

**LOSING THE WAR AT HOME: BUY
AMERICAN ACT WAIVERS COST U.S. JOBS**



**PREPARED BY THE
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Federal Contracting Decisions Cost U.S. Jobs

Connecticut has been one of the world leaders in aerospace and defense manufacturing, even after the 2008 economic crisis hit Connecticut businesses hard.

In 2010, the state lost 4,700 manufacturing jobs – bringing total manufacturing employment in the State to approximately 166,000. However, this year is looking up for Connecticut’s manufacturers. There was a 1% increase in manufacturing output since January 2010, and pay is up, with Connecticut manufacturing employees making \$30.62 per hour in January 2011, the highest level since the statistic started being recorded in 2007. The country also added 243,000 jobs from a recent low point in December 2009 through April 2011.

Unfortunately, due to several gaping loopholes in the Buy American Act, the Department of Defense is not contributing as much as it should to Connecticut’s manufacturing recovery and these contracting decisions are putting the U.S. defense industrial base at risk. Too often contracting officers are pinching pennies without regard to the long-term security implications of losing domestic defense suppliers. These shortsighted decisions cost the U.S. industrial base as many as 620,000 jobs by some estimates.

Our Flawed Procurement Policy

The Buy American Act only requires 51% of an item to be made in the United States to be considered “American made” – meaning that as much as 49% of an item could come from foreign sources. Currently, there is no reporting by the Department of Defense on how many items are purchased that only meet the minimal standards of the Buy American Act. Meaning that this report shows only the tip of the iceberg when it comes to federal dollars going to foreign manufacturers.

The current Buy American statute allows government agencies to issue a waiver of the Act if they are able to meet one of eight criteria. For example, waivers can be issued to meet our international trade agreements, or if the product cannot be found in the United States or if the product is to be used outside the United States.

The incredibly low threshold for a product to be considered “American” combined with the current loopholes in the law combine to create a perfect storm for American manufacturing. As Co-Chair of the bipartisan Congressional Buy American Caucus, Congressman Murphy has been leading the charge to reform the Buy American Act and restore Connecticut manufacturing.

It wasn’t until 2007, after 6 years of war, that the Department of Defense even bothered counting Buy American Act waivers. In 2006, the Department issued a report saying, “DoD has no central repository for waivers of the BAA and such information is not available in the existing DoD database.”

This report shows that since 2007, billions of dollars in federal contracts were awarded overseas through waivers to the Buy American Act, creating jobs in foreign countries instead of in Connecticut and the rest of the nation.

Report Highlights: Waivers are costing jobs

- The Department of Defense issued 38,498 waivers to the Buy American Act last year and 161,711 waivers over the last four years.
- The total amount of contracts awarded to foreign firms through a waiver of the Buy American Act was \$15.8 billion last year, up 13% from 2009. In total, we have sent \$53.5 billion to overseas manufacturers over the last four years.
- This costs the United States as many as 620,000 jobs by some estimates.
- 92% of waivers since 2007 were allowed due to international obligations and the “outside the U.S.” loophole.
- Reporting from the Department of Defense fails to account for the billions of dollars that are spent every year on products that only meet the minimum standards of the Buy American Act.
- It wasn’t until FY2007 that there was itemized, categorized, complete reporting on purchased goods manufactured overseas.

Too Many Loopholes

There are eight separate reasons why a waiver might be granted to the Buy American Act. These “waiver categories” are:

- 1) *Use outside the United States:* The Buy American Act does not apply to purchases of goods that will be used outside of the United States. That doesn’t mean that all of the articles materials and supplies used outside of the United States (which would be almost everything needed to fight in Iraq and Afghanistan) are bought from foreign companies, but billions of dollars are spent on these types of purchases;
- 2) *Resale:* If DoD is not the end user of the item, the Buy American Act doesn’t apply;
- 3) *WTO GPA and Free Trade Agreements:* Purchases that would interfere with our obligation to the WTO, the Agreement on Government Procurement or other Free Trade Agreements that restrict domestic preference are not subject to the Buy American Act;
- 4) *Commercial IT:* Purchases that are commercial information technology (IT) like computers, printers, software and hardware are exempt;
- 5) *Public Interest Determination:* Purchases for which an Agency head determines that enforcing the Buy American Act is not in the “public interest” are not subject to the Buy American Act. This waiver authority can be invoked after bidding is open and is at the discretion of the Secretary of Defense;

- 6) *Domestic Non-availability*: An item that is not made in the United States in sufficient quantity or quality is not subject to the Buy American Act. Even though there are American firms that make these items, DoD still sometimes says the items are non-available anyway;
- 7) *Unreasonable cost*: A federal agency is permitted to use a foreign product if the head of the agency determines that the cost of the lowest priced domestic product is "unreasonable." A system of price differentials has been established for use in making this determination. A 50% price differential is applied to Department of Defense procurements; and
- 8) *Qualifying country*: If the purchase is from a "qualifying country", which is one where we have a special trade agreement or a memorandum of understanding regarding defense trade, a waiver is available.

Total Cost of Buy American Waivers
(in millions)

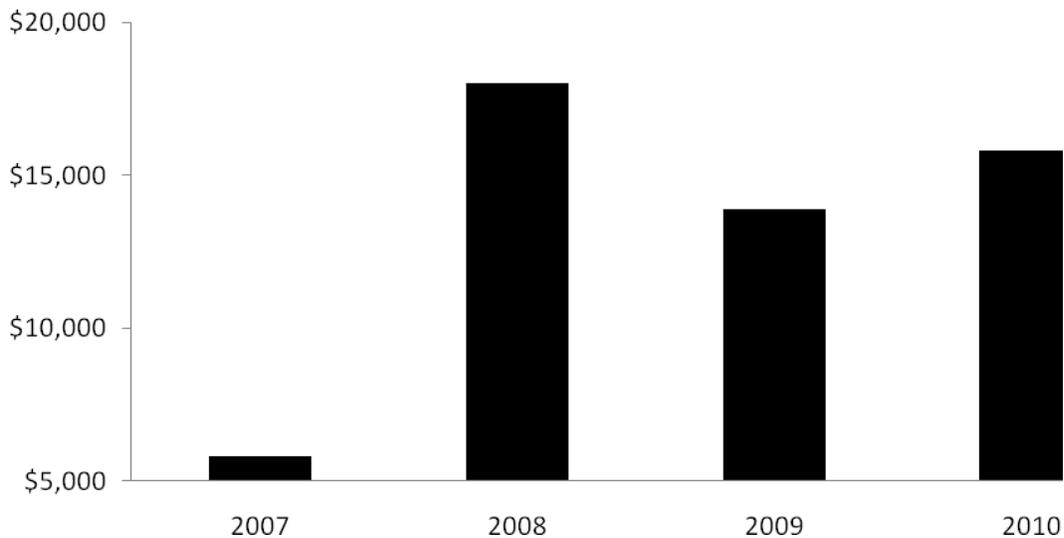


Table 1

How Buying Foreign Goods is Costing American Jobs

This cadre of official exceptions, carve outs and broad discretion by the Secretary of Defense has led to billions of taxpayer dollars being awarded to foreign firms through federal contracts, costing as many as 620,000 jobs.

Since 2007, DoD has purchased \$53.5 billion worth of goods from foreign manufacturers. As you can see in Table 2, most of these contracts were awarded due to the blanket exemption of Buy American for items used overseas. While we are engaged in two wars, with military personnel all over the world, it is clear that this exemption allows DoD to award contracts to foreign firms at will.

Even though fighting in Iraq has lessened since 2007 and the Administration plans to draw down fighting in Afghanistan soon, purchases of items used outside of the United States have increased over the years.

Non-Availability Determinations: A Vicious Cycle For American Businesses

The decline of U.S. manufacturing has also contributed to the increase in waivers granted. However, there is a vicious cycle in these numbers.

As we lose manufacturing jobs, the DoD determines that the capacity to make certain items no longer exists. Instead of working with companies that are the last manufacturer of a certain item, DoD awards the contract overseas, thereby assuring the demise of a struggling domestic manufacturer.

According to business owners in Connecticut, sometimes DoD doesn't even look before granting a "non-availability" waiver, and simply awards the contract to a foreign manufacturer. Instead of re-investing in domestic manufacturers so that our Defense Industrial Base can produce the items needed to supply our armed services, DoD has instead given up, and sent \$2.3 billion over the last four years through the "non-availability" waiver to overseas manufacturers instead of using that money here at home.

Congressman Murphy's Plan to Bring Back American Jobs

A series of legislative fixes to our procurement regime and industrial policy are needed to maintain supremacy in manufacturing.

- First, we need to implement a National Manufacturing Strategy that brings policy professionals together with business leaders at the cabinet level to chart a course for the future of manufacturing. Rep. Murphy is a cosponsor of the *National Manufacturing Strategy Act* of 2011 (HR 1366), to do just that.
- We need an honest assessment of our procurement that gives contracting officials the ability to give American manufacturers a leg up in contracting, which is why Congressman Murphy introduced the *American Jobs Matter Act* (HR 1354) to allow agencies such as the Department of Defense to accept "job impact statements" when soliciting bids.
- The domestic content requirement of the Buy American Act, which requires that only 51% of the cost of all the components of an item be American for the item to qualify as American, needs to be updated. Rep. Murphy is working with his colleagues to introduce legislation that would increase this percentage, and comprehensively reform the Buy American Act.
- We need to invest in our skilled workers by looking at training programs and incentives for young people to go into manufacturing. Rep. Murphy recently wrote a letter to President Obama requesting that the Trade Adjustment Assistance program be reauthorized immediately.

- DoD’s reporting shows that we need more transparency in our federal contracting. Rep. Murphy has twice offered Amendments to our National Defense Authorization bills that would require more-robust reporting of waivers. Specifically, the Amendments stipulated that DoD must include in this report an analysis of the domestic capacity to produce an item for which a waiver was granted. This exercise will allow us to see whether they are waiving the Buy American Act for items that are already available in the United States. These amendments also stipulated that the annual report from DoD must also include an analysis of the increase or decrease in the amount of waivers granted from the previous fiscal year. In FY 2007 there were 14,000 waivers granted. In the following year, FY 2008, there were 65,000 waivers granted without any explanation for the increase.
- Finally, we need to look at the total cost of our international obligations to determine whether they are worth the cost of millions of jobs lost in the last several decades.

Here is the sum total of these waiver decisions:

Table 2

Total Number of Waivers

Waiver Authority	FY2007	FY2008	FY2009	FY2010	Total
Use outside the U.S.	7,955	18,456	30,837	26,969	84,217
Resale	1,691	1,544	1,777	1,721	6,733
WTO GPA and Free Trade Agreements	793	1,063	1,016	1,100	3,972
Commercial IT	1,413	2,752	2,877	3,110	10,152
Public Interest Determination	98	110	211	187	606
Domestic Non-Availability Determinations	741	2,224	2,202	1,980	7,147
Unreasonable Cost	65	173	202	132	572
Qualifying Countries	1,403	38,678	4,932	3,299	48,312
Total	14,159	65,000	44,054	38,498	161,711

Total Dollar Amount of Waivers

(in millions)

Waiver Authority	FY2007	FY2008	FY2009	FY2010	Total
Use outside the U.S.	\$4,706	\$7,962	\$10,546	\$13,041	\$36,255
Resale	\$41	\$45	\$274	\$136	\$497
WTO GPA and Free Trade Agreements	\$153	\$640	\$634	\$354	\$1,781
Commercial IT	\$263	\$512	\$406	\$263	\$1,444
Public Interest Determination	\$41	\$8	\$28	\$17	\$94
Domestic Non-Availability Determinations	\$280	\$410	\$980	\$610	\$2,280
Unreasonable Cost	\$4	\$10	\$30	\$22	\$66
Qualifying Countries	\$306	\$8,437	\$988	\$1,368	\$11,099
Total	\$5,793	\$18,024	\$13,887	\$15,810	\$53,514

Conclusion

Taken in total, the last four fiscal years of defense procurement confirm what manufacturers in Connecticut and around the country are feeling: Federal dollars are going to foreign manufacturers at a disturbing rate. Instead of looking inward and investing in United States manufacturers, DoD has been too quick to look for ways to get around the Buy American Act. We need to reform our procurement regime, refocus on job creation, and reverse the current trend that leads to outsourcing American jobs.

Methodology

Section 8306 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act for FY 2007 (Public Law 110-028), modified the Buy American Act (41 U.S.C. 10a) by adding a requirement for the head of each Federal agency to submit a report to Congress on the amount of acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States in each of the fiscal years 2007 through 2011. This report is the aggregate of the four years of reporting (FY2007 – FY2010), compiled by the Under Secretary of Defense for Acquisition, Technology and Logistics.

To determine the amount of jobs created by defense spending the Office of Rep. Murphy used the methodology described in a report entitled, “The U.S. Employment Effects of Military and Domestic Spending Priorities,” written by Robert Pollin and Heidi Garrett-Peltier (2007) for the Institute for Policy Studies, Political Economy Research Institute, and Women’s Action for New Directions. According to this study, \$1,000,000,000 in defense spending created 11,600 jobs, of which 1,670 direct, indirect and induced manufacturing jobs – representing 14.4 percent of the total.