



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

For Immediate Release:

April 18, 2017

Contact:

Matt Groch (202) 454-5111

mgroch@citizen.org

Trump Buy American Order Good First Step, But Enacting EO's Goals Will Require Elimination of Trade Pact Buy American Waivers for 59 Nations

Statement of Lori Wallach, Director, Public Citizen's Global Trade Watch

Note: Today, President Donald Trump is signing an executive order to strengthen Buy American policies.

“Procurement is one of the most effective tools President Trump has to help U.S. workers, and strengthening Buy American rules is a good first step, but Buy American means buy from 59 countries and America unless the administration ends the trade agreement waivers now in effect.

If these important changes to procurement policy were fully implemented and the administration ended the waivers of Buy American policy now in place because of past trade deals, it could create more American manufacturing jobs and bring down our trade deficit.

The administration cannot have a policy of “Buy American, Hire American” and simultaneously authorize American taxpayer funds to be offshored to buy goods made by workers in the 59 countries that currently receive Buy American waivers under our trade agreements.

If President Trump is serious about strengthening Buy American and delivering on his pledges to create more American manufacturing jobs, he could immediately withdraw with 60 days written notice from World Trade Organization procurement rules with no penalty and invoke his executive authority to reverse all 59 trade pact Buy American waivers.” (On March 13, U.S. Sens. Tammy Baldwin (D-Wis.) and Jeff Merkley (D-Ore.) [wrote](#) to Trump calling on him to suspend trade agreement Buy American waivers.)

Background Information: Thanks to Trade Pact Waivers, Buy American Now Means Buy 59 Other Countries and American

Below is background information about Buy American and other U.S. procurement preferences and how these policies are being undermined by U.S. trade pact implementation. More details are available in [this](#) briefing paper.

- Firms and products from 59 nations with which the United States has trade pacts must be given the same access to U.S. government contracts as domestic firms and goods for all but the lowest-value government contracts. Effectively, these rules offshore our tax dollars rather than investing them to

create jobs and innovation at home. The World Trade Organization’s (WTO) Agreement on Government Procurement (GPA) covers 45 nations, and the North American Free Trade Agreement (NAFTA) and other free trade agreements (FTA) cover 14 nations. These rules even apply to subsidiaries of firms based in countries that have not signed agreements and provided reciprocal access as long as a subsidiary is operating in a country that has signed a U.S. trade pact. These limits on procurement policy apply to most U.S. federal purchases, with limits for U.S. defense agencies and some specific products listed in each trade deal.

- Setting limits on how our democratically elected federal and state governments can spend our tax dollars on procurement was not a traditional focus of trade agreements. But U.S. firms that offshored production did not want to be excluded from lucrative U.S. government contracts. They pushed for rules to require companies operating in trade partner countries to be treated like U.S. firms – and foreign-made goods to be treated as if they were made in America.
- The Procurement Act of 1949 gives a U.S. president broad powers to enact “policies and directives” for federal contracting. President Lyndon Johnson used this authority to issue an executive order in 1965 to prohibit contractors from discriminating against *any* of their employees – not just those performing federal work – on grounds of race or gender. President Barack Obama used this authority to set minimum wage and sick leave entitlements for federal contract employees.
- The U.S. government has a long tradition of using its contract spending, which adds up to \$450 billion per year, to promote national policy goals. For instance, a share of federal government contracts must be awarded to small businesses and women- and minority-owned firms; to qualify for government construction projects, firms must agree to pay workers prevailing wages; and the Buy American Act in effect since the Roosevelt administration requires preferences for purchase of American-made products. Indeed, the president has the authority under the Trade Agreements Act of 1979 to ban altogether government purchase of goods from countries such as China that have not signed trade pact procurement agreements.
- A U.S. president may withdraw from the WTO’s GPA by providing 60 days written notice to the WTO Director-General without incurring any liability at the WTO (WTO GPA [Art. XXII – 12 Withdrawal](#)). The GPA text makes explicit that the only penalty that can be imposed against one WTO member by another for any dispute relating to the GPA is to suspend benefits under the GPA (WTO GPA [Art. XXII\(2\) — Consultations and Dispute Settlement](#)). The standard WTO enforcement system that allows imposition of “cross sectoral” sanctions does not apply to the GPA.
- Even if the underlying notion of offshoring our tax dollars in exchange for providing opportunities for individual U.S. firms to obtain contracts from other governments was a good one, the way it is done in trade pacts is a losing proposition for the United States. A recent GAO report found that the United States opened *twice as much* procurement to foreign firms as the next five largest WTO

Products from and Firms in These 59 Countries Get Treated as if They Were U.S. Goods and Firms

Armenia, Aruba, Australia, Austria, Bahrain, Belgium, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxemburg, Mexico, Moldova, Malta, Montenegro, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Oman, Panama, Peru, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, Ukraine, UK

Bold = WTO GPA; Italics = FTA

GPA signatories *combined* (European Union, Japan, South Korea, Norway and Canada). The U.S. procurement market is much larger than any but that of the European Union. And, U.S. negotiators bound almost all procurement activity to the trade pact rules, while other countries preserved their policy space to use procurement for job-creation and other goals, and excluded significant aspects of their procurement activity from the rules. The result is that in exchange for some U.S. firms getting some opportunities to bid on equal terms with domestic firms on contracts in other nations (most of which have much smaller amounts of procurement), almost all U.S. government contracts are made available on terms equal to U.S. firms for all firms operating in 59 other countries

- These constraints are enacted through a waiver of Buy American and other domestic procurement preference policies through regulation, not by statute. The waiver rules are contained in the Federal Acquisition Regulation 52.225. These regulations implement a provision of the Trade Agreements Act (19 U.S.C. 2501, *et seq.*) that provides authority for the president (Section 2511) to waive the Buy American Act and other domestic procurement preferences a) that are above a set threshold and b) that involve countries that have signed an international trade agreement with the United States or are otherwise “designated countries.” The Trade Agreements Act gives the president discretionary authority to waive domestic procurement preferences, *but does not require a waiver*. This waiver authority has been delegated to the U.S. Trade Representative (USTR). USTR’s practice is to add new trade agreement countries or countries joining the WTO procurement agreement to a list found at 48 CFR 25.400.

###