

BACKGROUND

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“Buy American” Laws: A Costly Policy Mistake That Hurts Americans

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Abstract

Proponents of domestic content requirements for goods procured by federal, state, or local governments, commonly referred to as “Buy American” laws, argue that these laws promote economic growth and national security and create jobs in sectors like the steel industry. Contrary to these claims, domestic content requirements create additional, costly regulatory burdens for producers, increase costs for American taxpayers, and are unlikely to yield job growth in target industries. Rather than strengthening domestic content requirements, Congress and the Administration should eliminate all such laws currently on the books. Such a move would result in more than 300,000 additional private-sector jobs (net) and contribute \$22 billion to U.S. GDP.

The Trump Administration has made it clear that the slogan “Buy American, Hire American” will be a cornerstone of its policy agenda. This sentiment was exemplified when the President signed an executive order to that effect in April. The order not only directs federal agencies to comply with and enforce current laws on domestic content requirements, it makes several restrictive changes to current practices regarding government procurement.

The order directs federal agencies to ensure that contractors are not utilizing allegedly dumped products, thereby increasing the difficulty of obtaining domestic content waivers. For iron and steel goods, the order defines “produced in the United States” as the initial melting, as well as coating processes, having taken place in the U.S. This process-based definition, found mostly in more recent “Buy America” laws and provisions (confusingly given the same name, save the absence of the “n”), is much more stringent

KEY POINTS

- In his “Buy American, Hire American” executive order, President Trump directed federal agencies to enforce domestic content requirements as strictly as possible.
- For an Administration that claims to support economic growth and job-growth policies, this order has completely missed the mark.
- In addition to the 1933 Buy American Act, there is a host of newer, highly complex, and confusing “Buy America” provisions that burden industry and cost U.S. jobs.
- Domestic content requirements create additional, costly regulatory burdens for producers, increase costs for American taxpayers, and are unlikely to yield job growth in target industries
- Congress should repeal or amend all existing domestic content requirements—which would create more than 300,000 additional jobs (net) and increase U.S. GDP by \$22 billion.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3218>

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than the definition found in the Buy American Act of 1933.

For an Administration that claims to support economic growth and job-growth policies, this order has completely missed the mark. Domestic content requirements, like those found in the Buy American Act, the Berry Amendment, and various other laws, result in additional regulatory burdens for producers and increase costs for American taxpayers. All for little or no gain: The policies are unlikely to stimulate job growth in target industries.

Congress and the Trump Administration should work together to eliminate all existing domestic content requirements. Doing so would create hundreds of thousands of American jobs across the country and contribute billions of dollars to U.S. gross domestic product (GDP).

Overlapping Regulatory Mandates

U.S. law is filled with a myriad of highly complex and confusing domestic content requirements, and the situation is further complicated by varied interpretations of the laws by different government agencies. The regulatory landscape that American businesses must navigate to fulfill their Buy American obligations raises their costs, hurts their profits, holds back employment of American citizens, and reduces the value that taxpayers receive for the dollars invested by the government in infrastructure and other projects.

The various laws and provisions are separated into two categories, those that regulate direct federal government spending, and those that regulate indirect federal government spending, such as federal grant funds to state and local governments. The former, commonly called “Buy American,” include: The Buy American Act of 1933, the Trade Agreements Act, and the Berry Amendment. The latter are commonly referred to as “Buy America,” and include a host of laws and provisions related to the Department of Transportation and other agencies. Many of the laws or provisions define “produced or manufactured in America” in a different way, making it

extremely cumbersome and expensive for businesses to bid on government contracts while remaining competitive in the world economy.

The Buy American Act

The Buy American Act of 1933¹ is the best-known of the pieces of legislation that impose domestic content requirements on federal government acquisition. While this specific piece of legislation has been amended a handful of times since its original passage, the act today still establishes a price preference system for domestically manufactured products.

The Trade Agreements Act

The Trade Agreements Act (TAA), passed in 1979, created a method for the U.S. to approve and implement trade agreements negotiated under the Trade Act of 1974. The TAA gives the President the authority to waive the Buy American Act and other domestic content requirements through international agreements.² “[T]he Office of the United States Trade Representative (USTR) has waived the Buy American Act for eligible products from designated countries, making these products in a sense ‘subject to’ the TAA rather than the Buy American Act.”³

The Berry Amendment

The Berry Amendment has existed for Department of Defense procurement for decades, but was codified into law as a result of the 2002 National Defense Authorization Act. This law requires all food, clothing, and tents, as well as certain textiles and hand or measuring tools to be 100 percent grown, reprocessed, reused, or produced in the United States. There are 10 exemptions for this law, including exemptions for procurement that falls below the micro-purchase threshold, items procured outside the U.S. for combat or contingency operations, and in cases when the goods are needed urgently.⁴

The 2007 National Defense Authorization Act codified into law a requirement for specialty metals that has been around since the beginning of World War II. The specialty-metals restriction prevents

1. 41 U.S. Code §§ 8301-8305.

2. 19 U.S. Code § 2502.

3. Kate M. Manuel et al., “Domestic Content Restrictions: The Buy American Act and Complementary Provisions of Federal Law,” Congressional Research Service *Report for Congress*, September 12, 2016, <https://fas.org/sgp/crs/misc/R43354.pdf> (accessed April 14, 2016).

4. 10 U.S. Code § 2533a.

A Nightmare of Complexity

The Federal Acquisition Regulation (FAR)^{*} is the legislative instrument used to implement the Buy American Act, implementing regulations for the government’s purchase of supplies and construction materials. In each of these areas, the appropriate government agency must add 6 percent to the lowest offer from a foreign company if the lowest offer from a domestic company is from a large business. When the lowest domestic offer is from a small business, an agency must add 12 percent to the lowest foreign bid. The margin added is 50 percent for Department of Defense contracts. Individual agencies can adopt higher percentages than required under the Buy American Act. After these adjustments to foreign offers, if the domestic offer is lower or tied, the domestic company will typically receive the contract.

Standards for supplies and construction materials vary slightly under the Buy American Act. When federal agencies acquire supplies for use within the U.S., they must be domestic end products if the purchase exceeds \$3,500. To be considered a domestic end product, the product must fulfill certain unmanufactured and manufactured requirements.

Unmanufactured end products must be mined or produced in the United States in order to qualify as “domestic” for purposes of the Buy American Act. *Manufactured* end products, in contrast, qualify as domestic if they are manufactured in the United States, and either (1) the cost of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components, or (2) the end product is a commercially available off-the-shelf item.[†]

The interpretation of “manufactured in the U.S.” under the Buy American Act is different than more recent domestic content requirements found in Buy America provisions and other laws. This is because the definition is outcome-based instead of process-based, making it last through technological and process advancements in the iron and steel industry. In short, it is an “evergreen” definition that does not stifle innovation as much as the interpretations found in the more recent Buy America laws.

When federal agencies conduct construction projects, all construction materials used on the job site must be domestic end products; this includes items brought to the job site by contractors and subcontractors. This means that every hammer, forklift, and nail not directly purchased by a federal agency must meet the same aforementioned domestic end-product standards.

There are some exceptions to the Buy American Act. The domestic content requirements for federal acquisition can be waived if:[‡]

1. The procurement of domestic goods or the use of domestic construction materials would be “impractical” or “inconsistent with the public interest”;
2. Domestic end products or construction materials are not “in sufficient and reasonably available commercial quantities and of satisfactory quality”;
3. The contracting officer determines that the cost of domestic end products or construction materials would be “unreasonable”;
4. The goods are acquired specifically for commissary resale; or

^{*} 41 U.S. Code § 106.

[†] Kate M. Manuel et al., “Domestic Content Restrictions: The Buy American Act and Complementary Provisions of Federal Law,” Congressional Research Service *Report for Congress*, September 12, 2016, p. 4, <https://fas.org/sgp/crs/misc/R43354.pdf> (accessed April 14, 2016).

[‡] *Ibid.*, pp. 6 and 7.

5. The agency procures information technology that is a commercial item.

Additionally, the Trade Agreements Act waives requirements under the Buy American Act for designated countries.⁸

⁸ International Trade Administration, Department of Commerce, General Country Eligibility Provisions, <http://trade.gov/agoa/eligibility/index.asp> (accessed May 8, 2017).

the Defense Department from procuring certain end goods or components thereof containing foreign specialty metals. There are seven exemptions to the specialty-metals restriction, including when a non-compliant good is needed for national security reasons and when noncompliant specialty metals equal less than 2 percent of the total weight of the good.⁵

Despite these exemptions, when Defense Department procurement for one of these goods is exempt from the Berry Amendment, it could still be subject to the price preference system established under the Buy American Act.

Decreased Choice. Tucked into the 2017 National Defense Authorization Act is a provision that requires the Department of Defense to buy athletic shoes for all incoming service members from domestic sources.⁶ The United States makes less than 1 percent of the 24.3 billion shoes produced worldwide. Previously, the Defense Department provided a stipend to service members so that they could choose the athletic shoes that best met their needs. Athletic shoes vary greatly, and different shoe brands are better for different people. This example of “buying American” robs U.S. service members of the ability to make the best choice for their needs.

Other “Buy America” Laws and Provisions

Before the 1980s, domestic content requirements only applied to procurement conducted specifically by federal agencies. The Surface Transportation Assistance Act of 1982 changed that, as it included provisions that placed domestic content require-

ments on federal grant funds. The act required state and local governments to use steel, cement, and manufactured products that are “produced in the United States” when using federal funds for transportation infrastructure projects.⁷

Today, these requirements primarily affect five administrations within the Department of Transportation, but due to the vague definition of “produced in the United States,” each administration interprets the law differently. These variations are incredibly complex and it is difficult for potential contractors to have multiple sets of rules on top of the existing requirements for direct federal procurement under the Buy American Act of 1933. Each of the variations includes waivers if complying with the requirements is inconsistent with the public interest or if the necessary iron, steel, or manufactured products are not available in the United States. The Department of Transportation requirements for five individual administrations are as follows:

- **Federal Highway Administration (FHWA).** The FHWA considers an end product “produced in the United States” if domestic content represents 100 percent of the overall cost, but allows minimal use of foreign iron and steel components “if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater.”⁸ A waiver to these requirements exists in cases where compliance increases the overall cost of the contract by more than 25 percent. The FHWA also waives the “Buy America” requirement for raw materials

5. 10 U.S. Code § 2533b.

6. 2017 National Defense Authorization Act, § 817.

7. Gary Clyde Hufbauer et al., *Local Content Requirements: A Global Problem* (Washington, DC: Peterson Institute for International Economics, 2013), pp. 135-150.

8. 23 C.F.R. § 635.410(b)(4).

used to create basic steel products, allowing primary metal manufacturers to use imported iron ore and other such raw materials. The FHWA uses a process-based definition for iron and steel making with the requirement that the inputs must be “melted and poured” in the U.S.⁹

- **Federal Aviation Administration (FAA).** The FAA considers an end product “produced in the United States” if domestic content represents 60 percent of the overall cost or if final assembly takes place in the United States. A waiver exists in cases where compliance increases the overall cost of the contract by more than 25 percent.¹⁰
- **Federal Transit Administration (FTA).** The FTA requires construction materials to be made primarily of U.S. steel or iron but does not define the term further. The FTA defines “produced in the United States” to mean that all manufacturing processes take place in the U.S with all components being of domestic origin, though the sub-components are not required to be U.S.-made. A waiver exists in cases where compliance increases the overall cost of the contract by more than 25 percent. A waiver also exists for rolling stock, which allows a percentage of the end product to not be U.S.-made so long as the final assembly takes place in the U.S. The percentage of domestic content for rolling stock is set to increase each fiscal year (FY) until 2020, when the requirement will reach 70 percent domestic content. The requirement for FY 2017 is 60 percent.¹¹
- **Federal Railroad Administration (FRA).** The FRA requires end products to be 100 percent U.S.-made for contracts that exceed \$100,000 and defines “produced in the United States” as end

products that are manufactured domestically with all components of U.S. origin. A waiver exists for rolling stock or equipment that cannot be delivered in time or if compliance increases the overall cost of the contract by more than 25 percent.¹²

- **Amtrak.** Amtrak must purchase end products manufactured “substantially” in the U.S. for procurement projects exceeding \$1 million. An end product is considered substantially “manufactured in the United States” for Amtrak if the value of domestic content represents more than 50 percent of the total cost.¹³

Water, Too. As part of the Consolidated Appropriations Act of 2014, Congress included Buy America provisions on federal funds dispersed to states through the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF).¹⁴ These requirements were only in place for FY 2014, but Congress also passed the Water Resources Reform and Development Act of 2014, which made the requirements for CWSRF permanent.¹⁵ While “Buy America” requirements have not been made permanent for DWSRF, provisions have been included in legislation regarding the use of these funds for the past two fiscal years.

Last year, Congress passed the Water Infrastructure Improvements for the Nation (WIIN) Act, which expanded the federal government’s role in funding state and local water infrastructure. The WIIN Act contained a costly provision requiring the use of American-made iron and steel for water infrastructure projects. The provision cannot be waived unless the cost of buying U.S. products raises the overall cost of a project by more than 25 percent, if the product is not available from U.S. manufacturers, or if compliance is not in the public interest.¹⁶

9. Michaela D. Platzer and William J. Mallett, “Effects of Buy America on Transportation Infrastructure and U.S. Manufacturing: Policy Options,” Congressional Research Service *Report for Congress*, November 10, 2015, p. 18, <https://fas.org/sgp/crs/misc/R44266.pdf> (accessed April 14, 2017).

10. Manuel et al., “Domestic Content Restrictions,” p. 18.

11. *Ibid.*, p. 19.

12. *Ibid.*, p. 20.

13. Platzer and Mallett, “Effects of Buy America on Transportation Infrastructure and U.S. Manufacturing,” p. 22.

14. Public Law 113-76, tit. IV, § 436, 128 Stat. 346 (2014).

15. Public Law 113-121, § 5004, 128 Stat. 1326 (2014).

16. The Buy American provision of the WIIN Act applies only to funds made available during FY 2017. Public Law 114-322, § 2113.

The Negative Effects of Domestic Content Requirements

Existing laws and provisions regarding domestic content requirements, as exhibited above, are extremely onerous and complicated burdens. They have three main effects: (1) creating additional regulatory hurdles for producers; (2) costing American taxpayers more than they would otherwise pay for government projects; and (3) they are unlikely to yield job growth in target industries like the steel sector.

Regulatory Burden for Producers. In 2013, Congress was considering a wave of water infrastructure bills that included Buy America provisions. During the debate, 15 trade associations submitted a letter to Congress opposing legislation with such provisions, citing two reasons for their dissent. The first was regarding international supply chains, as many of their member companies produced final goods containing components from around the world. The provisions would prevent these companies from competing for contracts with their current supply chains. The second was a concern about other countries following America's lead on this issue, which would hinder the ability of domestic companies to bid on foreign government contracts.

Since then, scores of businesses have expressed how the Buy American Act and Buy America provisions affect their ability to compete. A study published by Trade Partnership Worldwide shares the stories of just a few of these businesses.

Canam Group, a Canadian company that supplies custom-made products for the construction industry, has two facilities in the United States supporting 2,100 jobs. Due to the custom nature of the parts that Canam produces, each product requires special machinery, which is expensive. This makes it necessary for each of the company's four facilities (the remaining two are located in Canada) to specialize in different products. As Trade Partnership Worldwide explains:¹⁷

For projects subject to requirements related to using American iron and steel, Canam may

choose not to bid at all, since it would require investing in expensive equipment for U.S. facilities when it already has the equipment in Canada.... In these cases, U.S. domestic content rules hurt Canam's employees in New Hampshire and Maryland as well as American suppliers that provide key components to Canam such as Arcelor-Mittal, St. Louis Fasteners in Missouri, and Birmingham Fasteners in Alabama.

JCM Industries is a family-owned pipe-fitting manufacturer located in Nash, Texas, employing approximately 140 people in the small town of 3,000. JCM imports partially manufactured products like steel couplings from Robar Industries, a Canadian company. These intermediate goods are then manufactured further to create larger pipe fittings, which are used in the U.S. and exported around the world.¹⁸ Ron Collins, president of JCM Industries, says that

I consider Canada an extension of the U.S. market and vice versa. We do cross-border business seamlessly, except when governments make business more difficult. The burden of the [American Iron and Steel] paperwork chain is both slowing and reducing the number of project starts.¹⁹

Because the company does a great deal of work in the water and sewer sector, it has to deal with the burden of regulations put in place by the Clean Water Act. The American Iron and Steel (AIS) requirements in this act require "complete traceability for products that end up in projects paid for with either Clean Water or Drinking Water State Revolving Funds." Due to JCM's complex supply chain, tracking the origin of product components can be incredibly difficult.

NLMK USA is a steel manufacturing company that uses steel slab to make hot-rolled and cold-rolled coil. The company also produces some galvanized steel products, employing approximately 1,100 Americans in Pennsylvania and Indiana. NLMK imports most of its steel slab because the limited amount produced in America does not meet their need.²⁰

17. Trade Partnership Worldwide, LLC, "Economic Impact of U.S.-Canada Supply Chains," May 2016, p. 10, http://tradepartnership.com/wp-content/uploads/2016/05/Canada-Supply-Chain_Final.pdf (accessed April 17, 2017).

18. *Ibid.*, p. 14.

19. *Ibid.*

20. *Ibid.*, p. 19.

Unfortunately, “Buy America provisions can disqualify steel products manufactured from imported slab for U.S. highways, transit, and water projects.”²¹ This has become an even greater problem for companies like NLMK because of expanded domestic content requirements in laws like the WIIN Act. The WIIN Act prohibits federal funds from being “used for a project for the construction, alteration or repair of a public water system unless all of the iron and steel products used in the project are produced in the United States.”²²

According to Trade Partnership Worldwide, “If domestic content rules were removed, NLMK could add 25 new jobs in Indiana alone.” The average wage for NLMK jobs is more than \$100,000 a year—making these 25 jobs a major boon for residents of the small town of Portage, Indiana.²³

Even federal, state, and local governments express concerns about the regulatory burden of domestic content laws. A Government Accountability Office study published in 2010 found that five of 27 federal agencies surveyed reported that Buy American requirements tied to the America Recovery and Reinvestment Act of 2009 caused delays in implementing new projects. Three other agencies reported that Buy American laws could cause delays for the agency. The same study also surveyed various state and local government agencies. Two states and one local agency reported that Buy American requirements caused delays in implementing projects. Three states reported that the regulations could cause delays.²⁴

Increased Costs for Taxpayers. In February 2017, a coalition of 30 business groups submitted a letter to the governor of New York and the state’s legislature expressing serious concerns about potential legislation that would increase domestic content requirements in the state. The proposed measure did not pass, but the coalition’s remarks on the cost of domestic content requirements rings true at the federal level as well.

[Domestic content] requirements undermine manufacturing in the state and limit the ability of New York-based companies to succeed and compete in the global economy. Localization requirements would increase costs for taxpayers and affect hundreds of thousands of New York workers whose jobs rely on the global economy.²⁵

The cost-related effects of the many domestic content requirements currently on the books vary, but there is no doubt that these laws do force American taxpayers to pay more than they would otherwise pay for federal, state, and local projects.

The Buy American Act’s preference system could cost taxpayers between 6 percent and 50 percent more, depending on the agency and type of business bidding on the contract. For example, a contract for \$50 million could cost taxpayers between \$53 million and \$75 million before a foreign bid could be considered.

The cost of the Berry Amendment is a bit more difficult to nail down, but when these goods must be 100 percent grown, reprocessed, reused, or produced in the United States, foreign competitors, and even U.S. companies with facilities located abroad, are not able to compete.

For the many Buy America provisions, the extra cost is fairly consistent at up to 25 percent higher than a lower foreign bid. This means that the same \$50 million contract could cost taxpayers as much as \$62.5 million before a foreign bid could be considered.

Does Little to Help Job Growth in Target Industries. One of the main arguments in support of domestic content requirements is that these laws help create American jobs. Furthermore, proponents of these laws say that showing preference for American goods is more patriotic because it supports U.S. jobs.

After President Barack Obama signed the American Recovery and Reinvestment Act in 2009, the

21. Ibid.

22. Water Infrastructure Improvements for the Nation Act (S. 612), <https://www.congress.gov/114/bills/s612/BILLS-114s612enr.pdf> (accessed May 5, 2017).

23. Trade Partnership Worldwide, “Economic Impact of U.S.–Canada Supply Chains,” p. 19.

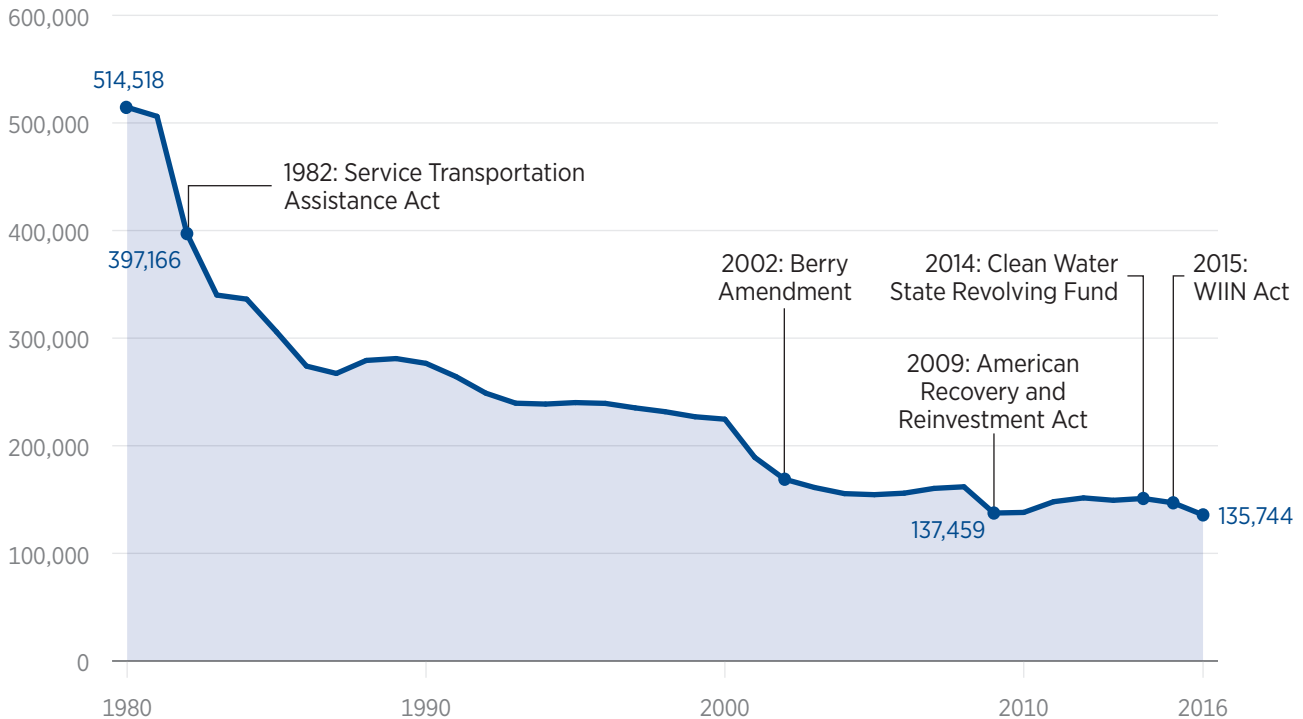
24. Government Accountability Office, “Recovery Act: Project Selection and Starts Are Influenced by Certain Federal Requirements and Other Factors,” February 2010, <http://www.gao.gov/assets/310/300873.pdf> (accessed April 17, 2017).

25. Letter from Information Technology Industry Council and 29 other organizations to Governor Andrew Cuomo, Senators, and Assembly Members, February 16, 2017, <http://www.itic.org/dotAsset/d3f18380-a460-4273-91bf-d8c8b100937a.pdf> (accessed April 17, 2017).

CHART 1

Effects of “Buy American” on Steel-Manufacturing Employment

ANNUAL AVERAGE EMPLOYMENT



SOURCE: Bureau of Labor Statistics, “Quarterly Census of Employment and Wages,” <http://www.bls.gov/cew/datatoc.htm> (accessed April 24, 2017).

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Economic Policy Institute had this to say about the benefits of Buy American laws:²⁶

The federal government needs to embrace wholeheartedly the goal of creating good jobs in the United States. Including domestic sourcing requirements, like those reflected in the Buy American Act, strengthening enforcement of such requirements, and creating transparency in all aspects of the program will go a long way towards achieving that goal and strengthening the role of government as an engine of economic growth.

Contrary to these claims, there is no positive correlation between increased domestic content

requirements and job growth in the industries these policies are meant to help. The U.S. steel-producing industry, often the target industry for domestic content requirements, is an example: In 1980, more than 500,000 Americans were directly employed in the domestic steel industry. Since then, employment has consistently decreased despite the government’s efforts to protect the industry from foreign competition. Approximately 136,000 Americans are directly employed in the steel industry today.²⁷

As detailed above, Congress has enacted many laws in the past four decades that contained domestic content requirements. Chart 1 shows employment in the U.S. steel-producing sector from 1980 to 2016. Employment in the sector has not had an

26. Owen E. Herrnstadt, “Buy American and the Recovery Program: Now What?” Economic Policy Institute, March 13, 2009, http://www.epi.org/publication/buy_american_and_the_recovery_program_now_what/ (accessed April 17, 2017).

27. U.S. Department of Labor, Bureau of Labor Statistics, Quarterly Census of Employment and Wages, 1975 to 2016.

uptick during that entire time, despite the vast array of domestic content requirements and other protectionist measures meant to create steel jobs.

Meanwhile, 12.8 million Americans owe their jobs to industries that use domestic and foreign steel as a means of production. On top of that, 27.6 million American jobs depend on industries that sell and move American and foreign-made goods.²⁸

More than 40 percent of goods imported into the U.S. are intermediate goods used to produce finished products. The inclusion of capital goods like equipment and machinery boost that percentage to just over 62 percent of all U.S. imports.²⁹ This means that more than half of what the U.S. imports, including foreign steel products that complement or compete with domestic steel products, support millions of American jobs like the ones previously mentioned.

The U.S. economy is a job-creating machine, adding between 200,000 and 300,000 new jobs each month. It is not the government's role to create those jobs directly. The government's role in job creation is to create a tax, trade, and regulatory environment where private businesses are able to grow and flourish. Domestic content requirements achieve the opposite of this mission and hinder a business's ability to create jobs.

U.S. Government Should Eliminate All Domestic Content Requirements

A new report found that eliminating all existing domestic content requirements would provide immense benefits to U.S. producers and taxpayers, as well as contribute to significant job growth across the economy.³⁰

Removing domestic content requirements would let businesses spend less money on supplies and compliance, allowing the private sector to increase employment. The move would also increase efficiency, reduce costs, and allow the federal government to complete more projects without increasing fund-

ing. All of these things would result in American taxpayers getting more out of their tax dollars and ensure that the government is spending their money wisely.³¹

Finally, eliminating all domestic content requirements would increase U.S. GDP by \$22 billion and create thousands of jobs across the country.³² An estimated 363,000 additional jobs would be created as a result of this change, while approximately 57,000 jobs would be lost. Fifty of 51 states (including the District of Columbia) and 430 of 436 congressional districts would experience job increases. For a comprehensive list of employment gains and losses by congressional district, see Appendix Table 1.³³

With that in mind, Congress should start by repealing or amending the following laws:

- **Buy American Act of 1933:** Repeal 41 U.S. Code §§ 8301–8305.
- **Berry Amendment** (food, clothing, tents, some textiles, and hand or measuring tools): Repeal 10 U.S. Code § 2533(a).
- **Berry Amendment** (specialty metals): Repeal 10 U.S. Code § 2533(b).
- **Federal Highway Administration:** Repeal 23 U.S. Code § 313.
- **Federal Aviation Administration:** Repeal 49 U.S. Code §§ 50101 and 50103.
- **Federal Transit Administration:** Repeal 49 U.S. Code § 5323(j).
- **Federal Railroad Administration:** Repeal 49 U.S. Code § 24405.
- **Amtrak:** Repeal 49 U.S. Code § 24305.

28. Ibid.

29. U.S. International Trade Commission, "Interactive Tariff and Trade DataWeb," <https://dataweb.usitc.gov/> (accessed April 19, 2017).

30. Peter B. Dixon, Maureen T. Rimmer, and Robert G. Waschik, "Macro, Industry and Regional Effects of Buy America(n) Programs: USAGE Simulations," Victoria University, Melbourne Centre of Policy Studies *Working Paper* No. G-271, April 2017, <http://www.copsmodels.com/ftp/workpapr/g-271.pdf> (accessed April 19, 2017).

31. Ibid.

32. Ibid.

33. Ibid.

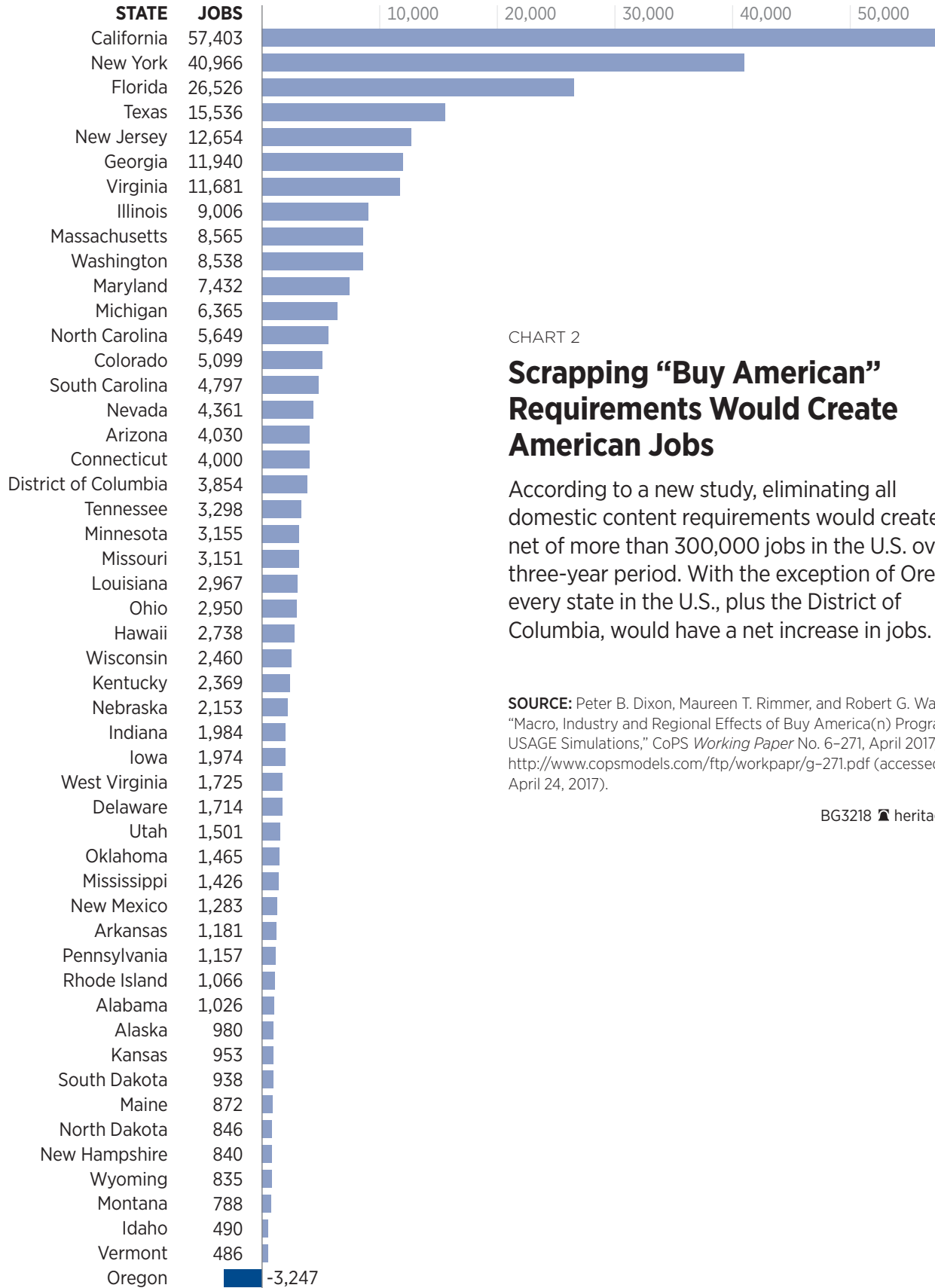


CHART 2

Scrapping “Buy American” Requirements Would Create American Jobs

According to a new study, eliminating all domestic content requirements would create a net of more than 300,000 jobs in the U.S. over a three-year period. With the exception of Oregon, every state in the U.S., plus the District of Columbia, would have a net increase in jobs.

SOURCE: Peter B. Dixon, Maureen T. Rimmer, and Robert G. Waschik, “Macro, Industry and Regional Effects of Buy America(n) Programs: USAGE Simulations,” CoPS *Working Paper* No. 6-271, April 2017, <http://www.copsmodels.com/ftp/workpaprg-271.pdf> (accessed April 24, 2017).

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- **WRRDA of 2014:** Repeal Public Law 113–121 § 608.
- **WIIN Act:** Repeal Public Law 114–322 § 2113.

These laws are just a sampling of the existing laws with domestic content requirements. There are dozens of other requirements codified in law; for a comprehensive list see Appendix Table 2.³⁴ (The Appendix list does not include requirements that are *not* codified in law, like those found in the WIIN Act.)

Domestic content requirements create costly regulatory hurdles for producers, costing American taxpayers more than they would otherwise pay for government projects, and are unlikely to result in job growth in target industries. Rather than strengthening these laws, Congress and the Administration should eliminate all domestic content laws and create an economic environment in which private business can grow and flourish.

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34. Manuel et al., “Domestic Content Restrictions,” pp. 24–28.

APPENDIX TABLE 1

Domestic Content Requirements in U.S. Law (Page 1 of 4)

U.S. CODE	DESCRIPTION
3 U.S.C. §110	Directs that all furniture purchased for the use of the Executive Residence at the White House be, “as far as practicable,” of domestic manufacture.
6 U.S.C. §453b	Prohibits the Department of Homeland Security from using funds appropriated or otherwise available to it to procure covered items unless the item was grown, reprocessed, reused, or produced in the United States, with certain exceptions. Covered items include (1) articles and items of clothing, and the materials and components thereof, other than sensors, electronics, or other items added to and not normally associated with clothing; (2) tents, tarpaulins, covers, textile belts, bags, protective equipment, sleep systems, load carrying equipment, textile marine equipment, parachutes, and bandages; (3) cotton and other natural fiber products, woven silk or silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, and wool; and (4) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.
7 U.S.C. §612c note	Requires that Community Distribution Programs receiving certain federal funds purchase, “whenever possible,” only “food products that are produced in the United States,” with certain exceptions.
7 U.S.C. §903 note	Mandates that, as a condition of certain loans made for purposes of rural electrification, “to the extent practicable and the cost of which is not unreasonable,” borrowers agree to use, in connection with the expenditure of borrowed funds, only (1) unmanufactured articles, materials, and supplies that have been mined or produced in the United States or an “eligible country” (a country with which the United States has certain trade agreements), or (2) manufactured articles that have been manufactured in the United States or an eligible country from articles, materials, or supplies mined, produced, or manufactured in the United States or an eligible country.
7 U.S.C. §1506(p)	Expresses the sense of Congress that, “to the greatest extent practicable,” all equipment and products purchased by the Federal Crop Insurance Corporation (FCIC) using funds available to the FCIC should be “American-made,” and that, in providing financial assistance to, or entering contracts with, entities for the purchase of equipment and products to carry out this subchapter, the FCIC, “to the greatest extent practicable,” shall notify the entity of this policy.
7 U.S.C. §7012	Expresses the sense of Congress that, “to the greatest extent practicable,” all equipment and products purchased using funds made available pursuant to Chapter 98 of Title 7—which addresses the Consolidated Farm Service Agency, the Rural Utilities Service, the Rural Business and Cooperative Development Service, and the Rural Development Disaster Assistance Fund—should be “American-made”; and that, in providing financial assistance to, or entering contracts with, entities for the purchase of equipment and products to carry out this subchapter, the Secretary of Agriculture, “to the greatest extent practicable,” shall notify the entity of this policy.
10 U.S.C. §2302 note	Requires the Secretary of Defense to “encourag[e] increased domestic breeding,” while ensuring that military working dogs are procured as efficiently as possible and at best value to the government.
10 U.S.C. §2436	Directs the Secretary of Defense to plan and establish an “incentive program” for contractors to purchase capital assets manufactured in the United States, in part with funds made available to DOD.
10 U.S.C. §2534	Prohibits DOD from procuring sonobuoys manufactured in a foreign country if U.S. firms that manufacture sonobuoys are not permitted to compete on an equal basis with foreign manufacturing firms for the sale of sonobuoys in that country, with certain exceptions.
10 U.S.C. §2534 note	Mandates that DOD incorporate clauses into any of its contracts that provide for photovoltaic devices to be (1) installed on DOD property or in a facility owned by DOD, or (2) reserved for the exclusive use of DOD in the United States for their full economic life, to require that any photovoltaic devices installed under the contract “be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.”

APPENDIX TABLE 1

Domestic Content Requirements in U.S. Law (Page 2 of 4)

U.S. CODE	DESCRIPTION
10 U.S.C. §7291 note	Requires that any vessels constructed or converted under a program for the construction and conversion of cargo vessels incorporating features “essential for military use” incorporate (1) propulsion systems whose “main components (that is, the engines, reduction gears, and propellers)” are manufactured in the United States, and (2) bridge, machinery control systems, and interior communications equipment that are manufactured in the United States and have more than 50 percent of their value, in terms of cost, added in the United States, with certain exceptions.
12 U.S.C. §1735e-1	Directs the Secretary of Housing and Urban Development to encourage the use of materials and products mined and produced in the United States in the administration of housing programs.
14 U.S.C. §97	Prohibits the Coast Guard from procuring any buoy chain that is not manufactured in the United States, or substantially all the components of which are not produced or manufactured in the United States, unless the price of a buoy chain manufactured in the United States is “unreasonable” or emergency circumstances exist.
15 U.S.C. §631 note, 15 U.S.C. §661	Requires the Administrator of Small Business, when providing financial assistance with amounts appropriated pursuant to certain amendments made to the Small Business Act in 1992, “when practicable,” to give preference to small businesses which use or purchase equipment and supplies produced in the United States, and to encourage small businesses receiving assistance to purchase such equipment and supplies.
15 U.S.C. §2221(l)	Requires that the recipients of arson prevention grants under Chapter 49 (Fire Prevention and Control) of Title 15 purchase, when available and cost-effective, American-made equipment and products when expending grant funds.
20 U.S.C. §6067	Expresses the sense of Congress that no funds appropriated pursuant to Chapter 68 (National Education Reform) of Title 20 are to be expended by an entity unless the entity agrees to comply with the Buy American Act in expending the funds, and to purchase only “American-made equipment and products” in the case of any equipment or products that may be authorized to be purchased with financial assistance provided under Chapter 68.
22 U.S.C. §2354	Imposes a number of restrictions on procurements made outside the United States involving foreign assistance funds. Among other things, (1) funds may not be used to purchase, in bulk, any commodities at prices higher than the market price prevailing in the United States at the time of purchase (adjusted for differences in the cost of transportation to destination, quality, and terms of payment); (2) agricultural commodities or products available for distribution under the Food for Peace Act shall, “insofar as practicable,” be procured within the United States unless such items are not available in the United States in sufficient quantities to supply emergency requirements of recipients; (3) commodities procured must generally be insured in the United States against marine risk with companies authorized to do a marine insurance business in any state of the United States; (4) funds made available under Chapter 32 of Title 22 may not be used to procure any agricultural commodity, or product thereof, outside the United States when the domestic price of such commodity is less than parity, with certain exceptions; and (5) funds may not be used to procure construction or engineering services from “advanced developing countries” which have attained a “competitive capability” in international markets for construction services or engineering services.
24 U.S.C. §225h	Requires the District of Columbia to comply with the Buy American Act in all procurements made under Subchapter III (Mental Health Service for the District of Columbia) of Chapter 4 of Title 24, and prohibits the award of contracts or subcontracts made with funds authorized under this subchapter for the procurement of articles, materials, or supplies produced in countries whose government unfairly maintains in government procurement a “significant and persistent pattern or practice of discrimination” against U.S. products and services that results in identifiable harm to U.S. businesses.
25 U.S.C. §1638b	Requires that all procurements conducted with funds made available to carry out Subchapter III (Health Facilities) of Chapter 18 (Indian Health Care) of Title 25 comply with the Buy American Act.

APPENDIX TABLE 1

Domestic Content Requirements in U.S. Law (Page 3 of 4)

U.S. CODE	DESCRIPTION
31 U.S.C. §5111	Requires that the Secretary of the Treasury, in order to protect the national security through domestic control of the coinage process, acquire only articles, materials, supplies, and services for the production of coins that have been produced or manufactured in the United States, unless the Secretary (1) determines that doing so would be inconsistent with the public interest, or the cost is unreasonable, and (2) publishes a written notice stating the basis for this determination in the <i>Federal Register</i> .
31 U.S.C. §5114	Requires that articles, materials, and supplies procured for use in the production of currency, postage stamps, and other security documents for foreign governments be treated “in the same manner” as articles, materials, and supplies procured for public use within the United States under the Buy American Act.
31 U.S.C. §5114 note	Provides that none of the funds made available by the Treasury, Postal Service, and General Government Appropriations Act, 1989 (P.L. 100–440), or any other act with respect to any fiscal year, may be used to contract for the manufacture of “distinctive paper” for U.S. currency and securities pursuant to 31 U.S.C. §5114 outside the United States or its possessions, with certain exceptions.
33 U.S.C. §1295	Prohibits the award of grants for the construction of water treatment works under Subchapter II (Grants for the Construction of Treatment Works) of Chapter 26 (Water Pollution Prevention and Control) of Title 33 unless only (1) unmanufactured articles, materials, supplies that have been mined or produced in the United States, and (2) manufactured articles, materials and supplies that have been manufactured in the United States “substantially all” from articles, materials, or supplies mined, produced, or manufactured in the United States, are used, with certain exceptions.
33 U.S.C. §2201 note	Expresses the sense of Congress that, “to the extent practicable,” all equipment and products purchased with certain funds made available for water resources development be “American made.”
38 U.S.C. §2301(h)	Prohibits the Department of Veterans Affairs from procuring any burial flags that are not “wholly produced in the United States,” unless the Secretary determines this requirement cannot reasonably be met, or that compliance with the requirement would not be in the national interest of the United States.
40 U.S.C. §3313	Requires that procurements carried out pursuant to this section (procurements promoting the use of energy-efficient lighting fixtures and bulbs in public buildings) comply with the Buy American Act.
42 U.S.C. §1760	Requires, with certain exceptions, that school food authorities participating in the National School Lunch Program purchase, “to the maximum extent practicable,” “domestic commodities or products” (agricultural commodities produced in the United States, and food products processed in the United States “substantially using” agricultural commodities that are produced in the United States).
42 U.S.C. §5206	Prohibits the expenditure of funds appropriated under the Disaster Mitigation Act of 2000, or any amendment made by the act, by any entity unless that entity complies with the Buy American Act in expending the funds.
42 U.S.C. §6374	Requires that “preference” be given to vehicles that operate on alternative fuels derived from domestic sources when considering which types of alternative fuel vehicles to acquire in implementing the statutory requirement that “the maximum number practicable” of vehicles acquired annually for use by the federal government be alternative fueled vehicles.
42 U.S.C. §6705	Prohibits the award of grants under Chapter 80 (Local Public Works Employment) of Title 42 for local public works projects unless the project uses only (1) unmanufactured articles, materials, or supplies mined or produced in the United States, and (2) manufactured articles, materials, and supplies manufactured in the United States “substantially all” from articles, materials, and supplies mined, produced, or manufactured in the United States, with certain exceptions.

APPENDIX TABLE 1

Domestic Content Requirements in U.S. Law (Page 4 of 4)

U.S. CODE	DESCRIPTION
42 U.S.C. §13316	Requires that the U.S. Agency for International Development (USAID), in selecting projects for the renewable energy technology transfer program, consider, among other things, the degree to which the equipment to be included in the project is designed and manufactured in the United States, and ensure that, in carrying out projects, the “maximum percentage”—but in no case less than 50 percent—of the cost of any equipment furnished in connection with the project shall be attributable to the manufactured U.S. components of such equipment, as well as the “maximum participation” of U.S. firms.
42 U.S.C. §13362	Requires that USAID, in selecting projects for the innovative clean coal technology transfer program, consider, among other things, the degree to which the equipment to be included in the project is designed and manufactured in the United States, and ensure that, in carrying out projects, the “maximum percentage”—but in no case less than 50 percent—of the cost of any equipment furnished in connection with the project shall be attributable to the manufactured U.S. components of such equipment, as well as the “maximum participation” of U.S. firms.
42 U.S.C. §13387	Requires that USAID, in selecting projects for the innovative environmental technology transfer program, consider, among other things, the degree to which the equipment to be included in the project is designed and manufactured in the United States, and ensure that, in carrying out projects, the “maximum percentage”—but in no case less than 50 percent—of the cost of any equipment furnished in connection with the project shall be attributable to the manufactured U.S. components of such equipment, as well as the “maximum participation” of U.S. firms.
42 U.S.C. §16312	Requires that any agreement for U.S. participation in the International Thermonuclear Experimental Reactor (ITER) shall, at a minimum, ensure that the share of high-technology components of the ITER manufactured in the United States is “at least proportionate” to the U.S. financial contribution to the ITER, among other things.
42 U.S.C. §17353	Requires that International Clean Energy Foundation promote the use of American-made clean and energy-efficient technologies, processes, and services by giving preference to entities incorporated in the United States, or whose technology will be “substantially manufactured” in the United States, when making grants to promote projects outside the United States.
49 U.S.C. §24305	Requires Amtrak to buy unmanufactured articles, material, and supplies that are mined or produced in the United States, and manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies that are mined, produced, or manufactured in the United States when the cost of articles, material, or supplies bought is at least \$1 million.

SOURCE: Kate M. Manuel et al., “Domestic Content Restrictions: The Buy American Act and Complementary Provisions of Federal Law,” Congressional Research Service, September 12, 2016, <https://fas.org/sgp/crs/misc/R43354.pdf> (accessed April 25, 2017).

APPENDIX TABLE 2

Change in Jobs Due to Scrapping “Buy American” Regulations (Page 1 of 2)

BY STATE AND CONGRESSIONAL DISTRICT

Alabama	1,026	31	664	14	1,158	Indiana	1,984	6	739
1	166	32	1,038	15	989	1	53	7	2,257
2	129	33	1,938	16	810	2	170	8	1,091
3	81	34	1,136	17	710	3	76	9	617
4	57	35	626	18	867	4	135		
5	181	36	557	19	842	5	473	Michigan	6,365
6	269	37	1,462	20	1,022	6	81	1	328
7	145	38	1,041	21	1,139	7	596	2	219
		39	1,152	22	1,185	8	189	3	326
Alaska	980	40	825	23	1,259	9	213	4	274
		41	483	24	1,122			5	325
Arizona	4,030	42	580	25	1,113	Iowa	1,974	6	285
1	330	43	1,099	26	1,312	1	344	7	343
2	381	44	822	27	1,285	2	329	8	672
3	448	45	1,503			3	693	9	408
4	273	46	1,076	Georgia	11,940	4	607	10	214
5	491	47	1,250	1	760			11	891
6	604	48	1,503	2	596	Kansas	953	12	731
7	449	49	982	3	561	1	396	13	549
8	495	50	900	4	856	2	169	14	800
9	557	51	709	5	1,774	3	351		
		52	1,143	6	1,796	4	38	Minnesota	3,155
Arkansas	1,181	53	1,012	7	898			1	236
1	235			8	509	Kentucky	2,369	2	322
2	436	Colorado	5,099	9	694	1	190	3	714
3	394	1	1,511	10	549	2	297	4	496
4	116	2	650	11	981	3	700	5	695
		3	598	12	593	4	414	6	179
California	57,403	4	523	13	967	5	204	7	411
1	630	5	590	14	404	6	565	8	101
2	1,047	6	753						
3	695	7	473	Hawaii	2,738	Louisiana	2,967	Mississippi	1,426
4	763			1	1,328	1	597	1	214
5	906	Connecticut	4,000	2	1,410	2	759	2	426
6	792	1	991			3	512	3	403
7	849	2	590	Idaho	490	4	330	4	383
8	604	3	564	1	159	5	255		
9	718	4	1,139	2	331	6	515	Missouri	3,151
10	690	5	716					1	962
11	1,037			Illinois	9,006	Maine	872	2	693
12	3,251	Delaware	1,714	1	608	1	591	3	94
13	1,205			2	534	2	281	4	239
14	2,258	District of		3	597			5	469
15	1,209	Columbia	3,854	4	602	Maryland	7,432	6	352
16	626			5	1,047	1	689	7	241
17	1,556	Florida	26,526	6	595	2	868	8	101
18	1,835	1	781	7	761	3	1,139		
19	1,419	2	773	8	485	4	723	Montana	788
20	866	3	608	9	868	5	698		
21	607	4	1,259	10	559	6	967	Nebraska	2,153
22	683	5	1,225	11	362	7	1,251	1	549
23	791	6	719	12	340	8	1,096	2	886
24	948	7	1,045	13	433			3	718
25	1,242	8	768	14	285	Massachusetts	8,565		
26	846	9	1,137	15	125	1	379	Nevada	4,361
27	1,365	10	1,115	16	102	2	406	1	1,189
28	1,659	11	500	17	243	3	893	2	742
29	1,106	12	739	18	459	4	722	3	1,272
30	1,696	13	1,056			5	1,461	4	1,158

APPENDIX TABLE 2

Change in Jobs Due to Scrapping “Buy American” Regulations (Page 2 of 2)

BY STATE AND CONGRESSIONAL DISTRICT

New Hampshire	840	24	1,090	Oregon	-3,247	5	884	3	387
1	413	25	1,181	1	-2,155	6	101	4	587
2	427	26	3,340	2	-515	7	287		
		27	1,820	3	66	8	300	Vermont	486
New Jersey	12,654			4	-386	9	491		
1	672	North Carolina	5,649	5	-257			Virginia	11,681
2	811	1	417			Texas	15,536	1	721
3	710	2	260	Pennsylvania	11,576	1	213	2	406
4	886	3	405	1	1,074	2	393	3	955
5	1,180	4	589	2	1,228	3	655	4	670
6	1,055	5	347	3	239	4	169	5	657
7	1,408	6	399	4	423	5	448	6	808
8	1,062	7	435	5	231	6	493	7	1,284
9	975	8	194	6	814	7	558	8	2,255
10	1,035	9	918	7	841	8	349	9	514
11	1,487	10	184	8	669	9	344	10	1,286
12	1,374	11	176	9	367	10	454	11	1,727
		12	753	10	282	11	365		
New Mexico	1,283	13	572	11	526	12	594	Washington	8,538
1	387			12	600	13	453	1	1,150
2	428	North Dakota	846	13	1,145	14	377	2	596
3	468			14	1,017	15	210	3	427
		Ohio	2,950	15	578	16	339	4	682
New York	40,966	1	176	16	494	17	420	5	682
1	1,138	2	205	17	368	18	546	6	525
2	1,165	3	527	18	678	19	423	7	1,559
3	1,320	4	-49			20	492	8	1,061
4	1,426	5	47	Rhode Island	1,066	21	586	9	1,210
5	1,572	6	46	1	568	22	364	10	646
6	1,859	7	38	2	498	23	432		
7	1,962	8	111			24	775	West Virginia	1,725
8	1,436	9	257	South Carolina	4,797	25	380	1	575
9	1,631	10	263	1	854	26	442	2	679
10	3,077	11	381	2	734	27	395	3	471
11	677	12	309	3	522	28	311		
12	3,971	13	110	4	813	29	294	Wisconsin	2,460
13	2,016	14	69	5	565	30	298	1	234
14	1,799	15	318	6	664	31	315	2	681
15	508	16	216	7	646	32	595	3	264
16	1,286					33	1,050	4	607
17	1,434	Oklahoma	1,456	South Dakota	938	34	239	5	168
18	931	1	254			35	436	6	21
19	773	2	207	Tennessee	3,298	36	331	7	179
20	1,155	3	268	1	209			8	305
21	795	4	295	2	443	Utah	1,501		
22	711	5	432	3	370	1	136	Wyoming	835
23	895			4	212	2	391		

NOTES: Figures are for a three-year period. Figures may not sum to state totals due to rounding.

SOURCE: Peter B. Dixon, Maureen T. Rimmer, and Robert G. Waschik, “Macro, Industry and Regional Effects of Buy America(n) Programs: USAGE Simulations,” CoPS Working Paper No. 6-271, April 2017, <http://www.copsmodels.com/ftp/workpap/g-271.pdf> (accessed April 24, 2017).