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The Self-Imposed Blockade

Evaluating the Impact of Buy American Laws on U.S. National Security

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EXECUTIVE SUMMARY

Among the forms of protectionism practiced by the United States are laws mandating the federal government's purchase of materials, products, and services from domestic suppliers. Although all government agencies are subject to domestic content laws such as the Buy American Act, others, such as the Berry Amendment, either exclusively apply to the Department of Defense and other security-related entities or else disproportionately impact them.

This paper examines these laws and their effect on national security. While these domestic content laws are ostensibly aimed at bolstering the defense industrial base, closer scrutiny reveals that they often impose detrimental impacts on the military, while claims of enhanced national security are shown to be more properly understood as lending the veneer of respectability to run-of-the-mill protectionism for well-connected companies. A proper accounting of the costs and benefits of these laws produces a more complicated picture that calls their wisdom into question.

Although some of these protectionist laws should be abolished, this paper also presents various reforms meant to address genuine national security needs while reducing opportunities for protectionist self-enrichment under the guise of bolstering the country's defense.

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INTRODUCTION

There is perhaps no more fundamental duty of government than securing the safety of its citizens and their property from foreign attack and invasion. It is therefore imperative that money devoted to this end be spent in the most efficient and effective manner possible. Wasted dollars means either purchasing less defense than would otherwise be the case or imposing an unnecessarily high burden on the country's citizens to fund defense expenditures, presenting both an opportunity cost and economic drag. While this is true of all countries, it is of paramount importance for the United States, given its current defense budget of over $700 billion, which arguably exceeds what is required to meet legitimate security needs.[1] Procurement should be done cost-effectively, and even a relatively small percentage of inefficiency can mean billions of wasted dollars, to the detriment of the country's economy and national security.[2]

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One such source of inefficiency is protectionist "Buy American"–style laws that increase the cost of procurement. Theoretically, in a purely national security context, such laws can make a certain amount of sense. Being beholden to foreign adversaries for needed wartime supplies—or even friendlier countries of uncertain reliability—is a situation that no country wants to find itself in. But in the pursuit of avoiding such scenarios, Buy American laws can introduce other risks that leave the country's security in an even more precarious position. It is crucial that the correct balance be struck between preserving industrial base capacity and deploying defense dollars to maximum effect.

Beyond the risks and inefficiencies introduced by Buy American laws, another downside of such restrictions is their potential to advance the narrow interests of particular groups—namely, the recipients of lucrative government contracts—under the guise of national security. This aspect of such laws should not be taken lightly. When laws meant to promote the country's security are used to instead reward favored constituencies, it not only wastes precious defense dollars but also encourages further abuses and cynicism around both defense spending and laws based on claims of national security, including those that may be legitimate.

SUMMARY OF LOCALIZATION LAWS

The Buy American Act, Berry Amendment, and Kissel Amendment

Background

For decades, Americans have been subject to localization laws requiring the purchase of goods from domestic sources. Such protectionism imposes no small cost upon the country. According to Gary Clyde Hufbauer and Euijin Jung of the Peterson Institute for International Economics in 2017, the added costs of major Buy American laws—a form of protectionism functionally similar to a tariff—could exceed $100 billion annually.[3] Economists Peter B. Dixon, Maureen T. Rimmer, and Robert G. Waschik of Victoria University in Australia, meanwhile, calculated in 2017 that scrapping Buy American type–laws could create more than 300,000 jobs, as savings to the government could be redeployed to the private economy, creating jobs and boosting GDP by about $22 billion.[4] Beyond these direct costs, Hufbauer, along with Megan Hogan and Yilin Wang of the Peterson Institute, pointed out in a March 2022 paper that trade liberalization measures, including the relaxation of Buy American–style rules, could provide relief from increased inflation.[5]

Among such laws that apply to the Department of Defense (DOD) and other security agencies are the Buy American Act, the Berry Amendment, and the Kissell Amendment. Passed in 1933, the Buy American Act directs federal agencies—including the DOD—to give a procurement preference to items that have been "manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured" domestically. For manufactured end products to meet this standard, either the cost of the components mined, produced, or manufactured in the United States must exceed 55 percent

of the cost of all components, or it must be a commercially available off-the-shelf item.[6]

An even more draconian measure is the Berry Amendment. Passed in 1941, the law requires DOD-purchased items to be 100 percent domestic in origin—a far higher requirement than the Buy American Act's 55 percent requirement—if they fall into one of five categories: textiles, clothing, footwear, food, and hand or measuring tools (including flatware and dinnerware). In fiscal year 2020, sales to the DOD of products in these five categories amounted to approximately $4 billion, which was roughly 1 percent of the department's spending on products and services.[7]

A close cousin of the Berry Amendment is the Kissell Amendment. Passed as part of the 2009 American Recovery and Reinvestment Act, the Kissell Amendment requires the Department of Homeland Security to use funds directly related to national security interests to purchase textiles, clothing, and footwear from domestic sources (hand or measuring tools, and flatware and dinnerware are excluded). Because the Kissell Amendment applies only where it does not violate trade agreements, including the World Trade Organization Agreement on Government Procurement, on a de facto basis it is only relevant to the Coast Guard and Transportation Security Administration.[8]

Exceptions Help Mitigate the Added Costs

Fortunately, numerous exceptions help mitigate the added cost of these protectionist laws. The Buy American Act's requirements, for example, can be avoided if an agency head determines that the preference for U.S. goods is inconsistent with the public interest; if the item exists in sufficient and reasonably available commercial quantities and of a satisfactory quality; if the added cost is unreasonable (the DOD defines this as a bid at least 50 percent higher than the lowest foreign bid); or for purchases of information technology acquisitions for commercial items and commissary resales.[9] The law also does not apply to end products meant for use outside the United States.

International agreements further narrow the scope of the Buy American Act. Notably, the DOD does not apply Buy American measures to 27 countries (comprised mostly of European countries but also including Australia, Canada, Egypt, and Japan) with which it has reciprocal procurement agreements, while various international trade agreements exempt approximately 60 countries from the law for bids above certain dollar thresholds.[10]

Despite these exemptions, however, foreign goods accounted for only 4 percent of end products purchased by the federal government in fiscal year 2017 ($7.8 billion of $196 billion). The DOD accounted for approximately 82 percent of these foreign end products. As the Government Accountability Office points out, almost all of these purchases were either for use outside of the United States or were from countries with which DOD has procurement agreements allowed under the public-interest exemption.[11]

> "Despite exemptions to Buy American–style laws, foreign goods accounted for only 4 percent of end products purchased by the federal government in fiscal year 2017 ($7.8 billion of $196 billion)."

Like the Buy American Act, the Berry and Kissell Amendments are subject to certain exceptions in their application. The DOD, for example, can purchase foreign-sourced items when they are unavailable from American manufacturers at satisfactory quality and sufficient quantity or when they are used in support of combat or contingency operations.[12] In addition, Congress has enacted permanent waivers for particular products, such as the flame-resistant rayon fabrics used in standard ground combat uniforms and para-aramid fibers and yarns used in anti-ballistic body armor.[13]

With $4 billion of products subject to the Berry Amendment purchased in fiscal year 2020 and $30 million worth of Kissell Amendment items purchased by the Coast Guard and the Transportation Security Administration annually, the fiscal impact of these laws is modest relative to overall defense expenditures.[14]

A Bonanza for Well-Connected Companies

Despite its relatively limited fiscal impact, such national security protectionism has yielded a bonanza for some companies.

Sherrill Manufacturing, for example, is uniquely positioned to capitalize on the Berry Amendment as the country's sole flatware manufacturer. After the 2020 National Defense Authorization Act reinstated the U.S. sourcing requirement for stainless-steel flatware—something Sherrill Manufacturing had lobbied for following its 2007 removal—the company's CEO said that he expected the measure to double or triple the amount of work at the company's plant.[15]

New Balance shoes, meanwhile, received a $17.3 million contract after running shoes were subjected to Berry Amendment requirements in 2014.[16] That's a good return on a $230,000 lobbying effort the company launched to capitalize on its position as the sole footwear manufacturer able to meet both DOD and Berry Amendment requirements.[17]

"While the Berry Amendment bolsters the bottom line of American firms such as Sherrill Manufacturing and New Balance, the benefits to national security are less clear."

While the Berry Amendment bolsters the bottom line of American firms such as Sherrill Manufacturing and New Balance, the benefits to national security are less clear. Indeed, Rep. Anthony Brindisi (D-NY) who—along with Sen. Charles Schumer (D-NY) helped champion the flatware requirement in the National Defense Authorization Act—did not offer any obvious connection between the measure and improvements to national security in his press release announcing the passage of his amendment requiring the use of domestically produced flatware.[18] In his own press release, meanwhile, Schumer's only nod to national security considerations was that the Berry Amendment restrictions would "ensure that our military have the highest quality silverware available."[19]

Instead, jobs and other economic benefits were strongly emphasized by both Schumer and Brindisi, whose district included the production facility for Sherrill Manufacturing. Brindisi even appeared to admit that such factors were his primary motivation, stating "I fought hard to get this legislation included because it will create good-paying jobs in Oneida County." Schumer, meanwhile, sounded a similar note by claiming that the bill's passage would "provide a valuable shot in the arm to the Mohawk Valley economy."[20]

The push to subject running shoes to Berry Amendment requirements—led by members of Congress from Massachusetts (home to New Balance headquarters and two manufacturing facilities) and Maine (home to three New Balance manufacturing facilities) appears to have been similarly motivated. In a joint statement announcing the inclusion of running shoes under Berry Amendment requirements, members of Maine's congressional delegation highlighted the measure's alleged economic benefits while failing to articulate how it would assist the military.[21] Rep. Niki Tsongas (D-Mass.), meanwhile, claimed the Berry Amendment's restrictions would "boost job growth, spur economic development and innovation and give the brave men and women of our armed forces better gear."[22]

The notion that members of the military—who were previously able to select the running shoes of their choice through a voucher system—benefit from having fewer choices in footwear, however, seems dubious. Indeed, defense officials have pushed back on the Berry Amendment requirement by noting that vouchers allowed servicemembers a wider selection of brands to find the shoes most appropriate for them.[23]

Questionable Benefit to the U.S. Industrial Base

A skeptical eye should also be cast on notions that such laws benefit either the broader economy or the country's industrial base. By insulating American companies from the pressures of competition, protectionist measures diminish their incentives for innovation and efficiency. This, in turn, undermines the long-term viability of firms that fall under the protectionist umbrella.

But the disincentivizing of efficiency can also be more direct. Requiring certain amounts of domestic sourcing to qualify as U.S.-made—100 percent in the case of the Berry and Kissell Amendments—can mean less-efficient sourcing. New Balance, for example, needed to make capital-intensive purchases, such as an injection-molding machine, so that it could manufacture midsoles domestically to become Berry Amendment–compliant. That the company did not elect to

purchase such equipment until it sought to attain compliance with the law suggests that the move was suboptimal from an efficiency perspective.

A 2017 report from the Congressional Research Service discussed how such reconfigurations of supply chains and manufacturing methods can undermine firm competitiveness:

> The Berry and Kissell Amendments require apparel manufacturers to construct supply chains separate from those used in commercial apparel production, relying exclusively on domestic manufacturers of components such as buttons and zippers. Because these producers lack scale and face little competition in the market for 100% U.S.-made products, they may have cost structures that make it difficult to compete in the commercial apparel market.[24]

In addition, lobbying expenditures dedicated to securing contracts under such laws represent a loss to economic efficiency and resources that could otherwise be used to bolster a company's competitive position. New Balance alone is estimated by various sources to have spent hundreds of thousands of dollars in its lobbying effort to place running shoes under the Berry Amendment.[25] Such sums represent resources that otherwise could have been devoted to research and innovation, capital improvements, or a multitude of other more productive uses.

Perhaps most importantly, such laws hamper the military. As the Advisory Panel on Streamlining and Codifying Acquisition Regulations, created by the FY 2016 National Defense Authorization Act, stated in a 2019 report:

> [The Buy American Act (BAA)] and the Berry Amendment undermine DOD's ability to acquire the most innovative products at reasonable prices due to their restriction on non-U.S. components. BAA and Berry Amendment provisions are increasingly out of step with commercial practices and global supply chains across most product categories. . . . The limits BAA and the Berry Amendment place on accessing cutting-edge products produced outside of the United States are antithetical to efficiently procuring the most advanced readily available products and solutions.[26]

The Jones Act and Military Cargo Preference Act

Beyond the purchase of physical goods, Buy American–style requirements also force the military to pay increased costs for the shipping services needed to supply bases in the United States and abroad. Section 27 of the Merchant Marine Act of 1920, better known as the Jones Act, restricts domestic waterborne transportation to vessels that are U.S.-registered and built, as well as mostly U.S.-crewed and owned. U.S.-built oceangoing commercial ships cost four to five times as much as those built abroad, and U.S.-flagged ships have operating costs approximately three times higher than those of foreign-flagged ships.[27]

"Beyond the purchase of physical goods, Buy American–style requirements also force the military to pay increased costs for the shipping services needed to supply bases in the United States and abroad."

The military has no choice but to use such shipping for the movement of cargo between the U.S. mainland and bases in the noncontiguous states and territories, including Alaska, Hawaii, and Guam that are collectively home to approximately 70,000 military personnel.[28] This imposes no small cost on a military that has to rely on Jones Act–compliant ocean carriers for the movement of everything from helicopters to household items.[29] In fact, the U.S. Navy described transportation costs to Hawaii and Guam as "extremely high" in a 1995 letter and said it was considering shifting personnel from Guam to Japan in an attempt to save money.[30]

Even military cargo destined for abroad, however, is subject to inflated shipping rates. The Military Cargo Preference Act, passed in 1904, requires all items either owned or purchased by the military to be exclusively transported on available U.S.-flagged vessels, provided the rates are not excessive or otherwise unreasonable.[31] Part of such determinations is based on a comparison with foreign-flag rates. However, if a U.S.-flag liner operator—those ships that move on fixed routes and schedules—files and publishes its rates

with the Federal Maritime Commission, they are automatically considered to be fair and reasonable regardless of those charged by a foreign-flag carrier.[32]

The added cost of cargo preference mandates can be significant. According to a 1994 Government Accountability Office report, the DOD estimated that the additional cost of using U.S. ships due to cargo preference requirements averaged $350 million per year for fiscal years 1989–1993 (approximately $730 million in 2022 dollars)—a figure that did not include costs related to the 1991 Persian Gulf War.[33]

A 1984 *Washington Post* article, meanwhile, noted that the success of coal industry lobbying in securing legislation requiring the use of American anthracite coal for heating U.S. military bases in Europe. A large percentage of the extra cost in using such coal, author Michael Isikoff noted, was due to cargo preference laws "which require[d] the Pentagon to ship on U.S. vessels that are twice as expensive as foreign vessels" from the United States to Europe.[34]

More recently, a 2021 American Enterprise Institute working paper found that containerized shipping for food aid under cargo preference laws is 68 percent higher than would otherwise be the case, which is perhaps suggestive of the overall scale of increased prices faced by the military for its ocean shipping needs due to such laws.[35]

While the employment of U.S.-flagged ships may help preserve the American fleet for national security sealift needs, it does so inefficiently and at significant cost.

The Byrnes-Tollefson Amendment

Protectionism of arguably even greater consequence to the DOD is the Byrnes-Tollefson Amendment, which applies to the construction of vessels for the U.S. Navy and Coast Guard. The Tollefson Amendment, passed as part of the DOD Appropriations Act of 1965, forbade appropriated funds from being used for the construction of major components of vessel hulls in foreign shipyards, while the Byrnes Amendment, incorporated into the DOD Appropriations Act of 1968, prohibited funds to be used for the construction of naval vessels in foreign shipyards. Both measures are now codified at 14 U.S.C. 1151: "Restriction on Construction of Vessels in Foreign Shipyards" and 10 U.S.C. 8679: "Construction of Vessels in Foreign Shipyards: Prohibition."[36]

Although meant to promote national security by bolstering domestic shipyards, these restrictions also subject the military to shipbuilding costs that can be significantly higher than those of U.S. military allies—with a deleterious impact on fleet size, given budget constraints. One useful example is the contrasting costs experienced by the navies of the United States and United Kingdom in building vessels to perform logistical functions.

In 2012 the UK Ministry of Defence placed an order for four new Tide class replenishment tankers to be built by Daewoo Shipbuilding Marine Engineering of South Korea. Originally priced at £452 million ($715 million in 2012 or $923 million in 2022 dollars) with £150 million going to UK suppliers, the contract amount would eventually rise to £550 million, per figures published in 2017 ($700 million in 2017 or $846 million in 2022 dollars).[37] In 2022 dollars that is approximately $212 million per vessel.

"Protectionism of arguably even greater consequence to the Department of Defense is the Byrnes-Tollefson Amendment, which applies to the construction of vessels for the U.S. Navy and Coast Guard."

In comparison, the John Lewis class of fleet oilers currently being constructed by the General Dynamics/National Steel and Shipbuilding Company in San Diego, California, have a unit procurement cost of roughly $650 million when two ships are built per year (and a higher price if only one ship is built per year).[38] Of course, these are not identical vessels and, among other differences, the John Lewis class oilers are larger vessels (742 feet in length with a displacement of 49,850 tons, compared to the Tide class's 659 feet and displacement of 39,000 tons).[39] But even considering this and other factors, such as currency exchange, the roughly $440 million price difference per vessel is significant.

Efforts to acquire new icebreakers for the U.S. Coast Guard may also be instructive. In 2019 the DOD awarded a $745.9 million contract to the VT Halter Marine shipyard in Pascagoula, Mississippi, for the design and construction of

the Polar Security Cutter (PSC) icebreaker. If options for two more vessels are exercised, it would take the contract's total value to $1.8 billion.[40]

In contrast, Finland's Los Angeles–based consul general stated in 2017 that a polar-class icebreaker could be built for €200–220 million ($235–258 million in 2017 or $284–$312 million in 2022 dollars) and be delivered two years after the contract's signing (for context, a smaller icebreaker than the PSC built in Finland in 2016 cost €128 million/$145 million in 2016 or $178 million in 2022 dollars).[41] Although it is unclear how the icebreaker mentioned by the consul general would compare to the specifications of the PSC, even doubling the estimated price would still produce considerable savings.

"The VT Halter Marine shipyard that won the Polar Security Cutter contract has no experience building such vessels, and observers have raised concerns about the shipyard possibly having underbid the project."

That Finland (an applicant for NATO membership) could plausibly deliver such a vessel at a significantly lower price point and in shorter time must be in large part attributed to its expertise in the construction of icebreakers. According to Finland's government, Finnish companies have designed about 80 percent of the world's icebreakers and built 60 percent of them.[42] Indeed, the last U.S. Coast Guard polar icebreaker built by an American shipyard, the *Healy*, relied extensively on expertise from Finnish companies.[43] Meanwhile, the VT Halter Marine shipyard that won the PSC contract has no experience building such vessels, and observers have raised concerns about the shipyard possibly having underbid the project.[44]

Also worth considering is Australia's decision to award the construction of a combination icebreaker/research vessel to Netherlands-based Damen Shipyards Group, which delivered the vessel in 2020. Despite being slightly larger than the PSC, as measured by both length and displacement, the new Australian icebreaker cost significantly less ($528 million Australian dollars or approximately $395 million U.S. dollars).[45]

Beyond cost and expertise considerations, tethering the military to domestic shipbuilding introduces other potential downside factors, such as capacity constraints, as noted by the Congressional Research Service.[46] The Heritage Foundation's Brett Sadler elaborated on this point in a 2020 analysis, noting that larger outlays for new ship construction "necessarily impose greater demands on shipyard infrastructure" and that the "industrial base, for example, has limited excess capacity over the next 30 years to accelerate the production of attack submarines."[47] Other observers have similarly argued that the United States lacks sufficient capacity to meet U.S. Navy needs.[48] (For a summary of the U.S. localization laws, see Table 1.)

CONSIDERATIONS FOR IMPROVING U.S. DEFENSE PROCUREMENT

That Buy American–style requirements come at the country's economic detriment while producing problems such as rent seeking should not surprise. But neither does it necessarily justify their wholesale abolishment or mean that some preference for domestic production is entirely lacking in merit.

Indeed, during the Revolutionary War the Continental Army found itself at a disadvantage due to its need to obtain imported items such as gunpowder and clothing.[49] The task for policymakers, then, is to create measures that ensure access to vital goods in times of conflict while guarding against their abuse for run-of-the-mill protectionism. To do this effectively, several factors must be taken into consideration.

Dispersed costs/concentrated benefits. Those who collect the economic rents generated from Buy American protectionism (or any kind of protectionism) are far more incentivized to lobby in their favor than are members of the general public who bear the dispersed costs. As a result, policymakers are likely to be disproportionately pressured to accommodate such interest groups, leading to distorted public policy outcomes that may not reflect either the will of most citizens or the country's best interests.

Shifting nature of critical goods or inputs. Items deemed critical today may become less important in the future, yet history suggests that government aid, once

Table 1

Summary of U.S. localization laws and their exceptions

Name	Summary	Exceptions
Buy American Act	Requires federal agencies to purchase "domestic end products" and use "domestic construction materials" on contracts above certain monetary thresholds performed in the United States.	• The procurement of domestic goods or the use of domestic construction materials would be "impracticable" or "inconsistent with the public interest." • The domestic end products or construction materials are unavailable "in sufficient and reasonably available commercial quantities and of a satisfactory quality." • The contracting officer determines that the cost of domestic end products or construction materials would be "unreasonable." • The goods are acquired specifically for commissary resale. • The agency procures information technology that is a commercial item. • The value of the procurements is at or below the micropurchase threshold (generally $10,000). • The items are procured for use outside the United States.
Berry Amendment	Generally requires that food, clothing, tents, certain textile fabrics and fibers, hand or measuring tools, stainless steel flatware, and dinnerware purchased by Department of Defense (DOD) be entirely grown, reprocessed, reused, or produced in the United States. Also requires that any "specialty metals" contained in any aircraft, missile and space system, ship, tank and automotive item, weapon system, ammunition, or any components thereof, purchased by DOD be melted or produced in the United States.	• Products are unavailable from American manufacturers at satisfactory quality and in sufficient quantity at market prices. • Items are used in support of combat operations or contingency operations. • Products are purchased by U.S. vessels in foreign waters. • Products contain noncompliant fibers, if the value of those fibers is not greater than 10 percent of the product's total price. • Items are for emergency acquisitions. • Products are intended for resale at retail stores such as military commissaries or post exchanges. • The purchase is part of a contract whose value is below the Simplified Acquisition Threshold, generally $150,000, beneath which certain federal procurement regulations do not apply.
Kissell Amendment	Textile, apparel, and footwear products purchased by certain Department of Homeland Security agencies, namely the Transportation Security Administration and the U.S. Coast Guard, must be manufactured in the United States with 100 percent U.S. inputs.	Same as Berry Amendment (see above).
Military Cargo Preference Act	All items procured for or owned by U.S. military departments and defense agencies must be exclusively (100 percent) transported on U.S.-flagged vessels.	Foreign-flagged vessels can be used if rates offered by U.S. ships are "excessive or unreasonable" as determined by the Secretary of the Army or the Navy.
Jones Act (Section 27 of the Merchant Marine Act of 1920)	Domestic waterborne shipping of merchandise is restricted to vessels that are U.S.-flagged, U.S.-built, and at least 75 percent U.S.-owned and U.S.-crewed.	Waivers of the law can be requested by the Secretary of Defense to "address an immediate adverse effect on military operations." Waiver durations are limited to 10 days with extensions not allowed beyond 45 days. The Secretary of Homeland Security may grant waivers to non-defense entities if they are considered necessary in the interest of national defense.[1]
Byrnes-Tollefson Amendment	No vessel constructed for the armed forces, and no major component of the hull or superstructure of any such vessel, may be constructed in a foreign shipyard.	The president may authorize exceptions if he/she determines that it is in the interest of U.S. national security to do so.[2]

Sources: David H. Carpenter, "The Buy American Act and Other Federal Procurement Domestic Content Restrictions," Congressional Research Service, R46748, March 31, 2021; Michaela D. Platzer, "Buying American: Protecting U.S. Manufacturing through the Berry and Kissell Amendments," Congressional Research Service, R44850, May 18, 2017; John Frittelli, "Cargo Preferences for U.S.-Flag Shipping," Congressional Research Service, R44254, October 29, 2015; William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 4397–98; and National Defense Authorization Act for Fiscal Year 1994, 10 U.S.C. § 8679.

Notes:

1. "Application of Foreign Shipyard Construction Prohibitions to Inflatable and Rigid Hull Inflatable Boats," Decision, Comptroller General of the United States, October 22, 1991, page 6.

2. The Secretary of Homeland Security may grant waivers to nondefense entities if they are considered necessary in the interest of national defense. "Domestic Shipping," U.S. Department of Transportation Maritime Administration, March 26, 2022.

granted, is not so easily undone. Mohair subsidies, for example, were implemented as part of the National Wool Act in 1954 in order to help ensure its availability for use in military uniforms. But even though the Pentagon removed the fiber from its strategic materials list in 1960, the program was not defunded until 43 years later.[50] Had mohair been supported via a tariff or Buy America requirement rather than direct subsidies, the program would perhaps have been even more difficult to repeal given the more opaque and indirect nature of costs imposed by protectionism.

Assessing the real risk of supply interruption. Advocates of Buy American restrictions often argue that foreign sources may not prove to be dependable in time of conflict, either due to a refusal to sell a needed good or it being interdicted en route to the United States. While perhaps a useful rule of thumb, one can easily imagine scenarios in which this does not hold. Crude oil sourced via pipelines from Canada, for example, may prove less vulnerable in times of war than the marine transport of crude oil from Alaska.

Furthermore, and perhaps more importantly, U.S. policy should avoid a binary perspective in which domestic sourcing is viewed as reliable (or close to it) while foreign sourcing is deemed freighted with risk. Some countries are more likely to be reliable trading partners and it makes little sense to lump all of them together in the same category. Properly assessing sourcing risk demands more nuance than a simple domestic/foreign dichotomy.

Cost/benefit analysis. Efforts to mitigate risk must be weighed against the forgone benefits of sourcing from cheaper, more-efficient producers. Even seemingly minimal cost savings in percentage terms can add up to substantial sums, given the amount of defense spending. Realizing a 2 percent cost savings on a defense budget of $700 billion—$14 billion—would more than cover the cost of constructing the over-budget *Gerald R. Ford* aircraft carrier.[51]

Trade and dependency go both ways. While it is commonly recognized that relying upon a foreign country for critical items grants it a certain amount of influence, perhaps less appreciated is that this leverage runs in both directions. The United States, for example, imports vast amounts of goods annually from China. China, in turn, uses a portion of this revenue to purchase tens of billions of dollars worth of U.S. agricultural and energy products.[52] A considerable number of academic papers, meanwhile, have found that expanded commercial ties and free trade can help mitigate the odds of countries becoming embroiled in armed conflict.[53] None of this forestalls the possibility of war between the two countries, but such interdependence perhaps raises the opportunity cost and lessens the odds of a conflict. Protectionist measures that discourage or prevent such economic linkages can interrupt this dynamic, thus contributing to reduced security.

Protectionism disincentivizes competitiveness and innovation. Requiring products to be purchased domestically necessarily means granting a captive market to domestic producers of that good. This lack of international competition will reduce the producer's incentive to innovate and develop or maintain a competitive edge, particularly if there is minimal or nonexistent domestic competition. Simply put, firms that don't have to compete will become less competitive. Faced with such an incentive structure and the allure of easy profits, given minimal competition, the long-term viability of such firms could be called into question.

"Properly assessing sourcing risk demands more nuance than a simple domestic/foreign dichotomy."

The American shipbuilding industry perhaps offers a cautionary tale here. Handed a captive market for commercial vessels used in domestic trade since 1817 (and for U.S.-flagged vessels engaged in international trade until 1912), the industry's competitiveness has so degraded that large merchant ships built in American shipyards cost four to five times as much as those constructed overseas.[54] With little appetite for such expensive ships, U.S. commercial shipbuilding's output has declined to the point that it accounted for a mere 0.12 percent of global shipbuilding as measured by gross tonnage in 2020.[55]

Supply diversity is a form of security. The well-known adage against placing all of one's eggs in a single basket is worth bearing in mind. Restricting the purchase of products to those produced in the United States necessarily means that the pool of potential suppliers is much reduced, both in number and geographic scope. While perhaps

reducing some kinds of risks, it can also introduce others, such as increased vulnerability to domestic shocks.[56] In 2022, for example, widespread shortages of infant formula occurred in the United States after a major U.S. producer shut down a factory and trade barriers thwarted efforts to bolster supplies via imports.[57]

POLICY RECOMMENDATIONS

Exempt countries that have collective defense arrangements with the United States from the Buy American Act, Berry Amendment, and Kissell Amendment. The United States currently has signed collective defense treaties that include the participation of more than 50 countries, yet many are fully subject to the Buy American Act and none are excluded from the Berry and Kissell Amendments.[58] That the United States is willing to intimately link its security affairs with such countries and potentially send its armed forces into harm's way on their behalf, yet either blocks their products from DOD acquisition or subjects them to substantial penalties, is inconsistent. Countries that the United States is willing to fight beside should also be those that it incorporates as partners in product acquisition.

To be sure, relationships between countries change and countries that the United States previously regarded warmly may in the future be viewed warily. For example, one signatory to a collective defense arrangement with the United States is Venezuela, via the 1947 Rio Treaty. To prevent potential adversaries from gaining access to DOD contracts via defense treaties with the United States, the Secretary of Defense should be granted the authority to remove countries that are deemed potential threats.

Allow for expanded shipbuilding cooperation with defense allies. The Byrnes-Tollefson Amendment's goal of preserving the U.S. shipbuilding industrial base has intuitive appeal but must be weighed against the need to realize the maximum return from defense expenditures. More expensive ships mean fewer ships or some other trade-off, such as reduced expenditures elsewhere, higher taxes, or increased borrowing. This does not, however, mean that the United States should simply outsource the construction of all military vessels to the low-cost bidder. No one is advocating for U.S. Navy aircraft carriers to be built in China. But the United States should also recognize—and take advantage of—the fact that some of its closest allies are also home to leading shipbuilders. Japan and South Korea, for example, accounted for approximately 53 percent of shipbuilding tonnage in 2020.[59]

To bring some balance between these considerations, the law should be amended to allow for the construction of noncombatant vessels (e.g., icebreakers, replenishment ships that do not contain sophisticated weapons systems) in the shipyards of countries with which the United States has a mutual defense arrangement.

"The United States should also recognize—and take advantage of—the fact that some of its closest allies are also home to leading shipbuilders."

Expand and deepen the national technology and industrial base. The National Technology and Industrial Base, which consists of the United States, Canada, the United Kingdom, and Australia, is meant to promote expanded national security cooperation among members through benefits such as the ability to procure conventional ammunition from such sources, as well as exempting members from domestic sourcing restrictions for certain products, such as buses and certain components for naval vessels. To promote more effective integration, the National Technology and Industrial Base should include exemptions to the Buy American Act, the Berry Amendment, and the Kissel Amendment, and expand its membership to advanced economies with which the United States has mutual defense treaties.

Simply put, the United States should take a more expansive view of what constitutes the defense base to include our closest and most capable allies. As former Rep. Mac Thornberry (R-TX), who served as chairman of the House Armed Service Committee from 2015 to 2019, stated, "We need to look at our defense industrial base from both a broader and a deeper perspective. We should include defense companies from allied and partner nations who maintain the high standards of security, cyber and otherwise, that we expect from U.S.-based defense companies."[60]

Repeal or reform protectionist shipping laws. Cargo preference laws mandating the use of expensive U.S.-flagged ships raise the cost of military transportation while providing a subsidy (with opaque costs) to the American shipping industry. Ideally, they should be repealed. At a minimum, the DOD should be exempted from their application. Similarly, the Jones Act should be repealed or significantly reformed, such as through removal of its U.S.-built requirement or exemptions from the law for the noncontiguous states and territories that are highly dependent on ocean transport.

If subsidizing U.S. shipping is deemed to be the most efficient and effective means to ensuring that the military's sealift needs are met, it should be done transparently and directly for the sake of greater efficiency and ease of performing a cost-benefit analysis. One possible alternative would be the expansion of the Maritime Security Program, which provides 60 ships with an annual stipend in exchange for the military's use of those vessels in time of war or national emergency.

"If subsidizing U.S. shipping is deemed to be the most efficient and effective means to ensuring that the military's sealift needs are met, it should be done transparently and directly for the sake of greater efficiency and ease of performing a cost-benefit analysis."

Require the DOD to perform periodic Buy American assessments to ensure that rules cover only those items with a clear and direct national defense nexus. Some products arguably are worth paying a premium for to ensure they can be produced domestically. Many products are not, or perhaps were at one time but no longer are. To ensure that items subject to Buy American requirements at least plausibly serve the national interest and are not simply run-of-the-mill protectionism, a periodic review should be performed of items that should be subject to Buy America rules with an eye toward removing those that are not deemed critical to national security or that can simply be stockpiled.

One possible mechanism for accomplishing this task would be for the Secretary of Defense to perform an assessment of items that should be subject to Buy American laws every four years and submitting the list to a congressional commission for review. That commission would then have the opportunity to add or subtract items before submitting it to Congress for a straight up or down vote. Such an approach, loosely modeled on the Base Realignment and Closure process, could offer a means of securing national security interests while guarding against their abuse.

WHAT ABOUT CHINA?

As talk brews in Washington about a Cold War with China, it has become increasingly fashionable for various industries that benefit from protectionism to insist that the liberalization of domestic content requirements plays into Beijing's hands. Such talk should be disregarded. As China proceeds with its defense buildup, it is even more imperative that the United States deploy its defense dollars to their greatest effect.

The need for the reform of domestic content laws is particularly pressing in this context. In a Cold War–style battle for influence, Buy American laws and other local content requirements only serve as a point of contention and division between the United States and its allies that reduce the potential for cooperation. This is the opposite of what U.S. policy should promote and makes it even more crucial that such restrictions be imposed only when necessary.

It should also be stressed that any relaxation of the Buy American Act and similar protectionist laws does not mean that the United States will be reliant on Chinese suppliers. Chinese and foreign suppliers are not synonymous, and policy should distinguish between the two. Relaxing such rules is not a benefit to China, but an opportunity for the U.S. military to obtain needed cost savings—thus freeing up funds for other military priorities, such as a buildup of naval forces, while further solidifying ties to key allies.

CONCLUSION

This paper is not a call to eliminate all barriers to foreign sourcing and simply obtain needed products or equipment from the lowest-cost provider. Plainly there is value in domestic production of particular critical goods to help ensure their

access in time of need. But there is also a need to ensure that defense dollars are wisely spent to their fullest effect (nor should it be assumed that foreign production necessarily means inaccessibility). American policy must strike a balance.

Unfortunately, there are plentiful signs that too much policy has tipped in the direction of protectionism that contributes little, if anything, to national security while benefitting connected special interests. Indeed, the Biden administration has championed making such laws even more restrictive on spurious economic grounds.[61] Such protectionism applied to the DOD and agencies with related missions amounts to the frittering away of precious defense dollars that undermines national security and weakens competition and the economy.

To bring a needed course correction, U.S. policy must adopt an approach with greater nuance and flexibility that allows expanded cooperation with allies. Defense dollars also cannot become a cash grab by special interests under the thin veneer of national security that drains precious resources. Guarding against such abuse should be viewed as strengthening, not threatening, national security. Through the adoption of protectionist policies, policymakers must ensure that they don't simply inflict upon the U.S. military in peacetime what the country's enemies would seek to do to us in wartime.

NOTES

1. For more discussion of the U.S. defense budget, see Benjamin H. Friedman, "The Military Budget," in *Cato Handbook for Policymakers*, 8th ed. (Washington: Cato Institute, 2017), pp. 659–70.

2. "Defense Budget: Opportunities Exist to Improve DOD's Management of Defense Spending," U.S. Government Accountability Office, GAO-21-415T, February 24, 2021.

3. Gary Clyde Hufbauer and Euijin Jung, "'Buy American' Is Bad for Taxpayers and Worse for Exports," *Trade and Investment Policy Watch* (blog), Peterson Institute for International Economics, September 5, 2017.

4. Peter B. Dixon, Maureen T. Rimmer, and Robert G. Waschik, "Macro, Industry and Regional Effects of Buy America(n) Programs: USAGE Simulations," Centre of Policy Studies Working Paper no. G-271, April 2017.

5. Gary Clyde Hufbauer, Megan Hogan, and Yilin Wang, "For Inflation Relief, the United States Should Look to Trade Liberalization," Peterson Institute for International Economics Policy Brief no. 22-4, March 2022.

6. David H. Carpenter, "The Buy American Act and Other Federal Procurement Domestic Content Restrictions," Congressional Research Service, R46748, March 31, 2021.

7. Michaela D. Platzer, "Defense Primer: The Berry and Kissell Amendments," Congressional Research Service, IF10609, January 13, 2021.

8. Michaela D. Platzer, "Buying American: Protecting U.S. Manufacturing through the Berry and Kissell Amendments," Congressional Research Service, R44850, May 18, 2017.

9. Carpenter, "The Buy American Act and Other Federal Procurement Domestic Content Restrictions."

10. "Buy American Act: Actions Needed to Improve Exception and Waiver Reporting and Selected Agency Guidance," Government Accountability Office, GAO-19-17, December 2018.

11. "Buy American Act: Actions Needed to Improve Exception and Waiver Reporting and Selected Agency Guidance," U.S. Government Accountability Office, GAO-19-17, December 18, 2018.

12. Platzer, "Defense Primer: The Berry and Kissell Amendments."

13. Platzer, "Buying American: Protecting U.S. Manufacturing through the Berry and Kissell Amendments."

14. Michaela D. Platzer, "Defense Primer: The Berry and Kissell Amendments"; and Platzer, "Buying American: Protecting U.S. Manufacturing through the Berry and Kissell Amendments."

15. "Brindisi, Schumer Get Flatware Provision Included in Defense Bill," *Utica Observer-Dispatch*, December 11, 2019.

16. Matthew McMullan, "New Balance Lands a Contract to Supply Military Recruits with Sneakers," Alliance for American Manufacturing, March 16, 2018.

17. Michael Needham, "New Balance's Cronyism Invades Defense Bill," *RealClearPolitics*, March 17, 2016.

18. "Official Press Release from Office of Former Rep. Anthony Brindisi (D-NY): Brindisi Secures Key Win in House National Defense Authorization Act for Sherrill Manufacturing's Liberty Tabletop Flatware; Passes SPOONSS Act through House for First Time," LEGISTORM, July 15, 2019.

19. "Schumer, Brindisi Buy-American Provisions to Create Good-Paying Jobs at Sherrill Manufacturing in Oneida County Included in Must-Pass Legislation," press release, Charles E. Schumer, U.S. Senator for New York, December 11, 2019.

20. "Schumer, Brindisi Buy-American Provisions."

21. "Collins, King, Poliquin Announce Significant Victory for Made-in-USA Athletic Footwear Provision," press release, Angus King, U.S. Senator for Maine, November 30, 2016.

22. Bob McGovern, "New Balance Gets DoD Boost," *Boston Herald*, November 18, 2018.

23. Jon Chesto, "New Balance's Quest for a Sneaker Made Entirely in America," *Boston Business Journal*, October 11, 2013.

24. Michaela D. Platzer, "Buying American: Protecting U.S. Manufacturing Through the Berry and Kissell Amendments," Congressional Research Service, R44850, May 18, 2017.

25. Tim Mak, "New Balance Lobbies Congress to Make the U.S. Military's Only Running Shoe," *Daily Beast*, April 14, 2017; Needham, "New Balance's Cronyism Invades Defense Bill"; and "Department of Defense to Procure 'Made in America' Running Shoes," New England Council.

26. *Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations*, vol. 3 (Arlington, VA: Section 809 Panel, January 2019).

27. John Frittelli, "Shipping under the Jones Act: Legislative and Regulatory Background," Congressional Research Service, November 21, 2019; and *Comparison of U.S. and Foreign-Flag Operating Costs* (Washington: Department of Transportation, September 2011).

28. "Alaskan Command," Joint Base Elmendorf-Richardson; "Quick Defense Facts: Military in Hawaii," State of Hawaii, Business Development and Support Division; and Audrey McAvoy, "Q&A: What Does the US Military Do on the Island of Guam?," Associated Press, August 10, 2017.

29. Nick Souza, "Military Helicopter RoRo Operations," Pasha Hawaii, June 9, 2021.

30. W. A. Earner, letter to Larry Pressler, December 15, 1995.

31. "Cargo Preference Laws and Regulations," Department of Transportation, Maritime Administration.

32. John Frittelli, "Cargo Preferences for U.S.-Flag Shipping," Congressional Research Service, R44254, October 29, 2015; and "United States-Flag Privately-Owned Merchant Fleet Report: Oceangoing, Self-Propelled Vessels of 1,000 Gross Tons and above that Carry Cargo from Port to Port," Department of Transportation, Maritime Administration, August 2021.

33. "Maritime Industry: Cargo Preference Laws—Estimated Costs and Effects," Government Accountability Office, GAO/RCED-95-34, November 1994.

34. Michael Isikoff, "Anthracite Coal's Lobbyist Wields Surprising Clout," *Washington Post*, February 26, 1984.

35. Philip G. Hoxie, Stephanie Mercier, and Vincent H. Smith, "Food Aid Cargo Preference: Impacts on the Efficiency and Effectiveness of Emergency Food Aid Programs," American Enterprise Institute Economics Working Paper no. 2020-11, August 31, 2021.

36. *Hearings on Military Posture and H.R. 5968 [H.R. 6030]—Department of Defense Authorization for Appropriations for Fiscal Year 1983, Before the Committee on Armed Services, House of Representatives, Ninety-Seventh Congress, Second Session, Part 4 of 7 Parts: Seapower and Strategic and Critical Materials Subcommittee, Title I* (Washington: Government Printing Office, 1982), pp. 345–46.

37. "Turning the Tide: Rebuilding the UK's Defence Shipbuilding Industry and the Fleet Solid Support Order," GMB Union; and Harriett Baldwin to Sir Nicholas Soames, response to online question, UIN 71204, UK Parliament, April 18, 2017.

38. Ronald O'Rourke, "Navy John Lewis (TAO-205) Class Oiler Shipbuilding Program: Background and Issues for Congress," Congressional Research Service, R43546, updated March 31, 2022.

39. "T-AO Program: U.S. Navy John Lewis Fleet Oiler Program (T-AO 205)," General Dynamics NASSCO; and "Tide Class (MARS) Royal Fleet Auxiliary Tankers," Naval Technology, April 26, 2016.

40. Ed Adamczyk, "VT Halter Awarded $745.9M for Coast Guard's New Polar Security Cutter," UPI, April 24, 2019.

41. Yereth Rosen, "Can the US Benefit from Finland and Russia's Icebreaker Expertise?," *Arctic Today*, October 9, 2017; and Sam Kingsley, "Going Greener: Finland's New

Gas-Fuelled Icebreaker," Phys.Org, February 22, 2019.

42. "Finnish Solutions for the Entire Icebreaking Value Chain," Business Finland, 2018.

43. Henrik Segercrantz, "Finland: A Hot-Bed of ICEBREAKER Technology," *Maritime Reporter and Engineering News*, August 2018.

44. Craig Hooper, "Trouble Ahead as Builder of USCG Heavy Icebreaker Abruptly Changes Leadership," *Forbes*, June 30, 2020.

45. "About RSV *Nuyina*," Australian Antarctic Program, Australian Government.

46. Ronald O'Rourke, "Navy Force Structure and Shipbuilding Plans: Background and Issues for Congress," Congressional Research Service, RL32665, April 27, 2022.

47. Brent Salder, "U.S. Navy," in Dakota L. Wood, ed., *2021 Index of U.S. Military Strength* (Washington: Heritage Foundation, 2021), pp. 381–410.

48. Matthew Hipple, "The U.S. Navy Must 'Stand Separately' to Take On China's Rise," 19FortyFive, October 5, 2021.

49. Douglas A. Irwin, *Clashing over Commerce: A History of US Trade Policy* (Chicago: University of Chicago Press, 2017), p. 71.

50. "USDA01: End the Wool and Mohair Subsidy," National Performance Review, Office of the Vice President of the United States, September 1993; and Stephen Proctor, "Mohair's Redemption," Medium, May 26, 2021.

51. Dave Ress, "Years Late and Billions More: The USS *Gerald R. Ford* Is a Lesson in How the Navy Builds Ships," *Daily Press*, May 23, 2021.

52. Chad P. Bown, "US-China Phase One Tracker: China's Purchases of US Goods," Peterson Institute for International Economics, March 11, 2022.

53. Scott Lincicome, "Manufactured Crisis: 'Deindustrialization,' Free Markets, and National Security," Cato Institute Policy Analysis no. 907, January 27, 2021.

54. Frittelli, "Shipping under the Jones Act."

55. "Maritime Profile: United States of America," United Nations Conference on Trade and Development, January 5, 2022.

56. Scott Lincicome, "The Pandemic Does Not Demand Government Micromanagement of Global Supply Chains," Cato Institute, February 24, 2021.

57. Scott Lincicome, "Baby Formula and Beyond: The Impact of Consolidation on Families and Consumers," Cato Institute, June 15, 2022.

58. "U.S. Collective Defense Agreements," Department of State (2009–2017).

59. *Review of Maritime Transport 2021* (New York: United Nations Publications, 2021).

60. Mac Thornberry, "Buy America Doesn't Work, We Need Allies," *Breaking Defense*, December 16, 2020.

61. "Fact Sheet: Biden-Harris Administration Delivers on Made in America Commitments," press release, White House, March 4, 2022.

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