 

**require the federal government to buy american more often**

***Buying American Strengthens Our Economy and National Security***

**ISSUE:**

U.S. “Buy American” laws have been diluted significantly over the years, enabling more imports to become eligible for federal procurement. Noting that “Buy American, Hire American” is a priority for President Trump, there are several actions Congress could take to require the U.S. government to buy more U.S.-made goods in a manner that is consistent with existing U.S. international obligations.

Also, in recent years, there have been multiple attacks on the Berry Amendment and the Kissell Amendment during annual congressional consideration of the National Defense Authorization Act (NDAA). These attacks must stop.

**BACKGROUND – SOME BUY AMERICAN LAWS ARE STRONGER THAN OTHERS:**

**The strongest “Buy American” law is the Berry Amendment** ([10 USC 2533a](https://www.law.cornell.edu/uscode/text/10/2533a)), which requires the Department of Defense (DOD) to buy textile, clothing, and footwear products made with 100% U.S. fibers, yarns, and fabrics that are cut, sewn, and assembled in the United States. Berry also applies to DOD procurement of food, hand tools, and measuring tools. There also is a separate Berry-like statute ([10 USC 2533b](https://www.law.cornell.edu/uscode/text/10/2533b)) that applies to specialty metals. These laws were enacted to ensure that critical U.S. military needs are not dependent on being filled by goods from foreign countries — thus mitigating a potentially serious national security issue.

The **Buy America** statute ([23 USC 313](https://www.law.cornell.edu/uscode/text/23/313)) requires the procurement of U.S. made steel in highway and transit projects subject to a prescribed content standard.

**The weakest “Buy American” law is the Buy American Act of 1933**. It requires the federal government to procure goods assembled in the United States and that at least 50 percent of the value of the content of the good originate in the United States. In practice, however, the Buy American Act of 1933 ([41 USC 8301](https://www.law.cornell.edu/uscode/text/41/subtitle-IV/chapter-83) et al) has been eviscerated by various international trade agreements. Per [federal acquisition regulations](https://www.acquisition.gov/far/html/Subpart%2025_1.html), **more than 100 countries** – every signatory to the WTO’s Revised Agreement on Government Procurement ([GPA](https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm)), U.S. free trade agreement (FTA) partner, and Least Developed Country (LDC) – now are designated as “American” under the Buy American Act of 1933. In other words, buying goods from Mexico made with 50 percent Chinese content is just one example of procurement legal under the Buy American Act of 1933.

**WAYS TO MAKE THE U.S. GOVERNMENT BUY AMERICAN MORE OFTEN**:

* **Oppose any increase to the simplified acquisition procedure (SAP) threshold with respect to Berry and Kissell in the FY 18 NDAA**

By statute, the threshold to trigger the provisions of the Berry and Kissell Amendments is tied to the SAP. In both the FY 16 and FY 17 NDAA cycles, there were attempts to raise the SAP threshold from $150,000 to $500,000. Thankfully, allies of the U.S. textile sector in Congress rebuffed each of those efforts. Had the SAP been raised, fewer contracts would have been subject to Berry and Kissell. In fact, were the threshold raised to $500K, as much as $340 million, 20% of all DOD spending on textiles and apparel, could fall outside Berry.

The Department of Defense buys $1.4-2.2 billion in textile, clothing, and footwear items for our armed forces each year. DOD estimates that over 8,000 different textile items are purchased for use by the U.S. military, and this figure rises to over 30,000 line items when individual sizes are considered.

* **Fix the Kissell loophole in any NAFTA renegotiation**

The Kissell Amendment, [6 USC 453b](https://www.law.cornell.edu/uscode/text/6/453b), is a Berry Amendment-like buy American law for textiles that applies to the Department of Homeland Security (DHS).  In practice, however, DHS only applies Kissell to purchases by the Coast Guard and Transportation Security Administration (TSA) because of U.S. commitments made under the WTO’s GPA.

With respect to its application to TSA, Kissell has further been diluted. This is because the U.S. government failed to notify Mexico and Canada under NAFTA, as well as Chile under the Chilean FTA, that the United States was reserving TSA from the GPA when TSA was created. Thus, the United States has taken the position that those countries are acceptable as U.S. sources under Kissell.  This oversight should be rectified in any NAFTA renegotiation.

* **Enact stronger U.S. content requirements for infrastructure spending**

Geosynthetic textile products make roads last longer. Reflective, flame-resistant clothing keeps workers safer. Textile membranes prevent water from seeping into tunnels. These are just a sample of the products that make infrastructure a major market for U.S.-made textiles.

Consistent with its obligations under the 2012 revision to the WTO GPA and its attendant [coverage schedules](https://www.wto.org/english/tratop_e/gproc_e/gp_app_agree_e.htm#revisedGPA), the United States is free to enact any law or implement any executive order requiring the federal government to buy U.S.-made textiles or any other product **for highway and mass transit projects as well as Federal Aviation Administration projects**. Government procurement commitments under the GPA also have been applied to U.S. FTAs.

As for specific authority, U.S. Note 5 to [Annex 2](https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=UnitedStates&AnnexNo=2&ContentCulture=en), which outlines U.S. commitments under the GPA reads, “The Agreement shall not apply to restrictions attached to Federal funds for mass transit and highway projects.” This provision makes the Buy America statute ([23 USC 313](https://www.law.cornell.edu/uscode/text/23/313)) requiring the procurement of U.S. made steel in highway and transit projects consistent with U.S. trade obligations. Also, U.S. Note 7 to [Annex 1](https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=UnitedStates&AnnexNo=1&ContentCulture=en) states that U.S. procurement for the FAA is exempt from the GPA.

* **Enact stronger U.S. content requirements for U.S. Agency for International Development (USAID) spending**

U.S. Note 9 to [Annex 1](https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=UnitedStates&AnnexNo=1&ContentCulture=en) states that U.S. procurement for USAID is exempt from the GPA. As such, the United States is free to impose whatever U.S.-made content requirements it pleases and remain consistent with U.S. international obligations.

**ACTION REQUESTS:**

* Take no action to weaken the Berry Amendment or the Kissell Amendment.
* Encourage the Executive Branch to better enforce “Buy American” laws already on the books.
* Enact strengthened “Buy American” provisions consistent with existing U.S. international obligations where possible.