



U.S. Senator Chris Murphy

Not Made in the U.S.A.

*Buy American Act Waivers and
Connecticut Manufacturing Jobs*

Prepared by the
Office of Senator Christopher Murphy
October 1, 2014

Executive Summary

Connecticut has been one of the centers of manufacturing in the United States for centuries, and we are now one of the premiere aerospace and defense manufacturers in the world. Manufacturers account for over 90% of Connecticut's exports, employ over 160,000 workers in the state, and account for over 11% of the state's Gross State Product. Manufacturing employees in Connecticut can expect to make a comfortable living, earning 57% more than employees in non-manufacturing jobs.

The United States Government, and specifically the Department of Defense (DoD), is the largest purchaser of manufactured goods in the world. However, DoD sometimes makes it harder for Connecticut to benefit from the economic ripple effects of the purchase of manufactured goods. This report shows that since 2007, the Department of Defense has spent billions of dollars on goods manufactured by foreign companies. Through waivers to the Buy American Act, the statute that is supposed to give preference to American manufacturers in procurement, the U.S. government has shipped billions of dollars and untold thousands of jobs overseas. These decisions create jobs in foreign countries instead of in Connecticut.

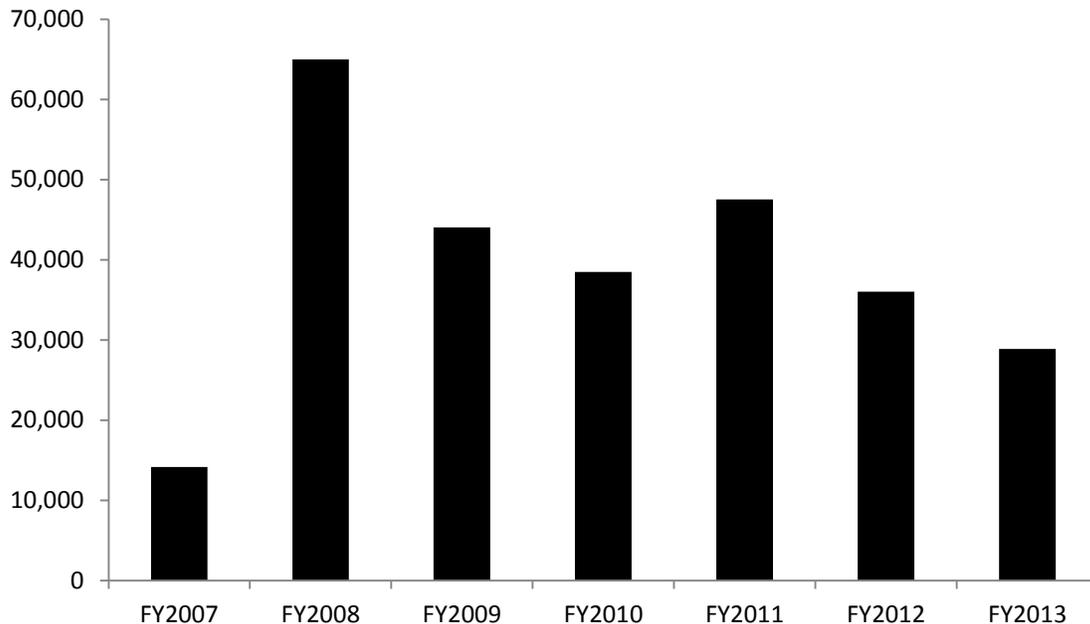
Since coming to Congress, Senator Murphy has been sounding the alarm about the staggering amount of Buy American waivers and has been successful in reducing the amount of Buy American Waivers issued since 2008. In response to the disturbing number of Buy American Act waivers, Senator Murphy has introduced *the 21st Century Buy American Act* and the *American Jobs Matter Act* – legislation that will strengthen the Buy American Act and re-orient our procurement decisions towards more American manufacturers.

Report Highlights

- The Buy American Act, which governs federal procurement, has been amended and eroded since its inception in 1933.
- In 2007, a new reporting requirement was added to the Buy American Act. Under P.L. 110-28, the head of each federal agency is required to annually report to Congress concerning procurements from non-domestic sources. **Since FY 2007, the Department of Defense has granted 274,186 waivers of the Buy American Act.**

- There are currently eight statutory authorities for which the Department of Defense may grant a Buy American waiver.
- Since 2007, **the Department of Defense awarded \$163,400,000,000 to foreign manufacturers.**

Buy America Waivers Issued by Year



The Buy American Act

The Buy American Act, enacted in 1933, seeks to give preference in contracting to domestic manufacturers. As the global economy changed over the years, federal agencies, especially the Department of Defense began to purchase more and more items from foreign manufacturers. It wasn't until recently that we have had comprehensive reporting on the amount of material being manufactured overseas, and it wasn't until FY 2007 that there was itemized, categorized, complete reporting on purchased goods manufactured overseas.

The numbers since 2007 are disturbing. **Since FY 2007, the Department of Defense has granted 274,186 waivers of the Buy American Act.**

Waiver Authority

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

- 1) Use outside the United States: The Buy American Act does not apply to purchases of goods that will be used outside of the United States. That doesn't mean that all materials and supplies used outside of the United States (including for overseas military operations or for use by our embassies and consulates) are bought from foreign companies, but billions of dollars are spent on these types of purchases.
- 2) Resale: If DoD is not the end user of the item, the Buy American Act doesn't apply.
- 3) WTO GPA and Free Trade Agreements: Purchases that would interfere with our obligation to the WTO, the Agreement on Government Procurement, or other Free Trade Agreements that restrict domestic preference are not subject to the Buy American Act.
- 4) Commercial IT: Purchases that are commercial information technology (IT), like computers, printers, software, and hardware, are exempt.
- 5) Public Interest Determination: Purchases for which an Agency head determines that enforcing the Buy American Act is not in the “public interest” are not subject to the Buy American Act. This waiver authority can be invoked after bidding is open and is at the discretion of the Secretary of Defense.
- 6) Domestic Non-availability: An item that is not made in the United States in sufficient quantity or quality is not subject to the Buy American Act. Even though there are American firms that make these items, DoD still sometimes says the items are non-available anyway.
- 7) Unreasonable cost: A federal agency is permitted to use a foreign product if the head of the agency determines that the cost of the lowest priced domestic product is "unreasonable." A system of price differentials has been established for use in making this determination. A 50% differential is applied to Department of Defense procurements.

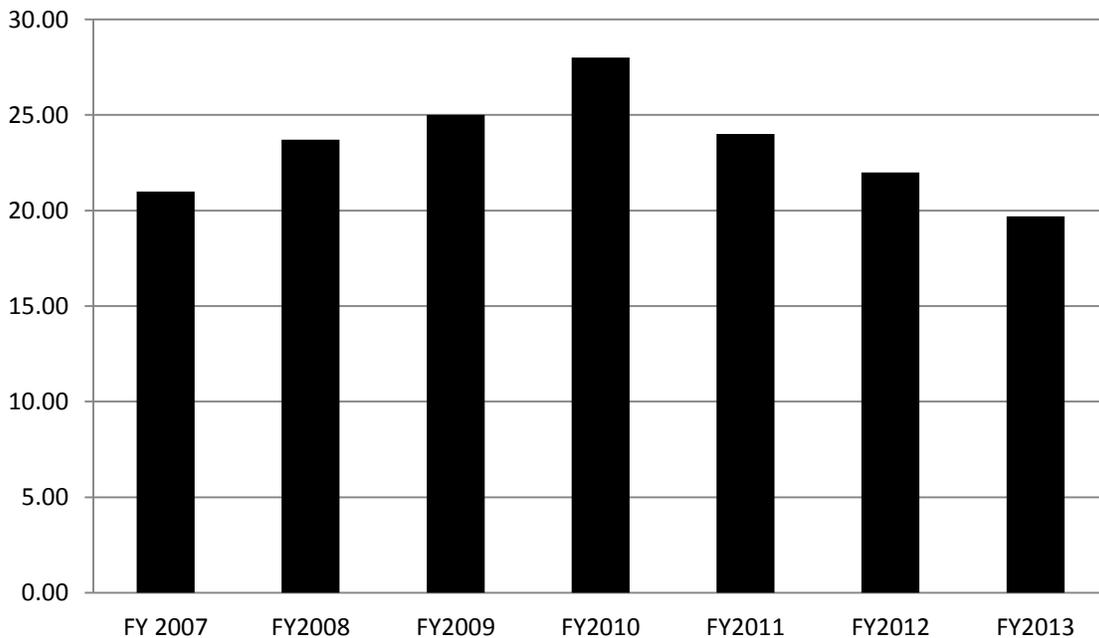
8) Qualifying country: If the purchase is from a “qualifying country” which is one where we have a special trade agreement or a memorandum of understanding regarding defense trade.

The cost of Buy American Act waivers

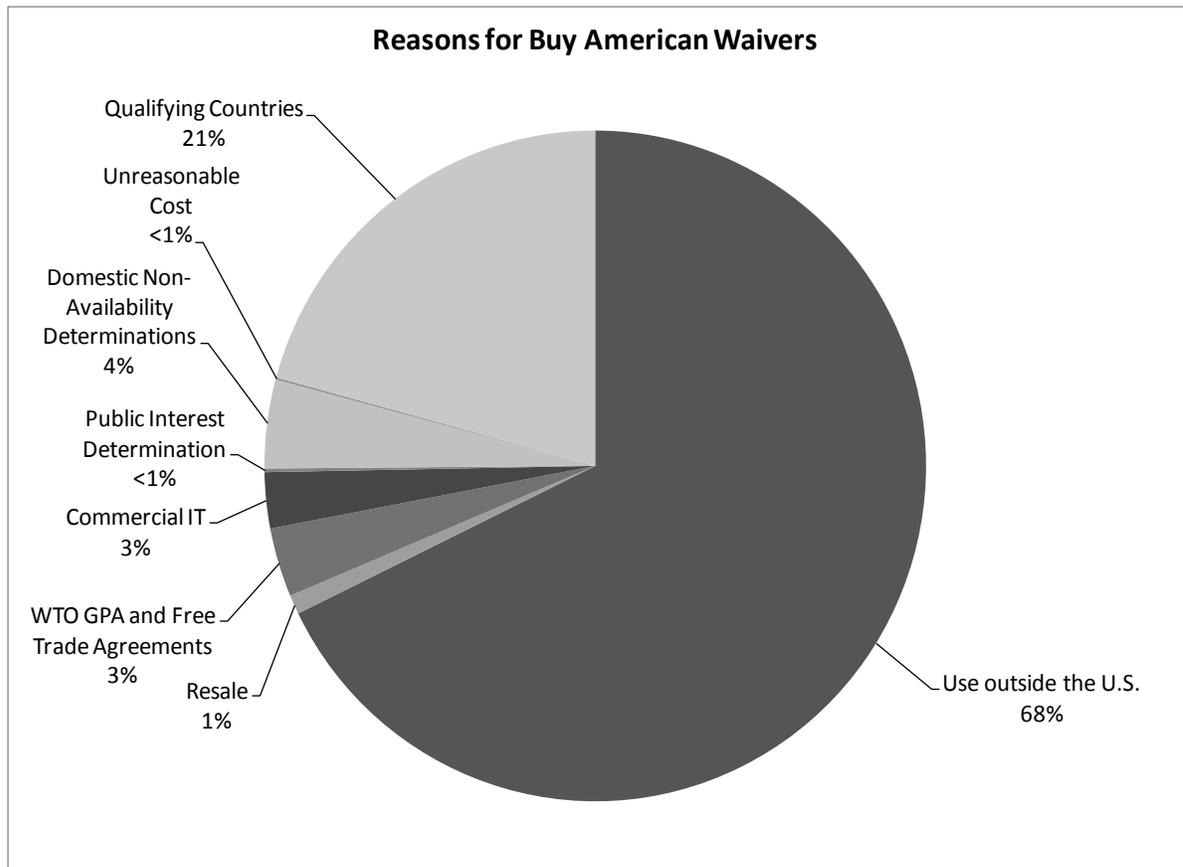
This myriad of official exceptions, carve outs, and broad discretion by the Secretary of Defense has led to billions of taxpayer dollars being awarded to foreign firms.

Since 2007, DoD has given **\$163,400,000,000** (\$163.4 Billion) to foreign manufacturers.

Cost of Buy American Act Waivers in Billions of Dollars

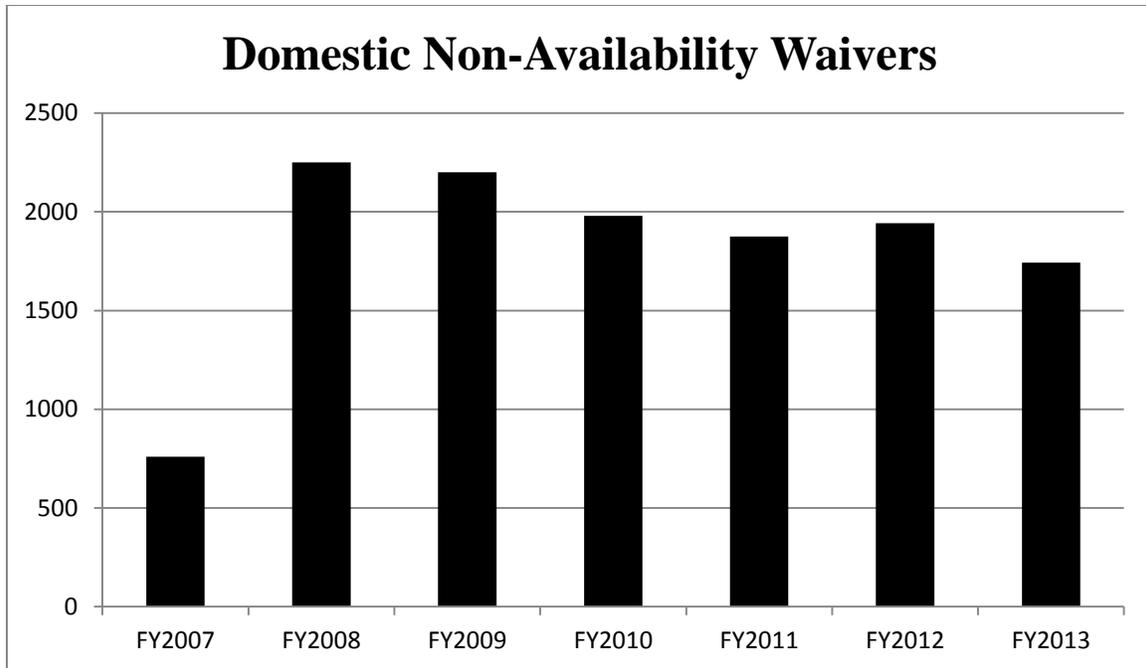


Most of these contracts were awarded due to the blanket exemption of Buy American for items used overseas. While we were engaged in two wars, with military personnel all over the world, it is clear that this exemption makes the Buy American Act almost meaningless.



Non-availability

The decline of U.S. manufacturing has also contributed to the increase in waivers granted. However, there is a vicious cycle in these numbers. As we lose manufacturing jobs, the DoD determines that the capacity to make certain items no longer exists. Instead of working with companies that are the last manufacturer of a certain item, DoD often awards the contract overseas, thereby assuring the demise of a struggling domestic manufacturer. According to business owners in Connecticut, sometimes DoD doesn't even look before granting a "non-availability" waiver. The numbers from FY2007-FY2013 underscore the decline of U.S. manufacturing, exacerbated by Department of Defense procurement practices.



Instead of re-investing in domestic manufacturers so that our Defense Industrial Base can produce the items needed to supply our armed services, we have instead given up, and sent billions of dollars overseas. That money should have gone to re-tool and re-furbish American factories.

Senator Murphy's Plan to Bring Back American Jobs

After a concerted campaign of floor speeches, amendments, town hall meetings and roundtable discussions, and legislation, Senator Murphy has been successful in reducing the amount of Buy American Waivers generally and Domestic Non-Availability Waivers specifically. However, a series of legislative fixes to our procurement regime and industrial policy are needed to maintain supremacy in manufacturing. First, we need to implement a National Manufacturing Strategy that brings policy professionals together with business leaders at the cabinet level to chart a course for the future of manufacturing. We also need an honest assessment of our procurement that gives contracting officials the ability to give American manufacturers a leg up in contracting, which is why Senator Murphy introduced the *American Jobs Matter Act*. That legislation would require DoD to take into account the impact of domestic job creation when considering a procurement bid.

The Buy American Act also needs to be updated for the 21st Century. The “overseas exemption” is a loophole that gives DoD a blank check to purchase whatever they want from foreign manufacturers. The domestic content requirement of the Buy American Act, which requires that only 51% of the cost of all the components of an item be American for the item to qualify as American, also needs to be updated, which is why Senator Murphy introduced the *21st Century Buy American Act*. This bill is a comprehensive overhaul of the Buy American Act that will create American jobs and reorient our procurement decisions towards American manufacturers.

Taken in total, the last seven fiscal years of Defense procurement confirm what manufacturers in Connecticut and around the country are feeling. Federal dollars are going to foreign manufacturers at a disturbing rate. Instead of looking inward and investing in United States manufacturers, DoD has been too quick to look for ways to get around the Buy American Act.