



Insight

The Economic Impact of a Buy American Mandate for Medical Goods

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Executive Summary

- The Trump Administration is considering an executive order requiring the federal government to purchase medical goods only made in the United States.
- To do this, the order would eliminate current exceptions to Buy American laws allowing the federal purchase of foreign-made medical goods in special circumstances, e.g. if the product is not available domestically or is unreasonably costly compared to its foreign-made alternatives.
- If enacted, the order will have a small but negative impact by increasing the cost and reducing the supply of medical goods procured by the federal government.
- The order will also invite retaliation from our trading partners, which may or may not be in proportion to U.S. action given the currently broken state of the World Trade Organization's dispute settlement system.

Introduction

The Trump Administration has [reportedly prepared](#) an executive order that would strengthen Buy American laws for federal purchases of medicine and medical supplies. The order would eliminate current exceptions to Buy American mandates, which allow the government to purchase foreign goods if they meet select criteria. While a Buy American order may be appealing during a time of crisis, the mandate's impact on U.S. medical supply chains will be limited, and it will invite retaliation from our trading partners.

What Are Buy American Laws?

Buy American laws were instituted as a part of the Buy American Act of 1933, which aimed to protect American jobs in the wake of the Great Depression. These laws limit the federal government's ability to purchase foreign-made goods and instead establish a preference for goods produced in the United States.

Buy American laws regulate the federal purchase of construction materials and end products, i.e. goods to be acquired for public use. A "domestic end product" is [defined as](#) an unmanufactured good mined or produced in the United States, a manufactured good with more than 50 percent of the cost of its components made in the United States, or a commercially available off-the-shelf item. If a product fails to meet these criteria, it is instead defined as a "foreign end product" and the federal government is prohibited from purchasing it. Transactions that do not meet Buy American requirements are assigned [cost penalties](#), and government contractors that fail to comply with Buy American mandates when sourcing their materials must pay [hefty fines](#).

There are several exceptions to Buy American laws that allow for the procurement of foreign end products. For instance, the government may purchase foreign end products if the product will not be used in the United States

or if the value of the transaction is less than the “micro-purchase threshold” – [set at \\$10,000](#) for both military and civilian federal agencies as of 2019.

[Other exceptions](#) are available to ensure the mandate does not cause geopolitical or economic harm. These can be applied if:

1. An agency has a preexisting agreement with a foreign government exempting it from Buy American laws;
2. The foreign end product is not mined, produced, or manufactured in the United States;
3. The cost of the domestic end product is unreasonable;
4. The foreign end product is purchased specifically for commissary resale; or
5. The foreign end product is a commercial item consisting of information technology.

In addition to the exceptions defined in the Buy American law itself, the Department of Defense has its own exceptions for “[qualifying countries](#)” that have reciprocal defense procurement agreements with the United States. Examples of qualifying countries include Australia, Canada, Germany, and Japan.

How is President Trump Changing Buy American Laws?

In July of 2019, President Trump issued [an executive order](#) strengthening Buy American laws. The order states that 55 percent of the cost of manufactured domestic end goods must be made in the United States (up from 50 percent), redefining foreign end products to be of 45 percent U.S.-origin. The order further strengthened domestic requirements for iron and steel products, which now may only have 5 percent of the cost of their components manufactured abroad.

In response to recent medical-supply shortages during the COVID-19 pandemic, the president is [reportedly](#) now considering an executive order that would eliminate some or all exceptions to Buy American laws specifically for the procurement of medicine and medical goods by the Departments of Defense, Veterans Affairs, and Health and Human Services.

What Will Be the Economic Impact in the United States?

A stronger Buy American mandate for medical goods would have harmful impacts in the United States. By restricting options for purchasers, Buy American mandates increase the cost and reduce the supply of goods. Indeed, [research](#) shows that discrimination in government procurement increases prices and reduces national welfare. Furthermore, more than 250 economists [signed a letter](#) urging the Trump Administration against stronger Buy American laws for medicine and medical supplies, arguing that they would undermine the economic recovery.

While the impact of a Buy American executive order would be negative, it would also likely be small. The president may only use an executive order to direct the actions of the federal government and federal employees, not of private actors. This limited authority explains why the proposed executive order only applies to federal procurement activities. It also explains why the order is limited to the Departments of Defense, Veterans Affairs, and Health and Human Services – the three agencies tasked with the direct purchase of medical goods for health plans under TRICARE, the Veterans' Administration, and the Indian Health Service, respectively. The order is unlikely to impact spending under Medicare or Medicaid, as the federal government does not directly purchase pharmaceuticals through either program.

Furthermore, the magnitude of government purchases of foreign medicine and medical supplies is fairly small. According to the [Government Accountability Office](#) (GAO), the federal government spent \$508 billion on all federal procurement in fiscal year 2017 – not just on medical goods. Of that, \$188.2 billion was spent on domestic end products, and only \$7.8 billion was spent on the purchase foreign end products (less than 5 percent of total end products). Even more, only \$4.1 billion was spent on foreign end products that were to be used in the United States. For context, net sales of medicines in the United States that same year were nearly [\\$325 billion](#). While GAO did not limit its study to medical goods in particular, the comparison shows that government procurement of foreign-made medicine provides a miniscule fraction of total medicine sold in the United States (likely far less than 1 percent).

The order is also unlikely to have a large impact on goods from China, which is the main motivation of the new mandate. [GAO reports that](#), of the \$7.8 billion of foreign end products purchased by the federal government in 2017, China supplied somewhere between \$25 million to \$125 million of goods (0.3 percent to 1.6 percent). Furthermore, the United States is not as dependent on Chinese pharmaceuticals as is reported. Previous [AAF research](#) shows that China only supplies 18 percent of total active pharmaceutical ingredient imports, 9 percent of total antibiotics imports, and less than 1 percent of total vaccine imports. Alternatively, 70 percent of essential medical equipment is manufactured in the United States, and 70 percent of total antibiotic spending and 50 percent of total vaccine spending is on U.S.-made products.

What will be the Impact on Trade?

While the executive order may not have a large impact on U.S. spending, it will certainly open the United States up to retaliation from our trading partners. In 1996, the United States entered [into an agreement](#) with other World Trade Organization (WTO) nations pledging not to discriminate against foreign suppliers in federal procurement. That agreement has since grown to include 48 WTO members and 35 additional observers in the process of negotiating membership. If the United States were to eliminate all exceptions to the Buy American law for medical goods, it would completely eliminate the ability for the federal government to purchase foreign medical end products, violating the terms of the agreement.

Normally, other countries would have the option to legally challenge the United States' Buy American executive order at the WTO, and the case would be decided through due process. Recently, however, the United States [blocked appointments](#) to the WTO's appellate body, eliminating its ability to rule on appeals and effectively resolve disputes. Due to these current circumstances, it is more likely that other nations would simply retaliate against the United States with tariffs or other trade barriers instead of pursuing due process at the WTO – retaliation which may or may not be in proportion to the harm caused by the United States. This in turn would likely lead President Trump to impose retaliatory tariffs, spurring new trade wars and further [increasing consumer costs](#) in the United States.

Conclusion

The Trump Administration's Buy American executive order for medicines and medical goods is misguided. While its intention is to reshore medical supply chains during a pandemic, its impact will be to increase the prices and restrict the availability of medical goods. Because the order is limited to federal procurement activities, however, its impact will be small, and it will not significantly decrease U.S. imports of medical goods from China or any other country. It will, however, invite retaliation from our trading partners, potentially sparking new trade wars and harming relationships with our allies.