

United States Senate
WASHINGTON, DC 20510

March 15, 2021

The President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

We write to you today as Congress considers proposals to address the COVID-19 pandemic and related economic crisis. We commend you for your leadership in crafting the American Rescue Plan. This \$1.9 trillion investment will address the twin public health and economic crises caused by the COVID-19 pandemic. In order to ensure that this spending provides the relief intended, we ask you to take steps to close loopholes that could allow the historic investments included in COVID relief legislation to go to foreign firms. Specifically, we ask you to use your authority under 19 U.S.C. 2511 to temporarily suspend the trade-pact waivers to Buy American and other domestic procurement preferences that allow foreign firms to bid as American companies. Importantly, we ask you to make this change *before* contracts are awarded under the American Rescue Plan and any other legislation aimed at addressing the COVID-19 pandemic emergency, including through additional recovery-related spending.

The Trade Agreements Act of 1979 allows the President to waive Buy American and other domestic preference restrictions for countries with which the United States has a trade agreement or procurement agreement.¹ As of this writing, 60 countries currently qualify for such a waiver and are eligible to bid as American firms for contracts that are covered by the Buy American Act and other domestic content preferences, despite that these firms do not have American workers or pay American taxes.²

¹ This includes the World Trade Organization's Agreement on Government Procurement (GPA).

² Armenia, Aruba, Australia, Austria, Bahrain, Belgium, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxemburg, Mexico, Moldova, Malta, Montenegro, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Oman, Panama, Peru, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, Ukraine, and the United Kingdom.

We support your commitment to reform our government procurement agreements.³ Despite the fact that our international trade rules are based on the principle of reciprocity, a 2017 Government Accountability Office report requested by Senators Merkley and Baldwin found that the United States opened double the opportunities to foreign firms to win government procurement contracts than the next five largest eligible trade partners combined, which includes all European Union countries, Japan, Korea, Canada and Norway.⁴ Making thoughtful reforms to address this imbalance through renegotiation will take time that we do not have. The President is expressly given the authority to modify or withdraw any waiver granted without condition or need for notice and comment. We recommend that you suspend these waivers for all extraordinary COVID-19 relief and recovery-related spending (including recovery-related infrastructure spending) and commit to our trade partners to renegotiate these terms as quickly as possible. This approach would ensure that extraordinary COVID-19 relief and recovery funds are reinvested at home during the process of renegotiating the trade-pact terms that apply to ordinary procurement.

To be clear, we are not advocating for a “go it alone” approach to trade. We recognize the value of our trade relationships and understand that a pandemic is not the time to put our aspirations for increased domestic production before Americans’ immediate needs. As such, we note that removing this waiver would not suspend the other exemptions built into our domestic preference laws. If buying domestically is cost prohibitive or not in the public interest, government agencies can still buy from a foreign firm. Immediate needs would not go unmet because of the change we request.

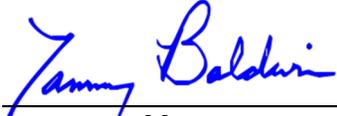
However, this crisis has demonstrated the risks of long foreign supply chains. The United States has endured shortages for crucial items like Personal Protective Equipment (PPE), ventilators, and chemical inputs for pharmaceuticals due to lack of domestic industries in those products. In order to ensure that such shortages do not continue, we must do everything we can to boost our domestic industries and unemployed Americans by making government purchasing commitments wherever possible.

Inherent in the Build Back Better agenda is a recognition of our shortfalls and a commitment to learn and improve. The American Rescue Plan is arguably the first major step in these efforts. Therefore, we must learn from previous economic relief efforts and make big, bold investments that are targeted to American firms and their workers. In closing, we again commend your leadership and offer our services to assist your Administration with this important work.

Sincerely,

³ From the Build Back Better plan: [“Update the trade rules for Buy American”](#): Biden will work with allies to modernize international trade rules and associated domestic regulations regarding government procurement to make sure that the U.S. and allies can use their own taxpayer dollars to spur investment in their own countries.” The White House’s 1/25/21 Buy American Executive Order [Fact Sheet](#) reiterated this plan.

⁴ The European Union, Japan, South Korea, Norway, and Canada.



Tammy Baldwin
United States Senator



Sherrod Brown
United States Senator



Chris Murphy
United States Senator



Jeffrey A. Merkley
United States Senator



Richard Blumenthal
United States Senator



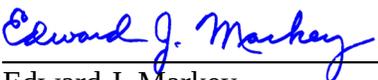
Chris Van Hollen
United States Senator



Elizabeth Warren
U.S. Senator



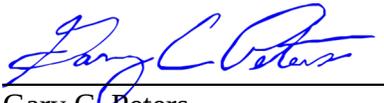
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Jeanne Shaheen
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Gary C. Peters
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Kirsten Gillibrand
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