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U.S. SENATOR FOR CONNECTICUT



NOT MADE IN THE U.S.A

BUY AMERICAN ACT WAIVERS AND
CONNECTICUT MANUFACTURING JOBS

PREPARED BY THE
OFFICE OF SENATOR CHRISTOPHER MURPHY
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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, shipbuilding and defense manufacturers in the world. Manufacturers account for over 90% of Connecticut's exports, employ about 160,000 workers in the state, and account for over 11% of the state's Gross State Product. Manufacturing employees also earn an average of \$76,108 a year, almost 30% higher than wages for all industries.

The United States Government, and specifically the Department of Defense, is the largest purchaser of manufactured goods in the world. However, actions taken by the Department of Defense sometimes make 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 and exceptions to the Buy American Act, 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.

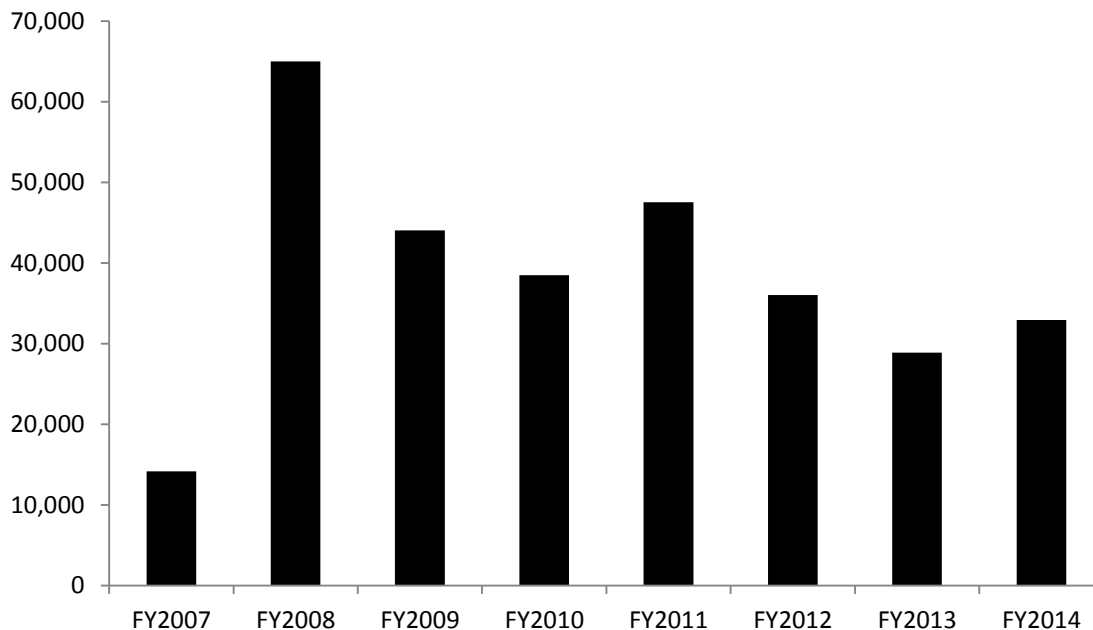
Since coming to Congress, Senator Murphy has sounded the alarm about the staggering amount of Buy American waivers and has successfully reduced the amount of such waivers issued since 2008. In response to the disturbing number of Buy American Act exceptions, Senator Murphy has introduced *the 21st Century 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 307,123 waivers and exceptions to the Buy American Act.**

- There are currently eight statutory authorities for which the Department of Defense may grant a Buy American waiver.
- **Since FY 2007, the Department of Defense awarded \$176.800.000.000 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 307,123 waivers and exceptions to the Buy American Act.**

Waiver Authority

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

- 1) For 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, including materials for overseas military operations or for use by our embassies and consulates. Not all materials and supplies used outside of the United States are bought from foreign companies, but billions of dollars are spent on these types of purchases.
- 2) Resale: If The Department of Defense is not the end user of the item, the Buy American Act does not 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. Alarming, American firms often do make these items, yet the Department of Defense will grant waivers 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

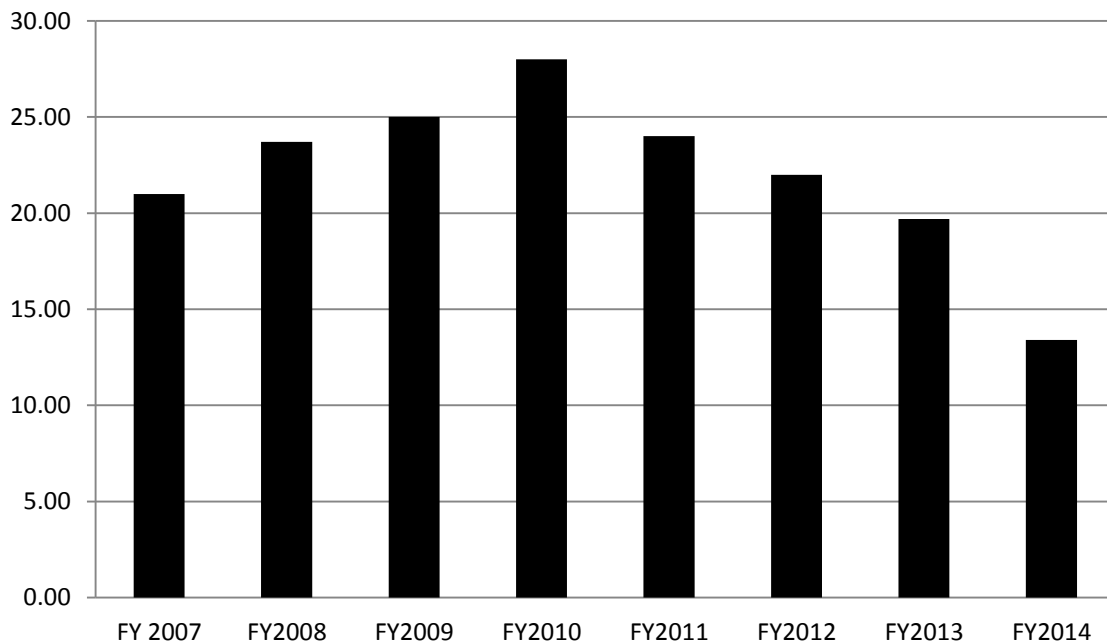
understanding regarding defense trade.

The cost of Buy American Act waivers

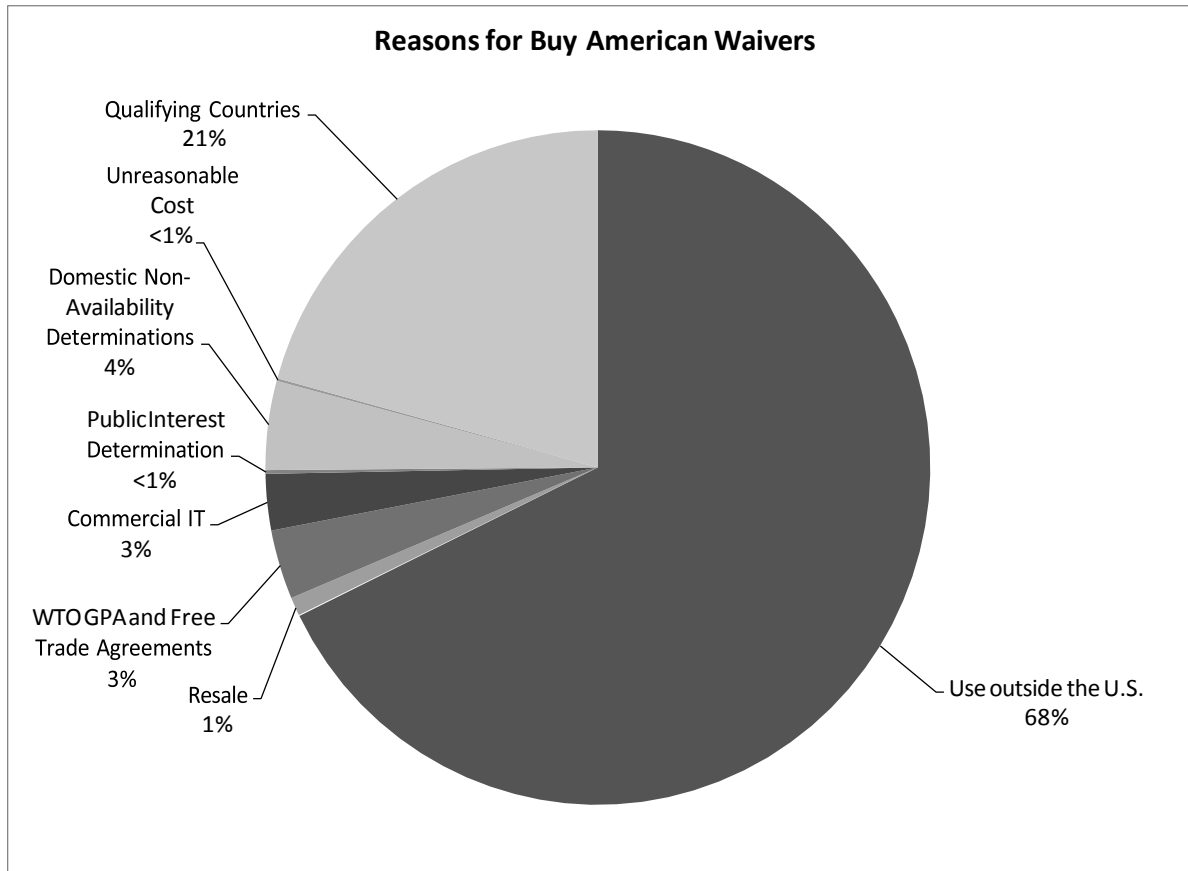
This myriad of official exceptions, carve outs, and broad discretion by the federal government and individual officials has led to billions of taxpayer dollars being awarded to foreign firms.

Since 2007, The Department of Defense has given \$176,800,000,000 (\$176.8 billion) to foreign manufacturers.

Cost of Buy American Act Waivers in Billions of Dollars



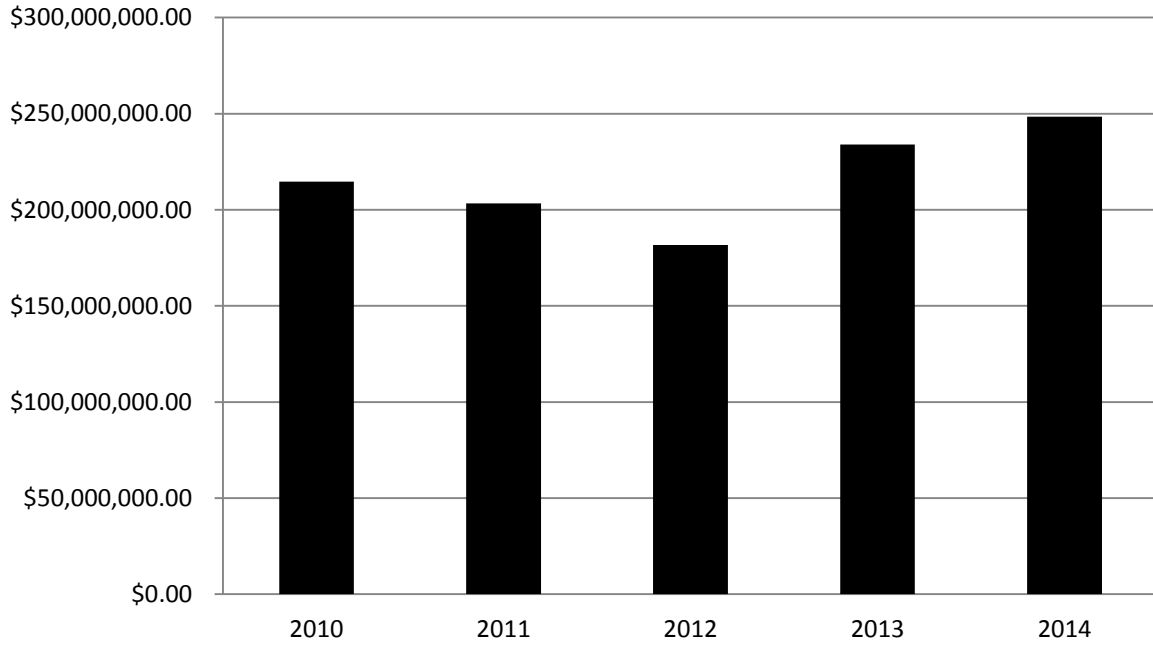
Most of these contracts were awarded due to the blanket exemption of Buy American for items used overseas. While we were engaged in two wars, with military personnel all over the world, it is clear that this exemption makes the Buy American Act almost meaningless. The *21st Century Buy American Act* eliminates this waiver.



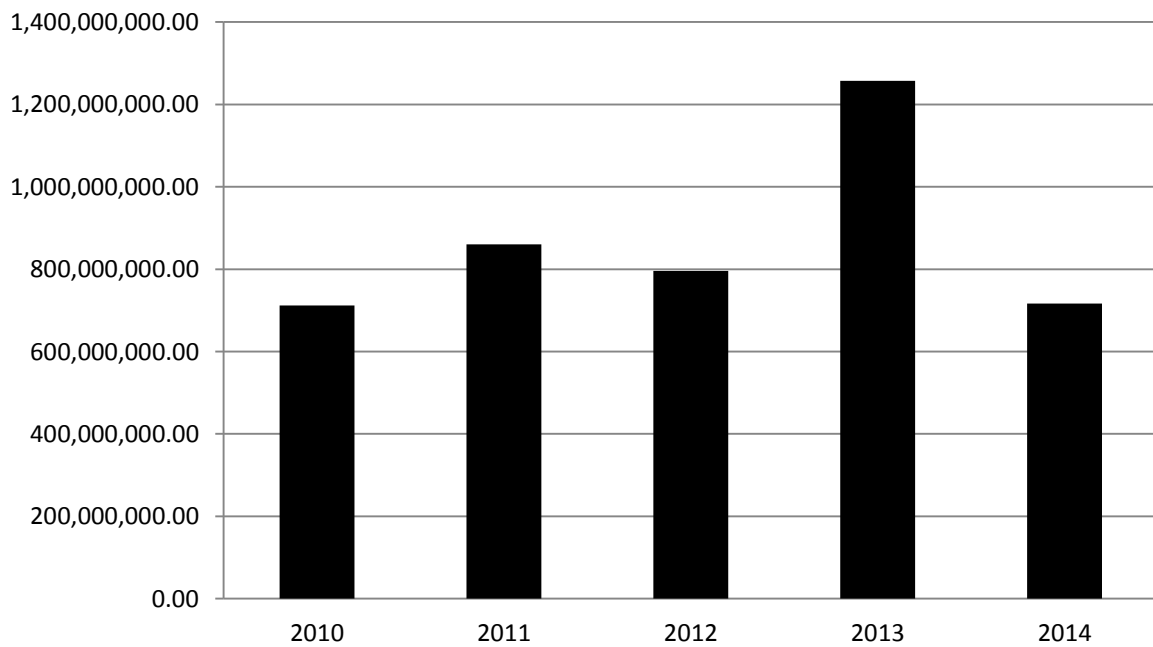
Aerospace and shipbuilding waivers

More concerning than the total cost and amount of all waivers is the impact that they have in Connecticut's most important manufacturing sectors. The state's economy relies on shipbuilding and aerospace manufacturing through a network of small suppliers that contribute to the major defense programs in Connecticut. Alarming, as the total amount and cost of waivers has decreased as our two wars have wound down, the cost of aerospace and shipbuilding related waivers have stayed high. Aerospace waivers, which include airframes, spares, engines and miscellaneous aerospace equipment, represent **\$4,342,000,000 in waivers since FY 2010**. Similarly, shipbuilding-related waivers represent **\$1,082,000,000 in waivers since FY 2010**. This combined \$5.4 billion dollar wasted opportunity would have had an outsized positive impact on Connecticut, but instead these waivers and exceptions have cost jobs in our state.

Shipbuilding Waiver cost



Aerospace Waiver cost



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 played a leading role in reducing the overall amount of waivers that the Department of Defense grants on a yearly basis. 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 to chart a course for the future of manufacturing. Next, we 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* and the *21st Century Buy American Act*, which would eliminate the ability to grant certain waivers and give the federal government the ability to give American manufacturers extra consideration before awarding a contract.

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