

Intelligence MEMOS



From: Jon Johnson

To: Joe Biden

Date: August 5, 2020

Re: **BUY AMERICAN AND ECONOMIC RELATIONS WITH CANADA**

Your [website](#) makes Buy American promises such as investing \$400 billion in your first term in additional federal purchases of products made by American workers. You also promise to “work with allies to modernize international trade rules and associated domestic regulations regarding government procurement to make sure that the US and allies can use their own taxpayer dollars to spur investment in their own countries.”

As you are aware, a similar playbook unfolded under the Obama administration, of which you were an integral part. In response to the 2008 financial crisis, Congress enacted the *American Recovery and Reinvestment Act of 2009* (“Recovery Act”) that provided for massive government spending to stimulate the economy, coupled with strong Buy American provisions. However, the legislation required that Buy American be applied consistently with US international obligations, which included the WTO Government Procurement Agreement (GPA).

Much of the spending under the Recovery Act was to take place at the state level. Thirty-seven states had assumed procurement obligations under the GPA. However, the US, not unreasonably, excluded Canada from the benefit of these obligations because Canada had not assumed any obligations respecting procurements by its own provincial or territorial governments, either under the GPA or under the NAFTA procurement chapter.

As a result, Canada and the US negotiated a 2010 government procurement agreement that included extensive procurement commitments by every Canadian province and territory. These commitments, as well as the commitments by the 37 states, have been carried forward into the WTO Revised Agreement on Government Procurement (Revised GPA), which remains binding even though CUSMA, unlike NAFTA, does not set out procurement obligations between the parties.

Will a Biden administration, like its Obama predecessor, ensure that its Buy American commitments are subject to US international obligations, which include the Revised GPA?

And, further, what is meant by pledging to “modernize international trade rules” regarding government procurement?

From one perspective, your pledge to “modernize” makes sense as between Canada and the US. The US continues to deny to Canada the benefit in the Revised GPA to procurements by certain governmental entities (such as the Tennessee Valley Authority) because Canada still has not assumed procurement commitments respecting provincial government enterprises (such as Ontario Power Generation). If modernizing means requesting negotiations with Canada to expand Canadian coverage to include procurement by provincial government enterprises, then this could benefit both countries, whose economic fates are closely intertwined, as you know.

However, if modernizing international trade rules means cutting back, or worse, renegeing on US commitments under agreements such as the Revised GPA, you will create significant problems for Canada and all your trading partners that are party to the Revised GPA. This will almost certainly lead to reduced access to procurement markets abroad for US businesses and their workers.

This raises the broader question. Will a Biden administration continue on the Trump path of self-defeating mercantilism, raising costs for US businesses, consumers and public entities? Or will a Biden administration take steps to repair the damage Trump has done and take positive steps to address perceived flaws with the WTO and put the trading system back on the rails, thereby supporting both US and global recovery?

The approach you suggest makes sense as a way to support US jobs, if it leads to a fairer, more balanced access to procurement opportunities between the United States and its allies.

Every country’s citizens want to make sure they get best value for their taxes, including in terms of local economic development from government spending. However, indiscriminately closing cross-border procurement opportunities would most likely hurt everyone, including US workers and taxpayers.

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