

# Intelligence MEMOS



From: Jon Johnson  
To: Global Affairs Canada  
Date: July 5, 2021  
Re: **SPECIAL COMMITTEE TAKES ON BUY AMERICA**

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The House of Commons Special Committee on the Economic Relationship between Canada and the United States has now issued its interim [report](#) on “Buy America” procurement policies based on testimony heard in April.

Usefully, the report distinguishes between “Buy American” and “Buy America”.

“Buy American” refers to US practice under the 1933 [Buy American Act](#) requiring that materials for public use or for public buildings in the US be of US origin, subject to certain exceptions, bureaucratic discretion, and the issuance of waivers.

Procurements covered by US obligations under the WTO Agreement on Government Procurement (GPA) are exempt from Buy American requirements through a waiver under a subpart of US federal acquisition regulations.

“Buy America” refers to programs involving transfers of money from Washington to the states and cities for such things as transit, highways and water infrastructure. These programs, which fall outside US GPA obligations and from which there is no exemption, place quotas on the use of US domestic iron, steel and manufactured goods.

Last month’s Commons report is mainly concerned with “Buy America” policies.

It sets out six recommendations:

- (1) aim for a full exemption from “Buy America” policies;
- (2) failing that, prioritize exempting integrated supply chains and specific sectors;
- (3) work with Canadian firms and organized labour to impress upon the US the costs of Canada not receiving an exemption from “Buy America” policies;
- (4) work with US government to investigate the possibility of bilateral procurement strategies;
- (5) work with US government prioritizing the purchase of low-carbon emission goods;
- (6) monitor implementation of President Joe Biden’s [American Jobs Plan](#).

As committee members were doubtless aware, the chance of securing a full exemption is virtually nil.

However, exempting integrated supply chains and specific sectors, makes perfect sense, given the high degree of integration between the Canadian and US economies. Insisting on Buy America in sectors that are already highly integrated may be counter-productive for the US. Alon Levy recently [described](#) how Buy America requirements have been highly detrimental to US mass transit. US-produced rolling stock is much more expensive than European and Asian produced trainsets and years of Buy America have not jump-started a domestic industry.

The committee’s second recommendation raises the question of whether the most-favoured-nation (MFN) obligation in GPA Article IV would block member-specific exemptions. Individual GPA Annexes suggest otherwise. US Annex 7 sets out exclusions from coverage that apply only to Canada, Korea and Japan. Notes to the EU Annex 1 and UK Annex 1 deny the benefit of domestic review procedures to suppliers and service providers of Japan, Korea, the US and Australia until those countries change certain practices. MFN-inconsistent provisions in GPA member annexes (coupled with US-induced Appellate Body dysfunction) suggest that the risk of a successful WTO challenge of an exemption for Canada is low.

The third recommendation also makes considerable sense. Strict application of Buy America requirements disrupts supply chains, which raises costs. In many instances, the disruption and resulting cost to US government purchasers could be considerable.

While bilateral procurement strategies suggested in Recommendation 4 may seem unlikely, one witness cited the Gordie Howe Bridge as an example of bilateral co-operation.

Recommendation 5, working with the US to prioritize prioritizing the purchase of low-carbon emission goods, could be useful, given the Biden administration’s evident concern with carbon pollution. A case in point is aluminum, which is produced in Canada using carbon-free hydro-generated electricity. As one witness pointed out, Canada’s industry generates less than two tonnes of CO2 per tonne of aluminum as compared with as much as 17 tonnes in China. Meanwhile, some US aluminum production still uses electricity generated by burning coal.

As with the mass transit example cited above, Global Affairs Canada should have no hesitation in publicly identifying key instances in which application Buy America is detrimental to the interests of US consumers of government-provided goods and services and demand exemptions.

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