

Frequently Asked Questions (FAQs)
about “Buy American” provision of U.S. stimulus package

Compiled by the US Embassy Berlin

Q: What is the “Buy American” provision of the U.S. stimulus package?

A: “Buy American” legislation has existed for decades. The American Recovery and Reinvestment Act of 2009 (ARRA) – the \$787 billion dollar stimulus package – contains a provision (Section 1605) that refers to this pre-existing legislation - the Buy American Act of 1933. The “Buy American” provisions require that only U.S.-produced iron, steel and manufactured goods be used in public buildings and public works, subject to certain exceptions (public interest, non-availability, or unreasonable cost). **Section 1605(d) of the ARRA also requires the “Buy American” provision to be applied in a manner consistent with U.S. obligation under international agreements.** Other Federal legislation attaches similar “Buy American” requirements to spending that involves Federal funds, such as highway and mass transit programs.

Q: Will this provision affect German companies?

A: Under its international obligations, the United States grants open access to public procurement bids to countries that are parties to the World Trade Organization’s Government Procurement Agreement (GPA). Germany, like all European Union member states, is a signatory and receives market access to U.S. public procurement based on reciprocity under this agreement. For this reason, Germany receives market access to U.S. public procurement according to the same rules it did before the U.S. stimulus package was enacted. **No substantive changes have been made to the rules that govern public procurement when German firms bid on U.S. projects.**

Q: Has “Buy American” caused a decline in German exports to the United States?

A: No. The recent slowdown in bilateral trade is a result of the current financial/economic crisis, which has reduced worldwide demand for merchandise goods and services. German exports to the United States have fallen by one third during the first four months of 2009 compared to the same period a year ago. Similarly, U.S. exports to Germany have fallen by one-quarter in the same year-over-year period. Nonetheless, our two-way trade during this period amounted to more than \$36 billion worth of merchandise goods. **There are no indications suggesting that “Buy American” provisions contributed to the drop in German exports.**

The overwhelming trend between our countries remains growing cross-investment, trade and job creation. Trade between the United States and Germany doubled over the decade from 1998 to 2008. Since reunification, U.S. investment in Germany quadrupled while German investment in the United States multiplied by more than seven times.

Q: How will U.S. subsidiaries of German companies be treated under application of the “Buy American” clause?

A: They will have the same rights that they currently enjoy with respect to U.S. government procurement. For a better illustration, please see the graph below.

Q: What is the status of the implementing regulations for the “Buy American” provision in the U.S. stimulus package?

A: To implement the "Buy American" provision in Section 1605 of the American Recovery and Reinvestment Act (ARRA), two interim measures have been issued:

- On March 31, an interim rule amending the Federal Acquisition Regulation ("Interim FAR Rule") was published in the *Federal Register*. (see 74 FR 14623-14633) (<http://www.gpoaccess.gov/fr/>).
- On April 3, the Office of Management and Budget (OMB) issued "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009", which are posted at www.recovery.gov. The Guidance includes Appendix 9, "Interim Final Guidance for Federal Financial Assistance" ("Interim OMB Guidance"), which provides information relevant to state and local governments on the application of the "Buy American" requirement consistent with U.S. obligations under international agreements. The Interim OMB Guidance was published in the *Federal Register* on April 23 (see 74 FR 18449-18463) (<http://www.gpoaccess.gov/fr/>).

The 60-day public comment period closed on June 1 for the interim FAR rule and on June 22 for the OMB guidance. The final rules and OMB Guidance are expected to be finalized shortly.

Q: Does the “Buy American” provision violate the United States’ World Trade Organization (WTO) obligations?

A: No. The legislation explicitly states that it will be implemented in a fashion consistent with the United States’ international obligations.

Q: Does the United States open its federal public procurement to foreign suppliers?

A: The United States’ federal procurement contracts are substantially open to foreign suppliers from GPA signatory countries. In addition, 37 individual U.S. states have voluntarily agreed to the World Trade Organization’s Government Procurement Agreement to varying degrees. The federal U.S. government only carves out foreign iron and steel used in federally funded **state transportation projects** from its WTO procurement obligations. Many WTO members including the European Commission, however, have reserved certain areas of public procurement under this agreement.

Q: Does the European Union restrict U.S. firms from member states' public procurement?

A: The European Union has taken reservations for public procurement related to drinking water, energy, transport and telecommunications sectors. Service-sector contracts have additional reciprocity requirements. Beyond these reservations, U.S. firms are specifically excluded from contracts involving airport, water and urban transportation authorities.

Q: Do individual U.S. states or municipalities open their public procurement to foreign suppliers?

A: Market access to sub-federal public procurement also operates according to reciprocity. Thirty-seven individual U.S. states voluntarily signed on to the WTO's Government Procurement Agreement to varying degrees. These individual states have outlined the areas of procurement open to foreign suppliers under Appendix II of the GPA. Similarly, European Union sub-federal level public procurement has sector-specific exclusions for U.S. firms. No commitments were made for U.S. municipalities under the GPA.

Q: Has "Buy American" caused trade difficulties between the United States and Canada?

A: Secretary of State Hillary Clinton made clear during her visit to Canada in June 2009 that the United States considers Canada an important trade partner. Canada's provinces, however, are not signatories to the GPA and do not give access to U.S. companies for provincial procurement. Therefore, Canadian companies do not receive reciprocal access to public procurement in individual U.S. states or municipalities.

Q: Will the "Buy American" provision include restrictions on iron, steel and manufactured goods from non-signatory countries?

A: Under the Government Procurement Agreement, market access is granted based on reciprocity. Signatory countries are not obligated to provide market access to public procurement to countries who are not signatories. The United States remains ready to consider offers from any countries interested in offering reciprocal market access.

Graph: “Buy American” provisions in U.S. public procurement bids

