

May 17, 2022

The Honorable Gina Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Ave., N.W.
Washington, DC 20230

RE: Buy America Implications on Environmental Technology Sector
ETTAC Recommendation 2021-11

Dear Secretary Raimondo:

We are writing to request that you convene the U.S. government interagency community with programs related to implementation of the Infrastructure Investment and Jobs Act or Bipartisan Infrastructure Law (BIL) with the business community to discuss consistent and timely development of the Buy America provisions.

The Environmental Technologies Trade Advisory Committee (ETTAC) is a federally established committee whose purpose is to advise on the policies and procedures of the U.S. government that affect U.S. environmental technology exports. The U.S. environmental industry supports over 1.6 million jobs and generates over \$345 billion in revenue annually.

The ETTAC appreciates and agrees with the Administration's efforts to build our domestic manufacturing base including onshoring key technical sectors and supported the additional funding provided by the BIL that will catalyze modern, resilient infrastructure. However, we are concerned over the implementation of the law and the effect the Buy America provisions could have on environmental exports as well as domestic projects.

The BIL took effect on May 14, 2022, and we are currently waiting on the EPA implementation procedures, which are not expected to be released until subsequent to the statutory deadline. As implementation proceeds, we encourage that products from countries with free trade agreements with the U.S. to be considered as domestic products. Many U.S. manufacturers have spent the last twenty years or more globalizing our supply chains to enhance our competitiveness in U.S. and global markets; and to increase our supply chain resiliency. In some limited cases, we can onshore production that was moved offshore or we can shift our supply chains for domestic production in lieu of lesser expensive offshore fabrication, but both of those depend on availability of domestic capacity and adequate time to ramp-up production. In other cases, we have businesses that manufacture technologies developed abroad that have been introduced into the domestic market but were never manufactured in the U.S.

As we strive to increase our domestic content, we are forced to either maintain two sources for materials or to pass along increases to our international customers. Both of these options present

serious challenges as inflation increases and will decrease our global competitiveness. In many cases, these additional costs will be passed along to customers in the U.S., and these costs will remain high until such time as sufficient factory capacity is brought online within the U.S. Examples of this scenario are foundries, motor manufacturers, electronics, steel mills, and many others. In some cases, these businesses will face long environmental review/approval processes for permitting further deterring domestic onshoring. This is a serious concern for the environmental industry especially water and energy where this rapid schedule seems impractical without some additional waivers. We understand that some are being considered but do not have transparency on the details at this time.

Additionally, as we currently understand the OMB guidance, labor is to be excluded from the calculations of the 55% domestic content for the end manufacturer although it can be included for products made downstream and sold to the end manufacturer. Many of our products are labor intensive and involve skilled trades at various steps in our manufacturing process from design through manufacturing to final assembly. These jobs are the reason that the bill was passed and are the value that American manufacturers bring to the market through product innovation, efficiency, etc. We believe this guidance of 55% on our material costs without the inclusion of labor at the point of final manufacturing sends the wrong message to tradespeople, is not in the spirit of the law, and will hurt commerce both domestically and internationally.

We applaud the EPA's efforts to conduct listening sessions to address stakeholder concerns in their yet to be released implementation documentation, but we remain concerned about the unintended consequences of this mandate while the industry already faces massive supply chain disruptions in the short term. We believe the whole of government should carefully examine the extension of the already broad reach of domestic procurement rules to maintain the global competitiveness of U.S. industry, including innovations that reduce emissions and improve energy efficiency, and facilitate the infrastructure expansions contemplated within the BIL.

Stakeholder engagement and the strategic evaluation of Buy America requirements, as applied to specific sectors and products, should guide their implementation. The blanket application of Buy America across all infrastructure investments and critical industries will unnecessarily increase costs and force delays in execution. Short term waivers to Buy America requirements should be readily available, including in project categories such as EPA's recent announcement around WIFIA projects, to support project delivery and maintain domestic competitiveness where the onshoring of production capacity is not a national security imperative.

Given the rapidly approaching implementation deadline and the uncertainty created by Office of Management and Budget's recent guidance, we again ask that you expeditiously convene an interagency dialogue that includes impacted sector stakeholders most affected by Buy America implementation. This calls for more flexible implementation taking into account the pandemic, economic, energy, and supply chain challenges that have been further exacerbated in recent months. The dialogue should be structured to ensure a more open and transparent discussion

focused on a risk-based and strategic application of Buy America principles under manageable timeframes that account for industry, economic, environmental, and practical realities.

Please feel free to contact us if you require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Decker', with a long horizontal flourish extending to the right.

William Decker
ETTAC Chair

CC: Celeste Drake, Director, Made in America Office, OMB
Radhika Fox, Assistant Administrator for Water, EPA