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# Effects of Buy America on Transportation Infrastructure and U.S. Manufacturing: Policy Options

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## Summary

With the aim of protecting American manufacturing and manufacturing jobs, Congress over the years has passed several domestic content laws. Buy America refers to several similar statutes and regulations that apply to federal funds used to support projects involving highways, public transportation, aviation, and intercity passenger rail, including Amtrak. Unless a nationwide or project-specific waiver is granted, Buy America requires the use of U.S.-made iron and steel and the domestic production and assembly of other manufactured goods. One of the main manufacturing industries this applies to is the production of rolling stock (rail cars and buses) used in federally funded public transportation and Amtrak's intercity passenger rail service. This report examines the effects of Buy America on these two industries, iron and steel manufacturing and rolling stock manufacturing, in the context of industry trends.

Buy America dates to passage of the Surface Transportation Assistance Act of 1978 (STAA; P.L. 95-599), and is different from the Buy American Act, enacted in 1933, which applies to direct purchases by the federal government. Although the Buy America provisions have been in place in some form for almost 40 years, it is difficult to know how they have affected steel and rolling stock manufacturing in the United States, whether measured by jobs, output, or any other indicator. Empirical evidence on the economic benefits or costs of domestic preference laws is largely lacking, in part because the effects are small compared with macroeconomic forces such as global economic growth and the related growth in demand for steel. Although employment in domestic steel manufacturing has declined sharply, this is largely attributable to higher industry productivity. Buy America has likely promoted the production of rail cars and buses in the United States, but these industries are relatively small, and demand is related strongly to the combined level of federal, state, and local government funding.

Buy America could increase the cost of some transportation projects by requiring the purchase of domestic steel, vehicles, and vehicle components when imported products might be cheaper. In some cases, the difficulty of complying with Buy America rules has been blamed for project delays. The cost of imports used in federally supported projects could rise if some agencies within the Department of Transportation (DOT) begin to require that these imports be carried on U.S.-flag vessels in compliance with the FY2009 Defense Act (P.L. 110-417, §3511). Requiring transport by U.S.-flag vessels may also contribute to project delays. Lack of information makes claims about project cost and delay difficult to assess.

Much of the congressional activity related to Buy America seeks to strengthen its requirements. The Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act (H.R. 22), a six-year surface transportation bill passed by the Senate in July 2015, would increase from 60% to 70% the share of U.S.-made components and subcomponents required in public transportation vehicles bought with federal support. A version of H.R. 22 passed by the House in November 2015, the Surface Transportation Reauthorization and Reform Act of 2015, would do the same.

There are no legislative proposals in the 114<sup>th</sup> Congress to loosen Buy America requirements substantially. Two proposed provisions in the DRIVE Act would make Buy America somewhat less restrictive. The DRIVE Act would raise the threshold for purchases in public transportation subject to Buy America requirements from \$100,000 to \$150,000. It would also subject Amtrak to Buy America requirements only for purchases of \$5 million or more, as opposed to the current threshold of \$1 million.

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## Introduction

With the aim of protecting American manufacturing and manufacturing jobs, Congress over the years has passed several domestic content laws. Applying in some way to federal government spending, these domestic content laws generally restrict purchases of goods to those made in the United States unless there is a reason to waive the restriction. The first of these laws, the Buy American Act, was enacted in 1933, and applies to direct purchases by the federal government.<sup>1</sup>

In 1978, Congress passed legislation to place domestic content restrictions on federally funded transportation projects that are carried out by nonfederal government agencies such as state and local governments.<sup>2</sup> These restrictions are commonly referred to as the Buy America Act, or more simply, Buy America. Today, Buy America refers to several similar statutes and regulations that apply to federal funds used to support projects in highways, public transportation, intercity passenger rail, including Amtrak, and aviation.<sup>3</sup> Unless a nationwide or project-specific waiver is granted, Buy America requires the use of U.S.-made iron and steel and the domestic production and assembly of other manufactured goods, such as rolling stock used in public transportation.<sup>4</sup>

To evaluate the implications of Buy America on domestic manufacturing, this report analyzes the effects of Buy America on steel and rolling stock manufacturing in the context of industry trends. It also briefly discusses the effects of Buy America on the transportation system. The report begins by explaining Buy America restrictions in more detail; how Buy America comports with international trade agreements that generally forbid procurement restrictions favoring domestic products; and how a relatively new Buy America-like provision may require imports of materials on federally funded transportation projects to be carried on U.S.-flag ships. The report identifies policy options Congress might consider in light of recent legislative proposals, such as the American Pipeline Jobs and Safety Act of 2015 (H.R. 3385), which involves broadening the applicability of Buy America requirements to federally regulated pipelines that receive no federal funding.

## Buy America Requirements

Buy America requirements differ in law and regulation according to the specific funding program and administering agency (see **Table A-1**). These agencies are the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), and the Federal Aviation Administration (FAA). Buy America also applies to purchases by Amtrak.<sup>5</sup> In certain situations, the statutes permit a regulating agency to waive the Buy America provisions. If a state or local government does not use federal funds on a project, the project is not

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<sup>1</sup> CRS Report R43354, *Domestic Content Restrictions: The Buy American Act and Complementary Provisions of Federal Law*, by Kate M. Manuel et al.

<sup>2</sup> Buy America restrictions date to the passage of the Surface Transportation Assistance Act of 1978 (STAA; P.L. 95-599).

<sup>3</sup> CRS Report R43388, *Transportation Spending and “Buy America” Requirements*, by Alissa M. Dolan.

<sup>4</sup> The term rolling stock covers various kinds of transit vehicles such as buses, vans, rail cars, locomotives, and streetcars.

<sup>5</sup> A side-by-side comparison of the Buy America provisions applying to various U.S. Department of Transportation (DOT) agencies can be found at <http://www.transportation.gov/highlights/buyamerica>. Programs administered by the Maritime Administration are not subject to Buy America requirements, but they are subject to other domestic preference restrictions that derive from earlier statutes such as the Jones Act (§27, Merchant Marine Act of 1920, P.L. 66-261).

subject to Buy America (although states may have laws imposing similar requirements on state-funded purchases).<sup>6</sup>

Buy America provisions applicable to funds administered by FHWA, for example, are found at 23 U.S.C. §313 and 23 C.F.R. §635.410, and apply to iron and steel permanently incorporated into a highway project. This requirement can be waived if the Secretary of Transportation determines that it would be inconsistent with the public interest, that the materials are not produced in the United States in sufficient quantities or of a satisfactory quality, or that the inclusion of domestic materials will raise the cost of the overall project by more than 25%. FHWA determined in a 1983 rulemaking that Buy America would not apply to raw materials, such as iron ore, limestone, and waste products, all of which “may be imported.”<sup>7</sup> Waste products that may be used under this waiver include scrap steel. FHWA also waived the application of Buy America requirements to products other than those manufactured predominantly of iron and steel.<sup>8</sup> In 2012, FHWA clarified that a manufactured product must consist of at least 90% iron and steel for it to be considered manufactured predominantly of iron and steel and, thus, subject to Buy America requirements.<sup>9</sup> In 1995, FHWA determined that due to inadequate national supply, a national waiver would be granted for certain iron components used in the manufacture of steel and/or iron materials, including pig iron and iron ore that is reduced, processed, or pelletized.<sup>10</sup>

Even though FHWA waives Buy America requirements for manufactured products, except those made predominantly of iron and steel, this is not the case with other DOT agencies and Amtrak. For example, for the purchase of rolling stock using FTA funds, the Buy America requirement is waived only if (1) the cost of the components produced in the United States is more than 60% of the cost of all components of the rolling stock and (2) final assembly of the rolling stock occurs in the United States (49 U.S.C. §5323(j) and 49 C.F.R. §661). Moreover, for a rolling stock component to be considered produced in the United States or of domestic origin, “more than 60% of the subcomponents of that component, by cost, must be of domestic origin, and the manufacture of the component must take place in the United States” (49 C.F.R. §661.11(g)).<sup>11</sup> For other manufactured goods regulated by FTA and not eligible for the rolling stock waiver, assembly must be done in the United States, and 100% of the components, including steel and iron, must be made in the United States.

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<sup>6</sup> For example, in 1978 Pennsylvania enacted the Steel Products Procurement Act, which requires suppliers contracting with a public agency to use U.S.-made steel unless the head of a public agency determines that the required steel products are not produced domestically in sufficient quantities. 73 Pa. S. §§1881 et seq. Several other states have enacted some form of domestic steel preference legislation, including Maryland, Texas, and West Virginia. See Government Accountability Office (GAO), *Federal-Aid Highways: Federal Requirements for Highways May Influence Funding Decisions and Create Challenges, but Benefits and Costs Are Not Tracked*, GAO-09-36, p. 28, December 2008.

<sup>7</sup> 48 *Federal Register* 1946 (Interim Final Rule, January 17, 1983); 48 *Federal Register* 53099, 53103 (Final Rule, November 25, 1983).

<sup>8</sup> *Ibid.*, 53099.

<sup>9</sup> Federal Highway Administration, “Clarification of Manufactured Products under Buy America,” memorandum from John R. Baxter, Associate Administrator for Infrastructure to FHWA Division Administrators, December 21, 2012, <https://www.fhwa.dot.gov/construction/contracts/121221.cfm>.

<sup>10</sup> Federal Highway Administration, 60 *Federal Register* 15478-15479, March 24, 1995, <http://www.gpo.gov/fdsys/pkg/FR-1995-03-24/pdf/95-7362.pdf>.

<sup>11</sup> FTA’s Buy America regulations define a component as “any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location” (49 C.F.R. §661.3). Moreover, “a component is considered to be manufactured if there are sufficient activities taking place to advance the value or improve the condition of the subcomponents of that component; that is, if the subcomponents have been substantially transformed or merged into a new and functionally different article” (49 C.F.R. §661.11(e)).

Buy America provisions restrict Amtrak’s spending when the cost of articles, materials, or supplies bought is at least \$1 million. They require Amtrak to purchase goods that are manufactured in the United States “*substantially* from articles, material, and supplies mined, produced, or manufactured in the United States” (emphasis added).<sup>12</sup> FRA has interpreted “substantially” to mean that the manufactured goods must have domestic component content greater than 50%, by cost.<sup>13</sup>

## **Trade Agreements and Domestic Preferences**

The U.S. government builds few transportation projects directly. Instead, it generally funds highways, airports, and public transportation projects by making grants or loans to state or local governments. This funding structure has made it possible to avoid claims that Buy America violates international trade agreements.

The United States is a signatory to international agreements that restrict discrimination against trading partners in government procurement. Currently, 43 World Trade Organization (WTO) members, including the United States, have made binding commitments under the WTO Agreement on Government Procurement (GPA), whereby each provides access to the others’ national procurement markets.<sup>14</sup> Most U.S. bilateral and regional free trade agreements also include public procurement provisions. These agreements are generally based on “national treatment,” which requires the United States to treat foreign goods, services, and suppliers no less favorably than U.S. goods, services, and suppliers. As a consequence, firms based in countries covered by such agreements can bid on covered U.S. government procurement contracts over a certain dollar threshold. The thresholds are adjusted every two years.<sup>15</sup> National treatment also means U.S. firms can bid on contracts in foreign procurement markets, giving American suppliers treatment no less favorable than domestic suppliers.

Although the United States is a WTO GPA signatory, state and local governments are excluded from coverage, even if federal funds are involved, unless they voluntarily agree to comply.<sup>16</sup> Thus, where the federal government provides grants or loans to state and local authorities for transportation projects, it may attach domestic sourcing restrictions to these funds without violating international obligations.<sup>17</sup>

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<sup>12</sup> 49 U.S.C. §24305(f)(2).

<sup>13</sup> See Letter from Joseph Szabo, Administrator of the Federal Railroad Administration, to Jeff Martin, Chief Logistics Officers, Amtrak, “Re: Request for a Buy American Exemption for Acela Power Car Central Block Assemblies,” March 7, 2012, available at <https://www.fra.dot.gov/eLib/Details/L04370>. The FRA has been delegated authority from the Secretary of Transportation to evaluate requests from Amtrak for exemptions from these requirements. Federal Railroad Administration, “Buy America Frequently Asked Questions,” at 11, <https://www.fra.dot.gov/eLib/Details/L02740>.

<sup>14</sup> China, India, Russia, and Brazil are not signatories of the WTO GPA.

<sup>15</sup> The thresholds differ depending on the type of procurement and the level of government making the purchase.

<sup>16</sup> More than three dozen states have voluntarily waived most Buy America provisions for state procurement. Several large manufacturing states, including Georgia, Indiana, New Jersey, Virginia, and Ohio, have not agreed to comply with the GPA (see Annex 2 of the U.S. GPA Agreement). For more information on the United States’ international procurement obligations, see <https://ustr.gov/issue-areas/government-procurement/additional-information-on-US-Procurement>.

<sup>17</sup> Revised WTO GPA Annex 2, note 5 (“For the state entities included in this Annex, this Agreement does not apply to restrictions attached to federal funds for mass transit and highway projects.”); and Alliance for American Manufacturing, *Buy America Works, Longstanding United States Policy Enhances the Job Creating Effect of Government Spending*, February 2010, pp. 7-8, <http://www.mcwane.com/upl/downloads/library/buy-america-works.pdf>.

The exclusion of subnational procurement has caused considerable tension with major U.S. trading partners such as Canada and the European Union. In 2010, for example, the United States agreed to allow Canadian firms to bid on subnational economic stimulus contracts, including those involving construction of highways, bridges, and rail lines, in return for Canada's commitment to include provinces in the WTO GPA.<sup>18</sup>

## **Cargo Preference**

Cargo preference is another restriction applicable to federally supported activities, in this case requiring that a portion of "government-impelled" cargoes be carried on U.S.-flag vessels (46 U.S.C. §55305, 46 C.F.R. Part 381). Although cargo preference is not a Buy America requirement, a relatively new cargo preference provision may complicate transportation projects that are subject to Buy America. In 2008, Congress incorporated a provision in the FY2009 Defense Act (P.L. 110-417, §3511) specifying that cargo preference requirements also apply to cargo that is imported by an organization or person if the federal government "provides financing in any way with federal financial funds for the account of any persons unless otherwise exempted." At least 50% of such cargo must be shipped in U.S.-flag vessels. The law directs the U.S. Department of Transportation (DOT) to issue regulations and guidance to govern the administration of cargo preference by other federal agencies.<sup>19</sup>

The Maritime Administration (MARAD) within DOT has not begun a rulemaking process to clarify how the cargo preference requirements of the FY2009 Defense Act will be implemented. The agency submitted a draft notice of proposed rulemaking for Office of Management and Budget approval in December 2011, but the draft notice is still apparently under interagency review and has not been published.<sup>20</sup> FHWA has interpreted the law to apply cargo preference requirements to federally supported highway projects carried out by state departments of transportation and other agencies, but it has not yet issued notification and guidance.<sup>21</sup> MARAD's attempt to apply cargo preference requirements to vessel components imported for ships constructed with federal loan guarantees generated comments asserting the provision does not provide MARAD with such authority.<sup>22</sup>

## **Buy America and MAP-21**

As part of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21; P.L. 112-141), which reauthorized federal highway and transit programs in 2012, Congress made a change to Buy America as it applies to highway funding. The change aims to prevent project sponsors from segmenting a project into smaller parts, some federally funded and some not, so as to free some segments of the project from Buy America requirements. To accomplish this, MAP-21 specified

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<sup>18</sup> Office of the United States Trade Representative, "U.S.-Canada Agreement on Government Procurement," press release, February 16, 2010, <http://tcc.export.gov/static/node2319.asp>.

<sup>19</sup> The application of the law to nonfederal entities is codified at 46 U.S.C. §55305. 46 C.F.R. §381.7 indicates cargo preference includes cargoes that are generated by a federal grant, guaranty, loan, and/or advance of funds program, and applies to the borrower, grantee, and any of their contractors or subcontractors.

<sup>20</sup> See, <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201504&RIN=2133-AB74>.

<sup>21</sup> Communication from Federal Highway Administration to CRS, October 27, 2015.

<sup>22</sup> 80 Federal Register 22611, April 22, 2015. For comments filed, see <http://www.regulations.gov>, searching under docket no. "MARAD 2015-0049" and "MARAD 2011-0082." Comments filed by "McKeever-Bloom" and "Overseas Shipholding Group" question MARAD's authority. Comments filed by U.S. shipbuilders and domestic ocean carriers contend that the requirement would severely disrupt shipbuilding supply chains.

that FHWA Buy America requirements apply to all contracts eligible for assistance within the scope of a project's National Environmental Policy Act of 1969 (NEPA) document if at least one contract for the project is federally funded.

This provision addressed issues that arose during reconstruction of the San Francisco-Oakland Bay Bridge by the California Department of Transportation (CalTrans). After a major earthquake in 1989, California decided to reconstruct the Bay Bridge by refurbishing the western span and replacing the eastern span. CalTrans determined that it could obtain imported steel for the project more cheaply than domestic steel. To avoid Buy America requirements, it decided the eastern span would be built without federal funds. Subsequently, and controversially, the eastern span was built using steel made in China.<sup>23</sup>

Another effect of the provision prohibiting the segmenting of projects is that utility relocation work done as part of a federally funded highway project must now be Buy America-compliant even if the contract to do the utility work does not use federal funds.<sup>24</sup> This change has caused concern among state departments of transportation and industry associations that projects would be delayed as utilities sought to obtain Buy America-compliant products. In response, FHWA delayed implementation of the new requirements until January 1, 2014. The effects of compliance since then on highway projects, utilities, and manufacturers of products used by the utility industry are unknown.

MAP-21 also made changes aimed at making the FTA waiver determination process more transparent. MAP-21 requires FTA to publish each waiver request and a detailed explanation of the waiver determination in the *Federal Register*, and to make them easily accessible on its website. In addition, MAP-21 requires that FTA provide a report on waivers granted in the previous year to the Senate Banking Committee and the House Transportation and Infrastructure Committee.

## **Buy America and U.S. Steel Manufacturing**

Unless the requirements are waived by the federal agency concerned, Buy America provisions require the use of U.S.-made steel in a wide variety of applications.

U.S. mills produce steel in three distinct ways. Approximately 63% of domestic production comes from plants known as minimills, which use electric arc furnaces to melt scrap steel and in some cases iron pellets. The other 37% is made in traditional integrated steel mills, which use ovens to turn coal into coke and then combine the coke with iron ore to produce pig iron in blast furnaces. The pig iron is then melted in a basic oxygen furnace to produce steel. A very small portion of U.S. production involves direct reduction technology, now used in a single U.S. mill.<sup>25</sup>

The raw materials used to produce steel in the United States largely come from domestic sources. Around 90% of the scrap used by minimills is obtained domestically, although the products from which scrap is commonly derived, such as vehicle bodies and beams used in construction, may originally have been imported. Integrated steel mills mostly use iron ore from Minnesota's Mesabi Iron Range and Michigan's Iron Range, which account for more than more than 90% of

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<sup>23</sup> David Barboza, "Bridge Comes to San Francisco With a Made-in-China Label," *New York Times*, June 25, 2011.

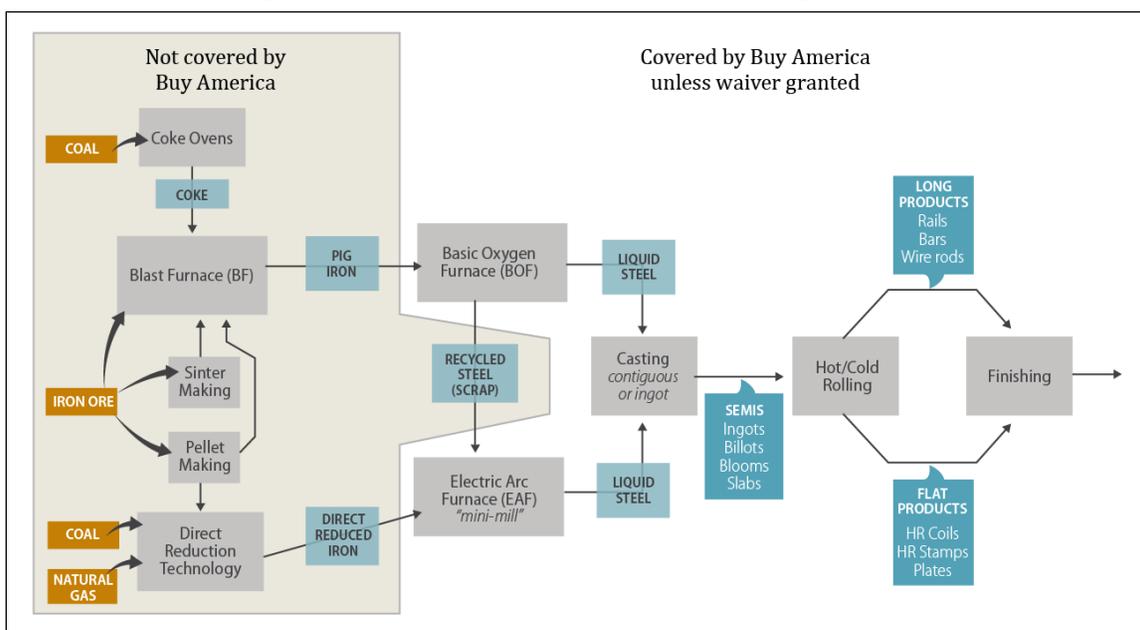
<sup>24</sup> Gloria M. Shepherd, *Application of Buy America to non FHWA-funded Utility Relocations*, FHWA, July 11, 2013, <http://www.fhwa.dot.gov/construction/contracts/130711.cfm>.

<sup>25</sup> Direct reduction technology is used to produce iron ore in a thermal, natural gas-based process. The ore is turned into a pellet, lump, or briquetted form and transformed to steel in electric arc furnaces.

America's iron ore supply. U.S.-mined iron ore takes the form of taconite, a relatively low-grade source of iron-bearing rock typically containing 15% to 30% magnetic iron particles. To be useful in steelmaking, the taconite is formed into pellets before delivery to a steel mill.<sup>26</sup>

**Figure 1** provides a graphic depiction of the iron and steel manufacturing process. Originally, Buy America covered raw materials used in steel manufacturing. A lack of adequate domestic supply resulted in a 1995 nationwide waiver for raw materials (iron ore and limestone), scrap (recycled steel scrap), pig iron, and processed, pelletized, and reduced iron ore.<sup>27</sup> Because of the waiver, U.S. steel mills may use imported inputs to make Buy America-compliant steel products. Therefore, the part of steel production shown in the shaded section of **Figure 1** is currently not subject to Buy America requirements.

**Figure 1. The Iron and Steel Manufacturing Process**



**Source:** Figure adapted by CRS from Eurofer, *Study on the Competitiveness of the European Steel Sector*, August 2008, p. 10.

After the steel is produced, it is cast into variety of shapes and left to cool. Ingots, which vary in size, are often rolled further to produce rectangular steel slabs. Companies known as slab converters have sought a nonavailability waiver for products manufactured in the United States from imported steel slabs.<sup>28</sup> Slab converters claim there is insufficient supply of domestically made steel slabs available from U.S. integrated steel mills.<sup>29</sup> In addition, they claim that the

<sup>26</sup> The United States depleted its high-quality red iron ore deposits in the 1950s. Thereafter, the mining industry developed new technologies that allowed for the processing of lower-quality ore into pellets. Pelletizing involves crushing iron ore, grinding it into a powder, rolling the powder into balls, and firing the balls in a furnace to produce marble-sized pellets that contain 60% to 70% iron.

<sup>27</sup> See Department of Transportation, "General Material Requirements: Buy America Requirements," 60 *Federal Register* 15478-15479, March 24, 1995, <http://www.gpo.gov/fdsys/pkg/FR-1995-03-24/pdf/95-7362.pdf>.

<sup>28</sup> In 2015, FHWA denied a waiver request from two major slab converters, California Steel Industries and NLMK. See letters from Walter C. Waidelich, Jr., Associate Administrator for Infrastructure, to Gary Lee Moore, Interim Executive Director, Port of Los Angeles, February 3, 2015, and to Robert Miller, President, NLMK USA, April 9, 2015.

<sup>29</sup> Steel slab converters include firms such as California Steel Industries (CSI), which produces a portion of its hot- (continued...)

original Buy America requirements were issued before slab converters even existed, and the requirement unfairly prevents them from participating in federal-aid highway projects. To date, FHWA has denied a waiver to slab converters, a position supported by steel industry trade groups such as the Steel Manufacturers Association, which considers a waiver on steel slabs to be a weakening of Buy America rules.<sup>30</sup>

## **Economic Effects**

Assessing the economic effects of Buy America on the steel industry is difficult due to the lack of relevant data.<sup>31</sup> It is unclear how much iron and steel are used in transportation projects that have federal funding; hence data are not available to calculate how much steel is produced and sold domestically as a direct result of Buy America. Nevertheless, the available data suggest that the steel produced for the Buy America market represents a small portion of total domestic demand for steel.

Industry sources estimate that net shipments of steel mill products in the United States totaled 98.2 million tons in 2014. Of these shipments, 23 million tons, or about a quarter, were consumed in public and private construction projects.<sup>32</sup> This quarter, however, includes steel used in a range of nontransportation projects, such as office buildings, shopping centers, and apartment towers, as well as in transportation projects that are not publicly funded, such as those in the freight rail industry. Steel used in rail transportation projects of all types, including those undertaken by freight railroads as well as passenger cars and locomotives for Amtrak and commuter services, amounted to 1.6 million tons in 2014. This represented 1.6% of U.S. steel production and 1.4% of total U.S. steel consumption.<sup>33</sup>

A key rationale for Buy America is its positive effect on steel industry employment. Direct employment in steel has declined from almost 260,000 jobs in 1990 to 152,000 in 2014 (**Figure 2**), due largely to higher productivity. According to the American Iron and Steel Institute, the number of labor hours needed to produce one finished ton of steel has fallen 81% since 1980, from 10.1 to 1.9.<sup>34</sup> If broader Buy America requirements were to increase annual demand for U.S.-made steel by 1 million tons (about 1%), and if each ton were to require 1.9 hours of labor, steel-industry employment would be expected to rise by approximately 1,000 jobs (assuming a 1,900-hour work year). A similar estimate can be derived from data in a December 2013 report by the Steel Manufacturers Association, which represents North American minimills, indicating that an increase of 1 million tons of domestic steel production would create 792 new steel

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(...continued)

rolled, cold-rolled, and galvanized sheet from domestic slab, but imports much more of its semifinished feedstock from foreign suppliers. Because of this, a significant portion of CSI's California-finished steel is unusable in most federal projects. See CSI, *California Steel Industries*, Presentation to Assembly Committee on Jobs, Economic Development, and the Economy, November 6, 2013.

<sup>30</sup> "SMA digs in to defend against attack on Buy America rules," *American Metal Market Daily*, November 4, 2015.

<sup>31</sup> A 2008 GAO report looked at the benefits and costs of the Buy America program, but GAO was unable to find a source that tracked resulting demand for American-made products. GAO, *Federal-Aid Highways: Federal Requirements for Highways May Influence Funding Decisions and Create Challenges, but Benefits and Costs Are Not Tracked*, GAO-09-36, p. 20-1, December 2008.

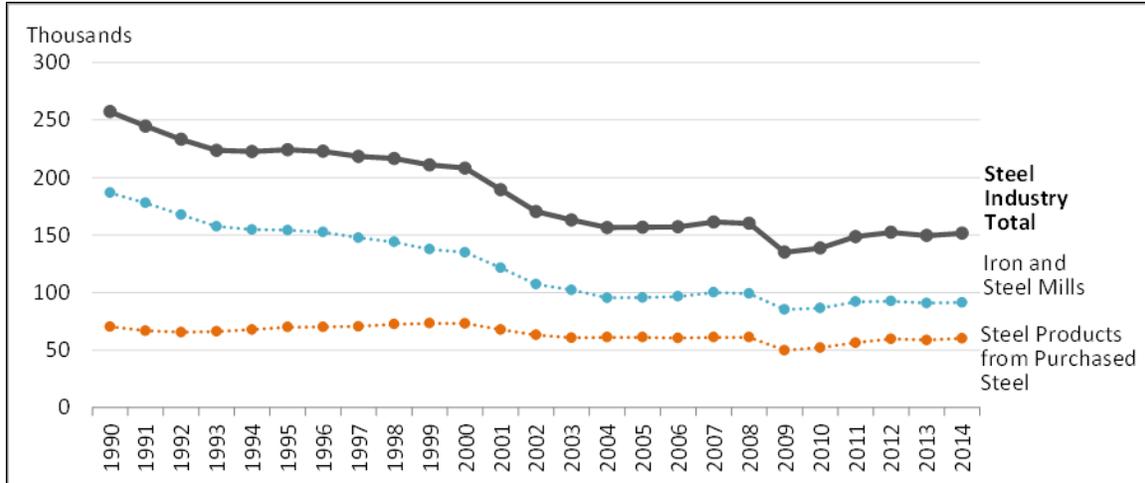
<sup>32</sup> American Iron and Steel Institute (AISI), *2014 Annual Statistical Report (ASR)*, June 26, 2015, Table 12, Shipments of Steel Mill Products by Market Classification, All Grades, 2014, pp. 29-31.

<sup>33</sup> AISI, *2014 ASR*, June 26, 2015, Table 11, Net Shipments of Steel Mill Products by Market Classification, All Grades, 2014, pp. 27-28.

<sup>34</sup> AISI, *Profile 2015*, p. 4.

manufacturing jobs.<sup>35</sup> Presumably, these jobs would pay well, as steel mill workers earned an average annual wage of \$81,396 in 2014, significantly above the average of \$62,977 for all manufacturing.<sup>36</sup>

**Figure 2. Steel Manufacturing Employment**



**Source:** CRS analysis of Bureau of Labor Statistics, Current Employment Statistics, for iron and steel mills (NAICS 3311) and steel products from purchased steel (NAICS 3312).

## Buy America and U.S. Rolling Stock Manufacturing

Besides its restriction on the sourcing of iron and steel, Buy America also places limits on state and local governments and Amtrak when using federal funds to purchase manufactured goods. One of the main manufactured products this affects is rolling stock, which includes intercity passenger rail trains, public transportation rail cars and buses, and associated equipment.<sup>37</sup> Under Buy America domestic sourcing requirements, as noted earlier, rolling stock final assembly must take place in the United States. Moreover, significant proportions of the systems and components used to assemble rail vehicles and buses must be manufactured in the United States, although this can differ depending on the agency source of the federal funds.

According to one industry estimate, the U.S. domestic market for railroad rolling stock manufacturing totaled \$14 billion in 2014.<sup>38</sup> Federal data indicate that manufacturers of all types of railroad rolling stock directly employed 27,300 workers in 2014, making up 0.2% of total factory employment. These data, however, include equipment that is not publicly funded and thus not subject to Buy America, such as freight locomotives and freight rail cars.<sup>39</sup> According to one

<sup>35</sup> Peter Morici, Alan H. Price, and Thomas A. Danjczk, “Melt It Here: The Benefits of Expanding Steel Production in the United States,” Steel Manufacturers Association, December 2013.

<sup>36</sup> Bureau of Labor Statistics, Quarterly Census of Employment and Wages. Average annual pay in steel product manufacturing was \$62,701 in 2014, very close to the average for all manufacturing.

<sup>37</sup> The U.S. market for railroad freight cars is larger than the market for passenger equipment. *Railway Age* predicts freight car deliveries will total 85,000 units and platforms in 2015, and it expects deliveries to remain at an annual level of some 75,000 cars through 2020. See William C. Vantuono, “2015 Freight Car Deliveries: 85,000,” *Railway Age*, March 1, 2015.

<sup>38</sup> Lucas Isakowitz, *Train, Subway & Transit Car Manufacturing in the US*, IBISWorld, November 2014, p. 14.

<sup>39</sup> Railroad rolling stock is a broad term covering the manufacturing of various types of transportation equipment including locomotives, freight and intercity passenger rail cars, and public transportation rail cars. The U.S. North (continued...)

industry estimate, the size of the U.S. market for new street, subway, and transit cars, which would represent only a portion of the Buy America public transportation market, was at least \$2.6 billion in 2014.<sup>40</sup> Demand for intercity passenger rail and rebuilt transit cars rolling stock would be in addition to the \$2.6 billion. Imports of all railroad rolling stock, including freight cars and railway track maintenance equipment, and street, subway, and transit cars, accounted for less than 10% of total domestic rail equipment sales in 2014, according to various industry estimates.<sup>41</sup> Publicly available data do not allow the calculation of the share of imports in the Buy America market.

Although a few domestic firms have tried to carve out niches in the transit market, foreign-based manufacturers build essentially all intercity passenger rail cars and rail transit vehicles produced in the United States. Buy America has required them to establish assembly plants in the United States rather than import finished vehicles. Often, the plant location is selected in conjunction with negotiations to supply vehicles to a local transit agency. In September 2015, for example, the China Rolling Rail Stock Corporation broke ground on a \$95 million assembly plant in Springfield, MA, shortly after receiving a contract to provide 284 subway cars for the Massachusetts Bay Transportation Authority.<sup>42</sup>

Such plants typically lack private customers. Their dependence on demand for passenger rail and transit vehicles acquired with the help of federal grants means that they are comparatively small, and may lack economies of scale that could help reduce unit costs. Their cost structures and the varying requirements for transit and passenger rail vehicles in other countries may make it difficult for U.S. plants to export. By one estimate, 89% of global demand for passenger rail rolling stock in the 2017-2019 period will be outside North America.<sup>43</sup>

Assemblers of transit vehicles depend on an extensive global supply chain that includes steel and aluminum producers and component suppliers that make thousands of parts and accessories such as transmissions, axles, steering systems, and engines. An estimate by the private research firm First Research says that purchased steel and components represent 50% of rolling stock manufacturing costs.<sup>44</sup> In 2010, the Duke University Center on Globalization, Governance & Competitiveness identified about 150 subcontractor firms in the United States that sold components to passenger and transit rail vehicle manufacturers.<sup>45</sup>

Some argue that more public-sector investment in public transportation systems is needed to significantly bolster the passenger rail car manufacturing industry in the United States.<sup>46</sup> Over the

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(...continued)

American Industry Classification System (NAICS) code is 33651.

<sup>40</sup> Lucas Isakowitz, p. 14.

<sup>41</sup> First Research, *Railroad Equipment Manufacturing*, Full Industry Profile, June 8, 2015; and Lucas Isakowitz, p. 18.

<sup>42</sup> Massachusetts Department of Transportation, “Governor Baker, Springfield Mayor Sarno, CRRC Vice President Yu Celebrate Groundbreaking for \$95M Rail Car Manufacturing Facility,” press release, September 30, 2015, <http://www.massdot.state.ma.us/transit/main/tabid/1079/ctl/detail/mid/980/itemid/620/Governor-Baker--Springfield-Mayor-Sarno--CRRC-Vice-President-Yu-Celebrate-Groundbreaking-for--95m-Rail-Car-Manufacturing-Facility.aspx>.

<sup>43</sup> Bombardier, Inc., “Profile, Strategy and Market,” February 2015, pp. 68-72, <http://ir.bombardier.com/images/ckeditor/staging/upload/ckeditor/files/BInc-Profile-Strategy-and-Market-FEB-2015-en3.pdf>.

<sup>44</sup> First Research, *Railroad Equipment Manufacturing*, Full Industry Profile, June 8, 2015.

<sup>45</sup> Marcy Lowe, Saori Takuoka, and Kristen Dubay et al., *U.S. Manufacture of Rail Vehicles for Intercity Passenger Rail and Urban Transit*, Center on Globalization Governance & Competitiveness, A Value Chain Analysis, June 24, 2010, pp. 37-44.

<sup>46</sup> Michael Renner and Gary Gardner, *Global Competitiveness in the Rail and Transit Industry*, September 2010, <http://www.worldwatch.org/system/files/GlobalCompetitiveness-Rail.pdf>.

last decade, annual domestic demand for new passenger rail cars has fluctuated from a low of 497 units in 2011 to a high of 1,141 in 2009 (see **Table 1**).<sup>47</sup> Since 2005, domestic manufacturers have shipped about 8,200 new passenger cars to Amtrak and transit agency purchasers. This figure includes regional, intercity, rapid transit, and light rail cars as well as streetcar units. There were reports of a backlog of more than 6,000 vehicles at the end of 2014, including 110 intercity cars for Amtrak to be manufactured by CAF USA and 775 rapid transit cars to be manufactured by Bombardier for the Bay Area Rapid Transit system in California.<sup>48</sup> It is unclear how much of this manufacturing would occur in the United States in the absence of Buy America.

In the context of current Buy America restrictions, and based on one recent estimate, the outlook for 2015 through 2020 is for about 3,500 to 4,000 new passenger rail cars.<sup>49</sup> An unknown for the entire industry is the level of future federal assistance for vehicle purchasers. If federal funding declines, many transit operators will, in all probability, reduce their demand for new vehicles and opt where possible to rebuild their current fleets for extended service. Alternatively, if federal funding increases, demand for new domestically produced passenger rail cars will likely grow. According to one analysis of the U.S rail and transit industry, large global manufacturers can ride out years with low U.S. demand for public transit units because these companies also fill orders from customers outside the United States, in some cases from their plants abroad.<sup>50</sup>

**Table 1. New Passenger Rail Car Deliveries by Mode**

| Year         | Regional/Intercity | Rapid Transit | Light Rail/Street Car/<br>Automated People Mover | Total        |
|--------------|--------------------|---------------|--------------------------------------------------|--------------|
| 2005         | 486                | 302           | 132                                              | 920          |
| 2006         | 358                | 250           | 130                                              | 738          |
| 2007         | 139                | 402           | 121                                              | 662          |
| 2008         | 227                | 272           | 97                                               | 596          |
| 2009         | 187                | 752           | 202                                              | 1,141        |
| 2010         | 199                | 782           | 148                                              | 1,129        |
| 2011         | 235                | 113           | 149                                              | 497          |
| 2012         | 343                | 243           | 59                                               | 645          |
| 2013         | 531                | 337           | 166                                              | 1,034        |
| 2014         | 251                | 484           | 116                                              | 851          |
| <b>Total</b> | <b>2,956</b>       | <b>3,937</b>  | <b>1,320</b>                                     | <b>8,213</b> |

**Source:** Douglas John Bowen, 2015 Passenger Rail Outlook, “Equipment Suppliers Keep Sharp as More Customers Keep Coming,” *Railway Age*, pp. 49-53, January 2015.

Despite Buy America rules that require more than 60% of the value of the subcomponents of transit vehicles and equipment to be produced in the United States and the final assembly to occur

<sup>47</sup> These figures do not include rebuilt deliveries. In 2014, new and rebuilt deliveries totaled 1,103 units. Of those, the majority were new cars.

<sup>48</sup> Douglas John Bowen, “2015 Passenger Rail Outlook,” *Railway Age*, January 2015, p. 52.

<sup>49</sup> *Ibid.*, pp. 52-53.

<sup>50</sup> Joan Fitzgerald et al., *Reviving the U.S. Rail and Transit Industry: Investments and Job Creation*, Worldwatch Institute, September 2010, p. 13, <http://www.worldwatch.org/system/files/Reviving-the-US-Rail-and-Transit-Industry.pdf>.

in the United States, domestic transit bus manufacturing has remained over many decades a small and concentrated manufacturing sector. In 2014, bus manufacturing revenue was estimated at \$6.2 billion, including school buses and intercity buses along with public transit buses.<sup>51</sup> According to the American Public Transportation Association (APTA), bus manufacturers in a typical year produce somewhere between 4,000 to 6,000 buses for the public transit market.<sup>52</sup> Transit bus manufacturers directly employ fewer than 3,000 workers, although there are likely several thousand more jobs in the broader bus manufacturing supply chain.<sup>53</sup> Like other vehicles, transit buses are mostly made of steel.<sup>54</sup>

New Flyer, a Canadian company, and Gillig, a U.S.-headquartered manufacturer, account for about 80% of the North America transit bus market.<sup>55</sup> New Flyer makes buses in Minnesota and Alabama.<sup>56</sup> Gillig makes buses in California. Nova, a subsidiary of the Swedish firm Volvo Group, holds most of the remaining share of the North America market. Nova's bus plant in Plattsburgh, NY, employs about 250 people. Orion, part of Daimler Buses North America, stopped assembling buses in the United States in 2013, citing "low public sector investments by municipal government agencies" as a reason,<sup>57</sup> and New Flyer acquired North American Bus Industries (NABI) the same year.<sup>58</sup>

## Effects of Buy America on Transportation

Buy America is primarily an industrial policy designed to protect U.S. manufacturing and manufacturing employment. However, Buy America could increase the cost and completion time of at least some transportation projects, and may result in fewer projects being undertaken. Evidence of these effects, however, is largely anecdotal. In a review of the costs and benefits of various federal requirements on highway projects, the Government Accountability Office (GAO) found that several studies discussed regulatory costs and benefits, but "none of the studies we reviewed separately estimated the costs of the Buy America program's requirements."<sup>59</sup> Highway projects most affected by Buy America are bridges because of the amount of iron and steel

<sup>51</sup> Brandon Ruiz, *Rolling on: Revenue will rise, but emerging economies will lure operators overseas*, Truck & Bus Manufacturing in the US, IBISWorld, March 2015, pp. 14-15.

<sup>52</sup> American Public Transportation Association, *2015 Public Transportation Fact Book*, Appendix A: Historical Tables, Table 25, June 2015, pp. 121-122.

<sup>53</sup> Stan Voas, *The Lean Manufacturing Journey*, New Flyer, September 17, 2014, p. 4, [http://www.enterpriseminnesota.org/assets/business\\_events/Sept\\_2014-\\_Stan\\_Voas\\_-\\_New\\_Flyer\\_Lean\\_Manufacturing\\_Journey.pdf](http://www.enterpriseminnesota.org/assets/business_events/Sept_2014-_Stan_Voas_-_New_Flyer_Lean_Manufacturing_Journey.pdf).

<sup>54</sup> MORR Transportation Consulting Prepared for American Public Transportation Association, *An Analysis of Transit Bus Axle Weight Issues*, November 2014, p. 30, <https://www.apta.com/resources/reportsandpublications/Documents/An-Analysis-of-Transit-Bus-Axle-Weight-Issues-TCRP-J11-T20.pdf>.

<sup>55</sup> New Flyer Industries, *New Flyer Investor Presentation*, August 6, 2015, p.5, [http://www.newflyer.com/index/cms-file-system-action/investor\\_relations/events%20and%20presentations/nfi%20company%20overview%20aug%206-15%20final.pdf](http://www.newflyer.com/index/cms-file-system-action/investor_relations/events%20and%20presentations/nfi%20company%20overview%20aug%206-15%20final.pdf).

<sup>56</sup> On November 10, 2015, New Flyer announced the acquisition of Motor Coach Industries International, which has a manufacturing facility in North Dakota. "New Flyer Announces Acquisition of MCI, North America's Leading Motor Coach Manufacturer, Parts and Service Company," New Flyer Press Release, November 10, 2015, [http://www.newflyer.com/index/cms-file-system-action/investor\\_relations/news%20releases/2015/2015-11-10-acquisition.pdf](http://www.newflyer.com/index/cms-file-system-action/investor_relations/news%20releases/2015/2015-11-10-acquisition.pdf).

<sup>57</sup> Christopher Rauwald, "Daimler to Revamp North American Bus Operations," *Wall Street Journal*, April 25, 2012.

<sup>58</sup> New Flyer, "New Flyer Announces Acquisition of North American Bus Industries, Inc., and Extends Senior Credit Facility to 2017," press release, June 21, 2013, <http://www.newflyer.com/index/news-app/story.144>.

<sup>59</sup> GAO, *Federal-Aid Highways*, 2008, p. 15.

required. Transit projects most affected by Buy America are rail rolling stock and bus procurement.

Buy America rules prohibit customers from buying less expensive steel from overseas suppliers for use in public works projects. A project sponsor, however, can apply for a waiver if inclusion of iron, steel, or manufactured goods would increase the overall cost of the project by more than 25%. The price of steel produced in the United States tends to be higher than that of comparable steel produced in other countries.<sup>60</sup> For example, the benchmark average U.S. hot-rolled band price over the past decade has consistently been higher than the Chinese price and, in most years, has been higher than the Western European price (**Figure 3**). However, higher transportation costs for imported steel may reduce or eliminate its cost advantage at a particular project site.

In 2013, for example, the average price of domestic hot-rolled band was about \$290 per metric ton higher than the price of the same product made in China. Industry estimates suggest that freight, insurance, and handling from Asia to ports on the Pacific and Gulf coasts would have added about \$60 per metric ton to the import price, leaving a Chinese cost advantage of \$230 per ton at dockside.<sup>61</sup> The differential with respect to a particular project would also depend on the costs of moving steel from a domestic mill or a port to the job site. Both steel costs and freight transportation costs can vary significantly over time due to global steel demand, energy prices, exchange rates, and other factors.

Buy America may also raise the cost of rolling stock procurements. One analysis of bus procurement in public transportation notes that buses in the United States are about twice the price of those in Japan and South Korea. This study also makes the case that bus purchasers are limited in their choice of buses, and that the protected industry is less innovative. They conclude that if public transit agencies could import buses, “they would have access to a greater menu of differentiated products at lower prices. This would lead to a higher quality of service provision (e.g., better service frequency and coverage) which could induce urbanites to substitute from private vehicles to buses.”<sup>62</sup>

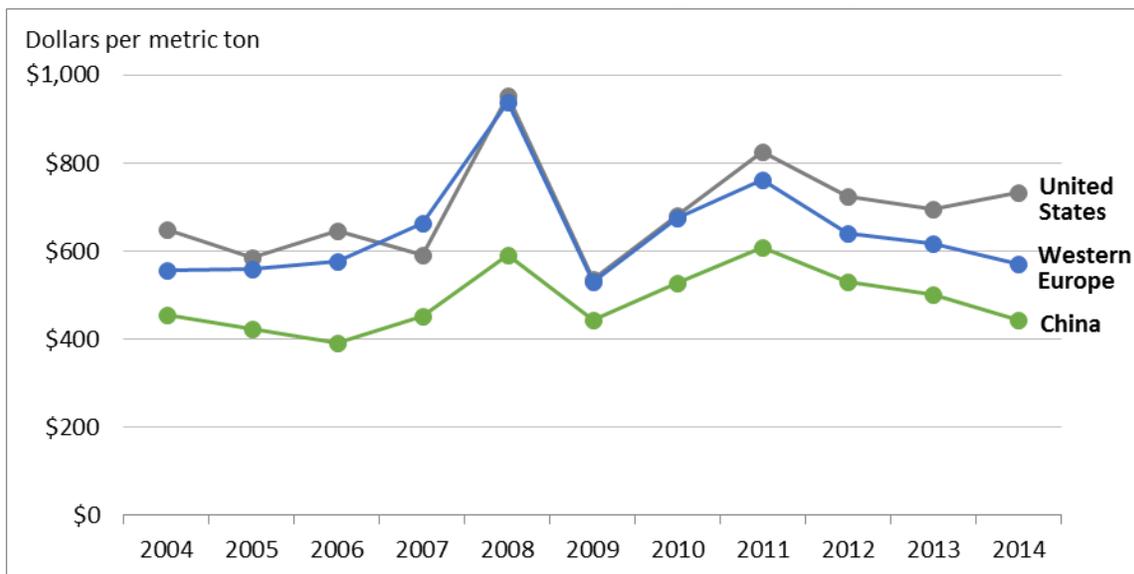
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<sup>60</sup> Ibrahim Yucel, *Steeling the show: Import competition and falling prices will interrupt industry recovery*, IBISWorld Industry Report 3311, July 2015, p. 8.

<sup>61</sup> Steel Market Update, *Steel Buyers Basics*, p. 15, <https://www.steelmarketupdate.com/resources-mobile/steel-buyers-basics>.

<sup>62</sup> Shanjun Li, Matthew E. Kahn, and Jerry Nickelsburg, “Public Transit Bus Procurement: The Role of Energy Prices, Regulation, and Federal Subsidies,” *Journal of Urban Economics*, Vol. 87, pp. 57-71, May 2015.

**Figure 3. Steel Prices Excluding Transportation and Other Importation Costs**  
Hot-Rolled Band Price, 2004-2014 (Current Dollars)



**Source:** Hot-rolled band price data from World Steel Dynamics Steelbenchmarker. Data reflect the ex-works or free on board (FOB) mill price. These data do not include freight, insurance, handling, import tariffs, and other associated costs.

Other direct costs associated with Buy America are mainly related to administering and enforcing its requirements, costs that are mostly absorbed by state and local government project sponsors. These costs include the effort required by contractors to document the national origin of iron, steel, and manufactured products and agency administration of the certification process. Extra work may also be required of contractors to put together two bids for a given project, one incorporating domestic products and one with foreign products. Waiver requests, another cost, may be prepared by the state or local government project sponsor alone or in cooperation with the contractor.<sup>63</sup>

Buy America may make it more time-consuming to complete transportation projects, ultimately causing higher project costs. Delays can arise from domestic supply problems and the waiver application process. Extending Buy America requirements to utility relocations, for example, led to concerns about project delivery among state departments of transportation, although this effect may wane as utilities become accustomed to working with the Buy America requirements.<sup>64</sup> The private developer of a proposed high-speed rail line from the outskirts of Los Angeles (Victorville) to Las Vegas, XpressWest, blamed Buy America compliance for blocking its plans. The company sought low-cost financing through the federal Railroad Rehabilitation and Improvement Financing (RRIF) program, subjecting it to Buy America. Although there have been other issues with the project, the Secretary of Transportation suspended consideration of the loan request because the sponsors were having difficulties satisfying the Buy America requirements.<sup>65</sup>

<sup>63</sup> Battelle, *The Costs of Complying with Federal-aid Highway Regulations*, draft report prepared for the Federal Highway Administration, August 2008. A final report was never published.

<sup>64</sup> See, for example, California Department of Transportation, "Buy America Utility Relocation Challenges in California," May 16, 2013, <http://napolitano.house.gov/sites/napolitano.house.gov/files/documents/BuyAmericaUtilityRelocationChallengesinCaliforniaFinal.pdf>.

<sup>65</sup> Letter from the Secretary of Transportation to Anthony Marnell, Chairman, Xpress West, June 28, 2013. See also (continued...)

More generally, in a survey of people in the public transportation industry in the mid-1990s, Buy America was mentioned by respondents as the cause of project delay more often than any other reason.<sup>66</sup>

The FY2009 Defense Act (P.L. 110-417, §3511) established cargo preference requirements for imported materials purchased by state and local governments and private organizations with federal financial assistance. The requirements have the potential to raise costs of transportation projects and contribute further to delays. Shipping rates for preference cargo aboard U.S.-flag vessels tend to be higher than those for similar cargo on foreign-flag vessels, and services are less frequent, as the number of U.S.-flag commercial vessels providing international service is much smaller than the number of foreign-flag vessels serving the United States.<sup>67</sup> On balance, Buy America waivers will generally be less attractive to project sponsors if the imported products are subject to cargo preference.

Although Buy America may increase the cost and completion time of transportation projects, its effects may be less important overall than other federal requirements. In its 2008 study of highway projects, GAO found that Buy America was mentioned much less often by state department of transportation officials than environmental requirements when asked about decisions to undertake projects without federal funds. Of 39 states that indicated they had decided not to use federal funds to avoid federal requirements in the last 10 years, 33 mentioned environmental requirements and five mentioned Buy America.<sup>68</sup>

## Policy Options for Congress

Policy options for the future of Buy America broadly conceived are

- tightening Buy America restrictions,
- loosening Buy America restrictions,
- standardizing Buy America restrictions, and
- broadening Buy America restrictions to other parts of the transportation system or to nontransportation sectors.

These are discussed in detail below. Another option is to leave the Buy America requirements unchanged. Supporters of the status quo could argue Buy America requirements do an effective job of supporting domestic manufacturing employment and encouraging some foreign manufacturers to establish factories in the United States. It could also be argued that the content requirements are adequate, and that the administrative waivers process provides enough

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Stephens Tetreault, "Feds: XPressWest Failed to Meet Buy America Rules for High-Speed Train," *Las Vegas Review Journal*, July 16, 2013, <http://www.reviewjournal.com/news/traffic-transportation/feds-xpresswest-failed-meet-buy-america-rules-high-speed-train>. According to press reports, the project is still being actively pursued, possibly with financing and high-speed train technology from China. See, Julie Makinen and Dan Weikel, "A high-speed rail from L.A. to Las Vegas? China says it's partnering with U.S. to build," *Los Angeles Times*, September 17, 2015.

<sup>66</sup> Kevin M. Sheys and Robert L. Gunter, "Requirements That Impact the Acquisition of Capital-Intensive Long-Lead Items, Rights of Way, and Land for Transit," Transit Cooperative Research Program, *Legal Research Digest*, number 6, December 1996.

<sup>67</sup> CRS Report R44254, *Cargo Preferences for U.S.-Flag Shipping*, by John Frittelli.

<sup>68</sup> GAO, *Federal-Aid Highways*, 2008, pp. 23-23.

flexibility to accommodate changing technologies and market conditions. Changes to the law, moreover, might introduce uncertainty and delay in project delivery.<sup>69</sup>

## **Tightening Buy America Restrictions**

Congress could modify Buy America by making it more restrictive. Most bills introduced in the 114<sup>th</sup> Congress propose tightening existing domestic preference laws.

For example, the Invest in American Jobs Act of 2015 (S. 1043), introduced by Senators Merkley and Baldwin, would increase the share of public transit rolling stock components and subcomponents that must be produced in the United States from 60% in FY2015 to 100% by FY2019 and ensuing years. The bill would also apply U.S.-made requirements for steel, iron, and manufactured goods to water systems that receive a loan from a federally capitalized drinking water treatment revolving loan fund (42 U.S.C. 300j-12), and to bridges over navigable waters funded under the Truman-Hobbs Act (33 U.S.C. 511 et seq.).<sup>70</sup> The measure has been adapted from similar bills considered in previous Congresses. President Obama's surface transportation proposal, the Generating Revenue, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act (the GROW AMERICA Act), introduced by Representative DeFazio by request (H.R. 2410), would also raise the share of rolling stock components and subcomponents that must be made in the United States from 60% to 100% by 2019.<sup>71</sup>

More technical changes to tighten Buy America are contained in the Buy America Update Act (H.R. 2451), introduced by Representative Lipinski. This bill proposes to subject rolling stock purchased using highway funds administered by FHWA to the same Buy America requirements as those purchased with funds administered by FTA. It would also require FHWA to reevaluate its waiver of Buy America rules for manufactured products predominantly made of iron and steel. Moreover, it would require FTA to develop audit requirements and best practices for documenting compliance with Buy America, and includes a new rule for standards by which to measure the percentage value of a component relative to the entire procurement. The bill would require Amtrak to contract with the National Institute of Standards and Technology (NIST) to search for domestic suppliers of products before seeking a waiver.<sup>72</sup> FAA would be required to do a similar search for domestic suppliers. The bill also would apply Buy America requirements to projects financed with local passenger facility charges, federally authorized fees collected from airline passengers by certain airport operators.

Much of the congressional activity related to Buy America seeks to tighten its requirements. The Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act (H.R. 22), a six-year surface transportation bill passed by the Senate in July 2015, would increase from 60% to 70% the share of U.S.-made components and subcomponents required in public transportation vehicles

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<sup>69</sup> Cliff Henke, "Buy America: Why Do Policymakers Keep Trying to Fix what's Not Broken?" *Metro Magazine*, September/October 2014, pp. 12-24.

<sup>70</sup> The Truman-Hobbs Act of 1940 requires the federal government to share in the cost of upgrading bridges considered navigational hazards.

<sup>71</sup> Federal Transit Administration, *GROW America Act*, Summary of Federal Transit Administration Provisions, p. 3, [http://www.dot.gov/sites/dot.gov/files/docs/Summary\\_of\\_Federal\\_Transit\\_Administration\\_Provisions\\_1.pdf](http://www.dot.gov/sites/dot.gov/files/docs/Summary_of_Federal_Transit_Administration_Provisions_1.pdf).

<sup>72</sup> This practice is known as supplier scouting. An established service at NIST is the Hollings Manufacturing Extension Partnership, <http://www.nist.gov/mep/>.

bought with federal support. A version of H.R. 22 passed by the House in November 2015, the Surface Transportation Reauthorization and Reform Act of 2015, would do the same.<sup>73</sup>

## **Loosening Buy America Restrictions**

There are no legislative proposals in the 114<sup>th</sup> Congress to loosen Buy America requirements substantially. Two proposed provisions in the DRIVE Act would make Buy America somewhat less restrictive. The DRIVE Act would raise the threshold for purchases in public transportation subject to Buy America requirements from \$100,000 to \$150,000. It would also subject Amtrak to Buy America requirements only for purchases of \$5 million or more, as opposed to the current threshold of \$1 million.

## **Standardizing Buy America Restrictions**

Another frustration with the current Buy America law and regulation is the differences that exist across the several DOT subagencies and Amtrak, particularly with respect to rolling stock purchases. Standardizing the Buy America requirements with respect to rolling stock purchases and possibly having a single office within DOT to enforce them might address that concern.<sup>74</sup>

## **Broadening Buy America Restrictions**

There are proposals to expand Buy America to other parts of the transportation system and to other sectors such as clean energy manufacturing. The American Pipeline Jobs and Safety Act of 2015 (H.R. 3385), for example, introduced by Representative Nolan, proposes to extend Buy America requirements to gas and hazardous liquid pipelines regulated by DOT's Pipeline and Hazardous Materials Safety Administration. Currently, Buy America does not apply to these pipelines because they are privately built and operated. H.R. 3385 would require, as a new safety standard, that the construction or replacement of regulated pipelines use only steel produced in the United States from iron ore and taconite mined and processed in the United States. Steel made from scrap in the United States would comply with the provision if "the recycled materials are combined with iron ore and taconite mined and processed in the United States."<sup>75</sup>

There have also been proposals to extend some requirements that apply to ships in domestic trade to ships that are used to export liquefied natural gas (LNG) and crude oil. The Jones Act, a maritime law, requires that a vessel carrying passengers or cargo between U.S. points must be built in the United States, crewed by U.S. citizens, and be at least 75% owned by U.S. citizens.<sup>76</sup> According to 46 C.F.R. Section 67.97, to be considered U.S.-built a vessel must meet two requirements: "(a) all major components of its hull and superstructure are fabricated in the United States; and (b) the vessel is assembled entirely in the United States." These requirements do not currently apply to vessels engaged in international trade.

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<sup>73</sup> The Surface Transportation Reauthorization and Reform Act of 2015 (H.R. 3763), a six-year surface transportation bill reported out of the Transportation and Infrastructure Committee on October 22, 2015, was incorporated into H.R. 22 as amended by the Senate.

<sup>74</sup> See, for example, Railway Supply Institute, "Rail Supply Innovation and Buy America Requirements," [http://rsiweb.org/pdfs/whitepaper\\_buyam\\_26apr11.pdf](http://rsiweb.org/pdfs/whitepaper_buyam_26apr11.pdf).

<sup>75</sup> H.R. 3385, §2.

<sup>76</sup> For more on the Jones Act, see CRS Report RS21566, *The Jones Act: An Overview*, by John Frittelli.

LNG can currently be exported, but federal approval is needed.<sup>77</sup> Crude oil exports are not generally permissible under current law, although there are some circumstances under which exports are allowed.<sup>78</sup> During markup of the Coast Guard and Maritime Transportation Act of 2014 (H.R. 4005), an amendment was offered to require that LNG exports be carried in U.S.-flag and eventually in U.S.-built tankers; the amendment was subsequently withdrawn.<sup>79</sup> A law generally allowing U.S. exports of crude oil could also come with a requirement that such shipments be limited to U.S.-flag and U.S.-built ships.<sup>80</sup> Such laws would effectively extend Buy America-like requirements to vessels constructed by private companies without U.S. government financial involvement.

Another recent proposal to broaden Buy America was the Make It in America: Create Clean Energy Manufacturing Jobs in America Act (H.R. 1524, 113<sup>th</sup> Congress). This bill proposed requiring clean-energy goods and equipment purchased by states with federal funding, such as wind turbines and solar panels, to meet an 85% American-made content threshold. H.R. 1524 would also have required 85% U.S. content of purchases for which private companies claim the Renewable Energy Investment Tax Credit and the Renewable Energy Production Tax Credit.

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<sup>77</sup> 15 U.S.C. §717b.

<sup>78</sup> 42 U.S.C. §6212; 15 C.F.R. §754.2.

<sup>79</sup> H.Rept. 113-384, Howard Coble Coast Guard and Maritime Transportation Act of 2014, p. 27.

<sup>80</sup> H.R. 702, a bill passed by the House on October 9, 2015, would remove restrictions on the export of crude oil. The bill does not contain a requirement that such shipments be carried on U.S.-flag and U.S.-built ships.

## Appendix. DOT Buy America Requirements

**Table A-I. Buy America Requirements for Transportation Projects**

| Agency                                                                             | Domestic Content                                                                                                                                                                                                                                                        | Price Threshold                                                   | Potentially Affected Industries                                                                                                            | Waivers                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal Transit Administration (FTA):<br>49 U.S.C. §5323(j);<br>49 C.F.R. Part 661 | 100% U.S.-made requirement for iron, steel, and manufactured goods; for rolling stock (trains, buses, ferries, etc.), Buy America does not apply if more than 60% of the cost of components is produced in the United States and final assembly is in the United States | Above \$100,000                                                   | Iron and steel producers; manufacturers of products and components related to forms of public transport (buses, rail cars, etc.)           | <ol style="list-style-type: none"> <li>1. Inconsistent with the public interest, which can include a wide range of impacts on domestic markets or firms, or on project outcomes</li> <li>2. Insufficient quantity or quality of iron, steel, or manufactured products in the United States</li> <li>3. Inclusion of iron, steel, or manufactured good would increase overall project costs by more than 25%</li> </ol>                                                                                                                                                                                           |
| Federal Highway Administration (FHWA):<br>23 U.S.C. §313; 23 C.F.R. §635.410       | 100% U.S.-made requirement for iron, steel and manufactured goods made predominantly of steel and iron                                                                                                                                                                  | Above \$2,500 or 0.1% of the contract price, whichever is greater | Steel manufacturers; makers of utility equipment                                                                                           | <ol style="list-style-type: none"> <li>1. Inconsistent with the public interest</li> <li>2. Insufficient quantity or quality of iron, steel, or manufactured product in the United States</li> <li>3. Inclusion of domestic material will increase the cost of the overall project contract by more than 25%</li> <li>4. Waived are raw materials, iron ore, pig iron, reduced/processed/pelletized iron ore, and specific ferryboat parts</li> <li>5. The standard for iron and steel making is that the product must be “melted and poured” in a blast or electric arc furnace in the United States</li> </ol> |
| Federal Railroad Administration (FRA):<br>49 U.S.C. Chapters 244, 246; §24405      | 100% U.S.-made requirement for iron, steel, and manufactured goods                                                                                                                                                                                                      | Above \$100,000                                                   | Steel manufacturers; rolling stock manufacturers; rail equipment service manufacturers                                                     | <ol style="list-style-type: none"> <li>1. Inconsistent with the public interest</li> <li>2. Insufficient quantity or quality of iron, steel, or manufactured product in the United States</li> <li>3. Inclusion of domestic material will increase the cost of the overall project contract by more than 25%</li> <li>4. Rolling stock or power train equipment cannot be bought and delivered within a reasonable time</li> </ol>                                                                                                                                                                               |
| Amtrak (National Railroad Passenger Corporation):<br>49 U.S.C. §24305              | All manufactured and unmanufactured goods must be substantially domestic; manufactured products must have undergone final assembly in the United States and have 50% or more domestic components by value                                                               | \$1 million and above                                             | Steel manufacturers; rolling stock manufacturers (rail cars, locomotives); rail service goods, rail material, maintenance-of-way equipment | <ol style="list-style-type: none"> <li>1. Inconsistent with the public interest</li> <li>2. Insufficient quantity or quality of iron, steel, or manufactured product in the United States</li> <li>3. Rolling stock or power train equipment cannot be bought and delivered within a reasonable time</li> <li>4. Waived "if the cost of imposing requirements is unreasonable"</li> </ol>                                                                                                                                                                                                                        |
| Federal Aviation Administration (FAA):<br>49 U.S.C. §50101                         | 60% U.S.-made requirement for manufactured steel and goods and U.S. final assembly                                                                                                                                                                                      | Unspecified; above \$3,000 for supplies                           | Companies offering products or materials for airport construction                                                                          | <ol style="list-style-type: none"> <li>1. Inconsistent with the public interest</li> <li>2. Insufficient quantity or quality of iron, steel, or manufactured product in the United States</li> <li>3. Inclusion of domestic material will increase the cost of the overall project contract by more than 25%</li> </ol>                                                                                                                                                                                                                                                                                          |

**Source:** CRS adapted from U.S. Department of Transportation, Buy America Provisions—Side-by-Side, <http://www.transportation.gov/buy-america-provisions-side-side-comparison>.

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