

Transition 2020 | Biden Pledges to Expand Buy American Policies, Promote Domestic Supply Chains

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Businesses of all sizes should consider how the Biden Administration's "Build Back Better" economic plan would affect international supply chains. His strategy to revitalize the American economy rests on two pillars: strengthening Buy American provisions and reforming the tax code to incentivize domestic production.

President-Elect Biden best explained his philosophy in a September speech in Warren, Michigan, where he spoke of revitalizing American innovation and competitiveness. He believes that the federal government should use its purchasing power to complement trade and tax policies that will increase domestic manufacturing. Within his first week in office, President-Elect Biden has promised to sign executive orders that:

- Use the *Defense Production Act* and the *Federal Property and Administrative Services Act of 1949* to enforce Buy American rules;
- Expand Buy American rules for public infrastructure projects;
- Use subsidies, federal matching, and other incentives to make American products more competitive in government procurement;
- Expand the list of critical materials required to be made with US origin components (which could include critical medicines, semiconductors, and other key technologies);
- Ensure that only materials of "absolute infeasibility" will be on the designated "non-available materials" list of products not subject to Buy American provisions; and
- Crack down on companies falsely labeling goods as "Made in America."

To coordinate these efforts, President-Elect Biden has pledged to establish a new "Made in America" office within the Office of Management and Budget. The office will coordinate interagency Buy

American policy, review waivers and general compliance, and establish additional transparency rules.

To complement the strengthened Buy American orders, President-Elect Biden plans to pursue aggressive tax reform to return key supply chains to the United States. President-Elect Biden plans to pursue the following tax policies:

- Institute a 10% Offshoring Penalty surtax on profits of “any production by a United States company overseas for sales back to the United States;”
- Eliminating tax offshoring loopholes found in the 2017 *Tax Cuts and Jobs Act*; and
- Institute a “Made in America” tax credit of 10% for investments that create jobs for American workers.
 - Eligible investments could include reshoring production to the United States, revitalizing closed facilities, retooling facilities to meet advanced manufacturing capabilities for key industries, and expanding manufacturing payroll.

While President Trump has supported Buy American and “Made in America” policies, a Biden Administration’s commitment will likely have a broader reach, especially given President-Elect Biden’s desire to use the purchasing power of the federal government to achieve its policy goals. For example, President-Elect Biden has promised to replace the federal government’s entire fleet of vehicles with electric vehicles (EVs), using government procurement policies to pursue environment and clean energy goals.

While President-Elect Biden’s Buy American policies could be implemented relatively quickly at an executive level, changes to the tax code would require Congressional support. Bipartisan appetite for reshoring American supply chains and investing in key technologies is significant and could advance even in a divided government. For example, the *Creating Helpful Incentives to Produce Semiconductors for America Act* or the *CHIPS for America Act*, would incentivize domestic semiconductor manufacturing; portions of the bill have been included in the House and Senate versions of the draft *FY 2021 National Defense Authorization Act*. However, amending the *Tax Cuts and Jobs Act* to close the so-called loopholes targeted by the Biden team will likely only be possible if Democrats secure control of the Senate after the January 5 run-off elections in Georgia.

As they approach the incoming Biden Administration, stakeholders should recognize – and leverage – bipartisan support for shoring up domestic supply chains. Strengthened Buy American orders, paired with a “Made in America” tax credit and other federal incentives, will create new economic and political pressure for companies with pharmaceutical, emerging technology, and manufacturing supply chains to source their materials in the United States.

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