

Congress of the United States

Washington, D.C. 20510

May 13, 2024

Ms. Livia Shmavonian
Made in America Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Shmavonian:

We write regarding your review of reciprocal defense procurement agreements as required by Section 70923(d) of the *Infrastructure Investment and Jobs Act* (Public Law 117–58). We appreciate the Made in America Office’s work to fully enforce President Biden’s stated policy and “Buy American” requirements in law for federal procurement and federally funded infrastructure projects. As the sponsors of the “Make It in America Act” establishing your office and requiring this review of reciprocal defense procurement agreements under the 2021 law, we have a keen interest in your work.

Given the significance of these agreements for defense procurement by the U.S. Department of Defense and our country’s strategic partner nations, we urge the Made in America Office to complete the Congressionally directed review as soon as possible. In addition to furnishing the final report to the OMB Director and the Secretaries of Defense and State as required by law, we request that you provide our offices with a status update on this review and the final report, when completed.

Reciprocal defense procurement agreements are effectively binding international trade agreements for direct government procurement negotiated by the DoD with foreign counterparts, without Congressional ratification. Since first authorized by Congress in 1988, the DoD has entered into 28 such agreements and 6 related reciprocal government quality assurance agreements with both North Atlantic Treaty Organization (NATO) member-states, major non-NATO allies, and other strategic partner countries. We understand that the DoD is currently negotiating new agreements with South Korea, India, and Brazil.

Reciprocal defense procurement agreements are used by the DoD to waive “Buy American” requirements and similar domestic preferences for federal procurement of defense materiel. When applied, these requirements are supposed to ensure that taxpayer dollars support American businesses and workers by mandating that federal agencies prioritize domestically produced goods and material when making procurement decisions. This helps to bolster the U.S. economy, ensure a skilled domestic workforce, and strengthen our industrial base. While we work with our allies and partners to build robust supply chains and strengthen our strategic partnerships, federal law and presidential intent is clear that this healthy cooperation should not come at the expense of our domestic industrial base. Current DoD regulations (DFARS 225.872-

1) provide a blanket “public interest” waiver of all Buy American requirements for defense materiel for any foreign supplier from a country with an active reciprocal defense procurement agreement with the United States.

While we appreciate the strategic importance of interoperability between the U.S. and allied militaries, we are concerned that the DoD is not well-positioned to assess fully the significant implications of these agreements on our defense industrial base, particularly for small and medium-sized domestic manufacturers. As the number of reciprocal defense procurement agreements continues to grow, we believe these agreements should be strengthened by greater interagency input and Congressional oversight. At our request, the U.S. Government Accountability Office (GAO) is currently completing a review of all existing reciprocal defense procurement agreements.

We are also concerned that the DoD may be concluding agreements without sufficient input from domestic industry. Longstanding federal law (10 U.S. Code §4851) requires the DoD to assess the effect of any potential reciprocal defense procurement agreement on our domestic industrial base and prohibits the DoD from entering into an agreement that “has or is likely to have a significant adverse effect on United States industry that outweighs the benefits of entering into or implementing such memorandum or agreement.” Furthermore, longstanding federal law authorizes the U.S. Department of Commerce to initiate an inter-agency review of existing reciprocal defense procurement agreements when the Department has reason to believe such an agreement either has or could have “a significant adverse effect on the international competitive position of United States industry.” To date, the Department of Commerce has never completed such a review of any reciprocal defense procurement agreement, even those renewed several times since first authorized in 1988.

While the law is clear, many domestic manufacturers question how the DoD considers the industrial base implications when approving or renewing reciprocal defense procurement agreements. Such agreements are only noticed in the Federal Register for a brief period—often just 30 days—stating only that the “DoD is contemplating negotiating and concluding a new Reciprocal Defense Procurement Agreement.” While this bare minimum effort by the DoD fulfills a statutory requirement, it is wholly inadequate to ensure the spirit of the law is being implemented with sufficient consideration to impacts on U.S. industry, particularly small and medium-sized domestic manufacturers.

We fully support the Administration’s efforts to strengthen our international alliances and military cooperation with our partners and allies while recognizing that our domestic industrial base is the backbone of our military readiness. We must ensure that any reciprocal defense procurement agreements undergo rigorous public scrutiny with transparent decision-making processes and input from stakeholders across industry. The decision to enter or renew such agreements should be guided by strategic imperatives, not expediency. We must weigh the benefits against the downsides, considering both short-term gains and long-term consequences for our domestic industrial base.

As GAO conducts our requested review, we again urge the Made in America Office to also complete a thorough review of existing reciprocal defense procurement agreements, as required by the 2021 law, to ensure such agreements consider national priorities beyond narrow defense interests. Thank you in advance for your attention to this critical matter. We look forward to your response.

Sincerely,



John Garamendi
Member of Congress



Debbie Stabenow
United States Senator

CC: The Honorable Lloyd J. Austin III, Secretary of Defense
The Honorable Gina M. Raimondo, Secretary of Commerce