

May 24, 2024

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

RE: Recommendation from the Environmental Technologies Trade Advisory Committee on
Build America, Buy America

ETTAC Recommendation 2024-9

Dear Secretary Raimondo:

The Environmental Technologies Trade Advisory Committee (ETTAC) is a federally established committee focused on advising the U.S. government on policies impacting environmental technology exports. With representatives from various sectors and industries, ETTAC provides guidance on enhancing the competitiveness of U.S. environmental technology providers in global markets.

The enactment of the *Infrastructure Investment and Jobs Act* provided a historic opportunity to modernize our Nation's water infrastructure and improve the delivery of safe, reliable drinking and clean water services to all Americans. The *Infrastructure Investment and Jobs Act* included a new provision, the *Build America, Buy America Act* (BABA), which for the first time requires that all iron and steel, construction materials, and manufactured products used in federally funded infrastructure projects are produced in the United States. We understand that domestic content requirement policies such as BABA are designed to increase reliance on domestic supply chains and ultimately reduce the need to spend taxpayer dollars on foreign-made goods. However, there are several concerns we have identified that could have an adverse impact on our ability to expand U.S. exports of environmental technologies, goods, and services.

As we have addressed in the [ETTAC Recommendation 2021-11](#), ETTAC acknowledges the fact that it is a priority for the Administration's climate policy to help promote the building of clean energy projects here in the United States. Given the evolving discussions around BABA, our concerns outlined in our recommendation last year appear to still be relevant. These include concerns about the effects BABA provisions could have on environmental exports, U.S. companies and effects on infrastructure project budgets, availability of materials, and impact on important infrastructure project schedules. We ask that you refer to last year's letter as the discussions around BABA continue.

One critical aspect we would like to raise is the fact that one cornerstone of the enactment of this legislation is the fact that it would create a historic opportunity to increase domestic manufacturing in communities across the country, which would include good-paying jobs for America's workers, including union jobs.

While the plain text of the legislation does not refer to labor, we understand that the Administration has interpreted the legislation to not include any costs associated with the manufacture of the manufactured products. Considering the fact that bolstering American manufacture requires creation and modernization of manufacturing facilities, upskilling and transforming skills in the workforce will be an essential part of the success of the onshoring of manufacture. Further, the exclusion of labor goes against Congress' intent to revitalize American industry.

Therefore, the Administration and federal inter-agencies should reconsider including labor (labor, R&D, and design) as a part of the calculation of the domestic component.

Other critical factors that require careful consideration from the Administration and the relevant agencies are the impact that the provisions will have on the Free Trade Agreements the United States of America currently have with trade partners, the World Trade Organization Agreement on Government Procurement, and Federal permitting processes on the operation of Buy American laws, including their impacts on implementation of domestic procurement preferences. (Sec. 7093474 in IJJA).

ETTAC is charged with advising the Secretary of the Department of Commerce on all matters concerning trade policy development and negotiations relating to U.S. environmental technologies exports. Therefore, we ask the Department of Commerce continue to actively work with the U.S. government interagency community to evaluate the impacts of BABA on our trade partners and consider products from countries with a Free Trade Agreement with the U.S to be considered as domestic products, to allow the U.S to preserve trade relations with important allies.

There also remains a critical need for additional guidance on compliance with BABA provisions, particularly concerning waivers and eligibility criteria for manufacturers and exporters. The ETTAC recommends that the Department of Commerce continue to collaborate with the U.S. government interagency community, along with representatives from the business sector, to facilitate discussions on the development or refinement of consistent and timely BABA provisions. This is especially important where there is lack of clarity, or potential enforcement implications with material consequences for non-compliance involved. We are apprehensive about possible impact of these provisions on environmental exports and domestic projects and advocate for proactive measures to address these concerns. Furthermore, we recommend the interagency community provide additional tools and incentives, such as grants, tax incentives, or preferential treatment in procurement processes, to companies that proactively prepare for compliance.

ETTAC is increasingly concerned about foreign governments enacting domestic laws and regulations to counter the impacts of BABA on their manufacturing base. This is particularly concerning among U.S. allies, such as members states in the European Union, that have high labor and environmental standards. As noted in a letter from Water Europe, "[t]he new domestic content requirement for the water infrastructure funded by the U.S. Government will disrupt the smooth collaboration between the U.S. and Europe by impacting up to 1 million jobs in the

European water sector and hinders access to the best available water technologies and scientific knowledge which is paramount to achieve a Water-Smart Society not only in Europe but also the United States”. We recommend that the Department of Commerce continue to evaluate domestic content laws in foreign countries, including for alignment with free trade agreements, and provide the public with a transparent view about this growing movement towards manufacturing where a company operates.

Another aspect that the U.S export sector in the environmental industry is being forced to either maintain two sources of material or to pass along increases to our international customers. This coupled with the weakening of many currencies around the world is making U.S goods a lot less competitive in the global markets.

Furthermore, providing technical assistance and support to help companies navigate compliance complexities will ensure a smoother transition and foster the growth of domestic companies in the global market.

Thank you for your attention to these important matters. We look forward to your continued leadership in advancing our national interests and supporting American companies in the environmental sector.

Sincerely,

A handwritten signature in black ink that reads "Clare Schulzki". The signature is written in a cursive style with a large, prominent initial 'C'.

Clare Schulzki
ETTAC Chair