Switzerland

Buy American, Buy European, Buy Swiss? Switzerland's Isolated Position in the Global Market

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Protectionist measures and geopolitical power plays are not only impacting international trade relations between the European Union (EU) and the United States (US), but also 'third countries'[1] like Switzerland. Over recent years, we have witnessed a shift of governments protecting their regional and national economies, which seems to be coming to a peak. With the US and EU being Switzerland's two largest trade partners, the small nation is particularly affected by those policies. Recent landmark decisions of the Court of Justice of the European Union (CJEU) on third-country companies' access to the EU market, the EU Foreign Subsidies Regulation (FSR), and the 'America First Trade Policy' are a few, but important examples. This report outlines Switzerland's position with respect to domestic preference rules in public procurement, highlights the increasing use of public procurement as a geopolitical trade tool and explores the options that Switzerland has amid those recent developments.

I. 'Closed Unless Opened' Access to the EU Procurement Market

Over the past 10 years, the EU's policy on third countries' access to its market, including the procurement market, has been undergoing a silent, but increasingly drastic shift towards a 'closed unless opened' approach. The EU procurement market is closed, unless it is opened through an access agreement. One of its early examples is enshrined in Article 85(2) of the 2014 Utilities Procurement Directive, holding that a tender for a supply contract can be rejected if over 50% of the products originate from non-EU countries that are not covered by an access agreement.[2] Amidst an increasing presence of state-subsidised companies from third countries in the EU market, the European Commission (Commission) reaffirmed its view on third-country access in its 2019 'Guidance on Participation of Third-Country Bidders and Goods in the EU Procurement Market.' The Guidance clarifies that, if a third country is not bound by the WTO-Government Procurement Agreement (GPA)[3] or a similar agreement with the EU, its suppliers 'do not have secured access' to EU public tenders.[4]

This 'managed openness' approach has been strengthened by two recent landmark decisions of the CJEU: Kolin (C-652/22), decided in October 2024, and Qingdao (C-266/22), decided in March 2025.[5] These rulings squarely hold that bidders from a third country with no relevant access agreement do not have the right to equal treatment under EU law. The Court also clarified that Member States cannot 'determine unilaterally whether and under what

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1 From the perspective of the EU and the US.

2 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.3.2014, p 243-374.

3 World Trade Organization, Agreement on Government Procurement, adopted in March 2012. Switzerland was the last party to ratify the GPA 2012, which entered into force for Switzerland on 1 January 2021 and replaced the GPA 1994.

4 European Commission, Guidance on the Participation of Third-Country Bidders and Goods in the EU Procurement Market, 2019/C 271/02, 13 August 2019, p 50, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0813(01)>, accessed 15 September 2025.

5 Judgment of the Court (Grand Chamber) of 22 October 2024, *Kolin Inşaat Turizm Sanayi ve Ticaret AŞ v Državna komisija za kontrolu postupaka javne nabave* (Case C-652/22), ECLI:EU:C:2024:910; and Judgment of the Court (Fourth Chamber) of 13 March 2025, *CRRC Qingdao Sifang CO LTD and Astra Vagoane Călători S.A. v Autoritatea pentru Reformă Feroviară and Alstom Ferroviaria S.P.A.* (Case C-266/22), ECLI:EU:C:2025:178.

arrangements the economic operators of that third country may participate in public procurement procedures in the European Union."[6] Instead, the EU (and not its Member States) holds the exclusive competence to decide over access to the Internal Market.

Since Switzerland is not only a member of the WTO-GPA but has also signed a bilateral agreement with the EU on certain aspects of public procurement,[7] Switzerland still has access to the EU general procurement market. The EU market is of great importance for Switzerland. While Switzerland's share of the EU *public procurement* market is not known, with Swiss goods and services making up 7% of EU imports in 2024,[8] Switzerland is a significant player in the EU market. The most important product categories sold by Swiss companies to contracting authorities in the EU include rail and transport equipment, med-tech, power and grid gear, and IT services.[9]

II. EU Instruments That Apply Despite Access Agreements

To protect and promote the internal market, the EU has adopted several policy instruments with extraterritorial reach that apply to non-EU companies independent of a country's access agreement with the EU. The most prominent and powerful measures were adopted in 2022: Regulation (EU) 2022/1031, the International Procurement Instrument (IPI),[10] a trade policy instrument designed to promote reciprocity and fair competition in procurement markets, and the FSR, which entered into force in July 2023.[11]

The IPI empowers the Commission to take measures if EU companies face discrimination or lack reciprocal access to a third-country's procurement market, either by (a) imposing a price penalty of up to 50% on the offered good (and therefore making it less likely to win the bid) or (b) implementing an outright exclusion of tenders from that country.[12] While the IPI measures have mainly been used to combat discriminatory practices from Chinese companies,[13] they can also be targeted towards other third countries, including states from the European Free Trade Area (EFTA) like Switzerland. The same holds true for the FSR. The Foreign Subsidies Regulation applies to all companies, whether EU-based or not, that receive non-EU funding and participate in large EU tenders.[14] This means that the FSR applies to subsidised companies from the European Economic Union (EEA) and EFTA, including Switzerland. While those instruments are meant to target more drastic interferences with the Internal Market, like unfair competition and market distortions, it is important to note that 'foreign financial contributions' are defined broadly and encompass not only grants, loans and guarantees but also fiscal incentives and tax exemptions (eg, to promote renewable energy production) and R&D support from non-EU governments, such as academic-industry partnerships like Horizon Europe.

Although no investigation against Switzerland has been opened under the IPI or the FSR, Switzerland's isolated position in Europe becomes more and more apparent. In a recent comment on the 'European preference requirement in public procurement', issued by the Standing Committee of the EFTA States this June, the Committee states that: 'Where a European preference requirement is introduced in public procurement legislation, it should be clarified that this requirement includes *all 30 EEA States*. Public procurement is key to the well-functioning of the Internal Market, and the same rules and regulations must

6 *Kolin* (Case C-652/22), note 57.

7 Abkommen zwischen der Schweizerischen Eidgenossenschaft und der Europäischen Gemeinschaft über bestimmte Aspekte des öffentlichen Beschaffungswesens, 21 June 1999, Amtsblatt Nr. L 114 vom 30.4.2002, p 0430-0467.

8 Swiss Federal Department of Foreign Affairs, Switzerland-EU in figures, 7 July 2025, available at <https://www.europa.eda.admin.ch/en/switzerland-eu-in-figures>, accessed 15 September 2025.

9 Tenders electronic daily (TED), available at: <https://ted.europa.eu/en/search/result?FT=Switzerland&notice-type=can-standard%2Ccan-social%2Ccan-desg%2Ccan-tran&buyer-country=EU&legal-basis=32014L0024%2C32014L0025%2C32014L0023%2C32009L0081&search-scope=ACTIVE>, accessed 15 September 2025.

10 Regulation (EU) 2022/1031 of the European Parliament and of the Council of 23 June 2022 on the access of third-country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI), OJ L 173, 30.6.2022, p 1–16.

11 Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the Internal Market, OJ L 330, 23.12.2022, p 1–45.

12 Art 6(6) and art 6(8) IPI.

13 The Week's Top Stories from the European Commission, Commission launches first investigation under EU International Procurement Instrument, EUbusiness, 25 April 2024.

14 Art. 28(1) FSR. Companies must notify the Commission if the estimated contract value is equal or greater than €250 million and the company (including its subsidiaries and subcontractors) received a foreign subsidy equal or greater than €4 million.

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apply across the entire EEA.'[15] While Iceland, Norway and Liechtenstein are part of the EEA, Switzerland is the only EFTA state that is not in the EEA and is thus excluded from such 'Buy European' policies.

III. Security-Related Exclusions from Procurement Markets

While the IPI and FSR are targeting fair competition, other regulations are concerned with security in the Internal Market. In 2019, the EU adopted the Foreign Direct Investment (FDI) Screening Regulation,[16] which established a framework for EU Member States to exchange information and concerns about specific foreign direct investments (including acquisitions of control by private or state-owned companies and governments) from non-EU countries into the EU that may affect the security or public order.

Switzerland is a major investor in the EU. Swiss investments that are relevant for FDI screening include investments into *critical sectors*, such as pharmaceuticals, energy and infrastructure, and critical technologies. As a response to evolving geopolitical challenges, the Commission has proposed significant amendments to the FDI Regulation in January 2024, which include a mandatory screening mechanism for certain sensitive sectors, like semiconductors and artificial intelligence, and an extended screening to *indirect* investments from EU-based entities controlled by non-EU investors.[17] These (existing and proposed) FDI regulations put Swiss companies with stakes in EU pharma, energy or tech companies under increased pressure and scrutiny.

A parallel development concerns defence procurement. Defence procurement is excluded from the WTO-GPA and hence, relies on bilateral relations. In spring this year, reports have surfaced that Germany, Switzerland's largest arms export market, has excluded Swiss companies from some procurement deals.[18] Denmark and the Netherlands have also halted orders.[19] The ban on Swiss war-material exports is partly due to EU concerns over Switzerland's restrictions on re-exports to conflict zones like Ukraine. These actions and EU instruments show that Switzerland is finding itself in a more and more isolated position.

IV. 'America First Trade Policy' and 'Buy American' Policies – Real or Hot Air?

The pressure on Switzerland is not only increasing from its European peers but also from the American government. Since August 7, 2025, Switzerland's businesses face 39% tariffs on goods exported to the US.[20] The claimed culprit was Switzerland's large goods trade surplus with the US of over CHF 25 billion in 2023,[21] driven by sectors like the export of gold and pharmaceuticals. But what do the 'America First Trade Policy' and the 'Buy American' policies mean for government procurement, and how do they affect Switzerland?

The 'America First Trade Policy' implemented by the Trump Administration in January 2025 not only affects commercial trade but also government purchasing. The policy is a geopolitical trade instrument that aims to 'protect' and promote American business. In the midst of the Liberation Day on April 3,

15 European Economic Area, Standing Committee of the EFTA States, Subcommittee I on the Free Movement of Goods, EEA EFTA Comment on the European preference requirement in public procurement, Ref. 25-1126, 10 June 2025, available at <https://www.efta.int/sites/default/files/uploads/2025-06/25-1126-Rev3.2-EEA%20EFTA%20Comment%20on%20the%20European%20preference%20requirement%20in%20public%20procurement_0.pdf>, accessed 15 September 2025.

16 Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, OJ L 79I, 21.3.2019, p 1–14.

17 European Commission, Factsheet Economic Security – Proposal for a New Regulation on the Screening of Foreign Investments, 24 January 2024, available at <https://ec.europa.eu/commission/presscorner/detail/en/fs_24_367>, accessed 15 September 2025.

18 Levin Stamm, Switzerland's Neutrality Is Holding Back Its Defense Industry, Bloomberg, 30 April 2025, available at <https://www.bloomberg.com/news/articles/2025-04-30/switzerland-s-neutrality-is-holding-back-its-defense-industry>, accessed 15 September 2025; John Revill, Swiss Arms Exports Fall as Government Mulls Looser Curbs after Ukraine War, Reuters, 11 March 2025, available at <https://www.reuters.com/world/europe/swiss-arms-exports-fall-government-mulls-looser-curbs-after-ukraine-war-2025-03-11/>, accessed 15 September 2025.

19 Giannis Mavris, European Nations Snub Swiss-made Weapons over Ukraine Restrictions, SwissInfo, 24 September 2024, available at <https://www.swissinfo.ch/eng/foreign-affairs/european-nations-snub-swiss-made-weapons-over-ukraine-restrictions/87599015>, accessed 15 September 2025.

20 SECO, Swiss-US Trade Relations, 7 August 2024, available at <https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/usa.html>, accessed 15 September 2025.

21 Coface for Trade – Switzerland, US Tariff Increase: Switzerland Faces Highest Rates among OECD Countries, 4 July 2025, available at <https://www.coface.ch/news-publications-insights/us-tariff-increase-switzerland-faces-highest-rates-among-oecd-countries>, accessed 15 September 2025.

2025, the White House quietly released a (non-public) report on America's trade policy, including on 'Buy American' policies in public procurement.[22] The report raises concerns about its membership in the WTO-GPA, reciprocal defence procurement agreements, and foreign subsidies distorting the US procurement markets, echoing the FSR. This protectionism in procurement marks a sharp departure from postwar US trade policy.[23] Currently, the only agreement upholding the free flow of publicly procured goods between the US and Switzerland is the WTO-GPA.

Whether Swiss companies – that are selling goods and services to the US government – are exempt from the exorbitant tariffs that apply to commercial trade is unclear. So far, the US Administration has not issued a clear public statement as to whether the 39% tariffs on Swiss goods imported into the US also apply to government trade. From the GPA perspective, applying different tariff regimes to different countries would violate the principle of non-discrimination. However, this benefit of equal treatment would be lost if the US exits the GPA, which is a possibility. Under US federal procurement regulations, certain supplies purchased by the US government may be exempt from import duties.[24] This exception includes military articles and scientific instruments and apparatuses but lies within the discretion of procuring agencies. Because the government would typically not charge itself a tariff, American legal experts discuss the idea that presidential tariff actions may not fully reach into public procurement and hence, government contracts might be exempt from import duties.[25] Yet, the legal uncertainty leaves Swiss companies in a stalemate.

The 'Buy American' policies, by contrast, seem generally accepted and have a long history in America. 'Buy American' policies go back to the 'Buy American Act' enacted in 1933 (the Roosevelt era) and were reinforced under the Biden Administration with the 'Build America, Buy America Act' (BABA), enacted in 2021. BABA requires that federal funds allocated to state and local infrastructure projects be procured with iron, steel, construction materials and manufactured products[26] produced in the United States. But what often goes unmentioned – and unnoticed by procurement officials – is that the WTO-GPA trumps 'Buy American' preference rules in covered procurements and in the 37 US states that have joined the GPA.[27] The US government also issues numerous waivers from *domestic* preference rules, particularly where products are not produced or available in the United States. From 2017 to 2022, the US federal government issued waivers in the amount of USD 5.9 billion to Swiss companies for products, including medical devices, information technology and industrial machinery.[28]

The supremacy of the GPA and the waivers raise a fair question: Are 'Buy American' policies just a (geo)political tool or do they have real consequences? From a legal perspective, the answer is straightforward: As long as the US stays part of the WTO-GPA, the legal consequences of the 'Buy American' policies remain limited, at least in covered procurements. However, to provide a more conclusive answer, we would need (reliable) data on products that are bought under the 'Buy American' policy, the GPA, and the waiver program. And similar to the EU, the procurement relationship between the US and Switzerland is tied to an access agreement, the GPA, which currently stands on thin ice.

Also, the Swiss government is slowly but surely affected by the recent US trade policy when buying goods and services from American companies – not directly, but indirectly. Even though there are (currently) no tariffs imposed on industrial goods from the US imported into Switzerland, the factual force of the 'America First Trade Policy' is trickling down to daily procurement activities. For one, US taxes on American products (which are increasing) can be

22 The White House, Report to the President on the America First Trade Policy – Executive Summary, 3 April 2025, available at <https://www.whitehouse.gov/fact-sheets/2025/04/report-to-the-president-on-the-america-first-trade-policy-executive-summary>, accessed 15 September 2025.

23 Christopher Yukins, President Trump and Buy American – The Overlooked Report, 6 April 2025, available at <https://publicprocurementinternational.com/2025/04/06/trump-and-buy-american-the-overlooked-report/>, accessed 15 September 2025.

24 US Federal Acquisition Regulation (FAR) Subpart 25.9 "Customs and Duties" and Subpart 52.225-8 'Duty-Free Entry'; Defense FAR supplement (DFARS) Subpart 225.9 and 252,225-7013.

25 See Christopher Yukins et al., Feature Comment: President Trump and Tariffs – The Procurement Exception, The Government Contractor Vol. 67, Issue 7, February 19, 2025.

26 US Federal Acquisition Regulation (FAR) 25.003 (Definitions). While the original threshold for the domestic components of manufactured products was 50%, this threshold was raised to 65% in 2024 and will be increased to 75% in 2029.

27 FAR Part 25. Among the 37 US states that have joined the GPA are New York and Florida. Two large states that have not signed the GPA are California and Texas – mainly due to strong buy local laws and for sovereignty reasons.

28 MadeInAmerica.gov, Waivers, available at <https://www.madeinamerica.gov/waivers/>, accessed 15 September 2025.

passed on to consumers. In the case of Swiss public procurement, those taxes would need to be paid by the Swiss procurement agency and ultimately the Swiss taxpayers. Another recent example is Switzerland's procurement of F-35A fighter jets from the American defence manufacturer Lockheed Martin. Switzerland had to factor in price increases driven by inflation in the United States, higher global commodity prices and US tariff policies, which would lead to additional costs of up to CHF 1.3 billion.[29]

V. The Way Forward for 'Third Countries' like Switzerland – Access Agreements as Lifeline

As the fronts between the EU and US harden, pressure on Switzerland to take a stance is increasing: Should Switzerland become part of 'Buy European' preferences (after all, Switzerland is part of Europe), should it stay neutral and friendly towards 'Buy American' and American trade policies, or should it push its own 'Buy Swiss' agenda?

While a 'Buy Swiss' policy seems tempting as a counteraction to protect the Swiss procurement market, such a policy is not workable for a small country like Switzerland. Increasing reliance on Swiss production capacities, which supports Switzerland's autonomy, softens vendor lock-ins and creates more resilient supply chains, works for certain products, but not for all. Switzerland, as a small market economy, is strongly dependent on access to international markets and competition. Hence, the credo should be: 'Make what you can and buy what you need (from abroad).'

As outlined in this report, procurement agreements that ensure reciprocal market access are currently the only effective shield – and frankly, lifeline – against the surge of domestic preference rules around the world. Due to Switzerland's dependence on international markets, it should continue doing what it does best: take the 'bilateral approach', maintain the plurilateral and bilateral agreements it has and negotiate new trade agreements that give Switzerland access to the raw materials, technology and equipment that it needs to deliver high-quality products and services. But before negotiating with outside partners, Swiss agencies should have a procurement strategy in place. Amidst ongoing trade wars and the tense geopolitical situation, Switzerland cannot afford not to have a coherent procurement strategy.

29 Sinead Baker, Switzerland is eying cuts to its F-35 stealth fighter order amid price battles with the US, Business Insider, 14 August 2025, available at <https://www.businessinsider.com/switerland-may-order-fewer-f-35s-over-us-pricing-2025-8>, accessed 15 September 2025.