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Trade Briefs

Debate Over Buy American Provision

One of the most controversial inclusions in the American Recovery and Reinvestment Act of 2009, the stimulus plan passed by the U.S. House of Representatives and currently being considered by the Senate, is a "Buy America" provision mandating domestic sourcing for any stimulus-related procurement of iron and steel products. Recent comments by industry groups, congressmen, and the President himself show that there is a serious debate over whether or not the provision should survive as a part of the ultimate package.

When the House version of the bill, H.R. 1, was first released and included a Buy America provision, the most ardent defenders of free trade predictably objected to the law on the grounds that it was protectionism. A variety of groups—including the U.S. Chamber of Commerce, the *Wall Street Journal* editorial page, and scholars at the Cato Institute—warned that a requirement to buy American would heighten trade tensions and possibly lead to retaliation by trading partners. They also said that the provision would make infrastructure spending unnecessarily expensive by reducing competition.

Defenders of the provision—like the American Iron and Steel Institute (AISI), the Alliance for American Manufacturing, labor organizations, and liberal economists—responded that the stimulus package should necessarily be aimed at helping American businesses. Some rebutted the fears of retaliation by claiming that other countries had already put domestic procurement measures in their own economic stimuli. Therefore, they argued, Buy American rules would be reasonable and desirable to protect American workers.

Lately, there has also been foreign pressure to remove the provision. Canada, which deliberately avoided protectionist language in its stimulus, warned that the U.S. risked losing its moral authority on the trade issue. And the leader of Canada's National Democratic Party (NDP) has already called for a "Buy Canadian" policy if the U.S. decides to enact its own. Also, the European Union's (EU) Ambassador to the U.S. said that the EU would "regard this legislation as setting a very dangerous precedent at a time when the world is facing a global economic crisis." An EU spokesman went even further, saying that inclusion of a Buy American provision would not be "something [the EU] will stand idly by and ignore," a hint that the EU could contest the law at the World Trade Organization (WTO). Japanese Prime Minister Taro Aso has also been outspoken on the issue, condemning the provision as "definitely wrong."

In the Congress, Democrats and Republicans had generally lined up behind their parties in supporting or opposing the Buy American provision, respectively. However, there have been some cracks in party unity. Most prominently, House Majority Leader Steny Hoyer (D-MD) recently said that he considered the concerns of the EU to be "justified."

Also, there is a danger that the removal of the Buy American provision would force Democrats to oppose the stimulus in protest. Rep. James Oberstar (D-MN), Chairman of the House Transportation and Infrastructure Committee and member of the House Steel Caucus, said that he would try to defeat any stimulus package that did not have Buy

American provisions. If there is a move to strip the stimulus of the provision, there may be more defections from Democrats in states with major organized labor constituencies.

Apparently, the Obama White House has not yet chosen a side on the issue. In an interview, Vice President Joe Biden said that the Administration believed that some "portion" of Buy American in the stimulus was defensible. It is possible that this reflects an interest on the part of the White House in some kind of compromise, perhaps a watered-down Buy American provision. It was, however, at least a tepid endorsement of this kind of measure.

White House Press Secretary Robert Gibbs, when asked about it, said that the Administration was still reviewing the provision. And in the midst of a round of interviews to promote the package, President Obama hinted that he might favor the removal of the Buy American requirement. When asked by ABC News' Charles Gibson if he wanted the provision removed, he said, "I think we need to make sure that any provisions that are in there are not going to trigger a trade war." On FOX News, Obama said, "I agree that we can't send a protectionist message... I agree that we can't send a protectionist message. I want to see what kind of language we can work on this issue. I think it would be a mistake, though, at a time when worldwide trade is declining for us to start sending a message that somehow we're just looking after ourselves and not concerned with world trade."

Obama is grappling with his desire to secure passage of his stimulus bill while not undermining his credibility in foreign affairs. Politically, it is a difficult line to walk. However, based on these interviews, he seems to be leaning against the inclusion of the Buy American provisions as they are now written. This would be a significant reversal from the lukewarm support given by Biden only days before.

It is not yet clear how much of an effect the Buy American provision would have on U.S. steel imports and on American jobs. The stimulus bill, while totaling a gargantuan \$800 to 900 billion, only allocates a small portion for spending on projects that would require significant quantities of steel. While the actual number of infrastructure spending is relatively fluid as the bill goes through the amendment process, it is likely to be in the neighborhood of \$90 billion. According to Stan Hasselbusch, CEO of L.B. Foster, material cost accounts for roughly 30% of infrastructure projects while steel accounts for about 8% of materials used. Therefore, the total expenditures on steel for the stimulus plan, assuming a \$90 billion expenditure on infrastructure, would amount to a little over \$2 billion. Furthermore, existing "Buy American" laws would likely cover a large portion of this infrastructure procurement already. It is possible then that the passage of the stimulus bill in its current form with the retention of a Buy American provision might not have an enormous distorting effect on its own.

Of course, any substantial portion of \$2 billion would be a lot of money. According to statistics from the Department of Commerce (DOC), the U.S. imported over \$33 billion in iron and steel products in 2008. That would make \$2 billion equal to roughly 6% of total U.S. imports. Moreover, imports are likely to plummet as steel orders go down during the recession, thereby enhancing the distorting effects of the Buy American provision on the international trade of steel. When compared with U.S. consumption, which totaled \$65 billion in 2007, \$2 billion is equal to roughly 3% of the total. Regardless, context is important when the Buy American provision is discussed as part of a \$1 trillion bill.

Another point of debate on the Buy American provision is its expected impact on job creation. In a policy brief from the Peterson Institute for International Economics (PIIE) entitled "Buy American: Bad for Jobs, Worse for Reputation," Gary Clyde Hufbauer and Jeffrey J. Schott argue that the provision may create, in an optimistic scenario, 10,000 new jobs in the iron and steel industry. Needless to say, this is not a very large number for a country with a workforce of about 140 million.

Even worse, Hufbauer and Schott fear that retaliatory policies from trading partners "could easily outweigh the positive effect of the measures on jobs." This provision could push other countries to enforce their own protectionist policies, policies that could be longer-lasting or further reaching than that of the U.S. In that scenario, the U.S. would get the worst of both worlds: a meager amount of domestic-targeted stimulus, a political black eye to the world, and the prospect of an escalating trade war.

The Senate is expected to pass the bill very soon, and then the stimulus will go to conference. And at this point, it appears that the Buy American provision will survive largely intact. An amendment offered by Senator John McCain (R-AZ) to remove the Buy American provision was roundly rejected. One change in the Senate version adds language that directs agencies to apply the provision "in a manner consistent with United States obligations under international agreements." This is probably the last compromise for those who support the provision.

Dumping Watch

DOC Gives Notice of Remand Proceedings on AD Duty Orders on Japanese Ball Bearings

On February 5, the Department of Commerce (DOC) gave notice that it was resuming remand proceedings regarding the sunset review of the antidumping (AD) duty order on ball bearings from Japan and the United Kingdom. In June 2006, the DOC found that revocation of this order for Japan and the U.K. would likely result in continuation or recurrence of injury to domestic industry. These determinations were appealed to the Court of International Trade, which then remanded the case to the DOC. The DOC asked the Court to reconsider and stay the remand while it did so. Now, the Court has rejected the motion to reconsider, and the DOC must file a remand determination by May 4, 2009.

Federal Register Notices

International Trade Administration

Mission Statement; Commercial Service Trade Mission to Colombia; March 8-13, 2009
74 FR 6267-6268, February 6, 2009.

[A-549-817] Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Correction to Preliminary Results of Changed Circumstances Review and Intent To Reinstate Sahaviriya Steel Industries Public Company Limited in the Antidumping Duty Order 74 FR 6136, February 5, 2009.

[A-583-833] Certain Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review 74 FR 6136-6139, February 5, 2009.

[A-570-855] Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Extension of Time Limits for the Preliminary Results of the Administrative Review 74 FR 6139-6140, February 5, 2009.

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review 74 FR 6013-6014, February 4, 2009.

[A-580-839] Certain Polyester Staple Fiber From the Republic of Korea: Extension of Time Limit for the Preliminary Results of the 2007-2008 Antidumping Duty Administrative Review 74 FR 6014-6015, February 4, 2009.

[A-552-801] Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the New Shipper Reviews 74 FR 6015, February 4, 2009.

Export Trade Certificate of Review 74 FR 6015-6016, February 4, 2009.

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review 74 FR 6016, February 4, 2009.

[C-475-819] Certain Pasta from Italy: Final Results of the Eleventh (2006) Countervailing Duty Administrative Review 74 FR 5922-5924, February 3, 2009.

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews 74 FR 5816-5817, February 2, 2009.

[A-533-843] Certain Lined Paper Products from India: Extension of Time Limits for Final Results of Antidumping Duty Administrative Review 74 FR 5817, February 2, 2009.

[A-351-825] Stainless Steel Bar From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review 74 FR 5817-5818, February 2, 2009.

[A-570-890] Wooden Bedroom Furniture From the People's Republic of China: Notice of Court Decision Not in Harmony 74 FR 5818-5819, February 2, 2009.

Applications for Duty-Free Entry of Scientific Instruments 74 FR 5819, February 2, 2009.

[A-552-801] Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order 74 FR 5819-5820, February 2, 2009.

House Ear Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes 74 FR 5820-5821, February 2, 2009.

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part 74 FR 5821-5823, February 2, 2009.

International Trade Commission

[Investigation No. 337-TA-533 (Remand)] In the Matter of Certain Rubber Antidegradants, Components Thereof, and Products Containing Same; Notice of Commission Determination (1) To Review and Not Take a Position on Certain Issues in the Final Initial Determination of the Administrative Law Judge and (2) Not To Review the Remainder of the Final Initial Determination; Termination of the Investigation 74 FR 6307-6308, February 6, 2009.

[Investigation No. 337-TA-623] In the Matter of Certain R-134a Coolant (Otherwise Known As 1,1,1,2-Tetrafluoroethane); Notice of Commission Determination To Review the Final Initial Determination in Part and To Remand the Investigation; Schedule for Written Submissions on Remand Determination and on Remedy, the Public Interest, and Bonding 74 FR 6172-6173, February 5, 2009.

[Investigation Nos. 731-TA-394-A & 399-A (Second Review) (Remand)] Ball Bearings From Japan and the United Kingdom 74 FR 6173-6174, February 5, 2009.

[Investigation No. 337-TA-654] In the Matter of Certain Peripheral Devices and Components Thereof and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation in Its Entirety on the Basis of Settlement and Terminating the Investigation 74 FR 6174-6175, February 5, 2009.

[Inv. No. 337-TA-605] In the Matter of Certain Semiconductor Chips With Minimized Chip Package Size and Products Containing Same; Notice of Commission Decision To Review in Part a Final Determination Finding No Violation of Section 337 74 FR 6175-6177, February 5, 2009.

[Investigation No. 337-TA-646] In the Matter of Certain Power Supplies; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation With Respect to Respondents Super Flower Computer, Inc. and Andyson International Co., Ltd. and Terminating the Investigation 74 FR 6055-6056, February 4, 2009.

[Investigation Nos. 701-TA-460-461 (Preliminary)] Ni-Resist Piston Inserts From Argentina and Korea 74 FR 5946-5947, February 3, 2009.

The Week Ahead

- The ITC has no votes or hearings scheduled for this week.