



BUY AMERICA

Briefing Document

May 4th, 2009

The Issue

- On February 17th, President Obama signed the ***American Recovery and Reinvestment Act of 2009*** ("Recovery Act"). Section 1605 of the Recovery Act attaches *Buy America* conditions to the US\$90 billion in infrastructure funding it provides for projects involving the "construction, alteration, maintenance or repair of a public work or public building". This provision requires that "**all of the iron, steel and manufactured goods used in the project are [to be] produced in the United States.**"
- The Recovery Act allows for three types of waivers that can be applied to its *Buy America* provisions. Waivers can be granted when:
 1. Application of the *Buy America* clause would be inconsistent with the public interest;
 2. The iron, steel, and relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or,
 3. Inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent
- The Recovery Act also requires that the application of *Buy America* requirements be consistent with US obligations under international trade agreements.
- All funds under the Recovery Act must be dispersed in very short timeframes and all must be "under contract" by February 2010, with one half of all projects well underway by June 2009.
- Since passage of the Recovery Act, similar *Buy America* provisions are appearing in other US legislation and business leaders in the US anticipate that a "*Buy America baseline*" will be inserted into most if not all US appropriation and authorization legislation in the months to come. One particular bill recently passed by the House of Representatives and now under consideration by the Senate confirms this expectation. The ***Water Quality Investment Act*** (Water Quality Act) provides \$13.4 billion over the next five years for clean water and drinking water improvements. Section 608 of that bill repeats the *Buy America* provisions of the Recovery Act.

Canadian Concerns

- Although Canada and the United States have agreed to international procurement obligations at the federal level under the NAFTA and the WTO Government Procurement Agreement (GPA), there are no international obligations at the sub-national level, i.e. States or municipalities.

- *Buy America* content requirements have been applied to US state and local procurement since the 1930s. However, the *Buy America* provisions now appearing in the Recovery and Water Quality Acts significantly extend conditions applied to state and local procurement to an outright restriction on imports of iron, steel, and manufactured goods unless waivers are applied.
- The appearance in other appropriations bills and authorizing legislation of *Buy America* provisions similar to those in the Recovery Act threaten to expand the scope of US market access restrictions applied to imports from Canada and other countries – in spite of commitments made by G20 nations not to undertake further protectionist measures in response to the current recession.
- Canadian companies will be ineligible to compete for state and local procurement projects funded under the Recovery Act or other US legislation containing similar *Buy America* provisions if waivers are not granted. Meanwhile, US companies continue to have access to Canadian provincial and municipal infrastructure projects.
- There is a danger that other countries will impose protectionist measures in retaliation to US *Buy America* restrictions, further limiting market access for Canadian exporters.

Impact on Canadian Exporters

- Canadian and US industrial markets are closely integrated with material and components of complex products and technologies crossing our border many times before being sold to the final customer.
- Canadian exporters supplying state and local procurement projects affected by new *Buy America* restrictions are being asked to sign affidavits verifying that their products are manufactured in the United States. US manufacturers selling directly to state and local procurement projects are also beginning to ask their Canadian suppliers to sign similar affidavits.
- Canadian companies are already losing contracts, leading to production shutdowns in Canada and forcing some businesses to consider moving production to the United States.
- Canada's water and wastewater equipment industry is a good example of the integrated nature of the Canada-US market and of a sector that has already been affected by the *Buy America* provisions inserted into the House version of the Water Quality Act.
- The Canadian water and wastewater equipment market generates over CDN\$7 billion per year. In the US, it is estimated that water and wastewater infrastructure needs over the next five years would require up to \$500 billion in new spending. In both countries, most of this spending is at municipal levels.
- Canada has been a leading supplier of water and wastewater treatment technology, including:

- UV water treatment equipment manufactured by Trojan based in London, Ontario;
- Membrane technology for water and wastewater treatment manufactured by GE Water and Process Technologies (formerly Zenon) in Oakville, Ontario; and,
- Energy efficient pump technology manufactured by Hayward Gordon in Halton Hills, Ontario.
- Long-lasting non-corrosive plastic pipe used in municipal, plumbing, electrical, and industrial sectors manufactured by IPEX Inc, based in Don Mills, Ontario. With over 25 plants, offices and distribution centers across Canada, IPEX has produced enough plastic pipe to circle the globe approximately 150 times.
- Many leading Canadian water and wastewater equipment suppliers purchase significant inputs from the United States. For example:
 - IPEX, purchases about 90% of its chemical inputs, valued at more than \$200 million, from suppliers in the United States, particularly Texas and New Jersey.
 - Hayward Gordon, a pump and mixer manufacturer incorporates millions of dollars of U.S. input such as gearboxes made in Wisconsin into its mixers, and electric motors made in Georgia, into its submersible pumps.
- Canada's suppliers of water and wastewater treatment technologies face the threat of being excluded from US state and local markets.

Growing Protectionist Pressures

- The fear of growing protectionism and retaliation on the part of US trading partners is the most important consideration for opponents of *Buy America* provisions in the United States.
- There is growing pressure on the part of Canadian manufacturers, finding themselves locked out of the US market but competing with US companies that can freely bid for provincial and municipal procurement projects in Canada, for provinces and local governments to introduce similar *Buy Canada* or reciprocal procurement provisions.
- The Town of Halton Hills has passed a resolution calling on Canadian municipalities to source from companies whose countries of origin do not impose local trade restrictions against goods and materials from Canada. The resolution has been submitted for endorsement to the Federation of Canadian Municipalities.

What is CME Doing?

- In response to growing concern among its membership, Canadian Manufacturers & Exporters is taking the lead in:

- Monitoring legislative and regulatory developments in the United States, working through CME's office in Washington and with the Canadian Embassy;
- Raising awareness about *Buy America* issues at federal, provincial, and municipal levels in Canada as well as among the associations that are members of the Canadian Manufacturing Coalition;
- Briefing Canadian and US officials, business groups, and media about the issue;
- Identifying Canadian companies affected by *Buy America* restrictions;
- Encouraging Canadian companies to contact their elected representatives, and their US suppliers to communicate concerns to US legislators;
- Identifying and mobilizing US business associations opposed to Buy America restrictions; and,
- Coordinating communication and consultative activities among government officials, business associations, and individual companies affected by the issue.
- CME is the only Canadian business association that has an office in Washington DC.

Canada's Policy Response

- There is an urgent need for leadership from the Government of Canada, and all other levels of government, on this issue. The Senate Committee on Environment and Public Works will begin their consideration of the Water Quality Investment Act on May 7th.
- The Government of Canada should pursue a two-pronged response strategy aimed at:
 1. The general issue of *Buy America* restrictions; and,
 2. The particular issue of the water and wastewater treatment sector.
- The objectives of the Canadian Government's strategy should be to:
 1. Prevent *Buy America* restrictions from being adopted in US Government legislation; and,
 2. Secure a sectoral waiver for Canadian goods if Buy America restrictions are present in US legislation.
- The Prime Minister should raise *Buy America* issues with the President of the United States at the earliest opportunity.
- The threat of retaliation by provincial and municipal governments and agencies should be used as negotiating leverage by the Canadian Government.

- Negotiating options for the Government of Canada include:
 - Lobbying US Congressional leaders not to include Buy America provisions in future legislation;
 - Working with the US administration to provide a blanket waiver for Canadian goods recognizing the close integration of our industrial market;
 - Negotiating an agreement that local procurement restrictions should not be attached to federal funding to sub-national levels – emphasizing consistency with current NAFTA procurement provisions; and,
 - Negotiating waivers or reciprocal access agreements on a sector by sector basis.
- All federal parties should work together in support of a speedy resolution of the issue.

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Appendix – Other Legislation Currently Under Consideration in the 111th Congress

1. HR 629 Energy and Commerce Reinvestment Act

Section 4103 – Requires that any funds made available to carry out this title be used to purchase health information technology only if such technology is manufactured, including the engineering and programming of any software, in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States

2. HR 689 Air Force One Built in America Act

Section 3 – The Secretary of Defense may enter into a contract for the procurement of an aircraft for use as Air Force One by the President only if that aircraft is manufactured in the United States by an American-owned company.

3. HR 580 Purchasing Low Emission Vehicles for Use in Government Act

Section 3 – In meeting the requirements of paragraph (1)(D), the Secretary, with the cooperation of the heads of other appropriate agencies, shall ensure that the Federal Government acquires not fewer than 100,000 plug-in hybrid electric vehicles manufactured in the United States by entities incorporated or organized under the laws of the United States

4. HR 595 American Steel First Act of 2009

Section 2 – The head of a covered Federal agency shall not obligate or expend funds appropriated to the agency, or provide financial assistance using funds appropriated to the agency, for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron and steel used in such project is produced in the United States.

5. HR 861 Strategic Targeted American Recovery and Transition Act of 2009

Section 1110 – None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron and steel used in the project is produced in the United States. Subsection (a) shall not apply in any case in which the head of the Federal department or agency involved finds that—

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron and steel are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron and steel produced in the United States will increase the cost of the overall project by more than 20 percent.