THE COST OF BUY AMERICAN MANDATES ON AMERICAN JOBS

Reviewing the "Buy American" Requirement on the Recovery Act's Anniversary

FEBRUARY 17, 2010

INTRODUCTION: THE RECOVERY ACT'S ANNIVERSARY

February 17, 2010, is the first anniversary of the signing into law of the *American Recovery and Reinvestment Act* (Public Law 111-5). The U.S. Chamber supported passage of this legislation, which provided a needed stimulus to the U.S. economy, but we had grave concerns with the inclusion of the "Buy American" provision in the law. Unfortunately, our concerns with the Buy American provisions have been realized. They are stunting job growth, slowing the initiation of projects, causing mass confusion, and creating an atmosphere of potential retaliation abroad.

On the first anniversary of the signing of the Recovery Act, the Chamber wants to highlight the ramifications of these counterproductive Buy American provisions in order to demonstrate why their inclusion in future bills will harm our economic recovery and the efficacy of such bills. Notwithstanding the positive effects from the Recovery Act, its impact could have been more pronounced and effective.

During debate on the Senate floor, the Chamber applauded approval of an amendment to ensure that the Buy American provisions were implemented in a manner consistent with U.S. obligations under international agreements. While not the complete solution that we needed, it was a helpful modification that limited the negative effects at the federal level.

> *The Buy American mandates have caused confusion and harmed the efficacy and efficiency of the Recovery Act.*

Today, it appears that the Recovery Act funds are being disbursed at the federal level in a manner consistent with U.S. obligations under international agreements such as the World Trade Organization's Government Procurement Agreement (GPA). However, a significant portion of the dollars that the Buy American requirement has an impact on are being spent at the sub-federal level where the GPA is oftentimes not applicable. As a result, the Buy American requirements are having major consequences on projects administered by state and local governments.

The problems with the Buy American provision are being noticed by constituencies at all levels, which instigated the need for the recent agreement announced on February 5, 2010 between the United States and Canada. The agreement allows Canadian companies the right to participate in projects funded under the Recovery Act at the federal, state, and local levels. This agreement is only applicable for Recovery Act funds and not similar requirements in future bills. However, it provides for a fast track consultation process if future pieces of legislation include similar requirements. In addition, Canada and the United States have agreed to offer each other permanent access for the majority of sub-federal level contracts under the provisions of the GPA.

This bilateral agreement is a positive development, but we still have tremendous concern with the Buy American provision in the Recovery Act, its negative consequences on projects and U.S. jobs, and its impact on our trade relations around the world.

THE COST OF BUY AMERICAN RULES

The Buy American requirement seems like a rational response during tough economic times, but the true ramifications of such a requirement are much to the contrary. Buy American mandates may be the best illustration of how well-intended policies can sound good, but, in fact, hurt the very workers and industries they are supposed to protect.

Of course, American companies would like to see American consumers buy their products. But 95% of the world's consumers do not live in the United States, and we need access to the world's markets to grow economically. We want other nations to "Buy American" too, at least some of the time. And the way to do that is through an open trading system where consumers—not the government—decide what they are going to buy. We should not be shutting off potential access to foreign markets.

American manufacturers are finding it difficult to comply with Buy American rules because it is often impossible to avoid sourcing at least a portion of their content from other countries. Many U.S. manufacturers rely on global production chains that integrate components from U.S. and non-U.S. sources. American manufacturers are frequently finding it difficult to comply with these new Buy American rules because it is impossible or extraordinarily expensive to avoid sourcing at least a portion of their content from other countries. The timing and cost for this disruption — coming in the midst of the worst economic recession in decades — could hardly be worse for U.S. manufacturers. Thus, due to global supply chains, these Buy American rules are being interpreted and enforced in a way that bars some U.S.-based manufacturers from bidding on projects.

With the president's goal as outlined in his State of the Union address of doubling our exports in five years, we cannot and should not be enacting more Buy American barriers that will make doubling our exports all but impossible.

Through our conversations with companies, we believe that there is a high degree of confusion among the various government contracting workforces as well as prospective and current contractors on what exactly is covered under the statutory language and the implementing regulations. This is causing a difficult and complex situation to become even worse, which is, in turn, causing many of our trading partners tremendous concern.

The contracting community and their government partners are keenly aware of the additional oversight and scrutiny that Recovery Act projects garner. We strongly believe that thorough and appropriate oversight is vital on these and all other federal projects, but it creates an environment that incentivizes a risk-averse nature, which is exacerbated by the confusion and the ambiguities in the law and implementing regulations. This situation is most prominent at the state and local levels for which these requirements are even more difficult to interpret and understand, owing in large part to these issues being completely unfamiliar concepts.

The Chamber released a trade study in September 2009, which is appended to this report, that estimates that any net increases in U.S. employment resulting from the Buy American provisions will quickly evaporate as other countries implement "buy national" policies in their own stimulus programs. Further, this study did not take into account the economic impacts of slowing the initiation and completion of projects due to the complexities caused by the Buy American provisions, which would dampen the job creation estimate. In the event that retaliation causes U.S. companies to lose just 1% of potential foreign stimulus procurement opportunities, the net employment loss to the United States from the Recovery Act's Buy American provisions could total 176,800. In the event retaliation escalates, U.S. job losses would mount dramatically.

MOVING FORWARD

We must limit the negative consequences of the Buy American requirements in the Recovery Act, and we must ensure that additional Buy American requirements are not included in future legislation. In our comments on the implementing regulations for the Recovery Act that we submitted in June 2009, we articulated many areas in which the regulations could be modified to lessen and limit the impact on the Recovery Act funds and speed up projects. We are still awaiting the final regulations to be issued, and we hope that some of our recommended changes will be included.

> *In a global economy with our greatest potential for growth outside our borders, we should not be shutting the door on those opportunities.*

While a few new bills have included Buy American language, they have not become law. We will continue to vigorously highlight the negative consequences of the Buy American provision in a plethora of forums. This should help people recognize and understand the complexities of this issue and the actual harm that such provisions have on our economy. We need to get past the headlines so that people can grasp the true impacts.

With the president's recent goal as outlined in his State of the Union address of doubling our exports in five years, we cannot and should not be enacting more Buy American barriers that will make doubling our exports all but impossible.

This is such an important issue that we must fight it in Congress, with the regulators, and in the court of public opinion. These Buy American requirements are hindering — NOT helping — U.S. companies and workers.

PROFILES OF AMERICAN COMPANIES HARMED BY BUY AMERICAN RULES

Compiled by the U.S. Chamber's TradeRoots team

Below are a few examples of American companies that are feeling the consequences of Buy American mandates:

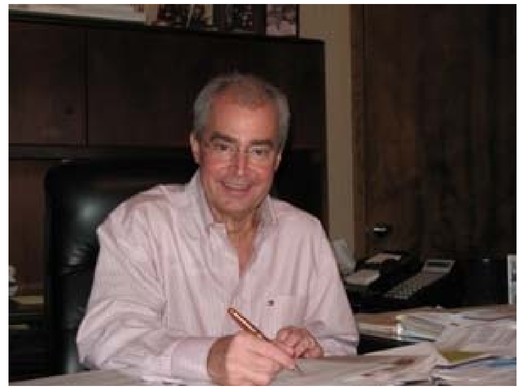
Deb LaVelle, Vice President of Sales & Marketing
Aqua-Aerobic Systems, Inc.
Rockford, Illinois
160 Employees
www.aqua-aerobic.com

We are extremely concerned that the Buy American provision is resulting in project delays, limited competition, increased costs, and reduced quality. Moreover, it poses a potential danger to the international portion of Aqua-Aerobic Systems' business. The company has been a leader in the design, application, and manufacturing of wastewater treatment equipment and systems for both municipal and industrial markets worldwide since 1969.

Many of Aqua's projects are with small and medium-size municipalities that are not willing to accept the requirements and potential risks associated with the Buy American provision. We are also concerned that our international business will be penalized due to these protectionist measures. A loss of sales revenue will affect our financial stability and may result in the loss of jobs.

Update: As anticipated, the Buy American legislation, regulations, and enforcement have become more complicated, and the provisions continue to put an increased hardship on small and medium-size manufacturers and suppliers. Our company has invested in several internal and external resources over the past year at a considerable cost. Although successful in meeting the compliance requirements for our customers, the result has not laid a path for more jobs but, instead, has created a paper menagerie. The ambiguity of the law and the continual updates and modifications, combined with the requirements of appropriated federal and state funds, put small and medium-size companies at a disadvantage. Larger corporations have the resources to hire lawyers and dedicate internal resources to ensure compliance, whereas small and medium-size owners, managers, and supervisors are scrambling to stay on top of the legal implications of the legislative changes. I believe when it comes time to inspect construction sites to ensure compliance, those responsible for enforcement will be inundated by the transgression of well-intentioned business executives and site managers who did not fully understand the Buy American rules of engagement.

David J. Culbertson, President
National Pipe & Plastics, Inc.
250 Employees
Vestal, New York
www.nationalpipe.com



We are very concerned that Buy American requirements will hinder our ability to service our Canadian customers. More than 10% of our sales are to customers in Canada, and this key market supports 25 jobs at our company. National Pipe & Plastics, Inc. has been producing polyvinyl chloride (PVC) pipe for residential, agricultural, commercial, municipal, and export markets since 1970. We have 250 employees in New York and North Carolina. Our sales territory covers the eastern half of the United States, east of the Mississippi River, and the eastern half of Canada.

We have already heard that, in accordance with the Buy American provision, our American-made products will be restricted at the Canadian border, and that our Canadian customers will be instructed to buy similar products from Canadian manufacturers. This backlash from Canada could cause our company and our employees in the United States to suffer dramatically.

With the recent agreement between Canada and the United States, we look forward to seeing if it has any material impact.

Ron Collins, President & CEO
JCM Industries, Inc.
Nash, Texas
Approximately 140 Employees
www.jcmindustries.com

Our company, JCM Industries, Inc., is a family-owned manufacturing business specializing in pipe fittings for repair, connection, and branching of all types of pipes worldwide. Potential backlash from the Buy American inclusion could impact our company significantly, because we have seen firsthand the confusion that this provision has created and the frustrating hang-ups that result. Exporting is vital to our business, and Canada and Mexico are key markets. While we have not yet experienced stoppages of our products into these markets, we do foresee problems. Currently, we sell more than 5% of our production abroad, and this allows us to employ seven to eight additional factory workers. These regulations threaten not only our sales but also jobs at our factory.

Update: The result of the Buy American provisions has been a paperwork nightmare. Every project that is even partially funded by Recovery Act funds is required to fulfill the paperwork requirements. This means that every participating contractor, supplier, and manufacturer is must fill out and submit a different set of paperwork certifying that the parts being supplied meet the Buy American clause of the Recovery Act. Every part, even a $10 one, requires certification, paperwork and proof that it fulfills the "Made in the U.S." requirements. Waivers are difficult to obtain and are rarely granted. In sum, the provision is causing huge delays, and the confusion regarding the provision is stalling otherwise viable projects. It is discouraging both companies from pursuing projects and contractors from bidding on projects.

ECONOMIC ANALYSIS OF THE COST OF BUY AMERICAN RULES

Imposition of Buy American Provisions of the Recovery Act:
The Cost for American Workers and Companies

by Laura M. Baughman and Joseph F. Francois[1]
September 2009

This paper is part of a larger study entitled *Trade Action – or Inaction: The Cost for American Workers and Companies*, available at www.uschamber.com/trade

Congress passed, and the President signed into law, the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") in February 2009. It provides tax relief and government funds for a wide variety of spending initiatives, totaling $787 billion. It includes a requirement that all iron, steel and manufactured products used in Recovery Act-funded public building and works projects be produced in the United States. It further includes a mandate that clothing, equipment and textile products purchased by the Department of Homeland Security with Recovery Act funds be made in the United States. The legislation authorizes limited waivers, and stipulates that the Buy American provisions be applied in a manner consistent with U.S. obligations under international agreements.

In the enthusiasm to create new U.S. jobs and to spend the stimulus money as quickly as possible, it is inevitable that rigorous attention to U.S. international agreement obligations will be difficult and the United States will be exposed to the risk of retaliation.[2] More immediately, moves by U.S. trading partners to employ their own "buy national" or "buy local" requirements to their stimulus spending initiatives have been reported.[3]

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1 Laura M. Baughman is President of Trade Partnership Worldwide, LLC in Washington, DC (www.tradepartnership.com). Dr. Joseph F. Francois is Managing Director of Trade Partnership Worldwide, LLC, and professor of economics at Johannes Kepler Universität Linz.

2 This is in addition to the economic impacts of slowing the initiation and completion of projects due to the complexities caused by the Buy American provisions.

3 See for example Annys Shin, "'Buying American' Puts Strain on U.S. Trade with Canada," *The Washington Post*, August 11, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/08/10/AR2009081002834.html; Raymond Colitt, "Brazil may challenge 'Buy American' at WTO," Reuters UK, February 17, 2009, http://uk.reuters.com/article/idUKTRE51F52920090217; Jamil Anderlini, "'Buy China' policy set to raise tensions," *Financial Times*, June 16, 2009, http://www.ft.com/cms/s/66454774-5a7c-11de-8c14-00144feabdc0,Authorised=false.html?_i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F66454774-5a7c-11de-8c14-00144feabdc0.html%3Fnclick_check%3D1&_i_referer=http%3A%2F%2Fwww.governmentcontractslawblog.com%2F2009%2F07%2Farticles%2Fstimulus%2Frecovery-act-update-us-stimulus-buy-american-prc-stimulus-buy-chinese-canada-and-wto-not-pleased%2F&nclick_check=1.

We estimate that any net increases in U.S. employment resulting from the new Buy American provisions will quickly evaporate as other countries implement "buy national" policies of their own. In the event that retaliation causes U.S. companies to lose just 1% of potential foreign stimulus procurement opportunities, the net employment loss to the United States from the Recovery Act's Buy American provisions could total 176,800. In the event retaliation escalates, U.S. job losses will mount dramatically.

Methodology

The Recovery Act appropriates a total of $787 billion in new government spending designed to stimulate the U.S. economy. About 13% of this total ($101 billion) is targeted at spending on infrastructure projects, the projects that would be impacted by the Buy American requirements.[4] This potential spending includes purchases of iron, steel, and other manufactured products as well as the services of contractors that undertake the projects. Based on data for U.S. federal procurement of manufactured goods in 2008, we estimate that $37 billion of the $101 billion would be spent on the procurement of manufactured goods.[5] Of this amount, we estimate that $3.2 billion is vulnerable to the new Buy American provisions.[6]

A $3.2 billion shift in federal procurement from foreign sources to domestic sources would create jobs in the up- and downstream sectors associated with that new production. It would also cost jobs in the importing/wholesaling sectors and all the up- and downstream sectors associated with that

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4 Derived from a detailed summary of investment spending included in the legislation and prepared by the House Committee on Appropriations, "Summary: American Recovery and Reinvestment Report Conference Agreement," February 2009, http://appropriations.house.gov/pdf/PressSummary02-12-09.pdf.

5 According to data provided by the Federal Procurement Data System ("Total Action by NAICS Report", found at www.fpds.gov), 36.57% of total Federal procurement in 2008 went to purchase goods produced in four North American Industrial Classification (NAICS) sectors: mining (NAICS 21); food and beverages, textiles and apparel and leather manufactures (NAICS 31); wood, paper, and printed products, petroleum and coal, chemicals, plastics, rubber and nonmetal manufactures (NAICS 32); and metals (e.g., iron and steel), metal products, machinery, computer and electronic products, transportation equipment, furniture and miscellaneous manufactures (NAICS 33). This share represents the total value of manufactured goods purchased by the federal government divided by total federal procurement on all goods and services in 2008. The share of manufactured goods that will be purchased by the $101 billion available under the Recovery Act for infrastructure spending is likely to be higher, which would mean that our estimate of the trade at risk is conservative.

6 FPDS reports that 10% of all federally procured products came from foreign sources ("Buy American Act Place of Manufacture Report"). Of that, 1.3% was sourced from trade agreement partners, or was exempted as the result of a public interest determination, a nondomestic availability determination, or an unreasonable cost of domestic product determination, among other possible exceptions. We assume that these exceptions apply to the new Buy American purchases, in the same proportions, both at the national and state and local levels (a similar database of state and local procurement purchases is not available). Therefore, 8.7% of Recovery Act purchases could come from foreign sources, but might not if U.S. procurement agents choose to implement the Buy American requirements more rigidly instead.

importing and wholesaling activity. Unwarranted discrimination against foreign suppliers could also result in retaliation by the governments representing those suppliers. This could happen in one of two ways: direct retaliation equal to the loss of sales to the United States, or imposing their own "buy national" requirements on public purchases by foreign governments.

To estimate these job effects, we rely on Bureau of Labor Statistics (BLS) calculations of the number of jobs required to produce $1 million in output. The so-called "employment requirements table" is based on 2006 input-output tables estimated by the BLS representing 2006 labor productivity levels. It shows, for example, that every $1 million of steel product manufacturing output requires 8.74 workers (1.5 workers in that sector directly and 7.24 elsewhere in the economy). Using the employment multipliers appropriate to each manufacturing sector, we find that transferring $3,219 million in purchases from foreign suppliers to U.S. suppliers creates 29,789 jobs throughout the U.S. economy. It costs 5,680 jobs associated with the loss in importing activity (estimated as the gross margin associated with $3,219 million in mining and manufacturing imports), for an estimated net gain of 24,109. However, retaliation would erase all of those employment gains and then some. If foreign governments reduce their imports of U.S. manufactured goods by $3,219 million (U.S. exports fall by that much), the total gain in U.S. employment would evaporate, with a net impact on U.S. employment of the 5,680 jobs lost to the absence of imports.

The impact of foreign "buy national" requirements would be even worse. At least 90 countries or regions (e.g., the European Union) have announced stimulus spending plans of their own, totaling well over $1.7 trillion.[7] If foreign governments impose their own "buy national" requirements on public purchases that lock U.S. goods and services providers out of even just 1% of this total spending, the net U.S. job impact could climb to a loss of 176,762.[8]

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7 "International economic stimulus plans," http://www.sites.google.com/site/maar258/; "FACTBOX-Europe's fiscal stimulus plans," Reuters, March 17, 2009, http://www.reuters.com/article/turkey/idUSLH44404720090317; Library of Congress, "Financial Stimulus Plans: Recent Developments in Selected Countries," http://www.loc.gov/law/help/financial_stimulus_plan.php#.

8 U.S. goods and services exporters would lose out on $17.2 billion in procurement opportunities abroad (1% of estimated stimulus spending in at least 90 countries). Each $1 million in U.S. output supports 11.66 jobs, so the loss in jobs associated with the loss in sales totals 200,871. Factoring in the net gain in U.S. jobs from Buy American (24,109) yields a net loss of 176,762 jobs.

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