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July-August, 2010: MSCI Advocacy Newsletter

Welcome to the MSCI Advocacy Newsletter, a monthly medium through which MSCI aims to keep its members updated on federal legislative and regulatory issues of importance to the metals industry. The following issue covers a number of broad topics that will affect the metals industry and builds a framework upon which details may be added in the coming months. For additional information on these and other law-related topics, go to www.winston.com and click on "Publications" or "Newsletters" under the "Resources" tab. Or, visit MSCI's [policy agenda](#) for other updated materials.

"Jobs" and Tax Legislation

This has been a spring and summer of the "jobs" and tax policy extensions that never seem to happen. In a story reminiscent of ground hog day, Senate Majority Leader Reid and Speaker Pelosi have re-bundled the same tax provisions into a dizzying array of "packages" – none of which were able to attract enough votes to pass before the August recess. While each package contained many popular and bi-partisan infrastructure and business incentive provisions, federal budget deficits have assumed a larger role at the consideration table. With a dwindling supply of "offsets" or "pay-fors", Republicans and moderate Democrats alike were simply unwilling to take a deficit vote so near the November elections. Fortunately, the prognosis for September is improving.



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For one, two major lead weights have been removed from the "jobs" debate. The costly Medicaid expansion and unemployment insurance provisions have now moved through congress independent of tax extenders. This acts to shield tax incentives from the often polarizing debate around the merits of enhanced social spending during a time of growing federal deficits.

Second, while controversy remains on some of the chosen offsets for the remaining package, including increased tax rates on private equity fund managers, venture capitalists and real estate investors, the desire to ensure continuity for popular financing tools and predictability on investments has thus far outweighed interests on the other side of the equation. Additionally, limitations previously placed on characterization of earnings at small professional service S-corporations have been moderated to appease key moderate voters such as Senator Snowe (R-ME).

When the House and Senate return in September, they will face a dizzying schedule. Majority Leader Reid just last week announced that he intends first to take up a bi-partisan small-business-focused bill that includes a \$30 billion lending fund to help small banks extend credit, small business hiring tax credits and extension of "bonus depreciation". He anticipates a vote on that bill the first legislative week of the September session. Soon after, the broader extenders measure will be debated in both chambers. And if all goes well, income taxes and other expensive and more controversial measures will see debate in October before the Congress adjourns again for elections.

Progress has also been made on energy-related jobs packages. In late July, [Chairman Levin released the outline of a bill](#) that would seek to promote "green-jobs" through various green manufacturing-related incentives. The Senate package will be revealed in September and will likely include similar provisions. Both measures should be popular, but they will struggle to find time on the legislative calendar.

The large elephant in the room, of course, is the burgeoning federal deficit versus continued spending debate that is sure to take center stage on the fall campaign trail. At the center of this debate will be whether the Bush era tax cuts, which are set to expire at year end, should be extended and if so to what degree. Also central to the debate will be reinstating of the federal estate tax that lapsed at the beginning of 2010 and without legislation will revert back to pre-2009 55% rates and lower exemption levels.



The lines are being drawn fairly clearly on the political front. The Republicans would like a straight extension of the Bush tax cuts coupled with a more generous estate tax exemption and lower estate tax rates going forward. At the same time, the Republicans are hammering the Democrats for freely spending the nation's treasure and doing little to address growing deficits. The Democrats counter that a straight extension of the Bush tax cuts is irresponsible and that the estate tax should revert to 2009 levels where the exemption was \$3.5 million and the rate for estates above the exemption was 45%. They argue that some Bush tax cuts should be extended, but not for those earning more than \$200,000 per year as an individual or \$250,000 per year as a couple.

President Obama and some in Congress have argued that the Republican position on tax cuts is a mere political one. They point out that tax cuts cannot be extended without finding some way of paying for them, pursuant to the pay-go rules of the House. Thus, they argue, it is hypocritical to argue both for deficit reduction and for continued tax cuts at the same time. Republicans counter this argument stating that increasing tax rates will stifle economic growth at a time when we cannot afford it. [Secretary Geithner takes the position](#) that allowing tax cuts to expire for the wealthiest 3 percent will help us to begin the process of bringing down long term debt. He finds support in former [FED Chairman Greenspan](#) who last week on Meet the Press argued that it would be disastrous to extend tax cuts without paying for them. Finally, current [FED Chairman Bernanke](#), while far more cautious in his comments, has suggested that continued tax cuts could be helpful, but that they are not the only option.

One thing is for certain with respect to congressional activity. Both Speaker Pelosi and House Ways and Means Committee Chairman Levin have emphatically deferred to the Senate to take the first step on both of these issues. Still miffed at the Senate's inactivity on climate legislation; members of the House Democratic caucus refuse to take another vote that their colleagues in the Senate are unable to honor – at least not during election season. The problem there is that key [Senate Democrats like Senator Kerry \(D-MA\) and Conrad \(D-ND\)](#), each Finance Committee members, have suggested that all tax cuts should probably be extended temporarily so as not to disturb economic growth.



Trade, China and Manufacturing

While trade and Chinese currency manipulation have been focal points for press coverage this year, little has actually happened in the halls of Congress. That may change in the coming months. Attempting to live up to the commitment of preserving and promoting the American manufacturing base and recognizing that America has lost 1/3rd of its manufacturing jobs in the past decade, House Majority Leader Hoyer recently rolled out his and Speaker Pelosi's "[Make it in America](#)" agenda. The agenda is not one single bill, but is instead envisioned as a series of bills that together will improve manufacturing, promote exports, right trade imbalances and ensure adequate enforcement of trade laws. At this point, as many as twenty bills are being considered under the "Make it in America" umbrella.

To date, four measures that are part of the agenda have passed the House. The first was [H.R. 4380](#), which suspends tariffs on roughly 600 import items to lessen the expense of those supplies for certain United States manufacturers. Since these tariff bills are treated under the House rules like earmarks, many Republicans chose not to support the bill despite their agreement on the policy. The majority, however, did support in a 378-43 successful vote. The Senate approved the same bill a few days later on July 26th.

The second measure to pass the House was [H.R. 5156](#), a bill to promote the development of clean energy technology through the Commerce Department. A third measure was [H.R. 4692](#), introduced by Representative Daniel Lipinski (D-IL). Titled the National Manufacturing Strategy Act of 2010, it will require that the President issue a national manufacturing strategy every four years so that U.S. manufacturing is a persistent emphasis of every White House. The Commerce Department will also play an advisory role under this legislation. Finally, the fourth measure to pass the House was [H.R. 1875](#), a bill to create an emergency commission on the national trade deficit.

While the remaining bills are largely unknown at this juncture, a few are almost certain to come up in debate. They are as follows:

- ❖ [H.R. 2378](#), a bill sponsored by Representative Tim Ryan (D-OH) who is the chairman of the House Manufacturing Caucus. H.R. 2378 is a bill that would seek to end China's practice of pegging the yuan to the dollar. While China has made progress in past months on this issue, most believe that their action is not enough and few trust that they will not revert back to old practices as soon as the international political heat dissipates. MSCI continues to follow this



debate and voice opposition to China's currency policy. This will be a widely supported but controversial bill. It may not actually receive a vote.

- ❖ [H.R. 5312](#), a bill that would require that the total value of Chinese-made goods the federal government buys cannot exceed the amount of U.S. made products purchased by the Chinese government. This is also a controversial bill.
- ❖ [H.R. 3786](#), a bill that would not permit the United States to lower tariffs with another country unless that country similarly lowered tariffs on goods manufactured and produced in the United States.
- ❖ [H.R. 4678](#), a bill sponsored by Representative Betty Sutton (D-OH) that would require foreign manufacturers to have registered agents in the United States that agree to receive notice of lawsuits, effectively requiring that such manufacturers subject themselves to personal and subject matter jurisdiction in United States courts. The National Association of Manufacturers opposes this bill out of fear that it would strain our relationships with suppliers.
- ❖ [The ENFORCE Act](#), a bill sponsored by Senators Wyden (D-OR), Snowe (R-ME) and Schumer (D-NY) that is aimed at better and more efficient enforcement of United States trade laws. The bill would expand Commerce and Customs and Border Protection authority to investigate certain circumvention activity and fraudulent schemes and it would provide a more transparent process for United States stakeholders to participate in.

Climate and Energy Policy

As of last month, the debate around climate legislation was whether the Kerry-Lieberman economy wide approach would be able to attract 60 votes or whether Senate Majority Leader Harry Reid (D-NV) would need to accept a more moderated approach such as the one offered by Senator Bingaman (D-NM) that would limit the cap on greenhouse gas emissions to the utility sector. It was not long before even that approach seemed untenable and observers believed that the Senate would have to settle for passing an energy-only bill like the one passed out of the Senate Energy Committee earlier in the year. That bill included a Renewable Electricity Standard which would require power producers to increase the percentage of supply that comes from renewable sources such as wind, solar and biomass.

By the last week of July, it had become evident that no energy or climate legislation would get enough votes to pass before recess. In fact, Reid expressly stated that no energy bill would receive



consideration until the fall. Great skepticism now surrounds the viability of energy and climate bills given the short window of opportunity and highly polarized election season ahead. That said, [Carol Browner, President Obama's senior climate and energy adviser](#), said two days ago that the White House is "deeply disappointed" that Congress hasn't passed climate legislation and that the White House will not give up on it this year. Browner even went on to suggest that the measure could pass in a lame duck session between November elections and Christmas where certain members may not let their votes be so influenced by the politics of the day. Majority Leader Reid has already scheduled a Senate session during lame duck and has himself suggested that some "substantive" legislation may be considered during that period.

Use of the lame duck session for this purpose would infuriate Republicans in both chambers who charge that it is an abuse of power and would usurp the will of the people by passing contentious legislation outside the reach of political accountability. In fact, Representative Tom Price (R-GA) brought a resolution to the House floor yesterday that would require Congress not to convene unless in the case of a national emergency during that time. The resolution failed.

Another scenario that invokes a negative response is the notion of adding cap and trade in conference. For this to happen, the Senate would pass a slimmed down energy package, presumably including a Renewable Electricity Standard. Passing such a package has strong support from the American Wind Energy Association, United Steel Workers, Sierra Club and Environment America, each of whom argue that good paying manufacturing jobs will continue to be shipped overseas if we don't act soon. Should such a measure pass, the House and Senate would then meet in conference to sort out the differences between their respective bills. Since the House-passed bill includes cap and trade provisions, they could theoretically be added to the final measure and reported out for a vote. This scenario is unpleasantly reminiscent of the Health Care Reform process for many Republicans. At this juncture, it is very difficult to predict how the energy and climate debate will unravel in Congress.

However, one thing for sure is that the lack of congressional activity shines a bright light back on the EPA. As you will recall, in December, the EPA released a finding that greenhouse gas emissions endanger public health and welfare. In light of that finding, the EPA intends (and is, in fact required) to regulate greenhouse gas emissions from both mobile and stationary sources. This spring the EPA issued a rule clarifying how it intends to regulate stationary sources of greenhouse gas emissions. Under this "tailoring rule," EPA intends to begin regulating the largest stationary sources of greenhouse gas emissions by January 2011. Proponents of climate change legislation in the past had



hoped that EPA's impending regulations would provide the needed momentum for a climate change bill to be passed in the Senate this year. Since the likelihood of such legislation is substantially diminished, the question of whether and how to use the Clean Air Act has come into greater focus.

In June, the Senate blocked Senator Lisa Murkowski's (R-AK) resolution of disapproval to veto the authority of the EPA to regulate greenhouse gas emissions under the Clean Air Act by a vote of 47-53. While the bill was never expected to pass, it was an important message from those who believe that Congress is the appropriate venue for determining our climate policy and not the EPA. Since this is far more a regional than ideological issue, we should expect to see efforts to postpone or prohibit EPA activity resurface again as early as September. In fact, new voices are joining the chorus - Democrats at that. Representative Rick Boucher (D-VA) recently stated that "the time has come to prevent the EPA from going forward next year with regulations on stationary sources". Senator Jay Rockefeller (D-WV) has joined Mr. Boucher. Of course, both only support a two year delay of EPA authority and not an injunction as sought by the Murkowski amendment. Environmentalists, on the other hand, are pushing very hard to keep the EPA ball rolling as it is the best immediate chance for regulating carbon.

In other developments, last week the Sierra Club, a number of states and a long list of associations filed petitions in the U.S. Court of Appeals for the District of Columbia challenging the EPA and its "Tailoring Rule". The rule is designed to limit the regulation of green house gases (GHGs) to the largest emissions sources, starting with those greater than 75,000 tons per year.

The Center for Biological Diversity's (CDB) petition seeks to force the EPA to regulate all emitting sources greater than 100 tons or potentially an additional 6 million GHG sources. CBD, which has a successful track record on federal GHG lawsuits, is asking the federal courts to review EPA's implementation of their new rule under the Clean Air Act. Full implementation of GHG regulation under the Clean Air Act, could mean that schools, hospitals, many small manufactures and service centers could be subject to additional EPA new source review and permitting requirements, for more information see [MSCI's position on the EPA's GHG regulation](#).

Materials may be found at the following links:

[House Climate Bill Summary](#)

[Kerry-Lieberman American Power Act and Accompanying Materials](#)



[Kerry-Lieberman Benefits for American Manufacturers](#)

Labor & OSHA Developments

On July 21st, the House Education and Labor Committee approved a "[mine safety](#)" bill (H.R. 5663) in response to the West Virginia mine explosions in April of this year. Hidden in this bill are broader provisions applicable to all who fall under the regulation of the Occupational Safety and Health Act (OSHA). The provision included in H.R. 5663 would amend the 1970 OSHA law so that workers would have 180 days rather than 30 days to file complaints with whistleblower protections. The measure would also increase civil and criminal penalties for OSHA violations. Critics argue that this is an overly broad provision to be included in a mine-specific bill. Supporters say that this is a perfect time to address the forty year old law and that 180 days is consistent with recently enacted whistleblower protection elsewhere under federal law.

In addition, rule making possibilities are heating up at the Department of Labor. In recent months, the Department published its "2010 Regulatory Agenda". Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. According to the Occupational Safety and Health Administration ("OSHA") at the United States Department of Labor, their role is "to assure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance." [The 2010 Regulatory Agenda includes a newly branded "Injury and Illness Prevention Program"](#).

More specifically, the injury and illness protection program and resulting regulations are part of the Department's "Plan/Prevent/Protect" regulatory and enforcement strategy. According to labor officials, due to a significant imbalance between the number of labor inspectors and the quantity of entities to be inspected, the status quo has always been "catch me if you can". Under the new strategy, the Department will require employers to take proactive steps that are open and transparent. As the title of the strategy reflects, employers will:

1. Be required to create a plan for identifying and remediating risks of legal violations and any other injury or illness risks to workers. Workers will be given the opportunity to participate in the planning and monitor implementation;



2. Be required implement the plan in a way that demonstrates that it is not a mere "paper process" but instead is an actual and viable plan;
3. Be required ensure that the plan's objectives are met on a regular basis i.e. that the plan actually protects workers from violations.

As mentioned in the last issue, the next informal stakeholder meeting on this is scheduled in Sacramento, CA in August. Anyone interested in participating in the meetings should submit a notice of intent to participate through the following [link](#). Additional background on this issue was [posted in the Federal Register](#) last month. MSCI will continue to monitor developments and report on them as appropriate.

Campaign Finance

As discussed in the prior newsletter, the House of Representatives recently passed the DISCLOSE Act ([H.R. 5175](#)), a bill to place limitations on the impact of a Supreme Court ruling (*Citizens United v. Federal Election Commission*) that would allow corporations, non-profits and labor unions to use money from their own treasuries to fund political advertisements close in time to elections. In effect, the Citizens United decision holds that corporations are afforded the same First Amendment rights of free speech as individual with respect to campaign spending. The House-passed bill seeks to temper that decision by restricting government contractors, corporations with foreign ownership, and TARP (Troubled Asset Relief Program) recipients from contributing to campaigns. The bill would also impose disclosure requirements to ensure that funding streams are transparent to the public and that those supporting political advertisements are forced to take claim for the message. It would not affect labor unions in the same way.

Senator Schumer (D-NY) introduced a Senate version of the legislation (S. 3295). However, on July 27th, the Senate rejected a motion to limit debate and move toward a vote by 57-41. 60 votes were needed. The bill is substantially similar to its House counterpart, but it would require corporate CEOs to appear in any ads funded by their organizations. Although Senator Schumer lost, he has vowed to fund Republican support and continues to fight for passage in the fall. This too is likely to be a major campaign issue as the elections near. Early polls after the Supreme Court decision was released showed 70% of Americans opposed to this type of corporate spending and the [President released a policy statement](#) on July 27th, calling the bill "a matter of urgent importance".



Most business groups remain adamantly opposed to both the House and Senate measures. MSCI strongly opposes this legislation and continues to coordinate a letter writing campaign against it. You can join that campaign [here](#).

Federal Register Notices

Below are a series of Federal Register Notices of interest to the metals industry. Additional information or full notices may be found at the Government Printing Office [web site](#).

- ❖ **DEPARTMENT OF COMMERCE; International Trade Administration (ITA); Import Administration – August 9, 2010 - Notice, 75 FR 47780**
 - **SUMMARY:** In response to requests from respondent, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox) and petitioners, 1 the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico. This administrative review covers imports of subject merchandise from Mexinox S.A. during the period July 1, 2008, to June 30, 2009. Petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, and North American Stainless. We preliminarily determine that sales of S4 in coils from Mexico have been made below normal value (NV). If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and NV. Interested parties are invited to

- ❖ **DEPARTMENT OF COMMERCE; International Trade Administration (ITA); Import Administration - June 29, 2010 - Notice, 75 FR 47777**
 - **SUMMARY:** On January 29, 2010, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products from Italy. The review covers one manufacturer/exporter, Evraz Palini Bertoli S.p.A. (Palini). The period of review is February 1, 2008, through January 31, 2009. Based on our analysis of the comments



received, we have made changes in the margin calculation for Palini. Therefore, the final results are different from the preliminary results. The final weighted-average dumping margin for Palini is listed below in the section entitled “Final Results of the Review.”
EFFECTIVE DATE: August 9, 2010

- ❖ **ENVIRONMENTAL PROTECTION AGENCY - 40 CFR Part 98 - Mandatory Reporting of Greenhouse Gases**
 - **SUMMARY:** EPA is proposing to amend specific provisions in the GHG reporting rule to clarify certain provisions, to correct technical and editorial errors, and to address certain questions and issues that have arisen since promulgation. These proposed changes include providing additional information and clarity on existing requirements, allowing greater flexibility or simplified calculation methods for certain sources in a facility, amending data reporting requirements to provide additional clarity on when different types of GHG emissions need to be calculated and reported, clarifying terms and definitions in certain equations, and technical corrections.

- ❖ **DEPARTMENT OF COMMERCE - International Trade Administration Import Administration - Certain Activated Carbon From the People’s Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review**
 - **SUMMARY:** Background: On May 28, 2010, the Department of Commerce (“Department”) published in the Federal Register a notice of initiation of an administrative review of the antidumping duty order on certain activated carbon from the People’s Republic of China (“PRC”) covering the period April 1, 2009-March 31, 2010. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 75 FR 29976 -29980 (May 28, 2010) (“Initiation”).

- ❖ **DEPARTMENT OF COMMERCE - International Trade Administration - Import Administration - Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil and Japan: Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders**
 - **SUMMARY:** On April 1, 2010, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on hot-rolled flat-rolled carbon-quality



steel products from Brazil and Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted expedited (120-day) sunset reviews for both orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping.

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