



July 6, 2009

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### **June, 2009: MSCI Advocacy Newsletter**

Welcome to the June 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](http://www.winston.com) and click on "Publications" or "Newsletters" under the "Resources" tab.

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### **Health Care Reform**

The Senate Finance Committee (Chairman Baucus (D-MT)) and the Senate Health, Education, Labor and Pensions ("HELP") Committee (Chairman Kennedy (D-MA), by way of Senator Dodd (D-CT)) continue to [work together](#) with a goal of negotiating health care reform legislation and moving it to the floor by President Obama's October deadline.

The HELP Committee has, through Chairman Kennedy and Senator Dodd, already [introduced health care reform legislation](#) and begun to mark-up it up in committee. In its current form, the legislation seeks to reduce cost, emphasize prevention, expand coverage to the currently uninsured, and improve the current health care delivery model. The Committee is expected to continue work when they return to Washington from the holiday break on July 6<sup>th</sup> and Senator Dodd has set a target completion date of July 10<sup>th</sup>. That said, the HELP Committee has run into a series of challenges given that the legislation is accompanied by enormous cost estimates, and some of the more controversial provisions have been left



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blank in the actual legislative text provided to committee members. These blanks include provisions that: (1) would create a public health insurance plan to compete directly with private insurance; (2) would require certain employers to provide insurance coverage for their employees; and (3) would establish a pathway to market for generic biotechnology drugs. Few in the Senate believe that this legislation will succeed without substantial modification, and most eyes are set on the Senate Finance Committee as the venue with the best chance to arrive at a realistic, bi-partisan compromise.

The Senate Finance Committee is expected late next week or early the following week to release its draft bill. Thus far, Chairman Baucus has held his legislative language very close to the vest in an effort to persuade various powerful stakeholders to remain engaged in the process. Notwithstanding the lack of legislative language, Chairman Baucus has set a target mark-up date of July 14<sup>th</sup> and expects to remain in negotiations for the ensuing weeks. The general understanding is that this date is likely to hold now that Chairman Baucus has found sufficient offsets for a \$1 trillion package and has received cost estimates for his various "policy options" (The Congressional Budget Office this week announced that the Finance committee proposals were achievable within a \$1 trillion budget). With all information on hand, Baucus has expressed his opinion, stating that he will be able to move on legislation "sooner than expected". The product of the Senate Finance Committee will need to be reconciled with whatever the HELP Committee produces.

In the House, the Chairman of three separate Committees of jurisdiction (Ways & Means, Education & Labor and Energy & Commerce) joined last week to introduce one comprehensive health care reform measure on which two of the committees held hearings on June 23<sup>rd</sup> and 24<sup>th</sup>. Throughout the hearings and drafting of the tri-committee bill, there appeared no effort to gain Republican support. Unlike the Senate where, absent a "veto-proof Democratic Majority" of 60 votes, a significant attempt must be made to bridge the gap and achieve some bi-partisan consensus, the House has a large Democratic majority. This was evidenced just last week when the House successfully passed an unpopular climate measure despite having more than 40 Democrats break rank and vote against the measure.

The most controversial proposals in the current health care reform debate are as follows:

- ❖ Repeal or Limitation of the Currently Unlimited Tax Exclusion for Employer Benefits: Employees and members of their families currently pay no taxes on employer-provided health care benefits. This is a long standing precedent in tax law and changing course now concerns many politicians. However, many argue that taxing a portion of those benefits will result in more efficient consumption of health care services since employees will no longer be sheltered from the actual cost of consumption. Additionally, the tax would raise a substantial portion of the funds needed to cover the cost of health care reform (more than \$400 billion over 10 years). Chairman Baucus remains wary of the option, but all indications are that he will introduce a bill that



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includes a "limited" exclusion. The limitation is expected to be based on the average "value" of health care plans with a ceiling on benefits exempt from taxation in the range of \$15,000 to \$17,000. If Democrats and the President are successful in selling this proposal to their own party on policy grounds, they must then account for regional variations in health care cost in order to maintain the support of their caucus. This may prove a challenge.

- ❖ The "Public Option": A "public option" would be a government or quasi-government (possibly administered by the private sector) insurance program that would compete head to head with private insurance products available through a national health insurance "exchange". On a level playing field with private plan choices, the public option would theoretically need to offer the same benefits, abide by the same insurance reforms, and follow provider network requirements and other consumer protections. The House Republicans have drawn a line in the sand, indicating that they will NOT support any plan with a public option included. In the Senate, Senator Conrad (D-ND) and others are focusing on a compromise that involves a "cooperative" structure where state level cooperatives could band together to negotiate insurance rates.
- ❖ Employer Mandate: Largely modeled after Massachusetts, the proposals all have considered some form of "employer mandate". In a strict sense, all employers of a certain size would be required to provide health insurance options for their employees. Given significant push-back, a compromise is in the making. Likely, a compromise will require employers to pay part of the cost of insurance if their workers are covered by Medicaid or the entire cost if the workers are poor enough to qualify for certain subsidies expected to be included in the final legislation. In support of congressional Democrats, [Wal-Mart sent President Obama a letter](#) this month announcing that it would support a proposal to require all companies to provide health insurance to all employees.
- ❖ Various "Revenue Raisers": While there are many potential federal policy areas where the Congress can look to find cost-savings sufficient to pay for health care reform, one alarming option already mentioned by the Senate Finance Committee is the elimination of last-in, first-out (LIFO) accounting for inventories. By abolishing LIFO, the administration immediately can tax LIFO reserves to fund health care reform. MSCI strongly encourages all members to contract their senators to voice opposition to LIFO repeal. For more information see the MSCI [website](#).

The issue of a public benefit option is hotly contested by Republicans as an unnecessary expansion of government. Conversely, it is broadly supported by a coalition of health care advocacy groups, unions and Democrats. According to the Kennedy outline, his committee is seeking to include a public insurance option along with employer and individual mandates. This stands to reason as Massachusetts is the incubator for "individual mandates", having passed a law in 2006 that requires all Massachusetts



residents to buy insurance or pay a fine. The program has been met with mixed reviews and mixed notions of success. In either case, Kennedy's position is thought to be much more liberal than Chairman Baucus's approach is likely to be. It is worth noting that President Obama spoke out against individual mandates on the campaign trail, but is now noticeably silent on the topic, and perhaps, leaning toward supporting it.

President Obama also voiced a strong opposition voice to the notion of taxing health care benefits when campaigning in 2008. Now, taxing employer sponsored benefits is seen as an integral part of the three congressional plans. From a practical standpoint, without modifying the exclusion, it is highly unlikely that the Congress will find the more than \$1 trillion needed to fund health care reform. In either case, the President is expected to weigh in much more seriously and encourage an expedited process after he returns from a July 5- 12 trip to Europe and Africa.

#### Reference Materials:

- ❖ HELP Committee [Bill](#)
- ❖ HELP Committee [Summary](#)
- ❖ Senate Finance Committee Policy Papers: (1) "[Reducing Costs and Improving Quality in the Health Care Delivery System](#)"; (2) "[Expanding Health Care Coverage: Proposals to Provide Affordable Coverage to All Americans](#)"; (3) "[Financing Comprehensive Health Care Reform: Proposed Health System Savings and Revenue Options](#)".
- ❖ House Tri-Committee [Bill](#)
- ❖ House Tri-Committee [Summary](#)
- ❖ House Tri-Committee [Additional Materials](#)

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## Climate & Energy

On May 21, 2009, the House Energy and Commerce Committee approved H.R. 2454, "[The American Clean Energy and Security Act](#)," by a vote of 33 to 25. Since that time, Chairman Waxman has worked hard to enlist the necessary support of moderate Democrats from industry, coal and agriculture heavy states to support the measure. Ultimately, on June 26<sup>th</sup>, the House narrowly passed the Act by a vote of



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219 to 212. The Act is 1500 pages long and was most recently revised by a 300 page amendment in the last few hours of debate. The "manager's amendment" added several new sections, a new subtitle on energy efficiency and green housing programs, and a new title creating an offset credit program for agricultural and forestry offsets. Most think that the House measure will serve as little more than a "guidance" document for the Senate. Given narrow Democratic margins and 60 votes needed to stop a filibuster, the Senate will have to tread far more carefully to ensure consensus.

The Act establishes a cap and trade system for greenhouse gas ("GHG") emissions and a comprehensive system to spur investment in renewable energy. Specifically, the Act would set an aggregate cap on GHGs and establish a market for entities to trade GHG emission allowances and offset credits. It calls for reducing pollution to 17% below 2005 levels in 2020, 42% below 2005 levels in 2030, and 83% below 2005 levels in 2050. In addition, the measure requires that 15 percent of the nation's electricity come from renewable sources including wind, solar, hydro and geothermal by 2020.

To achieve these reductions, the Act requires electric utilities, liquid fuel producers and importers, and large industrial sources of GHGs to hold an emissions allowance for each ton of carbon dioxide equivalent emitted, produced or imported. The compliance obligation is phased in for industrial stationary sources (requirements begin in 2014) and local natural gas distribution companies (requirements begin in 2016). The number of emission allowances declines over time so that entities are permitted to emit less and less GHGs. Under certain conditions, entities can buy credits from each other if their emissions are greater than their allowances.

The primary concern with this legislation is the cost of compliance. In reference to expected increases in consumer electricity costs, some Republicans are calling the bill an "energy tax." The Congressional Budget Office has estimated that the total cost of the cap and trade system would be \$175 per household in 2020. For the manufacturing industry, concerns over reducing its own carbon footprint are heightened by the increased cost of electricity that will inevitably occur when utilities pass on compliance costs to ratepayers.

Increasing industry costs have caused many to argue that this legislation will adversely impact domestic manufacturers and place them at a competitive disadvantage to manufacturers in countries where similar "cap and trade" regulations do not exist. To address these international competitive concerns, the bill includes a title called, "Transitioning to a Clean Energy Economy". The title is specifically designed to benefit industrial sectors, including iron, steel, aluminum, cement, glass, ceramics, chemicals, and paper. First, to smooth the transition into carbon regulation, companies in these specified industries would receive a percentage of their allowances for free until 2025. If, through efficiency, the company is able to emit less, the company can sell the additional allowance permits into the market.



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In addition to ensuring a certain amount of free allowances, Representative Inslee (D-WA) and Representative Doyle (D-PA) were instrumental in including in the legislation "transitional rebates" for certain energy-intensive manufacturers burdened by strong international competition. Acknowledging that increased costs could cause production, jobs, and emissions to be exported to countries without carbon emission controls, Inslee, Doyle and other industry-focused Democrats advocated for rebates that will cover the cost of direct (from manufacturing process) and indirect emissions (associated with energy consumption) until 2025. In addition importers of competing products would have to purchase special international reserve allowances to make up for emissions associated with manufacturing in their unregulated home countries. These provisions are widely considered to be an excellent deal for manufacturers that are subject to robust international competition.

Some have questioned whether the trade provisions are compliant with international rules and whether border measures imposed on manufacturing output from countries that do not have similar carbon regulations will merely serve to increase friction with allies. Most manufacturers see the trade provisions as [protecting trade-sensitive U.S. industries](#), including steel, cement and chemical manufacturers, from competitors in countries that don't cap their output of greenhouse gases.

The bill will now proceed to the Senate, where it will be revised substantially in several Senate committees. Senate Environment and Public Works Chairwoman Boxer (D-CA) is expected to begin hearings on July 7<sup>th</sup>. Energy Secretary Steven Chu, EPA Administrator Lisa Jackson, and Agriculture Department Secretary Tom Vilsack are all scheduled to testify. Senator Boxer and Majority Leader Reid (D-NV) have signaled that they would like the Senate Agriculture, Finance and Foreign Relations Committees, each of which have partial jurisdiction over the legislation, to complete their own mark-ups by mid September so that the legislation can be considered on the Senate floor this fall. This is an ambitious agenda, particularly in light of its parallel consideration with health care reform. Chances of the legislation's success will rest upon a number of factors, not the least of which is whether President Obama can persuade fence-sitting members of his own party to support it.

To that end, attention is quickly focusing on about 15 Democratic moderates and a handful of Republican moderates who are on the fence. Geographic and industry considerations will play prominently, including that: (1) mid-west Democrats will have a difficult time supporting legislation that is perceived as harmful to the auto and manufacturing industries (Senator Brown (D-OH) and Senator Levin (D-MI)); (2) farm states will need assurance that farmers are able to benefit from their tree planting and other green activities that generate offset carbon credits to sell into the compliance market (Senators Dorgan (D-ND), Bayh (D-IN), Conrad (D-N.D.), McCaskill (D-MO), Tester (D-MT), Nelson (D-NE)); (3) senators from coal-mining states such as Pennsylvania and West Virginia will feel obligated to fiercely defend jobs in their home state (Senators Casey (D-PA), Specter (D-PA), Rockefeller (D-WV), Byrd (D-WV)); (4)



senators from the southeast will remain hesitant of the renewable power standard that heavily rewards wind and solar, sources that are not prevalent in their states (Senators Lincoln (D-AR), Pryor (D-AR), Webb (D-VA), Warner (D-VA), Hagan (D-N.C.)); and (5) freshman senators will heavily consider re-election aspirations when casting a vote (Senators Gillibrand (D-NY) and Begich (D-AK)). In summation, few believe that anything more than committee consideration can be achieved before year end.

For a summary of the "American Clean Energy and Security Act", click [here](#).

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## Labor

### A. The Supreme Court

While Congress is largely preoccupied with Climate Change and Health Care Reform legislation, labor issues continue to simmer on the back burner. Most recently, the Supreme Court ruled (in a 5-4 opinion) against the City of New Haven in their decision to discard results from promotion qualification exams merely because most minorities failed to qualify. The court held that such race-based actions were impermissible under Title VII of the Civil Rights Act "unless the employer can demonstrate a strong basis of evidence that had it not taken the action, it would have" otherwise been liable under Title VII. In other words, the court recognized that there are tensions under Title VII, but that the City could not throw out the results merely because they feared litigation from certain minorities. Instead, the court spelled out a rationale for why the test results must be upheld in favor of the White and Hispanic firefighters who, in fact, outperformed minority candidates.

Title VII of the Civil Rights Act prohibits employment practices that involve disparate treatment or that have a disparate impact upon a protected class. In this case, the City of New Haven administered objective examinations to determine which firefighters were best qualified for promotion. When the test results showed that whites had vastly outperformed minority candidates, the City opted to discard the results due to the statistical racial disparity. White and Hispanic firefighters who passed the exams but were denied promotions because the results were discarded sued the City, claiming the action discriminated against them based on their race in violation of Title VII of the Civil Rights Act. The City responded that had it certified the test results, it could have faced Title VII liability for utilizing a practice that had a disparate impact on minority firefighters.

However, under the disparate impact statute, if a plaintiff can demonstrate that an employer uses a practice "that causes a disparate impact on the basis of race, color, religion, sex, or national origin," an employer may defend against liability by showing: (1) that the employment practice is job-related to the



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position in question; (2) that the practice is consistent with business necessity; and (3) that there is no alternative employment practice that is less discriminatory and serves the employer's needs. The Court found that the New Haven firefighter exams were job-related and consistent with business necessity, and that there was no evidence of a valid, less-discriminatory testing alternative to the exam in question. The Court explained that "fear of litigation alone cannot justify an employer's reliance on race to the detriment of those who passed the examination and qualified for promotion."

This decision may make it more difficult to prove discrimination absent evidence the discrimination was intentional. Under this ruling, employers must take great care when attempting to remedy employment practices that appear to have a disparate impact upon a protected class. If the practice is job-related and without a valid, less discriminatory alternative, employers will be prohibited from remedying the practice through actions that adversely affect a Title VII protected class.

### B. The Congress

The Congress continues to work behind closed doors to advance union friendly legislation. Adding promise to the Democratic agenda is Senator Al Franken's (D-MN) imminent seating as the 60<sup>th</sup> Democrat in the Senate. The Minnesota state Supreme Court ruled Tuesday that Franken was the winner of that election, paving the way for him to be sworn in as early as Monday of next week. The decision brought an end to a seven-month, multimillion-dollar series of recounts and legal battles over the hard-fought election. Senator Franken will have a seat on the Health, Education and Labor Committee as well as the Senate Judiciary Committee, each of which have broad jurisdiction over matters such as labor organizing and employment discrimination.

As a liberal Democrat, Franken is expected to support [the Employee Free Choice Act](#) (EFCA) and other labor-related legislation. As stated in the past, the EFCA would amend the National Labor Relations Act to allow unions to bypass secret ballot elections and demand employer recognition of the union's representative authority through a process called "card check". Essentially, unions would need only to obtain signed authorization cards by a majority of employees in order to organize. Industry's chief concern is that such a process would allow for intimidation since the cards would be signed in public and the company would be disadvantaged in not receiving fair warning of an organizing campaign. In addition to eliminating a federally-supervised, secret ballot election, the EFCA calls for mandatory and binding arbitration for first contracts if the union and company cannot agree to terms within 120 days.

Since making a [statement](#) in opposition to the EFCA as written, Senator Arlen Specter (D-PA) is now changing his tune and inferring that a compromise is possible. Two other Senate Democrats presumed to be on the pro-EFCA side of the ledger are now blurring the lines. Senator Blanche Lincoln's (D-AR)



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recently announced her [opposition](#) to the EFCA as it is written, stating that the recession is not the time to reform our labor laws. Recently, Senator Diane Feinstein (D-CA) put forth a compromise proposal of her own. Senator Feinstein's legislation would require mail-in elections to preserve the secret ballot rather than allowing workers to unionize simply if a majority of workers sign authorization cards. The above mentioned senators join a growing list of Democratic senators considered not fully supportive of the bill as written. The list includes Senators Mark Pryor (D-AR), Ben Nelson (D-NE), Mark Udall (D-CO), Michael Bennet (D-CO), and Thomas Carper (D-DE).

The National Association of Manufacturers and the U.S. Chamber of Commerce both remain opposed to the EFCA in any form, arguing that it is fundamentally [flawed](#). The Chamber organized a fly-in on June 2 and June 3 to Washington. Their members carried the message that a compromise version of card check would NOT be acceptable.

On the other side, an international coalition of institutional investors sent Congress a letter urging passage of the Employee Free Choice Act. Several of the letters' signatories were individuals involved in union pension investing, including Daniel F. Pedrotty, director of the AFL-CIO's office of investment, and Stephen Abrecht, of SEIU Employees and Affiliates Pension Plans. The letter stated that EFCA would "help balance the relationship between worker and employer in the U.S." A group of religious leaders in the U.S. announced they are forming an organization, "Faith Leaders for Workplace Fairness," to promote passage of the proposed EFCA. More than 200 religious leaders of myriad denominations signed statements supporting EFCA. And finally, celebrities from Hollywood and Broadway released a video endorsing the passage of EFCA and urging viewers to lobby their members of Congress to do the same. The video was developed by a number of entertainment unions that are affiliates of the AFL-CIO including Actors' Equity Association; the American Federation of Musicians; and the Screen Actors Guild. Among the performers appearing in the videos are actress Amy Brenneman and comedian Jerry Stiller.

In addition to the above, a variety of interest groups have ramped up their activity. A newly formed coalition called "Business Leaders for a Fair Economy" announced it would organize a series of "business roundtables" in Arkansas, Colorado, Indiana, and Pennsylvania, to rally support for EFCA. The group has taken out advertisements in *The Wall Street Journal*, *The Hill*, and *Politico* in support of the bill. The Sierra Club has been working on moderate Republicans such as Senators Susan Collins (R-ME) and Olympia Snowe (R-ME).

In addition to the Employee Free Choice Act, another labor related measure is working its way through Congress that would ensure paid sick days for workers who do not currently receive them. The recent outbreak of "swine flu" prompted the move as some in Congress argued that without guaranteed paid



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sick leave, many people will not stay home out of fear of reprisal or loss of earnings. Representative DeLauro and Senator Kennedy teamed up to introduce the "[Healthy Americans Act](#)" (H.R. 2460 & S. 1152) that would require employers to provide seven paid sick days to each of their employees per year. Industry groups such as the National Association of Manufacturers (NAM) are opposed to the legislation on the basis that it will significantly increase costs to companies and reduce their ability to respond in a more flexible manner to the needs of its employees. It would apply to employers with 15 or more employees. Sick leave required under this legislation would be in addition to any leave provided under the Family and Medical Leave Act or state workers compensation laws.

MSCI will continue to monitor both of these measures and will provide updates where appropriate. We'll be sharing updates in the weekly MSCI News, on our website and Bob Weidner, MSCI's President and CEO, will continue to provide you special notifications as warranted.

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### Trade & China

June has been a busy month outside of Washington with respect to key trade policy. Most prominent among the issues of the day are: trade relations with China; trade related aspects of the climate change legislation that most recently passed the House; the impact of the "Buy America" provisions on our manufacturing relationship with Canada; and mounting pressure to finalize pending free trade agreements.

As the world has fallen into recession, all eyes are on China and the United States. Last month, as previously reported, Treasury Secretary Geithner visited China and released a broad [statement](#) outlining the United States-China relationship and the challenges and opportunities ahead. The two governments appear to be off to a good start in discussions and have recently re-coined their official interactions as a "Strategic and Economic Dialogue". The next high level meeting is slated for July in Washington, D.C. Additionally, there is a Group of 20 meeting in Pittsburgh scheduled for the fall where officials of the 18 other largest economies, such as India and Brazil will converge.

However, despite the good and continuing relationship, a number of concerns remain. Both governments have launched substantial economic recovery (spending) packages, which in the short run do nothing to address the massive trade and investment imbalances between the two countries. Highlighting this concern, U.S. Trade Representative (USTR) Ron Kirk and European officials have requested World Trade Organization (WTO) dispute settlement consultations with China regarding their apparent policy of imposing export restraints on numerous important raw materials to benefit China's domestic industries at the disadvantage of similar U.S. industries. The materials listed are: bauxite, coke,



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fluorspar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorus, and zinc, each key raw material for the steel, aluminum and chemical sectors.

In addition, steel, rubber, and other industries sectors affected by Chinese imports have continued to push for trade penalties on nations with artificially low currencies, including China. A bipartisan group of lawmakers from both the House and the Senate introduced legislation aimed primarily at China that would make countries with undervalued currencies subject to retaliatory import duties. Supporters include Representatives Timothy Ryan (D-OH), Tim Murphy (R-PA), and Senators Debbie Stabenow (D-MI) and Jim Bunning (R-KY). This [bill](#) is different than past versions in that it focuses only on U.S. trade law rather than changing the law regarding Treasury Department determinations on foreign exchange rate practices. The legislation is supported by the [Fair Currency Coalition](#) and MSCI continues to follow it closely. For more information, refer to our [web site](#).

Just last week, 106 Members of Congress, largely Democrats, called on President Obama to slow consideration of free trade agreements with Panama, Colombia and South Korea. The group of legislators [introduced](#) the "Trade Act" which requires a review of the economic impact of existing trade agreements before considering any new agreements. It also provides for environmental and labor standards and provisions for food and product safety and human rights protections that have not been included in prior trade agreements. Democratic and liberal activist [supporters argue](#) that such an approach will help to address manufacturing job losses experienced under NAFTA.

Finally, the "Buy America" provisions of the American Recovery and Reinvestment Act have come under fire. The Federation of Canadian Municipalities on June 6 issued a 120 day deadline for the U.S. to exempt Canada from the "Buy American" provisions or Canadian municipalities would begin shutting out U. S. firms from bidding on local contracts. The Office of Management and Budget (an arm of the White House) is responsible for writing the implementing regulations and is expected to do so promptly. To what extent they will accommodate the concerns of manufacturers and certain foreign countries is yet to be known. In the meantime, with respect to water infrastructure projects, the Environmental Protection Agency has issued guidelines that require for foreign component parts to go through a "substantial transformation" in the U. S. in order to qualify under "Buy America".

Additionally, China has introduced a "Buy Chinese" policy as part of its own economic stimulus program. "In an edict [released jointly](#) by nine government departments, Beijing said government procurement must use only Chinese products or services unless they were not available within the country or could not be bought on reasonable commercial or legal terms." Many fear that this will only serve to increase protectionist policies around the world.



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### Transportation

Reauthorization of the nation's transportation laws have begun to get more attention. While President Obama has expressed his desire to shelf the issue for the time being and Senator Boxer (D-CA), Chair of the Senate Committee of jurisdiction, has expressed support for the President's approach, the House has taken a different line. Two weeks ago, House Transportation and Infrastructure Committee Chairman Oberstar (D-MN) made public an [outline of his proposed authorization bill](#) for the government's highway and transit programs. The legislation is a six-year, \$450 billion package, consolidating more than 100 individual federal programs into four broad categories. The greatest reform objective is that the legislation seeks to achieve specific goals and measures (e.g. cut congestion in cities) instead of distributing money only by formula or through congressional earmarks.

Most do not believe that this legislation is likely to move quickly. The President and Democratic leadership do not want to raise yet another massive measure to prominence without having an ability to pay for it with offsets (as opposed to new spending). Since health care is sucking up all of the available federal offset dollars, it is highly unlikely that the Congress will find an additional \$450 billion, particularly since the President has already struck down the idea of a new gasoline tax. Instead, the President, through Transportation Secretary Ray LaHood, is recommending an 18-month extension of current programs combined with a few modifications. To further complicate matters, while Oberstar's committee is responsible for managing the legislation, he will need cooperation from the House Ways and Means Committee and the Senate Finance Committee in order to pay for it. That he does not have.

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### Looking Ahead

- ❖ Tax Proposals: Senator Baucus, Chairman of the Senate Finance Committee, recently introduced a comprehensive tax bill. Health care reform is the number one priority of his panel, and we therefore should not expect any action on this legislation until later in the year. That said, this package should be seen as the authoritative legislation dealing with numerous tax provisions set to change or expire in 2010. In brief, the package would: (1) allow the top two tax brackets to rise to 36 percent and 39.6 percent, up from 33 percent and 35 percent respectively; (2) make permanent the 15 percent capital gains rate for taxpayers in the 25 percent and 28 percent income tax brackets and the zero rate for those in the 10 percent and 15 percent income tax brackets while increasing the capital gains rate to 20 percent for higher income brackets; (3) make permanent the increased standard deduction for married filers; (4) make permanent the 35 percent credit for



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child care expenses up to \$3,000 (one child) and \$6,000 (two or more children); (5) make permanent the \$46,700 AMT exemption for individuals, \$70,950 AMT exemption for married couples filing jointly and index exemptions for inflation; (6) make permanent the 45 percent estate tax rate (\$3.5 million exemption per individual, indexed for inflation); and (7) repeal the last-in, first-out (LIFO) accounting for inventories.

- ❖ International Tax Enforcement: President Obama's budget earlier this year stated that it intended to raise \$210 billion from provisions to "implement international enforcement, reform deferral and other tax reform policies". On May 11, the Administration issued the [General Explanations of the Administration's Fiscal Year 2010 Revenue Proposals](#) ("Green Book") which explained his full range of proposals in greater detail. Some are concerned that such provisions will diminish the ability of American-based companies to compete with foreign-based companies in the same sector. That said, both Chairman Baucus (D-MT) and Chairman Rangel (D-NY) have indicated that this is a likely source of funding for health care reform. We will continue to follow this issue.

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