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April, 2009: MSCI Advocacy Newsletter

Welcome to the April 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. Both the Congress and the Obama Administration continue to pursue a robust legislative and regulatory agenda. The following issue covers a number of broad topics that will affect the metals industry and builds a framework upon which details can 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" under the "Resources" tab.

Changing Congressional Landscape

The past month has been eventful for the Democratic Party. First, a Minnesota court ruled in favor of Al Franken. In January, Senator Coleman chose to challenge recount results that gave Franken a 225-vote victory in the Minnesota Senate race (2.9 million votes cast). Franken's lead expanded slightly after the challenge and the court ruled in his favor. Senator Coleman has now appealed to the Supreme Court in Minnesota. That court has agreed to hear oral arguments on June 1 from Senator Coleman, who alleges constitutional violations during the initial vote count and the re-count. Most observers agree that this appeal will not succeed and that Al Franken will be seated sometime in June.

Second, Senator Arlen Specter (R-PA) this week decided to change parties and register as a Democrat. The move came in response to his poor polling in the Pennsylvania Republican primary. The decision, coupled with the likely seating of Al Franken, will give the Democratic Party a 60 member majority in the Senate. When the party is aligned on issues, this will provide them with a filibuster-proof majority, meaning that the Democrats will be able to invoke cloture (limit the time of debate) on more legislation. That said, Senator



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Specter has long deviated from the party line and was already expected to cross that line on a number of major initiatives in 2009, including health care reform and immigration. Only time will tell the true impact of Senator Specter's decision, but the move can only help – not hurt – the Obama Administration's early and active attempts at major policy reform.

Labor

[The Employee Free Choice Act](#) (EFCA), as discussed in prior newsletters, 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" that would require unions only to obtain signed authorization cards by a majority of employees in order to organize. The elimination of a federally-supervised, secret ballot election, coupled with mandatory, binding arbitration for first contracts, will affect companies of all sizes.

The EFCA is expected to pass the House of Representatives by wide margins, but face a more difficult challenge in the Senate. The measure's prospects for success in the Senate were dealt a blow when Senator Specter, a former supporter of the legislation, [announced](#) that he would not support the EFCA this Congress. Many speculate that Specter's decision came as a result of his poor polling in the Pennsylvania primary against former Representative Toomey (R-PA). Since Pennsylvania is heavily tilted in favor of Democrats this year, due largely to the Obama-driven voter registration and political infrastructure efforts, Specter knew he would need union support. Prior to Toomey entering the race, a non-negotiable condition of union support was his pro-EFCA position. Once Toomey entered, his support became untenable in a Republican primary.

However, things have changed since then. First, Senator Specter, as mentioned above, is now a Democrat. He no longer needs to concern himself with surviving a Republican primary. Second, Specter's withdrawal of his support for the legislation was coupled with a recommendation for modification. In providing such recommendations, he left the door open for negotiation and ultimate support of a modified version of the bill, stating the following: "Knowing that I will not support cloture on this bill, Senators may choose to move on and amend the NRLA as I have suggested or otherwise. This announcement should end the rumor mill that I have made some deal for my political advantage. I have not traded my vote in the past and I would not do so now."

Senator Specter aside, organized labor and special interest groups have engaged in a multi-million dollar public relations campaign in support of the EFCA with the AFL-CIO preparing to ramp up its legislative campaign later this year. In addition to its Washington efforts, the AFL-CIO is committing staff in target states to mobilize a grass roots outreach to fence-sitting Senators.

On the other side of the equation, "The Alliance to Save Main Street Jobs" recently released a [report](#) stating that the EFCA could result in an increase in unemployment. The alliance consists of pro-business groups,



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including the "U.S. Chamber of Commerce" and the "HR Policy Association". The study found that in Canada, over the course of 20 years, for each 3 percentage points gained in union membership through card check and mandatory arbitration, the following year's unemployment rate increases by 1 percentage point and job creation diminishes significantly. Furthering the opposition cause, a group called "[Save Our Secret Ballots](#)" is championing measures introduced in five states to amend their state constitutions to guarantee the right to secret ballot elections in private-sector union representation elections. To date, proponents in state legislatures in Florida, Georgia, Missouri, South Carolina, and Utah have introduced some form of the secret ballot amendment.

MSCI will continue to monitor this legislation and will provide not only updates but opportunities for its members to communicate with their elected representatives about the legislation. 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.

FY '10 Budget Overview & Health Care Reform

The Congress this week adopted a \$3.56 trillion FY 2010 Budget Resolution with no Republican support and a few Democratic defectors. While the budget resolution is nonbinding, it sets the framework for Congress to make legislative decisions on taxes, appropriations and entitlement programs later in the year. The table is now set for the FY 2010 appropriations process. Members have already solicited constituent input and are eagerly awaiting the President's more detailed, program by program, budget proposal.

According to the Resolution:

- ❖ The debt held by the public will rise from 55% of GDP (\$7.7 trillion) in FY 2009 to 67% of GDP (\$11.5 trillion) in FY 2014
- ❖ The House increased the statutory debt limit by \$925 billion, to \$13.029 trillion
- ❖ The budget assumes the deficit will drop to \$523 billion in FY 2014, from \$1.2 trillion in FY 2010

As you will recall from our last issue, one of the more controversial issues involved in the Budget debate was whether to allow for a process called "reconciliation" as an option for passing health care and climate change legislation. In brief, "[reconciliation](#)" is a process whereby the congressional budget resolution broadly instructs committees of jurisdiction to undertake certain legislative actions in order to meet budget goals. In the Senate, those legislative actions are then sheltered from the procedural rules that require 60 votes to limit debate and move to a final vote. As such, allowing reconciliation for such major reform legislation as health care and climate change, given the margin of 59 Democrats to 41 Republicans in the Senate, would have the effect of removing power from Republicans.

In the end, the Congress decided not to allow reconciliation for climate change, but they did provide a pathway for health care reform. Republicans argued that limiting the rights of the minority party in this way



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will only discourage bipartisanship. Senate Budget Chairman Kent Conrad (D-N.D.) emphasized that reconciliation is merely an insurance policy for Democratic leverage, and that the option would not be available until October 15th (meaning that real negotiation would have to take place between now and then). The reality is that the reconciliation option is enough to bring interested Republicans to the table in what they perceive is their only chance to influence the legislation. At this stage, it is unclear whether the Democrats actually intend to use their 51-vote option to gain a victory on health care, but reading between the lines in Chairman Conrad's assertion that "this is the starting point for everything he [Obama] wants to do", many believe that they will, in fact, exercise the option if it is the only path forward.

That said, the Senate Finance Committee (Chairman Baucus (D-MT)) and the Senate Health, Education, Labor and Pensions Committee (Chairman Kennedy (D-MA)) have been hard at work drafting comprehensive health care reform legislation. The committees have set a timeline to produce a stand-alone health care bill by June, and to complete floor action by the start of the August. Most think this is a highly ambitious schedule. Nonetheless, the process moves forward. On April 27th, the Senate voted to confirm Kansas Governor Kathleen Sebelius as Secretary of the Department of Health and Human Services. On April 29th, Chairman Baucus released his first in a series of three "policy option" white papers, titled "[Reducing Costs and Improving Quality in the Health Care Delivery System](#)". Each white paper will be accompanied by a round table discussion with stakeholders invited by the Chairman. The schedule is posted [here](#).

Finally, as mentioned in the prior issue, the President's budget outline proposed to repeal the "Last-In, First-Out" ("LIFO") accounting method as a means of raising \$61 billion in federal revenue, beginning in 2012. While no additional detail has been provided, and none is expected before the middle of May, the issue has gained the attention of some in Congress. The "Blue Dog Democrats", a powerful centrist group, sent a [letter](#) to the Chairman of the House Budget Committee at the end of last month arguing against LIFO repeal. As always, MSCI opposes the repeal of LIFO and continues to be actively involved in the LIFO Coalition efforts to educate Congress and the Administration on its importance to the metals industry. We will continue to monitor developments on the issue and report about it on our [web site](#).

U.S. Auto Industry

On April 30th, President Obama announced that he would require Chrysler LLC to file for bankruptcy in order to receive additional federal support. The fate of GM is still uncertain, but they have until June 1 to report back to the administration. As background, you will recall that in the fall of last year, the federal government provided GM with more than \$13 billion and Chrysler more than \$4 billion in capital to buy time for the companies to re-structure and cut costs. The loans were meant to provide operating capital to GM and Chrysler through March of 2009. When the deadline arrived, both requested substantially more funding and President Obama, unsatisfied with their restructuring efforts, offered "GM and Chrysler a limited period of time to work with creditors, unions and other stakeholders to fundamentally restructure in a way that would justify an investment of additional tax dollars; a period during which they must produce plans that would give the American people confidence in their long-term prospects for success." As such, the President limited his additional support to sixty days of additional working capital for GM and thirty days for Chrysler.



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Chrysler was to use that time to complete a deal with Fiat or would need to file for what Obama described as a government-backed "organized" bankruptcy.

The press release and details of the President's bankruptcy plan for Chrysler can be found [here](#). A broad summary of the President's new plan is as follows:

- ❖ Chrysler's best assets will be sold to be sold and remaining bad assets will undergo liquidation.
- ❖ Radical restructuring of management
- ❖ Conclude deal with Fiat, providing them with 20% ownership stake (up to 35%, subject to conditions)
- ❖ An additional \$8 billion in federal government backing for operations through the bankruptcy proceedings and to help finance the Fiat deal
- ❖ Chrysler's union retiree health fund will assume a 55 percent stake in the new company

While the President continues to assert that the above plan will be "organized" and should be completed within 30 to 60 days, many disagree. In fact, the final drive into bankruptcy was prompted by the inability of the negotiators to provide a deal to a group of about 20 Chrysler lenders who were unwilling to take 36 cents on the dollar. That same group is planning on [objecting to the bankruptcy sale](#) and will likely play a role in delaying the process.

In addition to the most recent Chrysler plan, the following summarizes other related executive actions to date:

- ❖ The President announced a new government plan that would guarantee the warranties on any new car or truck purchased from GM or Chrysler during their ongoing restructuring. A detailed account of the President's plan for the two manufacturers can be found [here](#).
- ❖ The Obama Administration announced the [Auto Supplier Support Program](#) to provide up to \$5 billion in financing, "giving suppliers the confidence they need to continue shipping parts, pay their employees and continue their operations" by: (1) providing suppliers with access to government-backed protection that money owed to them for the products they ship will be paid no matter what happens to the recipient car company; and (2) allowing participating suppliers to be able to sell their receivables into the program at a modest discount.
- ❖ The federal government will accelerate government fleet purchases and publicize a new tax benefit that would allow consumers to deduct the cost of sales and excise taxes on cars purchased between Feb. 16 and the end of this year.

Finally, the Congress is currently considering legislation called "Cash for Clunkers". The idea is to reward consumers who turn in old, less fuel-efficient cars and trucks to purchase new, more fuel-efficient ones. The



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"vouchers" anticipate a total benefit of between \$3000 and \$5000 per consumer, but the details on the age of vehicles and fuel efficiency thresholds must be worked out.

The bill is not without controversy. While foreign auto manufacturers have been noticeably silent, some in Washington are raising the concern that this will only heighten scrutiny about U.S. protectionist policies in the automotive industry, and may even raise a red flag with the WTO.

Given the already full docket in the House Energy & Commerce Committee, this legislation is not expected to receive immediate consideration. However, the President has expressed his support for the concept and Representative Steve Israel (D-N.Y.) is promoting a bill in the House while Sen. Dianne Feinstein (D-CA) is promoting a companion bill in the Senate. Another competing plan is also being floated, which is considered to be more industry friendly. That proposal is backed by Representative Betty Sutton (D-OH) Speaker Pelosi (D-CA) and Chairman of the Energy & Commerce Committee Henry Waxman (D-CA) have each encouraged the competing parties to work out a compromise, indicating that at some point, the legislation will receive serious consideration.

Climate & Energy

In the last newsletter, we wrote about the Waxman-Markey 650 page global warming discussion draft, "[The American Clean Energy and Security act of 2009](#)". Among other things, the legislation would set an aggregate cap on greenhouse gas emissions (GHGs) and establish a market for entities to trade GHG emission allowances and offset credits. The plan would limit emissions to 3% below 2005 levels in 2012, 20% in 2020, 42% in 2030, and 83% in 2050. Since the time of introduction, the Energy & Commerce Committee held a four day series of hearings on the legislation with more than 60 witnesses in total.

The hearings focused largely on issues that were not addressed in the legislation, as introduced. Namely, the bill avoids some of the more controversial components of setting up the cap and trade regime, including the methodology for distributing emission allowances. Industry is arguing for a large number of free allowances in the early years as a way of ramping up to compliance, and it appears that congressional supporters of this position are in a power position.

With a 36-23 margin of Democrats to Republicans on the Energy & Commerce Committee, Chairman Waxman can only lose votes from 6 Democrats and still secure committee passage of his bill. The four key Committee Democrats advocating for a more industry-friendly approach, Representatives Rick Boucher (D-VA), Mike Doyle (D-PA), John Dingell (D-MI) and Ray Inslee (D-WA), have now been joined by a significant group of other moderates, including Representatives Gene Green (D-TX) and Baron Hill (D-IN). Together, they have forced the Chairman into more than a week of negotiations with no end in sight. The Subcommittee with jurisdiction over this issue was scheduled to mark-up the legislation this week, but has now twice postponed his plans.



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To address concerns that some industries are particularly vulnerable to international competition and will be disadvantaged by a cap and trade scheme, the bill includes a section called, "Transitioning to a Clean Energy Economy". That section authorizes rebates to companies in certain industrial sectors, including iron, steel, aluminum, cement, glass, ceramics, chemicals, and paper to offset increased costs, and it is, at least in part, the focus of negotiation among Democrats.

An ad war has begun in target states such as Indiana, Michigan, Ohio, West Virginia, Missouri, New Hampshire and Virginia. On the pro side are: The Environmental Defense Action Fund; the United Steel Workers; the Blue Green Alliance (environmental-labor group); and The Alliance for Climate Protection. The group is universally arguing that cap and trade means creation of jobs in the renewable and energy efficiency marketplace. On the other side is the American Energy Alliance and the U.S. Chamber of Commerce who argue that the legislation is simply too costly to industry.

Finally, separate from these negotiations, the House Ways & Means Committee has begun to look at the cap and trade legislation from a trade perspective. That panel held a [hearing](#) at the end of March and has more recently been meeting with industry representatives, including the "National Foreign Trade Council" and "USA Engage" to discuss the impact of cap and trade on U.S. interests.

Trade

U.S. Trade Representative Kirk appears to have won over some who were otherwise skeptical of the Obama administration's trade plans. The National Association of Manufacturers (NAM) recently went on record that comments and actions by Kirk "make us believe we have an administration we can work with." Key to NAM's assessment is Kirk's efforts to move on a trade pact with Panama and take steps toward a similar agreement with Colombia.

Indeed, the President's March 1 trade policy [report](#) suggested that the U.S.-Panama Free Trade Agreement would be the first considered. That said, the President's support for this trade agreement is not settling well with House Democrats who believe that the President should negotiate his own agreement rather than rely on the one negotiated by the Bush administration. A bloc of 37 House Members have formed a Trade Working Group that is opposed to new trade agreements until they are renegotiated with better worker protections. Many Democrats beyond the working group are also sensitive to this issue, and President Obama will have to consider the broader impact on his own broader agenda if he loses supporters in the House by proceeding without their support. The Senate is more trade friendly, and the Chairman of the Senate Finance Committee has already indicated his support for the Panama agreement.

In our last two newsletters, we noted that many in the trade community had become increasingly concerned about the global recession's influence on "protectionist" trade policies. Specifically, with the enactment of the American Recovery and Reinvestment Act, many foreign countries warned against including "Buy American" provisions that were designed to ensure the use of U.S. steel and other supplies in stimulus-funded



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infrastructure projects. Those foreign voices also found support here in the U.S. who feared that "Buy American" could serve as a catalyst for retaliatory responses from trading partners. President Obama followed with a recent [op-ed](#) in which he called for "solutions that reject destructive protectionism", and he encouraged the world to "embrace a collective commitment to encourage open trade and investment, while resisting the protectionism that would deepen this crisis."

Nonetheless, a particularly acute crisis continues between the United States and Mexican Governments. They have yet to remove tariffs on [certain U.S. exports](#) in retaliation for Congress's ending a pilot program that allowed approved Mexican trucking companies to send vehicles beyond a 25-mile border zone. Although few if any of the items subject to retaliation are related to our industry, the action by such a close trading partner is worrisome. Secretary of Transportation LaHood has assured the country that he is working toward a resolution of this impasse that is consistent with the U.S. requirements under the North American Free Trade Agreement (NAFTA). However, many are concerned that the Administration is not moving fast enough. The NFTC recently wrote a [letter](#) to President Obama, arguing that the stakes are rising each day and that an immediate resolution is necessary if we are to restore trust with Mexico and bring an end to current and future retaliatory tariffs.

On another topic, all eyes remain on China. Ambassador Kirk recently met with the Chinese Commerce Minister Chen Deming to discuss the importance of avoiding protectionism and of utilizing cooperative mechanisms to resolve bi-lateral trade disputes. At the same time, Steel, rubber and other industries affected by Chinese imports have not been silenced by President Obama's insistence on diplomatic resolution to currency disputes. They have been pushing for legislation to impose trade penalties on nations with artificially low currencies. "We expect the administration to help us build the industrial base of America, and we know now you can't build an economy on asset bubbles and our own currency devaluation," United Steelworkers President Leo Gerard said. The Steelworkers union is also filing a petition with the International Trade Commission for trade remedies on behalf of members in the tire and rubber industries

But, the U.S. Treasury Department this month [refused](#) again to list China as a currency manipulator. The Department released a report that acknowledged China's artificially low currency, but stopping short of declaring it a result of manipulation. The report slowed legislative progress as well with Senate Finance Committee Chairman Max Baucus (D-MT) saying that they were slowing action on legislation for now, but that it was not dead. MSCI continues to follow this issue closely and has helped craft *The Fair Currency for Fair Trade Act of 2009*. Expectations are that this legislation will be introduced in the House and Senate in the coming weeks. For more information, refer to our [web site](#).

Finally, the United States appears to be working toward a closer trade relationship with Cuba. President Obama's first steps were to lift most restrictions on travel to Cuba by Americans with family members there, and to remove limits on sending money back to the island. While a highly sensitive issue, this administration appears to be moving toward a new policy posture toward Cuba, and many, including farm groups, support his decision. Hearings have been held as recently as this week in the House and more are expected.



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At the Summit of the Americas this month, President Obama stated:

- ❖ *"The United States seeks a new beginning with Cuba. I know there's a longer journey that must be traveled to overcome decades of mistrust, but there are critical steps we can take toward a new day. I've already changed a Cuba policy that I believe has failed to advance liberty or opportunity for the Cuban people. We will now allow Cuban Americans to visit the islands whenever they choose and provide resources to their families – the same way that so many people in my country send money back to their families in your countries to pay for everyday needs..... I'm prepared to have my administration engage with the Cuban government on a wide range of issues – from drugs, migration, and economic issues, to human rights, free speech, and democratic reform...."*

Selected Regulatory Matters

- ❖ Import Administration Actions: The Department of Commerce posted a number of "Import Administration Actions" in the Federal Register this month. Among them were: [Extension of Time Limits](#) for the Preliminary Results of Antidumping Duty Administrative Review Corrosion-resistant Carbon Steel Flat Products From the Republic of Korea; [Stainless Steel Bar](#) From India; Extension of Time Limit for the Final Results of the 2007-2008 Antidumping Duty Administrative Review; Certain Cut-to-Length [Carbon-Quality Steel Plate](#) Products From the Republic of Korea; Final Results of Antidumping Duty Administrative Review; Continuation of Antidumping Duty Order on [Malleable Cast Iron Pipe Fittings](#) From the People's Republic of China.
- ❖ The Labor Department's Office of Labor-Management Standards is rescinding regulations found at 29 CFR 470 requiring federal contractors to post workplace notices informing their employees of their right not to join a union. The rule appeared in the [Federal Register](#) and became effective on March 30.
- ❖ The interim rules implementing Buy American provisions for economic stimulus funds in the American Recovery and Reinvestment Act (ARRA) were released on March 31 [here](#).

Looking Ahead

- ❖ Surface Transportation Reauthorization: New legislation to reauthorize expiring federal surface transportation programs must be passed this year. The earliest we should expect to see serious consideration of this measure is June.
- ❖ Tax Proposals: Senator Baucus, Chairman of the Senate Finance Committee, recently introduced a comprehensive tax bill. While action is not expected immediately on the measure, 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 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; and (6) make permanent the 45 percent estate tax rate (\$3.5 million exemption per individual, indexed for inflation).

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