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May, 2009: MSCI Advocacy Newsletter

Welcome to the May 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 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.

Industry Voice in Washington

More than ever, Washington needs to hear industry voices. Over the next four weeks the Congress is aiming to complete work on 12 appropriations bills, move health care reform out of the committees of jurisdiction, pass climate change legislation out of the House and approve President Obama's nominee for the Supreme Court. In the best of times, this would be a near impossible task. Given the dire economic condition of our country, such a lofty agenda should be met with pause.

In addition to the agenda laid out before the Congress, President Obama's Administration, while talented and dedicated, is noticeably lacking in private sector experience. None of the cabinet-level Secretaries hail from the private sector and most were either members of Congress or Governors before accepting their current posts. As a result, many question whether industry perspective is being sufficiently weighed during this time of unprecedented decision making.

Adding to industry's challenges, President Obama has imposed stringent restrictions on outside communications with his administration. On March 20th of 2009, following the enactment of the American Recovery and Reinvestment Act ("ARRA"), President Obama released an executive memo forbidding his administration from communicating, except in writing, with registered lobbyists on matters related to the ARRA. The President's memo was the first of its kind, stirring a fevered [response](#) from lobbyists and the



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thousands of clients represented by lobbyists who characterized the policy as discriminatory. On Friday of last week, the White House released another memo that clarified that the restriction on communications would now apply to ALL outside parties. Although the restriction no longer targets just lobbyists, the American Civil Liberties Union (ACLU) remains [opposed](#) to a ban on oral communications, asserting that it is an unlawful restriction on free speech.

It is true that this restriction only applies to funds received under the ARRA and only to the Administration. Registered lobbyists and other interested parties may continue to petition the Congress as long as they comply with the new reporting requirements and restrictions imposed upon them since 2007. However, weak private sector representation in the highest ranks of government coupled with restrictions on communications could spell disaster for industry interests.

MSCI will continue to monitor developments on this front. In the mean time, we encourage our members to take a proactive role in making your concerns heard in Washington.

Climate & Energy

On May 21, 2009, the House Energy and Commerce approved H.R. 2454, "[The American Clean Energy and Security Act](#)," by a vote of 33 to 25. While the legislation will now have to be referred to other committees of jurisdiction and ultimately to the House floor for final chamber approval, the hardest battle in the House of Representatives has been fought and won. The Energy and Commerce Committee is chock full of moderate coal and manufacturing state Democrats. Many concessions were granted in the process in order to alleviate much of the pain associated with transitioning to a carbon constrained economy.

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 final committee product was a result of marathon negotiations over the course of April and May that resulted in legislation to cut global warming 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 must come from renewable sources including wind, solar, biomass and geothermal by 2020.

As discussed in prior newsletters, the devil is in the details. The main points of controversy were: (1) establishing a methodology for distributing emission allowances; and (2) ensuring that certain industries would not be disadvantaged in the international marketplace by virtue of complying with such a sweeping regulatory regime. While President Obama initially called for 100% of the emission allowances to be auctioned, the final committee measure calls for a phase in of auctioned allowances to better protect affected industries, their employees and the rate payers from excessive cost spikes.

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 title called, "Transitioning to a Clean Energy



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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 15% of their allowances for free until 2025 (established at a level equivalent to the average emission rate for their industry sector). If, through efficiency, the company is able to emit less, the company can sell the additional allowance permits into the market.

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 of who are burdened with 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.

House leadership has made clear that they would like to see the Waxman-Markey legislation considered on the floor in June or July. However, given the far reaching nature of this legislation, at least eight additional committees can claim jurisdiction and hold hearings and negotiations of their own, including the Foreign Affairs, Financial Services, Education and Labor, Science and Technology, Transportation and Infrastructure, Natural Resources, Agriculture and Ways and Means Committees. Negotiations are expected to begin this week to encourage these chairmen not to stall the process. One key chairman who will have to be appeased is Representative Rangel (D-NY), whose tax-writing committee will oversee the billions of dollars in new federal revenue that would result from the auction of allowances. Additionally, he has never been a strong proponent of cap & trade and he has already voiced his intention to proceed with health care reform before considering this legislation. House Agriculture Chairman Peterson (D-MN) also has significant concerns with the treatment of biofuels. These too will likely need to be addressed. The other committees may either pass on their right to exercise jurisdiction or work out a deal with the leadership.

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

Labor (The Employee Free Choice Act & Paid Sick Leave)

In each issue, we have highlighted [the Employee Free Choice Act](#) (EFCA) as a major priority worthy of significant industry attention. 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



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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.

The politics around the EFCA are ever changing. President Obama this month admitted that there are not enough votes in the Senate to pass the EFCA as it is currently written. Instead, he suggested that his staff was working to find points of compromise with fence sitting Senators. Senator Tom Harkin (D-IA), a leader on this issue in the Senate, effectively confirmed the President's assessment by saying that the "card check" provision would probably not survive final passage.

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. Arguably the most important vote, Specter is on the record as being opposed to the "card check" process and to mandatory arbitration as currently prescribed by the legislation. However, he agrees that the voting process under current law should be speeded up so as to minimize the opportunity for employers to coerce employees into voting against unionization. He also has expressed support for a "last best option" form of arbitration where each side must submit a last best option to an arbitrator who will pick one or the other in the end. In theory, this brings a more honest approach to the negotiating table since there is too much risk involved in only offering radical propositions.

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) recently announced her [opposition](#) to the EFCA as it is written, stating that the recession is not the time to reform our labor laws. Most consider her decision a result of a constituent interest in Wal-Mart who stands squarely opposed to the legislation and who stands to lose significantly if it is enacted. 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. Under her plan, if a majority of workers mailed in the ballots to the National Labor Relations Board, then the NLRB would recognize the union. 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 has vowed to spend \$20 million in opposition advertising this year alone. Wal-Mart and other major employers are also fighting back. The unions, of course, continue to fervently call for enactment this year, and they appear to believe that they will have the votes in the end.

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 sick leave, many people will not stay home out of fear of reprisal or loss of earnings. Representative DeLauro and



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Senator Kennedy teamed up to introduce the "[Healthy Americans Act](#)" (H.R. 2460) 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. As of today, there is a hearing scheduled on this legislation in the House Education and Labor Workforce Subcommittee on June 11, 2009.

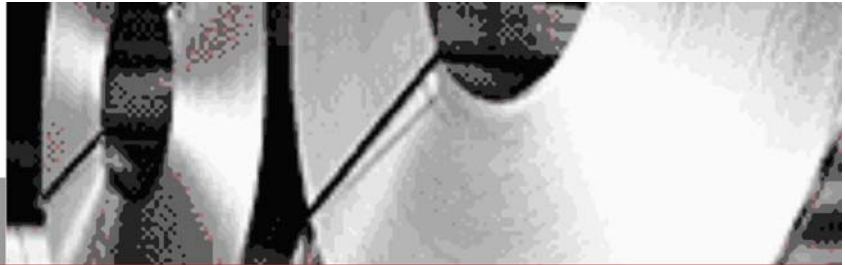
MSCI will continue to monitor both of these measures and will provide updates where appropriate. We'll be sharing updates in the weekly MSCI News, on our website and Bob Weidner, MSCI's President and CEO, will continue to provide you special notifications as warranted.

Health Care Reform

Senate Finance Committee (Chairman Baucus (D-MT)) and the Senate Health, Education, Labor and Pensions Committee (Chairman Kennedy (D-MA)) continue to [work together](#) with a goal of negotiating health care reform legislation in their respective committees and moving legislation to the floor before the August recess. Senator Baucus has thus far been in the driver's seat, spearheading a series of white papers that are the framework upon which final legislation is expected to be built. 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](#)". On May 11th, he released "[Expanding Health Care Coverage: Proposals to Provide Affordable Coverage to All Americans](#)", and on May 18th, he released "[Financing Comprehensive Health Care Reform: Proposed Health System Savings and Revenue Options](#)". One of the revenue options proposed is the elimination of last-in, first-out (LIFO) accounting method for inventory valuation. By abolishing LIFO, the administration immediately can tax LIFO reserves to fund health care reform. MSCI strongly encourages all members to contact their senators to voice their opposition to LIFO repeal. For more information see our [website](#).

The Senate Health, Education, Labor and Pensions Committee, chaired by Senator Kennedy, is scheduled to conduct private member and staff meetings this week with a target mark-up date of June 16, according to press reports. Staff to Chairman Kennedy has been circulating a timeline on Capitol Hill as well as a sketch outline. The most contentious issues on the table now are: (1) whether there should be a public benefit option that competes with private sector insurance offerings; (2) whether there should exist employer and individual mandates to provide and/or purchase insurance coverage; and (3) how to pay for the total cost of reform.

The issue of a public benefit option is hotly contested by Republicans as an unnecessary expansion of government while 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



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noting that President Obama spoke out against individual mandates on the campaign trail, but is now noticeably silent on the topic.

The third issue, how to pay for reform, is under very close scrutiny. This is the make or break component of the deal. In a recent hearing before the Senate Finance Committee, substantial weight was given to the notion of eliminating or reducing the tax exclusion for employer based coverage as a means of paying for a significant part of the health care reform package. While most, including the Chairman, felt that it was important to keep the current employer based system intact, many still toyed with the idea of modifying the exclusion. This issue will continue to occupy the center of debate as any alterations to the current employer based system are likely to meet significant opposition both from employees who benefit from the exclusion and employers who currently have the flexibility to provide a broad array of non-mandated health care coverage options.

Health care reform legislation is still a long way from the finish line. That said, many in Washington continue to say that "the stars are aligned". Progressive groups have formed a coalition to collectively dedicate \$82 million in advertising and grassroots mobilization support to the 2009 healthcare reform campaign. The participating groups include: "Health Care for America Now"; the "AFL-CIO"; "Change to Win"; "MoveOn.org"; and "Democracy for America". A coalition of health care providers have vowed to save \$2 trillion in extra spending over the next 10 years as a way to get health care costs under control. In addition, the health insurance companies have vowed to accept all those who apply for coverage and to do so without charging them based on health status. This pledge, of course, relies on the existence of an individual mandate to assure that premiums are paid by young, healthy, and low-cost consumers in order to offset the cost of older and sicker consumers.

In the mean time, many observers have noted that President Obama is trying to toe a fairly moderate line, infuriating single-payer advocates on the left and bringing the traditionally right wing-friendly health care industry closer to the center. Many think that this approach is likely to end in victory--unlike unsuccessful attempts in the past. The real question is what will the victory look like?

U.S. Auto Industry

Yesterday, General Motors filed for Chapter 11 protection. This decision comes in the wake of nearly six months of federal government efforts to minimize the fallout of the failing auto industry. To get GM through the bankruptcy, President Obama pledged an additional \$30 billion in assistance with the federal government assuming an even larger ownership stake in the company. When all is final, the United States will own nearly 60% of the company, and Canada, the bond holders and the United Auto Workers health trust fund will own the balance. Details of the President's plan for GM were released yesterday and can be found [here](#). According to a statement by President Obama, the federal government will act as a "reluctant shareholder" who will rely on a private board of directors and management team to run the company in the interim.



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As background, 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. 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. On April 30th, President Obama announced that he would require Chrysler LLC to file for bankruptcy as a condition of receiving additional federal support. The press release and details of the President's bankruptcy plan for Chrysler can be found [here](#).

In his comments yesterday, the President noted that the process was moving along [smoothly](#) for Chrysler and that their merger with Fiat would make the company stronger and more efficient on the other end of bankruptcy. He stated that he believed the same would be true with GM, but that there would be short term job losses and a significant economic impact. GM is expected to scale back from 90,000 to 60,000 employees this year, and the federal tax payers are expected to lose about \$20 billion on the deal. But, as announced earlier in the year, a government plan will continue to 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](#).

In the short term, according to press reports, the following facilities will be closed or idled: an assembly plant in Wilmington, Delaware will close in July; the Pontiac, Michigan pickup truck plant will close in October; assembly plants in Spring Hill, Tennessee and Orion, Michigan will be placed on standby; engine and transmission plants in Livonia, Flint and Ypsilanti, Michigan, as well as in Parma, Ohio, and Fredericksburg, Virginia will all be closed by December of 2010; parts stamping plants in Indianapolis and Mansfield, Ohio, will close in 2010; a stamping plant in Pontiac, Michigan will close by December 2010 but remain on standby; and services and parts warehouses in Boston, Jacksonville, Florida, and Columbus, Ohio, will close by the end of 2009. Most expect that politicians will try to save some of these facilities on a district by district, constituent by constituent level. However, the United States Chamber of Commerce and others are warning that intermeddling of that nature may cause the entire orderly bankruptcy process to unwind.

All of the instability has proved too difficult for auto suppliers as well. Visteon Corporation and Metaldyne Corporation both filed for bankruptcy protection last Thursday. While the manufacturing jobs have been the focal point of media attention, more than 500,000 people in the mid-west work for auto suppliers. From the start, the suppliers have called for federal guarantees of loan and/or cash infusion due to hesitance on the part of banks to keep capital flowing. Among the suppliers are U.S. Steel Corp., ArcelorMittal USA Inc., AK Steel Corp. and Severstal North America Inc. who are listed in the bankruptcy filing as being owed almost \$35 million.

Earlier this year, 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



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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 suppliers are now asking for an additional \$8 billion, but they are unlikely to get it, according to press reports out of the White House. American Axle & Manufacturing Holdings Inc. and Lear Corporation are both on the watch list now.

In response to the most recent news, Michigan lawmakers called for investments in advanced technologies, voucher programs to spur consumer demand (“cash for clunkers” legislation), and re-training of workers as a few necessary and immediate steps toward protecting those who have lost or will lose their jobs in the process.

Trade & Chinese Currency

Two days ago, Treasury Secretary Geithner visited China and released a broad [statement](#) outlining the United States-China relationship and the challenges and opportunities ahead. As mentioned in the last issue, Ambassador Kirk also 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. And while the Steel, rubber and other industries affected by Chinese imports have continued to push for trade penalties on nations with artificially low currencies, including China, the U.S. Treasury Department last month [refused](#) again to list China as a currency manipulator. The Department released a report that acknowledged China's artificially low currency, but stopped short of declaring it manipulation.

In response, 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](#).

Looking Ahead

- ❖ [Antitrust](#): Much attention has been focussed of late on President Obama's new chief antitrust official, Assistant Attorney General for Antitrust Christine Varney. Many believe that this Administration is ramping up to dramatically increase enforcement of antitrust violations, and [some assert](#) that the President's ultimate goal is to follow the lead of our European counterparts. We will continue to monitor developments in this area and report on them in subsequent newsletters.
- ❖ [Surface Transportation Reauthorization](#): New legislation to reauthorize expiring federal surface transportation programs must be passed this year. The Senate has yet to provide a timeline or send



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instructions to senators on how to request special projects. The House is expected to move relatively soon with expected progress this month.

- ❖ **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 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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