Extract of US Related issues in European Commissions Tenth Report on Potentially Trade-Restrictive Measures

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EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR TRADE

TENTH REPORT ON POTENTIALLY TRADE-RESTRICTIVE MEASURES

IDENTIFIED IN THE CONTEXT OF THE FINANCIAL AND ECONOMIC CRISIS

1 MAY 2012 – 31 MAY 2013

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EXTRACT:

EXECUTIVE SUMMARY

The tenth edition of the report on the monitoring of **potentially trade-restrictive measures** of the European Commission's Directorate-General for Trade gives the latest state of play regarding trade measures which were introduced by the EU's trade partners between **1 May 2012 and 31 May 2013**[1] and which have the potential to disrupt trade.[2] The monitoring of such measures was initiated following the breakout of the financial and economic crisis in autumn 2008. It represents an important contribution to the global surveillance on free and fair trade and the monitoring of the G20 anti-protectionism commitment[3], and is a reflection of the EU's efforts to continuously enforce existing trade rules, in line with the agenda set out in the EU Communication on Trade, Growth and World Affairs[4].

Since and during 2012 the state of the **world economy has continued to improve**. Demand from advanced economies is on track to getting back to normal, although differences persist among the output performances of developed countries. Meanwhile, the expectation is that growth in the developing and emerging world will continue to be sustained. Notably, the resilience of many emerging economies in developing Asia has been a crucial factor allowing them to grow even when global conditions were not favourable. Yet as international production processes rely heavily on the linkages between the production centres in advanced and developing economies through complex value chains, **trade remains an important source of economic growth,** not only for developed economies, which are still key drivers of global demand, but also for developing and emerging countries. In this context, further impediments to trade, as we see them occurring, are bound to **have negative consequences on global growth and to delay the overall recovery process.**

The upcoming **G20 Summit to be held in St Petersburg on 5-6 September 2013** is yet another occasion for G20 leaders to reflect on the above paradigm, and to confirm the need to preserve unimpeded trade, as well as to reaffirm the commitment **not to resort to trade-restrictive measures** during the crisis period and to **rectify without delay any measure introduced**. Looming protectionism is now, more than ever, a significant threat to global growth and welfare, especially as the effects of the economic downturn are still being felt. Were the World Trade Organisation (WTO) to have transparency and monitoring tools, this would facilitate a more effective implementation of the G20 leaders' pledge and help boost the efficiency of their commitments. The EU is ready to support further initiatives in St Petersburg to strengthen the implementation of such transparency and monitoring tools.

1 The ninth edition of the report covered an eight months period and was released ahead of the G20 Summit in Los Cabos on 18-19 June 2012.

2 More details about the number and qualification of measures listed are available in chapter I.2

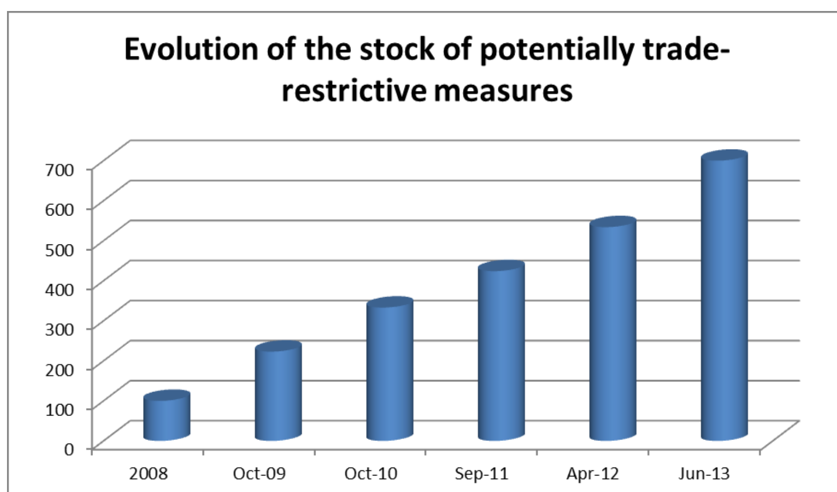
3 Since the beginning of the financial and economic crisis, G20 leaders have been regularly renewing their commitment not to impose new barriers to investment or trade in goods and services, including new export restrictions and WTO-inconsistent measures to stimulate exports, as well as to roll back any new protectionist measure that may have arisen. This pledge has been extended last year until the end of 2014 at the G20 Summit in Los Cabos.

4 European Commission, *Trade, Growth and World Affairs*, COM(2010)612, 9 November 2010,

http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146955.pdf

Indeed, it is high time for the G20 pledge to be adhered to in full. Published in June 2013, the WTO Report on G20 Trade Measures confirmed already that G20 economies continue to impose new trade restrictions, and that the share of trade facilitating measures has recently decreased. This report of the European Commission services also shows that the number of potentially trade-restrictive measures has increased as a result of the slow removal of the existing measures, and a continuously high rate of addition of new ones.

Between 1 May 2012 and 31 May 2013 **154 new measures** were adopted and only **18** measures were lifted. This represents a slightly slower monthly increase in newly adopted measures compared to the previous period of observation. However, the pace of removal remained very weak, and the increase in the application of certain types of measures or their application in certain areas remains very worrying. Ultimately, the total number of potentially trade-restrictive measures observed since October 2008 grew to **688.** This means that in the last 33 months, more than 350 new measures were adopted, which still represents a **high average of more than 10 new measures per month**, each of them with the potential to negatively and unnecessarily affect world trade.



In particular, **emerging economies** led by: **Argentina, Brazil, India, Indonesia, Russia, China** and also **recently South Africa and Ukraine** continued to apply the highest number of potentially trade-restrictive measures**.** This is a striking phenomenon. Economic growth, the development of efficient value chains, and export activities are intrinsically dependent on imports, so developing countries should have a real interest in avoiding and combatting impediments to trade. By keeping their markets open, these fast developing economies would not only strengthen their competitiveness but also contribute to the economic recovery of other parts of the world, and to an increase in global demand, upon which they themselves depend to a significant extent.

Against this background, the main conclusions of this report are as follows:

- Over the past 13 months **154 new measures** of a potentially trade-restrictive nature were introduced (compared to 123 measures over a period of eight months covered by the previous report). Therefore, the trend in imposition of protectionist measures has unfortunately continued, albeit at a slower pace compared to previous reporting periods, but with a worrisome increase in the application of certain types of measures. The total number of potentially trade-restrictive measures observed since October 2008 has largely grown again, and the overall stock has now reached **688 measures**.
- Only **18** potentially trade-restrictive measures have been rolled back between 1 May 2012 and 31 May 2013. The pace of removal therefore remained as slow as in the last period and is largely

unsatisfactory. Bearing in mind that economies are now recovering faster, this leaves more space for opening-up markets. Overall, only **107** measures have been removed since reporting started in October 2008, against 688 still in place.

- On balance, over the reporting period the emerging economies of **Argentina, Brazil, India, Indonesia, and Russia** again applied the most new potentially trade-restrictive measures. This group was joined by **South Africa**. More specifically:
  - **South Africa, Argentina, Russia and Indonesia** formally announced in this period the highest number of new potentially restrictive **import and export measures,** mainly by raising import tariffs or equivalent import fees, by introducing new import licensing procedures, by fixing reference or minimum import prices and applying export duties. The share of this type of immediately trade-disrupting measures has increased since the last exercise. It has to be noted that **Brazil and Ukraine** should also be included in this group as they announced one-off measures having an impact on significant numbers of traded products. Besides that, Ukraine is now trying to renegotiate many of its bound import duties beyond the rates agreed upon in its WTO accession. Therefore **Brazil, Argentina, Russia and Ukraine** stand out as having gone on the path of the heaviest tariffs increases.
  - In the period in question, trade-related restrictions in **government procurement** also continued to increase in share. **Brazil** accounts this year for more than one third of these, followed – again – by **Argentina** and by **India**. Many of these measures are linked to **business localisation requirements**. The continuous application of such measures is particularly problematic, as they are subject to weaker international disciplines.5
  - The pace in setting up **new stimulus measures, and especially export support measures** remained worrying, bearing in mind that some of those provisions are cross-cutting and constitute comprehensive and highly competition-distorting packages. The greatest number of such measures was introduced respectively by **Brazil, South Africa, Turkey, Japan** and **South Korea**.
  - The high number of behind-the-border measures that has been applied by some countries through **technical regulations** (e.g. China) or **through internal taxation schemes based on localisation requirements** (e.g. Brazil) has to be again highlighted as a cause of serious concern.
  - This time, protectionist trends have been less pronounced in the **services and investment areas** than in others, but they still remain present. Notably, **Argentina** proceeded with the formal expropriation of a large EU investment in the hydrocarbon sector, without providing any compensation to date. In addition, it imposed new measures in the services area. **Indonesia** tightened its system regarding foreign equity ownership and establishment of franchise companies.

The Commission will continue to closely monitor the measures envisaged or adopted by third countries and, when necessary, will address them using the full range of tools available under the EU Market Access Strategy.

Conclusions

This tenth report on potentially trade-restrictive measures confirms - in line with recent findings by the WTO - that protectionist measures are still proliferating around the world at a significant rate and that their rollback continues to take place to a very limited extent. This results in an ever expanding range of restrictive measures.

In the last 12 months, the state of the **world economy has continued to improve**. While demand from advanced economies is slowly moving back to normal, albeit with important differences in output performance, notably in the EU, the most dynamic engines of growth remain in the developing and emerging world. In the meantime, **growth in trade has also been positive** and is predicted to expand during 2013, and to further accelerate in 2014. It is again the emerging markets and the developing economies that will continue to boost trade growth in the coming years.

That said, a disproportionate amount of newly adopted potentially trade-restrictive measures persists in the case of certain **emerging countries** compared to the rest of the world. This appears to be paradoxical, as healthy and open markets would allow fast-developing economies to further contribute to global economic recovery and the increase in demand, from which they have been gaining. **Impediments to trade will inevitably have damaging consequences for global growth** and will eventually negatively affect all players, both developed and developing.

Beyond this general remark, the following key conclusions arise from this report:

- Over the past 13 months the number of **new potentially trade-restrictive measures has been rising,** albeit at a slower pace compared to the previous reporting period, but with a worrying increase in the application of certain types of measures and an insufficient rate of dismantling of the existing ones.
- There was a **sharp increase in the use of measures applied directly at the border (especially through import duty hikes)**. This is particularly problematic as the latter affect trade flows immediately and directly and penalise exporters through a very negative kind of fast-track 'à la carte' protectionism.
- The use of **localisation requirements has continued, especially in the field of government procurement,** which is also particularly worrying, as the latter area is only moderately shielded from protectionism by international disciplines.
- **Stimulus measures (and in particular measures to support exports) continue to be applied**, and some of these measures take the form of comprehensive, long-term and highly competition-distorting packages.

This report shows that it is therefore high time for the G20 anti-protectionism pledge to be fully adhered to. The upcoming **summit in St Petersburg** is yet another occasion for G20 leaders to reflect on the need to support unimpeded trade, by fully implementing their commitment **not to resort to trade-restrictive measures** and to **rectify without delay any measure introduced in the past**. That is because looming protectionism is, more than ever, a significant threat to global growth and welfare, especially as the effects of the economic downturn are still being felt.

ANNEX 1

New potentially trade-restrictive measures (1 May 2012 – 31 May 2013)

In italic: planned measures **Country**	**Date of adoption** (where available)	**Measure**
USA	**15 May 2013**	**Water Resources Development Act (S 601) – extends "Buy American" provisions to certain water infrastructure projects to be known as Innovative Financing Pilot Projects.**

ANNEX 2
Measures adopted or planned, since October 2008

BORDER MEASURES

United States

- A 'National Dairy Promotion and Research Program' was introduced on 18 March 2011, as a follow up to the 2008 Farm Bill. It introduces, inter alia, a requirement for importers to pay 7.5 cents per hundredweight of imported milk, or equivalent. The levy will be used to fund promotion and research in the dairy sector. The law is in force since 1 April 2011. **The measure, still in force, has been extended until September 2013.**

BEHIND-THE-BORDER MEASURES

United States

- A draft bill (H.R. 6969) was introduced in Congress in 2009 to amend the Internal Revenue Code (the Neal bill) and deny a tax deduction for excess reinsurance premiums with respect to US risks paid to affiliated insurance companies that are not subject to US taxation. The bill risks creating unfair tax disadvantages to EU-owned US subsidiaries compared to US-owned companies.

- The US House of Representatives Ways and Means Subcommittee on Select Revenue Measures held a hearing on 14 July 2010 regarding international reinsurance transactions and competing proposals to reform their US tax treatment. These proposals would affect European insurance companies operating in the US that conduct reinsurance transactions to diversify risk and hurt legitimate reinsurance transactions by raising insurance premiums for US consumers. ***The Neal Bill was reintroduced in the current Congress in May 2012 (HR 2054), but Congressman Neal is no longer Chairman of the Tax Subcommittee on Ways and Means, which weakens the bill's chances of advancing in the legislative process. In next year's FY2014 Presidential budget proposal released in February 2013, the Administration opted for a more restrictive proposal in line with the Neal bill which would deny an even larger share of tax deductions for reinsurance than their initial proposal. In addition, a similar provision on reinsurance is contained in a tax reform legislative proposal by Keith Ellison (D-MN) in HR 505 which was introduced in April 2013. To date, the bill has not advanced in the legislative process.***

- *Food Safety Modernization Act: implementing regulations may entail excessive burdens for EU exporters regarding: registration of exporters and food facilities, designated agents, preventive controls for human food; new production standards; new accreditation standards for food safety audit.*

Government procurement

United States

- On 13 February 2009 the US Congress passed the $790bn American Economic Recovery and Reinvestment Act (ARRA), which was signed into law by President Obama on 17 February 2009. The legislation includes two new 'Buy America(n)' provisions that:

- 'prohibit funds appropriated by this Act to be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States.';
- 'prohibit funds appropriated by this Act to be used for the procurement by the Department of Homeland Security of a detailed list of textiles items (e.g. clothing, tents, cotton and natural fibres, etc.) unless the item is grown, processed in the United States.'
- Specific waivers to these restrictions can be requested on the basis of public interest, non-availability or unreasonable costs. The final new Buy America(n) type amendments contain language that the law should be "applied in a manner consistent with US obligations under international agreements". Such wording is supposed to give ARRA consistency with, among other US international agreements, the WTO plurilateral Government Procurement Agreement (GPA).
- On 30 August 2010, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Councils adopted a rule that implements a "Buy American" provision of the American Recovery and Reinvestment Act. The rule clarifies that iron and steel construction materials are exempt from the Buy American provision only when those materials do not consist wholly or predominantly of iron or steel. If they do, no exemption is made. The Buy American provision does not apply if: coverage would not be in the public interest; if the US does not produce enough iron, steel, and manufactured goods; or if enforcing the provision would increase the cost of the project by more than 25%.
- As regards the application the rules apply to:
  - State procurement entities not covered by the US GPA commitments as well as the procurement by the States not committed under the GPA;
  - States covered by the GPA will have to admit bidders coming from GPA Parties if the procurement in question is covered by the US GPA commitment.
  - Although the funding, in the form of grants, will be provided by the federal authorities, the States will be for the most part the ultimately procuring entities.
  - Following the adoption of ARRA, the U.S. Administration has issued two sets of implementing rules and guidance aiming at further clarifying the new provisions. These have been subject to a two-month stakeholder consultation. No change was done in theimplementation of the Act, except an increase from 787 to 840bn USD of the expenditure, in 2011.
  - On May 15, the Senate passed S 601, Water Resources Development Act of 2013. The bill included an amendment by Senators Jeff Merkley (D-OR) and Sherrod Brown (D-OH) that would extend Buy American provisions to certain water infrastructure projects to be known as Innovative Financing Pilot Projects. The Buy American provision is in Section 10016 of the bill. The Senate bill would authorize $50,000,000 in funding for the program for each fiscal year from 2014-2018. Under the legislation approved by the Senate, recipients of federal loans and loan guarantees under the Water Infrastructure Finance and Innovation Act (WIFIA) for eligible construction, alteration, maintenance, or repair projects must use U.S.-produced iron, steel, and manufactured goods. Eligible entities are corporations, partnerships, JVs, trusts, federal/statel/local govt. entities, tribal governments and state

infrastructure financing authorities. The legislation contains an exception to the Buy American requirement in situations where the Secretary finds that (1) adhering to the requirement would be inconsistent with the public interest, (2) the iron, steel, and the relevant manufactured goods are not made in the United States in sufficient quantities or are not of satisfactory quality, or where (3) complying with the rule would increase the cost of the overall project by more than 25%. (These are the standard Buy American exceptions). The Senate bill would apply to projects valued at $20,000,000 or more, except for certain rural water infrastructure projects that qualify for a lower $5,000,000 project cost threshold. Under the bill, several types of projects would be eligible for WIFIA assistance, including certain flood control or hurricane and storm damage reduction projects; certain water pollution control projects; certain Safe Drinking Water Act projects; energy efficiency projects for public water systems or treatment works; repair, rehabilitation, or replacement of treatment works, community water systems, or aging water distribution or waste collection facilities; brackish or sea water desalination projects, managed aquifer recharge projects, or water recycling projects; certain real property acquisitions in connection with a project, and projects that combine a variety of eligible projects pursued by a state infrastructure financing authority or pursuant to a common security pledge. The Senate bill also identifies several activities that would be eligible for assistance under WIFIA, including development-phase activities, construction, reconstruction, rehabilitation, replacement, real property acquisition, environmental mitigation, acquisition of equipment, and certain aspects of project financing. There is currently no companion House bill for the Senate-passed Water Resources Development Act of 2013 at this time.

- Other initiatives possibly entailing domestic content requirements have also been introduced to Congress for assessment, such as “The Invest in American Jobs Act of 2013’ or the “American Steel First Act of 2013”.

The Unites States are a party to the WTO GPA.

Investment and services

Unites States

- Foreign ownership of US airlines: the US Code 40102 establishes that 75% of the voting rights in a US carrier must be owned by persons who are citizens of the United States. **The FAA Modernization Act of 2012 (Public Law 112-95), which authorized the FAA budget from 2011-14, modified some provisions in title 49 of the US code but did not touch this issue. This matter is discussed yearly between the EU and US but no progress has been made.**

- CFIUS: Committee on Foreign Investment (CFIUS) is the US foreign investment screening used to monitor acquisitions by foreign governments. While CFIUS is used in transactions involving sensitive sectors, the lack of transparency prevents verification that the process is not politicized or investments are prevented on protectionist grounds, or that EU companies are pressured to withdraw acquisition plans. The US Government does not share information on specific transactions. The last annual CFIUS report to Congress for 2011, showed a majority of companies filing CFIUS applications were European.

EXPORT RESTRICTIONS

N.A.

MEASURES TO STIMULATE EXPORTS

N.A.

OTHER MEASURES

Stimulus measures

United States

- On 30 March 2010, President Obama signed into law the Health Care and Education Reconciliation Act of 2010 that closed the supposed tax loophole for black liquor provided in the CBPC. It was planned to enlarge the scope of the US fuel tax credit, which related to a tax credit designed to promote the use of alternative fuels, expanded in 2007 by the US Congress. US $0.50 a gallon were supposed to be offered to firms that blend renewable fuels, such as ethanol, with traditional fossil fuels, such as diesel. By mixing a small amount of taxable fuel (diesel) into the 'black liquor', US companies that produce pulp through the kraft chemical process would qualify for funding. Payment of those subsidies started in March 2009. From a Memo No. AM2010-002 from the U.S. Internal Revenue Service (IRS), it emerged that black liquor producers could qualify for a higher tax credit by registering as cellulosic biofuel producer and get USD1.01/gallon for the volumes of black liquor produced in 2009. The companies could retroactively claim this USD1.01/gallon biofuel tax credit instead of the USD0.50/gallon credit for alternative fuel mixtures. Current legislation in force, Tax Relief, Unemployment Insurance Reauthorisation, and Job Creation Act of 2010 (H.R. 4853) renewed the Alternative Fuel Mixture Credit yet effectively removed black liquor fuel as an eligible fuel. During negotiations for a multiyear US transportation bill, an attempt was made in the Senate to eliminate the "black liquor" tax credit through an amendment to the legislation as a cost savings measure, but the proposal and the legislation failed to pass the Senate.

Other

N.A.

SUSPENDED/TERMINATED MEASURES

United States

- On 17 July 2009 the House of Representatives passed H.R. 3183, "Appropriations for Energy and Water Development and Related Agencies Act of 2010 ". The House also adopted a "Manager's amendment" - made up of a series of 10 amendments including a so called Kissell/Pastor Amendment, which says: "None of the funds made available in this Act may be used to purchase passenger motor vehicles other than those manufactured by Ford, GM or Chrysler". This discriminatory provision has been removed during the conference process.

- Discriminatory Buy America provisions in the Jobs for Main Street Act, adopted on 18 March 2010, have been abandoned.

- Restrictions on foreign entity related to funding of energy-related researched projects have been reversed on 17 December 2009.

- The draft Foreign Manufacturers Legal Accountability Act of 2009, which lapsed due to the Congress elections in November 2010 aimed to further protect U.S. consumers and businesses from injuries caused by defective products manufactured abroad. It would require the heads of federal government agencies such as the Food and Drug Administration to pass regulations requiring that foreign manufacturers of products regulated by their agencies register an agent who will accept service of process in case of damage litigation. Regulators could exclude manufacturers who only import a minimal amount of products into the United States. The Bill would create an obligation that these foreign manufacturers consent to the jurisdiction of the courts in the state where their agent is located. Foreign Manufacturers Legal Accountability Act of 2010 in the House version was very similar to the Foreign Manufacturers Legal Accountability Act of 2009. It required establishing a registered agent in the United States who would be authorized to accept service of process on behalf of foreign manufacturers for the purpose of all civil and regulatory actions in state and federal courts. The House Energy and Commerce Committee 21 July 2010 passed H.R.467, which contained an import ban on products of those manufacturers who failed to register an agent in the US. There was a similar pending legislation in the Senate (S.1606) which sought to remove this provision, while looking at the possibility to establish an import threshold exempting minor exporters from the requirements. Due to the November 2010 elections to the Congress, no further action on the draft was taken. In relation to the objectives of the Act, the U.S. Supreme Court issued two opinions, on 27 June 2011, in which it declined to expand the jurisdictional reach of U.S. courts over foreign manufacturers, including foreign subsidiaries of U.S. companies whose products may end up in the U.S. In *Nicest*, the Supreme Court reversed (5 to 3) a decision of the New Jersey Supreme Court denying the New Jersey Court specific jurisdiction over a U.K. manufacturer whose product had been involved in a workplace accident. In a unanimous decision, the Supreme Court in *Goodyear* concluded that a North Carolina court did not have jurisdiction, under a theory of general jurisdiction, over foreign subsidiaries of a U.S. company that manufactured tires in Turkey that were allegedly involved in a bus accident in France, killing two North Carolina residents.

- Financial Services and General Government Appropriations bill (S 1432, HR 3170) The Senate Appropriations Committee and the full House passed their own versions of the Financial Services and General Government Appropriations bill (S 1432, HR 3170), which would prohibit inverted companies from receiving funds through contracts with federal government agencies. The specific language states: None of the funds appropriated or otherwise made available by this or any other Act may be used for any Federal Government contract with any foreign incorporated entity which is treated as an inverted domestic corporation or any subsidiary of such an entity. Although the Senate version of the bill states consistency with international obligations (the prohibition in subsection (a) shall not apply to the extent that it is inconsistent with the United States obligations under an international agreement), the House version of the bill, which has already passed in the House of Representatives, does not. This provision will only apply to the appropriations funds for the fiscal year of 2010. Currently there are only a couple of companies that would be negatively affected (that recently inverted to become European companies), but this does not mean that

there will not be more in the future. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- The “National Defense Authorization Act for Fiscal Year 2010” included three provisions that would introduce either 'Buy American' requirements or otherwise imply set-asides or protection for U.S. providers of goods or services. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- 'Buy American' provisions on steel and iron and manufactured goods and 'Hire American' provisions were expected to be included in the economic stimulus legislation. Concrete negative effects of these provisions to the procurement possibilities of European companies in the US market have already been reported. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- On 30 July 2010, the House of Representatives passed the Assistance, Quality and Affordability Act (HR 5320), which included new Buy American requirements. Notably, the funds made available by a State loan could be used for a project for the construction, alteration, maintenance, or repair of a public water system if the steel, iron, and manufactured goods used in such project are produced in the US. This legislation intended to fund various drinking water projects set up by US states and municipalities, which are not covered by the Government Procurement Agreement. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- In the House of Representatives, Rep. Lipinski introduced HR 4351 and Senator Feingold in the Senate introduced S 2890, Buy American Improvement Act, which proposed to eliminate reasonable costs exception in 1933 Act and replacing it with 25% of project cost, as well as other preferences for domestic suppliers. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- The House of Representatives approved on 23 September 2010 a temporary, three-month extension of Federal Aviation and Administration Act (FAA) programs, allowing more time for Congress to debate a permanent reauthorisation bill for the FAA. This means that the issues relating to airline ownership, mobile voice communication in aircraft and foreign repair stations are not yet off the table. On 29 and 30 July 2010 the House and Senate respectively passed another extension of the current Federal Aviation and Administration Act authorization until 30 September 2010. It is of concern because the House bill contains more restrictive language on foreign ownership and control of US airlines, inspection of foreign repair stations by the US government and a sunset clause for anti-trust immunity for airline alliances. The text approved by the Senate has less stringent provisions. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- The US is adopting a series of measures in the field of exploration and exploitation of energy resources. The Consolidated Land, Energy, and Aquatic Resources Act, H.R. 3534 provides for: the Americanization of offshore operations in the exclusive economic zone (all oil drilling related vessels in the exclusive economic zone must be registered in the United States and must be at least 75 per cent U.S. owned); Build America requirement for offshore facilities (a person may not use an offshore facility to engage in support of exploration, development, or production of oil or natural gas in, on, above, or below the exclusive economic zone unless the facility was built in the US. A person can seek to have the "build American" requirement waived). The legislation was passed by

the House on July 30, 2010. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- The U.S. government approved two relevant auto loans to date. On 30 September 2008 President Bush signed into law the "2009 Continuing Appropriations Resolution", which included appropriation of funding for so called 'Advanced Technology Vehicles Manufacturing Incentive Program' (ATVMIP). On 19 December 2008 President Bush announced that the Administration would provide federal loans for GM and Chrysler in the total amount of US $ 17.4 billion using the 'Troubled Assets Relief Program' (TARP) originally approved for the financial institutions. The law expired.

- On 17 March 2009 Rep. Betty Sutton introduced 'car scrappage' legislation (HR 1550), which would provide consumers with vouchers if they decide to scrap their high polluting automobile and replace it with a new fuel efficient automobile. All new cars would benefit from this measure. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- The House of Representatives passed American Clean Energy and Security Act of 2009 (H.R. 2454) on 26 June, 2009 which included section 123: Plug-In Electric Drive Vehicle Manufacturing, which directs the U.S. Department of Energy to establish a vehicle manufacturing assistance program to provide financial assistance to automobile manufacturers to facilitate the manufacture of plug-in electric drive vehicles that are developed and produced in the United States. The financial assistance would be provided for the reconstruction or retooling of facilities for the manufacture of plug-in electric drive vehicles or batteries for such vehicles that are developed and produced in the United States. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- Related to Black Liquor, the program constituting a part of the 2008 Farm Bill, was supposed to benefit "companies that use expensive, cutting-edge technologies to distil ethanol from plant materials instead of corn". Despite Congress' intent, the Internal Revenue Service released a memorandum in October 2009 ruling that black liquor qualified for cellulosic biofuel producer credits because the fuel is produced and used in the U.S. and is "derived from lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis." Current legislation in force, Tax Relief, Unemployment Insurance Reauthorisation, and Job Creation Act of 2010 (H.R.4853) renewed tax reliefs for alternative energy production but removed black liquor fuel as an eligible fuel.

- Jones Act: on 17 July 2009 Customs and Border Protection (CBP) published a "Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment between Coastline Points", which proposed to remove exemptions to the Jones Act for certain offshore activities involving foreign flag vessels and thereby change long-standing interpretations of rules for vessels in the offshore oil and gas industry. The notice provided only a 30-day comment period and letters were sent to CBP by Ambassador Bruton, the Consultative Shipping Group and the European Community Shipowners' Association (ECSA), among others, requesting an extension of the deadline so the impact could be fully examined. ECSA's request was denied. However on 15 September 2009 CBP withdrew the proposal based upon its consideration of 141 comments received both in favor of and against the proposal, and on additional research. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- New piece of legislation would force the administration to reduce trade barriers in other countries before allowing other countries to sell their products in the US market. The Reciprocal Market Access Act would essentially add 'common sense' reforms to the process by which goods are exchanged between the United States and other countries. The bill would instruct US trade negotiators to eliminate foreign market barriers - including non-tariff barriers - before reducing US tariffs. It also would provide enforcement authority to reinstate the tariff if the foreign government does not honour its commitment to remove its barriers. The lawmakers indicated their legislation is particularly targeted at the ongoing World Trade Organization Doha Development Agenda trade negotiations. US negotiators currently do not have the flexibility to trade a tariff reduction for elimination of a non-tariff barrier, the lawmakers said. To correct that, the bill would require the President to provide a certification to the Congress, in advance of agreeing to a modification of any existing duty on any product, that sectoral reciprocal market access has been obtained; if trading partners do not grant similar market access or if they erect new barriers to US exports, the United States may withdraw tariff concessions. The process would be triggered by either a private-sector or Congressional petition. Due to the November 2010 elections to the Congress, no further action on the draft was taken.

- The Berry Amendment Extension Act (H.R. 3116) extends certain "Berry Amendment" restrictions placed on military acquisitions by the Department of Defence to the Homeland Security Department. The original Berry Amendment requires the U.S. Department of Defence to procure certain goods, such as textiles, clothing, tents and cotton, from domestic sources. The legislation includes a clause requiring consistency with international obligations.

- The House of Representatives passed the Congressional Made in America Promise Act of 2009 (H.R. 2039), which clarifies that the Buy American Act of 1933 extends to the Legislative branch. The bill also prohibits application of any of the exceptions to requirements of the Act (public interest, unreasonable cost, unavailable supply, etc.) for all products bearing the Congressional Seal.

- On 22 May 2009 the United States Department of Agriculture (USDA) presented a 'Dairy Export Incentive Program' for the period from July 2008 through 30 June 2009. The programme is equivalent to the US WTO commitments for agricultural export. Some countries and regions will be excluded from the programme and quantities may be limited depending on the budget. USDA's Foreign Agricultural Service is in charge. The programme originally was introduced in 1985 and was reauthorized by the Food, Conservation and Energy Act of 2008, the so-called 'Farm Bill'. The programme has been extended for the period July 2010 – June 2011 and the beneficiary products are non-fat fry milk, butterfat and various cheeses. While the programme officially lapsed, applications were still being accepted to distribute the remainder of funds.

- On 25 March 2010 a proposal for a bill was tabled, to extend for five additional years the existing subsidies and protection for US ethanol. The bill would extend three measures, the Volumetric Ethanol Excise Tax Credit, the Small Ethanol Producers Tax Credit, and a special tariff on imported ethanol. It would also extend the Cellulosic Ethanol Production Tax Credit for three years. Current legislation in force, Tax Relief, Unemployment Insurance Reauthorisation, and Job Creation Act of 2010 (H.R. 4853) renewed the Alternative Fuel Mixture Credit but effectively removed black liquor fuel as an eligible fuel. The Volumetric Ethanol Excise Tax Credit, Small Ethanol Producer Credit, Biodiesel Tax Credit, Small Agri-Biodiesel Producer Credit and Renewable Diesel Tax Credit, administrated by IRC, expired in December 31, 2011. The Credit for Production of Cellulosic Biofuel and Special Depreciation Allowance for Cellulosic Biofuel Plant Property, administrated by IRC, to

expire in December 31, 2012. Biorefinery Assistance and Repowering Assistance, which offers grants to biorefineries that use renewable biomass to reduce or eliminate fossil fuel use, administrated by the Rural Business-Cooperative Service (RBS), to expire at the end of FY2012. Bioenergy Program for Advanced Biofuels administrated by the Rural Business-Cooperative Service (RBS), which provides payments to producers to support and expand production of advanced biofuels, to expire at the end of FY2012**.**

TRADE FACILITATION MEASURES

United States

- On 11 August 2010, President Obama signed into law the U.S. Manufacturing Enhancement Act of 2010 (H.R. 4380), known as the Miscellaneous Tariff Bill (MTB), intended to help create jobs and strengthen the manufacturing sector. The MTB amended the harmonized tariff schedule of the US to provide for duty suspensions and reductions (chemical components in particular) until 31 December 2012. The MTB reduces or suspends some tariffs that U.S. companies must pay to import certain materials to manufacture their products. **On 1 January 2013, Ways and Means Chairman Dave Camp (R-MI), Ranking Member Sander Levin (D-MI), Trade Subcommittee Chairman Kevin Brady (R-TX), and Trade Subcommittee Ranking Member Jim McDermott (D-WA) announced the introduction of the "US Job Creation and Manufacturing Competitiveness Act of 2013", which would extend existing or introduce new import tariff cuts.**