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Tempering 'Buy American' in the Recovery Act - Steering Clear of a Trade War

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Focus

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FEATURE COMMENT: Tempering 'Buy American' In The Recovery Act—Steering Clear Of A Trade War

Regulators have begun drafting new rules to implement the "Buy American" provisions in the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"), P.L. 111-5. See 51 GC ¶ 60; Peter Orszag, Director, U.S. Office of Management and Budget, Memorandum M-09-10, *Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, at 47 (Feb. 18, 2009), available at *www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf.* Specifically, § 1605 of the Recovery Act requires that, for public works and public buildings funded by the new law, all iron, steel and manufactured goods be produced in the U.S. The regulation implementing § 1605 may be published as an interim rule and, presumably, become binding immediately because of the need to rush implementation of the Recovery Act.

We remain concerned that the new rule implementing the Buy American provisions may prove one of this year's most important procurement measures. If not carefully drawn, the rule could help draw the world economy deeper into a debilitating spiral of protectionism. See, e.g., Steven L. Schooner and Christopher R. Yukins, "Public Procurement: Focus on People, Value for Money and System Integrity, Not Protectionism," in *The Collapse of Global Trade, Murky Protectionism, and the Crisis: Recommendations for the G20*, at 87 (Richard Baldwin and Simon Evenett eds.) (March 2009), available at *www.voxeu.org*; Robert D. Anderson and William E. Kovacic, "Competition Policy and Trade Liberalisation: Essential Complements to Ensure Good Performance in Public Procurement Markets," 2009 Pub. Proc. L. Rev. 67.

The timing could not be more delicate. This rulemaking comes just before the April 2009 G-20 summit, when the U.S. will attempt to persuade its (at this point, skeptical) major European trading partners to undertake a massive, coordinated stimulus effort. See Bob Davis, "U.S. to Push for Global Stimulus," Wall Street Journal, March 9, 2009, at A1. In an effort to assess and, hopefully, inform the likely next steps, this Feature Comment reviews the history of § 1605 and discusses a number of paths the rule-writers may take.

Background: The Recovery Act's Buy American Requirements—When the Recovery Act originally passed the House, the bill stated that all iron and steel used in stimulus projects for public buildings or public works had to be produced in the U.S. The Senate went further, requiring that all iron, steel and "manufactured goods" be produced here. Then, in response to sharp criticism that the legislation might launch a trade war, see, e.g., Gary Clyde Hufbauer and Jeffrey J. Schott, "Buy American: Bad for Jobs, Worse for Reputation," PIIE Policy Brief 09-02 (February 2009), available at *www.petersoninstitute.org/publications/pb/pb09-2.pdf*, the Senate appears to have backpedaled and amended the bill to clarify that the Buy American requirements must be enforced "in a manner consistent with United States obligations under international agreements." See, e.g., *Congressional Record,* Feb. 4, 2009, at S1528; David W. Burgett, Lewis E. Leibowitz and Andrew C. Ertley, Feature Comment, "How Will Buy America Restrictions Affect Stimulus Spending?," 51 GC ¶ 51; Jason Matechak, Feature Comment, "No Way BAA: Domestic Preferences and the Stimulus Package," 6 IGC ¶ 9.

Many assumed that the Senate's compromise put the trade issues to bed by stipulating that the U.S. would comply with its preexisting international commitments. We are not so sanguine. The revised

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legislation leaves many questions open, which, unfortunately, only nourished the anxieties of the U.S.' trading partners.

Impacts of the Buy American Provisions—No matter how the regulatory process turns out, we already foresee a number of important results caused by the Recovery Act's Buy American provisions.

International Support for Open Markets ...: Deeply concerned by Congress' willingness to veer towards protectionism, leaders from around the world continue to press for open markets. In an address to Congress on March 4, UK Prime Minister Gordon Brown asked:

> But should we succumb to a race to the bottom and to a protectionism that history tells us that in the end protects no one? No. We should have the confidence, America and Britain most of all, that we can seize the global opportunities ahead and make the future work for us ... . [W]e win our future not by retreating from the world but by engaging with it.

Canada's ambassador to the U.S. voiced the same concerns in comments made during the congressional debate on the Recovery Act: "We are concerned about contagion, that is, other countries also following protectionist policies. If Buy America becomes part of the stimulus legislation, the United States will lose the moral authority to pressure others not to introduce protectionist policies. A rush of protectionist actions could create a downward spiral like the world experienced in the 1930s." See *Congressional Record*, Feb. 4, 2009, at S1529 (quoted by Sen. John McCain (R-Ariz.)).

... Including Open Procurement Markets: Ironically, while Congress passed protectionist legislation to shelter U.S. procurement, the European Commission reacted in exactly the opposite way: only a month or so earlier, the Commission issued a formal communication urging that "[w]e must ... maintain our commitment to open markets across the globe, keeping our own market as open as possible and insisting that third countries do the same, in particular by ensuring compliance with WTO rules." To preserve that commitment to open markets, the Commission urged, Europe "should take renewed action to ... [c]ontinue dialogues with key bilateral partners such as China, India, Brazil and Russia and use them to address" market opening in various sectors, including public procurement. European Commission, Communication from the Commission to the European Council, "A European Economic Recovery Plan," COM(2008) 800 final, at 18 (Brussels, Nov. 26, 2008), available at *ec.europa.eu/commission_barroso/president/pdf/Comm_20081126.pdf.*

Increased Pressure on Nations Outside the "Walled Garden" of U.S. Procurement: The U.S. takes a special approach to its free trade agreements in procurement, in which reciprocity, rather than openness, serves as the ultimate touchstone. To encourage other nations to join agreements, the U.S. generally *excludes* from the federal market those nations that have not yet joined the U.S.' trade agreements. See, e.g., Christopher R. Yukins and Steven L. Schooner, "Incrementalism: Eroding the Impediments to a Global Public Procurement Market," 38 Geo. J. Int'l L. 529 (2007), available at *ssrn.com/abstract=1002446*. The excluded nations—including China, which is only now moving to join the WTO Government Procurement Agreement (GPA), and India, which is not—alarmed by their exclusion from the hundreds of billions of dollars funded by the Recovery Act, may sense an increased level of urgency to enter into U.S. free trade arrangements.

The true impact of the Recovery Act's "Buy American" provisions will only be known when the implementing rule is issued. What shape, then, should that new rule take? As noted, the rule may well have repercussions far beyond the U.S., especially if the rule embraces protectionism in the midst of the current economic storm. Cf. Jeffrey E. Garten, "The Dangers of Turning Inward," Wall Street Journal, March 5, 2009; Burton G. Malkiel, "Congress Wants a Trade War," Wall Street Journal, Feb. 5, 2009. Thus, the regulators—those drafting the implementing provisions for the Federal Acquisition Regulation—should be mindful of the rule's political context, both here and abroad.

The Perils of Rulemaking: Domestic and Global Political Contexts—The procurement regulators face a checkered political landscape, for the Obama administration earlier may have sent mixed messages. On the campaign trail, candidate Obama bemoaned the (since-overturned) award of the Air Force tanker contract to a team including EADS over Boeing, and implied it was hard for him to believe that "an American company that has been a traditional source of aeronautic excellence" was not the preferred outcome. Candidate Obama also pledged to "fight to ensure that public contracts are awarded to companies that are committed to American workers."

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But much has changed in the few months since the election. Most of the world has plummeted into a daunting recession with the potential to spawn a long-term depression, see, e.g., Anthony Faiola, "U.S. Downturn Dragging World Into Recession," Washington Post, March 9, 2009, at A01, and history offers too many lessons against resorting to protectionism in the face of economic collapse. The Obama administration's public positions echo those lessons. In joint comments with Prime Minister Gordon Brown, for example, President Obama noted, "Globalization can be an enormous force for good. And one of the things we've talked about repeatedly is that countries in this crisis cannot start turning inward and try to erect protectionist barriers. We should encourage trade." *Remarks by President Obama and British Prime Minister After Meeting*, March 3, 2009, available at *www.whitehouse.gov*.

The Administration's Procurement Agenda—True to these concerns, the Obama administration has *not* pressed for protectionism, as the new administration has taken its first steps towards procurement reform. The new administration has instead stressed:

Containing Procurement Costs: The Recovery Act and other economic stimulus measures will likely drive the U.S. budget deeper into deficit spending and mind-boggling debts for many years. To stem that tide, the Obama administration intends to probe expensive weapon system programs for possible modification or termination. See President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies re: Government Contracting, March 4, 2009 (presidential memo), available at *www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government-Contracting/*; 51 GC ¶ 77; see also Remarks of the President, March 4, 2009 (endorsing legislation to strengthen weapon system cost reviews sponsored by Sens. Carl Levin (D-Mich.) and John McCain, S. 454), available at *www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-Procurement-3/4/09/*; Government Accountability Office, *GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*, (GAO-09-3SP) (assessment tool for program costs), available at *www.gao.gov*.

Encouraging Competition and Discouraging Cost-Reimbursement Contracting: In his presidential memo of March 4, Obama directed OMB to issue, by the end of September, Government-wide guidance to discourage the use of noncompetitive contracts. Picking up a theme from McCain, who has long criticized cost-reimbursement contracts as inherently wasteful, Obama called for guidance on "the appropriate use ... of all contract types," consistent with § 864 of the last defense authorization act, which calls for clearer regulation of cost-reimbursement contracts. We remain skeptical of these priorities (although we acknowledge that they resonate with the media).

Rebuilding the Acquisition Workforce: After years of denial, the Federal Government is finally awakening to the fact that its acquisition workforce desperately needs to be bolstered. See, e.g., "Acquisition Workload and Ineffective Oversight Remain Top Concerns, PSC Finds," 50 GC ¶ 433; Professional Services Council, *Acquisition in Transition: Workforce, Oversight and Mission* (October 2008) ("As ... in all previous surveys, workforce issues were the number one challenge and area of focus"), available at *www.pscouncil.org/pdfs/2008PSCProcurementPolicySurvey.pdf*; Commission on Army Acquisition and Program Management in Expeditionary Operations, *Urgent Reform Required: Army Expeditionary Contracting* (Oct. 31, 2007), available at *www.army.mil/docs/Gansler_Commission_Report_Final_071031.pdf*. The presidential memo called for OMB to issue guidance to "assist agencies in assessing the capacity and ability of the Federal acquisition workforce." Of course, that is not a complete solution, but we hope that it at least signals a step in the right direction.

Checking Federal Outsourcing: Finally, the presidential memo called for guidance to "clarify when governmental outsourcing for services is and is not appropriate, consistent with section 321 of Public Law 110-417." Here, as elsewhere, the administration seems intent on signaling a change in tone, not in the law: a departure from the Bush and Clinton administrations' support for outsourcing, but in keeping with last year's defense authorization act, which already called, in § 321, for a "comprehensive analysis and development of [a] single government-wide definition of inherently governmental" functions that should not be outsourced. Of course, no policy statement alone can address the root cause of this complex phenomenon. Today, the Government has too few civil servants and an undersized military to fulfill the Government's large (and ever-expanding) body of mandates.

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Thus, although the president has publicly charted an ambitious course for procurement reform, *none* of the announced initiatives calls for closing the federal procurement system to foreign vendors. Indeed, a core fiscal goal in this reform effort—containing procurement costs by encouraging competition—would only suffer if foreign competitors were excluded from the procurement market. See Robert Anderson and William Kovacic, "Competition Policy and International Trade Liberalisation," supra.

Foreign Concerns—At the same time, foreign governments have made clear that they are watching closely to see how the U.S. will implement the Buy American provisions in the Recovery Act, and that they are willing to fight if the implementation proves protectionist. As the Washington Trade Daily reported February 27:

> During an extensive World Trade Organization government procurement committee meeting …, several members—including the European Union, Switzerland, Norway, Japan, Canada and Israel—expressed sharp concerns about US expansion of its Buy America provisions in a just-passed economic stimulus bill ….
>
> The critics said the move sends a "negative" signal to other committee members and undermines the coverage aspects of the [WTO] plurilateral agreement [on government procurement]. The European Union, in particular, took Washington to task by charging that the United States has gone against commitments it made during last November's Group-of-20 leaders meeting in Washington not to take any protectionist actions during the current economic downturn ....
>
> The United States told the committee that it has yet to formulate monitoring procedures for the implementation of the Buy America provisions. It assured members, however, that the controversial provisions will be implemented "fairly"—in consonance with its commitments. … But US officials admitted that more work needs to be done on implementation in the coming days. Washington will come back with more information in the next committee meeting set for May 11 to 15 … .

Id.; see also Elliot J. Feldman, " 'Buy American' Gets a Hot Reception: Despite Obama Visit, Stimulus Provisions Force Canada to Re-Examine Its Relationship with U.S.," Legal Times, Feb. 23, 2009; "EU Angered by Obama 'Buy American' Call," Irish Times, Feb. 4, 2009, at 21. The challenge for U.S. regulators, therefore, is to implement § 1605's "Buy American" requirements without driving the globe closer to a trade war.

Potential Ways Forward for U.S. Regulators—The regulatory drafters must start with the relatively spare language of statute itself. Section 1605 of the Recovery Act reads:

> BUY AMERICAN
>
> Sec. 1605. Use of American Iron, Steel, and Manufactured Goods.
>
> (a) None of the funds appropriated or otherwise made available by this Act may 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.
>
> (b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that—
>
> (1) applying subsection (a) would be inconsistent with the public interest;
>
> (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
>
> (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.
>
> (c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.
>
> (d) This section shall be applied in a manner consistent with United States obligations under international agreements.

P.L. 111-5, § 1605. Section 1605 thus:

- Articulated a default rule that all "iron, steel, and manufactured goods" used in a "public building" or "public work" funded by the Recovery Act must be produced in the U.S.
- Failed to define "public building" or "public work." The House version of the legislation had defined those terms by reference to the original

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Buy American Act, 41 USCA § 10c, to include "airports, bridges, canals, dams, dikes, pipelines, railroads, multiline mass transit systems, roads, tunnels, harbors, and piers." This more detailed definition could narrow debate over which "public works" might be covered by the new law.

- Left unclear whether the requirement applies only to end products ordered under contracts or also to *components*.
- Left agency heads the option of waiving the requirement for reasons of public interest, or a defined measure of excessive cost, i.e., if the overall cost of the project would increase by more than 25 percent.
- Explicitly mandated an outcome "consistent with" U.S. obligations under international agreements. The statute did not, however, state how the new requirements could be reconciled with the many U.S. trade agreements.

The conference report that accompanied the legislation sheds little light on Congress' intent:

> Section 1605 provides for the use of American iron, steel and manufactured goods, except in certain instances. Section 1605(d) is not intended to repeal by implication the President's authority under Title III of the Trade Agreements Act of 1979. The conferees anticipate that the Administration will rely on the authority under 19 U.S.C. 2511(b) [affording the President authority to waive trade barriers] to the extent necessary to comply with U.S. obligations under the WTO Agreement on Government Procurement and under U.S. free trade agreements and so that section 1605 will not apply to least developed countries to the same extent that it does not apply to the parties to those international agreements. The conferees also note that waiver authority under section 2511(b)(2) [a special waiver authority for nations, other than major industrial nations, which will comply with the GPA] has not been used.

H. Rep. No.111-16, 111th Cong., 1st Sess. 512 (2009). The conference report thus reflects the conferees' understanding that the U.S. would honor its trade agreements, and that least-developed nations should continue to be afforded special admission to the "walled garden" of U.S. procurement, but offered little further guidance. In light of this relatively sparse legislative record, there are several potential ways forward for the U.S. regulators.

Regulatory Option: FAR Pt. 25—The simplest, most expeditious and elegant approach would be to fold Recovery Act procurement, when undertaken by federal agencies, into the existing regulatory structure in FAR pt. 25. The FAR describes a decision-making process for federal contracting officials assessing foreign goods and services. That "decision tree" is quite complex, but it accommodates the U.S.' many (and sometimes overlapping) trade agreements. If the Recovery Act's Buy American provisions are to defer to existing trade agreements, then goods and services to be purchased under the Recovery Act should simply follow the existing regulatory framework.

The existing structure in FAR pt. 25 provides a pragmatic solution, for FAR pt. 25 both *permits* and *excludes* foreign vendors. For procurements over certain monetary thresholds, FAR pt. 25 accommodates vendors from nations with standing open-market agreements with the U.S. But FAR pt. 25 also acknowledges that those larger purchases may *not* go to vendors from nations that do not have trade agreements with the U.S. (or are not least-developed nations). Thus, FAR pt. 25 already excludes nations without open-market agreements with the U.S., such as China, and creates a (so-called) "walled garden" for vendors from the U.S. and from nations with open-market agreements. Of course, this means that the central goal of the Recovery Act's § 1605—excluding non-U.S. iron, steel and manufactured goods—may already be met, in large part, by FAR pt. 25.

This approach raises an obvious question: if the Recovery Act can simply be folded into FAR pt. 25, would the new law's domestic preferences in fact mean anything? The answer is yes, but the change would be marginal. For example, although the "Buy American" provisions generally would not create new constraints for federal agencies that are already bound by existing trade agreements, the Recovery Act *would* impose new domestic content requirements where the trade agreements do not apply—such as in procurements by the 13 states that are not signatories to the WTO GPA. Because the FAR does not apply directly to state procurements using Recovery Act funds (§ 1610 of the Recovery Act says that the FAR will not apply to Recovery Act procurements covered by other laws), presumably the FAR drafters could leave to the states how to implement the new "Buy American" requirements.

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This "short and simple" regulatory approach also would reduce political unrest: making clear that the Recovery Act does not carve out new exceptions to foreign firms' opportunities in the U.S. market would sharply reduce concerns, and rhetoric, over protectionism—and so would avoid fueling the fires of protectionism abroad. Cf. Art Pine, "Hurt American?," Congress Daily, March 9, 2009 (noting that "Buy American" provisions in the Recovery Act have encouraged protectionism in other nations). In the current environment, with political concerns magnified by the economic crisis, easing the war of words over protectionism seems a sound course.

Regulatory Option: The Specialty Metals Model—A second approach would be to adopt the regulatory regime normally applied to specialty metals bought by the U.S. Defense Department. See U.S. Department of Defense, Defense Procurement and Acquisition Policy, *Restrictions on Specialty Metals (10 U.S.C. 2533b)*, available at *www.acq.osd.mil/dpap/index.html* (Web site chronicles evolution of specialty metals restrictions). Under 10 USCA § 2533b, when DOD purchases certain major categories of items—such as aircraft, missile and space systems, ships, tank and automotive items, weapon systems, and ammunition—only items and components containing domestic specialty metals may be purchased. See, e.g., "DOD Says Domestic Source Restrictions Not Necessary for Specialty Metals," 6 IGC ¶ 13; "DOD Final Rule Waives Specialty Metal Restrictions On COTS Item Acquisition," 4 IGC ¶ 93; John W. Chierichella and David S. Gallacher, Feature Comment, "The Continuing Saga Of Specialty Metals—Nothing Is Ever So Bad That It Cannot Be Made Worse," 4 IGC ¶ 26; John J. Pavlick and Rebecca E. Pearson, "New DOD Guidance on the Berry Amendment: Still Berry After All These Years," 42 Proc. Law. 7 (Winter 2007); Paul M. Kerlin, "Note, 1,000 Trucks Can't All Be Wrong: The Untenable Reality of the Specialty Metals Requirement," 38 Pub. Cont. L.J. 237 (2008).

There are compelling reasons, however, not to apply the specialty metals regime. First, the specialty metals regulatory regime took years to implement. Delaying the Recovery Act's implementation, in contrast, could be disastrous. Second, although the specialty metals statute applies a domestic preference to both *end items* and *components*, the Recovery Act does *not* specifically state that its "Buy American" protections should be extended to *components* as well as the end products actually purchased under a contract. Experience with the specialty metals requirement demonstrates that forcing suppliers to ensure that *components*, as well as end items, meet domestic-content requirements imposes enormously costly compliance burdens. Also, in a curious twist, only *domestic* vendors must bear this burden regarding components: foreign vendors need not ensure that components are compliant, so long as the end product being offered by the foreign vendor (the end product which contains the component) is "substantially transformed" in a designated nation. This perverse result—sometimes known as the "Frankenstein" effect, see John W. Chierichella and David S. Gallacher, Feature Comment, "Specialty Metals and the Berry Amendment—Frankenstein's Monster and Bad Domestic Policy," 46 GC ¶ 168—could mean that *foreign* vendors from nations with trade agreements with the U.S. would actually enjoy a *comparative advantage over domestic U.S. vendors*, were the Recovery Act's "Buy American" requirement to be funneled through the specialty metals regime.

Regulatory Option: The Federal Transit Funding Model—A final option is found in the regulatory regime through which the Government administers "Buy America" requirements in federally funded transit projects. See 49 USCA § 5323; 49 CFR pt. 661. This approach is superficially attractive for its apparent symmetry. The governing federal transit statute, much like the Recovery Act, says that federal funds may be obligated for a transit project "only if the steel, iron, and manufactured goods used in the project are produced in the United States."

From there, however, the federal transit regime morphs into something of a quagmire. First, unlike procurement conducted under the Recovery Act, federal grants to state and local governments—the typical means of funding federal transit projects—are generally exempted from, for example, the WTO GPA. See GPA, Appendix I Annexes—General Notes ("procurement in terms of U.S. coverage does not include non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and governmental provision of goods and services to persons or governmental authorities not specifically covered under U.S. annexes to this agreement"), available at *www.wto.org/english/tratop_e/gproc_e/appendices_e.htm*. Procurement under the Recovery Act, in contrast, will be carried out at least in part by federal

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agencies directly. It would be essential, therefore, to clarify that those federal agencies are still subject to U.S. trade agreements, for the Recovery Act specifically states that procurements funded by the Recovery Act *will* honor U.S. trade agreements.

Second, the federal transit project regulatory regime would cause the new law's "Buy American" requirements to apply to *components,* as well as the end products listed in a contract, much as those requirements are applied to components in federally funded transit projects. This would invite a regulatory regime of enormous complexity. Under the federal transit regulations, for example, although requirements for steel and iron apply to all "construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges," the requirements "do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock." Manufactured products, on the other hand, are treated differently: for a manufactured product "to be considered produced in the United States," all of the manufacturing processes for the project must take place in the U.S., and all of the components must be of U.S. origin, though the origin of its *sub*components is not considered relevant. 49 CFR § 661.5. Sorting out this very complex regulatory regime in Recovery Act projects could take years—a delay that the U.S. economy, which desperately needs new stimulus funds, simply cannot afford.

Conclusion—The "Buy American" requirements in § 1605 of the Recovery Act remain extremely controversial. Moreover, they threaten to stir protectionism—if not an outright trade war—among other nations. Protectionism, most observers agree, could be catastrophic in the current economic crisis, and nothing in the Obama administration's first forays into procurement policy suggests that the new administration believes additional domestic preferences are needed for U.S. procurement. The pending challenge for federal regulators, therefore, will be to craft a rule that contains the Recovery Act's international impact, while implementing Congress' intent. The optimal approach seems to be the most simple: to fold new procurement under the Recovery Act into the existing FAR regulatory structure, which, in keeping with the Recovery Act, accommodates the U.S.' many trade agreements. Bringing Recovery Act procurements within the FAR structure would ensure that federal agencies' procurements adhere to those trade agreements. (In addition, this approach also dramatically increases the likelihood that an already over-taxed acquisition workforce can consistently apply the new rules.) From there, the FAR drafters could leave it to state governments (and other recipients of Recovery Act funding) to implement the new law's domestic content requirements. This simple, quick and elegant approach would be the least likely to generate new, potentially disastrous waves of protectionism in the critical, but treacherous, waters of global commerce.

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