

THE 'BUY-AMERICAN' CLAUSE

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President Barack Obama had just signed a US\$787 bi fiscal stimulus package passed on to him by the US Congress. It was hailed in the United States as Obama's first big legislative victory and a bold step to get the American economy out of recession.

But outside the United States, the stimulus bill was not so popular because it contains a protectionist section which stipulates that only US-made steel and manufactured products can be used in government projects funded by the stimulus package.

The protectionist clause especially affects developing countries, since most developed countries are to a large extent exempted from this buy-American condition. The bill stipulates that none of the funds appropriated may be used for public works projects "unless all of the iron, steel and manufactured goods used in the project are produced in the United States."

China's state-owned Xinhua news agency attacked the "buy American" clause in an article entitled: "Protectionism a poison to financial crisis solutions." It said "history and economics have told us, facing a global financial crisis, trade protectionism is not a solution, but a poison to the solution."

China's Commerce Ministry spokesman said it was deeply concerned over trade protectionist measures some countries were adopting in the face of the economic crisis.

"Some countries raised clauses to prioritise the purchase of products of their own countries in their economic stimulus packages," said Yao Jian.

"We express deep concern about these measures."

In contrast to the US move, China had avoided "buy China" protectionist measures in its own multi-billion-dollar stimulus effort. Deputy Commerce Minister Jiang Zengwei said in early this month that "China would treat domestic and foreign goods equally so long as we need them."

World Bank President Robert Zoellick, attending a G7 finance ministers' meeting in Rome, told journalists that "the 'buy American' provision is very dangerous".

The response from developed countries was muted. When a draft of the bill containing the "buy American" clause was made known a few weeks ago, it led to protests from political leaders in Europe and Canada.

Obama then promised that the bill would be amended to avoid protectionism. The final bill adds this line: "This section shall be applied in a manner consistent with US obligations under international agreements." This is taken to mean that the buy American principle would not be implemented if it violates the obligations the US has undertaken under the World Trade Organisation and bilateral free trade agreements.

This is cold comfort to most developing countries because WTO multilateral rules do not forbid a country from having buy-local measures in government projects. The WTO does, however, have a plurilateral agreement on government procurement (GPA), under which members agree to open up their procurement business to other members of the agreement through a schedule listing the sectors offered and the extent offered.

There are currently 39 members in the GPA, and most of them are developed countries. Only three developing country members of the WTO - Singapore, South Korea and Hong Kong (China) - are members of the GPA.

Under the stimulus bill, the United States is to meet its obligations under the GPA by continuing to open the business in its public-sector projects and expenditure to the other GPA members in line with what it has offered under the GPA.

It is also to keep open its offers contained in the procurement chapter of the free trade agreements it has signed. Only a few developing countries have signed FTAs with the United States.

The clause that the buy American condition in the stimulus package will be applied in a manner consistent with US obligations under international agreements seems to have placated the other developed countries since their companies market access in the GPA and FTAs will be maintained.

The bill also enables least developed countries to have access. However, these poor countries generally lack the supply capacity to take advantage of this.

The larger developing countries such as China, India or Brazil that are more equipped to benefit from the stimulus package are the ones that may be affected by the buy American clause. This may explain why the Xinhua opinion article described the protectionist measure as "poison", especially since Chinese officials said China did not have a buy-local clause in its own fiscal stimulus package. □□□

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