

## Despite assurances, Buy American lives

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WASHINGTON — Buried deep in the Water Quality Investment Act of 2009 – a proposed piece of U.S. legislation that would grant billions to state and local governments – Buy American is alive and well.

The bill, which would finance more than \$15-billion (U.S.) worth of water and sewage projects over the next five years, bars the use of all foreign-made iron, steel and other manufactured goods on such projects.

“Overnight, it's going to cause huge damage to a lot of Canadian companies, including our own,” said John Hayward, president of Hayward Gordon Ltd., a small Halton Hills, Ont.-based pump maker. “It's creating a lot of panic.”

Until now, such water and sewage projects were open to foreign suppliers, including Hayward Gordon. The company, which has 75 employees, has been doing about \$5-million worth of this type of work annually, Mr. Hayward said.

But the Obama administration's \$800-billion economic stimulus package revived the use of Buy American restrictions, and almost identical language is now finding its way into a variety of unrelated pieces of legislation.

Canadian businesses are anxiously watching a flurry of other upcoming spending legislation – including massive highways and energy bills – in case they, too, have potentially restrictive conditions. “We had heard that Congress was looking at attaching Buy American to other bills,” said Jayson Myers, president of Canadian Manufacturers & Exporters.

“A lot of bills could be problematic,” Mr. Myers noted.

Unless the water legislation is changed, Mr. Hayward said he'll have to lay off more than 10 per cent of his work force and shift some production to the U.S. – a scenario that could be replicated hundreds of times as Canadian suppliers are shut out of lucrative local projects.

More than a decade after the passage of the North American free-trade agreement, many U.S. policy makers still don't understand the highly integrated nature of the global manufacturing supply chain, said Maryscott Greenwood, executive director of the Washington-based Canadian-American Business Council.

They don't understand that Canadian and U.S. companies “make things” together, she said.

“Buy American provisions have been around for a long time, but this seems to be gaining momentum because of the exasperation with the economy,” Ms. Greenwood said. “It’s a disturbing trend.”

Last month, Prime Minister Stephen Harper declared a partial victory in the fight over a Buy American clause in the U.S. stimulus package, after the Obama administration pledged to comply with its international trade obligations. NAFTA and World Trade Organization rules prohibit discrimination against foreign suppliers on most government purchases.

The catch is that those agreements do not apply to state and local purchases, nor to provincial purchases in Canada. “NAFTA is not a panacea,” Toronto trade lawyer Lawrence Herman said.

The status of federal grants, which are commingled with state and local funds, is less clear. Legally speaking, those projects might be deemed federal, and therefore subject to the NAFTA and WTO protections, Mr. Herman said.

But enforcing the rights of Canadian company to bid on the work might be tough, he said. A Canadian supplier denied work could file a bid challenge under NAFTA, but the process is long and sometimes costly.

“This is the other shoe dropping,” Mr. Herman said. “It’s going to be very difficult for Canadian suppliers to participate in state projects. Unfortunately, that’s the reality.”

Mr. Hayward, the pump maker, said he recently reviewed a project in the state of Maryland, partly funded by federal stimulus dollars. And the bidding documents make it clear that “goods not produced in the United States” are ineligible for funding – without exception.

The Obama administration’s assurances to Canadian officials aren’t making “a difference on the ground level,” Mr. Hayward said.

Meanwhile, some U.S. suppliers are just as unhappy with the spread of Buy American legislation. In a letter sent last week to key members of the House of Representatives, makers of sewage equipment warned that the measure would trigger trade retaliation and “immobilize our markets by undermining our member companies’ ability to produce in their normal supply chain.”

The Washington-based Water and Waste Water Equipment Manufacturers Association urged congressmen to remove “this onerous and unachievable requirement” before they vote on the legislation later this week.

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