

## INFORMATION BULLETIN

---

**DATE: December 4, 2009**

**SUBJECT: "Buy America" Clause**

**SOURCE: Toronto Star**

There has been a breakthrough in talks between Ottawa and Washington aimed at resolving a dispute over a protectionist U.S. policy known as Buy America, according to a source close to the negotiations.

A tentative deal is ready to go to the desks of Prime Minister Stephen Harper and President Barack Obama, the source said, but both could still face significant political obstacles in winning support for the deal.

The pact is intended to respond to Ottawa's complaint that Canadian exporters are being excluded from bidding on projects under Obama's \$787 billion (U.S.) stimulus package because Buy America provisions shut out foreign-made components being used on infrastructure projects

The compromise would for the first time guarantee that U.S. manufacturers could bid on supply contracts being awarded by provincial and municipal governments in Canada, the source said.

Negotiators are expected to meet behind closed doors again next week in Washington to iron out final details of the tentative package.

International Trade Minister Stockwell Day, who is in Asia, has nothing to say about the negotiations now, according to a ministerial spokesperson.

But the U.S. is convinced that the two sides are close enough to an agreement to move ahead on the political front, the source said.

Aware of Canadian complaints that resolving the protectionist problem is dragging on too long, the government in Washington has quietly begun to prepare the groundwork to seek approval of the proposed agreement in the U.S. Congress.

Reaching agreement on the outline of a deal after two months of talks is a significant accomplishment by the negotiators. But the political hurdles on the way to a final settlement are formidable. Whether Obama can get American lawmakers to back a proposal that goes against the prevailing America-first sentiment during the recession south of the border is unknown.

It's not clear if there is enough for Canada in the deal to convince Harper and the provincial premiers it is worth a significant compromise that would for the most part eliminate the provinces' and municipal governments' ability to favour local companies on bids for procurement contracts.

A business representative in Washington said that by last week the two sides in the talks had a pretty good idea what a deal would entail.

"But the conclusion of the technical negotiations does not necessarily mean that there's a settlement," said the representative, who asked not to be named because of the sensitive nature of the talks.

"On the U.S. side, that decision is going to be made by the politicians, and that's where everything can crumble, or languish – or they can endorse it," the representative remarked.

The dispute that is causing tension in the two countries' \$2-billion-a-day commercial relationship began in February when Obama's recovery bill was passed by Congress. It contained Buy America rules that allow U.S. states and cities to bar foreign-made steel, iron or other manufactured goods on infrastructure projects funded out of the stimulus program.

Hundreds of Canadian companies have been hurt by these protectionist measures, according to the Ottawa-based industry association Canadian Manufacturers and Exporters.

In hopes of resolving the issue, the Harper government and the provincial premiers opened the way for negotiations in the summer by presenting the White House with a compromise proposal. Under it, Canada would agree for the first time to bind its provinces and municipal governments to a World Trade Organization procurement agreement blocking discrimination against foreign companies when letting contracts.

This is said to form a key element of the complex deal that negotiators are putting on Harper's and Obama's table.

For its part, Ottawa had been hoping that Canadian companies might in exchange be granted a waiver from Buy America restrictions.

While a waiver appears out of the question, the U.S. has proposed other policy mechanisms to assist Canadian companies whose ability to bid on urban renewal contracts has been hurt by Buy America, according to the source close to the talks.

The protectionist measures have been a problem for Canadian sectors such as steel manufacturers, makers of water treatment equipment and industrial equipment producers. Details on the American compromise are being kept under wraps until the deal is made public.

Canadian companies have urged the two governments to resolve Buy America quickly before the billions of dollars worth of contracts being awarded under the U.S. recovery program are all finalized with Canada's firms left out.

The U.S. government would like to see political approval for the deal in place in Canada by the third week in December so that the Obama administration could move as quickly as possible to win approval in Washington. As in Ottawa, the political machine comes to a halt in the U.S. capital from mid-December to mid-January.