

# Client Alert

International Trade & Litigation Practice Group

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## Proposed American Jobs Act of 2011 Text Carries Forward Buy American Provision from the 2009 Recovery Act

The national discussion regarding President Obama's proposed *American Jobs Act of 2011* ("Jobs Bill") has only just begun. A key provision in the initial draft circulated by the White House is a *Buy American* rule which is identical to language in the *American Recovery and Reinvestment Act of 2009* ("2009 Recovery Act").

In part, the *Buy American* provision states that:

[n]one of the funds appropriated or otherwise made available by [the *Jobs Bill*] 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.

*Jobs Bill* at § 4(a).

The current version of the *Jobs Bill* mandates that the *Buy American* provision apply to multiple projects for which funds are made available under Title II of the legislation, including school and community college modernization, transportation, and other infrastructure projects. See *Jobs Bill* at § 231 (which explains that "Section 1605 of division A of the *American Recovery and Reinvestment Act of 2009* (P.L. 111-5) applies to funds made available under this title.")

As readers of this page may recall, the process of promulgating federal rules and guidelines clarifying the *Buy American* provision of the *2009 Recovery Act* continued through August 2010, or more than a year after that bill's enactment. To limit confusion in the application of future legislation, the language of section 231 of the *Jobs Bill* suggests that the Obama Administration intends for any *Jobs Bill Buy American* provision simply to be governed by rules which are already in force. Please note, however, that because the legislation has only just been introduced by Senate Majority Leader Harry Reid (S. 1549), any final act could be significantly different at the time of passage.

We will continue to monitor this process and welcome the opportunity to help companies with current or future *Buy American* inquiries.

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For more information, contact:

**J. Michael Taylor**  
+1 202 626 2385  
[jmtaylor@kslaw.com](mailto:jmtaylor@kslaw.com)

**Mark Wasden**  
+1 202 626 5529  
[mwasden@kslaw.com](mailto:mwasden@kslaw.com)

**Patrick J. Togni**  
+1 202 626 2958  
[ptogni@kslaw.com](mailto:ptogni@kslaw.com)

**Amy Stanley Hariani**  
+1 202 626 8979  
[ahariani@kslaw.com](mailto:ahariani@kslaw.com)

**King & Spalding**  
**Washington, D.C.**  
1700 Pennsylvania Avenue, NW  
Washington, D.C. 20006-4707  
Tel: +1 202 737 0500  
Fax: +1 202 626 3737

[www.kslaw.com](http://www.kslaw.com)