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“Buy America” Provisions Hurt War Fighters and Taxpayers

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The House version of the National Defense Authorization Act (H.R. 1585), adopted on May 17, 2007, would restrict the supply of certain specialty metals used in weapons construction to domestic sources. If these “buy America” provisions become law, they will drive up construction costs and interfere with the timely construction of weapons needed by military personnel. President Bush’s senior advisors will recommend that he veto any version of the legislation that includes these counterproductive provisions.¹ The Senate Armed Services Committee’s version of the legislation (S. 567), reported on May 25, 2007, does not contain the restrictions.² Congress should embrace the Senate’s current position, thereby avoiding a veto fight and expediting the enactment of legislation critical to national security.

“Buy America” Provisions in the House Bill. H.R. 1585 contains four sections that impose restrictions on the sources of specialty metals:³

- Section 808 requires that bids for major weapons be evaluated on the basis of plans by the metal suppliers to reinvest in domestic production;
- Section 809 broadens the application of requirements to determine the lack of availability of domestic metal products in weapons parts (retroactive to December 2006);
- Section 845 provides a competitive advantage to a contractor using domestic sources of specialty metals by allowing it to discount the costs of complying with domestic source restrictions present in existing law; and

- Section 846 slows the process by which the Secretary of Defense could waive domestic content requirements based on the non-availability of domestic supply.

Regrettably, the House provisions would disrupt improvements made only last year. After careful consideration, Congress included in the National Defense Authorization Act for Fiscal Year 2007 provisions to rationalize the acquisition of weapons containing specialty metals.⁴

The Senate’s Superior Approach. The defense authorization bill reported by the Senate Armed Services Committee contains no provisions that would alter existing law in this area, effectively allowing the Department of Defense to continue implementing the positive changes adopted last year.

The full Senate is tentatively scheduled to take up the National Defense Authorization Act later this month. The Senate should respect the considered judgment of its Armed Services Committee and not adopt amendments that impose new “buy America” restrictions on specialty metals. Assuming the Senate does not adopt such amendments, the Senate’s appointees to a House-Senate conference, which is likely to be convened later this year, should be pre-

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pared to stand their ground on this issue with support from the Bush Administration.

Conclusion. The proper goal for Congress in setting procurement policy for the Department of Defense is to promote fair and open competition, which includes suppliers from allied and friendly countries. The reality is that the defense industrial base is “globalized” in most respects.⁵ The House position focuses exclusively on the risks associated with a global defense market. The risks related to the reliability of supply and the protection of sensitive technology are real, but manageable. The happy circumstance is that most foreign defense sector

partners hail from allied and friendly nations. Furthermore, a diversity of supply and greater competition in defense markets leads to lower prices and more flexibility in acquisition options. The House needs to broaden its perspective regarding the risks and benefits of foreign participation in the defense industrial base. Strict “buy America” restrictions are contrary to the national interest.

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1. Executive Office of the President, “Statement of Administration Policy, H.R. 1585 – National Defense Authorization Act for Fiscal Year 2008,” May 16, 2007.
2. John M. Donnelly, “Road to Reconciliation Could Be Rough for Defense Authorization Measures,” *CQ Today – Defense*, May 24, 2007.
3. For a description of these provisions, see “Report of the Committee on Armed Services, House of Representatives on H.R. 1585,” Report 110–146, May 11, 2007, pp. 361–362 and 370.
4. National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, § 822.
5. For a detailed description of the globalized defense market, see Jack Spencer, ed., *The Military Industrial Base in an Age of Globalization* (The Heritage Foundation: Washington, D.C., 2005).