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Metropolitan Transportation Authority

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Metro

AUGUST 1, 2018

TO: BOARD OF DIRECTORS

**THROUGH: PHILLIP A. WASHINGTON
CHIEF EXECUTIVE OFFICER**

**FROM: PAULETTA TONILAS
CHIEF COMMUNICATIONS OFFICER**

SUBJECT: CORNYN AMENDMENT - ROLLING STOCK PROCUREMENT

ISSUE

Last night, the U.S. Senate adopted an amendment offered by U.S. Senator John Cornyn (R-TX) that would, if adopted into federal law, prohibit the use of federal funds for the procurement of rolling stock from firms who receive support from governments that (1) are identified as non-market economy countries (2) have been identified by the U.S. Trade Representative's recent report 182 and (3) are currently subject to monitoring by the U.S. Trade Representative under section 306 of the Trade Act of 1974. These three criteria apply to rolling stock manufacturers Build Your Dreams (BYD) and the China Railway Rolling Stock Corporation (CRRC), which are both supported by the People's Republic of China. The amendment was offered to H.R. 6147, a \$154.2 billion four-bill spending package.

DISCUSSION

Earlier this year, the Trump Administration indicated its intent to impose billions of dollars in tariffs on products imported from the People's Republic of China. In June of this year, the Office of the United States Trade Representative announced a specific list of products (1,102 separate tariff lines) from that country that will be subject to additional tariffs. The list circulated included rail cars and buses, and spare parts related to railcars and buses, which would be subject to an additional 25 percent *ad valorem* rate of duty. This issue is of concern to our agency because we are purchasing 100 zero emission buses (including options) from BYD and 282 heavy rail cars (including options) from the China Railway Rolling Stock Corporation.

The U.S. House of Representatives and the U.S. Senate have taken their own discreet actions on rolling stock being purchased from firms based in the People's Republic of China. Earlier this year, the House Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development included language (Section 165) in their Federal Fiscal Year 2019 spending bill. Specifically, the language in the bill asserts that:

The Committee prohibits the use of funds to procure any mass transit and passenger rail or freight rail Transportation Systems Sector asset to an entity that is owned, directed, or subsidized by a country identified as a Priority Watch List country, and is subject to monitoring by the U.S. Trade Representative.

Last week, U.S. Senator John Cornyn (R-TX) offered an amendment (No. 3670) to a large spending package that would prohibit the use of federal funds for the procurement of rolling stock from firms who receive support from governments that (1) are identified as non-market economy countries (2) have been identified by the U.S. Trade Representative's recent report 182 and are currently subject to monitoring by the U.S. Trade Representative under section 306 of the Trade Act of 1974.

Yesterday, the language in the Cornyn amendment was modified several times – though it appears the final version of the amendment reverted to its original language (see attachment). The Cornyn amendment would, if adopted, apply to awarding a contract or subcontract with federal funds derived from the Federal Fiscal Year 2019 spending bill. Of note is the fact that the prohibition in the Cornyn amendment does not apply to Capital Investment Grant program (Section 5309) funds. Our Office of County Counsel is currently assessing how the passage of the Cornyn amendment would impact our existing rolling stock contracts, including its potential impact on our ability to exercise options embedded in those contracts.

NEXT STEPS

With the Senate having adopted the Cornyn amendment to H.R. 6147, the next opportunity to modify the language will be when this measure goes to conference. We have and will continue to be in touch with senior aides for our two U.S. Senators to express our agency's concerns regarding the Cornyn amendment. We look forward to working with members of the Los Angeles County Congressional Delegation to offer language that would modify the Cornyn amendment to ensure that it would not compromise our ability to freely exercise our existing bus and rail procurement contracts.

With respect to the Trump Administration's tariff actions, the Office of the U.S. Trade Representative will be providing entities – including rolling stock companies from the People's Republic of China - an opportunity to request the exclusion of particular products from the additional duties outlined by the agency. It is our understanding that several firms subject to this amendment will pursue

this option to seek to have their products excluded from additional tariffs. On July 6, 2018 the U.S. Trade Representative issued a notice in the Federal Register that explained the “procedures and criteria” as to how to request a product exclusion. The request period for the exclusion of products from the added tariff concludes on October 9, 2018.

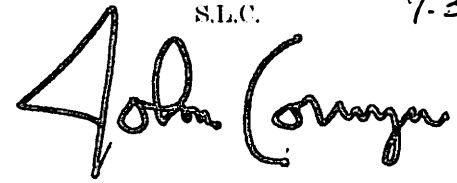
Metro looks forward to working with the Office of the U.S. Trade Representative to ensure a favorable outcome for our agency with respect to our purchase of bus and rail cars from both BYD and CRRC. Metro is also in contact with both firms to ensure the free flow of timely and accurate information regarding this matter.

We will keep the Board apprised of any new developments as they relate to the Cornyn amendment and other actions taken by the Trump Administration that may impact our procurement of rolling stock from BYD and CRRC.

Attachment

A. Cornyn Amendment 3670

MS
3:17pm
7-30-18
BW



AMENDMENT NO. _____ Calendar No. _____

Purpose: To prohibit funds made available to the Federal Transit Administration from being used for the procurement of rolling stock from manufacturers supported by certain foreign governments.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

AMENDMENT N^o 3670

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Page(s)

GPO: 2016 22-045 (mac)

AMENDMENT INTENDED TO BE PROPOSED BY MR. CORNYN TO THE AMENDMENT (NO. 3399) PROPOSED BY MR. SHIELBY

Viz:

- 1 At the appropriate place in title I of division D, insert
- 2 the following:
- 3 SEC. ____ (a) None of the funds appropriated or
- 4 otherwise made available to the Federal Transit Adminis-
- 5 tration under this title to carry out sections 5307, 5311,
- 6 5337, and 5339 of title 49, United States Code, may be
- 7 used in awarding a contract or subcontract to an entity
- 8 on or after the date of enactment of this Act for the pro-
- 9 curement of rolling stock for use in public transportation
- 10 if the manufacturer of the rolling stock is incorporated

1 in or has manufacturing facilities in the United States and
2 receives support from the government of a country that—

3 (1) is identified as a nonmarket economy coun-
4 try (as defined in section 771(18) of the Tariff Act
5 of 1930 (19 U.S.C. 1677(18))) as of the date of en-
6 actment of this Act;

7 (2) was identified by the United States Trade
8 Representative in the most recent report required by
9 section 182 of the Trade Act of 1974 (19 U.S.C.
10 2242) as a priority foreign country under subsection
11 (a)(2) of that section; and

12 (3) is subject to monitoring by the Trade Rep-
13 resentative under section 306 of the Trade Act of
14 1974 (19 U.S.C. 2416).

15 (b) This section shall be applied in a manner con-
16 sistent with the obligations of the United States under
17 international agreements.

18 (c)(1) This section shall not apply to the award of
19 a contract or subcontract made by a public transportation
20 agency with a rail rolling stock manufacturer described in
21 subsection (a) if the manufacturer produced rail rolling
22 stock for an eligible public transportation agency through
23 a contract executed prior to the date of enactment of this
24 Act.

1 (2) A rail rolling stock manufacturer described in
2 subsection (a) may not use funds provided under a con-
3 tract or subcontract described in paragraph (1) to expand
4 the manufacturer's production of rail rolling stock within
5 the United States to an amount that is greater than the
6 amount required under contractual obligations of the man-
7 ufacturer as of the date of enactment of this Act.

8 (d) Nothing in this section shall be construed to apply
9 to funds that are not appropriated or otherwise made
10 available to the Federal Transit Administration under this
11 title.