

November 9, 2009

## Climate Change Policy Update Week of November 2-6, 2009

**Commentary:** *The Boxer/EPW chapter of the Senate climate legislation story ended abruptly this week. In the face of a Republican boycott over the absence of a new EPA analysis of the Kerry-Boxer bill, Chairman Boxer decided to report the Manager's Amendment version of the bill out of the Committee for Senate consideration. The maneuver was not popular with some important moderate Republicans. Many moderate Democrats appeared to view the abrupt end of the EPW process with something close to relief, as it cleared the way for the Kerry-Graham-Lieberman team to get to work on the ultimate "leadership" bill for the floor. Nevertheless, five other committees conceivably could take some action . . . One likely component of the ultimate leadership bill emerged this week, as Sen. Stabenow (D-MI) and a group of other key moderates, came out with a bill outlining a domestic offsets program. The bill is a product of significant outreach to the agriculture community, and to companies for which offsets are a cost containment priority . . . State Department Climate Envoy says a comprehensive new agreement is unlikely to emerge from Copenhagen, but could be finalized in 2010. He says the United States is seeking firmer commitments to emission reduction actions (if not actually binding emission limits) from other countries, including major developing countries . . . The Chamber of Commerce stepped out to embrace the broad policy principles of Kerry-Graham and signal its willingness to engage on the development of climate change legislation.*

### Executive Branch

- **U.S. Climate Envoy Says Developing Countries Should Make Binding Commitments at Copenhagen.** In testimony before the House Committee on Foreign Affairs, U.S. climate change envoy Todd Stern stated that the upcoming December 7<sup>th</sup> climate change summit in Copenhagen should result in binding and verifiable commitments to GHG mitigation from both developed and developing countries. Stern noted that China and India have both taken significant domestic policy actions to reduce GHG emissions, but have yet to translate those efforts into international commitments. Stern also opined that the summit was unlikely to produce a formal legal agreement. Instead, Stern expressed a desire to reach a political agreement that addresses commitments to reduce greenhouse gas (GHG) emissions; transparency and accountability in emissions and allowance tracking; financing; technology transfer; deforestation; and adaptation to the impacts of climate change. A full international treaty could emerge in the following year, said Stern.

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November 9, 2009

- **Export-Import Bank Adopts Carbon Policy.** The Export-Import Bank of the United States (ExIm Bank), which provides direct financing and loan guarantees to support United States exports, announced a broad “Carbon Policy” to guide more of its financing activities towards less GHG-intensive sectors. Elements of the policy include a \$250 million financing mechanism to benefit exports of renewable energy technologies; enhanced provisions for measuring and reporting GHG emissions resulting from projects receiving ExIm Bank support; and efforts to engage other members of the Organization for Economic Cooperation and Development (whose Export Credit Working Party negotiates informal international agreements on export credit policies) on appropriate incentives for low-carbon exports and projects. ExIm Bank, which in the past has been criticized by environmental organizations for its involvement in carbon-intensive infrastructure and energy projects in developing countries, is the first official export credit agency to adopt a GHG policy. The text of the policy is available at: [http://www.exim.gov/products/policies/environment/carbon\\_policy.cfm](http://www.exim.gov/products/policies/environment/carbon_policy.cfm).
- **Presidential Nominations and Appointments.**
  - The Senate confirmed Ignacia Moreno as Assistant Attorney General for Environment and Natural Resources.

## Congress

- **EPW Democrats Report Bill in the Face of Republican Boycott.** The Republican members of the Environment and Public Works Committee boycotted the mark-up of the Kerry-Boxer cap-and-trade bill scheduled by Chairman Barbara Boxer (D-CA), arguing that the Environmental Protection Agency should run a full modeling analysis of the bill rather than relying on analyses of parallel provisions in the Waxman-Markey bill. Committee rules require the presence of two members of the minority party to conduct a business meeting, such as a mark-up to consider amendments, but only a majority vote to report a bill out of committee. After two days of boycott by the Republicans, Chairman Boxer held a vote without any Republicans present. Senator Max Baucus (D-MT) cast the sole vote against the bill, but promised to work with other Senators to create a climate and energy package that could attract 60 votes. S. 1733 will now be referred to the five other Senate committees that have jurisdiction over elements of the bill. Chairman Boxer told reporters that the six committee chairs will meet with Majority Leader Harry Reid (D-NM) on November 16<sup>th</sup> to map out strategy for attracting 60 votes. Sens. Lisa Murkowski (R-AK) and Susan Collins (R-ME), both seen as possible votes for climate legislation, were strongly critical of Sen. Boxer’s decision to hold a vote. Sen. Murkowski suggested that the EPW-passed version was “doomed” and the Senate should start over on the legislation.
- **Sen. Stabenow Releases Offsets Bill.** Senator Debbie Stabenow (D-MI) released the Clean Energy Partnerships Act of 2009 (S. 2729), which would create a domestic offsets program within a federal cap-and-trade program and provide the agriculture and forestry sectors with other financial incentives for reducing greenhouse gas emissions. The bill has been co-sponsored by Sens. Max Baucus (D-MT), Mark Begich (D-AK), Sherrod Brown (D-OH), Bob Casey (D-PA), Tom Harkin (D-IA), Amy Klobuchar (D-MN), and Jeanne Shaheen (D-NH)—most of whom are considered key swing votes for climate legislation. The offsets provisions are generally more flexible than those in the Kerry-Boxer and Waxman-Markey bills, and the Stabenow bill was well received by industry and pro-offsets groups as well as the National Farmers Union, the American

November 9, 2009

Forest Foundation, and the Trust for Public Land. The Environmental Defense Fund offered qualified support, stating that the bill needs more work “to guarantee that offsets are environmentally effective.”

- **Sens. Kerry and Graham Continue Talks.** Senators John Kerry (D-MA), Lindsey Graham (R-SC), and Joe Lieberman (I-CT) met with top Administration officials to discuss climate legislation, and Sen. Kerry told reporters that they were working to put together a climate and energy legislative package that could earn the support of 60 Senators and the White House. Sen. Kerry said that their efforts would move on a “dual track” with work by the six Senate committees with jurisdiction over elements of climate change legislation, but that his negotiations would remain private until the package was assembled, hopefully before international negotiations in Copenhagen. Sen. Graham urged Senate Republicans to “come to the table” to create “meaningful” legislation to control “carbon pollution”, stating his belief that “if you do it right, people can make money and we’ll have a cleaner planet and the world will follow.” Sen. Graham also warned that if Congress failed to create a market-based cap-and-trade program, EPA would issue command-and-control regulations to control greenhouse gas emissions.
- **Senate Finance & Energy Committees to Hold Climate Hearings.** On Tuesday, November 10<sup>th</sup>, the Finance Committee will hold a hearing on climate change and jobs with witnesses representing labor, utilities, the Nuclear Energy Institute, the American Enterprise Institute, and the American Council for Capital Formation. Also on Tuesday, the Energy and Natural Resources Committee will hold a hearing on policy options for reducing GHG emissions, with witnesses representing Resources for the Future, the Brookings Institution, the Natural Resources Defense Council, and the Clean Air Task Force.

## Industry and NGOs

- **Chamber of Commerce Signals Willingness to Engage on Climate Change.** The U.S. Chamber of Commerce, an influential business lobby known for opposing climate change legislation, sent a letter to Senate Environment and Public Works Committee Chairman Barbara Boxer (D-CA) and Ranking Member James Inhofe (R-OK) praising the agreement on bipartisan climate change principles between Senators John Kerry (D-MA) and Lindsey Graham (R-SC). Stating that the “challenge of drafting comprehensive climate change legislation is not ‘whether’ to do something, but ‘how’,” the letter called the Kerry-Graham agreement a “workable, commonsense foundation” for climate legislation. The Chamber also expressed willingness to work with the Senate to “resolve this issue (climate change) in a bipartisan manner that recognizes regional differences, the state of the technology, and the compelling need for a solution that minimizes overall economic impact.” The text of the letter is available at: <http://www.uschamber.com/issues/letters/2009/091103climate.htm>.
- **Environmentalist-Industry Alliance Demands Tighter GHG Market Regulation.** An unusual collection of over thirty environmental organizations, agricultural and petroleum marketers, and consumer advocates sent a letter to Senators John Kerry (D-MA) and Barbara Boxer (D-CA) demanding that climate change legislation include stronger regulation of carbon markets than would be provided under legislation approved by the House Financial Services and Agriculture Committees. The group – which included the Agricultural Retailers Association, Public Citizen, Friends of the Earth, and the Petroleum Marketers Association of America –

November 9, 2009

called for all allowances and GHG derivatives to be traded on exchanges; for index funds and other large investment funds to be prohibited from trading in GHG markets; and for a study of the relationship between the GHG markets and other commodities markets. The letter emphasized that an appropriate regulatory framework should be put in place before Congress establishes new markets for GHG allowances and offset credits.

- **New Business Coalition Calls for Swift Passage of Climate Legislation.** A new coalition of twenty-two companies, including Public Service Enterprise Group (PSEG), Deutsche Bank, and Gap Inc., launched with a press conference calling on Congress to work quickly to pass climate change legislation. The group, which calls itself American Businesses for Clean Energy (ABCE), did not endorse any particular bill or policy approach, but encouraged other firms to register their support for climate and clean energy legislation by listing themselves on the organization's website.

## Studies and Reports

- **Study Finds Deforestation Emissions Overestimated.** Research published in *Nature Geoscience* concludes that greenhouse gas emissions caused by deforestation account for approximately 12% of anthropogenic carbon dioxide emissions, rather than 20% as previously estimated. Researcher Guido van der Werf said the earlier estimates relied upon overestimates of deforestation rates and outdated data.

## International

- **Barcelona Climate Talks Mark Final Formal Negotiations Before Copenhagen.** Representatives from 175 nations met in Barcelona, Spain to continue negotiations on a successor treaty to the Kyoto Protocol. The week-long talks were marked by little progress, continued disagreement between developed and developing nations, and talk of reduced expectations for the December climate negotiations in Copenhagen, Denmark. Echoing events in the United States, the talks included a day-long boycott by African nations to protest a lack of commitment by developed nations to increased emission reduction targets and to providing financing for clean energy development and mitigation and adaption measures in developing nations.

If you have questions about topics covered in this Update, please contact Kyle Danish, head of the Climate Change and Emissions Trading Practice, at [kwd@vnf.com](mailto:kwd@vnf.com).

*The Climate Policy Update is intended as a general summary of major climate change-related policy developments that we judge to be of interest to a broad range of our clients and friends. We welcome your comments and suggestions. Coverage in, and selection of topics for, the Update is not intended to reflect the position or opinion of Van Ness Feldman or any of its clients on any issue. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.*

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