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Climate Change Policy Update Week of December 14 - 18, 2009

Commentary: *Through personal intervention in the negotiations, President Obama salvaged from the Copenhagen talks a 3-page accord. It achieves – in the geologic time scale of the international negotiations – a truly seismic shift: first-time emission reduction commitments from major developing countries, including China. The accord also includes a major package of funding for least developed countries. However, it is woefully short on specifics. In particular, it is vague on the issue of independent international verification of commitments, but seems to suggest that countries not accepting funding (such as China) would not be subject to such verification. This could be a problem for Senate moderates . . . The Copenhagen talks raise several questions. Does the Accord build sufficient momentum to reach a legally-binding agreement in 2010? Is the effect of the Accord negative, positive, or neutral with respect to Senate efforts? And can we keep doing things this way? The events in Copenhagen call into question whether U.N.-style talks among 193 countries can really get anywhere. If such a forum simply ends with a frenzied negotiation among the major economies, why not simply shift the forum to the major economies in the first instance? Can the other developing countries be persuaded that, even if such a shift implies sacrificing their procedural “voice,” they might get a more meaningful agreement?*

International

- **Tense Copenhagen Negotiations Result in Preliminary Political Deal between Major Players; Other Delegations “Take Note.”**
Concluding a frenzied series of negotiations, high level negotiations between the heads of state of the United States, China, India, Brazil, and South Africa resulted in what the Obama Administration called a “meaningful” framework agreement. After President Obama departed to beat a snowstorm in Washington, D.C., the remaining delegations debated the agreement, and only resolved to “take note” of the accord. Elements of the interim agreement include a goal of limiting global average surface temperature increases to 2 degrees Celsius over pre-industrial levels; a requirement that countries publicly disclose national actions and the implementation of their commitments; and establishment of a financing mechanism for adaptation and greenhouse gas (GHG) mitigation projects in developing countries. Many aspects are to be finalized later, including specific 2020 and 2050 targets, and a peak year for global GHG emissions. The agreement establishes a February 1, 2010 deadline for developed nations to agree to 2020 emission targets and for developing nations to release their national action plans.

On the critical issue of independent verification of national actions by the major developing countries, the agreement provides that the countries shall: “communicate information on the implementation of their actions through National Communications, with provisions for international consultations and analysis under clearly defined

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guidelines that will ensure that national sovereignty is respected.” Commitments supported by funding from developed countries are also subject to international “verification.” This formulation implies that actions undertaken by developing countries without external funding will not be subject to international verification.

The 3-page accord is available at <http://unfccc.int/resource/docs/2009/cop15/eng/107.pdf>.

Executive Branch

- **President Obama Announces “Meaningful” Climate Accord in Copenhagen.** In remarks delivered at the end of the conference, the President said that “this progress alone is not enough” and expressed confidence that “we’re moving in the direction of final accord.” The President also said it was necessary to “build some trust between developing and developed countries to break some of the logjams.”
- **At Copenhagen, U.S. Pledges Significant Funds for International Climate Change Efforts.** In a bid to bridge the gap between developed and developing countries at the international climate change summit in Copenhagen, the United States offered several major financial commitments to advance international climate change programs:
 - First, Secretary of State Hillary Clinton offered to work with other countries to marshal \$100 billion per year by 2020 to provide adaptation assistance to those poor countries most adversely affected by climate change. Clinton said the money would be raised from a combination of public and private sources, both domestic and international, and could include revenues from allowance sales in a possible United States cap-and-trade program. However, she did not provide detail as to the potential U.S. contribution to the fund, and said that the pledge was contingent on major emerging economies making binding and transparent GHG reduction commitments.
 - In addition, Agriculture Secretary Tom Vilsack pledged a \$1 billion contribution to a \$3.5 billion financing package assembled by the United States, Australia, France, Japan, Norway, and the United Kingdom to support Reducing Emissions from Deforestation and Degradation (REDD) incentives. The program would encourage developing countries to reduce deforestation, which accounts for approximately 17 percent of global GHG emissions. The initial \$3.5 billion in financing, which the United States said was contingent on an “ambitious and comprehensive outcome in Copenhagen,” would be distributed over three years to countries that develop REDD plans.
 - Separately, Energy Secretary Steven Chu announced a Renewables and Efficiency Deployment Initiative (REDI) that would provide \$70 million per year for five years to promote clean energy technologies in developing countries. The U.S. would contribute \$85 million to the Initiative, with the remaining \$265 million to come from other developed countries.
 - Nancy Sutley, Chairman of the White House Council on Environmental Quality, said the United States would provide \$5 million in funding for international efforts to control black carbon (a form of fine soot with potent climate change effects) in the Arctic region.

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- **EPA Sends OMB Proposed Rule for GHG Reporting From CCS, Oil & Gas Systems.** According to news reports, the Environmental Protection Agency (EPA) has completed two proposed addenda to its GHG Emissions Reporting Rule that would require reporting of CO₂ emissions from carbon capture and sequestration (CCS) sites and fugitive and vented methane and CO₂ emissions from oil and gas systems. EPA submitted the proposed rules to the White House Office of Management and Budget (OMB) for review on December 14. Typically, OMB review shortly precedes the public release of a proposed or final rule. EPA reportedly plans to issue a notice of proposed rulemaking for these rules by February 2010, with the aim of finalizing the rules by September 2010. Monitoring would begin in January 2011, and the first reports would be due in March 2012 – a full year after other sectors now subject to the Reporting Rule commence monitoring and reporting GHG emissions.
- **USDA, Dairy Farmers Execute GHG Reduction Agreement.** At the Copenhagen climate change summit, Secretary of Agriculture Tom Vilsack signed a memorandum of understanding (MOU) with U.S. dairy industry representatives to engage in GHG-reducing manure management projects. The MOU, which was signed by Dairy Management, Inc. – a group representing 56,000 dairy producers, the American Dairy Association, the National Dairy Council, and the U.S. Dairy Export Council – aims to achieve a 25% reduction in GHG emissions from dairy farms by 2020. To achieve this goal, USDA will use existing authority to invest in digesters that generate electricity from captured methane, streamline the process of funding methane digesters on dairy farms, and conduct research on the GHG benefits of changes in animal feed. Vilsack said that methane digestion technology “is a win for everyone” because “it provides an untapped source of income for farmers, it provides a source of renewable electricity, reduces our dependence on foreign fossil fuels, and provides a wealth of additional environmental benefits.”
- **Presidential Nominations and Appointments.** The Senate Commerce, Science, and Transportation Committee approved the nomination of David Strickland to become Administrator of the National Highway Traffic Safety Administration (NHTSA). One of NHTSA’s core responsibilities is to establish fuel economy standards for passenger cars and light trucks.

Congress

- **CBO Gives Kerry-Boxer Bill A Favorable Deficit Score.** The Congressional Budget Office (CBO), a nonpartisan Congressional agency that analyzes the fiscal impacts of proposed legislation, concluded that the federal budget deficit would be reduced by \$21 billion as a result of the Kerry-Boxer climate change bill reported from the Senate Environment and Public Works Committee in November. Through 2019, the Kerry-Boxer bill would raise approximately \$854 billion in federal revenues – largely through the auctioning or free distribution of emission allowances – and spend only \$833 billion of that total. CBO also found that the Kerry-Boxer bill would not increase the federal budget deficit after 2019. These estimates were based on a projected allowance price of \$17 per ton of CO₂-equivalent in 2011, increasing to \$30 by 2019. These results are consistent with CBO’s analysis of the Waxman-Markey climate change bill, released in June, which found that the cap-and-trade bill would generate surplus revenues of \$9 billion through 2019. The CBO report is available at: http://blogs.cqpolitics.com/copenhagen2009/climate_s1733_cbo.pdf.

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- **House and Senate Republicans Seek To Overturn EPA Endangerment Finding.** Republican Reps. Joe Barton (TX) and Darrell Issa (CA) announced that House Republicans would seek a Resolution of Disapproval in response to EPA's recently issued GHG endangerment finding. The Resolution would overturn the endangerment finding and prevent it from taking legal effect. The move follows an announcement earlier in the week by Senator Lisa Murkowski (R-AK) that she would seek a Joint Resolution in the Senate to veto the endangerment finding. In addition to Senate passage, the Joint Resolution must be passed by the House and signed by President Obama.

Judicial

- **Airlines Sue United Kingdom over Inclusion in EU ETS.** The Air Transport Association, American Airlines, Continental Airlines, and United Airlines have sued the government of the United Kingdom in a bid to overturn the inclusion of aviation sector emissions in the European Union's (EU) cap-and-trade program, known as the EU European Trading System (EU ETS). According to the complaint filed in a London court last week, the United Kingdom's promulgation of regulations placing international airlines under the EU ETS emissions cap represents a breach of both the Kyoto Protocol and a 2007 US-EU bilateral agreement on air transport.

States and Cities

- **California Concludes Pair of Sub-National Agreements in Copenhagen.** In Copenhagen, Denmark, alongside the international climate change negotiations, high-ranking California officials signed two sub-national climate change agreements with counterparts from other nations. The first agreement will establish a coalition, to be called the "Club of 20 Regions (R20)," that will focus on fast-track implementation of the Copenhagen results at the domestic level. The second agreement will expand the existing Governors' Climate and Forest Task Force, a group that includes governors from California, Brazil, Indonesia, Malaysia, Nigeria, and Wisconsin and is focused on reducing GHG emissions from forestry activities. California Governor Arnold Schwarzenegger also issued a proposal for the United Nations to hold a Climate Change Summit for state, city, local and regional governments, offering to host the event in California.

Industry and NGOs

- **Environmentalists Send Copenhagen Requests to Obama.** The World Resources Institute, Sierra Club, and sixteen other environmental organizations sent a letter to President Barack Obama on the eve of his arrival in Copenhagen, asking that the President commit to phasing out the \$10 billion in tax benefits and subsidies provided to the American fossil fuel industries. In addition, the groups called for the President to pledge to redirect those resources to the protection of tropical forests, the deployment of clean energy technology, and humanitarian assistance and adaptation programs. The letter also advocates creation of a "global sectoral cap" for the international shipping and aviation industries, which were not covered by the Kyoto Protocol. The letter is available at: <http://www.wri.org/press/2009/12/ceo-letter-president-obama-international-climate-finance>.
- **European and American Business Groups Call for Climate Accord.** The American business association known as the Business Roundtable issued a unique joint statement with the European

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Round Table of Industrialists calling on negotiators in Copenhagen to agree on “practical and effective climate solutions” at the climate change summit. The statement endorsed six principles for a global agreement on climate change, including: binding emission reduction commitments from all major emitting countries; common monitoring, reporting, and verification systems to track progress against those commitments; the development of a global market for emissions allowances; and distribution of free allowances to energy-intensive and trade-exposed industries. The statement is available at <http://www.businessroundtable.org/sites/default/files/ERT%20Press%20Release%20FINAL.pdf>.

Studies and Reports

- **AP-Stanford Poll Finds Shallow Support for Cap-and-Trade Policies.** A poll jointly conducted by Stanford University and the Associated Press found majority support for cap-and-trade policies to reduce GHG emissions, but also found that the level of support was highly sensitive to the anticipated cost of the program. Approximately 50% of respondents in two polling groups said they favored a cap-and-trade program, with support rising to 66% when the question included a reference to the success of tradable allowances in controlling acid rain. However, fifty-nine percent of respondents said they would oppose a cap-and-trade program that increased their monthly electricity bills an additional \$10. Opposition rose to 75% of respondents at a hypothetical cost increase of \$25 per month. Asked about general support for action on climate change, a slight majority – fifty-two percent – said the U.S. government should be doing “a great deal” or “quite a bit” on climate change. Sixty-three percent agreed that global warming would harm future generations “a great deal” or “a lot” if no action is taken. A separate Gallup-USA Today poll found that 55% of Americans supported signing a binding treaty to reduce GHG emissions at the global climate change summit in Copenhagen.

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.

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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