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## Climate Change Policy Update December 10-14, 2007

### Commentary

*After a dramatic finish, the Bali talks produced a two-year road map for development of a successor to the Kyoto Protocol. The Bush Administration successfully avoided inclusion of any explicit emission targets in the Action Plan. However, after the 2008 Presidential election, a different team will take the field for U.S., and that team will face strong international pressure to accept binding reduction obligations.*

*Bali turned out to be a surprisingly good place to learn about domestic U.S. climate policy developments. Key Congressional staffers were on hand, and participated in several side-events. Staff for Senators Lieberman and Warner reported that they expect a Senate floor vote on the Lieberman-Warner bill by February or March. Between now and then, they will be working to defuse and resolve issues of cost containment mechanisms (including safety valve price caps, the carbon market efficiency board, and offsets) and nuclear power. They also expect further modifications to the provisions for allocating and auctioning allowances. The staffers indicated that they see possible changes to the rather restrictive offset provisions in the bill – including the blanket prohibition on use of reductions from projects in developing countries – but made clear that this will only happen if industry makes its case for such modifications.*

### UN Bali Negotiations

- **Delegates Agree on “Bali Action Plan.”** After a rancorous series of final plenary sessions in Bali, delegates participating in the UN Conference of the Parties to the Framework Convention on Climate Change reached agreement on a two-year road map for negotiating a post-2012 international climate change treaty. What follows are some of the highlights of the Action Plan:
  - The document establishes an “Ad Hoc Working Group on Long-Term Cooperative Action” under the UN Framework Convention on Climate Change. The group will negotiate over the next two years and present its work to the Conference of the Parties for adoption. At the same time, talks will continue under the auspices of the Kyoto Protocol to the UNFCCC – the United States is not a party to the Kyoto Protocol. The Action Plan envisions that these dual-track talks eventually will converge.
  - EU delegates had sought to include in the Action Plan a specific objective of achieving 25-40 percent emission reductions from 1990 levels by developed countries by 2020, which is the level the Intergovernmental Panel on Climate Change (IPCC) recently identified as a minimum level of reductions needed to avoid warming in excess of two degrees Celsius. The US objected to inclusion of a specific numerical target (or even range of targets), asserting that it would pre-judge the outcome of the discussions. The final document omits any numerical targets, but includes a footnote referencing the page of the most recent IPCC report that includes the 25-40 percent figure.
  - The Action Plan commits developed countries to “enhanced national . . . action on mitigation of climate change, including consideration of . . . quantified emission limitation and reduction objectives.”

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- Developing countries resisted similar commitments, but agreed to consideration of “measurable, reportable, and verifiable nationally appropriate mitigation actions.” The Action Plan also raises the possibility of global sectoral agreements, which could lead to measures encompassing the steel, aluminum, or cement industries.
- The parties also agreed to development of an enhanced program to reduce emissions from deforestation and forest degradation in developing countries (REDD), which accounts for 20-25% of global CO<sub>2</sub> emissions. The Bali Action Plan calls for agreement on “policy approaches and positive incentives” for REDD. It is unclear at this point whether the parties will support strategies utilizing the private sector, *e.g.*, through the global emissions trading markets.
- Finally, the Action Plan calls for “enhanced action” on: (1) adaptation measures for developing countries particularly vulnerable to the effects of climate change, and (2) technology development and transfer to support action on mitigation and adaptation in developing countries. The US and other countries resisted inclusion of any specific funding commitments for the measures in the Action Plan.
- **Bush Administration Schedules Next “Major Economies” Meetings.** The Bush Administration announced plans for two “Major Economies Meetings on Energy Security and Climate Change” in January and February. The first “Major Economies” meeting took place in September when President Bush invited the leaders of Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, South Korea, South Africa, United Kingdom, the European Union (EU), the European Commission (EC), and the UN to discuss strategies for addressing GHG emissions from the largest economies (and largest GHG emitters). Earlier this month, White House Council on Environmental Quality Chairman James Connaughton sent a letter scheduling the next meetings to the leaders of the 17 nations that met in September. Mr. Connaughton said in the letter that the January meeting, to be held in Hawaii, will “take stock of the Bali outcomes” and focus on long term reduction goals, national mid-term goals, and the development and deployment of low-carbon fossil fuel-fired electricity generation. The February meeting will be held in Paris. During the sessions in Bali, representatives from the European Union threatened to boycott the Hawaii “Major Economies” meeting if the U.S. did not agree to a meaningful Action Plan for the UN negotiations.

## Congress

- **Energy Bill Progresses without Tax Package.** Late Thursday night, the Senate passed a scaled-back version of the energy bill (H.R.6) by a vote of 86 to 8. Senator Debbie Stabenow (D-MI) was the only Democrat to vote against passage. Earlier in the day, the Senate failed to approve a vote on cloture to end debate on a version of the energy bill that had a contentious tax package that would have repealed roughly \$13 billion in tax incentives for domestic oil and gas producers. The tax plan also included extensions of credits for renewable power production. The cloture vote failed by a narrow vote of 59 to 40. Sixty votes were necessary to close debate. The bi-partisan approval came after Senate Majority Leader Harry Reid (D-NV) removed the tax component of the package. Earlier in the week, Senate Democrats also removed a provision that would require electric utilities

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to supply up to 15 percent of their power from renewable sources by 2020, in order to avoid a filibuster threat from Republicans. The approved measure includes the following provisions:

- An increase in fuel economy standards for cars and light trucks to 35 miles per gallon by 2035;
- An expansion of biofuels production to 36 billion gallons of ethanol or other renewable fuels by 2022; and
- An increase in efficiency standards for light bulbs.

The House is expected to pass the bill on Tuesday and the White House has reported that President Bush intends to sign the bill.

- **House Panel to Hold Hearing on Bali Outcome.** The House Select Committee on Energy Independence and Global Warming will hold a hearing on Wednesday, December 19<sup>th</sup>, to discuss the Bali road map agreement. Witnesses will include a Costa Rican environmental official, representatives from the Pew Environment Group and the Center for Clean Air Policy, and a representative from the Competitive Enterprise Institute.
- **House Panel Alleges White House Altered Climate Reports.** The House Oversight and Government Reform Committee released a report this week accusing the White House Council on Environmental Quality of editing scientific documents to emphasize uncertainty about climate change. The report was released at the conclusion of a 16-month long investigation to review thousands of government documents and congressional testimony. Republican committee members offered a companion report as a rebuttal to the mostly-Democratic undertaking.
- **Conference Report Includes Climate Change Risk Assessment.** The House approved a conference report on the fiscal year 2008 defense spending bill (H.R. 1585), which includes a provision that will require the Department of Defense (DoD) to assess the affects of climate change on current and future military operations. The provision also requires that the DoD include consideration of risks from climate change in its reviews of missions of the U.S. Armed Forces. The measure was approved by a vote of 370 to 49.

## Courts

- **Federal District Court Dismisses Industry Challenge to California Vehicle CO<sub>2</sub> Standards.** A federal district court last week dismissed an auto industry challenge to California's vehicle CO<sub>2</sub> emission standards, holding that the state regulations were not preempted by federal laws addressing fuel economy. On behalf of the U.S. District Court for the Eastern District of California, Judge Anthony Iishi held that under the Supreme Court's decision in *Massachusetts v. EPA*, EPA was authorized to regulate vehicle CO<sub>2</sub> emissions based on its statutory mandate to protect public health and welfare, even if those regulations affect vehicle fuel economy. Furthermore, Judge Iishi held that the Energy Policy Conservation Act (EPCA), the statute under which the National Highway Traffic Safety Administration (NHTSA) issues corporate average fuel economy (CAFE) standards, requires NHTSA to conform its regulations to the level set by EPA if the two standards differ. Finally, the judge held that once EPA issues a waiver for California vehicle standards, those standards become "federalized" and should be treated the same as EPA regulations. With regard to preemption, Judge Iishi held that because the California regulations are directed at reducing vehicle

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emissions, rather than at improving fuel economy, the standards are not directly related to the federal CAFE program and, therefore, are not preempted by EPCA.

## Industry

- **Industry Leader Urges Global Shipping Industry to Establish GHG Reduction Targets.** The Secretary General of the International Chamber of Shipping (ICS), the international trade association for merchant shippers, called on the worldwide shipping industry to establish targets by the end of next year for the reduction of GHG emissions and other air pollutants. The Secretary General stated that it is “absolutely vital that conclusions are reached and improved standards adopted during 2008,” or the shipping industry could be subject to various local regulations. The comments were made at a conference on ship emissions, and in advance of a report due to be released shortly from the United Nations International Maritime Organization on CO<sub>2</sub> emissions reductions.

## States and Cities

- **Michigan Climate Council Begins Developing State Climate Action Plan.** With a meeting on December 12, the 35-member Michigan Climate Action Council began its year-long mission of developing a state climate action plan. Michigan Governor Jennifer Granholm (D) created the group in November of this year to prepare a state inventory of GHG emissions since 1990, develop a forecast of GHG emissions through 2020, create a state action plan with recommendations for reducing emissions, and work with local governments and universities to implement the action plan. The Council’s areas of focus include energy supply, land use, transportation, and residential and industrial energy use. The task force will deliver its final report in mid-December of next year. The Council builds on a number of other state climate change initiatives, such as a pilot carbon-offset program for forestry and agriculture, a commission reviewing renewable fuels, a carbon-sequestration assessment project, and wind energy projects.
- **Seattle Mayor Proposes Free Bus Passes for City Employees By 2009 to Reduce City’s GHG Emissions.** In an effort to reduce the city’s GHG emissions, Seattle Mayor Greg Nickels sent to the city legislature a proposal to increase the city’s annual employee transit pass subsidy. For 2008, the Mayor’s proposal would increase the subsidy from \$15 to \$30, covering over half of the cost of a monthly transit pass, and would increase to cover the entire cost of a monthly pass in 2009-10. The plan would raise the city’s transit subsidy expenditures to \$1.1 million over the three years. The city council is not likely vote on the proposal until next year.

## Studies and Reports

- **Business Group Questions Climate Change Bill’s Compliance with WTO.** A National Foreign Trade Council report titled *WTO – Compatibility of Four Categories of U.S. Climate Change Policy* suggested that the Lieberman-Warner bill may violate WTO rules. As currently drafted, the bill authorizes the President to apply the bill’s requirement that domestic manufacturers hold emissions allowances for their GHG emissions to importers of energy-intensive goods from high GHG emitting nations that do not have emission caps, such as India and China. The report noted that this provision may violate WTO rules against placing more stringent restrictions on foreign goods than on domestic goods. Other provisions cited as potentially violating WTO rules include the bill’s definition of covered goods and its renewable fuels standard. However, one observer noted that the bill was

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specifically drafted to comply with WTO rules and that the provisions could be permissible under the WTO's natural resources and public health exemptions. The Senate Finance Committee is expected to consider the bill's WTO compliance when it holds a hearing on the bill.

## International

- **Canada Sets GHG Reporting Deadline for Industry.** Canadian Environment Minister John Baird announced that industry is required to submit data on 2006 GHG emissions by May 31, 2008 to enable the government to set emission intensity reduction targets for each industrial sector. The Canadian climate plan requires a 6 percent reduction in GHG emissions intensity each year until 2010 and 2 percent each year thereafter. The electricity, oil and gas, pulp and paper, smelting and refining, iron, steel, cement, lime, and chemicals manufacturing sectors are targeted under the plan.
- **Survey Finds Regulatory Uncertainty Prevents Canadian Industry Action on Climate.** A survey conducted by the Deloitte consulting firm found that Canadian companies cited regulatory uncertainty as the reason for not taking action to reduce GHG emissions. Of the 54 companies surveyed, 43 percent said that uncertainty posed the most significant obstacle, while 20 percent said that implementation costs were the most important factor contributing to inaction on reducing emission.
- **Quebec Announces Intent to Adopt California Vehicle CO<sub>2</sub> Emission Standards.** Quebec Environment Minister Line Beauchamp announced at the UN climate negotiations in Bali that the province plans to adopt California's vehicle CO<sub>2</sub> emission standards. Under the draft regulations, manufacturers would be required to meet the standards beginning with model year 2010 vehicles. British Columbia and Manitoba also have pledged to adopt California's standards. In the U.S., 16 states have adopted or are preparing to adopt California's regulations.

*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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