



Fall 2009 Newsletter

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The editors of the Women in International Trade Newsletter welcome you to the last WIIT Newsletter of 2009! This newsletter keeps members informed about WIIT events and activities, and current issues in international trade through articles written by WIIT members.

This edition of the Fall Newsletter includes articles from WIIT members on efforts to combat global warming and other environmental threats, and how proposed policy changes will affect international trade. The newsletter also includes summaries of recent events, including the annual OWIT International Fall Board Meeting, which was held in Cleveland on October 23-24 and was attended by Carol Brewer, the WIIT DC OWIT Representative, along with several other WIIT DC members.

Finally, if you have not done so already, don't forget to renew your WIIT Membership! As a member, you can participate in events in Washington, DC at the member rate, plus you get free attendance to brown-bags and events on Capitol Hill. Follow the links for the application and for more information on what each category includes!

[Individual Memberships](#): \$75, Government: \$45, Student: \$45

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We hope you find this issue informative and engaging. We welcome your comments and suggestions.

Sincerely,

[Manka Azefer and Kristin Wedding](#)

WIIT Newsletter Editors

Potential Issues Related To Exempting Certain Products and Countries From Climate Change Border Measures

*by Emily Bleimund, Associate at King & Spalding**

The recently-passed American Clean Energy and Security Act of 2009 (HR 2454) establishes a national cap-and-trade program and includes an international reserve allowance program ("IRAP") requiring importers of covered goods to provide allowances for the carbon emissions associated with those goods, beginning in the year 2020. The purpose of the program is to ensure that both domestic and foreign producers face the same compliance costs, that neither side gains a competitive advantage due to the regulatory regime, and that overall carbon emissions do not increase (known as "leakage"). HR 2454, however, includes numerous exemptions to this requirement. As we await the Senate's proposal for this section, it is important to note several problems that may arise with the inclusion of these exemptions in the final bill.

The first exemption included in HR 2454 is for countries that are party to an international agreement to which the United States is also a party, and that includes a nationally enforceable and economy-wide emission reduction commitment. This exemption - a Kyoto-type agreement where countries commit to future national emissions targets - poses potential problems. For example, as written in HR 2454, the exemption only requires that the country be "party to" an agreement. What if the country signs, but does not implement, the agreement? The exemption also does not ensure that the emissions target applies to all sectors in the economy or all types of emissions (e.g., indirect and direct). For any particular foreign industry, therefore, there is no guarantee that any emission reductions will take place at all. Thus, there is no guarantee that the industry will incur compliance costs similar to those faced by the competing U.S. industry.

The second exemption is for products from countries that are party to a sectoral emission reduction agreement to which the United States is also a party. Sectoral agreements are recognized by the United Nations Framework Convention on Climate Change (UNFCCC) as potential successful components of a global environmental regime, and are the object of serious discussion in various negotiating contexts. As with the first exemption, however, one potential problem is the lack of any requirement that the agreement actually be implemented and enforced. Another concern is the absence of language regarding the scope and level of commitment in such agreements. The UNFCCC embraces a "common but differentiated" approach to the reduction of GHGs where countries are held to different standards based on the acknowledgement that each country has differing capacity for emissions reductions, but the lack of more specific language regarding commitments may compromise the anti-leakage purpose of the IRAP.

Another concern related to these two exemptions is the approval process for such agreements. While trade agreements have traditionally been considered congressional-executive agreements, requiring majority approval by both houses of Congress, environmental agreements have traditionally been considered treaties, requiring two-thirds approval by the U.S. Senate. Is a climate change agreement a trade or an environmental agreement? There is no provision in HR 2454 designating the approval process for these agreements, and clarification of this issue in the statute would clear up any uncertainty.

The third exemption is for products from countries where the annual GHG intensity for that sector is lower than in the United States. For example, if the average GHG intensity of all cement produced in Canada is lower than the average GHG intensity of all cement produced in the United States, imports of cement from Canada would be exempt from the IRAP. There are several potential problems with this exemption. The first is the significant administrative burden of calculating sector-specific GHG intensities for foreign countries. Who will provide the information? How will it be verified? Another problem is that, even if the average intensity is lower than in the United States, the products actually exported to the United States may not have lower GHG intensities. It may be the case, in fact, that the highest emission products in a particular sector (and therefore likely those with the lowest environmental compliance costs) are those that are exported to the United States. This would compromise the anti-leakage goals of the IRAP.

The fourth and fifth exemptions in HR 2454 share some common problems with the first three. The fourth exemption is for products from least developed countries ("LDCs"), as they are defined by the United Nations. As of today, this list includes 49 countries around the world that have the lowest indicators in income, human resources, and economic vulnerability.[1] The fifth exemption is for products from countries representing less than a de minimis 0.5% of global GHG emissions, and less than 5% of total U.S. imports for that sector. Based on 2006 emissions data, 178 countries had de minimis emissions, representing 17.9% of total U.S. imports for that year.[2] All five exemptions share some common potential issues. First, any type of exemption creates a risk of trans-shipment. A product could be manufactured in a non-exempt country, and then shipped through an exempt country in order to qualify for the exemption. Without severe penalties against fraud and false statements, and thorough country of origin verification procedures, such trans-shipments could defeat the purpose of the exemptions.

Another potential problem is the risk that production facilities would be moved from non-exempt to exempt countries. For example, manufacturers could move production to one of the 178 countries with de minimis GHG emissions, and because it is unlikely that the exempt status would be updated annually, even an extreme shift of production could go unaddressed for several years, allowing high-emissions products to come in under exempted status. Alternatively, a production shift could be concentrated in one particular sector, not significant enough to change a country's exempt status, but causing substantial harm to the competing U.S. industry.

A third common issue with the exemptions is a potential WTO challenge that they violate the most favored nation ("MFN") clause contained in Article I of the General Agreement on Tariffs and Trade ("GATT"). This provision prohibits WTO Members from discriminating amongst other Members - they may not treat one Member more favorably than another. Exempting certain countries from a border measure requirement would appear to constitute favorable treatment that is not granted to all Members, and would likely be a violation. This violation could be justified by the environmental or public health exception contained in Article XX of the GATT. The offending Member would need to show, however, that the discrimination relates to the environmental or public health objective, that due process is provided, that differing conditions in countries are respected, and that the discrimination is not arbitrary, unjustified, or a disguised restriction on international trade, among other considerations. Could all of these necessary components be successfully demonstrated?

A final issue regarding exemptions to a border adjustment mechanism is a "missing" exemption that has yet to be proposed in legislation, but whose absence may create future legal issues. Such an exemption would be for products from countries that have enacted and implemented economy-wide enforceable GHG emissions reductions programs that are comparable to that enacted in the United States. This would differ from the first exemption in HR 2454, because it would not require that the foreign country be party to an agreement with the United States. It would, however, eliminate the potential for double taxation - if exports from a foreign country already pay comparable compliance costs in their place of production, charging them an additional cost upon importation into the United

States would essentially create a regime of double taxation on the same emissions (with the exception of any emissions associated with transporting the good to the United States). Including such an exemption would address this potential problem.

In conclusion, exempting certain products and countries from a climate change border adjustment program may be essential to recognizing the efforts of other countries in making emissions reductions, and the special difficulties faced by some countries in complying with complex environmental regimes. In order to not diminish the purpose of the border adjustment mechanism of ensuring a level playing field between domestic and foreign products, however, the issues identified above should be considered.

[1] The current list of LDCs can be found at <http://www.unohrrls.org/en/ldc/related/62/>

[2] The source of the 2006 emissions data is the Carbon Dioxide Information Analysis Center, a part of the U.S. Department of Energy, and the source of 2006 import data is Official Commerce Statistics provided by USITC Dataweb. The determination of whether these countries would also meet the second criteria of the exemption - accounting for less than 5% of U.S. imports in a given sector - would have to be made on a sector-specific basis.

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The views expressed in this article are personal to the author and do not necessarily represent the views of King & Spalding, its clients, or WIIT.*

Copenhagen "Plan B": Could the WTO be a Better Multilateral Negotiating Forum for Concluding New (post-Kyoto) Standards for the Regulation of the Global Carbon Financial Services Market?

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This past summer, political will in the two most important countries to any post-Kyoto climate change deal, under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC) - the United States and China - simultaneously the two largest polluters and the two countries that have yet to ratify the Kyoto Protocol - seemed to be increasing exponentially.

In late September 2009, the Chinese President Hu Jintao and President Barack Obama arrived in New York, along with close to 100 other leaders, to address a Summit on Climate Change convened by United Nations Secretary General Ban Ki-Moon. President Hu's speech was politically significant for two reasons. First, it marked the first time in 30 years that a Chinese head of state had done addressed the UN General Assembly "since the resumption of China's legitimate seat at the United Nations in 1971,"[1] according to Liu Zhenmin, China's Deputy Permanent Representative to the United Nations (UN) in New York. Second, President Hu speech was the first time "that China's top leader discuss[ed] his nation's environmental policies and measures to fight global warming at the UN." [2] Not to be outdone, United States President Barack Obama outlined America's domestic programs, new U.S. climate

change legislation, U.S. engagement with regional partners, and most notably in terms of multilateral cooperation, Obama also acknowledged that "we must seize the opportunity to make Copenhagen a significant step forward in the global fight against climate change." [3] Here the political, historical significance of Obama's speech was that it represented the White House's first official recognition of the need for multilateral engagement on the climate change issue.

However, hope has faded. While just a couple months ago, environmental policy analysts' hopes for Copenhagen were buoyed by the highly anticipated participation and remarks of the top U.S. and Chinese leaders at the New York summit, the disappointing results of the "mini-Summits" since the 2007 Bali Summit until now have led negotiators from both developed and developing countries to scale back their expectations for reaching consensus on a legally binding post-Kyoto agreement 30 days from now.

Even the UN Secretary-General Ban K-Moon's most recent statements regarding the Copenhagen agenda seem to reflect the pessimism. A little over a month ago, the New York Times published an Op-Ed piece in which Ki-Moon cited his four (4) benchmarks for next month's meeting:

1. "Every country must do its utmost to reduce emissions from all major sources, including from deforestation and emissions from shipping and aviation. Developed countries must strengthen their mid-term mitigation targets [and] slow the rise in their emissions and accelerate green growth as part of their strategies to reduce poverty.
2. A successful deal must strengthen the world's ability to cope with an already changing climate. In particular, it must provide comprehensive support to those who bear the heaviest climate impacts. Support for adaptation is not only an ethical imperative; it is a smart investment in a more stable, secure world.
3. A deal needs to be backed by money and the means to deliver it. Developing countries need funding and technology so they can move more quickly toward green growth. The solutions we discuss cannot be realized without substantial additional financing, including through carbon markets and private investment.
4. A deal must include an equitable global governance structure. All countries must have a voice in how resources are deployed and managed. That is how trust will be built." [4]
5. The four items read more like a political wish list for the draft UNFCCC Conference of the Parties (COP) Declaration rather than the outline of a new legally binding agreement.

Meanwhile, in the United States, the political realities for the Obama Administration include health care reform, the ongoing financial crisis, and the efforts to garner enough Republican support this fall to pass a climate change bill in the U.S. Senate before Copenhagen, which appears unlikely. Passage of the U.S. climate change bill would have set the stage for the U.S. to make explicit commitments to Intergovernmental Panel on Climate Change (IPCC) targets in Copenhagen. "We have to be honest in the process and deal with the realities that we don't have time in these four weeks to put the language together and flesh out every crossed t and dotted i of a [post-Kyoto] treaty," said John Kerry, who chairs the Senate foreign relations committee" [5] which will be key to ratification of any treaty agreed at or beyond Copenhagen.

Without the United States making commitments to reduction targets, many believe that it would severely delay, if not derail, progress toward conclusion of a legally binding agreement next month. Senior negotiators for the UK, European Union, as well as for the group of African nations negotiating as a bloc at the UNFCCC have already conceded defeat of a potential Copenhagen deal. In his speech before the United Kingdom's House of Commons, Edward Miliband, the UK Secretary of State for Energy and Climate Change, Milliband admitted that the best that negotiators could hope for next month was a political statement. "The UN negotiations are moving too slowly and not going well" [6] Milliband said. "The African bloc complained that rich nations' carbon cuts [as per proposals tabled at

the "mini-summits" leading up to Copenhagen] were far too small to avoid catastrophic climate change, and refused to participate until more was done. The move forced the UN to abandon several sessions and reschedule others to give rich countries more time to debate emissions cuts." [7]

Two years before, the UNFCCC Bali Summit's Roadmap proposed definitive agenda items for the Copenhagen Summit, as follows: "action for adapting to the negative consequences of climate change, such as droughts and floods; ways to reduce GHG emissions; and ways to widely deploy climate-friendly technologies and financing for both adaptation and mitigation measures." The 2007 Bali Action Plan also noted that "participating countries ha[d] also agreed on a series of steps that can be taken immediately to strengthen their commitment to the UNFCCC, such as combating deforestation in poor countries, scaling-up of investment in green technology and enhancing funding for adaptation measures." [8]

The fact that the Bali "Roadmap" from two years ago provided specificity regarding the issues to be included on the 2009 Copenhagen negotiating agenda and seemed for more progressive than the UN's current list, is indicative of the difficulty of finalizing a new agreement based on the IPCC's targets (which were explicitly excluded from the Bali Action Plan).

As a former trade policy negotiator, the difficulty in reaching consensus on the text of a multilateral agreement covering a very broad agenda which will create cross-cutting issues in a myriad of industrial sectors is well-understood, particularly in finalizing a good agreement - not just making a political statement. With just over 24 months left before the Kyoto Protocol expires in 2012, the fact that parties to the UNFCCC have yet to launch negotiations to conclude a new treaty updating the 1995 Kyoto Protocol with greater carbon emissions reduction targets, or to agree upon, and finalize a legal framework within which to regulate global carbon dioxide (CO₂) emissions trade once the Kyoto Protocol does expire, is of grave concern. Ban Ki-Moon's four points are merely the tip of the iceberg regarding the breadth of work that must be done on climate change, and did not address how widely the IPCC targets will cut across a broad range of industrial sectors, including the financial markets referenced by Ki-Moon. Perhaps a focus on at least one important sector, the global carbon finance markets, best illustrates the need to consider and implement a "Plan B" in the expected absence of the legally binding post-Kyoto Protocol agreement that will not be coming out of the December 2009 Copenhagen meeting.

In the absence of a post-2012 agreement and given the rapidly increasing number and types of carbon commodities/securities being traded, the policy implications for uncertainty across industrial sectors due to the current global financial crisis, and its linkages to climate change, I propose the World Trade Organization (WTO) "Plan B" as a better, more effective multilateral forum for negotiating new international standards for the regulation of at least the services sector, and specifically, the regulation of trade in carbon financial services.

While it is true that the point of selling carbon commodities - permits, credits, assets or securities, etc. - is to help raise funds for the development of clean, "green" sources of energy. But the global investment and banking crisis has not only had an impact on the developed and developing countries foreign financial markets, but also on carbon financial exchanges, limiting the overall access to financial products and services (both general and carbon-related) and leading to decreased value for carbon commodities traded on international stock exchanges. In a nutshell, financing may only be available for higher-value sustainable development projects, with lesser risk and shorter timetables to completion. The same need for international regulation of banks and banking practices in order to minimize volatility and frivolous speculation in the global financial market also exists in its sub-set, the global carbon financial market. The two most important things that the WTO has that the UNFCCC Conference of the Parties does not are:

1. China and the United States, who are already seated at the negotiating table, ratified WTO agreements in hand;
2. Existing, and well-tested dispute settlement mechanism to deal with issues like non-compliance with Most Favoured Nation (MFN) principles and the ability to circumvent use of carbon emissions credits as possibly non-compliant subsidies to support uncompetitive sectors in countries' respective domestic industry.
3. Specific to the regulation of financial services, specific to carbon commodities, the WTO's General Agreement on Trade in Services (GATS) and the Financial Services Agreements have existing provisions for the regulation of international trade in services. The WTO Negotiating Group on Services could receive proposals to include additional sub-sectors under the Financial Services umbrella related to newly developed carbon commodities.

These WTO agreements contain the three key elements required to ensure that regulations within international agreements are legally binding: monitoring, implementation, and enforcement mechanisms. These key elements provide industry with certainty and give weight to international agreements. Given the current financial crisis, there is definitive interest in negotiating stronger, more meaningful international regulation of the global financial market by international institutions empowered to monitor, implement, and enforce those regulations.

Enforcement Mechanisms/Dispute Settlement

As noted above, one of the main reasons that the WTO would serve as a better multilateral forum than the UN to negotiate, implement, monitor and enforce international regulations related to trade in carbon finance services is the WTO's Dispute Settlement Body (DSB); the Kyoto Protocol does not include any enforcement mechanisms. Among the series of WTO agreements negotiated and concluded in 1994 as part of the Uruguay Round was the Dispute Settlement Understanding (DSU). It established the WTO Dispute Settlement Body and enhanced the existing dispute settlement procedures which, under the former General Agreement on Tariffs on Trade (GATT) had "no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively." [9] The texts of the DSU explained that the powers of the DSB, which were to "administer the [WTO] rules and procedures and, except as otherwise provided in a covered (WTO) agreement[s] the consultation and dispute settlement provisions of the covered agreements. [10] The DSB was further accorded the "authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements."

According to the WTO website, "in the event of problems related to the operation of the GATS, Article 22 and Article 23 provide the framework for consultations and, if need be, dispute settlement and enforcement among Members" [11] as per the nine steps outlined on the WTO Dispute Settlement Gateway web page copied into the table below:

Dispute Settlement within the WTO^[12]

- Step 1:** A Member requests consultations with another Member which it considers to have breached its obligations or otherwise impaired benefits under the GATS.
- Step 2:** Consultations between the two Members are held to reach a mutually satisfactory solution.
- Step 3:** If the consultations fail to resolve the issue, the complaining Member may request the establishment of a panel of three independent experts. These are generally chosen from an existing roster of qualified panellists.
- Step 4:** The panel examines the complaint in the light of the relevant legal obligations, and has six months to issue a report with binding recommendations for adoption by the dispute-settlement body (DSB).
- Step 5:** Any party to the dispute may appeal the panel ruling before the WTO Appellate Body.
- Step 6:** The Appellate Body examines the appeal, and has up to 90 days to deliver its report.
- Step 7:** The panel ruling is adopted by the DSB (including any modifications decided by the Appellate Body), unless there is consensus not to adopt.
- Step 8:** The Member concerned has time for implementation.
- Step 9:** In the absence of full implementation within the specified period, a party to the dispute may request permission from the DSB to suspend equivalent commitments with respect to this Member.

Regarding issues related to the rules under the GATS, there is precedent for services-specific cases heard before the WTO DSB, as exemplified by the following two cases, both filed by the United States and noted in the table below. In August 2000, the United States filed case DS-204 against Mexico, better known as the Mexico Telecoms case, complaining of Mexico's measures affecting telecommunications services under the GATS, including Mexico's failure "to enforce regulations and other measures to ensure compliance with Mexico's market access, national treatment, and additional commitments for service suppliers seeking to provide basic and value-added telecommunications services into and within Mexico."^[12] After being unable to come to settlement through consultations, the case went to a WTO DSB panel and, in June 2004, the DSB issued recommendations, or "a decision" against Mexico. Mexico was required to make changes to its regulations so as to return to compliance with GATS. A year later, in August 2005, Mexico announced that "it had published its new resale regulations allowing for the commercial resale of long distance and international long distance services originating in Mexico and thus, with these changes, it had fully complied with the DSB's recommendations."^[13]

Last year, in March 2008 the U.S. requested consultations (the first step in the dispute settlement process) with China, WTO case DS-373, on its domestic financial information measures affecting foreign financial services providers within China, including a requirement that "foreign financial information suppliers supply their services through an entity designated by Xinhua News Agency ("Xinhua"). Xinhua has designated only one such agent, China Economic Information Service ("CEIS"), one of Xinhua's commercial enterprises."^[14] The U.S. alleged that these and other Chinese measures forced foreign financial information suppliers (in this case, the U.S. and the European Community, which had also requested to join the GATS consultations) to solicit for subscriptions only "through the Xinhua-designated entity"^[15] and to provide the Chinese agency with basically business confidential information about the nature of their services in order to secure licenses to provide those services. "The United States contends that these and other requirements and restrictions accord less favourable treatment to foreign information services and service suppliers than that accorded to Chinese financial information services and service suppliers which are not affected by these requirements and restrictions,"^[16] an apparent inconsistency with China's obligations under the GATS "commercial presence" provisions.^[17] (A WTO Member has commercial presence when any type of business which supplies a service is established in the territory of another WTO Member.^[18]) Three months later, Canada also requested consultations with China under the GATS for exactly the same concerns, as per WTO DS-378 (The U.S.

also joined Canada on DS-378.) China, Canada, the United States and the European Community were able to reach a settlement by December 2008, so the case did not have to reach a WTO DSB panel.[19]

One of the better known cases involving WTO dispute settlement and enforcement of commitments under GATS is the US Gambling case, or DS-285, consultations for which were initially requested by Antigua and Barbuda in March 2003. It best exemplifies the variety of enforcement mechanisms and resolutions to disputes which are available to WTO Members. The Gambling case went to a WTO Dispute Settlement panel which rendered a decision against the United States in 2004, finding that "three U.S. federal laws (the Wire Act, the Travel Act and the Illegal Gambling Business Act) and the provisions of four U.S. state laws (those of Louisiana, Massachusetts, South Dakota and Utah) on their face, prohibit one, several or all means of delivery included in mode 1 of GATS (i.e. cross-border supply), contrary to the United States' specific market access commitments for gambling and betting services for mode 1. Therefore, the United States failed to accord services and service suppliers of Antigua treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the U.S. Schedule, contrary to Article XVI:1 and Article XVI:2 of the GATS (i.e. concerning market access).[20]

The DSB decision was appealed by the United States in 2005, but the WTO Appellate Body upheld the majority of the DSB panel's initial decisions/recommendations. Implementation of the DSB and WTO Appellate Body's decisions involve the affirmation from the WTO Respondent that steps have been taken to follow through on DSB/Appellate Body recommendations/decisions. Resolution on the Gambling case was delayed as there were questions about whether the United States had fully complied with the measures recommended by the DSB to bring the U.S. back in to satisfactory compliance with its GATS obligations. In 2007, the issue was taken up for arbitration. On December 2007, the Arbitrator's decision proved deference to Antigua: "The Arbitrator determined that the annual level of nullification or impairments of benefits accruing to Antigua is US\$21 million and that Antigua may request authorization from the DSB to suspend [its] obligations under the TRIPS Agreement at a level not exceeding US\$21 million annually." [21] This outcome could be viewed as equivalent to Antigua and Barbuda being awarded damages in the WTO dispute settlement case.

WTO	YEAR	COMPLAINANT	RESPONDENT	3 RD PARTIES	SECTOR/SUB-	ISSUES /OUTCOME
DS-204	2000	United States	Mexico	Australia; Brazil; Canada; Cuba; European Communities; Guatemala; Honduras; India; Japan; Nicaragua	Services/Telecom Services	Dispute Resolved. Mexican domestic telecom and competition laws. DSB found Mexico in violation of GATS, Art. 12a and Reference Point
DS-285	2003	Antigua & Barbuda	United States	Canada, Chinese Taipei, European Communities, Japan, Mexico, China	Services/Other Recreational Services ("sporting") – interpreted to include gambling	Dispute Resolved.
DS-373	2008	United States	China	European Community	Services/Financial Services supply	Dispute Resolved. Settlement among the parties reached in December 2008
DS-378	2008	Canada	China	United States	Services/Financial Services supply	Dispute Resolved. As per outcome in DS-373.

As many carbon products and services are negotiated and traded in various global exchanges on the stock market as financial instruments and/or securities rather than as environmental goods and services, the need to negotiate enforceable international standards for the regulation of global carbon finance services trade is no less important. Industry has already offered views on the difference in the approaches of the climate change negotiators at the UNFCCC versus services and investment negotiators, trained to assess risk, in multilateral forums such as the WTO.

Leo Denault, Executive Vice President and Chief Financial Officer (CFO) at New Orleans-based utility Entergy, offered a quote in CFO Magazine which best clarifies the difference between broad climate change policy initiatives, legislative action, and international organizational efforts aimed at the reduction of carbon emissions versus international regulation of carbon securities trading. He said "the last thing you want as CFO is a guy in your environmental engineering group making policy decisions around commodity risk management." [22]

It must be noted that, while there is general agreement on the need for more international regulation, precisely because there are concerns, particularly among Members of the U.S. Senate, that banking practices are to blame for the collapse of the global financial market, in general, and specifically for the recession in the U.S., new energy legislation pending approval in the U.S. Congress includes proposed provisions to limit the participation of banking institutions in the carbon finance market.

But this is not the sort of regulation that carbon finance traders are looking for. Mr. Henry Derwent, President and Chief Executive Officer (CEO) of the International Emissions Trading Association (IETA) [23] states that "forcing banks away from carbon markets removes the very source of financing necessary to build new, more efficient and cleaner manufacturing centres and power plants. Their participation will be essential to drive innovative technologies which will protect the climate... Excluding banks from the US carbon market will make the market less liquid, less efficient, more volatile, and more expensive, and will increase overall compliance costs due to the decreased market efficiency and lack of liquidity. ... In a proper carbon market structure, banks, acting as financial intermediaries, will provide liquidity by standing in the market and providing daily offers to buy or sell allowances to covered industries. Banks will also provide tools to help covered industries manage their longer-term exposure to carbon price risk. These tools, like forward sales and options to purchase, are not designed to fuel unscrupulous speculation, but rather to enable companies to prudently manage their exposure to market fluctuations and preserve capital for productive investments. Insisting that a newly created market like carbon do without these tools, in contrast to every other commodity in America, shows a complete misunderstanding of how markets can help reduce the cost of dealing with climate change." [24] This point is further underscored when one considers the broad range of private and public finance mechanisms, discussed in further detail below, which are exclusively dedicated to sustainable energy markets and climate change.

The need for international regulation in this sector is thus established. The question remains, regulation of the carbon finance markets by whom? The UNFCCC? In light of calls for greater monitoring of the financial services market due to the global banking crisis, the unlikelihood that UNFCCC negotiators can launch and conclude of a legally binding agreement before the Kyoto Protocol expires in 24 months, the lack of any dispute settlement mechanism in place which might give industry some confidence about how governments will facilitate trade in carbon products, and the fact that China and the United States have already made binding commitments before the WTO, it is my belief that the WTO could be a better multilateral forum than the UNFCCC because of its existing, ratified structures to enable negotiations, and to monitor, implement, and enforce new international standards for the regulation of the sub-sector, carbon financial goods and services, which are traded as commodities on existing international carbon stock exchanges much like currency and other securities.

**The views expressed in this article are personal to the author and do not necessarily represent the views of WIIT.*

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- [4] NYtimes.com: "We Can Do It", 25 October 2009, by Ban Ki-Moon.
- [5] Guardian.co.uk: "US Scales Down Hopes of Global Climate Change Treaty in Copenhagen", 4 November 2009, by Suzanne Goldenberg at <http://www.guardian.co.uk/environment/2009/nov/04/us-climate-change-copenhagen-treaty>
- [6] Guardian.co.uk: "Global climate deal at least a year away, negotiators say", 5 November 2009, by John Vidal at <http://www.guardian.co.uk/environment/2009/nov/05/climate-deal-copenhagen>
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- [14] WTO Dispute Settlement Gateway, DS-373 summary, China Fin Services case, on the WTO website at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds373_e.htm, last accessed 11 September 2009.
- [15] Ibid.
- [16] Ibid.
- [17] General Agreement on Trade in Services (GATS), Article 1.2(c)
- [18] General Agreement on Trade in Services (GATS), Article 28.d (1-3).
- [19] WTO Dispute Settlement Gateway, DS-373 summary, on the WTO website at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds373_e.htm, last accessed 11 September 2009.
- [20] WTO Dispute Settlement Gateway, summary of the US-Antigua Gambling case, or the DS-285 case, found on the WTO website at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds373_e.htm, last accessed 11 September 2009.
- [21] Ibid.
- [22] CFO Magazine.com, "Carbon Trading," 1 January 2008, by John Goff at <http://www.cfo.com/printable/article.cfm/10345560>.

[23] IETA is the International Emissions Trading Association. According to its online brochure, IETA is a "non- profit business organization created in June 1999 to establish a functional international framework for trading in greenhouse gas emission reductions. [Its] membership... comprises more than 160 international companies from OECD and non-OECD countries." Brochure is at <http://www.ieta.org/ieta/www/pages/getfile.php?docID=858>.

[24] IETA Statement on Financial Institutions, 18 Aug 2009 at <http://www.ieta.org/ieta/www/pages/getfile.php?docID=3323>.

Could Climate Change Melt Down China's Steel Dragon?

*By Jing (Patricia) Zhu, International Trade Analyst, Baker & Hostetler LLP**

Exhausted by the debate over healthcare reform, the Senate Finance Committee is reluctant to tackle another controversial issue - border measures in climate change bill this year. It looks like the final action on the Senate climate change bill will be markup at the Committee on Environment and Public Works. However, if a climate change bill that contains border measures were signed into law, could it pressure China's energy-intensive industries to cut down greenhouse gas (GHG) emission?

China and Copenhagen

China's chief climate negotiator, Vice Chairman of the National Development and Reform Commission (NDRC) XIE Zhenhua visited India at the end of October. And the two countries signed the *Agreement on Cooperation on Addressing Climate Change*, which, according to China, was "conducive to positive results" of the upcoming United Nations Climate Change Conference in Copenhagen.

Nevertheless, the two countries merely reiterated their long-standing negotiation positions on the subject. The two sides reaffirmed the principle of "common but differentiated responsibilities," and called on developed countries to take the lead in and continue reducing GHG emissions and provide financial resources, technology transfer and capacity building support to developing countries.

It was not surprising for the world's leading GHG emitter to form an alliance with India, another rising industrial power, on the eve of the Copenhagen meeting. Indeed, it was a victory for China to obtain India's assurance that there "was virtually no difference between the negotiating positions" of the two Asian giants.

As early as last May, China issued a position paper outlining its stance on the Copenhagen meeting. Besides the principle highlighted in the bilateral agreement, China called on industrialized countries to commit to specific targets. For instance, as a mid-term target, developed countries should collectively reduce their GHG emission to at least 40 percent below their 1990 level by 2020. And developed countries should annually contribute a half percent to one percent of their gross domestic product (GDP) to four funds addressing climate change, which should be under the supervision of an international body.

In contrast, China insisted that no cap or target should be set for developing countries. According to China, developing countries' mitigation actions are fundamentally different from industrial countries' mitigation obligations:

the actions are voluntarily and should be proposed by developing countries themselves, and the obligations are legally binding and should be monitored, reported and verified.

NDRC and the Chinese Economy

Domestic politics determines a nation's foreign policy. In China, the NDRC is the government agency that drafts and takes the lead in implementing long-term development plans and industry policies that cover every aspect of the economy. As the NDRC's number three official, China's chief climate negotiator knows that the current financial crisis has overshadowed climate change debate in China.

China has been severely hurt by the financial crisis. China's GDP growth rate dropped from 13 percent in 2007 to 9 percent in 2008, and is projected to slide to 8 percent this year. Even though the economy is still growing, the profit level of China's manufacturing sector has been declining. The total profit of China's major manufactures dropped to US\$246.3 billion (RMB1674.7 billion) during the first eight months of 2009, a 10.6 percent decline compared to the same period last year. Rising raw material costs and low demand contributed to the gloomy picture.

And with more than twenty years' experience in environmental work, Xie fully understands that pollution, rather than climate change, is a major concern of the Chinese public. Xie's technical background could be traced back to 1982. And in 2003, the Ministry of Environmental Protection under his leadership launched an "environmental protection storm." For the first time, Chinese people recognized the importance of the agency.

However, Xie was forced to resign in December 2005 after pollutants containing benzene and nitrobenzene contaminated the Songhua River in Northeastern China after a chemical-plant blast. According to BBC reports, residents of Harbin City distrusted statements made by the local government, which initially claimed that stoppage of water supply was for routine maintenance. Xie stepped down but was promoted to the NDRC position slightly after a year, a minister level position that is half a level above ministers in the Chinese hierarchy system.

Consequently, Beijing always puts energy conservation, pollution reduction and GHG emission mitigation together and pressures provincial and local governments to move forward. And this is the reason Xie heads both the Department of Resource Conservation and Environmental Protection and the Department of Climate Change at the NDRC, and is in charge of both domestic and foreign policies regarding these issues.

Steel Industry and Hebei Province

China's energy-intensive industries are concentrated in China's less developed regions, and 112 of China's Top-1000 energy consuming enterprises are located in Hebei province, which is next door to Beijing. At the same time, as China's leading iron and steel producer, Hebei's iron, crude steel and steel product output exceeded 310 million tons in 2007 and accounted for 18 percent of the nation's total.

Although China's iron and steel industry has lowered its energy consumption level, it remains as the most energy-intensive industry and accounts for 18 percent of China's total industrial energy consumption. And steel producers in Hebei admit that most of them are less energy efficient than their domestic competitors. Low energy efficiency is one of the reasons why the province's contribution to the nation's economic growth has lagged behind coastal provinces. 2007 statistics showed that gross industrial output value created by Hebei's large companies reached US\$230.5 billion (RMB1705.5 billion), accounted for 4.2 percent of China's total; and their

industrial value-added climbed to US\$65.2 billion (RMB482.3 billion), about 4.1 percent of the nation's total. At the same time, the two ratios for Jiangsu province, a coastal province and another major steel producer in China, were 13.2 percent and 11 percent.

Hebei has another important reason to cut down coal consumption and improve energy efficiency. Its hazardous industrial air pollutants rose to 4804 billion cubic meters in 2007, far exceeded all other provinces and accounted for 12.4 percent of China's total. At the same time, sulfur dioxide (SO₂) discharged by Hebei manufacturers accounted for 6 percent of the country's industrial total.

However, both the provincial government and the public are reluctant to pressure the iron and steel industry too hard. The industry plays a significant role in Hebei. Industrial profit generated by ferrous metal producers and manufacturers reached US\$6.8 billion (RMB50 billion) in 2007, accounted for 27.3 percent of the province's total industrial profit produced by large companies. In addition, the industry employed 450,000 workers in 2008, about 15 percent of the province's total employment. When the unemployment rate is rising in Hebei, neither the provincial government nor the public wants to see those small inefficient steel factories to be eliminated quickly.

Besides closing down some out-dated small iron and steel factories as NDRC instructed, the province took another major step. It consolidated the top two steel groups and launched the Hebei Iron & Steel Group (HBIS) in 2008, which became China's number two and the world's number four steel-producing company. The creation of HBIS was to improve competitiveness and efficiency of Hebei's steel industry. However, a recent Chinese study showed that China's giant iron and steel producers are not necessarily more efficient than smaller companies. Compared to the size of a steel company, technology plays a more important role in improving efficiency. This economic analysis indicates that size does not guarantee energy efficiency either.

Conclusion

China is unlikely to make major concessions at the Copenhagen meeting, but this does not mean it is unwilling to mitigate GHG emission. On the other hand, China's energy-intensive industries, particularly the iron and steel industry, have neither the financial motivation or technology resource to dramatically cut down GHG emission. In short, the domestic debate over climate change has not been heated up to melt down the steel dragon.

*The views expressed in this article are personal to the author and do not necessarily represent the views of WIIT.

Book Review:

Climate Change: Financing Global Forests

Review by Caroline Tyra, Client Program Manager, GeoSAR Services, Fugro EarthData, Inc.

Climate Change: Financing Global Forests is a report of The Eliasch Review, an independent review on the role of international finance mechanisms to preserve global forests in tackling climate change. This study was commissioned by Gordon Brown, the UK Prime Minister, who appointed Johan Eliasch as his Special Representative on

deforestation and clean energy and commissioned him to undertake the review in September 2007. Forestry produces around 17 percent of global emissions, making it the third largest source of greenhouse gas emissions, exceeding the entire global transport sector. Current annual emissions from deforestation are comparable to the total annual CO2 emissions of the United States or China.

The Review focuses particularly on the scale of finance required and on the mechanisms that can, if designed well, lead to effective reductions in forest carbon emissions to help stabilize greenhouse gases in the atmosphere and avoid the worst effects of climate change. It also examines how mechanisms to address forest loss can contribute to poverty reduction, as well as providing incentives to preserve other ecosystem services such as biodiversity and water services.

The Review believes that an ambitious international climate change deal should aim to halve deforestation emissions by 2020 and make the forest sector carbon neutral by 2030, with emissions from forest loss balanced by new forest growth. This will require a step change in the way land is used and commodities produced.

The forest sector should be included in global carbon markets: in doing so the costs of reducing global carbon emissions will be reduced substantially, making possible a more ambitious overall emissions target. This will be a hot topic at the discussions in Copenhagen this month, making this a timely read.

In attempting to research this burgeoning market, I found this particular provided me with much needed, but difficult information to find. Certainly, the outlook for this potential market changes almost daily, and so information quickly becomes dated. However, this book provided a great foundation for understanding the forces behind these changes.

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Upcoming Events

for updates, refer to the [WIIT web site](#)

U.S. Controls on Exports and Reexports of Encryption Products

Dec 15, 2009 12:00 pm - 1:30 pm

Baker & McKenzie, LLP 815 Connecticut Avenue, N.W.

Washington, DC

Contact: info@wiit.org

[Event Details](#)

[Event Flyer](#)

[Event Registration](#)

Past Events:

Dealing with Difficult People and Conflict Resolution

WIIT Professional Development Committee

November 5, 2009

In discussing "Dealing with Difficult People in Conflict Situations" Wendy Swire, of Swire Solutions, focused on the awareness required to manage those situations. The presentation offered three take-aways: 1) self-awareness really matters in conflict with difficult people; 2) practical strategies; and 3) it's all in your head - amygdala and neurons. Not everyone finds the same behaviors "difficult," so each person initially must understand which behaviors trigger reactions that detrimentally affect work or life. Ms. Swire offered animal analogies as one tool. She then described techniques to neutralize difficult behaviors. These include traditional somatic responses, "visualizing the animal kingdom," changing the thought, using self-neutralizing statements, and retaining a focus on the problem and not the person. Ms. Swire discussed how the human brain reacts when confronted with difficult behaviors, which tied together self-management techniques with the science. Success in "dealing with" difficult people and managing conflicts results being savvy about self-management, and not by attempting to manage (or change) others. A copy of her presentation can be obtained through Ms. Swire's website: www.swiresolutions.com

OWIT International Fall Board Meeting

October 23-24, Cleveland, Ohio

Submitted by Carol J. Brewer, WIIT DC's OWIT Representative

The Board of Directors of OWIT International held its Fall Board Meeting in Cleveland, Ohio on October 23-24, 2009. Nine chapters, including WIIT DC, were represented at the meeting, with several other chapters participating by telephone conference. Our chapter is the largest chapter of the twenty-five chapters comprising the international Organization of Women in International Trade (OWIT). Carol Brewer represented WIIT at the Board meeting. In addition, several other WIIT DC members participated in the meeting in their capacity as members of OWIT's

Executive Committee: Cami Mazard, Vice President, Conference; Andrea Ewart, Vice President, Chapter Support; and Angela Marshall Hofmann, Vice President, Strategy.

Members of the Northeast Ohio chapter (OWIT-NEO) were wonderful hosts, planning a welcome dinner at a "green" restaurant, organizing a panel discussion and networking event for the NEO chapter and the OWIT Board, and arranging a rockin' trip to the Rock and Roll Hall of Fame and Museum.

The meeting kicked off with a motivational guest speaker, Ms. Rosalind Thompson, a recognized team builder in the Greater Cleveland Community. Ms. Thompson taught us the difference between dialogue, debate, discussion, and deliberation, and encouraged us to practice the art of dialogue -- to listen to understand and find meaning and value in each individual's position, to seek common ground and shared vision, and to find the path to consensus-building.

Inspired by Ms. Thompson's words, the Board and Executive Committee successfully finalized and passed a proposal to establish a Virtual Member Chapter, designed to offer membership in OWIT to individuals who are not located near an established chapter. The Virtual Member Chapter provides a means to offer these individuals the benefits of membership in OWIT, while creating a new revenue source for OWIT International. The hope is that the Virtual

Member Chapter may lead to the development of new OWIT chapters in the future.

The group also developed an OWIT International Privacy Policy, which details the conditions and limitations that will apply when a Chapter agrees to share its members' contact information with OWIT International for the purpose of communicating OWIT benefits such as the OWIT newsletter, the OWIT conference, and OWIT webinar programs.

The final task addressed by the chapter representatives and the Executive Committee was to vote on the amended and restated bylaws of the organization. This huge undertaking was initiated five years ago, and many in the organization sought resolution at the board meeting. About half of the 100 pages of bylaw revisions, explanations, and rationale were reviewed, amended, and voted on. The remaining articles were tabled due to lack of time and will be addressed a special meeting of the board in the near future. The Chapter Operating Principles will also be addressed at the special meeting of the board.

Other topics of discussion included the introduction of webinars as a means to increase members' exposure to high profile leaders in the trade community, to provide educational opportunities to members, and to generate income for OWIT International. The Board voted to provide funds for the Webinar Committee to conduct a beta test of the program in the near future. The first webinar will highlight the 2009 Chapter of the Year, Woman of the Year and Member of the Year. The winners of these prestigious awards were announced at this meeting and they are:

OWIT Chapter of the Year - Toronto

OWIT Member of the Year - Kollyn Katz from OWIT Los Angeles

OWIT Woman of the Year - Joan Mwangi from OWIT Nairobi

Congratulations to the Toronto chapter and to Kollyn and Joan for their leadership in advancing the mission of OWIT and enhancing awareness of the importance of international trade and business to women around the globe.



WIIT celebrated OWIT International's 20th anniversary at our membership social at the House of Sweden on September 29th. WIIT is the largest chapter of OWIT, the Organization of Women in International Trade.



OWIT Group

Accessing International Procurement Opportunities Through Multilateral Development Banks

WIIT Baltimore Section

September 23, 2009

On September 23, the Baltimore Section of Women in International Trade (WIIT) hosted a seminar on accessing international procurement opportunities through multilateral development banks. As the featured speaker, David Fulton of the U.S. Commercial Service was able to not only discuss how companies can learn about these opportunities, but he also shared "inside tips" on how companies can increase their chances of success in bidding on these projects, many of which are worth millions of dollars. While Mr. Fulton is based at the World Bank, the databases and best practices that he shared apply to most multilateral development banks, many of which are based right in WIIT's backyard in Washington, D.C.



About 30 people attended the event, which was publicized not only through WIIT but also by the Maryland Department of Business and Economic Development and the U.S. Export Assistance Center in Baltimore, which partnered with WIIT to make this event a success. The event was hosted at the office of Whiteford, Taylor & Preston in downtown Baltimore.

Announcements:

WIIT is part of LinkedIn and Facebook!

If you would like to join or visit WIIT's LinkedIn Group, follow this [link](#).

WIIT also has a [Facebook page](#).

WIIT Toastmasters

In a supportive, friendly environment, WIIT Toastmasters can help you improve your public speaking skills. Public speaking skills can help you more effectively present and communicate your ideas and help advance your career. We are affiliated with WIIT and with Toastmasters International. Toastmasters International has been helping people of all walks of life become effective communicators for over eighty years...

Let us help you achieve your goals. Visit our [web site](#) for details and information. We meet the second and fourth Mondays of the month, except Federal holidays. We meet at 12:30 PM until 1:30 PM at the National Association of Manufacturers, 1330 Pennsylvania Avenue. The closest Metro Stop is Metro Center; exit to 13th and F Streets.