

# Torys on Climate Change

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## Recent Developments

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### Canada

#### ***Comment period open for federal offset system guidance***

The federal government has released long-awaited draft guidance on a proposed Canadian offset system for greenhouse gas (GHG) emissions. The draft guidance documents, titled “Program Rules and Guidance for Project Proponents” and “Program Rules for Verification and Guidance for Verification Bodies,” set out mechanics of the offset system, which would credit projects that reduced or removed emissions when not required by law to do so. Environment Canada is accepting comments on the guidance documents until August 12, 2009.

For further details, please see [Torys’ June 12 Climate Change Bulletin](#).

Additional information is also available at [www.ec.gc.ca/creditscompensatoires-offsets/default.asp?lang=En&n=109DDFBA-1](http://www.ec.gc.ca/creditscompensatoires-offsets/default.asp?lang=En&n=109DDFBA-1).

### Provinces

#### ***Comment period open for Ontario cap-and-trade proposal***

On May 27, 2009, the Ontario government introduced Bill 185, the *Environmental Protection Amendment Act (Greenhouse Gas Emissions Trading), 2009*, which would expand the government’s regulation-making authority to implement a cap-and-trade system. On the same day, the government published an updated discussion paper, “Moving Forward: A Greenhouse Gas Cap-and-Trade System for Ontario,” highlighting how such a system might take shape. The Ontario Ministry of the Environment will be accepting comments on Bill 185 and the discussion paper until July 26, 2009.

For further details, please see [Torys’ June 2 Climate Change Bulletin](#).

Additional information is also available at [www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTA2NjU5&statusId=MTYwMDI0&language=en](http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTA2NjU5&statusId=MTYwMDI0&language=en).

#### ***Saskatchewan and Quebec introduce climate change legislation***

On May 11, 2009, the Saskatchewan government introduced Bill 95, an Act designed to help the province reduce GHG emissions and adapt to climate change. Bill 95 would set GHG emissions limits, presumably on large industrial emitters, although the capped sectors and the size of the caps are expected to be set out in regulation. Firms that did not meet required caps through emissions abatement would be able to make “carbon compliance payments” at the rate of \$15 per tonne of carbon dioxide equivalent, essentially capping the cost of compliance at that amount. The

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Saskatchewan government also recently adopted the current federal government target of reducing emissions by 20% of 2005 levels by 2020.

On May 12, 2009, the Quebec government introduced Bill 42, which would establish the framework for a cap-and-trade system in the province. Bill 42 would allow for greater flexibility mechanisms, including tradable emissions allowances, offset credits and early emission-reduction credits. In contrast to Saskatchewan, Quebec has targeted a 6% reduction of 1990 emissions by 2012.

For further information, please see [www.legassembly.sk.ca/bills/pdfs/bill-95.pdf](http://www.legassembly.sk.ca/bills/pdfs/bill-95.pdf) and [www.mddep.gouv.qc.ca/changements/plan\\_action/index-en.htm](http://www.mddep.gouv.qc.ca/changements/plan_action/index-en.htm).

### ***Manitoba to require climate change considerations in environmental licensing***

On June 11, 2009, Manitoba's Bill 29, the *Environment Amendment Act*, received royal assent. When it is proclaimed in force, the bill will make various amendments to the province's *Environment Act*, including with respect to the environmental licensing process. In particular, when considering whether to issue a licence for a proposed development, the applicable director or minister must take into account the amount of GHGs to be generated by, and the energy efficiency of, the proposed development.

For further information, please see <http://web2.gov.mb.ca/bills/39-3/b029e.php>.

## **United States**

### ***Waxman-Markey bill passes U.S. House of Representatives***

On June 26, 2009, in a 219-212 vote, the U.S. House of Representatives narrowly passed the *American Clean Energy and Security Act of 2009* (ACES), the climate change bill sponsored by Henry A. Waxman (D-Calif.) and Edward J. Markey (D-Mass.). It will now be considered by the Senate, where it is expected to undergo continued scrutiny and revision. As drafted, however, ACES would establish a framework for a U.S.-wide cap-and-trade system, designed to reduce U.S. GHG emissions by 17% below 2005 levels by 2020 and 83% below 2005 levels by 2050. The system would, among other things, allow capped entities to trade emission allowances and to acquire credits representing up to 2 billion tons of emission offsets annually from projects outside the capped sectors that reduce or remove GHG emissions. Up to half of these offset credits could come from projects that avoid, reduce or sequester GHGs outside the United States in developing countries with which the United States has an international agreement. In particular, these international offsets could be issued (i) in exchange for credits, such as Certified Emissions Reductions, issued by a body established by or under the United Nations Framework Convention on Climate Change or a successor treaty, provided that those credits have undergone sufficient scrutiny to ensure their environmental integrity; (ii) for sector-wide reductions or avoidance of GHG emissions in countries that the United States determines to have a comparatively high level of GHG emissions or economic development, and if that sector, if located in the United States, would be subject to the emissions cap; and (iii) to certain projects that reduce deforestation.

In addition, the Environmental Protection Agency (EPA) would maintain a strategic reserve of emissions allowances that it could auction if allowance prices exceeded 160% of their three-year average. Initially, ACES would establish a floor price of auctioned allowances of \$10 per tonne (in 2009 dollars), although the EPA has estimated that allowances would cost between \$11 and \$15 in 2012, increasing to between \$22 and \$28 by 2025. Notably for Canadians, ACES retains provisions allowing the U.S. government to impose tariffs, in certain circumstances, on the import of carbon-intensive products, ostensibly to prevent the "leakage," or movement, of U.S. carbon-intensive industries to other jurisdictions to avoid the regulatory burden of a cap-and-trade system. A [recent report](#) by the World Trade Organization and the

United Nations Environment Programme indicated that such border adjustment tariffs may be justifiable under international trade law.

ACES would also establish many complementary climate change initiatives. Key provisions include (i) requiring retail electricity suppliers to meet 6% of their electricity demand by renewable-source generation and energy-efficiency gains by 2012, rising to 20% by 2020; (ii) investing approximately \$190 billion in energy efficiency and new clean energy technologies; and (iii) setting new energy efficiency standards for buildings, appliances and industry, which would, for example, require new buildings to be 50% more energy-efficient in 2016 than they currently are. Many of these provisions have already been substantially amended from those in the version of ACES that was originally proposed in March 2009 (see [Torys' April 1 Climate Change Bulletin](#)).

For further information, please see <http://globalwarming.house.gov/>.

## International

### *Delegates discuss successor to Kyoto Protocol*

From June 1 to 12, 2009, delegates from 182 countries met in Bonn, Germany, to discuss key documents that are to provide a basis for international negotiation of a post-Kyoto multilateral climate change treaty in Copenhagen, Denmark, in December 2009. The first document concerns the post-2012 emission-reduction commitments of industrialized countries. The second covers related issues such as the Kyoto flexibility mechanisms, including emissions trading and the Clean Development Mechanism.

For further information, please see <http://unfccc.int/meetings/sb30/items/4842.php>. 