

# Torys on Climate Change

CC 2010-2  
February 2010

## Recent Developments

By [Patricia Koval](#), [Dennis Mahony](#), [Michael Pickersgill](#) and [Tyson Dyck](#)

### International

#### ***Copenhagen parties submit mitigation plans***

Major developed and developing countries around the world have now submitted their targets for reducing greenhouse gas (GHG) emissions, in accordance with the Copenhagen Accord. A non-binding deal negotiated in the last days of December's UN Climate Change Conference, the Copenhagen Accord called on countries to voluntarily submit mitigation targets by January 31, 2010.

The Canadian government, consistent with its plan to coordinate climate change efforts with those of the United States, proposed to reduce its emissions by 17% below 2005 levels by 2020. Prior to Copenhagen, the federal government had proposed reducing Canada's emissions by 20% below 2006 levels by 2020. The new target weakens Canada's emissions-reduction goal by nearly 20 million tonnes by 2020.

At the time of writing, another 91 countries, including the 27 members of the European Union, had announced or were expected to announce their association with the Copenhagen Accord. Of these countries, many major emitters also provided mitigation targets:

- The United States proposed to reduce its GHG emissions by 17% below 2005 levels by 2020, conditional on the passage of (and any targets in) future domestic climate change legislation.
- China undertook to reduce its carbon dioxide emissions per unit of GDP by 40%–45% below 2005 levels by 2020. It also pledged to increase the share of non-fossil fuels in primary Chinese energy consumption to around 15% by 2020. Finally, China proposed to increase national forest cover by 40 million hectares and forest volume by 1.3 billion cubic metres above 2005 levels by 2020.
- India targeted a 20%–25% reduction in its 2005 emissions intensity by 2020.
- Brazil submitted a list of voluntary mitigation measures designed to reduce emissions by 36.1%–38.9% below 2020 business-as-usual projections.
- The EU-27 pledged to reduce their emissions by 20% below 1990 levels by 2020, with an additional pledge to increase this cut to 30% if other major emitters took on "their fair share of a global reduction effort."

For a full list of commitments, please see [here](#). For further information about the Copenhagen Accord, please see [Torys' January Climate Change Bulletin](#).

To discuss these issues, please contact the authors.

For media calls, please contact [Stuart Wood](#), Chief Marketing Officer, 416.865.8205.

To contact us, please email [info@torys.com](mailto:info@torys.com).

Torys' bulletins are available on our website at [www.torys.com](http://www.torys.com), under Publications.

*This bulletin is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this bulletin with you, in the context of your particular circumstances.*

© 2010 by Torys LLP.  
All rights reserved.

## United States

### ***Commission issues guidance on climate change disclosure***

On January 27, 2010, the U.S. Securities and Exchange Commission (SEC) issued new guidance to clarify how existing securities laws may require publicly traded companies to disclose material impacts and opportunities related to climate change. Specifically, the SEC guidance highlights the following as having the potential to trigger disclosure under existing requirements:

- **Impact of legislation and regulation.** Public companies should consider the impact of certain existing laws and regulations regarding climate change. Companies should also, in certain circumstances, evaluate the potential impact of pending legislation and regulation related to climate change.
- **Impact of international accords.** Public companies should consider the risks or effects on their businesses of international accords and treaties relating to climate change.
- **Indirect consequences of regulation or business trends.** Public companies should consider the actual or potential indirect consequences they may face as a result of climate change–related regulatory or business trends. In particular, the SEC indicated that climate-related legal, technological, political and scientific developments may create new opportunities or risks for companies, such as increased or decreased demand for products having lower and higher carbon intensities, respectively.
- **Physical impacts of climate change.** Public companies should evaluate the actual and potential physical impacts of environmental matters on their business.

Despite some congressional criticism, the guidance responds to formal petitions that had called on the SEC to provide guidance on the disclosure of climate-related business impacts. The guidance also follows a series of settlements between the New York Attorney General and certain of the United States' largest power companies regarding their climate change disclosure in SEC filings. For further information, please see the [Commission guidance](#).

### ***Californian low carbon fuel standard challenged***

On February 2, 2010, the National Petrochemical and Refiners Association (NPRA) and three other parties filed suit against the California Air Resources Board for the state's implementation of a low carbon fuel standard (LCFS) that requires a 10% reduction in the carbon intensity of the state's transportation fuels by 2020. The challenge, made on constitutional grounds, claims the LCFSs would have little impact on national GHG emissions, but rather harm U.S. energy security partly by discouraging the use of Canadian crude oil and Midwest ethanol. For further information, please see [here](#).

### ***U.S. House issues bill to prevent EPA regulation of GHG emissions***

On February 2, 2010, two Democrats and one Republican proposed a bill in the U.S. House of Representatives that would prevent the Environmental Protection Agency (EPA) from regulating GHG emissions under the federal *Clean Air Act*. In December, the EPA had issued findings under the federal *Clean Air Act* that enabled the EPA to finalize its proposed [GHG emission standards for light-duty vehicles](#); however, it did not impose any requirements on industry or other entities. Many had viewed the possibility of future EPA regulation of GHG emissions from stationary, and not just mobile, sources as a back-up plan if Congress proved unwilling or unable to pass comprehensive climate change legislation.

For further information, please see Congressman Skelton's [press release](#). 