



The Importance of the Upcoming IMO Discussion of the Proposed North American ECA

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Canada and the United States have proposed establishment of an extensive Emission Control Area (ECA) off their coasts pursuant to the provisions and authority provided by the recently adopted Annex VI of the MARPOL Convention. The industry has anticipated the proposal for some time.

Some stakeholders have focused on the spatial extent of the U.S. and Canadian proposal, which seeks to include waters 200 nautical miles from the U.S. and Canadian coastline. There is no doubt that the proposed area would be extensive in size; however, there is also no question that Annex VI envisioned that coastal states could propose zones of this size, so long as they were developed in accordance with the criteria of the convention. Analysis conducted by Environment Canada and the U.S. Environmental Protection Agency indicates that benefits outweigh costs by a 2 to 1 ratio at the farthest reach of the proposed area designation. These governments should be prepared to explain their analysis and conclusions. We expect that they are prepared to do so as their 73 page submission to the IMO and over 320 pages in technical supporting documentation indicate.

Some parties will probably question the spatial extent of the proposed ECA, and such questions and debate are an appropriate part of the IMO deliberative process. Nonetheless, given the extensive analysis and documentation behind the proposal, it will be difficult to argue that the proposal does not meet the criteria specified under MARPOL Annex VI. Accordingly, approval of the proposal would seem likely.

The timing and nature of the debate undertaken at the IMO may, however, have significant political implications in North America that may affect future air emission standards for the industry, including standards for greenhouse gas emissions. Unnecessary delay in considering these governments' ECA proposal would have consequences that should be understood, if we want to see the IMO maintain its position as the leading regulatory authority for establishing environmental standards applicable to international shipping.

The U.S. Environmental Protection Agency is currently under a court order to propose U.S. air emission standards applicable to ocean-going ships, with a court imposed deadline of December 2009. Most stakeholders expect that the U.S. regulation will comply by codifying the new standards recently adopted under the revised MARPOL Annex VI. While the U.S. played a leading role in the development of Annex VI and subsequently ratified the agreement (which is a positive change from how it has treated

some previous IMO agreements it has helped shape), the environmental benefits to the United States from Annex VI derive largely from the ability to establish an ECA.

If the 59th Session of the Marine Environment Protection Committee (MEPC) meeting this July fails to circulate the proposed North American ECA for debate and adoption at the 60th session of the MEPC in March of 2010, there may be strong political pressures in the U.S. -- from politicians and environmental groups that are quick to find fault with the IMO -- to adopt unilateral regulatory measures. Failure to circulate the proposal for adoption would signal to the political leadership in Ottawa and Washington that IMO approval may be uncertain and that approval might be delayed for some time. That would increase the pressure for unilateral action. Some stakeholders may be hesitant to encourage or support designation of such a large emission control area, because the operational implications and costs will be significant. It is important, however, that one considers the larger picture -- namely, that the IMO needs to be responsive to proposals made by governments acting under the MARPOL framework.

The industry has argued for years that IMO is the proper forum for establishing standards applicable to international shipping. The IMO burnished its credentials and its political reputation in this regard with the adoption of Annex VI and its regulatory response to ship air emissions of NO_x, SO_x and particulate matter (PM). Timely and decisive action by the IMO on the Canadian and U.S. proposal to establish an ECA is necessary if we are to be successful in our collective efforts to convince regulators across the world and particularly in North America that the IMO is not only the correct forum, but it is a forum that can be responsive to the objectives and demands of a world that requires timely decisions. The IMO by practical and fiscal necessity is limited in the frequency of its meetings -- namely an eight month cycle for the MEPC. National governments, however, are faced with the need to proceed with actions that do not easily follow discussions that proceed sequentially on an eight month interval. As we consider the fate of proposals before the IMO, we will be well-served to be mindful of the need to move in a manner that clearly demonstrates to national governments that the IMO is not only technically competent, but is efficient in its process of decision making.

Consideration of the North American ECA proposal in London has broader implications as well. The Obama Administration is currently working through what approach it will take with respect to greenhouse gas (GHG) emissions from international shipping and aviation. Current discussions with Administration representatives suggest that the U.S. and Canada are inclined to favor development of an international GHG regime through the IMO rather than national requirements or a system for maritime shipping negotiated through the Framework Convention. It is also clear, however, that delay in consideration and approval of the U.S. and Canadian ECA proposal will not only complicate the U.S. Environmental Protection Agency's planning for how to address vessel emission such as NO_x, SO_x, and PM, but could resuscitate influential political voices in the U.S. to call for unilateral regulatory action, arguing that the IMO cannot be relied on to act on such matters in a timely manner. This would be most unfortunate.

With the North American ECA proposal, the IMO is once again faced with a call to act on a proposal that has far-reaching implications for the industry. The IMO can maintain and solidify its leadership in global regulation if the MEPC decides to formally circulate the U.S. and Canadian ECA proposal when the

Committee next meets for its 59th Session in July, so that the proposal can be debated and voted on at the 60th session in March of 2010. Debate on the proposal is appropriate. Governments that are parties to the Annex have the right to vote for or against the proposed ECA. But delaying formal circulation of the proposal and delaying decision-making would not serve the interests of the IMO, the industry, or the environment.