COVINGTON

The Paris Climate Change Agreement Creates a Range of Opportunities for Companies

December 28, 2015

Clean Energy & Climate and Public Policy & Government Affairs

This advisory highlights aspects of the Paris Agreement that are important for businesses, outlines some valuable opportunities for corporations that emerge from the Paris Agreement, and presents Covington's global climate and clean energy team.

* * *

The United Nations Climate Change negotiations in Paris culminated in a significant international agreement. This agreement likely will have a profound effect on the scope of future regulatory controls on greenhouse gas emitting industries, presents unrivaled business opportunities for the clean energy sector, enshrines international finance approaches and capital flows, and creates opportunities for business and governmental planning for enhanced climate resilience.

The Paris Agreement — Establishing the Expectations for Ambitious Country Actions to Reduce Greenhouse Gas Emissions

Covington lawyers participated in various activities and events in Paris. While much will be written about how 195 nations came together to make a global commitment to tackle climate change and what changes in regulation and the investment landscape might result, a few key impressions stood out to our team:

First, the agreement overcomes past flaws that prevented a more universal endorsement, including fully by the United States. Rather than being a top-down allocation of an emissions budget, it relies on each country to identify the measures it will take to address greenhouse gas emissions. This eliminates the past distinction between developed and developing countries and seems to contain a more equitable burden sharing, epitomized by the extensive green energy commitments China has made.

Under the agreement, countries are required to prepare, maintain, and communicate "Intended Nationally Determined Contributions" every five years, reflecting a party's "highest ambition" for emissions reductions. Each successive submission is expected to "represent a progression" beyond the previous one. Indeed, 185 countries, in the lead up to the Paris meeting, submitted ambitious commitments outlining their plans to reduce emissions. The objective of these efforts is established as a peaking of emissions as soon as possible, and then a goal of net greenhouse gas neutrality in the second half of this century. The overall target is to keep temperature rise to well below 2 degrees Celsius above pre-industrial levels and to pursue steps to keep that increase to 1.5 degrees.

Second, the degree of participation in the discussions and the commitments many businesses brought forth was quite extraordinary. Large companies in the United States signed on to the Business Acts for Climate Pledge, the We Mean Business coalition brought other business commitments, and the UN Global Compact registered actions by many more. Large electricity generators and oil and gas producers called for a price on carbon, and renewable energy generators highlighted the scale of their recent deployments.

Government and United Nations negotiators heard a clear message that many capable companies and investors believe in clean energy solutions and are rethinking their business models to develop more nimble, technologically-oriented models. Some of this optimism flowed from the new connectedness that technology enables and the ever accelerating pace of that technological change. Many in Paris envisioned a sense of new possibilities for economic growth from the need to decarbonize economies, rather than a pervading sense of limits and sacrifice. The agreement in Paris also establishes the basis for an extended life for international emissions trading after 2020.

Third, the numerous regulatory and diplomatic steps that the European Union and the United States pursued these past several years provided it with significant negotiating credibility. By coming equipped with extensive emissions reductions due to EPA's power plant regulations and the doubling of motor vehicle efficiency standards, as well as having worked closely with China and India through bi-lateral efforts, the US was able to achieve its key negotiating objectives. The EU's unilateral commitment to reduce its greenhouse gas emissions by 40% by 2030 and its efforts to reach out to the African Caribbean countries, Brazil, and Japan also helped to break the China-India deadlock. Thus, the final agreement includes enhanced transparency and review provisions to help to ensure that country emissions reduction commitments prove to be meaningful.

US negotiators also carefully avoided new legal obligations and thereby arguably minimized the need for Senate confirmation before a deeply polarized Congress, much as occurred with the Minamata Convention on mercury emissions. However, in the EU the agreement's objective to limit the increase of temperature to 1.5 degrees Celsius will be politically perceived as a binding commitment that will provide strong arguments to impose higher emission reduction targets and should have a significant impact during the legislative review of the EU Renewable Energies Directive and Energy Efficiency Directive in 2016-2017.

Fourth, the agreement follows the pattern of existing domestic environmental laws in recognizing that it may not be a perfect solution, in and of itself, and that the science will continue to evolve. Similar to the Clean Air Act's five year review provision for fundamental health-based pollutants, the Paris climate agreement acknowledges the need to calibrate future emissions reductions based on new science and will regularly assess the success of country measures in meeting the emissions targets.

While the agreement and on-going support for it in the United States surely will spawn much on-going debate and many challenging implementation issues, what happened in Paris represents a tectonic shift in the global approach to climate change and energy. This shift will also affect emitting sectors left out of the agreement in Paris, such as the important business sectors of aviation and maritime.

The Paris Climate Agreement -- Opportunities for Corporations

The Paris agreement presents numerous opportunities for participation, advocacy, and market promotion in implementing its provisions. Covington's unique experience, access, and capabilities in this arena can assist your company with gaining a deeper understanding of likely regulatory trajectories, help to shape regulatory outcomes, develop opportunities for creating or strengthening partnerships and coalitions, and evaluating and executing transactions that are supported by the Paris agreement. As companies shift from traditional to lower carbon business models, we are strongly positioned to add value on a range of fronts:

- Transactions
  - Renewable energy, energy storage, energy efficiency, advanced vehicle transportation fleet procurements
  - Investments in renewable energy projects -- e.g. tax equity, virtual ppa, lease or sale of surplus assets for project siting (rooftops, brownfields, mining sites)
  - Corporate venture investments in new sustainable technologies
  - Forest conservation and other deals with Governments and NGOs
  - Monetizable collaborations with off-takers of CO_2 and other waste gas emissions
  - Collaborations and joint ventures with grid management technology and energy services companies
  - International carbon emissions and offsets trading
- Advisory and Public Policy
  - Compliance with new regulatory regimes -- *e.g.* Clean Power Plan in the United States and EU emission caps, and renewable energies and energy efficiency requirements
  - Legislative advice during the upcoming EU review of its Renewable Energies Directive and Energy Efficiency Directive in 2016 and 2017
  - Corporate carbon reporting and stranded asset disclosure
  - Trade association and coalition activities - industry standards and collaborations
  - Insurance policy review of climate change risks
  - Implications of international trade agreements for national carbon policies
  - Environmental assessments and approvals of energy projects
- Disputes
  - Arbitration or other disputes arising from volatility in energy prices
  - Public policy disputes and litigation over rulemaking
  - Overcoming regulatory or public interest objections to clean energy projects
  - Tax controversies stemming from tax credits or tax-advantaged structures

Covington Team

Covington fields a team with extraordinary depth in this arena. We field experts in the United States, London, Brussels, and China, who include:

- Stuart E. Eizenstat, who negotiated the original Kyoto Protocol during his tenures as Under Secretary of State for Economic, Business and Agricultural Affairs and Deputy Secretary of the Treasury;
- Gary S. Guzy, who has participated in five UN Climate Convention Conferences of the Parties, including during his recent tenure helping direct climate and energy issues at the White House and, previously, at the US Environmental Protection Agency as the General Counsel of the US EPA. Mr. Guzy participated in the events in Paris;
- Cándido García Molyneux of our Brussels Office, who brings tremendous expertise on European Union climate policy emissions trading and renewable energies and energy efficiency requirements;
- Rubén Kraiem of our New York Office, who leads our Latin America practice and has had extensive experience representing the rainforest sector and Latin American interests at previous Conferences of the Parties. He participated in Paris as a Delegate for the Coalition for Rainforest Nations. We have long represented the Coalition's Secretariat on a number of initiatives related to Reducing Emissions from Deforestation and Degradation ("REDD"), and worked with the Secretariat staff at COP-21 on the negotiation of REDD-related provisions of the Paris Agreement and the design of REDD implementation initiatives;
- E. Donald Elliott previously served as Assistant Administrator and General Counsel to the US Environmental Protection Agency and has over 30 years of experience in environmental law, administrative law and product liability and toxic torts. He has extensive regulatory experience in Clean Air, water, wetlands, waste and chemical regulation. During his tenure at EPA, Mr. Elliott was involved in developing the 1992 Framework Convention (Rio Treaty) and the 1990 amendments to the Clean Air Act, including helping to draft the acid rain permit trading statute and regulations. As a Yale Law Professor, Mr. Elliott has written and spoken extensively about climate change issues, including being one of the first to advocate the use of the existing Clean Air Act to address climate change issues without new legislation;
- W. Andrew Jack chairs the firm's Clean Energy and Climate industry group and has a diverse corporate and securities practice with clients principally in the solar, advanced vehicles, industrial manufacturing, and sports and entertainment industries. He is ranked as a leading corporate lawyer by *Chambers USA* and he regularly advises corporations, board committees, and other forms of enterprises in mergers and acquisitions, strategic alliances, financing activities, Sarbanes-Oxley and 1934 Act compliance, corporate governance counseling, and executive compensation arrangements. Mr. Jack is a frequent speaker at clean energy conferences and he works closely as the firm's membership liaison to SEIA and ACORE on a variety of matters to advance opportunities in clean energy, including as a founding member of the planning committee for SEIA's Solar Finance Conferences and as a co-chair of ACORE's Transportation Advisory Committee;
- William R. Collins has experience representing energy clients on an array of project development, M&A, and financing transactions. His clients have included investor-owned

utilities, independent power producers, renewables companies, private equity firms, financiers, project developers, and financial advisory firms in a wide range of corporate matters and transactions;

- Simon Amies, a partner in the firm's London office, advises on a broad range of corporate matters including mergers and acquisitions (public and private), IPOs and other securities offerings, private equity and venture capital investments, joint ventures and strategic transactions, and corporate governance. Mr. Amies advises companies at all stages of their development, as well as investors and banks. He has particular expertise advising clients in the clean energy industry; and
- Sebastian F.A. Vos heads the European division of the firm's global Public Policy and Government Affairs practice. He provides clients with strategic public policy, regulatory, and communications advice on a range of competition, trade, transactional, and sectoral issues. Mr. Vos has extensive experience in the European Union and advises clients in the energy, transport, technology and financial services sectors as they navigate and manage today's global regulatory and policy challenges.

If you would like to better understand these timely and consequential issues or learn how Covington broadly could assist you, we would be pleased to arrange an introduction.

Expanded Team

Transactions

Simon Amies
+44 20 7067 2002
samies@cov.com

Scott Anthony
+1 650 632 4703
anthonys@cov.com

Eric Blanchard
+1 212 841 1111
eblanchard@cov.com

Bill Collins
+1 212 841 1075
wcollins@cov.com

James Gubbins
+44 20 7067 2065
jgubbins@cov.com

Andrew Jack
+1 202 662 5232
ajack@cov.com

Rubén Kraiem
+1 212 841 1002
rkraiem@cov.com

Dan Levine
+86 21 6036 2507
dlevine@cov.com

Weishi Li
+86 21 6036 2502
wli@cov.com

Gabriel Mesa
+1 212 841 1228
gmesa@cov.com

Louise Nash
+44 20 7067 2028
lnash@cov.com

William Park
+82 02 6281 0001
wpark@cov.com

Ingrid Rechtin
+1 415 591 7080
irechtin@cov.com

Amy Toro
+1 415 591 7086
atoro@cov.com

Natalie Walter
+44 20 7067 2066
nwalter@cov.com

Disputes

Bruce Baird
+1 202 662 5122
bbaird@cov.com

Suzan Charlton
+1 202 662 5898
scharlton@cov.com

Nicole Duclos
+1 212 841 1135
nduclos@cov.com

Marialuisa Gallozzi
+1 202 662 5344
mgallozzi@cov.com

Larry Hobel
+1 415 591 7028
lhobel@cov.com

Steven Rosenbaum
+1 202 662 5568
srosenbaum@cov.com

Dan Shallman
+1 424 332 4752
dshallman@cov.com

Jeremy Wilson
+44 20 7067 2110
jwilson@cov.com

Regulatory/Policy

Tom Barnett
+1 202 662 5407
tbarnett@cov.com

Eric Carlson
+86 10 5910 0503
ecarlson@cov.com

Marney Cheek
+1 202 662 5267
mcheek@cov.com

Rob Culbertson
+1 202 662 5004
rculbertson@cov.com

Jean De Ruyt
+32 2 549 5289
jderuyt@cov.com

Stuart Eizenstat
+1 202 662 5519
seizenstat@cov.com

Don Elliott
+1 202 662 5631
delliott@cov.com

David Fagan
+1 202 662 5291
dfagan@cov.com

Holly Fechner
+1 202 662 5475
hfechner@cov.com

Scott Freling
+1 202 662 5244
sfreling@cov.com

Cándido García Molyneux
+32 2 549 52 61
cgarciamolyneux@cov.com

Gary Guzy
+1 202 662 5978
gguzy@cov.com

Karel Kovanda
+32 2 549 5275
kkovanda@cov.com

Anne Lee
+1 202 662 5535
alee@cov.com

Dan Luchsinger
+1 202 662 5175
dluchsinger@cov.com

Muftiah McCartin
+1 202 662 5510
mmccartin@cov.com

Bill Massey
+1 202 662 5322
wmassey@cov.com

Mark Perlis
+1 202 662 5446
mperlis@cov.com

Tim Stratford
+86 10 5910 0508
tstratford@cov.com

Sebastian Vos
+32 2 549 5267
svos@cov.com

Gerry Waldron
+1 202 662 5360
gwaldron@cov.com