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Dear Mr. Terrill:

Thank you for taking my call this afternoon.

As requested, please find below information about the international dimensions of the Regional Greenhouse Gas Initiative (RGGI) that 9 Northeastern and Mid-Atlantic States, and perhaps, five Eastern Canadian Provinces will soon enter into. It will impose a mandatory cap on carbon dioxide emissions of power plants, and establish a GHG registry and an emissions trading scheme. New York State Governor George Pataki initially proposed that plan during 2003. The States of Maryland and Pennsylvania and the District of Columbia have been 'Observers' of this initiative, and we have been informed that they are unlikely, at this point, to join.

The plan is based partly on the current U.S. sulfur dioxide (SO₂) and nitrous oxide (N₂O) trading regimes and the recently enacted EU regional GHG (carbon dioxide) emissions trading regulations. As noted above, RGGI is also being closely observed by several Eastern Canadian provinces with which the participating New England states have already formed a cross-border partnership. Given the scope and nature of that cross-border partnership, the Institute for Trade, Standards and Sustainable Development (ITSSD) is concerned that it will likely be expanded to include all of the states participating in the regional GHG emissions trading scheme, and perhaps even others. Furthermore, the ITSSD's review of documents supporting this regional initiative reflects that the EU Commission, DG Environment and the Netherlands Ministry of Economics have each served an advisory or supportive role in connection with this initiative, as they both have dispatched representatives to speak with the U.S. State Governors and the Canadian Premiers about how best to design such a system. Moreover, the ITSSD has been informed by the Independent Power Producers of New York, Inc., a trade association representing the power generation industries, that the scheme's expected launch date has been pushed back from April 2005 to sometime during the fall of 2005. We have not been able to confirm this, however, and it is quite possible that an agreement may be signed anytime between now and then.

The (ITSSD) is concerned that a precautionary principle-based regional regulatory regime of this kind will, if enacted, adversely impose higher energy, production and materials costs and taxes upon New York State and regional businesses and consumers that will potentially create an economic drag on the state and regional economies. We are also concerned that New York State and northeastern businesses would be placed at an economic competitive disadvantage vis-à-vis



businesses from other U.S. states outside the region that compete in the same markets, as well as, vis-à-vis competing businesses from within non-Kyoto Party foreign countries. This could, contrary to the assertions of the plan's advocates, harm U.S. global competitiveness.

The ITSSD is also concerned about the legal dimensions of this state-based regional cross-border GHG regime. The ITSSD believes that if such a regime, whether adopted by executive order or through the enactment of compatible legislation in each of the participating states is not immediately countered/prevented, it will: 1) spread to other U.S. states and regions; 2) squarely contradict federal climate change policy and constitutionally preempt federal law (Congress has not legislated and the EPA has not regulated carbon dioxide emissions); 3) substantially undermine U.S. negotiating and/or strategic positions advanced at international fora such as the United Nations Environment Program - the UNEP secretariat (Conference of the Parties [COP] meetings) to the UN Framework Convention on Climate Change, and the UN Commission on Sustainable Development (COP meetings); 4) substantially undermine U.S. negotiating positions at the current Doha Round of WTO negotiations; 5) substantially impair the President's express and implied constitutional power to conduct foreign affairs competently; 6) help to establish the use of the precautionary principle as an exercise of 'state practice', as a matter of customary international law; and 7) substantially impair the competitiveness of U.S. industry in the global marketplace by setting forth a process that will lead to progressively higher prices that will result in the abandonment of what has been for the United States a comparative advantage in terms of international trade (lower energy prices).

The information set forth below provides background information about the proposed regime, its participants and its potential international scope. It is intended to respond to the points you raised during our phone conversation.

1) The Regional Greenhouse Gas Initiative (RGGI)

"The Regional Greenhouse Gas Initiative, or RGGI, is a cooperative effort by Northeastern and Mid-Atlantic states to reduce carbon dioxide emissions – a greenhouse gas that causes global warming... To address this important environmental issue, the RGGI participating states will be developing a regional strategy for controlling emissions. *This strategy will more effectively control greenhouse gases, which are not bound by state or national borders.* Central to this initiative is the implementation of a multi-state cap-and-trade program with a market-based emissions trading system. The proposed program, which will *require* electric power generators in participating states to reduce *carbon dioxide emissions*, is planned to be designed by April 2005... *The goal is to have a program design agreement by April 2005 or sooner. After the cap-and-trade program for power plants is implemented, the states may consider expanding the program to other kinds of sources...* The program will be expandable and flexible, *permitting other states to seamlessly join in the initiative* when they deem it appropriate. The program *will not unduly interfere* with other national, state or regional emissions trading programs and initiatives, but may serve as a platform and model for the implementation of future additional emissions trading programs and initiatives that individual or multiple states might deem appropriate" (emphasis added).



“About RGGI; Goals and Guiding Principles”, at: <http://www.rggi.org/about.htm> ;
<http://www.rggi.org/goals.htm> .

- 2) Excerpt from BNA Environment Reporter article - March 29, 2004 - entitled, "Northeast U.S. Emissions Trading Scheme Could Serve as Model for National System"

"...Erin Crotty, commissioner of the New York State Department of Environmental Conservation, said March 9 [the] emissions trading market being developed by 11 northeastern states *could serve as the model for a national system in the United States...*Once the program is fully operational, which is scheduled to happen in April 2005, *there is no reason why it could not be extended to other states or other emissions trading markets that are developing in Canada and the European Union...*The initiative so far has been limited to the 11 original states because their governments have a history of working together, including in litigation against the federal government and Midwestern states on air quality issues, Crotty said. However, *the Northeast region also has a close working relationship with California, which is undertaking efforts with Western states on a greenhouse gas emissions trading market...*" (emphasis added).

See: <http://subscript.bna.com/SAMPLES/ecb.nsf/0/bfde82e9101da86485256e63000431bf?OpenDocument> .

See, also: “Carbon Finance 2004” Conference in Toronto, Canada, on March 9, 2004.

“REGIONAL GHG INITIATIVE IN NORTHEAST US AND OTHER STATE EFFORTS

- Background on *Governor Pataki's invitation to the Northeast Governors*
- Efforts to design a *mandatory regional cap and trade programme for power plants*
- Development of the Northeast Greenhouse Gas Registry
- *Possible interplay with other state and provincial initiatives*

Honorable Erin M. Crotty, Commissioner, New York State Department of Environmental Conservation” (emphasis added).

Agenda at: <http://www.environmental-center.com/events/carbonfinance2004/carbonfinance2004.htm#program> .

- 3) "27th and 28th Conferences of the New England Governors and the Eastern Canadian Premiers"

New England Governor's Conference:

"The New England Governors' Conference, an informal alliance since colonial days, was formally established in 1937 by the Governors of the six state region to promote New England's economic development...The NEG's framework permits the Governors to work together, to coordinate and implement policies and programs which are designed to respond to regional issues...The NEG coordinates regional policy programs in the areas of economic development, transportation, *environment, energy, and health*, among others. Through these efforts, the Conference seeks to coordinate, effectively and cost-efficiently, regional policies that reflect and benefit the states. The NEG manages committees



of state officials in such areas as energy, the environment, and economic development...*The NEGC also serves as the New England Secretariat for the Conference of New England Governors and Eastern Canadian Premiers. The Conference of New England Governors and Eastern Canadian Premiers, which first met in 1973, is a unique, inter-regional, bi-national organization*" (emphasis added).

The Conference of NEGC and Eastern Canadian Premiers:

"The Conference of New England Governors and Eastern Canadian Premiers was established in 1973. The Conference's many accomplishments over the years include:

- * The *expansion of economic ties among the states and provinces*;
- * The fostering of energy exchanges;
- * The *forceful advocacy of environmental issues and sustainable development*;

...At the annual conferences, the Governors and Premiers discuss issues of common interest and concern, and *enact policy resolutions that call on actions by the state and provincial governments*, as well as by the two national governments..." (emphasis added).

The Conference of NEGC and Eastern Canadian Premiers consists of the following partners: The Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont; and The Premiers of New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Quebec.

See: <http://www.negc.org/negecpmembers.html> .

"Resolution 27-4 -- Resolution Concerning the Synchronization of Energy-Related Regulations in the Northeast", adopted Aug. 25-27, 2002.

"WHEREAS, energy is fundamental to the future prosperity of the region if its jurisdictions are *to be competitive in the global market as a region*;

... WHEREAS, many jurisdictions are continuing to move toward new regulatory environments through a reassessment of regulatory policies and procedures in many areas of business such as *sustainable development*; energy efficiency; renewable and transportation energy; energy resources; and *international priorities*;

...NOW, THEREFORE, BE IT RESOLVED THAT the Conference of New England Governors and Eastern Canadian Premiers direct NICE [Northeast *International* Committee on Energy] to:

- form a working group...to address *the synchronization of energy-related regulations* designed to foster growth while protecting the environment; and
- present a report and recommendations based on deliberations and findings of this working group..." (emphasis added).

See: <http://www.negc.org/02En009.html> .

"Resolution 27-7 -- Resolution Concerning Climate Change", adopted Aug. 25-27, 2002.

“WHEREAS, the Conference of New England Governors and Eastern Canadian Premiers *accepted the Climate Change Action Plan* at its 2001 meeting; and

WHEREAS, the Climate Change Action Plan outlines greenhouse gas reduction goals for the region and presents bold approaches for meeting these goals within the region;

...WHEREAS, the Committee on the Environment and the Northeast *International Committee on Energy (NICE)* have begun the implementation of the Climate Change Action Plan with a *focus on energy use, transportation emissions, greenhouse gas inventory and registry development, adaptation strategies, and state and provincial government programs*;

...WHEREAS, *state and provincial governments are committed* to lead by example in implementing climate change and greenhouse gas reduction programs...

...BE IT FURTHER RESOLVED THAT the Conference of New England Governors and Eastern Canadian Premiers continue developing mechanisms to promote cleaner and more efficient vehicles, identify opportunities related to bio-fuels, and explore models of land use and development that could lead to the design of potential incentives and performance-based practices *to encourage a reduction in vehicle miles and kilometers traveled*;

...BE IT FURTHER RESOLVED THAT the Conference of New England Governors and Eastern Canadian Premiers *identify areas for expanded jurisdictional efforts for the implementation of government climate change programs*;" (emphasis added).

See: <http://www.negc.org/02En003.html> .

"New England Governors/Eastern Canadian Province Climate Change Action Plan 2001", adopted Aug. 2001. See: <http://www.negc.org/documents/NED-ECP%20CCAP.pdf> .

"Resolution 28-7 -- Resolution Concerning Environmental Projects and Issues", adopted Sept. 7-9, 2003.

“WHEREAS, *the continued implementation of the NEG/ECP Climate Change Action Plan* is focusing on developing energy efficient and economically beneficial strategies to reduce greenhouse gas emissions from sources in the northeast and help our region’s economy and environment adapt to the impacts of climate change.

...BE IT FURTHER RESOLVED THAT the Conference of New England Governors and Eastern Canadian Premiers directs its Committee on the Environment and the Northeast International Committee on Energy to:

- Evaluate “smart growth” approaches to land-use and development and seek recommendations for implementation;

- Continue to develop the administration, tracking and reporting framework for a *voluntary* [??] regional greenhouse gas registry; and
- Work to develop voluntary partnerships with cities, towns, and businesses *to increase the efficacy of our climate change work*” (emphasis added).

See: http://www.negc.org/03resolutions/res28_7.html .

4) European Union and Member State Presentations

- a) “Allocation Under the European Union Emissions Trading System”, RGGI Stakeholder Workshop (Boston, Oct. 14, 2004), by Olivia Hartridge, of the European Commission, DG Environment.

See: http://www.rggi.org/docs/hartridge_pres_10_14_04.pdf .

- b) “Dutch Lessons as GHG Buyer”, (June 25, 2004), by Maurits Henkemans, Netherlands Ministry of Economic Affairs.

Furthermore, the RGGI website lists as one of several resources, “The European Union’s Climate Change Program”, at: <http://europa.eu.int/scadplus/leg/ens15009.htm> .

In closing, the ITSSD’s focus is primarily international in scope. The ITSSD is concerned, however, based on its recent interviews of the RGGI Staff Working Group Subgroup Chairs, that what appears on the surface to be merely a domestic state-level regional GHG emissions trading initiative *is* actually a regime that is *international* in scope, with its design, development, diffusion and international linkages being assisted by the European Commission, certain EU member state governments and five Canadian provinces. This conclusion coincides with our extensive research of disguised international trade barriers cast in the form of national and regional EU precautionary principle-based EHS regulations and standards. Indeed, the ITSSD’s research and review of RGGI documents strongly suggests that the RGGI GHG emissions trading regime is actually part of a broader international attempt by European governments to impose on U.S. businesses and consumers the same high costs and burdens that European businesses and consumers will have to bear as the result of Europe’s ratification of the Kyoto Protocol and enactment of regional GHG emissions caps. In sum, the ITSSD believes that it is more likely than not that the EU is working with these willing U.S. states and Canadian provinces in order to gain a strategic legal and economic foothold within the United States for purposes of ultimately influencing U.S. *international and domestic* climate change and sustainable development policy vis-à-vis the Kyoto Protocol.

The ITSSD believes furthermore that, if the RGGI is successfully established, it may trigger a domino effect of sorts within the United States as different U.S. states, seeing that they can freely design and implement such initiatives without legal repercussions, will actually decide to experiment on their own; they may enter into and enact similar climate change regimes in other



regions of the country. In addition, it may also lead to new state and regional level precautionary-principle-based EHS regulations modeled after existing or proposed EU regulations, such as those relating to GMOs, high volume chemicals, cosmetics, product stewardship and take-back, waste disposal and recycling, and the use of hazardous substances in electrical and electronic equipment. Indeed, the ITSSD will soon release a white paper detailing how such legislation and related corporate governance standards, which are alarmingly similar to those championed in the EU, are increasingly being proposed at the local, state and federal levels.

The ITSSD admonishes the U.S. State Department, along with other relevant federal agencies, such as the Office of the United States Trade Representative and the U.S. Department of Justice, Office of Solicitor General, of the need to take urgent action to address this growing international and domestic threat before the RGGI agreement is formally executed, before costly and burdensome mandatory GHG emissions trading scheme regulations become a reality for millions of U.S. citizens and businesses, and before U.S. international economic competitiveness is adversely affected.

The ITSSD is pleased to have had the opportunity to bring this important information to your attention. Please do not hesitate to contact us should you be interested in discussing these matters in greater detail or otherwise require our assistance.

Very truly yours,

Lawrence A. Kogan, Esq.

Chief Executive Officer