

MMTA TRADE AND LOBBY COMMITTEE'S NEWSLETTER

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WAIVING THE REQUIREMENT TO PURCHASE EMISSIONS RIGHTS; ARE YOU ON THE LIST?

As of 1 January 2013, as set out in the EU's Emissions Trading Scheme, companies must pay for their carbon emissions. In 2013, companies will have to purchase 20% of their emission rights, and that percentage will rise to 70% in 2020, and to 100% in 2027. However, the requirement will not apply to all companies, creating the potential for distortions of trade and competition.

The EU has decided to exempt companies in certain key sectors from the requirement to purchase emission rights, fearing that they might relocate outside the EU to avoid paying the costs. Sectors receiving emission allowances "free-of-charge" include:

- Mining of non-ferrous metal ores;
- Casting of light metals;
- Manufacture of accumulators, primary cells and primary batteries; and
- Manufacture of basic iron and steel, as well as ferro-alloys like silicon.

The benefit to companies in these sectors could be quite significant, as the price of emissions rights will be auctioned. The price for emissions will thus vary with supply and demand (and by period), making it potentially volatile. Conceivably, certain EU companies may end up paying high prices while competing non-EU companies in exempted sectors pay nothing at all. (The following link lists the sectors that will be given their emission rights free-of-charge:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:001:0010:0018:EN:PDF>)

Companies should verify whether they, their suppliers or their customers are included in the list of exempted sectors. As a first step, companies should prepare an impact assessment of the climate change legislation in their most important markets. This assessment can be used to develop a strategy for 2013 and onward. Business might consider making a contingency plan, a plan to purchase credits, or an effort to obtain an exemption. The European Commission will revise the list of exempted sectors each of the next five years.

The EU's Emissions Trading System will obviously be affected by emission reduction targets, and it was hoped that such targets would be set internationally at Copenhagen in December 2009. Unfortunately, the international community failed to agree to an international treaty on climate change. An agreement is still envisioned before 31 December 2012, but in the meantime, many countries are setting their own targets and drafting corresponding legislation. Some blocks (e.g. the EU and the U.S.A.) are also reserving the right to take compensatory measures against goods from countries which lack emissions legislation comparable to theirs. Such measures could include additional import duties.

In summary, in the wake of Copenhagen, countries will be taking individual and collective action to create a level playing field for their industries and prevent companies from relocating to countries where emissions are free. Companies must keep track of such developments and plan accordingly.

Sidley Austin would be pleased to answer your questions or concerns regarding emissions trading.

Please contact the [MMTA](#) or [Arnoud Willems](#) at Sidley Austin for more information.

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