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Congress Passes Legislation to Curb Shipping Pollution

Global Discussions to Reduce Vessel Emissions Will Resume in October

With the passage of the Maritime Pollution Prevention Act of 2008 (H.R. 802), the United States gains a seat at the International Maritime Organization (“IMO”) negotiating table – maybe. The bill, which would help curb emissions from shipping vessels, amends the Act to Prevent Pollution from Ships (33 U.S.C. 1901) to implement Annex VI to the 1973 International Convention for the Prevention of Pollution from Ships, commonly known as the MARPOL Convention. The legislation makes the United States a Party to Annex VI, which went into effect in 2005. H.R. 802 sets emissions standards for sulfur dioxide and nitrogen oxides from ships and bans ships’ use of ozone-depleting substances.

The standards set forth by H.R. 802 would apply to:

- Any oceangoing vessel registered in the United States;
- Ships of any registry in ports, shipyards, terminals or the internal waters of the United States;
- Ships of any registry bound for, or departing from, the United States while they are located in the navigable waters of the United States or designated emission control areas; and
- Ships bearing the flag of any country that has ratified Annex VI traveling through U.S. waters or designated emission control areas, even if they are not bound for, or departing from, a U.S. destination.

The United States had until July 6, 2008 to approve the legislation or risk losing its seat at the October 6-10 meeting of the IMO’s Maritime Environment Protection Committee (“MEPC”), which is meeting to revise the MARPOL Convention. However, Congressional action on H.R. 802 was not completed until July 8, 2008. Countries are not considered parties to the convention until the instruments of ratification have been lodged with the IMO for 90 days. Since the United States missed the 90 day deadline, it may not be able to vote at the October meeting.

Annex VI of the MARPOL Convention established a ceiling of 45,000 parts per million (“ppm”) for sulfur in diesel fuel used in Category 3 engines, or oceangoing vessels with a cylinder displacement greater than 30 liters. The current sulfur content of vessel diesel fuel is typically 27,000 ppm and can be as high as 45,000 ppm. U.S. negotiators, if allowed to participate in the October meeting, are expected to push for a substantial reduction in the allowed sulfur content.

In addition to H.R. 802, the Marine Vessel Emissions Reduction Act of 2008 (S. 1499), sponsored by Sen. Barbara Boxer (D-CA), Chairman of the Senate Environment and Public Works Committee, would reduce air pollution from ships and other marine vessels and would specifically target pollution from transoceanic vessels.

Specifically, S. 1499 would:

- Amend the Clean Air Act to require the U.S. Environmental Protection Agency (“EPA”) to limit the sulfur content to 1,000 ppm in main and auxiliary engines for both domestic and foreign flagged vessels using U.S. ports beginning in 2010;

- Authorize the EPA to establish interim regulations should it be determined that compliance with the 1,000 ppm requirement is not technically feasible by 2010; and
- Require the EPA to establish and revise standards no later than December 15, 2008 for nitrogen oxide, particulate matter, hydrocarbons and carbon monoxide emissions from newly manufactured and in-use main and auxiliary engines in oceangoing vessels that enter or leave a U.S. port or offshore terminal. Such standards would require, by January 1, 2012, that engines achieve the greatest degree of emission reduction available through the application of available technology.

Rep. Hilda Solis (D-CA-32) has introduced a companion bill (H.R. 2548) in the House, which is still awaiting consideration by the House Energy & Commerce Committee. Sen. Boxer's bill is currently awaiting consideration by the full Senate.

In April 2008, MEPC approved proposed amendments to the Annex VI regulations, which will be voted on at the October meeting. The revised regulation proposes a progressive reduction of sulfur levels in heavy bunker fuels, with a final global cap of 0.5 percent sulfur effective January 1, 2020, as well as more stringent Tier II and Tier III nitrogen oxide emissions standards for marine engines.

The principal elements of the MEPC proposed amendments are:

- Starting March 1, 2010, the sulfur limit applicable in emission control areas would be 10,000 ppm, reduced from the current 15,000 ppm;
- On January 1, 2015, sulfur limits in emission control areas would be reduced to 1,000 ppm;
- Effective January 1, 2012, the global sulfur cap would be reduced to 35,000 ppm, down from the current 45,000 ppm; and
- Effective January 1, 2020, subject to a feasibility review to be completed no later than 2018, the global sulfur cap would be reduced to 5,000 ppm.
 - Should the 2018 review reach a negative conclusion, the effective date would be pushed back to January 1, 2025.

MEPC's revised Annex VI also introduces a three-tier structure for nitrogen oxide emission standards for new marine engines, depending on the date of their installation, with significant emission reductions (Tier III) mandated for ships operating within designated emission control areas. The new standards would also allow for an emission control area to be designated for sulfur oxide, particulate matter or nitrogen oxide, or all three emission types, subject to a proposal from a Party to Annex VI, which would be considered by the IMO for adoption, if supported by a demonstrated need to prevent, reduce and control one or all three of those emissions from ships.

The proposed draft amendments to Annex VI will now be submitted to MEPC 58, which meets from October 6-10, 2008, for adoption. Should the amendments be adopted, the revised Annex VI would enter into force in 2010.

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