Regulatory compliance – developing corporate climate change and sustainability policies and frameworks

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Climate change is happening and without prompt global action, life on Earth will be grim according to the recently released report "*OECD Environmental Outlook to 2030*". This OECD report identifies four priority areas (climate change, biodiversity loss, water scarcity and the impacts on human health of pollution and toxic chemicals) which together constitute the major environmental issues to be addressed by sustainable development policies and frameworks. On March 5, 2008, the OECD Secretary General, Angel Gurria, remarked: "Timing is crucial. We need to act now, before we pass critical thresholds beyond which we face irreversible damage or the costs of policy action increase significantly. The window of opportunity is open today for cost-effective approaches towards a clean and green future."[1]

The OECD Secretary-General emphasised "policies should focus on pricing the 'bad', rather than on subsidising the 'good' and that market-based instruments (e.g. taxes on pollutants, emissions trading, waste charges, etc.) will need to be supplemented by regulations and standards, investment in research & development, sectoral and voluntary approaches to harness industry initiatives, and information approaches to enable the market to reward green businesses.[2]

According to the OECD, solutions to climate change and environmental challenges are currently available, achievable and affordable especially when compared to the costs and consequences of inaction. In light of the concerns reflected in the OECD Report, businesses should expect that in the near future, they will be subject to increased regulation and increased non-financial reporting requirements for the purpose of assessing the effectiveness of company policies and actions designed to address climate change. Regulators, investors and other stakeholders will increasingly demand that businesses report and document what they are doing in respect of climate change, how their businesses are being affected by climate change, and what businesses are doing to 'green' their operations as part of good corporate governance.

Climate change and sustainable development initiatives will have significant bottom line financial and legal ramifications for international shipping and global trade. In the same week that MS BELUGA SKYSAILS (a cargo ship that uses a towing kite system to achieve better shipping fuel economy) completed its maiden voyage, a report commissioned by the International Maritime Organization (IMO) found that "*ship-related emissions, at 3.5% of global carbon emissions, were grossly underestimated*."[3] According to Reuters, carbon emissions could rise by another 30% by 2030 if world seaborne trade increases as predicted.[4]

Shipping companies, like other global businesses, will be required to be transparent and accountable for their impact on climate change and to build on their existing environmental compliance policies to develop, apply and adjust their own business practices to be sustainable and 'green', the new business imperative. As a matter of good corporate governance, businesses should operate in ways that align with their core business and bottom line goals which "*meet the needs of the present without compromising the ability of future generations to meet their own needs*."[5] The goal of good corporate governance is to guide a company through the various regulatory, financial, ethical, environmental and other risks and opportunities to ensure that the company will be deemed to be acting in a prudent and socially responsible manner to increase profits and confidence in the manner in which it conducts its business. A sustainability policy is an integral part of good corporate governance because it requires that a corporation integrate its environmental integrity with economic growth and a commitment to social equity.

While regulatory requirements or threatened regulatory requirements initially may prompt a company to adopt a climate change or sustainability policy, enlightened self interest should prompt the integration of the sustainability frameworks and policies into the company's operations and management structure to ensure that the goals specified in such policies are indeed being met.

Just over two years ago, Wal-Mart outlined three goals to serve as the basis for its sustainability policy: to be supplied 100% by renewable energy by 2025; to create zero waste; and to sell products that sustain the world's resources and the environment. According to Wal-Mart's sustainability page on its website, building upon these three goals has provided the company the opportunity to become a better company by looking at every facet of its business – from the products offered to the energy used – and has resulted in significant cost savings in a number of areas, including, for example, doubling the fuel efficiency of its truck fleet by, improving the design of trucks, changing the packaging of the goods and redesigning the routes.

In his speech entitled "The Company of the Future" delivered on January 23, 2008, Wal-Mart's CEO and President, Lee Scott indicated that as part of its ongoing sustainability policy, Wal-Mart will require that its global procurement and supply chain meet specific environmental, social and quality standards which can be verified by independent third party auditing systems. Wal-Mart, like other large participants in global trade (including, Target Corporation, The Home Depot, Inc., United Parcel Service, etc.) controls enough business to dictate that those companies which transport its goods have their own verifiable sustainable development policies and frameworks. Moreover, these large companies, have banded together to leverage their size and expertise to launch a variety of private sector initiatives (such as the Coalition for Responsible Transportation, US Climate Action Partnership, World Business Council for Sustainable Development, etc.) to find solutions to climate change and support sustainable development. As the customers, investors, governments and other stakeholders pressure these large global companies to commit to sustainable development, the companies in turn will require the same of their supply chains.

Given the complexity of the analysis of the factors affecting sustainable development, corporate climate change and sustainability policies and frameworks cannot be 'cookie cutter' responses to regulatory mandates. Rather, enterprise sustainable development and climate change policies are long term, ongoing creative processes for improving operations, setting and modifying organisational strategies, implementing business actions, limiting legal exposures, assessing outcomes, improving management and communicating with customers, regulators and investors. In short, well crafted climate change and sustainability policies should operate to promote improvement and innovation, reduce costs, limit legal exposure and enhance the company's business.

With the progressive expansion of non-financial reporting standards for governments and businesses to provide detailed accountings of GHG emissions, carbon footprints and climate change risks, independent organisations such as International Organisation of Standardisation (ISO) (www.iso.org) and the Global Reporting Initiative (GRI) (www.globalreporting.org) have and are continuing to develop system standards and metrics to assist in the measurement of various aspects of climate change and sustainable development. These systems are analogous to 'soft law' or international practice and custom because they are flexible market-based codes of conduct or guidelines which are not restricted by geographical boundaries.

At present, ISO has a number of focused management system standards and tools that are useful for those in the maritime field, including the ISO 14000 series on environmental management, ISO 14064 and 14065 on greenhouse gas (GHG) accounting and verification and ISO/TC8 on ship recycling, etc. In addition, ISO is in the process of developing ISO 26000 which is aimed at providing an international standard or guidelines for social responsibility which incorporates mechanisms to assess climate change impacts and sustainable development.

GRI is a multi-stakeholder non-profit organisation that develops and publishes guidelines for reporting on economic, environmental, and social performance ('sustainability performance') to create sustainability and climate change reports and policies based on generally accepted frameworks, principles and indicators which are able to be verified and gauged by third parties such as investors, financiers, regulators and others. The GRI claims that its Sustainability Reporting Guidelines are now used by over 1000 organisations worldwide, with many more organisations considering the guidelines informally during the preparation of their public reports. The Guidelines are intended to serve as a social and environmental reporting framework (akin to the generally accepted accounting principles for financial accounting). GRI includes: (i) protocols and principles to assist a company in deciding what is feasible or material to the company or its stakeholders and in determining the frequency and medium of reporting; and (ii) standard disclosures and sector supplements which assist a company in determining what needs to be reported and what procedures need to be implemented. GRI may be used by any size of company and should yield a sustainability report with a shared framework of concepts, consistent language and metrics which will allow a company to: (i) benchmark and assess its sustainable development performance with respect to applicable laws, standards and voluntary initiatives; (ii) communicate how the business influences and/or is influenced by climate change and sustainable development; and (ii) compare performance within a company and over time.

The trend is clear. Regulatory authorities will act. But, in the interim, businesses should take the initiative and participate in solving the issues of climate change and sustainable development. It is time for each maritime business to begin to navigate its own course in the uncharted seas of climate change and sustainable development. The first step is to plot a course by developing one's own sustainability policies and frameworks. Tools, information and solutions are available. Sustainable development is currently achievable and affordable, especially when compared to the costs and consequences of inaction.

Notes:

1 "Launch of the 2008 OECD Environmental Outlook" Speeches of the Secretary-General, March 5, 2008.
2 Id.
3 "DHL Completes More Eco-Friendly Ship Voyage as Industry Comes Under Fire", http://www.greenbiz.com/news/news_third.cfm?NewsID=55596
4 Id.
5 World Commission on Environment and Development, Our Common Future. Oxford, Oxford University Press, 1987, p. 43

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