July 13, 2010

California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812
http://www.arb.ca.gov/cc/capandtrade/comments.htm

Re: Comments on California Air Resources Board Proposed Cap and Trade Cost Containment and Offset Options

Effective April 2010, all twelve Saint-Gobain glass packaging businesses around the globe (including Saint-Gobain Containers in the U.S.) became a single brand: Verallia.

Verallia operates 13 glass manufacturing facilities in North America in eleven states including California. The company's 4500 U.S. employees (378 at its Madera, California plant) produce approximately 9.1 billion endlessly recyclable glass containers for beer, food, beverages, spirits and wine each year. The company's Madera, California facility primarily produces glass wine bottles for the west coast market. Verallia respectfully submits the following comments on the California Air Resources Board's ("CARB") Staff Presentations on Cost Containment and Offsets and Linkage as presented at a Public Workshop on June 22nd, 2010.

The Glass Container Industry is an Energy Intensive/Trade Exposed 'High Risk' Industry

Verallia agrees with CARB's position that the glass container industry is an Energy Intensive/Trade Exposed 'high risk' industry and that without consideration in the Cap & Trade rulemaking, rapid manufacturing relocation ("leakage" or "reshuffling") could result.[1]

Carbon leakage or reshuffling occurs when increased compliance and energy costs on trade exposed entities covered by a GHG law move production (and jobs) to unregulated countries or states to avoid regulation. California's and America's glass industry is especially vulnerable to carbon leakage according to EPA,[2] the General Accountability Office (GAO),[3] and an industry groups' testimony to Congress.[4]

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[1] See Slide 55 of CARB's May 17, 2010 Webinar; CARB's Economic Evaluation Supplement Appendix II, page 11 states that "Any increase in the California price will further increase the demand for imported products at the expense of California production."

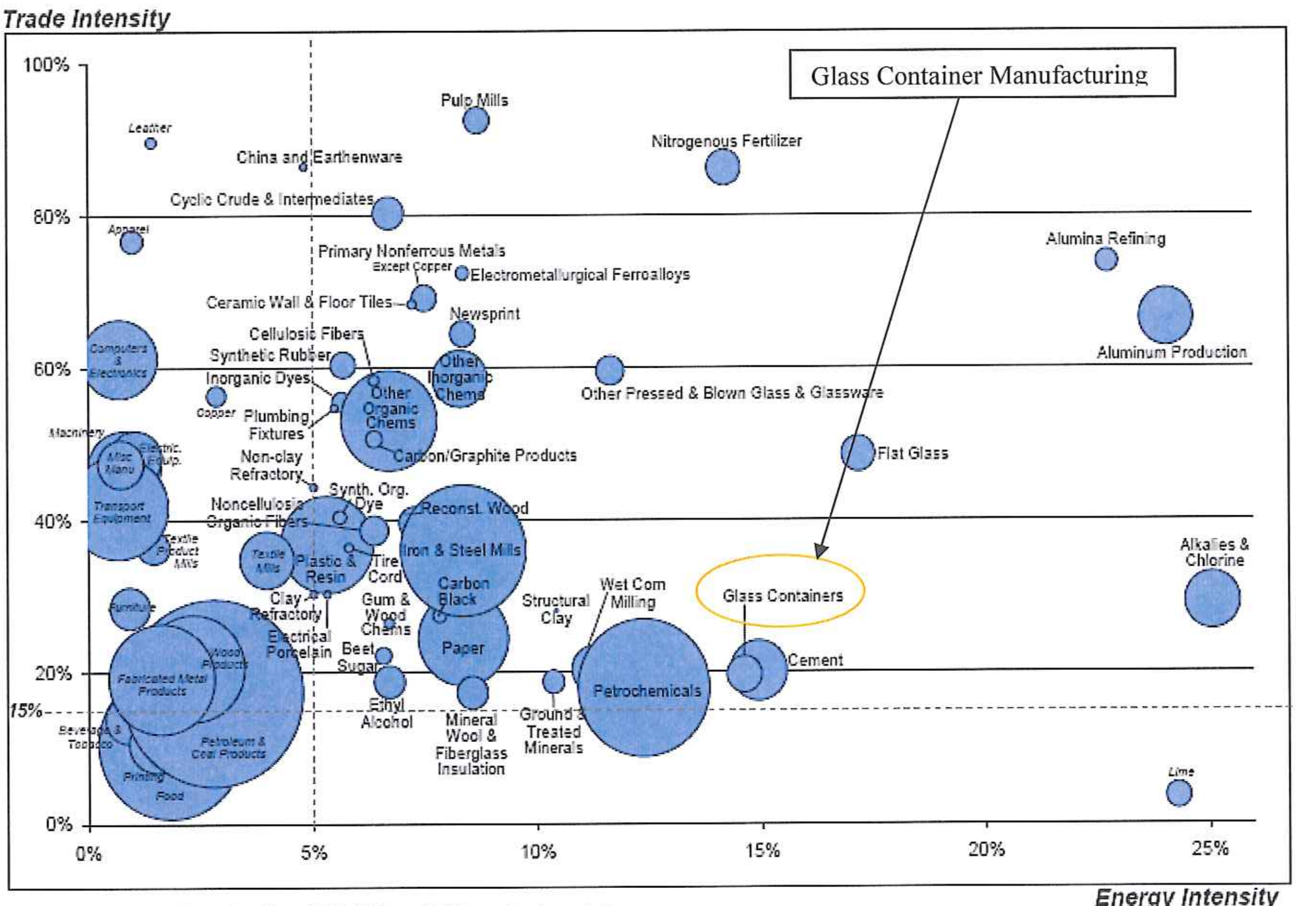
[2] Appendix to EPA Cost Analysis of HR 2545 at , available at http://www.epa.gov/climatechange/economics/pdfs/HR2454_Analysis_Appendix.pdf.

[3] General Accountability Office, Climate Change Trade Measures: Considerations for U.S. Policy Makers (July 2009), available at: http://www.gao.gov/new.items/d09724r.pdf.

[4] *See* Testimony of John J. McMackin, on behalf of The Energy-Intensive Manufacturers' Working Group on Greenhouse Gas Regulation, Before the House Committee on Ways and Means Subcommittee on Trade Hearing on Trade

In recognition of this fact, both the House and Senate bills (H.R. 2454, Waxman-Markey; S. 1733, Boxer-Kerry) provide for a detailed rebate system to prevent leakage.[5] For example, both bills set the rebate eligibility requirement at 5% for energy/GHG intensity and 15% for trade exposure. If an industrial sector exceeds these two thresholds, it is eligible. As depicted in the chart below, which was presented at the House Committee on Ways and Means Subcommittee on the trade aspects of climate change legislation (March 24, 2009), numerous domestic industries, including glass manufacture, without the assistance of rebates, would migrate to unregulated countries should rules be promulgated that run contrary to these sensible provisions. Imports would then increase without trade rules in place to level the playing field.

US Manufacturing Leakage Exposure: Detailed Industry Level



Trade-Intensity = (Imports+Exports) / (Value of Shipments+Imports)
Energy-Intensity = (Energy & Fuel Costs + Generation) / Value of Shipments
Size of Bubble = Amount of energy and fuel consumed as proxy for emissions
Sources: US Census 2006 Annual Survey of Manufacturers, EIA 2002 MECS, US International Trade Commission Tariff & Trade DataWeb

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Aspects of Climate Change Legislation (March 24, 2009), available at: http://waysandmeans.house.gov/media/pdf/111/mcm.pdf.

5 H.R. 2454 at §§763-764; S. 1733 at §§763-764.

Carbon leakage is a very real threat to the glass industry. Verallia is already facing increasing foreign imports of glass containers on the west coast. If energy and manufacturing costs increase in California as a result of AB 32, imports will continue to increase. These imports are from regions where energy use is more carbon intensive and energy-saving technologies are less developed (not to mention GHGs associated with shipping). Consequently, in addition to simply displacing California GHG emissions, glass imports could *increase* GHG emissions over the business-as-usual level.

To avoid further loss in basic manufacturing to other nations or states, the best solution is to exempt any energy intensive/trade exposed industries that meet the above thresholds from the Cap and Trade program. If the glass container industry is not exempted from the Cap and Trade requirements under AB 32, then Verallia strongly supports free allocations or rebates for eligible industries through 2020 and beyond. CARB has indicated that this would be appropriate for Apparel and Automobile Manufacturing[6] and it is even more appropriate for glass manufacturing.

Auction and Pricing of Allowances and Cost Containment

As discussed above, Verallia believes that free allocation of allowances to certain energy intensive and trade exposed industries like glass manufacturing will ameliorate any concerns that we may otherwise have regarding cost containment. To the extent that there is a need to purchase allowances in the future, Verallia seeks a reasonable mechanism for containing these costs. For example, the bidders at the auctions should be limited to the end users that are regulated by the cap and trade program. That is, there should be pre-bidding qualification regulations to prevent (non-GHG emitting) speculators from buying up large portions of allowances and later gouging prices. Of course, allowances should still be freely tradable among regulated entities.

Moreover, Verallia supports all efforts to contain costs of allowances to make them available to end users at the lowest cost per ton. Since a shrinking economy wide allowance cap drives real reductions over the life of the program when a scarcity of allowances naturally leads to a price increases, there is no need to set an artificially high price floor at initial auctions and subsequent auctions for future vintage years. Thus, Verallia disagrees with the purported downside to low cost allowances that was identified as the "Goldilocks Paradox" in the Nicholas Institute's presentation. Verallia would also support a buffer to prevent price gouging such as Discount Window access to a strategic reserve.

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[6] California Air Resources Board Economic Evaluation Supplement, Appendix II, Environmental Dynamic Revenue Assessment Model's Sources And Methods, at 11. Available at: www.arb.ca.gov/cc/scopingplan/document/economic_appendix2.pdf

SAINT-GOBAIN CONTAINERS

1509 South Macedonia Avenue • PO Box 4200 • Muncie, IN 47307-4200 • USA
Tel: (765) 741-7000 • Fax: (765) 741-7012 • www.sgcontainers.com • www.verallia.com

Borrowing and Use of Future Vintage Allowances, Offsets

CARB has suggested that it is considering limitations on borrowing allowances and on the use of future vintage allowances.[7] Such restrictions should not exist in a free-market driven system like cap and trade where companies should be afforded flexibility with different methods of achieving compliance. For example, the scheme proposed in H.R. 2454 (Waxman-Markey) would allow entities to bank purchased offsets for use in later years with no restrictions.[8] CARB has also stated that the use of offsets to achieve compliance may be limited to 4% of the total allowances used. This too would be inconsistent with the spirit of a cap and trade program. Once an offset is generated and verified, an entity should be free to purchase as many offsets as are available for compliance without running into any percent caps – especially a cap as low as 4%.

Linkage

It is critical that Verallia, as well as other companies operating in California with facilities in other states, be able to manage its carbon footprint on a national basis. Thus, Verallia supports a cap and trade program under AB 32 that is linked to programs in other states or a comprehensive national program – not simply for purposes of offsets, but also for basic allowances for compliance. For example, an excess reduction in GHG emissions at Verallia's facility in Massachusetts should be creditible against Verallia's compliance obligation in California for its Madera facility. Businesses should also be able to generate allowance credits when a regulated GHG emitting facility is shut down in California or elsewhere. Promulgating a cap and trade program in a vacuum that is not adequately linked to other programs or that erects artificial barriers within a company's facilities across the country could put our California plant at a competitive disadvantage as to glass plants located in other states, fails to account for the realities of the global economy and incorrectly assumes that climate change is only a California problem.

Offsets

Verallia disagrees with CARB's statement in its presentation on offsets (Slide 24) that it may take enforcement action against "offset users." Once an offset has been generated and certified by CARB or some other third-party verifier, the end user should be able to rely on the validity of such an offset when purchased in good faith. The end user should be able to get on with the business of selling goods and services instead of spending unnecessary time and incurring expenses *double* verifying that an offset complies with the regulations. In other words, enforcement should be limited to the generator, marketer/seller, or verifier of the offsets rather than enforcing against innocent end users who would then have to pay twice for what was represented to be a legitimate and valid offset.

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[7] Cost Containment presentation at Slide 14, available at: http://www.arb.ca.gov/cc/capandtrade/meetings/062210/cost_containment_presentation.pdf.

[8] H.R. 2454 at Section 725(a).

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Thank you for your time and consideration on this important rule making process and the impact it is likely to have on the glass container industry. As mentioned throughout, Verallia stands ready to engage with CARB on this issue and look forward to establishing a schedule of meetings with CARB staff to begin discussing the above concerns.

Sincerely,

Steven B. Smith
V.P. Environmental and Regulatory Affairs
Verallia
Saint-Gobain Containers

cc: Stephen A. Segebarth