

## Welcome

This is the latest edition of “Hot Issues” from Burson-Marsteller’s Global Public Affairs Practice. Every month, “Hot Issues” focuses on 10 new forthcoming legislative or policy issues that will impact business from around our global network of 130+ offices in Latin America, Asia-Pacific, Europe, Middle East, Africa and North America.

The public policy dynamics in each country, let alone a particular region can be very different, demonstrated by the different experts we utilize in the countries where we operate. Conversely, there are similarities and you can see this in some of the issues we have picked out.

Hot Issues are designed to give you a flavor of our global perspective and should any of the items raise particular interest with you please contact the designated person listed with that issue.



## Australia Passes Clean Energy Legislation, Debates Next Steps for Implementation

In November, the Australian Senate passed the Clean Energy Act, a major piece of legislation that is intended to begin shifting Australia’s energy consumption away from fossil fuels and towards renewable energy sources by implementing a new Australian carbon tax on companies with high emissions footprints, increasing government investment in renewable energy, and creating new energy sector regulators to encourage development of green energy resources and technologies. However, many provisions in the legislation are still to be finalised and these are expected to face strong political opposition as debates over the final implementation frameworks evolve.

Companies in the mining, aviation, steel, and industrial manufacturing industries are expected by analysts to be some of the hardest hit by the Clean Energy Act, while renewable energy companies are likely to see benefits from billions of dollars in new government investment and the creation of new government regulators that are expected to begin shifting Australian energy consumption away from fossil fuels and towards renewable energy sources. The legislation’s central carbon tax provision will force 500 of Australia’s most emissions-heavy companies (defined based on emissions data reported under Australia’s National Greenhouse and Energy Reporting Scheme) to pay a tax of AUD 23 per tonne on their carbon emissions beginning in July 2012, increasing the tax rate over time and eventually replacing it with a more expansive emissions trading scheme by 2015.

The Clean Energy Act also aims to significantly increase the government’s involvement in the energy sector. The Act mandates a new Australian

Renewable Energy Agency (ARENA) to administer AUD 3.2 billion in government support for renewable energy, a new Clean Energy Finance Corporation (CEFC) to distribute AUD 10 billion in investment funds for renewable technology businesses, and a new Climate Change Authority made up of independent experts to propose annual carbon budgets and tax measures. These new regulatory bodies are expected to play a major role in driving the medium and long-term scope of the Act’s effects on the Australian energy sector, and both their establishment and the leadership appointments that will be made to run them are expected to be politically contentious.

Observers note that the legislation is only one step in the broader energy debate and that the Act was specifically designed to include multiple points for legislative review and revision. Several key provisions – including the compensation packages that will be paid to the hardest-hit polluting industries and detailed implementation frameworks for many of the Act’s key provisions – either require ongoing debate or are not scheduled to go into force until 2013/2014 or later, leaving them vulnerable to political lobbying and legislative revision. Australia’s center-right coalition has vowed to pursue a repeal of the carbon tax if it wins office in the next election, and debate over the legislation’s implementation are expected for many months to come.

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## Chinese Officials Review Legal Rules for Public Interest Litigation Cases against Businesses

The Standing Committee of the National People's Congress (NPC), China's top legislative body, has opened discussions of a draft proposal to revise the legal rules governing public interest litigation (PIL) cases against commercial companies in China. If enacted, the new rules would make it much easier for state authorities, civil society groups, and individual citizens in China to take companies to court over alleged environmental pollution abuses, food safety violations, and other issues that have been the focus of global attention in China in recent years.

Discussion of the new draft proposal by Chinese officials has closely followed two high-profile environmental and food safety scandals that hit prominent western companies ConocoPhillips and Walmart. Some analysts have drawn a link between those cases and the newly proposed PIL rules, warning that more permissive PIL regulations could result in increased targeting of prominent foreign companies by Chinese officials and civil society groups for protectionist or politically-motivated reasons. According to law experts in China, PIL cases in China are almost always aimed at private companies, while government agencies, state-backed companies, and prominent domestic firms favored by the government are rarely sued. Large private food and grocery retailers, as well as fossil fuel, mining, industrial manufacturing, and chemical companies, are expected to be amongst the most at-risk firms for PIL lawsuits if the legal rules are revised according to the direction now being discussed.

The current PIL rules in China restrict the definition of an eligible plaintiff to include only citizens, corporations, or other organizations whose interests have been directly harmed by the case. In contrast, the new proposal broadens this definition to include unspecified "related authorities" as well as civil groups without any direct interest in the case. The vagueness of the current draft legal proposal could expose private companies in China to litigation from a broader pool of potential plaintiffs – including Chinese activist groups, NGOs, and a wider array of government regulators – without a direct interest in the case who would be empowered to file lawsuits against companies on behalf of affected citizens under the new proposed rules.

Analysts say the new PIL proposal is designed to encourage increased judicial activism and complement the Chinese government's efforts to crack down on environmental, food safety, and other scandals that involve commercial companies. Business representatives and law experts in China have called for clearer definitions to be specified for the "related authorities" and other groups that will be empowered with the right to launch PIL cases under the new rules and a clear timeline for ongoing debate, approval, and adoption has not yet been announced.

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## Indian Government Stalls Proposals to Open Retail Sector to Foreign Companies

On December 7, the Indian Parliament formally put on hold a major legislative reform that could pave the way for global retail giants to set up shop in India's multi-brand retail market for the first time. Parliament's deferment reversed a 13-day-old cabinet decision to approve the legislation – which promises to open the Indian market to major foreign retailers like Walmart and Carrefour by raising the foreign direct investment (FDI) limit in India's multi-brand retail sector to 51% and raising the FDI limit in single-brand retail to 100% – reigniting national debate over the controversial proposals and creating a new

setback for multinational retailer hoping to increase their presence in the country.

If they are eventually approved, the revised FDI limits would remove restrictions that currently limit foreign companies to back-end wholesale and supply chain management in India, allowing international retailers to sell directly to Indian consumers through front-end retail outlets for the first time. Global retail giants like Walmart, Carrefour, Tesco, Auchan and Best Buy have previously been barred from entering India's front-end retail industry and they say that India's

population size, economic growth, and rapidly emerging middle class would mean very attractive business opportunities if FDI limits are raised. Some foreign retail companies have already spent years lobbying for better market access. Others have already engaged with major Indian retailers to assess potential joint ventures and other business opportunities as the FDI debate has evolved.

Despite firm backing from the central government and foreign industry representatives, the proposals to raise FDI limits in India's retail sector remain highly contentious. Political debate and Indian media coverage around the issue has reached a fever pitch in recent weeks and the reform proposals face strong opposition from the Bharatiya Janata Party (BJP), Bharatiya Samaj Party (BSP), and other opposition coalition members who say the reforms are unacceptable because of their potential negative impact on small traders and "mom and pop" stores. Advocates for liberalised FDI limits say the reforms will help attract foreign capital to India, strengthen the country's position as an investment-friendly nation, inject world-class industry know-how and best practices, and make India's USD 450 billion

retail sector more competitive. Political opponents portray the proposal as the brainchild of foreign business lobbies, and argue that international mega-stores would harm India's traditional small-trader kirana stores and result in widespread job-losses.

Although India's political opposition parties have delivered on their promise to paralyse the reform proposals in parliament, the final fate of the legislation remains in doubt. Carrefour, Walmart, and other major retailers have reiterated their commitment to the Indian market, and some analysts remain optimistic that the legislation could be taken off hold and brought back to the table for discussion and approval in the future. With a final legislative decision deferred, global retailers and other proponents of the legislation are expected to continue to lobby for FDI reform.

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## South Africa: Ban on Advertising/ Marketing to Children

Originally part of the Nutrition Labelling Act, the ban of advertising/marketing to children is being intensely debated in South Africa. The Department of Health has assumed political leadership of the debate to curb the marketing of 'unhealthy' products on TV during children's programmes or the use of 'free toys' as a means to entice children.

The government is poised to push for stringent measures that will regulate the food industry, particularly on ensuring that children below a certain age are not exposed to adverts that promote 'unhealthy' products. Should the government succeed, businesses will need to reconsider their advertising and marketing strategies for calorie-packed food and drinks that target this group. The issue continues to gain traction with growing concerns over the scale of childhood obesity and as efforts to

combat Non-Communicable Diseases (NCDs) associated with obesity become more prominent.

The Nutrition Labelling Act will come into effect on 1 March 2012 and it is possible that this contentious issue will be reintroduced to the Act and the Act amended accordingly. It is critical for businesses to monitor developments within the Department of Health on this issue. This is a significant priority for the Minister of Health and the private sector has to note that the Department of Health has a national mandate to reduce the effects of NCDs by 2014.

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## UK: A Focus on Energy Efficiency

An announcement by the UK Government is expected imminently on a consultation around the Green Deal, a scheme which aims to help consumers make their homes and businesses more energy efficient. With fuel poverty a growing problem in the UK and winter well on the way, helping consumers to reduce their energy bills whilst heating their homes is an important issue that the Government is keen to tackle. To meet an ambitious target to insulate 14m homes by 2020, plans to offer families up to £150 “cashback” are expected to be announced as an incentive to take up the scheme and to enable people to upgrade their homes with energy-efficient measures without any upfront cost. The Green Deal

represents a significant opportunity for industry with Ernst & Young predicting that a 10% uptake alone could equate to an annual energy efficiency market of up to £800 million by 2020 for small and medium sized businesses. Over the coming weeks interested stakeholders will have the opportunity to respond to the upcoming consultation ahead of roll out in autumn 2012.

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## Brussels: Energy Roadmap 2050

On the 15th of December, the European Commission published The Energy Roadmap 2050 which presents different pathways to reach the objective of reducing carbon by 80-95% by 2050. It addresses the established objectives of EU energy policy – sustainability, energy security and competitiveness, and focuses on how energy security and competitiveness can be improved throughout the transition to a low-carbon energy system.

The Roadmap does not replace national efforts to modernize energy supply, but seeks to develop a European framework in which national policies will be more effective, and Member States can continue to develop the options which are most appropriate to their circumstances. It argues that a European approach to the energy challenge will increase

security and solidarity as well as lower costs compared to parallel national schemes by bringing economies of scale and a wide market for new products and services. As such, the Roadmap gives direction in showing common features of de-carbonisation scenarios. It also helps to provide certainty by identifying the policy areas in which actions have to be developed and the principles and objectives of these actions. The global energy future is uncertain, but a European approach, where all Member States share common goals, helps to create the certainty and stability which are needed.

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## Brussels: Revised Data Privacy Rules & the Cloud: the European Challenge

The European Commission will shortly propose a major revision of its 15-year old comprehensive legal framework for the protection of personal data (Directive 95/46/EC). Aimed at updating the rules to meet the challenges of today’s internet and global economy, the revision is set to provoke a storm – particularly a transatlantic one – as the European Union strives to find a balance between the requirements of rapidly expanding cloud

computing services and its commitment to ensure a high standard of data protection for individual consumers. The revisions all aim to ensure that EU consumers benefit from the same high standards of data privacy whether the cloud applications are located in Berlin or India. But they will also be designed to end the fragmentation of the EU’s single market prompted by differing national implementation of the 1995 Directive.

If approved as currently drafted, the revised legislation will also give EU standards “a bite” by introducing a series of administrative sanctions against companies that violate the data privacy standards. Depending on the violation, the sanctions could represent from 1 to 5% of a firm’s annual global turnover.

On taking office as European Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding identified the revision of data privacy rules as one of her top legislative priorities. The revisions originally scheduled for November 2010 have already been delayed a year, and are now expected for end-January 2012. In anticipation of this draft text which will require approval by both the Council of Ministers representing the 27 member states and the European Parliament, stakeholders have lined up with their own concerns and objectives for the revision.

In 2012, the Commission will also issue a report on the implementation of the so-called safe harbour agreement with the US by which the EU recognised US data privacy standards as equivalent to the EU. There is considerable concern in European circles that these arrangements simply do not work effectively. During the spring the EU will also host a conference in Brussels in collaboration with the US that will look at the link between the safe harbour provisions and the EU’s planned reform.

If the Commission has its way, the proposal will also remove administrative burdens notably the reliance on a priori authorisations for transfers. Instead, the new legislation will make data comptrollers in corporations or public authorities legally responsible for ensuring that all data transfers comply with the legislation.

The Commission is also paying particular attention to consumers because the cloud’s advantages for consumers also contain the greater risks: the cloud’s greater processing speed, cheaper storage and greater choice among service providers must be balanced against the greater risk to data privacy and security arising from the very processing speed and the

availability of the services on any device which makes the cloud so compelling.

The amendments will also seek to clarify data protection in the emerging cloud economy, by closing existing loopholes:

- A cloud provider operating outside the EU even if it targets EU citizens is not subject to the EU’s current data privacy Directive. So one amendment under review is to modify the Directive so that it applies to clouds that target EU citizens.
- With regard to third country transfers, although the current Directive prohibits transfers to countries which do not ensure an adequate level of protection, the legislation defines a data transfer as from point to point.
- As the cloud will also be used by individuals for the storage of pictures, calendars etc, the applicability of the EU Directive to such data is too ambiguous.
- The issue of the right to forget (incomplete data deletion): when a request to delete a cloud resource is made, as with most operating systems, this may not lead to the full elimination of the data.

Amendments will attempt to resolve issues related on the one hand to the limited obligation to notify individuals when a privacy breach occurs and the rules’ failure to provide clearly for “privacy by design.”


The Union’s challenge will lie in ensuring that these individual rights do not interfere with the EU’s goal of stimulating innovation and the expansion of cloud services – all in the interests of promoting a globally competitive web-based economy. Note that the EU’s Digital Agenda calls for an EU-wide strategy on “cloud computing” notably for government and science, but that strategy is not expected before 2012 either.

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## Argentina: New cabinet appointments reinforce local manufacturing policies



President Cristina Kirchner reassumed her position on December 10th, after winning the national elections with more than 54% of the votes.

Although most of her cabinet remained the same, the President introduced some modifications in the structure of the ministries of Economy and Industry. She created a new Secretary of External Commerce, to work together with the Secretary

of Internal Commerce and manage the non-automatic licenses system, which was implemented to promote local manufacturing and imports substitution. These two secretaries formally report to the Minister of Economy, but they will have direct contact with the President and are known to be tough when implementing policies that affect companies.

On the other hand, the Ministry of Industry strengthens its focus on supporting companies which invest to manufacture locally the products they sell in the internal market. A new Secretary of Industrial Planning will coordinate the efforts to establish productive processes and implement the Strategic Industrial Plan 2020, which has objectives to reach a 5% annual growth of GDP and 7% of industrial GDP, to reach total exports for USD167 billion by year 2020, to reduce unemployment to 5% through the creation of 1.5 million jobs in the


industry and to achieve level of investment of 28% over GDP.

The new political environment represents an opportunity for those companies with operations in Argentina to understand the local political environment and build or reinforce the relations with key government officials.

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## Brazil: New rules for the acquisition of defence products



The Brazilian Government recently presented a Provisory Measure (legislation with enforcement of a Law) - 544/11- establishing special rules for the acquisition of defence products and systems for the country as well as creating a special tax regime for the domestic defence sector.

The 'Special Tax Regime to the Defence Industry' (RETID, in its Portuguese abbreviation) is designed to benefit strategic defence companies by suspending taxes and contributions concentrated within the sales of inputs to the manufacturing of these products.

Federal Government also says it is their duty to promote the Brazilian defense industry, especially regarding the development of national technology, choosing products that promote its strategic interests.


The measure also builds on the National Defence Strategy, which establishes that the national industry of defence can receive incentives to compete on external markets, without prejudice to meeting the local Armed Forces requirements.

Following its presentation to Congress, the MP 544/11 has until the end of January 2012 to be approved by the Chamber of Deputies and Federal Senate. Changes can be suggested with amendments from any congressmen. After Congress, the approved version is sent to the Presidency of the Republic for ratification or veto of all or specific parts of the text.

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## U.S.: Tax Transparency



The present global economic turmoil has left political leaders and citizens around the world looking to diagnose the cause of their economic woes, attribute blame and determine solutions. At the same time, strong anti-establishment movements, from the Tea Party in the U.S. to Occupy events, have emerged in the backdrop of this crisis and the resulting high unemployment. Large corporations have come under intense scrutiny and increasingly becoming targets of both public officials and these movements, who have now found yet another issue to criticize corporations: taxes.

In recent months, the debate surrounding tax transparency has come to the forefront, most recently via the Cannes Summit agreement by G20 economies to work together to combat cross-border tax evasion. In the U.S., the surge in media coverage dovetailed the G20 agreement with the release of the report "Corporate

Taxpayers & Corporate Tax Dodgers," by Washington-based non-profit groups, Citizens for Tax Justice and the Institute on Taxation and Economic Policy. Select corporations have come under fire from media ranging from the New York Times to "The Daily Show," making this tax gamesmanship a national issue.

In 2012 Year, it is plausible that attention on this issue will heighten given high posturing during an election year. Corporations need to be prepared to strategically navigate the issue, anticipate public and political reaction and respond accordingly. A proactive approach will serve to protect and manage corporate reputation.

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