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Carbon Taxation in British Columbia

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INTRODUCTION

Among alternative public policies to reduce emissions of carbon dioxide and other greenhouse gases (GHGs), environmental taxation represents a promising but often under-utilized approach—particularly in North America where the introduction of any new tax involves enormous political challenges. In Canada, however, British Columbia became the first North American jurisdiction to implement a consumption-based environmental tax specifically designed to reduce GHG emissions when the Provincial Government enacted a carbon tax effective July 1, 2008.[1]

This paper provides a general overview and initial evaluation of British Columbia's carbon tax, explaining the background to the announcement of

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1. Carbon Tax Act, 2008 S.B.C., ch. 40 § 157 (Can.). As explained later in this paper, the Province of Quebec became the first jurisdiction in North America to introduce a carbon tax when it imposed a duty on the bulk sale of specific fossil fuels (gasoline, diesel fuel, heating oil, propane, petroleum, and coke) effective October 1, 2007. *See* Regulation Respecting the Annual Duty Payable to the Green Fund, R.Q. ch. R-6.01, r.0.2.3.1 (2008).

the tax in the Provincial Government's 2008 Budget, the structure of the legislation and its relation to other provincial initiatives to address climate change, and the possible implications of the tax for climate change policy in Canada. Part I provides a short background to the tax, summarizing the evolution of Canadian climate change policies up to the announcement of the tax in February 2008. Part II explains the structure of the carbon tax and its relation to other provincial climate change policies, reviewing the Provincial Budget and the specific tax implementing legislation. Part III discusses the implications of the tax for climate change policy in Canada, considering public reaction to the tax in British Columbia and subsequent developments at the federal level.

I. BACKGROUND

Canada ratified the Kyoto Protocol on December 17, 2002, legislatively affirming the commitment that it had made at the negotiating table five years earlier to reduce Canada's GHG emissions by 6% from the 1990 level of 599 million tons of carbon dioxide equivalent (CO_2e) emissions.[2] Notwithstanding a series of Green Plans and Climate Change Action Plans, which have generally emphasized public education, voluntary initiatives, and fiscal incentives,[3] GHG emissions in Canada increased substantially throughout the 1990s and early 2000s; reaching 747 million tons in 2005—over 25% higher than the 1990 level and almost 34% higher than Canada's commitment under the Kyoto Protocol.[4]

Although population and economic growth have made it especially difficult for Canada to limit or even stabilize GHG emissions,[5] particularly in the provinces of Alberta and Saskatchewan where increased oil and gas production from conventional sources as well as Alberta's oil sands have been a major contributor to Canada's rising GHG emissions,[6] ineffective public policies have also played a significant role. The Federal Government has consistently failed to introduce measures that would put a

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2. On the unrealistic and highly political nature of this commitment, which was designed to ensure that promised emissions reductions in Canada would be slightly better than those promised by the United States, see JEFFREY SIMPSON ET AL., HOT AIR: MEETING CANADA'S CLIMATE CHANGE CHALLENGE 33–41 (2007).

3. For a discussion of these plans, see *id.* at 47–107.

4. *Id.* at 16.

5. *See id.* at 80–83 (explaining that Canada's GHG emissions would have increased only 6% from 1990 to 2005 if the country had experienced the same rates of population and economic growth as European countries experienced during this period).

6. *Id.* at 24, 83–84.

market price on GHG emissions in order to discourage their occurrence.[7] Offering little more than "pious hopes and good intentions,"[8] the Federal Liberal Government, which had signed and ratified the Kyoto Accord, did little to ensure that Canada could meet its commitments under the agreement.

On January 23, 2006, Canadians elected a new federal government, giving the Conservative Party under Stephen Harper the largest number of seats in the House of Commons, though substantially short of a majority. Unlike the Liberal Party, which (despite its failure to contain rising GHG emissions) supported the Kyoto Protocol in principle, the Conservative Party was skeptical of the agreement,[9] instead favoring a "made-in-Canada" approach to the reduction of GHG emissions.[10] Although popular support for the Kyoto Accord dictated that the new government could not formally withdraw from the agreement,[11] the Environment Minister declared in November 2006 that Canada would not meet its commitments under the Protocol.[12]

In the months following this announcement, Canada experienced the second warmest winter on record, with temperatures averaging approximately three degrees Celsius above normal.[13] For this reason, as well as increased media attention to the problem of global climate change, polls taken in January 2007 indicated that the environment had become Canadians' primary concern, displacing Canadians' usual concern about health care.[14] In April 2007, the Conservative Government responded by introducing a "regulatory framework for air emissions" promising emissions regulations for large industrial facilities, mandatory emissions standards for passenger vehicles, strict efficiency regulations for household

7. *See generally* NICHOLAS STERN, THE ECONOMICS OF CLIMATE CHANGE 39–42 (2007) (discussing the need to price carbon in order to encourage emissions reductions).

8. SIMPSON ET AL., *supra* note 2, at 87.

9. Harper himself has characterized Kyoto as "essentially a socialist scheme to suck money out of wealth-producing nations." *Id.* at 95.

10. CONSERVATIVE PARTY OF CANADA FEDERAL ELECTION PLATFORM, STAND UP FOR CANADA 37 (2006), *available at* http://www.conservative.ca/media/20060113-Platform.pdf.

11. SIMPSON ET AL., *supra* note 2, at 98.

12. *Canada Backs Away from Kyoto Protocol Commitment*, ENV'T NEWS SERVICE, Nov. 22, 2006, http://www.ens-newswire.com/ens/nov2006/2006-11-22-03.asp.

13. *See* SIMPSON ET AL., *supra* note 2, at 7 (explaining that the previous winter had been the warmest on record, almost four degrees Celsius above normal, and above average temperatures had been experienced since 1996).

14. *Environment Tops Public Agenda, Poll Finds*, CTV.CA, Jan. 26, 2007, http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20070125/environment_poll_07025?s_name=&no_ads=.

appliances, and an emissions trading system for large emitters.[15] Instead of hard caps on GHG emissions, however, the Government's plan proposed intensity-based emissions targets, which would limit emissions per unit of output but permit aggregate GHG emissions to increase.[16] Nonetheless, the Government insisted the plan would achieve a total reduction in GHG emissions of 20% below the 2006 level by 2020.[17]

In this context, as in the United States, where federal inaction on climate change policy appears to have stimulated state and local initiatives to address climate change,[18] provincial governments have stepped forward introducing a variety of policies to promote renewable energy, encourage energy efficiency, and reduce the emission of GHGs.[19] On July 1, 2007, the Province of Alberta introduced a cap-and-trade regime for large emitters, incorporating intensity-based limits on regulated facilities that can be satisfied through emissions reductions, the purchase of "emissions offsets" or "emissions performance credits" from other regulated facilities, or the payment of $15 per ton of CO_2e to a Climate Change and Emissions Management Fund.[20] On October 1, 2007, the Province of Quebec introduced North America's first carbon tax by introducing a duty of approximately $3 per ton of CO_2 on bulk sales of fossil fuels to be paid by roughly fifty large distributors in the Province.[21] On February 19, 2008, the

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15. GOVERNMENT OF CANADA, REGULATORY FRAMEWORK FOR AIR EMISSIONS 7, 13, 29, 33 (2007), *available at* http://www.ec.gc.ca/doc/media/m_124/report_eng.pdf.

16. GOVERNMENT OF CANADA, ECOACTION: ACTION ON CLIMATE CHANGE AND AIR POLLUTION 4 (2007), *available at* http://www.ec.gc.ca/doc/media/m_124/brochure/brochure_eng.pdf ("[A] company will have to cut its greenhouse gas emissions per unit of production by 18% by 2010 [and] a further 2% in each and every year after 2010").

17. *Id.*

18. *See, e.g.*, Kristen H. Engel, *State and Local Climate Change Initiatives: What is Motivating State and Local Governments to Address a Global Problem and What Does This Say About Federalism and Environmental Law?*, 38 URB. LAW. 1015 (2006).

19. For a comprehensive inventory of provincial and territorial initiatives as of August 2007, see THE COUNCIL OF THE FEDERATION, CLIMATE CHANGE: LEADING PRACTICES BY PROVINCIAL AND TERRITORIAL GOVERNMENTS IN CANADA (2007), *available at* http://www.councilofthefederation.ca/pdfs/CCInventoryAug3_EN.pdf.

20. To the extent that many large emitters have opted to pay the $15 per ton charge rather than reduce emissions, the Alberta cap-and-trade regime may operate as a *de facto* carbon tax. Teresa Meadows, *Carrots, Sticks, Taxes, Caps and Trades: Canada's Provinces and Territories Tackle Climate Change*, Paper delivered at the Canadian Bar Association's 2008 National Environmental, Energy and Resources Law Summit 7–12 (May 15–16, 2008), *available at* http://www.cba.org/cba/cle/pdf/env08_meadows,%20teresa_paper.pdf.

21. Regulation Respecting the Annual Duty Payable to the Green Fund, R.Q. ch. R-6.01, r.0.2.3.1 (2008) (requiring distributors of fossil fuels to pay approximately one cent per liter on the bulk sale of gasoline, heating oil, and diesel; half a cent per liter on the bulk sale of propane; and $8.00 per ton of coal sold). For a summary of this duty, the revenues from which are earmarked to a "Green Fund" used to support expenditures announced in the Province's Climate Change Action Plan, see Meadows, *supra* note 20, at 20–21.

Government of British Columbia announced that it would introduce a consumption-based carbon tax of $10 per ton of CO_2e, rising to $30 per ton by 2012[22]—making the Province the most aggressive jurisdiction in Canada (and perhaps North America) when it comes to addressing climate change.

For several reasons, it is perhaps not surprising that British Columbia would be a leader in the development of public policies to reduce GHG emissions. With almost half the Province's population concentrated in a metropolitan area (Vancouver) that enjoys a more moderate climate than the rest of Canada and almost 93% of its electricity currently generated from hydroelectric power,[23] carbon emissions in British Columbia are among the lowest in Canada on a per capita basis at 15.5 tons in 2005 compared to 23.1 tons in the country as a whole.[24] Despite low emissions per capita, however, total emissions increased by 30% between 1990 and 2005,[25] with the greatest growth resulting from fossil fuel production and fugitive emissions from oil and natural gas, which almost doubled during this period.[26] At the same time, British Columbia is particularly vulnerable to the effects of global climate change, having already lost half of its lodgepole pines to the ravages of the mountain pine beetle,[27] experiencing summer droughts and severe winter storms, and facing a major risk of flooding from sea level increases.[28]

In the Throne Speech in February 2007, in which it announced its legislative agenda for the year, the Provincial Government declared that it would "take concerted provincial action to halt and reverse the growth in

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22. BRITISH COLUMBIA MINISTRY OF FINANCE, BUDGET AND FISCAL PLAN 2008/09–2010/11 at 11–12 (2008) [hereinafter B.C. BUDGET 2008], *available at* http://www.bcbudget.gov.bc.ca/2008/bfp/2008_Budget_Fiscal_Plan.pdf.

23. GOVERNMENT OF BRITISH COLUMBIA, THE BC ENERGY PLAN: A VISION FOR CLEAN ENERGY LEADERSHIP 26 (2007), *available at* http://www.energyplan.gov.bc.ca/PDF/BC_Energy_Plan.pdf.

24. ENVIRONMENT CANADA, NATIONAL INVENTORY REPORT—GREENHOUSE GAS SOURCES AND SINKS IN CANADA, 1990-2005 at 548 (2007), *available at* http://www.ec.gc.ca/pdb/ghg/inventory_report/2005_report/2005_report_e.pdf. Among Canadian provinces and territories, per capita emissions in 2005 were lower only in Quebec (11.8 tons) and the Yukon (13 tons). *Id.* at 537, 551. In contrast, emissions per capita were greatest in Saskatchewan (71.6 tons) and Alberta (71.0 tons), which have significant oil and gas production. *Id.* at 544, 546.

25. *Id.* at 548.

26. *Id.* at 549.

27. WALTON ET AL., PROVINCIAL-LEVEL PROJECTION OF THE CURRENT MOUNTAIN PINE BEETLE OUTBREAK: UPDATE OF THE INFESTATION PROJECTION BASED ON THE 2007 PROVINCIAL AERIAL OVERVIEW OF FOREST HEALTH AND REVISIONS TO THE "MODEL" (BCMBP.v5) 11 (2008), *available at* http://www.for.gov.bc.ca/hre/bcmpb/BCMPB.v5.BeetleProjection.Update.pdf.

28. *See* B.C. MINISTRY OF THE ENV'T BRITISH COLUMBIA, ENVIRONMENTAL TRENDS IN BRITISH COLUMBIA, 142, 150 (2007), *available at* http://www.env.gov.bc.ca/soe/et07/EnvironmentalTrendsBC_2007.pdf (detailing the impacts of climate change on the environment of British Columbia).

greenhouse gases,"[29] pledging to reduce British Columbia's greenhouse gas emissions "by at least 33 percent below current levels by 2020" or 10% below 1990 levels.[30] Among other initiatives to encourage emissions reductions, the speech suggested that "our tax system should encourage responsible actions and individual choices" and that the Government would over the next year "look for new ways to encourage overall tax savings through shifts in [behavior] that reduce carbon consumption."[31]

In April 2007, the Provincial Government announced that it would join the Western Regional Climate Action Initiative (subsequently the Western Climate Initiative),[32] a collaborative effort launched in February 2007 by the Governors of Arizona, California, New Mexico, Oregon, and Washington to develop regional strategies addressing climate change, including the design of a market-based cap-and-trade regime based on hard emissions targets.[33] In November 2007, the Government enacted into law the emissions targets announced in the Throne Speech as part of a Greenhouse Gas Reduction Targets Act¸[34] which also established an emissions target for 2050 of 80% less than 2007[35] and mandated the Provincial Environment Minister to establish emissions targets for 2012 and 2016 and produce bi-annual reports on provincial progress in meeting these targets.[36] In the Provincial Budget delivered on February 19, 2008, the Government announced that it would introduce a carbon tax based on GHG emissions from fossil fuel combustion effective July 1, 2008.[37]

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29. Iona Campanolo, Lieutenant-Governor, Speech from the Throne at the Opening of the Third Session, Thirty-Eighth Parliament of the Province of British Columbia 12 (Feb. 13, 2007), *available at* http://www.leg.bc.ca/38th3rd/Throne_Speech_2007.pdf.

30. *Id.* at 14.

31. *Id.* at 23.

32. Press Release, Office of the Premier, B.C. Joins Western Regional Climate Action Initiative (Apr. 24, 2007), http://www2.news.gov.bc.ca/news_releases_2005-2009/2007OTP0053-000509.htm.

33. *See* Western Climate Initiative (WCI), http://www.westernclimateinitiative.org (last visited Nov. 17, 2008) (explaining that in addition to its founding states and British Columbia, the WCI now also includes as partners Utah and Montana, and the Canadian provinces of Manitoba, Ontario, and Quebec).

34. Bill 44, Greenhouse Gas Reduction Targets Act, 2007, 3rd Session, 38th Parliments, British Columbia, 2007, § 2(1)(a), *available at* http://www.leg.bc.ca/38th3rd/3rd_read/gov44-3.htm. Although the bill passed Third Reading on November 26, 2007, it does not yet appear to have been proclaimed into law.

35. *Id.* § 2(1)(b).

36. *Id.* § 4.

37. B.C. BUDGET 2008, *supra* note 22, at 11.

II. The Carbon Tax

As Janet Milne explains in her contribution to this volume, the design of a carbon tax involves four essential elements: the definition of the tax base, the identification of persons subject to the tax (the taxpayer/collection point), the specification of tax rates, and the use of the revenues generated by the tax.[38] The 2008 Provincial Budget and the subsequent legislation implementing the British Columbia carbon tax address each of these features.

A. Tax Base

Although CO_2 is only one of several GHGs attributable to human activities,[39] CO_2 emissions are the leading contributor to climate change both globally and in Canada, accounting for more than 60% of anthropogenic GHG emissions globally and almost 80% of GHG emissions in Canada.[40] Likewise, in British Columbia, CO_2 accounts for almost 80% of GHG emissions.[41] Of this percentage, the vast majority results from the combustion of fossil fuels.[42]

As its name suggests, the British Columbia carbon tax does not apply to all GHG emissions, but only to emissions from the combustion of fossil fuels and other specified combustibles in the Province, with rates based on CO_2e emissions associated with the various fuels and combustibles that are subject to the tax.[43] As a result, while the tax applies to emissions of CO_2

38. Janet E. Milne, *Carbon Taxes in the United States: The Context for the Future*, in this volume.

39. Other gases include methane (CH_4), most of which results from the anaerobic decomposition of solid wastes in landfills, the production and distribution of oil and natural gas, enteric fermentation in ruminants, coal mining, and manure management; nitrous oxide (N_2O), most of which is attributable to agricultural soil management (including the application of synthetic and organic fertilizers), the combustion of fossil fuels, the production of nitric acid for synthetic fertilizers, and manure management; and hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF_6), one or more of which is either used as a substitute for ozone depleting substances (ODS), attributable to the production of ODS substitutes, used in electrical transmission and distribution, or attributable to the production of aluminum, the manufacture of semiconductors, or the production of magnesium. Environment Canada, Information on Greenhouse Gas Sources and Sinks, http://www.ec.gc.ca/pdb/ghg/about/gases_e.cfm (last visited Oct. 16, 2008).

40. Org. for Econ. Co-operation and Dev., Environmentally Related Taxes in OECD Countries: Issues and Strategies 117 (2001). For the Canadian figure, see Environment Canada, *supra* note 24, at 41.

41. B.C. Ministry of the Env't, *supra* note 28, at 152.

42. *Id.*

43. B.C. Budget 2008, *supra* note 22, at 12.

and other GHGs from the combustion of fossil fuels,[44] it does not apply to CO_2 emissions from industrial processes such as the production of oil, gas, aluminum, or cement; or to the emission of other GHGs such as methane and nitrous oxide from the disposal of solid waste and the agricultural sector.[45] Nor does the tax apply to the combustion of biofuels such as firewood, woodwaste, ethanol, biodiesel, and bio-heating oil, which are arguably carbon-neutral.[46] Instead, the Provincial Budget explains:

> The tax base includes fossil fuels used for transportation by individuals and in all industries, including the combustion of natural gas to operate pipelines, as well as road, rail, marine and air transportation. As well, the tax base includes fuel used to create heat for households and industrial processes, such as producing cement and drying coal.[47]

Additionally, since the tax applies only to the combustion of fossil fuels within the Province, it also excludes or specifically exempts fuels exported from British Columbia and fuels used for inter-jurisdictional commercial marine and aviation purposes.[48] As a result, the budget explains, "neither the emissions released elsewhere to produce fuel imported to BC or the emissions released elsewhere from burning fuel exported from BC are included in the tax base."[49]

Although the British Columbia carbon tax does not apply to all GHG emissions, the substantial share of CO_2 in total GHG emissions and the equally substantial role of fossil fuel combustion as a cause of CO_2 emissions means that the tax base is quite broad, reaching approximately 70% of aggregate GHG emissions within the Province.[50] While the exclusion of GHG emissions from industrial processes has been sharply criticized by the Opposition New Democratic Party (NDP),[51] administrative

44. *See id*. (noting that the combustion of fossil fuels produces emissions of methane and nitrous oxide as well as CO_2, which are converted into CO_2 emissions in order to apply the tax).

45. *Id*. at 13.

46. *Id*. Fuels that include fossil fuel and biofuel, such as blended gasoline and ethanol, are subject to tax only on the fossil fuel content of the fuel. Carbon Tax Act, 2008 S.B.C., ch. 40 § 13 (Can.).

47. B.C. BUDGET 2008, *supra* note 22, at 13.

48. *Id*. at 12. The specific exemption for inter-jurisdictional commercial marine and aviation purposes appears in the Carbon Tax Act, S.B.C. 2008 S.B.C., ch. 40 § 14.

49. B.C. BUDGET 2008, *supra* note 22, at 13.

50. *Id.*

51. *New Carbon Tax Receives Praise, Sparks Criticism*, CBC NEWS (Can.), Feb. 19 2008, http://www.cbc.ca/technology/story/2008/02/19/bc-carbon-tax-reactions.html. NDP Finance Critic Bruce Ralston commented, "The tax doesn't capture the full spectrum of emissions. [It] will hit

challenges to the measurement of these emissions—which depend on production processes and can vary from facility to facility—suggest that their initial exclusion from the carbon tax is reasonable. Additionally, it seems reasonable to exclude CO_2 emissions from industrial processes and other GHG emissions from waste disposal and agriculture from the carbon tax because, as the budget explains, "many of these emissions will be subject to the cap-and-trade system or other GHG reduction measures under development."[52] The exclusion of fuels for export and fuels used for inter-jurisdictional commercial, marine, and aviation purposes may also be justified on the basis that the tax is intended to apply only to emissions from the combustion of fossil fuels within the Province.[53] Although one might argue that British Columbia should take some responsibility for emissions resulting from inter-jurisdictional commercial, marine, and aviation operations within the Province, international agreements and competitiveness considerations suggest that these emissions should also be exempt pending broader inter-jurisdictional coordination on the taxation of emissions from these sources and their inclusion in an international emissions trading regime. Also, since Canada's constitution limits provincial taxing jurisdiction to "Direct Taxation" imposed "within the Province,"[54] it is possible that a carbon tax that applies to fossil fuels exported from the Province or used for inter-jurisdictional commercial, marine, and aviation purposes would exceed provincial jurisdiction.[55]

B. Taxpayer/Collection Point

As the discussion of the tax base indicates, the British Columbia carbon tax is intended to apply to the combustion of fossil fuels within the Province, by individuals and by enterprises, for personal use and business purposes. As such, it is properly characterized as a destination-based consumption tax on the combustion of fossil fuels.[56] Unlike a pure

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consumers and average families the hardest as large industrial polluters get a pass and a handout. . . . This budget puts all of the burden on individuals instead of big polluters. Clearly, the industrial lobbyists won in the backrooms." *Id.*

52. B.C. BUDGET 2008, *supra* note 22, at 13.

53. *Id.*

54. Constitution Act, 1867, 30 & 31 Vict. ch. 3 § 92(2) (U.K.).

55. For a comprehensive account of constitutional provisions relevant to the regulation of greenhouse gases in Canada, see generally SHI-LING HSU & ROBIN ELLIOT, REGULATING GREENHOUSE GASES IN CANADA: CONSTITUTIONAL AND POLICY DIMENSIONS (2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1265365 (last visited Nov. 17, 2008).

56. Thomas J. Courchene, Climate Change, Competitiveness and Environmental Federalism: The Case for a Carbon Tax (June 3, 2008), *available at* http://www.irpp.org/miscpubs/archive/tjc_canada2020.pdf (background document for Canada 2020 Address).

destination-based carbon tax, however, the tax does not exempt embedded carbon taxes on the export of provincially-produced goods and services, nor apply to the import of goods and services from other jurisdictions.[57] For this reason, the tax may be vulnerable to the same concerns about international competitiveness that motivated the Clinton Administration to favor a system of border tax adjustments for its proposed Btu tax.[58] Indeed, certain sectors, such as the concrete and cement industry, have already complained about the tax's impact on domestic competitiveness, arguing that the tax "will make B.C.'s three cement facilities vulnerable to plant closures" as consumers switch to Asian producers who are not subject to carbon taxation or emissions limits.[59]

Although the tax is nominally applied to every person who either purchases taxable fuel for use in the Province or uses fuel that is imported into or produced within the Province,[60] the tax is actually applied and collected at the wholesale level by the distributors of different fuels, rather than the retail level, in the same way that the Province applies and collects motor fuel taxes.[61] According to the Provincial Budget, this arrangement "minimizes the cost of administration to [the] government and the compliance cost to those collecting the tax on [the] government's behalf."[62] As Milne observes, collecting the tax upstream from actual consumers may also lessen the political visibility of the tax, improving its political viability.[63] As popular opposition to British Columbia's carbon tax has increased since its announcement in February,[64] one might wonder whether it would have been more politically wise for the Government to impose the tax on fuel distributors (as in Quebec), rather than consumers—even if the economic burden of the tax ultimately falls on consumers in the form of

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57. For a proposal along these lines, see Thomas J. Courchene & John R. Allan, *Climate Change: The Case for a Carbon Tariff /Tax*, POL'Y OPTIONS, Mar. 2008, at 59–64 (proposing to require the carbon tax to be applied to all imports from all countries and to be applied to all domestically produced and consumed products).

58. Milne, *supra* note 38, at 12.

59. Richard Gilbert, *British Columbia's Ready-Mix Producers See Threat in New Carbon Tax*, DAILY COM. NEWS & CONSTRUCTION REC. (Ontario), July 17, 2008, http://www.dailycommercialnews.com/article/id28999.

60. Carbon Tax Act, 2008 S.B.C., ch. 40, §§ 8(1), 10(1) (Can.).

61. *Id.* §§ 15(1), 17(1).

62. B.C. BUDGET 2008, *supra* note 22, at 12.

63. *See* Milne, *supra* note 38, at 14 (discussing the Clinton Administration's plan for collecting the tax and the realities it faced).

64. *See, e.g.*, Jonathan Fowlie, *Most Oppose Carbon Tax: Anti-tax Sentiment a Potential Threat to Liberals Ahead of Election, Pollster Says*, VANCOUVER SUN, June 18, 2008, http://www.canada.com/vancouversun/news/story.html?id=0c50aa7d-d414-4eb6-8b86-843d2ef28cad (reporting that 59% of those responding to a poll conducted in early June were opposed to the tax, with roughly half of respondents saying that they oppose it "strongly").

higher prices.[65] Indeed, the Opposition NDP appears to have gained considerable popular support by arguing, among other things, that the tax should be applied to industrial polluters at the source rather than consumers.[66]

C. Tax Rates

As explained in the discussion of the tax base, the British Columbia carbon tax applies to the combustion of fossil fuels and other specified combustibles in the Province, with tax rates based on their respective CO_2e emissions. At an initial rate of $10 per ton of CO_2e emissions,[67] the tax results in a levy of 2.41 cents per liter of gasoline, 2.76 cents per liter of diesel, 1.53 cents per liter of propane, 2.45 cents per liter of aviation fuel, 49.66 cents per gigajoule of natural gas, $17.72 per ton of low-heat-value coal, $20.79 per ton of high-heat-value coal, $24.87 per ton of coke, $10.22 per ton of peat, $23.91 per ton of shredded tires, and $20.80 per ton of whole tires.[68]

According to the Provincial Budget, the tax rate is scheduled to increase by $5 per ton on July 1 of each year until July 1, 2012,[69] when the tax rate will be $30 per ton of CO_2e emissions. The resulting levies for each type of taxable fuel and combustible are three times the amount charged in 2008.[70] The budget explains further changes in tax rates will depend on various factors including: whether British Columbia satisfies its emissions targets, the impact of other policies such as fuel standards and cap-and-trade regulations, actions taken by other governments to reduce GHG emissions and set a price on carbon,[71] and the advice of a Climate Action Team established in November 2007 to advise the Provincial Government on emissions targets for 2012 and 2016 and on ways to reduce GHG emissions.[72]

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65. *See* Meadows, *supra* note 20, at 21 (reporting that the actual result of the duty in Quebec is on the consumers instead of the distributors).

66. *See* Chad Skelton, *B.C. prefers NDP's Carbon Tax Plan,* VANCOUVER SUN, June 27, 2008, http://www.canada.com/vancouversun/news/story.html?id=a824db32-b10c-44e5-8292-ddc4d31a4ecc&k=30817 (reporting that 82% of British Columbians would prefer the Government to "target major industrial polluters" than levy a carbon tax at the retail level).

67. B.C. BUDGET 2008, *supra* note 22, at 12.

68. Carbon Tax Act, 2008 S.B.C., ch. 40, scheds.1–2 (Can.).

69. B.C. BUDGET 2008, *supra* note 22, at 12 tbl.1.1.

70. *See* Carbon Tax Act, scheds. 1–2 (calculating the average tax increase within four years).

71. B.C. BUDGET 2008, *supra* note 22, at 20.

72. Press Release, Office of the Premier, Province Announces Climate Action Team (Nov. 20, 2007), http://www2.news.gov.bc.ca/news_releases_2005-2009/2007OTP0180-001488.htm#.

Although the budget itself acknowledges that a price of even $30 per ton of CO_2e emissions may be insufficient to encourage significant changes in behavior,[73] it also offers two reasons for introducing the tax at a relatively low rate and gradually increasing this rate over five years. First, it explains, this approach "gives individuals and businesses time to make adjustments and respects decisions made prior to the announcement of the tax."[74] Second, it notes, the phase-in also ensures "certainty about rates for the first five years."[75] This is a notable advantage over emissions trading regimes in which the price of GHG emissions is subject to market fluctuation.[76]

In addition, a low initial rate followed by a gradual increase may reduce public opposition to the tax and increase its political viability.[77] However, given increasing opposition to the tax in British Columbia[78] it appears as though a gradual phase-in alone cannot ensure popular support or acceptance for the taxation of GHG emissions. On the contrary, the Organisation for Economic Cooperation and Development concluded that political viability of environmental taxes and other economic instruments, like emissions trading, ultimately depends on the public's understanding of the environmental problem, the purpose of the economic instrument, and the perceived fairness of the instrument itself.[79] The Provincial Government attempted to improve public understanding through an extended series of announcements and legislative measures, beginning with the Throne Speech in February 2007, along with using the revenues collected from the tax to enhance its perceived fairness.

D. Use of Revenue

According to the Provincial Budget, the British Columbia carbon tax is anticipated to raise $338 million in its first year, $631 million in 2009/10, and $880 million in 2010/11.[80] Unlike the carbon tax in Quebec, which dedicates revenues to a Green Fund in support of spending initiatives

73. B.C. BUDGET 2008, *supra* note 22, at 18, 20.
74. *Id*. at 11.
75. *Id*.
76. *See, e.g.*, Reuven S. Avi-Yonah & David M. Uhlmann, *Combating Global Climate Change: Why a Carbon Tax is a Better Response to Global Warming than Cap and Trade* 37 (Univ. of Mich. Pub. Law Working Paper No. 117, 2008) *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1109167 (last visited Nov. 17, 2008) (discussing the "Cost Certainty" of the carbon tax as opposed to the cap-and-trade regime).
77. ORG. FOR ECON. CO-OPERATION AND DEV., THE POLITICAL ECONOMY OF ENVIRONMENTALLY RELATED TAXES 153 (2006).
78. Fowlie, *supra* note 64.
79. ORG. FOR ECON. CO-OPERATION AND DEV., *supra* note 77, at 21–22.
80. B.C. BUDGET 2008, *supra* note 22, at 15.

announced in the Province's Climate Change Action Plan,[81] the British Columbia carbon tax is intended to be "revenue neutral"—with all revenues from the tax "recycled" back to individuals and businesses in the form of personal and corporate income tax cuts,[82] and a refundable Climate Action Tax Credit for low-income households.[83] Through these measures and additional corporate income tax cuts scheduled for 2010 and 2011,[84] the budget projects that revenue reductions for the fiscal years 2008/09 to 2010/11 will match the expected revenues raised by the carbon tax.[85]

In order to ensure that the carbon tax remains revenue neutral, the implementing legislation includes provisions requiring the provincial Minister of Finance to prepare and submit annual plans to the provincial legislature, projecting over a three-year period both the revenues that the carbon tax is estimated to collect and the revenues that are expected to be returned to taxpayers through tax reductions, exemptions, or credits.[86] If the Minister fails to ensure that carbon-tax revenues are fully recycled through these "revenue measures," the legislation imposes a personal penalty in the form of a salary reduction of 15%.[87]

In addition to this revenue recycling the budget also announced a one-time Climate Action Dividend of $100 per person funded from the Province's 2007/08 surplus and paid to all residents on December 31, 2007.[88] According to the budget, this payment was "intended to help British Columbians make changes to reduce their use of fossil fuels."[89] More cynically, perhaps, the payment (which was distributed in the month of June, immediately before the tax came into effect on July 1, 2008) may have been intended to reduce public opposition to the tax by providing a "sweetener" to accompany its introduction.[90] In practice, however, the

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81. *See* An Act Respecting the Régie de l'Énergie, R.S.Q. ch. R-6.01, ch. VI. 3 §§ 85.35, .38 (2007) (discussing financing for the reduction of greenhouse gas).

82. *See* B.C. BUDGET 2008, *supra* note 22, at 104–05 (announcing rate reductions of 2% in 2008 and 5% in 2009 for the lowest two brackets of provincial personal income tax, and reductions in the general and small business corporate income tax rates of 1% effective July 1, 2008).

83. *See id*. at 103 (announcing an annual refundable credit, "[t]o help low-income individuals and families with the carbon taxes they pay and as part of the government's commitment that the carbon tax be revenue neutral," of $100 per adult and $30 per child, reduced by 2% of net family income exceeding $30,000 for individuals and $35,000 for families).

84. *See id.* at 15 (proposing cuts in 2010 and 2011 for the general corporate tax rate and the small business corporate income tax rate).

85. *Id*.

86. Carbon Tax Act 2008, S.B.C. ch. 40, § 3(2) (Can.).

87. *Id.* § 5(3).

88. B.C. BUDGET 2008, *supra* note 22, at 105.

89. *Id*.

90. *See* John Bermingham, *B.C. Gov't Issues $100 Cheques to Residents Next Month*, THE PROVINCE (Vancouver), May 16 2008, http://www.canada.com/theprovince/news/story.html?id=47e58a

"dividend" may have heightened public awareness and hostility to the new tax—exemplified by the common complaint that the payment "barely covers an average fill-up at current gas prices."[91]

Whatever its political impact, the Climate Action Dividend has been rightly criticized on the grounds that the amount of the payment is insufficient to finance meaningful household expenditures on emissions reduction measures. Additionally, the surplus might have been better spent on public initiatives to reduce GHG emissions, such as improved public transit or a program to improve the energy efficiency of low-income housing. In contrast, the recycling of carbon tax revenues through personal and corporate income tax rate reductions and the introduction of a refundable tax credit for low-income households may be justified by economic efficiency, tax equity, and political reality. From an efficiency perspective, economists widely conclude that a shift from economically-distorting taxes on economic "goods," like the production of income, to cost-internalizing taxes on environmental "bads," like GHG emissions, should produce a so-called "double dividend" in the form of enhanced environmental protection and improved economic efficiency.[92] From a tax-equity or fairness perspective, the introduction of a refundable tax credit for low-income households represents an attractive measure to offset the potential regressivity of a carbon tax, which is apt to impose a larger relative burden on low-income individuals and families who are likely to devote a larger share of their incomes to the consumption of goods and services.[93] Politically, a firm commitment to revenue neutrality should lessen popular opposition to the tax as a new levy designed to increase

47-38b6-4f2c-b16b-ece7144573f1 (reporting that the head of the British Columbia branch of the Canadian Taxpayers' Federation stated the payment was "just a total bribe" designed to "keep the squealing about the carbon tax to a minimum").

91. Vaughn Palmer, *Voters Really, Really Don't Like Gas Tax, Poll Tells Stubborn Campbell*, VANCOUVER SUN, June 18, 2008, http://www.canada.com/vancouversun/columnists/story.html?id=0329b877-e8a6-4883-b313-b143edd401e0.

92. *See e.g.,* ORG. FOR ECON. CO-OPERATION AND DEV., *supra* note 40, at 35 (asserting that a double dividend occurs with more effective environmental protection and a reduction in other distortionary taxes).

93. *See* ORG. FOR ECON. CO-OPERATION AND DEV., *supra* note 77, at 134–49 (explaining that energy taxes tend to be income regressive, and direct mitigation measures should be used to reduce the impact on household income in order to compensate for the larger burden on low-income families). A similar argument can be made in support of special measures to offset increased costs faced by residents of rural and Northern communities who may find it difficult to make adjustments to reduce transportation and heating costs. *See, e.g., Official Report of Debates of the Legislative Assembly*, 26 HANSARD 9, 9840 (afternoon sitting Feb. 20, 2008) (statement of Bob Simpson, Member of the Legis. Assemb., Cariboo North, B.C.), *available at* http://www.leg.bc.ca/hansard/38th4th/H0220pm-09.pdf ("Our lifestyles are fundamentally different, and putting an incremental tax on fuels adds additional burdens to people who live in rural B.C. . . . .").

government revenues. In practice, however, recent polls suggest that most Canadians would prefer to see carbon tax revenues devoted to investments in renewable energy and energy efficiency, rather than cuts in income taxes.[94]

III. IMPLICATIONS

When British Columbia announced that it would introduce a carbon tax in February 2008, the Provincial Budget confidently proclaimed that "[a] rare consensus has formed in British Columbia among individuals, certain business interests, environmental organizations, and economists that a carbon tax is a key and necessary tool in the move to reduce GHG emissions . . . ."[95] Indeed, although the tax was immediately condemned by some business organizations and at least one conservative policy institute,[96] it was warmly welcomed by most environmental organizations,[97] and continues to enjoy the support of several business interests in the Province.[98] In May 2008, two polls indicated that Canadians supported the idea of a carbon tax at the national level. Sixty-one percent of respondents stated they supported a tax on businesses and people based on the carbon emissions that they generate,[99] and 72% described the introduction of the British Columbia carbon tax as a positive step.[100]

As gasoline prices soared during the spring and early summer of 2008 and the Canadian economy began to experience the effects of an economic

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94. *See, e.g.,* Mike De Souza, *Carbon Tax Gaining Support Across Canada: Poll*, CANWEST NEWS SERVICE (Ottawa), May 25, 2008, http://www.canada.com/topics/news/story.html?id=c28d5cd4-5404-4ade-a748-0352268d392c (reporting that 47% of respondents thought that "revenues should be spent on 'renewable energy like wind and solar power' and 16 per cent [sic] said they wanted to see more spending on 'energy efficient technologies'").

95. B.C. BUDGET 2008, *supra* note 22, at 11.

96. *See* Jonathan Fowlie & Fiona Anderson, *B.C. Introduces Carbon Tax: Province is the First Jurisdiction in North America to Have Consumer-Based Carbon Tax*, VANCOUVER SUN, Feb. 19, 2008, http://www.canada.com/vancouversun/news/story.html?id=ecea1487-507c-43ef-ab88-5a972898e0b7&k=38130 (quoting representatives of the Canadian Federation of Independent Business and the Fraser Institute).

97. *See id.* (quoting representatives of the Suzuki Foundation and the Sierra Club of British Columbia).

98. *See* Brian Hutchinson, *Public Opinion Shifts Over New B.C. Carbon Tax*, NAT'L POST (Toronto) June 20, 2008, http://www.nationalpost.com/todays_paper/story.html?id=599801 (reporting that the Business Council of British Columbia decided not to oppose the tax).

99. *Most Canadians Support Carbon Tax, Poll Suggests*, TORONTO STAR, May 7, 2008, *available at* http://www.thestar.com/printArticle/422643.

100. *See*, De Souza, *supra* note 94 (noting that "72 per cent [sic] of those surveyed" in a poll discussing British Columbia's recently introduced carbon tax on fossil fuels "said that it was a positive step").

downturn, however, whatever consensus may have existed when the British Columbia carbon tax was first announced on February 19 appears to have disappeared by the time it became effective on July 1. In mid-June, the Leader of British Columbia's Opposition NDP launched an "axe the tax" campaign,[101] invoking an anti-tax slogan that sits uncomfortably with the party's social-democratic orientation. By the end of August, polls showed that the New Democratic Party had more popular support than the governing Liberal Party for the first time in several years.[102]

In the meantime, the Federal Liberal Party, under Leader Stéphane Dion, released a "Green Shift" tax plan on June 19[103] proposing a revenue-neutral carbon tax modeled on the British Columbia tax that would commence at $10 per ton of CO_2e emissions and rise to $40 per ton within four years.[104] Incorporating scheduled reductions in personal and corporate income tax rates,[105] new or enhanced refundable tax credits for low-income individuals and families,[106] and tax incentives for green technologies,[107] the Green Shift plan would also introduce a legislative requirement for revenue neutrality by mandating the Federal Auditor General to annually monitor carbon tax revenues and foregone revenues resulting from rate reductions, exemptions, and credits.[108] Unlike the British Columbia carbon tax, however, the Green Shift plan would exempt gasoline on the basis that this category of fossil fuel is already subject to an effective tax rate of $42 per ton of CO_2e emissions under the existing federal tax on motor fuels.[109] The

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101. *See* New Democrat: Official Opposition, Axe the Gas Tax (June 16, 2008), http://www.bcndpcaucus.ca/en/axethegastax (contending that Gordon Campell's new fuel tax targets consumers who already are suffering from high gas prices while being ineffective in combating climate change).

102. *See B.C. Poll Fires a Warning Shot for Federal and Provincial Liberals*, VANCOUVER SUN, Aug. 28, 2008, http://www.canada.com/vancouversun/news/editorial/story.html?id=75f4c677-dc4e-411b-b25f-0f41c8598bdf ("[T]he Angus Reid Strategies poll released this week showed B.C. New Democrats ahead of the Liberals for the first time in years.").

103. Meagan Fitzpatrick, *Liberal Carbon Tax Plan Good for Planet, Wallet: Dion*, NAT'L POST (Toronto), June 19, 2008, *available at* http://www.nationalpost.com/news/story.html?id=599498.

104. LIBERAL PARTY OF CANADA, THE GREEN SHIFT: BUILDING A CANADIAN ECONOMY FOR THE 21ST CENTURY 6 (2008), *available at* http://www.thegreenshift.ca/pdfs/green_shift_book_en.pdf.

105. *See id*. at 6–9 (proposing to reduce the lowest rate of personal income tax as well as to reduce the general and small business corporate income tax rates).

106. *See id*. at 7–8 (proposing to introduce a new child tax benefit worth $350 per child, to replace the existing employment tax credit with a refundable credit targeted at individuals earning less than $50,000 per year, to enrich the Working Income Tax Benefit by eliminating a $3,000 income threshold below which the benefit is currently unavailable, and to make the Disability Tax Credit refundable).

107. *See id*. at 9 (proposing accelerated depreciation rates and refundable tax credits to encourage the development of green technologies).

108. *Id*. at 6.

109. *Id*.

plan would also create an annual "Green Rural Credit" of $150 for every Canadian residing in a rural area and an enhanced deduction for northern residents to lessen the impact of the tax on individuals who face higher transportation and heating expenses.[110]

While the exemption for gasoline, the credit for rural residents, and the enhanced deduction for northern residents appear to have been designed primarily for political reasons, the tax measures for rural and northern residents also address an important fairness concern resulting from the prospect that the tax might fall more heavily on these individuals. To the extent that the existing motor fuel tax constitutes a form of benefit-taxation designed to finance public expenditures on roads and highways, however, it is more difficult to justify the exemption of gasoline from the proposed carbon tax.

Not surprisingly, given its libertarian predispositions and its unwillingness to adopt aggressive policies to limit GHG emissions, the governing Federal Conservative Party was quick to attack the Liberal Party's Green Shift plan, characterizing it as a tax increase that "will not be revenue neutral,"[111] and launching radio advertisements attacking the plan and Liberal Party Leader Stéphane Dion.[112] Denouncing the Green Shift plan as "crazy" and "insane,"[113] Prime Minister Stephen Harper labeled the plan a "'green shaft' that will stifle the Canadian economy" and "take this country back to the tax-and-spend policies of the past."[114]

Although the Conservative Party's characterization of the Green Shift plan as a tax increase to support larger government spending constitutes a deliberate misrepresentation of the proposal, opinion polls conducted during the summer of 2008 suggest that the Prime Minister's denunciations and the Conservative Party's attack ads had a significant impact on popular support for the plan as well as for the Federal Liberal and Conservative Parties. While a poll conducted in July found that 51% of respondents supported the Green Shift plan and 41% were opposed, a poll conducted at the end of August found that 52% opposed the plan and 45% were in

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110. *Id*. at 8.

111. Fitzpatrick, *supra* note 103 (quoting Prime Minister Stephen Harper).

112. David Akin, *Tories Launch New Attack on Liberal Green Plan*, NAT'L POST (Toronto), Aug. 4, 2008, *available at* http://www.nationalpost.com/related/topics/story.html?id=700261.

113. *Id*. ("Prime Minister Stephen Harper's denunciation of Mr. Dion's plan as 'crazy' and 'insane'").

114. Chris Morris, *Liberal Green Shift is 'Green Shaft,' Says Harper*, TORONTO STAR, Aug. 14, 2008, http://www.thestar.com/News/Canada/article/478887.

favor.[115] More significantly from a political perspective, while polls conducted in early August suggested that the Conservative Party's attacks on the Green Shift plan and the Liberal Leader had not had a noticeable effect on popular support for these federal political parties,[116] a poll released in early September indicated that support for the Federal Conservative Party had pulled significantly ahead of the support for the Federal Liberals.[117]

In this circumstance, the Prime Minister called a federal election on September 7, seeking to capitalize on its rise in the polls and secure the legislative majority that it was denied in January 2006.[118] Campaigning against the Liberal Party's Green Shift plan, the Conservative Party fell short of its majority when the election was held on October 14, but increased its share of the popular vote and obtained nineteen more seats in the House of Commons.[119] In contrast, popular support for the Liberal Party fell by 4% and the Party lost twenty-seven seats in the House.[120] A week after the election, Stéphane Dion resigned as Liberal Leader, blaming "the massive Conservative advertising onslaught against him personally and against his carbon-tax-based Green Shift environmental policy" for the disappointing election outcome.[121]

In British Columbia, where the introduction of a provincial carbon tax appears to have cost the governing Liberal Party considerable political support,[122] the next election is scheduled for May 12, 2009,[123] giving the Government little time to reverse its sagging political fortunes. Although the provincial Premier has not backed away from the carbon tax, recent

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115. Juliet O'Neill, *Support for the Liberals' Green Shift Dropping: Poll*, VANCOUVER SUN, Sept. 1, 2008, *available at* http://www.canada.com/vancouversun/story.html?id=37ed64fc-b218-4959-918a-fa0b72dc30fc.

116. *See* Akin, *supra* note 112 ("Nationally, support for the Conservatives is at 34%, up two percentage points over the last six weeks, while the Liberals are at 30%, down two percentage points.").

117. Brian Laghi, *Harper Tories on the Brink of Majority, Poll Finds*, THE GLOBE & MAIL (Ottawa) Sept. 2, 2008, *available at* http://www.theglobeandmail.com/servlet/story/RTGAM.20080901.wpoll0901/BNStory/Front/home (reporting that 37% of respondents would vote for the Conservative Party and 29% for the Liberal Party).

118. *Vote set for Oct. 14: Harper Expects Tight, Tough Election*, CBCNEWS.CA, Sept. 7, 2008, http://www.cbc.ca/canada/story/2008/09/07/election-call.html.

119. *Compare* Election Canada, 40th General Election, http://enr.elections.ca/National_e.aspx (last visited Nov. 13, 2008) (reporting 2008 election results) *with* International Foundation for Electoral Systems, Election Profile: Canada, http://www.electionguide.org/results.php?ID=350 (last visited Nov. 13, 2008) (reporting 2006 election results).

120. *Id.*

121. Bruce Campion-Smith and Les Whittington, *Dion Resigns but Will Remain as Leader for Now*, TORONTO STAR, Oct. 20, 2008, http://www.thestar.com/FederalElection/article/520583.

122. *B.C. Poll Fires a Warning Shot for Federal and Provincial Liberals*, *supra* note 102.

123. According to the British Columbia Constitution Act, provincial elections must be held on fixed dates, which are the second Tuesday in May every four years after May 17, 2005. Constitution Act, R.S.B.C. ch. 66, § 23(2) (Can.).

statements suggest that the Government has opted to downplay the carbon tax after the federal election, emphasizing instead infrastructure spending and accelerated income-tax cuts to combat the economic downturn.[124] Whether the British Columbia carbon tax survives the provincial election next spring remains to be determined.

CONCLUSION

As an economic instrument to combat global climate change by placing a price on GHG emissions, there is much to favor in the use of environmental taxes like the British Columbia carbon tax.[125] Nonetheless, as experience at the federal level and in British Columbia suggests, the introduction of a consumption-based tax on GHG emissions is likely to be politically difficult, irrespective of its merits in terms of environmental effectiveness, economic efficiency, and distributional fairness. Reflecting on this experience, however, a number of suggestions emerge regarding ways in which a carbon tax might be made politically more appealing.

First, as the New Democratic Party's objection to the tax in British Columbia demonstrates, it is unwise to introduce a consumption-based tax on the combustion of fossil fuels without simultaneously announcing a comprehensive tax or emissions trading regime to address GHG emissions from industrial processes and other sources like waste disposal and agriculture. By leaving the regulation of these sectors to subsequent measures, such as the future emissions trading regime established under the Western Climate Initiative, the British Columbia Government opened itself to accusations that it was placing "all of the burden on individuals instead of big polluters."[126]

Second, in order to address fairness considerations concerning the distributional impact of the tax, the tax should be accompanied by other measures to compensate for increased and largely unavoidable tax burdens. Examples include the Climate Action Tax Credit for low-income households announced in British Columbia's 2008 Provincial Budget and

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124. Justine Hunter, *B.C. Accelerates Income-tax Cuts*, GLOBE & MAIL (Ottawa), Oct. 23, 2008, http://www.theglobeandmail.com/servlet/story/RTGAM.20081022.wcampbell1022/BNStory/politics/home?cid=al_gam_mostemail.

125. *See generally*, STERN, *supra* note 7, at 351–67 (explaining that a tax-based approach will raise public revenues and can be used for short term flexibility as to how, where, and when emissions are reduced, while providing long term quantity goals to limit the risk of catastrophic environmental damage).

126. *New Carbon Tax Receives Praise, Sparks Criticism*, *supra* note 51.

the Green Rural Credit proposed in the Federal Liberal Party's Green Shift plan.

Third, the political viability of a carbon tax may also be enhanced by legislative measures to ensure revenue neutrality—though these measures must be clearly explained and vigorously defended in order to prevent the deliberate mischaracterization of the tax as a tax increase. Alternatively, as at least one Canadian poll suggests,[127] the political viability of a carbon tax may also be enhanced by dedicating the revenues that it yields to investments in renewable energy and energy efficiency, as was done in Quebec.[128] While the revenue-recycling measures accompanying the British Columbia carbon tax likely improved its political acceptance, the payment of a Climate Action Dividend to all residents of the Province appears to have been a poorly-conceived attempt to lessen public opposition to the tax, which may have had the opposite effect by drawing public attention to the new tax at the same time as it came into effect.

Fourth, phasing in a carbon tax may enhance its political viability. By beginning with relatively low rates and gradually increasing them over time according to a schedule set out when the tax is first introduced, political opposition may be lessened. As British Columbia's 2008 Provincial Budget explains, this approach "gives individuals and businesses time to make adjustments and respects decisions made prior to the announcement of the tax" and provides certainty about tax rates during this phase-in period.[129]

Fifth, competitiveness concerns are best addressed by implementing border tax adjustments that would impose carbon taxes on the embedded-carbon content of goods imported into the jurisdiction and exempt embedded carbon taxes on goods and services that are exported from the jurisdiction.[130] Although these kinds of border tax adjustments are difficult to devise for a broad-based carbon tax and would have to satisfy international trade rules,[131] these kinds of arrangements are apt to be essential if jurisdictionally-specific carbon taxes are to have any hope of long-term viability.

Finally, as shifting public opinion in British Columbia and Canada demonstrates, popular support and acceptance of a carbon tax may depend on the timing of its introduction, considering prevailing fuel prices and

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127. De Souza, *supra* note 94.

128. Regulation Respecting the Annual Duty Payable to the Green Fund, 2008 R.R.Q. ch. R-6.01, r.0.2.3.1 (Can.).

129. B.C. BUDGET 2008 , *supra* note 22, at 11.

130. Courchene & Allan, *supra* note 57.

131. *See generally*, ORG. FOR ECON. CO-OPERATION AND DEV., *supra* note 77, at 89–106 (discussing border tax adjustments in environmentally related taxes).

economic conditions. While the introduction of a carbon tax appears to have been politically popular in British Columbia and Canada in the spring and early summer of 2008, opposition grew as gas prices increased and economic conditions deteriorated. Whether carbon taxes can garner support in tougher economic times remains to be determined.