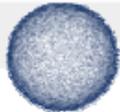


S U M M A R Y

THE US POSITION ON

CLIMATE CHANGE

P o s t - C  P 1 5

Executive Summary

President Obama left Copenhagen with an accord that outlines broad goals for international cooperation on climate change, with the US, China, India, Brazil and South Africa acting outside of the United Nations' intended negotiating framework. But the climate discussion in Copenhagen created a lot of uncertainty, and the USA has demonstrated its willingness to address climate change issues in an international context differently than before by agreeing to discuss climate policy without the rest of the UNFCCC. That is to say, the US may begin to evaluate alternatives to signing and agreeing to an internationally binding agreement, such as the Kyoto Protocol, by opting to negotiate with select nations independent of the UNFCCC framework. However, sentiment still exists within America that strives for US climate legislation empowering the President to commit to a binding international climate agreement. It remains to be seen what Congress authorizes to that end, but the administration has made clear – by their actions in Copenhagen and through publicly released statements – that they would prefer congressional ratification of energy legislation before becoming a signatory to an international climate agreement, despite being granted authority by the Environmental Protection Agency (EPA) to regulate greenhouse gas emissions without congressional consent.

About the Author

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1

Climate Policy and Executive Power

The EPA ruling

In December 2009, the US Environmental Protection Agency (EPA) ruled that greenhouse gases are a danger to public health and welfare and could be regulated by the EPA under the *Clean Air Act* without congressional approval.¹ This gives President Obama the option of acting outside of congressional authority in setting emissions reduction strategies by allowing the EPA to utilize what is known as 'an endangerment finding' through the *Clean Air Act*. Under the act, the EPA could force certain emitters of carbon dioxide to install new technology to reduce their emissions.²

Even though President Obama has indicated that he wants to utilize Congress for passing climate legislation and curbing emissions, Republicans have taken up the matter to block the EPA's ruling through a rarely used joint resolution.³ However, it seems unlikely that such a measure will pass due to the fact that the Republican minority that supports the action will have to garner enough support for the measure from the House and the Senate as well as receive presidential authorization. Thus, the President will most likely still maintain the EPA ruling as his trump card, even though it would be unfavourable politically to use it as a justification to impose emissions targets.

2

The Passage of Climate Legislation in the US Congress

Senate passage and the filibuster

Congress hopes to pass energy legislation in 2010, but there is no assurance that the legislation will authorize the signing of a binding international agreement. There are many issues at play that could affect the outcome of climate legislation; the most important of which is that passage of climate legislation depends on the Senate's ability to secure 60 votes in order to bypass a filibuster. In order to secure 60 votes, certain provisions of the already passed House version of the climate bill – such as emissions reductions, cap and trade, etc. – conflict with the interests of Senators and their constituencies whose job sectors will be greatly affected. Thus, there are many Democrats and Republicans who have to consider the potential 'economic disruption for the coal, oil and utility sectors' caused by climate legislation, as such a bill will not be passed if the needs of those constituencies are not adequately addressed.⁴ But if a compromise is made

- 1 Ball, J., Forelle, C. & Talley, I. (7 December 2009) 'EPA Calls Greenhouse Gases a Public Threat', *The Wall Street Journal* http://online.wsj.com/article/SB126020179812780059.html?mod=rss_Today's_Most_Popular accessed 10 December 2009.
- 2 Ball 2009, above.
- 3 Rascoe, A. (17 December 2009) 'Republicans work to block EPA carbon rules', *Reuters* <http://www.reuters.com/assets/print?aid=USTRE5BH05M20091218> accessed 21 December 2009.
- 4 Harwood, J. (20 December 2009) 'Obama's Ambitious Agenda Carries a Few Bruises', *The New York Times* <http://www.nytimes.com/2009/12/21/us/21caucus.html> accessed 21 December 2009.

that removes an effective cap and trade system and/or significant emissions cuts, it becomes nearly impossible for the US to rely on legislation to sign an internationally binding climate treaty, to follow the Copenhagen Accord.

Financial cost of climate legislation

The financial cost of a massive overhaul of US energy policy is a primary cause for concern many in the USA. Whether one agrees with the assumption that energy policy will be prohibitively costly or not, public sentiment is hugely important in dictating the legislative agenda of Congress. If the public and their congressional representatives argue that the cost of climate change legislation is too great – at a moment, economically, when the US is only beginning to emerge from one of the most debilitating recessions in its history and national unemployment is about 10%⁵ – it is unlikely that the USA will pass an effective climate bill that provides aggressive emissions reduction and a cap and trade system. Such measures may be perceived as detrimental to the economy. Thus, the stipulations of such a climate bill may not be effective enough to meet certain expectations or requirements in order for an internationally ratified treaty to be agreed upon.

Timeline for passage

The timeline for passage of the climate bill remains uncertain even though President Obama and several Senators have promised that it is high on the agenda. Former Vice President Al Gore suggested that Congress aim for a deadline of 22 April 2010, or the 40th anniversary of Earth Day, but Senate Majority Leader Harry Reid has indicated that he will finalize the health care bill and propose financial reform and jobs legislation before moving onto the climate bill.⁶

Bi-partisan measure

To help expedite the process, Senators John Kerry, Lindsey Graham and Joseph Lieberman are working on a bi-partisan compromise that aims to get the necessary 60 votes to bypass a Senate filibuster.⁷ They have released some details of their proposal and will meet with Senate Democrats and select Republicans to attract support for the bill.⁸ But as evidenced by the recently passed health care bill, the 60-vote threshold to override a filibuster can prove to be a difficult impediment, often times so reducing legislation as to render it almost entirely ineffectual.⁹

Likely timetable

As indicated by Harry Reid's statement regarding the legislation priorities for the Senate, it is likely that the climate bill will be brought to the Senate floor at some point in 2010. But health care and financial reform and jobs legislation will be debated before climate change. Once – and if – the Senate passes climate legislation, the House and Senate will then have to work to create an amenable compromise between the two versions, which will then be presented to the President for approval.

5 US Bureau of Labor Statistics News Release (4 December 2009), *Employment Situation Summary* <http://www.bls.gov/news.release/empsit.nr0.htm> accessed 3 January 2010.
6 Lerer, L. (21 December 2009) 'Copenhagen fizzle won't help bill', *Politico* <http://dyn.politico.com/printstory.cfm?uuid=AF1727B2-18FE-70B2-A87A3646AE004E6A> accessed 21 December 2009.
7 Samuelsohn, D. (21 December 2009) 'Obama Negotiates 'Copenhagen Accord' With Senate Climate Fight in Mind', *The New York Times* <http://www.nytimes.com/cwire/2009/12/21/21climatewire-obama-negotiates-copenhagen-accord-with-senat-6121.html> accessed 22 December 2009.
8 Lerer 2009, above.
9 For more information on the US Senate filibuster, please refer to the following article: Krugman, P. (20 December 2009) 'A Dangerous Dysfunction', *The New York Times* <http://www.nytimes.com/2009/12/21/opinion/21krugman.html> accessed 26 December 2009.

3

Acting Outside of the UNFCCC Negotiations

Will the USA work outside of the UN framework?

The possibility of the USA acting outside of the UNFCCC framework for negotiation and ratification of a climate treaty seems plausible, and may experience less domestic resistance. Many prominent US scholars and public figures have stated that Copenhagen may represent the last time that the US and the world places such high hopes in the UNFCCC process for achieving climate change policy because of the ineffectiveness of the UN forum for negotiations.¹⁰ Nevertheless, the US Congress still must find common ground on the issue, and legislation must effectively address the effects of climate change, regardless of whether or not such legislation will be used in part or entirely to guide ratification of an internationally binding climate treaty.

Aside from the effectiveness of dealing outside of the framework of the UN to enact climate policy domestically and internationally, the emergence of green technology competition may encourage US willingness to improve carbon emissions. Based on statements issued by the administration, it is possible that the US will focus its climate policy efforts on competing with the rest of the world in the so-called green economy. President Obama has stated his interest in innovation and development of green technology, which could in turn provide a lasting impact on the climate as well as provide an opportunity to benefit economically.¹¹ Many have argued that focusing on emissions reduction targets detracts from the political, economic and technological methods by which such targets can be attained.¹²

4

The National Sentiment – some selected quotes

Jon Kyl,
Republican Senator
from Arizona

'We're not going to allow the executive branch, through the Environmental Protection Agency...to appropriate to themselves the power to make laws that govern the people of the United States without the United States Congress acting in this area as well.'¹³

Barack Obama,
President of the US

'But I want to be very clear that ultimately this issue is going to be dictated by the science, and the science indicates that we're going to have to take more aggressive steps in the future. Our hope is that by investing in clean energy, in research, in development, in innovation, that in the same way that

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- 10 Muro, M. (30 December 2009) 'After Copenhagen: Now a New Start?' *The Brookings Institution* http://www.brookings.edu/opinions/2009/12/30_copenhagen_muro.aspx accessed 2 January 2010;
 - Friedman, T. (19 December 2009) 'Off to the Races', *The New York Times* <http://www.nytimes.com/2009/12/20/opinion/20friedman.html> accessed 20 December 2009.
 - 11 White House Press Release (18 December 2009), *Remarks by the President during press availability in Copenhagen* <http://www.whitehouse.gov/the-press-office/remarks-president-during-press-availability-copenhagen> accessed 21 December 2009.
 - 12 Muro 2009, above.
 - 13 Rascoe 2009, above.

the *Clean Air Act* ended up spurring all kinds of innovations that solved the acid rain problem at a much cheaper and much more rapid pace than we expected, that by beginning to make progress and getting the wheels of innovation moving, that we are in fact going to be in a position to solve this problem.¹⁴

**John McCain,
Republican Senator
from Arizona**

'It's a nothing burger,' referring to the agreed upon Copenhagen Accord.¹⁵

**Michael Levi, David M.
Rubenstein Senior
Fellow for Energy and
the Environment at the
Council on Foreign
Relations**

'The climate treaty process isn't going to die, but the real work of coordinating international efforts to reduce emissions will primarily occur [outside of the UN framework].¹⁶

**Thomas Friedman,
Opinion Columnist for
The New York Times**

'Still, I am an Earth Race guy. I believe that averting catastrophic climate change is a huge scale issue. The only engine big enough to impact Mother Nature is Father Greed: the Market. Only a market, shaped by regulations and incentives to stimulate massive innovation in clean, emission-free power sources can make a dent in global warming. And no market can do that better than America's.'

'Therefore, the goal of Earth Racers is to focus on getting the US Senate to pass an energy bill, with a long-term price on carbon that will really stimulate America to become the world leader in clean-tech. If we lead by example, more people will follow us by emulation than by compulsion of some UN treaty.¹⁷

14 White House Press Release 2009, above.

15 Samuelsohn 2009, above.

16 Revkin, A. & Broder, J. (19 December 2009) 'A Grudging Accord in Climate Talks', *The New York Times* <http://www.nytimes.com/2009/12/20/science/earth/20accord.html> accessed 23 December 2009.

17 Friedman 2009, above.