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U.S. Government Policymaking on Climate Change

Recent Developments, Transitions, and Prospects for the Future

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Introduction

Government policymaking on climate change issues in the United States is in the midst of a significant transition period. The transition has been triggered in part by the recent declaration by Senator Harry Reid, Leader of the Democratic Party in the Senate, that there would not be a cap-and-trade bill passed this year; however, he was not only making a proclamation about the legislative calendar of the Senate, he was also inadvertently marking the transition to a new era in U.S. policymaking on a broad range of climate change issues.

Recent events, the nature of the transition period and the prospects for policymaking during the next several years can all be represented conveniently in terms of five clusters of issues. Although the five are partly interdependent with one another, each has distinctive patterns in the domestic pressures and constraints that shape U.S. policymaking.

1. National Cap-and-Trade Legislation

Establishment of a national mandatory cap-and-trade system through Congressional legislation is virtually dead for at least the next two years, and perhaps for several years beyond that.

It is likely that the November elections will enable the Republican Party to regain a majority in the House of Representatives and thus prevent action in the House on cap-and-trade legislation for at least two years. (The Waxman-Markey cap-and-trade bill was passed in the House last year by only a seven-vote margin, with 95 percent of Republicans voting against it and 83 percent of Democrats voting in favor of it.) In the Senate, although the Democrats are likely to keep their majority after the

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November elections, it will probably be even more difficult to obtain the 60 vote special majority needed to end debate and pass a cap-and-trade bill. (This year at the high-water mark of support during the summer, there may have been as many as 55 prospective votes in favor of passing the Kerry-Lieberman bill, but the ranks of the supporters included only 3 to 5 Republicans at most.)

The party distributions of election outcomes every two years for the Congress and every four years for the President will therefore be key determinants of the fate of climate legislation. Re-election of Obama with substantial Democratic majorities in both houses of Congress beginning in January 2013 would likely lead to the establishment of a national cap-and-trade system, but initially only for the electric power sector. Several of the biggest electric power producers have publicly supported establishment of a cap-and-trade system, though their support became less solid as the prospect of a power-sector only cap-and-trade Senate bill became increasingly salient this past summer. The prospects for any future legislative proposals to establish a cap-and-trade system will almost certainly depend directly on the level of support from key firms in that sector.

2. Regulatory Agencies

Attention concerning national regulation of greenhouse emissions is shifting to the Environmental Protection Agency (EPA) and the Securities and Exchange Commission (SEC), where there have already been potentially significant developments. But legal challenges may constrain further actions.

Factually, the current situation is that: (a) the EPA already has in force a requirement that firms report annual greenhouse gas emissions, (b) the EPA has promulgated rules to cover greenhouse gas emissions using the Clean Air Act but they are not yet in force, and (c) the SEC has released a ‘staff interpretation’ of *existing* rules that indicates firms ‘may’ need to report how climate change affects them in the annual reporting process. The key developments in coming months/years will be the fates in the courts of the legal challenges to EPA actions on greenhouse gas emissions under the Clean Air Act. The climate agenda will therefore be focused on narrow administrative and legalistic issues as ‘anti-’ groups try to prevent these agencies from taking action and ‘pro-’ groups try to prod them to undertake more action; such tendencies have long, robust traditions in U.S. administrative-regulatory rulemaking, including on environmental issues in particular.

Court cases are already beginning to emerge, and they could take years to be finally decided. Since the economic, environmental and legal issues are enormously important, it is likely the Supreme Court will probably eventually become involved in at least some cases; Supreme Court votes are likely to be close on any climate change cases because of the ideological composition of the court. In the meantime, lower courts could decide to prevent the implementation of prospective EPA rules, pending resolution of the issues by the Supreme Court.

3. Cities, States and Regions

Actions to address climate change issues at the city, state and regional levels will increase.

Over 1000 cities participate in the bi-partisan U.S. Conference of Mayors ‘Climate Protection Agreement’, according to which they urge the national government and state governments to adopt legislation to reduce greenhouse gas emissions to 7 percent below 1990 levels by 2012 – and they undertake to meet the target themselves as mayors of cities. Although the targets will not be met in more than a few cities, there have nevertheless been tangible results in many cities to date, eg

Portland, Oregon; and the agreement is in any case a politically important statement of concern about climate change.

In terms of the immediate future, the next big state-level event will be the outcome of Proposition 23 in the California elections in November – a proposal that would defer implementation of Assembly Bill 32, with its many climate change provisions, until state unemployment levels are below 5.5 percent for 4 successive quarters (which has only happened 3 times in several decades). The prospects for passage/defeat of the proposition are unclear at this time. Regardless of its fate, many states and cities will continue to address climate change through a variety of measures, such as energy efficiency programs, mass transit programs, building standards, and renewable portfolio standards – all of them policy domains where state and local governments have much leeway in the U.S. political system. It is useful to remember that one state - Texas - by itself contributes one-tenth of U.S. carbon dioxide emissions and thus by itself more than the total emissions of most countries' emissions. Only ten states contribute about half of U.S. national emissions. The effects of a few states' policies on emissions can therefore be significant; Texas, for instance, is a leading state in wind power installations.

At the regional level, the Regional Greenhouse Gas Initiative (RGGI) of ten northeastern states will continue as a cap-and-trade system for the electric power sector in those states. The prospects for regional initiatives in the west and the mid-west are less clear, as some prospective individual member states reconsider their intentions.

4. Annual Budgets

Funding of executive agency programs through the annual budgeting process in Congress will receive more attention. Government funding of climate friendly technologies will continue to increase, but domestic political constraints will prevent substantial increases in funding of international finance programs for mitigation or adaptation.

There is increasing bi-partisan support for domestic clean tech program R&D funding at the national level, partly because of increasing business concerns about the U.S. international competitive position in renewable energy and energy efficiency sectors. These programs will include nuclear power along with a wide range of other low-carbon technologies. At the same time, Congressional support for spending on international programs remains weak. An initial U.S. contribution of \$300 million for the new World Bank Clean Technology Fund has been passed – though several years late and well below the level implied by President Bush's original proposal, made together with the Japanese and UK governments.

Actual disbursements of funds towards the U.S. share of the \$30 billion for 2010-2012 pledged at Copenhagen last year will be similarly behind schedule and below implied amounts. The recently expressed concerns of Ms. Figueres as Executive Secretary of the UNFCCC about the progress to date on the part of the donor countries, therefore, are understandable. It is also doubtful that whatever funds are made available will be entirely 'new and additional' beyond established foreign economic assistance programs.

5. Energy Technology/Trade Issues

Climate-related international trade issues, including especially foreign market access for U.S. exporters of clean-tech goods and services, and U.S. export subsidy programs, will become much more salient and gain increasing domestic political support.

There will be bi-partisan support in the Congress for increased efforts in these directions, with strong business lobbying, through unilateral, bilateral, regional and multilateral policy processes. The Obama administration will use these trade issues as an opportunity to advance their climate change and related energy technology agendas. At the unilateral level, there will be increasing scrutiny of the energy sector projects of the U.S. Export-Import Bank and the U.S. Overseas Private Investment Corporation - both of which are semi-autonomous U.S. government agencies that provide loans, loan guarantees and political risk insurance for U.S. firms' international business activities in 'developing' countries.

There will be further proliferation of bi-lateral technology cooperation agreements. Regionally, within APEC and NAFTA there will be increasing attention to members' policies that inhibit international trade and international investment in clean tech goods and services. Multilaterally, at the WTO liberalization of policies that impede international trade and international investment in climate friendly goods and services will continue to be on the agenda and continue to be contentious, with little progress in prospect for the next few years. In general, therefore, the U.S. government will be trying to focus the agendas of many international trade and investment policymaking venues on tariffs and non-tariff barriers to the international diffusion of climate friendly goods and services. The associated international negotiations will put climate change and clean energy issues much more at the centre of the agendas of the panoply of existing international trade and investment institutions and agreements.

Implications

In sum, the climate change policy agenda is being both broadened and deepened across a wide range of policy clusters, even as the establishment of a national cap-and-trade system through Congressional action recedes from the agenda for at least the next few years. Each of the issue clusters has its own distinctive mix of interests and institutions that come into play as policy is developed and implemented. Predicting and assessing U.S. climate policy in the future will thus become more challenging and require more detailed analysis of multiple policymaking processes. Whether the expansion of the agenda in the U.S. will result in significant policy changes and substantial reductions in greenhouse gas emissions will only become clear over the next many years.

Of course, U.S. policymaking is not only driven by the domestic economic and political factors that are emphasized in this analysis. International events, including the policies of foreign governments, also obviously affect the U.S. agenda. For instance, the prospective inclusion of flights from the U.S and other non-EU countries, as aviation is integrated into the EU Emissions Trading Scheme, will be a shock to the U.S. agenda. Another possible shock would be an EU decision to impose border adjustment measures on imports of goods from countries that are not addressing climate change seriously in a world of unequal carbon prices and international 'leakages'. Such shocks could dramatically alter the scenarios sketched out above – and perhaps even bring the potential establishment of a national cap-and-trade system back into the centre of the U.S. climate change agenda.