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US Climate Policy on the Road to Copenhagen

The political context makes it clear that the US will not have a climate bill ready in time for the talks in Copenhagen, and the commonly accepted premise seems to be that without climate legislation enacted domestically, the US won't be able to sign on a global deal on climate change in December.

The attitude of the United States towards acting on global climate change has been drastically transformed with the arrival of the Obama administration. In fact, President Obama has taken several concrete steps towards reversing the attitude and level of US involvement on climate change held by his predecessor. The call for a mandatory cap on greenhouse gas, a change in the Corporate Average Fuel Economy (CAFE) standards and the increased support that President Obama has provided for alternative energy production cannot be understated. However, due to the political and economic realities in the U.S., including the mixed political will of Congress to enact climate change legislation, and the concerns that have been voiced (both by private and public interests) regarding the impact that any legislation will have on states, businesses and corporations in terms of projected costs, the expectations of what the U.S. will bring to the table in Copenhagen should still be relatively minimal.

The Domestic Position

Domestically, President Obama vowed that he would work with Congress to pass comprehensive legislation to protect America from the serious economic and strategic risks associated with America's heavy reliance on foreign oil and the destabilizing effects of a changing climate. He stated that policies to advance energy and climate security should promote economic recovery efforts, accelerate job creation, and drive clean energy manufacturing by investing in clean (green) energy jobs.

The American Recovery and Reinvestment Act, a key piece of legislation enacted by President Obama when he first came to office, includes more than \$80 billion in clean energy investments. These investments include:

- \$11 billion for a bigger, better, and smarter electrical grid that will move renewable energy from the rural places it is produced to the cities where it is mostly used, as well as for 40 million smart meters to be deployed in American homes.
- \$5 billion for low-income home weatherization projects,
- \$4.5 billion to green federal buildings and cut energy bills, supposedly saving US taxpayers billions of dollars.

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- \$6.3 billion for state and local renewable energy and efficiency efforts, with \$600 million in green job training programs-\$100 million to expand line worker training programs and \$500 million for green workforce training.
- \$2 billion in competitive grants for the development of next generation batteries used to store energy.

Additionally, the President has called for increasing the fuel economy standards for Model Year 2011 cars and trucks so they will get better mileage, saving consumer's money and spurring companies to develop more innovative products. The President also issued a memorandum to the Department of Energy to implement more aggressive efficiency standards for common household appliances, like dishwashers and refrigerators. The Energy Star New Homes Initiative promotes energy efficiency guidelines that enable new homes to be approximately 30 percent more energy efficient than those built to minimum provincial building codes. The increased efficiency of these homes translates into reduced energy costs for homeowners. It is estimated that by taking this step, the US will save twice the amount of energy produced by all the coal-fired power plants in American in any given year. On Earth Day 2009, President Obama also unveiled a program to develop the renewable energy projects on the waters of the Outer Continental Shelf that produce electricity from wind, wave, and ocean currents. These regulations will enable, for the first time, the US to tap into the ocean's vast sustainable resources to generate clean energy in an environmentally sound and safe manner¹.

The President is committed to an economic future in which the strength of the economy is not tied to the unpredictability of oil markets and towards investing in clean energy sources that will curb America's dependence on fossil fuels and make it energy independent. The ultimate goal is to be able to break the dependence on foreign oil, produce more energy within the US, and promote energy efficiency by enhancing US energy supplies through responsible development of domestic renewable energy, fossil fuels, and advanced bio-fuels and nuclear energy. President Obama acknowledged that other countries are in a high-tech race to address climate change by reshaping power generation and creating new modes of transportation and stated that he will continue to promote investments in the transportation, electricity, industrial, building and agricultural sectors that reduce energy bills.

Engaging the World

Internationally, President Obama vowed early on in his presidency to lead the world in tackling climate change. "The days of Washington dragging its heels are over, we will make it clear to the world that America is ready to lead," President Obama said in January. "To protect our climate and our collective security, we must call together a truly global coalition-- the days of Washington dragging its heels are over. My administration will not deny facts - we will be guided by them," President Obama said, in an apparent dig at President Bush's aides accused of subverting science for ideological reasons and for President Bush's reluctance to take control of international efforts to combat climate change. ²

Soon after being inaugurated, President Obama began to alter Bush administration climate policies, signing measures to encourage production of fuel-efficient cars and vowing to lead the fight against global warming. Speaking at the Climate Change Conference of 2009 regarding climate change legislation currently being considered in the Senate, Democratic

¹ http://www.whitehouse.gov/issues/energy_and_environment/

² <http://www.timesonline.co.uk/tol/news/environment/article5588346.ece>

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Senator Ben Cardin said: "And of course we have a more receptive Congress now, and we certainly have a stronger president for global climate change."

The actions taken so far by President Obama should be viewed in a very positive light by Europe and the rest of the world. With the failure of the US Senate to ratify and implement the Kyoto Protocol, followed by the eight-year long effort to resist any type of concerted action by the Bush administration regarding combating global climate change, President Obama's call to the world to unite and battle climate change was very welcome news indeed. President Obama signalled a sharp departure from climate change politics-as-usual in the United States by vowing that his policies would be dictated by the "sound science" behind climate change, rather than "rigid ideology."

Another signal to the world that the US was serious about battling climate change, was the appointment of Todd Stern as the country's first-ever climate change envoy to lead international negotiations. As the country's chief negotiator in international climate talks, Todd Stern is a central key to the discussions on how to agree on a comprehensive climate treaty that would impose tough new restriction on green house gas emissions by the end of this year. Todd Stern led the US delegation to the Kyoto Protocol talks in 1997. The experience that Todd Stern brings to the negotiating table allowed the Obama Administration to get up and running almost immediately after being elected.

Raising Corporate Average Fuel Economy (CAFE) Standards

On May 19, 2009 President Barack Obama proposed a new national fuel economy program which adopts uniform federal standards to regulate both fuel economy and greenhouse gas emissions while preserving the legal authorities of the Department of Transportation (DOT), the Environmental Protection Agency (EPA), and California. Prior to President Obama's announcement, the DOT managed fuel economy, the EPA dealt with emissions, and California used the Clean Air Act to come up with even more stringent rules. This created a situation where car manufacturers had to deal with rules from three different agencies. The new federal standards are roughly equivalent to those proposed under California's tailpipe greenhouse-gas program, which passed the state Legislature in 2002, but was never enacted because the EPA under the Bush administration declined to approve a necessary waiver.

The EPA is expected to release a final version of a rule finding carbon dioxide and other greenhouse gases are a danger to human health and welfare. The ruling will mandate that the agency begin regulating emissions under the Clean Air Act. The EPA has stated that it would still rather see the emission cuts be made through legislation instead of through an executive order. EPA Administrator Lisa Jackson said that: "Even as the President and the members of his Cabinet move forward under existing authority, we continue urging Congress to pass a new clean energy law. Only new legislation can bring about the comprehensive and integrated changes that are needed to restore America's economic health and keep the nation secure over the long term."³

The new CAFE standards create a national standard and incorporate California's strict emissions rules to raise the national fleet mpg average to 42 mpg for cars and 26 mpg for light trucks for an overall average of 35.5 mpg by 2016. Current CAFE standards require an automaker's fleet of cars to average 27.5 mpg and trucks must get 24 mpg. President

³ <http://dyn.politico.com/printstory.cfm?uuid=97f021a2-18fe-70b2-70b2-a8541bd0c2188173>

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Obama said the new rule will save 1.8 billion barrels of oil over the next five years, and is the projected equivalent of taking 58 million vehicles off the road.⁴

The auto industry reacted positively to the news. "Automakers are committed to working with the president to develop a national program administered by the federal government," said Dave McCurdy, president and chief executive of the Alliance of Automobile Manufacturers. "What's significant about the announcement is it launches a new beginning, an era of cooperation. The president has succeeded in bringing three regulatory bodies, 15 states, a dozen automakers and many environmental groups to the table."⁵

Democratic Senator Jeff Bingaman, Chairman of the Senate Energy and Natural Resources Committee, stated that it was no coincidence that the most technologically advanced fuel-efficient cars are now being developed and manufactured in the countries with the highest fuel-efficiency standards. Senator Bingaman mentioned that the Cash for Clunkers, a government program designed to stimulate auto sales by providing a subsidy for fuel efficient cars, was a short term success. The fact that most of the cars sold under the program were fuel-efficient foreign cars reaffirmed the view that US auto dealers and manufacturers need stronger long-term incentives if they are to rebuild an internationally competitive auto industry in the United States. He reiterated the fact the US needs a system that rewards fuel efficiency in the US auto industry.⁶

Cap-and-Trade

Additionally, President Obama charged Congress with creating a sweeping effort to put a cap on the number of tons of carbon emissions that are produced by coal-fired plants, oil refineries and industrial manufacturers. These polluters would have to buy allowances for each ton they intend to emit. They could also buy and sell allowances on an open financial market, along with investors and other players.

Support for cap-and-trade legislation stems from the fact that the US economy must transition away from dependence on (foreign) oil, not only because it contributes to global warming, but also because it makes the US dependent on foreign countries for a dwindling, expensive resource. The argument is then made that the creation of a carbon emission cap will create economic incentives to invest in a wide array of clean, new energy technology resources, thereby creating new domestic industries and jobs.

Others support cap-and-trade legislation because of the fact that carbon emissions are warming the planet and will lead to catastrophic global warming in the coming decades, if not years, with consequences such as increased drought, floods, disease, starvation and political unrest. Creating a cap on carbon emissions is seen by some as a moral imperative.

The first efforts towards creating a climate change cap-and-trade law were forged in Kyoto. However, despite the US not being a signatory, Congress has tried (unsuccessfully) to pass cap-and-trade legislation. In 2003, then-Democrat Senator Lieberman teamed with Republican John McCain to pass a cap-and-trade bill through the Senate, but the effort failed, as did another effort by the pair in 2005.⁷

⁴ <http://www.autoblog.com/2009/05/19/obama-cape-increase-an-historic-agreement-to-help-america-brea/>

⁵ <http://wheels.blogs.nytimes.com/2009/05/19/obama-to-raise-fuel-economy-standards/>

⁶ Roll Call, Buyers need incentives to go green. Jeff Bingaman, October 19, 2009

⁷ http://www.congress.org/news/2009/10/13/trading_permits_to_pollute

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Continuing the work on bipartisan support for a cap-and-trade bill, in 2008, Senator Lieberman teamed with Republican John Warner on another version of cap-and-trade. While the measure did garner some bipartisan support, it ultimately was defeated by Republicans on the Senate floor. Most recently, cap-and-trade legislation was passed out of the House (Waxman-Markey Bill) with eight Republicans voting in support along with their Democrat counterparts.

The Waxman-Markey Bill

The Waxman-Markey Bill establishes a cap-and-trade system and would require power companies to produce fifteen percent of their electricity from wind or solar energy.

However, doubts have already been raised as to how effective the House legislation will be. By the time of the vote, the Democratic leadership had made several major concessions to win support from party moderates, weakening the bill. Several environmental organizations admitted that they were very disappointed and Greenpeace went so far as to ask Congress to reject the bill as a whole.⁸

When President Obama first proposed a cap-and-trade system for carbon, he stated that the system would put a ceiling on the amount of carbon released, and companies would bid on the right to emit carbon in the atmosphere. Such a system is tantamount to a carbon tax, because the auction price of an emission right is effectively a tax on carbon. The revenue raised by the auction would give the government revenue with which it could off-set other taxes that distort behaviour, such as income or payroll taxes. But the Waxman-Markey bill that passed out of the House, would give most of the carbon allowances away to powerful special interests, instead of being sold at auction. CBO estimates have pointed out that if the allowances were to be auctioned, the government could stand to raise \$989 billion in proceeds in the next ten years. With the current House bill, as written, auction proceeds would only be \$276 billion.

This is important because it could be a breaking point with the Administration. In 2007, President Obama said: "I believe that, depending on how it is designed, a carbon tax accomplishes much of the same thing that a cap-and-trade program accomplishes. The danger in a cap-and-trade system is that the permits to emit greenhouse gases are given away free as opposed to being sold at auction. One of the mistakes that Europeans made in setting up a cap-and-trade system was to give too many of those permits away."⁹ The line of reasoning follows that if most of those allowances are not auctioned but handed out, the government won't have the resources to cut other taxes and offset the price increase. The end result is an increase in the effective tax rates facing most Americans, leading to lower real take-home wages, reduced work incentives and depressed economic activity - hardly a workable solution for President Obama.

The Boxer-Kerry Bill

The Senate version of climate change legislation has been introduced in the Senate Committee on Environment and Public Works by Senator Kerry and Senator Boxer, both Democrats. The Senate bill requires a twenty percent decrease in 2020 in the greenhouse gas emissions blamed for global warming, while the House bill required fifteen percent. Like the House bill, the Senate draft also sets up a cap-and-trade system to reduce emissions. Com-

⁸ <http://www.guardian.co.uk/environment/2009/jun/27/barack-obama-climate-change-bill>

⁹ <http://www.nytimes.com/2009/08/09/business/economy/09view.html?fta=y&pagewanted=...>

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panies would have to buy pollution credits to emit greenhouse gases, while those that reduce their pollution could sell or trade the credits.

One of the most contentious sections of the House bill was the list of industries and other benefactors that would receive free pollution credits, which could eventually be worth billions of dollars. The Senate draft does not spell out who would get free credits, a topic that is likely to be crucial to Senate negotiations. The bill also includes provisions that its sponsors argue would help avoid severe energy price spikes as the economy shifts more and more away from cheaper fossil fuels, especially coal for electricity production. It would also seek to hold emission allowances in reserve so they can be made available if energy prices soar.

However, Climate SOS, a coalition of scientists and advocates who support science and environmental justice-based climate legislation, recently called the Kerry-Boxer Senate bill an "irresponsible non-solution. Any bill that embraces cap and trade, offsets, outrageously inadequate emission reduction targets, and counter-solutions such as biomass burning, nuclear power and more coal fired power plants (under the guise of partial carbon capture technology that is yet unavailable) will fail to meet its stated goal of forestalling catastrophic climate change."¹⁰

Some moderate Democrats have also voiced their concerns and criticized the proposed legislation. Senator Baucus said he had overall concern at that: "we cannot afford the unmitigated impacts of climate change, but we also cannot afford the unmitigated effects of legislation." As Chairman of the Finance Committee, Senator Baucus plans to hold hearings on the legislation and is expected to be very tough on the distribution of allocations, which is at the heart of the Senate proposal. Senator Baucus also implied that the short-term emissions cuts mandated by Senator Kerry and Boxer were too steep for him and other moderates to support. Senator Baucus is a particularly influential voice in the climate debate in which Democrats from coal and manufacturing states have raised concerns that the legislation unfairly favours electric utilities serving the coasts.¹¹

Pennsylvania Democrat Senator Arlen Specter, echoing the comments made by Senator Baucus, said he supports passing climate change legislation but that he also has serious concerns, given his state's dependence on oil. "When I hear concerns about jobs and higher costs for consumers, I'm very much concerned about that," he said.

Republicans and moderate Democrats have also advocated for the legislation to include funding to expand domestic oil exploration and nuclear power. The emphasis on more traditional sources of energy could also weaken the committee's more liberal members, who want to see greater backing green technologies to spur the development of renewable fuels.

The committee's more conservative Republicans see the legislation as a non-starter, since the sponsors will most likely need some bipartisan support to get the 60 votes needed to thwart any Republican-led filibuster on the Senate floor. White House officials also acknowledged that the legislation would undergo significant changes before it reached the Senate floor. Interior Secretary Ken Salazar said that "this legislation is the beginning of a process. How this legislation ultimately comes together as legislation on the floor will be different than what we have today."

¹⁰ <http://www.commondreams.org/view/2009/10/07-12>

¹¹ <http://dyn.politico.com/printstory.cfm?uuid=97f021a2-18fe-70b2-70b2-a8541bd0c2188173>

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The Senate bill is expected to get input from five other committees, Finance, Energy and Natural Resources, Agriculture, Commerce and Foreign Relations. Senate Majority Leader Harry Reid will compile the final bill after all six committees complete their work. Currently, there is no timetable for the committees to complete their work, and the unresolved issues seem to indicate that any action would only be taken next year.

Cap-and-Dividend Alternative-The Cantwell Compromise

Democrat Senator Maria Cantwell is also raising concerns about the proposed Senate bill. Senator Cantwell mentioned her concern that cap-and-trade legislation is vulnerable to abuses by market manipulators like those on Wall Street who took advantage of loopholes in derivatives trading and helped bring about the current financial crisis. Senator Cantwell prefers an alternative emissions reduction scheme called cap-and-dividend.

Under the cap-and-dividend plan, permits are auctioned, but the revenues do not go to the government; they go back to citizens in the form of dividends, distributed equally among everyone, perhaps even wired directly to people's bank accounts or debit cards. The plan is modelled after the Alaska Permanent Fund, which pays equal dividends to Alaskan residents from the proceeds generated from state oil leases.

In essence, the cap and dividend alternative treats the air as a managed commons in which everyone owns a share. Liberals such as former secretary of labour Robert Reich and conservatives such as Senator Bob Corker of Tennessee support the approach, as do a growing number of climate scientists and economists. Some U.S. states as well as other countries are also considering the idea.¹²

As in other forms of capping, carbon emissions prices will continue to rise as the cap declines, spurring private capital to flow into clean alternatives such as wind and solar power. The crucial difference is that the dividends should rise along with the carbon prices, easing the impact on consumers.

This approach also relieves pressure on politicians who want to do something about global warming but don't want to impose burdens on the public or key sectors of the economy, a crucial consideration at a time when high fuel prices and the economy are explosive political issues.

Cap and dividend has another advantage: it creates a virtuous circle, in which how people fare depends on what they do. The more carbon any company or individual burns (directly or indirectly), the more that company or individual pays. Because everybody gets the same amount back, people gain if they conserve and lose if they overuse. Because the transition to a far more carbon-free economy will be long and difficult, it is vital to operate a system in which everyone has a chance to win. Otherwise people will get angry and disillusioned, and political support will crumble.

Opposition

The current opponents of the cap-and-trade legislation use the tried and tested argument that there is not enough scientific evidence that carbon emissions are warming the planet. "I really believe that a lot of people are in denial who want to hang their hat on the fact, that they believe is a fact, that man-made gases, anthropogenic gases, are causing global warming. The science really isn't there." said Senator James Inhofe, Republican Ranking

¹² <http://www.scientificamerican.com/article.cfm?id=cap-and-divident-not-trade>

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Member of the Senate Committee on Environment and Public Works, in September.¹³ While rhetoric such as this may seem shocking to the scientific community, far from disqualifying Senator Inhofe, it puts him in very good company with other leading conservative politicians.

Within this political context, the number of Americans who believe there is solid evidence the Earth is warming because of pollution is at its lowest point in three years, according to a survey released in October.

The poll of 1,500 adults by the Pew Research Center for the People & the Press found that only 57 percent believe there is strong scientific evidence the Earth has gotten hotter over the past few decades, and as a

result, people are viewing the situation as less serious. That's down from 77 percent in 2006, and 71 percent in April 2008.¹⁴

In April, Republican Representative Shimkus said that he knows with 100 percent certainty that humans can't cause devastating sea level rise because God said in the Bible he would "never again" devastate humans with a flood again. In July, Former Republican House Majority leader Dick Armey extended that doctrine. Mr. Armey told Republican Members of Congress on Capitol Hill that because "the lord God almighty made heavens and the Earth...to his satisfaction...it is quite pretentious of we little weaklings here on Earth to think that, that we are going to destroy God's creation".¹⁵

Additionally, opponents of cap-and-trade legislation highlight the perceived economic pitfalls, stating that putting a price on fossil fuel emissions would raise prices of all traditional forms of energy, from gasoline to coal-fired electricity. The assumption is that the cost would be passed along to consumers, thereby hurting the economy. Even if fossil fuel emissions are warming the planet, the economy-wide cap-and-trade mechanism is too vast, complex, unwieldy and prone to being gamed, opponents say. Emissions could instead be cut by capping just one sector of the economy, such as electric utilities, and increasing the production of nuclear power, which produces no carbon emissions.¹⁶

Republicans, with few exceptions, have voiced strong opposition to cap-and-trade climate legislation calling it a massive energy tax on consumers as energy prices increase amid the shift away from fossil fuels. And many centrist Democrats — especially from rural areas and from states with energy intensive industries — have expressed reluctance to support any bill that does not protect against energy cost spikes and protect domestic industries.

US Business Interests

US companies are also finding it hard to speak with one cohesive voice both on the threat that global climate change poses and on the appropriate response. The divisions arose within the business community over the importance of acknowledging global climate change, debating the projected costs of utilizing a greener set of economic technologies vs. the projected impact of climate change on the global economic matrix (i.e., how would a

¹³ <http://thinkprogress.org/2009/09/25/inhofe-god-cycles/>

¹⁴ http://www.huffingtonpost.com/2009/10/22/steep-decline-in-american_n_330315.html

¹⁵ <http://climateprogress.org/2009/09/27/inhofe-global-warming-god%E2%80%99s-still-up-there-natural-cycles/>

¹⁶ http://www.congress.org.news/2009/10/13/trading_permits_to_pollute

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meter rise in sea level impact revenue), and how to encourage a shift from contemporary fossil fuels to renewable energies.

"Carbon Capturing and Sequestering technology, while proven to work, has not been developed for commercial use." said Jorma Ollila, Chairman of Royal Dutch-Shell, which belongs to the Chamber of Commerce.

The US Chamber of Commerce, one of the most powerful business interest groups in the US (spending a record \$34.7 million to lobby the government in July, August and September, which is more than \$300,000 a day) has strongly opposed climate change legislation. The Chamber has opposed both the House and Senate versions of climate change legislation, claiming the measures will stifle US economic growth and shift business investment to countries that have yet to impose strict pollution caps. However, it should be noted that a number of high-profile companies, including Apple Inc., Exelon Corp, PG&E Corp and PNM Resources Inc., have left the Chamber, disagreeing with the Chamber's stance over greenhouse gas emissions. US Energy Secretary Steven Chu, a strong supporter of alternative fuels and strong regulation of greenhouse gas emissions, has welcomed the decision by some firms to quit the US Chamber of Commerce. Secretary Chu said that he is happy over companies' realization that reduced emission is necessary for the economic future of America. "I would encourage the Chamber of Commerce to realize the economic opportunity that the United States can lead in a new industrial revolution," said Secretary Chu.¹⁷

Complications Arise

Opponents to cap-and-trade got a two-fold boost: the first from the Congressional Budget Office (CBO), and the other from Carol Browner, director of the White House Office of Energy and Climate Change Policy.

Early in October, CBO Director Douglas Elmendorf told a Senate energy panel that "the House-passed bill that targets climate change through a cap-and-trade system of pollution credits would slow the nation's economic growth slightly over the next few decades and would create 'significant' job losses from fossil fuel industries as the country shifts to renewable energy." Director Elmendorf emphasized that his estimates contained significant uncertainties and "do not include any benefits from averting climate change," but his message nevertheless contrasted sharply with those of President Obama and congressional Democratic leaders, who have suggested that a cap on carbon emissions would help revive the US economy.¹⁸

Republican Senator Sam Brownback seized on director Elmendorf's comments, suggesting they meant the United States would be better off not curbing greenhouse gas emission linked to climate change. Senator Brownback, who describes himself as "a sceptic" on climate change, detailed how his home state of Kansas would likely face higher energy prices under a cap-and-trade system.

"Because while we're projecting these things, people have to deal with their basic lives on it, and this is going to be very expensive," said Senator Brownback. Senators Mary Landrieu (D-LA), John Barrasso (R-WY), and Jim Bunning (R-KY) joined Senator Brownback in voicing their concerns that the proposed Senate legislation would hurt their states and respective

¹⁷ <http://topnews.us/content/27652-energy-secretary-applauds-companies-leaving-chamber>

¹⁸ <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/14/AR2009101404054.html>

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regions. Senator Landrieu said the bill could raise the costs for oil refiners in her state to such an extent as to force them to close, their product replaced by gasoline imports.¹⁹

Several other senators raised their concerns about the proposed Senate climate bill. Senator John McCain (R-AZ) said the current version needs to do more to encourage the development of nuclear power. Senator McCain also said he opposed a carbon tariff on goods from countries without a carbon cap. The tariff is considered a necessary addition for attracting Democrats from Midwestern states who worry the climate bill will force companies in their states to shift jobs overseas. Senator McCain called the tariff protectionism.

Senator Maria Cantwell (D-WA) criticized the provisions that would allow companies to meet their emission reduction targets by investing in overseas projects that remove carbons dioxide from the atmosphere or otherwise reduce CO₂ and other greenhouse gas emission because the offset program could result in the transfer of \$1.4 trillion to foreign countries.

Copenhagen

Also in October, Director Browner, President Obama's top climate and energy official said that there was virtually no chance that Congress would have a climate and energy bill ready for the President to sign before negotiations on a global climate treaty begin in December in Copenhagen. Her remarks were the first definitive statement by the Obama administration that it saw little chance of Congressional passage this fall. Given the high priority that has been put on passing health care reform legislation, the array of meetings that would be need on the energy initiative, and not to mention the time that would be spent on reconciling the competing House and Senate versions of cap-and-trade, it should come as no surprise that there will be no bill ready for the President's signature by December.

At the moment, US political leaders are sending very mixed signals on whether the Senate will pass a climate bill before Copenhagen. After Carol Browner was quoted predicting no bill this year, Senator Barbara Boxer rushed to declare that passage is still possible. In Late October, Democrat Senator John Kerry and Republican Senator Lindsey Graham (showing signs of bi-partisan support) expressed joint optimism in an op-ed piece for the New York Times: "We are confident that a legitimate bipartisan effort can put America back in the lead again and can empower our negotiators to sit down at the table in Copenhagen in December and insist that the rest of the world join us in producing a new international agreement on global warming. That way, we will pass on to future generations a strong economy, a clean environment and an energy-independent nation."

The political context makes it clear that the US will not have a climate bill ready in time for the talks in Copenhagen, and the commonly accepted premise seems to be that without climate legislation enacted domestically, the US won't be able to sign on a global deal on climate change in December.

UN Climate chief Yvo de Boer told the Financial Times recently that the Copenhagen climate change conference will not produce a new international treaty to replace the Kyoto treaty, an ill-timed admission from the man whose job it was to bring December's negotiations to a successful conclusion. "A fully fledged new international treaty under the (UN framework) convention (on climate change) – I do not think that will happen. If you look at the limited amount of time remaining to Copenhagen, it's clear. The need now is concentrate on the political imperatives that make it clear how countries are committed (to tackling climate

¹⁹ <http://www.earthtimes.org/articles/show/290389%2Celimnate-change-exposes-sharp-divid...>

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change) and engaging in cutting emissions, and what co-operative mechanisms they need to put in place." He said.²⁰

President Obama does have a relatively weak negotiating position, not only because the United States doesn't have domestic legislation in place but because he doesn't know what Congress is willing to tolerate in terms of financial and technological support for developing countries, which is an indispensable part of the bargain that will ultimately need to be made for an international agreement. However, the President can go to Copenhagen with a lot of the other moves that have been made, the stimulus package, vehicle regulations, and potentially a clean-energy and energy-efficiency bill that might make it through Congress by early next year. As The Economist recently put it, "America will now not have to go naked into the conference chamber" at Copenhagen.²¹

Clean Air Act

However, due to conversations that Mr. de Boer has had with Senator Kerry and senior advisors to President Obama, he has mentioned that it is still possible for the Administration to bypass Congress for comprehensive energy reform by using the Clean Air Act (CAA) as a platform.

Some of President Obama's top environmental advisers have argued that the CAA gives the EPA the authority to regulate already existing regional cap-and-trade regimes; the EPA would simply knit them together, into a quasi-national cap-and-trade program. While every state in the union would have to affiliate with a program or create one of their own, many governors and legislatures appear ready to do this, conditioned on the federal government's willingness to administer it.²²

In 2007, the Supreme Court agreed, ruling in Massachusetts v EPA that the Clean Air Act unambiguously permits -- and, indeed, requires -- the EPA to regulate greenhouse gas emissions. Opponents had argued that any regulatory regime would rest on ambiguous science; the Court disagreed that the science of climate change was nebulous. Right before President Obama tapped him to co-chair his EPA policy review council, Robert Sussman wrote that: "A new administration could enforce new global warming regulations with common sense, focusing on large emitters of greenhouse gases to achieve reasonable reductions while spurring trillions of dollars worth of economic growth and green-collar jobs."²³

Gina McCarthy, assistant administrator for the Office of Air and Radiation, told Dow Jones Newswires in a story published in October that the agency is working on a final decision and intends to release it by year's end. The EPA released a draft finding back in April, which proposed declaring greenhouse gases a public danger. The agency has since proposed regulating emissions from cars and stationary sources like power plants. The draft came about two years after the Supreme Court found that carbon dioxide is a pollutant under the Clean Air Act and that the EPA has the authority to regulate it. A final endangerment finding from the EPA before Copenhagen could give the Obama administration enough political leverage to possibly sign an interim agreement in Denmark.

²⁰ BBC NEWS, Climate conference 'set to fail'. Justin Rowalatt, October 21, 2009

²¹ http://www.economist.com/world/unitedstates/displaystory.cfm?story_id=14569458

²²

http://marcambinder.theatlantic.com/archives/2008/12/one_assumes_that_the_obama.php#more

²³ <http://www.cleanskies.com/articles/epa-endangerment-finding-possible-years-end>

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While the US attitude toward climate change has been drastically transformed under President Obama, the political realities greatly limit how far the US can go by Copenhagen and beyond. The sooner that the European community can appreciate the limitations that the President faces, the better able it will be to continue working with the US to achieve a meaningful post-Kyoto climate change agreement.

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