

# THE U.S. CLIMATE POLICY DEBATE

*How climate politics are moving forward on  
Capitol Hill and in the White House*

TIM PROFETA

DIRECTOR

NICHOLAS INSTITUTE FOR ENVIRONMENTAL POLICY SOLUTIONS  
DUKE UNIVERSITY

CATHLEEN KELLY

DIRECTOR

CLIMATE AND ENERGY PROGRAM  
THE GERMAN MARSHALL FUND OF THE UNITED STATES

G | M | F

The German Marshall Fund  
of the United States

STRENGTHENING TRANSATLANTIC COOPERATION

© 2008 The German Marshall Fund of the United States. All rights reserved.

No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the German Marshall Fund of the United States (GMF). Please direct inquiries to:

The German Marshall Fund of the United States  
1744 R Street, NW  
Washington, DC 20009  
T 1 202 683 2650  
F 1 202 265 1662  
E [info@gmfus.org](mailto:info@gmfus.org)

This publication can be downloaded for free at <http://www.gmfus.org/publications/index.cfm>. Limited print copies are also available. To request a copy, send an e-mail to [info@gmfus.org](mailto:info@gmfus.org).

#### **GMF Paper Series**

The GMF Paper Series presents research on a variety of transatlantic topics by staff, fellows, and partners of the German Marshall Fund of the United States. The views expressed here are those of the author and do not necessarily represent the view of GMF. Comments from readers are welcome; reply to the mailing address above or by e-mail to [info@gmfus.org](mailto:info@gmfus.org).

#### **About GMF**

The German Marshall Fund of the United States (GMF) is a non-partisan American public policy and grant-making institution dedicated to promoting greater cooperation and understanding between North America and Europe.

GMF does this by supporting individuals and institutions working on transatlantic issues, by convening leaders to discuss the most pressing transatlantic themes, and by examining ways in which transatlantic cooperation can address a variety of global policy challenges. In addition, GMF supports a number of initiatives to strengthen democracies.

Founded in 1972 through a gift from Germany on the 25th anniversary of the Marshall Plan as a permanent memorial to Marshall Plan assistance, GMF maintains a strong presence on both sides of the Atlantic. In addition to its headquarters in Washington, DC, GMF has seven offices in Europe: Berlin, Bratislava, Paris, Brussels, Belgrade, Ankara, and Bucharest.

# THE U.S. CLIMATE POLICY DEBATE

## *How climate politics are moving forward on Capitol Hill and in the White House*

Tim Profeta\*

Director

Nicholas Institute for Environmental Policy Solutions  
Duke University

Cathleen Kelly\*

Director

Climate and Energy Program  
The German Marshall Fund of the United States

Executive Summary . . . . .	3
Senate Debate on Cap-and-Trade Legislation. . . . .	5
Status of the House Climate Debate . . . . .	15
EPA's Evolving Approach to Greenhouse Gas Regulation . . . . .	18
The U.S. Presidential Candidates' Positions on Climate Change . . . . .	21
Conclusion . . . . .	24

---

\* Cathleen Kelly is the director of the Climate and Energy Program at the German Marshall Fund of the United States and has been working on climate policy issues in the United States and internationally for 14 years. At GMF, Ms. Kelly manages programs to support transatlantic dialogue on issues that are central to the U.S., European, and international climate policy debates, and directs research and analysis to bring to light new information and ideas to support climate policy development in these arenas.

\* Tim Profeta is the founding director of the Nicholas Institute for Environmental Policy Solutions at Duke University. Since 2005, the Institute has grown into a major non-partisan player in key environmental debates, serving both the public and private sectors with sound understanding of complex environmental issues. Mr. Profeta has continued to use his experience on Capitol Hill to engage in the most pertinent debates surrounding climate change. Since 2005, his work has included proposal development with four senate offices to contain costs while maintaining environmental integrity under a cap-and-trade program.

The authors would also like to thank Kristin Luber, Dan Moss, and Kristina Field for their assistance with research and other aspects of this paper.



# EXECUTIVE SUMMARY

The Bush administration's waning days in office herald a likely new approach in U.S. climate policy. Both major candidates in the upcoming presidential election—Senator Barack Obama and Senator John McCain—have publically embraced approaches to the issue which dramatically differ from the resistance to greenhouse gas regulation that has been espoused by President Bush over the last eight years. Accordingly, while no major climate legislation will likely emerge from Congress before next year at the earliest, the climate debate in the United States is changing.

Specifically, an increasing recognition by policymakers of the realities of climate change and of the need for action has altered the political dynamics of the debate. This fact, coupled with the anticipation of a new U.S. administration's different perspective, suggests that prospects for aggressive federal action to reduce greenhouse gas emissions are greater than they have been in years. To be sure, formidable challenges still confront those who would enact such policies. But there will soon be opportunities for action in the United States which haven't existed for some time. This paper provides an overview of the current status of the U.S. climate change policy debate.

Section one discusses the status of efforts in the U.S. Senate to design and win support for a mandatory cap-and-trade program that will regulate U.S. greenhouse gas emissions. These efforts, which began in earnest in 2003 with the introduction of legislation by Senator Joe Lieberman and Senator McCain to create such a program, have confronted continued concerns about "cost containment" (the question of how to limit the potential cost of the program without weakening its environmental effectiveness) and the United States' competitiveness in a global market. But they have also helped spur increased awareness and support for legislative action in the chamber. For example, while the principal Senate

cap-and-trade bill recently died in the chamber on a procedural vote, Senator Joe Biden and Senator Richard Lugar (the chairman and ranking members of the Senate Foreign Relations Committee) have introduced a bipartisan resolution (with growing support) that seeks to strengthen U.S. involvement in international efforts to fight climate change. The resolution also calls for binding emission reduction commitments from all major emitters, including China and India.

Section two highlights where the climate policy debate stands in the U.S. House of Representatives. That debate to a large extent was put on hold until relatively recently—before Democrats assumed control of the House after the 2006 elections, the Republican majority leadership actively opposed any mandatory climate measures. Following the elections, however, House Speaker Nancy Pelosi has helped place the issue on the chamber's agenda. She created a Select Committee on Energy Independence and Global Warming to highlight the topic, and the House Energy and Commerce Committee, led by Chairman John Dingell, has produced a series of white papers on various aspects of the climate debate in the fall of 2007 and spring of 2008. Still, unlike in the Senate, a primary legislative vehicle has not been drafted, and it is unclear how the climate discussion will proceed in the House.

Section three describes the controversy over the U.S. Environmental Protection Agency's (EPA) role in regulating U.S. greenhouse gas emissions. Ever since the landmark Supreme Court decision in the spring of 2007 which declared that the EPA did, in fact, have the authority to regulate greenhouse gas emissions, proponents of greenhouse gas regulation have been eagerly awaiting the agency's response. However, that response—reflected in its July 2008 Advanced Notice of Proposed Rulemaking (ANPR)—disappointed those advocates. While soliciting comment from the

*Prospects for aggressive federal action to reduce greenhouse gas emissions are greater than they have been in years. To be sure, formidable challenges still confront those who would enact such policies.*

public regarding whether the Clean Air Act should regulate greenhouse gas emissions, the Notice simultaneously detailed the U.S. administration's hostility to this very notion, and its rejection of the work of EPA staff. The ANPR ensures that substantive action addressing greenhouse gas emissions will be delayed until after the Bush administration leaves office.

Lastly, section four offers insight into the positions of the U.S. presidential candidates, McCain and Obama, on U.S. and international climate policy. As noted earlier, both major party presidential candidates veer sharply from the Bush administration's approach to climate change and believe that climate change needs to be addressed

by the federal government. Furthermore, while McCain and Obama may differ on emission reduction levels and timetables, the two candidates agree with each other more than they disagree on this issue. For example, they both support mandatory cap-and-trade programs, and Senator Obama has co-sponsored climate legislation drafted by Senator McCain. Additionally, the two candidates agree that major emitters such as China and India need to be held to binding commitments under an international climate agreement. While both would undeniably still face difficulties in pushing climate legislation through the U.S. Congress, it seems clear that there will at least be a sincere, presidentially backed effort to do so, regardless of who is elected.

# 1 SENATE DEBATE ON CAP-AND-TRADE LEGISLATION

On June 6, 2008, the U.S. Senate voted on a procedural motion to close the debate on Senator Barbara Boxer's proposal to reduce U.S. greenhouse gas emissions by creating a comprehensive emissions trading program. In what was a highly politicized debate between the Democrats and Republicans, this procedural vote was on whether to debate the proposal or not—not on whether to support it. Requiring the votes of 60 Senators to close the debate, the procedural motion failed by a vote of 48 to 36, with six senators indicating their support to end debate in absentia. Despite the shortage of votes, Senate Majority Leader Harry Reid ended the debate on Senator Boxer's proposal, claiming that Republican senators were not debating the proposal in good faith. This procedural vote stands as the only record vote taken on Senator Boxer's proposal in the 2007–2008 U.S. Congress.

The nature of this vote, as well as the exhaustive political interpretation of it in its aftermath, have obscured its meaning and left many confused about the status of the climate change debate in the U.S. Senate. Some advocates maintain that the debate outcome demonstrates that 54 senators support the Boxer proposal; while others argue that it foreshadows the political failure of the proposal. Neither of these claims is correct.

The June 6th Senate vote established that a majority of senators support the creation of a comprehensive U.S. greenhouse gas cap-and-trade program, but that a number of substantive issues continue to frustrate consensus on the details of such a program. Each of these issues—such as containing program costs and maintaining the competitiveness of the U.S. manufacturing sector—remain unresolved and will challenge efforts to solidify support for a mandatory U.S. climate program. Nonetheless, the debate clearly highlighted the full list of issues that must be resolved before a comprehensive emission reduction program can win the support of Congress.

## 1.1 The Lieberman/McCain and Lieberman/Warner proposals

To appreciate the meaning of the June debate, it may be helpful to understand its legislative history. In three successive Congresses, beginning in 2003, Senator Joseph Lieberman of Connecticut and Senator John McCain of Arizona introduced a proposal to create a cap-and-trade program that would mandate a reduction in U.S. greenhouse gas emissions. The core architecture of this bill—coverage of the transportation, utility and industrial sectors, distribution of emissions allowances through a mix of auctions and free allocations, different points of regulation for different sectors, and access to a limited pool of greenhouse gas offsets—has remained constant through time. Both the 2003 and 2005 bills proposed by Lieberman and McCain called for modest emissions reductions, with the 2003 version aiming to reduce emissions to 1990 levels by 2016 and the 2005 version to reduce emissions to 2000 levels by 2012.

The U.S. Senate voted twice on the Lieberman/McCain bill, first in 2003 and then in 2005. In 2003, the bill failed with 43 senators voting in favor and 55 opposed (with one absent senator indicating his support).<sup>1</sup> In 2005, it failed again by a vote of 38-60 after support among liberal Democrats in the Senate was weakened when nuclear subsidies were added to the bill.<sup>2</sup> Paired with the 2005 vote on the Lieberman/McCain bill, however, was a second vote on a resolution proposed by Senator Jeff Bingaman of New Mexico, chairman of the Energy and Natural Resources Committee. The resolution called for legislation mandating greenhouse gas reductions in the United States that “will not significantly harm the United States economy”

<sup>1</sup> [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=108&session=1&vote=00420](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=1&vote=00420)

<sup>2</sup> [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=109&session=1&vote=00148](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=1&vote=00148)

*The June 6th Senate vote established that a majority of senators support the creation of a comprehensive U.S. greenhouse gas cap-and-trade program and clearly highlighted the full list of issues that must be resolved before a comprehensive emission reduction program can win the support of Congress.*

and “will encourage comparable action by other nations that are major trading partners and key contributors to global emissions.”<sup>3</sup> That resolution passed by voice vote after a motion to kill it was defeated by a vote of 53–44.<sup>4</sup>

While the Lieberman/McCain proposal did not receive enough support to pass after three years of debate, it did succeed in establishing that a majority of U.S. senators desired a comprehensive climate program, provided that such a program met their criteria. Together, the 2005 votes on the Lieberman/McCain proposal and the Bingaman resolution allowed advocates to identify a group of senators who might support cap-and-trade legislation if their concerns were addressed. This group consisted of senators who voted for the Bingaman resolution but against the Lieberman/McCain proposal. Based on the text of the 2005 Senate resolution, these legislators had clearly indicated two major concerns that needed resolution to draw their support:

- *Concerns about “cost containment,” or how to limit the potential cost of a cap-and-trade program without eroding its environmental effectiveness.* Lieberman/McCain had attempted to minimize program costs by creating a flexible greenhouse gas emissions trading market that would allow companies to bank and borrow emissions allowances and purchase offsets (i.e., low cost emissions reductions from outside of the regulated sectors). More specifically, the Lieberman/McCain bill would allow companies to save or bank their allowances for future compliance periods, to borrow or use early future allowances as long as they were repaid with interest, and to meet up to 15 percent of their compliance obligations with offsets. Each

<sup>3</sup> S. Amdt. 866 (2005).

<sup>4</sup> [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=109&session=1&vote=00149](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=1&vote=00149)

of these devices would help to lower compliance costs by offering companies some flexibility in meeting the emissions cap.

But many senators (especially those with major interests in coal or manufacturing) demanded more certainty about program costs and pushed for the creation of a ceiling or cap on the price of emissions allowances. This concern about the cost of a cap-and-trade program had a significant impact on legislation crafted by Senator Bingaman in 2005. The Bingaman proposal included a “safety valve,” or cap on the cost of emissions allowances. The safety valve would essentially act as a conditional carbon tax, in that once the market price of allowances exceeded the price cap, regulated entities could pay a set fee to account for their emissions rather than purchase allowances in the greenhouse gas emissions trading market. The safety valve drew fire from the environmental community because it would allow covered entities to simply pay fees rather than purchase allowances tied to real emissions reductions, undermining the environmental goals of the program. Some in the investment community were concerned that a safety valve would stifle investments in clean energy technologies. Europe was concerned that a safety valve would prevent the possibility of linking the European Union (EU) Emissions Trading System to a U.S. program without damaging the environmental integrity of the EU program. This would in essence create a barrier to establishing a truly global emissions trading market.

- *Concerns about the United States’ competitiveness in a global market.* The Bingaman resolution’s demand for “comparable action” from “major trading partners” underscored fears in the United States that China and India would gain an unfair competitive advantage in the global market if the United States capped its



greenhouse gases without meaningful action to combat climate change from other major economies. This same fear had undermined support in Congress for the Kyoto Protocol in 1997. Broad support for the Bingaman resolution sent a clear message to champions of climate legislation that concerns about the impact of a U.S. cap-and-trade program on the competitiveness of energy-intensive industries in the United States needed to be addressed.

## 1.2 The 2007–08 U.S. Congress

At the beginning of 2007, several major events occurred that greatly increased the U.S. Senate's attention to global warming. First, in the November 2006 elections, the Democratic Party took control of the Senate by a slim margin, which transferred the chairmanship of all Senate committees to Democratic members. No transfer of leadership was more dramatic than in the Senate Environmental and Public Works Committee, the committee of jurisdiction for climate legislation. Senator Boxer, one of the Senate's most liberal members, took the gavel from Senator Jim Inhofe, one of its most conservative. The 2006 elections had thus re-opened the Environment and Public Works Committee as an avenue for creating climate legislation rather than having such efforts blocked by Senator Inhofe.

In addition, a confluence of other events greatly intensified the sense of urgency among the general public for action on global warming. *An Inconvenient Truth*, the movie by former Vice President Al Gore, drew increased attention to the issue and motivated the Democrats' political base to demand action. The *Massachusetts vs. EPA* decision from the Supreme Court in April 2007 established the authority of the EPA to regulate greenhouse gases without additional Congressional

action.<sup>5</sup> Concerned about the prospect of potentially cumbersome regulations crafted by the EPA, companies began demanding a legislative solution from Congress. And the increasingly dire predictions of the consequences of warming from the scientific community raised awareness among the American public and heightened pressure on Congress to take action on climate change.

Consequently, 2007 brought an immediate new focus in Congress on designing cap-and-trade legislation. Senator Lieberman and Senator McCain once again developed a proposal with the same architecture as their previous proposals, but the new version added a long-term goal to reduce emissions by approximately 70 percent from 2005 levels by 2050.<sup>6</sup>

Senator Bingaman introduced a final version of his cap-and-trade proposal in July 2007 with Senator Arlen Specter, a moderate Republican from Pennsylvania.<sup>7</sup> The architecture of the Bingaman/Specter proposal differs slightly from the McCain/Lieberman proposal in that it would place the point of regulation on fossil fuel providers (e.g., oil and gas producers and importers). It also included a more modest environmental goal, requiring companies to return emissions to 1990 levels by 2030. Finally, the Bingaman/Specter bill attempted to address concerns about U.S. competitiveness and program costs. To address cost concerns, Bingaman and Specter continued to embrace the “safety valve” approach. Under their bill, a company could choose to pay the federal government a set “safety valve” fee of \$12 to emit a ton of greenhouse gas, rather than purchase an emissions allowance at the market price. To address fears about the loss of U.S. competitiveness, the Bingaman/Specter

<sup>5</sup> *Massachusetts vs. Environmental Protection Agency*, 549 U.S. 497 (2007).

<sup>6</sup> S. 280 (2007).

<sup>7</sup> S. 1766 (2007).

*In the November 2006 elections, the Democratic Party took control of the Senate by a slim margin, which transferred the chairmanship of all Senate committees to Democratic members and re-opened the Environment and Public Works Committee as an avenue for creating climate legislation.*

*The Lieberman/Warner proposal... rejected Senator Bingaman's "safety valve" approach, opting instead to create a Carbon Market Efficiency Board to help manage program costs.*

legislation included a new provision that would require importers of primary products from countries without emissions caps to purchase an "international allowance" at the border. The price of the allowance would be set by the U.S. emissions allowance market. Many have compared this proposal to a border tax adjustment. This provision, however, would only be triggered if the trading partners have not adopted a comparable emissions control program by 2020.

### **1.3 The Senate Environment and Public Works Committee (EPW)**

Early in 2007, the Senate EPW Committee made several small steps to begin a new dialogue on global warming legislation. Chairman Boxer conducted a series of hearings to investigate the topic, but didn't begin serious legislative efforts until Senator Lieberman and Senator John Warner of Virginia announced their plan to design a new climate bill on June 27, 2007. Their bill, America's Climate Security Act,<sup>8</sup> was introduced on October 18.

Lieberman and Warner worked with Chairman Boxer to build on the Lieberman/McCain legislation to design the new bill.

First, they tightened the emissions reduction requirement to 15 percent below 2005 levels by 2020. Second, they provide more detail on how emissions allowances would be allocated at the outset of the program. Under the new Lieberman/Warner proposal, 73 percent of the emissions allowances would be given to companies for free in the first year. The majority of these free allowances would go to large stationary sources. The program would move away from freely allocating allowances to regulated emitters to nearly a full allowance auction by 2031. The billions of dollars of new revenue that the U.S. government would generate from the auction added a new dimension to the

climate legislative debate. The Lieberman/Warner proposal included a detailed plan on how to spend this revenue on a wide range of climate-related activities, including technology programs, support for low-income communities, domestic and international programs to help people and wildlife adapt to climate change, and support for individual states. The plans for spending this pool of money captured the attention of many lobbyists hoping to secure resources for their climate-related interests.

One area of particular interest for the international community was the push by the U.S. religious and conservation communities to set aside auction revenue to increase the resilience of developing countries most vulnerable to the impacts of climate change. This international climate adaptation fund would be administered by the U.S. State Department and the U.S. Agency for International Development (USAID) and would provide approximately \$200 million in the first year of the program, based on projections of allowance prices.

The Lieberman/Warner proposal also attempted to address the Senate's two core concerns about climate legislation. On the issue of cost containment, Senator Lieberman and Senator Warner rejected Senator Bingaman's "safety valve" approach, opting instead to create a Carbon Market Efficiency Board to help manage program costs. The Carbon Board would have the power to change key market parameters if it determined that the program was causing substantial harm to the U.S. economy. The Carbon Board proposal, first offered by Senator Warner, Senator Lindsay Graham, Senator Blanche Lincoln, and Senator Mary Landrieu in July 2007,<sup>9</sup> gave the Board the authority to:

- ease restrictions on borrowing emissions allowances (including the amount that companies could borrow and the interest rates)

<sup>8</sup> S. 2191 (2007).

<sup>9</sup> S. 1866 (2007).

- increase the amount of greenhouse gas offsets allowed in the market, and/or
- increase the amount of allowances available in any year by reducing an equivalent amount of allowances in a future year's cap.

While the legislation did not include a guaranteed ceiling on the price of emissions allowances like the Bingaman/Specter proposal, the Carbon Board would allow for market intervention if the program posed unacceptable costs on the U.S. economy. On the issue of competitiveness concerns, the Lieberman/Warner proposal adopted the Bingaman/Specter “international allowance” provision with the support of key manufacturing and labor constituencies.

To further lower program costs, the original Lieberman/Warner proposal would allow companies to meet up to 15 percent of their compliance obligations with domestic offsets from the agriculture and forestry sectors. The proposal also would allow companies to meet an additional 15 percent of their obligations with allowances from other countries or regions with mandatory cap-and-trade programs, such as the EU Emissions Trading System. This would allow the U.S. emissions market to link with markets in other countries, laying the groundwork for the creation of a strong international market. But, the original Lieberman/Warner proposal did not allow companies to use emissions reductions from deforestation and degradation in developing countries comply with the program. Instead, the proposal would allocate some of the allowance auction revenue to support efforts to reduce deforestation in developing countries.

As the Lieberman/Warner proposal moved through the EPW committee, a number of new concerns arose that required attention including the following:

- *Maintaining state authority to regulate greenhouse gas emissions.* The states that had already taken action on global warming demanded the ability to continue to regulate greenhouse gas emissions, even if a national climate program were enacted. States called for the right to regulate emissions either through a cap-and-trade program or through other standards and requirements. Consequently, industry groups rejected loudly the possibility of having to face different requirements from different states throughout the country. Under heavy pressure from Chairman Boxer's home state of California, the co-sponsors included language in the legislation that would maintain a state's rights to regulate greenhouse gases even if a federal program were enacted.
- *Ensuring the credibility of carbon offsets.* Building on the Lieberman/McCain proposal, the Lieberman/Warner proposal included additional details on which types of offsets would be eligible under a climate program. These changes were a direct response to concerns about the credibility of offsets under the Kyoto Protocol's Clean Development Mechanism (CDM) and the U.S. voluntary offsets market.
- *Avoiding manipulation of the emissions trading market.* With the growing reports of scandal in the voluntary offsets markets in the United States, many members of Congress became increasingly concerned about the structure of the greenhouse gas emissions trading market and whether speculators could drive up prices for their own financial reward. The Lieberman/Warner proposal did not directly address this concern, but the EPW committee promised to do so once the proposal was under the consideration of the full Senate.

*While the legislation did not include a guaranteed ceiling on the price of emissions allowances like the Bingaman/Specter proposal, the Carbon Board would allow for market intervention if the program posed unacceptable costs on the U.S. economy.*

The bill was reported favorably out of the EPW committee by a vote of 11–8 on December 5, 2007. Although this was the first time that a comprehensive climate proposal had passed out of the EPW committee, no major controversies surfaced nor did it lead to any major bipartisan breakthroughs on key issues. All Democratic members of the committee, plus Senator Warner, voted in favor of the legislation and all Republican members of the committee, minus Senator Warner, voted in opposition.

#### 1.4 Senate Floor debate

Soon after the committee vote, Senate Majority Leader Reid informed Chairman Boxer that he would dedicate time for a debate on the Lieberman/Warner bill beginning on June 2, 2008. This provided approximately six months for the proponents of the bill to work with their colleagues to resolve the issues that had been raised in the committee debate. Negotiations commenced immediately, leading to some significant changes to the proposal that ultimately was offered on the floor. The changes were captured in a new version of the bill introduced by Chairman Boxer as a substitute amendment.<sup>10</sup> Major changes were as follows:

- The cost containment provisions were amended once again, solidifying the process by which allowances from future years could be borrowed to alleviate short-term economic harm. Instead of leaving borrowing decisions to the discretion of the Carbon Board, the Boxer substitute created a reserve of allowances borrowed from years 2031 to 2050 of the program that would be released in a second auction every year. The auction floor price would be set by the EPA at somewhere between \$22 and \$30.
- The “international allowance” requirement for importers remained in the bill, but would be active at the outset of the cap-and-trade market in 2012, instead of 2020.

- A commission would determine the proper market structure for the greenhouse gas market to prevent market gaming and manipulation.
- Carbon offsets projects were prohibited from receiving federal funding and emissions baselines from which emission reductions would be calculated would need to be updated more quickly than in previous drafts. In addition, the proposal would allow U.S. firms to account for 10 percent of their emissions by purchasing international credits for forest protection. The Boxer Amendment would also allow companies to account for 5 percent of their emissions with project-based credits, including for the first time an explicit permission to use credits from Clean Development Mechanism projects.
- The amount of funding for the international adaptation program was doubled relative to the earlier version of the proposal. Any unused portion of either of these budgets could be met by allowances from approved international cap-and-trade programs, like the European Emissions Trading System.
- A new International Clean Energy Deployment Fund was created with a small portion of revenue from auctioning allowances between 2012 and 2017. The fund would leverage private financing for the development and international deployment of technologies to support sustainable economic growth and the stabilization of greenhouse gases. Only developing countries who have made binding commitments to reduce their emissions under a future climate treaty are eligible to receive these funds.
- One percent of allowance revenue, or approximately \$180 million in the first year of the program would be set aside for international capacity building to reduce deforestation and degradation, primarily in tropical developing countries.

<sup>10</sup> S. 3036 (2008).

Unfortunately, these revisions to the Lieberman/Warner proposal happened very late in the process, leaving little time for consideration by other Senate offices or stakeholders. Many did not receive the new 491-page bill until May 26—four working days before the Senate floor debate.

When the bill went to the Senate floor for debate on June 2, senators from both parties were uncomfortable with the proposed legislation and were concerned that they didn't know the details of the bill well enough to cast a well-informed vote. In addition, some senators felt that, with heightened energy prices, it was an inappropriate time to debate a proposal that would likely increase electricity rates. These concerns intensified as opponents of the bill argued that the measure would have a devastating impact on the U.S. economy.

In addition, a new and substantial concern arose during the debate. Senator Bob Corker, a Republican from Tennessee, argued that the proposal's plan to spend trillions of dollars of allowance auction revenue was irresponsible. Rather than supporting clean technologies and other actions to combat climate change, Corker proposed redistributing the revenue to citizens by lowering taxes.

Given the unrest among even the Democratic members of the Senate, the bill appeared ready for a wide-open debate with very little certainty about the outcome. But in the end, Republican opponents of the bill blocked discussions by fighting every procedural step needed to move the debate forward. Most dramatically, the Republican leadership forced Senate staff to take up ten hours of the June 4th debate time to read aloud the 491 pages of bill text.

At this point, Majority Leader Reid indicated that he saw no way to have a constructive debate on the bill and called for a procedural vote on whether to “invoke cloture,” or close debate, on the legislation.

This vote did not produce the 60 votes needed to close the debate, failing 48–36 with six absent senators indicating support.<sup>11</sup> Reid was able to muster near unanimity among his Democratic caucus in support of the motion to end debate largely based on party loyalty.

To avoid the misperception that a “yes” vote signaled support for the Boxer amendment, ten moderate Democrats, including nine who voted to close the debate, released a letter stating that they would not have voted for the Boxer amendment unless it had been amended to address their concerns. The letter highlighted the senators' continued concerns about cost containment, the potential loss of U.S. competitiveness, the availability of offsets, the role of the states, and the fiscal responsibility of the auction.

### 1.5 Aftermath

In the aftermath, the vote and what it means for future efforts to craft climate legislation have been interpreted in many different ways. It's unlikely that the U.S. Senate will continue the debate on a mandatory climate package in 2008. But the Senate will probably consider a proposal very early in 2009, in time to demonstrate progress for the Copenhagen Climate Conference in December, where countries hope to reach agreement on a new international climate treaty. Since the June 2008 Senate debate, there have been a few notable developments:

- The ten moderate Democrats who sent the letter detailing their concerns with the Boxer amendment to Senate Majority Leader Reid have remained organized as a group, and are likely to pick up additional members as they develop proposals to address their concerns. This block of votes could control the fate of a climate bill in the next U.S. Congress.

<sup>11</sup> [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=110&session=2&vote=00145](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=2&vote=00145)

*While the Senate does not have the authority to ratify a treaty, the U.S. Constitution requires the Senate to approve by a two-thirds majority (67 votes) treaties drafted by the government's Executive Branch with other countries.*

- Senator Bingaman has reiterated his intent to push his own legislation because the Boxer amendment did not adequately address his concern about program costs.
- There are early indications that the EPW committee will no longer have exclusive jurisdiction over climate legislation. Discussion in the Senate hints at the possibility that next year's legislation will be controlled centrally by the Senate leadership, with pieces of the bill offered to interested committees and later consolidated into a cohesive package by the leadership.

#### **1.6 Status of Senate discussion of U.S. participation in a future international climate agreement**

The Senate plays a powerful role in determining whether the United States will participate in climate treaties and other international agreements. While the Senate does not have the authority to ratify a treaty, the U.S. Constitution requires the Senate to approve by a two-thirds majority (67 votes) treaties drafted by the government's Executive Branch with other countries. The United States cannot be bound by a treaty without the advice and consent of the Senate. By requiring the support of two-thirds of the Senate, the Constitution guarantees that treaties have bipartisan backing.<sup>12</sup>

The Senate may make its approval of a treaty conditional, suggest changes to the treaty text, offer its own interpretations, or make reservations or other statements that could send the United States and other nations back to the negotiating table. The Senate could also choose to take no action, leaving the treaty pending in the Senate until it's withdrawn by the president. The president may also enter into executive agreements with other countries

<sup>12</sup> The United States Senate. July 14, 2008, <http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm>

that do not require the approval of the Senate but are still binding under international law.<sup>13</sup> In fact, some experts have suggested that packaging an international climate agreement as an executive agreement rather than a treaty could increase the likelihood of U.S. participation.<sup>14</sup>

Although former U.S. President Bill Clinton never submitted the Kyoto Protocol to the Senate for its consideration, the Senate has greatly influenced the United States' positions on key issues in the international climate negotiations. At the UN climate conference in 1995, the Clinton administration signed on to the Berlin Mandate, which established a two year negotiation timeline to create a climate agreement with emissions reduction commitments for industrialized countries, but not for major emitters in the developing world.<sup>15</sup> In July 1997, before the Kyoto Protocol was finalized, the U.S. Senate unanimously passed by a 95–0 vote a resolution introduced by Senator Robert C. Byrd, a Democrat from West Virginia and Senator Chuck Hagel, a Republican from Nebraska.<sup>16</sup> The overwhelming support in the Senate for the Byrd/Hagel resolution made it clear that the Senate would not support U.S. participation in an international climate treaty that set emissions limits for the United States and other industrialized countries unless it also included “specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period.”<sup>17</sup> Even though

<sup>13</sup> The United States Senate. July 14, 2008, <http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm>

<sup>14</sup> Nigel Purvis. “Paving the Way for U.S. Climate Leadership; the Case for Executive Agreements and Climate Protection Authority” Resources for the Future. April, 2008, <http://www.rff.org/Pages/default.aspx>, July 14, 2008.

<sup>15</sup> UNFCCC. Report of the Conference of the Parties on its First Session, Held at Berlin from March 28 to April 7, 1995. FCCC/CP/1995/7/Add.1, June 6, 1995.

<sup>16</sup> S. 98 (1997).

<sup>17</sup> S. 98 (2002).

Vice President Gore signed the Kyoto Protocol in November 1998, the Clinton administration did not submit the treaty to the Senate for its approval. Since the Protocol does not include emissions reduction commitments from India and China, President Clinton knew that it would be firmly rejected by the Senate.

Several important developments led to the Byrd/Hagel resolution. First, labor unions, the coal industry and energy-intensive manufacturers raised concerns that a climate treaty without binding emission reduction commitments from rapidly growing developing countries like India and China would lead to a significant loss of jobs and cause serious harm to the U.S. economy. Second, Congress had yet to begin a serious debate on the design of a comprehensive, mandatory climate program and was not yet ready to commit to a specific emission reduction target that would be binding internationally. Third, the relationship between President Clinton, a Democrat, and the Republican-led U.S. Congress was strained. Fourth, many industry groups and senators did not feel consulted by the Clinton administration during the Berlin Mandate and Kyoto Protocol negotiation process and were angered by what they perceived as a top-down approach to crafting the climate treaty.<sup>18</sup>

### 1.7 Recent Biden/Lugar amendment

During the June 2008 Senate debate on the Boxer amendment, Senator Biden, chairman of the Senate Foreign Relations Committee, and Senator Lugar, a ranking member of the same committee, introduced a resolution (S. Res. 30, as amended SA4836) aimed to strengthen U.S. involvement in international efforts to combat climate change. The resolution calls on the United States to engage in the UN climate negotiations to

secure U.S. “participation in binding agreements, consistent with the Bali Action Plan, that...establish mitigation commitments by all countries that are major emitters of greenhouse gases consistent with the principle of common but differentiated responsibilities.”<sup>19</sup> The resolution was co-sponsored by a bipartisan group of 15 senators (13 Democrats and five Republicans), including 2008 presidential hopefuls, Senator Obama and Senator McCain.

The resolution highlights that greenhouse gas emissions from some developing countries will soon surpass those from the United States and other industrialized countries. While the resolution calls for action by all major emitters, it also acknowledges that the types of commitments from developed and developing countries may need to be different to take into account varying national circumstances.<sup>20</sup> This acknowledgement represents a significant shift in the Senate on the issue of developing country participation in a climate agreement. Whereas the Byrd/Hagel resolution demanded equal levels of emission reductions and compliance periods from developing countries, the Biden/Lugar resolution allows for some flexibility in the types of actions and commitments from developing countries, as long as they are legally binding.

A similar version of the Biden/Lugar resolution (S. Res. 312) passed the Senate Foreign Relations Committee in May 2006, with nine senators in favor of the amendment and four opposed.<sup>21</sup> Biden and Lugar had also hoped to attach a version of the resolution (S. Res. 30)<sup>22</sup> to the June 2007 Senate energy bill, which tightened auto efficiency standards and required a five-fold increase in the use of biofuels. But the amendment was never

<sup>18</sup> Darren Samuelsohn, *ClimateWire*, INTERNATIONAL NEGOTIATIONS: After long intermission, U.S. has second act on climate change (03/26/2008)

<sup>19</sup> S. 3036 (2008).

<sup>20</sup> S. 3036 (2008).

<sup>21</sup> S. 312 (2006).

<sup>22</sup> S. 30 (2007).

*Members of Congress and industry stakeholders continue to have deep concerns about how U.S. participation in a climate treaty that does not include binding commitments from China and India will impact U.S. competitiveness.*

added to the bill because Senate Democrats opted to focus the debate on other issues rather than push for a vote on the resolution.

To avoid a repeat of the conditions that led to the Byrd/Hagel resolution, Biden and Lugar also sent a letter in March 2008 to committee members sharing their plan to make international climate policy a focus of the committee in 2008. The letter noted that meeting the Bali Roadmap deadline to create a new climate treaty by the end of 2009 would be “complicated by the American election schedule and the time it will take for the new administration to establish itself and for the Senate to confirm key personnel.” The letter urged committee members to attend the international climate negotiations in 2008 and 2009, and to give the negotiations their full attention. The senators also said that they’d hold a series of hearings and briefings on international climate issues, and called on committee staff to publish a study of “issues confronting the United States in addressing climate change” by the end of 2008.

### **1.8 Implications of the Biden/Lugar amendment for the Senate debate going forward**

The climate policy debate on Capitol Hill has progressed significantly since the passage of the Byrd/Hagel resolution in 1997, and some senators have indicated greater flexibility on the level and types of action they expect from major emitters in the developing world. But members of Congress and industry stakeholders continue to have deep concerns about how U.S. participation in a climate treaty that does not include binding commitments from China and India will impact U.S. competitiveness. The growing support for the Biden/Lugar amendment reveals that the next president will be challenged to build the consensus needed in the Senate to back U.S. participation in a future climate agreement, unless the agreement includes binding emissions reduction commitments, or something perceived as comparable, from major trading partners such as China and India.



# 2 STATUS OF THE HOUSE CLIMATE DEBATE

In contrast to the Senate, the U.S. House of Representatives has a shorter history of drafting climate change legislation. Until the Democrats took control of the House in 2007, there was blanket resistance among Republican leaders to any mandatory climate proposal. The only activity had been an effort to draw co-sponsorship to the House version of Lieberman/McCain, sponsored by Representatives Wayne Gilchrist of Maryland and John Oliver of Massachusetts. At the outset of 2007, the House was largely writing on a blank slate.

The first question for the House was one of committee jurisdiction. In the regular course of business, any legislation mandating greenhouse gas emissions reductions would by its nature be given to the U.S. House Energy and Commerce Committee, under the leadership of Chairman John Dingell of Michigan and his subcommittee Chair, Rick Boucher of Virginia. Chairman Dingell has long-standing ties to the automobile industry and has substantial power and influence as one of the longest serving House members and chairman of one of the most powerful Committees in the House. Boucher, also a moderate, comes from a district in Virginia where the influence of the coal industry is strong. Both Congressmen had expressed some reluctance to supporting climate legislation in the past. Perhaps in response to this reluctance, House Speaker Pelosi in January 2007 proposed a Select Committee on Energy Independence and Global Warming under the leadership of Representative Ed Markey of Massachusetts, a well-known supporter of climate legislation, to provide a second forum for consideration.

The proposal to form a select committee created immediate political wrangling between Pelosi and Dingell. In February 2007, the two resolved their differences, with Dingell agreeing to the creation of the select committee and Pelosi acknowledging that the authority to legislate on the issue would reside with the Energy and Commerce Committee.

## 2.1 Energy and Commerce Committee

With the clear authority to legislate, Chairman Dingell and Representative Boucher have been the leaders of the House efforts on global warming. Despite promises and rumors that they would propose specific legislation, they have not yet produced any proposals for a mandatory cap-and-trade program. For most of 2007, the Committee was focused on the energy legislation moving through the U.S. Congress, and Dingell and Boucher repeatedly noted that they would not turn to climate legislation until the energy bill was resolved. Early statements were released by the two leaders expressing their intent to introduce legislation that would reduce U.S. emissions by 60–80 percent by 2050. Very few further details were offered. In June 2008, Boucher introduced legislation to accelerate the availability of carbon capture and storage technology.

Beginning in the fall of 2007, the Energy and Commerce Committee turned to the topic, but not through legislative drafting. Instead, the Committee opted to produce a series of white papers to summarize the climate program design options being considered by the committee.<sup>23</sup> The committee produced the following white papers:

- “Scope of a Cap-and-Trade Program” (October 2007). This paper concluded that (1) the United States needs to reduce its emissions by 60-80 percent by 2050; (2) the United States needs an economy-wide program to reduce emissions; and (3) a cap-and-trade program will be central to that system. The paper then considered many options for the cap-and-trade program without reaching a conclusion.
- “Competitiveness Concerns/Engaging Developing Countries” (January 2008). This paper reached no conclusions, but

<sup>23</sup> The white papers are available at [http://energycommerce.house.gov/Climate\\_Change/index.shtml](http://energycommerce.house.gov/Climate_Change/index.shtml).

evaluated three possible approaches to address competitiveness concerns and engage developing countries in climate action: (1) the Bingaman/Specter proposal to impose an international allowance requirement for energy-intensive imports from countries without comparable climate programs; (2) a proposal to replace the greenhouse gas market with performance standards for heavy industry; and (3) a proposal to create a number of less direct penalties for importers from uncapped countries and incentives for the adoption of a cap by trading partners.

- “Appropriate Roles for Different Levels of Government” (February 2008). This paper evaluated, again with no conclusions, the “key factors” for the committee to consider when deciding how to integrate existing state and regional climate programs into a federal cap-and-trade program.
- “Getting the Most Greenhouse Gas Reductions for Our Money” (May 2008). This paper assessed the universe of options that had been put forward on cost containment, again without drawing any conclusions.

The Committee has continued research and analysis for additional white papers, with a paper on carbon offsets policy expected in the near future.

## **2.2 Select Committee on Energy Independence and Global Warming**

Consistent with the agreement between Pelosi and Dingell, the Select Committee on Energy Independence and Global Warming has largely served as a venue to draw attention to, and explore the challenges created by, global warming. Since its creation, the Committee has held 45 hearings on global warming and energy.

On June 4, 2008, Select Committee Chairman Markey, who is also a member of the Energy

and Commerce Committee, released his own legislative proposal to address global warming. The legislation, termed the “Investing in Climate Action and Protection Act,” is a detailed proposal with strong similarities to the Lieberman/Warner proposal. The Markey bill would:

- cover the major sectors of the economy in the same way as the Lieberman/McCain proposal
- reduce emissions to 85 percent below 2005 levels by 2050
- auction 94 percent of allowances at program inception and 100 percent of allowances by 2020
- incorporate the Bingaman/Specter provision to require international allowances for imported primary products

The Markey bill does not include a proposal for cost containment beyond the flexibility of the emissions trading market.

## **2.3 The future of the House debate**

It is unclear how the debate on climate legislation will proceed in the House of Representatives. Chairman Dingell is likely to be the chief author of the legislation that is considered by the House. His delay in producing a first proposal makes the timing of his progress hard to predict, although there has been some indication that he and Representative Boucher may introduce climate legislation this fall. But his choice of white paper topics and discussion of the key issues in the legislative process reveal that he is on course to produce legislation that is similar to the Senate proposal and that will include new provisions to address the same challenges that were laid bare in the Senate debate.

The Senate debate and its aftermath also appear to have affected the thinking of the House leadership, in that the House might distribute the legislative

burden across several committees to create a bill that is consolidated on the floor. Key committees might include the Committee on Natural Resources, the Committee on Ways and Means, and the Committee on Agriculture. But even in that event, most observers believe that Dingell will still be the key manager of the legislation.

#### **2.4 Prospects for passing legislation prior to the 2009 Climate Conference in Copenhagen**

Ideally, the U.S. climate negotiators would come to the international conference with a climate bill that has passed the Senate and the House, and has been signed into law by the president. This would give the negotiators a clear sense of the level of emissions reductions the United States could commit to under a future international climate agreement without risking the possibility

of the Senate opposing U.S. ratification of the agreement. Based on the status of the Senate and House debate, it seems unlikely that the Congress will pass legislation prior to the December 2009 international conference in Copenhagen on climate change. The House and Senate debates, however, are likely to advance enough to allow the United States to agree to a framework that lays out key parameters for a future climate treaty at the 2009 Copenhagen Conference. The new U.S. administration will likely need additional time in 2010 to receive buy-in from Congress on key details of a future climate treaty such as the mid-term emission reduction targets for the United States. As we discussed in more detail above, a future international climate agreement will need to include binding emissions reduction commitments from all major emitters, including those in the developing world, to receive the support of the U.S. Senate.

*The U.S. House and Senate debates are likely to advance enough to allow the United States to agree to a framework that lays out key parameters for a future climate treaty at the 2009 Copenhagen Conference.*

# 3 EPA'S EVOLVING APPROACH TO GREENHOUSE GAS REGULATION

On July 11, 2008, the U.S. Environmental Protection Agency (EPA) unveiled its long awaited official response to a 2007 Supreme Court ruling on whether the agency has the authority to regulate greenhouse gas emissions. Although the Supreme Court ruled that EPA does indeed have this authority, the agency responded to the ruling by delaying any substantive action on curbing greenhouse gas emissions until the next U.S. administration takes office. The response, which controversially rejected the advice of career science and legal staff at the agency who were advocating for a more aggressive approach, ended several years of litigation and internal disputes.

## 3.1 Early Background

The legal dispute which culminated in the 2007 Supreme Court decision originated during the Clinton administration.

In 1998 and 1999, two successive EPA general counsels issued legal opinions that EPA had the authority under the Clean Air Act to regulate carbon dioxide emissions. Subsequently, in 1999, a group of 19 private organizations filed a rulemaking petition with EPA to regulate greenhouse gas emissions from new motor vehicles under the Clean Air Act. The agency, however, did not rule on the petition before President Clinton left office.

The incoming Bush administration was characterized in part by its philosophy in opposition to increased government regulation, and its increased emphasis on the costs of regulation to industry. Consistent with this perspective, EPA's new general counsel issued an opinion which disagreed with those of his predecessors about EPA's authority to regulate greenhouse gases, and in September 2003, EPA denied the rulemaking petition. In its decision, the agency ruled that the Clean Air Act does not authorize EPA to issue

mandatory regulations to address climate change. Even if it did have such authority, EPA argued that it would be unwise to do so at the time. The agency also cited scientific uncertainty about the subject, and contended that Congress, by not having approved a regulatory approach, did not intend for one to be passed.<sup>24</sup> The decision was upheld by the United States Court of Appeals for the District of Columbia, and was immediately appealed to the U.S. Supreme Court.

## 3.2 April 2007 Supreme Court Decision

The U.S. Supreme Court heard the case in November 2006, and the landmark, 5-4 decision was announced in April 2007. In *Massachusetts v. EPA*, the Court ruled that the EPA did in fact have the authority to regulate carbon dioxide (CO<sub>2</sub>) and other greenhouse gases, and that CO<sub>2</sub> fits within the Clean Air Act's definition of an air pollutant. The Court also declared that "EPA identifies nothing suggesting that Congress meant to curtail EPA's power to treat greenhouse gases as air pollutants...." and added that "under the [Clean Air] Act's clear terms, EPA can avoid promulgating regulations only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do."

## 3.3 EPA's Public Health and Welfare Endangerment Findings

In the wake of the decision, President Bush instructed the agency to work with the Departments of Transportation, Energy, and Agriculture to "take the first steps toward regulations" by cutting U.S. gas consumption over the next ten years. Additionally, EPA Administrator

<sup>24</sup> "U.S. Supreme Court Decides *Massachusetts v. EPA*," by Michael Gerrard, *American Bar Association*, <http://www.abanet.org/abapubs/globalclimate/> April 11, 2007.

Steve Johnson formed a task force to determine whether carbon dioxide emissions endangered the public's health and welfare. (A declaration that global warming harmed human welfare would trigger regulatory requirements under the Clean Air Act.) According to press reports, some in the U.S. administration supported the finding that climate change endangered both human welfare and health while others supported limiting the finding to just welfare.<sup>25</sup>

Fearing the economic consequences of greenhouse gas regulations, however, the Bush administration has avoided publicly issuing either of these findings. According to press reports, a series of interagency meetings led by the Office of Management and Budget (OMB), and including members of the National Economic Council, the Council on Environmental Quality, and Vice President Dick Cheney's staff, promoted the idea that addressing human health concerns would lead to costly regulations. Additionally, the same media coverage noted that administration officials reportedly told EPA to change calculations to play down the cost of carbon, and prohibited the agency from including a document on the benefits of emission reductions in EPA's July 2008 Advanced Notice of Proposed Rulemaking (described in more detail below).<sup>26</sup>

### 3.4 White House rejects previous EPA positions and staff recommendations

Despite the alleged pressure from political figures, EPA staff did not alter their findings. For example, toward the end of October, EPA staff warned the Administrator to not leave out health risks, arguing that to do so would create the "potential

<sup>25</sup> "EPA Won't Act on Emissions This Year," Juliet Eilperin and R. Jeffrey Smith, *The Washington Post*, p. A1, July 11, 2008; and "EPA Seeks Comment on Emission Rules, Then Discredits Effort," by Juliet Eilperin, *The Washington Post*, p. A4, July 12, 2008.

<sup>26</sup> Eilperin, July 11 and 12, 2008.

for confusion, criticism, suspicion—e.g., is EPA downplaying public health risks and/or ignoring the science of climate change, in order to avoid doing more?"<sup>27</sup> Nonetheless, Johnson opted not to address whether emissions endanger human health. Instead, in December 2007, the EPA Task Force, backed by significant scientific analysis, concluded that there was "compelling and robust" evidence that emissions endangered public welfare, and that the Administrator was "required by law" to act.

In December 2007 and early 2008, press reports indicated that administration officials continued to object to the idea of regulating greenhouse gases under the Clean Air Act. For example, reports indicate that:

- The Office of Management and Budget refused to open an e-mail from EPA's associate deputy administrator which detailed the endangerment finding.<sup>28</sup>
- EPA Administrator Johnson pointed to the passage of legislation which strengthened national fuel economy standards in December to justify a less aggressive regulatory approach under the Clean Air Act.<sup>29</sup>
- In April, President Bush publically revealed his latest thinking on the issue, contending that the Clean Air Act "was never meant to regulate global climate."<sup>30</sup>

<sup>27</sup> Juliet Eilperin and R. Jeffrey Smith. "EPA Won't Act on Emissions this Year." *The Washington Post*, July 11, 2008, [http://www.washingtonpost.com/wpdyn/content/article/2008/07/10/AR2008071003087\\_pf.html](http://www.washingtonpost.com/wpdyn/content/article/2008/07/10/AR2008071003087_pf.html).

<sup>28</sup> Juliet Eilperin, "EPA E-mail Concluded Global Warming Endangers Public Health, Senator Says" *The Washington Post*, July 25, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/24/AR2008072403423.html>.

<sup>29</sup> <http://www.epa.gov/epahome/anprfs.htm>

<sup>30</sup> "EPA Won't Act on Emissions This Year," Juliet Eilperin and R. Jeffrey Smith, *The Washington Post*, p. A1, July 11, 2008.

*The EPA Task Force, backed by significant scientific analysis, concluded that there was "compelling and robust" evidence that emissions endangered public welfare, and that the Administrator was "required by law" to act.*

### 3.5 Advanced Notice of Proposed Rulemaking (ANPR)

These internal discussions all culminated in the July 11, 2008 Advanced Notice of Proposed Rulemaking (ANPR), which seeks public comment on the feasibility of using the Clean Air Act to regulate greenhouse gas emissions. The publication of this notice laid bare the division between EPA staff and the White House—even while EPA was publishing this solicitation, Bush administration officials rejected the approach, contending that it would not be workable. Accompanying letters from OMB’s Office of Information and Regulatory Affairs and the heads of the Departments of Agriculture, Energy, Commerce, and Transportation all objected to the use of the Clean Air Act for such regulation, citing “enormous, —and we believe, insurmountable—burdens, difficulties, and costs, and likely limited benefits” of doing so.<sup>31</sup> Accordingly, OMB wrote that the EPA staff draft “cannot be considered administration policy or representative of the views of the administration.”

EPA Administrator Johnson concluded that,

...the ANPR demonstrates the Clean Air Act, an outdated law originally enacted to control regional pollutants that cause direct health effects, is ill-suited for the task of regulating global greenhouse gases. Based on the analysis to date, pursuing this course of action would inevitably result in a very complicated, time-consuming and, likely, convoluted set of regulations.<sup>32</sup>

Instead, he called for Congress to address the issue. It didn’t take long for House Republicans to respond. On July 30, Rep. Marsha Blackburn (joined by other House Republicans) introduced legislation which would prevent EPA from regulating greenhouse gases under the Clean Air Act. The bill (H.R. 6666) would change how the Act defines a pollutant, and would specifically exclude greenhouse gases from regulation. While this bill is not likely to move in a Democratic Congress, many industry groups also strongly oppose using the Clean Air Act to address climate change. In early August, the U.S. Chamber of Commerce urged Congress to enact legislation prohibiting EPA from regulating greenhouse gases under the Clean Air Act.

As a consequence of this activity, it is fair to conclude that the EPA is extremely unlikely to regulate greenhouse gases under President Bush. The Supreme Court’s ruling and work by Agency staff, however, also creates a situation in which the next President is in a position to, and may be required to, regulate greenhouse gases under the Clean Air Act. Many industry and other stakeholders fear that this approach would lead to new cumbersome and costly requirements under the Clean Air Act, and believe that Congress is in a better position than EPA staff to design a flexible and cost-effective climate program. Thus, the threat of revisions to the Clean Air Act to address climate change will likely be a key political factor driving Congress to take action in 2009 and 2010 to pass legislation to limit U.S. greenhouse gas emissions.

<sup>31</sup> “EPA Seeks Comment on Emission Rules, Then Discredits Effort,” by Juliet Eilperin, *The Washington Post*, p. A4, July 12, 2008.

<sup>32</sup> EPA, ANPR Preamble, July 11, 2008.

# 4 THE U.S. PRESIDENTIAL CANDIDATES' POSITIONS ON CLIMATE CHANGE

## 4.1 Senator John McCain

As the first section of this paper points out, Senator McCain has been a strong advocate of climate action in the Senate, sponsoring with Senator Lieberman in 2003, the first proposal for a comprehensive cap-and-trade program in the United States. For more than five years, McCain has played an important role in drawing the attention of the public, industries, and members of Congress to climate science and the urgent need to pass legislation to reduce greenhouse gas emissions. McCain held numerous hearings on climate change as chairman of the Senate Commerce Committee. As a Republican, McCain's leadership role in the U.S. climate debate is particularly notable in that he broke from Republican Party ranks by taking a radically different stance on global warming than President Bush, who focused on questioning the science and opposing a mandatory cap-and-trade program.

In May 2008, Senator McCain gave a campaign speech during which he promised to implement a cap-and-trade program that would return U.S. emissions to 2005 levels by 2012 and to 1990 levels by 2020, with the ultimate goal of a 60 percent reduction below 1990 by 2050. These emissions reduction goals are consistent with the goals in the 2007 version of McCain and Lieberman's climate legislation.

It's worth noting that the long-term emissions reduction goal McCain proposed for the United States is more ambitious than the global goal to reduce emissions by 50 percent by 2050 recently endorsed by G-8 leaders at the July 2008 G-8 summit in Japan. President Bush had long opposed calls from European and other nations for a 50 percent reduction in global emissions from 1990 levels by 2050, but began to soften his stance on this goal during the July 2007 G-8 summit in Heiligendamm, with the encouragement of German Chancellor

Angela Merkel. While the Bush administration finally agreed to the 50 percent by 2050 goal at the 2008 G-8 summit, it did so only after the reference to the 1990 base year was removed (President Bush was advocating a 2005 base year).

It's also worth noting that McCain's mid-term goal to reduce emissions to 1990 levels by 2020 falls short of the European Union's call for developed nations to reduce emissions by 25 to 40 percent below 1990 levels by 2020. During the 2007 Conference of the Parties to the UN Framework Convention on Climate Change in Bali, the Bush administration firmly rejected the EU's proposed 2020 goal, claiming that it was completely out of reach for the United States.

During his May 2008 campaign speech, Senator McCain drew a sharp distinction between his plans to work with other nations to find solutions to climate change and President Bush's lack of enthusiasm for international climate cooperation. He promised "not to shirk the mantle of leadership that the United States bears. I will not permit eight long years to pass without serious action on serious challenges. I will not accept the same dead-end of failed diplomacy that claimed Kyoto. The United States will lead and will lead with a different approach—an approach that speaks to the interests and obligations of every nation."<sup>33</sup> McCain has used his position on global warming to separate himself from President Bush and his policies and appeal to Independents and Democrats.

Senator McCain also pointed to China, India, and other emerging economies that are "increasing carbon emissions at a furious pace—and they are not receptive to international standards. Nor do they think that we in the industrialized world are in any position to preach the good news of carbon-

<sup>33</sup> Speech by Republican presidential candidate John McCain at the Vestas Training Facility in Portland, Oregon. May 12, 2008.

*As a Republican, McCain's leadership role in the U.S. climate debate is particularly notable in that he broke from Republican Party ranks by taking a radically different stance on global warming than President Bush.*

emissions control.” McCain strongly emphasized the need for global cooperation to combat climate change, stating that “[t]he United States and our friends in Europe cannot alone deal with the threat of global warming.” He made it clear that he would not support an international agreement that does not obligate fast-growing emitters such as India and China to take action. “If we are going to establish meaningful environmental protocols, then they must include the two nations that have the potential to pollute the air faster, and in greater annual volume, than any nation ever in history.”<sup>34</sup> These statements are consistent with both the Biden/Lugar resolution and the Bush administration’s calls for legally binding commitments for all major economies in the lead up to the 2008 G-8 summit and Major Economies Meeting in Japan.

In his May 2008 campaign speech, Senator McCain made it clear that he expects climate action from fast-growing emitters that are equal to those in the United States. He promised to “apply the same environmental standards to industries in China, India, and elsewhere that we apply to our own industries. And if industrializing countries seek an economic advantage by evading those standards, I would work with the European Union and other like-minded governments that plan to address the global warming problem to develop effective diplomacy, affect a transfer of technology or other means to engage those countries that decline to enact a similar cap.”

After his May 2008 campaign speech, Senator McCain was harshly criticized by conservative Members of the Republican Party for his stance on climate change. Some conservative activists are preparing to push back hard on any attempts by McCain to change the Republican policy platform. The current platform has only one paragraph on

<sup>34</sup> Speech by Republican presidential candidate John McCain at the Vestas Training Facility in Portland, Oregon. May 12, 2008.

climate change that emphasizes using “markets and technologies” to reduce emissions and re-enforces U.S. opposition to the Kyoto Protocol.<sup>35</sup>

#### 4.2 Senator Barack Obama

Senator Obama is a co-sponsor of the climate legislation introduced by Lieberman and McCain, which calls for a 60 percent reduction of emissions from 1990 levels by 2050 (roughly equivalent to a 70 percent cut from 2005 levels), and to return emissions to 1990 levels by 2020. Senator Obama also co-sponsored the Global Warming Pollution Reduction Act (S. 309), which was introduced by Senator Bernie Sanders of Vermont and Senator Boxer in January 2007. It aims to return emissions to 1990 levels by 2020, and to cut emissions by roughly 27 percent from 1990 levels by 2030, by roughly 53 percent by 2040, and by 80 percent by 2050.<sup>36</sup>

In an October 2007 campaign speech, Senator Obama reiterated his commitment to slash emissions by 80 percent by 2050 and said that he would also set interim targets, which he did not specify.<sup>37</sup> Obama also lambasted President Bush for failing to offer leadership on climate change at a September 2007 Major Economies Meeting—one of a series of climate meetings launched by the Bush administration for the 17 economies responsible for most of the world’s energy use and greenhouse gas emissions. Obama said that “for a brief moment, there was hope that maybe this conference would be different—that maybe America would finally commit to steps that nearly every scientist and expert believes we must take... Instead, the world traveled thousands of miles to Washington only to find that Washington is still miles away from the

<sup>35</sup> *The Washington Post*, Conservatives Ready to Battle McCain on Convention Platform by Michael D. Shear, p.A1 and A4. Monday, July 7, 2008.

<sup>36</sup> S. 309 (2007).

<sup>37</sup> Speech by Senator Barack Obama, *Real Leadership for a Clean Energy Future*, Portsmouth, New Hampshire, October 8, 2007.



world in its willingness to address one of the most urgent challenges of our generation.”<sup>38</sup> During the October 2007 speech, Senator Obama promised that, if elected, he would transform the United States into a leader on climate change solutions. He also said that he would reach out to leaders of the biggest carbon emitters in the developed and developing world to invite them to join a “new Global Energy Forum that will lay the foundation for the next generation of climate protocols. It will complement—and ultimately merge with—the much larger negotiation process underway at the UN to develop a post-Kyoto framework.”<sup>39</sup> Obama also pledged to work with leaders from major economies to develop “feasible emissions targets that all of us will meet.”<sup>40</sup> Like McCain, Senator Obama believes that all major emitters, including China and India, should be held to binding and enforceable commitments to reduce emissions.<sup>41</sup>

#### **4.3 How an Obama or McCain presidency would likely impact U.S. climate policy**

Both McCain and Obama have dramatically different stances on global warming than President Bush. Both senators firmly believe the consensus among science experts that climate change is a threat to people and the economy, and that U.S. action is critical to avoid dangerous impacts. They both support the adoption of a mandatory cap-and-trade program in the United States, something that President Bush has vehemently opposed throughout his eight years in office.

<sup>38</sup> Speech by Senator Barack Obama, *Real Leadership for a Clean Energy Future*, Portsmouth, New Hampshire, October 8, 2007.

<sup>39</sup> Speech by Senator Barack Obama, *Real Leadership for a Clean Energy Future*, Portsmouth, New Hampshire, October 8, 2007.

<sup>40</sup> Speech by Senator Barack Obama, *Real Leadership for a Clean Energy Future*, Portsmouth, New Hampshire, October 8, 2007.

<sup>41</sup> Remarks by Senator Barack Obama to the Chicago Council on Global Affairs, Chicago, Illinois. April 23, 2007.

While Senator Obama supports deeper cuts in U.S. emissions than Senator McCain, as a Republican and long-time leader in the Senate on global warming, some argue that McCain may be better positioned to build the bipartisan support needed in Congress for a mandatory climate program to pass. However, given the backlash McCain has recently faced from conservatives after detailing his climate policy positions in his May campaign speech, McCain may be under severe pressure to water down his plans to enact a strong cap-and-trade program in the United States.

Both senators support long-term emission reduction goals for the United States that are more aggressive than the goal to cut global emissions by 50 percent by 2050 that the Bush administration and other G-8 leaders agreed to consider and adopt—Senator Obama backs an 80 percent reduction in U.S. emissions from 1990 levels by 2050 and Senator McCain a 60 percent cut from 1990 levels by 2050. With either senator in the White House, Europe and other nations will likely experience less difficulty in solidifying this global target. But both Obama and McCain also support mid-term emission reduction goals that come nowhere near the range of the EU call for developed countries to cut emissions by 25 percent to 40 percent from 1990 levels by 2020. The Boxer amendment, recently debated by the Senate in June 2008, calls for a reduction of 15 percent below 2005 levels by 2020, and it failed. This suggests that under either an Obama or McCain administration, sharp differences between the United States and Europe on defining mid-term emissions reduction goals for developed countries are likely to continue.

Lastly, based on their backing of the Biden/Lugar resolution and statements during their presidential campaigns, it’s clear that with either Obama or McCain in the White House, the United States will continue to call for binding commitments from all major economies, including China and India.

*During the October 2007 speech, Senator Obama promised that, if elected, he would transform the United States into a leader on climate change solutions.*

# 5 CONCLUSION

It seems clear that regardless of who wins the presidency in November, climate politics in the United States will shift dramatically in 2009. An energetic push will be made for the passage of comprehensive cap-and-trade legislation. Significant emissions reduction goals will be set, and the United States will rejoin international climate negotiations with renewed vigor. Still, even with a supportive administration, the obstacles to passing cap-and-trade legislation—or to developing EPA-led greenhouse gas regulations—remain large. The fact that the four White Papers produced by the House Energy and Commerce Committee reached no conclusions is indicative of how complex the issue is—and of how difficult it will be to reach enough of a consensus to pass legislation.

As the ongoing, domestic debate over offshore drilling reveals, rising energy costs may have a significant impact on the upcoming climate policy debate. A ban on offshore drilling—which was not seriously being challenged in recent years—has, in recent weeks, been revisited due to the high price of gasoline. In fact, there now appears to be significant bipartisan support for a relaxation—if not an outright revocation—of the ban. Similarly, especially since energy costs are not expected to drop markedly anytime soon, any new greenhouse gas policies which are projected to increase energy costs substantially, will undoubtedly meet with sustained, well-funded, and vociferous opposition.

Additionally, the legislative process may stymie progress on climate legislation. Specifically, the rules of the Senate require 60 votes (as opposed to a simple majority of 51) to advance legislation over a filibuster of a determined minority. Even if, as projected, Democrats gain seats in the Senate in the November elections, it is unlikely that they will

gain enough seats to cross the 60-vote threshold. In such a scenario, united opposition could, in theory, block a cap-and-trade bill from advancing. Thus, in order to be enacted, a cap-and-trade bill must attract bipartisan support, even in a Congress with larger Democratic majorities in both chambers (as is expected). To date, as reflected in the debate over this year's Lieberman/Warner/Boxer legislation, that bipartisanship has been lacking.

Finally, on the regulatory front, the recent evolution of EPA's approach to regulating greenhouse gas emissions suggests that the development of comprehensive climate regulations will be challenging. Even under an administration that wants to regulate greenhouse gas emissions, significant questions remain about whether the Clean Air Act is the right vehicle to do so. But, fears among industry groups about the complexity and cost of adding greenhouse gas regulations to the Clean Air Act will put pressure on Congress to act quickly to design new cap-and-trade legislation to avoid a Clean Air Act approach.

Still, despite these obstacles, there is a real chance for the approval of a new, comprehensive climate policy, regardless of who is elected. A President Obama, working with a strengthened Democratic congressional majority, would be in a good position to advance his climate agenda. As one of only a limited number of congressional Republicans who have been at the forefront of the climate change debate, Senator McCain is well-positioned to convince Republican senators to support a cap-and-trade program and secure the bipartisan support needed for climate legislation to pass through Congress. In either case, the climate policy debate in the United States will be reenergized in 2009.



G | M | F OFFICES

WASHINGTON • BERLIN • BRATISLAVA • PARIS  
BRUSSELS • BELGRADE • ANKARA • BUCHAREST

[www.gmfus.org](http://www.gmfus.org)