

ISSUE BRIEF

The Shape of International Agreements: Political Economy Analysis of the Copenhagen Accord

*U.S. Global Leadership: An Initiative of the Center for Climate and
Electricity Policy*

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Resources for the Future

The Center for Climate and Electricity Policy at Resources for the Future provides a framework for policymakers and stakeholders to better understand and address one of the most complex environmental issues of our time: climate change. The center has three core objectives: to develop domestic policies that are politically and economically viable, to articulate new architectures for a global climate policy regime, and to conduct advanced research focused on the future needs of policymakers.

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The Shape of International Agreements: Political Economy Analysis of the Copenhagen Accord

Raymond J. Kopp¹

Summary

The nations of the world came together in Copenhagen in December 2009, to continue a process begun in 1992 at the Rio Summit that addresses the causes and consequences of climate change². The ultimate goal of this process begun in Rio is conference to reach an international agreement to limit global greenhouse gas (GHG) emissions to a level “that would prevent dangerous anthropogenic interference with the climate system”³, while providing the financial and technical means for the most vulnerable nations to adapt to a changed climate.

There are those who believe the Copenhagen process was less than a great success, but a step in the right direction, while others believe it to be a complete failure.. Whether one sees Copenhagen as an abject failure or a moderate success has a great deal to do with prior expectations. Those who hoped for or expected Copenhagen to produce a successor to the Kyoto Protocol were disappointed. On the other hand, others viewed Copenhagen as an opportunity to begin crafting an emissions limitation agreement that includes the world’s largest emitters and establishes funding and technology transfers to aid the adaptation of the most vulnerable nations. These people see Copenhagen as progress toward that goal.

The purpose of this essay is to provide a view of the Copenhagen negotiations and outcome from a distinctly American perspective, blending global economics with domestic U.S. politics. My

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² Copenhagen was the site for the fifteenth Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC),

³ (UNFCCC), Article 2, 1992, <http://unfccc.int/resource/docs/convkp/conveng.pdf>, Web April 2010.



premise is that the domestic politics of all the major emitting countries largely shaped the outcome of Copenhagen and the ensuing international process, with U.S. domestic politics playing a particularly large role.

I first discuss the evolution of domestic U.S. GHG policy, with particular attention to recent political developments. Next, I address the domestic events that shaped the U.S. negotiating position going into Copenhagen. I summarize what I believe was and was not achieved in Copenhagen and speculate on the process of global climate policy development in the wake of Copenhagen. I close with some remarks about likely U.S. positions in the negotiations to come.

Domestic U.S. Climate Policy—House of Representatives

The U.S. Congress has been considering policies to limit GHGs for at least two decades, but there was little to show for it until June 2009 when, under the leadership of democrats Henry Waxman and Edward Markey, the U.S. House of Representatives passed H.R. 2454, the American Clean Energy and Security Act. This comprehensive GHG legislation passed by a very narrow margin of 224 to 219. Only eight republicans supported the bill and 40 democrats opposed it. Although there is much to dislike in H.R. 2454, it does take emission limitations seriously and there is no denying its breadth and depth.

The emission reduction regulations that would emanate from H.R. 2454 would cover 85 percent of all GHG emissions in the United States. The law requires the adoption of a comprehensive, economy-wide cap-and-trade approach to GHG regulation, with caps that would lower U.S. emissions 17 percent below 2005 levels in 2020 and 83 percent below 2005 levels in 2050.

The breadth and the depth of emission reductions mean the total dollar value of the emission allowances will be very large. The U.S. Energy Information Agency (EIA) predicts that 2020 allowance prices will be \$31.70 per ton CO₂ equivalent in 2007 dollars and that the annual value of allowances in 2020 will exceed \$160 billion (2007 dollars).⁴ The bulk of the allowances is used to diminish the cost impact to consumers, to aid energy-intensive trade-exposed industries, and to support technology development and deployment.

H.R. 2454 allows up to 2 billion tons of offsets to be used system-wide, to comply with emission reduction targets—1 billion from domestic sources and one billion from international sources. If domestic sources cannot generate the full 1 billion tons, international sources can fill the gap up to an additional 500 million tons, for a maximum of 1.5 billion tons. EIA estimates 1.2 billion tons of offsets entering the U.S. market in 2020 (900 million from international sources) and 1.8 billion entering in 2030 (1.3 billion from international sources).

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⁴ Energy Information Administration/Energy Market and Economic Impacts of H.R. 2454, the ACESA of 2009.



Other significant aspects of the legislation are unlimited banking and some borrowing (allowing regulated entities to borrow up to five years in advance to meet 15 percent of their obligation). H.R. 2454 also has a mechanism to limit allowance price spikes. The mechanism, termed the *Strategic Reserve*, is a bank of allowances established by skimming a small amount of allowances off each year's allocation from 2012 to 2050. These allowances would then enter the allowance market through a minimum price auction if the price of allowances were to rise above a previously specified level.

Domestic U.S. Climate Policy—Senate

In the United States, both the House of Representatives and the Senate must pass comparable bills to enact law. The Senate produced a bill (S. 1733) similar to H.R. 2454 in the autumn of 2009, under the leadership of democratic Senators John Kerry and Barbara Boxer. However, unlike the House of Representatives, the Senate did not pass the bill. The House of Representatives can pass legislation with a simple majority, whereas the Senate cannot pass a bill without the approval of 60 percent of the 100 Senators.⁵ At the current time, no more than 40 of the 59 democratic Senators would likely to vote for S. 1733 and none of the 41 republicans have declared their support for any cap and trade based climate bill in the Senate.

Why so little support in the Senate for efforts to limit GHG emissions? Unlike the House, where most of the representatives come from very densely populated states, in the Senate, a state with a vast urban population of, say, 15 million residents gets two senators, but so does a rural state with a half million residents. Many low population rural states rely heavily on fossil fuels, predominately coal, to generate electricity. They fear curbs on GHG emissions will lead to significant energy price increases and negative impacts on local businesses and employment. In these states, where the fear of GHG regulation is high, it does not matter if the Senator is a democrat or republican; if a vote were held today, a good many senators from both parties would vote against S. 1733.

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⁵ Sixty senators must vote in favor of a motion to end debate on the particular legislation (termed a cloture vote) and then it only takes a simple majority to pass the legislation. However, without a cloture vote, debate can continue indefinitely, so effectively all legislation first requires a 60 percent cloture vote then a simple majority vote on the actual legislation.



Domestic U.S. Climate Policy—What are the Options for the United States?

PLAN A. PRESIDENT OBAMA EXERCISES LEADERSHIP AND PLAYS AN ACTIVE ROLE IN THE STALLED SENATE NEGOTIATIONS.

Recognizing that regional differences will mean some democrats are not likely to support comprehensive GHG legislation, the president can work to form a bipartisan coalition of democrats and republicans.

One legislative path forward for the president is a new comprehensive climate bill being developed by Senators John Kerry (democrat), Lindsey Graham (republican) and Joe Lieberman (independent). The trio of senators has released very little descriptive information regarding the structure of the climate legislation they would propose. They have, however, acknowledged the importance of the following activities: (a) an economy-wide price on GHG emissions, which is favored by the president; (b) strengthened incentives for nuclear power and *clean coal*,⁶ perhaps putting nuclear power on an equal footing with zero-carbon generation technologies like wind and solar; and (c) expanded domestic oil and gas exploration and extraction.

Recent interest in legislation co-sponsored by Senators Maria Cantwell (democrat) and Susan Collins (republican) provides a second path the president may take. Tipping scales at a scant 39 pages compared to the 1,500 page heft of H.R. 2454, the Cantwell–Collins legislation is considerably more straightforward and less complex than H.R. 2454. It would establish a comprehensive cap and trade program like H.R. 2454, but unlike H.R. 2454, all allowances would be auctioned and allowance trading provisions are quite restrictive. Three-quarters of the auction revenue would be distributed to legal residents based on equal per capita shares. The remaining quarter would fund a variety of research programs and help heavily impacted industries. Importantly, the legislation would have a very robust price collar, initially limiting allowance price movements to the range of \$7–21.

PLAN B. IT BECOMES TOO DIFFICULT POLITICALLY TO PASS A COMPREHENSIVE CLIMATE BILL THAT INCLUDES A PRICE ON CARBON AS ONE OF THE CORE COMPONENTS.

Many moderate senators in both parties want to pass an energy bill that would have some impact on GHGs, but would also avoid politically unacceptable increases in energy prices that would come about from a cap-and-trade policy. The Senate Energy and Natural Resources Committee has already crafted an energy bill consistent with these desires (S. 1462, “American Clean Energy Leadership Act of 2009”). This bill would be one major component of Plan B. It would, in part,

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⁶ Clean coal is often used in the U.S. to refer to coal fired electricity generation with carbon capture and storage technology in place.



significantly increase government funding to support energy research and development; establish a national Renewable Portfolio Standard for electricity generation at 15 percent of all generation capacity by 2021; establish federal authority over new transmission capacity, perhaps overriding state authority; deploy many new energy efficiency policies; and open the eastern Gulf of Mexico to oil and gas exploration and extraction. No one has yet undertaken an analysis of emissions under this bill, but there is reason to believe the legislation would have a significant impact on U.S. GHG emissions.

Another part of Plan B involves regulating transport emissions under the nation's Clean Air Act, using tailpipe standards. The U.S. Supreme Court recently ruled the Environmental Protection Agency (EPA) has the authority to regulate carbon dioxide emissions from transport under the act. EPA is promulgating regulations now.

The final component of the plan would be to develop a separate piece of legislation that would set up a cap-and-trade program for carbon dioxide emissions from just the electric power sector. Alternatively, the president could choose to use the existing authority of the Clean Air Act to regulate power plant emissions through technology standards or perhaps a form of cap-and-trade.

This piecemeal and inefficient approach is less coherent than a comprehensive cap-and-trade policy. More important, it is unclear how well Plan B would accomplish the goal of reducing emissions. However, if electric power generation were included via its own cap-and-trade program, Plan B would target the major emitting sectors and could have quite meaningful impact on U.S. emissions.

PLAN C. LARGELY CONTINUE BUSINESS AS USUAL FOR THE NEAR TERM

Plan C is the path of least political resistance and the path of least emission reduction. Because it requires little economic or political sacrifice, the energy bill of Plan B would pass into law under Plan C. Legislative action of one form or another to pre-empt the authority of the Clean Air Act to regulate carbon dioxide emissions would move forward, but is likely to be unsuccessful. Current EPA CO₂ tailpipe regulations under the Clean Air Act would advance, but it is likely to take years to develop stationary source regulations to control emissions from electric power plants.

With the energy legislation passed and the Clean Air Act used to regulate a significant portion of transport emissions, the United States would take no further substantive action on climate change in the near term.

However, President Obama has created, by executive order, the National Commission on Fiscal Responsibility and Reform, to examine the huge federal deficit. This commission is likely to make



recommendations for tax reform to address the deficit. There is a chance, perhaps slim, that GHG control policy would be recast as deficit reduction policy, where revenues from carbon taxes or auctioned allowances would be used to reduce the deficit.

Copenhagen Accord: U.S. Position Going into Copenhagen

The U.S. negotiating position at Copenhagen reflected domestic political concerns. The White House made it clear that the negotiating team must not, under any circumstances, appear to be pre-empting the U.S. Congress in setting emission reduction goals for the United States. The negotiators were free to use the reduction goals in —H.R. 2454 (17 percent below 2005 levels in 2020, and 83 percent below 2005 levels in 2050), but they could not negotiate more stringent reductions. Thus, the U.S. team did not come to Copenhagen prepared to negotiate targets more stringent than H.R. 2454.

The United States had little interest in negotiating a successor to the Kyoto Protocol⁷ – a binding agreement under international law that limits emissions to specified levels – and disinterested in progress along the Kyoto track.⁸

The U.S. negotiators did hope to influence conference delegates to abandon the Berlin Mandate, which exempts non-Annex I country parties to the UNFCCC from any responsibility to reduce GHG emissions.⁹ In its place, the United States sought an agreement requiring all countries— developed and developing, particularly countries participating in the Major Economies Forum (MEF)¹⁰—to agree to undertake a series of domestic mitigation actions. These actions, termed “nationally appropriate mitigation actions” (NAMAs), are of the countries’ own choosing.¹¹ The

⁷ There are a number of reasons why the U.S. does not support a continuation of the Kyoto agreement, but the most important reason is the absence of any mitigation commitments on the part of rapidly developing countries like China. For environmental, political, and economic reasons it is vital to U.S. interests to have rapidly developing countries begin now to reduce their emissions. A secondary, but important political issue concerns the difficulty of ratifying an international treaty such as a successor to Kyoto. Under the U.S. constitution, the United States cannot enter into any form of binding international treaty unless the agreement is first ratified by the U.S. Senate. Ratification of international treaties requires 67 senators to vote in favor. It is politically challenging to amass 60 votes in the Senate to break a filibuster and pass domestic climate legislation. Finding 67 senators to support an international agreement on climate is highly improbable.

⁸ Specifically, efforts of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP).

⁹ See <http://unfccc.int/resource/docs/cop1/07a01.pdf> Web April 2010, for the text of the Berlin Mandate.

¹⁰ The Major Economies Forum includes: Australia, Brazil, Canada, China, the European Union, France, Germany, India, Indonesia, Italy, Japan, Korea, Mexico, Russia, South Africa, the United Kingdom, and the United States. The MEF is an outgrowth of the Major Emitters Forum established by President George W Bush, See <http://www.majoreconomiesforum.org/about/descriptionpurpose.html>. Web April 2010.

¹¹ The concept of “nationally appropriate mitigation actions” (NAMAs) was first used in the final action of COP13 called the “Bali Roadmap.” Section 1(b)(ii) of the Roadmap text refers to mitigation actions by developed and developing countries calling for “Enhanced national/international action on mitigation of climate change, including, inter alia, consideration of: (ii) Nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner.”



countries would commit to these actions on the international stage and enact domestic laws to fulfill those commitments. In addition, a mutually acceptable system of monitoring, reporting, and verification (MRV) of the NAMAs would be required as part of the agreement.

As the conference in Copenhagen made obvious, a handful of nations can block any UNFCCC agreement forged among a majority of nations and reveals the dysfunctionality of the process. The United States much prefers the Major Economies Forum as the venue for collaboration and cooperation on international climate policy. Indeed, an “MEF Plus,” made more credible by the addition of another half dozen or so countries, would likely be welcomed by the U.S.

U.S. negotiators were supportive of policies to limit carbon dioxide emissions from tropical countries to deforestation and degradation (REDD policies), the establishment of a credible and efficient sectoral offset policy to accompany the Clean Development Mechanism (CDM) of the Kyoto Protocol, funds for developing countries to finance GHG mitigation and adaptation, and a robust global carbon market. Indeed, the carbon market is the primary mechanism by which funds from the U.S. private sector would flow to developing countries for mitigation efforts.

The Copenhagen Accord: What Went Well and Poorly in Copenhagen?

From the U.S. perspective, Copenhagen produced many good results. Perhaps the most important outcome embodied in the Copenhagen Accord¹² was the agreement hammered out by the United States and the BASIC countries (Brazil, South Africa, India, and China) to develop and articulate NAMAs and enter them into a registry. The final agreement also included some MRV language. While the actions contained in the registry at the current time are not enough to solve the climate problem, they are a step forward.¹³

Another positive outcome was an agreement to strive to limit the maximum mean global temperature increase to two degrees Celsius above pre-industrial levels. This is a long-term goal and to reach it, significant pledges of near and longer-term finance for mitigation and adaptation were made, even approaching the lower end of what is generally believed to be needed. Pledged near-term finance (2010–2012) amounted to \$30 billion while longer-term pledges (2012–2020) were \$100 billion.

Section 5 of the “Copenhagen Accord,” the product of COP15, contains the agreement that “Non-Annex I Parties to the Convention will implement mitigation actions, including those to be submitted to the secretariat by non-Annex I Parties in the format given in Appendix II by 31 January 2010, for compilation in an INF document, consistent with Article 4.1 and Article 4.7 and in the context of sustainable development.” These mitigation actions referenced in the Accord are the NAMAs of the Bali Roadmap and the posting of the NAMAs in Appendix II of the Accord and the further compilation is considered the registry of NAMAs.

¹² Text of the Copenhagen Accord can found at <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf>. Web, April 2010.

¹³ Several websites are tracking these submissions. See for example, <http://www.wri.org/publication/comparability-of-annexi-emission-reduction-pledges/chart> and <http://www.usclimatenetwork.org/policy/copenhagen-accord-commitments>



On the negative side of the ledger, six countries (out of the 190+ participating in the negotiations) rejected the accord. By this action, these countries—Sudan, Venezuela, Bolivia, Nicaragua, Cuba, and Tuvalu—prevented it from being adopted as an official decision of the Conference of the Parties (COP). Those parties who agreed to the accord could only officially “take note.” It is not entirely clear what the meaning and implication of “take note” is, but it is clear the Accord is not an official decision of the COP and therefore lacking official status it is difficult to know how to make further progress under the Accord, within the context of the UNFCCC.

Perhaps more worrisome, the negotiations almost certainly would have failed without direct intervention from heads of state. Ministers and representatives of the various countries failed to make any progress during the year in advance of the COP and were at loggerheads during the COP before the heads of state arrived. This lack of negotiating progress at the substantive and technical level pursued by career diplomats suggests dysfunctionality within the UNFCCC/COP process.

From a U.S. perspective, key elements were missing from the text. In particular, resistance from China blocked the addition of language requiring an 80 percent emission reduction target for developed countries by 2050 and a 50% global reduction by 2050. Moreover, developing countries were unwilling to make the outcomes (NAMAs) legally binding on themselves and it is unclear whether they would ever do so.

Several discussions moved forward without having text adopted, including negotiations on forestry, technology, adaptation, and finance. These tracts needed more time and high-level engagement to be completed. Forestry seemed to move the furthest along. The papers on technology and intellectual property issues still need more development and thought and the text on the Copenhagen Green Climate Fund¹⁴ needs a good deal more elaboration prior to the sixteenth Conference of the Parties COP-16 in Cancun, Mexico December 2010.

International Negotiations Post-Copenhagen

Copenhagen marks a substantial shift in the dynamics regarding the development of global climate policy and a good deal of that shift seems due to the renewed presence of the United States in international negotiations. Because of Copenhagen, global policy development has moved further away from a Kyoto-like agreement, not closer. Copenhagen has perhaps signaled a move further from the U.N. process that involves more than 190 nations and closer to the model used by the MEF. Certainly, this is the desire of the U.S.; however, it remains to be seen whether

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¹⁴ “We decide that the Copenhagen Green Climate Fund shall be established as an operating entity of the financial mechanism of the Convention to support projects, programme, policies and other activities in developing countries related to mitigation including REDD-plus, adaptation, capacity building, technology development and transfer.” Article 10 of the Copenhagen Accord.



the BASIC countries will agree to this radical shift in negotiating venue. Regardless, it seems almost certain that issues such as CDM, sectoral offsets, REDD, adaptation, and finance will remain within the UNFCCC negotiating structure, because they directly concern developing countries and these countries have no desire to abandon the UN process.

The negotiating posture in Copenhagen of the U.S. and some extent the European Union as well makes clear that it is not possible to achieve the goal of a comprehensive, legally binding agreement, such as the Kyoto Protocol, which sets emission reduction targets for developed countries while requiring no action on the part of major developing economies. What is achievable is a process of bottom-up pledge and review, in which the major developed and developing countries agree to take domestic actions to limit their emissions, agree to some form of MRV, review these actions after a suitable period of time to see if everyone is abiding by their pledges, then pledge again. Pledge and review is not as elegant as Kyoto, but it is much more practical.

Although the accord does include language that sets an aspirational goal limiting emissions to two degrees Celsius, one doubts whether anyone with a sense of politics finds that fact comforting. The GHG concentration at which the earth's atmosphere will eventually stabilize (and therefore the temperature rise that will be achieved) is dependent upon the actions all countries take now and over the next few decades. Those policies will be determined by the messy business of politics and the reality of economics, they will not necessarily align with science based goals consistent with climate protection.

As the major economies, which are also the major emitters, take the lead in forging agreements, possibly outside the realm of the UNFCCC, they may overlook the interests of poor nations that must adapt to climate change. The major economies in international negotiations are reasonably well developed and should have little trouble adapting. They are concerned about their emissions. Once the major economies take their mitigation negotiations out of the UNFCCC, the poor countries who will suffer the most from climate impacts might end up talking to themselves about adaptation.

If the United States does not pass comprehensive legislation establishing a domestic cap-and-trade program that admits international offsets, a broad and deep global carbon market may fail to materialize. Absent such a market, the amount of wealth that would be transferred from the north to the south would be small and would get smaller over time. Without private sector money flowing to developing countries to purchase offsets, the transfer of wealth would have to come from government tax revenues. In the United States, and I expect elsewhere, it will be a very difficult political challenge to get these flows up to the levels needed and even more difficult to maintain those flows over time.



Long-term funding for adaptation will be particularly difficult to amass. Although mitigation lends itself to a carbon market, there is not a private market analog for adaptation. Many adaptation projects look to the financier as straightforward economic development projects, where the risk tends to be high and rate of return low. Without private capital interest in these projects, poor countries will have to rely on highly uncertain government funds from developed countries.

U.S. Negotiating Position Post-Copenhagen

If, as I believe, Copenhagen signals a very different process for reaching global climate agreements, the roles of the major economies will grow and the United States will have more opportunity to exercise leadership. Domestic climate policy and politics will form the proper foundation for foreign policy with respect to climate change. The Clinton administration let the formulation of climate foreign policy precede the development of domestic climate policy. Those actions angered the U.S. Senate and doomed the Kyoto Protocol in the United States. The Obama administration has taken that lesson.

The U.S. negotiating stance going forward can be summed up with a few short sentences. The United States will attempt to establish the MEF as the venue for future mitigation agreement negotiations and will seek to establish pledge and review of NAMAs by all MEF members with suitably strong MRV requirements as the general form of the agreement. The United States will not support the Kyoto track within the UNFCCC. Mitigation NAMAs for the United States will be identical to those passed by the U.S. Congress (whatever those actions might be). Because the U.S. NAMAs will be written into domestic law, the United States will hold these to be legally binding on their own and therefore not necessary to be included in a treaty; however, the United States would not block such a treaty should one be developed. If the U.S. Congress passes cap-and-trade legislation with international offsets, the United States will be able to deliver funds to developing countries for mitigation. The United States will support REDD and sectoral offsets. If domestic cap-and-trade legislation with international offsets is passed, REDD will be high on the negotiating priority list.

