



Paris Agreement Sets the Stage for Global Greenhouse Gas Emission Reductions

On December 12, 2015, 195 countries adopted the first global agreement addressing climate change. The Paris Agreement was adopted following two weeks of negotiations during the 21st Conference of the Parties (“COP21”) to the United Nations Framework Convention on Climate Change (“UNFCCC”). The Agreement marks the first time that developed and developing countries have joined together to address what the Parties consider “an urgent and potentially irreversible threat to human societies.”¹

The Agreement’s goals are lofty. First, the Agreement seeks to limit the increase of the global average temperature to well below 2°C over pre-industrial levels.² The Parties also committed to “pursue efforts” to limit warming to only 1.5°C above pre-industrial levels.³ Second, each Party aims to reach peak greenhouse gas emissions as soon as possible.⁴ Finally, the Agreement endeavors to reach “net zero” emissions by 2050, taking into account the balance of anthropogenic emissions by sources and greenhouse gas removals by sinks, such as forests.⁵

Substance of the Agreement

Under the Paris Agreement, each individual country will submit an Intended Nationally Determined

Contribution (“INDC”), or an emissions pledge it intends to achieve based on its analysis of what is feasible. INDCs are not legally binding, and there are no penalties for a country that fails to meet its pledged emissions target. INDCs are supposed to represent a country’s “highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”⁶ The INDCs will be communicated by each Party through a submission portal and will be published online by the United Nations Framework Convention on Climate Change.

One hundred and eighty countries have already submitted INDCs for the first cycle beginning in 2020. Developed countries will undertake absolute emissions reduction targets, while developing countries are encouraged to move to absolute targets over time. Since these pledges are currently not enough to keep warming below 2°C, the Agreement establishes a ratcheting mechanism where each country must review its pledge every five years, starting in 2020, to determine if it can achieve a more stringent emissions pledge. While countries will not be required to state a new goal, there will be pressure to submit a new, more stringent emissions pledge. The ratcheting mechanism was a point of contention because

large, developing countries did not want a system that would pressure them to establish more stringent emissions targets within the next decade. The United States was a proponent of the ratcheting mechanism and argued that as a nation starts down the path of reducing carbon emissions and expanding renewable energy, the process becomes easier and nations can reach targets more quickly than expected.

The Agreement also creates a “stocktake” event that will first occur in 2023 and every five years thereafter. At this meeting, the parties to the Agreement will assess collective progress toward the Agreement’s long-term goals. The stocktake will help determine whether the world needs to do more to address climate change. At these meetings, attendees should consider “mitigation, adaptation, and the means of implementation and support.”⁷ The dialogue and outcomes from these stocktake meetings will then help inform countries as they review their pledges every five years under the ratcheting mechanism. While the first stocktake is not until 2023, the Agreement calls for a “facilitative dialogue” to convene in 2018 to assess progress toward long-term climate goals.

Shifting Global Approach

The Paris Agreement potentially represents a shift in the global approach to address climate change. Unlike the 1997 Kyoto Protocol and subsequent Doha Amendment, the Paris Agreement does not specify quantified reductions. Furthermore, unlike the Kyoto Protocol, the Paris Agreement does not focus on emissions targets only for specified developed nations. Instead, the Agreement employs transparency through emissions reporting as a basis for creating accountability and pressure on developed and developing nations. Thus, public recordkeeping and diplomatic considerations are the incentives for nations to meet their INDC commitments. The shift away from legally binding commitments reflects the reality that nation-level policies are likely to be the most effective mechanism for implementing emissions-reducing measures on a global scale.

The Paris Agreement also signals a shift in U.S. participation and leadership on global climate change. During negotiations, the U.S. joined a loose alliance known as the “[High-Ambition Coalition](#)” with the EU, Latin American countries, and least-developed nations, which shifted traditional

negotiation positions of developing countries like China and India. The result of this change in U.S. policy was an increase in the coalition’s negotiating power, which led to an agreement that commits both developed and developing nations to significant emissions reductions. Furthermore, [U.S. local, private sector, and citizen action have augmented](#) federal policy supporting climate action. In addition to corporate support voiced through signing the White House’s American Business Act on Climate Pledge, 117 U.S. mayors have signed the compact of mayors pledge, and seven states have signed the Under-2 MOU, which commits states to cut greenhouse gas emissions 80 to 95 percent below 1990 levels and other actions. Similarly, 311 colleges and universities have joined the American Campuses Act on Climate Pledge to support climate action.

Transparency and Trading

The United States argued that the Paris Agreement needed a strong transparency mechanism, like an outside agency, to track each nation’s progress toward its INDC. Developing countries like China and India did not want a formal, third-party oversight system. Article 13 calls for a transparency system that will be implemented in a “facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties.” The specific reporting and monitoring measures have yet to be determined, although the Agreement provides that parties should regularly supply a national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases and information necessary to track progress in achieving their INDC.

Prior to the Paris Agreement, the Copenhagen and Cancun agreements established an accountability mechanism based on countries reporting emissions, reduction measures, and estimates of ability to achieve national targets. The mechanism includes an independent review of country reports and a public review of the reports. Under this system, developed and developing nations receive differential treatment.⁸ The Paris Agreement bolsters this mechanism by requiring, among other things, an emissions inventory every two years that meets the Panel on Climate Change greenhouse gas emissions reporting guidelines and uses a common accounting framework. Under the Agreement, the distinction between

developed and developing nations remains, but the transparency mechanisms are meant to apply to both.

While it does not require any form of carbon trading, the Paris Agreement embraces the idea of voluntary carbon trading by allowing countries to pursue cooperative approaches and to use “internationally transferred mitigation outcomes” (“ITMOs”) to implement their INDCs. ITMOs are a new category of carbon assets that will require significant efforts to create standards that facilitate trade.

Legal Status of the Agreement

The Agreement has both binding and nonbinding provisions. The binding provisions are mostly procedural and include commitments to (i) submit an INDC, (ii) submit an updated INDC every five years, (iii) demonstrate a progression in subsequent INDCs, (iv) pursue domestic measures to achieve INDCs, and (v) submit emissions inventories and information necessary to achieve INDCs.⁹ The actual emissions reduction targets, however, are not binding. Further, the Agreement does not regulate private entities directly; private entities will be subject to the regulatory schemes of the individual Parties.

The Agreement will enter into force after at least 55 Parties representing at least an estimated 55 percent of total global greenhouse gas emissions have ratified, accepted, approved, or acceded to the Agreement.¹⁰ Each Party has its own methods for formally concluding the treaty. The estimated percentages of global greenhouse gas emissions for each Party are collected and tracked by the UNFCCC.

The Obama administration has taken the position that the Agreement is not a treaty requiring U.S. Senate approval, primarily on the grounds that most provisions of the Agreement are not legally binding or are already authorized by existing law. Republicans currently have a majority in the Senate, making it unlikely that Senate approval could be obtained if necessary. It seems unlikely that Congress will commence a formal attack, such as a lawsuit, with regard to the Agreement’s legal status. The Obama administration is therefore expected to implement the Agreement during the remainder of the President’s term. Following the 2016 election, however, the new administration may choose to withdraw from, or otherwise curtail implementation of, the Agreement.

Issues Going Forward

In addition to lacking authority to legally bind nations to their emissions reduction commitments, the Paris Agreement faces a number of challenges. First, the estimated aggregate greenhouse gas emissions levels resulting from the current INDCs do not reach the goal of limiting warming to 2°C, let alone 1.5°C. While more than [150 INDCs from 180 countries](#), accounting for more than 90 percent of global emissions, have been submitted, [current pledges and INDCs are estimated to contain warming only to 2.4 to 2.7°C](#). To bridge the gap between the current INDC and pledge warming projections and the Agreement’s 2°C goal, increasingly expensive emissions reduction pathways will need to be employed, and further commitments will need to be made and fulfilled.

Despite language in the Agreement’s Preamble committing developed nations to provide funding for climate adaptation, the Agreement does not address how these nations will distribute the burden of mobilizing \$100 billion per year to support climate adaption. The result, if achieved, will likely be a combination of private and public funding sources, but whether nations like China and India will join the U.S., EU, Canada, and Japan in “mobilizing” sources seems unlikely. In 2014, the [estimated amount of money mobilized for climate finance was \\$62 billion](#), up from \$52 billion in 2013. Thus, there remains a [\\$30 billion gap despite \\$7 billion in additional commitments](#) made by the U.S., Canada, and Japan in 2015. Furthermore, how the financing will be distributed remains an open question, as adaptation projects needed by the most vulnerable nations do not generally provide the same return on investment as do renewable energy projects.

Ultimately, the greatest challenge facing the Paris Agreement may be its vulnerability to nation-level politics. For example, despite the European Union’s past commitments to reduce its greenhouse gas emissions by 40 percent by 2010 compared to 1990 levels, a number of eastern European countries remain very dependent on fossil fuel sources. Furthermore, on December 16, 2015, the European Council decided, against the European Commission’s proposal, to entirely [remove the greenhouse gas methane from the National Emissions Ceilings Directive](#), which sets limits on pollutants to be emitted from each member country.

In the U.S., reactions from industry following adoption of the Agreement have been mixed. [Many American corporations have pledged their support for the Agreement](#) and declared their intent to help implement it, including Coca-Cola Enterprises, Cisco, Johnson & Johnson, The Kellogg Company, Mars Inc., Microsoft, and Sprint. Various United States cities have also joined the pledge in support of the Agreement. On the other hand, the United States Chamber of Commerce [issued a statement](#) pointing out that the Agreement leaves many implementation issues unresolved. [Technical experts, too, noted](#) that many of the technological advances necessary to achieve the targets are not yet available. In addition, the Clean Power Plan is currently being challenged by industry members and various states on several grounds, including that the United States Environmental Protection Agency lacks authority to adopt the Plan, the Plan imposes unachievable obligations, and the Plan will have a devastating impact on the energy industry.¹¹ Similar challenges can be expected with regard to other regulatory efforts, meaning implementation of the rules could be delayed or halted altogether.

Reactions from Congress have largely been split along party lines, with most Republicans expressing concerns about the legality and implications of the Agreement. For example, Senators John Barrasso (R) and Jim Inhofe (R) [sent a letter to the President](#), urging him to submit the Agreement for Senate review. Various senators also introduced a resolution stating that the President should submit the Agreement to the Senate for review and approval (it has not passed).¹² In contrast, a group of 10 Democratic senators [stated strong support for the President's actions](#) regarding climate change while attending the COP21 event.

U.S. INDC Pledge and Interaction with Clean Power Plan and Climate Action Plan

The U.S. submitted to UNFCCC an [economy-wide target of reducing greenhouse gas emissions](#) by 26 to 28 percent below 2005 levels by 2025. By comparison, [European Union member states agreed](#) to a 40 percent reduction below 1990 levels by 2030. [China pledged to lower carbon dioxide emissions](#) per unit of GDP by 60 to 65 percent below 2005 levels by 2030, and [Brazil committed to reducing greenhouse gas emissions](#) to 37 percent below 2005 levels by 2025.

Existing or forthcoming laws and regulations will already reduce U.S.-based greenhouse gas emissions to some extent. For example, it is estimated that the Clean Power Plan,¹³ which [aims to reduce carbon dioxide emissions from power plants](#), will decrease total U.S. greenhouse gas emissions to 7.3 percent below 2005 levels by 2025. In addition, the United States Environmental Protection Agency has proposed a rule for “Phase 2” of its greenhouse gas emissions and [fuel efficiency standards for medium- and heavy-duty vehicles](#). The agency has also targeted methane emissions reductions, including through a proposed rule that would apply to [municipal solid waste landfills](#), and a rule that would lower methane emissions associated with [oil and gas operations](#). The Obama administration is expected to continue to push for other regulatory developments consistent with the [President's Climate Action Plan](#) throughout the remainder of his term.

Developing Countries and Climate Change Loss and Damage

The Paris Agreement requires developed countries to provide financial support to developing countries to help them adopt clean energy and adapt to climate impacts. The developed countries have set a nonbinding goal under which they have pledged to provide \$100 billion per year to developing countries in public and private investment by 2020. The Agreement does not provide a mechanism to ensure that this goal is met.

Climate-vulnerable countries wanted the Paris Agreement to address loss and damage caused by climate change. Article 8 recognizes the “loss and damage associated with the adverse effects of climate change” and lists ways that developed countries could help these climate-vulnerable countries. However, the Agreement does not provide any basis for liability or compensation for damage caused by climate change.

Conclusion

The Paris Agreement is filled with ambitious goals for achieving deep reductions in global greenhouse gas emissions over the rest of the century. Whether those goals ultimately are achieved is left to the vagaries of nation-level policies.

The Paris Agreement seeks to influence the direction of those nation-level policies with transparent accounting and publication of each country's progress in reducing emissions. The effectiveness of such mechanisms will likely depend on diversified support from both developed and developing nations in the coming years.

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Endnotes

- 1 [Paris Agreement Preamble](#), Dec. 12, 2015.
- 2 *Id.* art. 2.
- 3 *Id.*
- 4 *Id.* art. 4.
- 5 *Id.*
- 6 *Id.*
- 7 *Id.* art. 14
- 8 *Id.* art. 13.
- 9 *Id.* art. 3, 4, 13.
- 10 *Id.* art. 21.
- 11 [West Virginia v. EPA](#), No. 15-1363 (D.C. Circuit filed Oct. 29, 2015).
- 12 S. Con. Res. 25, 114th Cong. (introduced No. 19, 2015).
- 13 Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule, 80 Fed. Reg. 64,662 (Oct. 23, 2015).