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A Green Light for the American Climate Discussion?[1]

Warner ten Kate, May 2008

Introduction

The United States is the most important actor in the current international climate discussion that reached an initial peak at the Bali-summit in December 2007 by drawing a roadmap for negotiations to the end of 2009. Although the European Union and its member states entered the Bali Summit discussions with ambitious climate targets from the 'green package', the joint opposition of developing countries and the United States proved insurmountable. It was therefore not possible for the European Union to establish these targets as firm international commitments. Only in the last hours of the conference, after being publicly reprimanded by delegate Kevin Conrad from Papua New Guinea, was the United States willing to continue the negotiations for a successor to the Kyoto Protocol, which will end in 2012.

International leadership without Washington?

Kevin Conrad, together with the rest of the conference, accused the United States of lacking the leadership it had promised to show in the run-up to Bali. The US, as the largest consumer of energy in the world, and as *de facto* leader of the industrialized nations, is indispensable in setting a good example, and in such to convince the large developing economies such as China and India to contribute in mitigating climate change. Although on the international level the leadership of Washington has been sorely missed for several years, an increasingly vocal call for more leadership is originating from the national level. The autonomous governments of the American states are developing a number of climate initiatives, which they seek to couple with international initiatives, particularly the European Emission Trading Scheme (ETS).

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[1] This article is a translation from the original article in Dutch: *'Lichten op groen in de Amerikaanse Klimaatdiscussie?'* Internationale Spectator, vol. 62, nr. 5 (The Hague 2008) 291 – 196. Available on: www.clingednael.nl/ciep A more elaborate Briefing Paper on the subject will be published in July 2008.

In the run-up to the international climate conference in Bali, the *International Carbon Action Partnership* (ICAP) was launched on October 29, 2007. Apart from several member states of the European Union, together with Norway, New Zealand, and Canadian Provinces, sixteen individual states from the United States joined the partnership.[2] ICAP provides a platform for the exchange of expertise in the field of emission trading systems which would, in the long term, enable these systems to be coupled. ICAP thus wants to contribute to the Bali-road map, in order to facilitate the creation of a global emission trading system.[3]

The Dutch minister of European Affairs, Frans Timmermans, called the signing of ICAP a milestone: *"For the first time we have been able to establish sounds commitments across the Atlantic. You don't need 'Washington' to make substantial agreements with the American States."*[4] Although it is clear that it is essential to keep the United States involved in the international climate dialogue at all possible governmental levels, the minister was wrong when he declared that binding climate agreements can be made without 'Washington'.

The debate in the US on how to address the consequences of their own energy use on the global climate, and the measures that have to be taken to counter these consequences, is being waged at various levels. Although the Bush government has acted as a lightning rod for the lack of American leadership over the past few years, more than just a new 'green' government is needed to develop a climate policy that is broadly supported by the American population. In the United States, all sectors of society – from the general public, academia and industry – at various political levels should give the green light to enable the US government to establish effective leadership in the international climate dialogue.

Climate awareness in the United States

During the past few years in the United States, climate change has received an ever more prominent place on the national agenda. In addition to the 'traditional' climate lobby from environmental organizations, other interest groups are giving attention to the consequences of climatic change and demand action from the federal government. Al Gore's documentary, *An Inconvenient Truth*, that won an Oscar and a Nobel Peace Prize, serves as a showcase that firmly put climate change on the political agenda (not only in the United States). Authoritative voices are also being heard from military circles, that strongly associate US national security with climate change mitigation.[5] This security debate is a direct consequence of hurricane *Katrina* which, apart from the destruction of important energy infrastructure, also resulted in a large wave of civilian refugees.

Additionally, industrial parties play an ever-increasing role in efforts to push the federal government to introduce an economy-wide emission trading scheme. The *United States Climate Action Partnership* (US-CAP) is supported by large car manufacturers, energy suppliers, and NGO's alike – a cooperation that would have been unthinkable a mere five years ago.[6] The private parties in the US-CAP are

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[2] Members of ICAP are: Germany, Portugal, Britain, France, Netherlands, Norway, Greece, Ireland, New-Zealand, the European Commission; the American states of Arizona, California, New Mexico, Oregon, Washington, Maine, Maryland, Massachusetts, New Jersey, New York, and the Canadian provinces of British Columbia and Manitoba.

[3] *'International Climate Action Partnership Political Declaration'*, Lisbon, October 29, 2007. Available on: www.icapcarbonaction.com/docs/icap_declaration.pdf.

[4] *'EU wil emissiehandelsmarkt integreren met Amerika, Canada en Australië'*, in: *Energeia*, October 29, 2007.

[5] *'National security and the threat of climate change'* Alexandria: CNA corporation, 2007, http://www.securityandclimate.cna.org/.

[6] See: www.us-cap.org

bound by a common understanding that an emission trading system will be inevitable in the long run, and that a fractured system in the US would be detrimental to the economy.

However, the biggest turn-around came when the former CEO of Exxon Mobil, Lee Raymond, who last year as Chairman of the *National Petroleum Council* stated that action on climate change (via an international emission trade system) was essential to the future of American energy security. For many years, Mr. Raymond and Exxon Mobil were known for their scepticism towards climate change, and were often accused of purposefully derailing climate change discussions. A change of heart originating from this camp is indicative of a shift in the national discussion in the United States for positive action to reduce greenhouse gas emissions.

Bottom-up: climate initiatives from local and state levels

Apart from the increased pressure on the federal government in Washington, it appears that local authorities, counties, cities and states, are under pressure from public opinion to take action wherever possible. As early as 1989, the states of Oregon and Vermont set greenhouse gas emission reduction targets. Currently, no less than 170 local authorities and 35 states participate in *Cities for Climate Protection*, in which they agreed to reduce their emissions. Since February 2005, nearly 800 mayors signed the *U.S. Conference of Mayors Climate Protection Agreement*, in this agreement they collectively agreed to reduce their cities greenhouse gas emissions by 7% from 1990 levels in 2012.[7] Although these initiatives have proved to be little more than hollow rhetoric in the past, they do illustrate that there is a clear political undercurrent within the United States of local climate initiatives that are broadly supported.

The most visible advocate of climate policy at the U.S. state level is governor Arnold Schwarzenegger of California. After launching comprehensive climate legislation in his state, he announced that the climate policies of California should be coupled to other regional and international initiatives, such as the European ETS. However, the primary focus of the Schwarzenegger initiative was on the development of a regional emission trading scheme, since part of the CO_2-emissions from other states are a direct consequence of energy consumption in California (notably through the import of electricity from neighbouring states). In February 2007 these Californian efforts culminated in the *Western Climate Initiative* (WCI), which consists of American West Coast states, as well as several Canadian provinces and Mexican states.[8] The WCI also looks to establish links with a regional East Coast initiative launched in 2003, the *Regional Greenhouse Gas Initiative* (RGGI). RGGI is an regional endeavour initiated by state governments to unite ten states within one emission trading scheme, it also has neighbouring Canadian provinces as observers.[9]

Both the WCI and RGGI were initiated due to a lack of a federal initiative to mitigate climate change; this was also the case with the most recently launched initiative of the *Midwestern Governors Association* (MGA): titled the *Midwestern Greenhouse Gas Accord* (MGGA).[10] This accord should also lead to a regional emission trading scheme involving ten states in the Midwest in 2010 (see fig.1). If all these regional initiatives to establish emission trading schemes will come to fruition, approximately 37% of the United States' CO_2 emissions (in 2004) would be capped.

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[7] These are the Kyoto emission reduction targets: www. usmayors.org/climateprotection/agreement.htm.

[8] See: www.westernclimateinitiative.org/Index.cfm.

[9] See: www.rggi.org/index.htm.

[10] See: www.midwesterngovernors.org/Publications/Green-house%20gas%20accord_Layout%201

Although, two of the three initiatives are still in their infancy – only the RGGI is in a more advanced stage of development – it is quite clear that their designs and future goals are considerably different. This is a consequence of the different levels of ambition between the regions and the different composition of energy mixes within the regions.[11] These differences will makes it difficult to couple the regional emission trading systems in the future. However, it does mean that trading schemes are tailored to the region's specific energy situations, and that they will therefore be more acceptable to local politicians and industry lobbies. While the inter-state discussions on the designs of the emission trading systems continue, it is difficult to imagine that 37% of the total American CO_2 emissions will be capped under regional emission schemes within the foreseeable future. Two legal obstacles are a cause for uncertainty on the prospects for the regional emission trading initiatives to actually start: *market interference* and *international commitments.*

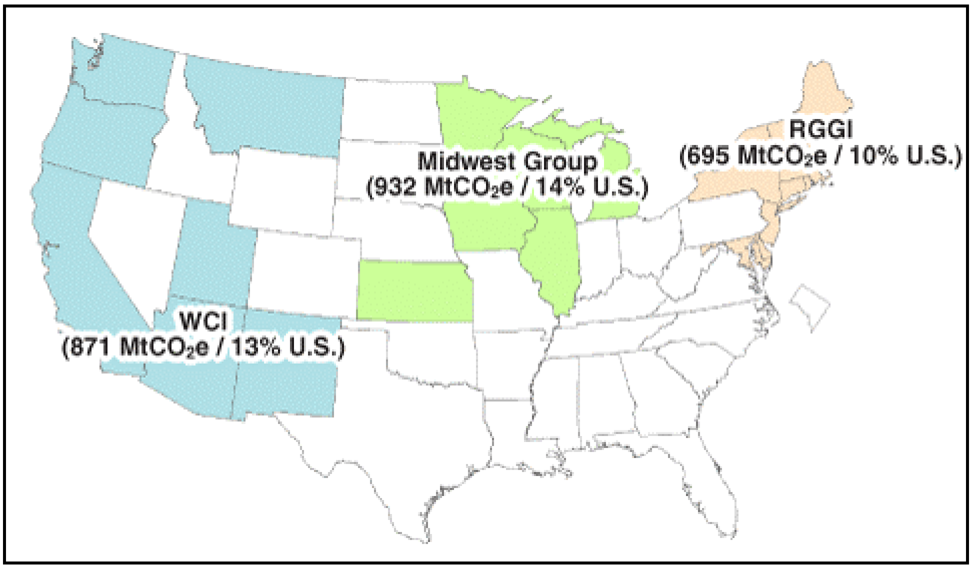

Figure 1: Regional Emission Trading Schemes in the United States[12]

The creation of different market mechanisms within the United States is risky, for it can lead to internal market obstacles, which the federal government can use to obstruct the regional initiatives. A case in point is the recent rejection of California's proposals to strengthen its automobile emission standards. California has a unique legal position within the United States, in that it may set its own emission standards, after which other states may apply these standards as well. Currently 16 states (encompassing nearly half the American population) have indicated that they will adopt the Californian standards, provided that California will receive the necessary legal waiver from the federal *Environmental Protection Agency* (EPA). The EPA has refused this waiver on grounds of interference with the internal market and a lack of necessity for new standards, since strengthened national standards have been adopted in 2007 (although these are less ambitious).

The federal government has shown that it will continue to be an obstacle for regional greenhouse gas mitigating initiatives, even if its own passivity is a dominant driver to develop these. Another obstacle is the envisioned coupling of regional emission trading schemes to international entities, such as the

[11] Differences in: start dates, emission limits, desired reductions, economic sectors covered by the cap, measures to offset the emission "leakage", allocation of emissions, and price cap for allocations

[12] World Resource Institute: www.wri.org/stories/2007/11/mid-west-greenhouse-gas-accord-numbers#. MtCO2e represents millions of tons of CO2-equivalent and the respective percentages of the total emission of the United States in 2004.

Canadian provinces or other trading schemes such as the European ETS. Entering into binding agreements with other countries is a constitutional right reserved exclusively for the federal government. The United States constitution reads: ‘No State shall, without the consent of Congress, [...] enter into any agreement or compact with another State or with a foreign power...’ (Art. I, sect. 10, clause 3). Herein lies a clear constitutional barrier, which-considering the Bush governments views on climate change-will be used by the federal government to frustrate the regional initiatives that have international commitments.

Although an increased number of states are coming out in favour of a regional or national emission trading scheme, Washington will continue to oppose it for the market-interfering potential of regional trading systems, and a possible constitutional conflict over the entering into agreements with other countries. It seems that the function of the regional emission schemes is hereby limited as an intellectual exercise. Regions are looking at the possibility of developing a trading system that is tailored to their specific energy situation. The specific trademarks of their systems may then be adopted in a future federal emission trading scheme that will be developed.

Top-down: federal initiatives

Although the *Independence and Security Act of 2007* contains several measures that should reduce the CO_2 emissions in the long run, the Democratic leadership in Congress had stated beforehand that the act would not be complete without extensive climate legislation, which should also contain an emission trading system. This proposition was already stated in 2005 by a so-called *Sense of the Senate*, a non-binding resolution that was added to the *Energy Policy Act of 2005*. This resolution stated that the United States should develop a market-based trading system, which should reduce the world-wide increase in CO_2 emissions into the atmosphere in the long run.

Since 2005, several proposals – supported by individual Democrats and Republicans – to establish a national emission trading system were made in both the House of Representatives and in the Senate. To date, none of these proposals have been signed into law, because they suffered from a lack of broad bipartisan political support, or drew opposition from groups of individual representatives/senators who considered the economic interests of their home states in jeopardy. The interests of the democratic “Coal States” (Coal accounts for 80% of the CO_2 emissions caused by electricity generation) are an often underrated source of resistance against CO_2 reduction legislation.[13]

The two most prominent legislative proposals currently scheduled for debate in the Senate are the *Low Carbon Economy Act of 2007*[14] of Senators Bingaman (Democrat) and Specter (Republican), and the *Lieberman-Warner Climate Security Act of 2008*[15] of Senators Warner (Republican) and Lieberman (Independent). Both proposals are based upon an emission trading system to reduce emission. The Bingaman/Specter proposal aims to reduce greenhouse gas emissions to 2006 levels in 2020 and to 1990 levels in 2030, after which further reductions would be possible. The Warner/Lieberman proposal looks reduce 2005 emission levels by 70% in 2050. Both proposals will cover the economic sectors that are responsible for approximately 80% of the CO_2 emissions, and can therefore be considered to be economy-wide.

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[13] The large coal-producing states all have one or two Democratic Senators: West-Virginia (2), Montana (2), Illinois (2), Virginia (1), North Dakota (2), Colorado (1), Indiana (1), New Mexico (1) en Ohio (1).

[14] See: www.thomas.loc.gov/cgi-bin/query/z?c110:S.1766.

[15] See: www.lieberman.senate.gov/documents/lwcsa.pdf.

It is interesting to notice that both the Senate proposals will give the US president the authority to levy an emission surcharge on products from countries that show little or no initiative with respect to reduction of their greenhouse gas emissions. This clause is intended to protect domestic American industry since it would hinder the relocation of CO_2 intensive industries to other countries. It is also intended to help achieve the emission reduction targets by taxing CO_2 emissions abroad. Thus, both proposals will possibly set the scene for trade relations as a source of conflict instead of international co-operation in the battle against climate change. The proposals have significant differences with regard to the distribution of costs of an emission trading system for the economy. The Bingaman/Specter initiative proposes a price ceiling for emission allocations to be set at 12 USD; a maximum price is not mentioned in the Lieberman/Warner proposal.[16]

Both legislative proposals were discussed in the U.S. Senate Committee on the environment and public works. This means that the bills are at the beginning of the legislative process and will have a long way to go before any president will sign one of the two into law. Although the Lieberman/Warner proposal has received its fair share of media attention, which has raised public expectations, no emission legislation is likely to be adopted before 2009.[17] For the time being, legislation to mitigate climate change via an economy wide emission trading scheme will not receive the green light at the federal congressional level.

National elections 2008

The expectation that no substantial federal climate legislation will be adopted in the United States before 2009, has everything to do with the upcoming presidential elections. The Bush government's policy preferences, as far as climate change is concerned, have been to invest in technological developments such as nuclear energy, energy-efficiency, and particularly no compulsory targets for future CO_2 emissions levels. Consequently, no spectacular developments in the U.S. climate policy will be established. The hopes of environmental groups are therefore focused on the new president, who will take office in 2009.

It is noteworthy that all current presidential candidates – Clinton, Obama en McCain – have voiced their intentions to reduce American CO_2 emissions beyond levels that are proposed in Congress and the regional initiatives. The Democratic senators, Clinton and Obama, have ushered virtually identical proposals aimed at reducing the level of 1990 emission 80% in 2050. An indispensable element in both their proposals is an emission trading scheme. Senators Clinton and Obama have both declared that they will push hard for an international process to develop a successor to the Kyoto-protocol.

With respect to his political background, Republican senator McCain is a spectacular breakaway from the policy of the present government. In the past, senator McCain submitted a legislative proposal (co-signed by senator Lieberman and supported by senator Obama) that would reduce the level of 2010 emissions by 65% in 2050. To reach the targets in his proposal McCain also turned to market mechanisms that would provide for a as economically responsible CO_2 reduction as possible. The

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[16] This rather low price ceiling to a very important extent restricts the efficiency of the trading scheme to reach the targets in the long run.

[17] See: Bill Loveless, Jean Chemnick & Alexander Duncan, *'US Congress to hold of on energy, emissions until 2009: analyst'*, in: *Platts*, January 7, 2008. This view was confirmed as this publication was being printed. The Lieberman-Warner proposal failed to pass the US senate even though it obtained majority support. 54 senators backed the proposal (although only 48 voted), however 60 were needed to advance the proposal to the next legislative level. See also: Deborah Zabarenko, *'US climate bill dies; hope for 2009'* Reuters, June 6, 2008.

targets of presidential candidate McCain were not as drastic as those proposed by the Democratic candidates today, but are more in line with the legislation currently under debate in the senate.

Thus, it is clear that the upcoming presidential elections will not constitute a choice for or against climate change mitigating legislation, as was the case in 2000 and 2004. However, the new president will have to rally broad support from the American people and within Congress to enable him to fully take part in the international climate dialogue. For a Republican president, this would specifically imply taking into account the wishes of a (highly probable) Democratic majority in Congress, without alienating his own party members by signing far-reaching binding international treaties to mitigate climate change. A Democratic president will have to recon with Democratic Congressmen who will let their own agendas prevail and (with a miniscule Democrat majority in Congress) could block legislation. However, it is clear that when the current US President will be replaced in 2009, a green light is given on an important level within the American political system.

Conclusion

Developments in the ongoing climate debate in the United States are considerable. In contrast to Europe, changes need to be implemented from the bottom-up for a popular and broadly supported climate policy to emerge. Although three different emission trading schemes are under development, these should be considered policy laboratories for an eventual nation-wide emission trading scheme. A federal climate policy that will aim to establish an economy-wide emission trading scheme for the United States can most probably expect a renewed impetus. The replacement of the current president will not fundamentally alter the opposition in Congress against a comprehensive climate policy with firm emission reduction targets. In order to win over representatives that will continue to protect the economic interests of their home states – both Republican and Democrat – support within the individual states will be a very important precondition.

The constitutional primacy for the government in Washington to enter into binding international treaties can never be changed by well-meant initiatives such as ICAP. Therefore, doing business with Washington will remain a precondition for international parties to create a successor to the Kyoto protocol. Nevertheless, stimulating and supporting bottom-up state climate initiatives should not be rejected out of hand. It is of great importance for the United States to keep working on a system that is tailored to the American energy mix. The regional supported and tailor-made emission trading regimes will help to convince sceptics in Congress that such emission schemes can work nationally. These will also convince sceptics of the need to ratify a international successor to the Kyoto protocol that complements to a national emission reduction scheme.

At all levels within the United States political system, lights are switching from red to green for a leading role in the international climate negotiations to establish a successor for the Kyoto-protocol. Nevertheless, state specific interests within the United States Congress will determine exactly how leading this role will be.