U.S. Climate Legislation Implications and Prospects: Challenges for Canada

By

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This paper was last revised November 26, 2009. Although not updated since then, in the author's view it provides a valuable resource to the reader.
In this briefing, Gary Clyde Hufbauer and Jisun Kim look at the shape and prospects for climate change legislation currently being contemplated by the United States Congress, U.S. states, and in global negotiations. Proposed U.S. federal and state legislation envisions a highly complex emissions cap-and-trade system, punitive measures against U.S. trading partners that do not undertake similar climate action, pre-emption of regional climate initiatives (which could affect Canadian provinces), renewable energy standards that could adversely affect some energy-intensive Canadian industries, either in the domestic Canadian market or in the U.S. market, unless modified in the Senate or by the conference committee. California’s low-carbon fuel standard and similar standards being considered by several states, raise major concerns for Alberta’s oil sands.

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At a Glance

- The successful conclusion of both the Copenhagen talks and U.S. climate legislation in 2009 appears unlikely.
- Mechanisms envisaged in U.S. climate legislation—i.e., subsidies, border adjustments, and renewable energy standards—would adversely affect some energy-intensive Canadian industries, either in the domestic Canadian market or in the U.S. market, unless modified in the Senate or by the conference committee.
- California’s low-carbon fuel standard and similar standards being considered by several states, raise major concerns for Alberta’s oil sands.

In this briefing, Gary Clyde Hufbauer and Jisun Kim look at the shape and prospects for climate change legislation currently being contemplated by the United States Congress, U.S. states, and in global negotiations. Proposed U.S. federal and state legislation envisions a highly complex emissions cap-and-trade system, punitive measures against U.S. trading partners that do not undertake similar climate action, pre-emption of regional climate initiatives (which could affect Canadian provinces), renewable energy standards that could adversely affect some energy-intensive Canadian industries, rebates extended to U.S. firms that could lower U.S. goods’ prices relative to Canadian ones, and low-carbon fuel standards that will negatively affect Canada’s oil sands projects. China—not Canada—is the intended target of punitive border measures. But if the legislation eventually passes,
and if Canada does not adopt similar measures, Canada’s energy-intensive industries could face punitive measures at the U.S. border.

Hufbauer and Kim expect passage of U.S. legislation and global accords to be delayed—at least until 2010 and likely beyond. They also say that, despite these delays, the world has moved toward consensus on a lower-carbon future. The proposed legislation and the expected delays, as well as the broader global shift under way, leave Canada with some difficult challenges and choices—but also some important opportunities.

For one, Canadian businesses face unprecedented global opportunities to both adopt and sell climate-friendly technologies and related services. Despite the policy uncertainty, business leaders need to get out in front of policy makers—not only to protect company brands and reputations, but also to capitalize on these global opportunities and already be an active player when policy comes into play.

At the same time, the delays present a major opportunity to shape Canada’s climate policy. Ottawa now has some breathing room to consider Canada’s strategic options armed with a better sense of what U.S. climate legislation might look like, and greater motivation to be in sync with the global shift toward low-carbon policies. Should Canada simply wait until U.S. legislation is adopted and then mirror the complex legislation enacted in Washington? Or, given the delays, should Ottawa and the provinces pre-emptively adopt a climate change policy designed for Canada’s circumstances, but that could eventually accommodate U.S. legislation? What shape should Canada’s climate change policy take? Perhaps a cap-and-trade system like the U.S. is likely to implement, or maybe a carbon tax?

This briefing provides background for Canadian policy makers and businesses as they reflect on these major strategic questions. A future report will focus on Canada’s opportunities in the global market for climate-friendly technologies.

In December 2008, we wrote the briefing A View from Washington: Climate Policy Under Obama—Implications for Canada and Trade for The Conference Board of Canada. In it, we examined the major features of Obama’s climate change and energy policies as proposed during the presidential campaign, and we discussed the implications of U.S. climate legislation for Canada and trade. Since then, progress has been made in the U.S. legislative process and at international talks on moving toward a post-Kyoto era.

In June 2009, the U.S. House of Representatives narrowly passed a historic energy and climate bill, the American Clean Energy and Security Act of 2009 (ACESA), better known as the Waxman-Markey bill. On the international side, many meetings have been held to bridge differences between developed and developing countries. Nevertheless, progress does not appear to be sufficient to wrap up either the Copenhagen talks or U.S. climate legislation before the end of 2009.

Following a short overview on post-Kyoto negotiations, this briefing examines details of the Waxman-Markey bill as passed by the U.S. House and speculates on the implications of U.S. climate change policies for Canada.

In brief, our key findings include:

- U.S. climate legislation is highly unlikely before the Copenhagen talks in December 2009 and even in 2010. The U.S. legislative process involves several steps. Once the House and the Senate each pass their own bills (following committee debates, markups, and floor votes), leaders of the relevant House and Senate committees meet in conference to produce a consolidated bill that hammers out differences between the two versions. Once passed by both houses of Congress, the bill then moves to the President for his signature.

- While Congress is working on its climate change bills, the Environment Protection Agency (EPA) is working on “Plan B,” a framework to regulate greenhouse gases (GHGs) under the Clean Air Act (CAA). The draft EPA regulations will likely be used as leverage both for U.S. climate legislation and at international climate talks.