

SPECIAL REPORT

America's long hard road to climate-change law

What challenges lie ahead as the United States tries to construct a working system for greenhouse-gas regulation? **Jeff Tollefson** reports.

"We're back." That was the message from Todd Stern, the United States' new international envoy on climate, to congressional staff, scientists and representatives of several countries on 3 March in Washington DC.

In a room overlooking the Capitol dome, Stern noted the United States' responsibility as the historical emitter of most greenhouse gases globally. He explicitly recognized the right of developing nations to lift their people out of poverty, and pledged resources to help them make the transition to clean development.

But Stern — the person charged with leading US negotiations through the United Nations climate-change talks — went on to challenge Europe on multiple fronts. Most notably, he suggested that Europe's proposal for industrialized nations to reduce their emissions by 25–40% below 1990 levels by 2020 is unfair, unnecessary and "a prescription for stalemate".

President Barack Obama has pushed for a cap-and-trade system to control greenhouse gases in which industries can buy and sell permits, auctioned off from the start, in order to stay within an overall cap on pollution. It is not yet clear whether the United States will embrace such a strict regime. But for Obama, the place to start is working with Congress.

Congressional leaders have talked before about legislation to create a US cap-and-trade system, but the bills usually never make it out of committee to be voted on by all lawmakers. This year, however, may be different. With the president on board and strong Democratic majorities in both congressional houses, 2009 may be the year when cap-and-trade legislation gets done. The question on Capitol Hill is not so much if but when Obama will sign such a bill into law — and how that law will mesh with US negotiations for the next international climate agreement. In December, international envoys will meet in Copenhagen to hammer out a successor to the Kyoto Protocol on Climate Change. Stern will represent Obama there, and he knows the necessity of working with Congress. In 1997, even as he was helping negotiate the final details of the Kyoto Protocol, the Senate signalled its discontent with a

symbolic 95–0 vote against the treaty.

Europe has recently been streaming emissaries through Washington DC in an effort to build alliances and provide perspectives on how to set up a cap-and-trade system. And they are actively engaging members of Congress and policy-makers instead of just focusing on Obama. "This is too important to be left to the president," says Ed Miliband, the UK Secretary of State for Energy and Climate Change. "The Congress needs to be an equal partner."

Obama has appointed an all-star cast to develop a federal strategy on climate and to work closely with Congress on the issue (see 'The key players'). No one is yet sure how well this assembled cast will work to advance climate policy. "But there are some very smart and very capable people who have gone into the administration, who have a deep knowledge of climate policy and who have all of the talent and capability to get this done," says Tim Profeta, who heads Duke University's Nicholas Institute for Environmental Policy Solutions in Durham, North Carolina.

The first moves from the administration might come as early as this month, when the Environmental Protection Agency could announce its long-delayed response to a 2007 Supreme Court decision establishing the agency's authority to regulate carbon dioxide as a pollutant. Lisa Jackson, the agency's administrator, is almost certain to issue an 'endangerment' finding declaring CO₂ a pollutant that should be regulated under the 1970 Clean Air Act. Technically, such a move would allow the Obama administration to move forward with regulating carbon on its own.

But Obama's main goal is to push a bill through Congress. The first actions from lawmakers could come from the House of Representatives. Henry Waxman (Democrat, California), chair of the House energy and commerce committee, has said his committee will produce a comprehensive energy and climate bill by the end of May. House speaker Nancy Pelosi (Democrat, California) has promised to bring such a bill out of committee and onto the full House floor for a vote this year; it would be

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— Ed Miliband



the first-ever climate vote in the House.

Alden Meyer, who handles climate policy for the Union of Concerned Scientists in Washington DC, says that Waxman's approach of putting energy and climate into one bill makes sense. Like many, Meyer argues that issues such as energy efficiency, renewable energy and transportation are more easily addressed through separate regulations than through the cap-and-trade programme itself. "That's one of the things we've learned," says Meyer. "You need other policy mechanisms in addition to cap-and-trade."

It's not yet clear whether the Senate will take that same comprehensive approach. Last June, the Senate shot down a bill that would have reduced emissions to 63% below 2005 levels by 2050. Senate majority leader Harry Reid (Democrat, Nevada) has said he will bring a bill to the floor again this year, but there is still debate as to how comprehensive it might be — or not. Barbara Boxer (Democrat, California), who chairs the Senate's environment and public works committee, has said she wants her committee to produce "simplified legislation". That could well mean a cap-and-trade outline only, leaving other committees to handle provisions related to things such as energy, taxes and agriculture.

Balancing act

Any energy issues would be headed by Jeff Bingaman (Democrat, New Mexico), who chairs the energy and natural resources committee in the Senate and who fears that progress on renewables might be held hostage by hammering out the more complicated details of cap-and-trade legislation. To overcome such blocks, Bingaman is working with a loose group of centrists from both parties, often dubbed the 'Gang of 16', members of which are searching for ways to make greenhouse-gas caps more politically palatable. Their staff



Congress is under increasing pressure to pass legislation regulating carbon dioxide emissions.

are looking at technical solutions that tackle the thorniest problems, including how to control costs, provide environmental integrity and ensure that domestic industries are not put at a disadvantage if, say, China fails to act on controlling its own emissions. “This whole debate often focuses on the differences between those who advocate clear environmental certainty and those who want clear economic certainty,” says Jonathan Black, who handles climate for Bingaman on the energy committee.

The same debates have played out internationally, with some countries suddenly backedpedalling on commitments even as the United States steps forward. Canadian voters rejected a strong environmental platform proposed by the Liberal party last autumn, and cap-and-trade legislation is floundering in Australia despite support from Prime Minister Kevin Rudd. European leaders had to make concessions to various industries in December 2008 to hold together their coalition on the next phase of their carbon trading scheme, which begins in 2013.

If it had been successful, last June’s climate legislation in the United States would have controlled costs by creating an independent federal board with the authority to intervene if the market gets out of control. Companies would also have been able to borrow some credits from the future, meaning they could emit more now, as long as they emit even less in subsequent years. Bingaman favours the use of set minimum and maximum prices for credits to ensure economic predictability, but such a ‘price collar’ would not guarantee emissions reductions because more credits could be issued if prices were to reach a set level.

“The question is how much they are really willing to fight for this.”

Many lawmakers are also looking at border-tax adjustments — essentially tariffs — on imports if certain industries find themselves at an economic disadvantage as a result of carbon regulations. Another method for protecting specific industries is to allocate some emissions permits to them for free, which is how European regulators will handle the issue in the next phase of their emissions trading scheme.

The challenge of getting Congress to act becomes even more difficult if Stern actually brings home an international treaty from Copenhagen, which requires a two-thirds majority (67 votes) to pass in the Senate. “There are far less controversial agreements that have not managed to attract that level of supermajority here in the Senate,” says Nigel Purvis, a former US climate negotiator who works on climate issues at the Brookings Institution in Washington DC.

That has Purvis, as well as some in Congress and the administration, thinking about ‘congressional executive agreements’. Used for most international trade agreements, these have the same legal effect as a treaty, but require only 60 votes to pass in the Senate. In these, Congress would authorize the president to negotiate an agreement, which is then voted yes or no by Congress on its return.

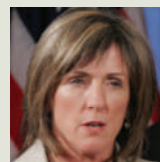
Kathleen Frangione, chief climate aide to Senator John Kerry (Democrat, Massachusetts) on the Senate foreign relations committee, says that no matter what, the White House will have to be fully engaged if legislation is going to move this year. “The question is how much they are really willing to fight for this year,” she says. “And we don’t really know yet.”

THE KEY PLAYERS

Leaders in both houses of US Congress say they will bring climate legislation to a vote this year, so congressional staff are busy hammering out the details of such a bill — particularly a cap-and-trade solution to limit greenhouse-gas emissions. The Obama administration is pushing to get such legislation passed by lawmakers. The debate’s key players are almost all Democrats, who expanded their majorities in Congress in the 2008 election.

THE OBAMA ADMINISTRATION Carol Browner

Assistant to the president on energy and climate change



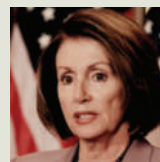
Lisa Jackson

Administrator, Environmental Protection Agency



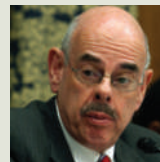
HOUSE OF REPRESENTATIVES Nancy Pelosi

Democrat, California Speaker of the House



Henry Waxman

Democrat, California Chairman of the House committee on energy and commerce



SENATE Harry Reid

Democrat, Nevada Majority leader



Barbara Boxer

Democrat, California Chairwoman of the Senate committee on environment and public works



Jeff Bingaman

Democrat, New Mexico Chairman of the Senate committee on energy and natural resources



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