

Client Update

Paris Climate Change Accord: 195 Countries Agree to Limit Greenhouse Gas Emissions

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On December 12, 2015, 195 nations signed in Paris an international accord (the “Paris Agreement”) to cut their greenhouse gas (“GHG”) emissions in order to reduce the effects of global climate change. The agreement was reached at the 2015 United Nations Climate Change Conference, also known as the 21st Conference of the Parties, or “COP21.” The Paris Agreement has been touted as a significant development to limit global GHG emissions.

THE AGREEMENT

The Paris Agreement binds signatories to limit average global temperature increases below 2 degrees Celsius (“2C”) above pre-industrial levels. It further seeks to compel future efforts to limit temperature increases to 1.5 degrees (“1.5C”) above pre-industrial levels. According to many scientists, limiting increases to 1.5C would prevent the most severe effects of climate change, such as more powerful hurricanes, drought and other extreme weather events.

The agreement does not specify emissions targets as one of its objectives. Instead, the agreement aims to reach global peaking of GHG emissions as soon as possible. It also seeks to achieve net zero emissions in the second half of the century by balancing anthropogenic emissions with removals of GHG emissions through carbon sinks, such as trees and vegetation, which remove carbon from the atmosphere.

Signatory nations are required to prepare Nationally Determined Contributions (“NDCs”), which are pledges “of ambitious efforts” to cut GHG emissions and to report these to the United Nations Secretariat. The reporting will include emissions levels as well as progress made toward reduction targets. The first year that signatory nations will be required to communicate a new national plan to cut emissions will be 2020. Plans will be updated every five years. Beginning in 2018, the United Nations will review each country’s progress.

Under the Paris Agreement, developed countries would provide at least \$100 billion annually, after 2020, to assist developing countries in cutting emissions. While the Paris Agreement strongly urges developed nations to make this financial contribution, contributions are voluntary. The signatories to the Paris Agreement would set a new financial contribution goal by 2025, with \$100 billion in annual contributions representing the floor requirement. The financial support would help developing nations mitigate and adapt to climate change through technological advancement.

The agreement calls for strengthening of cooperative action on technology development, encouraging innovation to promote economic growth and facilitating developing countries' access to technology.

Countries will sign the accord on April 22, 2016 at a United Nations meeting in New York, and it will remain open for signature until April 21, 2017. The agreement's provisions will become effective in 2020 after at least 55 countries representing at least 55% of total GHG emissions have signed the agreement.

ROLE OF THE UNITED STATES UNDER THE AGREEMENT

In an already submitted voluntary NDC, the United States pledged to cut carbon emissions by 26-28% from 2005 levels by 2025. A major factor in reaching this objective would be the Obama Administration's Clean Power Plan (the "Clean Power Plan"), which requires existing U.S. power plants, the nation's largest source of carbon pollution, to reduce carbon emissions by 32% from 2005 levels by 2030. The Clean Power Plan recognizes the importance of fossil fuels to the country's energy sector while urging fossil fuel-fired power plants to operate more cleanly and efficiently. The plan also expands the capacity for zero- and low-emitting power sources, primarily through changes in the U.S. power generating fleet to include less coal and more renewable energy sources, using natural gas as a bridge fuel, and increased efficiency. The Clean Power Plan has been challenged through litigation by several states, and its future in its current form remains uncertain.

The United States may need to take actions in addition to the Clean Power Plan to further reduce carbon emissions and comply with the Paris Agreement. These additional activities would be outside the electric generation sector and would include efficiency initiatives and reductions in fossil fuel use. Many observers have commented that the most promising options rest in new technology.

Also being debated is whether the Paris Agreement constitutes a treaty under international law and Article II of the U.S. Constitution. If so, the advice and

consent of two-thirds of the Senate would be required for the United States to become a party to the agreement. The extent of the obligations imposed by the NDCs – particularly the obligation for continued progress on previously issued NDCs – is one major factor in determining whether the Paris Agreement falls under Article II. Whether the U.S. Senate would approve the Paris Agreement remains an open question, almost certainly to be determined by the 2016 election.

IMPACT

The Paris Agreement marks the first genuinely global commitment to emissions reduction in more than 20 years. It represents a single and flexible approach by both developed and developing countries to reduce dependence on fossil fuels. Implementation of the agreement will require significant reductions in the use of fossil fuels in favor of renewable energy. Individual countries will have to choose their own strategies for energy production and consumption – a choice that will affect both domestic and global corporate behavior.

While the rest of the world, including India and China, has demonstrated a commitment to the Paris Agreement (with China likely relying on the U.S. NDC to draft its own), it is possible that the U.S. Senate would not ratify the Paris Agreement. Some Senators have promised to vote against it should it come before the Senate. However, failure to become a party to the Paris Agreement would risk leaving the United States isolated on one of the more important global and technological developments of this generation.

MOVING FORWARD

The United Nations Climate Summit, which is to be held in Morocco in November 2016, will mark the first opportunity to observe how countries might expand on the Paris Agreement's provisions. Those following developments on climate change will also be eager to see the first national emissions cutting plans when they are released in 2020.

We will continue to monitor developments with respect to the Paris Agreement and other initiatives to reduce GHG emissions in the United States.

The Paris Agreement may be found at
<http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf>.

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Please do not hesitate to contact us with any questions.