

Tianjin - 9 October 2010

# WHAT ROLE FOR THE US?

## A question for the rest of the world

### The US vision for a 'new paradigm' in climate negotiations rejects the basic elements of the current regime, so how should countries respond to its proposals?

President Obama accepted a Nobel Prize for "his extraordinary efforts to strengthen international diplomacy and cooperation between peoples" and his "constructive role in meeting the great climatic challenges the world is confronting."

The US, however, remains the only Annex I country not to have ratified the Kyoto Protocol, the only international legal instrument with legally binding emission targets. Worse, the US is proposing a non-binding system of pledges with no guarantee of either curbing climate change or doing it in a fair way. This creates an ongoing challenge for climate negotiations under the UN Climate Convention and its Kyoto Protocol – what to do with the United States?

#### A new paradigm for climate diplomacy?

The US has responded to its isolation by announcing "a new paradigm for climate diplomacy." Todd Stern, US Special Climate Envoy, has said this will build on the Copenhagen Accord, reflect a "bottom up architecture" based on "domestically derived mitigation commitments," and include "robust transparency provisions for all countries." He called for an agreement that is "legally symmetrical" with "the same elements binding on all countries, except the least developed." Would the agreement be binding? "It should be, as soon as that result is achievable." This, according to a speech by Stern (Brookings, 18 May 2010), is "the basic bargain of a new climate architecture, as we see it."

#### New paradigm or old?

The US calls this approach a "new paradigm for climate diplomacy," but most elements seem distinctively old. Its leaked communications memo (11 March 2010) says the US will try to "reinforce the perception that the US is constructively engaged in UN negotiations in an effort to produce a global regime to combat climate change." But its rhetoric of engagement is hard to square with the reality. It says it honors the Convention's core principle of common but differentiated responsibilities and respective capabilities, yet it proposes a "symmetrical approach" for all countries with new obligations for developing countries, except the LDCs. This contradiction is one of many.

A review of its formal AWG-LCA submissions (4 May and 26 April 2010) and its conduct in Copenhagen and Bonn raise the following question – if the US will not negotiate on the issues below, what do other countries discuss with it at the UNFCCC?

**No negotiation on a mitigation target:** The US remains unwilling to engage in negotiations on its mitigation target. Its "mitigation contribution" would be the "domestically derived mitigation commitment" it has "chosen to list" in an appendix. It supports the Copenhagen Accord as "deferring to Parties in terms of deriving their respective mitigation undertakings."

**No aggregate target:** The US remains unwilling to agree a science-based aggregate target for Annex I countries. In Copenhagen it opposed such a target for 2017 or 2020 and inserted text saying the amount would equal "[x]," where this is merely the sum of pledges. It favors the Copenhagen Accord, which has no aggregate target, and has confirmed that the absence of certain mitigation issues "was critical to making the Accord acceptable."

**No comparability of efforts:** The US AWG-LCA proposal includes no provisions ensuring comparable efforts among developed countries, despite the Convention's explicit requirements for "equitable and adequate contributions" and the Bali Action Plan's requirements of "comparability of efforts."

**No effective rules:** The US proposes achieving "targets" through various means, including those "provided for under their respective laws and policies." In other words, the system would be without comprehensive and effective international discipline on how targets are achieved, including guarantees that any specific proportion of effort would be undertaken domestically – potentially providing a major loophole to actually achieving serious GHG reductions within the US.

**No effective compliance:** The US opposes effective and enforceable compliance measures. It said in Bonn that inserting rules on compliance on Annex I mitigation is "not applicable". It suggests "transparency" will provide the "sunshine" to ensure that "Parties are carrying out their promises and that the world is on track in relation to the ultimate objective of the Convention."

**No set of science-based global goals:** The US remains unwilling to accept a set of science-based global goals. It

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supports a goal “that the increase in global temperature should be below 2 degrees Celsius.” It is unwilling to accept a 1.5°C goal or a set of goals reflecting all the elements of the Bali Action Plan, as called for by many developing countries. It supports a 2015 review of the 1.5°C goal - too late to offer a reasonable chance of remaining below that level and preventing catastrophic consequences for millions of people.

The US seeks to “reinforce the perception” that it is “constructively engaged in UN negotiations”, yet it remains unwilling to negotiate on the basic elements relating to climate mitigation – including many explicitly required by the Bali Action Plan. Rather, it seeks to avoid scrutiny by pointing the finger at other countries – namely China.

### **Blame China?**

The US has sought to deflect attention on to other countries, especially China. But the Chinese appear to be taking climate change and clean energy development substantially more seriously than the US. China has a comprehensive national climate programme; the US has yet to agree on comprehensive national climate legislation. China’s vehicle fuel efficiency standards are more stringent. And its investments in clean energy are almost double those of the US -- and around three times when adjusted for GDP

Moreover, per capita, the US is still a far larger polluter than China (19.2 vs. 4.9 metric tons in 2008). China’s contribution is reduced further if emissions are measured in terms of consumption (versus production), as part of its emissions are caused by the manufacture of goods consumed in the US and elsewhere. And the US has a much greater economic capacity to act. Per capita GDP in the US is some eight and a half times higher than in China.

On 9 September, the United Steelworkers union filed a 5,800-page petition with the US Trade Representative, alleging that China has violated international trade law by providing subsidies to its clean energy industry. The case, if pursued at the WTO, poses a real danger that the rules of the international trading system will undermine China’s domestic efforts to curb climate change. Further, the petition underscores the continued failure of the US government to enact comprehensive climate policies and scale up investment in the clean energy economy.

### **Holding climate finance hostage**

The US has threatened to block forward movement in the negotiations on establishing a global climate fund if its demands on mitigation and transparency from developing countries, especially China, aren’t met. Todd Stern issued a new ultimatum at the Geneva Dialogue on Climate Finance in September, saying, “We are not going to move on the Green Fund and the \$100 billion. If the issues that were central to the Copenhagen Accord that were part of the

balance of the Copenhagen Accord, including mitigation and transparency, don’t also move.” Climate finance is an obligation in and of itself and must not be used as a bargaining chip with which to gain concessions from developing countries.

### **A race to the bottom**

The US approach risks a race to the bottom by inspiring an exodus from the Kyoto Protocol and lowering the ambition of other Parties. Canada, for instance, lowered its pledge from 20% by 2020 relative to 2006 levels to 17% by 2020 relative to 2005 levels under the Copenhagen Accord, stating these are “to be aligned with the final economy-wide emissions target of the United States in enacted legislation.”

The US claims not to take a position on the Kyoto Protocol but, in practice, its proposed “pledge-based” or “bottom up” architecture is incompatible with a second commitment period for the Protocol and, in effect, is an attempt to replace the Protocol with a far weaker substitute.

The US effort to replace the current architecture with a new one should come as no surprise. In cases where the US has strong domestic rules, it has played a leadership role in negotiations. Where it does not, it has weakened and delayed deals and then declined to ratify them. The Kyoto Protocol provides a case in point. Biodiversity, biosafety, hazardous wastes, and the Law of the Sea provide other examples. So too do the International Criminal Court, the UN Declaration on the Rights of Indigenous Peoples and the UN Convention on the Rights of the Child.

### **What to do with the United States?**

Without the prospect of US climate legislation passing anytime soon, the Obama administration has lost almost all credibility on emission cuts and the provision of long-term climate finance and, consequently, its leverage to make onerous demands of developing countries. With its recent attempt in Geneva to hold climate finance hostage to more actions from developing countries, particularly in the areas of mitigation and transparency, the US has reinforced its image as a bad faith negotiator making unreasonable demands.

The world therefore faces a simple question: What to do with the United States? If developed countries opt for a Copenhagen Accord-type non-binding system of voluntary pledges, with no science- and equity-based aggregate target, then they will be dangerously backsliding from a legally binding system simply to secure a commitment by the United States to do whatever it was going to do anyway – nothing more and nothing less. If this is the case, then the “basic bargain” the US offers seems a bad one.

A better approach is already provided in the Bali Roadmap (i.e. the Bali Action Plan and Kyoto negotiations). It confirms that all countries will participate in future mitigation efforts – and that these must be nationally appropriate. Under this approach: 1) Annex I Parties would continue to take emission reductions under the Kyoto Protocol; 2) the US would take emission reductions under the Convention through paragraph 1(b)(i) of the Bali Action Plan, and 3) developing countries would undertake nationally appropriate mitigation actions supported and enabled by financing and technology.

**Leadership from elsewhere**

Under this approach, the world would not move forward without the US. It would simply recognize that the US remains unwilling or unable to ratify the Kyoto Protocol but should participate on a comparable basis as other developed countries through a commitment under the Convention (e.g. in the form of a decision or unilateral declaration).

Following the Bali Roadmap, this avoids the danger of a gap between Kyoto commitment periods, and the potentially adverse implications for emission reductions and economic activity. It is a long-term strategic decision that retains the current climate architecture as the

foundation for the stronger system the world needs and demands in the longer term. It protects this foundation from being dismantled and from the difficulty of any attempt at reconstruction.

To Europe, the architects of Kyoto, it provides an opportunity to renew its leadership on climate change after losing some direction in Copenhagen. And it reduces the risk that President Obama will be labeled – and rightly so – as a “wrecker” rather than supporter of the climate regime. The world must then work to engage Australia, Russia, Japan and other Umbrella Group Parties to support a second commitment period, rather than abandoning the Kyoto Protocol.

President Obama characterized his Nobel Prize as "an affirmation of American leadership on behalf of aspirations held by people in all nations." In Bali, the United States was told to “lead or get out of the way.” True leadership from the US would require a “new paradigm” indeed: to admit it cannot lead, not now, but that the global climate architecture and global ambition are more important than looking like a leader for its domestic audience.

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