

Questions for the Record for Special Envoy for Climate Change Todd Stern:

Copenhagen Climate Deal

1. Would the Administration treat a Copenhagen climate deal, if one will be reached, as an Article II Treaty that required the advice and consent by 2/3 of the Senate?
2. During the September 18, 1992 hearing on the United Nations Framework Convention on Climate Change (UNFCCC), The U.S. Senate Committee on Foreign Relations asked the George H.W. Bush Administration whether protocols and amendments to the Convention and to the Convention's Annexes would be submitted to the Senate for its advice and consent. The George H.W. Bush Administration responded:

“Amendments to the convention will be submitted to the Senate for its advice and consent. Amendments to the convention's annexes (i.e., changes in the lists of countries contained in annex I and annex II) would not be submitted to the Senate for its advice and consent. With respect to protocols, given that a protocol could be adopted on any number of subjects, treatment of any given protocol would depend on its subject matter. However, we would expect that any protocol would be submitted to the Senate for its advice and consent.”¹

Does the Obama Administration agree with the George H.W. Bush Administration's response? If not, why not?

3. During the September 18, 1992 hearing on the UNFCCC, the U.S. Senate Committee on Foreign Relations also asked whether a protocol containing targets and timetables for emissions reductions would be submitted to the Senate. The George H.W. Bush Administration responded:

“If such a protocol were negotiated and adopted, and the United States wished to become a party, we would expect such a protocol to be submitted to the Senate.”²

Does the Obama Administration agree with the George H.W. Bush Administration's response? If not, why not?

4. The Senate did not attach any formal conditions to its resolution of ratification for the Convention. But the report of the Senate Committee on Foreign Relations on the resolution stated:

“The Committee notes that a decision by the Conference of the Parties to adopt targets and timetables would have to be submitted to the Senate for its advice and consent before the United States could deposit its instruments of ratification for such an agreement. The Committee notes further that a decision by the executive branch to reinterpret the Convention to apply legally binding targets and timetables for reducing emissions of greenhouse gases to

¹ Hearing before the Senate Committee on Foreign Relations, 100th Cong., 2d Sess. (Sept. 18, 1992) at 105 (appendix).

² *Id.* at 106.

the United States would alter the ‘shared understanding’ of the Convention between the Senate and the executive branch and would therefore require the Senate’s advice and consent”³

The Committee made clear, in other words, its view that “[t]he final framework convention contains no legally binding commitments to reduce greenhouse gas emissions” and its intent that any future agreement containing legally binding targets and timetables for reducing such emissions would have to be submitted to the Senate.

The George H.W. Bush Administration concurred with that view and agreed to submit any such agreement to the Senate. That commitment was cited during the Senate debate on the resolution of ratification as an important element of the Senate’s consent.⁴

Does the Obama Administration concur with the George H.W. Bush Administration’s response? If not, why not?

U.S. Proposed Implementing Agreement to the United Nations Framework Convention on Climate Change (UNFCCC)

5. On June 4, 2009, the U.S submitted a “proposed implementing agreement” to the UNFCCC.
 - 5.1. Does the Administration intend for its “Proposed Implementing Agreement” to be legally-binding, including the appendixes?
 - 5.2. If the Conference of the Parties (COP) were to adopt such an implementing agreement, is the Administration committed to submitting it to the United States Senate for its advice and consent?
 - 5.3. What is the rationale for proposing an “implementing agreement” in the form of a protocol under Article 17.2 of the Convention, rather than as a decision or an amendment under Article 15 of the Convention?
 - 5.4. Why did the Administration decide that an “implementing agreement” to the UNFCCC is the best legal instrument to further “implement” the Convention?
 - 5.5. What does the Administration believe to be the legal, policy and procedural advantages to the U.S. of this choice? Alternatively, what are the potential disadvantages?
6. The “Introductory Comments” to the U.S. Proposed Implementing Agreement to the UNFCCC states that the U.S. “*is committed to reaching a strong international agreement in Copenhagen based on both the robust targets and ambitious actions that will be embodied in U.S. domestic law and on the premise that the agreement will reflect the important national*

³ S. Exec. Rep. No. 102-55 at 14.

⁴ 138 Cong. Rec. S 17150 (daily ed. Oct. 7, 1992) (statement of Sen. McConnell).

actions of all countries with significant emissions profiles to *contain* their respective emissions”. (Emphases added).

- 6.1. What does the word “contain” in the above quote mean in regards to other countries’ emissions?
7. The term “in conformity with domestic law” used in Article 2.1(a) of the U.S. proposed Implementing Agreement appears to be overly vague, uncertain, open to wide interpretation, and likely to have uneven or inconsistent application from country-to-country, all of which could lead to establishing economic and competitive advantages and disadvantages for UNFCCC Parties.
 - 7.1. How would/could each Party’s domestic law be incorporated into any UNFCCC agreement that would be legally binding, particularly if that law does not exist when the COP adopts such an agreement?
 - 7.2. How does the U.S. contemplate such domestic law would be referenced in, or by, the U.S. in the proposed implementing agreement?
 - 7.3. What would happen if the U.S. or any other Party’s domestic law is amended or otherwise changed?
8. As I understand the Administration’s proposed Implementing Agreement, Article 2.1 calls for developed countries to take on binding targets and timetables “in conformity with domestic law,” while Article 2.3 calls for developing countries “with greater responsibility or capability” to take actions that might or might not lead to emissions reductions. Article 2.4 calls for “[o]ther developing countries” to implement actions . . . consistent with their capacity.” In all cases, countries are to develop low-carbon strategies.
 - 8.1. Are all of these Articles intended to be legally-binding?
 - 8.2. What is the enforcement mechanism?
 - 8.3. What would be the penalties for failure to meet the requirements of this Article?

Intellectual Property Rights (IPR)

9. Developing countries are leading efforts to weaken or even destroy intellectual property rights (IPR) by seeking to gain free access to American and other developed countries IPR for clean-energy technologies. Their proposals include preventing patenting in developing countries, requiring compulsory licensing, and ensuring access to new technologies on non-exclusive royalty-free terms. All of which ignore the fact that new technologies will only be developed if there are incentives to create them. Is the Administration committed to protecting our IPR from this assault?

Financing

10. On September 10, 2009, the European Commission released a Communication entitled “Stepping up international climate finance: A European blueprint for the Copenhagen deal,” which presents a blueprint for scaling up international finance to help developing countries combat climate change.⁵

According to the Communication, the Commission’s “best estimate” of “finance requirements for adaptation and mitigation actions in developing countries could reach roughly €100 [\$146] billion per year by 2020,” and “international public funding in the range of €2 to 50 [\$32 to \$73] billion per year should be made available in 2020,” which would be “shared out on the basis of ability to pay and responsibility for emissions and include economically more advanced developing countries.” The Communication also states that “[o]n the basis of these assumptions, the EU share would be from around 10% to around 30% depending on the weight given to these two criteria” and “could therefore be between €2 to 15 [\$3 to \$22] billion per year in 2020.”

The Communication also includes a proposal to introduce a global emissions trading system for international aviation and shipping or a tax on their emissions as a source of financing.

- 10.1. Does the Administration agree with the Commission’s “best estimate” that “finance requirements for adaptation and mitigation actions in developing countries could reach roughly €100 [\$146] billion per year by 2020”?
- 10.2. Does the Administration agree that “international public funding in the range of €2 to 50 [\$32 to \$73] billion per year should be made available in 2020”?
- 10.3. Does the Administration agree with the Communication statement that such international public funding should be “shared out on the basis of ability to pay and responsibility for emissions and include economically more advanced developing countries” and if so, what should be the U.S. share?
- 10.4. Does the Administration support the European Commission’s proposal to introduce a global emissions trading system for international aviation and shipping or a tax on their emissions as a source of financing?

Submitted Written Testimony

11. You mention on page 3 of your submitted written testimony that the Major Economies Forum will continue “to meet at the level of leaders’ representatives in September, October, and November.”
- 11.1. What are the dates and venues of each of those meetings?
- 11.2. What do you plan to accomplish?

⁵See http://ec.europa.eu/environment/climat/pdf/future_action/com_2009_475.pdf.

12. At the bottom of page 3 of your submitted written testimony, you state that “China and the other major developing countries . . . must take actions that will significantly reduce their emissions below their so-called ‘business-as-usual’ path in the mid-term (around 2020), to an extent consistent with what is called for by the science; they must reflect these actions in an international agreement, just as we must reflect our own undertakings; and these actions must be subject to a strong reporting and verification regime.”
 - 12.1. “Business-as-usual paths” include assumptions of GDP and population growth rates, population, penetration of low-carbon energy sources, energy efficiency improvements, and so on, as well as differences in model assumptions, model structure and data, and scenario definitions. How does one determine the “business-as-usual path?” Who would make that determination?
 - 12.2. What is the level of emissions reductions of these countries below their so-called “business-as-usual” path that would be “consistent with what is called for by the science”?
 - 12.3. Who would determine these emissions reductions levels and how would they be verified?
 - 12.4. What is the Administration’s view of a “strong reporting and verification regime?” What organization is responsible for verification? What penalties would exist for a failure to report?
13. On page 4 of your testimony, you state that “[w]e must make the development and dissemination of technology a top priority in order to help bring sustainable, low-carbon energy services to people around the world, and we must do so in a way that recognizes the importance of protecting and enforcing intellectual property rights.” How specifically do you propose to do that?
14. On page 4 of your testimony, you also state that “the adoption of appropriate financing provisions is pivotal to getting a deal.” Please define what would be “appropriate financing provisions.”