

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#1)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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?

Answer:

Our expectation is that a new legal instrument under the Framework Convention would be sent to the Senate for advice and consent to ratification. We continue to press for such an instrument in Copenhagen, including legally binding mitigation commitments from all major economies.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#2)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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?

Answer:

Yes, we agree with this response.

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

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#2)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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?

Answer:

Yes, we agree with this response.

² *Id.* at 106.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#4)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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 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?

³ S. Exec. Rep. No. 102-55 at 14.

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

Answer:

Yes, we agree that the Convention's "aim" to reduce greenhouse gases to 1990 levels in the year 2000 was not legally binding and that a reinterpretation of that provision to constitute a legally binding target would warrant the Senate's advice and consent.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#5)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question: 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?

Answers:

- 5.1 Many provisions of the proposed Implementing Agreement would be legally binding. For example, Article 1.1 on mitigation (Parties “shall” implement...) would be legally binding. Whether an appendix is legally binding depends upon the structure and language of that appendix.

Mitigation actions listed in the appendix would be legally binding by virtue

of Article 1.1 (not the appendix per se), while the provisions in the adaptation appendix, for example, would not (Parties “should”...).

5.2 Our expectation is that such an agreement would be sent to the Senate for advice and consent.

5.3 In Bali, when the mandate for the negotiations was decided, there were differences among Parties whether there should be an entirely new legal instrument, at one extreme, or a non-legally binding COP decision, at the other. We intended for the idea of an implementing agreement, which elaborated existing specifically-referenced provisions of the FCCC, to provide a possible middle ground. We did not consider an amendment to be a viable option, given that, per Article 15 of the FCCC, the entry into force requirements for an amendment do not ensure that the key countries would have ratified.

5.4 See answer 5.3 above.

5.5 Legal and procedural advantages include, for example, that the entry into force provision can be crafted *de novo* (unlike in the case of an amendment) and that provisions can be made legally binding (unlike in the case of a COP decision, generally speaking). Policy advantages are noted in the answer to Q 5.3.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#6)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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

- a. What does the word “contain” in the above quote mean in regards to other countries’ emissions?

Answer:

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 actions of all countries with significant emissions profiles to contain their respective emissions.

a. As set forth in the July Declaration of the Major Economies' Leaders, we would expect the major developing countries to undertake actions whose projected effects on emissions represent a meaningful deviation from business as usual in the midterm.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#7)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

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?

Answer:

7.1 Domestic laws would be incorporated by reference, as has been done in other international environmental agreements. A U.S. legally binding commitment would not be finalized absent legislation.

7.2 See answer above.

7.3 The issue of updating and/or revising mitigation actions is still under discussion internationally.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#8)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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?

Answer:

8.1 Under Articles 1 and 2, developed and more advanced developing countries have the most legally binding commitments; other developing countries have fewer, with the least developed countries having no legally binding commitments, so it depends upon the type of Party in question.

8.2 We do not favor an enforcement mechanism, such as that under the Kyoto Protocol, with an enforcement branch and consequences for non-compliance. Such a regime would raise issues of intrusiveness for the United States, even if other countries favored such an approach. Rather,

consistent with the Bali mandate from 2007, we are focusing transparency and accountability through measurement, reporting, and verification.

8.3 See answer above.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#9)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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?

Answer:

It is our view that protecting and enforcing intellectual property provides an essential foundation for the development and deployment of environmentally sound technologies. Robust IPR regimes support investment in and the diffusion of environmentally sound technologies—IP protection gives companies the confidence to engage in FDI, joint ventures, partnerships and licensing arrangements with local partners; to establish local operations and work with local manufacturers and suppliers; and to open research facilities in markets abroad. In short, intellectual property protections foster creativity and innovation, and contribute to economic development and improved quality of life around the world. In addition, the sustained innovation and competition that result from

adequate and effective IPR regimes will drive down the cost, increase the accuracy of market pricing, and improve the quality of products over time—all of which are fundamental to solving the energy challenge. Clear and transparent policies with regard to the protection and enforcement of intellectual property rights, along with a predictable and stable legal system, consistent contract enforcement, and responsible and consistent environmental policies will increase all countries' ability to gain increased access to cutting-edge clean energy technologies.

The Administration will not support any language in the UN Framework Convention on Climate Change (UNFCCC) that seeks to undermine or weaken protection and enforcement of intellectual property rights. We will not support it in a Copenhagen outcome. We have made this very clear in the negotiations, where we have argued intellectual property is an essential building block for technology innovation that we will need if we are to achieve the ultimate objective of the Convention. Undermining the intellectual property system, as has been suggested by various proposals, will only hinder the development and diffusion of new environmentally-sound technologies.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#10)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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 €22 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 €22 to 50 [\$32 to \$73] billion per year should be made available in 2020”?

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

- 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?

Answer:

- 10.1 While agreeing that the existing levels of available resources need to be scaled up significantly, the Administration does not endorse any particular estimate of finance requirements. We note that many studies of climate finance needs exist, employing widely varying methodologies to arrive at their aggregate figures.
- 10.2 See answer 10.1 above.
- 10.3 All countries are already expending resources to address the challenges of climate change mitigation and adaptation. Going forward, significant funding will continue to come from countries’ own resources, including developing countries. The Administration believes that all countries but the least developed should contribute to the effort to mobilize international public funding, in line with their capacities. We do not believe

it will be constructive to mandate a specified level of contributions from each country according to a formula or mandatory scale of assessment. However, the United States is clearly a country of high capability, and should be ready to play an enhanced role in climate financing in a manner appropriate to our capabilities and consistent with our standing in the global community.

10.4 Our position on various proposals to establish levies on international aviation and maritime activities is consistent with Congressional guidance. In international negotiations, we have been clear that the United States will not be able to participate in any arrangement that sought to impose international taxes and levies on all countries.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#11)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

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?

Answer:

11. 1 The Major Economies Forum met September 17-18 in Washington and October 18-19 in London. A date and venue for a possible meeting in November is still under consideration.

11.2 The meetings provide an opportunity for a detailed and candid conversation among leaders’ representatives about key elements of agreement for Copenhagen. While the MEF is not a negotiating venue, these discussions can help provide greater clarity on approaches different parties are promoting, and can in turn help us build support for the outcomes we seek.

The meetings also are reviewing progress on the development of action

plans on specific clean energy technologies, and other technology-related efforts called for by MEF leaders at their summit in L'Aquila in July.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#12)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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?

Answer:

12.1 The U.S. will evaluate major developing country actions using a range of analytical tools including energy demand and emissions projections from U.S. and international institutions such as the Energy Information Administration and the International Energy Agency.

12.2 The U.S. will assess the impact of actions of major developing countries on an ongoing basis, both in the context of actions by developed countries and the latest climate science, to assess the adequacy of global action in meeting the climate change challenge. Meaningful and verifiable mitigation efforts in major developing economies are absolutely necessary if we are to achieve the scientifically-recognized target to halve global emissions by 2050.

12.3 The actions taken by major developing countries to reduce emissions would be derived from their own domestic processes, as would ours, and would be subject to international scrutiny before an international agreement, in which these actions are inscribed, is finalized. These actions would be reported to the international community in a credible and transparent manner to allow countries to assess the adequacy of global efforts to combat climate change. See answer to Q 12.4 below with regard to verification.

12.4 The U.S. sees the need for a strong system for measurement, reporting and verification (MRV) that would provide enhanced international transparency and credibility, and a process that would encourage and facilitate implementation of Parties' actions. Under the UNFCCC, the U.S. has proposed an MRV system that includes enhanced reporting (including robust and more frequent inventories, strategies, and national communications), a review by an expert panel, and a formal review by Parties. With regard to penalties, see answer to Q 8.2.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#13)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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?

Answer:

To promote both technology R&D and commercialization of clean technologies, we must examine how best to provide the necessary incentives and help to reduce risks. This may include programs by export credit agencies, as well as through loan guarantees and through a variety of development institutions and agencies. These efforts are, in our view, national and bilateral. We believe the UNFCCC should promote countries to undertake such activities. On deployment—we need a large-scale deployment of existing technologies, and here we see a role for all our governments in establishing laws and policies that can drive massive investment at the scales we need them to make the transition. Here, we emphasize the importance of efficient and effective market signals, including the growth and expansion of the carbon market both domestically and through this process. We see a role for the UNFCCC in facilitating and delivering on

deployment efforts. Copenhagen should play a major role in advancing our efforts across this spectrum. A climate change agreement can and must enable us to pursue and support clean technology development and dissemination at a larger scale.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#14)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

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.”

Answer:

All countries except the least developed should act in accordance with the demands of science and their capabilities. Many, if not all, of these actions, particularly in the more advanced developing countries, would be self-financed. Some countries would, in proportion to their needs, receive international support for implementing their actions. It is therefore clear that mobilizing substantially scaled-up international financial resources will be necessary – both public and private finance. The international financing provisions of Waxman-Markey are important in this regard, and should be retained.

Appropriate financing provisions include strengthening existing institutions and delivery channels for climate finance, both bilateral and multilateral. They may also include new arrangements to channel scaled-up public financing in an efficient and effective manner according to strong fiduciary standards. The

financing provisions should leverage private capital wherever possible, both by encouraging national mitigation policies that create a carbon price signal and by designing public funding institutions that attract private co-financing.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#15)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

The water cycle will be one place where climate change shows itself most significantly. With water and sanitation already a challenge for many of the poorest nations around the world, how is this being factored into the international climate negotiations? It is clear that the impacts of climate change will be felt in all sectors – including both in water and in sanitation.

Answer:

The impacts of climate change are felt disproportionately by the poor and most vulnerable. We anticipate that agreement in Copenhagen will include language promoting more effective approaches to adaptation, including through galvanizing climate resilient development, calling for all countries to institute better climate adaptation planning, and providing new sources of financial assistance to the most vulnerable.

This particularly applies to countries in Africa, Asia and Central America who are the hardest hit. Basic human health needs, in particular those in water and sanitation, are high on our own – and on all nations’ – priorities for adaptation funding and support.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#16)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

What are the impacts on international negotiations of the United States either passing or not passing climate legislation reducing our emissions?

Answer:

Passing domestic legislation on climate change is enormously important to the international negotiations and our international reputation. Other countries are looking to our domestic actions to evaluate the seriousness of our intentions.

Passing strong legislation will show U.S. commitment and leadership and dramatically increase our leverage in negotiations.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#17)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

What are the next steps for an international climate treaty if we don't reach agreement in Copenhagen?

Answer:

The United States is fully committed to trying to get a strong, pragmatic and solid agreement in Copenhagen and the administration is working tirelessly to do so. There is still work to be done, but we think there's a deal to be done and we're committed to trying to make that happen.

**Questions for the Record Submitted to
Special Envoy Todd Stern by
Representative James Sensenbrenner, Jr. (#19)
House Select Committee on Energy Independence and Global Warming
September 10, 2009**

Question:

In the legislative discussions of a climate bill there have been a number of options raised to protect US industry from potentially unfair competition. Based on your discussions, do you see some mechanisms as being more acceptable to the developing world and should these trade protections be part of a climate treaty?

Answer:

The Administration believes that the most effective approach to prevent carbon leakage is to negotiate a new international climate change agreement that ensures that all the major emitters take significant actions to reduce their greenhouse gas emissions. Recent legislation provides for so-called border adjustments. We will review the need for such an approach. Countries like India and China have reacted negatively to the idea of U.S. border adjustments.

