The Congress, the States, and the Courts: Sausage-making in the US

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The Lieberman-Warner Climate Security Act

- First economy-wide cap-and-trade to move through Committee process: showed it can be done
- Provisions
  - Covers 87% of US economy
  - Would reduce emissions 19% below 2005 levels by 2020, 71% below by 2050
  - Up to 15% domestic offsets
  - Allows up to 15% international credits—10% international forestry, 5% international offsets approved by EPA, unused amounts from international allowances
  - Pioneers idea of Carbon Market Efficiency Board to control the supply of carbon credits
Lieberman-Warner is dead: Long Live Chairman Dingell

- Nothing will happen in the Senate until the next Congress (2009-2010)
- The focus is now on the House, and the powerful Chairman of the Energy and Commerce Committee, John Dingell
  - Dingell will propose legislation this fall
  - Likely similar scope and targets to Lieberman-Warner, but nothing known for sure
  - Favorable to offsets?
The next Congress: 2009-2010

• Dingell and House Speaker Pelosi could pass legislation in 2009
• The Democrats will make gains in Congress, but are not united:
  • 10 Democratic Senators would have voted against Lieberman-Warner, would likely oppose future legislation
  • The Senate is still a big hurdle
• McCain could move legislation more quickly than Obama
What about the States?

US States involved in emissions trading program/design

- Regional Greenhouse Gas Initiative (and observers)
- Western Climate Initiative (and observers)
- Midwest Cap-and-Trade Accord (and observers)
- Individual state initiatives

Numbers rank the ten biggest emitters

Adapted from WRI
RGGI

- Power Sector only
- 10% below 2009 levels by 2018
- Most states going to 100% auctioning
- First auction Sep. 25, 2008.
- First compliance period begins Jan. 2009
- Allows domestic offsets only:
  - Initially up to 3.3%.
  - Access increases at certain triggers (5% at $7)
  - Only domestic projects (from participating states or other states that have signed MOUs with participating states).
Western Climate Initiative (WCI)

- Expected to cover most sectors of the economy
- 15% below 2005 levels by 2020
- WCI expected to recommend minimum auction levels
- Reporting begins Jan. 2010:
- Offsets:
  - 10% limit or less
  - Most within the region
  - Might allow limited CDM and JI credits with added criteria.
California

• State-wide reduction targets:
  – By law: 1990 levels by 2020 (AB32)
  – By Executive Order S-3-05:
    • 2000 levels by 2010,
    • 1990 levels by 2020,
    • 80% below 1990 levels by 2050.
• 20% cap-and-trade, 80% command and control
• Dates:
  – Jan. 1, 2009: Adopt plan indicating how reductions will be achieved
  – Jan 2011: Adopt regulations to achieve maximum feasible and cost-effective reductions
• Offsets:
  – Draft scoping plan recommends limiting offsets from outside California
Emissions covered by Regional Initiatives

Emissions reductions below US BAU unknown. States representing 42% of US emissions developing programs. Increasing to 59% including current observers.

- MGGRA Participants: 14%
- WCI Participants: 13%
- RGGI Participants: 11%
- Florida: 4%
- The Rest: 58%
Will the federal government preempt the states?

- Overruling state initiatives in favor of national consistency is a key driver for Congress.

- Lieberman-Warner offered a $30 billion bribe to the states—but was it enough?

- The longer state programs continue, the harder to preempt.
Massachusetts vs. EPA: The Supreme Court ruled that EPA has the authority—and potentially the obligation—to regulate carbon emissions under the Clean Air Act.

On July 11, 2008, EPA Administrator Johnson issued an Advanced Notice of Proposed Rulemaking (ANOPR) to regulate US emissions—but made clear it was the wrong tool for the job.

An option for the next President in 2010?
Conclusions

• Uncertain outcome at the federal level

• Patchy initiatives at the regional level

• Federal legislation may preempt state initiatives

• Federal Courts gave the President authority to unilaterally adopt legislation—but it would be a mess
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Carbon Expo - Barcelona - 27-29 May 2009

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