

Client Alert

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Paris Agreement on Climate Change Boosts Clean Energy Innovation and Finance

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On December 12, 2015, 195 countries came together in Paris to adopt a landmark climate change deal. The Paris Agreement creates, for the first time, a long-term global framework that commits nearly every country to reducing greenhouse gas emissions to address climate change. The Agreement sets a concrete goal of limiting temperature increases to “well below” 2 degrees Celsius above pre-industrial levels, and pursuing efforts to meet a more ambitious goal of 1.5 degrees Celsius. Under the Agreement, all countries must establish nationally determined climate targets and report on their progress using a rigorous, standardized process of review.

NATIONALLY DETERMINED CONTRIBUTIONS, INTERNATIONAL ACCOUNTABILITY

The cornerstone of the Agreement is the requirement that each country set a nonbinding (i.e., intended) target for itself to cut its carbon emissions. Although there is no penalty for failing to meet a target, the Agreement includes a robust transparency system that enables countries to hold each other accountable for meeting their targets. This transparency system requires countries to report on national inventories of emissions by source on a uniform basis and on progress made in implementing and achieving the targets put forward (with some flexibility for developing countries). As a further check, the Agreement establishes a comprehensive technical expert-review process that analyzes whether their reporting is in line with adopted standards.

FUTURE TARGETS AND CHECK-INS (A NAME AND SHAME MECHANISM)

To ensure that progress continues, every five years (starting in 2020) all countries are required to create new, more stringent reduction targets. (Certain countries initially sought a less frequent 10-year review cycle, but the more rigorous five-year cycle was ultimately chosen). These targets will be submitted nine to 12 months before they are finalized to provide time for other countries and the public to comment on the proposed targets, increasing pressure on countries to conform their actions to their national targets and the goals set forth in the Agreement. We expect this component of the Agreement, in particular, will result in greater demand for clean technologies as these new and more ambitious greenhouse gas targets come into play.

FINANCING (VARYING LEVELS OF COMMITMENT)

To hold all countries accountable to this Agreement, and to avoid the shortcoming of the Kyoto Protocol in 1997 (in which only developed nations were required to reduce emissions), both developed and developing countries alike are required to set national climate targets. To encourage developing nations to implement a low-carbon growth path, the Agreement requires developed countries to mobilize climate finance from a wide variety of sources. While the text of the Agreement does not set a specific amount that must be contributed, the preamble states a goal of at least \$100 billion a year in contributions by 2020 and, among other things, adds new commitments to provide at least the same level of finance through 2025.

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IMPLICATIONS FOR NATIONAL CLIMATE POLICY

Under the Agreement, carbon regulation, as a legal matter, is dependent on each country's laws, regulation, and policies. The United States has pledged to cut its carbon emissions by 26 – 28 percent from 2005 levels by 2030. Achieving this target depends, in part, on whether the Clean Power Plan survives legal challenges and is successfully implemented. The Clean Power Plan requires existing power plants to cut their carbon emissions by 32 percent from 2005 levels by 2030. As the emission reduction goals by the United States ramp up at future five-year intervals, national climate policy will have to be adjusted accordingly. However, the Agreement intentionally does not assign legal requirements for countries to cut emissions at specific levels, as this type of deal would have required ratification by the U.S. Senate. Such a strategy suggests the implementation challenges the United States may face going forward as the necessary actions for meeting the target goals are determined. While certain policies—such as the Clean Power Plan— can be implemented by executive action, Congressional action will likely be important to meet the increasingly ambitious targets in the future.

MARKET-BASED MECHANISMS AND INNOVATION

Or perhaps market-based mechanisms and technological innovation will do the work instead? Article 6 of the Agreement recognizes that emissions trading programs have played a role in achieving emission reduction targets. The Agreement does not mandate the use of cap and trade programs, as insufficient preparatory work was done to bake cap and trade in the Agreement. Nonetheless, the Agreement contemplates that such programs will be used, and that the parties will develop international guidance for those programs.

But it is likely that the most substantial work will be done by businesses and investors in response to emissions reductions embodied in the national commitments. At the same time, the Agreement's greenhouse gas mitigation targets also help create the need for better, bigger markets for clean technologies. The Agreement states that accelerating, encouraging, and enabling innovation is critical for an effective response to climate change, and establishes a technology framework to provide guidance for the existing technology mechanism. Increased demand provides an opportunity for businesses to be first to market in this wider-scale deployment of renewables and other low carbon energy technology, providing an economic incentive to invest in clean energy technologies. We expect businesses and investors to drive renewables development and energy technology innovation, enhanced utilization of natural gas and nuclear generation, and renewed focus on carbon sequestration in forests and other carbon "sinks" and carbon-capture technology.

CONCLUSION

The Paris Agreement was designed to establish a global commitment to reduce greenhouse gas emissions to incentivize investment and innovation in cleaner, low-carbon technologies. The Agreement very clearly depends on commercialization of such technologies, responding to the pressures exerted by national emission reduction commitments, to achieve its goals. In this sense, the Agreement is anything but a repudiation of "the market"; rather, it relies on regulatory mandates to help make the market, from which the low-carbon economy will grow. Traditional and renewable energy developers, technology companies, and investors the world over will be impacted by the Agreement, making it important to stay informed about developments in international, national and sub-national law and policy that will follow from its implementation.

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