CLIFFORD CHANCE

IMPLICATIONS OF PRESIDENT BIDEN'S PLAN TO COMBAT CLIMATE CHANGE

– THOUGHT LEADERSHIP

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IMPLICATIONS OF PRESIDENT BIDEN'S PLAN TO COMBAT CLIMATE CHANGE

During his campaign to be elected as President of the United States, Joe Biden set out an ambitious climate plan which, among other things, calls for a goal of net-zero emissions in the U.S. by 2050 and actively combating climate change. Below, we have outlined the implications of the Climate Plan for the U.S. and the international community under the new Biden-Harris Administration.

Domestic Implications

We expect a Biden-Harris Administration to initially implement its climate change agenda through Executive Orders and administrative empowerment. Throughout his term, President Trump overturned over 100 major environmental regulations implemented by the Obama-Biden Administration. The new Biden-Harris Administration will likely reverse President Trump's rollbacks aimed at boosting fossil fuel production, and could reinstate and expand upon many Obama-era environmental regulations.

Here are some of the commitments under the Climate Plan that could be implemented to tackle climate change in the U.S.

- **Substantial investments in energy efficiency**
  The Climate Plan calls for substantial spending in clean energy and infrastructure (both onshore and offshore), committing to USD$2 trillion in investments over four years. More specifically, Biden's Climate Plan calls for increased development of distributed and utility scale renewable energy, including solar, onshore and offshore wind, and hydropower, among others, as well as an amended regulatory framework for utilities to source clean energy instead of fossil fuels.
- **Smart infrastructure investments to withstand the impact of climate change**
  Biden's Climate Plan intends to upgrade the commercial building sector by retrofitting buildings, upgrading schools and improving energy efficiency in homes across the country to ensure that they are more energy efficient and "climate-ready." Specifically, the Climate Plan calls for energy updates for four million commercial offices, warehouses and public buildings, making two million homes more energy efficient and resilient to adverse weather over a four-year period and introducing legislation to set net-zero emissions for all commercial buildings by 2030.
- **Repositioning the auto industry**
  The Climate Plan aims to reposition the auto industry to focus on clean vehicles and speed up the transition to electric vehicles, including expanding the investment in supply chains and infrastructure for clean vehicle production.
- **Financial regulations**
  President Biden has said he will sign an Executive Order requiring public companies to disclose climate change-related financial risks and greenhouse gas (GHG) emissions in their operations, ensuring the U.S. joins the growing number of nations who are already mandating, or preparing to mandate, climate-related financial reporting. We anticipate that U.S. financial regulatory agencies will move to further assess and account for climate change in policy, enforcement and guidance measures.
- **Public land leases**
  President Biden will pivot away from the Trump-Pence Administration's approach toward leasing public lands to oil and gas companies (including President Trump's recent Executive Order permitting drilling on federal lands in Alaska) and is likely to re-evaluate various agencies' review

of environmental impacts of energy exploration and development efforts. It is anticipated that this will favor development efforts in offshore wind while disfavoring oil and gas development.

- **Civilian climate corps**
  The Climate Plan includes the establishment of a civilian conservation corps to find nature-based solutions to address climate change, reduce leakage of toxic chemicals, methane, and other wastes from oil and gas wells and restoring and reclaiming abandoned coal, hardrock, and uranium mines.
- **Clean energy research and innovation**
  The Climate Plan would represent "the largest-ever investment in clean energy research and innovation," at an estimated cost of USD$400 billion over ten years to increase federal procurement for the purchase of key clean energy inputs such as batteries and electric vehicles.

Prospects for the implementation of the Biden/Harris domestic climate agenda

Aspects of the Climate Plan such as increasing investments in energy storage, clean hydrogen and carbon capture incentives are likely to garner bipartisan support, whereas other aspects of the Climate Plan, such as gradually eliminating fossil fuel production, may not.

In order to fully implement and achieve certain goals set out in the Climate Plan, the Biden-Harris Administration will also have to win support and buy-in at the state level, as the ability for the federal government to undertake broadscale change on its own is ultimately limited. Notably, clean energy projects are booming in certain Republican leaning states, for example, Texas, North Carolina and Oklahoma, and generally, bi-partisan support for renewables at the state legislature level continues to grow.

For more details about President Biden's Climate Plan, please see our July 2020 client briefing on the topic **here**.

Global implications

The Biden-Harris Administration's focus on climate change will also have significant global implications. Here are a few likely impacts that the new Administration could have on global efforts to tackle climate change and potential opportunities for international parties with an interest in investing in the U.S. energy market.

Rejoining the Paris Agreement

President Biden has pledged to rejoin the Paris Climate Agreement on his first day in office, calling climate change an "existential threat to humanity." The Biden-Harris Administration will have to determine new climate targets once it rejoins the Paris accord. The Climate Plan includes the goals of net zero emissions by 2050, and for all electricity to be emissions-free by 2035. Key questions will be whether the commitment will cover all GHGs and the extent to which the U.S. will rely on domestic action to meet the net zero goal. The Paris Agreement will also require that the U.S. sets climate targets for 2030, a nearer-term goal which is likely to require near term action, immediately testing the robustness of the U.S. commitment. Rejoining the Paris Agreement will also re-establish the U.S. commitment to, and participation in, climate finance, a collective commitment for developed countries to provide finance to developing nations for climate mitigation and adaptation efforts by at least USD$100 billion per year.

U.S. role in the United Nations Climate Change Conference (COP26)

The COP26 summit in November 2021 will bring parties together to accelerate action towards the goals of the Paris Agreement and the UN Framework Convention on Climate Change. Since President Biden has pledged to rejoin the Paris Agreement, among other commitments, we would expect that the U.S. will attend the COP26. These COP meetings are a key opportunity (and catalyst) for countries to announce or agree to GHG reduction targets, and U.S. participation and leadership is key to building momentum for this process.

At a glance

- The Biden Climate Plan contains ambitious proposals for a clean energy/low carbon future, but the most ambitious measures are likely to be challenging to implement if faced with a Republican Senate. The new administration is likely to make maximum use of Executive Orders and administrative empowerment to reverse numerous measures aimed at facilitating fossil fuel development.
- Major domestic green economy investment is expected in areas of energy efficiency, smart infrastructure, clean vehicles, and related research and innovation efforts.
- President Biden has committed to the U.S. rejoining the Paris Agreement on his first day in office, and has pledged a net carbon neutral U.S. by 2050, with emissions free electricity by 2035.
- U.S. re-engagement in international climate action is likely to encourage greater international carbon reduction and climate finance efforts at the COP 26 meeting, and could help unblock continuing impasses on the development of a carbon market mechanism.
- Biden-Harris Administration's plans for measures to penalize high-carbon imports are likely to find favor with the EU in light of their similar plans, but could well open up a new trade dispute front with China.
- Significant opportunities are anticipated for international investment in U.S. domestic climate-related projects, in particular in the renewable energy field.

Given its global influence, setting a target for meaningful emissions reductions in the U.S. could well lead to other countries that have so far been less ambitious in their GHG pledges establishing more stringent targets in alignment with the goals of the Paris Agreement. The U.S. presence at the table is also likely to be a major boost to efforts to ramp up international climate finance for developing countries, which have languished during the years of the Trump-Pence Administration.

Another area where US re-engagement could help kick start international action at COP 26 under the Paris Agreement is in the area of emissions trading. Article 6 of the Paris Agreement provided for a future global carbon market mechanism to offer a replacement for the Kyoto Protocol (which allows for a carbon market to help countries reach their targets by reducing GHG emissions in other countries, and encourages the private sector and developing countries to contribute towards emissions reductions). Since the Paris Agreement, little progress has been made on the design for such a mechanism and it is hoped COP26 will bring a breakthrough in this regard. Major disagreements remain: Key outstanding issues relate to the carryover of legacy credits from the former Kyoto Protocol's Clean Development Mechanism/Joint Implementation projects; accounting rules around double-counting of emissions; and how the trading mechanisms would, in fact, lead to a reduction in global emissions rather than simply shifting them around the globe. A robust resolution of the outstanding issues could see significant incentivization for private sector companies able to aid in the transition to net zero, and therefore commercial opportunity.

Global cooperation and trade

Given that President Biden has pledged to focus on combating climate change, we can expect more stringent pollution controls across various sectors and in trade arrangements. Unlike domestic policy, where the new Biden-Harris Administration may be limited in creating new climate change legislation without bipartisan support, in some respects, the U.S. President generally has greater discretion and independent powers when it comes to international policy. When Joe Biden was elected, UK Prime Minister Boris Johnson noted that climate change would be an important area of cooperation between the new U.S. Administration and the UK, alongside trade and security.

We expect that a Biden-Harris Administration will leverage its authority to integrate its climate change initiatives into U.S. foreign policy, national security, trade and other international agreements. In particular, President Biden notes in his Climate Plan: *"We can no longer separate trade policy from our climate objectives. Biden will not allow other nations, including China, to game the system by becoming destination economies for polluters, undermining our climate efforts and exploiting American workers and businesses. As the U.S. takes steps to make domestic polluters bear the full cost of their carbon pollution, the Biden Administration will impose carbon adjustment fees or quotas on carbon-intensive goods from countries that are failing to meet their climate and environmental obligations."* This will be a welcome boost for policymakers in the EU and elsewhere where green goals are increasingly becoming a question of trade, and not simply domestic policy. For example, under the 'European Green Deal', the EU is planning its own legislation on a 'carbon adjustment mechanism' to be implemented at the EU border for 'selected sectors' to reduce the risk of carbon leakage (i.e. higher regulatory standards in the EU leading to production being displaced to outside the EU, or import of products with higher carbon content – see our **briefing** on the European Green Deal). The development of a robust carbon adjustment fee or quota domestically in the US would be likely to facilitate US/EU trade, and thereby alleviate possible political tensions.

How this will translate for U.S. trade with China remains to be seen. On the one hand, President Xi Jinping's announcement in September 2020 committing China to have carbon emissions peak before 2030, and targeting carbon neutrality by 2060, creates a landmark boost to global carbon reduction efforts. On the other hand, China's targets would put it on a slower trajectory towards carbon neutrality than the U.S. and many other countries. Tough EU/US carbon adjustment measures could have an impact on China (and other major developing country manufacturing hubs) significantly triggering a major new front in potential trade disputes.

Investment opportunities in the US renewable energy market, including the offshore wind market

Biden's Climate Plan aims to dramatically increase spending on development and corresponding infrastructure designed to both reduce carbon emissions and withstand the impacts of climate change. Given that the Climate Plan includes measures for federal support and incentives to support the development of the renewable energy market, this will create opportunities for international market participants to invest in the U.S energy, auto and technology markets. For example, given that offshore wind is currently in its infancy in the U.S. compared with the rest of the world, and the industry already has bi-partisan support among coastal state legislatures, offshore participants with expertise in the area, as well as suppliers, and service providers could naturally have a competitive advantage in this burgeoning industry in the U.S. It is expected that the new Administration will reverse a number of the Trump-Pence Administration's trade tariffs imposed on solar modules and development materials. As a result, development costs are likely to drop, and greater stability is likely to fortify the U.S. renewables market.

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