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ESG TRENDS: WHAT THE LATEST PARIS AGREEMENT COMMITMENTS MEAN FOR U.S. CLIMATE POLICY

– THOUGHT LEADERSHIP

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With COP26 (the United Nations climate change talks) fast approaching, the U.S. has announced its new Nationally Determined Contribution (NDC) under the landmark 2015 Paris Agreement, pledging to reduce greenhouse gas emissions by 50-52% below 2005 levels by 2030. The announcement was made at the President Biden's Leaders Summit on Climate, a virtual gathering of world leaders and representatives of civil society and the private sector, aimed at raising global ambition on climate action.

The new NDC, along with a bundle of climate-focused government policies announced this week, are the Biden Administration’s latest efforts to reestablish the U.S. as a global leader on climate in the aftermath of the country’s official withdrawal from the Paris Agreement under the Trump Administration. With the U.S having rejoined the Paris Agreement in February 2021, the announcements are a crucial step in rebuilding America's credibility on climate.

THE CONTEXT OF THE NEW US CLIMATE PLEDGE

The Paris Agreement is the latest international consensus in a decades-long effort to reach a global agreement on reducing climate-warming greenhouse gas (GHG) emissions. This year's COP26 meeting – the fifth such Conference of the Parties to take place since the Paris Agreement was negotiated at COP21 – is viewed as a key test of the Agreement's durability and success.

The Paris Agreement places climate action by each of its signatory countries somewhere between a national goal setting exercise and a binding international treaty commitment. Each party to the Agreement was obligated to prepare an initial NDC following the agreement's conclusion in 2015, representing the level of GHG reductions it aimed to achieve over subsequent years. The new NDC announced by the U.S. complies with the parties' obligations under Article 4 of the Agreement, to revise their respective commitments every five years. Each successive NDC must "represent a progression beyond" the prior commitment, a mechanism intended to "ratchet up" national commitments over time.

However, where the Paris Agreement sets binding requirements for announcing and updating climate goals, meeting those goals is entirely and explicitly a matter of domestic policy. While Article 15 of the Agreement establishes a compliance mechanism, that mechanism is expressly "non-adversarial and non-punitive."

The announcement of a 50% reduction goal is a significant commitment in the context of the U.S.' initial NDC of a 26-28% reduction below 2005 levels by 2025, which was announced at COP21. The commitment is more significant still, considering that the primary method by which the United States was intended to meet its initial NDC – the EPA's "Clean Power Plan" – stalled in the courts, before being formally replaced in 2019 (which replacement was itself subsequently vacated by the DC Circuit in January of this year). Meeting this target will require a dramatic departure from the policy status quo.

THE FUTURE OF U.S. CLIMATE POLICY

If meeting the U.S.'s ambitious new NDC is a matter for domestic policy the question for the Biden Administration is what laws, regulations, and financial levers will the U.S. utilize to meet its pledge. A critical variable in this question will be Congress, where Democrats currently control a razor-thin majority in the House and a tie-breaking vote in the Senate. Passing transformative climate legislation is unlikely.

Nevertheless, the Biden Administration, which has **pledged** to engage the "full capacity of the Federal Government" in addressing climate change, has no shortage of opportunity. The Administration is preparing a range of climate-focused executive actions, agency rulemakings, and coalition building exercises, many of which are already coming into view. These include:

- **Agency initiatives.** The U.S. government maintains a number of lending programs, each of which can be targeted at achieving specific policy goals. Reorienting these programs to maximally align with U.S. climate goals can have a significant effect on the country's decarbonization efforts.

  One high-priority example of these programs is the Loan Programs Office at the Department of Energy (LPO), which is authorized to issue nearly $45 billion in loans and loan guarantees for renewable, advanced nuclear, carbon capture, and advanced vehicle technology projects. LPO was critical in jumpstarting utility scale solar and onshore wind in the U.S. following the 2008 global financial crisis, and early statements from the office's new leadership have underlined LPO's desire to be a key source for climate-oriented projects. In particular, LPO is expected to be a major player (in cooperation with the Bureau of Ocean Energy Management) in helping the U.S. reach its recently-announced target of constructing 30 GW of offshore wind capacity by 2030.

  From a foreign policy perspective, concurrently with the Leaders Summit, the White House released a new **International Climate Finance Plan**. The plan is aimed at scaling the U.S.'s contribution to the Paris Agreement's goal of mobilizing $100 billion in climate finance for developing countries each year. Under the plan, climate change will be a central consideration in U.S. foreign aid and lending abroad, including through multilateral development banks in which the United States is a shareholder.

  Agencies are anticipated to release their own climate policies under the International Climate Finance Plan, and some have already done so. For example, the United States International Development Finance Corporation (DFC) announced that it will achieve a **net zero investment portfolio** by 2040. Beginning in October 2022, DFC has committed that at least a third of its new investments will be climate-linked.

- **Regulatory action.** While the stalling of the Clean Power Plan was a setback for the U.S.'s first NDC, the U.S. is likely to pursue new, more targeted agency actions aimed at curbing GHG emissions. An executive order signed on President Biden's first day in office directed all federal agencies to both review regulations inconsistent with the country's climate goals and to consider new agency actions to achieve those goals.

  More immediate action on regulations may also become relevant if Congress exercises its authority to overturn regulations under the Congressional Review Act (CRA). The CRA permits both houses of Congress to disapprove (by majority vote) of a wide variety of regulations finalized in the previous 60 legislative days. Congressional Democrats have already introduced resolutions to disapprove of two Environmental Protection Agency (EPA) rules published in 2020, which effectively eliminate the authority of the EPA to regulate methane emissions from oil and gas facilities.

- **Transportation.** The rapid electrification of U.S. light duty vehicle stock is an increasingly clear priority both at the federal level and for a number of States. California, Massachusetts, and Washington State have all announced plans to ban the sale of new internal combustion engine vehicles (ICE) by 2035 (2030, in the case of Washington). And while not yet announcing their own standards, nine other states recently signed up to a letter to the White House requesting that the federal government take action to **phase out** light duty ICE sales nationally by 2035.

The Biden Administration itself has committed to deploying the infrastructure required to enhance zero emission vehicles (ZEV) rollouts, announcing a plan to deploy an additional 500,000 ZEV chargers across the country by 2030.

- **Economics.** The economics of energy have shifted dramatically in favor of decarbonization in recent years. Solar and onshore wind are now the cheapest new generation electricity available in the country. Offshore wind, which existed only in the designs for the ill-fated Cape Wind project under the Obama Administration, is on the brink of massive development. Advances in next generation alternative fuels, in particular green hydrogen (which could become **competitive** with current natural gas prices by 2050), promise to inject more affordable clean energy into the mix in the next ten years.
- **Financial sector and business buy-in.** Much as the economics of climate action have changed since the U.S. submitted its first NDC at COP21, so have the attitudes of the financial sector. One recent report suggested that since the conclusion of the Paris Agreement, the world's largest banks provided nearly $4 trillion in financing for coal, oil, and gas companies.

  But over the past year, this disconnect seems to be sparking action. Many of the nation's largest banks have **announced** plans to harmonize their financing activities with the Paris Agreement through 2050. In the week of the Leaders Summit on Climate, that ambition expanded as 43 banks across the world joined the newly announced **Glasgow Financial Alliance for Net Zero**, which will aim to standardize metrics for measuring net zero pledges by financial institutions. A parallel initiative, the **Net Zero Asset Managers Initiative** has already garnered 87 signatories representing $37 trillion in assets under management. Finally, a newly announced **Net-Zero Insurance Alliance** will see some of the world's largest insurers make their own commitments in the run-up to COP26.
- **Legislative ambitions.** The confluence of the COVID-19 pandemic and a long-running bi-partisan desire to fund new major infrastructure has left an opening for substantial federal investment in new energy and infrastructure projects and initiatives. The Biden Administration's opening bid to Congress – a $2 trillion infrastructure package – is heavily climate-focused, including plans for $174 billion to expand the electric vehicle market and install charging infrastructure, $100 billion to green the power sector, and $180 billion for climate tech research and development. The plan also includes a number of support measures for renewable energy, including an enhancement and ten-year extension of the investment tax credit (primarily used to support solar projects) and production tax credit (primarily used for wind projects).

  Whether the Democrats can force through an infrastructure bill with their current margins, or whether they can find a compromise to bring on board Republicans, remains to be seen.

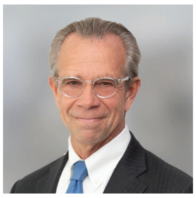
ACTION AROUND THE WORLD

Reducing GHG emissions requires global action, and leaders from across the world took the opportunity of the Leaders Summit to announce their own enhanced ambitions. Aside from the new U.S. pledge, the UK, keen to demonstrate leadership in the run-up to the COP26 talks, announced a landmark target to reduce emissions by 78% from 1990 levels by 2035. Canada, announced a 40-45% reduction from 2005 levels by 2030, and Japan promised a 46% cut from 2013 levels, also by 2030. China too made some strides in allaying fears on its dominant use of coal in agreeing to "phase down" coal consumption in the five years to 2025.

Such pledges and initiatives are all significant and to be welcomed but, like the U.S. pledge, will need to be backed up by credible implementation plans and policies domestically.

Renewed US engagement on climate change seems to have been a significant factor in galvanizing recent climate ambition by government and business alike, and it is to be hoped that this continues in the months and years to come.

CONTACTS



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