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## THE U.S. ROLE IN SOLVING CLIMATE CHANGE: GREEN GROWTH POLICIES CAN ENABLE LEADERSHIP DESPITE THE ECONOMIC DOWNTURN

*Keynote Address to the Energy Bar Association*

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*Ambassador Stuart Eizenstat\**

There is no doubt that with incoming President-elect Obama and a Democratic majority in Congress, there will be a sea change in United States climate change policy. We are at a critical juncture, and the opportunities and challenges for the U.S. and the world are immense. The new administration has indicated its determination to show leadership on climate change, but faces competing demands and the resource constraints of an economy in recession and financial crisis.

I want to make several broad points this morning. The first is that the current financial and economic crisis clearly puts a cloud over climate change efforts, at home and abroad, but cannot be an excuse to avoid action. Much progress can be made on climate change in ways that create green jobs and energy security, starting with low cost ways to reduce emissions that also put us on the path to a green economy. Achieving these goals will have a huge impact on companies involved in the electricity, natural gas, hydro-electric, coal and nuclear power, oil pipeline, and alternative fuels industries among others.

The second point is that we must move on two simultaneous tracks: passing domestic cap and trade legislation, and engaging in post-Kyoto international negotiations. These must be mutually reinforcing. In both, we must do so with cost and competitiveness implications high on our agenda.

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\* Ambassador Stuart Eizenstat, a partner at Covington & Burling LLP, has held numerous senior positions in government as Deputy Secretary of the Treasury, Under Secretary of State for Economic Affairs, U.S. Ambassador to the EU, and former U.S. Sous Sherpa to the G8. He was the lead U.S. negotiator of the Kyoto Protocol on Climate Change. The views he expresses are his own, and do not necessarily reflect the views of any of the firm's clients.

The third point is that the United States must show leadership if we are to deal with one of the greatest challenges of the twenty-first century, despite the economic crisis. The Obama-Biden Administration will be well-positioned to provide this leadership, given the strong stance taken by Senator Obama during the campaign.

We can do so by the following:

- Building on our history of innovation to promote job-creating green growth;
- Passing U.S. legislation with significant targets for emissions reductions, but in ways that keep costs down;
- Recognizing that the international negotiations will be among the world's most complex, and will require a grand bargain, with contributions from developing countries, including major emitters, and even lesser developed countries, as well as from the developed countries. But, the U.S., and other developed countries, must show the way and help provide developing countries with the tools to achieve an accelerated transition to a lower carbon economy during their own growth phase.

The rest of the world is waiting to see what stance the United States will take at the upcoming high-level UN climate negotiations in December, in Poznan, Poland. Yvo de Boer, the UN's top climate change official, has said publicly that leadership from President-elect Obama, given his forward-leaning policy statements, "can have a huge impact on the dynamics of these negotiations."<sup>1</sup> At the same time, de Boer sought to provide the new administration breathing room by reminding that no country had domestic legislation in place at the time they signed on to the Kyoto Protocol. "I don't see why we should have a much more difficult standard for the United States,"<sup>2</sup> he told the press.

Projecting early leadership on climate change represents a major challenge to the new administration. They are not yet in office, and President-elect Obama has pointed out that there is only one President at a time. They face daunting economic problems and extremely high expectations—internationally as well as domestically—to set a bold new course, and time is very short. Just yesterday President-elect Obama's senior energy advisor said this week to expect no major announcements on global warming before Inauguration Day. Yet, President-elect Obama is uniquely positioned to be credible on the issue of climate change, because he made clear during the campaign his commitment to act on climate change. He has made energy security and independence, and green jobs, early priorities for his new administration. He also explicitly supported U.S. cap and trade legislation and binding emissions targets: at 1990 levels by 2020 and at

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1. Dune Lawrence, *Obama May Have "Huge Impact," UN Climate Chief Says*, BLOOMBERG.COM, Nov. 6, 2008, <http://www.bloomberg.com/apps/news?pid=20601130&refer=environment&sid=aHQ9KrY9NRQ0>

2. Darren Samuelsohn, *Obama Need Not Bring U.S. Emission Law to Copenhagen – U.N. Climate Chief*, GREENWIRE, Nov. 10, 2008.

eighty percent below 1990 levels by 2050. Early action in some form on the details of his campaign goal to create five million new “green” jobs by investing \$150 billion over ten years in clean energy efforts in the United States would also highlight that major opportunities exist to tackle climate change while also promoting economic recovery. He might begin to open a path to real cooperation with major emerging economies and the developing world by stressing as well a commitment to approaches that enable and spur sustainable growth for all.

But what are the prospects for U.S. legislation? No one ought to expect U.S. cap and trade legislation to pass in the first months of his administration. House Speaker Pelosi’s spokesman said this week that cap and trade legislation is “not a first 100 days priority.”<sup>3</sup> Cost and competitiveness issues are a big part of the political debate in the United States, as they are elsewhere. There are many ways we can address costs issues, both in the legislation and in international negotiations. We can start by examining more carefully and realistically low-cost and no-cost options. National and international systems must also help to provide incentives to adopt these “low-hanging fruit,” which are based almost entirely upon existing and off-patent technologies. They include insulating buildings, changing lighting, and other relatively painless changes that I believe people would make if it were clearer to them how and why they should.

We also need to improve technical and institutional capacities and regulatory frameworks in support of low carbon growth, both at home and internationally. U.S. power sector regulations need modernizing, including accelerating progress on new pricing, metering and demand-aggregation approaches into transmission planning, and to promote the interconnection of renewable energy—such as wind and solar—into the grid. We will also need a significant expansion and modernization of the energy grid itself to enable promising new technologies, such as plug-in hybrids. To get the job done, we may also need a larger federal role in siting electric transmission lines. We will need to further improve building and appliance standards, to learn how to encourage cleaner and more efficient industrial processes, to reduce waste, and to recycle more cost-effectively. We also need to support clean coal and carbon capture and storage.

To help keep costs down, we will certainly need to expand trading and deepen markets internationally through passage of U.S. cap and trade legislation, along with implementing effective verification and compliance rules and institutions. Including international trading in U.S. legislation is critical because getting a two-thirds vote for it otherwise will be very difficult. And as we expand the use of carbon credits and trading, we need to protect the most vulnerable among us, including to assist workers and industries hard hit by the transition to a green-growth economy. For example, revenues from auctioning credits might be used to offset the impact and cost to consumers and industries of meeting the targets, as well as to promote the use of alternative fuels and the uptake of clean technologies more generally. We should also look at how sales of credits from strategic emissions allowance reserves—as proposed in the Dingell-Boucher bill—can best be designed to provide us flexibility to act in the

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3. *Id.*

face of unexpected carbon credit price increases. Robust, high quality offsets must also be considered as part of our efforts to manage the cost of transition to green jobs, low carbon growth approach. And we must make use of carbon credits, at home and internationally, including for sustainable forestry and land use, if we are to manage costs and create incentives for effective action.

Clearly, however, the U.S. will not agree to an international deal that goes beyond targets the new Administration believes are realistic domestically, and we will certainly not have a domestic target by December 2008, and perhaps not by December 2009, the current deadline for agreement on a post-Kyoto framework. Nor are we likely to reach one that matches the EU's target of a twenty percent reduction in emissions from 1990 levels by 2020.

Nonetheless, I am cautiously optimistic—both about prospects for U.S. action and about cooperative efforts internationally. Much has changed. The scientific case on climate change is now widely accepted. We have a far better understanding of the economics of climate change. Technical and technological progresses now offer great hope that we can beat climate change transparently, verifiably and cost-effectively. No longer is climate change seen as a problem created solely by highly-developed economies. Emerging economies are now major and fast-growing emitters, and developing countries now have the potential to be a major part of the solution as well. Moreover, the United States appears poised to again engage, cooperate and lead.

During Kyoto Protocol negotiations, the United States led the world in urging that market mechanisms would be critical to addressing climate change. My European counterparts were highly skeptical of emissions trading. Today, Europe has embraced trade in carbon credits. The United States must move quickly to regain its lead role on climate change, both on the intellectual front and in driving forward creative policy responses. Fortunately, I see clearly the emergence of a broad consensus to act. This is illustrated by California's actions, by the collaborative efforts of nearly a dozen mid-Atlantic and Northeast states involved in the Regional Greenhouse Gas Initiative (RGGI), by the rapid growth in operations of the Chicago Climate Exchange—where over sixty million metric tons have been traded voluntarily this year alone by over 300 companies, in private sector efforts within the U.S. Climate Action Partnership (USCAP) as well as by the actions of citizens across the country.

There has also been progress on cap and trade legislation, and growing emphasis on energy efficiency and security. But make no mistake, passage of U.S. cap and trade legislation will be challenging, even with Democratic majorities. It is true that in June 2008, support for cap and trade legislation reached its highest point to date, with fifty-four Senators favoring action of some sort. However, fifty-four is not the sixty needed to break a filibuster much less the sixty seven needed to ratify an international treaty. The Boxer-Lieberman-Warner bill was pulled from the floor in three short days. Moreover, ten moderate Democrats from among the fifty-four supporters wrote to Senators Reid and Boxer to make clear that while they wanted action, they could not support passage of the Boxer substitute. They cited concerns about the economic impact on the U.S. A well-organized campaign by opponents to climate legislation had managed to characterize the approach as “cap and tax” rather than as a market-based solution to a critical problem.

Recently, House Energy & Commerce Committee Chairman John Dingell (D-MI) and Energy Subcommittee Chairman Rick Boucher (D-VA) released a cap-and-trade proposal that is more sensitive to these cost pressures. Still, serious cost and competitiveness concerns mean that any U.S. legislation almost certainly will have trade measures designed to level the playing field for U.S. industries that must compete globally with competitors from countries—such as China India and Brazil—that have yet to take on binding commitments of any sort on greenhouse gas emissions. There are a range of trade measures that have been proposed, including an approach would require China and India to meet the same standards as for the United States and other developed countries, and potentially to block trade if they do not. That presents serious challenges to WTO obligations, and would likely provoke counter-measures against United States exports. Both the Boxer-Lieberman-Warner legislation and the recent Dingell-Boucher proposal include requirement that U.S. importers purchase offsets and/or emissions allowances along with any carbon-intensive imports from major emitters that have not taken on commitments to reduce emissions. We will need to be very thoughtful about trade measures, not only their about impacts on competitiveness, but also on efforts to revitalize trade liberalization talks and on trade-enabling WTO disciplines, as well as how they impact the positions of others and stack up against incentive mechanisms. While we must address concerns about any competitive advantage climate negotiations may confer on India and China, we need to do so in a WTO-consistent manner.

Because U.S. cap and trade legislation is not likely to move until the end of 2009 at the earliest, President-elect Obama's team may be considering the use of domestic regulation, perhaps through EPA's interpretation and enforcement of the Clean Air Act. In 2007, in *Massachusetts v. EPA*,<sup>4</sup> the Supreme Court ruled that EPA has authority under the Clean Air Act to address greenhouse gas emissions. The new team would be wise to consult closely with Congress before unleashing the option. Some believe that using the Clean Air Act to regulate greenhouse gases domestically, which would require EPA to find that greenhouse gas emissions "endanger" public health, might also unleash pressure for EPA to regulate stationary point sources of greenhouse gases, from buildings to industrial processes and even agricultural sources. The new administration might also consider reversing EPA's decision to disallow California's waiver request so as to set vehicle greenhouse gas standards stricter than the national standards. Clearly, use of the Clean Air Act and enabling sub-national standards must be carefully assessed to ensure that they expedite effective action and do not distract from efforts to pass comprehensive U.S. cap and trade legislation.

Congress has already included a range of renewable energy tax credits, and extended the time frame for issuance of clean renewable energy bonds in the Emergency Economic Stabilization Act of 2008 passed in October.<sup>5</sup> The legislation contains nearly eighteen billion dollars in tax provisions, including production tax credits for wind energy and a new tax credit for carbon sequestration. The new Obama administration may use the next round of stimulus efforts to accelerate progress towards a more fuel efficient auto industry, as John Podesta and Rahm Emmanuel suggested last weekend, and

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4. 549 U.S. 497 (2007).

5. Pub. L. No. 110-343, § 122 Stat. 3765 (2008).

perhaps to improve the energy efficiency of our infrastructure—such as transportation and buildings—as well as to promote renewable energy supplies and the creation of green jobs. That too would signal the United States' intent to move towards a more sustainable growth path.

The new administration also will be working to find ways to implement the President-elect's campaign commitment to ensure that by 2012 ten percent of our electricity comes from renewables, and twenty-five percent by 2025, as well as to put one million plug-in cars on the road by 2015. President-elect Obama called for investments to modernize the transmission grid and energy infrastructure, and cited the need to enable integration of renewable energy supplies and plug-in vehicles. The economic downturn, falling oil prices and the credit crunch have hit clean technology investments hard, however. At least one major index of clean technology stocks fell by eighty percent from early September to early November 2008, compared to a twenty-five percent loss in value for the S&P Index. Clean energy companies and investors are scaling back worldwide. Incentives and policy certainty and commitment will be required to ensure needed engagement by the private sector.

In fact, despite a September 2008 report by the UN arguing that stimulus policies enacted in response to the global down turn could create millions of green jobs internationally, most countries are concerned that a new climate change framework will hurt revitalization efforts. Although President-elect Obama and the new Congress are forward-leaning on climate change, this makes prospects challenging for a new international climate change agreement. But climate change negotiations have always been among the world's most challenging.

I have now been engaged on climate change policy since 1997, when I was the U.S. lead negotiator on the Kyoto Protocol. We fought to convince the Europeans to agree to cost-reducing emissions trading, and had to struggle to include deforestation and afforestation, as well as carbon sinks, as key to cost effective results. We simply failed on avoided deforestation. Measurement and verification, and other complex issues, made it just too much for overloaded negotiating circuits. We now have the means and methods to verify forest bio-carbon credits, and are far better placed to ensure their inclusion in a post-Kyoto approach.

I also had to ensure that U.S. commitments were equal to those of Europe and Japan, with Congress watching closely and the Europeans insisting upon reductions that we knew were unachievable. To add to that, I was bound by a 1995 international agreement—the so-called Berlin mandate—that developing countries would not have to undertake binding commitments to reduce greenhouse gas emissions, and a U.S. Senate vote of ninety-five to zero in favor of the Byrd-Hagel amendment opposing United States participation in any climate change treaty in which developing countries were not also participating. We simply had to find a way to engage developing countries in the process formally in order to secure domestic political support. China and India literally blocked Argentina and Kazakhstan from taking on binding commitments which would have allowed them to benefit from emissions trading. To counter, we established the Clean Development Mechanism (CDM).<sup>6</sup> The CDM was

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6. ABOUT CDM (2008), <http://cdm.unfccc.int/about/index.html>.

sufficiently flexible to allow Argentina and other countries that had wanted to tap market mechanisms available to those that limited growth in their emissions to earn emission reduction credits by making relevant investments in developing countries. Nonetheless, it is widely agreed that the CDM has not met expectations that it would promote emission reducing investments throughout the developing world, and we now have an opportunity to revisit it.

The politics and technical challenges of climate change are as complex as ever, but there are key differences. For one, the financial meltdown will color and constrain every policy debate, including the climate change negotiations. For another, China has now surpassed the United States as the world's largest emitter of greenhouse gases, and—if we take account of deforestation rates—Indonesia and Brazil already rank in the top five. So clearly they have to be a greater part of the solution than they were willing to be at Kyoto. As we approach a post-Kyoto period and the prospect of a U.S. cap and trade system, it is clear that a “grand bargain” requires these new entrants to the biggest emitters group to make some sort of binding commitments. To do so, they are demanding technology transfer action and funding without full intellectual property rights (IPRs) protections, in a replay of the Doha access to medicines debate. China's Premier has called in recent days for a one percent tax on the GDP of developed countries, for free or low-cost transfer of the very technology upon which our new jobs depend, and for developed countries to end their “unsustainable lifestyles.” Unfortunately, China's basic perspective is shared by Brazil, India, Pakistan, Indonesia and others, including some UN officials and many civil society leaders. Without leadership and skillful negotiation, we could face the same developed-versus-developing world stand-off we saw in Kyoto.

McKinsey estimates that investments in energy productivity on the order of \$170 billion will be needed every year between now and 2020 to meet emissions reduction targets.<sup>7</sup> To achieve needed emission reductions while sustaining robust growth, McKinsey believes that “carbon productivity”—as measured by GDP per ton of CO<sub>2</sub> emitted—must increase ten-fold globally by the year 2050. That is equivalent to the changes we saw during the industrial revolution. McKinsey estimates that these changes could be achieved at a cost of “only” 0.6 to 1.4% of global GDP by the year 2030, because of the low cost—and even no cost—opportunities available worldwide.<sup>8</sup>

There are those who will continue to try to compel access to technology and to weaken intellectual property rights, in some cases to bolster their own competitive aims. The developing countries have, in fact, demanded that most if not all of the cost of their efforts to address climate change be borne by developed countries. In part, this results from a decades-old—and now clearly outmoded—perspective that also pervades the climate negotiations. In that view, addressing global challenges is a zero-sum game between the developed and the developing countries. Developed countries (and their companies) are seen to have a lock on the financial and other modern resources needed to address climate change, and developing countries are essentially just victims ensnared in climate change.

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7. MCKINSEY & COMPANY, MCKINSEY QUARTERLY, WHAT COUNTRIES CAN DO ABOUT CUTTING CARBON EMISSIONS (2007).

8. *Id.*

Practically speaking, the climate problem cannot be solved without action by all major emitters. We cannot have both strong industry and a healthy environment unless these big, emerging economies are yoked up with us into a multilateral framework. Even many least-developed countries could actually be a tremendous source of carbon offsets from sustainable forestry management and land use that can make a real, cost-effective contribution to fighting climate change. Some of the world's poorest countries may be keys to solving the problem. The 2006 UK Stern Report on climate change economics found that emissions related to forests now account for around twenty percent of global totals, more than the entire transportation sector worldwide.<sup>9</sup> By establishing the proper incentives for both public and private investment, relatively low-cost improvements which dramatically reduce those emissions could be made and verified. The resulting carbon credits could dramatically reduce poverty among rural populations, and spur sustainable growth and development, while positioning these countries as true partners in the fight against climate change. It could change the whole debate between developed and developing countries concerning climate change, from one focused on aid to a focus on partnership, investment and opportunity. Finally, it would allow us to engage broad groups of developing countries, such as the multi-regional Coalition for Rainforest Nations and the Common Market for Eastern and Southern Africa (COMESA), on sectoral forestry agreements that help address climate change at the least cost to the global economy.<sup>10</sup>

There is no longer a question of the need to engage major emitting economies to make commitments—we cannot succeed without them, and they too will bear major costs if we do not succeed. The least developed economies of the G77 may finally be willing to break with the past, and act more independently as the risks that they face become more evident and pressing, and as they see the development opportunities in being a part of the solution. Still, the international negotiations on climate change will be a multi-leveled chess game like no other. There will be major sectoral winners and losers, energetic efforts to game the negotiations and still-deep fault lines between the developed and developing world may cause an earthquake or two before we reach agreement.

What then are the elements of our ultimate success internationally in addressing climate change at the lowest possible cost overall, through mutually beneficial partnership among all governments, private sectors and civil societies worldwide. To get there will require a post-Kyoto framework that taps market-oriented incentives and regulatory frameworks to facilitate and accelerate innovation and technology development, transfer and diffusion, not slow it down. Highly developed countries will continue to lead, but a new agreement must provide clear avenues for committed action by major emitters—whether in the form of sectoral commitments, energy efficiency or carbon intensity targets

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9. ELIASCH REVIEW, CLIMATE CHANGE : FINANCING GLOBAL FORESTS EXECUTIVE SUMMARY (2008), [http://www.occ.gov.uk/activities/eliasch/report/Executive\\_summary\\_eliasch\\_review.pdf](http://www.occ.gov.uk/activities/eliasch/report/Executive_summary_eliasch_review.pdf).

10. COALITION FOR RAINFOREST NATIONS, ABOUT THE COALITION (2008), <http://www.rainforestcoalition.org/eng/>; COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA, ABOUT COMESA, OVERVIEW (2008), <http://about.comesa.int/lang-en/overview>.

or some combination of mechanisms—and there must be tangible rewards for their concrete action.

And, of course, we must engage these countries as partners, recognizing their development imperatives. Actions we should look at in this regard include:

- Consideration in international climate discussions of energy efficiency standards and sectoral approaches and agreements—for example, on automobiles, steel, forests and land use;
- Funding for development, transfer and diffusion of technologies for climate change mitigation and adaptation, *e.g.* for the Clean Technology and Climate Stabilization Funds, without sacrificing the protection of intellectual property rights;
- Multi-sectoral R&D, education and training partnerships and resources to ensure more rapid and widely-shared innovations;
- Fiscal and regulatory incentives and frameworks for technology development and diffusion;
- Trade tariff reforms—*e.g.* to reduce and render them more technology neutral—to enable clean technology diffusion;
- More widely available information on technology choices;
- Removal of policy barriers to sustainable, low carbon development, including with the support of the Multilateral Development Banks (MDBs);
- Efforts to include forest carbon and land use credits, and related land use credits, in domestic and international climate policies;
- New approaches to the use of existing mechanisms such as the Clean Development Mechanism (CDM) and the Global Environment Facility (GEF); and
- Help in mobilizing the substantial investment resources needed by these countries to get onto a low-carbon growth path, including by strategic use of grants and loans from the MDBs, in partnership with export credit agencies, risk mitigation and insurance programs and in partnership with the private sector.

In the end, every country, every industry and every environmental and other stakeholder groups will need to be willing to take a realistic approach to reach the compromises needed to solve the problem of climate change. Everyone must understand that the impacts of climate change—on resources, habitats, health and political stability—present a global security threat. The new Administration will need to continue to exercise the sort of practical, hard-headed judgment shown in recent months. Based on experience, I believe it can be done, and based on the scientific consensus, it must be done. The longer we wait, the more costly it will be and the more we will be rolling the dice on catastrophic changes to the global environment.