Changing Climate: What The Paris Accord Means For China

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*In December 2015, nearly 200 countries reached a historic agreement in Paris to limit greenhouse gas emissions in hopes of curbing global warming. Law360's **Expert Analysis special series** looks at the impact the agreement will have on policies in various regions and countries.*

Lester Ross

Adoption of the Paris agreement under the 1992 United Nations Framework Convention on Climate Change (UNFCCC)[1] at COP 21 in Paris on Dec. 12, 2015, is attributable in substantial part to bilateral agreements between the presidents of the People's Republic of China and the United States.[2] This first took place when President Xi Jinping and President Barack Obama met in Beijing in November 2014 just after the Asia-Pacific Economic Cooperation (APEC) Summit. The resulting U.S.-China Joint Announcement on Climate Change, in contrast to the discord at COP 15 in Copenhagen in 2009, committed each of the world's two largest greenhouse gas (GHG) emitters to substantial emissions reductions. China specifically committed its intent to cap or peak its CO2 emissions by "around 2030" and to make its best efforts to do so at an earlier date, by which time it intended to have 20 percent of its primary energy consumption generated from sources other than fossil fuels.[3] The second was the Sunnylands Summit in September 2015 where the two presidents reaffirmed the joint announcement and elaborated on their respective domestic climate change action and international cooperation commitments.[4]

Background

China's commitments resulted from three sets of decisions by China to address the dangers presented by climate change and accept more of the financial burden derived from three sets of factors:
China's economic strategy for many years was predicated on heavy industry and investment intensity with little regard for environmental protection. This is attributable in large part to the economic model introduced from the former Soviet Union after the establishment of the PRC in 1949. The legacy persisted for a time even after the Sino-Soviet split beginning in the late 1950s. The model only slowly began to end after the chaotic Cultural Revolution (1966-1977) when China opened up to the world. Since then China has gradually but with increasing rapidity enacted a series of laws, regulations and policies to address pollution and other environmental concerns, upgraded enforcement responsibility to ministry level in the Ministry of Environmental Protection, and begun to impose more severe sanctions for violations.[5] Such concern has extended to climate change as the consequences for China became better understood, in particular an accelerating average rise in terrestrial surface temperature of 0.9 C-1.5 C from 1909 to 2011 and consequent environmental, economic and social impacts.[6]

While China was an original signatory to the UNFCCC and acceded to the founding Kyoto Protocol,[7] it did so as a nonannex I party, i.e., a developing country without binding emission limitations or reduction commitments under annex B in accordance with the principle of "common but differentiated responsibilities" adopted in the Rio Declaration on

Environment and Development in 1992.[8] China, as a nonannex I party, was eligible to implement its GHG emissions reductions to a substantial degree through financial subsidies under the UNFCCC's clean development mechanism (CDM) and to a more modest extent technology transfers.[9] China, as a rapidly growing and still heavily centrally planned economy, in fact made the greatest use of CDM under which annex I parties could meet some of their commitments by subsidizing emission reduction projects in nonannex I parties.[10] Eventually, however, China's industrial expansion and increased competitiveness aroused opposition to such free riding among annex I parties. The European Union in particular removed China from CDM eligibility as of Jan. 1, 2012, because of its economic growth and increased competitiveness, while political opposition to climate change policies in the United States rested in part on the exemption enjoyed by large developing countries like China. China therefore increasingly accepted the need to finance its own climate projects and even to support projects in the least developed countries under the concept of "win-win" cooperation, with each country making contribution (sic) to the best of its ability.[11] Any financial contributions will be made in the new China South-South Climate Cooperation Fund independent of the Green Climate Fund specified in the Paris agreement because China does not regard itself a developed country and in some instances seeks to establish an alternative international architecture.[12]

The third factor was the change in China's overall foreign policy strategy. Deng Xiaoping, who led China from the late 1970s into the 1990s in the recovery from the Cultural Revolution and the start of the reform era, proclaimed a principle in foreign policy that has been translated as "hide your strength, bide your time." This principle, which was adhered to by his two immediate successors, led China to generally refrain from asserting a leading position in regional or global affairs while concentrating on its own economic development. Even with respect to climate change, former Vice Chairman Xie Zhenhua of the National Development and Reform Commission and special representative to the climate change talks described China's participation in such talks in 2007 as follows: "When we took part in negotiations in Bali the developed countries spoke, and we listened, and then went back to discuss among ourselves."[13]

By contrast, Xi Jinping has asserted a more robust diplomatic policy approach. As Evan Osnos has reported, "he intends to make China's voice heard, and inject more Chinese elements into international rules."[14] This includes efforts to establish a "new type of great-power relationship" with the United States, i.e., to create an equality of status with the United States as the world's two great powers. The United States has not accepted the concept and in many respects has rejected efforts by China to insist upon acceptance of what it defines as its "core interests" in political-military affairs. Nevertheless, the agreements between Xi and Obama in Beijing on climate change led other developing countries in particular to make serious commitments of their own at COP 21, without which the Paris agreement would not have been possible. As Xie Zhenhua said, "we are [now] almost standing at the center of the climate change stage."[15]

Intended Nationally Determined Contribution

China's intended nationally determined contribution (INDC) as submitted to the UNFCCC secretariat on June 30, 2015, in advance of COP 21 includes a peaking of CO2 emissions by approximately 2030, as well as a reduction in the intensity of CO2 emissions per unit GDP by 60-65 percent from 2005 levels, and an increase in the proportion of nonfossil fuels to 20 percent of total energy consumption.[16] The targets are quite conservative and are expected to be easily surpassed ahead

of time, in part because China is transitioning to a more service-oriented, less energy-intensive consumption-based "new normal" economy with slower growth, and in part because China's industrial policy and capability have already made it a global leader in wind, solar, nuclear and hydro nonfossil fuel energy equipment manufacturing and power generation. Although particular energy-intensive industrial sectors like steel and coal will be adversely affected, the economy as a whole is expected by policymakers to be able to adapt, although the general slowdown of the economy will complicate the transition.

Implementation

Policy implementation in China is subject to law and state planning. The decision-making process is directed by the State Leading Small Group on the Response to Climate Change established in June 2007 and chaired by Premier Li Keqiang. This multiagency committee is effectively staffed by the National Development and Reform Commission, i.e., the former State Planning Commission, through its climate department.

With respect to legislation, recognizing that existing legislation, in particular the Law on Prevention and Control of Air Pollution (revised version effective 2016), Energy Law (draft submitted to the State Council in 2015) and Energy Conservation Law (2007) are inadequate, a new law on addressing climate change is in process. The drafting process took shape in 2012, led by a research team in the Chinese Academy of Social Sciences,[17] which was followed by a further solicitation of comments in 2015.[18] The 2012 draft shows that China will go beyond the early conception of a law on low-carbon economy. If the final version reflects the structure of the 2012 draft, it will include provisions on duties, rights, obligations, mitigation, response protection and monitoring measures, education and societal participation, international cooperation, and penalties for violations.

Regulatory initiatives are taking place along a broad front, including action to extend nascent local carbon emissions trading markets nationwide.[19]

With respect to planning, the 12th Five-Year Plan (2011-2015) introduced several measures to address climate change. The soon-to-be announced 13th Five-Year Plan (2016-2020) will go further. It is likely to include actions to implement all of China's INDC. These consist not only of a reduction on carbon dioxide emission intensity but also an increase in forest cover, a promotion of green power dispatch in power generation, implementation of the emissions trading system in high-pollution industries, investment in low-carbon buildings and transportation, higher fuel efficiency standards, and tighter controls on hydrofluorocarbon (HFC) emissions.[20] Taken together with legislative and regulatory initiatives, it is apparent that China intends to take substantial actions to address climate change. The pace and details of such actions may, however, be affected by the state of the economy.

—By Lester Ross, WilmerHale

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