VIEWPOINTS

A PORTFOLIO OF DOMESTIC COMMITMENTS:

IMPLEMENTING COMMON BUT DIFFERENTIATED RESPONSIBILITIES

BY ROBERT N. STAVINS*

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International negotiations are focused on developing a climate policy framework for the post-2012 period, when the Kyoto Protocol's first commitment period will have ended. In addition to negotiations under the United Nations Framework Convention on Climate Change (UNFCCC), other intergovernmental outlets, including the G20 and the Major Economies Forum, are trying to reach common ground among the world's major emitters of greenhouse gases. To date, these efforts have not produced a politically, economically, and environmentally viable structure for a future climate agreement.

An effective, but more flexible and politically palatable approach could be an international agreement on a "portfolio of domestic commitments." Under such an arrangement, nations would agree to honor commitments to greenhouse gas emission reductions laid out in their own domestic laws and regulations. A portfolio of commitments might emerge from a global meeting such as the UNFCCC Conference of the Parties, or a smaller number of major economies could negotiate an agreement among themselves, and then invite other countries to join.

Despite the differences between such a system and the conventional "targets and timetables" in the Kyoto Protocol, negotiators should not dismiss this new approach out of hand. There are several ways to construct a portfolio of domestic commitments, and negotiators have numerous levers available to tailor an agreement to meet their political, economic, and environmental goals. This *Viewpoint* outlines some basic features of a portfolio approach, highlights a few major issues and concerns, and discusses its potential feasibility.

THE PORTFOLIO OF DOMESTIC COMMITMENTS APPROACH

The core of a portfolio of domestic commitments is agreement among a set of countries to conform to the climate change mitigation requirements specified by their respective domestic laws, regulations, and official planning documents (the last being domestically binding in centrally planned economies). The portfolio approach gives member countries free rein to dictate the precise form their domestic commitments will take, whether those be greenhouse gas cap-and-trade systems, carbon taxes, intensity targets, performance or technology standards, or other instruments. A portfolio agreement should be highly credible, given that it is grounded in domestic commitments, en-

*The author is the Albert Pratt Professor of Business and Government, Harvard Kennedy School. Thanks are due to Matthew Littleton for his valuable assistance with the preparation of this *Viewpoint*. Comments from Michael Levi are gratefully acknowledged. The author is solely responsible for the content.

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forceable by law previously made by the very governments signing on to the international agreement[1].

Domestic commitments might take the form of specified greenhouse gas emission targets or, as stated in the Bali Action Plan, "nationally-appropriate mitigation actions" (NAMAs)[2]. A target-based approach has the advantage of being transparent and relatively simple to aggregate across countries to reach a global target. On the other hand, action-oriented goals can be more concrete and may be easier for many governments to implement in the short term. There is no reason why both targets and actions could not be pursued simultaneously. Coexistence of multiple approaches is not uncommon in environmental policy.

Ongoing commitments for several years into the future are necessary to stabilize and eventually reduce atmospheric greenhouse gas concentrations to combat climate change. Under a portfolio approach, these domestic commitments could be represented in a table of national schedules attached to an agreement[3]. Such schedules would signal a continuing commitment to the international community, and their inclusion in an international agreement would provide a disincentive for member nations to deviate from them in the future.

Countries would not be limited to acting unilaterally to meet their domestic commitments. They could choose to submit joint goals or targets (for example, on a regional level), link with other countries through a multinational carbon trading regime to reduce costs[4], or assist other countries. The portfolio approach would *not* be a bar to international cooperation.

A primary consideration for a portfolio agreement is the well-established principle of "common but differentiated responsibilities." This principle acknowledges that responsibility is shared for solving the climate change challenge, but suggests that historical differences in contribution to the problem and economic and technical disparities be reflected in varying national commitments[5]. A portfolio of domestic commitments may be particularly well-suited to implement this principle because it allows for countries to make commitments along a continuum of stringency, rather than dividing nations into two groups as did the Kyoto Protocol. The placement of each country upon the continuum would depend on an array of political, economic, and environmental concerns[6].

KEY ISSUES FOR NEGOTIATORS

Negotiators will inevitably need to tackle a number of key issues in crafting a portfolio agreement, three of which we highlight here.

Rigidity of Commitments

A portfolio agreement would function as a depository for current domestic legislation, serving the dual roles of information gathering and diplomatic recognition of shared commitment to the climate problem. It is difficult to imagine countries registering objections to such an agreement, given that they would not be binding themselves to future commitments. However, climate negotiators may *wish* to bind future governments by barring relaxation or abandonment of preexisting climate commitments. In other words, the agreement could set minimum commitments on a country-specific basis. Amendments would be allowed only if they maintained or strengthened domestic commitments to climate change mitigation. Such a precommitment strategy is not generally included in domestic legislation or plans, and it is likely to require careful wording and additional domestic legislation to become effective in some countries.

There is surely the possibility of domestic commitments being ignored by future leaders[7], but this concern is not unique to the portfolio approach. All climate policy architectures — indeed, all international agreements — face this problem, and the question is whether the precommitment challenge is greater under this approach than it would

be under others. One possible compromise position would be to allow revision of domestic commitments, but only at specified intervals, in order to account for dramatic shifts in economic, political, or environmental situations and expectations.

Type of Legal Instrument

Another key issue is the official legal status of a portfolio of domestic commitments. There are a number of possible structures for such an agreement, each with different implications under international law. A treaty is the most formal option and would be the most binding on participating nations. Treaty law is relatively well-developed, as compared with the law governing other international instruments, and the law of treaties provides a framework for enforcement and dispute resolution. But treaties are difficult to craft and face the perils of national ratification.

Outside of a treaty, there are various other instruments of international law that could be used in the portfolio approach. For example, in the United States, congressional-executive and sole-executive agreements can be entered into by the President and do not require the approval of two-thirds of the Senate, as do treaties[8]. Other "soft law" instruments, such as explicitly nonbinding agreements, political declarations, and UN declarations, are fallback options that merit consideration for implementing a portfolio approach. Ultimately, negotiators will choose the best instrument, based on how open countries are to the agreement and what obligations the agreement imposes.

Monitoring and MRV

Throughout the industrialized countries — and increasingly in the emerging economies — domestic environmental regulations include internal mechanisms for monitoring and enforcement. A portfolio agreement could rely on countries to be prompted by international pressure to enforce their commitments, or an agreement could take a more active role. The agreement could, for example, put in place an international monitoring body, license domestic entities in each country to monitor national commitments, or suggest model codes for enforcement. International assistance may be necessary to aid countries lagging in technical or administrative capacity to monitor greenhouse gas emissions and enforce domestic policies. More broadly, the agreement would need to define — to the extent possible — uniform measurement, reporting, and verification (MRV) procedures and assure that all countries could implement these procedures.

FEASABILITY OF A PORTFOLIO OF DOMESTIC COMMITMENTS

A portfolio of domestic commitments has several advantages as the foundation of a future international climate policy architecture. The agreement could be flexible enough to allow countries to implement the mitigation instruments of their choice and link or aggregate those instruments with domestic instruments in other nations if they so chose. It could also allow for countries to accede at various times, thus giving them adequate time to prepare to participate[9]. This approach could also be an ideal vehicle for implementing the principle of common but differentiated responsibilities, since member countries would not need to be lumped together into rigid tiers of commitment.

Perhaps most crucial is the political feasibility of the portfolio approach. In recent months, several major economies have expressed willingness to consider a climate policy architecture along these lines, including Australia, India, and the United States[10]. For this reason alone, the portfolio approach merits serious consideration, despite the significant hurdles to negotiating an effective portfolio agreement.

The concerns regarding this approach to a future global climate policy architecture are significant. A remaining question is whether a domestic portfolio of commitments would prompt national actions ambitious enough to yield emissions reductions of the magnitude that science suggests may be required. But it also has potential advantages. For example, the transparency of such an approach generates confidence that economic competitors are all act-

ing, even if not on a fully level playing field. A virtuous cycle might thus be created between rising confidence and increasing ambition.

In general, there are real challenges to developing any post-2012 international climate policy architecture that is scientifically sound, economically rational, and politically pragmatic. The challenges facing this approach are no greater — and may be less — than those facing other means of addressing the threat of global climate change.

NOTES

[1] Our discussion takes such commitments as preexisting. It is also possible to imagine an agreement that would require some or all countries to make a baseline level of commitments, requiring new domestic commitments in some cases.

[2] UNFCCC, 2008. *Bali Action Plan*, Decision 1/CP.13, U.N. Doc. FCCC/CP/2007/6/Add.1.

[3] For example, Australia has proposed a model agreement that includes such schedules. Australia, 2009. *Legal Architecture for a Post-2012 Outcome, Submission to the AWG-LCA and AWG-KP*, U.N. Doc. FCCC/AWGLCA/2009/MISC.4/Add.2 [hereinafter "AU Proposal"]. The Republic of Korea has proposed an associated registry of NAMAs.

[4] See, for example: Jaffe, Judson and Robert N. Stavins, 2008. Linkage of Tradable Permit Systems in International Climate Policy Architecture. Harvard Project on International Climate Agreements, Discussion Paper 08-07.

[5] This principle has been applied numerous times in multilateral environmental agreements, including the Kyoto Protocol and the Montreal Protocol on Substances that Deplete the Ozone Layer.

[6] One possibility along these lines is an "income elasticity of reductions" approach, wherein commitments would vary based on the level of economic development as measured by per capita GDP. For examples of how this could be structured and implemented, see: Frankel, Jeffrey and Valentina Bosetti, 2009. Global Climate Policy Architecture and Political Feasibility: Specific Formulas and Emission Targets to Attain 460 PPM CO_2 Concentrations. Harvard Project on International Climate Agreements, Discussion Paper 09-30; and Olmstead, Sheila M. and Robert N. Stavins, 2009. An Expanded Three-Part Architecture for Post-2012 International Climate Policy. Harvard Project on International Climate Agreements, Discussion Paper 09-29.

[7] One serious concern is that early actors could face relatively stringent requirements, effectively penalizing them for leading the way in tackling the climate change problem. A "ratcheting" requirement could also chill new pro-mitigation domestic commitments.

[8] Congressional-executive agreements require approval by a simple majority of both houses of Congress, while sole executive agreements do not require Congressional approval at all (though the latter may be limited in scope by the Constitution). See: Purvis, Nigel, 2008. Paving the Way for U.S. Climate Leadership: The Case for Executive Agreements and Climate Protection Authority. Resources for the Future, Discussion Paper 08-09.

[9] Victor, David, 2008. Climate Accession Deals: New Strategies for Taming Growth of Greenhouse Gases in Developing Countries. Harvard Project on International Climate Agreements, Discussion Paper 09-30.

[10] See, for example: AU Proposal; Friedman, Lisa. "India Takes a Climate Pledge, Finds Senate's Climate Target 'Measly.'" *ClimateWire*, Oct. 2, 2009; and Broder, John M. and James Kanter. "Europeans say U.S. lacks will on climate." *New York Times*, Sept. 21, 2009. Non-governmental observers are also beginning to push a portfolio approach. See: Gronewold, Nathaniel. "Pared-down proposal for a Copenhagen pact is unveiled." *ClimateWire*, Oct. 7, 2009.

ABOUT THE HARVARD PROJECT ON INTERNATIONAL CLIMATE AGREEMENTS

The goal of the Harvard Project on International Climate Agreements is to help identify and advance scientifically sound, economically rational, and politically pragmatic public policy options for addressing global climate change. Drawing upon leading thinkers in Australia, China, Europe, India, Japan, the United States, and other countries, the Project conducts research on policy architecture and key design elements of a post-2012 international climate policy regime. The Harvard Project also provides insight and advice regarding countries' domestic climate policies, especially as these policies relate to the prospects for meaningful international action. The Project is directed by Robert N. Stavins, Albert Pratt Professor of Business and Government at the Harvard Kennedy School. Major funding for the Harvard Project on International Climate Agreements is provided by a generous grant from the Climate Change Initiative of the Doris Duke Charitable Foundation.

Project Email: climate@harvard.edu
Project Website: http://belfercenter.ksg.harvard.edu/climate