Client Alert | Environment & Climate Change

US Withdrawal from the Paris Agreement: Impact and Next Steps

June 2017

Authors: Douglas Halsey, Brendan McGivern, Seth Kerschner, Matt Wisnieff, Laura Mulry

President Trump's announcement that he would withdraw the United States from the landmark Paris climate agreement is a setback to multi-country efforts to address global environmental issues. Within the United States, state and city efforts to mitigate greenhouse gas (GHG) emissions and adapt to the adverse impacts of climate change will continue, in spite of the President's decision to withdraw from the Paris Agreement. Additionally, corporate and financial investors will continue to focus on climate change, along with other environmental issues, even in the absence of US federal government leadership on climate change.

President Trump's Withdrawal Announcement

Citing economic hardship, competitive disadvantage and sovereignty concerns, President Trump announced on June 1, 2017, that the United States was officially withdrawing from the Paris Agreement, adopted in December 2015 by the parties to the United Nations Framework Convention on Climate Change (UNFCCC). The Paris Agreement sets an international goal to limit the global average temperature increase to "well below" two degrees Celsius above pre-industrial levels.[1] This global goal is intended to be achieved primarily by reductions in GHG emissions by the 195 member states, or parties, to the Agreement, as pledged in each party's "Nationally Determined Contributions" (NDCs). Under the Paris Agreement, each party determined its own NDC, individually, and there are no penalties if a party fails to meet its NDC.[2] The United States' initial NDC pledged that it would reduce GHG emissions by 26 – 28 percent below 2005 levels by 2025.

The Trump Administration plans to invoke the Agreement's formal withdrawal mechanism, a legal process that will take four years to complete and would lead to an official exit on November 4, 2020.[3] However, President Trump has not announced withdrawal from the underlying UNFCCC treaty, which was ratified by the US Senate in the 1990s, and which provided the framework under which the Paris Agreement was negotiated and signed.

---

1 *See* Conference of the Parties, Paris, Fr., Nov. 30 – Dec. 11, 2015, Draft Decision -/CP.21, Annex: Paris Agreement, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015), available at http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf.

2 The Paris Agreement requires parties to submit progressively stronger NDCs every five years to ensure the objective of the Agreement is met.

3 Article 28 of the Paris Agreement allows parties to withdraw three years from the date on which the Agreement entered into force for that country (i.e., November 4, 2016, for the United States). The earliest date that the United States can formally provide notice of its withdrawal under the Agreement is November 4, 2019. Withdrawal becomes effective no sooner than one year later (i.e., November 4, 2020, for the United States).

President Trump indicated that his Administration would be amenable to “renegotiating” a different climate change agreement, presumably a reference to Paris rather than the UNFCCC, as a whole. Other parties to the Paris Agreement have little appetite to renegotiate the text, however, which reflects a carefully-balanced consensus developed over several years.[4]

The withdrawal is in line with President Trump’s March 28, 2017 Executive Order on Promoting Energy Independence and Economic Growth, which seeks to reverse clean energy initiatives developed by the Obama Administration, and calls for a review of the Environmental Protection Agency’s proposed Clean Power Plan. The Clean Power Plan, if implemented, would regulate carbon dioxide emissions from existing fossil fuel-powered electricity plants.[5]

Other Governmental Efforts to Address Climate Change Likely to Remain Undeterred

Other parties to the Paris Agreement, and many individual US state and municipal governments, disapprove of the President’s decision to withdraw the United States from the Paris Agreement. As a result, US state governments that currently place an emphasis on climate change mitigation and adaptation, such as California, will likely continue to implement regulatory programs to reduce GHG emissions from sources such as power plants. These states that are already implementing efforts to address climate change constitute a significant portion of the US economy and US sources of GHG emissions.

Thirty US states and numerous US cities have committed to uphold the Paris Agreement objectives at their respective levels, despite the President’s announcement of withdrawal. Some local governments have pledged to redouble their efforts to make up for a lack of US federal action. Promptly following the announcement on June 1, ten states formed the United States Climate Alliance, which pledges to uphold the Paris Agreement despite the federal government’s planned formal withdrawal. The Alliance’s three founding member states of New York, California, and Washington made up 20.5 percent of the US population and 24.7 percent of US GDP as of 2016, and made up 11.1 percent of US carbon dioxide emissions as of 2014.

In reaction to President Trump’s announcement, some parties to the Paris Agreement—such as France, Germany and Italy—indicated that they will increase their efforts to address climate change. Notably, the EU and China are expected to work closely to try to mitigate the effects of US withdrawal.[6]

Potential for Increased Private Sector Focus

Despite the US exit from the Paris Agreement and the departure by the Trump Administration from the Obama climate change regulatory agenda, institutional investment groups, such as pension funds, insurance companies, endowments and private equity firms will likely continue to focus on climate change. Proposals calling for increased disclosure from companies with respect to climate risks will likely continue, if not accelerate. For example, on May 31, 2017, just a day before President Trump’s announcement, an ExxonMobil shareholder resolution instructing the company to produce a report detailing the impacts of climate change on its business passed with 62 percent support.[7] In addition, S&P and Moody’s are considering how to incorporate the risks to bonds from severe or unpredictable weather. Moody’s also released a report regarding climate impacts on corporate bond ratings in November 2016 and is in the process of preparing a similar report on municipal bonds.

---

[4] The main process that led to the Paris Agreement was the Durban Platform for Enhanced Action, which was established in December 2011 at the 17th Conference of the Parties (COP) held in Durban, South Africa.

[5] The Clean Power Plan has been stayed by the US Supreme Court since February 2016.

[6] *See* EU-China Leaders’ Joint Statement on Climate Change and Clean Energy (June 2, 2017) available at https://cdn.yesilgazete.org/wp-content/uploads/2017/06/AB-%C3%87in-%C4%B0klim-De%C4%9Fi%C5%9Fikli%C4%9Fi-ve-Temiz-Enerji-Ortak-A%C3%A7%C4%B1klamas%C4%B1.pdf

[7] The proposal was filed by the New York comptroller’s office and the Church of England and backed by more than 70 organizations with more than $5 trillion worth of assets.

Private financing opportunities for climate change adaptation and mitigation efforts may increase as a result of the President's withdrawal action. One of the major reasons cited by President Trump for withdrawal from the Paris Agreement is the Agreement's Green Climate Fund (GCF). Through the GCF, the Paris Agreement calls for developed countries to contribute funds to assist developing countries with efforts to mitigate and adapt to climate change. The United States had promised $3 billion in aid to developing countries to help them expand clean energy and adapt to emerging threats such as droughts and sea-level rise, as well as other impacts of climate change. The Obama Administration already had contributed $1 billion to the GCF as of 2017. In addition to the stepped-up commitments from other developed countries in order to fill the vacuum of US leadership on climate change, there may also be new opportunities for private sector financing of climate change mitigation and adaptation efforts. The Paris Agreement calls for "mobilizing climate finance from a wide variety of sources, instruments and channels" and for creation of a mechanism to "incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party."[8] The decision adopting the Paris Agreement by the COP to the UCFCCC also has multiple references to private sector and financial institution roles in supporting climate change mitigation and adaptation.[9] Therefore, in the absence of significant funding from the US federal government, there may be an increased role for new and alternative sources of financing for climate change mitigation and adaptation projects, such as green bonds.

White & Case LLP
2nd Floor
Quai du Mont-Blanc 5
1201 Geneva
Switzerland
T +41 22 906 9800

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020-1095
United States
T +1 212 819 8200

White & Case LLP
Southeast Financial Center
200 South Biscayne Boulevard, Suite 4900
Miami, Florida 33131-2352
United States
T +1 305 371 2700

8 *See* Article 9, paragraph 3 and Article 6, paragraph 4(b) of the Paris Agreement.

9 For example, Article 54 of the COP Decision provides that the COP recognize the importance of adequate and predictable financial resources for support of its policies and encourages the coordination of support from, inter alia, public and private, bilateral and multilateral sources, and alternative sources.