

Business and Politics

Volume 13, Issue 3

2011

Article 5

THE DOMESTIC FOUNDATIONS OF IPE: THE U.S. CASE IN
CURRENT AND HISTORICAL PERSPECTIVE

From Foe to Friend? Business, the Tipping Point and U.S. Climate Politics

Irja Vormedal, *University of Oslo*

Recommended Citation:

Vormedal, Irja (2011) "From Foe to Friend? Business, the Tipping Point and U.S. Climate Politics," *Business and Politics*: Vol. 13: Iss. 3, Article 5.

DOI: 10.2202/1469-3569.1350

©2011 Berkeley Electronic Press. All rights reserved.

From Foe to Friend? Business, the Tipping Point and U.S. Climate Politics

Irja Vormedal

Abstract

This article develops a model for analyzing corporate strategy formation and regulatory change in environmental politics. The model emphasize how conditions that materialize through the dynamic interplay between corporate preferences and multilevel environmental governance can trigger the emergence of “tipping points,” at which a critical mass of leading industries begin to push for regulatory change. It is argued that tipping points often generate new political momentum and may lead to considerable progress in political and legislative bargaining. The model is applied to a case study of U.S. climate politics between 1990 and 2010. The case demonstrates that the tipping point model provides a plausible account of the intersection between business strategies and the failures and successes of federal climate action in this period.

KEYWORDS: environmental governance, tipping point, business, climate politics

Author Notes: I would like to thank Arild Underdal, Tora Skodvin, Alex Bozmoski and the two anonymous reviewers for their very constructive comments on the first draft of this article.

Introduction

When climate change first emerged on the political agenda in the early 1990s, talk of the need to curb emissions of carbon dioxide and other greenhouse gases (GHGs) encountered strong and united, business opposition. Throughout the 1990s, the fossil-fuel lobby—representing leading U.S. companies from the oil, coal, chemical, and automobile industries—led a public and political crusade against GHG regulations which severely limited the viability of federal action. These pollution-intensive industries obscured the science and economics of GHG regulation by funding contrarian research, negative advertisement and direct lobbying of Congress and the White House. Indeed, it is widely acknowledged that business opposition to GHG regulation provides a major explanation for Washington's lack of climate action in the 1990s and well into the next decade, including the blockage of Kyoto Protocol ratification.

However, by the turn of the century, it became increasingly evident that a growing, albeit small, number of prominent U.S. corporations were beginning to adopt more accommodating approaches to climate change mitigation. By 2005, the number of climate-constructive business organizations had increased significantly. By 2007, a coalition of leading U.S. industries, including some of America's largest utilities, coal mining, chemical manufacturers and environmental organizations, had established a new pro-regulation lobby. Now, the gradual shift in business strategy from opposition to regulatory support had become manifest in political action, and as the coalition started lobbying the Capitol for a federal cap-and-trade program, the previous business veto on climate legislation was effectively broken.

This article provides an account of this strategic shift amongst leading U.S. industries from opposition to support for GHG legislation and examines its effect on U.S. climate politics. It begins by presenting a model for analyzing change in business political strategies that emphasizes how the dynamics between embryonic, multilevel governance and corporate preferences can generate new conditions for change and lead to so-called “tipping points” in business strategies. Tipping points are defined as thresholds at which the strategies of a critical mass of affected industries have begun to exercise support and push for regulatory change.¹ It is argued that the materialization of a tipping point is also likely to generate new political momentum and more enabling conditions for political bargaining, which may spur considerable progress in the legislative process.

The tipping point model is then utilized to analyze U.S. climate politics between 1990 and 2010. Through a detailed case study of business lobbying and the evolution of climate politics in this period, this model demonstrates how the

¹ Vormedal 2011.

strategies of a prominent share of leading U.S. businesses “tipped” in response to emerging conditions. The analysis also illustrates that while business opposition provided a major obstacle to regulatory change for over a decade, this dynamic clearly changed after the manifestation of a tipping point. Indeed, from 2007, many previously antagonistic U.S. businesses started to play an enabling and constructive role in the drafting of new GHG legislation. First, in the negotiation and drafting of the Waxman-Markey climate bill—which was successfully adopted by the House of Representatives in July 2009—and second, in negotiating and collecting support for the Senate version of the bill, known as the Kerry-Lieberman-Graham (KGL) “tripartisan” initiative. However, despite widespread business support and lobbying for its adoption, the KGL ultimately fell short of collecting the 60 Senate votes needed for it to become legislation. But this time around it was not business opposition but the lack of presidential commitment and the tough political environment before the midterm election that led senators to pull the plug on climate legislation in the 111th Congress.

The Interplay between Environmental Governance and Business Strategies: The Tipping Point Model

All corporations operate within a broader societal structure that determines the scope and conditions for current and future business operations. Changes in a corporation’s external environment, such as new regulations and policies, technological developments, shifts in public opinion or consumer preferences, can alter the limits and possibilities of business conduct. Corporations must therefore continuously consider how expectations, demands, and future trends in the external environment are likely to affect their organization.²

For those corporations whose operations, products or services cause environmental degradation, new mitigation policies and regulations may limit their ability to conduct business as usual. Regulations that require a significant reduction of hazardous emissions may induce high compliance and adjustment costs if there is no technologically feasible or commercially viable alternative. Because such environmental regulations may threaten the business models of large emitters, the anticipation of new regulations and/or de-facto regulatory developments represent an important determinant of corporate strategy.³

When proposals for new environmental regulations first emerge on the policy agenda, affected industries are likely to pursue a strategy of opposition. Indeed, initial business resistance to emerging environmental governance—such as publicly questioning the underlying scientific claims and warning against the

² Johnson et al. 2005; Gunningham et al. 2003.

³ Henriques and Sadorsky 1995; Rugman and Verbeke 1998a; 1998b.

costs associated with regulatory action—is well documented.⁴ For example, in the case of ozone layer depletion, the large producers of Chlorofluorocarbons (CFCs)—the major ozone depleting substance—led a Congressional lobbying effort which argued that the scientific basis for regulatory action was weak and inconclusive, and that any mandatory restriction on the use of CFCs would be too costly.⁵

However, under certain conditions that may emerge as a particular issue area of environmental governance matures, business opposition is likely to decrease, become more fragmented and shift towards regulatory support. This model emphasizes three conditions that may cause corporations and business lobbies to begin to support and/or push for the adoption of new environmental regulations; i) the emergence of uneven playing fields, ii) the increase of regulatory threats and uncertainties and iii) the proliferation of new market opportunities.

First, efforts to deal with modern environmental problems are usually multiple and fragmented. Such environmental problems are commonly trans-boundary in nature, meaning that pollution or toxic wastes are transmitted through water or air across geopolitical units. The effects of trans-boundary pollution are experienced not only near the source but also far from the source, and even to other countries in the GHG case. Moreover, the globalization of the world economy has led to a diffusion of environmentally-harmful production methods and products. Multinationals have amplified the transnational nature of environmental problems by moving their production to and between new, low-cost regions and countries. While some local environmental problems such as the depletion of a natural resource might be treated in isolation, efforts to mitigate trans-boundary and transnational problems seldom emerge in one country alone. Therefore, they are likely to clarify calls for concerted international action.

The emergence of an international regime often marks a defining moment in time when the environmental problem's scientific evidence, salience and urgency has gained almost universal acceptance. Yet, processes of institutional formation are usually tedious and may be stalled by countries seeking to free-ride on the actions of others. Therefore, in its early phases of development, environmental-governance structures may constitute an uneven patchwork of different standards and measures at multiple and sometimes overlapping levels. This scenario in-effect creates uneven playing fields for regionally and/or globally competitive industries, as companies operating in regulated localities have a competitive disadvantage vis-à-vis companies operating in unregulated or less regulated areas. At this point we may expect those industries that are

⁴ Falkner 2008, 54.

⁵ Ibid., 55.

disproportionally disadvantaged by non-universal compliance costs to begin to push for regionally or internationally harmonized rules.⁶

Second, the growth of governance measures and political pressures for new or more stringent regulations will increase perceptions of regulatory uncertainty and risks among liable industries. Because uncertainty impedes corporations' ability to plan future investments, over time the cost of inaction may be perceived as greater than the cost of compliance. Furthermore, if political momentum for regulation persists and corporations are faced with a high probability or perceived inevitability of being regulated in the short to medium term, many liable industries may begin to prefer to adopt regulations to enhance predictability. Many will also seek to support and become constructively engaged in the regulatory process in order to get a seat at the negotiating table, where they can push for and shape rules that favor their strategic positioning.⁷

Third, regulatory uncertainties also create business opportunities. Environmental regulations, or the credible threat of future regulations, signal the coming of a market shift towards greener production and may spur investments in clean technologies and production methods. Early movers in the development of technological solutions may find their strategic positioning improved vis-à-vis competitors. As Falkner argues, "if market leaders can hope to lower the compliance costs relative to their competitors, then an increase in regulatory standards and compliance costs may shift the competitive balance in their favor, thus making regulation more acceptable to them."⁸ Therefore, market opportunities related to new regulation may impel emerging technological frontrunners to begin to pursue a strategy of regulatory entrepreneurship.⁹

In sum, under and in response to one or a combination of the above conditions—including emerging or de-facto uneven playing fields, the growth of regulatory threats and uncertainties, and the proliferation of market opportunities—the strategies of affected corporations and business lobbies may shift from opposition to regulatory support and entrepreneurship.

The model identifies the threshold at which a critical mass of leading industries and business lobbies begins to lobby for regulatory change as the manifestation of a "*tipping point*." Tipping points signal the disruption of a previous trajectory or path and the commencement of new political advocacy and action. The concept of tipping was first introduced by sociologists studying segregation in American cities.¹⁰ Later, it was further developed by Schelling, who defined tipping as the point "when a recognizable new minority enters a

⁶ Vormedal 2011; DeSombre 1995.

⁷ Hoffman and Woody 2008, 20; Vormedal 2011.

⁸ Falkner 2008, 34.

⁹ Vormedal 2011.

¹⁰ Grodzins 1957; Mayer 1960.

neighborhood in sufficient numbers to cause the earlier residents to begin evacuating.”¹¹ In contrast to more recent and popular notions of tipping points—such as Malcom Gladwell’s definition of tipping as ‘change that does not happen gradually but at one dramatic moment’¹²—this article departs from Schelling’s notion of it as a threshold which is part of a gradual and cumulative process of change. It begins among the few, gradually builds up to change among a critical mass, and becomes manifest in new forms of political activity.

It should be noted that a tipping point in business strategies does not imply that all liable industries and business lobbies have become regulatory entrepreneurs or favor legislation, but that a clearly identifiable and prevailing group of corporations and/or business lobbies—large enough to make a political difference—have begun to exercise support and push for regulatory change.¹³

The rate of change may depend on the nature of existing triggers and conditions. First, the velocity and form of the embryonic, environmental governance structures influence perceptions of risks and opportunities and therefore strategy construction. Stronger political and regulatory momentum hastens strategic change, while political setbacks and decreasing momentum may cause the process to slow down. Second, the more fragmented and uneven the playing field, the larger the efforts by competitively-disadvantaged industries to lobby for harmonized rules. Third, change will depend on available adaptation strategies, i.e. rate of innovation and the commercial viability of alternative technologies and production methods. Finally, one might also identify a certain psychological dynamic behind and inherent to the tipping point process. Perceptions of risk are often informed by the risk perceptions of others. The likelihood of universal adoption increases when a particular interpretation of threats and opportunities is shared by a critical mass of market actors. Because an actor’s strategy is partly influenced by de-facto or expected actions of others, tipping points are more likely to materialize when a sizeable share of dominant corporations anticipates that future adoption of regulation is very likely, if not inevitable.

Empirically, the observed and verifiable change in the strategies, goals and activities of business lobbies over time provides a functional indicator of a tipping point. The most prominent and active business lobbies in a particular issue area usually represent large and dominant market actors directly affected by the existing or proposed regulations. The process of “tipping” can thus be informed by longitudinally tracking changes in the constellation of strategies and activities of dominant business lobbies.

¹¹ Schelling 1971, 181.

¹² Gladwell 2000, 9.

¹³ Vormedal 2011.

Tipping points are also likely to spur the creation of “Baptist and bootlegger” coalitions of business and environmental organizations. In the analogy, both ‘Baptists and bootleggers favor prohibition or regulations on alcohol, the former for religious or moral reasons, the latter because of the profit they can make on illegal liquor.’¹⁴ In this case, environmental organizations and businesses will join forces to lobby for regulations, the former for moral reasons, and the latter for reasons of competitiveness. Finally, a tipping point in business strategies may also generate new political momentum. When the strategies of key business lobbies ‘tip’ and these groups begin to push for the adoption of new regulation and/or legislation, it improves conditions for political bargaining and places constructive pressure on the rule-making process. The dispersion of antagonistic lobbying and the parallel emergence of lobbying *for* regulatory change may thus spur legislators to take action.

The tipping point model differs from other, notable frameworks for analyzing the intersection of business strategies and environmental governance. The neo-Grassmanian model rightly emphasizes how business strategies are structurally determined, that is, how they are influenced by the evolution of environmental governance itself. Yet, the *a priori* assumption of markets and market actors’ structural power in the construction of hegemonic fields¹⁵ in environmental governance¹⁶ provides a rather deterministic account of regulatory outcomes. The model lacks a more precise notion of how dynamics between structures and actors’ preferences can generate conditions for trajectory change. The neo-pluralist school, on the other hand, provides a less deterministic account that considers environmental governance a pluralistic field where the power of actors to shape policy outcomes is determined by the particular range of constraints and opportunities pertaining to the given issue-area.¹⁷ Falkner’s model for business power and conflict¹⁸ has contributed significantly to our understanding of corporate preference and strategy formation. However, it fails to explain how and why business strategies change over time and provides an unsatisfactory account of how dynamics between strategic engagement and governance can generate conditions for change. Therefore, by emphasizing and demonstrating mechanisms for change and the significance of dynamic thresholds in triggering momentum and progress, the tipping point model provides a timely extension of the neo-pluralist account of the intersection of business strategies and environmental governance.

¹⁴ DeSombre 1995, 54.

¹⁵ Hegemony is defined as the unison of economic, political and ideological aims and beliefs amongst members of a dominant group who exercise leadership in society.

¹⁶ Levy and Newell 2005.

¹⁷ Cerny 2010.

¹⁸ Falkner 2008.

In the next section, the article utilizes the tipping point model to analyze the development of business lobbying and climate change politics in the United States between 1990 and 2010.

Business Strategies and Climate Change Politics in the United States

Climate change represents one of the most complex and pressing environmental problems facing mankind today. Since 1850, the global mean temperature has increased by 0.76° C, and if appropriate action is not taken, the average surface temperature is likely to rise by a further 1.8- 6.4° C over the course of the century.¹⁹ An overwhelming majority of scientists now conclude that most warming since the advent of the industrial era is caused by human activities which release heat-trapping greenhouse gases (GHGs) into the atmosphere.²⁰ The most important sources of GHGs are fossil-fuel consumption, agriculture, and land-use changes such as deforestation. If temperatures rise more than 2° C above pre-industrial levels, global warming may bring about irreversible and potentially catastrophic changes in the earth's climate system. Widespread melting of snow and ice would cause sea levels to rise between 18 and 59 cm, producing more frequent and extreme weather events including droughts, floods and storms.²¹ As such, climate change is not only an environmental problem, but represents an all-encompassing threat to development, economic growth, human security, food supplies and health.²²

Denial and Opposition: A Non-Climate for Change

In the United States, climate change first emerged on the political agenda in the early 1980s. In response to growing alarm from scientists, a number of congressional hearings were held to investigate the global warming problem. In 1988 Dr. Hansen of NASA testified to the House that the greenhouse effect was already occurring, and that an almost unprecedented warming of the earth's atmosphere was to be expected in the coming century.²³ Climate change quickly rose to become an internationally recognized problem, and in 1990, when the newly established Intergovernmental Panel on Climate Change (IPCC) concluded that GHGs were likely to cause global warming, the international community called for negotiations for a multilateral convention to curb the rise of GHG emissions.

¹⁹ Intergovernmental Panel on Climate Change 2007b.

²⁰ Intergovernmental Panel on Climate Change 2007a; Human Development Report 2007/8.

²¹ Intergovernmental Panel on Climate Change 2007c.

²² Human Development Report 2007/8; Agder et al. 2003; O'Brien 2006.

²³ Manzur and Lee 1993.

Fossil-fuel-intensive industries reacted swiftly and aggressively in response to the emerging regulatory threat. Over 50 companies and trade associations from oil, coal, chemical manufacturing and automobile industries formed a new, anti-regulation lobby—the Global Climate Coalition (GCC)²⁴—which quickly rose to become the most prominent business voice on climate change. To block U.S. legislative action, the GCC sought to spread doubt about the scientific and economic basis for limiting GHG emissions. The lobby argued that the theory of anthropogenic warming was based on a series of scientific uncertainties, and that the observed rise in the average ocean and air temperatures reflected a natural climate variability. They also argued that regulating GHGs would be too costly and cause serious economic decline and loss of employment in the United States.²⁵

In 1992, President George H.W. Bush signed the UN Framework Convention on Climate Change (UNFCCC), which established a shared goal to stabilize GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system (Article 2). But since the Convention did not include mandatory targets and timetables for emissions reductions, the GCC considered their campaign a success.²⁶

After the ratification of the UNFCCC and during the years of the Clinton administration (1992-2000), the GCC scaled up their efforts to prevent Congress and the White House from adopting federal climate policies and legislation. When President Clinton proposed the BTU tax²⁷ in 1992 to achieve his campaign goal of reducing emissions to 1990 levels, the business lobby quickly set out to melt it down. In 1993 the bill was declared dead due to the vast opposition from industry associations.²⁸ The GCC used advertising and “front groups” to spread opposition to climate action amongst the general public. For example, the Information Council for the Environment (ICE)²⁹ launched a number of media campaigns which sought “to reposition global warming as a theory, not a fact,” targeting what they considered vulnerable groups such as “older, less educated men” and “young, low income women.”³⁰ GCC members also set up a Science Advisory

²⁴ GCC members included American Petroleum Institute, Amoco, Chevron, the Chrysler Corporation, Dow Chemicals, Duke Energy, DuPont, Edison Electric Institute, ExxonMobil, the National Mining Association, Shell, and Texaco, U.S. Chamber of Commerce.

²⁵ Dunn 2002; Levy 2005; Levy and Egan 1998; Skodvin and Skjærseth 2003; Corporate Watch Magazine 1997. *Disguise the limit: The Global Climate Coalition*. Issue 4.

²⁶ Legget 2001; Newell and Paterson 1998; Levy and Egan 1998.

²⁷ Legget 2001; Newell and Paterson 1998; Levy and Egan 1998.

²⁸ Pooley 2010, 86-87; Levy and Egan 1998; Skodvin and Andresen 2009.

²⁹ The ECE was founded in 1991 by GCC members from the coal, oil and utility industries—including the Edison Electric Institute and the National Coal Association.

³⁰ Levy and Egan 1998, 350; Pooley 2010, 41.

Panel fronted by prominent climate skeptics³¹ that received industry funding. Some ran advertisements on TV and distributed educational kits for classrooms, which argued that climate change was not a real problem.³² In addition, the lobby commissioned a series of economic studies, which argued that GHG regulation would cause serious economic decline and that measures to curb emissions by 20 percent would reduce GDP by 4 percent and slay 1.1 million jobs annually.³³ In Congress, the GCC successfully managed to gain the support of a key group of Republicans.³⁴ In a 1995 congressional hearing, the chair of the House Science Subcommittee on Energy and Environment, Dana Rohrabacher, invited several industry-funded “skeptics” to testify before her committee, after which she publicly declared global warming a “liberal clap trap.” Later that year, the House approved a bill that prohibited the EPA from spending money on climate change research.³⁵

Meanwhile, the Clinton administration agreed to the “Berlin Mandate” which established a path for negotiating international reduction targets for industrialized countries under the UNFCCC. The GCC responded with a third line of attack, focusing on the loss of U.S. competitiveness under an international protocol that exempted developing countries from legally binding emission limitations. To prevent U.S. participation, the GCC allegedly hand-picked Senator Chuck Hagel of Nebraska to sponsor a “sense of the senate” resolution together with Senator Robert Byrd (West Virginia),³⁶ which stated that “the United States should not be a signatory to any protocol, at negotiations in Kyoto or thereafter, which do not mandate developing nations to abide by the same restriction imposed on the United States, or that would result in serious harm to the U.S. economy.”³⁷ Four months prior to the Kyoto meeting, the senate adopted Byrd-Hagel by a unanimous vote (97-0). While the Clinton administration signed the Kyoto protocol in 1997, the President never submitted the treaty for ratification in the Senate because it would have suffered humiliating defeat.³⁸

In 2000, the newly elected President George W. Bush announced that his administration would formally withdraw its Kyoto signature due to lack of Senate support and its negative effects on growth, jobs and U.S. competitiveness.³⁹ Anti-

³¹ These included S. Fred Singer, Pat Michaels and Robert Balling.

³² Levy and Egan 1998; Levy 2005.

³³ Levy and Egan 1998, 351.

³⁴ Including the Chair of the House Science Subcommittee on Energy and Environment Dana Rohrabacher (California), the House Majority Whip John Doolittle (California) and Chair of the Science Committee Robert Walker (Pennsylvania).

³⁵ Levy and Egan 1998, 344.

³⁶ Fischer 2006.

³⁷ Byrd-Hagel Resolution, 105th Congress, 1st Session, S. Res. 98.

³⁸ Interview with Senator Byrd.

³⁹ Speech delivered in Washington by President George W. Bush on 11 June 2001.

climate business lobbyists played a major role the construction of the new White House climate policy or lack thereof. In 2001, the administration hired the ex oil-lobbyist Philip Cooney⁴⁰ as chief of staff at the White House Council on Environmental Quality (CEQ),⁴¹ and former ExxonMobil lobbyist Larisa E. Dobriansky as deputy assistant secretary for national energy policy with responsibility for managing the department's Office for Climate Change Policy. At the CEQ, Cooney led a systematic effort to downplay the urgency of climate action by editing climate change reports produced by the federal bureaucracy. According to a House committee investigation, Cooney made nearly 300 edits to the administration's Climate Change Science Program's strategic plan, edits designed to "exaggerate or emphasize scientific uncertainties or to deemphasize or diminish the importance of the human role in global warming."⁴² Furthermore, in the EPA's Draft Report on the Environment, White House staff insisted on edits so extreme that the EPA choose to eliminate the entire section on climate change.⁴³ However, by 2005, the formal influence of these corporate lobbyists came to a halt. After a leak exposing Cooney's edits to the New York Times, he resigned from the White House and went to work for ExxonMobil.⁴⁴ The Guardian also exposed documents that showed the Under Secretary of State Paula Dobriansky, Larisa Dobriansky's sister, thanking ExxonMobil executives for their active engagement with the administration on climate change policy. This indicated that the President's withdrawal from Kyoto was partly based on input from the GCC.⁴⁵

In sum, the above review of business lobbying during the Bush Sr., Clinton and Bush Jr. administrations clearly illustrate how business opposition to climate policy and legislation severely limited the scope for federal action to mitigate climate change.

Scaling Up: Emerging, Multilevel Climate Governance

Nevertheless, by the turn of the century, a new wave of climate-related governance initiatives emerged at the state and municipal levels. State-level regulation is significant because large U.S. states such as Texas and California have emissions equivalent to or larger than many key industrialized countries

⁴⁰ For fifteen years Cooney worked as a lobbyist for the American Petroleum Institute (API). At the API Cooney had worked to ensure that federal climate policy was consistent with the objectives of Big Oil, and to make sure that uncertainties and doubts regarding global warming science became part of the conventional wisdom.

⁴¹ Pooley 2010, 46.

⁴² *Ibid.*, 47.

⁴³ *Ibid.*, 47.

⁴⁴ *Ibid.*, 47.

⁴⁵ The Guardian, "Revealed: How Oil Giant Influenced Bush," 8 June 2005.

participating in the Kyoto Protocol. By 2006, 28 states had issued climate action plans, 9 had established state-wide GHG reduction targets, and 22 had implemented renewable energy portfolio standards for electric utilities and power plants. Half of all U.S. states had also established public funding in support of energy efficiency and/or renewable energy development.⁴⁶ In California, the legislature has adopted targets to reduce GHG emissions 11 percent by 2010, 25 percent by 2020 and 80 percent by 2050 in large industrial sectors such as utilities, oil refining and cement production.⁴⁷ Governor Schwarzenegger has also launched an initiative to regulate carbon dioxide emissions from vehicles.⁴⁸ Many other states have joined forces to establish common GHG reduction goals and regulatory systems. In 2001, six New England states committed to reduce their emissions to 1990 levels by 2010 and 10 percent below 1990 levels by 2020. In 2005, ten North-East and Mid-Atlantic states formed the 'Regional Greenhouse Gas Initiative' (RGGI): a cap-and-trade scheme which aims to stabilize emissions from large power plants from 2009 to 2014, and subsequently to ratchet-down GHG caps by 25.5 percent a year.⁴⁹

Furthermore, a coalition of states has engaged in a series of legal suits against the federal government for its inaction on climate change mitigation. In 1999, the International Centre for Technology Assessment and 18 other organizations petitioned the EPA to establish GHG standards for new vehicles under the Clean Air Act. In 2003, the EPA denied the petition, since Congress had not granted EPA the authority to regulate GHGs.⁵⁰ A few months later, the state of Massachusetts, joined by 12 other states⁴ and U.S. territories, filed a new petition to review the EPA's ruling, but in 2005 the Court of Appeals sided with the EPA. Despite this setback, Massachusetts et al. appealed to the U.S. Supreme Court⁵¹ and in 2007 it ruled in their favor, requiring the EPA to assess and adopt an official position on the public health risks posed by GHG emissions. The Court's decision granted the EPA the authority needed to regulate GHGs.⁵²

The number of U.S. municipalities implementing climate-change policies also grew during this period. By 2006, 150 out of 674 local governments participating in the Cities for Climate Protection program (CCP)⁵³ were located in the United States. Participation in the CCP requires cities to establish energy and emissions inventories and forecasts, emissions reduction targets, a plan for implementation and a process for monitoring and verifying results. Furthermore,

⁴⁶ Selin and VanDeveer 2007.

⁴⁷ California Assembly Bill 32, The Global Warming Solutions Act.

⁴⁸ California Low Carbon Fuel Standard.

⁴⁹ An initiative of the Northeast and Mid-Atlantic States of the United States.

⁵⁰ United States Environmental Protection Agency. 28 August 2003.

⁵¹ "EPA Set to regulate Greenhouse Gas Emissions," by Brian Lewis, Ph.D. 26 July 2010.

⁵² Supreme Court Decision on Massachusetts et al. vs. EPA. 2 April 2007.

⁵³ The CCP is part of the International Council for Local Environmental Initiatives.

by 2006 over 275 mayors representing more than 48 million Americans had accepted Mayor Nickels' (Seattle) challenge to adopt the U.S.-Kyoto commitment.⁵⁴

Meanwhile, other industrialized nations were moving forward to ratify the Kyoto Protocol and implement national and/or regional systems for reducing GHGs. In 2003, the European Union (EU) adopted Directive 2003/87/EC establishing the world's largest, economy-wide GHG trading program—the EU Emissions Trading System (ETS)—which entered into force in January 2005. The system also linked up with Kyoto's Clean Development Mechanism (CDM), allowing European industry to buy and sell most credits acquired from emissions-reduction projects in developing countries.⁵⁵

After the White House's withdrawal from Kyoto, several attempts to introduce federal, emissions-trading-based legislation emerged in the Capitol, albeit unsuccessfully. In 2003, Senators Joe Lieberman and John McCain sponsored the Climate Stewardship act, which sought to reduce GHG emissions from major utilities through federal cap-and-trade. The bill was defeated 55 to 43 in a Senate vote. A revised version of McCain-Lieberman was also defeated in 2005, this time collecting only 38 votes.⁵⁶ Yet, the congressional debates on federal climate action were becoming more substantial and constructive. In 2005, the Senate adopted a "sense of the senate" resolution stating that human activity was causing climate change, and that this required the Senate to implement federal legislation in the future.⁵⁷

These developments illustrate that despite the lack of federal climate policy and regulation in this period, from the turn of the century many U.S. industries nevertheless faced growing regulatory pressures at home and abroad. The establishment of new regulatory schemes at the state level and in other developed economies, coupled with the Supreme Court ruling which granted the EPA authority to regulate GHGs in the future, signaled that the political momentum to legally curb GHGs was not going to fade. Indeed, in the medium to

⁵⁴ Selin and VanDeever 2007.

⁵⁵ Ironically, the concept of emissions trading was not born in the EU but in Washington. The idea—influenced by the EPA Acid Rain Program, which established cap-and-trade scheme for sulfur dioxide and nitrogen oxides—was first developed by the Environmental Defense Fund (EDF). In 1996, the EDF began selling it to the EPA, Energy Department, State Department and finally the White House, who took it to Kyoto. Indeed, at this point the Europeans were skeptical of this American innovation, which many believe contained too many American "capitalist characteristics." But lead negotiator Eizenstat managed to reach a compromise: In exchange for "market mechanisms" the United States would agree to stronger emission reduction targets. However, the problem was that due to the Byrd-Hagel resolution, global cap-and-trade wouldn't fly in the U.S. Senate.

⁵⁶ Pooley 2010.

⁵⁷ Selin and VanDeever 2007.

long-term, the adoption of more widespread and stringent GHG regulation was becoming increasingly likely.

The Tipping Point in Business Strategies

In parallel, a growing share of leading U.S. industries started to recognize the global warming problem and adopt more accommodative positions on mitigation. The emerging scientific consensus and policy responses to global warming forced many prominent companies to reconsider their lobbying tactics.⁵⁸ In 1997, DuPont and BP pulled out of the GCC, followed by Shell Oil in 1998, Ford in 1999 and DaimlerChrysler, GM and Texaco in 2000. Defending BP's withdrawal from the coalition, CEO Lord Browne argued that "the time to consider the policy dimensions of climate change is not when the link between GHGs and climate change is conclusively proven, but when the possibility cannot be discounted and is taken seriously by the society of which we are part. We in BP have reached that point."⁵⁹ By 2002 the majority of GCC's prominent members had withdrawn their support and the GCC officially closed shop.

Four years later, negotiations for a new, pro-regulation lobbying coalition of U.S. businesses and environmental organizations was secretly taking shape.⁶⁰ The core group consisted of 6 corporations and 4 Washington NGO heavyweights: Alcoa, BP America, Caterpillar, Duke Energy, DuPont, and General Electric (GE), and the Environmental Defense Fund (EDF), the World Resources Institute (WRI), Pew Center on Global Climate Change, and the Natural Resources Defense Council (NRDC). In January 2007, the *U.S. Climate Action Partnership* (USCAP) revealed its "Call for Action," a policy-advocacy document which called for swift legislative action at the federal level to slow, stop and reverse the growth of GHG emissions in the United States. The USCAP argued that climate change science was now uncontroversial, and that the technological and product innovations needed to allow the phasing-out of GHGs would lead to increased U.S. competitiveness and energy security. Therefore, the USCAP recommended that Congress should enact a mandatory curb on GHG emissions for large stationary sources, transportation, and energy use in commercial and residential buildings as quickly as possible. To deliver the

⁵⁸ Skodvin and Skjærseth 2003.

⁵⁹ SourceWatch. Statement made by BP CEO in 1997.

⁶⁰ Vormedal 2008. In Europe and in the international arena, more progressive business lobbies supportive of the need for GHG regulation and seeking to influence the regulatory development had begun to emerge a few years earlier, at the same time as the break-up of the GCC. These include organizations such as the International Emissions Trading Association (IETA), BusinessEurope, the World Business Council for Sustainable Development (WBCSD) and the 3C Business Leaders Initiative.

required short and mid-term emissions reduction targets,⁶¹ the government should establish a federal cap-and-trade program alongside a national system for incentives to accelerate technology research, development and deployment.

By September 2007, the USCAP had more than doubled its membership, now representing over 25 of the world's largest corporations from a range of different sectors. These included many former GCC members from the coal, oil, electric utilities, automobile and chemical manufacturing industries.⁶²

Shortly after its launch, the Chairwoman of the Environment and Public Works Committee, Barbara Boxer (California), invited a group of USCAP CEOs to testify before the committee. Present at the hearing was Senator John Warner (Virginia), who had just started working with Senator Lieberman on a new climate bill. "You CEOs," he argued after hearing what the executives had to say, "have begun to move this whole new concept into the Big Leagues now [...] When I see such an extraordinary cross section of America's free enterprise system, together with the environmental groups, come and form a group like this—you've got my attention."⁶³ Indeed, the fact that the USCAP had effectively broken the 1990s business veto on climate action could be a game-changer. Subsequently, Lieberman and Warner set out to write a centrist bill and in December, the bill passed the committee. However, in order to attract enough votes on the Senate floor to send a signal to the next president that legislators were getting serious about passing a climate bill, some key issues still needed to be resolved.

A major concern was the issue of allocation versus auctioning of allowances. The USCAP hadn't yet agreed on specifics, but they would advocate initial, free allocation to many of the capped entities. Free allocation would smooth the transition and ensure fair treatment of economic sectors, regions and income groups disproportionately impacted by GHG regulations. To some USCAP members, including one of America's largest electric utilities, Duke

⁶¹ The Call for Action recommends an emissions reduction pathway of i) "between 100-105 percent of today's levels within five years of rapid enactment," ii) "between 90-100 percent of today's levels within ten years of rapid enactment," and iii) "between 70-90 percent of today's levels within fifteen years of rapid enactment." Furthermore, "Congress should specify an emission target zone aimed at reducing emissions by 60-80 percent from current levels by 2050" (pg. 7).

⁶² USCAP members included RioTinto, the Exelon Corporation, Alcoa, BP America, Caterpillar, Duke Energy, DuPont, FPL Group, General Electric, Lehman Brothers, PG&E, PNM Resources, American International Groups (AIG), Alcan, Boston Scientific, Johnson & Johnson, ConocoPhillips, Deere & Company, The Dow Chemical Company, General Motors Corp., Marsh, PepsiCo, Shell, the Chrysler Group, Xerox, Siemens, the Environmental Defense Fund (EDF), the World Resources Institute (WRI), Pew Centre on Global Climate Change and the Natural Resources Defense Council (NRDC), the Nature Conservancy and the National Wildlife Federation.

⁶³ Warner quoted in Pooley 2010, 164.

Energy,⁶⁴ free allocation represented *the* deal-maker or –breaker. The chairman, president and CEO Jim Rogers had over the past years become convinced that in the future, regulations were going to be implemented regardless of opposition from the coal industry. Based on his good experience with the EPA Acid Rain Program—a cap-and-trade scheme for limiting sulphur-dioxide emissions from power plants—Rogers was prepared to support a similar system for GHGs. In the case of SO₂s, the EPA had initially allocated most of the allowances for free to utilities,⁶⁵ enabling them to finance a clean-up using so-called “scrubbers.” While critics argued that the system represented a way to secure corporate “windfall profits” or “giveaways,” Rogers argued that free allowances were used to abate rising costs for consumers.⁶⁶ In the case of GHGs, the allowance revenues could similarly help Rogers modernize Duke Energy’s power plants and finance the development and deployment of carbon capture and storage (CCS). Arguably, he could not have afforded to do so otherwise. As such, it made sense for Rogers to participate in the USCAP and lobby for a GHG cap-and-trade legislation. But he alleged that he needed enough free allowances to be able to invest in the technology and make the transition to clean electricity affordable for his customers.⁶⁷

Lieberman and Warner supported both the USCAP and Roger’s position. They viewed free distribution of allowances as a means to ensure fairness, ease economic burdens and help finance the development and deployment of CCS for coal. But the environmental left saw things differently. They argued that people in environmentally conscious coastal states already paid more for their electricity, and that the free-ride for Midwestern utilities—that relied on dirty coal—had to end. To satisfy the left, Lieberman-Warner did not allocate enough free permits to satisfy coal-based utilities, so Rogers, the U.S. Chamber of Commerce and the National Association of Manufacturers set out to block their initiative. When the bill was called up in June 2008, it was essentially defunct because Boxer had not been willing to compromise, and because its foes in business had stirred up so much opposition in the Republican Party and the media.⁶⁸

The battle over allocation in Lieberman-Warner clearly demonstrated that USCAP companies were still divided on the economics of cap-and-trade. Electric utilities could not agree on how the allowances should be distributed between

⁶⁴ Duke supplies and delivers energy to approximately 4 million customers. Due to its vast number of coal-fired power plants, the company is the third largest emitter of CO₂ in America and the 12th largest emitter amongst corporations worldwide.

⁶⁵ Each allowance represented the right to emit one ton of sulfur dioxide in a given year. Altogether, 3 percent of allowances in the system were auctioned by the EPA while the remaining 97 percent were distributed for free based on each company’s historic emissions levels.

⁶⁶ Pooley 2010, 149.

⁶⁷ Pooley 2010.

⁶⁸ *Ibid.*, 201-227.

them, while the oil companies were not sure they could embrace a cap if power companies got so many free allowances. Furthermore, Rogers had spent over \$2.8 million on lobbyists, and used the media to debunk Lieberman-Warner. On a positive note, if the USCAP had dissolved then and there, the coalition would still have been remembered for breaking the 1990s business veto on climate action.⁶⁹

But the lobby survived after a new round of negotiations. For their message to be consistent and effective, the USCAP had to reach an agreement on how a climate bill could help finance the clean-up for coal-based electricity without being unfair to other sectors. They also had to strike a balance between the costs of reduction and stringency of emissions limitations. By the end of 2008 members had successfully agreed to, and developed a comprehensive manifesto: “*A Blueprint for Legislative Action: Consensus Recommendations for U.S. Climate Protection Legislation.*”⁷⁰ In short, the Blueprint sketched out a detailed plan for the development of legislation in the 111th Congress.⁷¹ The plan included a design for a cap-and-trade system and established a pathway for emissions reduction targets of 80-86 percent of 2005 levels by 2020, 58 percent of 2005 levels by 2030 and 20 percent of 2005 levels by 2050. It recommended that the cap cover large stationary sources and fossil-based fuels used by remaining sources and the use of abundant offsets⁷² for cost containment. Allowances should initially be distributed for free to capped entities, including a “significant portion (e.g. 40 percent)” to utilities. Furthermore, the program should provide credit for those taking early action to reduce GHG emissions and a set of complimentary measures for technology transformation, including for coal, transportation, buildings and energy efficiency.

By January 2009, 26 companies and the 4 founding environmental organizations had signed up for the Blueprint, thereby agreeing to specifics that would bind and unify their lobbying efforts. Now, USCAP companies would not be able to lobby for something weaker than the Blueprint, while the environmental organizations could not demand something stronger.

The decline of the GCC and the birth of the USCAP demonstrate the emergence of a tipping point in business strategies and the creation of a “Baptist and bootlegger” coalition for GHG regulation in the United States. Indeed, the review of USCAP activities shows how this strategic shift among leading U.S. industries resulted in new political action and lobbying for regulatory change. The

⁶⁹ Ibid., 316.

⁷⁰ Available for viewing at the U.S. Fish and Wildlife Service website.

⁷¹ The Blueprint also noted that the recommendations do not represent the only path forward, and that USCAP therefore stood ready to work with the Administration, Congress and other stakeholders to develop a new climate bill.

⁷² An offset is a reduction in GHG emissions made to compensate for an emission made elsewhere.

strengthening and deepening of the USCAP mandate through the Blueprint further marks the manifestation of a tipping point.

Catalyzing Change: The Tipping Point Drivers

This section examines the drivers and causes behind the strategic shift in political and lobbying tactics amongst USCAP industries. In line with the tipping point model, it demonstrates how the emergence of regulatory threats and uncertainties, uneven playing fields, and new market opportunities constitute central drivers behind the illustrated strategic change. It argues that the tipping-point model thus provides a plausible account of why this prominent group of leading U.S. industries began to support and lobby for the implementation of mandatory federal GHG caps.

First, it is evident that the steady acceleration of climate change governance in the United States and internationally has contributed to an increase in perceptions of regulatory risk among liable industries.⁷³ Perceptions of looming regulation have been heightened by several governance trends: the emergence and expansion of state-level initiatives, the entering into force of international and regional markets for mandatory GHG reduction, the Supreme Court ruling establishing EPA's authority to regulate GHGs under the Clean Air Act and the increasing efforts of U.S. senators to sponsor federal GHG legislation. When the USCAP was founded, the emerging belief amongst leading industry executives that the adoption of federal GHG legislation was ultimately inevitable provided one of the major grounds for action. According to Eileen Claussen, President of the Pew Center and founder of USCAP, there is not a single USCAP CEO who does not consider future GHG regulation inevitable.⁷⁴ This rationale also provided a key motivation for Jeff Immelt, the CEO of General Electric (GE) and co-founder of the USCAP, to gather fellow-minded corporations and environmental organizations to establish a new pro-change lobby for federal cap-and-trade.⁷⁵ As Rogers of Duke Energy argued, "Legislation is coming. We can help shape it or we can stand on the sidelines and let others do it."⁷⁶

The perception of high risk or inevitability of GHG regulation has also generated significant uncertainty about the future rules of the game. The cost of uncertainty can be considerable because regulatory ambiguity can impede

⁷³ Author's interview with Eileen Claussen, Pew Center on Climate Change, Arlington, March 2009; Author's interview with Jennifer Layke, World Resources Institute, Washington D.C., March 2009.

⁷⁴ Author's interview with Eileen Claussen, Pew Center on Climate Change, Arlington, March 2009.

⁷⁵ Pooley 2010, 138-139.

⁷⁶ Pooley 2010, 170. Statement by Jim Rogers in an e-mail to Robert Murray, CEO of Murray Energy.

corporations' abilities to make decisions on future investments. As Claussen argued, "If you don't know what's coming down the road, you don't know where to make investments or how big they should be. You can't move forward with this regulatory uncertainty."⁷⁷ When the USCAP was founded, many corporations felt that the level of uncertainty now signaled an end to business as usual.⁷⁸ An increasing share of companies were beginning to realize that if they did not start promoting favorable regulation and take a seat at the table, they would end up being worse off.⁷⁹ They could be the victims of a badly designed and costly regulatory system, or they could work actively to push for business-friendly and cost-efficient legislation. Thus, for many industries the anticipated costs of continued legislative inaction were perceived as greater than the anticipated costs of compliance with a well-designed cap-and-trade program. For example, to coal-based utilities such as Duke Energy, badly designed future GHG regulations could threaten its very existence. The best way for them to ensure that coal would survive in a carbon-constrained market was to work with legislators and push for rules that would help them finance, develop and deploy carbon capture and storage (CCS).⁸⁰

Thus, it is evident that the emergence of regulatory threats and uncertainties, an important condition identified by the tipping point model, constitutes a major driver behind the strategic shift among USCAP companies.⁸¹

Second, the emergence of a patchwork of different standards and measures for GHG emissions reductions at the state and municipal levels has created an uneven playing field for businesses operating in the United States. For these companies, lobbying for federal legislation through the USCAP represents a way to promote harmonization of the rules. To the USCAP multinationals, the adoption of a federal cap-and-trade program would also enable harmonization of regulations internationally, by linking them to established emissions-trading systems such as the Kyoto mechanisms and the EU ETS. Such linkages would reduce the cost of operating in and complying with several different regulatory

⁷⁷ Author's interview with Eileen Claussen, Pew Center on Climate Change, Arlington, March 2009.

⁷⁸ Author's interview with Jennifer Layke, World Resources Institute, Washington D.C., March 2009.

⁷⁹ Author's interview with Eileen Claussen, Pew Center on Climate Change, Arlington, March 2009; Author's interview with Jennifer Layke, World Resources Institute, Washington D.C., March 2009; Author's phone interview with ConocoPhillips, March 2009; Rogers, quoted in Pooley 2010, 161.

⁸⁰ Pooley 2010, 171.

⁸¹ Author's interview with Eileen Claussen, Pew Center on Climate Change, Arlington, March 2009; Layke 2009.

systems worldwide.⁸² Thus, the need for harmonization of uneven regulatory playing fields also constitutes an important driver of tipping-points.⁸³

Third, a federal cap-and-trade program would also generate considerable commercial opportunities for many U.S. industries. Because federal legislation can further enhance the commercial viability and competitiveness of clean, low-carbon energy technologies and options, it is rational for companies with considerable investment in such technologies to start pushing for the adoption of GHG-limiting legislation. Indeed, some USCAP companies have been early movers in the race to develop new, low-carbon solutions. For example, GE is a frontrunner in CCS technologies for coal and is also the biggest wind-turbine maker in the United States. Each of these turbines includes fourteen products made by DuPont. To the major polluters such as coal-fired utilities, it is the free allocation of allowances and financial incentives for technological transformation that constitutes the main regulation-induced business opportunity. As Rogers of Duke Energy argues,⁸⁴ since allowance revenues would help finance investment in carbon-neutral facilities, cap-and-trade represents a business opportunity that would chart a future for coal in a carbon-constrained world.⁸⁵ As such, the range of business opportunities for different sectors that would materialize through the implementation of federal legislation represents another major tipping-point driver.

Also worth noting, many USCAP companies have already begun to implement procedures to cut GHG emissions, for various reasons related to sub-national compliance, pre-compliance risk management, or green branding. Lobbying for a particular design of cap-and-trade therefore represents a way to ensure that early action is appropriately awarded. Moreover, after decades of debate, most of the USCAP CEOs believe that global warming is real and do not want to be blamed by future generations for their neglect.⁸⁶

In sum, it is evident that regulatory risks and uncertainties, unbalance playing fields and business opportunities, all key conditions identified by the tipping point model, constitute important drivers behind the establishment, mandate and lobbying of the USCAP. The next section considers the impact of

⁸² Author's interview with Eileen Claussen, Pew Center on Climate Change, Arlington, March 2009; Author's interview with Jennifer Layke, World Resources Institute, Washington D.C., March 2009; Author's phone interview with ConocoPhillips, March 2009.

⁸³ Author's interview with Eileen Claussen, Pew Center on Climate Change, Arlington, March 2009; Author's interview with Jennifer Layke, World Resources Institute, Washington D.C., March 2009; Author's phone interview with ConocoPhillips, March 2009.

⁸⁴ Duke has a portfolio of old coal-fired power plants expected to expire in fifty years at the latest.

⁸⁵ Pooley 2010, 154.

⁸⁶ Author's interview with Eileen Claussen, Pew Center on Climate Change, Arlington, March 2009; Author's interview with Jennifer Layke, World Resources Institute, Washington D.C., March 2009; Pooley 2010.

this tipping point in business strategies on U.S. climate politics by examining how USCAP lobbying influenced the negotiations of federal climate legislation after the release of the Blueprint in 2009.

A New Climate for Progress?

In January 2009, Representative Henry Waxman, a Democrat from California, took over the powerful House Energy and Commerce Committee, while Representative Ed Markey, a Democrat from Massachusetts, took the reigns as Chair of the Environment and Economy subcommittee.⁸⁷ Since the Supreme Court ruling on *EPA vs. Massachusetts*, Waxman had warned about the costs of command-and-control regulation and argued that Congress needed to get serious about writing a more cost-efficient legislative alternative. He had also observed that U.S. businesses appeared to be caught in a worrying investment dilemma. Companies are “reluctant to invest in old polluting technologies,” he argued after taking over the committee, “because they know that tougher regulations are inevitable. But they can’t invest in new, cleaner technologies until they know what Congress is going to require.”⁸⁸ Furthermore, the fact that leading U.S. businesses and environmental organizations had joined forces in support of legislation had caught his attention. On January 15, his first hearing in the Energy and Commerce Committee, Waxman invited the USCAP CEOs to unveil the Blueprint. With the cooperation of USCAP, Waxman could write a centrist and interest-group supported climate bill.

Waxman, Markey and USCAP leaders found common ground on principles for legislative design. In early March, Rogers (Duke) and Krupp (EDF) traveled to the Capitol to comment on the draft bill that was under preparation. While the White House had called on Congress to enact cap-and-trade with “a 100 percent auction to ensure that the biggest polluters do not enjoy windfall profits” in the February budget, Waxman supported the USCAP view on allocation. In his opinion, they were correct in their view that in order to cushion electricity customers in coal-dependent states, allowances should be allocated to local distribution companies for free during a transition period. Moreover, free allowance distribution was likely to please Midwestern senators concerned about regional equity.⁸⁹ Soon, the President announced that the White House had abandoned the plan for full auctioning.⁹⁰

⁸⁷ Before this chairmanship, Markey had served as the leader of Pelosi’s committee on global warming.

⁸⁸ Statement by Senator Waxman at a committee hearing on 15 January 2009 quoted in Pooley 2010, 332.

⁸⁹ Pooley 2010, 336-340.

⁹⁰ At a March 24 press conference Obama signaled that his auction plan was dead.

On March 31, Waxman released the first draft of his new climate bill. Like Lieberman-Warner, it sketched out a federal cap-and-trade system, but it also included a number of complementary measures for technology transformation, including generous subsidies and incentives for CCS and a provision for grandfathering allowances to existing coal-fired plants. The bill left open the issue of allowance distribution and the overall stringency of the cap. After several rounds of discussion in the committee, senators agreed to mandate free transitional allowances for utilities in return for their acceptance of a 17 percent emissions reduction target.⁹¹ The power sector was allocated 35 percent of all allowances covering 90 percent of their total emissions. The oil refineries, which were standing on the sidelines, were granted only 2 percent of the allowances.

Meanwhile, the new EPA administrator Lisa Jackson announced that the agency had deemed climate change a danger to public health and welfare, and she thus began to prepare rules for GHG emissions reductions, first dealing with vehicles and then with stationary sources such as power plants and manufacturing facilities. For the business lobby and cost-wary senators, it was a reminder of the seriousness of the command-and-control regulatory threat. This reinforced their motivation to push a cap-and-trade bill through the House. Yet, outside the committee negotiations, opposition to the bill was growing. Critics argued that the financial crisis had weakened the case for a market-based approach to GHG regulation, and warned that legislators had failed to address weaknesses in emissions trading that could lead to the emergence of “subprime carbon” and the creation of a “carbon market bubble.”⁹² Many on the environmental left had therefore grown more than skeptical towards Waxman-Markey due to its abundant provision of free allowances to the big polluters. On the other hand, conservative Republicans started attacking the bill from the right, labeling it “cap-and-tax” and “freedom-limiting legislation.”

Nevertheless, in the House, negotiations continued to move forward. In May, Waxman announced that the committee had successfully reached a compromise and publicly thanked the USCAP members for their help and leadership.⁹³ On May 21, the Waxman-Markey bill passed the Energy and

⁹¹ The bargain was made between Representatives Waxman, Markey and the previous chair Rich Boucher (Virginia) and the power sector represented by the USCAP and the Edison Electric Institute (EEI).

⁹² Chan 2009. The Director of the Green Investment Program and Friends of the Earth, Michelle Chan, also testified before the U.S. House Ways and Means Committee in March 2009, arguing that without adequate market oversight, financial intermediaries would enter the market and allow speculators to push up prices and create a carbon bubble.

⁹³ To a crowd of legislators, lobbyists, policy specialists and environmental leaders at the Capitol, Waxman stated that “we used that proposal as a model for our legislation. I believe that the only hope we have to get legislation passed is to show a consensus of American business and environmentalists.” (Waxman, quoted in Pooley 2010, 375).

Commerce committee by a vote of 33 to 25, and on June 26 it passed in the House of Representatives by a 219-212 vote. It was a tight margin that had required a lot of political bargaining as well as the engagement of President Obama, who had personally asked uncommitted members from both parties for their votes. It was a historic moment, nonetheless, because for the very first time, legislators, corporate lobbyists, environmentalists and labor unions had worked together to arrive at a grand bargain that would impose mandatory reductions of GHG emissions in the United States.

For legislation to become law, however, a bill must be passed by both chambers of Congress, the House and the Senate, and then signed by the President. Because of Senate rules which give the minority power to stall votes, controversial bills often require 60 votes just to be heard on the floor. With no shortage of Republicans and even a few Democrats intent on filibustering, any climate bill would require a 60-vote supermajority in the Senate. After one failed attempt by Boxer and Kerry to forge a more left-oriented edition of Waxman-Markey through the Senate, Kerry teamed up with Lieberman and Republican Lindsay Graham (South Carolina) to write a revised, centrist version.

Initially, the Kerry-Lieberman-Graham (KGL) initiative met some renewed resistance from industry groups, primarily due to emerging conflicts of interests over allowance allocations. Amongst coal-based utilities, some members of the American Coalition for Clean Coal Electricity (ACCCE)—from which the USCAP utilities had resigned—now said they did not want to support a climate bill in 2010. Opposition had also grown from the oil refineries, who were dissatisfied with the low proportion of allowances they had been attributed relative to utilities. The American Petroleum Institute (API) began disseminating reports, which argued that the costs of KGL would harm the U.S. economy.⁹⁴ Furthermore, the API encouraged all its members to send their employees to partake in a so-called “Energy Citizen” rally against GHG legislation. In February 2010, BP and ConocoPhillips pulled out of the USCAP because they thought the coalition favored coal at their expense.⁹⁵

However, when negotiations for KGL got serious in the autumn of 2009, the business opposition was successfully appeased. From October 2009 to April 2010, Kerry and Lieberman met regularly with business lobbies such as the USCAP, the U.S. Chamber of Commerce, the API, the EEI, the National Association of Manufacturers and others to reach consensus and make sure everyone was satisfied with the bill’s provisions. During this process, the senators

⁹⁴ For example, a study cooked up by the Heritage Foundation, a think tank partly funded by ExxonMobil, argued that the cost of gasoline would increase by \$4 a gallon and lead to huge job losses.

⁹⁵ The Hill, “USCAP Departures Fray Industry Green Climate Unity,” 6 February 2010; The Washington Post, “ConocoPhillips, BP and Caterpillar Quit USCAP,” 2 February 2010.

reached a non-aggression pact with the API and the Chamber, whereby industry promised to refrain from publicly attacking their proposal in exchange for a number of concessions designed to keep compliance costs low.⁹⁶ The first draft established a cap-and-trade system for the electric power sector only, a carbon “fee” linked to the price of allowances for oil companies and a cap for steelmakers and other energy-intensive industries that would be phased in slowly. USCAP and other business lobbies immediately threw their weight behind it. Some groups, such as the EEI, even issued public statements in support of the bill.⁹⁷

Industry efforts to pass KGL were significant. In April, Rio Tinto sent a letter to Senate Majority Leader Harry Reid (D-NV)—since the majority leader is responsible for setting the Senate agenda—which pleaded for climate legislation in 2010. In the letter, CEO Preston Chiaro argued that neglect “will not only delay the action necessary to address the climate imperative, but will increase, rather than reduce, the uncertainties for businesses like Rio Tinto as we face a more rigid and expensive regulatory process under the Clean Air Act.”⁹⁸ In May, 60 leading U.S. corporations also sent a letter to President Obama, Senator Reid and the Republican Minority Leader Senator Mitch McConnell,⁹⁹ which strongly urged them to “move forward this year on comprehensive energy and climate legislation.” The letter emphasized the opportunities related to climate action and argued that “we face a critical moment that will determine whether we will be able to unleash homegrown American innovation or remain stuck in the status quo... Americans need and deserve a comprehensive energy and climate policy and we urge you to take action without delay.”¹⁰⁰

Thus, KGL had the support of a coalition of major environmental groups and leading U.S. industries, including a large share of the nation’s biggest polluters. No previous attempts to pass climate legislation had ever come this far.¹⁰¹ Yet, in the summer of 2010, senators pulled the plug on the KGL bill. On July 8, Graham announced that he would no longer support the bill he had helped to author, and with the loss of this pivotal bipartisan bridge, climate change

⁹⁶ Politico, “Talks Might Not Save Climate Bill,” 22 July 2010; The New Yorker, “As the World Burns,” 11 October 2010.

⁹⁷ Pooley 2010; The New Yorker, “As the World Burns,” 11 October 2010.

⁹⁸ Letter from CEO Preston Chiaro of Rio Tinto to Senate Majority Leader Harry Reid. 28 April 2010.

⁹⁹ Together these companies represent over 1 million employees and revenues over \$1.2 trillion. The list includes AEP, Alcoa, Alstom, Areva, Chrysler, DTE Energy, Duke, EEI, Ford, GE, GM, Honeywell, NRG Energy, PG&E, Shell, Siemens, Dow and others.

¹⁰⁰ Letter to the President, Senator Reid and Mitch McConnell from sixty corporations, 27 May 2010. See TreeHugger, 28 May 2010. “Big Corporations Lobby President, Congress for Climate Legislation.”

¹⁰¹ The New Yorker, “As the World Burns,” 11 October 2010.

legislation was pretty much dead.¹⁰² By the end of the month it was clear that there simply were not enough votes. What led the process to collapse?

KGL's cooperation with industry and their attempt to forge a grand bargain by handing out concessions to big polluters did not sit well with the environmental left. After its release, over 200 grass-root groups and some prominent green organizations including Greenpeace and Friends of the Earth immediately came out in opposition to the bill.¹⁰³ These groups strongly contested the design of KGL, which they considered to be a major corporate bailout, for providing abundant windfall profits to the oil, coal, nuclear and agribusiness industries.¹⁰⁴ Until senators could agree on a stronger bill that did not shower billions of dollars on polluters, many on the environmental left preferred the implementation of EPA regulations over the democratic legislative approach.¹⁰⁵

More importantly, despite its market-based and business friendly approach, KGL failed to harvest enough support from Republicans and Blue-Dog Democrats.¹⁰⁶ Democrats had hoped that with the support of their industry backers they would be able to collect enough Republican votes.¹⁰⁷ But this proved much more difficult than expected. While Senator Graham was showered with new financial support from pro-regulation utilities in return for his work on the climate bill,¹⁰⁸ he was the only Republican willing to work with Democrats on this particular legislation. There were other Republican climate advocates including Florida Senator LeMieux and Maine Senators Olympia Snowe and Susan Collins, but they never came out in support of KGL. Furthermore, John McCain, a long-standing climate advocate and co-writer of the Lieberman-McCain cap-and-trade bill of 2009, also ended up withdrawing his support for climate legislation during a hostile election challenge in the Arizona primary. He was attacked as a moderate and was forced to defend his position on global

¹⁰² Politico, "Energy Bill Stuck In Neutral," 9 July 2010; The Economist, "Lindsay Graham Kills His Bill," 9 June 2010.

¹⁰³ Grist, "Big Green and little green clash over the American Power Act," 18 May 2010.

¹⁰⁴ The Daily Green, "The Kerry-Lieberman Climate and Energy Bill," 12 May 2010; Environment News Service, "Kerry-Lieberman Climate Bill Generates Praise and Outrage," 12 May 2010.

¹⁰⁵ Grist, "Big Green and little green clash over the American Power Act," 18 May 2010; Friends of the Earth, "The American Power Act," May 12, 2010. Also, see Kerry-Lieberman Bill which gave billions to nuclear power companies.

¹⁰⁶ Politico, "Climate Bill Gets GOP Cold Shoulder," 28 June 2010.

¹⁰⁷ The New Yorker, "As the World Burns," 11 October 2010.

¹⁰⁸ The New Yorker, "As the World Burns," 11 October 2010. Grahams PAC contribution from utilities grew from nothing in 2009 to \$49,000 in 2010, and Fred Krupp from the EDF and USCAP furthermore introduced Graham to businesses new donors who were willing to contribute to his campaign in exchange for promoting climate legislation.

warming to conservative voters, who were increasingly skeptical that cap-and-trade was just another energy tax.¹⁰⁹

Already during the run-up vote on Waxman-Markey in 2009, Republican campaigns and their coverage by media-outlets targeted climate legislation. This may have undermined support for Democrats leading up to the midterm elections. Cap-and-trade was re-branded as cap-and-tax, a strategic attempt to frame the legislation as a hidden national energy tax and paint Democrats as out-of-control regulators.¹¹⁰ The tax phraseology was also an important contributor to Graham's withdrawal and thus, the death of the bill. Initially, the KGL included a linked fee for oil refineries, but this was re-negotiated due to the possibility that it would be conceived of as a tax and because the refineries agreed to shelve the fee and accept a system for fixed-price permits. But the White House, afraid of being accused for supporting a tax-hike, went on to sabotage the bill and the commitment of its bipartisan bridge, Graham. Based on a leak from within the Administration, on April 15 Fox News reported that "White House Opposes Higher Gas Taxes Floated by S.C.GOP Sen. Graham in Emerging Senate Energy Bill," in effect labeling the now non-existent linked-fee as a 'gas tax' and blaming Graham for it. Since the Administration leaker deliberately went to Fox in South Carolina, it may seem as if the leak was intended to spur criticism of Graham amongst Republicans and Tea Party supporters in his own constituency. Democrats made their implicit decision to kill the bill even more apparent when Majority Leader Reid announced in the end of April that he wanted to pass immigration reform before a climate bill. It was the last straw for Graham, who had gone out on a limb to cooperate with Democrats and felt he had been stabbed in the back. He would ultimately abandon the KGL initiative.¹¹¹

With the exception of the days spent whipping the vote for Waxman-Markey in June 2009, President Obama never engaged actively with Congress or the Senate to draft legislation and/or push for a cap. On the contrary, the gas-tax leak and the sabotage of Graham indicated that the White House sought to kill the KGL bill due to the risk that it would spur a political back-lash against Democrats. As long as the polling numbers and/or the 60 senate votes were not clearly there, Obama's advisors Rahm Emanuel and David Axelrod believed it was better for the president to pursue a hands-off approach. Emanuel was most concerned with acquiring and maintaining presidential power and was not willing to squander the president's political capital on a potentially lost cause.¹¹² "We want to do this climate bill," Emanuel argued to a group of CEOs in a USCAP-White House meeting. "But we need to put points on the board. We only want to

¹⁰⁹ The New Yorker, "As the World Burns," 11 October 2010.

¹¹⁰ Pooley 2010.

¹¹¹ The New Yorker, "As the World Burns," 11 October 2010.

¹¹² Pooley 2010; The New Yorker, "As the World Burns," 11 October 2010.

do things that are going to be successful. If the climate bill bogs down, we move on. We've got health care."¹¹³ Thus, despite President Obama's campaign promises to prioritize energy and climate change, it seemed to have slipped further and further down the agenda. He stood silent while opponents hijacked the public debate and did little to prevent the negative effects of the cap-and-tax phraseology. Indeed, it could be argued that his administration hastened that trend. Carol Browner, the Obama-appointed director of the White House Office of Energy and Climate Change Policy, had only three aides working directly for her. While the office attended the meetings of KGL staffers, they never expressed a policy preference or attempted to take the lead in the process. And despite continuous pressure from industry, environmental groups and leading U.S. senators to provide hands-on leadership, the Obama Administration did nothing to help collect the 60 votes needed for KGL.¹¹⁴

Clearly, this time around it was not industry that hobbled efforts to forge a centrist "grand bargain" for federal climate legislation, but the lack of presidential leadership and commitment, Republican framing and the tough political environment surrounding the midterm elections. According to Senator Kerry, it was the cooperation with industry that helped them come as far, and it is industry cooperation that will help pass climate legislation in the future: "The bottom line is that for more than a decade, climate change legislation was dead in the cradle because senators pointed to opposition from their home-state industries and businesses, and millions upon millions of dollars in negative advertising ground every debate to a halt."¹¹⁵ The review of the negotiations behind Waxman-Markey and KGL illustrate that after the emergence of a tipping point in business strategies, this dynamic changed dramatically. Indeed, the USCAP and its allies helped pass climate legislation in the House and played a key role in the attempt to forge KGL through the Senate.

Conclusion

This article has presented a model for analyzing change in business strategies related to climate change regulation. It is demonstrated that under certain conditions that may emerge as a particular issue area of environmental governance matures, including the emergence of regulatory threats and uncertainties, uneven playing fields and new market opportunities, the strategies of many prominent and leading industries are likely to shift from opposition to regulatory support and entrepreneurship. The model identifies the culmination of

¹¹³ The Climate Desk, "Obama's Climate Complacency: Blame Rahm?," 10 June 2010.

¹¹⁴ Rolling Stone Magazine, "Climate Bill, R.I.P.," 21 July 2010; The New Yorker, "As the World Burns," 11 October 2010.

¹¹⁵ Quote by Senator John Kerry in Politico, "Talks might not save climate bill," 22 July 2010.

this gradual process of change as a “tipping point,” at which a significant share of leading corporations and business lobbies begin to support and push for regulatory change. It is also argued that a tipping point in business strategies is likely to generate new political momentum and enabling conditions for political bargaining, which may spur significant progress in the regulatory negotiation process.

The article has used the tipping-point model to analyze the evolution of climate change politics in the United States. The case study finds that the model provides a plausible account of, first, the lack of federal climate action in the 1990s and early 2000s, and second, the new momentum to impose federal GHG legislation between 2008 and 2010. While business lobbying provided a major obstacle to regulatory change for over 15 years, this dynamic clearly changed after the emergence of a tipping point in business strategies. The tipping point is identified here as the establishment of the pro-change lobbying coalition USCAP and their efforts to push for the adoption of a federal cap-and-trade program. The case also demonstrated how the tipping point generated new political momentum and progress in efforts to negotiate federal climate legislation. USCAP and their allies played a key, enabling role first in the negotiations behind the Waxman-Markey climate bill, which passed the House in 2009, and second in the bargaining process behind the KGL bill and the attempt to forge it through the Senate in 2010. It is argued that the KGL negotiations collapsed not due to, but in spite of, continuous industry support and lobbying. Rather, it was the lack of presidential leadership and commitment, Republican framing and the tough bipartisan political environment leading up to the midterm elections that caused the process to collapse.

References

- Agder, Neil W., Katrina Brown, Declan Conway, and Mike Hulme. 2003. “Adaptation to Climate Change in the Developing World.” *Progress in Development Studies*, 3: 179.
- Cerny, Philip G. 2010. *Rethinking World Politics. A Theory of Transnational Neo-Pluralism*. New York: Oxford University Press.
- Chan, Michelle. 2009. “Subprime carbon? Re-Thinking the Worlds New Largest Derivatives Market.” Friends of the Earth, March.
- DeSombre, Elizabeth R. 1995. “Baptists and Bootleggers for the Environment: The Origins of United States Unilateral Sanctions.” *Journal of Environment and Development* 4: 1.
- Dunn, Seth. 2002. “Down to Business on Climate Change.” *Greener Management International*. Autumn.

- Falkner, Robert. 2008. *Business Power and Conflict in International Environmental Politics*. Hampshire: Palgrave Macmillan.
- Fisher, Dana R. 2006. "Bringing the Material Back In: Understanding the U.S. Position on Climate Change." *Sociological Forum* 21, 3: 467-94.
- Gladwell, Malcom. 2000. *The Tipping Point: How Little Things Can Make a Big Difference*. New York: Little, Brown and Company.
- Gunningham, Neil, Robert Kagan, and Dorothy Thornton. 2003. *Shades of Green: Business Regulation and the Environment*. Stanford, California: Stanford Law and Politics.
- Grodzins, M. 1957. *Metropolitan Segregation*. Chicago, IL: University of Chicago Press.
- Human Development Report (HDR). 2007. *Fighting Climate Change: Human Solidarity in a Divided World*. UNDP. Houndsmills: Palgrave Macmillan.
- Henriques, Irene and Perry Sadorsky. 1995. "The Determinants of an Environmentally Responsive Firm: An Empirical Approach." *Journal of Environmental Economics and Management* 30, 381-395.
- Hoffman, Andrew and John Woody. 2008. *Climate Change: What's Your Business Strategy?* Cambridge, Mass.: Harvard Business School Publishing Corporation.
- Intergovernmental Panel on Climate Change. 2004. "16 Years of Scientific Assessment in Support of the Climate Convention."
- Intergovernmental Panel on Climate Change. 2007a. *Climate Change 2007: Synthesis Report. Summary for Policymakers*. Cambridge: Cambridge University Press.
- Intergovernmental Panel on Climate Change. 2007b. *Climate Change 2007: The Physical Science Basis*. Contribution of the Working Group I to the Fourth Assessment Report. Cambridge: Cambridge University Press.
- Intergovernmental Panel on Climate Change. 2007c. *Summary for Policymakers Climate Change 2007: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Fourth Assessment Report. Cambridge: Cambridge University Press.
- Johnson, Gerry, Kevan Scholes, and Richard Whittington. 2005. *Exploring Corporate Strategy*. 7th edition. Essex: Pearson Education Limited.
- Legget, Jeremy. 2001. *The Carbon War: Global Warming and the End of the Oil Era*. New York: Routledge.
- Levy, David and Daniel Egan. 1998. "Capital Contests: National and Transnational Channels of Corporate Influence in the Climate Negotiations." *Politics and Society* 26 (3).

- Levy, David. 2005. "Business and the Evolution of the Climate Regime: The Dynamics of Corporate Strategies." In *The Business of Global Environmental Governance*, edited by David Levy and Peter Newell. Cambridge, Mass.: MIT Press.
- Levy, David and Peter Newell. 2005. *The Business of Global Environmental Governance*. Cambridge, Mass.: MIT Press.
- Manzur, Allan and Jinling Lee. 1993. "Sounding the Global Alarm: Environmental Issues in the U.S. National News." *Social Studies of Science* Vol. 23, 681-720.
- Mayer, A.J. 1960. "Russell Woods: Change Without Conflict." In Glazer, N and D. McEntire. eds. 1960. *Studies in Housing and Minority Groups* Berkeley, Calif.: University of California Press.
- Newell, Peter and Matthew Paterson. 1998. "A Climate for Business: Global Warming, the State and Capital." *Review of International Political Economy* 5 (4): 679-703.
- O'Brien, Karen. 2006. "Are We Missing the Point? Global Environmental Change as an Issue of Human Security." *Global Environmental Change-Human and Policy Dimensions* 16 (1): 1-3.
- Pooley, Eric. 2010. *The Climate War. True Believers, Power Brokers, and the Fight to Save the Earth*. New York: Hyperion.
- Rugman, Alan M. and Alain Verbeke. 1998a. "Corporate Strategy and International Environmental Policy." *Journal of International Business Studies*, 29, 4: 819-834.
- Rugman, Alan M. and Alain Verbeke. 1998b. "Corporate Strategies and Environmental Regulations: An Organizing Framework." *Strategic Management Journal* Vol. 19, 363-375.
- Schelling, Thomas C. 1971. "Dynamic Models of Segregation." *Journal of Mathematical Sociology* 1: 143-186.
- Selin, Henrik and Stacy D. VanDeever. 2007. "Political Science Prediction: What's Next for U.S. Climate Change Policy?" *Review of Policy Research* Vol. 24, No. 1.
- Skodvin, Tora and Jon Birger Skjærseth. 2003. *Climate Change and the Oil Industry: Common Problems, Varying Strategies*. New York: Manchester University Press.
- Skodvin, Tora and Steinar Andresen. 2009. "An agenda for change in U.S. climate policies? Presidential Ambitions and Congressional Powers." *International Environmental Agreements* 9: 263-280.
- Vormedal, Irja. 2011. "States and Markets in Global Environmental Governance: The role of Tipping Points in International Regime Formation." *European Journal of International Relations*, forthcoming.