

CEI ON POINT

The Competitive Enterprise Institute

1001 Connecticut Avenue NW • Suite 1250 • Washington, D.C. 20036 • (202) 331-1010 • <http://www.cei.org>

Committed to Advancing the Principles of Free Enterprise and Limited Government

October 13, 1999

No. 49

Kyoto: The Issue Is Power

By Jack Kemp

The Kyoto Protocol on global warming, and its underlying premise that the entire world's energy policies can be regulated pursuant to an international treaty, have set in motion a huge battle over power. That is, "power", not in the sense of controlling the energy sources that drive the world economy, but *political* power in the sense of who decides how fast our economy should grow (or if it should grow at all!), where the technologies of the future will come from, and under what terms the peoples of the developing world will enjoy the blessings of economic freedom and the tremendous wealth that comes along with it. "Wealth", of course, does not mean just greater personal and national income, but also the improved quality of life (including health, safety, and a cleaner environment) that is the hallmark of an advanced free market economy.

In the hands of its proponents, Kyoto is the leading edge of the greatest non-military power play in history, one that could put command-and-control authority over economic life in the hands of international bureaucrats who are known to, at most, a *tiny fraction of a percent* of the American people. Yet these are not 'faceless bureaucrats' but individuals well known to their well-placed allies in pressure groups, think tanks, foundations, and 'civic organizations' (i.e., non-governmental organizations, or NGOs). In tandem, these folks work tirelessly to spread their Malthusian message of limits to growth, 'green' controls on job creation and advanced technology, and strict controls on population. Government officials, NGOs, and those elements of the corporate community that have a special interest to protect, form a kind of 'global iron triangle' that secures power for its own purposes. This iron triangle advances an elitist and sometimes radical agenda at the expense of the average citizen, and does it in a way that contradicts the fundamental premises of a free society: open exchange of ideas, popular sovereignty, constitutional government with limited powers, and full accountability to the electorate for the actions of government.

Binding the Nation. The Kyoto Protocol was negotiated under the auspices of the United Nations, with active participation by the Executive Branch of the U.S. Last fall, President Clinton authorized the U.S. to sign the treaty, yet he has refused to submit it to the Senate for ratification. At the same time, the Clinton-Gore administration is hard at work trying to implement Kyoto *de facto*.

Despite congressional concerns about this treaty, the administration relentlessly promotes and often executes policies designed to reduce fossil fuel emissions in line with the 'commitment' the President made in Kyoto. That commitment, *in theory*, should have no binding effect on the United States unless the Senate ratifies the Kyoto Protocol. Absent major political changes, that just isn't going to happen.

The administration, for example, has held numerous public forums around the country promoting its apocalyptic view of global warming and the alleged virtues of reducing emissions in line with Kyoto.

Congress, rightly concerned about the preservation of its treaty power, has sought to block such 'back door' efforts to impose Kyoto's mandate on the American public by adopting legislative language proposed by Rep. Joe Knollenberg (R-MI). This language, included in FY 1999 appropriations bills (and FY 2000 appropriations bills, subject to final negotiations over congressional efforts to strengthen Rep. Knollenberg's original wording) bars expenditures that effectively implement or prepare to implement Kyoto.

Despite the Knollenberg provision, however, EPA undeniably is working to implement the treaty in the U.S. EPA has many devices to use, including public advocacy, incentives for so-called renewable fuels, technical assistance for lowering fossil fuels emissions, and so on. In fact, President Clinton himself has cited global warming as a reason for (1) his executive order mandating a 30 percent emissions reduction in federal facilities, (2) various provisions of his electricity restructuring plan geared to reducing emissions and promoting so-called renewable energy, and (3) EPA's attempt to regulate particulate matter and ozone (an attempt based on other legal grounds, but recently blocked by the D.C. Circuit Court of Appeals).

In short, there is no reasonable doubt that the President is trying hard to impose on the American people Kyoto's limits on growth and innovation, and doing so without the authorization of a legally binding treaty, and as far below the radar screen as the administration can possibly go so as not to alert the public about what is going on and what the stakes are.

The People's Prerogative. Whether the Clinton-Gore administration is technically in violation of the Knollenberg provision is a question for the lawyers, but it is clear to everyone that the Executive Branch has violated the will of Congress as expressed in that provision, and in the Byrd-Hagel Senate resolution that laid down markers for an 'acceptable' treaty. Congress does not want Kyoto; the public does not want Kyoto; but the administration *does* want it, and is determined to ram it down the throats of the American people whether they like it or not.

What can we do about all this? Certainly it is worth exploring legislative language that would strengthen and clarify the Knollenberg provision, such as the language in Rep. David McIntosh's bill H.R. 2221. In particular, the provisions of H.R. 2221 that bar the government (not just EPA) from regulating carbon dioxide emissions absent express legislative authority, and prohibiting any use of taxpayer dollars to advance the cause of granting early action credits designed to lure businesses into the Kyoto trap (by giving them the potential of real, marketable value for claimed emissions cuts), would have this effect.

Drawing lines between measures designed to implement Kyoto and those that are justified on the basis of pre-existing programs is an inherently tricky process. For that reason alone, we should be wary of depending too much on technical legal interpretations to advance the will of Congress, safeguard the treaty process, and protect the right of American citizens to shape their economic future. These are very weighty issues, and they warrant heightened public awareness of what is at stake. Those of us who care about these matters need to step up our efforts and initiate a vigorous public debate about back-door implementation of unratified treaties, the proliferation of international bureaucracies, and their gradual assumption of broad, unrestricted power over the economic lives and even the political rights of the American people.