

Keeping Kyoto

Kyoto architecture, the US and Australia proposals Greenpeace briefing, November 2009

The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change. The Protocol was negotiated in 1997 and binds a group of 37 industrialised countries to greenhouse gas emissions reductions of 5% by 2012 (compared to 1990 levels). It details how this aggregate reduction will be achieved by setting out legally binding individual targets for each of the countries.

In this way Kyoto's international framework governs domestic action whilst leaving countries to choose the climate-related domestic policies that best suit their circumstances. In order to ensure that Kyoto members stay on track and meet their obligations, the Kyoto Protocol also established international systems for:

- **International accountability:** holds countries accountable for their internationally agreed emission reduction targets
- **Accounting:** a set of international rules establishing what is accounted for (eg which sectors and gases) and rules for how it is done (eg a base year of 1990, rules for counting emissions from the forest sector and the Global Warming Potential (GWP) of greenhouse gases).
- **Verification:** As with the Convention, expert review teams ensure the environmental integrity and transparency of the accounting and reporting system. The review process is generally cooperative and problem solving in nature but under Kyoto, review teams also have the power to adjust the data if a resolution cannot be found.
- **Compliance:** the international compliance system detects failure of governments to meet obligations under Kyoto and employs a 'carrot and stick' approach. The Facilitative Branch offers advice when things start to go wrong, whilst the Enforcement Branch has tools to enforce compliance via penalties for defaulters.
- **Carbon Markets:** Kyoto establishes international rules and eligibility criteria to ensure the integrity of the carbon markets, ensuring that countries abide by international trading rules and maintain robust systems to support the market.

These essential elements, whilst in need of some improvement, encourage and enforce compliance and comparability of effort with maximum transparency. They ensure that all countries are playing by the same rules and adhering to the same standards.

The 'Copenhagen Agreement'

In Montreal 2005 Governments launched negotiations under the Kyoto Protocol to agree on new emission reduction targets for industrialised countries. Two years later The Bali Action Plan was agreed, launching wider negotiations under the Convention covering new issues, such as tropical forest protection, looking at how developing countries could enhance action on climate change and how that, as well as adaptation, could be financed.

Both of those negotiating processes are due to be completed in Copenhagen this December. For industrialised countries any resulting agreement must contain the fundamental components of Kyoto listed above, along with the concepts of international legally binding aggregate and individual targets.

Undermining Kyoto?

Earlier this year, both Australia and the USA submitted proposals for a framework 'Copenhagen Agreement'. These proposals differ quite markedly from the current international regime for climate action, suggesting one legal instrument to include industrialised and developing countries. In both cases the positive elements of the Kyoto Protocol architecture are in danger of being abandoned, redefining the nature of industrialised country emissions reductions.

The US proposal rejects an international compliance regime, whilst the Australian position on compliance is very unclear, calling into question the enforceability of commitments, and therefore the legally binding nature of the proposed commitments.

The US 'Implementing Agreement'

When President Obama used the platform of his inauguration to speak publicly and passionately about the dangers of climate change, the urgent need for action and his commitment to restore science to its rightful place, hopes were raised that the US was prepared to engage positively and progressively with the international community

In the months since, it has become clear that the US is not prepared to make up the ground lost during the Bush years or to take a leadership position in the international climate negotiations. The US continues to insist that action on climate change is conditional on developing countries doing what it calls their 'fair share'. At the same time it is imposing its own domestic restrictions on the negotiations - pledging to cut emissions, not by what science and equity demands but by what is acceptable to the energy producers and users who pull their strings.

With its current proposal the US clearly wants its commitment to be treated in the same way as that of China. Although it is prepared to make greater reductions (in line with common and differentiated responsibilities), it wants its obligations to take the same legal form and be subject to the same review or compliance regime (ie, not international) as China. It does not accept that its actions should be more stringently reviewed than those of China.

The problem with this approach is that China (quite reasonably) is unlikely to agree to take on Kyoto style legally binding obligations at this point. In order to address this conundrum and have China under the same agreement, the US is prepared to weaken the current industrialised country regime.

The US proposal:

- Puts forward a 'pledge and review system' whereby countries would develop their climate policies domestically and then bring these to the international community for review. This bottom-up approach means there will be no guarantee that action undertaken will be in line with what is required by science as countries will pledge only what they are prepared to do rather than what is necessary.
- Appears to reject international accounting rules. If countries use different methods to calculate emissions it will introduce inconsistencies and make it very difficult to compare actions. The US could adopt a 'target' – a percentage reduction from base year – but if the rules to calculate that target are not the same it is essentially meaningless.
- Includes only domestic compliance, namely that all action taken by countries has to be 'in conformity with domestic law' and that such compliance would be rubberstamped by the international community through a review process. In other words as long as the US follows the rules in its domestic legislation it must be considered as in compliance with both its domestic and international obligations, even if the international rules are different.

This position is completely unacceptable. It makes enforcement only as strong as the domestic system. For the US this system happens to be quite strong but this is not necessarily so in other countries. This approach would eliminate the ability of the international community to respond if there is a problem.

The Australian “Schedules Approach”

Despite coming to power on a promise to tackle climate change, Australian Prime Minister Kevin Rudd has failed to move the domestic debate beyond the influence of large polluting industry that dominated the previous Howard government.

Australia's industrial emissions are rising rapidly and the proposed emissions trading scheme has become bogged down in partisan politics. At the international level Australia, like the US, continues to insist that action on climate change is conditional on developing countries doing their 'fair share'. Proposals put forward by Australia, including the schedules approach, whilst not incompatible with an amended Kyoto Protocol may be perceived as a way to "break down the firewall" between industrialised and developing countries.

The Australian proposal has far less detail than the US proposal and is much more of a work in progress. However, there are some very clear risks associated with the outline put forward.

The Schedules approach is once again a single agreement that puts both industrialised and developing countries within the same legal form, although with different levels of commitment. It is likely that the motivation for this proposal is also to ensure that the US and China are both included under the same regime – with all the inherent dangers mentioned above.

All countries (except the Least Developed Countries) would set out their commitments and/or actions for a given period in what has been termed a 'National Schedule', which would be attached to the legal agreement. The underlying content of those actions or commitments may differ, reflecting countries' 'common but differentiated responsibilities'.

There are some fundamental gaps in the proposal:

- There is no mention of an aggregate target for industrialised countries. Although the proposal allows for the schedules to be updated through negotiation every two years there is no guarantee that this would result in increased effort or that initial or subsequent actions would be enough to keep the world below a 2 degree C increase.
- Draft schedules will be 'assessed' as part of the negotiation process but could still produce nothing more than a simple 'pledge and review' process without a science-triggered review process.
- 'Flexibility' is built into the proposal by way of listing all the actions or commitments countries will take. This is reasonable for developing countries but it is not necessary for industrialised countries as they already have targets that are simple to report on and compare. They do not need to detail every policy and measure they undertake and doing so could blur the lines between what is and isn't legally binding. This attempt to get all countries into the same legal form (to satisfy the US) could undermine the current structure of industrialised country obligations.
- It is not at all clear which actions under the proposal would be binding and which non-binding and there is no clarity on whether there would be a compliance regime to enforce the legally binding obligations.

What should be in the 'Copenhagen Agreement'

It took 10 years to negotiate the Kyoto Protocol and get it into force. It is essential to keep and improve the Kyoto architecture, ensuring that future reductions from industrialised countries (and some of the richer newly industrialised countries such as South Korea, Singapore and Saudi Arabia) are a lot deeper and consistent with the cuts that science requires.

As more is known about the science and speed of climate change, it has become clear that developing countries will also have to take action to reduce projected emissions from this group. This action must be based on a country's historical responsibility for emissions and its capability and potential to reduce them and must be supported with finance and technology transfer from industrialised countries.

An additional linked 'Copenhagen Protocol' would set legally binding targets for the USA (which is not part of Kyoto) that would be subject to accounting, verification and compliance procedures comparable to other industrialised countries. This new Protocol would also describe the actions that developing countries should take, defining the financial and technological support industrialised countries must provide to them, as well as set out how adaptation and forest protection will be funded. This kind of two-protocol approach was first introduced by Tuvalu and has since been endorsed by the African group.

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