

January 2011

CANCÚN AGREEMENT: PROMISES, PROMISES

Introduction and Background

What a difference a year makes. From the discord of cold and snowy Copenhagen to the self-congratulatory celebrations of warm and sunny Cancún, the climate of the climate change talks seems to have changed for the better, even if large issues of substance remain. The blue skies, palm trees, and azure waters of the famous Mexican resort town played their part, but much of the credit goes to the Mexicans for a nearly flawless conference, at least on the surface.

There were a handful of negotiations going on during the two week meeting held in early December 2010 under auspices of the UN Framework Convention on Climate Change (UNFCCC), but most of the attention was on those taking place under the Ad Hoc Working Group on the Kyoto Protocol (AWG-KP) and Ad Hoc Working Group on Long-Term Co-operative Action (AWG-LCA), the two main venues where Parties are trying to hash out a new post-2012 international agreement[s]. Because it is not a Party to the Kyoto Protocol, the U.S. essentially is an (interested) observer in the AWG-KP talks, and participants fully in the AWG-LCA talks.

Looming over these talks was the ghost of Copenhagen, where expectations for a new agreement were always unrealistically high. While many Parties found much worthwhile in last year's Copenhagen Accord of value, there was a general feeling that the *process* by which the Accord was developed was not the basis on which most Parties wished to continue negotiations. Developing countries, in particular, have equities in the UN process. Going outside this process and striking a deal among a small group of large emitting countries widened the rift between developed and developing countries.

It is hard to overemphasize the disillusionment of many Parties with the process by which last year's Copenhagen Accord was reached. Throughout the two weeks of talks in Cancún, the Mexican presidency kept expectations low and emphasized inclusion, transparency, allegiance to the UN process, and balance—a word that was on everyone's lips over the two weeks. In this context, balance meant an outcome that would have something for everybody and include all of the elements of the Bali Roadmap (mitigation, adaptation, technology and finance), forestry, and measuring, reporting, and verification (MRV). It also

meant balance in both the Kyoto and LCA negotiations, which proved a much trickier proposition.

All of the hard diplomatic work the Mexicans poured into these talks culminated in the modest agreement reached in the wee hours of Saturday morning. The Mexicans ran an efficient meeting, both from logistical and political perspectives and helped restore luster to the tarnished UN process. Indeed, in the closing plenary, Parties were nearly unanimous in praising the Mexicans for their leadership in preserving multi-lateralism.

The major outcome of the meeting was the “Cancún Agreement,” which was gavelled through by Conference President and Mexican Foreign Minister Patricia Espinosa over the objections of the Bolivian delegation. (The UNFCCC operates by consensus, which essentially means decisions are adopted in the absence of a strong objection. Although the Mexican president’s disregard for Bolivia’s vociferous objections cleared the way for a decision, it also may have set a bad precedent.) The Cancún Agreement comprises a LCA text and a KP text with an attached negotiating document containing all the options under discussion.

The reassertion of process over substance in the Cancún talks means, however, that decisions on extremely divisive issues were left for another day. Some aspects of the Copenhagen Accord survived, including the bottom-up approach to emissions reduction pledges, which remain non-binding (the decisions “took note” of the pledges being made under the Copenhagen Accord). The decisions contain a new climate fund to

finance programs in developing countries and a “technology mechanism” to accelerate diffusion of clean technologies, but the funding sources for these are not clear at this point.

The business community was generally pleased that the final decisions clarified the role of business in the technology mechanism and do not in any way compromise intellectual property protections.

What follows are the highlights of the KP and the LCA negotiating tracks, as well as some other issues.

Ad Hoc Working Group on the Koto Protocol

The AWG-KP talks in Cancún went from bad to worse—or good to better, depending on your perspective. The tone was set the first week when Japan reiterated what it has stated before, but perhaps not with as much finality: “We will never accept any CMP [Kyoto’s supreme body] decision implying the setting of a 2nd commitment period or provisional extension of the first commitment period.” Without the U.S. and China on board, Japan said, the Kyoto Protocol “can never be effective vehicle in tackling global warming in coming years . . .”

This disavowal of the Kyoto Protocol by Japan is especially significant because the treaty bears the name of the Japanese city that gave it birth. Other Kyoto Parties like Russia, Canada, and Australia, while perhaps not as blunt as the Japanese, nonetheless let it be known that they would eventually like to see a single agreement, and they would not mind if it were not

Kyoto. Those of you who have been following these talks over the years know that enthusiasm for the Kyoto Protocol has been dying for some time. It looks like the Japanese performed the last rites.

That does not mean the talks are going to end anytime soon. There are more than a few delegations here who will insist that this corpse still has a pulse, and it is certain that the burial will be a long and drawn out affair. But the Kyoto Protocol will, in time, be laid to rest.

There was a sense of urgency in the Kyoto discussions to preserve continuity between the existing and new commitment periods for developed countries. If the second commitment period is not in place by the time the first commitment period expires at the end of 2012, it creates a “gap” in a number of Kyoto instruments, such as the Clean Development Mechanism (CDM). The CDM is essentially an offset program that developed countries use to purchase emissions offsets in developing countries—a program, by the way, in desperate need of reform.

Legal opinion varies as to what would happen should a gap occur, and an examination of the issues by UN lawyers earlier this year was inconclusive. Either the CDM could chug along like before, or it would have to cease operation because a least part of its reason for existing is moot. Whatever the outcome, it is creating a great deal of uncertainty in European carbon markets, which depend on CDM credits to keep the costs of meeting the European targets under control.

There was talk about stretching out the existing targets for a couple of years to

allow for more time to strike a bargain, but even that was too much for the Japanese, who also unequivocally said “no” to an extension.

The KP outcome, then, was an effort in keeping at least the appearance of movement. A two-page [decision](#) prolongs the AWP-KP with an open-ended mandate, but sets a goal to adopt a new text “as early as possible and in time to ensure that there is no gap between the first and second commitment periods.”

The decision also “takes note” of the developed country emission reduction targets (which were submitted in response to the Copenhagen Accord) and urges developed country Parties “to raise the level of ambition of the emission reductions to be achieved by them individually or jointly.” Negotiations in the coming year will be based on the chairman’s [AWG-KP draft text](#).

A decision also was taken with regard to the treatment of carbon capture & storage in the CDM. CMP-6 agreed that “carbon dioxide capture and storage in geological formations is eligible as project activities under the clean development mechanism, provided that the issues identified in decision [2/CMP.5](#), paragraph 29, are addressed and resolved in a satisfactory manner.” This essentially defers any resolution of the issue to a later date.

It will be exceedingly difficult to pull off any sort of agreement in the AWG-KP. Remember that in the Kyoto Protocol, developing countries have no responsibility to do much of anything, and they would like to keep it that way. However, developed country Parties are now saying more

forcefully than ever that this state of affairs simply will not do anymore—developing countries will need to step up with commitments of their own. That is much more likely to happen in the LCA talks than in the Kyoto talks, where developing countries have at least put goals, voluntary though they may be, on the table.

But developing countries have conditioned any progress in the LCA talks with progress in the Kyoto talks. Let's make progress on the Kyoto Protocol first, they say, and then we will see what we can commit to in the LCA. One of the things to look out for in the coming year, therefore, will be the willingness of the developing countries to hold up progress in the AWG-LCA talks if they are not satisfied with the progress of the AWG-KP talks.

It is very unlikely that negotiators will make any headway in the AWG-KP. About the best that can be expected is some sort of an agreement to allow certain Kyoto mechanisms, the CDM being chief among these, to continue in the absence of a second commitment period.

But the reality is, if Parties are willing to accept it, that the Japanese have done everyone a favor. While there may be some rearguard actions to prop up Kyoto, all the real action going forward is liable to be in the AWG-LCA.

Ad Hoc Working Group on Long-Term Co-operative Action

While the AWG-KP talks stumbled to a barely acceptable outcome, the AWG-LCA discussions yielded some progress on relatively easy issues. Striving for balance, the 30-page [decision](#) includes the key

elements of the Bali Action Plan. Some aspects of the Copenhagen Accord (CA) also survived, including the bottom-up approach to emissions reduction pledges and funding pledges. The decisions also contain lots of recalling, recognizing, noting, emphasizing, reaffirming, requesting, urging, and the like, plus a full plate of workshops that is sure to keep everyone busy over the next year (and which afford opportunities for business input). We are still a long way from a binding treaty.

Highlights of the decision include the following.

Shared Vision: The decision “recognizes” that deep emissions reductions are needed to hold the increase in global average temperature below 2°C above pre-industrial levels, and that Parties “should take urgent action to meet this long-term goal, consistent with science and on the basis of equity.” (It also considers going to no more than a 1.5°C increase.) It is interesting to note, however, that the decision did not include a 50% reduction in global emissions as a goal for 2050, which has been a staple of G8 leaders’ statements. Nor did it include mention of a “peak year” beyond which global emissions—and, by implication, emissions from emerging economies—would have to start declining.

Mitigation: The decision “takes note” of the (nonbinding) emissions reduction pledges made by developed and, significantly, developing countries as part of the Copenhagen Accord. These could form the basis of binding emissions targets under a “pledge and review” system in a future agreement.

Measuring, Reporting, and Verification:

MRV of developed country activities and developing country activities supported by developed countries are to be subject to international review. Activities undertaken by developing countries that do not receive international support will be subject to domestic MRV only. This sticking point between the U.S. and China seems to have been resolved, largely because of the work of the Indians, who developed a compromise solution that proved agreeable to both countries.

Green Climate Fund: The decision sets up a new climate fund to finance programs in adaptation and mitigation activities in developing countries. The fund would be overseen by the UNFCCC but be run out of the World Bank. Developing country Parties will be well represented on the fund's board, and thus will have a significant say in how funds are distributed. The decision also references the developed country pledges for \$30 billion in "fast start" funding for 2011-2013 and the "goal" of mobilizing of \$100 billion funding by 2020, both of which were in last year's Copenhagen Accord. (The U.S. has yet to pledge a specific amount for the fast start funding, but the Administration has pegged its 2010 contribution at \$1.7 billion.)

The decision also took note of the [report UN Secretary General's High-Level Advisory Group on Climate Change Financing](#), released in November. The group was charged with finding sources of funding for the \$100 billion. Its report identified four major categories of potential finance: public sources for grants (including taxation and auctioning of emission allowances, removal of fossil fuel subsidies, other new taxes such as a financial transaction taxes and general

public revenues through direct budget contributions); development bank instruments; carbon market finance; and private capital.

While no decisions have been made on where the funding will come from, it is clear that public finance will never be sufficient to support deep emission reductions, especially in developed countries. Private finance is not only desirable, but necessary.

How these ideas play out will be of huge interest to the business community. For example, should private sector finance be expected to underwrite efficiency improvements that make state-run firms more competitive internationally? This finance debate within the UNFCCC is one that we will be paying particular attention to as the talks progress.

Reducing Emissions from Deforestation and Forest Degradation (REDD):

The decision also establishes a system to credit nations for reducing deforestation through REDD. While such an agreement was ripe, it still took some doing to get it into a final form.

Technology and Intellectual Property: A "technology mechanism"—composed of a Technology Executive Committee (TEC) and a Climate Technology Center and Network—was established to accelerate diffusion of clean technologies, but the funding sources for these are not clear at this point.

Many in the business community had concerns about language that would give the TEC an overly-broad mandate, and we also had questions about the proposed make-up of the group (we blogged about

these issues [here](#).) The purpose of TEC would be to provide “a global overview of technological needs and an analysis of policy and technical issues related to the development and transfer of technology for mitigation and adaptation.” TEC would be further tasked with recommending guidance “on policies, program priorities and eligibility criteria related to technology development and transfer, including activities . . . eligible for technological, financial and capacity-building support . . .”

Business believes an effective TEC would draw on the vast array of business and other expertise and be able to keep up with the fast pace of technology development and innovation. The business community was generally pleased, therefore, that the final decision comports with the [recommendations](#) the international business community made to the Parties identifying a clear role for business in the TEC.

There was also considerable debate over some draft language outlining various options on intellectual property rights (IPR). Both U.S. and European business groups sent letters to their respective organizations urging that anything other than a statement on the importance of IPR in technology innovation be dropped from the final text. Again, the business community’s position won the day, and the final text contains no reference to IPR. This is not a guarantee that the IPR issue will not be brought up again, but it makes it more difficult to do so.

Enhanced Business Engagement with the UNFCCC

One of the other decisions of perhaps most significance to the business community was

the decision that the Subsidiary Body on Implementation should “convene an in-session workshop in 2011 to further develop ways to enhance the engagement of observers . . .” Business is one of nine observer organizations, and its participation is co-ordinated by the International Chamber of Commerce (ICC).

Business is in broad agreement that greater engagement with business is needed—and that’s one of the reasons we launched the [Major Economies Business Forum on Energy Security and Climate Change](#).

One proposal is to establish a business consultative channel that would provide the UNFCCC with technical business views. It is important to understand that the purpose of this would not be to provide a channel for business to lobby, nor does business expect—or want—a seat at the negotiating table. Rather, business is discussing how a consultative mechanism of some sort could provide views in areas such as technology and innovation, management systems, investment and finance, trade, IPR, competitiveness, and risk management, to name a few.

Such a mechanism for business is sorely needed, but to do it right would require a big commitment of time and effort. It is critical that business rise to the challenge, and the Chamber’s Energy Institute will be working to help make this happen.

Major Economies Business Forum on Energy Security and Climate Change (BizMEF)

The BizMEF met for the fifth time in Cancún, at which time it released four issue papers covering technology, markets, low-

carbon pathways, and MRV. The papers are available at the new [BizMEF web site](#), which also was launched while we were in Cancún. We also welcomed two new members—Business NZ and the Turkish Industry and Business Association (TUSIAD).

In 2011, we will be identifying pertinent issues to address in preparation for the COP-17 meeting in South Africa next year.

Conclusion

So was Cancún a success, or was it merely the illusion of success? And can the decisions coming out of Cancún eventually form the basis for a new, binding agreement? Time will tell, but there are sure to be some bumps on the road to South Africa.

Take the Kyoto Protocol. The Parties in Cancún kept the Kyoto talks going for an indefinite period of time, urging negotiators to complete a new deal before the close of the first commitment period (the end of 2012). Japan strongly reiterated its position that it will not sign up to a second commitment period in the Kyoto Protocol, and the Russians have said much the same. Developing countries are still insisting that progress in the AWG-LCA, where the U.S. is involved, depends on progress in the Kyoto talks. Getting developing countries to budge from this position—or alternately, getting Japan and Russia to budge from theirs—will be no easy task.

The divisions between developed and developing countries are no less wide in the AWG-LCA talks. There are still many issues—comparability of effort, the nature of commitments, burden sharing, sources of

finance, trade, agriculture and forestry, and many others—that remain outstanding.

We also would note that the UNFCCC and Kyoto Protocol group Parties into specific annexes, whereas the LCA generally refers to Parties as “developed” and “developing.” It will be interesting to see how these terms ultimately are defined. That will be a huge fight because there is a lot at stake not just in the climate talks, but potentially in other UN venues as well.

The reality is that negotiators are left with many of the same issues they have been unable to resolve since the Bali Roadmap was agreed to three years ago. Setting up the Green Climate Fund and the technology mechanisms with no commitment to funding them is a relatively easy lift, especially when little is asked in return. Are good intentions enough? It is difficult to see, for example, funding for these activities coming out of the new Congress.

Nevertheless, Cancún was a small step forward in that most Parties moved on from the ill-will generated at Copenhagen. But from a substantive viewpoint, as the negotiations head to South Africa, it is difficult to see dramatic breakthroughs that would seal the deal on a new treaty. The better bet is that negotiators will be focusing on consolidating the decisions made in Cancún and building the structures, such as the Green Climate Fund, needed to implement them.