



Global Greenhouse Emissions



T R A D E R

A quarterly newsletter dedicated to greenhouse gas emissions trading

Chairman's comments on COP-6 negotiations

By Kok Kee Chow, Chairman, Working Group on the Kyoto Protocol Mechanisms

The Sixth Conference of the Parties (COP-6) of UNFCCC held from 13–24 November 2000, suspended its proceedings without fully reaching a conclusion on next steps for the implementation of the Buenos Aires Plan of Action. It was a long two-week session in The Hague where intense negotiations were held, often into the early hours of the morning. Senior officials tried their best to reach an agreement on many issues that remained unresolved despite two years of negotiations in the Subsidiary Bodies meetings.

The *supplementarity* issue was the major issue that required political agreement as it applies to all three Kyoto Protocol mechanisms. Parties could not reach an agreement on a limit to carbon reductions obtained abroad, as it has far reaching socio-economic implications. Some Parties would only decide the supplementarity issue after they had fully considered other related issues such as the compliance mechanism and land use, land-use change and forestry. In addition, strong divergent positions on those issues between Parties was another factor leading to the impasse.

An agreement was reached on Joint Implementation under Article 6 of the Kyoto Protocol even though a few points remained undecided, such as the choice of two-track verification or the full application of CDM rules and reporting format to Joint Implementation.

Parties had also agreed to give priority to implementation of the Clean Development Mechanism (CDM) under Article 12 and therefore spent considerable time in the

negotiation of the CDM. Parties agreed with the general framework of the project cycle but could not come to an agreement on the inclusion of sinks and nuclear projects. There was no agreement on an initial or 'positive' list of CDM projects. Parties have not made up their minds on the 'prompt start' of CDM, as they are waiting for the outcome of the political agreement.

After lengthy discussions, *liability* was still the main issue that remained open in negotiations on rules and modalities of emission trading under Article 17. However, developing and developed country Parties were still unable to reach an agreement on issues of equity and entitlement, as well as the set of basic rules governing assigned amount units.

The suspension of COP-6 negotiations has resulted in subsequent informal consultations in Ottawa and Brussels among Annex I Parties to resolve their differences. However, no consensus was reached there either. In the coming months, Parties should perhaps first reassess the progress made so far in the negotiations, particularly on issues related to the implementation of the Kyoto Protocol. They should also fully recognize the adverse impacts of climate change, the objectives of the Kyoto Protocol, and the national efforts needed to meet the commitments. Parties should be prepared to advance their political commitment at the upcoming round of negotiations proposed for May 2001 to be able to protect future generations from the adverse affects of climate change.

Overview of the negotiations at COP-6

Delegates at COP-6 failed to reach an agreement on what are the operational matters of the Kyoto Protocol, mainly due to differences between the European Union (EU) and the United States (USA) on issues relating to carbon sinks, compliance and supplementarity. This article attempts to provide a comprehensive, concise and balanced coverage of negotiations as they

took place in The Hague.

The talks were driven by conflicting agendas from the outset. Facilitation with respect to adaptation costs was requested by developing countries, while some developed countries sought to lessen the impact of emissions

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reductions on their economies by finding least-cost solutions including the planting of forests as sinks. The dispute between industrial powers on either side of the Atlantic was perhaps central to the collapse of the talks. In particular, there was a persistent disagreement between the two over the exact role of trees and properly managed farmland in sequestering carbon dioxide. In the end, the USA cited the EU negotiators' failure to get a mandate from all 15 members as the main factor that undermined the talks, after an apparent last-minute deal between the EU and the USA was rejected by dissenting states. The EU, in turn, saw the USA's lack of commitment and its insistence on including sink activities (i.e. the use of growing forests as a storage for carbon, hence offsetting in part CO₂ emissions) as the main causes for failure. Environmental groups have described the chaotic breakdown of talks as a fiasco, some placing the blame on the shoulders of the USA, Canada, Japan and Australia.

Following a proposal by COP-6 President Jan Pronk, negotiations are likely to continue at COP-6 Part II in May/June 2001 using the occasion of scheduled meetings of the Subsidiary Bodies—the highest level legislative bodies in charge of setting in motion the Kyoto Protocol—as a continuation of the 'suspended' COP-6. As stated in the COP-6 decision, the aim is to complete work on negotiating texts and adopt a comprehensive and balanced package of decisions on all issues under the Buenos Aires Plan of Action.

In the second week of negotiations, the COP-6 President issued an informal note outlining the 'crunch issues' that remained to be resolved after the first week of talks. These matters were then discussed in four informal consultation groups: (1) capacity building, technology transfer, adverse effects and GEF; (2) Kyoto Protocol mechanisms; (3) land use, land-use change and forestry (LULUCF); and (4) policies and measures, compliance, accounting,

reporting and review. While some issues could be resolved in the informal groups, little progress was made with regard to the most contentious issues relating to compliance, supplementarity, sinks and funding:

- **Compliance:** On facilitative and enforcement consequences of non-compliance, the G-77/China reiterated its call for differentiated responsibilities and stated that only Annex I countries—the 24 original OECD members, the EU and 14 countries with economies in transition—should be subject to enforcement measures, including contributions to a Compliance Fund, suspension from emissions trading, and deductions from the non-compliant country's allowance allocation in the subsequent commitment period with a penalty rate. The USA proposed penalizing non-compliant countries by reducing their emission allowances in the next budget period with voluntary penalties, while the EU supported a mandatory financial penalty rate. The President's proposal suggests a subtraction of excess emissions from the assigned amount of emission allowances in the next commitment period subject to a penalty rate of 1.5 per cent, as well as submission of a compliance action plan. No reference is made to a Compliance Fund which had been demanded by G-77/China, nor to a ban on transferring assigned amounts for non-compliant countries. Enforcement measures would only apply to Annex I Parties whereas facilitative measures would not be differentiated between Annex I and non-Annex I Parties.

- **Supplementarity:** Differences between the EU and US positions also became apparent with regard to supplementarity, i.e. the extent to which greenhouse gas emission targets can be met using the Protocol's flexibility mechanisms

(International Emissions Trading, Joint Implementation and the Clean Development Mechanism) *vis-à-vis* domestic action. The EU proposed that Annex I countries should reach at least half their targets through domestic mitigation measures. The USA, however, strongly opposes any cap on the mechanisms. According to David Sandalow, who heads the US delegation, 'emissions trading is too powerful a tool to restrict,' and market-based mechanisms such as emissions trading should be used 'to promote innovation and reduce cost in the fight against climate change'.¹ The issue of supplementarity has been largely left undefined in the President's note which only states that targets should be met 'primarily through domestic action since 1990'. While no quantitative cap would be set for the right of Parties to buy emission credits, the sale of allowances would be limited to 30 per cent of a Party's allowable emissions in order to reduce the sales of surplus 'hot air' credits from eastern Europe. The use of carbon sinks would be subject to a three per cent cap.

- **Sink activities:** Recourse to LULUCF activities to achieve emission targets has also proven to be a highly contentious issue. Many environmental groups are strongly opposed to the use of sink activities and have called the Protocol's provisions on carbon sink accounting the 'biggest loophole' in the text. The USA, supported by Canada, Japan and Australia, has proposed that credits for forestry management related to sinks should be 'phased-in' during the first commitment period of the Kyoto Protocol. The EU rejected the plan, dismissing it as a 'free gift' to the world's largest polluters and stating that it 'does not ensure the environmental integrity of the Kyoto Protocol and it does not address the concerns of the EU'.²

¹ US Office of International Programs, US Department of State, 'Press Briefing', 16 November 2000. <http://usinfo.state.gov/topical/global/enviro/climate/00111602.htm>

² Reuters, 'EU blasts US climate plan as 'free gift'', 17 November 2000



The decision on carbon sinks will also influence the implementation of the Clean Development Mechanism (CDM), with the USA proposing that sink activities should be included under the CDM. This proposal was strongly opposed by the EU and most developing nations. Regarding LULUCF, the President's note suggests including 'additional activities' as a means to meet emission targets, such as grazing and cropland management, forest management and revegetation, but suggests limiting the use of sinks to 3 per cent of a Party's base year emissions. On LULUCF under the CDM, activities involving afforestation and reforestation would be eligible as CDM projects. Initiatives to prevent deforestation and land degradation would be excluded from the CDM, but they would qualify for priority funding.

- **Funding:** Developing countries repeatedly stressed the 'common but differentiated responsibilities' principle of the FCCC, pointing to the developed countries as the main culprits for climate change. In particular, they called for increased funding to help developing countries deal with the effects of climate change and implement mitigation strategies. The President's note includes proposals for funding mechanisms that give special consideration to least-developed countries and small-island developing states. The proposal suggests the establishment of an Adaptation Fund to support adaptation projects in non-Annex I countries. Finances would be generated by a 2 per cent levy on the value of all emission reduction credits generated by CDM projects. The note also proposes creating a Convention Fund under the Global Environment Facility. Overall, resources should reach an annual

level of US\$1 billion by 2005. If this level was not reached, a levy would be applied to Joint Implementation and/or emissions trading.

Finally, an initial observation about the task of getting emissions trading off the ground is that the uncertainty generated in the agenda items detailed above has set back momentum to address technical details required to operationalize emissions trading. In relation to compliance, as well as overshadowed modalities and abandoned technical issues at The Hague, it has been noted³: (a) Jan Pronk's compromise that commitment period reserves of 70 per cent of the assigned amount for each period be retained might not succeed in removing the incentive to countries to 'oversell' and thereby undermine the Protocol's environmental integrity; (b) as such large political issues as supplementarity were intractable, it is not surprising but it is regrettable that technical modalities that would have provided real guidance to policy makers in devising national trading systems dropped off the agenda, including the development of common measurement and verification protocols among trading participants for emissions reductions embodied in permits; and (c) another technical matter that did not make it to the agenda, that of 'technical' draft decisions on emissions trading, meant the creation of a lacuna in policy-making on whether Parties wanting to trade must first prove they have adequate national systems/inventories, or, whether they can freely trade until the compliance system discovers a good reason to suspend trading.

This article draws extensively from *BRIDGES Weekly Trade News Digest*, Vol. 4, Number 45, 28 November, 2000, published by the International Centre for Trade and Sustainable Development (ICTSD) and was written by Heike Baumuller and Ali Dehlavi.

Useful websites

In every issue of the newsletter we put aside a corner to promote websites that deal with greenhouse gas emissions trading. This month's featured websites are:

- www.agora21.com
- www.bcscla.org
- www.bcse.org
- www.carbonstore.com
- www.chicagoclimatex.com
- www.cnie.org
- www.cool.policy.net
- www.dupont.com/corp/environment
- www.earthtimes.org
- www.ecouncil.ac.cr
- www.ecosecurities.com
- www.energetics.com.au
- www.environment.detr.gov.uk
- www.field.org.uk/fieldmain/climate.htm
- www.ghgprotocol.org
- www.greenhouse.gov.au
- www.heinzctr.org/PROGRAMS/global_change.htm
- www.iea.org/envissu/index.htm
- www.iepf.org
- www.iisd.ca
- www.isr.gov.au
- www.mit.edu/globalchange
- www.natsource.com
- www.nccp.ca
- www.ntree-trnee.ca
- www.oecd.org/env/cc/index.htm
- www.pembina.org/climate/default.htm
- www.pewclimate.org
- www.policy.ca
- www.qetf.org
- www.wbcds.ch

³ See Farhana Yamin, 'Emissions Trading: Post Hague Assessment', in *Greenhouse Gas Emissions Trading Systems: Economic and Legal Issues in Design and Implementation and Participation of Developing Countries and Countries with Economies in Transition in the Kyoto Mechanisms*, UNCTAD, forthcoming



Trade implications of the Kyoto Flexibility Mechanisms

Without a final agreement at COP-6, trade implications and trade conflicts are necessarily difficult to predict but nevertheless play a part in influencing the outcomes of climate negotiations as Parties assess potential losses in competitiveness. Issues arising from the simultaneous pursuit of climate change and trade goals were discussed in detail at the side-event (20 November 2000) entitled: 'The Kyoto Protocol and the WTO', organized jointly by the International Centre for Trade and Sustainable Development (ICTSD), the Royal Institute for International Affairs (RIIA) and the International Institute for Sustainable Development (IISD).⁴ Issues discussed at the event included:

- **Coordination of Climate Change and International Trade Regimes:** At its source, the tension between the collective provisions of the FCCC and GATT/WTO is due to widely differing aims: the maximization of economic growth and the mitigation of environmental risk from increased greenhouse gas emissions. GATT/WTO offers no precise guidance besides general principles in the area of non-compliance. In fact, it remains unclear what would happen, e.g., if a measure had a small degree of domestic economic benefit and a significant conservation benefit, or indeed if an appeal against trade sanctions was allowed under a Multilateral Environmental Agreement (MEA) such as the Montreal Protocol. The existence of exceptions to GATT/WTO principles were raised, particularly environmental exceptions that come under Article XX: of interest in relation to the Kyoto Protocol is the reference to 'necessary' measures and measures 'relating to' in Article XX(g). Under certain circumstances, domestic environmental standards could clearly appear to be barriers to trade, imposing higher costs on both

domestic industries and their competitors as they do when imports are treated the same as domestic products. The WTO Agreement on Technical Barriers to Trade (TBT) seems to discuss products only, although Article 14.25 mentions process and production methods (PPMs).

- **Domestic Mitigation Policies:** The trade impacts of mitigation policies and measures (e.g., subsidies, fiscal incentives, energy efficiency standards, government procurement policies, and border tax adjustments associated with a carbon or energy tax) which could risk contravening WTO rules include, potentially, very costly competitiveness effects, increases in the cost of energy, reductions in trade of electricity and energy-intensive goods, and potential effects on trade flows. Examples of subsidies to domestic industries are loan guarantees or tax credits to reduce fossil energy consumption. These can be actionable as being discriminatory subsidies and tax incentives that, under Article 5 of the WTO Agreement on Subsidies and Countervailing Measures, would have adverse consequences on the market share of other members. Energy-efficiency standards, while helping governments fulfil their Protocol obligations, are in principle opposed by WTO rules which prohibit trade-restrictive unilateral measures under the Agreement on Technical Barriers to Trade (TBT). A joint WTO/FCCC working group was suggested to maximize synergies and minimize the potential for conflict over these mitigation policies, and others such as government procurement policies, and carbon taxes and border-tax adjustments⁵.

- **Emissions Trading Systems and the WTO:** Although the basic framework for flexibility mechanisms—

International Emissions Trading (IET), Joint Implementation (JI) and the Clean Development Mechanism (CDM)—is in place, important provisions relating to their implementation and enforcement remain to be discussed as well as scrutinized in relation to GATT/WTO provisions. The emissions allowances discussed were Emissions Reduction Units (ERUs) under JI, Assigned Amount Units (AAUs) under IET, and Certified Emissions Reductions (CERs) under the CDM. Ways in which the Multilateral Trading System (MTS) might potentially undermine legal obligations under the Protocol included: the potential violation of Most Favoured Nation (MFN) in GATT through the exclusion of non-Annex I trade partners from allowance trades or, under Article XI of GATT; and quantitative restrictions could be a potential issue as petroleum exporters face an import ban in an upstream regulatory system if no allowances are for sale in the importing country. Similarly GATS could be in question if the delivery of energy services falls within the importing countries' market access schedule and allowances for fossil fuels are still required 'at the border'. Countervailing duties from importers could potentially be authorized under the WTO Agreement on Subsidies and Countervailing Measures if auction or grandfathering systems for allocation of emissions allowances were: (1) weighted to: favour certain fuel sources (less carbon-intensive sources e.g.,); favour classes of emitters (domestic, or domestically owned/operated entities); or to achieve other policy objectives (e.g., promoting sale of domestic energy products as against imports); and (2) are justified as being other than

⁴ For the full meeting report, papers, agenda and participants list, please see 'The Kyoto Protocol and WTO' on ICTSD's web site: <http://www.ictsd.org/dialogueweb/Dialogues/dialogue-archive.htm>

⁵ See L. Assunção, 'Trade Rules and Climate Change Policy: Some Issues of Synergy and Conflict', ICTSD Internal Document, 2000.



'specific' or bringing 'adverse effects to the interests of other Members'. The possibility of CDM/JI related investments and their interaction with the construction by government of regulations and compliance cost structures that favour domestic over foreign companies was considered in the WTO context.

● **Compliance Measures and the WTO:**

Trade-related measures such as energy efficiency standards, energy/carbon

taxes or subsidies could enter a risk of conflict with WTO rules, especially given that the integrity of any emissions trading system depends in part on trade bans and prohibitions against emissions trading with non-parties. Two other main forms of trade measures which could potentially be used as enforcement mechanisms include trade restrictions against commodities such as fossil fuels that release emissions and

restrictions based on PPMs. In the open dialogue that followed, it was pointed out that the temporary suspension of trading rights invoked in connection to non-compliance is not comparable to trade sanctions (used in the context of the United Nations Security Council actions related to, for instance, trade embargoes), but rather involve a suspension of trading rights in a highly focused group of products.

Joint UNCTAD/Earth Council Capacity Building Initiative for the Kyoto Flexibility Mechanisms

An UNCTAD/Earth Council meeting was held in The Hague on 21 November 2000 on the development of a training programme on GHG emissions trading⁶. The training programme forms part of an UNCTAD/Earth Council joint capacity building initiative on the Kyoto mechanisms.

The meeting was chaired by Mr Maurice F. Strong, Chairman of the Earth Council and President of the University for Peace. Ms. Elizabeth Dowdeswell, former Executive Director of UNEP, and Mr Sálvano Briceño, Coordinator of UNCTAD's BIOTRADE Initiative and GHG Emissions Trading projects, made presentations respectively on an overview of the work planned under the Emissions Trading Training Manual and UNCTAD's work on the Kyoto mechanisms and the future course of action. Panelists who subsequently stimulated discussion on regional perspectives and inputs into the training manual included: Mr Malik Amin Aslam, ENVORK, Pakistan; Dr ZhongXiang Zhang, University of Gröningen, The Netherlands; and Mr Peer Stiansen, Ministry of Environment, Norway.

Following UNCTAD's presentation of its work on emissions trading since 1991 and its presently enhanced focus

on developing countries, options were presented for transferring the Emissions Trading Manual onto the Internet as an ongoing web-based learning tool that would be open to potential learners (decision-makers in governments, business, and other public and private organizations). The work is being undertaken by Earth Council consultants who have formed Global Environmental Training Inc. (GETi) to build state-of-the-art Internet-based learning management systems. Further funding is being sought from the Canadian International Development Agency (CIDA) to assist in the development of the joint UNCTAD/Earth Council capacity building initiative.

The panel discussion started by Mr Aslam commented on the need to establish an international framework whereby countries can seek support to implement their national strategies for the Kyoto Protocol. Mr Stiansen discussed the 200-page document produced by Norway for full-fledged domestic emissions trading, allowing companies to trade (buy/sell) their Assigned Amounts Units (AAUs). Dr Zhang elaborated on the size of the CDM market and other flexibility

mechanisms, and the involvement of the Asian Development Bank and other Asian institutions. Needs and issues that were identified in the discussion period included: a coherent and harmonious capacity building scheme that links the activities of relevant agencies; infrastructure to facilitate increased participation of developing countries, in particular the Least Developed Countries (LDCs) and Economies in Transition (EITs), in the UNFCCC process; increased awareness, cooperation and expertise at all relevant levels in the public and private sectors; utilizing and maximizing the resources of the private sector as part of a team-building effort; training for developing, EIT and LDC negotiators; increased interdisciplinary work around the simultaneous functioning of Joint Implementation, Emissions Trading and the Clean Development Mechanism; performing trade flow impact studies on countries in different regional blocks.

⁶ More information on UNCTAD activities related to Climate Change and the Kyoto Mechanisms can be found at www.unctad.org/en/subsites/etrade as well as on www.ictsd.org/dialogueweb/Dialogues/dialogue-archive.htm and at www.ecouncil.ac.cr.



Emissions trading developments in The Netherlands

By Jos Cozijnsen, consulting attorney, The Netherlands

The Netherlands is planning to meet 50 per cent of its reduction commitments under the Protocol domestically and 50 per cent by making use of the Kyoto Mechanisms. This translates into a total reduction of 250 million tonnes of carbon equivalent. The current emissions levels are 17 per cent above their 1990 levels. Although the national Assigned Amount Units are not allocated to individual sectors yet, one can already observe an increase in the use of market mechanisms within national and private sector environmental programmes:

- **The Netherlands Social Economic Council advised the government to participate in CO₂ emissions trading at the EU level.** The Council does not recommend starting a national reductions trading scheme because of the cumbersome monitoring aspects and higher costs as compared to international trading within Europe. The Netherlands will actively contribute to setting up emissions trading arrangements at EU level.
- **A National Commission on CO₂ Ceilings** (comprising companies and non-governmental organizations) planned for October 2001 will provide advice on the feasibility of a national CO₂ emissions trading scheme for households and small enterprises. The Commission will consider providing quotas to car and energy consumers and to let them sell reductions or green certificates to companies.
- In 2000, government and energy intensive companies established a covenant **aiming at energy efficiency benchmarking.** Under the covenant, companies are committed to be at the top 10 per cent of comparable energy efficient companies globally in 2010, also leaving room for replacing this target with carbon credits through the use of carbon transfers, e.g., if companies are confronted with costs that are too high.

- **The Emission Reduction Unit Procurement Tender (ERUPT)** has been set up to promote investments in CO₂ reduction projects by companies from which the government can buy a share of the credits. The budget of this tender is \$ 20 million. Since these projects will be taken under an umbrella agreement with European Community governments, this tender contains references to emissions trading. Parties to the Memorandum of Understanding (MoU) anticipate a surplus from the assigned amount the host country will have during the commitment period (2008–12). Det Norske Veritas (DNV), KEMA Consulting, KPMG, PriceWaterhouseCoopers and SGS Agro Control have all been accredited for validation work. Until now 9 Dutch and international bids have been short-listed out of 26 bids, covering projects in Romania, Poland and The Czech Republic (including NUON Energy and Rabo Bank). Company investments may lead to a reduction of 9.11 M tonnes carbon equivalent. Contracts will be signed in April 2001. An ERUPT tender aimed at reducing projects in developing countries will be formulated after CoP-6bis.
- The Netherlands government recently finished negotiations with companies on a **NO_x reduction scheme** starting in 2003. Under the scheme, some companies pay a charge to a fund, while others install reduction units and receive financial compensation. While there is no absolute cap, both NO_x concentration levels for the sector(s) and NO_x performance standards for companies are envisaged. A regulating body will ensure that cost-effective NO_x reducing measures are taken and that investment proposals reflect real prices. The arrangement does not amount to a full-fledged cap-and-trade, but it is the first proof trading can be made to fit within national policy.

- The Government of Netherlands aims at reducing 8 M tonnes of carbon equivalent annually through specific and domestic non-CO₂ reductions. It recently started to consider **how realised methane and N₂O reductions in agriculture and industry can be transferred to other national sectors** to contribute to its targets.
- In December 1999, **the Dutch Environment Ministry and the New Jersey (US) Environment Protection Department signed an 'Aide Memoir' for cooperation on climate change.** One of the topics in the *Aide Memoir* is concerned with identifying GHG trading projects in both directions and testing an ERUPT or comparable project. Companies in New Jersey have already offered to provide reductions.
- The Government of The Netherlands and Rabo (a Dutch company) participated in the World Bank's **Prototype Carbon Fund** that assists in the identification and financing of cost-effective reduction projects. To date, one project in Estonia has been set-up with the help of this fund.

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