

E-ALERT | Clean Energy and Climate

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GLOBAL CLIMATE CHANGE NEGOTIATIONS: EVALUATING THE CANCÚN SUMMIT

OVERVIEW

The 16th Conference of the Parties to the United Nations Framework Convention on Climate Change (the UNFCCC), otherwise known as COP-16, ended in Cancún, Mexico during the early hours of the morning on December 11, 2010. In a closing session that contrasted sharply with the acrimony and procedural chaos that marked the end of the talks at COP-15 in Copenhagen, COP-16 adopted what many Parties described as a “balanced and comprehensive” package of decisions that together represent a modest but meaningful advance in the negotiations. Among other things, the Cancún Agreements:

- formally incorporate many of the key elements of the 2009 Copenhagen Accord – taking note, in particular, of mitigation commitments by both developed and developing countries;
- provide more specificity on the measurement, reporting and verification protocols that will apply to mitigation actions by both developed and developing countries;
- provide a legal basis for the inclusion of a forest conservation (REDD+) mechanism in the global climate change regime;
- call for the establishment of a Green Climate Fund and provide for its governance and administration;
- establish the Cancún Adaptation Framework; and
- call for the creation of a new Technology Mechanism.

The Cancún Agreements breathed new life into a multilateral process that was perceived to have stalled in Copenhagen. This happened because of deft leadership and diplomacy by the Mexican COP Presidency, combined with pressure felt by many delegations to show progress in the two negotiating “tracks” that were launched in Bali at COP-13. That said, it is clear that many key disagreements were merely papered over in Cancún: among these, whether a second commitment period (i.e., post-2012) will be agreed under the Kyoto Protocol. This sets the stage for what is likely to be a contentious process leading up to COP-17 in December of 2011, to be hosted by South Africa.

The COP-16 decisions were adopted over the stated objection of one country (Bolivia), which was expressly overruled by the COP Presidency. This was, in fact, a notable departure from past practice in the UNFCCC, and represents an important move in the direction of reforming a process that has been plagued by procedural disagreements and has been held back significantly on substance, as was the case in Copenhagen, by a small minority of dissenting voices.

THE CANCÚN AGREEMENTS

Ever since COP-13 in Bali, the UNFCCC negotiations have been organized in two Ad-Hoc Working Groups or negotiating tracks: One is focused on agreeing on the terms of a second commitment period under the Kyoto Protocol (the AWG-KP). The other (the AWG-LCA) is aimed at setting up a basis for “long-term cooperative action” under the UNFCCC. The AWG-LCA deals with a range of different subjects (from the more abstract, like “shared vision,” to the more concrete, like financing and technology transfer) and is not limited to the commitments made under Kyoto by the industrialized countries that are parties to it. It is important to note that the United States participates actively as a party only in the AWG-LCA, and not in the AWG-KP. The Cancún Agreements consist of decisions adopting the reports of those two Ad-Hoc Working Groups, along with a series of subsidiary or supporting decisions on individual topics that have been included as agenda items in the AWG-KP and the AWG-LCA deliberations.

For the carbon markets (including the European Union Emissions Trading Scheme), the AWG-KP track is the most immediately relevant: the carbon trading that exists today is essentially linked to the flexibility mechanisms agreed as part of Kyoto, including the Clean Development Mechanism (CDM). Here the results in Cancún were mixed. The COP, acting as a Meeting of the Parties to the Kyoto Protocol (the MOP) resolved that, when the first Kyoto commitment period ends in 2012, CDM and the other flexibility mechanisms will continue to operate for a second commitment period (assuming that there is one). It resolved also that CDM will then include carbon capture and storage, a critical technology of particular interest to developing countries like China and India, and a contentious subject in earlier meetings. Finally, it was resolved that COP-17 in South Africa, scheduled for December of 2011, would be the deadline for producing a final agreement “to ensure that there is no gap between the first and the second commitment periods.” The carbon markets have reacted positively to this, and to the specific — albeit limited — guidance offered in Cancún.

All of that said, looming above the AWG-KP discussion was the knowledge, based specifically on a clear statement by Japan (and acknowledged in the corresponding COP decision by referencing a provision in the Kyoto Protocol that preserves an opt-out option), that without progress on commitments from the major emitting countries in the developing world, there will not be a simple re-up of commitments under Kyoto. In other words, the industrialized countries are very unlikely to sign up for a second commitment period unless there is a broader agreement with far larger coverage. It remains to be seen whether the UNFCCC progress can in fact deliver a fully fleshed-out agreement that will actually accomplish this, and whether a sufficient link can be created between whatever commitments are adopted under the Kyoto Protocol and the various undertakings by developed countries that are not parties to the Kyoto Protocol (specifically, the United States) and developing countries that do not have binding limitation or reduction targets under Kyoto but are already major emitters of greenhouse gases (specifically, China, India and Brazil).

The continuing uncertainty over the future of the Kyoto Protocol did not block progress on the AWG-LCA track. For the first time, the UNFCCC decisions that were negotiated on that track affirmatively take note of mitigation commitments not only by developed but also by developing countries — expected to be the same commitments that were inscribed in the Copenhagen Accord, but were not formally acknowledged at that time as part of the UNFCCC process — and implicitly requires compliance with those commitments. Those same decisions now provide a basis for requiring that compliance be verified, and that there be a measure of international consultation and accountability not only on the part of the industrialized world but of the major emitting developing countries as well. The Cancún Agreements also create a legal basis for the incorporation of REDD+ initiatives into a global mitigation framework — a major advance for the rainforest countries. The precise role of market-based mechanisms as they relate to REDD+ was not decided, but will be addressed at COP-

17. A mandate was expressly given in Cancún “to explore financing options for the full implementation of results-based [REDD+] actions.”

On financing, always a major focus in these negotiations, the Cancún Agreements once again reaffirm — and bring formally into the UNFCCC process — the commitments outlined in Copenhagen: US\$30 billion in “fast track” financing for low-carbon development initiatives through 2012, and an annual pledge of US\$100 billion, beginning in 2020, a substantial portion of which will flow through a Green Climate Fund. While it is not at all clear how those pledges will be honored by the donor countries, or through what domestic mechanisms (such as taxes, cap-and-trade scheme, development assistance, and so forth), this again is an important advance. It was agreed also that the World Bank will be the initial trustee of that Fund (subject to review after three years); at the same time, a governance mechanism was agreed that gives equal representation to developed and developing countries — a significant move from the standpoint both of governance and shared accountability.

Two other broad initiatives were launched in Cancún, each of which will have implications for policy and for institutional design: The first is the Cancún Adaptation Framework, a comprehensive set of policy initiatives that include the design and implementation of individual adaptation plans for the countries that are most vulnerable to the impacts of climate change. An Adaptation Committee will be formed under the auspices of the UNFCCC, “to promote the implementation of enhanced action on adaptation under the Convention” by, among other things, providing technical assistance and sharing of best practices.

The second is the start of a new Technology Mechanism — which replaces the existing Expert Group on Technology Transfer. It will comprise a Technology Executive Committee that will provide needs analyses and policy recommendations, and a Climate Technology Centre and Network that will directly assist in the design, sharing and implementation of technology transfers for both mitigation and adaptation. At this stage there is no indication as to how the new technology mechanism will be funded, but the COP-16 decisions do refer to further consideration of the relationship between the technology mechanism and the new financial mechanisms. It is also not clear how the new technology mechanism will interact with The Agreement on Trade Related Aspects of Intellectual Property Rights (or TRIPS), which is an important issue going forward. For companies that are developing clean technology solutions, this is both a market opportunity and a potential challenge (in terms of intellectual property rights) and deserves careful attention.

THE VIEW FROM THE UNITED STATES

It is very unlikely that the results in Cancún, however positive they may be for the UNFCCC process, will have a significant effect in the near term with respect to prospects for climate change legislation in the United States. The Cancún Agreements do, however, advance many of the key negotiating positions that the United States has championed, including active participation by key developing countries in global mitigation efforts and meaningful measurement, reporting and verification mechanisms to monitor and evaluate their contribution. This may, in time, help address some of the concerns in Congress about whether countries are carrying their “fair share”, and whether the regime overall has a reasonable chance of delivering the intended results for the climate.

The Cancún Agreements are an important signal also that there is the will internationally to ensure that the carbon markets will have continuity and substance beyond the first commitment period under Kyoto, a point that has not been lost on places like California, which is launching its own cap-and-trade program notwithstanding the failure of comparable legislation in the US Congress.

Even if the idea recedes that a global agreement can be reached on binding emission targets for all major emitting countries, there is a developing consensus that committed mitigation actions – even if not framed in terms of an actual emissions cap – will provide a constructive and meaningful path forward. In this respect, the Cancún Agreements represent a first step towards a somewhat different goal (and a different paradigm) for the ongoing negotiations. This could present both challenges and opportunities for future participation by the United States.

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