

COP 17 – The "Durban Platform"

The 17th meeting of the Conference of Parties ("**COP 17**") and the 7th Meeting of the Parties to the Kyoto Protocol ("**CMP 7**") took place in the bright sunshine of Durban, South Africa between 28 November and 9th December. As has now become common at such meetings, the actual hard end of the decision making took place in the dying hours of the conference and, on this occasion, in the early hours of Sunday 11th December. Perhaps it was fatigue that wore out the resistance offered in the days leading up to the conference's climax or perhaps it was the realisation that our environmental debt crisis is no less significant than the financial debt crisis we currently face; in the end, the Durban meeting will be remembered for setting the world on a new path towards a binding international agreement, to be agreed by 2015, to reduce the impact of global emissions.

Sceptics may wonder whether this path is any different from the earlier paths agreed in Bali in 2007 or Copenhagen in 2009. On the face of it, the Durban platform is just an agreement to agree something in the future; that argument cannot be faulted. However, unlike Bali where the agreement didn't have US 'buy-in' or Copenhagen where the agreement was merely voluntary, for the first time Durban combined the elements of (i) a willingness to develop an international agreement that is either "a protocol, a legal instrument or an agreed outcome with legal force" and (ii) binding targets to be set for the largest emitters including the US, China and India. However, the results will only be on display once the actual agreement has been finalised. For this we will have to wait until the COP 21 in 2015. In the meantime, is there much else to celebrate?

The answer to this depends on whether you believe in the science behind climate change which tells us that global emissions must peak no later than 2017 or, at the latest 2020, and, therefore, a binding international agreement starting in 2020 is too late. A much heard and potentially overused phrase in the context of climate change is one of making "perfect the enemy of the good". Compared to the voluntary (and unambitious targets) of Copenhagen, the intention to have binding commitments that, at the very least, have "legal force" must mean we are better-off following Durban.

In the more mid-term, there are a number of real positives to focus on; in particular, regarding the future of the CDM, the inclusion of Carbon Capture and Storage ("**CCS**"), the progress on reducing emissions from deforestation and forest degradation plus the role of conservation, sustainable management of forests

Key issues

A series of decisions were made at this years' Climate Change Conference in Durban, the most important of which covered the following topics:

- **Financing climate change – the "Green Climate Fund";**
- **Promotion of REDD+ activities in developing countries;**
- **Entry into a second commitment period under the Kyoto Protocol; and**
- **The future of the Clean Development Mechanism.**

and enhancement of forest carbon stocks ("**REDD+**") and, last but not least, the establishment of the Green Climate Fund. We further explore some of these developments below.

Convention Developments

The Ad Hoc Working Group on the Durban Platform for Enhanced Action

This new group, created under the United Nations Framework Convention on Climate Change (the "**Convention**") is tasked with developing either a protocol, another legal instrument or "an agreed outcome with legal force" applicable to all parties under the Convention. The meaning of the phrase quoted above was the final sticking point for the Indian delegation in Durban and reflects a compromise against the original wording seeking a "legal framework". No doubt, in future years, the meaning of the phrase will lead to further interpretive gymnastics by the party seeking to have the least burdensome compliance obligation. The aim is to finish the work as soon as possible, but not later than 2015, and to launch a workplan on enhancing mitigation ambition to close the gap between the various party's voluntary ambitions (as set out in the Copenhagen Accord) and that identified by the IPCC's Fifth Assessment Report.

The Green Climate Fund

One of the few bright lights coming out of the Copenhagen meeting was the idea of the Green Climate Fund into which developed countries would pay USD 30 billion of quick start funding by 2012 and up to USD 100 billion annually by 2020. After much wrangling over the justice and equity principles regarding the distribution of such funds to developing countries, the COP finally gave life to the legal institution that is now the Green Climate Fund (the "**Fund**"). The Fund will now need to go through the

operational processes necessary to give it full functionality including, the nominations of Board members to the Fund, the identification of the host state where the Fund will be located, the setting up of an independent secretariat etc. In the meantime, the World Bank is to act as interim trustee for the first three years and the UNFCCC secretariat and the Global Environment Facility secretariat to jointly act as interim secretariat to the Fund.

Most significantly, the role of the private sector is recognised towards any 'financial inputs' to the Fund as these may arise from a variety of sources including "public and private" sources. However, the scope or nature of such input is likely to be subsequently determined by the Board as part of its role in approving "funding structures". Significantly, the eligibility to benefit from the Fund will apply evenly to both adaption and mitigation activities. Among these, funding of REDD+, CCS, NAMAs¹ and NAPAs² are expressly mentioned as eligible uses of the Fund.

REDD +

In Cancun an agreement was reached to encourage developing countries to contribute to mitigation actions on REDD+ in the form of "adequate and predictable support", namely financial and technological support. The REDD+ process will use a phased approach to the mechanism. As per the Cancun decision, initially national strategies and mechanisms

will be developed. Thereafter, these will be implemented and could involve capacity building and technology development, finally developing into results based actions that are fully measured, verified and reported.

In Durban, the areas on which progress was made relate to (i) the question of sources of funding and the role of the private sector, and (ii) enhancement of safeguards on forest reference levels. In Cancun, there was clear resistance to a participatory role for markets in the context of REDD+; this resistance seems to have eased in Durban. The COP endorsed the guidance of the ad-hoc working group for Long Term Cooperative Action ("**Ad-LCA**") that finance for REDD+ may come from a variety of sources, "public and private" and that "appropriate market-based approaches" could be developed by the COP to support results-based actions by developing country Parties to the Convention. Of course, until such market-based actions are in fact developed, the method for the participation of market mechanisms (and therefore any significant role for the private sector) in REDD+ remains unclear.

In the context of safeguards, a major technical achievement was the development of modalities for forest reference emission levels and forest reference levels. In terms of the transparency and accuracy of data used for the purposes of REDD+, it was important that host developing countries for REDD+ have credible and acceptable accounting and crediting standards. The decision recognises the 'nested approach' in that, countries can approach national level implementation depending on their own national circumstances. For example, sub-national forest reference emission and forest levels

¹ Nationally appropriate mitigation actions.

² National adaptation plans for action.

may be used as an interim measure whilst transitioning to a national reference level. The information and rationale adopted by a developing country on such levels are to be made public on a UNFCCC REDD web site for peer review and comment. By recognising the nested approach, the COP has created an environment where REDD+ activity may start in developing countries without having to wait for that developing country to first create a national reference level, which would be time consuming, costly and geographically challenging. Such activity on a sub-national level would therefore have the potential to earn credits at an earlier stage of a country's development in its process of moving towards national reference levels.

New Policy Mechanisms and Markets

The COP made progress in some aspects of alternative policy mechanisms (e.g. NAMAs) that have been gaining traction since Cancun. However, that progress is mostly to invite the Ad-LCA to run workshops and for the SBSTA to develop guidelines for domestic measurement, reporting and verification of such locally developed mitigation actions. Nothing more tangible can be reported at this stage.

The progress on REDD+ has already been referred to above.

Additionally, a new "market-based mechanism" has been contemplated which "may assist developed countries to meet part of their mitigation targets or commitments under the Convention". The conditions, modalities and procedures for such a mechanism remain to be elaborated, in particular by the Ad-

LCA, with a view to a recommendation being placed before the COP at the next meeting. At this stage it is unclear how or what this mechanism is going to achieve or who might want to use it.

Following Copenhagen, it was clear that there were some areas (that were less controversial than a new international agreement) on which progress and agreement could be reached between the parties at the various COP meetings and working group events. REDD+, NAMAs etc. are examples of such areas. However, absent an international framework or agreement into which these mechanisms feed, they sit in a vacuum and lack urgency and purpose. Under the very broad umbrella of the Convention, these new mechanisms are therefore making slow progress.

However, under an amendment to the Kyoto Protocol, mechanisms developed under the Convention may be used by countries to meet their targets under the second commitment period. In theory this would mean Norway could accept REDD+ credits which will then count towards its compliance targets under the Kyoto Protocol

Protocol Developments

Second Kyoto Commitment Period

Rumours on the very first day of the Durban meeting that Canada was planning to withdraw from the existing commitment period under the Kyoto Protocol provided little encouragement that countries would agree to a second commitment period. However, although Canada did eventually announce its withdrawal from the Kyoto Protocol, a decision has nonetheless been made that a

second commitment period under the Kyoto Protocol shall begin on 1 January 2013. The period will last for either five or eight years, ending on either 31 December 2017 or 2020. If there is to be no break between the Kyoto Protocol and the new international agreement starting in 2020, it is logical that the second commitment period should run until 2020. However, this will not be decided until CMP8 in Qatar.

At first glance, this is nothing but good news. However, with the world's largest emitters of emissions not being bound by targets under a second commitment period (e.g. the US), only approximately 15% of emissions will be covered and, therefore, the impact which this decision will have on meeting the 2°C target is questionable. For those Annex 1 parties that have signed up to a second commitment period, they must convert their emission reduction targets from the Copenhagen Accord into commitments under the Kyoto Protocol which take the form of quantified emission limitation or reduction objectives ("**QELROs**") and they have until 1 May 2012 to submit information on those QELROs to the Ad Hoc Working Group on Further Commitments for Annex 1 Parties under the Kyoto Protocol. The working group will deliver its findings at CMP 8 in Qatar.

The working group has also been tasked with determining how to deal with the carry-over of assigned amount units ("**AAUs**") into the second commitment period. Discussions at Durban suggested that one of three possible options will be adopted: full carry-over, partial carry-over or no-carry over at all.

The Future of the Clean Development Mechanism

Throughout Durban, there were concerns that, in the absence of securing a second commitment period under Kyoto, the future of the Clean Development Mechanism (the "CDM") would be in jeopardy. However, in light of the above decision that a second commitment period will begin in 2013, clear comfort can be taken from the fact that the future of the CDM is secured, albeit for an unknown period of time.

Despite the continuance of the CDM, progress in determining its content and regulation was hampered by the fact that the decision to extend Kyoto into a second commitment period came so late in the Durban meeting and, for yet another year, no decision was reached regarding the appeals process under the CDM. However, that's not to say that we find ourselves with an empty shell for the future of the CDM and, in fact, two major decisions were made at Durban which will govern the CDM for the next five or eight years:

1. The Materiality Concept

UN delegates have decided that the concept of 'materiality' is to be applied consistently across the CDM by agreeing that CDM projects will be able to earn carbon credits even where certain data is lacking. Missing information is defined as being 'material' where its omission, misstatement or erroneous reporting could change a decision by the Executive Board of the CDM. Five different thresholds have been implemented in order to govern the materiality concept. At one end of the scale, microscale projects can receive credits where only 90% of the data is available and at the other, those CDM

projects applying for more than 500,000 CERs are permitted only to have 0.5% of data missing. These thresholds are to be reviewed at least one year after implementation and the Executive Board of the CDM are to report on such implementation at CMP 8 in Qatar.

2. Carbon Capture and Storage

Following six years worth of indecision regarding whether and how carbon capture and storage projects ("CCS Projects") can earn carbon offsets under the CDM, a decision has been made at Durban. Whilst CCS Projects can officially earn Certified Emission Reductions ("CERs"), project developers must put 5% of those CERs into a reserve account in the CDM registry. These CERs will be returned to the developers only after monitoring of the site has shown that there has been no CO₂ seepage for a period of 20 years after the end of the last crediting period or after the issuance of the CERs has ceased, whichever occurs first.

However, with the uncertainty in the current market regarding CER prices, it is hard to see the CCS decision materially impact investment decisions on current CCS projects. Although, with the potential for attracting funding from the Green Climate Fund, the economics of financing CCS in developing countries may become more realistic than in developed countries.

The Future of Joint Implementation

Little progress was made at the Durban meeting regarding the future of the Joint Implementation Mechanism (the "JI"). It was agreed at last years' Cancun meeting that

decisions would be taken at Durban regarding whether or not to allow JI projects to earn emission reduction units. The JI Supervisory Committee ("JISC") had hoped that a decision would be made regarding the carry-over of AAUs into the next commitment period and the associated consequences relating to issuance of JI credits in the absence of such carry-over. However, the only decision that was actually made was one to defer consideration of the issue until CMP 8 in Qatar in 2012. Delegates at the Durban meeting also failed to reach an agreement on the recommendation by the JISC to merge the JI's two tracks, although the JISC have been requested to review the fee structure under both tracks.

Conclusion

So, what exactly was achieved at Durban 2011? Was it a milestone in the path to fighting international climate change, or simply yet another disappointing stepping stone?

It is easy to be critical of the outcomes from Durban, by claiming that no binding agreement has been entered into and that discussions have led to a resolve to reduce emissions as of 2020 rather than imminently. Whilst there is truth to this, it is important to recognise the significance of the willingness to enter into a binding deal obliging the world's largest emitters to reduce emissions by no later than 2020.

More immediately, Durban has provided us with confirmation that the future of climate change negotiations lie outside the Kyoto Protocol. Although there will be a second commitment period under Kyoto starting in January 2013, the

withdrawal by Canada and the unwillingness of Japan and Russia to participate (and doubts about Australia and New Zealand) in the second period, means that emission reductions achieved by the Kyoto Protocol will be limited to about 13% of global emissions. However, the importance of the continuation of the Kyoto Protocol is in retaining the symbolism of a binding international framework to link into the new agreement flowing from the Durban Platform.

We can also thank Durban for securing the future of the CDM, making progress on financing climate change vis-a-vis the Green Climate Fund and for opening up the possibility for new markets to emerge in the future.

Only time will tell whether the Durban Platform will deliver the international agreement envisaged or if it will be another 'Bali roadmap' (that ultimately led to a failed Copenhagen conference). Nonetheless, thanks to Durban, the battle to fight climate change at an international level lives to fight another day.

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