CHAPTER - IV

THE KYOTO SUMMIT

The Kyoto Protocol to the United Nations Framework Convention on Climate Change is one of the most significant international environmental agreements ever crafted, with potentially profound worldwide economic impacts.¹

From December 1 through 11, 1997, more than 160 nations met at Kyoto, Japan, to negotiate the binding limitations on greenhouse gases for the developed nations pursuant or climate change of 1992. The outcome of the meeting was the Kyoto Protocol, in which industrialized nations agreed to cut their collective greenhouse gas emissions to 5% below 1990 levels in the period 2008-2012, with each one committing to a certain percentage reduction. The United States (US) agreed to a 7% cut, Japan to 6% and the European Union (EU) to 8%.²

Background

Concerning that human activities have increasingly produced the concentrations of “greenhouse gases” (such as carbon dioxide and methane) in the atmosphere, most nations of the world joined together in 1992 to sign the United Nations Framework Convention on Climate Change (UNFCCC). The United States was one of the first nations to ratify this study. The convention included a legally non-binding, voluntary pledge that major industrialized/developed nations should reduce their greenhouse gas emissions to 1990 levels by the year 2000. However, a scientific consensus

has grown that human activities are having a discernible impact on global climate systems, possibly causing a warming of the earth that would result in significant changes in weather patterns and health effects – and it has become apparent that major nations like the United States and Japan would not meet the voluntary stabilization target by 2000.³

The first Conference of Parties (COP) was held in Berlin in 1995, where it was agreed that commitments were needed beyond the year 2000 A.D. and that freezing the emission levels at the 1990 level on that date would not suffice to arrest global warming. It was therefore decided to draft a "protocol or a legal instrument", that would be binding industrial countries for adoption at Kyoto in 1997.⁴ An Adhoc Group on the Berlin Mandate (AGBM) signed the task of drafting the protocol. Eight sessions were held between 1995 and November 1997, no agreement on the issue could be reached.

In the short span of little over five years since the signing of the convention in Rio, and two years after the conference of parties in Berlin in 1995, a Protocol was written which included targets and timetables for emissions reductions for the industrialized countries. These short-term targets would help to meet the long-term FCCC commitments. The Protocol was designed to accommodate rolling commitment periods and a toughening targets over time. However, the period from Berlin to Kyoto was clearly too short for agreement on all the details.⁵

In December 1997, negotiators from all the parties to the Framework Convention on Climate Change meeting at the third Conference of the Parties to the convention in Kyoto, Japan, successfully negotiated legally binding emission reduction commitments for the developed nations that are included

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in Annex 1 to the Framework Convention on Climate Change (the Annex 1 nations). While the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the "Kyoto Protocol") represents an important step forward, it will not only itself appreciably reduce the rate of climate change, and its effectiveness will depend on the resolution of a number of important issues.6

Key Elements of Kyoto Protocol

The Kyoto Protocol in key respects – including emissions targets and timetables for industrialized nations and market based measures for meeting those targets – reflects proposals advanced by the United States. The Protocol makes a down payment on the meaningful participation of developing countries, but more needs to be done in this area. Securing a meaningful participation of the developing countries remains core United States (US) goal.7

Emissions Reduction Targets

The central feature of the Kyoto Protocol is a set of binding emissions targets for developed nations. The Protocol states that Annex 1 parties are committed individually or jointly to ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of greenhouse gases do not exceed amounts assigned to each country in Annex B to the Protocol, “with a view to reducing their overall emissions of such gases by at least 5% below 1990 levels in the commitment period from 2008 to 2012.”8 Annex A lists the 6 major greenhouse gases covered by the treaty. Annex B lists 39 nations, including the United States, the European Union plus the individual European Union (EU) nations, Japan, and many of the former communist nations. The


amounts for each country are listed as percentages of the base year, 1990 (except for some former communist countries), and range from 92% (a reduction of 8%) for most European countries to 110% (an increase of 10%) for Iceland. The United States is committed on this list to 39%, or a reduction of 7%, to be achieved as an average over the 5 years from 2008-2012.\footnote{Climate Change Treaty: n.3, p.2of 6-3of6.}

**The framework for these emissions target is based largely on U.S. Proposals**

Emissions targets are to be reached over a five year budget period as proposed by the US, rather than by a single year. Slowing emissions to be averaged across a budget period increases flexibility by helping to smooth out short-term fluctuations in economic performance or if, either of which could spike emissions in a particular year.

The first budget period would be that of the US proposal of 2008-2012. The parties rejected proposals favoured by others, including budget periods beginning as early as 2003 that were neither realistic nor achievable. Having a full decade before the start of the binding period will allow more time for US companies to make the transition to greater energy efficiency and lower carbon technologies.

The emissions targets include all six major greenhouse gases. The EU and Japan initially favoured counting only three gases—carbon dioxide, methane, and nitrous oxide. Ensuring the inclusion of the additional gases (synthetic substitutes for ozone-depleting CFCs) that are highly potent and long-lasting in the atmosphere provides more comprehensive environmental protesting and lends more certainty concerning the treatments of the additional gases.

Activities that absorb carbon, such as planting trees, will be offset against emissions targets. The treatment of these so-called “sinks” was
another controversial issue at Kyoto. Many countries wanted sinks to be excluded. The United States insisted that they should be included in the interest of encouraging activities like forestation and reforestation. Accounting for the role of forests is critical to a comprehensive and environmentally responsible approach to climate change. It also provides the private sector with low-cost opportunities to reduce emissions.\(^\text{10}\)

Based on projections of the growth of emissions using current technologies and processes, the reduction in greenhouse gas emissions required of the United States would likely be between 20% and 30% below where it would be otherwise by the 2008-2012 budget period. However, according to Administration officials, based on the accounting method adopted in the protocol, which includes (as the United States had urged) greenhouse gas sinks, it appears that the actions that must be taken to reduce emissions within the United States, after sinks are counted; would be substantially less than 7% probably in the range of 2% to 3% below 1990 levels. The United States administration also assumed that a significant portion of its 7% target could be met through some combination of emissions trading and joint implementation.\(^\text{11}\)

**International Emissions Trading**

Emissions trading, in which a Party included in Annex I “may transfer to, or acquired from, any other such party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources of enhancing anthropogenic removals by sinks of greenhouse gases for the purpose of meeting its commitments under the treaty, is allowed and outlined in Article 6, with several provisos.”\(^\text{12}\)

\(^{10}\) Boden, T. n.7, p.12.

\(^{11}\) Climate Change Treaty, n.3, p.3of6.

\(^{12}\) Ibid, p.6of22.

\(^{13}\) Ibid, p.6of22.
Among the provisos is the requirement that such trading "shall be supplemental to domestic actions."\textsuperscript{13} The purpose of this proviso is to make it clear that a nation cannot entirely fulfill its responsibility to reduce domestic emissions by relying primarily on emissions trading or joint implementation to meet its targets.

Under an emission trading regime, countries or companies can purchase less expensive emissions permit from countries that have more permits than they need (because they have met their targets with room to spare). Structured effectively, emissions trading can provide a powerful economic incentive to cut emissions which also allowing important flexibility for taking cost-effective actions.\textsuperscript{14}

Article 17 of the Kyoto Protocol says that the conference of parties shall define the relevant principles, modalities, rules and guidelines for emission trading.\textsuperscript{15}

Rules and guidelines in particular for verification, reporting, and accountability are to be discussed at the next meeting of the parties at Buenos Aires in November 1998.

The inclusion of emissions trading in the Kyoto Protocol reflects an important decision to address climate change through the flexibility of market mechanisms. Led by the United States, the Conference rejected proposals to require all parties with target to impose specific mandatory measures, such as energy taxes. The United States also reached a conceptual agreement with the number of countries, including Australia, Canada, Japan, New Zealand, Russia and Ukraine, to pursue an umbrella group to trade emissions permits. Such a trading group could further contribute to cost-effective solutions to this problem.\textsuperscript{16}

\textsuperscript{14} Boden, T., n.7, p.13.

\textsuperscript{15} Climate Change Treaty: n.3, p.15of22.

\textsuperscript{16} Boden, T., n.7, p.23.
Joint Implementation

October 1997 – The United Nations Framework Convention on Climate Change says that developed and developing countries should try to work together to solve the global warming problem within a system called “Joint Implementation (JI)”\(^{17}\). Joint Implementation is project-based activity in which one country can receive emission reduction credits when it funds a project in another country where the emissions are actually reduced.\(^{18}\)

Under Article 6 of the Kyoto Protocol says about the rules for Joint Implementation among industrialized countries. Joint Implementation means transfer of emissions reduction at the project level.\(^{19}\) Annex I parties can transfer to or acquire from other Annex I parties Emission Reduction Units (ERUs) resulting from projects aims at reducing emissions by sources or enhancing removal by sinks.

But the following four conditions have been put for these transfers:

- The Joint Implementation project must be approved by the nations involved.

- It must be proved that the reduction by sources/ enhancement by sinks provided by the project is additional to any change that would occur without the project.

- No country can receive ERUs unless it has set up a national system for estimating emissions (Art. 5) and sent its national communication (Art.7).

- Acquisition of ERUs will be supplemental to domestic action.\(^{20}\)


\(^{18}\) Climate Change Treaty., n.3, p.4of6.

\(^{19}\) Kyoto Protocol to the UNFCC, n.8, p.6of22.

In other words, no country can meet its entire commitment only by acquiring ERUs. But the Kyoto Protocol does not specify the ratio between acquisition of ERUs and domestic action in meeting emissions reduction commitments.

The Joint Implementation programmes of developed industrialized countries have been varied in their focus. Some countries like the Netherlands and Norway are providing public funding for national Joint Implementation initiatives. Other programmes, most notably the US initiative, depend almost entirely on private funding for financing Joint Implementation projects. Many of the Joint Implementation programmes seem to promote strategic advantages that investing companies might gain in project host countries, in fact Joint Implementation programmes documents of many countries (The US, Australia, Japan, Canada) tout the promotion of report and foreign investment opportunities as benefits of Joint Implementation. Much of the discussions of Joint Implementation suggests that significant global cut backs of carbon emissions can be achieved in joint programmes with developing countries. A rough calculation suggests that this can be unduly optimistic estimate.21

Therefore, Joint Implementation or emissions trading between developing and industrialized countries is unlikely to make the required contribution to the global carbon abatement. Industrialized countries will eventually have to substantially reduce emissions in their own countries – something which they have shied away from completely over the last few years.

Clean Development Mechanism (CDM)

Article 12 defines the Clean Development Mechanism (CDM) which has been identified by the Kyoto Protocol as a mechanism for North-South co-operation. Unlike Article 6, this article essentially talks about a form of

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Joint Implementation between industrialized countries and developing countries. The Kyoto Protocol itself says that the purpose of CDM is to allow developing countries "...assist parties in Annex I in achieving compliance with their quantified emission limitation and reduction commitment".22

With the Clean Development Mechanism, developed countries will be able to use certified emissions reductions from project activities in developing countries to contribute to their compliance with greenhouse gas reduction targets. This Clean Development Mechanism will allow companies in the developed world to enter into cooperative projects to reduce emissions in the developing world such as the construction of high-tech, environmentally sound power plants for the benefit of both parties. The companies will be able to receive the kind of technology that can allow them to grow more sustainably. The Clean Development will certify and score projects. The Clean Development can also allow developing countries to bring projects forward in circumstances where there is no immediate developed country partner.23

Under Clean Development Mechanism, companies (private / public) can choose to make investments in projects or to buy emissions reductions. Importantly certified emissions reductions can be obtained from 2000 upto the beginning of the first commitment period, i.e., 2008, and these certified emissions reductions can be used to achieve compliance in the first commitment period from 2008 to 2012.24

The purpose of the Kyoto Protocol is to set a strategy that would ultimately help all countries to combat climate change in a way that would benefit both present and future generations and on the basis of equity, which are the two key guiding principles identified in Article 3 of the Framework

23 Boden, T., n.7, p.4.
24 Kyoto Protocol to the UNFCCC; n.8, p.12of22.
Convention on Climate Change. Therefore, the Kyoto Protocol strategy should be one, which helps all countries to combat climate change taking their common, but differentiated responsibilities into account.25

**Developing Countries Responsibilities**

Various Kyoto Protocol provisions, taken together represent a down payment on developing countries participation in efforts to reduce greenhouse gas emissions.26 Developing countries will be engaged through the clean development mechanism, which allows them to receive pollution reduction credits by permitting industrialized nations to finance projects that reduce emissions within their borders (the industrialized nations undertaking the activities also receive credits).27

The protocol advances the implementation by all parties of their commitments under the 1992 Framework Convention on Climate Change. For example, the protocol identified various sectors (including the energy, transport, and industry sectors as well as agriculture, forestry, and waste management) in which actions should be considered in developing national programmes to combat climate change and provides for more specific reporting on actions taken. Developing countries may, as a prerequisite for engaging in emissions trading, voluntarily assume binding emissions targets through amendment to the annex of the protocol that lists countries with targets.28 The Kyoto Protocol does not include separate article for nations to voluntarily assume binding emission targets.

According to US senators, it will be countries like India, China and Mexico which will decide if the US will ratify the Kyoto Protocol.29 The

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25 Aggarwal, A. and Narain, S., The Atmospheric rights of all people on Earth; why is it necessary to move towards the 'ultimate objective' of the FCCC? CSE Campaign on Global Climate Change – Happenings file://dl/sentil emp335.htm, p.3of7.


United States had taken a firm position that "meaningful participation" of
developing countries in commitments made in the protocol is critical both to
achieve the goals of the treaty and to its approval by the United States
Senate. The United States government also argued that success in dealing
with the issue of climate change and global warming would require such
participation.

The developing country block argued that the Berlin Mandate the
terms of reference of the Kyoto negotiations clearly excluded them from new
commitments in this protocol, and they continued to oppose emissions
limitation commitments by non-Annex 1 countries. The negotiations
concluded without such commitments, and the United States indicated that it
will submit the protocol for Senate consideration and therefore will not be
able to ratify until meaningful commitments are made by developing
countries. Without such participation, it will not submit the Kyoto Protocol to
the Senate for advice and consent to ratification.

Military Emissions

The Kyoto Protocol achieves the objectives identified by the
Department of Defence where international agreement was necessary to
protect U.S. military operations.

Emissions from "bunker" fuels (for international maritime or aviation
use) are exempted from emissions limits.

Emissions from multilateral operations pursuant to the United Nations
charter are exempted from emissions limits. This includes not only
multilateral operations expressly authorized by the United Nations Security
Council (such as Desert Storm, Bosnia, Somalia) but also multilateral
operations not expressly authorized that are nonetheless pursuant to the UN
charter, such as Grenada.

30 Climate Change Treaty:, n.3, p.3of6.
Countries may decide, among themselves, how to account for emissions relating to multilateral operations (for example, U.S. training in another NATO country). This provision avoids the need to use emissions trading to allocate such emissions.\textsuperscript{32}

Non-Compliance

Cases of non-compliance shall be addressed by procedures adopted by the meeting of the parties to the protocol, in conformity with Article 16.\textsuperscript{33} The Kyoto Protocol so far has not yet taken any decision on non-compliance measures.

Article 18 of the Protocol that states that “a Meeting of the parties to the Protocol is to approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance, with the provisions of this protocol, including through the development of an indicative of consequences taking into account the type, cause, degree and frequency of non-compliance”.\textsuperscript{34} The last part of the article also states that “any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this protocol.”\textsuperscript{35} The Amendment procedure has been spelt out in Article 20 of the Kyoto protocol.

\textsuperscript{34} Kyoto protocol to the UNFCCC, no.8, p.15 of 22.
\textsuperscript{35} Ibid, p. 15 of 22.