

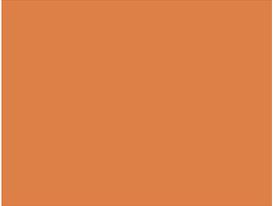
# THE FUTURE OF THE KYOTO PROTOCOL & IT'S COMPLIANCE SYSTEM

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# Overview



- The Kyoto Protocol Compliance System
- Cancun Agreements, 2010 & the Future of the Kyoto Protocol and its compliance system
- The fate of the Kyoto Protocol after 2012 if Annex B Parties do not adopt targets. Implications for:
  - Mechanisms
  - Compliance



# The Kyoto Compliance System

# Kyoto Compliance System

- Compliance Committee has two branches: a facilitative branch (applies to all) and an enforcement branch (Annex I alone)
  
- Questions of implementation can be raised by:
  - expert review teams
  - any Party with respect to itself
  - or a Party with respect to another Party
  
- Enforcement branch is responsible for determining if an Annex I Party is in compliance with:
  - emissions targets
  - methodological and reporting requirements for greenhouse gas inventories (Articles 5, 7 and 8)
  - eligibility requirements under the mechanisms

# Consequences of Non-Compliance

- A non-compliant state:
  - Has to make up the difference between its emissions and its assigned amount during the second commitment period, plus an additional deduction of 30% (if not in compliance with QUELROs)
  - Has to submit a compliance action plan (if not in compliance with 5, 7, 8)
  - Is suspended from eligibility to trade (if not in compliance with eligibility requirements)
  
- Cases thus far:
  - Greece, Croatia and Bulgaria – declared to be in non-compliance with national registry and national system requirements, and suspended from eligibility to trade

# Kyoto Compliance System: Unique

- A compliance system in IEL that has an 'enforcement' branch, and can impose penal consequences is unusual
- In theory it cannot impose binding consequences – under Article 18, to be able to do so, such consequences would need to have been adopted through an amendment, which they were not
- However the compliance committee has imposed mandatory consequences – suspension from eligibility to trade – without challenge
- Rationale for the departure from a facilitative model – to ensure accurate measurement, reporting, and verification of greenhouse gas emissions under the Protocol and the effective functioning of its carbon-market mechanisms

## Cancun Agreements, 2010

& the Future of the Kyoto Protocol and its  
compliance system

# KP Decision (1 /CMP.6)

- The AWG-KP will continue its work with a view to having its results adopted 'as early as possible and in time to ensure that there is no gap between the first and second commitment periods.'
- Language borrowed verbatim from 1 /CMP.1, 2005
- No deadline identified for completion of work
- Gap, given six month rule, and lack of political will, is unavoidable

# The Cancun Agreements, 2010



- Change the character of Developed Country Mitigation
- Create a bridge across the FCCC and Kyoto Protocol tracks
- Drain the Kyoto Protocol of its politically palatable content (i.e. MRV and Mechanisms)
- By implication, dispense with the rest (i.e. QUELROS, and the compliance system)

# Character of Developed Country Mitigation

- KP Decision, para 3 and LCA Decision, para 36:
  - 'Takes note of quantified economy-wide emission reduction targetsto be implemented' by Annex I Parties 'as communicated by them' and 'contained in document FCCC/SB/2010/INF.X.'
- 'Takes Note' – incorporates Copenhagen pledges
- From commitments to 'targets'
  - In KP there is a process for converting targets to QUELROs
  - In LCA no such process – 'international assessment' has no output
- 'To be implemented' – predictive not prescriptive language
- 'As communicated by them' – incorporates conditions + pledges

# Bridge Across FCCC & KP



- FCCC/SB/2010/INF. X – bridging device
- Information document – limited status
- Unclear (deliberate) whether this information document pertains to the FCCC or KP
- All developed country targets in one document
- All targets to be considered by the same body – the Subsidiary Body for Implementation

# Draining the Kyoto Protocol: Mechanisms

- The KP decision provides that emissions trading and the project-based mechanisms under the Kyoto Protocol ‘shall continue to be available to Annex I Parties, in accordance with relevant decisions of the CMP.’ (Para 6(b), KP decision)
- The LCA decision undertakes to ‘build upon existing mechanisms, including those established under the Kyoto Protocol.’ (Para 83, LCA decision)
- Implication: The Mechanisms will be available to Annex I Parties whether or not they are party to the Kyoto Protocol or they have adopted second commitment period targets

# Draining the Kyoto Protocol: MRV

- The LCA decision imports elements from the Kyoto Protocol on methodological issues, communication and review of information (Articles 5, 7 and 8) into the FCCC process
  
- Compare para 43, LCA decision, 2010, and Article 5(1), Kyoto Protocol, 1997
  - Para 43 - Decides that developed countries should establish national arrangements for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol;
  
  - Article 5(1) - Each Party included in Annex I shall have ... a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol

# Conspicuous Omissions



- QUELROs – legally binding obligations with timetables
- References to building on the Kyoto compliance system, or indeed the need for a compliance system
- Hence not on the agenda for Bangkok

# The fate of the Kyoto Protocol

after 2012 if no commitments are adopted for  
the second commitment period

# Beyond 2012



- Kyoto Protocol does not lapse immediately
- Activities relating to ERUs, CERs, AAUs, RMUs continue until the end of the 'true-up' period (100<sup>th</sup> day after the date set by CMP for completion of the Expert Review process – mid-2015)
- 'True-up' and Compliance Assessment continues
- Questions of implementation arising from the review process will be raised/addressed
- Obligations under Article 10 (advancing FCCC Art 4(1)) and 11 (financial obligations) remain

# Implications: Mechanisms

- No targets for Annex B Parties in gap period
- No obligation to maintain a national system (for estimating GHG)
- No obligation to maintain a national registry (for accounting)
- Unlikely Joint Implementation (after the true-up period) would continue
- Unlikely Emissions Trading (after the true-up period) would continue
- Continuation of CDM depends on whether both the stated objectives of the CDM - Non-annex I- sustainable development + Annex I QUELRO compliance - are mandatory requirements or the fulfillment of the former is sufficient

# Implications: Compliance

- Compliance assessment cycle continues
- No targets, therefore not all the consequences of non-compliance can be applied (i.e. deduction from Party's assigned amount for the subsequent commitment period at a penalty rate)
- If the architecture of a new legally binding instrument under the FCCC is top-down, this penalty can potentially be introduced into the negotiated QUELRO for the non-compliant party
- However, given the bottom-up predictive trend evident in the Cancun Agreements, there is little scope for negotiating more stringent QUELROs for non-compliant parties

# Conclusion: Future of KP Bleak

- The Cancun Agreements seek to salvage politically palatable elements of the Kyoto Protocol (MRV and Mechanisms)
- And, by implication, discard the politically unpalatable elements (QUELROs and Compliance)
- If Annex B Parties do not adopt second commitment period targets:
  - ▣ The Kyoto Protocol will continue at least until the end of the compliance cycle
  - ▣ Those of its provisions that are not contingent on targets can continue beyond that
  - ▣ However, if these elements are represented in the new agreements, the Kyoto Protocol will wither away from disuse

THANK YOU