

NEGOTIATIONS: Cancun agreement preserves an escape hatch for Japan and other industrial nations *(Friday, December 17, 2010)*

Lisa Friedman, E&E reporter

A provision ensuring that industrialized countries can wiggle out of the Kyoto Protocol after 2012 is hidden in plain view of a new climate change agreement established in Cancun, Mexico, last week.

The line smothered in legalese appears to merely reference a section of the 1997 climate change treaty.

In actuality, though, "recalling Article 20, paragraph 2, and Article 21, paragraph 7 of the Kyoto Protocol," serves as a key reminder that no country is obligated to take targets under the second phase of Kyoto. Its insertion was essential in winning Japanese support for the Cancun Agreements, experts close to the U.S., Japanese and European delegations said.

"It's kind of hidden in the document, but it's there," said Paul Bledsoe, a senior adviser at the Washington-based Bipartisan Policy Center. "It's a loophole for the parties not to have to enter the second commitment period."

"They weren't deciding anything new, but it was very important to Japan's point of view that that [provision of Kyoto] be called out," said Elliot Diringer, vice president for international strategies at the Pew Center on Global Climate Change.

The future of Kyoto -- which requires industrialized nations to collectively cut greenhouse gas emissions at least 5.2 percent below 1990 levels between 2008 and 2012 -- was the central battle of this year's U.N. climate conference. Japan declared it would not submit new targets for the next five-year period that begins in 2012, sparking an outcry among developing nations who insisted upon a rock-hard commitment to a second phase of Kyoto.

The key line is just one of many deft legal maneuvers strewn throughout the Cancun Agreements -- and particularly in sections dealing with the Kyoto Protocol -- that helped to satisfy 193 countries with the exception of Bolivia last week.

"This text is brilliant," Center for Clean Air Policy President Ned Helme said the final night of the Cancun talks just before diplomats stood and cheered final adoption of the agreements.

"It's really clever. Each step of the way, it's got a piece that's taken care of each person's thing," he said.

A new Green Global Fund authorized by the Cancun Agreements, for example, installs the World Bank as interim trustee at the United States' behest.

But it also does not give it control over funding priorities and decisions, as per the insistence of developing countries. The phrase "common but differentiated responsibilities" -- a phrase dear to developing nations -- can be found on nearly every page. And the pact allows for, but does not create, a market mechanism to help wealthy countries prevent tropical deforestation in developing nations.

Something for everyone, but silence on Kyoto

The agreement makes carbon capture and storage projects (CCS) eligible for carbon credits under Kyoto's Clean Development Mechanism -- something that Saudi Arabia, Australia, Kuwait and Venezuela pressed for hard. It even carves out a "special recognition" for Turkey and other industrialized countries that are still transitioning to a market economy yet remain poorer than their neighbors.

"This document is a good step, actually," Turkish Environment Minister Veysel Eroglu said, thumbing through the draft agreement minutes after it came out Friday.

Turkey was one of only two Group of 20 economic powers that did not embrace the Copenhagen Accord drafted last year in Denmark. Eroglu said that was because the Copenhagen text did not take the "special conditions" of Turkey and other Eastern and Central European nations into account.

"When we look at our greenhouse gas emissions, it is much lower than other countries. It's half of the European Union countries and one third of OECD countries. But we would like to go stronger, he said.

On the Kyoto question, experts said the lawyers and diplomats who drafted the Cancun Agreements found the only available middle ground: avoid the issue entirely. "It decides nothing about Kyoto, which was the only possible outcome," Pew's Diringier said. "It leaves all the options open."

Diringier described the solution as a three-part formulation spread across the two Cancun Agreements that anchor emission reduction pledges countries made last year in a formal decision "without either ensuring or completely undermining" a second round of targets under the Kyoto Protocol.

Diplomats listed targets by developed countries and Nationally Appropriate Mitigation Actions in different places, but the legal formulation for both are identical. Meanwhile, Diringier added, by anchoring mitigation pledges under a process for countries not part of the Kyoto Protocol -- which diplomats commonly refer to as the "Convention track" -- negotiators sent a signal that submitting targets for a second phase of the Kyoto Protocol is not the only option available.

In the hours after the Cancun Agreements were released in the form of draft text, though, many

environmental activists scouring the language said it appeared to ensure a second Kyoto commitment period.

"This saves the Kyoto Protocol," Wendel Trio, international climate policy director for Greenpeace.

"It's not a guarantee," he allowed. But, Trio said the Cancun Agreements call for countries to raise their level of pledge ambitions, "For me it's really an indication that they continue. I interpret this as developed countries giving some kind of indication that they want to move forward with a second commitment period without committing to it."

Some developing country leaders, like Sierra Leone negotiator Oguniade Robert Davidson agreed. "It's a first step toward a second commitment period of the Kyoto Protocol," he said.

But others noted that nothing in the agreement solves the fundamental problem: The only countries that really want to see Kyoto live on are the ones that are not obligated to cut greenhouse gas emissions under it. "Kyoto is still in real trouble here," said Alden Meyer, director of policy and strategy for the Union of Concerned Scientists. "All the dynamics in this meeting go forward to the next. Nothing here is going to change Japan and Russia's position."

U.S. remained aloof from Kyoto debate

Throughout the bitter Kyoto debate, the United States -- which is not a party to the treaty -- stayed studiously neutral.

"This is the area where the U.S. plays the least," U.S. Envoy Todd Stern said on more than one occasion.

Analysts said the position was disingenuous -- since the U.S. refusal to ratify Kyoto after all led to the confusion two-track mess countries are now trying to reconcile -- but helpful to the U.S. strategy in Cancun.

"The only thing the U.S. has going for it is that Kyoto isn't its issue and no one thinks that it is," Michael Levi, a senior fellow at the Council on Foreign Relations said early into the Cancun meeting.

"On the one hand it allows cooler tempers to prevail in things involving the United States. Even if the U.S. has ideas to break the logjam it wouldn't get involved. It doesn't want to touch Kyoto with a 10-foot pole," he said.

Even after the Agreements were formalized in a 3:15 a.m. vote, Stern sidestepped a question about whether the compromise effectively kills Kyoto.

"I'm not going to speculate on whether this is the end of the Kyoto Protocol or not, he said. "There's strong feelings on both sides."

And both sides say they have their work cut out for them in the next year. Elizabeth May, head of Canada's Green Party described the Kyoto Protocol as the only legally binding instrument available for ensuring that nations reduce greenhouse gas emissions, and the climate can't afford for it to fall victim to economic concerns. Keeping it alive will be a top priority in the next year before negotiators meet in Durban, South Africa, for their 17th annual conference.

But Bledsoe of the Bipartisan Policy Center said he doesn't see developed countries being any more willing to commit to a second phase of Kyoto next year than they are this year. Nor will 194 countries likely be able to come to a consensus about how to balance new targets for emission cuts.

He called Kyoto "a valuable contribution for its period," but noted that the emissions profile of the world heading into 2010 is far different from what it was in 1997. "A second commitment period under the Kyoto Protocol is not either politically or substantively adequate," he said.

The question, though, is what would take Kyoto's place? Bledsoe argued that countries should be willing to take that discussion out of the United Nations and allow the big-emitting countries that are part of the Major Economies Forum or G20 to resolve those questions.

Ultimately, he said, the Cancun Agreements "papered over differences so we can get an agreement this year. We've papered over the fundamental issue of emission limits, and we shouldn't pretend otherwise."

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