

THE INTERNATIONAL CLIMATE CHANGE AGREEMENT: AN EVOLUTION

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I INTRODUCTION

When climate change emerged as a critical issue on the international political agenda in the late 1980s, it was soon apparent that it would not be a classical environmental problem amenable to traditional environmental actions. This is because the cause of the problem – the generation of greenhouse gas emissions – lies at the heart of the structure and size of modern economic activity. Greenhouse gas emissions are embedded in our way of life, from our energy consumption patterns to the basic production of food.

Australia has participated in negotiations in the knowledge that the issue is both an economic and environmental one, and on this basis only a global response can ultimately prove to be effective. The following is a brief outline of the development of the international response to climate change and some of the current key issues.

II THE DEVELOPMENT OF AN INTERNATIONAL RESPONSE

The first significant act of the international community was to establish a panel to provide scientific and technical advice to guide a political response. The Intergovernmental Panel on Climate Change ('IPCC') produced its first assessment report in 1990, which led to the United Nations General Assembly calling for a global treaty to address the threat of human interference with the climate system. After two years of negotiations, the *United Nations Framework Convention on Climate Change* ('UNFCCC')¹ was adopted at the milestone United Nations Conference in Rio de Janeiro in 1992. Australia signed and ratified the *UNFCCC* that same year.

The *UNFCCC* sets out the broad parameters for countries collectively, over time, to stabilise greenhouse gas concentrations to a level that would prevent dangerous anthropogenic interference with the climate system. The *UNFCCC*

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1 Opened for signature 4 June 1992, 31 ILM 849 (entered into force 21 March 1994).

also establishes several principles which shape the ongoing negotiations. One is the recognition of the common but differentiated responsibilities of developed and developing countries, and art 3.1 of the *UNFCCC* states that developed countries should take the lead in combating climate change. This specification of the roles of developed versus developing countries is viewed by some commentators as being a serious flaw in the *UNFCCC*, particularly because the it does not also clearly state that developing countries should follow the lead of developed countries, even though this was the intention at the time it was negotiated.

In 1995, at the First Conference of the Parties to the *UNFCCC* ('COP 1'), Parties agreed to a negotiating mandate for the development of a protocol to the Convention. The 'Berlin Mandate',² as it became known, recognised that existing commitments under the *UNFCCC* would be insufficient to meet the Convention's ultimate objective of stabilising greenhouse gas concentrations at a safe level; what was needed was a more clearly defined pathway. In this regard, the Berlin Mandate called for a strengthening of the commitments of developed countries. The issue of how developed countries' commitments should be shaped was to an extent driven by the release in 1995 of the *IPCC Second Assessment Report*.³ The increasing certainty about the science of climate change, particularly in terms of climate projections over the next century and the impacts of likely temperature and rainfall variability, provided the impetus for the Second Conference of the Parties to the *UNFCCC* ('COP 2') to embrace a binding targets and timetables approach, rather than a 'softer' approach of policies and measures. At the Third Conference of the Parties to the *UNFCCC* ('COP 3') in December 1997, Parties agreed to adopt the *Kyoto Protocol to the UNFCCC* ('*Kyoto Protocol*'),⁴ which sets out mandatory targets for greenhouse gas emissions for developed countries, relative to a 1990 base year.⁵ Since then, negotiations have continued in an effort to finalise the detailed rules by which those targets and other commitments under the *Kyoto Protocol* can be met.

There are two important features of the negotiations that warrant comment. The first is the importance of the science. The interplay between the development of the science of climate change and the development of the legal and institutional pathways is a key feature of these negotiations. The science has proved to be critical in providing the justification for an international approach to a problem that traverses territorial boundaries. Australia has supported the role of the IPCC as an independent scientific authority on climate change.

Another key aspect of the negotiations is the concept of equity. In taking a targets and timetables approach, the critical question becomes on what basis commitments should be allocated to countries. During the Kyoto talks, Australia

2 *UNFCCC Secretariat, 'The Berlin Mandate' (Decision 1/CP.1) in Report of the Conference of the Parties on its first Session, held at Berlin from 28 March to 7 April 1995: Addendum, UN Doc FCCC/CP/1995/7/Add.1 (1995).*

3 Intergovernmental Panel on Climate Change, *IPCC Second Assessment Report: Climate Change 1995 (1995).*

4 Opened for signature 16 March 1998, 37 ILM 22.

5 *Kyoto Protocol Annex B.*

successfully argued for targets to be allocated on the basis of an equality of effort, which led to differentiated targets. Differentiated targets allow for consideration of an individual country's national circumstances, economic structures and development needs, and the recognition of these in the terms of their participation. For example, Australia's target for the first *Kyoto Protocol* commitment period (2008-12) reflects our economy's significant dependence on fossil fuels and relatively high rate of population growth. Australia will continue to advocate the principle of equality of effort in the negotiations.

III UNRESOLVED ISSUES

The Sixth Conference of the Parties to the *UNFCCC* ('COP 6') in The Hague in November 2000 came close towards but in the end failed to reach agreement on the key implementation provisions for the *Kyoto Protocol*. More recently the new United States ('US') Administration has stated that it opposes the *Kyoto Protocol* and is currently undertaking a comprehensive review of its climate change policy.

Although the future direction of climate change negotiations has become more uncertain, key implementation elements of the *Kyoto Protocol* – which have stumped the international community thus far – remain to be addressed regardless of the framework under which they sit. From Australia's perspective, they revolve around the following key issues: commitments from all major emitters; unrestricted market-based mechanisms; a facilitative compliance regime; a sensible and fair approach to carbon sinks; and assistance for the most vulnerable countries to adapt to climate change. The ongoing international negotiating effort will take place against the backdrop of the 2001 *IPCC Third Assessment Report*,⁶ which shows a further firming in the state of knowledge of climate change science and provides conclusions reinforcing the seriousness of the extent of future climate change impacts.

IV COMMITMENTS FROM MAJOR EMITTERS AND ASSISTANCE FOR VULNERABLE COUNTRIES

Australia recognises that developed countries should take the lead in reducing emissions. The Government has taken its target under the *Kyoto Protocol* seriously and has implemented a comprehensive package of domestic programs to reduce emissions, at a cost of almost one billion dollars over five years. These programs cover a range of economic sectors and include regulatory, voluntary and market based approaches including, for example, tradable renewable energy certificates. However, the lack of agreed international rules threatens to constrain the development of the next phase of our domestic response.

⁶ Intergovernmental Panel on Climate Change, *IPCC Third Assessment Report: Climate Change 2001* (2001).

Australia has consistently argued that in the future, developing countries must be prepared to take steps to reduce the growth in their emissions. No one – including developing countries – disputes the environmental reality that developing countries must act if the international community is to address this global problem. Developing countries' emissions will overtake the emissions of developed countries this decade, and even if developed countries' emissions decrease dramatically from 1990 levels, increases in the emissions of developing countries will ensure that total emissions continue to rise.

An international response to climate change will also not survive for long if some countries have a price on carbon and others do not. Under such conditions, countries such as Australia would lose competitiveness, as we would see a significant shift offshore in Australian industry. In addition, the environmental effectiveness of the scheme would be undermined, as emissions reductions in developed countries would be offset by increased emissions from relocated industries in developing countries.

In the negotiating context, this issue of developing country commitments has probably been the most vexed, so much so in fact that we have barely begun to have a dialogue on what developing country commitments might look like. One practical obstacle to negotiations is the fact that developing countries form a heterogeneous group of the Group of 77 ('G77') and China, representing the diverse interests of more than 130 countries that range widely in capacity and development. Any regime for developing country commitments needs to be progressive and able to take that variability into account.

It is also probably fair to say that industrialised countries need to think through more solidly what incentives there are for developing countries to 'buy in' to an international agreement to modify their emissions growth. The 'what's in it for them' analysis is very different from the perspective of developing countries, with their focus on capacity, technology transfer, economic growth and poverty alleviation. These countries do not generally contain domestic constituencies pressuring their governments to take domestic action on climate change, even though they may well be calling for international action. They will have to present any future commitments to their people primarily on the basis of economic benefits.

No matter how many countries take on commitments though, some degree of climate change can be expected. Countries that are likely to experience the worst effects are those with the least resources to adapt. Small island states, particularly our neighbours in the Pacific, and the least developed countries, are extremely vulnerable to the future impacts of climate change. In asking developing countries to take on commitments, it is also incumbent on developed countries to offer strategies for financing the implementation of adaptation projects in countries most vulnerable to climate change.

V UNRESTRICTED MARKET-BASED MECHANISMS AND A FACILITATIVE RATHER THAN PUNITIVE COMPLIANCE SYSTEM

Australia, along with other members of the Umbrella Group, believes that least-cost outcomes are critical to a sound international response. Every dollar invested in a greenhouse response must yield the maximum environmental benefit if we are to sustain the response over the long term. Unrestricted market based mechanisms are one of the key methods of ensuring the availability of least-cost abatement options.

At the conclusion of COP 6 last year, a number of aspects of the design and functioning of the flexibility mechanisms and the compliance system, which relate to cost, remained unresolved. The European Union ('EU') has continued to push both for an approach to these mechanisms that would severely restrict their use and cost effectiveness, and for a punitive compliance regime. The Umbrella Group, on the other hand, has advocated unrestricted market-based mechanisms – on the grounds that restrictions on the mechanisms as proposed by the EU would increase costs – and has generally advocated a compliance system that facilitates and encourages Parties to comply with their commitments.

For reasons of international competitiveness, the EU is seeking to ensure that emissions abatement undertaken outside the EU is as costly as that taken by the EU under its preferred harmonised domestic policies and measures approach. Another factor driving the EU agenda on these issues is the fear of a 'rogue' state. For some, the prospect of a state that deliberately over-sells emission reduction credits is perceived to be so dangerous that it warrants everyone in the system paying a price, attempting to make the system safe through caps on the use of the mechanisms and restrictions on their use via the compliance system.

However there is flawed logic in this approach. By definition, a rogue state will not consider itself bound by restrictions or compliance systems. A state behaving that way only has to bow out of the system to avoid compliance consequences. Attempting to prevent this kind of behaviour through restrictions on the use of the flexibility mechanisms and a punitive compliance system unjustifiably penalises others. What we do have at our disposal is the knowledge of the effects of international diplomatic pressure – 'naming and shaming' as it is sometimes referred to in this context – which may be more effective in modifying the behaviour of such states.

Australia believes that countries enter and comply with these agreements primarily on the basis of political will and this belief engenders a different perspective on system design. Minimising costs, while maximising emissions limitation, is the basis for an international response that will attract broad acceptability and therefore political will. If the costs are too high, it becomes a disincentive to implementation. This is the basis of Australia's strong advocacy for unrestricted market mechanisms; restrictions on a carbon market run counter to the objective of facilitating least cost abatement opportunities.

Similarly, in terms of compliance, Australia believes that it is a country's political commitment to meet its international obligations that underpins the

effectiveness of any international agreement on climate change. A punitive approach cannot compensate for lack of political will. However, a facilitative compliance system can help Parties overcome possible implementation problems and encourage them to stay within the agreement. This is especially important when we consider frameworks that enable developing countries to take on commitments. It is arguable that a facilitative compliance system, which acts from the presumption of best intentions, is more attractive to developing countries than a punitive one that discourages their participation.

VI A SENSIBLE AND FAIR APPROACH TO CARBON SINKS

Greenhouse sinks issues, such as land use, land use change and forestry issues, are among the most challenging to be resolved in the international negotiations on climate change. In the negotiations, concerns have been raised about the uncertainty surrounding measurement and the potential for carbon sink sequestration to be only a temporary event; that is, gases sequestered will eventually return to the atmosphere. However, scientific and technical advice from the IPCC demonstrated that there are policy and technical solutions to deal with these problems.⁷ Furthermore, the *UNFCCC* and the *Kyoto Protocol* recognise the scientific legitimacy of sinks in greenhouse gas abatement.

The question remains: given the solutions available, why has agreement proved elusive? Part of the answer is ideological. Some countries have raised concerns that sinks will be used to divert effort from action to reduce fossil fuel consumption and dependence, and thereby weaken the price signal associated with mitigation action. However, sinks offer a source of low cost abatement that can assist in the transition to a less carbon intensive global economy. It is vital that sinks are captured in an international carbon account; to ignore sinks is to address only one side of the ledger. This is critical for countries such as Australia and will be even more important under a regime that includes all major emitters, given that a significant portion of developing country emissions result from agriculture, land use change and forestry.

Reaching agreement on an international approach to sinks is also difficult because countries' national circumstances in relation to forests and agriculture vary widely. Australian forests have a short growth cycle and there is land available for tree planting, but our land use systems are highly vulnerable to emissions from drought and fires. On the other hand, many northern hemisphere countries have limited land for establishing new forests and their long growth cycles mean that it is difficult to gain significant credit from new forests. This can lead to perceptions of inequity and competitive concerns.

Unlike most other developed countries, nearly one third of Australia's greenhouse gas emissions come from agriculture, land use change and forestry. This has prompted Australia to establish a world class national carbon

7 Intergovernmental Panel on Climate Change, *IPCC Special Report: Land Use, Land-Use Change and Forestry* (2000), (also at <<http://www.grida.no/climate/ipcc/spm/pdf/srl-e.pdf>> at 28 June 2001).

accounting system to measure and monitor greenhouse sinks. A major source of our emissions is land clearing, which leads to other adverse environmental outcomes including soil salinity and erosion. Australia has found that it is possible to develop innovative greenhouse policies that can also be used to address other pressing concerns. We are successfully integrating climate change into natural resource management, and using greenhouse programs to help assist with solutions on salinity and land degradation.

VII CONCLUSION

COP 6, in November 2000, was regarded by some as a failure because agreement was not finalised on the issues outlined above. There was talk that we had been at it for a decade, yet had achieved little. But perhaps this 'talk' reflects an unrealistic view of the task at hand.

We are in the process of negotiating an environmental agreement that has significant global economic consequences. This has not been done before. A brief look at the development of the international trading system under the World Trade Organization ('WTO') provides a window into the difficulties posed by the climate change negotiations. Did anyone seriously believe that negotiating such an agreement would be easy?

Regardless of the difficulties, the imperative to act on climate change, and to act internationally, remains. While Australia only emits around one per cent of global emissions, we may well suffer more than one per cent of the effects of climate change which, like it or not, are the result of all countries' emissions.