

EMISSIONS TRADING AND CLIMATE CHANGE BULLETIN

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THE ASIA-PACIFIC PARTNERSHIP ON CLEAN DEVELOPMENT AND CLIMATE: CANADA'S NEWEST (POTENTIAL) CLIMATE CHANGE WEAPON

The new federal government has recently made it clear that it does not believe Canada will be able to abide by reductions in greenhouse gases ("GHGs"), as mandated under the Kyoto Protocol and committed by the previous government, of 6% below 1990 levels by 2012. Instead, the government is proposing a "Made-in-Canada" plan to be tabled in the fall and, more recently, has hinted at joining the Asia-Pacific Partnership on Clean Development and Climate (the "AP6").

The AP6 currently comprises six member countries: the United States, Australia, China, India, Japan and South Korea (the "Partnership"). Signed on January 12, 2006, the AP6 has been described by the signatories as a "new partnership to develop, deploy and transfer cleaner, more efficient technologies and to meet national pollution reduction, energy security and climate change concerns." Currently, Partnership economies account for 54% of global economic output, 45% of global population, 48% of global energy use and 50% of global GHG emissions. With China and India's populations projected to reach over 1.5 billion and 1.4 billion respectively by 2050, combined global energy use for the Partnership is expected to reach 55% in the same year.

OVERVIEW OF THE AP6

In order to prepare for the Partnership's inaugural meeting in January 2006 (the "Meeting"), the Australian government commissioned the Australian Bureau of Agricultural and Resource Economics (ABARE) to conduct a study on the use of existing and emerging clean technologies to reduce GHG emissions. The resulting report, entitled *Technological Development and Economic Growth*, concluded the following:

"The contribution of partnership economies to global population, wealth and energy consumption is such that actions undertaken by these economies on technological solutions alone could lead to a curbing of global energy demand growth and significant reductions in global emissions relative to what would otherwise have occurred."

In particular, the ABARE report found that the use of energy efficient technologies by the Partnership and the diffusion of such technologies to other non-Partnership states could reduce GHG emissions by about 23% in 2050, compared with what would otherwise have been the case (the equivalent of 90 billion tonnes of carbon equivalent between 2006 and 2050).

Using the ABARE report as a basis, the Partnership agreed upon a Charter, Communiqué and Work Plan at the Meeting.

The Charter

The Charter defines the main purpose of the AP6 as the creation of "a voluntary, non-legally binding framework for international cooperation to facilitate the development, diffusion, deployment, and transfer of existing, emerging and longer-term, cost-effective, cleaner, more efficient technologies and practices among the Partners through concrete and substantial cooperation so as to achieve practical results."

The Charter further recognizes development and poverty eradication as urgent and overriding international goals. It endorses the Delhi Declaration on Climate Change and Sustainable Development, and specifically states that the AP6 will be consistent with, and contribute to, each member country's efforts under the U.N. Framework Convention on Climate Change and will complement, but not replace, the Kyoto Protocol. The latter provision was deemed essential since Japan ratified the Kyoto Protocol and is actively pursuing GHG mitigation measures using Kyoto Protocol mechanisms.

The Communiqué

The Communiqué sets out the underlying policy of the AP6. It states that renewable energy and nuclear power will represent an increasing share of global energy supply and underscores that fossil fuels are, and will continue to be, a driving force in the global economy. The Communiqué makes it evident that the principle aim of the AP6 is to promote the use of technology and the production of renewable energy to reduce GHG emissions, rather than the regulation of fossil fuels. In that regard, the AP6 makes several references to the important role that the private sector will play in fostering a carbon-neutral economy.

The Work Plan

Based on the principles outlined in the Charter, the Communiqué and the ABARE report, the Work Plan identifies eight major areas/sectors in which private-public task forces will be formed to further sustainable development:

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| 1. Cleaner fossil energy | 5. Aluminium |
| 2. Renewable energy and distributed generation | 6. Cement |
| 3. Power generation and transmission | 7. Coal mining |
| 4. Steel | 8. Buildings and appliances |

Each Task Force is chaired or co-chaired by a member country which is responsible for formulating “detailed action plans outlining both immediate and medium-term specific actions, including possible ‘flagship’ projects and relevant indicators of progress.” The relevant Task Forces must submit such action plans to the newly created Policy and Implementation Committee, which reviews the plans and makes recommendations.

DIFFERENCES BETWEEN THE AP6 AND THE KYOTO PROTOCOL

The Kyoto Protocol and the AP6 are entirely different creatures, making direct comparisons difficult. However, three significant differences are important to note in considering the principles of each agreement.

Valuation of Emissions

Unlike the Kyoto Protocol, the AP6 does not impose mandatory reductions in GHG emission levels. Under Kyoto, 35 developed countries (Canada among them) agreed to specific, legally binding targets to limit or reduce their GHG emissions by the end of 2012. If these reduction targets are not met, these countries must comply by either purchasing various trading instruments developed pursuant to the Kyoto Protocol mechanisms or pay hefty fines. The Kyoto Protocol provides for commoditization of GHGs (essentially putting a price on GHGs and the right to pollute) via the Clean Development mechanism, the Joint Implementation mechanism and, eventually, an international trading scheme to trade credits and allowances developed pursuant to such mechanisms. The value accorded to GHGs (measured in tonnes of CO₂ equivalent) will depend directly on the emission limits prescribed by various national governments. The AP6 does not envision regulating GHG emissions and therefore will not use capital markets to promote emission reductions. Instead, the AP6 relies exclusively on the voluntary use of “green technologies” by the public and private sectors to achieve these reductions.

Level Playing Field

A second material difference between the agreements is their application to developing countries. The U.S. Administration seized upon Kyoto's failure to bind developing countries such as India and China in defence of its decision not to ratify. Proponents of Kyoto argue that: (a) developing countries did not contribute significantly to current GHG levels and should therefore not be punished for pollution emitted from the developed nations during the first compliance period (2008-2012); (b) the Kyoto mechanisms provide for a transfer of clean technologies to the developing countries; and (c) developing countries may be prescribed GHG emission reduction levels during future compliance periods. These arguments did little to persuade the U.S. Conversely, the AP6, while not subjecting any of the Partnership members to legally binding GHG reductions, does put China, India and South Korea on the same footing as the Partnership's developed country members.

Nuclear Solutions

Unlike the Kyoto Protocol, the AP6 envisions nuclear technology as a major source of GHG emission-free energy. The Kyoto Protocol specifically excludes the development of nuclear technology as an emission reduction activity.

CONCLUSION

It is difficult at this stage to determine whether the Kyoto Protocol and/or the AP6 will be successful in achieving material reductions in GHG emissions. If properly implemented, the AP6 could complement Kyoto-driven GHG emission mitigation measures. Regardless of the means, members of both groups acknowledge the need for a transition to carbon-neutral economies. Both agreements provide the means for doing this: the Kyoto Protocol by placing a price on CO₂ and its defined equivalents, and the AP6 by promoting growth in clean technologies. Perhaps a hybrid of the agreements, involving the regulation of GHG emissions and the promotion of "green technologies", will provide the best results.

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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