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Bangkok Talks on Climate Change:

Matter over Form is the Only Way Ahead

An IISD Commentary

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October 2009

Fifteen. That is the number of formal negotiating days between now and the conclusion of the 15th Conference of the Parties (COP) to the United Nations Framework on Climate Change (UNFCCC) being held in Copenhagen in early December. Yet the progress made during the most recent UNFCCC negotiations in Bangkok suggest that expectations for what Copenhagen will deliver will have to be seriously tempered.

Bangkok was successful in 'setting the table' for the December negotiations to the extent that we at least saw some progress in 'streamlining' and more clearly identifying the negotiating options. But real negotiations—with options actually being deleted and compromise wording worked out—have yet to take place. As a result, there is a general recognition that, at best, Copenhagen will deliver a set of discrete decisions on the substantive issues that will then need to be transformed into appropriate legal text in 2010.

Nevertheless, after Bangkok, it is also apparent that negotiators are making constructive headway on some of the critical issues. For example, actions to promote avoided deforestation, commonly referred to as REDD, is enjoying considerable support. Still, determining how REDD activities will be financed (private sector, carbon market or public funds) remains contentious. On the market mechanisms, considering the relative 'infancy' in these negotiations, it is remarkable the amount of attention they are receiving, covering sector-wide crediting options and even sector caps. Agriculture continues to gain in prominence, but it is clear that we probably don't have time for all of its elements to be included in an agreement at Copenhagen. Discussions on adaptation were also relatively constructive and there is a growing sentiment that it will be afforded an unprecedented place in the next agreement.

That all said, the two large substantive issues—targets and money—remain largely unresolved. On targets, it's not only a question of how much, of course, but who should be committing to meet them in the first place and what will be their form. No one, not even the most ardent of developed countries, appears to be calling for any developing countries to take on nationwide absolute reductions of greenhouse gas emissions of the sort that developed countries are expected to take on. Instead, OECD countries are pressing for major developing economies to enhance and report on their greenhouse gas reduction activities, along with estimates as to what reductions would result from those actions, without expecting them to take on nationally binding targets (at least for the next commitment period. On the other hand, developing countries are expecting industrialized countries to commit to reductions of at least 40 per cent from 1990 levels, by 2020. While the EU, Japan, Australia and Norway are somewhat in the same 'ballpark' promoting reductions in the range of 25 to 40 per cent by 2020, the U.S. and Canada are aiming for reductions of no more than five per cent less than 1990 levels. The enormity of the current gap in expectations regarding the target is a critical stumbling block. Canada and the U.S. are certain to find themselves under increasing pressure to strengthen their domestic targets at Copenhagen. It is quite clear, however, particularly in

the case of the U.S., that their targets will be driven mostly by domestic dynamics.

Nor are we seeing much headway in the area of financing. There is still no agreement on what level of funding developing countries will need for mitigation or adaptation, while major donors have yet to indicate how much funding they will be able to contribute. It also remains unclear how funding will be managed and whether there should be differentiation amongst developing countries in terms of their right to access such funds (e.g. providing the poorest countries with the greatest access). The fact that developing countries, including the least developed countries, insist there should be no differentiation in accessing funds demonstrates the leverage major developing economies have over the less powerful members of the G-77 and China negotiating bloc. In addition, the U.S. has put forward a proposal for a single financing trusteeship that in effect, appears to be embedded in the World Bank. The proposal is likely to bring strong opposition from developing countries, who have come to effectiveness of the World Bank and other Bretton Woods institutes in effectively addressing their priorities and would prefer establishing an decision making body under the direct authority of the Parties to the UNFCCC.

If it were only the substantive issues we needed to resolve, the road to Copenhagen would be difficult enough. But we have two very related major 'hiccoughs' in the process itself that turns this steep climb into a precipice.

First, the U.S. once again made it clear that it can only accept an international climate change mitigation agreement in which domestic legislation takes precedence over any international rules. This means the U.S. will not accept a regime that includes international penalties for non-compliance. It also means the U.S. will not accept the basic unit for international accounting of greenhouse gas emissions—the Assigned Amount Unit. It will devise and implement its own basic accounting unit, so rather than a single currency for carbon trading, each country or region would be responsible for creating its own carbon accounting unit. While this would not be entirely dissimilar from what the EU is currently doing (they prefer to trade in their own units (EU AAUs), there are concerns in the carbon trading world that nationally derived carbon currencies might make the global market less efficient. The U.S.'s action will also mean revisions to current rules around reporting, monitoring and verifying of countries' greenhouse gas emissions, and potentially to the domestic rules for international market mechanisms and offsets—although the U.S.'s messages on the latter issue have not been entirely clear.

Domestically driven rules are also likely to result in trade disputes. Without an international compliance regime in place, countries will take it upon themselves to decide what constitutes comparable actions and targets. And when they perceive that others are not taking equivalent actions, they are likely to take measures to ensure they do not lose competitive advantage (such as border taxes).

In effect, the U.S. is saying that the core architecture of the Kyoto Protocol is unacceptable. And the U.S. negotiators are taking this position in anticipation of what could likely be approved by the U.S. Senate. In their view, a top-down Kyoto regime with internationally binding consequences will simply not be acceptable to the U.S. Senate and its inherent suspicion of international institutions that carry authority over and above domestic politics.

And this brings us to our most serious 'hiccough'—one that very conceivably could bring the climate change negotiations to a full stop, or at least in some sort of purgatory not unlike the 'non-status' status of the current Doha trade negotiations.

Anticipated fears about the serious hurdles in the process raised by the presence of two negotiating tracks on the future of the international climate change have come to fruition. One track involves Parties to the Kyoto Protocol (and therefore not the U.S.) while the second involves all Parties to the UNFCCC (including the U.S.).[1] The decision to have a 'two track' negotiating process was made at the Montreal COP in 2005. It represents just one of a series of tortuous decisions, hearkening all the way back to the Berlin Mandate set at COP1 in 1995, that have tried to find some way forward while respecting the UNFCCC's principle of "common but differentiated responsibilities." This principle means that there are differing expectations regarding what actions developed and developing countries should take in response to climate change. The issues raised by this difference in expectations, particularly as some developing countries reach developed status, largely has been papered over throughout the history of the UNFCCC. In fact, the whole issue of when and how developing countries become classified as developed—countries like South Korea, Singapore and Mexico—is simply not being addressed in the public negotiations at all – it's not even an agenda item in the negotiations.

What blew up at Bangkok was the realization by developing countries that *all* developed countries will not be open to signing up to a set of new commitments under the Kyoto Protocol as it does not, and will not, include the U.S. Despite the change in Administration, the U.S. has made it clear that it is in no position to ratify the Protocol or any formal successor to that instrument. While Canada and other developed countries have made similar statements in the past, it was not until Bangkok that the EU formally stated its preference for a single agreement to be reached through negotiations that involve the U.S. As a result, all of the developed countries, including the EU, Canada and other OECD members, are now formally calling for the two negotiating tracks to merge into one, essentially declaring the Kyoto Protocol track dead for all intent and purposes.

[1] For further discussion of the challenges posed by the dual tracks of the negotiations, please see John Drexhage's April 2009 commentary "A Plea for Reason."

The result was a wholesale condemnation of this approach by the G-77 and China in Bangkok. For major developing economies (including China, India, Brazil, Indonesia and South Africa) such a step means that there will no longer be any 'institutional' protection distinguishing them from other major developed economies. (In their view, the Kyoto Protocol track is about targets, while the Convention track is more about actions and financing). They are of the strong view that this 'ploy' on the part of developed countries is simply yet another disingenuous attempt to compromise their development aspirations. On the other hand, the least developed countries and small island states are concerned that a weakening of the regime, both in legal form and in targets proposed, will condemn them to further climate change-related calamities, and in the case of some states, end their outright physical existence.

In Bangkok, we also had another one of those weird moments in the negotiations. The Chair of the G-77 and China was applauded long and loud by indigenous groups and environment and development stakeholders for its strong and forceful statement on not sacrificing the Kyoto Protocol and its sacrosanct principles of equity, transparency and differentiated responsibilities. All well and fine I guess, except for the fact that the Chair of the G-77 and China was Sudan—hardly the star candidate for actually implementing any of these principles in its own backyard. Veteran negotiators and others well versed in the ways of the U.N. may appreciate the distinct role played by Sudan in representing all developing countries when acting as Chair of the G77 and China. But the fact is that many in Washington (and I daresay Ottawa as well) will take note of this dynamic and use it to cast further disparagements on U.N. institutions, and in particular, the climate change negotiations.

One last note on the 'two track' negotiations controversy. For some reason, the Canadian media identified the government of Canada as a particular culprit in this controversy. While there are many countries and stakeholders upset that Canada has no intention of meeting its Kyoto targets and that the government has not clarified if it means to respect the Protocol's penalties for non-compliance, it would be an exaggeration to claim that Canada led the charge on the 'one negotiating' track position. Informally this has in fact long been the position of *all* developed countries, that an international agreement that does not involve the U.S. in the same legal regime is simply not a viable option for them.

Is there a way out of this impasse by Copenhagen? Who knows. But I can hardly believe that we cannot find a way forward. Can you imagine telling your children or grandchildren 20 years from now that we were not able to develop an effective global response to climate change because of a disagreement about the legal form in which those negotiations were to take place? Not to discount the particular challenges that face us in this area, but we should not let the negotiation track issue derail us from progress in the substantive issues that can be effectively tackled. For once, let's put matter before form in these negotiations. Let's see where we can arrive on targets, on financing, on

the role of REDD and agriculture, the market mechanisms, technology transfer, and—assuming we can reach substantive agreements—then decide how best to reflect those agreements in a legal text. Some will say that having constructive negotiations on the substantive issues will be difficult with the legal issues hanging like a Damoclean sword over the entire discussions. Fair enough. But trying to reach a decision on the form *before* the substance will virtually guarantee an implosion at Copenhagen. And that, above all else, must be avoided at all costs. Tackling climate change is critical, but that is not the full story of the implications of a failure in Copenhagen. In addition, yet another multilateral meltdown like Doha will only strengthen the voices of those in support of unilateralism and naked national self interests.

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