

THE EU AND THE GLOBAL CLIMATE REGIME

GETTING BACK IN THE GAME

Thomas Spencer, Kristian Tangen, Anna Korppoo

BRIEFING PAPER 55, 25 February 2010



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Thomas Spencer
Research Assistant
The Finnish Institute of International Affairs



Kristinan Tangen
Senior Adviser
The Finnish Institute of International Affairs



Anna Korppoo
Programme Director
The Finnish Institute of International Affairs

Briefing Paper 55
25 February 2010

- The Copenhagen climate summit was seen as a set-back for the EU. It was left out of the final meeting between the USA and major developing countries which led to the Copenhagen Accord, and had to accept a deal that fell below its expectations.
- Due to the impact of the economic crisis, the EU's current target of a unilateral 20 % reduction is no longer as impressive as it seemed in 2007–2008; this is undermining the EU's claim to leadership. In order to match the higher pledges of Japan, Australia and the US, as well as shoulder its fair share of the industrialized countries' aggregate 30 % reduction, the EU would have to pledge a 35 % reduction.
- The EU's practise of attaching conditionalities to its higher target gives it very little leverage. However, there might be a case for the EU to move unilaterally to a 30 % reduction in order to accelerate the decarbonisation of its economy and capture new growth markets.
- Doing so could support stronger policy development in other countries such as Australia and Japan, and help rebuild trust among developing countries. But on its own it would be unlikely to have a substantial impact on the position of the other big players—the USA, China, India, and Brazil.
- The incoherence of the EU's support of a “single legal outcome” from the Copenhagen summit, based on the elements of the Kyoto Protocol, was a major cause for its isolation. The US remains domestically unable to commit to this type of a ratifiable treaty while developing countries are not yet ready to commit to absolute targets.
- A return to a two-track approach, involving the continuation of the Kyoto Protocol and the negotiation of a new instrument for the USA and major developing countries, may be a more politically and practically feasible approach, while retaining the goal of working towards a legally binding instrument for all key participants over time.

The International Politics of Natural Resources and the Environment research programme
The Finnish Institute of International Affairs



Photo: European Commission

For the EU, the Copenhagen climate summit has been seen as a wake-up call. Sidelined in the final hours, the EU was left to publically accept a deal which fell well short of its stated demands. Subsequently, the EU's "post-Copenhagen blues" have been a symptom of a broader *malaise*, as it faces up to the power of other actors; the redirection of American priorities toward the Pacific, and questions on the effectiveness of its foreign policy. In this regard, the Copenhagen climate summit was seen by some in the EU as a "seminal and symbolic moment".

Yet in many respects the EU continues to set the benchmark in the global response to climate change. Internationally, the Copenhagen Accord enshrined the 2 degrees target, long advocated by the EU. Domestically, other developed countries are seeking to establish their own emissions trading schemes and to spur the growth of domestic clean tech industries. In this regard, the EU's policies do exert influence. President Obama summed up the challenge driving US policy in his 2010 State of the Union address: "... there's no reason Europe or China should have the fastest trains or the new factories that manufacture clean energy products".

Despite the growing synergies of self-interest motivating many countries' stronger climate policies, the future of the global climate regime is uncertain given the legally and politically fragile outcome of Copenhagen. This, in turn, is making domestic policy-making in countries like Australia and Japan more difficult. For some, the situation is so grim as to suggest that "we are witnessing the collapse of the global regime to manage climate

change". It is in this context that the EU will likely reconsider its strategy on climate.

This paper discusses what the EU could do to get off the sideline and regain some of the initiative on climate change. It focuses on two central elements of the EU's position in the international negotiations: 1) the EU's emission reduction target, and 2) the EU's demand that the negotiations should produce a "single legal outcome".

What went wrong for the EU in Copenhagen?

The EU has traditionally exerted influence by leading with strong reduction targets and promoting multilateral institutional frameworks. However, in Copenhagen the EU came to the table with a reduction target that conflicted with its claim to leadership, and advocated a politically incoherent institutional proposal. Both of these factors alienated other countries and prevented the EU from building a "coalition of ambition" around its position.

Thus, although the EU could not have significantly changed the outcome of the Copenhagen talks, it was clearly not as effective as it might have been. Indeed an internal Chinese report noted that "Copenhagen was a set-back for the EU". This should be seen within a wider, on-going debate about the effectiveness of the EU's foreign policy, a concern specifically addressed in the Lisbon treaty. As the EU seeks to define its strategy to 2020, the issues of future competitiveness, sustainability and new markets for growth are coming to the fore, implying

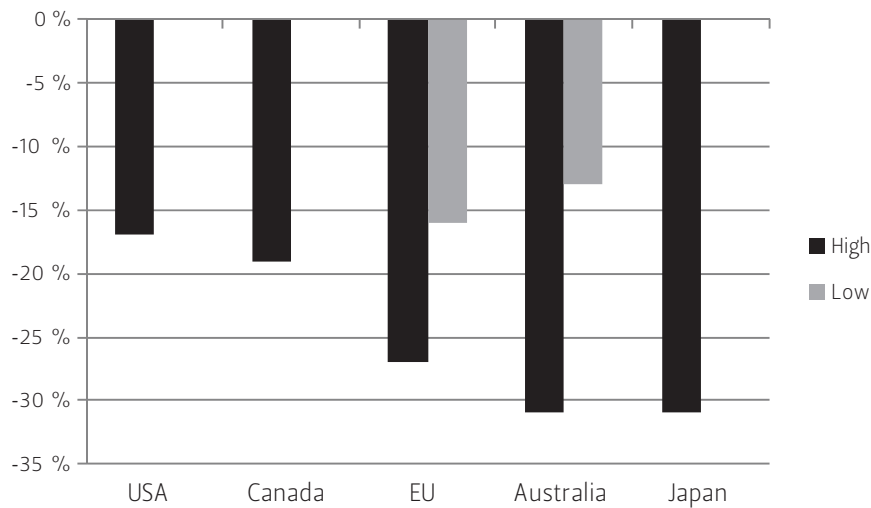


Figure 1: Developed countries' 2020 reduction targets compared to 2007 emissions levels.

synergies with a stronger climate agenda. Thus the EU could again look to the climate issue as it seeks anew to answer the question: “why Europe”?

Increasing the EU's target

Much has changed since the Commission first proposed the EU's 20–30 % target range in 2007. Policy success and the effects of recession suggest that meeting the EU's 20 % target will be substantially easier than envisaged. Other countries have also come forward with ambitious reduction targets. Thus there was a sense that in Copenhagen the EU could no longer claim leadership on the basis of its reduction target.

Even though the base year of the Kyoto Protocol—1990—is the legitimate base year for developed countries' targets, it is a poor indicator of the level of effort required to reach 2020 targets. Since 1990 emissions have developed very differently among the developed countries, due to variations in policy implementation and national circumstances. Measured against 2007 levels, the EU's current pledge of 20 % is weaker than the targets pledged by the USA and Canada. Even the EU's 30 % target is weaker than the upper-end pledges of Australia and Japan, as can be seen in the figure above.

Measured against business as usual emissions development, the picture is worse still for the EU. According to the IEA, business as usual development of the EU's emissions would see them fall to 16 % below 1990 levels by 2020. Taking into account the

potential for the import of emissions reduction credits from other sectors or countries, the IEA suggests that the EU ETS can meet its current emissions cap to 2020 without any need for further domestic abatement.¹ The EU's 30 % emissions target is also less costly than the higher end pledges of Japan and Australia, according to econometric modeling by the International Institute for Applied Systems Sciences. Indeed, due to the economic crisis the estimated cost of achieving a 30 % target is now less than the cost of achieving the 20 % target, as estimated in 2008. This is shown in figure 2 opposite.

Concerning a long-term target, the 2009 October EU Council supported “an objective... to reduce emissions by 80–95 % by 2050 compared to 1990 levels”. However, the EU's minimum target lies above the trajectory implied by a linear reduction from current levels towards a 2050 target in this range, as is shown in figure 3. In addition, the gradient of the EU's implied trajectory to an 80 % 2050 target is shallower than those of most other developing countries, given the same target.²

Moreover, the EU's proposal for how to generate financing for mitigation and adaptation to climate change in developing countries envisages a significant portion of financial flows coming through the carbon market. With the low target and limitation on import of credits, the carbon price and credit demand are

1 The International Energy Agency, “The World Energy Outlook 2009”, pp. 182.

2 Murray Ward and Michael Grubb, “Comparability of Effort by Annex 1 Parties: An Overview of Issues”, Climate Strategies, 2010.

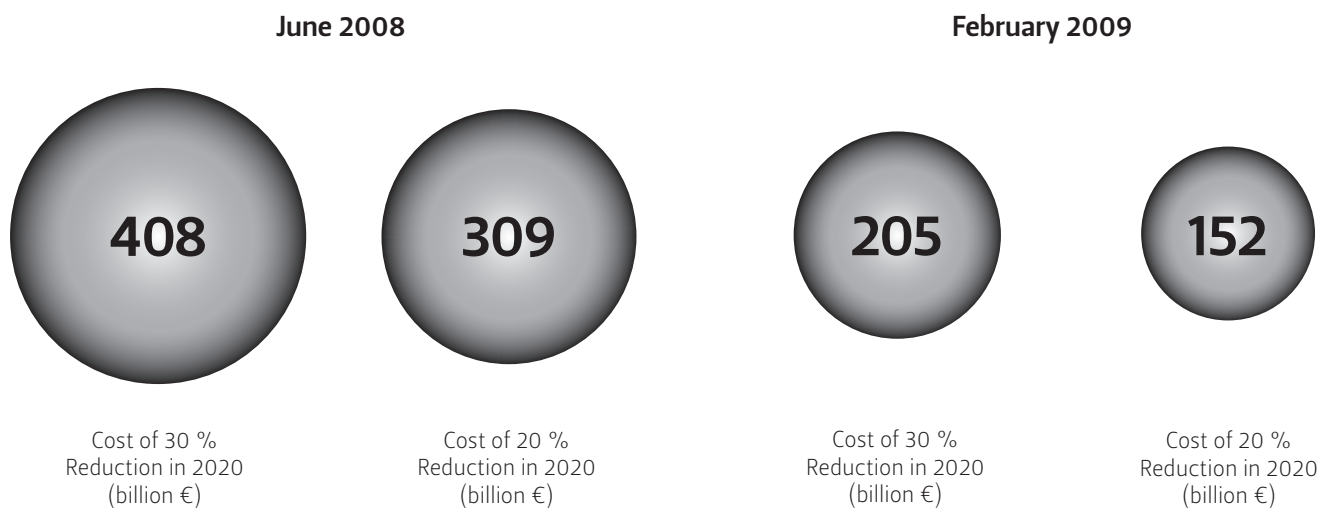


Figure 2: The impact of recessions and climate policy success on estimated costs of the EU's emissions Targets (New Energy Finance, 2009)

unlikely to be high enough to generate significant financial flows and the necessary abatement in developing countries, as is also acknowledged in the Commission's own communication on climate financing.

Clearly, the perception of the EU's weak emissions pledge means that the EU can not credibly take the lead through its traditional means: setting an example for others to follow by pledging the most ambitious target. In fact, using 2007 emissions as the benchmark, in order to offer the same percentage reductions as Australia and Japan it would have to up its target to 34–35 % compared to 1990. Indeed, an average of six econometric criteria of “comparability of effort” suggests that a 35 % pledge would represent the EU's fair share of an aggregate 30 % reduction for industrialized countries.³

Copenhagen showed that the EU's approach of attaching conditionalities to its target gives it little leverage. As President Barosso apparently said, “no one seemed to be interested in this offer”. Since Copenhagen, the EU, Australia, Japan, Russia and Norway have all submitted conditional target ranges under the Copenhagen Accord, and the summit's ambiguous outcome is contributing to a marked shift towards the lower end of pledged targets in Australia, and possibly Japan.

The EU moving unilaterally to 30 % may have a limited impact on other countries' positions. For example,

resolute action by the EU could help protect Japan's ambitious target against attack from domestic quarters. While it is true that Australia looks more towards the USA and China, the perceived ambition of European action has been used by both sides in the Australian debate. Most recently, opposition spokesman on climate Greg Hunt called the EU ETS a “mock trading scheme” which only addresses “four percent of business as usual”. Further ambition from the EU could thus strengthen the political space in Australia to establish firmer targets and policies. It could also help to rebuild trust and credibility with developing countries. But the higher target alone is unlikely to significantly move the big players, the USA and the BASIC countries—China, India, Brazil and South Africa.

However, there might be a case for moving to 30 % unilaterally for its own sake, in order to speed the transition to a competitive, low-carbon economy.⁴ As China's lead negotiator put it, “Countries with low-carbon industries will have a developmental advantage. Some people believe this is a global competition as significant as a space-race in the Cold War”. As the EU negotiates its 2020 strategy to replace the Lisbon strategy, competitiveness, innovation, sustainability and growth are shaping as key themes, implying synergies with a stronger climate policy. A shift in the EU's rhetoric towards these themes is also more likely to resonate within the US discourse, perhaps strengthening the political space for the Obama administration.

³ See, Michael den Elzen et al. “Pledges and Actions”, The Netherlands Environmental Assessment Agency, 2009.

⁴ See for example, Taylor Dimsdale and Matthew Findlay, “30 % and Beyond: Strengthening EU Leadership on Climate Change”, E3G, 2009.

Moreover, if the EU can combine a stronger domestic commitment to decarbonisation with a coherent institutional proposal for the global climate regime, it could recapture its credibility and perhaps give renewed impetus to the climate talks.

Returning to the two track approach

Negotiations around a post-2012 agreement could either produce a “two-track outcome”, with developed countries (except the USA) inscribing targets for a second commitment period of the Kyoto Protocol and the negotiation of a separate instrument for the USA and major developing countries, or a “single legal outcome” to replace the Kyoto Protocol.

In Copenhagen, the EU advocated for a single legal instrument to replace the Kyoto Protocol, yet suggested that this instrument subsume the “Kyoto system with all its bits and pieces”⁵. The US was and remains domestically unable to commit to a “Kyoto-like”, ratifiable treaty on climate change. Developing countries are not yet ready to commit to absolute, legally-binding targets. Thus at this stage a comprehensive single legal outcome could only be weaker in its legal nature than the Kyoto Protocol. In short, the EU’s position was fundamentally incoherent.

Article 3.9 of the Kyoto Protocol states that “Commitments for subsequent periods for Parties in Annex 1 shall be established in amendments to Annex B to this protocol”. Hence there is no sunset clause in the Kyoto Protocol and the responsibilities of Annex 1 countries are indisputable. To developing countries the EU’s position thus seemed hypocritical. On the one hand, the EU seemed to push for more bindingness and stringency in developing countries’ targets, whilst at the same time apparently abandoning the world’s only legal framework to cap developed countries’ emissions. This created distrust among the developing countries, and gave

5 Anders Turesson to reporters in Bangkok according to Point Carbon, Online News, “EU in “rescue operation” to save Kyoto”, October 5, 2009. Mr Turesson was the chief negotiator of Sweden, which held the rotating EU presidency.

obstructionist states a welcome excuse to disrupt negotiations on procedural grounds. And it hindered the EU from engaging with more progressive developing countries like South Africa, Brazil and Mexico to look for a stronger outcome in the LCA track. Thus the EU’s institutional position was a major driver for its isolation in Copenhagen.

The Kyoto Protocol established a coherent multilateral regime with agreed rules for accounting and emissions trading. Replicating this level of operational detail in a new instrument would take years. Aside from the technical difficulties, it could be some time before developing countries would even politically accept to work towards this goal. This would threaten a gap between the end Kyoto’s first commitment period and the entry into force of a replacement. There is also the risk that a new instrument would not enter into force at all, if for example the US Senate chose not to ratify it. Hence rather than joining in an inevitable slide toward less legal bindingness and less operational certainty, if the EU chose to support the Kyoto Protocol it would be sustaining the legal and technical benchmark for the ultimate result of negotiations in the LCA track.

While it may be a bitter pill to swallow, the EU should ultimately recognize that a legally-binding deal in the LCA track remains at the very least several years hence, and that a more realistic path to it needs to be charted. The EU’s approach could combine the traditional “top-down” approach based on a legally binding treaty in the Kyoto track, with a “bottom-up” approach in the LCA, building over time the elements of the final agreement. Rather than subsuming the Kyoto Protocol into a new agreement to replace it post-2012, under this scenario elements of the Kyoto framework would “fertilize” the LCA track over time, strengthening it legally and operationally.

In this regard, the Copenhagen Accord represents a significant breakthrough in broadening the international climate regime to major developing countries and the USA. It could form a political reference point for working towards an outcome in the LCA that would ultimately justify Kyoto parties staying within that framework. The review provided for under the Copenhagen Accord could provide a reference point towards the achievement of such an instrument.

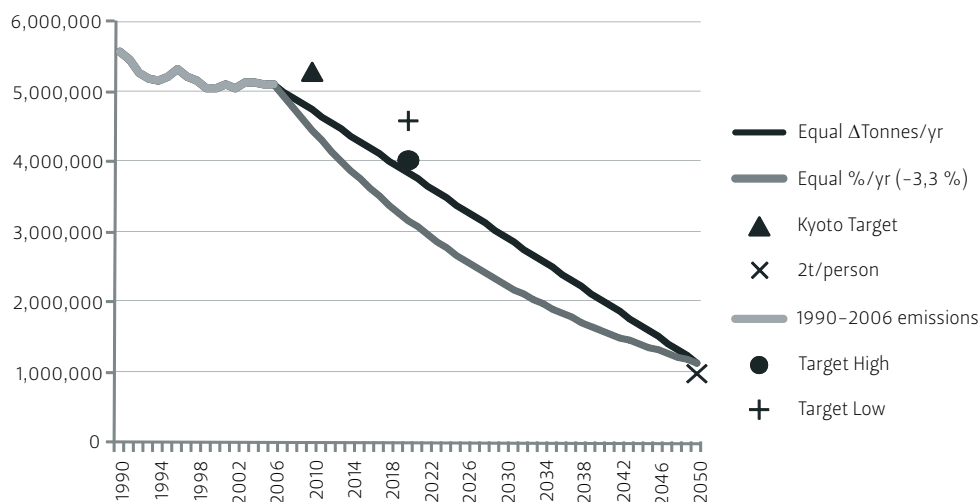


Figure 3: The EU's emissions target compared to implied trajectories to a 2050 target of -80 % from 1990 levels (Climate Strategies, 2010)

This kind of two-track approach would depend on being able to win sufficient participation in the Kyoto Protocol to make it a credible instrument. This means forging a rules- and trading-based alliance between progressive developed and developing countries. Of the former, Norway and Japan may seem the most likely candidates. Japan has strongly promoted a single legal outcome in the negotiations, but will at the same time find it politically hard to not comply with its international obligations, and a protocol that is carrying the name of its former capital. Hence, if the EU inscribed new targets in Annex B of the Kyoto Protocol, it seems likely that Japan would follow. Australia may be more likely to take its cue from China and the USA, but it has been flexible on the issue of whether to continue the Kyoto Protocol.

Russia represents a very significant share of Annex B emissions. Its rhetoric has been strongly against a second commitment period for the Kyoto Protocol. Nonetheless, it is likely that Russia will meet its target of 25 % below 1990 levels by 2020, regardless of what instrument it falls under. Russia has also been largely aloof from negotiations, and may be unlikely to strongly engage in the debate on the legal architecture of the regime. Russia's main concern is to ensure that the regime includes the USA and major developing countries. If this desire is satisfied under another instrument, it may be politically possible for Russia to inscribe a target for the second commitment period of the Kyoto Protocol, especially given its large surplus of AAUs and increasing interest in the Kyoto mechanisms. It can not be excluded, however, that Russia could look for concessions, as was the case with its Kyoto ratification.

As the case of Russia makes especially clear, a credible instrument for major developing countries and the USA is politically necessary for Annex B countries to commit to a second commitment period. But even the pressure of Copenhagen couldn't force consensus on the need to achieve a legally-binding agreement for the USA and major developing countries. Thus the modus operandi may shift towards a principle of "action first, then architecture". For the LCA track then, the key question becomes: can a compromise be found which is a) strong enough to satisfy Annex B countries, such that they might be willing to continue in Kyoto, b) flexible enough that the USA and major developing countries could sign up, building up the technical and legal detail over time?

Much thus depends on the expectations of Annex B countries on the USA and major developing countries, and on the latter's willingness to enjoin a process under the UNFCCC to formalize the progress made in the Copenhagen Accord. But one scenario going forward could see this kind of two-track approach, combining elements of the soft-law/hard-law, bottom-up/top-down dichotomies, with commitments being made to the Kyoto Protocol's second commitment period, complemented by soft-law decisions and on-going negotiations in the LCA track. A key element of such a deal may be a clear mandate to achieve a legal instrument under the LCA and conditions on the second commitment period of Kyoto concerning the coverage of global emissions by it and the LCA.

What next?

For the EU, pursuing both the options outlined above would require huge political effort. Internal opposition to the 30 % target would have to be overcome. A politically difficult reversal of its position on Kyoto would need to be engineered. Once again, the EU could be left to win other countries to its stance on the Kyoto Protocol. For the EU, this could be a key test of its belief in its low-carbon rhetoric, both in terms of its willingness to raise its targets and to accept the present political necessity of a softer approach for major developing countries and the USA.

The alternative to the two-track approach, however, would see the slow and acrimonious demise of the Kyoto Protocol, and in parallel a messy, bitter and interminable round of “Coha” negotiations to build up an alternative framework from the ground up.

Negotiating some of these issues effectively may always be a challenge under the UNFCCC, even if the voting is reformed along the lines of the Montreal Protocol’s “double majority” requirement. Therefore, consensus could be built up on a small set of thorny issues in other fora, e.g. the G20 or Major Economies Forum. Mechanisms must be found to bring such fora closer to the UNFCCC, while acknowledging that latter’s primacy and legitimacy going forward. Yet the dispute over the relationship of the Copenhagen Accord to the UNFCCC shows the practical and political difficulty of doing so.

There is a strong case to be made for a two-track approach. A rules-based, legally-binding instrument could coexist with a messier, soft-law process to cover advanced developing countries and the USA, and work towards a legally-binding instrument. If

consensus could be reached between the EU and the USA on the need to work towards such a two-track approach, some momentum and purpose could be returned to the international climate negotiations. As long as it is clear that it won’t be expected to be a part of it, the US could thus have a stake in the continuance of the Kyoto Protocol.

The glue for this kind of “messy” solution may be a robust, formal system to measure, report and verify developing countries’ emissions in order to give countries confidence that others are implementing what they promised. Establishing such a system for developing countries could be a priority for the EU, and here its position on the Kyoto Protocol could potentially give it leverage with progressive developed countries like India, Mexico and Brazil.

Thomas Spencer
Research Assistant

Kristian Tangen
Senior Adviser

Anna Korppoo
Programme Director

With thanks to:
Teija Tiilikainen, UPI; Juha Jokela, UPI; Alexandru Luta, UPI;
Antto Vihma, UPI; Michael Grubb, Climate Strategies

The Finnish Institute of International Affairs
ISBN 978-951-769-254-0
ISSN 1795-8059

Cover photo: Duke University Archives

Layout: Tuomas Kortteinen

The Finnish Institute of International Affairs 2010
www.upi-fia.fi