

For Now, Durban Platform Is Just A Stepping Stone

Law360, New York (January 04, 2012, 1:23 PM ET) -- Although it was scheduled to end on Dec. 9, 2011, the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) carried on for two extra days and reached a deal that surprised many observers.

The so-called "Durban platform" takes significant strides toward the development of a new global agreement on climate change that is binding on all countries.

In light of the renewed commitment by the parties to the UNFCCC to pursue a binding treaty under the Durban platform, the parties to the Kyoto Protocol also agreed to a second commitment period to begin in 2013.

While the extension of the Kyoto Protocol would be significant to those entities operating in countries that will accept emission limitations in the second commitment period and participants in the Clean Development Mechanism (CDM), the Durban platform itself has no impact unless a legally binding agreement to reduce greenhouse gas emissions is ultimately reached.

The COP agreed to develop a working group on the "Durban platform for enhanced action." The Durban platform calls for "a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the UNFCCC applicable to all Parties."^[1]

If agreed to, the legal instrument envisioned by the Durban platform would impose binding emissions limitations on both developed and developing countries. The Durban platform calls for a new protocol to the UNFCCC to be adopted by 2015 and enter into force no later than 2020.^[2]

As such, the Durban platform is best understood as an agreement to agree, and, until the details of a binding legal instrument are agreed to, the possibility of the new and binding global deal on greenhouse gas controls should be viewed with skepticism.

In light of the Durban platform and the agreement by all parties, including China, India and the United States, to work toward a treaty including legally binding greenhouse gas emission limitations, the parties to the Kyoto Protocol, led by the European Union (EU), agreed to a second commitment period to the Kyoto Protocol.

Prior to the COP in Durban, it was widely expected that the Kyoto Protocol would be allowed to expire at the end of the first commitment period on Dec. 31, 2012, and there were some doubts about whether the CDM — the process by which investment in low-carbon technologies in developing countries can generate U.N.-approved carbon credits — would continue to be viable.

In Durban, the parties to the Kyoto Protocol agreed that there will be a second commitment period beginning on Jan. 1, 2013, and running until either Dec. 31, 2017, or Dec. 31, 2020.[3] Parties are to submit their emission-reduction targets, in the form of quantified emission limitation or reduction objectives no later than May 1, 2012.[4]

As of this writing, the EU has committed to emission reductions of 20 percent below 1990 levels and reiterated its conditional pledge of 30 percent below 1990 levels. The EU has stated that it will commit to a 30-percent reduction if other developed countries commit to comparable emission reductions and developing countries "contribute adequately according to their responsibilities and respective capabilities." [5]

Nine other countries have joined the EU in pledging emission-reduction targets for the second commitment period, while Australia and New Zealand are still considering whether they will ratify the agreement.

Notably, Japan, Russia, and Canada have maintained their stance that they will not commit to further greenhouse gas emission reductions under the Kyoto Protocol.

The extension of the Kyoto Protocol is significant to those parties covered by the protocol or participating in the CDM. With respect to private parties, the extension of the Kyoto Protocol will be important for those entities that turn to the carbon markets either as a source of emissions allowances or a means to finance emission-reduction projects in Annex II countries.

As noted above, much work remains to be done before the Durban platform could mature into a binding international agreement. Thus, while the Durban platform is a potentially significant political milestone, it is of little practical impact to entities operating in countries that are not parties to the Kyoto Protocol.

For example, while an ultimate agreement to a legally binding treaty under the Durban platform could spur efforts to re-energize domestic climate change legislation in the United States, the Durban platform itself seems unlikely to alter the domestic political and regulatory landscape.

The COP also agreed to mobilize \$100 billion per year by 2020 to address the needs of developing countries and continue working toward mechanisms to sectoral emissions-reduction schemes and new market mechanisms.[6]

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[1] Draft Decision -/CP.17, Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action, ¶ 2 available at unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_durbanplatform.pdf.

[2] Id. ¶ 4.

[3] Draft Decision -/CMP.7, Outcome of the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its sixteenth session ¶ 1, available at unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/awgkp_outcome.pdf.

[4] Id. ¶ 5.

[5] Id. Annex 1.

[6] See Draft Decision -/CP.17, Outcome of the work of the Ad Hoc Working Group on Long-Term Cooperative Action Under the Convention, available at unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_lcaoutcome.pdf.

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