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CCS and CDM: the eligibility of carbon capture and storage projects under the clean development mechanism of the Kyoto Protocol - the Cancun Meeting of the Conference of the Parties

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Decision commented on:

UNFCCC, Kyoto Protocol, CoP\MoP Decision on "Carbon dioxide capture and storage in geological formations as clean development mechanism project activities"

The 16th Meeting of the Conference of the Parties to the United Nations Convention on Climate Change (UNFCCC), and the 7th Meeting of the Parties to the Kyoto Protocol (KP) (CoP\MoP) concluded last week in Cancun. In the assessment of most observers this was a successful meeting but perhaps only because expectations were modest and anything seemed liked progress after the Copenhagen debacle of last year. But there is still much that remains to be done before countries can agree on a successor to the first commitment period of the KP which expires in 2012. Without such agreement the KP will simply die. Some, especially Europe, but also developing countries, want to see a second commitment period. But others, like Canada, point to the lack of inclusiveness of the KP (to say nothing of our own non-compliance which would result in a penalty on Canada during any second commitment period) and want to see an alternative to the KP that imposes emissions reduction obligations not only on the United States (not a party to the KP) but also on the so-called BRIC countries (Brazil, India, China) as well as other developing countries.

The Meeting did make progress on number of larger matters including REDD+ (reduced emissions from deforestation and forest degradation) and on the narrower issue of the eligibility of carbon capture and storage (CCS) projects under the clean development mechanism (CDM) of the KP. The purpose of this note is to provide an update on that debate.

What is the issue?

The CDM is one of three flexibility mechanisms under the KP. Flexibility in this context means that a party to the KP can meet it obligations not just by reducing its own emissions or by enhancing sequestration in its territory but it can do so by other means as well, including by: (1) emissions trading, (2) by investing in emissions reduction facilities in another KP party that has an emission reduction commitment (joint implementation (JI) in the argot of the KP), or (3) by investing in a project in a developing country that is a party to the KP but which does not itself have emissions reduction obligations. This latter option is the so-called clean development mechanism (CDM).

Conceptually, the CDM is similar to the offsets regime that is familiar to Alberta's oil and gas industry under the terms of the *Specified Gas Emitters Regulation* (SGER) (Alta Reg. 139/2007).

Under that regime, covered entities (facilities that emit more than 100,000 tons CO2 per year) can meet their obligations by reducing emissions (based on emissions intensity targets), by paying into a fund, by purchasing credits from a covered emitter that has beaten its own target (emissions performance credits), or by purchasing offset credits created in Alberta. An offset credit is generated by a non-covered entity (i.e. a party that does not have its own obligations under the SGERs) which engages in some project activity which produces reduced emissions or enhanced sequestration that go beyond ('additionality') some notional base line of business as usual. Applied in the context of the CDM under the KP, the covered entities are the states that have quantified emission reduction obligations under the KP (e.g. the EU or Canada), and the offset projects are the CDM projects that are authorized in developing countries that do not have their own KP obligations.

The KP system (through something called the Executive Board (EB)) asserts a fair degree of international supervision over project eligibility under the CDM. The reason is simply that a developing country party with no emission reduction obligation has an incentive to overstate the emissions reductions associated with qualifying projects. Hence, the rules specify that a qualifying project must fit within an approved protocol, and for a long time there has been a debate as to whether CCS projects should be able to qualify under the CDM. Key concerns include problems of long term liability, the problem of boundaries (what is included and what is excluded in terms of determining the emissions reductions attributable to the project), the problem of scale (CCS projects are so large that if fully eligible they may dilute the obligations of parties with KP obligations) and the concern that CCS projects may take capital from smaller scale projects that may be more transformative and more sustainable.

CCS eligibility for CDM has been under discussion within the KP system for at least five years and has been so politically charged that in this case the eligibility decision has been assumed by the CoP\MoP itself rather than the EB.

So what happened at Cancun?

The Cancun meeting agreed that CCS should be eligible under the CDM but on a conditional basis, i.e. provided that some of the more technical concerns articulated above (and some others) can be "addressed and resolved in a satisfactory manner". Which begs the question 'satisfactory to whom'? The answer that the adopted Decision gives is the Subsidiary Body for Scientific and Technological Advice (SBSTA) which shall in turn report on appropriate "modalities and procedures" at the next CoP\MoP. The Decision then goes on to list (paragraph 3, clauses (a) – (o)), some 15 or so items that need to be elaborated upon. The Decision contemplates submissions from parties and others by February 2011 followed by a technical workshop of legal and technical experts. If all goes well the result will be the adoption of a CCS\CDM eligibility rule book at the next CoP\MoP in South Africa in December 2011.

In sum there is progress in deciding on CCS eligibility within the CDM and indeed even a decision in principle to make CCS eligible, but much work on the details remains to be done. It is also apparent that all of this may be for nought. This will be the case if there is no agreement to extend the KP into a second commitment period. If that is the case no doubt there will be cognate questions to consider such as how CCS projects can be integrated within NAMAs (nationally appropriate mitigation strategies) and how such projects will attract carbon financing, but the questions may be easier to resolve if a broader range of states assumes emission reduction obligations since that will serve to obviate the moral hazard issues associated with building a

project in a jurisdiction that has no direct responsibility for any emissions that may result from failures in its own domestic decision-making such as poor site selection procedures.

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