November 16, 2021

Preliminary Reflections on COP26 and the Glasgow Climate Pact, Part 1

By: David V. Wright

Matter Commented On: COP26 (Twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change) and the Glasgow Climate Pact (Decision -/CMA.3)

This is the first of two posts that discuss several notable developments from COP26, some of which took place within the formal negotiations process (e.g. market mechanism rules, financial assistance), and some of which took place in parallel (e.g. Global Methane Pledge, US-China bilateral announcement). This post is focused on the latter parallel developments, which primarily emerged in the first week of the conference. My next post will focus on the former, which largely materialized in the second week.

Overall, the stakes were particularly high at this COP because the parties needed to reach an agreement on final elements of the rulebook containing details of how the Paris Agreement would be implemented, many parts of which will be the most important and consequential as implementation unfolds in years to come. Additionally, a number of long-standing issues remain unresolved, including with respect to long-term financial assistance for the most vulnerable countries to reduce emissions and respond to the impacts of climate change. Overall, COP26 was a key juncture for ensuring that party commitments would add up to keeping within reach the overarching goal of keeping global mean temperature rise to below 1.5 degrees. It was these high stakes that led some to characterize this COP as "now or never" and a "last-chance saloon" scenario.

Developments Parallel to Formal Negotiations

As with any COP, there were a number of high-profile, high-level announcements made throughout the event, largely concentrated during appearances of world political leaders during week one of the two-week conference. Developments presented here focus on announcements that involve Canada or have the most relevance for Canada.

Cap on Oil and Gas

On day one of the summit, Canada announced that it would impose a cap on oil and gas sector greenhouse gas (ghg) emissions as a measure to achieve net-zero emissions by 2050. Details were scarce, as they typically are with such an announcement at such an event. However, this is consistent with a 2021 fall election Liberal party platform commitment, and the path to implementing this commitment is sketched out in a letter from Ministers Guilbeault and Wilkinson to the federal government's next-zero advisory board, which requests that board's assistance with "key guiding principles to inform the development of quantitative five-year targets."

In short, and subject to further legal analysis to come (quite possibly on ABlawg), from a legal perspective this is completely possible in the Canadian context. As noted in previous scholarly commentary, the federal government has ample constitutional authority to regulate ghgs emissions and has indeed been doing so for many years. The most controversial example in recent years has been the Greenhouse Gas Pollution Pricing Act, SC 2018, c 12, s 186, recently found to be constitutional by the Supreme Court of Canada (*References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 (CanLII), but the longer-standing approach has been through targeted direct regulation. Examples include regulating vehicle emissions [*On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2] , coal-fired power plants [*Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*, SOR/2012-167], and methane emissions [*Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector), Regulations Respecting*, SOR/2018-66]. While a significant announcement, capping oil and gas emissions will likely be done through this existing regulatory approach under the *Canadian Environmental Protection Act*, *1999*, (SC 1999, c 33). It is also possible that this cap initiative is implemented cooperatively between provinces and the federal government. Alberta, of course, has itself enacted a legislated cap on oil sands emissions in the form of the *Oil Sand Emissions Limit Act*, (SA 2016, c O-7.5), as commented on in this previous post from my colleague Nigel Bankes.

In terms of specific quantitative caps, details remain to be seen and the announcement certainly triggers many questions. A few key issues to wrestle include: coverage (what specifically does "oil and gas sector" mean?), sources (which facilities and actors are subject to this regulation?), time horizons (what does "today" mean? what might we see every five years toward net-zero?), contribution to national reductions (where and how does this fit in Canada's existing ghg emission reductions plan?)

As an aside, one way to view this announcement is as an illustration of the value of Canada's recently created climate accountability regime. The new *Canadian Net-Zero Emissions Accountability Act*, SC 2021, c 22, requires that the federal government release a detailed, comprehensive emissions reduction plan for 2030 within six months of that statute coming into force, and then ongoing plans and reports on progress until 2050. This new regulatory initiative to cap oil and gas will have to be included in that plan, complete with details regarding its role in achieving emission reductions. As I've written previously in this ABlawg post, having this comprehensive bird's eye view of Canada's emissions reduction approaches will be a benefit for everyone regardless of specific interests and positions.

Ending Fossil Fuel Subsidies

On November 04, Canada and a group of 21 other countries, including the US and UK, announced a commitment to "end" public support for the fossil fuel sector by the end of 2022 (see this Government of Canada news release). This "Statement on International Public Support for the Clean Energy Transition" builds on previous commitments, including by the G7, and is bundled with a commitment to prioritize "support fully towards the clean energy transition." Similar to the oil and gas sector cap announcement, details were scarce. Rather, the government has indicated that it "will develop policy direction that will define the scope of this policy" (see above news release). There are, however, important qualifiers apparent at the moment. Specifically, the commitment is to "end *new* direct public support for the international unabated fossil fuel sector by the end of 2022" (emphasis added), and there is a potentially significant exception "in limited and clearly defined circumstances that are consistent with the 1.5 degree Celsius and the goals of the Paris Agreement" (see above news release).

What all of this means at the practical level in the Canadian context remains to be seen. Reducing subsidies for fossil fuels has been discussed for many years but has been challenging to implement for a number of reasons. One significant issue is the challenge of defining and identifying what actually constitutes a subsidy (e.g. does this include industry-friendly royalty rules?). This 2019 report from Canada's federal Commissioner of the Environment and Sustainable Development presents an accessible view of the matter (see also this report published by the International Institute of Sustainable Development). Such a high-profile, broad-based coalition announcement at COP26 suggests that things could be different this time, but only time will tell, and the qualifiers noted above mean this will likely not result in a stark change in the short term. It should be noted, however, that a smaller group of national and sub-national governments, including Quebec, went a step further by creating the "Beyond Oil and Gas Alliance", which commits to a "managed phase-out of oil and gas production" including through ending new licensing rounds for oil and gas exploration and production (Beyond Oil and Gas Alliance news release).

Methane

Canada was also part of a group of nations that officially launched the "Global Methane Pledge" at COP26. This Pledge was actually announced this past September and Canada confirmed its support in October, but the Pledge was showcased at the climate summit in an effort to build momentum behind the Pledge and for the summit more broadly. The number of countries that signed on increased throughout COP26, growing to more than 100 by the end. The Pledge calls for countries to cut methane emissions by at least 30% of 2020 levels by 2030.

Canada has been acting on this issue for some time. For example, in 2016 Canada committed to reducing methane emissions from the oil and gas sector by 40-45% below 2012 levels by 2025 and has put in place regulations to do so. Canada has also committed to reducing methane emissions from oil and gas by at least 75% below 2021 levels by 2030. As such, signing onto this international Pledge does not represent much significant new action on Canada's part, though implementing these commitments will likely require a next phase of the methane regulations with increased stringency. Notably, the US was also a high-profile part of this pledge at COP, and this builds on the Biden Administration's climate change initiatives that essentially picked up from where the Obama Administration left off on methane.

One specific issue to watch in the implementation of these commitments in North America is the use of the "social cost of methane" in the cost-benefit analysis of those draft regulations (see this recent technical document on the topic). As I've noted in this previous post, Canada is now using a high value for the social cost of carbon in its regulatory rule-making process, and this will almost certainly be the case in the methane context. Depending on timing, Canada may use figures based on the reboot underway in the US, which will produce a fresh set of updated numbers soon, in January 2022.

Phasing out Coal-powered Electricity Generation

During COP26, more than 40 countries announced a commitment to phase out the use of coal for electricity generation. This group, named the "Powering Past Coal Alliance", included both developed and developing countries, with the former committing to a faster phase out than the latter. Canada was part of this group (see this Government of Canada news release), largely just reiterating a transition already underway under the existing coal-fired power plant regulations noted above. While this was not a big, new step for Canada, it was a significant development at COP26 given that the group included a number of countries heavily reliant on coal, such as Poland, South Korea, Indonesia, and Vietnam. This group did not, however, include several key coal-burning jurisdictions, including China, India, and Australia. As noted in Part 2 of these COP26 posts, this coal phase-out commitment in week one provided momentum for inclusion of similar in what would become the Glasgow Climate Pact at the end of week two; however, the attempt to explicitly refer to coal "phase-out" in the final text was changed in the final hours to a weaker articulation as a "phase down."

Reincarnated US-China Bilateral Pact

In a surprise development in week two of the COP, the US and China announced a bilateral declaration called the "US-China Joint Glasgow Declaration on Enhancing Climate Action in the 2020s." It focuses on cooperative action on clean energy, methane, deforestation, and several other areas. This is a reincarnation of the Obama Administration-led 2014 US-China bilateral pact that played a critical role in the lead up to COP21 in Paris and the relative success that became the Paris Agreement. The Trump Administration pulled out of that agreement, and also withdrew from the Paris Agreement. While many details are to come, and its scope is more limited than its predecessor, this reincarnated bilateral arrangement is a significant development that restores a foundational piece of common ground between the world's two largest emitters. One detail in the Declaration that has been overlooked in the fervour around the abovementioned shift from phase-out to phase-down language in the final COP26 outcome is that a seed for that specific text change was actually sown in this bilateral pact. It states, "China will phase down coal consumption during the 15th Five Year Plan and make best efforts to accelerate this work" (at 9(c)).

Ambiguity notwithstanding, this bilateral Declaration provided important political momentum for the COP26 negotiations. It was a boost because it demonstrated clearly to other nations that the US and China are firmly operating inside the Paris Agreement paradigm and that these major emitters approach climate change as an issue that transcends their many other political differences. While Canada is obviously not part of this bilateral agreement, the development does provide assurance that Canada's largest trading partner is also taking a relatively ambitious approach to climate change, and is going to use its international influence to move other key trading partners in a similar direction. This is starkly different from the Trump Administration years. Of course, political winds shift, but for now this is a relatively helpful tailwind for Canada's current approach.

Concluding Reflections

While there was much to be accomplished at COP26 within the formal negotiations process, the conference also included a significant amount of activity and announcements parallel to that process. Canada had a very high profile on this front. Many of the announcements were instances of re-announcing existing commitments and measures, but doing so in concert with other developed and developing countries provided momentum within the formal negotiations. As with everything in this realm, implementation is the critical next step, and Canada certainly has set an ambitious law and policy agenda for the months, years and decades ahead. Following through on that agenda will be important for achieving emissions reductions, and it will also be critical for the purposes of setting an example within an international climate change regime that is built on multilateral peer pressure and trust between the Parties.

This post may be cited as: David V Wright, "Preliminary Reflections on COP26 and the Glasgow Climate Pact, Part 1" (November 16, 2021), online: ABlawg, http://ablawg.ca/wp-content/uploads/2021/11/Blog_DVW_COP26_Reflections_Part1.pdf

To subscribe to ABlawg by email or RSS feed, please go to http://ablawg.ca

Follow us on Twitter @ABlawg