

**“From Negotiation to Implementation:  
The U.N. Framework Convention on Climate Change  
Strategic Issues for International Business”**

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Thank you to Jerome Blackman of U.S. EPA and the other organizers for having invited me to help set the stage for this important conference on SF6 and the environment. I intend to talk about recent global climate change policy as it pertains to and impacts the international business community. The main – but by no means the only -- locus of activity on global climate change has been the United Nations Framework Convention on Climate Change, UNFCCC, a treaty that emerged as one of the outcomes of the Rio Earth Summit in 1992 – this is the emerging international “master-plan” to address climate change. I have participated as a business observer in the UNFCCC process since 1993, and have worked with U.S. and international business groups to track and understand developments and develop and advocate consensus positions.

**INTRODUCTION**

I characterize the Framework Convention as a “treaty about everything.” This makes it a challenging topic to condense (let alone negotiate). Its environmental aspects are well-known, but its economic issues less so, despite the reality – this treaty will impact almost every aspect of commercial activity. These economic issues happen are the focus of my work in international business advocacy and is what I will pay particular attention to in my remarks today.

USCIB works to promote an open system of world trade, finance and investment in which business can flourish and contribute to economic growth, human welfare and protection of the environment. Representing some 300 U.S. companies, professional services firms and

associations, it is the U.S. affiliate of the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee to the OECD and the International Organization of Employers. USCIB's Environment Committee and its Working Group on Climate Change work actively to communicate business views on climate questions to the U.S. Government, international organizations and foreign business communities.

USCIB believes that addressing the climate challenge depends on a fully engaged business response on domestic and international fronts. U.S. businesses have already taken significant actions to reduce the potential climate impacts of their products and processes. To gain truly effective business participation, an inclusive economically efficient international framework, as well as balanced and reasonable domestic programs, should be developed with business as a partner.

I will begin by giving a highly selective summary of where the “treaty about everything” and its Kyoto Protocol stand today, based on the recently concluded 8<sup>th</sup> Conference of the Parties in New Delhi, COP8.

Then I will talk about two areas in which my organization, and its international affiliate, the International Chamber of Commerce (ICC), have been active in clarifying for negotiators and other participants some basic characteristics and preoccupations business “writ large” has in the climate process:

- The role of companies in the “Kyoto Mechanisms,” i.e. Joint Implementation (JI), the Clean Development Mechanism (CDM) and Emissions Trading (ET). Do we as business know enough to begin to plan on these “market-based” procedures that exist under the Kyoto Protocol? What is still needed from a business perspective?
- Long term issues arising from implementation and evolution of the Kyoto Protocol.

The Administration's views on the Kyoto Protocol are widely known. The White House has put a domestic program on the table, and at the international level, the Administration has undertaken several bilateral and regional programs, with more in the works. Bearing all that in

mind, one might ask why U.S. companies shouldn't focus just on those domestic and bilateral activities, and allow the Kyoto ship to sail on.

The international climate policy framework will have real impacts on international market access for U.S. companies, and will affect costs and regulatory requirements in many countries. These international rules and markets will make themselves felt at the domestic (including state) level sooner or later.

I believe that we can expect to feel these market and regulatory ripples regardless of the Kyoto Protocol's entry into force, certainly globally, and also here in the U.S. One of the challenges for business is that despite the Treaty's aspiration to be that "master-plan," we are not yet working from a single clear rule book under this treaty; implementation in different countries will certainly vary, and future issues are not being given the attention they deserve.

### **THE 8<sup>TH</sup> CONFERENCE OF THE PARTIES (COP8): MOVING TO IMPLEMENTATION REGARDLESS OF ENTRY INTO FORCE**

The main source of suspense at COP8 was the question of when the Kyoto Protocol could be expected to enter into force . Last year, the Johannesburg Summit on Sustainable Development was to have been the intended landmark for that entry into force. Since then, expectations for when entry into force would occur have continued to recede into the future, with the possibility of a "first Meeting of Parties" marking that entry into force next year at the 9<sup>th</sup> Conference of the Parties still far from certain. As I understand it, Russia's ratification is the lynch pin, but the timing of that is not moving quickly or predictably, with mixed signals sent by Russian representatives in New Delhi. Still, entry into force is expected eventually.

The Clean Development Mechanism (CDM) Board met in New Delhi during COP8, and its emerging procedures for project approval appear to be taking a turn for the complicated and costly. The emerging business expectation is that the CDM's increasingly byzantine structure will have a discouraging influence on attracting the thousands of projects that need to be initiated

to have meaningful impact on bringing investments to motivate developing countries toward less greenhouse gas emitting energy.

At COP8, any discussion of commitment periods beyond the first one– or even discussion of how to discuss them – was so contentious that it resulted in what has become the all too familiar gridlock and postponement. In the end, the Ministerial – or Delhi – Declaration made no mention of this question. Developing countries also emphasized a shift in emphasis from mitigation to adaptation, which one could speculate was both a recognition of their greater vulnerability to potential climate change, but also wishful thinking in expectation of funding and technology flows that adaptation could channel their way.

The government of Belgium proposed a workshop on Enabling Frameworks for Technology Development and Transfer, which caught the attention of business people there. This issue promises to gain momentum, both in light of the adaptation focus referenced above, but also because of the shift toward implementation.

### **THE ROLE OF COMPANIES IN THE KYOTO MECHANISMS (KMs): TRUTH, FICTION AND OPEN QUESTIONS**

The obligations of the Kyoto Protocol fall on countries, not companies. It is countries' national laws and regulations that govern both a company's obligations and opportunities. These in turn will determine companies' ability to participate in the KMs, presumably giving them access to emissions credits in their many forms.

A further point to lay the groundwork: oversimplistic generalizations about business should be abandoned in recognition of the more complicated real world -- companies come in many forms, as SMEs that do business in one country, affiliates of multinational companies and joint venture and partnerships with multiple owners. The international business community is far from monolithic, and its diversity is neither well understood nor tapped by this treaty process. Since companies can be based in developing countries as well as developed countries, which poses the

potential for a shifting balance of competitiveness, given the lack of binding commitments for developing countries under the Convention.

Eligibility to use the Kyoto Mechanisms will depend on national circumstances that will vary from country to country. However notwithstanding national variability, the rules pertaining to Kyoto Mechanisms in any given country should apply equally to all companies in a given sector, regardless of the nationality of the company's owners. By this token, all companies doing business in non-Annex 1 countries should be equally eligible to develop CDM projects – both “local” companies and affiliates of foreign companies should be able to develop CDM projects.

So business still doesn't know – and wants to know: how will companies be able to acquire, exchange and utilize credits? For many companies in countries with greenhouse gas controls, credits will be required to operate their business. Moreover, the economic and strategic value of credits could be important as an investment for any company, anywhere.

To elaborate, for companies that invest in JI or CDM projects, consideration of the potential value of credits is part of the investment decision. For operating companies in JI or CDM projects, the realization of credits with time becomes part the project's opportunity and risk. Acquisitions and sales of credits will subject companies to risk or liability that credits may become invalid or embargoes. If they become too cumbersome, JI and CDM procedures themselves will lengthen or delay project approval and add costs for analyses and information, not to mention risks from approval delays.

To summarize, for international business, the Kyoto mechanisms are important, but aspects of their procedures remain unresolved in key areas. As differentiated climate policy implementation plays out, competitiveness changes could give rise to trade barriers. These are all major matters for the international business community.

## **LONG TERM CONSIDERATIONS: INTERNATIONAL CLIMATE CHANGE POLICY AND INVESTMENT**

Energy investments can entail large costs and long lead-time: consequently financing, cost recovery and pricing are affected by long term considerations. Procedures for decisionmaking can be contentious and costly, and the risks – of stranded assets, infrastructure bottlenecks and limited power capacity – are real.

More specifically, such long-term considerations for business investments include:

- Viability of long-lived investments with cost-recovery bases beyond 2012;
- Availability of energy supply and associated infrastructure to support business, especially energy intensive business;
- Siting of new facilities and expansion of existing plants;
- Competitiveness implications of national policies.

Of course, business routinely deals with uncertainty in all investments and addresses it through design, financing, diversification and insurance. To be fair, uncertainty already exists on implementation of the Kyoto's first commitment period, as to companies' emissions obligations, supply of emissions credits and the cost of those credits. We can be certain that new negotiations will commence (according to the relevant treaty language by 2005) for the post-2012 period, but we can't define the process or outcome.

This is not an argument for regulatory certainty as the most important consideration, trumping all others. Business looks for a stable regulatory framework, cost effective-approaches which minimize trade barriers. Business looks for clarity in the process, and an opportunity to contribute information and views.

## **ON THE HORIZON**

From a business perspective, the Kyoto Protocol still leaves open vital questions in the areas of compliance, future commitment periods and global participation. Business is watching how rules for emissions trading and project-based approaches will form in the near and long terms, and to watch them as they play out in practice.

We are also aware of climate-related discussions and initiatives on other fronts: outcomes of the World Summit on Sustainable Development, the European Union and OECD, all of which could round out and amplify the UNFCCC process.

The success of the UNFCCC will depend on technological innovation and dissemination. Voluntary approaches and partnerships are required, and it behooves companies everywhere to show the way. Learning by doing will depend on achieving results in terms of the markets and technologies.

Companies will have to be in dialogue with governmental and non-governmental interlocutors to communicate what is being done on climate issues, and reinforce understanding of how business works. Finally, the longer term issues, beyond the first commitment period of 2008-2012 are not really so far away from a business perspective – investment and infrastructure planning can already be underway. The related discussions in the U.N. process should also begin.

There is spreading acceptance of convergences between sustainable development and climate change, highlighted in both Johannesburg and New Delhi. For climate policies to work, they need to deliver an environmental effectiveness at an acceptable cost with societal benefits. Providing energy for developing countries, promoting capacity building and economic growth are broader sustainable development ventures with obvious relevance to climate change. These broader, integrated pursuits will also benefit from the pursuit of cost effective policies and voluntary approaches.

## CONCLUSION

The truism is that all politics are local. From where I have sat– with the headphones for simultaneous interpretation on – for the last ten plus years, in a post-Rio, post-Seattle, post-Doha, post-Monterrey, post-Johannesburg world, it seems rather that all sustainable development politics are global. And business has to approach it that way, regardless of where a given country stands with regard to the Protocol.

What is the art of the possible in this complex, high stakes politicized process?

1. Patchwork implementation will soon be here to stay, regardless of entry into force. This raises competitiveness concerns that could lead to trade tensions.
2. There is a significant and even essential role for companies in addressing climate change – particularly where governments provide the right enabling framework and the Kyoto mechanisms are well designed. There is also tremendous scope for public-private sector cooperation at national and international levels if the bureaucracies can accommodate such more meaningful relationships.
3. In light of the urgent need for increased access to energy to fuel development, the UNFCCC has to move to engaging developing countries in a meaningful way over the long term.

Now is the time for more substantive consultative partnerships with business under the UNFCCC aegis. The World Summit on Sustainable Development set into motion so-called Type 2 partnerships – which are voluntary efforts by NGOs, business and government to supplement official commitments, and this approach could be applied in the climate area. As business, we can also see the potential that commercial relationships have in this regard as well.

This conference is an opportunity to discuss progress and opportunities for more progress, nationally and internationally, on these crucial questions for business. I hope I have provided some food for thought on where the international discussions are, and the preoccupations of international business, that can be useful in your discussions over the next two days..