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Agreeing on a Framework Agreement at Copenhagen

By

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The Copenhagen Conference approaches rapidly, but not a Copenhagen Treaty that will succeed the Kyoto Protocol in 2012. In despair, one can echo

Horace:

**Even while we have been talking,
Time has been swiftly flying.
So, seize the day.**

Seize the day, we can and we must. At this late hour, however, many recognize that a two-stage progress to the ultimate Treaty is now the only realistic path to travel. The first stage requires that we arrive at a “framework agreement” which all can sign on to. The second stage would then have the negotiators flesh out this framework agreement during 2010 and after.

But, what should be a framework agreement that has a reasonable chance of reconciling the conflicts that still prevail? A plausible framework emerges if we borrow ideas from institutions such as the World Trade Organization --- an idea that has been canvassed by Australia also, under the leadership of Professor Ross Garnaut of ANU --- and the US practices on domestic pollution and on the use of public funds to create public goods. Consider first the current conflicts and then their resolution.

In essence, regarding “flow” obligations, the developed countries, led by the United States, reject the Kyoto Protocol’s exemption of India, China and other developing countries from Annex 1 which imposed targets for reducing current, emissions. Equally, the United States has been adamant in arguing that will not accept “stock” liability for past emissions. Besides, its negotiators assert that it would be politically impossible to use such funds, in any event, to subsidize the

adoption of mitigation technology by countries as successful in the world economy as India and China.

In opposition, India maintains that its emission is only 4.5% of the total world emissions (unlike China's which is a fifth of the total and has already exceeded that of the United States). Citing Prime Minister Indira Gandhi's famous observation in Stockholm in 1972, "are not poverty and need the greatest polluters?", Indian spokesmen have argued that the country's extremely low per capita income makes the diversion of resources to reducing carbon emissions disproportionately expensive for her. Therefore, India would be unable to accept significant growth-retarding emission-reduction commitments with currently available environment-friendly technology and without the foreseeable availability of new and substantial mitigation technology whose costs also she cannot meet.

But these differences can be resolved. Regarding the flow obligations, the new framework agreement should include two key features of the WTO. First, the WTO model of a single undertaking, introduced in 1995, provides an institutional solution. In 1995, the earlier exemption of developing countries from obligations under the provision for Special and Differential Treatment, was generally replaced by obligations imposed on all, but with grace periods for the developing countries instead. At Copenhagen, we can therefore have all signatories accept emission commitments; but these would kick in at later periods for the developing countries. Thus India, with extremely low emissions and high poverty levels, would get a much longer grace period than China; Botswana would do even better.

Second, at the WTO, if commitments are not kept, there are consequences which carry penalties that cannot be avoided once the binding Dispute Settlement Mechanism has adjudicated the issue. It is well-known that the European countries that accepted large carbon emission cuts at Kyoto failed to keep them; and they were not accountable to any international institution. This cannot be allowed to happen again after Copenhagen.

The “stock” aspects can be addressed equally efficaciously. First, while Prime Minister Gordon Brown has accepted the notion that sums of the order of \$100 billion annually be provided for a Climate Change Fund, the United States must still be brought on board. This can be done by appealing to the principles accepted in US domestic pollution policy itself. The Superfund, which attached strict liability (i.e. ignorance of adverse impact was scientifically unknown at the time of the damage done) for clean-up of hazardous discharges, is exactly what defines this “tort” approach to addressing the issue of past damage to the environment .

Second, the bulk of these funds in turn should be spent exactly like in the Green Revolution: the moneys would support the creation of mitigation technologies, inviting open tenders where every nation could compete for every nation’s Superfund expenditures (but where clearly the innovative developed nations like the US have the competitive advantage), but where the resulting technologies would then become available to all. So, India and China, as would any other nation including the United States, can use the resulting technologies, thus addressing simultaneously the political problem in the US of financing sales of

technology to these nations and in India and China of having to pay for these technologies.

With a Framework Agreement along these lines, we could have accord in place of the current discord.