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DOES DOHA'S DECISION TREAT TRANSITION ECONOMIES UNEQUALLY?

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Abstract: Doha Amendment allows surplus AAUs to be carried over from the first commitment period but limits their use for offsetting emission growth beyond commitment levels. Amendment 7ter simultaneously 'shaves' AAU allocation to level equivalent of the average 2008-2010 emissions for countries which pledged a growth target under the second commitment period of the Kyoto Protocol. In sum this means that economies in transition (EITs) are not allocated headroom for growth, and makes their commitments starkly different from their original pledges. The bubble arrangement of the EU adds uncertainty to whether member states avoid the 'shaving' of 7ter due to their pooled target. This would put Annex I EITs into unequal position as a result of the Doha Amendment.

Keywords: Doha Amendment; transition economies; the European Union; Ukraine.

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1. Introduction

Many of us came back from Doha thinking that regardless of the disagreements on consensus decision-making, the transition economies got more or less what they wanted – to carry over the first commitment period surplus allowances. But the recent news of Kazakhstan, Belarus and perhaps even Ukraine considering dropping out of the second commitment period of the Kyoto Protocol seem to contradict. This paper takes a closer look at factors behind this reluctance, the potential limitations the Doha Amendment puts to both AAU allocations and the use of the first commitment period surplus in the case of EITs.

2. AAU surplus before Doha

Under the first commitment period of the Kyoto Protocol, Russia, Ukraine and many of the Eastern European new member states of the EU were over-allocated emitting rights (Assigned Amount Units – AAUs), as their economic activities had declined dramatically during the

transition following the collapse of the Soviet Union. During the first commitment period, the decline in their emissions proved a more permanent trend than originally expected: in 2010, for instance Russia's emissions remained some 34%, Ukraine's 59%, Poland's 29% and Romania's 58% below their base year emissions¹. Russia and Ukraine hold surpluses of over 5.5 Gt and 2.5 Gt respectively, which the Kyoto Protocol allowed to be carried over to the subsequent commitment period. The Eastern European new EU member states hold a surplus of ca. 1.5 Gt between them.² Kazakhstan and Belarus started processes to join the Annex B of the Kyoto Protocol during the first commitment period³, but this did not go further, and thus, they did not receive such surpluses.

Many Parties saw the over-allocation as unreasonably generous, as well as a threat to the environmental integrity of the Protocol. Revisions of the Kyoto rules have been suggested – ranging from a total ban on banking the surplus, to limiting its quantity or use.⁴ Such limits are fiercely opposed by the economies in transition (EITs), who see the surplus as their sovereign property, morally justified as compensation for the hardships experienced during the collapse of their economies. This issue has also complicated internal decision-making and formation of negotiation positions in the EU. In more practical terms, the EITs argue that they have a right to develop, and thus, to headroom for emission growth. They have repeatedly emphasized their over-achievement of commitments under Kyoto, citing this as evidence that they have done more than their fair share to solve the global climate crisis in comparison to the actions of others. This argumentation stands in stark contrast how most non-EIT Parties understand the issue, and is often interpreted as EITs protecting their economic interests linked to use of the Kyoto mechanisms. This longstanding dispute had to be solved prior to the second commitment period.

3. The Doha Amendment

By the time of Doha, Russia had clearly dropped out of Kyoto, despite some last-minute lobbying by domestic carbon-market actors (Parnell, 2012). The non-EU EITs had submitted emissions limitation pledges relative to 1990 levels: Ukraine –20%, Kazakhstan –7% and Belarus –8%. In comparison to their 2010 emission levels, the pledges would have secured these countries headroom for emission growth by 94%, 27.5% and 43%, respectively, from 2010 to 2020. If we assume that the emission dynamics of 2000–2010 continues until 2020, Ukraine's pledge would be extremely loose, while there would also be some significant leeway in Belarus' pledge. On the same assumptions, Kazakhstan's pledge would have implied a need for real emissions-reduction measures.⁵ The EU pledged -20% to be fulfilled jointly, but the burdens of individual countries are complicated to estimate given the EU level target for the EU emissions trading scheme (ETS).

¹ The base year is 1988 for Poland, 1989 for Romania and 1990 for Russia and Ukraine. Figures exclude land-use, land-use change and forestry.

² Based on 2008–10 real data (www.unfccc.int) and the assumption of 2011–12 emissions to be on 2010 level.

³ Belarus was included in the Annex I of the Convention from the beginning. It did not originally inscribe a commitment under Annex B of the Kyoto Protocol during the first commitment period, and when it sought to amend Annex B since 2006, the Amendment was not ratified by a sufficient number of Parties to enter into force. Kazakhstan has made efforts to join Annex I since late 1990s, and started the process to join Annex B in Doha in 2012.

⁴ *In the negotiations*: Earth Negotiations Bulletin, 2012; *In the analysis*: Vieweg et al., 2012; Korppoo & Spencer, 2009.

⁵ The 2000–2010 emissions trend for Ukraine was basically flat, whereas 3.6% and 1.3% average increases per year were recorded for Kazakhstan and Belarus, respectively. However, it should be taken into account that the 2008/2009 economic downturn caused an anomaly in emission trends, generally making them look flatter than in reality. If we correct for this by omitting the worst year of the crisis (2008 or 2009, depending on the country), the greatest impact would be on Kazakhstan, where average annual growth in emissions would go from 3.6% to 6.6%. For Ukraine the figure would rise to 0.8% growth; and there would be no impact in the case of Belarus. Source of data: www.unfccc.int.

The Amendment to the Kyoto Protocol adopted in Doha allows carrying over surplus AAUs from the first commitment period; these are to be transferred to a ‘previous period surplus reserve’ account of each Party. **Paragraph 25** of Decision 1/CMP.8 states: *‘Decides further that units in a Party’s previous period surplus reserve account may be used for retirement during the additional period for fulfilling commitments of the second commitment period up to the extent by which emissions during the second commitment period exceed the assigned amount for that commitment period, as defined in Article 3, paragraphs 7 bis, 8 and 8 bis, of the Kyoto Protocol’.*

Second commitment period pledges which exceed current emissions levels were limited, or ‘shaved’, to avoid allocating more surplus. As established by amendment **7ter**, *‘any positive difference between the assigned amount of the second commitment period for a Party included in Annex I and average annual emissions for the first three years of the preceding commitment period...shall be transferred to the cancellation account of that Party’.* As the Assigned Amount for the whole commitment period is calculated simultaneously, this applies to the whole commitment period.

4. Uneven impact

Various problematic elements can be identified. First, amendment **7ter** can reduce the AAU allocation to the level of the latest emission inventories (average of 2008–2010 emissions), whereas the assigned amount is defined by **Paragraph 25** of Decision 1/CMP.8 as equivalent to the country’s quantified emission limitation or reduction commitment (QELRC) – without mentioning the impact of **7ter**. Paragraph 25 thus allows the previous period surplus reserve to be used for domestic compliance *only* when emissions exceed assigned amount, i.e. the QELRC. This becomes a problem for the EITs when they need to retire AAUs (or other Kyoto units) equivalent to total emissions in the end of the second commitment period in order to demonstrate compliance: **7ter** does not allocate AAUs to cover any emissions growth while **Paragraph 25** in practice prevents using AAUs from the previous period reserve for this purpose.⁶

First, the Amendment splits Annex B countries into two groups as to whether they are in practice allowed to benefit from the surplus they can carry over. Countries with 2008-10 emissions above their QELRCs are allowed to offset their future emissions by first-commitment surpluses, whereas countries with emissions below their QELRCs in 2008-2010 may not do so. Second, the ‘bubble’ agreement of the EU may confuse the coherence of the method of AAU allocation to transition economies.

As Ukraine’s average annual emissions in 2008-2010 accounted for 390 Mt and QELRC 706 Mt, Ukraine is a good example of the limits to the use of surplus. Its emissions would have to exceed 706 Mt before being allowed to tap into its own surplus reserve for compliance. In practice, this makes it impossible to use surplus allowances to compensate for domestic compliance. Should Ukraine ratify the Amendment, compliance options would include keeping emissions below 2008–2010 average by means of domestic measures or purchasing allowances from other Parties. This is very far from what Ukraine originally pledged to accept as its commitment.

⁶ “Before the end of the true-up period, each Party will be required to demonstrate that it meets its Article 3, paragraph 1, commitment. To do so, each Party must ‘retire’ a quantity of Kyoto units equal to or greater than its total Annex A emissions for the commitment period.” P.37. The United Nations Framework Convention on Climate Change (2008).

The application of *7ter* is more complicated in the case of the EU. It raises two main questions. First, whether *7ter* ‘shaving’ of AAU allocation applies to the EU member states with emission levels below the -20% QELRC during 2008-2010, and second, if *7ter* does not apply, whether the EU internal rules prevent EU member states from using their first commitment period surpluses for Kyoto compliance.

7ter allows two potential interpretations of AAU allocation under the EU ‘bubble’: allocation based on the aggregate emissions of the EU, or based on national emission levels. As emissions of several new member states remain significantly below the EU QELRC -20%,⁷ the former option would generate more AAUs as it would avoid the ‘shaving’ of their allocations to 2008-2010 level. Given the difference between the logics of the Kyoto burden sharing (national targets) and the EU’s domestic policy measures (the EU ETS is regulated by community wide rather than national targets), it would be technically challenging to apply national level allocation, which would ensure coherence between the AAU allocations of EITs. For the first commitment period, the EU received AAUs based on the national commitments of member states under the EU bubble agreement. It is clear that this approach must change due to the further integration of the community level mitigation policies, which has in effect led to the fading away of national level targets, and thus made a centralized allocation the logical option.

7ter also determines how the first commitment period surplus can be used. The EU’s 2008-10 emission level as a whole is above its QELRC, and according to Decision 1/CMP.8, could therefore use the surplus for domestic compliance, while many of the member states are not, and would have to exceed the QELRC to do so. However, EU regulations ban the use of the first commitment period surplus for compliance under its internal Effort Sharing Decision (The European Parliament, 2012) and ETS Directive (The European Parliament and the Council of European Union 2003). Whether the EU can prevent its member states from using their first commitment period surpluses to demonstrate compliance under the Kyoto Protocol remains somewhat an open question, however, the current approach of mitigation policies may require centralized management of AAUs on the community level, which would introduce such control.

5. What to do – and who is to blame...?

Doha succeeded in solving the issue of surplus by limiting its use while allowing the disputed carry-over to take place as stated in the Kyoto Protocol, but at the same time it made the commitments of EITs very different from their original pledges. Also the legal uncertainty concerning the interpretation of *Paragraph 25* and *7ter* continues to cause confusion and frustration. From the perspective of *common but differentiated responsibilities and respective capabilities*, the legal solution seems incongruous, as it may apply different rules to allocation of AAUs to Annex B transition economies as a result of the EU’s bubble arrangement. What makes matters worse for the non-EU EITs is the fact that *7ter* ‘shaves’ their AAU allocations based on the low-point of the last decade’s economic crisis.

⁷ The sole exception is Slovenia, with emissions only 3% below 1990 level in 2010. Equivalent figures for the other new member states are as follows: Bulgaria 52%, Czech Republic 29%, Estonia 49%, Hungary 41%, Latvia 55%, Lithuania 57%, Poland 29%, Romania 58% and Slovakia 36% below 1990 levels in 2010. Source: www.unfccc.int → GHG data → Detailed data by Party

Prior to Doha, the EU urged equal treatment in terms of carry-over for all Parties who take commitments under the second Kyoto period.⁸ Applying the Amendment to the total EU ‘bubble’ rather than national level emissions would contrast this statement, however, it looks like the EU rules and practices would eliminate use of the surplus. Thus, the rules for allocation of AAUs to EITs seem to be more relevant from equity point of view. Still, the room left for starkly dissimilar treatment of different Annex B EIT Parties under *7ter* invites the question of whether this was the intended outcome, or perhaps simply an error in the final night’s drafting - even though it is difficult to believe that such a legal detail would have been totally overlooked in Doha.

The EU’s approach to *7ter* is a key element in terms of equality between Annex I EITs. To level the playing field, in its ratification instrument the EU could apply *7ter* to the allocation on member state rather than community level. Alternatively, adding a reference to *7ter* in *Paragraph 25* would allow non-EU EIT Parties to cover their emission growth from their first commitment period surplus to match the EU EITs escaping the ‘shaving’ of their AAU allocation due to community level approach. It could also be asked whether the playing field should be levelled as the EU is forcing its member states to implement climate policy, while the non-EU EITs have implemented few costly domestic mitigation measures beyond the side effects of economic transition so far. However, if the EU policy measures are effective in terms of limiting emission growth in the new member states, they should reduce the need for allocation of AAUs beyond current emission levels.

The issue of *7ter* is certain to be raised again in Bonn, but it seems unlikely that the package would be reopened. What is sad to see is that so much time and energy is spent discussing the details of the Kyoto second commitment period – which cover ca.14-15% coverage of global emissions and can hardly make any difference to the atmosphere. Beyond the equality between EITs and the Kyoto Protocol, perhaps a more important question is whether the EITs should be taking burdens under the Kyoto Protocol while many wealthier countries, from both Annex I and non-Annex I, are not taking equivalent commitments.

⁸ Council of the European Union, 15455/12, 26 October 2012. 16. *REITERATES that the surplus of AAUs from the first commitment period could affect the environmental integrity of the Protocol if it is not addressed appropriately; EMPHASISES the urgency of resolving this issue in view of the adoption of amendments to Annex B and the start of the second commitment period on 1 January 2013, and REITERATES that this must be done in a non discriminatory manner, treating equally EU and non-EU countries which take on a QELRO under the second commitment period, noting that carry-over and use for a second commitment period applies only to parties which take on a QELRO under the second commitment period; PROPOSES to agree a solution on the carry-over and use of AAUs in the second commitment period under the Kyoto Protocol that maintains an ambitious level of environmental integrity and preserves incentives for overachievement while encouraging the setting of ambitious targets.*

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