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Spurring Swift Action to Cut Emissions: How “Docking Stations” Can Help

Climate change requires swift action: global emissions must begin to decline within the next decade if the world is to avert dangerous climate shifts. Yet many nations’ legal procedures require long time periods for ratification of a new treaty. It took eight years from Kyoto’s adoption in 1997, and four years from the 2001 Marrakesh Accords, to obtain entry into force of the Kyoto Protocol. To encourage swift action following adoption of an agreement at Copenhagen in 2009, negotiators may wish to include a “docking station” provision to allow non-Parties to “dock in” to a new agreement while they work towards formal ratification.

- A “docking station” is a mechanism that would enable a nation to participate in the global carbon market if that nation adopts “comparable” commitments, such as a national cap and trade program – even if the nation has not yet ratified the new treaty. In other words, a “docking station” provision would allow any Party to the new agreement to trade in the carbon market with a non-Party if the non-Party enacts comparable national emission caps.
- The environmental and economic benefits of a “docking station” could be quite significant. By welcoming new countries into the cap-and-trade framework, docking stations would expand the coverage of the global emissions cap, reduce leakage and competitiveness concerns, and increase the size and power of carbon markets.
- Most importantly, allowing non-Parties to participate through “docking stations” would speed their transition to low-carbon economic growth by more quickly re-aligning market signals in favor of GHG emission reductions across all sectors while they work to formally ratify a new climate treaty.

There is ample precedent for such a provision in other treaties. For example, the Convention on International Trade in Endangered Species (CITES)¹ allows trade between Parties and non-Parties if the latter has, in effect, adopted comparable scientific and management authorities for the protection of endangered species, the trade is properly documented, and the transaction is entered in the CITES database.

Similarly, while the Basel Convention on Transboundary Movement of Hazardous Wastes prohibits trade between Parties and non-Parties,² Article XI allows hazardous wastes to be traded with non-Parties under specified circumstances that ensure trade is conducted under conditions not less environmentally sound than those specified in the treaty.³ Over thirty bilateral and multilateral agreements have been notified to the Basel Convention Secretariat under this provision.⁴

¹ Signed at Washington, D.C., on 3 March 1973, Amended at Bonn, on 22 June 1979.

² Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1990), Article 4(5), text at <http://www.basel.int/text/con-e-rev.doc>.

³ Article 11. Bilateral, Multilateral and Regional Agreements. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1990).

⁴ See <http://www.basel.int/legalmatters/index.html>

In contrast, the Kyoto Protocol does not allow Parties to trade Assigned Amount Units (AAUs) with non-Parties. Under Kyoto, only Parties can create AAUs. In a Copenhagen agreement, a "docking station" provision could welcome new nations into carbon markets, provided they adopt comparable environmental safeguards, thereby broadening and deepening the carbon market and yielding greater environmental benefits.⁵ To implement a "docking station" mechanism, the Parties to the Copenhagen agreement could:

- Assign the Secretariat or an independent panel the authority to determine whether a non-Party had taken "comparable action." Clear rules to guard against conflict of interest among members of the panel/Secretariat would need to be adopted.
- Create a provision, similar to that of the WTO, authorizing regional or bilateral carbon trading arrangements. WTO rules allow any nation or group of nations to enter into separate free trade agreements as long as the arrangement facilitates trade and does not raise barriers; such an agreement must be submitted to the Secretariat but can enter into force without Secretariat approval. Any objecting nation can request a review of WTO compliance by the Dispute Settlement Body.⁶ A new climate agreement could authorize Parties to enter carbon trading agreements with non-Parties that have taken comparable action. Any Party that believes a non-Party has not met this test could object and ask the Secretariat, or an independent panel, to determine whether the non-Party has met the "comparable action" standard, resolving the validity of the trading.
- Develop an opt-out/tacit acceptance procedure whereby any trading between Parties and non-Parties would be valid unless a minimum number of Parties use a special notification procedure within a certain amount of time to voice their disagreement.⁷ For example, to stop trading between a Party and non-Party, 1/3 of the Parties would have object.

However it gets implemented, Parties should recognize the importance of a "trade with non-Parties" provision to welcome the broadest possible participation in the global effort to cap and cut emissions.

Please visit www.edf.org/AccraClimateTalks for more information.

⁵ One relevant example is the Linking Directive of the European Union's Emissions Trading Scheme, which provides, in paragraph 18: "Following entry into force of the Kyoto Protocol, the Commission should examine whether it could be possible to conclude agreements with countries listed in Annex B to the Kyoto Protocol which have yet to ratify the Protocol, to provide for the recognition of allowances between the Community scheme and mandatory greenhouse gas emissions trading schemes capping absolute emissions established within those countries. See Directive 2004/101/EC of The European Parliament and of The Council of 27 October 2004, amending Directive 2003/87/EC.

⁶WTO Members can enter into free trade agreements under the conditions outlined in three sets of rules: (1) [Paragraphs 4 to 10 of Article XXIV of GATT](#) provide for the formation and operation of customs unions and free-trade areas covering trade in goods; (2) The [Enabling Clause](#) (i.e., the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries) refers to preferential trade arrangements in trade in goods between developing country Members; and (3) [Article V of GATS](#) governs the conclusion of RTAs in the area of trade in services, for both industrialized and developing countries. Over 115 RTAs have been notified to the GATT/WTO and are still in force. See: http://www.wto.org/english/tratop_e/region_e/regrul_e.htm

⁷ As discussed in the July 25 2008 CIEL draft document "Options for Procedural Flexibility in Inscribing New Commitments for Annex I Countries in Annex B of the Kyoto Protocol," drawing upon Paolo Contini, Peter Sand, *Methods of Expediting Environmental Protection: International Ecostandards*, 66Am.J.Int'l, 37, 49 (1972).