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Developments and Issues in Asia Climate Policy and Law

In many ways, it is business as usual around Asia in relation to national and international efforts to advance climate change policy and law.

Following the international climate negotiations held in Durban from November 28 to December 11, 2011, and fortified by an international agreement that included the establishment of a second commitment period to the Kyoto Protocol (legally binding emissions reductions for the period 2013 to 2017 or 2020) and the launch of the Green Climate Fund, governments in Asia are pressing ahead with domestic climate mitigation and adaptation action. Nevertheless, difficult global economic conditions have affected the ability and will of governments to take bold action, and there has been a wide disparity in the level and type of commitments and action put forward by countries in Asia.

Also weighing on the minds of developing country, non-Annex I Parties of the Kyoto Protocol in Asia is the position of the European Commission on the status and eligibility of Clean Development Mechanism (CDM) projects and Certified Emissions Reductions (CERs) generated by those projects hosted in their countries. A key concern of Asian non-Annex I Parties (and indeed of those in other parts of the world) is the apparent restriction in the use of CERs from CDM projects registered after January 1, 2013 for compliance in the European Union Emissions Trading Scheme (EU ETS) under the amended Directive 2003/87/EC (Amended Directive), except for CDM projects registered after that date hosted in least developed countries (LDCs). While the Amended Directive provides for the possibility of using CERs from CDM projects hosted in non-LDC countries registered after January 1, 2013 where the host country has concluded bilateral or multilateral agreements with the EU, no such agreements have been concluded to date.

Another controversial issue in Asia relates to the extension of the EU ETS to the aviation sector, which has provoked heated protests from non-EU carriers, including Asian airlines that fly into and out of the EU. Asian governments, many of whom wholly or partly own their national carriers, have started to take more vocal positions on the implementation of the EU ETS to aviation. In a decision dated December 21, 2011, the European Court of Justice rejected the challenge of the Air Transport Association of America and a number of U.S. airlines on the basis that the inclusion of international aviation in the EU ETS is contrary to international law and to the Chicago Convention, the Kyoto Protocol, and the Open Skies Agreement. This decision effectively limits if not ends further EU legal challenges, increasing the prospect of retaliatory trade measures by disaffected countries and WTO legal challenges.

Beyond international climate negotiations, Asian countries have been working at different paces in establishing and advancing their domestic climate change strategies, plans, and agendas. Comments on selected Asian countries are set out below.

Cambodia

Climate vulnerability threatens Cambodia, as it does many LDCs. Cambodia is implementing a pilot project within the framework of reducing emissions from deforestation and forest degradation as its Nationally Appropriate Mitigation Action (NAMA). The country is one of the Asian LDCs most likely to benefit from the implementation of new CDM projects after 2012 by virtue of the Amended Directive.

China and Hong Kong

The main driver of climate policy and action in China and the Hong Kong Special Administrative Region is the 12th National Five Year Plan (12th FYP). The 12th FYP aims to shift China to a low carbon economy and sets a 17 percent carbon intensity reduction target for the period 2011 to 2015. This is consistent with China's national carbon intensity reduction target of 40 to 45 percent by the year 2020 (base year 2005), but effectively leaves more aggressive action for the next five-year plan.

The Hong Kong government has proposed an even more aggressive carbon intensity reduction target of 60 to 65 percent by 2020 (adopting a 2005 base year) but has yet to implement specific actions following the closing of a public consultation on climate change policy in December 2010.

The Guangdong provincial and Hong Kong governments recently indicated that they are cooperating in the establishment of a greenhouse gas pilot emissions trading scheme (an earlier sulfur oxides, nitrogen oxides, and particulates pilot emissions trading scheme was unsuccessful), which is one of six pilot emissions trading schemes under development in China pursuant to the 12th FYP. (The others are the cities of Beijing, Chongqing, Shanghai, Tianjin, and Hubei Province.) Guangdong government officials have suggested that the Guangdong-Hong Kong pilot scheme would accept international carbon credits for compliance. A climate change law is also under development and is expected to be promulgated during the 12th FYP period. While a national carbon tax is under consideration, it is not expected to be implemented in the near future.

India

The National Action Plan on Climate Change of 2008 (Plan) remains the blueprint of India's policy and action on addressing climate change mitigation and adaptation. The Plan outlines eight core national missions up to 2017, targeting energy use, energy efficiency, renewable energy, and building research capacity on climate change issues. India has committed to a voluntary emissions intensity reduction target of 20 to 25 percent (2005 base year), exclusive of agricultural emissions, by 2020. India's 12th Five Year Plan, expected to be launched on April 1, 2012 will outline India's low-carbon growth strategy. India is not developing a domestic emissions trading scheme or considering the implementation of a carbon tax.

Indonesia

On September 26, 2011, the president of Indonesia signed Presidential Decree No.#61 of 2011 (Decree) on a National Action Plan to reduce greenhouse gas emissions. The Decree confirmed Indonesia's voluntary emissions reduction target of 26 percent or up to 41 percent with international support by 2020. The National Action Plan is intended to provide guidance to Indonesian government ministries and local governments. Local governments are required to develop regional action plans. Activities under the National Action Plan are grouped under agriculture, forestry and peat lands, energy and transport, industry, and waste management. Indonesia is not developing a domestic emissions trading scheme or considering the implementation of a carbon tax.

Japan

As the sole Asian Annex I Party, Japan has pledged a target of 25 percent emissions reduction by 2020 (1990 base year), contingent on a fair and effective international agreement. Efforts to enact this 25 percent emissions reduction target into law, along with legislation to implement a carbon tax and a cap and trade scheme have not been successful to date. On a brighter note, the Tokyo Metropolitan Government continues to implement a mandatory urban cap and trade scheme (launched in 2010) to cover emissions from 1,400 building installations. This scheme targets greenhouse gas emissions reductions of 25 percent by 2020 (2000 base year). Two compliance periods run from 2010 to 2014 and 2015 to 2019. Japan is not considering the implementation of a carbon tax.

Taiwan

The legal status of Taiwan as an independent state is controversial and has made it difficult for Taiwan to participate fully in international climate change negotiations and action. Taiwan is not a party to the United Nations Climate Change Conference (UNFCCC) or the Kyoto Protocol. However, Taiwan is newly industrialized and has taken significant steps domestically to reduce greenhouse gas emissions. The country continues to seek observer status in international climate negotiations. Domestically, the Greenhouse Gas Reduction Act is under review by the Taiwanese legislature and on April 18, 2011, the Environmental Protection Administration issued the Greenhouse Gas Reduction Credit Accounting Management Guidelines to facilitate domestic carbon offset projects.

Singapore

Singapore has pledged that the implementation of its NAMAs will lead to a reduction in greenhouse gas emissions of by 7 to 11 or 16 percent below business as usual by 2020. The latter target is contingent on a legally binding global agreement in which all countries implement their commitments in good faith. The Singapore government is currently working on the National Climate Change Strategy 2012, which will provide a framework and overall strategy to tackle climate change related issues. It is intended to outline policies and measures to reduce emissions, and to cope with the impacts of climate change and build on the country's capabilities to tap opportunities arising from climate change. Singapore is considering the feasibility of a domestic emissions trading scheme or the implementation of a carbon tax but nothing concrete has emerged to date.

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