

EEI POLICY PAPERS

EU and Kyoto

The Gambler's Dilemma

**A post-Gleneagles, post-Laos
assessment of the truth - and
consequences - surrounding
the EU and Kyoto “post-2012”**

BY CHRISTOPHER C. HORNER

EUROPEAN ENTERPRISE INSTITUTE

www.european-enterprise.org

EEI POLICY PAPERS

EUROPEAN ENTERPRISE INSTITUTE

www.european-enterprise.org

About European Enterprise Institute (EEI)

The European Enterprise Institute (EEI) is a non-profit, non-party affiliated organization, registered in Belgium. It aims to promote entrepreneurship in the EU policy community and to provide a platform for the ideas and philosophy of entrepreneurship throughout Europe.

The EEI works to facilitate research and debate in all areas of policy with impact on the conditions for entrepreneurship, incentives for innovation, competitiveness and economic prosperity. The EEI does not take any institutional opinion on individual issues but actively encourages an opinionated dialogue between stakeholders.

About EEI Policy Papers

The European Enterprise Institute *Policy Papers* series aims to provide qualified arguments to the European political debate. Papers are commissioned as short-to-the-point analytical papers written either directly by EEI staff or by external writers. Any conclusions or opinions expressed in these papers do not necessarily reflect the opinion of the EEI or to EEI affiliated people.

You will find more information about the European Enterprise Institute at www.european-enterprise.org

Previous EEI Policy Papers:

Preventive Medicine: How information can Modernize EU Healthcare by Jeremiah Norris.

Obesity-epidemiology, pathogenesis, therapy and prevention by I.Kiefer, T.Rathmanner and M. Kunze.

Will the Pension Time Bomb sink the Euro? by José Pipera

Developing Effective Approaches to Access to Genetic Resources by Alan Oxley

All these papers are accessible at www.european-enterprise.org

About the Author

Christopher C. Horner serves as Director of External Relations and Policy Counsel to the European Enterprise Institute. In addition Mr. Horner is Senior Fellow at the U.S.- based Competitive Enterprise Institute.

Mr. Horner is an internationally recognized expert on climate issues and a frequent speaker at international conferences both in the U.S. and in Europe. He has testified before the United States Senate Committees on Foreign Relations and Environment and Public Works and given numerous addresses in the European Parliament and before policymakers in London, Rome, Copenhagen and Madrid.

Contents

INTRODUCTION AND SUMMARY	pg01
BACKGROUND AND STATE OF PLAY	pg03
DISTORTIONS IN THE CURRENT "KYOTO" DEBATE	pg06
EUROPE'S FAILURE, KYOTO'S FAILURE	pg07
THE GHOST OF MARRAKECH	pg10
OTHER EU ISSUES: THE BURDEN OF BURDEN SHARING	pg13
OTHER EU ISSUES: THOSE CURIOUS, CHANGING BASELINES	pg15
OTHER EU ISSUES: CAN COVERED COUNTRIES BUY COMPLIANCE?	pg16
"POST-GLENEAGLES"	pg19
LAOS-ING UP KYOTO? ASIA-PACIFIC PARTNERSHIP ON CLEAN DEVELOPMENT APPEARS TO BE JUST WHAT EU ASKED FOR.....	pg22
POST-VIENTIANE: THE SINCEREST FORM OF FLATTERY	pg24
POST-FLATTERY: HOW SHOULD THE EU RESPOND?.....	pg25
CONCLUSION	pg28

INTRODUCTION AND SUMMARY

The "Gleneagles communiqué" from the July G-8 summit seemingly relegates the Kyoto Protocol¹ as yesterday's approach to yesterday's conception of tomorrow's problem, sealed by late July's Asia-Pacific or Vientiane pact. Now, poor OECD Kyoto "round one" performance certainly leave the Kyoto treaty's future, in question.

Europe prides itself as the "world leader" in regulating and reducing greenhouse gas (GHG) emissions in the name of fighting catastrophic anthropogenic climate change. However, despite internal maneuvering and rhetoric favorably coloring emissions data, the EU-15 now acknowledge the likelihood that - like Kyoto's other major players Japan and Canada - it will not comply with its collective promise. Still lacking the US, China and India, barring major reform the resulting problems doom Kyoto, "post-2012".

The EU-15 projects exceeding its emission quota despite their major drivers of energy use - economy and population - growing far slower than most others'. Further confusing matters is official Brussels' inconsistency, *e.g.*, the Council of Ministers demanding dramatic GHG emission cuts, then rejecting mandatory energy efficiency standards mere days after citing emission increases and the EU's likely Kyoto violation.

Whether Europe pursues Kyoto implementation is not open to debate. Instead, "post-2102", or what comes after Kyoto's five-year life, is on the table for the November Gleneagles follow-up, the 11th Conference of the Parties (COP-11) in December and now even a September World Bank meeting. Kyoto does require that any second round of commitments be negotiated in 2005 to avert "gaming" the system. With a lack of actual, if highly trumpeted emission reductions, and with numerous outstanding first commitment period issues still outstanding, any such promises will not be soon agreed.

If realized, the projected individual and collective EU failures to comply trigger penalties on most of the EU-15 member states and likely the entire EU-15 bloc. These restrictions appear insurmountable impediments to the member states satisfying any second round of cuts. This is because Parties agreed in Marrakech in 2001 ("COP-7"), at EU insistence no less, to 130% penalties for every ton of violation and to prohibit violators from employing certain "flexible mechanisms" in a second round. These include "joint implementation" and, embarrassing for the EU, emissions trading.

Given the relative lack of real cuts to date - outside of UK and German reductions unrelated to Kyoto - both mechanisms are critical to any EU hope of future compliance. If a country cannot

1 http://unfccc.int/essential_background/kyoto_protocol/items/1678.php

meet an easier target with the aid of such mechanisms, meeting a penalty-enhanced and deeper target without them is unrealistic.

As such, Kyoto seems *designed* to fail given these penalties. Economic factors compounding matters include the EEA's stubborn use of uninformative "PRIMES" sectoral econometric models, the rapidly escalating price of GHG credits and subsequent energy cost hikes, and the increasing possibility that sufficient GHG credits will not exist *at any price* for the EU to try and buy its way to compliance even if it wished.

Further complicating the debate are the myriad 1990 emission baselines reported by individual EU member states and as such the collective EU-15. This is material: each additional baseline ton reduces the required reductions. Shaving just 1% off the burden saves about *€1 billion*. The EU variance is 3.6%, nearly halfway to its promised 8% cut.

Finally, EU policy leaders persist in the irreconcilable positions of insisting a) the U.S., which like most countries will not agree to Kyoto's "targets and timetables" regime, is "indispensable" to any second round and b) on maintaining Kyoto's construct. This conflict ensures deadlock in the face of the treaty's obvious problems and the widespread demand among nations for a technology-based approach to the issue instead.

That the UNFCCC² trumpets³ the Gleneagles language is not surprising on one hand, given the communiqué affirms the UNFCCC's central role in climate talks. But this praise is for the G-8 purportedly affirming the Kyoto construct, a highly strained interpretation. Regardless of this and the other realities, Europe continues to demand that talks focus on a "second round" of the same GHG emission rationing, and deeper than the first. Remarkably, all official EU rhetoric and documents evince ignorance of the severe penalties for noncompliance, which *prima facie* block any country failing to comply with Kyoto from possibly complying with any second, deeper round of cuts.

It does seem possible that the EU will claim compliance with Kyoto, with the specifics assessed well after the fact and too late for penalties. Possibly, without getting to the point of formal challenges, the July G-8 statement will soon instead be accepted by the Kyoto establishment for what it clearly is, a breakthrough of consensus, adopting previous U.S. statements including on the science even though EU leaders must find some other way to depict such a path out of the morass.

In the context of the Gleneagles and Vientiane breakthroughs, this paper discusses the key realities, including a) actual EU-15 performance, b) the reality of post-2012 under the Marrakech penalties, c) curiously shifting EU baselines, and d) questions about whether the likely supply GHG credits will match those needed. Clearly, any future agreement requires Europe to adopt a more realistic negotiating stance and policies driven not by rhetoric and international rivalry, but instead by the art of the possible and the limitations of climate models upon which all such policies are ultimately based.

2 <http://www.unfccc.int/>

3 http://unfccc.int/files/press/news_room/press_release_and_advisories/application/pdf/050708_final_press_rel

BACKGROUND AND STATE OF PLAY

The pre-2004 EU-15 signed and ratified the Kyoto Protocol on climate change. Each nation did so in its individual capacity, promising to reduce greenhouse gases to 8% below 1990 levels. The EU-15 also collectively submitted ratification under Kyoto Article 4 as "Europe", with the same collective promise. Among them and again per Article 4, the group then reallocated responsibility in a Burden Sharing Agreement⁴ ("BSA"). The BSA allowed one-third of the states to increase GHG emissions (Spain, Portugal, Greece, Ireland, Sweden), and the more forgiving maintenance of 1990 levels for France and Finland. Still others undertook much deeper reductions.

Among the latter, large emitters UK and Germany believed their enhanced burden was feasible, given that ongoing reductions unrelated to Kyoto made the chosen baseline of 1990 convenient for their circumstances: *e.g.*, the UK's "dash to gas" initiated as part of Margaret Thatcher's battle with coal unions, and Germany shuttering inefficient East German production post-reunification.

These numbers matter for internal purposes only should the EU-15 meet the collective burden. Should they fail, however, as current projections indicate, each country is bound under Kyoto to the figure it promised in the BSA not 8% below 1990.

Off-the-record depictions by EU staff familiar with the closed-door BSA negotiations indicate that the driving force was more political one-upmanship by environmental officials than considered economic projection. This could account for, *e.g.*, Denmark making wild reduction promises now threatening to cost them relatively great sums. EU progress reports through the European Environment Agency (EEA) assured readers that virtuous and innovative European citizens would combine with the gentle ministrations of bureaucrats to ensure compliance.

This soothing rhetoric emphasizing EU "world leadership" not just in climate change regulation but *emission reduction* and, presumably, Kyoto compliance is widely accepted, prompting much public and official angst toward the United States, among the 155 nations rejecting Kyoto's emission rations. We shall see that these misplaced energies impede the EU reconfiguring and indeed rescuing any "post-2012" regime.

Also since the Burden Sharing Agreement, Europe has initiated its Emission Trading Scheme⁵ (ETS) allowing individual emitters to more efficiently allocate reductions than

4 <http://www.climnet.org/resources/euburden.htm>

5 <http://europa.eu.int/comm/environment/climat/emission.htm>

would a simple cap, by purchasing and selling credits depending upon their performance in relation to allocations.⁶ The financial incentive, in addition to *€40 per-ton penalties* for noncompliance, also presumably⁷ drives further emission reductions.

However, it is now clear that Europe is not on track to meet its Kyoto promises. The annual EEA report⁸ issued in December 2004 hypothesized how the EU might comply with Kyoto, but ultimately acknowledged that this actually is unlikely. Despite calling⁹ in March 2005 for dramatically deeper second cuts,¹⁰ in June the Council of Ministers rejected any mandatory elements of proposed energy efficiency regulations.¹¹ The Commission followed this a fortnight later by temporarily delaying plans¹² to carry out environmental initiatives while member states reconsider the *€12 billion* price tag.¹³

To extend such newfound if temporary¹⁴ reticence about Europe's booming eco-regulatory state to the costs of the "first step" of Kyoto and/or pursuing more of the same for a "second round", and with few in Brussels seem interested in reconsidering¹⁵

6 See also <http://www.euractiv.com/Article?tcmmuri=tcm:29-133629-16&type=LinksDossier>

7 http://www.forbes.com/business/2005/07/13/emissions-trading-unical_report_2004_7/en/Analysis_of_GHG_trends_and_projections_in_Europe.pdf

8 http://reports.eea.eu.int/technical_report_2004_7/en/Analysis_of_GHG_trends_and_projections_in_Europe.pdf

9 http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/envir/84322.pdf

10 Later that month the Council acknowledged this recommendation (15-30% below 1990 by 2020), without endorsement (http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/84335.pdf). This recommendation not only contradicted the Commission but open complaints by Italy, Spain, Finland and EU-25 member Poland. See <http://subscript.bna.com/SAMPLES/ier.nsf/0/64ed7cace24eb21885256fcc00788b6e?OpenDocument>. Further, the vague nature of the pronouncement purportedly came at the insistence of Germany and Austria. See <http://www.euractiv.com/Article?tcmmuri=tcm:29-137205-16&type=PolicyNews>. This author was informed by credible sources that political and symbolic considerations (regional elections in Germany) were invoked to overcome a Council majority opposing this conclusion.

11 On June 29, the Council of Ministers scrapped every binding element of a proposal to increase energy efficiency. The Commission proposed a binding 9 percent decrease on retail energy consumption by 2015, which the Parliament increased to 11.5 percent. Yet the energy ministers replaced those provisions with a nonbinding target of 6 percent reductions over a six year period starting at some undisclosed date. See <http://www.euractiv.com/Article?tcmmuri=tcm:29-141683-16&type=News>

12 <http://news.ft.com/cms/s/0fe35d7e-ec28-11d9-9796-00000e2511c8.html>

13 That amount is in the same neighborhood as the likely cost of the EU buying the necessary GHG credits - if they are available (see *infra*).

14 Commission President Barroso briefly delayed publishing two of seven "strategies" compiled by DG Environment, though the Commission ultimately adopted the greens' line on July 20, approving the total of seven environment strategies. The Commission enhanced its dissonance by concurrently adopting demands that the EU's "big three" improve their economic performance.

15 <http://www2.europarl.eu.int/omk/sipade2?L=EN&OBJID=95761&LEVEL=4&MODE=SIP&NAV=X&LSTDOC=N>

their approach despite obvious and growing problems,¹⁶ member states must drive the process. Spain's environment minister Cristina Narbona on May 5 told *La Gazeta de los Negocios* that "the conditions where Spain stands in order to fulfill the mandates derived from Kyoto 'could not be worse'". Her promise to try and keep costs down was a remarkable about face from the insistent "party line", up to that date, of cost-free compliance.¹⁷

In truth, things *could* be worse for Spain were it Denmark, or Portugal had the Burden Sharing Agreement not distorted the ratified Kyoto promises. But Ms. Narbona's underlying point is sound, and Spain's situation common. 5 of the EU-15 project violating their BSA promise by more than 20%, all the way up to 47%, while 12 of the 15 seem headed for double-digit violations. Sweden projects precisely meeting its target and the UK and possibly Germany believed at the time they would satisfy this "first round".

Spain has grudgingly admitted its problem and Ireland's own has been "outed", complementing Italy's COP-10 flat rejection of a second round of cuts given the growing realities. As a candidate Germany CDU leader Angela Merkel openly questioned¹⁸ the wisdom of current policies. Earlier, the Commission had wisely affirmed¹⁹ Italy's position, in substance, in February 2005, if only to be ignored by the Council weeks later.

Disturbing economic signals are already emerging, more than two years out from Kyoto's compliance period. Ultimately, these will expose EU predictions of the cost of Kyoto, relying upon the PRIMES sectoral econometric models, which mask²⁰ the economy-wide impacts of GHG rationing. Summer 2005 saw the cost of GHG credits dramatically spike from €16 to over €29, before pulling back somewhat. Carbon had immediately become the main driver of German electricity prices, accounting for 20% or more of the cost.²¹ Further, it is not entirely clear that

16 In the lead-up to the May 2005 Bonn talks (see *infra*), the European Parliament passed this resolution that in many ways echoed the Bush Administration's positions. However, it then "[w]elcome[d] the conclusions adopted by the Brussels European Council of 22 and 23 March 2005 and, in particular, the fact that reduction targets in the order of 15-30% by 2020 for the group of developed countries have been agreed upon," and went further, "regret[ing], however, that no indication was given by the European Council with regard to longer-term reduction targets and suggests that reductions in the order of 60-80% by 2050 be required." This appears to remain the "EU" position. See discussion of Council, *supra*.

17 On 8th September Spain announced the first closing of a facility for failure to comply with Kyoto-related requirements. See, e.g., "Firm faces closure over emission licence", <http://www.european-voice.com/current/article.asp?id=23515>

18 <http://www.ftd.de/pw/de/9896.html>

19 http://europa.eu.int/comm/environment/climat/pdf/press_release_battle_climate_change.pdf

20 <http://www.iccglobal.org/pdf/margo-thorning100103.PDF>

21 "CO₂ - The 'windfall' has arrived. CO₂ is driving electricity prices higher. CO₂ is now the key driver of electricity prices in Continental Europe. We believe the full €5/MWh increase in the German 2006 electricity price this year is caused by CO₂. In total, we estimate that €7 to 9/MWh of the current baseload price of €39/MWh in Germany (c.20%) is linked to CO₂. Near term electricity and CO₂-prices could increase further. We believe that €2 to 4/MWh of CO₂-price impact still remains to be priced in, thus at stable CO₂-prices German electricity prices could continue to rise. With the current high gas price the CO₂-price could increase further, leading to higher power prices." UBS Investment Research, 7 June 2005.

sufficient credits could even be available were countries willing to engage in such a massive wealth transfer (see discussion, *infra*).

The financial cost of Kyoto, "round one", to countries such as Spain, Denmark, Greece and others will doubtless also increase internal EU tensions, amid appeals to further distribute the burden and as the citizenry and regulated community question sacrifice borne of allegiance to an inflexible (and nearly unilateral) Brussels strategy.

These emerging problems highlight the increasingly obvious need for massive overhaul if some post-2012 "Kyoto" is to either gain support from exempt countries ranging from the United States to China, or simply among current Parties.

DISTORTIONS IN THE CURRENT "KYOTO" DEBATE

A special May 2005 negotiation of the Kyoto Protocol in Bonn was assembled after the failure in Buenos Aires to achieve agreement on remaining details for Kyoto implementation. Despite annual headlines of "World reaches historic climate pact", the rules for putting Kyoto into practice remain incomplete. Regardless, the five-year agreement (2008-12) came into effect, and negotiators now preoccupy themselves with seeking to define the future of a treaty that by any reasonable standard must appear to have been overtaken by related failures and unrelated events.

The Bonn session came on the heels of European Environment Commissioner Stavros Dimas coming to New York and Washington with the message that Europe is leading on climate change and America could cheaply comply with Kyoto.²² In Washington, Commissioner Dimas ritually repeated the assessment that U.S.-EU relations over climate change are "thawing"²³.

22 Commissioner Dimas relied upon a report by the U.S. Energy Information Administration (EIA) or, more likely, to a widely run April 15 Associated Press article distorting the report's contents. EIA found the U.S. could spend tens of billions per year and still not halt growth in greenhouse emissions. AP instead spun the report as EIA concluding it would cost 0.1% of US GDP, or about \$10 billion per year, for a 33% reduction in the *growth rate* of U.S. GHG emissions - from 1.5% per year down to 1% per year. That is, EIA said that the state could force Americans to spend \$10 billion per year on something other than what they would choose to spend it on, and cause only modest harm to the U.S. economy. While likely true, this alone is not a compelling case for GHG reductions. One can just as easily say that spending \$10 billion per year to have people dig holes and fill them up again would cause only modest harm to the U.S. economy - \$10 billion per year worth of harm. Reportorial advocacy notwithstanding, therefore, the AP story alone provided enough information to see that EIA effectively concluded a high cost for a small reduction in business-as-usual GHG emissions. Still, if one accepts that each \$15 million in regulatory costs induces one statistical fatality (Lutter, Viscusi, and Morrall 1999), then Commissioner Dimas might more appropriately have summarized the report as "study suggests even modest greenhouse gas measures will kill 1,000 Americans each year".

23 <http://www.environmentdaily.com/articles/index.cfm?action=article&ref=18631>

These claims increase in tandem with Kyoto's problems, and seem designed to create the inference of a Bush Administration gravitating toward agreement on Kyoto: Don't abandon ship, help is on the way. Europe, it seems, is realizing it has painted itself into a political corner such that either the U.S. must bail them out or - more painful - the EU must somehow reform its stance.

EUROPE'S FAILURE, KYOTO'S FAILURE

To imply that, for any among the myriad reasons invoked, the U.S. is inching toward Kyoto requires ignoring serial statements by U.S. officials up to and including President Bush, culminating in the Gleneagles communiqué in which the parties coalesced largely around the U.S. position (see discussion, *infra*). Further, claims of a low-cost Kyoto have been proven spectacularly false²⁴ in Europe, Japan and Canada. This actual OECD performance should surprise those familiar with the mantra of a United States grossly out of step with the Kyoto-compliant world. In fact, almost to a nation, those few countries actually covered by Kyoto's cuts aren't complying.

Europe's non-compliance with its Kyoto promise to collectively reduce "greenhouse gas" emissions to 8% below 1990 levels should soon create significant internal political tension to match that held by some with the U.S.

As cited, the BSA assumes that those EU countries increasing their emissions under the deal BSA would be covered by over-complying states Great Britain and Germany due to their "one-off" political developments. Again, it is now clear that the UK and Germany will not carry the rest of the EU-15 over the finish line of complying with a treaty invoked by many in the EU as embodying U.S. irresponsibility.

Consider the following recent member state projections²⁵ for 2010, representing what might be labeled, in the often shrill (pro-) Kyoto rhetoric, the EU "Dirty Dozen", whose emissions are

24 Translated: "*European Union will fail to meet Kyoto targets*. The European Union will fail to meet Kyoto targets for greenhouse gas reductions. 'Our energy mix is not optimal for Kyoto', said EU Energy Commissioner Andris Piebalgs in a 'Tagesspiegel' interview in Berlin. 'It is likely, that we will meet the target at a much later point than originally planned', he added. Particularly the share of renewable energy in Europe is still lacking behind. 'Our goal was to increase the RES share up to 22% of electricity production by 2010', says Piebalgs. Now, he only sees Europe at 18 or 19 percent. According to the interview, Piebalgs criticizes indirectly the plans of the CDU and FDP, to reduce subsidies for renewable energy technologies. 'Some people claim, that subsidies are too high, I disagree with that view. Germany has proven what is possible in this field'. Regarding coal subsidies, Piebalgs fully supports CDU and FDP in their plans to reduce subsidies. 'Energy companies buy coal on international markets, no matter where it comes from. We only need the German coal if it is internationally competitive'." <http://de.biz.yahoo.com/050619/336/4l3zm.html>

25 http://reports.eea.eu.int/technical_report_2004_7/en/Analysis_of_GHG_trends_and_projections_in_Europe.pdf

expressed here respectively in relation to their 1990 baseline, the 8%-below-1990 to which they are collectively (and per Kyoto, individually) committed, and the Burden Sharing Agreement (BSA)²⁶:

Portugal over 1990 by 72%, 76% over "Kyoto", 36% over BSA

Spain over 1990 by 48%, 61% over Kyoto, 29% over BSA

Greece over 1990 by 42%, 54% over Kyoto, 13% over BSA

Ireland over 1990 by 29%, 41% over Kyoto, 14% over BSA

Luxembourg under 1990 by 22%, 15% under Kyoto, 8% over BSA

Finland over 1990 by 17%, 27% over Kyoto, 17% over BSA

Denmark over 1990 by 16%, 26% over Kyoto, 46% over BSA

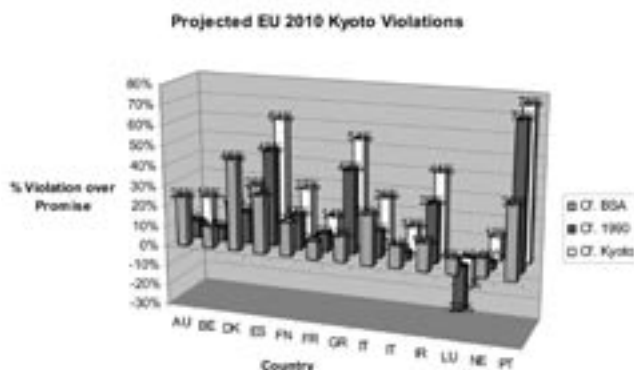
Italy over 1990 by 4-13%, 13-26% over Kyoto, 11-25% over BSA

France over 1990 by 9%, 14% over Kyoto, 9% over BSA

Austria over 1990 by 8.8%, 18% over Kyoto, 25% over BSA

Belgium over 1990 by 7%, 16% over Kyoto, 11% over BSA

Netherlands over 1990 by 3.3%, 12% over Kyoto, 10% over BSA

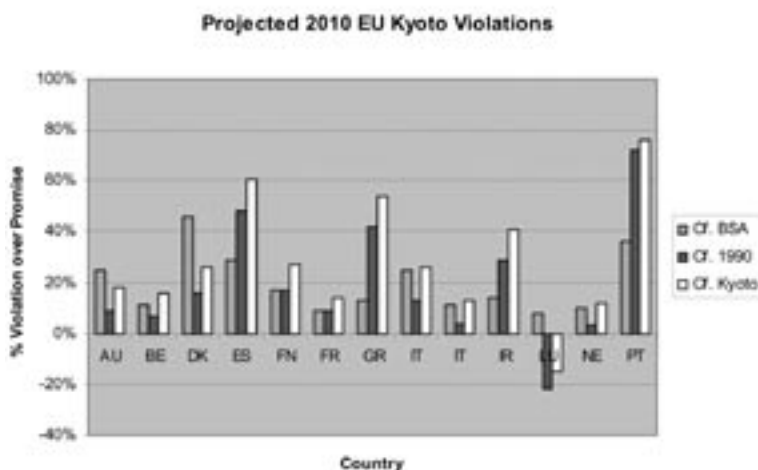


Unfortunately, statements from Brussels mask these reported figures. Still, clever wording²⁷ does not withstand the scrutiny of crunching the actual submitted numbers. These violations are not mere technicalities, but a red flag of future political problems as talks presumptuously turn to a "second round".²⁸ This is why Italy first rejected the Council's current stance, now facing failure on the first draw, of doubling the bet.

26 Neither the EEA nor Member States uniformly use higher or lower baselines, nor their unexplained "(latest projections)" or "(for projections)" figures from this particular report. Given the curious and often appreciable deviations between various EU baselines, discussed, *infra* this paper largely uses the lowest reported baseline figure to determine projected violations. In no case does this move a country or the EU-15 from projected compliance to non-compliance.

27 http://org.eea.eu.int/documents/newsreleases/ghg_emissions-trends2004-en

28 For country-by-country "effective" violations given the Marrakech 130% penalties, see Annex "1".



This projected, widespread lack of EU adherence to Kyoto does not match the rhetoric aimed by official Europe at the “irresponsible” United States. The EU appears unconcerned that, among covered Kyoto parties, only *European* countries exceed the “rogue” U.S.’s projected percentage increase over 1990 emissions, and that Japan and Canada project violation of their more forgiving baselines by 34% and 20%, respectively. Yet the debate remains dominated by talk of ever-grander promises and scolding the U.S. for being so grossly out of step with the rest of the world, acting alone - with 155 others - in insisting on some approach other than these unattainable pledges of absolute caps. Official Europe, however, may be quietly waking to its own Kyoto problems, if not necessarily coming to grips with the most direct way of dealing with them. According to BBC Science Editor Susan Watts on the 8th June 2005 “Newsnight”²⁹ broadcast:

“I understand, another key sticking point on that wish-list from Britain for the G8 was that there would be some kind of process agreed to whereby any action in the process would be followed-up. We [would] see whether countries were doing what they said they would do. It now seems even [*sic*] some European countries are finding it hard to agree to that.”

Yet barring imposition of effective oversight, and risking their claims to “world leadership” plus staggering penalties, it remains fair to presume that despite a lack of actual Kyoto-related emission reductions Europe will claim compliance relying upon some combination of, *e.g.*, “finding” new Annex I parties with credits to sell *a la* was just done with Belarus, confusion over the 1990 baseline figures, a years-long lag in verifying asserted reductions, and a burst of approved JI and CDM projects previously held up in the pipeline for reasons of costs and other poor program design. Accountability, however, would seem a preferable option for the credibility of the parties and the process.

29 <http://news.bbc.co.uk/1/hi/programmes/newsnight/4074654.stm>

THE GHOST OF MARRAKECH

Lost in the rhetorical fog shrouding the EU's looming Kyoto violations are the penalties in the event of such dereliction. That Japan successfully stripped Kyoto's enforcement provisions at "COP-6 *bis*" (Bonn, July 2001) is as commonly invoked, to moot the issue of possible EU noncompliance, as Europe's status as "world leader". In fact, to compensate for the removal of prior enforcement language, the EU insisted in Marrakech (COP-7, November 2001) on a carryover penalty of 130% of a country's first compliance period violation to reduce any second compliance allowance. Also, the Marrakech Accord³⁰ eliminated non-complying Parties from eligibility to employ the "flex mex" of JI and emission trading.

Regarding the latter, this means - under the "Annex: Modalities, rules and guidelines for emissions trading", specifically Paragraph 5 of Marrakech - individual countries, *and/or* the EU-15 are not permitted to "transfer and/or acquire" credits post-2012 toward complying with treaty promises if they violate Kyoto's first commitment period. Some Kyoto advocates accept and even boast about³¹ the obvious prohibition on selling *and* buying, while others oddly imply that this merely impedes a country that violated Kyoto from *selling* credits - that is, from participating in Kyoto only to the opportunistic extent of capitalizing on an international "Kyoto market". Indeed, even the UNFCCC employs such language³², non-binding but betraying awareness that the sole chance for most countries to comply is to buy their way out - assuming the credits exist:

"If, at the end of this [2008-2012] period, a Party's emissions are still greater than its assigned amount, it must make up the difference in the second commitment period, plus a penalty of 30%. It will also be barred from *selling* under emissions trading and, within three months, it must develop a compliance action plan detailing the action it will take to make sure that its target is met in the next commitment period." (emphasis added)

This is inaccurate, for in truth the Marrakech language is unambiguous: "Legal entities may *not transfer and/or acquire* under Article 17³³ during any period of time in which the authorizing

30 http://unfccc.int/cop7/documents/accords_draft.pdf

31 See for example the European Council for an Energy Efficient Economy commending the EU at the time as the negotiating party insisting on this restriction for Kyoto scofflaws: "However, the EU won a condition that countries may only use the protocol's vital 'flexible mechanisms' of meeting targets through emissions trading and funding climate gas-cutting projects abroad if they accept its compliance regime. *This means* that if they fail to comply with the protocol's strict monitoring and reporting provisions, or *if they exceed emissions targets at the end of the first commitment period*, they will be ineligible to trade." (emphasis added) http://www.eceee.org/latest_news/2001/news20011113.lasso

32 http://unfccc.int/kyoto_mechanisms/compliance/items/3024.php

33 http://unfccc.int/essential_background/kyoto_protocol/items/1678.php

Party does not meet the eligibility requirements” Annex: Modalities, rules and guidelines for emissions trading, Para. 5 (p. 99) (emphasis added).

Regardless of motivation, this selective revision of course impermissibly distorts the actual Marrakech Accord; impermissibly, that is, on its face, though plenary authority to determine this is exclusively vested in an “Enforcement Branch”.³⁴

No legitimate argument exists to support the UNFCCC claim that “transfer and/or acquire” actually means just “transfer,” any more than that it merely means “acquire”. That is a specious position that should be immediately defeated. Potentially innocent UNFCCC distortions notwithstanding, what does the actual Marrakech “second round” prohibition on emissions trading for violators of Kyoto, “round one”, mean? The open question seems whether, in the case of EU-15 collective non-compliance, the “legal entity” prohibited from selling or buying GHG credits is the EU-15, the individual member state, or “all of the above”.

For guidance we turn to the Kyoto Protocol, Article 4, which establishes the EU-15 status to operate as such a legal entity for these purposes. Kyoto, Article 1, paragraph 6, states “‘Party’ means, unless the context otherwise indicates, a Party to this Protocol.” Paragraph 7 states that “‘Party included in Annex I’ means a Party included in Annex I to the Convention, as may be amended, or a Party which has made a notification under Article 4, paragraph 2(g), of the Convention.”

Yet the Marrakech Accord to Kyoto - which per the UNFCCC³⁵ is “the compliance regime for the Kyoto Protocol...the ‘teeth’ of the Kyoto Protocol, facilitating, promoting and enforcing adherence to the Protocol’s commitments” - consciously employed neither of those two terms regularly used elsewhere throughout the Protocol. Marrakech instead uses “legal entity” instead of “Party included in Annex I”,³⁶ recognizing and facilitating this “other” entity created by Article 4.1: “[a]ny Parties included in Annex I that have reached an agreement to fulfil their commitments under Article 3 jointly.”

Consider two scenarios, that the EU-15 does collectively satisfy Kyoto, and that it collectively violates its promise. Assume for either scenario that most EU-15 member states do not comply with Kyoto, as inescapably several of them will not. In the event of collective compliance but selective member state non-compliance, arguably those states violating Kyoto could be prohibited from

34 “The Enforcement Branch, for its part, is responsible for determining whether an Annex I Party is not complying with its emission target or reporting requirements, or has lost its eligibility to participate in the mechanisms.” http://unfccc.int/kyoto_mechanisms/compliance/items/3024.php Upholding such a self-serving action as this distortion would certainly doom any chance of, *e.g.*, the U.S. further participating in such an enterprise where long-fought, painfully detailed language actually means nothing but the interpretation most convenient for a given circumstance.

35 http://unfccc.int/kyoto_mechanisms/compliance/items/3024.php

36 That is Annex I Parties, vs. all Parties, as Article 4 only applies to the subset of those countries actually obliged with Kyoto cuts, who combine to attempt a collective emission reduction but whose individual commitment in the event of non-compliance is expressly reaffirmed in Article 4, para. 5: “In the event of failure by the Parties to such an agreement to achieve their total combined level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement”.

emissions trading post-2012. Given the self-policing enforcement structure illustrated, *supra*, let us instead however assume the forgiving interpretation that the EU's burden sharing agreement per Article 4 in fact allows that penalties incurred from such individual violations are made up for by the collective compliance. Thanks to the EU's BSA, there should be no problems for future emission trading even for states violating Kyoto if the EU-15 meets its burden.

The more problematic, and more likely, scenario is selective EU member state compliance, *e.g.*, the UK, and maybe Germany and Sweden, but widespread exceedances leading to collective violation. In this case, Marrakech seemingly dictates that not only are those 12 or so EU-15 states that violate Kyoto prohibited from using, *e.g.*, ETS to comply with any second round, but the EU-15 as a legal entity would be prohibited. This is also relevant to the extent the ETS ties with other, non-EU-15 states as is anticipated.

In this case, post-2012, EU states may trade emissions internally as they so choose, but the fruits of this activity may not be considered toward a state's compliance with a "round two" of Kyoto. Only emissions and CDM will count toward compliance.

The question remains whether collective failure equally disqualifies compliant states. Might the UK, and possibly Sweden and Germany continue with emissions trading toward compliance with Kyoto, round two? Given that Article 4 affirms a state's individual liability, it likely also frees a compliant state from penalties assigned a collective entity. So the UK and Germany can likely continue to purchase - or sell - GHG credits. They just cannot sell to or buy from their fellow EU-15 member states.

In summary, the reasonable reading of Marrakech is that in the event of the EU-15 collectively failing to comply with its 8%-below-1990 commitment, any EU-15 member state which fails to comply with Kyoto is prohibited from "transfer[ing] and/or acquir[ing]" GHG credits. Assuming a second compliance period, these penalties are self-implementing.³⁷

This predicted outcome would be highly embarrassing given that numerous EU sources, *e.g.*, a recent document by the influential organization CEPS, declare ETS the "critical...centerpiece of EU climate policy".³⁸ Evading enforcement, however, appears possible only by a) negotiating

37 This also assumes that the parties with vested financial and other interests Russia, green pressure groups and LDCs, are able to stop any EU effort at waving a Kyoto wand of forgiveness at their violation.

38 "Towards a Global Climate Regime: Priority Areas for a Coherent EU Strategy, Second draft" *Centre for European Policy Studies* (2d May 2005). This document, produced by a "task force" on climate change policy led by senior executives of Shell Oil and BP and facilitated by CEPS, purports to explore necessary components of "a coherent EU strategy" for post-2012. Yet it appears remarkably unaware of Kyoto's actual requirements, particularly failing to even contemplate consequences of EU non-compliance with the 2008-2012 "first commitment period." Setting a new standard for understatement, it makes one mere reference to "difficulties", it states "[m]any Parties including the EU have difficulties in meeting the Kyoto Protocol commitments" (p. 31), followed by a specific discussion to reform of the ETS emphasizing only *expansion* as necessary to incorporate other industry sectors, gases and countries. Over 55 pages it neither employs any form of the word "violate", nor discusses *first commitment period* compliance outside of the single mention of EU "difficulties." As such, the CEPS report continues a typical EU treatment of Kyoto as merely an unenforceable icon demanding not adherence but use solely as a rhetorical cudgel to advance certain policies (if not those that Kyoto would actually require).

"forgiveness", b) eschewing a second compliance period or, c) ensuring a (very) favorable second compliance period allowance compensating for this penalty. The latter is the course most likely preferred at present by the EU, but it does not avoid the ban on trading in the second period. Also, another provision in the Marrakech accord - the requirement of negotiating a second period in 2005 - expressly was in fact included in order to avert "c".

Official Europe celebrated Marrakech as having "saved"³⁹ Kyoto. Regardless, how this does not actually doom any second compliance round is difficult to see. Even if the agreement in the G-8 communiqué⁴⁰ proves to relegate Kyoto to the dustbin of history as yesterday's approach to yesterday's conception of tomorrow's problem (see *infra*), it does not liberate Europe from its ratified "legally binding" Kyoto commitments. As such, Europe remains bound by the Marrakech penalties for any agreement that qualifies as a second round of "Kyoto".⁴¹ Logically, this mandates a change of the EU's posture.

OTHER EU ISSUES: THE BURDEN OF BURDEN SHARING

Notwithstanding optimistic EU portrayal of its progress toward achieving promised emission reductions, in the same document⁴² the EU-15 actually admits it is on track to reduce emissions 0.6%, a far cry from its collective Kyoto commitment of 8%-below-1990. Disinterested-party and Member States projections are less optimistic, predicting overall emission *increases*, despite the UK and Germany, up to 7.5% above 1990.⁴³

As such, those "one off" and unrelated political decisions of two actors accounting for all of the EU-15's cuts will not alleviate the failure of the rest of the bloc to make actual reductions. As illustrated, 12 of the EU-15 even presage violating their "burden sharing" Kyoto promise by 10% or more, and at least 5 of the EU-15 project violations of their substitute Kyoto promise by 20% or more up to 47%.

39 http://www.climnet.org/COP7/cop7_news.htm#comm10

40 <http://www.number-10.gov.uk/output/page7881.asp>

41 The CEPS paper flirts with acknowledging Kyoto may have to be all but abandoned. Its Section 6.3 "Six elements of a post-2012 architecture", asserts "It is realistic to expect that a comprehensive agreement on the post-2012 regime will need to ensure a *fair amount of continuity with the Kyoto Protocol structure*" (emphasis added). This modest realism is dashed, however, by the clarification that this calls for mere modifications: "...accommodating a number of *additional components* aimed at attracting quasi-universal participation in a global agreement." (emphasis added)(p. 33).

42 http://reports.eea.eu.int/technical_report_2004_7/en/Analysis_of_GHG_trends_and_projections_in_Europe.pdf

43 <http://www.iccglobal.org/research/climate/cop-10dec2004.html>. Also see CLIMATE CHANGE: GHG EMISSIONS OUTLOOK AND RESPONSE OPTIONS. 2004 EDITION, Robert A. Reinstein, Reinstein & Associates International.

Yet only by crunching numbers does one discern through the rhetoric the actual, official EU position about its likely 2008-2012 performance. At COP-10 in December, after Italy had dismissed the idea of second commitments, the EEA suddenly projected possible compliance a detailed review of which yields several key qualifications. First is the disclaimer that, "[h]owever, this relies on several Member states cutting emissions by more than is required to meet their national targets, which cannot be taken for granted."

The EEA also asserts,⁴⁴ "[i]f no over-delivery by these Member states is included, the EU-15 will [sic] achieve a 5.4 % reduction *with additional policies and measures*" (emphasis added). That is, the expressed likelihood of compliance relies upon not-as-yet enacted "additional" measures *and* highly unlikely over-compliance.

In the real world, under real policies, "If Sweden and the United Kingdom do no more than meet their agreed targets, the EU-15 reduction will be just 0.6 %."

In fact, not only is compliance not suddenly projected but scrutiny reveals no change from the earlier EEA projection of a 1% overall reduction. In sum, there is little tangible evidence upon which the EEA can credibly hang its touted 7-8% reductions.

Some do appear to be aware of the true state of play. CEPS Senior Researcher Christian Egenhofer was remarkably candid in a June interview with Euractiv:⁴⁵

"Q: So the EU is not a champion either in reducing emissions, is this what you are saying?

A: They are actually bringing emissions down but their targets were the easiest...You could say that the U.S. did a very bad job at negotiating [in Kyoto] while the EU did a good job.

...On the other hand, the EU, despite the targets they have set, is not getting there either.

... "I think we all have to go back to the drawing board and understand better where we want to go."

Given the above revelations this is wise counsel. Hopefully, the Gleneagles communiqué signals a new beginning. Three tests are found in the September World Bank meeting, the early November Gleneagles follow-up meeting in London, and the November-December COP-11. Most revealing will likely be how the EU publicly, and privately, approaches January's follow up meeting for the Vientiane agreement. If, as some suggest, it lobbies for countries to abandon the pact and/or avoid joining it, the EU will presumably signal that it has dug in its heels and will continue the failed insistence on the failed absolute emissions caps.

44 http://reports.eea.eu.int/eea_report_2004_5/en

45 <http://www.euractiv.com/Article?tcmuri=tcm:29-140339-16&type=Interview>

OTHER EU ISSUES: THOSE CURIOUS, CHANGING BASELINES

Kyoto performance and penalties remain assessed against the baseline of 1990 GHG emissions (with various exceptions immaterial to the following concerns). The EU-15 collective burden is to reduce emissions by 8% below 4,224 million metric tons (Mmt), the total baseline as recently reported by the EEA in its December 2004 "Analysis of greenhouse gas emission trends and projections in Europe2004",⁴⁶ Or, is it 8% below 4,252 Mmt, the total reported in the May 2005 "Submission to the UNFCCC Secretariat"?⁴⁷ Alternately, is the EU-15 obligation 8% below their reported baselines of 4,174 Mmt, or 4,320 Mmt, which figures represent, respectively, the sums of the lower and higher self-reported baselines by EU-15 member states? Note that these baselines differ by 146 million tons, a variance of 3.5%.

	2001 TNC ⁴⁸	EEA12/04 ⁴⁹	EEA 6/05	4/04 Member Reports	Internal Δ
AT	77.1	78.0	78.5	77.6	1.8%
BE	144.6	146.8	146.8	141.0	4.1%
DK	69.2	69.0	69.6	69.0	0.8%
FN	77.0	76.8	70.4	77.2	10%
FR	546.0	564.7	568.0	545.0	4.2%
DE	1,222.8	1,253.3	1,248.3	1,218.2	2.9%
GR	106.1	107.0	111.7	109.3	5.3%
IR	53.4	53.4	54.0	53.4	1.1%
IT	520.0	508.0	510.3	521.0	2.6%
LU		12.7	12.7	12.7	
NE	215.8	212.5	213.1	212.0	1.8%
PT	65.0	57.9	59.4	65.1	12.4%
ES	308.54	286.8	286.1	286.8	7.8%
SW	73.7	72.3	72.3	71.9	2.5%
UK	764.13	746.0	751.4	764.1	2.4%
	4,256	4,245.2	4,252.5	4,224.3	

46 http://reports.eea.eu.int/technical_report_2004_7/en/tab_content_RLR

47 http://reports.eea.eu.int/technical_report_2005_4/en/EC_GHG_Inventory_report_2005.pdf

48 Third National Communication pursuant to the UNFCCC. The UK figure is filed as 208 Mmt of carbon. The total presumes 12.7 for LU, who like several countries has not bothered submitting required reports since the early 1990s, despite this being prerequisite under Kyoto for various purposes.

49 Even this document contains two sets of numbers for each country. See "Annex1, Effective Projected GHG Emissions, Kyoto Performance".

Selectively using individual reported highs and lows provides no less than six different baselines of 15-year-old emissions from which to draw the EU's collective and individual Kyoto promises.⁵⁰ A higher baseline means a lower violation. Bureaucratic sleight of hand with that differential alone could provide nearly half of the required EU "reductions" to claim compliance and avert the fatal Marrakech penalties.

Yet these inconsistencies cannot be uniformly assailed as clever dodges. Instead, in reports following the 2001-2002 UNFCCC "Third National Communications" to the UN, some states have lowered their reported baseline while others raised theirs. Further, the collective EU-15 baseline changes only marginally (sub-1%) between the highest and lowest of the 2 EU-15 *compilations*, or between the sums of the individual member state figures submitted to the EEA and the UN to date.

The threat instead lies in the potential consequence of member states being allowed to continue maintaining, or cherry-picking among, variable baselines all measuring the same thing. If allowed to choose from among their recorded variations, then the member states have an appreciable delta of 3.5% of the EU-15's 8% Kyoto commitment.⁵¹ Countries must provide uniform answers to a uniform question. Varying the EU baseline by several percentage points toward its commitment of an 8% reduction yields not only means disingenuous "compliance" or material reduction of penalties and setbacks, but improper escape from billions in GHG purchases not made.

OTHER EU ISSUES: CAN COVERED COUNTRIES BUY COMPLIANCE?

As illustrated, official EU projections are more optimistic than private projections yet have the EU falling up to 7-8% short by 2010 of their collective promise to lower GHGs by 8% below 1990. Using the EU's submitted 1990 baseline of 4,124 Mmt, the EU must reduce its emissions by about 330 Mmt from that baseline (as with all such figures, this is on average over the five-year period 2008-12). If the EU reduced emissions instead by 0.6% as projected, or by about 25 Mmt, it presumably must "find" the remaining 7.4% of its baseline, or about 305 Mmt. At this writing, the price of buying such credits would be between €5,500,000,000-8,845,000,000 on top of the cost of the presumed 0.6% "reduction", part of which per the EU already includes costs for buying credits but does not include the macroeconomic impact of higher energy prices.

50 A 1996 method change allowed for recalculation, but that was long before these numbers were reported.

51 It could turn out that some variation in these reports comes from states alternately including "sinks" in their total (if given a choice the figures cited are "without sinks"; also, some states didn't want to answer the question, but the answer could be derived from other figures provided). It does seem that the above is a comparison of apple-to-apple-claims, not apples and oranges. Kyoto Article 25 established a formal baseline figure for determining which country's ratification would bring Kyoto into force, offering a logical collection of figures to stick with: "2. For the purposes of this Article, 'the total carbon dioxide emissions for 1990 of the Parties included in Annex I' means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex I in their first national communications submitted in accordance with Article 12 of the Convention."

Further, “[a]s of October 2004, Member States had provisionally indicated in their national allocation plans that they intend to procure 500-600 *million tonnes* of CO₂ credits for the period 2008-12.”⁵² It appears that whatever the amount, it must be purchased, as the alternatives Clean Development Mechanism (CDM) and JI have to date failed to produce meaningful emission credits. Given lead times and that each project produces 500,000 tons-1Mmt, CDM and JI cannot be viewed as major considerations.

The EU does insist that “The use of the Kyoto mechanisms within the EU will be *supplemental to domestic action to limit or reduce emissions*, as agreed by UNFCCC parties at Marrakesh (*sic*) in 2001. Member States will address this question specifically in national allocation plans for 2008-2012”.⁵³ Here is yet another irony of past EU efforts to restrict how much a country employ credits. At Kyoto, the EU fought emission credit trading, and through most of 2001 sought to mitigate how extensively credits could be used toward achieving a Kyoto promise. Since Marrakech, however, there is no firm cap on such use, but instead the “supplemental” restriction that, taken literally, prohibits the EU from relying on the purchase of tons of credits than tons over actual reductions. Given few actual reductions (Cf. 1990) outside of the UK and Germany, this could even mean that large EU credit purchases are impermissible.

With the overwhelming institutional bias being to perpetuate the Kyoto process, and thus to claim “compliance” and agree a second period, let us assume instead some more forgiving interpretation allowing widespread use of credits, JI and CDM reduction units. It remains unlikely that sufficient GHG credits will be available for the covered countries to comply with Kyoto even if the public accepts the additional wealth transfers.

Specifics are as follow. Available figures indicate that the EU, Japan and Canada together will need to obtain at least 850 Mmt *additional* per year by 2010, according to their self-reported projections. This amounts to 4,250 Mmt for Kyoto’s five-year life. The demand for credits rounds up to 890 Mmt or 4,450 Mmt over Kyoto’s life, with New Zealand and the minor requirements of Norway⁵⁴ and Slovenia.

Russia, by far the biggest potential supplier of GHGs (and Europe’s natural gas), should realistically have approximately 550 Mmt annually (2,750 Mmt 2008-2012). Assume 3,580 Mmt are available over 2008-2012 from Russia combined with the 165.7 Mmt projected as possibly available annually from Romania, Bulgaria, the Czech Republic, Slovakia, Estonia, Latvia, Lithuania, and Iceland.

This leaves a *deficit* of GHG credits of about 870 Mmt. Hyper-optimism might include CDM and JI to bring the deficit down to an extra 800,000,000 tons the EU-10 must find - greater than the annual projected emissions total of Canada, Norway and New Zealand combined, or the combined five-year total of Norway, Sweden and Finland.

52 http://europa.eu.int/comm/environment/climat/pdf/emission_trading2_en.pdf (emphasis added).

53 *Id.* (emphasis added)

54 In September Norway reported emissions increases making its own compliance even more unlikely. See, e.g., “Norway failing to meet Kyoto goals” <http://www.aftenposten.no/english/local/article1110449.ece>

TO HAVE AND HAVE NOT: TONS OF HOT AIR AVAILABLE, AND NEEDED				
"HAVES" ⁵⁵				
COUNTRY	BASELINE	PROJECTED	ALLOWED	AVAILABLE
Russia (1)	3,050.0	1,792.0	3,050.0	613.0 Mmt (looks closer to 500) ⁵⁶
Romania (.92 x'89)	261.4	178.4	240.5	62.0 Mmt
Bulgaria (.92)	75.8	64.9	69.7	4.8 Mmt
Estonia (.92)	43.5	20.0	40.0	20.0 Mmt
Latvia (.92)	25.4	12.0	23.4	11.0 Mmt
Lithuania (.92)	50.9	30.4	46.8	16.4 Mmt
Poland^ (.94 x'88)	565.3	464.0	531.4	67.4 Mmt
Czech Rep (.92)	192.1	137.9	176.7	38.8 Mmt
Slovakia (.92)	72.0	53.7	66.24	12.6 Mmt
Ukraine (1)	N/A			
Croatia (.95)	N/A			
Switz.(I) (.92)	55.0	48.2	50.6	2.4 Mmt
Iceland (1.1)	2.4	2.5	2.6	0.1 Mmt
"HAVE NOTS"				
COUNTRY	BASELINE	PROJECTED	ALLOWED	NEEDED
EU (.92)	4,124.0	4,100.0	3,794.0	305.0 Mmt (proj. 6% < 1990)
Slovenia (.92)	20.2	20.4	18.5	2.0 Mmt
Hungary* (.94)	122.2	114.9	114.9	0 Mmt
Japan (.94) ⁵⁷	1,229.0	1,549.0	1,155.0	394.0 Mmt (proj. 26% > '90)
Canada (.94)	607.0	686.0	571.0	115.0 Mmt (proj. 13% > '90)
N. Zealand (1)#	27.0	36.6	27.0	10.0 Mmt
Norway (1.01)	52.0		52.5	Mmt

! From 3d National Communications, respectively <http://unfccc.int/resource/docs/natc/cannce3.pdf> p. 15, and <http://unfccc.int/resource/docs/natc/japnc3.pdf> p. 76.

* Hungary baseline is the average of 1985-1987 emission totals.

New Zealand now projects larger increases and costs <http://unfccc.int/resource/docs/natc/newnc3.pdf>

^ Poland's baseline year is 1988. In 2001 it projected 2010 GHG emissions at, it appears, 464 Mmt. These figures are from the Third National Communication <http://unfccc.int/resource/docs/natc/polnc3.pdf> and EEA "gap filling estimate" http://org.eea.eu.int/documents/newsreleases/ghg_inventory_report-en due to a lack of data matched only by Cyprus. Poland provided the EEA only projections for its energy sector.

The same EEA source is used for baseline numbers for 5 of the EU-8 countries (excludes Poland, Hungary and Romania).

55 The parenthetical figures are the Kyoto commitment Cf. 1990 baseline, or other as noted.

56 Reports in September confirmed that this figure is at least 100 Mmt too high.

57 Japan and Switzerland figures come from 3d National Communications, respectively <http://unfccc.int/resource/docs/natc/cannce3.pdf> p. 15, and <http://unfccc.int/resource/docs/natc/japnc3.pdf> p.76. In September Japan's Economy, Trade and Industry Ministry indicated Japan would need only 20 million tons per year; this would leave Japan appx. 8% over its target; yet the same report indicated that Japan was presently 15% over its target, calling that new figure into question as overly optimistic.

All of these figures are from current projections of 2010 emissions, without Poland,⁵⁸ which promised to reduce its average emissions over 2008-2012 to 6% below 1988 but which offers confusion in its various reports. The numbers also assume each 2010 figure serves as an acceptable proxy for a five-year average. The wild card in addition to Poland - though not likely to alter a GHG-credit-deficit despite numerous states taking material advantage of Kyoto allowing selective baselines⁵⁹ - is if Europe deepens its economic malaise. Still, despite being in recession for the greater part of a decade Japan still has no chance of meeting its Kyoto emission-reduction promise.

EU compliance remains possible in theory, although the information available on the official sites is both spare and confusingly variable. In fact, the IPCC often employs much later baselines for certain purposes due to certain countries not having completely straightened out their reporting, adding further to opportunities for corrupting the process.

Further making compliance unlikely is the IPCC's acknowledgement that the EU-10's emission reductions from 1990-2000 came through economic downturn which, like the emission reductions, has reversed.

"POST-GLENEAGLES"

Brussels optimistically portraying possible EU compliance with Kyoto pales in comparison to some prominent characterizations of the Gleneagles Communiqué,⁶⁰ *e.g.*, "French President Jacques Chirac yesterday said he had won key U.S. concessions on global-warming policy, despite a Group of Eight accord that effectively killed the 1997 Kyoto treaty's restrictions on greenhouse-gas emissions."⁶¹

It is difficult to view the G-8 statement as embracing the Kyoto Protocol and mandatory emissions reductions. Notice that the conclusive statement on science that could be agreed

58 Using Poland's UN submission, it could have up to 67.4 Mmt of credits per year to sell, or 337 Mmt over Kyoto's five-year life, reducing Kyoto's GHG credit shortfall to approximately one-half a billion tons.

59 Kyoto Article 3 para. 5 provides: "The Parties included in Annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to decision 9/CP.2 of the Conference of the Parties at its second session shall use that base year or period for the implementation of their commitments under this Article. Any other Party included in Annex I undergoing the process of transition to a market economy which has not yet submitted its first national communication under Article 12 of the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this Article." For example, Poland, Hungary and Romania use this provision to dramatically increase their applicable baseline, and therefore materially alter their allowed 2008-2012 emissions and, in 2 of those 3 cases, whether they can sell credits and how many. This is particularly dramatic in the case of Poland, with a difference between the 1988 and 1990 baselines of nearly 100 million tons.

60 <http://www.number-10.gov.uk/output/page7881.asp>

61 James G. Lakely, "Chirac claims win over U.S. on Kyoto," *The Washington Times*, 8th July 2005.

was a mere truism: "We know that increased need and use of energy from fossil fuels, and other human activities, contribute in large part to increases in greenhouse gases associated with the warming of our Earth's surface." Parsed, it is of course not arguable - and in fact reads rather strangely for such a group to even state - that combusting hydrocarbons produces GHGs, that like all emissions they must by definition contribute to an increase in *emissions in GHGs*, and there has long been agreed an "association." As several greens have lamented, this statement is even a step down from its 1992 counterpart, the UN Framework Convention⁶² (paragraph 2).

As such, the G-8 language represents a less aggressive agreement than Kyoto, and certainly no next step toward a post-2012 pact that might resemble Kyoto's model.

The Communiqué continued, "While uncertainties remain in our understanding of climate science, we know enough to act now to put ourselves on a path to slow and, as the science justifies, stop and then reverse the growth of greenhouse gases." So, we agree now that we ought to slow GHG emissions, and depending on the science might later need to cut them.

This inarguably steps back from Kyoto's *de facto*, if not express, reliance upon the rhetorical scientific "certainty" or, as the speaker and context would have it, "consensus" of knowledge at least sufficient to mandate Kyoto's cuts. Indisputably, even tacitly acknowledging the myriad climate science uncertainties, previously unacceptable to the political forces driving Kyoto, represents a dramatic shift of approach.

As such, some offering the following evidence in arguing that at Gleneagles the G-8 adopted President Bush's climate policy language as its consensus statement.

The G8 proclaimed (with emphases added):

"(a) Climate change is a serious and long-term challenge that has the potential to affect every part of the globe. We know that increased need and use of energy from fossil fuels, and other human activities, contribute in large part to increases in greenhouse gases associated with the warming of our Earth's surface. While uncertainties remain in our understanding of climate science, we know enough to act now to put ourselves on a path to slow and, as the science justifies, stop and then reverse the growth of greenhouse gases"

The EU's claim of urgency is abandoned and the latter, bolded phrase is straight from the Bush Administration's February 2002 "Global Climate Change Policy Book".⁶³

"This new approach focuses on reducing the growth of GHG emissions, while sustaining the economic growth needed to finance investment in new, clean energy technologies. It sets America on a path to slow the growth of

62 http://unfccc.int/essential_background/convention/background/items/1349.php

63 <http://www.whitehouse.gov/news/releases/2002/02/climatechange.html>

greenhouse gas emissions, and - as the science justifies - to stop and then reverse that growth". (Emphasis added)

The same Policy Book stated, **"Focusing on Greenhouse Gas Intensity Sets America on a Path to Slow the Growth of Greenhouse Gas Emissions, and - as the Science Justifies - to Stop and Then Reverse That Growth".** (Emphasis added)

Similarly, on the White House Council on Environmental Quality (CEQ) website⁶⁴ in the section titled "Addressing Climate Change," we find, **"President Bush is addressing the complex and important issue of global climate change with an ambitious strategy: slow the rate of increase in greenhouse gas emissions, and then, as the science justifies, stop - and then reverse - the accumulation of greenhouse gas emissions in the atmosphere".** (Emphasis added)

Finally, consider the July 11, 2002 testimony⁶⁵ of CEQ Chairman James L. Connaughton on United States Global Climate Change Strategy before the U.S. Senate's Science, Commerce and Transportation Committee, **"This [the President's policy] will put America on a path to slow the growth of our greenhouse gas emissions and, if the science justifies, to stop and reverse the growth of emissions".** (Emphasis added)

Naturally, even were the G-8 to adopt the text of a previous Bush Administration statement on climate change verbatim and in its entirety, given the source EU leaders could not acknowledge such agreement. Still, the new tone is undeniable in the G-8 statement to follow the science with merely an afterthought reference to Kyoto.

Consider an analysis by former Clinton Administration negotiator and current Brookings Institution director David Sandalow of previous summit statements, as reported in the 8th July 2005 Financial Times. Sandalow concluded that earlier statements on climate change were much stronger than the 2005 version:

In 1990, under President George W. Bush's father, the meeting in Houston came up with the statement: 'Climate change is of key importance. We are committed to undertake common efforts to limit emissions of greenhouse gases, such as carbon dioxide.' At London in 1991, the countries agreed to 'design and implement concrete strategies to limit net emissions of greenhouse gases'. [In 1992] they promised 'rapid and concrete action to follow through on our commitments on climate change'. Even in the "difficult economic times" of 1993, 'environmental issues remain a high priority on our agenda', they noted. At Halifax in 1995, the leaders again said: 'Climate change remains of major global importance.' [Sandalow predicted "a watered down affirmation of the science", which would contrast] sharply with the 1997 communiqué from Denver which

64 <http://www.whitehouse.gov/ceq/global-change.html>

65 <http://www.state.gov/documents/organization/13774.pdf>

stated: 'Overwhelming scientific evidence links the build-up of greenhouse gases in the atmosphere to changes in the global climate system.' Since then, however, climate change has been avoided or referred to only vaguely.

Time will likely prove that the most important aspect of the communiqué, the subject of great scorn from the environmental pressure groups but ignored by the media, is that the statement regarding the science of climate change statement was just one of five equivalent challenges. The statement on adaptation is missing only a commitment to an economic resiliency strategy otherwise it, too, would be straight from the Bush team. The G-8 tasked the International Energy Agency⁶⁶ with developing alternative energy scenarios, threatening the SRES⁶⁷ upon which catastrophic claims tenuously⁶⁸ rest.

As Iain Murray summarized the communiqué in National Review Online:⁶⁹

"There are no targets or timetables, no ominous declarations of immediate global catastrophe, and no calls to reduce world energy consumption. Instead, the statement recognizes that the threat is long-term and stresses the need for adaptation to deal with the challenges. Moreover, there is recognition that the world actually needs to increase power consumption to help the 2 billion people who have little or no access to energy. In effect, the G8 has adopted the American position on global warming as the consensus position (even the language about science comes straight from Administration documents). This statement relegates global warming to its proper place in world affairs - one to keep an eye on, and work to mitigate with appropriate, low-cost strategies, but not an immediate priority."

LAOS-ING UP KYOTO? ASIA-PACIFIC PARTNERSHIP ON CLEAN DEVELOPMENT APPEARS TO BE JUST WHAT EU ASKED FOR

On 27th July word began to leak in Asian and Australian press outlets of a multi-party "climate change" agreement involving some of the world's largest emitters. Prompt White House confirmation of U.S. participation in an "Asia Pacific Partnership on Clean Development" confounded the Kyoto establishment, made evident by reaction to U.S. Deputy Secretary of State Robert Zoellick unveiling certain specifics at an Association of South East Asian Nations (ASEAN) meeting in Vientiane, Laos.

66 <http://www.iea.org/>

67 <http://www.grida.no/climate/ipcc/emission/>

68 <http://www.warwickhughes.com/hoyt/economics.htm>

69 <http://www.nationalreview.com/>

As with the Gleneagles Communiqué, response to Vientiane was by no means uniform among Kyoto parties and pressure groups.⁷⁰ Representative of this divide, Greenpeace Energy campaigner Catherine Fitzpatrick stated that "it's a tragedy that we have the Australian government and the U.S. government doing whatever they can to undermine international action on climate change", while Greg Bourne, WWF-Australia's Chief Executive Officer opined "we know we need to reduce carbon dioxide emissions, we know we have to help others reduce, we know that we need to get on with it and be innovative and anything that takes us down that path is significant."

This pact, the fine print of which will emerge later in the year, already involves 5 of the 10 largest emitters, and 4 of the top 5 including all 3 of those 5 whom refuse Kyoto's emission cuts. The countries agreeing to a pact allowing each to set their own emission goals represent nearly half of Man's GHG contribution, 45% of world population and 48% of global energy consumption. Putting aside for now debate over merits of the agreement, it is noteworthy for achieving something at which Kyoto is a proven failure: bringing together the two developed economies that have refused to ratify Kyoto (the U.S. and Australia) with the largest two economies having ratified the agreement but with the continued insistence on being bound by no obligations (China and India). They were joined by another top-10 party with no obligations (South Korea) and, in Japan, even an "Annex I" covered Kyoto party. Plans are to expand membership.⁷¹

Japan's participation is a uniquely potent political symbol, given the region's particular "face" sensitivities and Japan being host to the namesake negotiation creating the Kyoto pact. This factor alone casts, *e.g.*, Friends of the Earth denouncing⁷² Vientiane as "another (U.S.) attempt to undermine the Kyoto Protocol" as, at best, an analysis-free visceral reaction. Under this view the U.S. convinces otherwise "responsible" countries, Svengali-like, to abandon a pact they hold dear, of course begging the question of who bullied these malleable peoples into Kyoto. The more respectful view toward these developing nations is the apparently unthinkable idea that they sincerely rejected Kyoto's rationing and desire an alternate approach, and they enter agreements upon free will and mindful of practical experience.

70 As late as the eve of the (for now) "Vientiane agreement" Sir David King, the science advisor to and typical spokesman for the British government, continued to declare Gleneagles was a success for the more radical and even alarmist climate camp. Sir David's logic at the event was elusive, given that he cited as the victory Gleneagles' affirmation of President Bush's June 2001 articulation on climate policy, despite the pro-Kyoto camps having uniformly trashed that policy speech as irresponsible. Although President Bush's positions have been infuriatingly (to the pro-Kyoto forces) consistent, King instead inaccurately insisted that Bush had run away to ever more irresponsible stances than advocating voluntary measures and the pursuit of climate knowledge. At the same London event (http://www.danacentre.org.uk/Default.aspx?DanaMenu=_EVENT&ArticleID={7CF09601-982E-4157-9BBE-0D252D4A49FC}), originally and expressly a showcase of agreement for the idea that climate change is "a greater threat than terrorism" (a title promptly changed after the London bombings), chief Greenpeace policy advisor Charlie Kronick sighed a less scripted admission of defeat.

71 For example, Cho Han-Jin, South Korean Environment Ministry official, stated "We plan to increase the number of countries in the pact by the end of the year. We aim to announce a charter along with the partners by the end of this year with details on technology areas where cooperation is needed."

72 <http://www.newscientist.com/article.ns?id=dn7744>

Official Europe at first hailed⁷³ the agreement, emphasizing later how no agreement will “replace” the five-year Kyoto: a political and legal truism. The real issue is whether Vientiane or any other pact supplants Kyoto as the vehicle for *post-2012*.

Overall, “civil society” reactions while diverse included many amounting to not much more than surprised petulance, best summed up in the claim⁷⁴ that “This pact is not binding, has no targets, no timelines and no penalties.” Taken in order, Kyoto of course by its own terms has no enforcement and is only so binding as a self-selecting handful of nations enact binding domestic legislation. The Vientiane pact specifies no targets but instead allows participating nations to select their own; compare this with Kyoto’s targets which also were selected or agreed by the participating nations - with some increases, some decreases, but certainly no uniformity; these were rejected by most of the world’s large emitters and are on track to be violated by most of the rest.

Timelines only matter in the case of enforcement, so their absence warrants no analysis further to the above. Complaining that Vientiane is “unenforceable” again is incoherent given that Kyoto by its own terms is not enforceable, but is only made so by individual countries enacting their own implementing legislation as they see fit. As regards penalties, no one assessing the impossibility of post-2012 Kyoto compliance can reasonably believe that all looming violators, *e.g.*, the EU, Japan and Canada, will not seek to negate the existing regime’s terms beginning in Montreal this December.

The principal criticism of any substance is an intangible one that being that Vientiane poses a threat to the Kyoto pact and process. In point of fact, Vientiane is not a determinant, but a symptom, of Kyoto’s failure. As Gleneagles offered a nod toward the existing establishment, Vientiane is styled⁷⁵ as being consistent with the UNFCCC. In leaving individual approaches to the individual states, and otherwise being less prescriptive and bureaucratic than Kyoto, Vientiane can certainly be viewed as consistent with the original 1992 Rio Framework Convention, if not Kyoto.

POST-VIENTIANE: THE SINCEREST FORM OF FLATTERY

If imitation truly is the most sincere form of flattery then US climate policymakers should feel quite flattered, indeed. On 7th September the EU and China announced a partnership with a “Joint Declaration on Climate Change,”⁷⁶ remarkably similar to the coolly received Vientiane

73 <http://www.alertnet.org/thenews/newsdesk/L28465334.htm>

74 <http://www.sundayherald.com/51051>

75 <http://www.state.gov/s/d/rem/50326.htm>

76 <http://europa.eu.int/rapid/pressReleasesAction.do?reference=PRES/05/226&format=HTML&aged=0&language=EN&guiLanguage=en>

pact. The distinction was that each party expressly reaffirmed their own "commitment to the objectives and principles" of UNFCCC and Kyoto - which of course means China's strongly held demand for continued exemption.

That same day the EU and India announced a similar agreement, the India-EU Strategic Partnership Joint Action Plan.⁷⁷ This "Political Declaration on the India-EU Strategic Partnership" contained not even one mention of Kyoto but instead appeared entirely based on Asia-Pacific pact.

Clearly, on the substantive if not rhetorical level international climate policy continues to move steadily toward the US position, even among EU ventures. It is not overly simplifying the issue to reduce remaining differences to the EU's insistence - that is, outside of the Commission as of this writing - upon maintaining absolute caps. This further illuminates the curiosity of the EU insistence that any "round two" include the US, as well as the absolute caps rejected by the US and 155 other nations.

POST-FLATTERY: HOW SHOULD THE EU RESPOND?

Despite Europe's cautious support and subsequent imitation, it seems unlikely⁷⁸ that the EU-15 or EU-23 will seek membership of Vientiane anytime soon though a question on the minds of many is whether one or more EU nations might join. This conclusion is drawn from historical and political indicators: the EU drives the Kyoto/UNFCCC processes and stands little chance of taking the reins of Vientiane. This fact in turn is principally obvious due to Vientiane being, diplomatic rhetoric notwithstanding, an alternative to Kyoto's approach and the EU's apparent insistence on absolute GHG caps.

Tremendous political capital is at stake, mostly for the EU given Japan's blessing of Vientiane, and huge sums of money are in play for all concerned. As such, any among several outcomes appear possible. Let us examine the consistency of Vientiane with the EU's statements on record regarding Kyoto next steps.

Precisely how Vientiane tracks with proclaimed EU policy, even if led by other-than-the-EU, is found not just in subsequent EU pacts with China and India, but in the Commission's 2005 statement⁷⁹ to other EU institutions titled "Winning the Battle against Global Climate Change".⁸⁰

77 <http://europa.eu.int/rapid/searchResultAction.do?search=OK&query=allenvdoc&username=EN&advanced=0&guiLanguage=en>

78 <http://news.bbc.co.uk/2/hi/science/nature/4724877.stm>

79 http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0035en01.pdf

80 "Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and Committee of the Regions", COM (2005) 35 final, 9 February 2005.

Noting that very soon most GHG emissions will come from other-than those parties covered by Kyoto obligations, the Commission opens its discussion of next steps with an undeniably sympathetic priority, that “[t]he importance of broadening international participation in efforts to tackle climate change *cannot be overestimated*” (p.4) (emphasis added). Subsequent EU reactions to the Vientiane agreement to which it was not a party, however, indicate that the EU might well have overstated the importance of such inclusive efforts.

EU language that would seem a premonition (were the EU not so clearly taken aback by the Vientiane announcement) apparently endorses Vientiane’s non-prescriptive nature and openness to working through non-UNFCCC *fora*, e.g., the G-8 and World Bank, toward finding that upon which the U.S. and developing countries can agree:

“Devising incentives for developing countries to take part in international emission reductions may also be a way of achieving wider participation by developed countries. The U.S. has argued that the absence from the requirements of the Kyoto Protocol of developing countries that are by now the major greenhouse gas emitters makes it environmentally ineffective and risks undermining the competitiveness of U.S. industry. Developing countries in turn are reluctant to constrain their emissions. The EU should support efforts to resolve this impasse. Indeed, a relatively small group –EU, US, Canada, Russia, Japan, China and India - amounts for about 75% of world greenhouse gas emissions. It might be worthwhile to try and accelerate progress and the global level by discussing reductions among this smaller group of major emitters in a forum similar to the G-8, in parallel with vigorous efforts to reach agreement in the UN context.” (p.5)

In its conclusions to this document the Commission plainly states:

“The EU negotiating strategy should include an international process of negotiated actions to reduce emissions, with the aim of involving and committing all large emitters. These actions could consist of specific projects or programmes to improve energy efficiency or to promote low-carbon technologies as well as more comprehensive policies, including targets.” (p. 7)

“Targets” has become shorthand for absolute emission caps, which are both widely rejected and a proven failure. If this is what the Commission intends, as seems likely given continued EU insistence on caps despite their own experience, it represents an approach that, post-Vientiane, is increasingly unilateral. Other targets, however, such as technological and sectoral, are possible and are clearly contemplated by the Gleneagles Communiqué. Employing this more expansive view, the EU was indeed prescient.

Finally, the Commission offers “Recommendation for EU Climate Policies: the Next Steps”, one of which is:

"Stronger co-operation with third countries [] promoted through a strategic programme for enhanced technology transfer (incl. technology diffusion funds) and scientific R&D cooperation on low greenhouse gas technologies in the fields of energy, transport, industry and agriculture. Climate friendly development policies should be drawn up in cooperation with developing countries, in particular in the areas of energy and air quality." (p 10)

In closing, the EU leaves no doubt that it envisioned something akin to the Vientiane agreement, if not one led by the EU's White Whales, the U.S. and Australia:

"In building support for further multilateral action against climate change the EU should engage in real dialogue with its international partners. The Commission recommends that the EU explore options for a post-2012 strategy with key partners during 2005 before deciding on the position it will take in the upcoming negotiations. In bilateral contacts with interested countries, including the large emitters, actions should be identified that they are ready to take within specified time horizons and conditions. In this way, the EU should use its international leadership role on climate change to pursue an action oriented approach at the international level." (p. 11)

Post-Vientiane, this should sound deeply familiar. Viewed in this way, Vientiane can be viewed as much a triumph for EU policy as it clearly is for U.S. policy. The question remains whether political considerations will permit not only such an "admission," but the flexibility to accept where the rest of the world has determined to go. To date, the EU appears insistent on accepting only complementary regimes, but not alternatives to imposing absolute caps on others despite their near-universal rejection.

In conclusion, all diplomatic rhetoric aside the Vientiane agreement objectively is a clear challenge if not to the five-year Kyoto pact itself then to the non-existent post-2012 Kyoto, absolute emission caps, and EU "world leadership" on climate. It also, however, seems to be just what the EU claims to have desired. Given this, it is notable that those seeing value in the Vientiane framework include nations rejecting Kyoto and Parties to Kyoto, and among the latter, parties both exempt from Kyoto's cuts and not.

Although both pacts were developed concurrently Vientiane is a logical outgrowth of Gleneagles. Vientiane, like Gleneagles, inarguably is in keeping with long-running U.S. positions and proposals. Importantly, both are agreements that ultimately most countries can accept, which is the greatest failing of Kyoto's restrictions.

Former Australian trade negotiator Alan Oxley noted⁸¹ that at the December 2004 COP in Buenos Aires the European worldview in climate negotiations had given way to an

81 <http://www.onlineopinion.com.au/view.asp?article=2899>

Asian perspective: absolute caps impede desired economic growth and are as such are unacceptable hindrances. Vientiane proves Mr. Oxley, too, as prescient. Future progress on a climate pact, if it is to occur, is far less likely to be drawn from Kyoto's text than Gleneagles' focus on providing energy to billions without it and reducing GHG emissions as the science warrants, and Vientiane's GHG cap-free design to afford cleaner technologies to assist economic development.

CONCLUSION

Kyoto negotiations continue down the path toward an ever more unrealistic "second round" of GHG cuts, amid a growing understanding that Europe can only claim compliance, if at all, by sleight of hand combined with a measure of economic depression and wealth transfer to enable such efforts. Claiming compliance would only delay the political costs once Parties to the treaty seek to extricate from the rhetoric of ecological calamity that continues to be employed in pursuit of a deal. As such, the Kyoto talks continue with no hope of enlisting those producing the vast majority of future emissions.

Other talks, however, have already progressed away from ever grander promises, which in the face of ever more spectacular promise-breaking merely erode credibility. Europe now must take Kyoto's realities more seriously. The "gambler's dilemma" - believing that one must either win all or lose all - leads the foolish loser to continue doubling his bets. Instead, Vientiane and Gleneagles offer alternate paths forward.

Kyoto does indeed expire in 2012, though its failure will be manifest far sooner. A sincere global response to a global issue is not the Council's demand for even more unattainable promises with the first ones certain to be broken, but, *e.g.*, Italy's conclusion that a failed system dictates not further commitments but a different path. Legally bound by Marrakech penalties during any "second round", should it fail to comply with Kyoto as seems likely, Europe should be particularly interested in a fresh approach.

Can the EU acknowledge Kyoto's failure sufficient to adapt enough to find common ground with the U.S., China, India, *et al.*? As Tony Blair stated in the run-up to the Gleneagles G-8 summit, "There is no point in setting a task that is not achievable." Certainly the lesser sin is ignoring political embarrassment in the name of pragmatism.

ANNEX 1: Effective ^a Projected GHG Emissions, Kyoto Performance: EU, Canada, US										
Country	Mt 1990	BSA: Or KP;	2010 est. Mt	2010 (Cf 1990)	2010 (Cf CP1)	2d CP Mt (.7 x '90)	2010 (Cf2d CP)	Mt 2010 Effective ^a	2010 ^a (Cf 1 st CP)*	2010 ^a Cf. 2d CP ^a ©
EU-15:	(Irrelevant as there is no "EU-15" for Kyoto 2d CP purposes after violating 1 st CP)									
PT:	75.4	99.7	120.64	+60%	+21%	52.8	+129%	127.0	+27%	+141%
ES:	286.8	329.8	425.0	+48%	+29%	201.0	+112%	454.0	+38%	+126%
Canada;	607.0	570.6	686.0	+13%	+19%	331.0	+107%	836.0	+47%	+153%
GR:	106.0	132.5	151.4	+43%	+14%	74.2	+104%	176.0	+33%	+137%
USA	6,038.0	5,615.0	8,115.0	+34%	+45%	4,226.6	+92%	8,865.0	+58%	+110%
IR:	53.4	60.3	69.0	+29%	+14%	37.4	+85%	71.6	+19%	+91%
LU:	12.7	9.1	9.9	(78%)	+8%	8.9	+11%	9.9	+11%	+14%
FN:	77.0	77.0	90.0	+17%	+17%	54.0	+67%	106.9	+39%	+98%
DK:	69.0	54.5	80.0	+16%	+47%	48.3	+66%	87.65	+61%	+82%
FR:	545.0	545.0	594.3	+9%	+9%	381.5	+56%	609.0	+12%	+60%
AT:	77.5	67.4	84.4	+9%	+25%	54.3	+56%	89.5	+33%	+65%
BE:	141.0	130.0	150.0	+6%	+15%	98.7	+52%	156.0	+20%	+58%
IT:	521.0	487.0	540.0	+4%	+11%	364.7	+48%	608.9	+25%	+67%
SW:	71.9	74.8	71.8	(96%)	(100%)	50.3	+43%	71.8	+0%	+43%
NL:	212.0	199.3	219.0	+3%	+10%	148.4	+48%	244.6	+13%	+65%
DE:	1,218.0	962.2	978.0	(80%)	+2%	852.6	+15%	983.0	+2%	+15%
UK	744.7	651.6	641.0	(86%)	(98%)	521.3	+23%	641.0	+0%	+23%

The above presumes the EU's oft-floated second commitment period (2d CP) allowance of 30%-below-1990, but uniformly and without the crutch of another "burden sharing agreement". No projected 2030 emissions exists which is regardless at present too far out to credibly assess. As such, the final figure also presumes no GHG increases 2010-30 (not a likely scenario, but acceptable for these purposes).

Whatever future emissions are projected, penalties attach to any country that does not comply with or meet its required 1st CP reduction; as such, this entails an additional cut which provides the "Effective 2010" emissions and required percentage reduction. So, *e.g.*, the US would have to reduce its emissions approximately 30% plus whatever further reduction is required in a Second Commitment Period (estimated at "30%-below-1990"), *plus* whatever, otherwise projected emission increases for 2010-30.

Interpret these figures, using, *e.g.*, Denmark's Burden Sharing promise instead of its individually ratified commitment of .92 x 1990, as *"At present, Denmark projects being over its 1990 emissions by 16%. Due to a poor 'Burden Sharing' negotiation, however, this leaves Denmark over its 1st*

compliance period allowance by 47%, which is more than the U.S. would be in violation were it a Party; after the 'Marrakech' penalty, that violation is an effective 61% even assuming no further 'second round' cuts."

Assuming the EU 2d CP target, and EU baseline, this means the US would be at least 100% over its 2d CP Kyoto obligation even assuming 0 GHG growth 2010-30, yielding the cut of 50% from the "effective" 2010 baseline, over the course of that 2d CP. So, one can also highlight how *"Per Kyoto, Denmark may not use emissions trading to cut its emissions in a (more severe) 2d compliance period - despite due to penalties being 82% over its obligation even assuming no otherwise projected growth from 2010-2030."*

n - The emission total after penalty that a country would in effect be assigned under the Marrakech 130% penalty for each ton by which a Party exceeds its 1st CP#. This is not precisely accurate because the Marrakech Accords do not in fact attribute those emissions to a Party's 1st CP emissions for an "effective" figure, but instead use that figure to reduce whatever allowance is assigned for a Second Commitment Period. This is for all practical purposes the same, but also until the 2d Commitment allowance is assigned this is the closest approximation of a Party's projected standing after the 1st CP given projected emissions.

* -- As a % of 1st CP# (Cf. BSA promises for EU-15 and .93 and .94 for US and Canada, respectively).

° -- This is the % by which a country would be in violation of its 2dst CP, presuming emissions stayed flat from 2010-30.

© --Remember, this assumes zero GHG emission increases 2010-30, such that a country would be in violation of Kyoto's 2d CP of 30% below 1990 (.70 of 1990) by *e.g.*, 50% (USA) even assuming it experienced no GHG growth during that 20-year-period.

For individual EU member country figures, http://reports.eea.eu.int/technical_report_2004_7/en/tab_content_RLR

+/or http://reports.eea.eu.int/technical_report_2004_7/en/annex1_tech7-2004_ID879.pdf

Copyright© of this publication is held by the author Christopher Horner and the European Enterprise Institute.

You may not copy, reproduce, republish or circulate in any way the content of this publication except for non-commercial use. Any other use requires the prior written permission of either of the author or the European Enterprise Institute.

Layout-Publishing: 2020 SA - www.2020.gr



www.european-enterprise.org

For more information please contact:

European Enterprise Institute

22 Rue de Pascale, B-1040 Brussels

Tel.: (+32) 2 - 743 41 57, Fax: (+32) 2 - 742 17 85

E-mail: info@european-enterprise.org