

Wrap Up

9 December 2013

- > [Introduction](#)
- > [ADP](#)
- > [Finance](#)
- > [Markets](#)
- > [REDD+](#)
- > [Technology](#)
- > [Adaptation](#)
- > [Conclusion](#)

For more information



Ilona Millar

Special Counsel
+61411 451 411

ilona.millar@bakermckenzie.com

Or contact our team:

Martijn Wilder AM

Partner

+61 414 863 313

[martijn.wilder@](mailto:martijn.wilder@bakermckenzie.com)

bakermckenzie.com

Paul Curnow

Partner

+61 434 074 591

paul.curnow@bakermckenzie.com

Richard Saines

Partner

+1 (773) 818 7605

[richard.saines@](mailto:richard.saines@bakermckenzie.com)

bakermckenzie.com

Graham Stuart

Partner

+44 (0)7738 026 902

[graham.stuart@](mailto:graham.stuart@bakermckenzie.com)

bakermckenzie.com

COP 19 - Warsaw Wrap Up

Introduction

The Warsaw Climate Change Conference (COP 19) was labelled, from the outset, as an “implementation COP”. What that meant in practice was that no ground-breaking new deals were expected (nor did they occur) and the focus would be on decisions to facilitate the operationalisation of bodies established at previous COPs.

Holding COP 19 in the national football stadium of Poland brought out the combative spirit of many parties, with a number of entrenched positions being defended to the last hours of the closing plenary session, which for another year wrapped up almost 24 hours after it was due to close. This was particularly the case with respect to the timetable for all countries to put their mitigation “contributions” on the table in the lead up to COP 21 in Paris in 2015.

A changing of the guard within the Umbrella Group left many observers wondering about the ability to scale up the mitigation ambition required to achieve long-term climate goals of avoiding dangerous climate change. The announcement by Japan at the end of the first week of the COP that it would revise its 2020 pledge from a reduction of 25% below 1990 levels to an increase of 3.1% above 1990 levels as a result of the Fukushima nuclear disaster was greeted with dismay from many.

The Australian position on its 2020 pledge (currently 5% below 2000 levels) was also questioned as it remained unclear whether the goal posts had shifted on its conditional stretch target of 15 – 25% below 2000 levels, something that is unlikely to be clarified before 2015. The change in government in Australia, and consequently the negotiating position adopted at the COP, was evident in the approach taken to issues such as finance and markets. No new financial commitments were announced and support to progress issues such as the framework for various approaches and new market mechanisms was muted.

The key decisions taken by the COP and the CMP can be accessed here and include:

- a package of decisions on REDD+ finance and methodological issues;
- the establishment of institutional arrangements for the loss and damage mechanism;

- providing guidance on the relationship between the COP and the Green Climate Fund (GCF) to facilitate the capitalisation of the Fund; and
- setting a timetable for parties to set out their mitigation contributions before COP 21.

Each of these are elaborated upon below.

[> Back to top](#)

ADP

The ad-hoc working group on the Durban platform for enhanced action (ADP) continued its work under its two work streams. Work stream 1 is focussed on content and elements of the 2015 agreement, including adaptation, mitigation, technology, finance, capacity building and transparency. Work stream 2 is focussed on pre-2020 ambition. In work stream 1 divergent views were expressed on a number of issues, including the role of offset to fulfil domestic commitments and whether intellectual property rights (IPRs) represented a barrier to technology transfer. In work stream 2, parties considered various measures that could contribute to enhanced ambition, including the phase out of HFCs and increased ambition on REDD+.

A draft text was presented by the ADP-Co Chairs which immediately highlighted the very different view of parties on the elements of the 2015 agreement and the timing for putting forward commitments or contributions. The different views continue to be maintained along developed and developing country lines, with major developing countries such as India and China raising concerns about the use of the word “commitments” being applicable to all - a term later softened to “contributions”.

One of the key provisions in the COP’s decision on the ADP is its request that “all parties initiate or intensify domestic preparations for their intended nationally determined contributions, without prejudice to the legal nature of the contributions, in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention, applicable to all parties towards achieving the objective of the Convention and to communicate them well in advance of COP 21 (by the first quarter of 2015 by those parties ready to do so), without prejudicing the legal nature of the contributions.”

For many this timetable is considered too slow. The EU was pushing for a transparency on targets during 2014 and in advance of the High Level meeting being arranged by the UN Secretary General in September. However, it does still provide parties the ability to scrutinise the contributions proposed by others in advance of the 2015 Agreement.

Of note the ADP text also invited parties to promote the voluntary cancellation of certified emission reductions (CERs), without double counting, as a means of closing the pre-2020 ambition gap. This was a concept that had been discussed in the agenda item under the CMP on guidance to the CDM Executive Board, but which had been dropped due to concerns about how the Executive Board would implement cancellation. Voluntary cancellation could assist in mopping up some of the extensive oversupply of CERs before 2020 - a move that may help carbon markets recover in the medium term.

[> Back to top](#)

Finance

Long-term finance

Developing countries had initially viewed Warsaw as the “finance COP”, hoping to achieve greater clarity regarding a quantifiable pathway to scale up the contribution of financial resources to reach the target of US\$100 billion by 2020. Whilst some developed country parties tabled additional contributions - others, such as the US, made it clear from the outset that there would be no new money in Warsaw. Overall, the COP failed to deliver on mid-term targets. However, the work programme on long-term finance reiterated the previous commitment by developed countries to jointly mobilise US\$100 billion annually and urged developed countries to maintain continuity of the mobilisation of public finance at increasing levels and from a range of public and private sources. In addition, the COP requested developed countries to prepare biennial submissions on their strategies and approaches to scale up climate finance from 2014-2020. The work programme on long-term finance will continue through to 2020 with workshops and biennial ministerial dialogues.

Green Climate Fund

Following a year of intense work by the Board of the Green Climate Fund (GCF) to develop operating procedures, an important outcome of the COP was the finalisation of the institutional arrangements between the GCF and the COP. These arrangements will now facilitate the capitalisation of the GCF during 2014. In its guidance to the GCF, the COP requested the GCF to balance the allocation of resources between mitigation and adaptation; pursue a country-driven approach; take into account the immediate needs of vulnerable developing countries in allocating resources for adaptation and confirmed the eligibility of all developing countries to access resources. The COP has invited developed countries to make timely contributions to the GCF to enable initial resource mobilisation and also invited financial inputs from other sources. Whilst there was some discussion about the role of the private sector facility, no formal decisions have been taken regarding its operation. It is expected that the design of this facility will form part of the deliberations of the GCF Board during 2014.

Markets

CDM and JI

Despite the proliferation of agenda items related to the CDM and new market-based approaches, there appeared to be no sense of urgency to achieve meaningful progress in Warsaw.

In SBSTA parties had the unenviable job of revising the Marrakesh Accords to facilitate the implementation of the second commitment period - this involves consideration of both updates to referencing of IPCC Guidelines and CMP decisions but also more substantive methodological issues such as calculating new assigned amounts.

In SBI parties considered the Review of modalities and procedures of the CDM - a task that is intended to suggest ways to improve the operation and governance of the CDM. Whilst SBI was playing catch up after the suspension of the Bonn session in June, it had the benefit of submissions from Parties, Recommendations from the CDM Executive Board and a workshop to guide its consideration.

These inputs had been consolidated into a non-exhaustive list of suggested changes which address matters such as the role of the Executive Board, the role of the Host Party and Designated National Authorities, liability of Designated Operating Entities, greater use of standardised baselines and enhanced reporting on sustainable development benefits and adherence to human rights. However, Parties did not appear to get close to working through any of those suggestions.

Other issues which have also been under consideration for a number of years, such as a CDM appeals procedure, were deferred from the outset to SBI 40 (June 2014).

Whilst parties had asked for more time to consider outstanding issues during the second week of the CMP, that time was not available and instead draft conclusions identified the need to continue to consider the items further at SBSTA and SBI 40.

During the second week, the CMP considered its guidance to the CDM Executive Board. The current state of carbon markets was of major concern to a number of parties who noted that participation in the mechanism following 1 January 2013 was significantly lower than in the past (largely due to oversupply of CERs and the low CER price). The CMP encouraged parties to make greater use of the CDM. An early version of the draft decision made reference to use of voluntary cancellation of CERs, however, this did not make it into the final guidance (instead raising its head in the ADP text as discussed above).

The Executive Board was tasked to, amongst other things, allow validation of monitoring plans for small-scale and micro-scale project activities and programmes of activity before their first verification; simplify and streamline methodologies to reduce transaction costs; continue work on country-specific baselines and additionality thresholds for sectors in countries which are under represented in the CDM; examine alternative approaches to the demonstration and assessment of additionality; and simplify the validation process for activities and programmes of activity that are considered to be automatically additional.

Following a number of discussions about the environmental integrity of the CDM, the Executive Board was also asked to evaluate the use of the voluntary sustainable development tool and develop guiding tools to assist DNAs monitor sustainable developments in their territory.

Negotiations on JI progressed relatively smoothly in comparison to the CDM. Again the current state of the market was noted in the CMP's guidance to the JISC and it was acknowledged that there was a need to improve JI in the second commitment period. Similarly to the CDM, SBI's consideration of the Review of the JI Guidelines was delayed and will be revisited at SBI 40.

[> Back to top](#)

FVA and NMM

As noted in our [pre-COP brief](#), parties in Warsaw continued to consider the establishment of a new market mechanism (NMM), non-market mechanisms and the development of a framework for various approaches (FVA).

Whilst there was initial momentum on these issues, with certain positions crystallising in the first week and parties willing to continue work into the second week, the three related issues were unable to get political traction amongst Ministers and were ultimately stood over to the SB session in May 2014. In many ways it was the view of certain developing countries, that given the current difficulties faced by the CDM as a result of low demand for CERs, there was no urgency to develop new mechanisms, that stymied the sense of urgency. This notwithstanding, the EU, in the sidelines, promoted its pilot sectoral mechanism, which may provide an example of a NMM going forward.

Parties appeared to be moving towards consensus on the role of the FVA. This now appears most likely to take the form of a platform for the sharing of information about mitigation approaches, including about various market mechanisms. A number of parties underscored the need to any new approach, both market or non-market, to meet robust and transparent accounting standards and procedures and in particular to avoid the double counting and double crediting of emission reductions. These issues will likely lead the next series of discussions on these matters at SBSTA 40.

REDD+

In recent years, negotiators following REDD+ have worked exceptionally well to progress the development of a suite of methodological decisions to support the implementation of REDD+ activities. This year was no different, with the SBSTA draft decisions on MRV modalities and guidelines and procedures for the technical assessment of submission from parties on forest reference emissions levels and/or forest reference levels being agreed on time. These draft decisions complimented the three draft decisions from SBSTA 38 which addressed the timing and frequency of presentation of summary information of how safeguards are being addressed and respected; modalities for forest monitoring systems; and the drivers of deforestation and forest degradation.

The package of decisions was bracketed pending an outcome in the COP negotiations on results based finance for the full implementation of REDD+ activities. Throughout the second week of COP, parties considered draft decision text. The final text reaffirms that results-based finance may come from a variety of sources: public and private, bilateral and multilateral, including alternative sources. Parties agree that developing countries seeking to obtain and receive results-based payments should provide the most recent information on how all safeguards have been addressed and respected; and entities financing REDD+ (including the GCF) are encouraged to collectively channel adequate and predictable results-based finance in a fair and balanced manner, taking into account different policy approaches. The UNFCCC will establish a hub on its website to publish information about results-based payments for REDD+ activities. Kick-starting results-based finance were pledges from the UK, Norway and the US for US\$280 million. Further information about the package of REDD+ decisions can be [found here](#).

[> Back to top](#)

Technology

After the flurry of activity at previous COPs to establish the Technology Executive Committee (TEC) and Climate Technology Centre and Network (CTCN), the work of technology negotiators in Warsaw was expected to be relatively straight forward – to adopt the joint annual report of the TEC and CTCN and approve of the modalities and procedures prepared by the Advisory Board of the CTCN.

Unfortunately, this didn't prove to be the case and parties were unable to reach consensus on the annual report. The COP was, however, able to adopt the modalities and procedures for the CTCN and the rules of procedure for the CTCN's advisory board. These cover 6 key elements: roles and responsibilities of the CTCN; managing requests from national designated entities of developing countries and delivering responses; fostering collaboration and access to information and knowledge in order to accelerate climate technology transfer; strengthening networks, partnerships and capacity building; linkages with the TEC and information and knowledge sharing.

Adaptation - Loss and Damage

Perhaps the most controversial issue under negotiation in Warsaw was the institutional arrangements for a Loss and Damage Mechanism. Following the establishment of a mechanism in Doha, parties were tasked with determining the scope and content of the mechanism and the arrangements for its implementation. Some developing countries, particularly least developed countries and small island states were pressing for a new international body with a comprehensive mandate and access to financial resources to address issues such as insurance and compensation. The Umbrella Group, among others, were reluctant to set up new bodies, preferring to draw upon existing committees and groups established under the COP, and rejected any possible language that may suggest that liability could be attributed and compensation payable for climate change impacts.

The final decision on the “Warsaw international mechanism for loss and damage” reflects a compromise, with the mechanism being established under the Cancun Adaptation Framework which involves the establishment of a new executive committee which shall be accountable to, and report to, the COP through the SBs. The composition of, and procedures for, the new executive committee will be elaborated upon by COP 20. The objective of the loss and damage mechanism is to enhance knowledge and understanding of comprehensive risk management approaches; and to strengthen dialogue, coordination and synergies amongst stakeholders. The work programme is limited to knowledge sharing, information gathering and providing technical guidance and support and making recommendations. In this respect, the new mechanism will play an important role in better understanding impacts and vulnerability for climate change (in particular slow onset events), but lacks the teeth that developing countries were seeking.

[> Back to top](#)

Conclusion

The road to COP 21 in Paris in 2015 is a very long one and, as one commentator noted, if you give parties four years to negotiate a new agreement, they will take the full four years. Whilst Warsaw marked the half way point along that road, it is clear that going in circles around the Warsaw National Stadium did little to enable parties to move forward. In any event, a concerted effort from all parties will be needed to advance the form and content of the 2015 agreement - a point recognised by the proposal for additional negotiating sessions over the next two years. The COP moves to Lima, Peru, in December 2014.

[> Back to top](#)

This communication has been prepared for the general information of clients and professional associates of Baker & McKenzie. You should not rely on the contents. It is not legal advice and should not be regarded as a substitute for legal advice. To the fullest extent allowed by law, Baker & McKenzie excludes all liability (whether arising in contract, negligence or otherwise) in respect of all and each part of this communication, including without limitation, any errors or omissions.

This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

This email is sent by Baker & McKenzie (ABN 32 266 778 912), an Australian partnership and member of Baker & McKenzie International, a Swiss Verein. The contents are confidential and may contain copyright and/or legally privileged information. Personal information contained in communications with Baker & McKenzie is subject to our Privacy Policy and the obligations of the Privacy Act. Emails sent to Baker & McKenzie are subject to automated email filtering. Should you receive this email in error, please telephone us on +61 2 9225 0200 or email our Helpdesk.

Should this email contain a marketing message that you would prefer not to receive from us in the future, please select to unsubscribe below:

[UNSUBSCRIBE THIS COMMUNICATION](#)

[UNSUBSCRIBE ALL](#)

Thank you.

Sydney

Level 27, AMP Centre
50 Bridge Street
Sydney NSW 2000
Australia
Tel: +61 2 9225 0200
Fax: +61 2 9225 1595

www.bakermckenzie.com/climatechange