

EDITORIAL

IN THIS ISSUE

BY PATRICK J. MONAHAN

This issue of *Canada Watch* is devoted to a discussion of two important environmental issues that are currently featured on the national (and in one instance, international) political agenda.

The first is the Kyoto Protocol, agreed to last December in Kyoto, Japan. Under the Protocol, Canada (along with 38 other countries), has agreed to reduce or limit its greenhouse gas emissions to a specified level; in Canada's case, we are to reduce emissions 6 per cent below what they were in 1990 by the year 2012. [See the accompanying article, "What's in the Kyoto Protocol?" for an outline of the contents of the Protocol.]

The Protocol will not come into force unless ratified by at least 55 parties. In Canada's case, that calls into question the extent to which the provinces are to be involved in reviewing and approving the Agreement.

This, in turn, recalls memories of the process surrounding the ill-fated Meech Lake Accord in the late 1980s. In both cases (Kyoto and Meech), there was almost no domestic public debate prior to an all-night meeting at which a final text was hammered out between high-level government negotiators. The resulting Agreement was then presented as a "seamless web", which must be accepted or rejected *in toto*. (This latter requirement is not yet explicit in terms of Kyoto, but it is inevitable given the fact that it is simply not feasible to permit each party to a complicated multilateral deal to propose its own set of preferred amendments). The inability to propose or entertain amendments then stimulates a reaction to the process that was used to develop the text in the first place.


Will Kyoto meet the same unhappy fate as Meech? In part, the answer to this question will depend upon the issue raised earlier—do the provinces have to participate in ratifying the Protocol? The provinces will argue that, since the Protocol involves control over the environment

(a matter falling under provincial jurisdiction), they must consent to its terms. But Ottawa can argue that it also has a significant environmental role, as was recently recognized by the Supreme Court of Canada in *R. v. Hydro Quebec*. (This decision upheld the validity of certain provisions in the *Canadian Environmental Protection Act*.) On this reasoning, Ottawa may be under a political obligation to consult with the provinces, but the final legal power of ratification rests with the national government alone.

This leads naturally to a consideration of the second theme featured in this issue of *Canada Watch*—the Canada-Wide Accord on Environment Harmonization, agreed to unanimously by federal, provincial, and territorial governments in late 1996. The Accord, which seeks to "rationalize" federal, provincial, and territorial roles in relation to the environment, was to have been signed in November of 1997. However, only weeks prior to the scheduled signing, the ceremony was postponed until some time early in the new year. Then, in late November, a House of Commons Commit-

tee recommended that the federal government not proceed with the Accord on the grounds that the need for the agreement had not been demonstrated.

The Accord has received relatively little public debate and analysis. In the interests of stimulating such a debate, we present a range of viewpoints and assessments, both positive and negative.

There is a clear opportunity for the provinces to develop and exploit linkages between these two issues. The Environmental Accord refers to the environment as a matter of shared jurisdiction, requiring cooperation and coordination between all levels of government. Those kinds of commitments strengthen the case for the provinces to have a meaningful role in the ratification of the Kyoto Protocol. All of which suggests that the Environmental Accord is unlikely to be ratified until the fate of the Protocol has been finally settled. 

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WHAT'S IN THE KYOTO PROTOCOL

BY PATRICK J. MONAHAN

The Kyoto Protocol is a follow-up to the Convention on Climate Change, a treaty signed in 1992 and subsequently ratified by over 160 states. The Convention, which took effect on 21 March 1994, set an "ultimate objective" of stabilizing "greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous an-

thropogenic (human-induced) interference with the climate system". The Convention did not specify what these concentrations should be, only that they be at a level that is not dangerous.

"Greenhouse gases" are naturally occurring gases such as carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O), which act like a blan-

ket around the earth. Without this natural blanket, the earth's surface would be some 30°C colder than it is today. The problem is that human activity is making the blanket "thicker". For example, if emissions of these gases continue to grow at current rates, it is expected that atmospheric levels of carbon dioxide will double from their pre-industrial levels over the course of the next century. The most direct result, according to the scientific consensus, is likely to be a "global warming" of 1

to 3.5°C over the next 100 years. This is in addition to an apparent temperature increase of around half a degree Centigrade since the pre-industrial period before 1850. But the nature and extent of global warming remains a matter of scientific controversy and debate.

The Kyoto Protocol attempts to fill the gap left in the 1992 Convention by setting specific emission reduction targets for 39 states, including

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Canada. Most of these states have agreed to reduce their emissions from between 6 to 8 per cent below the 1990 levels. [See Table on this page, setting out the individual targets for the 39 states.] This reduced emission level is to be achieved in the "commitment period" of 2008 to 2012.

If parties reduce emissions below the levels required under the Protocol, they will be able to transfer the "excess" reduction to another party, thereby permitting the latter to achieve its targets without actually reducing its own emissions to the mandated level.

The Protocol consists of 27 Articles, and will come into force when ratified by at least 55 parties to the Convention; the ratifying countries must also include parties that account in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in the Annex.

Many of the provisions in the Protocol set out obligations to develop mechanisms and reporting requirements necessary to make the achievement of the emission targets feasible. For example, parties are to develop and have in place by 2007 a "national system for the estimation of . . . emissions by

sources" (Article 5.1), with the methodologies for such estimation systems to be agreed upon by the parties at a subsequent meeting (Article 5.2); each party shall submit annually data on its emissions by source beginning in the year 2008 (Article 7.1); the information submitted by each party is to be reviewed by independent expert review teams, who shall prepare "a thorough and comprehensive assessment of all aspects of the implementation by a Party of this Protocol" (Article 8.1-8.3).

The Protocol also provides for a market mechanism whereby parties will be able to purchase emission "credits" from other parties. If parties reduce emissions below the levels required under the Protocol, they will be able to transfer the "excess" reduction to another party, thereby permitting the latter to achieve its targets without actually reducing its own emissions to the mandated level.

While the Protocol will be legally binding as a matter of international law once it is ratified and comes into force, there are no enforcement mechanisms or sanctions established for breach of its obligations. The Protocol provides for the approval, at a subsequent meeting, of "appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance" (Article 17). However, any such enforcement mechanisms would require approval of three-quarters of the parties to

the Protocol, and would only become effective as against parties who agreed to be so bound.



| PARTY | EMISSION COMMITMENT (% of base year) |
|--------------------------|--------------------------------------|
| Australia | 108 |
| Austria | 92 |
| Belgium | 92 |
| Bulgaria | 92 |
| Canada | 94 |
| Croatia | 95 |
| Czech Republic | 92 |
| Denmark | 92 |
| Estonia | 92 |
| European Community | 92 |
| Finland | 92 |
| France | 92 |
| Germany | 92 |
| Greece | 92 |
| Hungary | 94 |
| Iceland | 110 |
| Ireland | 92 |
| Italy | 92 |
| Japan | 94 |
| Latvia | 92 |
| Liechtenstein | 92 |
| Lithuania | 92 |
| Luxembourg | 92 |
| Monaco | 92 |
| Netherlands | 92 |
| New Zealand | 100 |
| Norway | 101 |
| Poland | 94 |
| Portugal | 92 |
| Romania | 92 |
| Russian Federation | 100 |
| Slovakia | 92 |
| Slovenia | 92 |
| Spain | 92 |
| Sweden | 92 |
| Switzerland | 92 |
| Ukraine | 100 |
| United Kingdom | 92 |
| United States of America | 93 |

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was signed in 1992, suddenly crashed onto the media agenda. In an attempt to cover "both sides" of the "debate", much attention was given to the climate change skeptics and critics, despite the unprecedented consensus among scientists on the need to take action now. (The scientific work underlying the Kyoto conference was undertaken over a period of many years by a body called the Intergovernmental Panel on Climate Change (IPCC), which involves nearly 3,000 scientists from over 100 countries. Their findings pass through a nine-step process of review and critique, including government policy reviews in each country. Consensus is the rule. This degree of intensive scrutiny has been described authoritatively as "the most elaborate ever attempted by the scientific community on a science-environment issue." In a desperate attempt to shift public opinion during the final weeks before Kyoto, the Coal Association of Canada, the Canadian Association of Petroleum Producers, the Canadian Gas Association and, (from a very different perspective), the David Suzuki Foundation, all placed full-page ads in newspapers across the country.

Although Canada is of course a member of IPCC, and Canadian scientists have played an important role in conducting research on climate change, the Canadian government seemed paralyzed when it came to articulating a firm position and working out the implications for implementation. The terms of the agreement that was ultimately reached in Kyoto go beyond what the provinces supported at a meeting held last Fall in Regina. Yet their cooperation