

COMPLIANCE FOR GLOBAL CLIMATE REGIMES: KYOTO AND POST-KYOTO

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Agenda

- ▣ Kyoto Compliance Mechanism
- ▣ Kyoto Compliance Cases to Date
- ▣ Issues with the Kyoto Compliance Mechanism
- ▣ Other Forms of Compliance Mechanisms
 - Escrow Account Compliance
 - National Enforcement
 - International Rating Agencies
 - Trade Related Enforcement
- ▣ Bangkok and Durban Developments
- ▣ Concluding Remarks

Kyoto Compliance Mechanism

- ▣ 2 branches – Enforcement and Facilitative
- ▣ Process to handle complaints takes 35 weeks (16 minimum if expedited)
- ▣ Penalties include:
 - Shortfall + 30% carried forward to next regime
 - Lockout on participation in global carbon trading markets
 - Infringing party must prepare a report detailing what went wrong and how it will be fixed

Compliance Cases to Date

- ▣ 7 major cases
 - Canada
 - Croatia
 - Greece
 - Bulgaria
 - Lithuania
 - Romania (ongoing)
 - Ukraine (ongoing)

Issues with the Kyoto Compliance Mechanism

- ▣ Dispute / complaint handling process functional with no major issues to date
- ▣ Non-compliance penalties weak
 - Large element of self-enforcement
 - ▣ No back-up if self enforcement fails
 - Relevance issue for existing penalties
 - Heavy reliance on carbon credits to achieve goals
 - ▣ Not currently an issue, but it will be

Alternate Compliance Mechanisms Escrow Accounts

- ▣ Countries deposit significant funds into an international escrow account
- ▣ If countries fall out of compliance, funds are distributed to other countries in compliance
 - Evenly or unevenly
- ▣ Implementation difficult due to global conditions post-financial crisis
- ▣ If deposits are unable to be made, technological state secrets or similar vehicles could serve as a substitute

Alternate Compliance Mechanisms National Enforcement

- ▣ Ratify internationally agreed targets into national law
- ▣ National court systems would serve to enforce the agreement
- ▣ Would be as many accepted interpretations of an international climate change agreement as there are National court systems
 - Punishments for non-compliance would vary widely

Alternate Compliance Mechanisms Rating Agencies

- ▣ More passive enforcement type
- ▣ Agency set up to monitor and report the performance of all nations on adaptation and mitigation activities
- ▣ Could also be used as a tool to help in the distribution of international climate change funds

Alternate Compliance Mechanisms Trade Related Penalties

- ▣ WTO style dispute resolution
- ▣ Expand the text of WTO article XX
- ▣ Could involve trade sanctions as penalties

- ▣ Infeasible at present time
 - Requires much more exact measurement of emissions for any conclusions to be reached
- ▣ International push for improved measurement systems for emissions needed

Bangkok and Durban Developments

- ▣ US made reference to enshrining unilateral commitments into domestic law in Bangkok
- ▣ Bangkok and Durban saw agreement that targets and enforcement shouldn't be negotiated separately
- ▣ Both meetings made clear that resolution of Kyoto shortfalls before moving to the next regime is required
- ▣ Little on explicitly on enforcement in Durban save that targets and enforcement must be interlinked and country targets must be more individualized
- ▣ A Technology Network that challenges the status quo for international architecture

Concluding Remarks

- ▣ Only a limited period where Kyoto level of enforcement will work
 - Much stronger enforcement will be required in the future
- ▣ Current discussions entering a new paradigm
 - Targets and enforcement negotiated as a package
 - Decisions that challenge the international status quo (New Technology Network vs current IP Rights)
- ▣ Opens the field and allows alternate enforcement regimes to be considered

Thank You

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