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Kyoto carryover in Madrid

Australia's creative climate accounting at COP25

Australia is not on track to meet its Paris Agreement targets. Rather than implementing policies to address this mitigation gap, the Australian Government is looking to use "carryover credits" from the Kyoto Protocol towards its Paris target. There is no legal or moral basis for this approach.

Report by Climate Analytics
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Foreword

Under the landmark 2015 Paris Agreement, Australia has pledged to reduce its emissions by 26-28% below 2005 levels by 2030. Current projections by the Australian Government indicate it is not on track to meet this target.

Rather than implement policies to reduce emissions and achieve its Paris target, the Australian Government intends to 'carryover' emissions credits from the Kyoto Protocol era to count towards emissions reductions under the Paris Agreement.

This is problematic for many reasons.

Australia's carryover credits from the first and second Kyoto Protocol commitment periods derive not from genuine efforts to reduce fossil fuel use and curb emissions, but from the use of accounting loopholes.

Firstly, Australia negotiated an initial Kyoto target of 108% of 1990 emissions for the period 2008 to 2012. In other words, Australia could increase emissions rather than being required to decrease them.

Secondly under Kyoto, Australia gained a major benefit from the way land-use change and forestry emissions were accounted for. Australia lobbied so hard for a particular approach that the part of the protocol's text that set it out became known as "the Australia clause". Few other countries benefit from it. The Australia clause states that countries "*for whom land use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year … [emissions from] land use change for the purpose of calculating their assigned amount.*"

The significance of this clause and the focus on "land use change" was that Australia had particularly high emissions in 1990. The nation's emissions were boosted by very high rates of clearing land for agriculture in that year because of high beef prices and sub national governments proposing policies to restrict clearing in the following years.[1] Australia's deforestation emissions in 1990 were 131.5 $MtCO_2e$, accounting for 24% of the country's emissions.

This clause gave Australia an additional a 710.2 $MtCO_2e$ of 'assigned amount units', at a time when Australia's annual emissions were 547.7 $MtCO_2e$ – almost a year and a half of free emissions. Had a different base year been used, or emissions from land use change been treated differently, Australia's emissions targets would have been much more difficult to meet. Instead, Australia requested 149.4 $MtCO_2e$ carryover credits from the first Kyoto period into the second.

[1] Australian Government (2010) Drivers of land clearing in Australia, http://www.environment.gov.au/system/files/pages/63b569ff-ae63-4d7b-be54-16f2e79900e0/files/nga-factsheet3.pdf

Thirdly, Australia's target for the 2013-2020 second Kyoto period is for emissions 0.5% below the historically high base year of 1990. Again, Australia fought to keep the Australia clause, which meant the country received an assigned emissions budget amount for the second commitment period close to 25% higher for CP2 than it would otherwise have been.

Fourth, the 2010 Cancun Agreement saw Australia pledge 2020 emissions of 25% below 2000 emissions if the world agreed to an "ambitious global deal", or 15% below 2000 emissions if a global agreement that included developing countries "restraining" their emissions and advanced economies with similar commitments to Australia. Despite such an agreement existing since 2015, Australia has not implemented a 15% reduction target, sticking to its "unconditional" target of just 5%. Any overachievement would be extinguished in part or fully by a higher target.

Worse, Australia bases its Cancun Agreement targets not based on actual emissions in any of the relevant years, but on the inflated emissions budget it was allowed under the Kyoto Protocol. If Australia had used actual 2010 emission levels, or actual 2013 emission levels, its 2020 Cancun Agreement budget would be significantly lower -- and the amount of "overachievement" significantly smaller.

Australia is on track to meet its 2020 target only because it is combining elements of Kyoto and Convention reporting rules. If UNFCCC classifications are used, Australia's projected emissions in 2020 would be approximately the same level as they were in 2000.

There is no legal basis for Australia's proposal to carryover Kyoto Protocol credits into the Paris Agreement.

Paris and Kyoto are entirely separate treaties under the Convention. The Paris Agreement and subsequent decisions contain no provision allowing countries to use Kyoto credits towards Nationally Determined Contributions (NDCs).

Even under the rules of the Kyoto Protocol there is no legal basis for Australia's plans to carryover Kyoto credits to avoid genuine reductions under Paris:

- units from the first commitment period may be carried only into the second commitment period,
- Australia has no credits from the second commitment period as it is not in force, and
- there is no third commitment period into which any surplus credits may contribute to.

In order to secure explicit legal basis for carryover, Australia would need to move a proposal for a decision at a Conference of Parties (COP). The chance of such a proposal being agreed by consent of all parties is virtually nil.

Even if Paris were in fact an extension of Kyoto, there would be no legal basis for Australia's carryover of Kyoto credits. There were many kinds of credits under the Kyoto Protocol, issued in different ways. Each could be used to meet a national emissions commitment but there were different rules for carryover for different kinds of credit.

The first Kyoto Protocol commitment period (CP1) prohibited carryover of some forms of Kyoto credits and limited carryover of others, such as *certified emission reductions* (CERs) from offset projects in developing countries. It allowed unlimited carryover of *allowed amount units* (AAUs), credits acquired by keeping emissions under the assigned amount or target for the commitment period. From CP1 Australia sought to carryover 128 MtCOC2e worth of AAUs and 22 MtCO2e worth of other credits (CERs).

However, CP1 resulted in a large surplus of AAUs from many parties, including Australia, which was seen as a threat to environmental integrity. As a result, Parties revamped the rule in CP2 to limit carryover, preventing CP1 credits from being carried over beyond CP2.

As a result of these new rules, any surplus held in a national registry would be placed in a "previous period surplus reserve account" (PPSRA) from which they could only be used "up to the extent by which emissions during the second commitment period exceed the assigned amount for that commitment period." Moreover, CERs and AAUs can be carried over into the subsequent commitment period of the Kyoto Protocol only if they are not retired, cancelled or held in the PPRSA. Right now CP2 has not yet entered into force so no AAUs have been issued.

The carryover rules allow carryover to the next commitment period of the Kyoto Protocol. There is no third commitment period of the Kyoto Protocol. They are separate treaties.

There is no principled or moral basis for carryover

Principles in the Paris Agreement themselves weigh against allowing carryover. Article 4 of the Paris Agreement requires each Party to communicate an NDC every five years, with each to be successively more ambitious and to represent each Party's *"highest possible ambition"*. The Paris Agreement, subsequently agreed accounting guidelines, and Australia's own NDC all emphasise the need to preserve integrity, ensure claimed reductions are genuine and are not double counted.

Its worth recalling the covering decision to the Paris Agreement (1/CP.21), clause 106 that encourages parties to cancel surplus Kyoto credits that could be carried to the second commitment period.

Further the creative accounting efforts by Australia encourage others to engage in similarly dangerous creativity. This undermines the goals, principles, fabric and machinery of the Paris Agreement itself. As the New Zealand Minister for Climate Change stated at COP24, it is not in the spirit of the Paris Agreement.

It will be very difficult for Australia to defend against these principles any methodology that seeks to use pre-2021 CERs towards the 2030 target. These CERs reflect emission reductions that have already been reflected in the inventories of their developing country host Parties where the CER offset projects occurred, who likely have their own Cancun pledges and now NDCs. For Australia to claim these pre-2021 CERs credits under the Paris Agreement, outside the Kyoto Protocol context, would present a classic case of double counting unless Australia can secure agreement from the host countries.

Similarly, AAUs cannot be said to represent emission reductions, let alone "genuine" emission reductions. AAUs represent allowed emissions within the Kyoto Protocol rule set. There is no

reason to consider these units portable to another treaty process, or usable outside their own prescribed timeframe.

Negotiations towards and at COP25

Several groups of countries already oppose Australia's efforts to use Kyoto carryover, such as the Alliance of Small Island States and the Least Developed Countries group. There are many ways those opposed to Australia's approach can address this issue, both inside and outside the formal negotiating process:

- Parties could propose a draft decision that expressly precludes use of Kyoto units toward Paris Agreement goals.
- Parties could propose draft decision text seeking to address compliance where double counting may arise from the use of credits or units by multiple Parties, or by the same Parties in multiple periods.
- Under the Kyoto Protocol, Parties could propose draft decision text recalling that unused units are to be cancelled within previous period surplus reserves and within national registries at the end of CP2's true up period.
- Parties can make interventions at the COP 25 plenary, CMA plenary and/or CMP plenary, or at the opening of UNFCCC SBSTA or SBI sessions, on the inappropriateness of carryover, encouraging Parties to act responsibly. These sessions are open to NGO observers and other accredited entities.
- If a formal decision is not possible due to Paris Agreement consensus rules, like-minded Parties can also join together to express their shared understanding that Kyoto units do not survive the expiration of its second commitment period and/or are not appropriate for use under the Paris Agreement.
- Outside the negotiating process NGOs and academic institutions have the opportunity to independently examine the substantive and legal basis for assertions of "overachievement", with potential for legal challenge.

If this matter is not resolved at COP25, it could continue to be raised at successive meetings. For all the reasons stated above, a decision in Madrid to clarify the restriction in the use of Kyoto Protocol credits would be well placed.