

DEAT Climate Change Policy Summit

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The last edition of this column, in advance of the Fourteenth Conference of the Parties (COP14) to the United Nations Framework Convention on Climate Change (UNFCCC), held in Poznan, Poland, in December 2008, and in light of strong expectations for a notable outcome of that event, promised that this edition would provide a report on COP14. The COP was anticipated as the intermediary stage between COP13 (Bali, December 2007) and the deadline for the conclusion of the next round of climate negotiations (COP15, Copenhagen, December 2009). Expectations were that fair progress would be made in bringing the various country Parties to the UNFCCC, including the USA – then on the verge of the Obama administration – closer to defining the architecture of the agreement that must be concluded by the end of this year.

In retrospect, however, the results of COP14 were less interesting and momentous than anticipated – “disappointing” would not be too strong an assessment of the outcome. The USA, for example, was still fielding the negotiation team that proved to be such a hurdle to the process during the term of the Bush administration; while the European Union (EU), which had given the appearance of unity in the approach to the COP, fell to squabbling over future EU renewable energy targets at a Brussels meeting held during the course of the COP. In short, there seemed to be step back from the progress in negotiations that, at COP13, had led to the formulation of the much-vaunted Bali Action Plan. In addition the relevance of reporting on COP14 became superseded by more important, and more recent, developments in South Africa.

Consequently this article reports, and provides some personal reflections, on the recent National Climate Change Policy Summit, hosted by the Departments of Environmental Affairs & Tourism (DEAT) and Science & Technology, at Gallagher Estate from 3 to 6 March 2009 (<http://www.ccs Summit2009.co.za>). (For readers who are curious about the detailed outcomes of COP14, please visit: www.unfccc.int).

Policy evolution

Events like the Summit are very useful for observers of evolving South African climate change policy. The Minister of Environmental Affairs and Tourism, Marthinus van Schalkwyk, has, over recent years carved an important niche for himself and this country in the international climate change negotiations. Today South Africa is regarded as a representative-voice of the developing world, and Van Schalkwyk’s opinion on the future of the climate regime is regularly sought on the international stage. A recent example of this lies in the keynote address that the Minister delivered at a high-level seminar on “emerging strategies for international climate and investment policy”, in Washington DC, on 14 January 2009. On that occasion, and considering that his audience

was likely comprised of representatives from a broad swathe of country Parties to the FCCC and the Kyoto Protocol – South Africa’s counterparties in the negotiations – his message was unequivocal on this country’s formal negotiation position.

The essence of this position is that there are three fundamentals that should be included in the future international climate regime, namely:

- More ambitious, quantified and legally binding emission reduction commitments for developed countries under the Kyoto Protocol.
- Re-engagement of the SA in the full multilateral process.
- Formal recognition, in the context of a future agreement, of enhanced mitigation actions undertaken by developing countries which should inter alia include the opening of a registry for such actions.

An important further perspective of the Minister’s address in Washington was the so-called “trust deficit”, or the perceived widening gap between the positions of developed and developing countries in the international negotiations. South Africa has expressed disappointment at the lack of leadership from developed countries in the negotiations, particularly at COP14, and especially in regard to future greenhouse gas mitigation commitments by the developed world. Mitigation continues to be the most important issue addressed by South Africa in public fora, and the country’s position continues to be in keeping with:

- the strict wording of the Bali Action Plan in regard to the relative actions / commitments to be undertaken by developed and developing countries, respectively; and,
- the scientific views expressed in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change in regard to the depth of mitigation commitments that need to be undertaken by the developed world (See: www.ipcc.ch).

DEAT Climate Change Policy Summit

The origin of the Summit lies in the South African National Climate Change Conference (2005), during which it was agreed that a participatory climate change policy development process be initiated to formulate South Africa’s contribution to the objective of the United Nations Framework Convention, namely to achieve the stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The Summit, then, was the occasion of the formal launch of the policy process intended to translate Cabinet’s climate change policy

decisions and directives (the Long Term Mitigation Strategy Scenarios described in the previous edition), into positive action. The stated, specific purposes of the Summit 2009 were to:

- provide all key climate change response stakeholders with an update on the most recent climate change research and other current South African initiatives and interventions; and,
- provide a platform for all key climate change response stakeholders to discuss and agree the framework for a National Climate Change Response Policy that includes, among others, fiscal, regulatory and legislative packages as well as sectoral implementation plans.

DEAT Minister's Summit Keynote

The DEAT Minister's keynote address to the Summit was another useful barometer of the country's position vis-à-vis the international community. Unsurprisingly, given the South African demographic of the audience, his address also contained key messages for climate stakeholders in this country.

An important thread to the address was the notion that South Africa is prepared to undertake actions aimed at mitigating its greenhouse gas emissions profile, substantially below its business-as-usual baseline, without these actions translating to legally binding commitments under a future international climate change regime.

The Minister's message to local industry, which is likely to view such mitigation actions with some circumspection, was that development of the clean and renewable technologies, required to achieve substantial deviation below baseline, has the potential to provide South Africa with a competitive business advantage. "Rather than viewing action on climate change as a burden in the current global financial crisis, we realise that it holds myriad opportunities for green investment and green jobs", is the Minister's view.

A further foundation for the argument that South Africa should seek to mitigate its greenhouse gas emissions lies in the pervasiveness of the international trade regime. As Van Schalkwyk noted, "today we know that if we continue to grow without a carbon constraint we face the threat of border tax adjustments or trade sanctions from key trading partners and the destruction of thousands of jobs in the high emitting trade exposed sectors".

In referring to the pending COP15 and the world's hopes for the addition of a Copenhagen Agreement to the suite of international legal instruments dealing with the phenomenon of climate change, the Minister noted the leadership of the developing world, the end of the "eight dark years of the Bush administration" and a "new voice of reason in Washington", as reasons for an optimistic view of the future. It is significant, however, that his reference to recent international negotiations harked back to Bali and made no mention of the Poznan meeting.

Message to business

The Minister's address contained a clear message for South African business. Van Schalkwyk noted that business is a key partner to DEAT is approaching the issue of climate change, and indicated that, for the most part, business is engaging proactively and "repositioning itself to face the changing economic landscape in a carbon-constrained world". Some caution was also expressed, however, in that some quarters of business "(do)...not yet fully appreciate the implications of the developing world's commitment to a substantial deviation below baseline emission trajectories in a measurable, reportable and verifiable way".

The Minister's view is that not only do proper tracking, reporting and managing of South African business emissions make business sense, but such actions will also be taken by government as "...an indicator of good corporate governance and of taking co-ownership for the future". The message to business was, therefore, "...that industry must prepare itself for a new era in which mandatory reporting of greenhouse gas emissions will become part of the regulatory landscape".

The casual observer might note that the Minister's message, on this occasion, was for industry to prepare itself for regulations requiring reporting on emissions, as opposed to imminent regulation requiring a reduction in emissions. This is in contrast to his statement in the abovementioned Washington address which promised "ambitious and mandatory domestic targets" for emissions reductions from the transport, energy efficiency and power generation sectors.

All of this is broadly in accordance with DEAT's projections for a "peak, plateau and decline" of South African greenhouse gas emissions during the period to 2050. However, it is also apparent that this country, along with the rest of the world, has entered the "carbon-constrained future" that has been the subject of so much literature of recent years. The DEAT Summit telegraphs that the South African government is seeking to face this challenge head-on with adequate policy and legal interventions. Our common carbon-constrained future will be the witness to whether such interventions will be equal to their task.

IMBEWU Sustainability Legal Specialists (www.imbewu.co.za) is a specialist sustainability legal consultancy providing professional legal consultancy services in the area of environmental, health & safety and climate change law. IMBEWU collaborates with Warburton Attorneys in providing CDM project development and contract advice to clients.

This article should not be regarded a comprehensive discussion of the topics addressed, and should not be taken as legal advice or relied upon. Those seeking to participate in climate change-related activities are advised to seek specific legal advice. Contact: andrew@imbewu.co.za.