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Expert Analysis

The First 'Official' Draft of the Copenhagen Agreement

Blanks, Brackets, Chewing Gum and Baling Wire

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In his latest dispatch from the United Nations climate change conference in Copenhagen, attorney Richard Faulk of Gardere Wynne Sewell discusses the draft presented by a key U.N. working group that is intended to form the framework of a new climate change agreement after 2012.

Key Retriever: Combine a length of baling wire with a sticky piece of chewing gum to retrieve the key that fell through the sewer grating.

—Reginald Adkins, Greatest Tools of All Time

The war of words — and the fight over money — continued at the Copenhagen conference Dec. 11. Although some parties continue to posture and insist that the negotiations are between the “haves” (“developed” nations such as the United States and Japan) and the “have nots” (“developing” nations such as China and the “G77” group), those classifications are increasingly imperiled by harsh rhetoric and unrealistic expectations.

According to reports, China’s vice foreign minister, He Yafei, claimed that he was “shocked” by the United States’ frank refusal to consider providing financial assistance for his country’s emission reduction efforts. He professed to be representing all developing nations in requesting funding and insisted that the U.S. was “extremely irresponsible” and suffered from “a lack of common sense.” Despite its broad demands for funding and firm commitments from developed nations, China said it had no intention of assuming any legally binding obligations on any front.

Emotions heightened after Lumumba Stanislaus Di-Aping of Sudan, negotiator for the G77 group of developing nations, reportedly wept at a meeting with some of his constituents. For its part, the United States remained firmly resolved that China and the other economically growing developing nations should play a part in climate change financing and emissions controls. Thus, the tensions,

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perhaps purposefully created by the U.S. to isolate the Chinese and other relatively prosperous nations from truly needy and “vulnerable” countries, rose throughout the day.

Ultimately, a key working group under the U.N. Framework Convention on Climate Change released a six-page surprise. It provided a draft intended to form the framework of a new climate change agreement to govern international activities and obligations after 2012, the date when the Kyoto Protocol terminates. The text was filled with terms enclosed by brackets, however, which indicated the lack of consensus on essential points. For example, the draft lists three options for reducing emissions by 2050 compared with 1990 levels, and they vary from reducing to 50 percent to 80 percent or as much as 95 percent.

The draft also calls for setting an interim reduction target at various levels by 2020. In developed nations, for example, it suggests a target of at least 25 percent by 2020 compared with 1990 levels, with the possibility of a cut “in the order of 30 percent” or 40 percent, or even 50 percent, but the particular base year remains negotiable. Even the central idea of temperature reduction remains in dispute. Although many experts argue that warming should remain under 2 degrees Celsius, the draft lists 1.5 degrees as an alternative.

The draft also seeks “substantial deviations” from current growth rates for developing states. Although more prosperous states, such as China, would not be required to undertake any set obligations to reduce emissions, the draft suggests that they might take “autonomous mitigation actions” to limit their increase. Per the draft, this “implies” limits of 15 percent to 30 percent by 2020, but its terms actually require nothing.

The draft calls for developed countries to provide “adequate, predictable and sustainable financial resources, technology and capacity-building” to support developing countries, but the proposal is perhaps deliberately vague regarding how a “developing nation” should be defined. Since China has trillions of dollars in currency reserves, this lack of specificity signals that China, and similarly situated countries, may not ultimately qualify for “developing” status.

Highlighting this controversy, Todd Stern, the primary U.S. negotiator, said the draft was “constructive” but “unbalanced” because of the disparate treatment of developed economies. Driving the wedge further,

he stressed that the provisions did not even provide “a basis for negotiation.”

Of course, the biggest hole in the draft concerns how much money will be paid, and who will pay it to whom. Perhaps prompted by this vacuum, the European Union unilaterally offered to provide 2.4 billion (\$3.53 billion) annually until 2012 to subsidize efforts by “developing” countries to reduce greenhouse gas emissions. Even then, however, the EU did not specify which “developing” nations would be eligible for assistance and did not make any effort — at this time — to preclude funding for more successful nations, such as China.

This decision deftly allowed the EU to perhaps mediate the widening gulf between the American and Chinese positions, and it may have been an effort to pacify the more extreme elements of the G77 group. The EU bridgework was not universally admired, however. Sudan’s Di-Aping promptly exclaimed that the draft was a “suicide pact” and that the EU’s \$10 billion offer was “not enough to buy us coffins.”

Now that the document has been circulated, and the possible intermediaries have offered their “olive branches,” the negotiators will commence work to determine whether an agreement is possible. At best, the entire conference remains held together by a fragile consensus, one that believes too much has been invested, and too much is at risk, to simply walk away and go home. Somewhere out of the sight of the press and the public, some negotiators are probably finding new uses for the “chewing gum and baling wire” that loosely conjoined the terms of the draft. Perhaps they are designing a tool that will allow them to retrieve the keys of success from the deep drain where they now lie.

Even if their efforts succeed, however, major obstacles exist, and some may be insurmountable. A congressional delegation from the United States is arriving soon to remind the conferees of the most important ones: that President Obama cannot legally bind America to a treaty without the Senate’s consent and that senators don’t typically ratify treaties opposed by the majority of their constituents. They will almost certainly advise delegates that “redistributing America’s wealth” through “climate reparations” is not an appealing argument for ratification.

A number of Americans, perhaps even a majority, already distrust the current administration’s spending

proposals. Commitments of tax dollars to international climate issues may be viewed by many as a profligate program of international largesse.

Also not far away from the conference center, a few skeptical climate scientists are having a meeting of their own. Largely unwelcome at U.N. events, they are sharing and updating research, ideas and conclusions and undoubtedly planning to participate in the debate resurrected by the “Climategate” scandal. Perhaps in recognition of the impact of the controversy, the U.N. held a press conference the morning of Dec. 12 to lay out, once again, its conclusions that the issues are finally and fully settled. It might have been more convincing, however, if some of the skeptics had been invited to participate.

Although most delegates in the Copenhagen probably believe that these political and scientific groups are merely “fringe” elements that pose no threat to their plans, their confident dismissals underestimate the importance of the United States’ ratification process. Like it or not, American voters, with their political influence on their elected representatives, will ultimately decide whether a global agreement succeeds. Even a cleverly retrieved key will fail if it doesn’t unlock the door to their consent.



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