The Doha Dead End?

Transition Economies and the New Kyoto Rules

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- The Doha decision revised the rules of the Kyoto Protocol's second commitment period (CP2). These changes weakened the position of the economies in transition (EITs), especially Belarus, Kazakhstan and Ukraine, by effectively establishing the 2008–2010 average emission level as their commitment throughout 2013–2020 without their consent, and simultaneously limiting the use of surplus carried over from the first commitment period (CP1). Russia had already withdrawn from CP2 earlier.
- The treatment of the EITs can hardly be deemed equitable in terms of ability to pay for mitigation measures. Their economic conditions are less favourable than those of many non-Annex I countries, which escape binding commitments; and the very limited participation of other Annex I countries in CP2 makes it morally difficult to justify tightening EIT commitments. Further, the fact that the EU 'bubble' is based on aggregate target hints at an inequality across EITs.
- The original CP2 pledges of the EITs were unrealistic, as they had proposed generating more surplus. However, the Doha decision went to the other extreme, removing all headroom for economic growth believed to lead to higher emissions in the future. As this had not been considered as a policy option prior to Doha, the EITs had not evaluated how to deliver such emission limitations. A more balanced approach would have limited rather than completely eliminated the headroom for growth, or chosen another reference level instead of 2008–2010, in the midst of the global economic downturn. Also the EITs themselves could have done more to facilitate such an outcome.
- The decision-making process in Doha stretched the concept of consensus, as the views of an entire group of countries – Russia, Ukraine, Belarus and Kazakhstan – were ignored. The decision taken had a dramatic impact on the numerical targets of those who opposed, which was unprecedented under the UNFCCC. As a result, the EITs are losing trust in the legitimacy of the climate negotiation process.
- The withdrawal of several EITs from CP2 seems likely. This would bring CP2 coverage down to 12–13% of global emissions, and lead the EITs backtracking on existing climate policies. The treatment of the EITs in Doha is also likely to influence the negotiations on a future global agreement. Re-building trust by 2015 is a tall order, and no-one knows how interested other parties might be in engaging the EITs.

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The Doha Amendment launched new rules for the second commitment period (CP2) of the Kyoto Protocol. The position of the countries defined as economies in transition (EITs) changed radically as a result of the Doha decisions, leading them to reconsider whether to join CP2, as well as undermining EIT trust in the fairness and legality of global climate negotiations. This paper begins by explaining the background to the position of the EITs – their claim for headroom to accommodate future emission growth. It then outlines the relevant changes following from the Doha decisions, and their implications for the EITs. Equity issues concerning the role of the EITs in the global climate regime and the application of consensus rules in the Doha decision-making process are discussed to shed further light on the position of the EITs.

Starting point: Entitlement to headroom for growth

Under the first commitment period (CP1) of the Kyoto Protocol, Russia, Ukraine and many of the new Eastern European member states of the EU were deliberately over-allocated emission rights (Assigned Amount Units – AAUs), in order to allow recovery of their economic activities following the collapse of the Soviet Union. However, the decline in their emissions proved a more permanent trend than originally expected: in 2010, for instance, Russia's emissions remained some 34%, Ukraine's 59%, Poland's 29% and Romania's 58% below their base-year emissions.[1] Russia and Ukraine hold surpluses of over 5.5 Gt and 2.5 Gt respectively, which the Kyoto Protocol allowed to be carried over to the subsequent commitment period. Altogether, the Eastern European new EU member states[2] hold a surplus of ca. 1.5 Gt.[3] Kazakhstan and Belarus had started the processes for joining Annex B of the Kyoto Protocol during CP1, but this did not materialize in time, so they did not receive such surpluses.

In retrospective, many parties to the Kyoto Protocol consider the over-allocation to the EITs as unreasonably generous, as well as a threat to the environmental integrity of the Protocol. Revisions of the Kyoto rules have been suggested – ranging from a total ban on banking the surplus, to limiting its quantity or use.[4] Such limits have been fiercely opposed by the EITs, who argue that they have a right to develop, and thereby the right to headroom for growth in emissions. They have repeatedly emphasized their over-achievement of commitments under the Kyoto Protocol, citing this as evidence that they have done more than their fair share to solve the global climate crisis in comparison to the actions of others. The EITs see the surplus as their sovereign property legally established under the Kyoto Protocol, and morally justified as compensation for the hardships experienced during the collapse of their economies. This argumentation stands in stark contrast to how most non-EIT Parties understand the issue, and is often interpreted as the EITs protecting their economic interests linked to the use of the Kyoto mechanisms. This issue has also complicated internal decision-making and the formation of negotiating positions in the EU. The EITs will view the Doha decision from this ideological perspective, making it important as a background to any further analysis of the Doha outcomes.

AAU allocation rules – freezing of emission levels

In Doha, CP2 pledges in excess of 2008–2010 emissions levels were frozen, or 'shaved', in terms of AAU allocations, to avoid generating further surpluses.[5] There are now two alterna-

[1] The base year is 1988 for Poland, 1989 for Romania and 1990 for Russia and Ukraine. Figures exclude land-use, land-use change and forestry.

[2] Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania Slovakia and Slovenia

[3] Based on 2008–2010 real data (www.unfccc.int) and the assumption of 2011–2012 emissions being on 2010 levels.

[4] *In the negotiations:* Earth Negotiations Bulletin, 2012; *In the analysis:* Vieweg et al., 2012; Korppoo &Spencer, 2009.

[5] As established by Amendment *7ter, 'any positive difference between the assigned amount of the second*

tives in allocating AAUs to Annex B Parties: up to their commitment level[6] if recent emissions exceed this level, and to the average of 2008–2010 for countries which pledged an emissions growth target beyond their current emission levels. The latter case is a new arrangement under the Kyoto Protocol, as commitments and AAU allocations have previously been equivalent in the case of Annex B parties. For instance, according to the Kyoto Protocol Reference Manual on Accounting Emissions and Assigned Amount by the UNFCCC, *'So long as the Party's total emissions over the commitment period are less than or equal to its total assigned amount, the Party will be in compliance with its emissions limitation and reduction commitment.'* Further: *'Before the end of the true-up period, each Party will be required to demonstrate that it meets its Article 3, § 1, commitment. To do so, each Party must "retire" a quantity of Kyoto units equal to or greater than its total Annex A emissions for the commitment period.'*[7] The Doha decision redefines these rules.

This allocation method revises the pledges of EITs as follows: Ukraine, from –20% to –58%; Kazakhstan, from –7% to –29%; and Belarus, from –8% to –36%. In terms of effort required, these revised targets to freeze emission levels may not seem as challenging to achieve as the actual emission reduction targets of some other Annex I countries. However, the EITs were denied the opportunity to negotiate their *de facto* commitments, as the revised figures were indirectly imposed on them by the revision of the Kyoto rules. These figures, imposing flat emission dynamics on the EITs, stand in stark contradiction to the EITs' demand for headroom for emission growth. Also the choice of 2008–2010 as the reference point for freezing has been criticized, as the global economic crisis had brought emissions anomalously low. For Ukraine and Kazakhstan, these years were definitely out of the ordinary: their average emissions before the economic crisis (2006–2007) were 11.6% and 2.8% above the 2008–2010 average, respectively. For Belarus, emissions grew at basically the same pace throughout 2000–2010, without obvious impact from the economic crisis.[8]

Further, the dual method of AAU allocation leaves the door open for the EU 'bubble' to take its aggregate rather than national-level emissions as the reference point for allocation. As the emissions of several new EU member states remain significantly below the EU's aggregate commitment of –20%, the former method would generate more AAUs than freezing emissions on the 2008–2010 level based on the country-level method. The difference between the methods of the Kyoto burden-sharing (national targets) and the EU's internal policy measures (the EU emissions trading sector is regulated by community-wide rather than national targets) could also pose a technical challenge to applying the national-level allocation method.[9] However, if the EU should decide to allocate on the basis of aggregate emissions, that would lead to unequal treatment across EITs.

Limitations to the use of CP1 surplus

The Amendment to the Kyoto Protocol adopted in Doha allows countries to carry over surplus AAUs from CP1; these are to be transferred to a 'previous period surplus reserve' account of each Party.[10] However, the surplus may be used for domestic compliance only when emissions exceed the country's pledged commitment level. Thus, freezing emissions at the average 2008–2010 level by limiting AAU allocation creates a gap between what the AAUs can cover, and when the surplus can be used for domestic compliance. (See Graph 1.) As a result, the Amendment splits Annex B countries into two groups: countries with emissions above their commitment levels are allowed to offset their emissions by first-commitment surpluses; countries with emissions below their commitment levels may not do so.

commitment period for a Party included in Annex I and average annual emissions for the first three years of the preceding commitment period…shall be transferred to the cancellation account of that Party'.

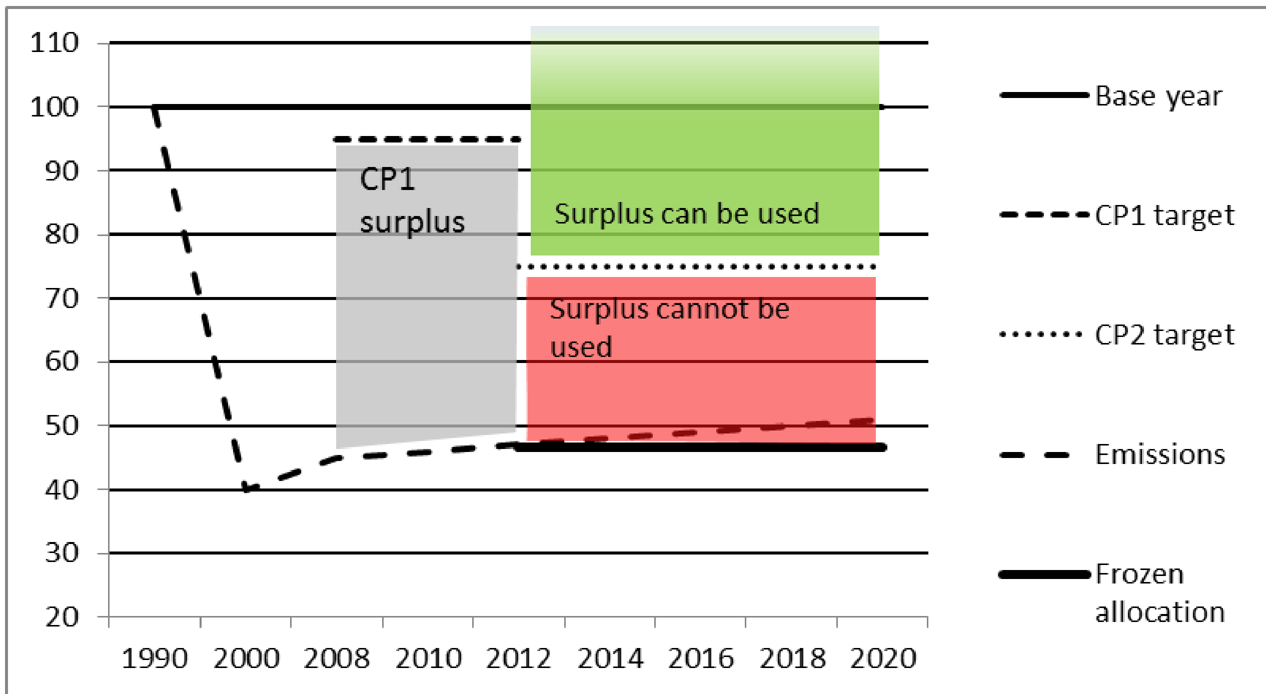
[6] quantified emission limitation or reduction commitment (QELRC)

[7] UN Framework Convention on Climate Change (2008). Kyoto Protocol Reference Manual on Accounting Emissions and Assigned Amount, pp. 19, 37.

[8] Calculations based on country-level data available at www.unfccc.int.

[9] Korppoo, Anna (2013). Does Doha's decision treat transition economies unequally? *Climate Policy* 13 (2013), No.13, 403-407.

[10] According to *§ 25* of Decision 1/CMP.8: *'… further, that units in a Party's previous period surplus reserve account may be used for retirement during the additional period for fulfilling commitments of the second commitment period up to the extent by which emissions during the second commitment period exceed the assigned amount for that commitment period, as defined in Article 3, §§ 7bis, 8 and 8bis, of the Kyoto Protocol.'*



***Graph 1**. Impact of Doha decision on EITs: freezing of AAU allocation to 2008–2010 levels, and limitations to the use of CP1 surplus for domestic compliance*

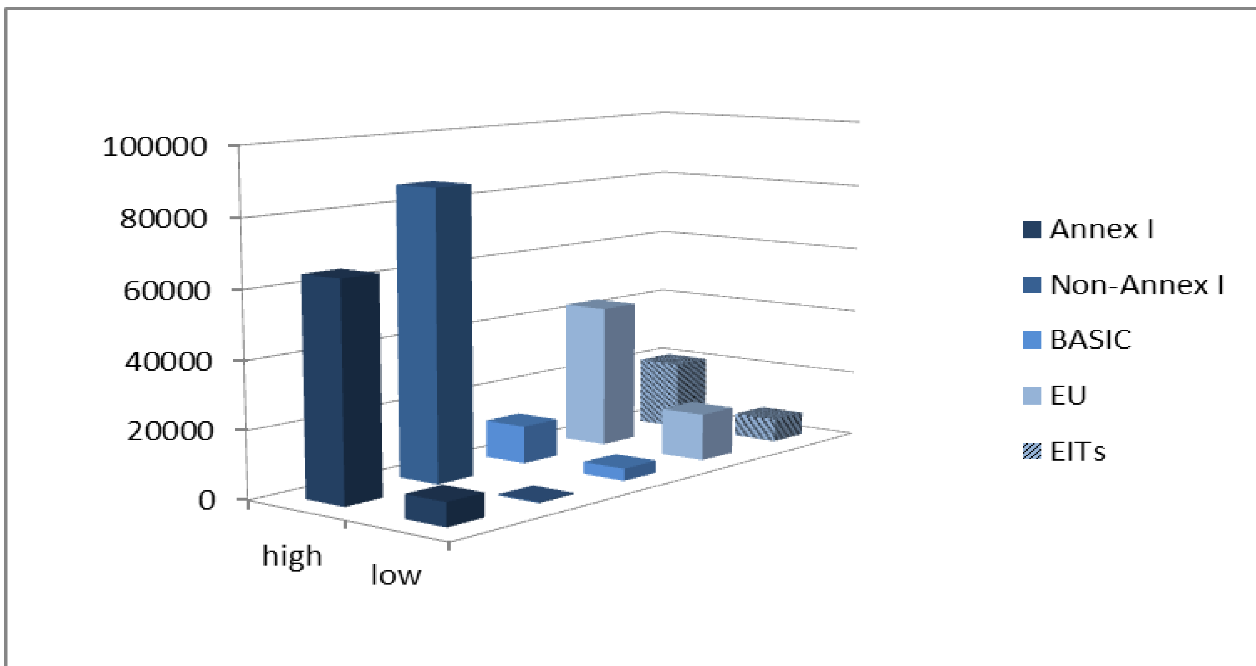
Source: Author. Data fabricated for the example.

Take the case of Ukraine. Its annual average emissions in 2008–2010 (indicating the annual AAU allocation) were 390 Mt, while its pledged commitment accounts for 706 Mt. Ukraine can tap into its surplus reserve for compliance only once it has exceeded this commitment level: thus, emissions growth to almost double the current level would have to be covered from other sources. Should Ukraine ratify the Amendment, compliance options would include keeping emissions below the 2008–2010 average by domestic measures, purchasing allowances from other Parties or adopting a more 'ambitious' target below its 2008–2010 average in order to cover emission growth from CP1 surplus. The last option would be purely a matter of calculation, and would not generate additional environmental benefits. In practice, the Doha rules make it impossible for EITs to use carried-over allowances to compensate for domestic compliance.

Global equity in terms of ability to pay

Following their economic and social difficulties related to the post-socialist economic transition, the EITs were granted 'transition economy' status under the Convention and the Kyoto Protocol. This meant not being included in Annex II of the Convention as responsible for financing climate mitigation and adaptation in developing countries, but instead being allowed to receive capacity-building finance from other Annex I countries. The EITs were also given easier targets in comparison to other Annex I countries.

The principle of *common but differentiated responsibilities and respective capabilities* included in the Convention and the Kyoto Protocol recognizes the historical responsibility of Annex I countries for causing climate change. However, the division into Annex I and non-Annex I has always been very approximate as regards *respective capabilities*, and is becoming even more so because some non-Annex I countries have developed significantly faster than others since the country groups were created for the Convention prior to 1992. Here the transition economies have been divided between the categories. Russia, Ukraine and the Eastern European new EU member states were included in both Annex I of the Convention and the Annex B of the Protocol from the beginning. Belarus was included in Annex I of the Convention. It did not originally inscribe a commitment under Annex B of the Kyoto Protocol during CP1, and when it sought to amend Annex B after 2006, the Amendment failed to gain ratification from a sufficient number of Parties to enter into force. Kazakhstan has made efforts to join Annex I since the late 1990s, and started the process for joining Annex B in Doha in 2012.



***Graph 2.** Differences in Gross National Incomes (per capita PPP) between country groups*

Source: Author, data: data.worldbank.org, Table: GNI per capita, PPP (current international $)

Note: EITs include non-EU EITs in Annex B of the Kyoto Protocol during CP2.

Graph 2 illustrates the position of the EITs in terms of ability to pay for mitigation measures, an indicator of their *respective capabilities*. The EITs are quite homogeneous as regards GNI per capita. The Non-Annex I group includes both the poorest and the richest country (Democratic Republic of Congo and Qatar) in the world. Further, four out of the richest ten areas worldwide,[11] as measured by this indicator, are non-Annex I countries. Non-Annex I countries have no binding emission limitation or mitigation commitments; several Annex I countries (the USA, Japan, Canada, New Zealand and Russia) have rejected CP2 and are thus not bound by emission limitations. Under these conditions, it hardly seems fair to require the poorest end of the Annex B EITs to make investments in keeping their emissions from increasing beyond the levels in the period of economic downturn, 2008–2010.

Consensus decision-making

The decision-making process in Doha once again faced the question of consensus and when the opposition can be ignored. The history of climate negotiations is rife with examples of decisions taken against the will of one or more of the parties. Indeed, UNFCCC itself is said to have been adopted against the will of the OPEC, while the adoption of the Kyoto Protocol was opposed by Saudi Arabia, and the Cancun Agreements by Bolivia. In fact, consensus has been described as follows: *'The consensus rule does not mean unanimity, far less does it mean the possibility of one delegation exercising a right of veto after years of hard work and huge sacrifices by many others.'*[12]

The opposition by Russia, Ukraine and Belarus in the final plenary in Doha could be seen as simply one more such case. However, when this is considered in greater detail, it could also be argued that the Doha treatment of the EITs marked a step beyond the normal definition of consensus. Russia stands as probably the most significant country – in terms of its share of global emissions – ever ignored as regards 'consensus'. This has alarmed other Parties concerned about the applications of the consensus rule. As expressed by an African negotiator: *'The question is not whether Russia was right or wrong in someone's views*

[11] Qatar, Singapore, Hong Kong (a Special Administrative Region of the People's Republic of China) and the United Arab Emirates. Their share of global emissions is about 1% while the corresponding figure for Ukraine, Kazakhstan and Belarus was ca. 2%.

[12] Mexican Foreign Minister Patricia Espinosa, in declaring the decisions adopted despite Bolivia's objection, at COP-16, Cancun, 2010.

but the precedence being set by breaking the norm of consensus. One may say that in the process the talks were saved from a complete collapse but it could be any country's turn next time to be run over.'[13] Moreover, the Doha decision had a dramatic impact on the pledged commitments of the objecting Parties Ukraine, Belarus and Kazakhstan – unlike the case with previous decisions that were adopted regardless of opposition. On the other hand, objecting Parties can of course opt out of the decision, by not ratifying the Amendment.

The representatives of Russia[14] felt strongly that the EITs had been misled by the presidency to table a proposal[15] which was then ignored. Russia raised a point of order prior to the adoption of the decision, and also at least Ukraine had asked for the floor but did not get a chance to speak. By contrast, in Cancun, the opposing party, Bolivia, was allowed to speak before the decision was taken.

Further, most other Annex I countries made plenary statements that they would not purchase surplus allowances from CP1. The motivation was to delegitimize surplus trading. This appeared to be a politically driven action, as the Doha decision already limited purchasing surplus to 2% of the buying party's assigned amount during CP1; Kazakhstan and Belarus received no surplus, and the EU has already limited its use through internal regulations.

Is the position of the EITs reasonable?

From the perspective of environmental integrity, it is easy to justify denying further surplus. The EIT opposition can be interpreted as aimed at avoiding costly obligations, and receiving income through international climate mechanisms instead. However, allocating no space for future emission growth from 2008–2010 levels contrasts starkly with how the EITs understand their own role in the UNFCCC. It marks a dramatic departure from their original pledges, and limits their emissions to the low levels achieved during the economic crisis. The Parties that pushed for the Doha decision may base their argument on the EITs not been obliged to implement domestic emission reduction measures so far, even though, given their inefficient energy use, they have the potential to do so. However, this viewpoint fails to acknowledge the vast domestic implementation problems in the EITs caused by bureaucratic systems as well as the limited capacities of many energy users to invest in efficiency measures.

The logic behind the new rules seems less firm also when the global comparisons of ability to pay, and the insignificant coverage of the Kyoto Protocol, are brought into the picture. Why should the EITs pay for mitigation measures if the richer countries in both Annex I and non-Annex I are not doing so? The coverage of the Kyoto Protocol, a mere 14–15% of global emissions, makes any sharing of burdens insignificant in terms of benefiting the earth's atmosphere. CP2 has often been considered as 'symbolic', and was politically important in delivering the promise of Annex I countries to non-Annex I countries to take the lead on emission reductions. However, this argument does not really fly, as the USA, Japan, Canada, New Zealand and Russia have all opted out of CP2. Further, the commitments of others cannot be described as ambitious (for example, the emissions of the EU-27 were 15.4% below 1990 levels already in 2010) and the treatment of EITs under the EU bubble may lead to an unequal situation across EITs.

The permission to use surpluses seems to favour countries with greater ability to pay for emission reductions: non-EITs. The logic can be based on the assumption that their surplus represents real emission reductions rather than windfalls. However, differentiating is difficult here, as the economic downturn provided windfalls in emission trends across Annex I during 2008–2010, and the treatment of the new Eastern European EU members, which have been allocated similar windfalls as the other EITs, remains unclear.[16] The argument that only countries with emissions exceeding their commitments would need to use their surplus for compliance during CP2 is clearly invalid, given the new rules that decouple AAU allocations from commitment levels (assigned amounts) as a result of freezing emissions to the 2008–2010 level.

[13] Quoted in Sethi, Nitin (2012). India, developing nations worried over consensus being buried in climate talks. *Times of India,* 17 December 2012. Available at http://articles.timesofindia.indiatimes.com/2012-12-17/global-warming/35868125_1_climate-talks-doha-talks-doha-round. Accessed 4 February 2013.

[14] Dobrovidova, Olga, Russia negotiators complain of 'legal nihilism' at UN climate talks. News story at RTCC 14 December 2012. Available at http://www.rtcc.org/russia-negotiators-complain-of-legal-nihilism-at-un-climate-talks/.

[15] This proposal was never made available to the public.

[16] EU internal rules, however, ban the use of AAUs carried over from CP1.

Further scrutiny could well be directed at the motivations underlying the treatment of the EITs in Doha. The insignificant coverage of the Kyoto Protocol makes it clear that the position taken by the EITs was hardly blocking a serious global effort to tackle climate change. The decision appears to have been pressed through, not in order to achieve actual atmospheric benefits, but for political reasons – as indeed the whole CP2. That could make it more difficult to accept as purely a procedural necessity. Given the statements issued most Annex I countries not to purchase CP1 surplus, the Doha decision could be seen as evening out accounts with Russia, long viewed as a difficult and self-interest seeking negotiating partner. Whether it is fair that the other EITs – Belarus, Kazakhstan and Ukraine – should end up suffering from this, is questionable. A more balanced approach would have avoided extremes – perhaps by scaling down the headroom for emissions growth instead of removing it completely. Also the low reference level imposed for freezing emission levels could have been more equitably chosen. The EITs themselves engaging more constructively in the negotiations, not least by recognizing the unreasonable nature of their original CP2 pledges, could have facilitated such an outcome. Perhaps the other EITs should have also taken a more active role, instead of allowing Russia to lead regardless of its wider political motives as well as detachment from CP2. Finally, the EITs' traditional strategy of avoiding debate on approaches they oppose by not engaging in the negotiations backfired. To a great extent, the new targets were probably imposed on them because they had not agreed about negotiating on such options.

Likely outcomes

Even if the original CP2 pledges of the EITs were unacceptable, the Doha decision went too far, from the EITs' perspective, by revising their commitments without their approval and by limiting compliance use of their own surpluses. One not unlikely scenario is therefore that the EITs will drop out of CP2. Even though Belarus/ Kazakhstan/ Ukraine's share of global emissions is only some 2%, this is a significant share (almost 14%) of the slimming global coverage of CP2. Moreover, the Doha rules are already slowing down, or even turning around, domestic climate policy agendas in the EITs. For instance, Ukraine had plans for an emissions trading scheme, but no longer.

Finally, all unresolved disagreements are likely to complicate negotiations on a future global agreement. Especially tensions between the non-Annex I and the Russia-led EITs group seem likely: both groups claim a special status that entitles them to emission growth, and each group blames the other for lack of action. Following what is seen as a dead end for the EITs after Doha, rebuilding trust will take time. Once discontinued, the fragile domestic policies in the EITs cannot be re-established overnight. This is also likely to make it more difficult for experts in the EITs to draw sufficient political attention to the climate issue in the near or even mid-term future. And finally, given the strategies employed in Doha, the political will of the other parties to genuinely engage the EITs in the future climate regime cannot be taken for granted.

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