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2 December 1997

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To: Please see attached listing

From: USDEL/Kyoto - Mark G. Hambley ~~was~~

Subject: Third Conference of the Parties to the Climate Convention, Update No. 3:
Report on the Meetings/Activities for Dec 1/2,, 1997

This unofficial and unclassified report covers regional meeting activities of the Third Conference of the Parties of the Framework Convention on Climate Change (COP-3) which is being held in Kyoto, Japan between November 30 and December 10, 1997. This edition covers events from the afternoon of Dec 1 to the morning session on Dec 2. Although it is not classified, it is not intended for use or distribution outside the U.S. Government.

We are also including various reports prepared by USDEL representatives dealing with recent discussions on the national security provision, on an EEL-sponsored side event, and reports on both the AGBM Plenary and the first meeting of the COP. We are also including the latest edition of ECO, the highly satirical, opinionated, and usually biased periodical published by environmental groups with financial support from the governments of Denmark, the Netherlands, and Germany. Nevertheless, ECO provides a humorous, always unique, and sometimes informed rendering of events.

The final paragraphs can be used as a summary as desired or appropriate.

COP-3 Update No. 3 (Dec 1-2): Difficult Afternoon COP Session Over Handling of Evolution; EU "Upset" about U.S. Questioning of its "Bubble"

Evolution Blow-up Contained - For Now

The afternoon plenary of the Third Conference of the Parties (COP-3) resumed deliberations on the agenda on Monday afternoon (Dec 1). The decisions made by the two key subsidiary bodies of the Convention ((the Subsidiary Body on Implementation (SBI) and the Subsidiary Body on Technological Advice (SBSTA)) were approved, with the exception about the work plan for COP-4 and the budget.

More excitement was forthcoming when the COP President, Minister Ohki of Japan, proposed that two issues not being dealt with by the Committee of the Whole (the COW) should be dealt with under Item 3F which deals with "other matters." The two issues involved were the Brazilian Protocol proposal and the question of future commitments by all Parties (read: evolution).

After making his proposal, a somewhat confused Minister Ohki apparently did not hear the suggestion made by an experienced aide (audible to all of us in the room) in which he was advised to declare that, in the absence of any objections, he should gavel the matter into a decision. Inexplicably, the Minister called upon Tanzania, the representative of the G-77/China, and the floodgates of protests about evolution poured out.

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Tanzania essentially said that this concept was not a proper item for consideration, as the Berlin Mandate focuses on developed country obligations only. He added that this is the case even when the Chair attempts to introduce this issue through the back door while trying to sugar coat it with the Brazilian proposal. The G-77 was followed by China, India, Malaysia, and Saudi Arabia who cited similar objections. Even Indonesia, which had made positive noises about its receptivity to the idea of developing country commitments at both the Tokyo ministerial and the APEC summit last month, indicated its view that this issue should not be discussed at this meeting.

The U.S. responded with an effective presentation in which we outlined why it is indeed appropriate for this subject to be discussed in the COP, in part because the COP is the "supreme body of the convention." If not here, then where? Australia also chimed in with a useful supporting intervention. For reasons that are not clear, the President did not recognize Canada or Japan which had both raised their flags. The EU, which did not speak, told us (with a straight face) that it had not spoken, because of the absence of Luxembourg from his chair. In any case, the Chair subsequently decided that Brazil would be discussed at the Dec 3rd plenary and that he would have consultations on how best to introduce the issue of a follow-on process to Kyoto.

Institutions Group Meets with Some Progress Reported

The negotiating group on institutional issues also met for the first time on Dec 2nd. Apparently, there was progress on the issue over the relationship of the COP to the proposed Meeting of the Parties for the protocol. (There had been concern expressed about the proposal by the G-77 that would have permitted non-Parties to the protocol to vote in the Meeting of the Parties.) A new formulation is being considered which will overcome this problem.

NGO/Business Briefings

The first two of daily briefings were held with U.S. environmental NGOs and with business representatives. Questions raised at the enviro briefing included those about the differentiation concept mentioned in our morning statement at the plenary (see Update 2). (The NGOs are particularly concerned that targets be established next week and not be postponed to a future date.) Other questions concerned gas coverage (with some initial suggestion that some of our enviros were backing away from the comprehensive six gas approach! They later reaffirmed their support.) The business representatives asked questions about differentiation, gases, and sinks. They also wanted to know about our attitude towards the Russian Annex I bubble approach.

National Security Exemption Provision

Several other side groups met throughout the afternoon and night. Our DOD reps, supported by Sue Biniarz of L/OES, discussed the question of the national security provision. JUSCANZ was very supportive; the UK was not, but thanks to the timely intervention of Under Secretary Eizenstat in London, this potential problem should be reversed. We are working on a proposal which would cast this issue as one methodological in nature. Some of the results, plus a copy of our proposal, are reported in an enclosure to this report.

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Developing Country Issues

Discussion among JUSCANZ members on developing country issues produced a paper which might be somewhat adequate as an end game, but not as an initial negotiating document. We raised with Japanese Ambassador Aoki in Geneva (a distinguished Berlin Mandate veteran) at a meeting on Dec 2 the necessity for COP President Ohki to have a piece of paper outlining what we have in mind as a possible Kyoto Mandate in hand for his discussions with countries on the question of a post-Kyoto process. We described the proposed JUSCANZ text as "too weak" and a proposed EU text as even weaker. At Japanese request, we prepared a page of short comments outlining how we look at the question of developing country participation.

Sinks Issue Also Pending Resolution

Meanwhile, discussions on sinks continued with this issue scheduled for discussion at the evening COW meeting on QELROS on Dec 2. Although the chair has indicated the necessity for Parties to reach conclusions at this time, this appears most unlikely.

Israel Joining Article 10?

Reports are circulating that Israel may become the first Party to offer to join Article 10 on voluntary entry into a legally binding quantified emission limitation objective. Stay tuned!

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The Minister first called upon Tanzania, the representative of the G-77/China for his reaction. Tanzania essentially said that this concept was not a proper item for consideration, as the Berlin Mandate focuses on developed country obligations only. He added that this is the case even when the Chair attempts to introduce this issue through the back door while trying to sugar coat it with the Brazilian proposal. The G-77 was followed by China, India, Malaysia, and Saudi Arabia who cited similar objections. Even Indonesia, which had made positive noises about its receptivity to the idea of developing country commitments at both the Tokyo ministerial and the APEC summit last month, indicated its view that this issue should not be discussed at this meeting.

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AGBM Plenary Meeting, November 30, Notes by Sharon Saile

Chairman Estrada opened the session hoping that Parties could make progress on the few issues where some consensus had seemed to emerge, but the Parties basically went back to repeating their original positions. The issues discussed included:

1. Sinks - Tony Devina (sp?) Of the Philippines has been chairing a contact group on sinks, and reported some progress by coming to 4 options to cover the range of Parties' views:
 - a. Include sinks in the QELROs on a "net,net" basis (i.e. net emissions in the baseyear and net emissions in the compliance years)
 - b. Exclude from QELROs at this time, but look at including sinks later when measurement methods are improved, perhaps by the second budget period
 - c. Exclude from QELROs at this time, but have a decision by the Meeting of the Parties to include them later
 - d. Exclude sinks from the QELROs, but allow sink offsets to count in the compliance years

The FCCC Secretariat will prepare text to implement these options, and the contact group will meet again on Monday. Chairman Estrada gave the group until Tuesday evening to resolve the issue (urging the Parties to decide what to do about sinks to help them resolve the level of the targets).

2. Budgets - Although many Parties seem to have agreed to a budget approach, G-77 raised its objections to a budget approach (concept of "emissions allowed" and emissions trading, etc) very strenuously
3. PAMs - Chairman indicated that one extreme is for mandatory policies and measures, another extreme is no policies and measures, therefore he plans to proceed to draft a further compromise text.
4. Name of Protocol: Kyoto Protocol to the UN Framework Convention on Climate Change on Greenhouse Gases. Note - the G-77 suggested waiting to name the protocol until after the substantive provisions of the protocol would be resolved. This reservation provoked a response from Chairman Estrada indicating that he needed more cooperation from G-77.

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COP, Monday Afternoon, December 1, Notes by Sharon Saile

SBSTA report - decisions on, contained in FCCC doc SBSTA/14/1997

1. cooperation with IPCC and other bodies and
2. observation of global monitoring networks
3. development and transfer of technologies - further analysis and information
4. jointly with SBI - AIJ - uniform reporting format, methodologies

roster of experts
division of labor

SBI report
non-Annex I national communications
division of labor
program budget
HQ agreement, financial mechanism

AG-13 report:

Waiting to decide process or committee for MCP
answerable to COP directly, or thru SBI
consultative advice for protocol, or all Parties to FCCC
form and content are open, but consensus that MCP is needed - delayed until post-Kyoto

therefore, the papers containing these reports are adopted for consideration by the COP

IPCC Report by outgoing chairman - 4 technical papers

All decisions adopted by consensus.

AGBM report: COP shall consider:

Negotiating text based on Parties proposals; plus the Chairman's revised text

1. negotiations will have to make final decisions
2. propose that SBSTA and SBI prepare work for any protocol decisions which require decisions at subsequent meeting of parties.
3. Brazilian proposal - QELROs to be based on changes in temperature -may merit SBSTA consideration
4. Evolution - one party proposed new instrument should be binding QELROs for all soon after 2000, with automatic progression of GHG commitments based on agreed criteria, but other Parties opposed as beyond Berlin Mandate. Outside AGBM, but appropriate for COP3. (191-195.1 of negotiating text)

Only 10 days to complete negotiation - square brackets indicating problems QELROs, PAMs, etc.

Need only political will to achieve the commitment. Stabilization of concentrations to prevent dangerous anthropogenic interference with climate. Stabilization of emissions will not lead to

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stabilization of concentrations, and this fact cannot be disguised. Historical contribution from developed countries - per capita from developing countries are still low, although will grow to meet social needs. Developing countries are taking actions (though haven't submitted communications)

Chairman Estrada was elected by consensus as Chairman of the Committee of the Whole, and will participate in Bureau of Conference of the Parties. COW will be convened tonight at 8 pm.

The President adopted all the Decisions. However, a long discussion erupted over the President's suggestion to discuss both the Brazilian proposal and the evolution proposal in the COP plenary sessions. All the developing countries (G-77/Tanzania, China, Malaysia, Indonesia, Brazil) objected to even discussing evolution, while the US and Australia supported the President's suggestion. The time for discussion was cut short, and will resume on Wednesday.

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Summary of Discussions of JUSCANZ Legal Working Group of 1 Dec 97, 1400-1600

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Chris Weaver, Roy Salomon, and Sue Biniacz met with other members of the JUSCANZ legal working group. (Countries represented at the meeting included Japan, Canada, New Zealand, Australia, Norway, US and Switzerland.) We reviewed four items, one of which was the US proposal for a Decision of the Parties on National Security. The proposal language is quoted below:

The Conference of the Parties, at its third session,

Recalling Article 3 of the Protocol, which requires each Annex I Party to limit "its" emissions, as set forth in that article,

Recalling Article 5 of the Protocol, which calls for further work on methodologies for estimating anthropogenic emissions by sources and removals by sinks of greenhouse gases,

1. recognizes the need to address, through work on methodologies, the appropriate treatment of bunker fuels,
2. recognizes the ability of two or more Annex I Parties to arrange for emissions in the territory of one such Party that are attributable to activities of another such Party to be counted against the emission budget of the latter Party; and,
3. decides that emissions related to multilateral operations conducted by militaries pursuant to the UN Charter, such as peacekeeping and humanitarian assistance, shall not count against the emission budgets of individual Annex I Parties.

The legal group's analysis states that decisions of the parties may form part of the negotiating history of a treaty provision with relevance to interpretation of the treaty, in accordance with international law. The group also noted that a decision of the parties is not as desirable as protocol language.

On the merits of the proposal, the lawyers were supportive. During the discussion, Japan and New Zealand expressed concern over bullets 1 and 2. First, they were confused that these bullets did not directly discuss military emissions. After the US explanation of the tactical reasons for the drafting, they were satisfied that all three items were concerns over the definition of "its" in Article 3. Japan expressed a second concern that the proposal might be viewed as an attempt to add a different type of trading provision. The US explained that this was not our intent. Australia expressed support for the proposal as written.

The group produced a short analysis that will be presented to the entire JUSCANZ group tomorrow at the 0900 regular meeting.

Summary of Discussions with EU Representatives, Dr. Wolfhart Durtschmidt (GE) and Dr. Jim Penman (UK) of 1 Dec 97, 1700-1745

At the request of Dr. Penman via Dr. Jonathan Pershing of the US delegation, Capt Weaver and Lt Col Salomon met informally with Drs. Durtschmidt and Penman on the afternoon of 1 Dec. The purpose was to provide background information and explanation of the US position on the National Security Provision.

Dr. Penman conveyed that it was unclear to the EU why this issue is so important to the US. He indicated that he didn't think military emissions amounted to a great deal and that it seemed a relatively small issue to raise to such a high level. Capt Weaver and Lt Col Salomon responded that what may seem to be a small emissions slice when viewed in the context of an individual nation's military forces can be significant when viewed in the context of another nation's territory or in the context of a large scale

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multinational military operation. Dr. Penman recommended that the issue be referred to a methodological determination by the FCCC's Subsidiary Body on Science and Technical Advice (SBSTA) or the Subsidiary Body on Implementation (SBI) in a post-Kyoto process.

Capt Weaver and Lt Col Salomon responded that a determination of how national security emissions are to be treated by the protocol is an extremely important aspect of the US position. We feel it is not appropriate to leave the issue for ultimate resolution by lower level bodies in the wake of the Kyoto Conference. It is not the amount of emissions that relate to military operations that is key, it is the principal of how military emissions in the multilateral environment are to be accounted for. The US is concerned that training, operations and thus readiness of forces may be inadvertently harmed by failing to address head on the issue of national security emissions accounting, regardless of their overall size. This is true not only for US forces, but equally importantly, for allied military forces as well. We offered the example of the "allied nation" that supported US airlift during the buildup for the Gulf War and how daily US aircraft refueling represented a substantial part of that nation's overall fuel consumption.

At one point, Dr. Durrschmidt observed that the EU has a number of significant issues between their position and the US position on the overall protocol. The EU wants to avoid another issue, such as NSP, arising to further complicate negotiations. Capt Weaver and Lt Col Salomon asked for additional feedback on how the current "DOP" language proposal could be better crafted to accommodate EU concerns. Drs. Penman and Durrschmidt indicated they would consult with the other EU members in their morning meeting and would get back for more discussions.

Capt Weaver summarized the differing perspectives developed during the discussion: The EU representatives feel that the absolute levels of emissions relating to national security are low and amenable to addressing in a post-Kyoto methodological determination process. The US position, on the other hand, desires that the NSP issue be included, albeit in as least intrusive a manner as possible, in the ongoing Protocol process. The US desires the support of our European allies (NATO) in this initiative and we look forward to working through the issue with the EU. Dr. Penman indicated that he "recognized the importance of this issue" to us and wanted to work with us as well. We expect to meet again on 2 Dec.

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Presentation of EEI, UNIPEDE, and FEPC
December 1, 1997

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On Monday, December 1, 1997, three organizations representing electric utilities in the U.S., Japan, and internationally presented the findings of an International Energy Agency study on technology development and diffusion for electric power generation. Dr. Koch from the IEA spoke to the study funded by these organizations. In addition, representatives from the three sponsors outlined their climate change mitigation activities. Bob Beck of the Edison Electric Institute (EEI) read from a prepared statement, discussing the role of U.S. electric utilities in the Climate Challenge program, a voluntary effort to reduce greenhouse gas emissions. He also outlined EEI's position in the international negotiations, namely that its member utilities do not support legally binding emissions targets. However, if an agreement does come out of Kyoto, they favor full credit for early actions, provisions for flexibility in implementation, and meaningful participation of developing countries in future commitments. Although Beck did not read all of the statement, one section was particularly critical of the Administration's position - it stated that the "approach ... threatens to do great damage to the economy;" that an auction permit fee is another form of a \$100/ton carbon tax; and that based on an Australian economic study, the U.S. would experience a greater economic loss under a grandfathered tradable quote approach than under a uniform targets approach.

A representative from the Japanese electric utility trade association, the Federation of Electric Power Companies of Japan (FEPC), also made a presentation which focused on the significant role of nuclear power, both past and envisioned for the future, in mitigating greenhouse gas emissions. Liquefied Natural Gas (LNG) will also play a major role. A short statement from the International Union of Producers and Distributors of Electrical Energy (UNIPEDE) was followed by a description of a joint statement from all three organizations which came out of an October summit held in Boston. Their recommendations to the COP emphasized the need to increase global use of electric energy and the use energy-efficient electrotechnologies as no regrets option. Furthermore, electric utilities can limit emissions from electricity production through efficiency improvements and energy consumers can reduce their total energy requirements.

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