



United States Department of State

Transition Team  
2201 C Street, N.W., Rm 1210A  
Washington, DC 20520  
(202) 647-6427.

# OFFICE OF THE SECRETARY TRANSITION TEAM (S/TT)

## FACSIMILE TRANSMISSION COVER SHEET

Date 2/2 Time 1250 Pages 4 plus cover sheet

### TRANSMITTED TO:

Name: JOHN HOWARD  
Organization: CEQ  
Telephone: (202) 456-6340  
Fax Number: -2710

### TRANSMITTED FROM:

Name: DAN NICHOLS  
Telephone: 647-6427  
Fax Number: 202-647-6640

### Message/Comment:

John - Christopher Horne's piece on Kyoto.  
Just FYI - Dan

## POST-HAGUE "KYOTO" STRATEGY FOR INCOMING ADMINISTRATION

The following summarizes historic and recent developments in international negotiations generally, and U.S. commitments specifically, toward limiting man-made greenhouse gas (GHG) emissions due to their possible contribution to climate disruption pursuant to the theory of catastrophic man-made global warming. The Bush Administration should consider the following actions, assertive yet hardly revolutionary, to improve the U.S. position in these ongoing negotiations.

These recommendations are offered in the context of EU nations, by design or otherwise, having engineered the futility of recent negotiations in The Hague, where they "wouldn't take 'yes' for an answer." That is, the EU rejected in November of a series of offers made by U.S. negotiators, culminating in near-total abandonment by the U.S. of its long-held stance on the critical if limited issue of "sinks" (or, Land Use Land Use Change and Forestry, LULUCF). EU negotiators informally justified their actions in part on the grounds that their nations desired seeking ratification in 2001, and their constituents would not accept ratification in the absence of wholesale lessening of the U.S. abilities to use mechanisms, such as sinks, emissions trading and joint implementation (technology transfer in return for partial project credit). Formally, they argue that absent their terms the U.S. could otherwise avoid major emission cuts and domestic sacrifice.

This position is critical. The EU negotiators did not formally request amendment of that which was agreed in Kyoto. However, this newfound insistence that sinks can not in any meaningful way be used to satisfy a country's emission reduction requirements would effectively and significantly alter their agreement in Kyoto. If that is their wish, they are free to formally propose such, which can be effected at a COP once the treaty is in effect. Alternately, the EU position may be distilled as denying that in Kyoto they contemplated a country using sinks, *et al.*, to any meaningful degree to satisfy its obligations (envisioned most prominently by the U.S., and the contemporaneous understanding of which by major participants is clear from the Kyoto record). In such case, the parties widely diverged on that to which they believed they agreed, thus there was no agreement in Kyoto. It is time to clarify, and to lead as opposed to being led.

### Executive Summary

- 1) U.S. negotiators at The Hague, to obtain "progress" and therefore "give the appearance that Kyoto is a live agreement, vs. dead", immediately and dramatically changed course;
- 2) Borne of these U.S. tactics, or simply to avert a deal, EU negotiators rejected a series of U.S. offers which by the end of the negotiating session represented what even U.S. negotiators made clear were positions not contemplated by the U.S. in agreeing to Kyoto;
- 3) Either the EU now insists on changing that which was agreed in Kyoto re: key compliance mechanisms, without admitting such and through a "back door", or exhibits that there was no agreement on such key components of "Kyoto", and thus no agreement;
- 4) Therefore, the Executive and Senate should put forth expressions of principles, derived from the UNFCCC and what the U.S. intended by its agreement in Kyoto, necessary to optimize and indeed protect US interests in this arena;
- 5) A "revisiting," and clarification of intent, of Kyoto is the only reasonable U.S. negotiating step, should EU nations wish to continue an international solution beyond that which has already been agreed and ratified, the UNFCCC and it's commitments.

### UNFCCC (United Nations Framework Convention on Climate Change)

Negotiated amid election year politics in 1992 by President George Bush, under strong pressure and criticism from left-leaning groups and individuals such as Senator Al Gore for not more aggressively and personally pursuing a wide-ranging deal, this treaty calls for, *inter alia*, voluntary efforts to stabilize atmospheric greenhouse gas concentrations. Hailed by some advisors, for its voluntary vs. mandatory approach, the treaty was unanimously ratified after President Bush submitted it almost immediately.

Not long after taking office, led by now-VP Gore the administration dramatically shifted the U.S. position, saying the time had come for mandatory CO2 limits. Thus began what now appears as a pattern of "solutions", the terms of which are soon declared entirely inadequate and/or, as we saw again in The Hague, morph toward the more onerous. It is key to remember that Kyoto's promoters admit that it's requirements represent as little as "one thirtieth" of what they seek. Today's agreements become tomorrow's anachronisms at a record clip, even as the science continues to trend away from the carbon theory, and buttresses non-anthropogenic factors, such as the sun, as determinative to climate.

### Kyoto Protocol

Negotiated at the third post-Rio summit, or Conference of the Parties (COP3). After the U.S. negotiators were confronted with unwise demands including several violative of the unanimous Hage/Byrd resolution, Al Gore flew in at a late hour and encouraged "increased flexibility" by U.S. negotiators. That yielded capitulation on major positions, though few specifics were provided in the agreement. The most critical specific included a U.S. commitment to reduce total greenhouse gas emissions (man-made) to 7% below 1990 levels, and maintain that level in perpetuity or face international sanctions. That figure in present terms yields reduction of approximately 20% of current emissions.

Though belied by EU actions in The Hague, this agreement included a statement that:

**"The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I."**(Article 3, Section 3; emphasis added).

No limitation or restriction upon the use of emission reductions resulting from any sink was included or implied, for any calculation, either here, or elsewhere in the Protocol where sinks are referenced. Considerations cited include transparency and verifiability, *etc.*, in terms of whether some activity could qualify as a sink; not how much of an obligation, either in terms of total amount, percentage, or otherwise, a country could satisfy with sinks. Indeed, the Protocol's various provisions citing calculation of a country's emissions evinces no presumption of limitations on *use of sinks* at the time the Protocol was drafted and agreed to.

Additionally, the record as reported from Kyoto makes clear the U.S. intended by this agreement the ability and anticipation to use sinks to a meaningful degree to meet its commitments. The record is equally clear that the other negotiating parties were fully aware of this intent at the time they, too, agreed to the language.

### The Hague

U.S. negotiators immediately and unexpectedly removed nuclear and hydroelectric power from the table as acceptable means for countries to meet their emission reduction obligations (through a letter on Gore-Lieberman letterhead). This represented a shift from as recently as the September pre-Hague sessions in Lyons, where the U.S. affirmed its longstanding position that all options must remain on the table.

Following this development, the US offered to "discount" the amount of credit available using sinks, at 80%; that is, the U.S. would accept 20% credit (down from 100%) for the approximately 288 million metric tons identified as available to the U.S. via sinks (of the total 600 million, first-year obligation). The EU rejected the first formal offer through the press, and refused every subsequent offer, each more generous.

Up through the Lyons talks, until several days prior to this capitulation, and though it had expressed a willingness to negotiate and presumably for concessions elsewhere, the U.S. had not advocated any limitation on credit for identified, verifiable sinks. That is, the U.S. express assumption had all along been that it could meet nearly 50% of its reduction commitments through land use and forestry practices, satisfying a meaningful portion of its putative commitment by removing carbon from the atmosphere. With this position change, compounded by the abandonment of nuclear and hydroelectric power as options, the U.S. exposed itself to the necessity of energy taxes, on a much greater scale than the Btu tax unsuccessfully proposed as part of the first Clinton tax increase/budget package.

Despite all of this, Europeans generally finger the U.S. for the failure at The Hague.

### Principles

The incoming administration needs to promptly set forth a set of principles that will guide the U.S. in its participation in all future discussions under the UNFCCC. These must include the Hagel/Byrd requirement of no economic harm to the U.S., and like participation by developing countries (not the illusory "meaningful participation by key developing countries" as this Administration unilaterally revised the Hagel/Byrd restriction). Also, until an understanding of Kyoto's terms is reached, these must include reaffirming the UNFCCC's "voluntariness" aspect.

Most important, the U.S. must reaffirm the clear intent of its commitment via the Kyoto accords, particularly meaningful, significant emission reduction credits through sinks and other mechanisms toward its commitments, prior to engaging in any further discussions under the UNFCCC in a climate of shifting demands and understandings.

A statement should also issue, and guide the U.S., to the following effect: "This is what we intended. The record is clear. Any insistence to the contrary merely indicates to us either an attempt to amend Kyoto, or that we in fact had no agreement at all, given there was no meeting of the minds on key conditions. You decide, and you come to us. The U.S. is no longer chasing other countries around to gain their approval, as they seek to burden us with competitive disadvantages unsupported by the science."

A harmonized effort should also be considered in the Senate, given there is rumored to be an effort afoot to pass a resolution superceding and/or weakening Hagel/Byrd. Finally, make clear that whatever post-Hague promises are made by the outgoing administration are not binding, in either fact or law.

#### Concluding Notes/Action Steps

It seems the EU ensured there would be no deal arising out of The Hague. It remains unclear why. Theories range from unease over looming internal conflicts in the event the treaty takes effect (e.g., between France and Germany, on nuclear), and genuine constituent desire for significant diminution of U.S. flexibility and increased U.S. cost, to premature manifestation of the intent to continue ratcheting down obligations.

It is worth noting that EU nations have significant existing energy taxes and a "bubble" deal under Kyoto such that their marginal costs of compliance would be much lower than the costs facing the U.S. Resistance to ratification among EU-nation constituents, who are generally also more accepting of the relevant theory and the prescribed interventions, would understandably be lower. However and as demonstrated this summer, those same high energy taxes have yielded significant unrest and resistance to further increasing these taxes, making ratification a possibly undesirable political move in the near term.

It is not certain but does appear that, whatever the underlying reason(s) and despite claims of a desire to ratify, EU nations feel best served to maintain a no-deal, "U.S.-as-bad-guy" dynamic in UNFCCC negotiations. This does abet pressure to ratify or comply.

The incoming administration should, before inauguration, reaffirm what was agreed to in Kyoto, that that document also provides for a process, and that nothing agreed to in the interim is binding on the incoming administration, legally or otherwise. Next, personnel should be put in place at the State Department at the earliest moment filling the positions of Under Secretary for Global Affairs, Assistant Secretary for International Pollution, plus the Special Negotiator for Climate Change. Otherwise, the outgoing administration will continue to negotiate the U.S. position in all of the work leading up to COP "6.5" in Bonn, end of May/first of June 2001, possibly to the further detriment of the U.S.

**Christopher C. Horner: Counsel, Cooler Heads Coalition and Adjunct Policy Analyst, Competitive Enterprise Institute; 202-331-1010, 202-262-4458 (cell)**