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Kazakh emissions trading scheme: legal implications for land use

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PROBLEM STATEMENT

Kazakhstan ratified the Kyoto Protocol on 26 March 2009. As part of measures aimed at implementing the Kyoto Protocol, Kazakhstan is preparing for launching its first domestic emissions trading scheme (ETS). National cap-and-trade system is expected to be a key climate-policy instrument for reaching general commitments of the country to mitigate climate change. Emitters which are subject to the Kazakh emissions trading scheme are allocated with emission caps, which can be traded within national cap-and-trade scheme. Such emitters can reduce their own emissions and then sell excess of cap allowances on the market. If emitting more than allowed, they can buy allowances if any available, otherwise are obliged to pay strict fines defined by the government.

Domestic sectors, which are subject to Kazakh emissions trading scheme, were chosen with the intention to regulate key sectors and categories by one market-based tool. Kazakh ETS will cover companies emitting from twenty thousand tons of carbon dioxide equivalent per year.

In the time when Kazakhstan is actively investigating other options for reducing emissions to comply with its present voluntary commitments and future commitments under the Kyoto Protocol, establishment of a domestic emissions trading scheme may be a good option. That is why Kazakh ETS is taking serious attention of the government. In this way, the government intends to raise the interest of operators to move gradually to energy efficiency and low-carbon policy by their own initiatives.

RESEARCH QUESTIONS

GHG emissions can be reduced by several means such as establishing renewables, installing energy-saving technologies, and such others; however, GHGs can also be reduced through increasing GHG absorbing measures, provided within the land use, land-use change and forestry (LULUCF) sector of the Kyoto Protocol. Kazakh emissions trading scheme does not provide trading of carbon units in the LULUCF sector directly. Planting new forests to absorb carbon dioxide in the atmosphere is one viable option to employ forests to curb climate change. The idea of planting carbon offsets is now being

implemented worldwide under the Kyoto Protocol and beyond it¹. There are three major frameworks for LULUCF projects. First, avoiding emissions by conservation of existing carbon stocks, second, increasing carbon storage by sequestration, and third, substituting carbon for fossil fuel and energy intensive products².

The aim of the study is to analyze how the LULUCF sector can be employed under current Kazakh emissions trading scheme.

METHODOLOGICAL APPROACH

According to the Resolution of the Government N128 dated 11 February 2008 quotation system and greenhouse gas emissions trading were expected to be launched in Kazakhstan back in 2008. In 2010-2011 the Government of Kazakhstan has returned to the issue of establishing a national quotation system and greenhouse gas emissions trading. With this purpose a draft law proposing amendments to a number of existing laws, including the Environmental Code and the Code of Administrative Offences as well as the Law "On Bankruptcy" was submitted to the Parliament. On 6 October 2011 the Upper Chamber of the Parliament accepted the draft law on the Kazakh emissions trading scheme. Adoption of the draft law was subject to the President's signature until it was signed on 3 December 2011 providing new provisions to the Environmental Code and the Code of Administrative Offences.

Methodological approach of the study is based on analysis of provisions regulating domestic emissions trading scheme and its implications to the LULUCF sector.

DISCUSSION OF RESULTS

Currently the new provisions incorporated to the Environmental Code and the Code of Administrative Offences outline several characteristics of the scheme including that a legally binding Kazakh emissions trading scheme will be based on the cap-and-

¹ Dieter Schoene and Maria Netto, 'The Kyoto Protocol: What Does It Mean for Forests and Forestry?' (2005) *Unasylva* 222 at 3

² Felipe García-Oliva and Omar R Masera, 'Assessment and Measurement Issue Related to Soil Carbon Sequestration in Land-Use, Land-Use Change, and Forestry (LULUCF) Projects under the Kyoto Protocol' (2004) 65 *Climatic Change* 3 at 348

trade system recognized worldwide. A nation-wide cap-and-trade system will cover medium and large companies which emit from twenty thousand tons of carbon dioxide equivalent and above per annum. Such emitters can either reduce their own emissions or trade allowances to meet their obligations.

The new amendments include basic requirements for the following important elements of the Kazakh ETS: a) allocation of allowances on GHG emissions on the basis of national allocation plans for GHG emissions; b) issuance of GHG certificates (permits); c) monitoring, reporting and verification of GHG emissions for regulated companies and installations; d) regulation of carbon units (Kazakh allowance and emission reduction units); e) trade of allowances and reduction units through designated trading platforms; f) administrative liability for failures to comply by emitting more than allowed and abusing validation and verification of reports on annual GHG emissions.

These elements are supported by the expanded glossary of the Environmental Code which contains already more than 20 new definitions related to the emissions trading scheme, including the definitions of ‘carbon registry’, ‘installation’, ‘trade of allowances’, ‘validation’, ‘verification’ and various carbon units. The new legislation also includes a number of provisions on the Kyoto flexible mechanisms and Kyoto carbon units (AAUs, RMUs, ERUs, CERs).

Kazakh emissions trading scheme does not provide trading of carbon units in the LULUCF sector directly. There is a domestic emissions reduction mechanism which defines a process of development and implementation of domestic projects aimed at reducing emissions and/or increase removals of greenhouse gas emissions in accordance with the procedure and criteria established by the environmental legislation of the Republic of Kazakhstan. Introduction to implementation of domestic emissions reduction projects that reduce emissions and/or enhance removals of greenhouse gases by sinks is provided in the provisions of the amended Environmental Code. The domestic emissions reduction mechanism generates project carbon units that are tradable on Kazakh ETS. It is where the Kazakh ETS can employ to the LULUCF sector of the country. This is similar to what the European Union did with regard to Joint Implementation and Clean Development Mechanism projects with its “Linking Directive”. In case of Kazakhstan domestic emissions reduction projects can be used by companies for partly surrendering

of their allowances and are not subject to the requirements of the flexible mechanisms under the Kyoto Protocol.

Domestic emission reduction projects can be implemented in the economic sphere, including forestry and prevention of land degradation. The aim of domestic emissions reduction projects is to provide implementation of Kazakhstan's commitments to reduce greenhouse gas emissions by providing opportunities for implementation of projects in the territory of Kazakhstan, under domestic emissions reduction mechanism, in order to obtain domestic emission reduction units that can be used afterwards in domestic and international emissions trading schemes. It should be mentioned that domestic projects are not subject to the requirements of the clean development mechanism and joint implementation of the Kyoto Protocol and participation in domestic emissions reduction projects is voluntary.

In addition, provisions of the amended Environmental Code provide institutional arrangements, in terms of new competencies of the Government and the Ministry of Environmental Protection regarding implementation and regulation of the Kazakh ETS. Accordingly, the Ministry of Environmental Protection is the assigned regulating authority. Its competence covers the questions such as issuance of certificates (permits) on greenhouse gas emissions; review of installation passports and annual emission reports submitted by regulated companies; approval of monitoring plans on regulated installations; review and endorsement of domestic emissions reduction projects and periodic implementation reports submitted by their operators for getting offset credits; accreditation of validators and verifiers; and monitoring of compliance and enforcement with the ETS requirements. The assigned authority in the field of environmental protection, the Ministry of Environmental Protection, is also in charge for regulations on development of domestic emissions reduction projects and preparation of review and approval, accounting, reporting and monitoring of domestic emissions reduction projects. Most of these functions will be performed by the Committee of Environmental Regulation and Control of the Ministry of Environment which is also the regulator of other environmental activities of large industrial companies in Kazakhstan. Some functions of the Ministry of Environment are designated to the subordinated organisation – Zhasyl Damu.

Maintenance of the domestic emissions trading scheme depends on a complex decision-making process with regard to the emissions trading rules. However, some aspects of the legal framework on the emissions trading scheme indicate that important steps in that process have already been taken. Development of the system brings multiple benefits to Kazakhstan, including the mitigation of negative effects on the economy from climate change, improvements to the economic, social, and physical well-being of the nation, increases in the energy efficiency of companies, the creation of large incentives for international investment inflows and new work places, and continued improvement of international relations. That is why Kazakh ETS may serve as a key instrument for implementation of the quantified emissions limitation and reduction commitment under the Kyoto Protocol.

Issues of how the LULUCF sector of Kazakhstan is linked to the Kazakh ETS were also discussed in this study. Domestic emissions reducing projects allow involvement of the LULUCF sector in the scheme. How LULUCF projects can be implemented through the domestic offset projects scheme is presented. In sum, involvement of the LULUCF sector through the domestic GHG reducing projects may be achieved if addressed properly. However, Kazakhstan lacks the level of understanding and acceptance of social or environmental responsibilities necessary to engage in such practices. In addition, project developers may face the complicated project submission process. However, involvement of Kazakhstan forestry project developers yields multiple benefits ranging from the mitigation of the potentially negative impacts of global warming to the improvement of the country's environmental image internationally.