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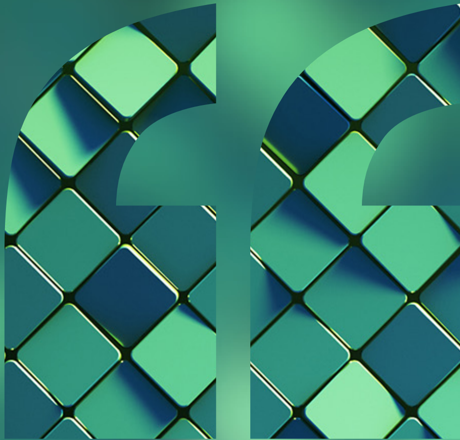
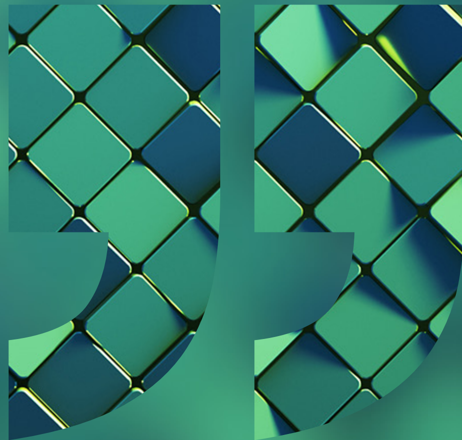


WHAT HAPPENED AT COP29?



— THOUGHT LEADERSHIP

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WHAT HAPPENED AT COP29?

COP29, held in Baku, Azerbaijan, was beset by controversy and disappointment, but some progress was made. In this extract from a recent Clifford Chance webinar moderated by Roger Leese, a member of the firm's ESG Board and co-head of the firm's Global Business and Human Rights practice, we explore what was achieved including the announcement of a New Collective Quantified Goal on Climate Finance and agreement on the operationalisation of the global carbon market following a decade of trying.

How did Azerbaijan do?

Azerbaijan faced a barrage of criticism for its stance on fossil fuels and for declaring that Western "fake news" was exaggerating the impact of the country's emissions. However, it was keen to demonstrate its commitment to green energy through the launch of SOCAR Green – an affiliate of Azerbaijan's state-owned oil and gas company – which will focus on renewable energy projects, green hydrogen production and carbon capture, utilisation and storage. "During COP29, we saw the financial closing of two massive solar projects in Azerbaijan for a combined 760 MW of solar power. The Sponsors for those projects are Masdar and SOCAR Green, and the financing is being provided by our clients – ADB, AIIB and EBRD. We saw the signing of a number of MoUs including between SOCAR Green, Masdar and AKWA Power to develop 3.5 GW of offshore wind projects in the Caspian Sea, and some agreements on geothermal energy exploration and development between SOCAR Green, SLB and Baker Hughes," says Irina Steinberg a Senior Associate in Clifford Chance's Global Construction practice.

Carbon markets – what progress was made?

In the context of COP there are two carbon market mechanisms under Article 6.2 and Article 6.4 of the Paris Agreement. Article 6.2 is the new mechanism for developing countries to sell some of the emissions reductions that they achieve in their country, primarily to other countries – but potentially to other forms of buyers – rather than to count them towards their own Nationally Determined Contributions (NDCs). That is the so-called cooperative approach or Internationally Transferred Mitigation Outcomes (ITMO) mechanism. Article 6.4 is the new carbon credit project mechanism which will replace the old clean development mechanism established under the Kyoto Protocol. This will allow private sector actors to register their carbon projects in the way that the voluntary market currently operates and to sell those carbon credits either to governments or to companies under the auspices of Article 6.

Article 6.2 was effectively already operational in advance of COP29, thanks to the agreement which was reached on Article 6 as far back as 2021 in Glasgow, the so-called Article 6 rule book. However, there are still many issues to be resolved.

"Despite the disappointment of COP28, where the parties failed to reach any agreement on any of the outstanding matters on 6.2 or 6.4, there was cautious optimism ahead of COP29 that real progress could be made, and perhaps even enough to say that both mechanisms had become fully operational," says Adam Hedley, a London-based Partner who specialises in carbon markets. "That optimism was partly driven by the fact that the Azerbaijani President of COP29 had expressed a commitment to this effect, which he described as a long overdue priority. A lot of progress was made in the year running up to COP29 to overcome the lack of consensus that caused the failure of COP28, and coming into COP29 there was a sense that the parties had a much clearer understanding of their differences and how to resolve the remaining issues," he adds.

A critical development shortly before COP29 was the adoption by the Article 6.4 Supervisory Body – responsible for

formulating the guidelines for that mechanism – of two sets of standards needed to operationalise Article 6.4. These addressed the standards for project methodologies and standards for carbon removals activities. "This was a highly unusual and controversial move by the Supervisory Body. In doing so, it was effectively seeking to avoid the need for these standards to be debated and finalised at COP29 – fearing a repeat of the failure of COP28. Instead, it merely invited the COP parties to take note of their adoption," says Hedley. "Some welcomed it as a bit of left-of-field thinking to unblock the long-standing impasse on Article 6.4, but others saw it as circumventing the proper governance processes and scrutiny of the COP."

Despite the controversy, in the opening plenary session of COP29, the parties adopted a decision taking note of the Supervisory Body's adoption of the two standards, effectively validating the adoption of these standards via the backdoor. Ultimately, an agreement was reached on both Article 6.2 and 6.4 – thus cementing the legacy of Baku as the COP that achieved the operationalisation of Article 6 after almost a decade.

For more information on Carbon Markets see our publication on **Scaling the global carbon markets: a way forward for the VCM and Paris Mechanisms**.

What happens now?

It sends a signal to the private sector and to private finance that the Article 6 market is almost open for business. It will still take some time for new carbon credit projects being developed under the 6.4 project mechanism to get off the ground (before credits can be issued and sold under Article 6.4, the Supervisory Body must approve methodologies for specific types of carbon reduction or removal project activities, and those projects must then be validated against those methodologies).

"Our prediction is that once both of the Article 6 mechanisms get off the ground and we start to see the volume of ITMO and Article 6.4 carbon credit transactions scale up, the Article 6 carbon market will increasingly converge with the traditional voluntary carbon market, as the regulatory framework under which Article 6 operates will be seen as providing the mark of quality and integrity that everyone is looking for in the voluntary market. But it remains to be seen whether that will happen."

The Article 6 carbon market mechanisms fall into what we call the voluntary carbon market – that is, the generators of carbon reductions and the buyers of those reductions are participating voluntarily – participation in Article 6 is not mandatory.

"What Article 6 will do, which has not been done before, is create a carbon market at country-to-country level, in addition to the more traditional project-based carbon market. And we know there is enormous potential in that country-to-country market – meaning countries can sell the carbon reductions they don't need to achieve their own NDC – and the revenues from those sales can be reinvested in domestic climate adaptation and mitigation efforts. If the Article 6 market mechanism scales up in line with its potential, it will be a massive source of financing for developing nations via the carbon markets," Hedley says.

The interconnectivity between climate change and nature

No major announcements or deals were made on nature. "With COP 29 coming hot on the heels of the COP 16 Biodiversity Summit, there were a lot of parties pushing to include ambitious commitments to finance nature. It made it into the negotiating text, but all mentions of ecosystems, nature and biodiversity came out of the final text," says Hedley. "There is a recognition that there is a nature and biodiversity funding gap, so I think it firmly puts this back on the agenda at COP30 in Brazil."

Climate finance – the New Collective Quantified Goal

COP29 was billed as "the finance COP" with a focus on increasing the provision of finance by developed countries to so-called "developing country parties" for mitigation and adaptation. An agreement

– the New Collective Quantified Goal (NCQG) – was finally reached to mixed reactions: India, for example, described it "woefully insufficient".

Back in 2009, under the Copenhagen Accord, developed countries committed to a goal of jointly mobilising US$100 billion dollars each year by 2020 to address the needs of developing countries. "This is referred to as "climate finance" – specifically, transferring funds from developed countries to developing countries," explains Clare Burgess, a Clifford Chance Partner based in London and Global Co-Head of the firm's Energy and Resources sector. "That poses questions about the forms of those transfers, and what counts as a developed country. On the list of 24 entities for these purposes are the EC and 18 European countries, the US, Canada, Australia, New Zealand and Japan, but notably not China or Middle Eastern countries," she says. The first accord said this funding from the developed countries would come from a wide variety of sources, public and private, bilateral and multilateral; not just grant aid.

At COP29 a compromise deal was agreed to provide US$300 billion annually to developing nations by 2035 to support climate action. Voluntary contributions from so-called developing countries (such as China) are encouraged which allows them to contribute without losing their developing status. "So, the good news is that the target tripled. The common criticism is that the impact of inflation reduces the real increase, and the developing countries wanted more. The agreed text recognises that more is needed, and that the US$300 billion should scale up climate financing to US$1.3 trillion per year by 2035 from all public and private sources," says Burgess. "The key issue is delivery. How the US$300billion is provided – and how it can catalyse other investment – will be critical."

However, despite a decade of anticipation, the 2020 deadline for the $100billion target was missed. There were concerns too when the target was declared as met in 2022 on the basis that more than a quarter of this "new and additional money" was "rebadged", coming from diverting existing development aid programmes. There was also the concern that the majority of the public finance elements – around 70% – came from loans, adding to the debt burden of developing nations. Now the scale-up has to be achieved in the context of increasing pressure on global aid budgets. To give some context, in 2023, global aid totalled US$223.7 billion. OECD Development Assistance Committee member countries have committed to spend 0.7% of their Gross National Income (GNI) as aid. But in 2023 the average was 0.37% 0 – US$197 billion shy of their commitment. "States need to start to act now, including by establishing programmes and partnerships which can bring in private capital, which will be key," Burgess says.

The role of blended finance

The development finance institutions will play an important role in achieving the new target, although this itself has caused some controversy as shareholders of those institutions include "developing countries", leading to arguments that developing countries are supporting themselves. Nonetheless, these development finance institutions have an opportunity, with programmes of concessional financing, risk guarantees, currency protections and many more, to create investable opportunities for the private sector. "There are many such programmes, and it will be great to see the various "pathfinder" projects and structures converted into country-wide or even continent-wide programmes," says Burgess.

What impact will the second Trump administration have?

President Biden's administration's climate-related regulatory agenda was very ambitious and included tax credits and subsidy initiatives under the Inflation Reduction Act (IRA), rejoining the Paris Agreement (following President Trump's withdrawal from the Agreement in 2019), and a number of environmental-related regulations aimed at curbing air pollution and climate change. Despite the U.S.

election results occurring during the convention, the US still managed to make a number of multilateral commitments, including the endorsement of the Global Energy Storage and Grids and Hydrogen pledges. "The US delegation signed onto these initiatives, so there was some progress, but the question now is, to what extent will that progress be stifled during President Trump's second term?" says Ty'Meka Reeves-Sobers, a Clifford Chance Partner based in Houston who advises on environmental risk and regulatory matters. "Significant rollback of these initiatives is expected, some of which could be prioritized in the very early days of the second Trump Administration. For example, there is some expectation that in addition to withdrawal from the Paris Climate Accord (which also occurred during Trump's first term), the Trump administration could remove the US from the United Nations Framework Convention on Climate Change (UNFCCC) entirely, thereby removing the US from the global climate bargaining table. However, it isn't clear whether such a move would be supported under the US Constitution, and it would likely be met with legal challenges. Reeves-Sobers noted that, should President Trump succeed in withdrawing the U.S. from the UNFCCC, "there is some talk that this could cause a domino effect, and other countries may follow suit."

Disengagement on the international level is likely to be coupled with some level of deregulation on the domestic front. Experts have said that a full repeal of the IRA is unlikely. However, in keeping with his campaign promises, Trump has explicitly stated a plan to pull back unspent funds from the US$142.3 billion allocated under the IRA for climate-related grants, loans and other spending programs. This could be the subject of legal challenges under the US Constitution since the IRA specifically allocates certain of those funds. "In the absence of a full repeal, the Trump Administration and a Republican-led Congress may use other tools, such as the Congressional Review Act, to hamper full implementation of the IRA", Reeves-Sobers says.

One environmental-related example is the Waste Emissions Charge rule which aims to reduce methane emissions from large oil and gas emitters and imposes an annual fee. It was recently finalized and will take effect three days before President Trump's inauguration. The Waste Emissions Charge is being heavily watched by the oil and gas industry. While the regulation could be met with action under the CRA or otherwise be repealed and replaced with a more industry-friendly rule, unless the provision mandating the fee in IRA is repealed, the Waste Emissions Charge is likely here to stay.

With respect to another closely watched climate-related rule, we expect that the Securities and Exchange Commission (SEC) will withdraw support for its Climate Disclosure Rule, which is currently stayed pending litigation. We expect that Democrat-led states will take up the mantle – California is one example with existing climate disclosure rules on the books. The California rules are more stringent than the SEC rule and are currently subject to litigation, but they are currently still on track for implementation at some level in 2026. "I think the takeaway is that there will be some rollback, but it won't be all doom and gloom," Reeves-Sobers says. "There has been a lot of growth of the renewable energy sector in the US, even during Trump's first administration, and in a lot of ways it makes good economic sense." She adds that things that make good economic sense tend to stick around and flags that some of the funding initiatives under the IRA, for example, have had wide benefits, including in Republican-led states. "The pullback in support will lead to slower progress, but not zero progress," she says. For more information see our publication **What the new Trump administration could mean for ESG**.

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