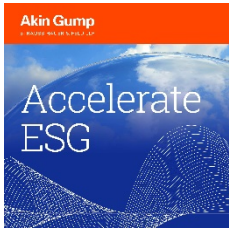


# Accelerate ESG



## **Ep. 1: COP26: Outcomes, Takeaways, Forecasts**

**December 13, 2021**

**Stacey Mitchell:**

Hello, and welcome to the inaugural episode in Akin Gump's *Accelerate ESG* podcast series. I'm Stacey Mitchell, co-chair of Akin Gump's climate change and ESG cross-practice groups.

Today, I have the pleasure of discussing some key takeaways from the most recent UN Climate Change Conference in Glasgow, Scotland, with my two partners Ken Markowitz and Naboth van den Broek, both of whom attended COP26 and have attended many prior climate COPs.

Ken co-chairs our climate change practice group, and Naboth is a partner in our international trade practice in London, and both have decades of experience in advising companies, government and environmental groups on matters related to climate change.

In this episode, we'll get their perspectives on the event and what we can expect to be outcomes in the coming weeks, months and years. So, turning now to our experts, Ken, this was the first COP in two years, and the first in several that the U.S. was present in a political capacity. With this new administration leading with its whole-of-government approach to climate action, expectations, I think not only in the U.S., but across the globe, were set quite high for COP26. After the dust has cleared, what will be COP26's legacy?

**Ken Markowitz:**

Thanks, Stacey. Appreciate the introduction, and hello, Naboth. It's a pleasure to be here. COP26 will be remembered as the "pledges and commitments COP." Everywhere you looked in Glasgow, there were pledges and commitments being made. These took the form of government-to-government pledges, such as the Global Methane Pledge, whereby countries joining the pledge commit to a collective goal of reducing global methane emissions by at least 30% from 2020 levels by 2030.

There are also other government-to-government examples, like the Clydebank Declaration for Green Shipping Corridor, supporting the establishment of at least six green corridors by 2025, such as zero-emission maritime routes between two

or more ports, and the Global Forest Pledge, which will provide 12 billion dollars for forest-related climate finance between 2021 and 2025.

We also saw a lot of public-private sector joint commitments, such as the Agriculture Innovation Mission for Climate, focused on increasing investment to underpin the transformative climate action in the agriculture sector in all countries, to the government-inspired commitments by the private sector, such as the First Movers Coalition, accelerating innovation in eight sectors, including steel, trucking, shipping, aviation, cement, aluminum, chemicals, and direct air capture.

And this is just to name a few, but holding the signatories to all these pledges and commitments accountable is the hard part. Making a pledge in these expedient times may come easy to some, but fulfilling a serious climate commitment takes hard work and lots of resources.

**Stacey Mitchell:**

Thanks, Ken, that's a great way to set the table for our discussion, and, hopefully, we will see lots of work from these companies moving forward. And Naboth, before we move onto some more substantive questions on the COP, there was certainly a new focus area that really seemed to come up for the first time in this climate COP, and that's the intersection of climate and the preservation of nature. Can you explain to us what's happening there and what you'll be watching for in the coming weeks and months?

**Naboth van den Broek:**

Thanks, Stacey. I actually think that that's one of the most exciting things that happened at this COP, and people aren't talking about it as much as I think we should. So, this is really a new focus area for the climate negotiations and I think you and Ken and the rest of the team actually recently summarized this quite well in a report that you published a couple of days ago.

And as you indicated there, and in some ways, the outcome maybe was a little disappointing. We didn't get really significant nature or biodiversity-based obligations in the COP outcome, but just some more hortatory language about the importance of protecting the ecosystem, the importance of conservation and restoration of nature, et cetera.

On the other hand, we did get some really specific initiatives agreed on. There are things like a U.S. Global Forest Conservation Plan, a commitment from well over 30 private financial institutions to eliminate agricultural commodity-driven deforestation risks in their portfolios by 2025, and several announcements relating to support for small, old farming for indigenous peoples, et cetera.

So we did get some of those very specific outcomes, but there's another thing. And I think that's really where the real value or the real contribution of this COP is in this area. And that is that as a legal and a negotiating matter, the fact alone that we now have this link between climate negotiations and biodiversity and nature discussions that are also going on in some other forums, like the Convention on Biodiversity, or CBD, that link is now so clear, and that is now really part of those negotiations on both fronts.

And so, the CBD is the most interesting piece there, because actually we are right in the middle of another COP, COP15, which is the conference of the parties, the ministerial meeting of the CBD parties. And that actually is taking

place in a couple of parts. Some of it took place actually over the past couple of months virtually already. And the rest of it is going to take place in China in early 2022 in the early spring and will be taking place as a hybrid meeting, with some of it being in person, some of it being virtual.

And that COP will actually try to get to a new agreement on biodiversity, and that will have a number of aspects. And maybe at some point, we can have a podcast that goes into much more detail about the CBD, and what issues they are discussing. But one of the main commitments that's under discussion is something called the 30 by 30 Commitment, which is a commitment of nations around the world to conserve a minimum of 30% of the world's land and water by 2030, which is an enormous achievement, if we get there.

So, I think the fact that this link has now been made between the climate agenda and biodiversity agenda is really a very big achievement of this COP, even though the language may not be as specific and as binding as some of us might've liked. And all of that is taking place against the context of a lot of private interests in this area as well.

And I am, as you know, based out of the U.K. And in the U.K., you can see an enormous number of private-sector efforts to create more biodiversity in the landscape, in agriculture, and in farming all around the country. So I think this is really an interesting new development and really something that we should all be watching over the next couple of weeks and over the next couple of years.

**Ken Markowitz:**

If I could just jump in and add to that, we're seeing also action on the ground here in the United States as well to back that up. And, so, while as you noted, Naboth, that there was not really significant text outcomes, the issue was clearly on the table and in the minds of parties all around Glasgow.

And when we bring it back to the United States, we see both activity going on at our United States Department of Agriculture and in Congress to provide incentives to really transform land use and agricultural practices to reduce emissions. So, we're seeing the action on the ground to back up a lot of the talk in the hallways.

**Naboth van den Broek:**

Absolutely. And just to jump back in, I mean, this really is one of my pet topics these days. It'll be very interesting to see, I think, over the next couple of months what the U.S. position in the CBD negotiations ends up being. The U.S., of course, is really the only major country that is not formally a party yet, but that may be something that this administration is looking into. So again, something to watch closely.

**Ken Markowitz:**

And it's not just government-driven, we're really seeing leading businesses right now recognizing that their future is also dependent on prevention of the loss of nature, preservation of our natural resources, and biodiversity. So I can expect this to continue to be a building trend of public-private partnerships moving forward.

**Stacey Mitchell:**

Absolutely agree with those great comments from both of you. And it really is exciting, Naboth, to see the connection and the correlation in between tackling climate change and the preservation of biodiversity and nature more broadly

being connected and being made and really being appreciated in a global context.

So, really exciting changes, and Ken, turning to you, you were just alluding to this. And, so, it's a perfect segue, but, really, the private sector showed up to this COP in a way that I think is distinct from the prior COPs. There's been some criticism of that, but, generally speaking, it seemed like a committed group of business that the private sector is really engaged at this point, and you alluded to these industries, whether it's transport, heavy industrial materials, really very engaged. And, so, I'd love to get your sense of how COP26 outcomes will be affecting business decisions going forward.

**Ken Markowitz:**

Sure, Stacey, and thank you, because it was a critical takeaway for me from being in Glasgow, was that if the world is really serious about trying to limit global temperature rise to 1.5 degrees, or even as in the Paris Agreement, the goal, 2 degrees Centigrade, it's going to take an effort by business, by government, by civil society, all working in concert together because there's not one solution that's going to get us to really meet these ambitious targets.

And at COP26, it was clearly demonstrated to me at least that leading global businesses and innovative companies are really charting and leading the charge to the transformative clean energy economy of the future. And it's not even in the distant future. There were significant efforts by the private sector to ramp up ambition between now and 2030 in particular and I was really taken by that, because the need for speed and to act now is critical to try to buy us some time in the future.

I think a lot of partnerships and ideas were struck for private climate action in Glasgow. Particularly striking was the attention paid to the transportation sector. Not only was a full day on the agenda dedicated as Transport Day, but emissions from the aviation and maritime sectors figured prominently in the debate for maybe the first time alongside ground transport.

For example, the First Movers Coalition that I mentioned before, where numerous companies took on significant commitments to reduce through emissions through greener purchasing by 2030 with particular emphasis on reducing emissions down the supply chain in trucking, in aviation, in shipping, along with some other sectors. Also, there was really a constant theme that was emphasized both by the private sector and governments on the need to accelerate a move towards sustainable aviation fuel, along with other alternative propulsion sources for large ocean-going vessels.

I can see real progress being led by the private sector in these two areas, particularly over the next five to seven years. And finally, the emphasis on short-lived climate pollutants at this COP will have lasting impacts on business. Short-lived climate pollutants in particular, methane and HFCs and the national commitments to accelerate the reduction of these pollutants I believe will lead to transformative changes in the oil and gas and agriculture sectors, and in the way the world cools buildings, peoples and products. So, I think that will really make some profound changes to the way business views a multiple basket of climate pollutants and takes action.

**Stacey Mitchell:**

Thanks, Ken. It is exciting that business and the private sector have really engaged full heartedly on this topic, and it's exciting to see that for sure, but if we think about what the negotiations are, they are international negotiations by national participants. And when you talk about the pledges and commitments that were made, there's always a concern that those can be undermined by changes in government, or some other lack of accountability.

Keeping in mind that we are seeing this engagement from the private sector, what are some of the keys to making efforts to make the outcomes of Glasgow meaningful and durable?

**Ken Markowitz:**

Well, Stacey, I think it really goes back to governance and building in systems of accountability, transparency, and environmental integrity from the start. So all these pledges and commitments, those that are signed onto these, how are you really going to measure and manage progress against these commitments?

One thing to consider is building into a clear set of indicators to account for progress on the delivery of the resources and the actions that we're committed to, whether it's by government actors, or the private sectors. This will require transparent systems for measuring and reporting on outcomes, not only on the climate benefits, but also with regards to the societal and community benefits of these actions and the potential impacts once again, on biodiversity and the preservation of our natural environments.

These co-benefits of climate action were really all on the table at COP26, but without accountability for the pledges and commitments, much will be lost. And as we think about establishing systems for measuring and managing performance, it's very important to also consider setting interim milestones and targets so that we can maximize the impacts of the actions on our climate systems, and in delivering co-benefits. It's really what's under the complete curve between now and our endpoint, not just meeting an endpoint and turning off the switch at a point in time in the future.

**Stacey Mitchell:**

Absolutely. That actually is something that also, from one of us that did not attend in Glasgow, that also felt like something that was resonating perhaps more strongly than in prior COPs, is we need to take these interim measures. The end goal is certainly laudable and important, but if we don't start taking action now and make commitments in the shorter term, those long-term commitments will be too far.

But I want to pivot a little bit, and come back to you because for our clients, obviously, we look at negotiations like the COP, not just in the technical substantive way, looking at what the text is and the like, but we also help them place these negotiations in a broader geo-economic context. Can you explain that a bit to our listeners and then give your point of view of whether this was an important COP from a geopolitical or geo-economic point of view?

**Naboth van den Broek:**

Yeah, absolutely. So, yeah, you're right. I mean, we always look at the geo-economics and the geopolitics of these negotiations, of course, because that is the context in which the substantive commitments that we've been talking about are being negotiated.

And so the broader geo-economics, the competitiveness issues, the political issues between countries always play a role in how those negotiations occur and the way in which the countries that are negotiating, the governments that are negotiating, interact with each other. A number of years... and there is a real intersection there between the intergovernment relations and what that means for many of our clients in the private sector.

So a number of years ago, for example, I think Ken and I both, in different ways, were involved in some of the technology-related discussions. There were lots of negotiations going on about technology transfer and what should happen with the protection of IP rights relating to technologies that are relevant to climate mitigation and climate adaptation.

And that was happening right at the same time that that was a big issue between China and India and the U.S. in other forums as well, such as the WTO, the World Trade Organization, and in bilateral negotiations, et cetera. So, it's always very relevant, but I think recently, the geo-economic and geopolitical aspects of these climate negotiations have become a much more clear and pronounced part of how a lot of the governments and a lot of companies are thinking about them.

And that's really playing out in a number of different ways and on different fronts. To give you just a couple of examples, one big one of course was this whole discussion, this whole achievement of the China-U.S. deal that was such big news in the final week of the COP. And that deal had been in the making for pretty much since the early days of the Biden administration, in some ways, even before that.

But even though some may still say that it didn't achieve as much as it should, and that both countries still need to make bigger commitments, it really was quite an achievement. And particularly when you think about it in that broader geopolitical and geo-economic context. At the same time that the U.S. and China agreed on this deal, they are continuing to be in a cold war about things like semiconductor technologies, 5G, Huawei, a range of other new strategic industries like AI and biotech.

And we're even seeing all kinds of issues around the South China Sea, et cetera. And while all that is playing out, John Kerry and his Chinese counterparts managed to quietly negotiate away from the limelight to end up really collaborating on this climate change issue, so that's a big geopolitical and geo-economic achievement, I would say. And you really do have to understand the broader context to know how that happened and how difficult it actually was to get to that point.

But we're seeing other things as well. A lot of people have about the north/south or industrialized versus developing country issues, where a lot of developing countries are asking for more help and more flexibility. But with industrialized nations not always feeling that they really can do that much, either because they have their own domestic problems or not enough domestic support, but also because they are increasingly worried about some of the competitiveness impacts of certain types of policies, rightly or wrongly.

And then there is in that same context, a broader issue of geo-economic competition. I think nations and industries are more acutely aware today than

they have ever really been that the policy choices that we make in this area have a direct impact on the competitiveness of industries and indeed, of countries as a whole. And this is really the first COP, I think, where it became so clear to the general public that climate change policy, energy policy and industrial policy really do intersect.

But these are all questions that the governments are struggling with. How forward leading can you be on climate policy without having your industries losing their competitive edge, or is it actually better to move quickly because it's clear that's where we are heading, and there's a clear first mover advantage to be gained if you are out the gates a little faster than some of your geo-economic competitors? And, so, lots of geo-economic issues at play there, and that is certainly a context that we take very seriously when we look at this, and when we advise our clients.

**Stacey Mitchell:**

And I think directly from that, there appears to be a link to everything you've just discussed to discussions that I think we've been seeing for over the last several years and even in the U.S., but certainly Europe and elsewhere, about carbon border adjustments. Can you explain briefly what these are, and how we should think about them in the context of these broader climate policies?

**Naboth van den Broek:**

Absolutely. So, the whole issue of carbon border adjustments played a role a little bit in the background, quietly in the lead up to this COP26 and to the negotiations that have been taking place. So basically, the idea of carbon border adjustments is that some of the measures that countries are taking to deal with climate change have an impact on the competitiveness of certain industries.

So a simple example of that would be if you impose a carbon tax on your steel industry domestically, then that steel industry, it has higher expenses, or its customers have to pay a higher price because of that tax that you are imposing. And the competitor industry from a different country may not have to pay the same price if its government has decided not to impose carbon tax, now that's a simple example.

You can make it a lot more complicated of course, once you start talking about regulatory measures and the costs that those impose on different kinds of industries, but that's the basic idea. You've got a competitiveness impact from certain types of pricing and other measures that governments take relating to certain industries.

And I think we've all been aware of that for quite a long time already, but as these measures have been adding up, and as we're talking more and more also again about how to best price carbon emissions into our tax systems or our regulatory systems, or our emissions trading systems, et cetera, the discussion about how to deal with that in that international context has really become much more active again as well.

And so what we've seen over the past year and a half roughly is first, the European Union coming out with a proposal to impose a carbon border adjustment, or CBAM, which really would be an import tax, if you will, that foreign companies, foreign importers would pay when their products are entered into the European Union, into the EU market, to level the playing field with domestic EU industries that are already paying through the emissions trading system. And

there are obviously exceptions to having to pay that carbon border adjustment, and those exceptions are available for companies that are exporting out of countries that have equivalent types of measures in place, or for companies or sectors that can show that actually, they have taken appropriate steps to limit their emissions and as such, should be treated the same as the domestic industries.

So the carbon border adjustment is really that additional price or that additional import tax, you could say, that is imposed on imported products to try to level the playing field with domestic products that are already subject to a significant carbon price. The same kinds of developments we've started seeing in other countries, couple of weeks after the European proposal, there was a legislative proposal in the U.S. as well for a similar type of measure. But it's actually based off of a broad range of regulatory measures that the U.S. is imposing, both federally and at state level, and trying to adjust for that at the border.

And then we're seeing other countries discussing potential carbon border adjustments as well. Canada, we've seen some discussions in the U.K., we're seeing some discussions in various countries in Asia, the Asia-Pacific region, et cetera. And this really has started playing a role in the context of the broader climate negotiations as well, because one of the things that it does is it forces countries that are not yet doing their part to think carefully about the potential impact that that can have on their industries, because they can no longer be free riders if there are carbon border adjustments available or imposed in the big economies around the world, particularly the European Union, the U.S. and a couple of other big economies.

So, that's the basic background of what carbon border adjustments are, and why they play such a big role here.

**Stacey Mitchell:**

Naboth, I thought that was a really great summary. And really, the bottom line is we're going to even the playing field to make sure that everybody's looking at and taking account of the climate impacts of the manufacturer of their goods, and that they aren't going to get the benefit because whatever country they sell in is more permissive.

So, really, a great summary. And my one question is I understand that there may be some questions about the extent to which these border adjustments are legal under international trade rules. Can you explain that to us? Does it matter? And do countries actually care about whether these kinds of policies are consistent with international law?

**Naboth van den Broek:**

So, let me take those two questions in turn. So first, there definitely is a set of real questions from a trade law perspective here. International trade rules basically prohibit countries from imposing additional taxes at the border that treat products from foreign sources differently, either among each other, between country A and B, or between those imported sources and domestic products.

There are some exceptions to that, though. And one set of exceptions is for situations where you do that to adjust the effect of price that is being paid for regulatory purposes, the regulatory cost, if you will, between an imported and a domestic product.



In some instances, you are allowed to adjust for that but it's a very limited number of instances. The other exception, and that's probably the most relevant one here, is an exception or set of exceptions for environmental and other public policy purposes.

So if you're making these kind of adjustments at the border for a set of justified public policy purposes such as the protection of the climate, then you are often, but not always allowed to do that. Now, of course, the devil is in the detail here. And the real question is, are we being careful enough in how we are structuring these different carbon border adjustment measures that we actually fall within these exceptions? Or does politics take over, and are we not quite careful enough? And do we get to situations where we're actually doing this in ways that are really protectionist and help our industries at the expense of foreign industries?

So there are some real questions here. It gets technical pretty quickly, but I think the bottom line is there are questions here and because of how complex it is to calculate even what the price is that products or that different producers or different products are paying for carbon emissions, and how you then adjust for that in an accurate way for imports, because of how complex that is, it's actually really, really hard to do it in a way that is fully consistent with these international trade rules.

Not impossible, but definitely quite, quite difficult. Now, you asked the intriguing question, "Does it really matter? Do countries actually care about this?" And I think the answer is yes. When we look at the discussions that have been taking place in Europe and in the U.S. both recently and in the past as well, these international trade and this question of consistency with them has really played a role in the intragovernment discussions about it.

And companies have pointed out potential issues with these international rules in an effort to really make sure that the domestic systems that we're putting in place are as consistent as possible. Because if they're not, that creates a lot of uncertainty. The real risk here is that other governments who are negatively affected by these border adjustments decide to actually bring a government-to-government litigation against the EU or against the U.S. when it imposes these kinds of measures.

And we've already seen some threats. We've heard some murmurings about countries actually considering that option. And so, we really do need to take this pretty seriously.

**Stacey Mitchell:**

Well, that is heartening to hear, certainly. Ken, I'm going to pivot back to you because I know we're running out of time, but another area that is of growing interest to our clients particularly, but also was a subject of the COP, pertains to the voluntary carbon markets.

Perhaps one of the biggest accomplishments from the conference is that the parties finally agreed to the rules to implement Article 6 of the Paris Agreement, which involves the market mechanisms towards achieving individual countries' reduction commitments, or NDCs, nationally determined commitments, and ultimately, the goals of the agreement. How do you, without going into the

nuances of them, because I don't think we have time in a single podcast for it, how do you see the new rules affecting the voluntary carbon markets?

**Ken Markowitz:**

Thank you, Stacey. And they're really, with great anticipation, one of the things still left on the table was coming up with rules for Article 6, regarding the market and non-market mechanisms. And the UNFCCC had tried several times to get the rules, the whole rule book for implementing the Paris Agreement locked down and Article 6 was really an outlier.

And finally in Glasgow, they were able to achieve consensus on the rule book to clarify how countries will implement and account for international carbon markets under Article 6. And this is really reflected in two major decisions. One on Article 6.2, which provides guidance on the bottom-up bilateral or regional approaches involving the use of internationally transferred mitigation outcomes, or ITMOs, as they colloquially have become known.

And also Article 6.4 rules, modalities, and procedures, which are governing a new centralized UN market mechanism, akin to the Kyoto Protocol's Clean Development Mechanism. And these new rules really usher in an exciting new era of government-to-government cooperation through markets. And while the markets are not a solution unto themselves and are not going to be able to drive comprehensively the climate action necessary, they certainly can further scale up investment in mitigation and removal activities in areas that otherwise are not receiving proper attention or financing.

It is also heartening to see the world move on from the clean development mechanism, which really gave us the foundation for developing complicated projects to offset emissions from sources that otherwise would not have received financing or the attention of government regulation and clean development mechanisms certainly served its function, but there was more that could be done, and it needed an update. Article 6 provides this new, important mechanism for international cooperation and for a framework to provide for international carbon market under the Paris Agreement.

Parties also included rules for Article 6.2, which is a framework on how transfers of these mitigation outcomes between parties can be accounted for. At the same time, it is intended to also promote sustainable development and ensure environmental integrity, i.e. no double counting, which is often in one of the key criticisms of the use of carbon markets.

But the cooperative approaches that are being implemented under the rules for Article 6 offer a really unique opportunity for countries to use existing high-quality voluntary GHG standards or crediting programs like the Verified Carbon Standard to earn credits that can be counted towards a country's nationally determined contributions under the Paris Agreement.

So an exciting development, giving some validation to all the hard work that the leading standard setting organizations have done to create methodologies to properly account for carbon removals and other nonregulated and additional types of projects. And finally, the rulebook really provides a good platform for scaling up the carbon markets across the globe.

It's going to enable stronger linkages between country emission trading systems and create a new demand for a high quality of Article 6-compliant credits for trading in the voluntary carbon markets. And these actions taken in consideration with all of the organic work that's being done on the task force for scaling of voluntary carbon markets and other efforts are really going to more solidify the rules and modalities around the use of carbon markets and in the way that they will be counted for in the international processes.

**Stacey Mitchell:**

Well, Ken and Naboth, I can't thank you enough for making the time today to give us a little bit of feel of how COP26 went, and what we could expect in the coming weeks, months, and even years. And really, I think there's a lot to be hopeful about coming out of this COP and I look forward to perhaps recording future podcasts with you, diving into each of these topics a little bit... even in a little bit greater detail. Thanks so much.

**Ken Markowitz:**

Well, Stacey, thank you very much. And thank you, Naboth. It's been a pleasure having a conversation with both of you today and look forward to continuing this discussion.

**Naboth van den Broek:**

Same here. Thank you both very much.

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