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SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE

Tenth session

Bonn, 31 May - 11 June 1999

Agenda item 10

SUBSIDIARY BODY FOR IMPLEMENTATION

Tenth session

Bonn, 31 May - 11 June 1999

Agenda item 6

**Procedures and mechanisms relating to compliance under  
the Kyoto Protocol**

**Submissions from Parties**

**Note by the secretariat**

**Addendum**

1. In addition to the submissions already received (see FCCC/SB/1999/MISC.4 and Add.1 and 2), a further submission\* has been received from South Africa on behalf of the Group of 77 and China.
2. In accordance with the procedure for miscellaneous documents, this submission is attached and is reproduced in the language in which it was received and without formal editing.

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\* In order to make this submission available on electronic systems, including the World Wide Web, this contribution has been reformatted. The secretariat has made every effort to ensure the correct reproduction of the text as submitted.

**FCCC/SB/1999/MISC.4/Add.3**

BNJ.99-95

## **INITIAL VIEWS OF THE G77 AND CHINA ON PROCEDURES AND MECHANISMS RELATING TO COMPLIANCE UNDER THE KYOTO PROTOCOL**

The Group of G77 and China has identified the following elements relevant to procedures and mechanism relating to compliance under the Kyoto Protocol. These represent the initial views of the Group on this matter and will be developed further as discussions evolve. The list of questions attached hereto, in addition to those compiled by the Secretariat, will be a useful tool in the preparation of further submissions. It is envisaged that such submissions made by members of the Group of G77 and China on the basis hereof would aid the Group to further develop its position on procedures and mechanisms relating to compliance.

### **ELEMENTS**

Elements that need to be taken into account in the development of a compliance regime are, *inter alia* –

- The objective of the compliance regime should be in line with the objective of the Convention and should as a first priority aim at ensuring that the emission reduction commitments are met by Annex B Parties.
- A comprehensive, strong, efficient and effective compliance system is of vital importance for the successful implementation of the Kyoto Protocol and is therefore imperative for the credibility and integrity of the processes to be developed under the Protocol.
- In line with the provisions of the Convention and the Protocol the principle of common but differentiated responsibility is regarded as a corner stone in the design and implementation of the compliance regime.
- In the design of the compliance regime due cognizance should be given to the principle of the need for adequate and effective national compliance regimes and enforcement measures in Annex B Parties and how these can support and strengthen the international regime.
- The adoption of legally binding and quantified commitments and the introduction of the Kyoto Protocol mechanisms make the development of non-compliance procedures imperative.
- The Protocol must be assessed in its totality with a view to identify the essential elements and tools for anticipating, preventing, identifying and responding to non-compliance.
- Compliance rules, procedures and institutions should be such that it would enable the climate change regime to anticipate, prevent, identify and respond to situations of non-compliance.

- The procedures and mechanisms should be effective, fair and equitable and operate in a transparent, timely and efficient manner.
- Aspects to be considered in the development of the compliance regime are the need for, *inter alia* –
  - the elaboration of relevant principles, modalities and guidelines for the verification, reporting and accountability under the Protocol's mechanisms;
  - the potential application to the Protocol of any MCP adopted under the Convention;
  - a critical evaluation of the Convention and the Protocol's financial mechanism as a means of assessing both the obligations of Annex I Parties, and the adequacy of the mechanism in assisting non-Annex I Parties to comply with the Protocol.
- Only Parties that are in compliance with their obligations and are bound by a compliance regime should be allowed to participate in the Kyoto Protocol mechanisms.
- Binding consequences for non-compliance are essential. This will enhance the Parties collective ability to deter non-compliance.
- Consequences resulting from non-compliance should be proportional and responsive to the case at hand.
- In dealing with cases of non-compliance, facilitative as well as enforcement measures should be employed.
- It may be desirable to identify cases and/or activities that may constitute non-compliance.
- An indicative list of non-compliance consequences, depending on the cause, type, degree and frequency of non-compliance should be devised. These could include *inter alia* –
  - Appropriate assistance, including technical and financial expertise and capacity building;
  - Issuing cautions;
  - Suspension of rights, including ability to participate in Article 6, 12 and 17;
  - Penalties, including financial penalties for Annex B Parties.
- Financial penalties resulting from a non-compliance procedure should be made available to meet the cost of adaptation.
- If necessary, an appropriate institution or body may be required to consider each case of non-compliance. Relevant procedures and the review process will need to be

determined. The application of the principle of due process should be fully taken into account. The constitution of such an institution or body shall be based on the principle of equitable geographical representation.

- The benefits of establishing procedures for imposing automatic consequences in certain circumstances to cases of non-compliance should be explored.
- The compliance regime will be essential to strengthen the domestic and regional arrangements of Annex B Parties.

## LIST OF QUESTIONS RELATED TO A COMPLIANCE SYSTEM

Note: These questions are submitted to be used in addition to the list of questions in Annex III of the Non-Paper by the Secretariat.

1. What should be the principles that guide the development of the procedures and mechanisms to implement Article 18 of the Kyoto Protocol?
2. What procedures and mechanisms under Article 18 entail binding consequences? What are the implications of "binding consequences" *vis-à-vis* other consequences of non-compliance, and the amendment of the Protocol?
3. Should procedures and mechanisms "entailing binding consequences" be adopted concerning non-compliance with respect to:
  - a) "Guidelines" for the national systems for estimating emissions of greenhouse gases and removals by sinks, which may be established pursuant to Article 5.1; or "guidelines" for the implementation of Article 6, as provided for in Article 6.2; or "guidelines" for the reporting of certain information in national communications, as provided for in Article 7.4?
  - b) "Modalities, rules and guidelines" adopted pursuant to Article 3.4, concerning how, and which, additional categories of sinks may be added to those contained in Article 3.3?
  - c) "Modalities and procedures" concerning the Clean Development Mechanisms, which may be adopted pursuant to Article 12.7?
  - d) "Principles, modalities, rules and guidelines" concerning emissions trading, which may be adopted pursuant to Article 17?
4. The expert review teams contemplated by Article 8 of the Kyoto Protocol review "information submitted under Article 7 by each Party included in Annex I." In this regard -
  - a) Should we integrate the requirements of Articles 8.3 and 8.5 with the procedures that may be developed to implement Articles 18, 16, and 19? If so, how?
  - b) Although the expert review teams may provide information relevant to whether an Annex I Party is at risk of non-compliance or may not be in compliance, do the teams have authority to make any determination (initial, provisional, or otherwise) that such Party is in non-compliance?
  - c) If the report of the review team (issued after the end of a commitment period of an Annex I Party) does not indicate non-compliance by the Annex I Party with its emissions limitation/reduction commitment under Article 3 of the Protocol, does that preclude any Party from being able to raise an issue of non-compliance?
  - d) Should a review team possess authority to initiate, by its own determination, a procedure adopted pursuant to Article 18 that could result in binding consequences to a Party?
  - e) Should a review team possess authority to initiate, by its own determination, a procedure that may be developed to implement Article 16?

5. Should the idea of "automatic" penalties be used? If so, in what cases?
6. Should financial penalties be used? If so, in what cases? Elaborate, including a description of how and for what purposes the proceeds of financial penalties should be used.

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