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SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE

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Bonn, 16–25 June 2004

Item 3 (e) of the provisional agenda

Methodological issues

Issues relating to Articles 7 and 8 of the Kyoto Protocol

**Possible ways to ensure access to confidential information by review experts
in accordance with the provisions of paragraphs 2, 3 and 4 of
decision 21/CP.9 relating to the implementation of
Article 8 of the Kyoto Protocol**

Submissions from Parties

1. The Conference of the Parties (COP), by its decision 21 CP/9, requested the Subsidiary Body for Scientific and Technological Advice (SBSTA) to further consider, at its twentieth session, ways to ensure access to confidential data by review experts in those periods of the inventory review in which experts are neither present in the country under review nor at the office of the secretariat. By the same decision, the COP invited Parties to submit to the secretariat, by 15 February 2004, their views on this issue.
2. Also by the same decision, the COP requested the SBSTA also to consider, at its twentieth session, the possible application of the code of practice for the treatment of confidential information to the review of information on assigned amounts pursuant to Article 3, paragraphs 7 and 8, of the Kyoto Protocol, emission reduction units, certified emission reductions, assigned amount units and removal units, and, to facilitate this consideration, invited Parties to include views on this matter in their submissions referred to in paragraph 1 above.
3. The secretariat has received three submissions. In accordance with the procedure for miscellaneous documents, these submissions are reproduced* in the language in which they were received and without formal editing.

* These submissions have been electronically imported in order to make them available on electronic systems, including the World Wide Web. The secretariat has made every effort to ensure the correct reproduction of the texts as submitted.

FCCC/SBSTA/2004/MISC.2

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PAPER NO. 1: IRELAND ON BEHALF OF THE EUROPEAN COMMUNITY AND ITS MEMBER STATES AND OF ESTONIA, LATVIA, SLOVAKIA AND SLOVENIA

SUBMISSION BY IRELAND ON BEHALF OF THE EUROPEAN UNION AND ITS MEMBER STATES AND THE FOLLOWING ACCEDING STATES: ESTONIA, LATVIA, SLOVAKIA & SLOVENIA.

Dublin,

- Subject:**
- (a) views on possible ways to ensure access to confidential information during those periods of the inventory review in which experts are neither present in the country under review nor at the office of the secretariat**
 - (b) views on the possible application of the code of practice for the treatment of confidential information to the review of information on assigned amounts pursuant to Article 3, paragraphs 7 and 8, of the Kyoto Protocol, emission reduction units, certified emission reductions, assigned amount units and removal units**
- (a) Views on possible ways to ensure access to confidential information during those periods of the inventory review in which experts are neither present in the country under review nor at the office of the secretariat**

Background

In undertaking the annual reviews of greenhouse gas inventories from Annex I Parties, it is important that expert review teams have access to all the necessary information, including information that a Party may deem to be confidential. This was recognised in the negotiations at SBSTA 18, which resulted in agreement on a code of practice (FCCC/SBSTA/2003/Add.1 pages 19-20) for the treatment of confidential information. The code of practice makes provision for access to, and treatment of, confidential information during an in-country review, when the ERT (expert review team) is based in the country under review, and during a centralised review when the ERT is present at the office of the Secretariat.

Draft decision -/CP.9 (*Issues relating to the implementation of Article 8 of the Kyoto Protocol*) requests the SBSTA to further consider, at its twentieth session, ways to ensure access to confidential data by review experts in those periods of the inventory review in which experts are neither present in the country under review nor at the office of the secretariat. This draft decision on Art 8 recognises that the draft decision on the technical guidance on methodologies for adjustments agreed at its eighteenth session of SBSTA is without prejudice to any additional provision relating to the application of adjustments in the case of confidential information arising from these further considerations, and invites Parties to consider possible ways to ensure access to confidential information during the review periods during which experts are neither present in the country under review nor at the office of the secretariat, taking into account their domestic legislation.

Importance of providing ERTs with full access to confidential data

Situations in which the ERT is not present in the country under review nor at the office of the Secretariat arises during a desk review or in the case where an ERT requests additional information during a centralised review which is only provided after the team has left the Secretariat's offices. ERTs cannot revisit issues that should already have been addressed in the review of a previous year. This is especially relevant regarding adjustments under Article 5.2 of the Kyoto Protocol where the technical guidance on methodologies for adjustments specifies that adjustments should not be retroactively applied for any year preceding the inventory year subject to review, except in cases where recalculated estimates for previous commitment period years were submitted to review. A situation could arise where access to confidential information provided during an in-country review or a centralised review might lead an ERT to conclude that an adjustment for a previous year is warranted but not allowed under the technical guidance on methodologies for adjustments. It is therefore important that procedures are devised so that the task of the reviewer experts working away from either the country under review in the case of an in-country review or the secretariat's office in the case of a centralised desk review is not hindered by lack of access to confidential information.

It is recognised that different Parties may have domestic legislation governing access to and transmission of confidential information and this needs to be taken into account in considering the issue of access to confidential information for review purposes. Discussions at SBSTA 18 focused primarily on the code of practice, though several Parties expressed concerns, inter alia, in relation to domestic legislation. Potential approaches to the issue each have different advantages and disadvantages, which may vary from Party to Party and by level of security attached to the confidential information in question.

Possible approaches to address the issue

In general, the EU believes the solution should follow the principles of the code of practice agreed at SBSTA 18 and respect existing domestic legislation. Outlined below are two general approaches which could form the basis for further discussion at SBSTA 20. The first general approach proposes means of access to confidential information by the ERT and outlines a number of options to achieve this. The options are not mutually exclusive and one may be more appropriate than another depending on the specific circumstances. However, it is recognised that this general approach may be cumbersome and resource intensive in certain circumstances and therefore a second general approach is proposed. This approach involves extending the range of conditions for which an adjustment may be applied retrospectively and thus reduces the need to devise procedures to handle confidential information in the case in question.

The second general approach is the EU's preferred method of dealing with this issue though, it is recognised that for specific circumstances, other options as outlined in general approach 1 may provide the appropriate solution.

General Approach 1: *Devise procedures so that the ERT can assess confidential information during those periods of the inventory review in which experts are neither present in the country under review nor at the office of the secretariat*

1. Provide electronic access to confidential information

As the problem is essentially one of remote access, it may be possible to establish procedures for electronic access to the information using appropriate security and encryption measures. This would provide speedy and efficient access to data and would minimise resource use. However, it would be

directly contrary to the provision that confidential data shall be submitted in hard copy. It would also require electronic formatting for confidential data, which may be contrary to relevant legislation in some Parties, and it would not be possible to provide an absolute guarantee that the information is protected in all cases. Furthermore, access details might be inadvertently disclosed to third parties e.g. through shared use of computer facilities. Nevertheless, the approach may provide an effective solution in certain circumstances depending on, inter alia, the level of security attached to the confidential information.

2. *Provide information in hardcopy via diplomatic services*

The information could be provided as hardcopy to the review experts via the diplomatic services of the Party concerned. The diplomatic services have established rules for confidential information and a Party would trust its own embassy to comply with handling procedures. However, it would be necessary to ensure that all review experts receive the information and not all experts may have the required access to embassies from Annex I Parties. In those cases diplomatic services could travel with the document to the review expert, though domestic legislation in some Parties may not allow such information to be forwarded in this way.

3. *ERT travels to Party*

This option could provide a solution that respects domestic legislation but it would be resource intensive and could result in delays in finalising the work of the ERT. Again, a decision to visit the country under review at short notice could present logistical problems and complicate the work of the Secretariat in coordinating the review process.

4. *Agree framework for Parties to provide information allowing flexibility to cater for different situations*

This approach would not prescribe a fixed set of specific rules governing the provision of confidential information in the situation being discussed but would instead establish a principle that, on a case by case basis, a Party shall facilitate the ERT by providing the necessary to the ERT within a reasonable time. The means of access to the data would be by agreement with the ERT with a view to arriving at the most mutually agreeable arrangement and could vary amongst members of the ERT. The arrangement might range from the Party providing the information in accompanied hardcopy to the workplace of the review expert(s) or the review expert(s) travelling to the Party. In the absence of a mutually agreeable arrangement, the Party would ultimately have a duty to provide the information to the workplace of the expert reviewer accompanied if it saw fit by diplomatic or other personnel. The provisions of the code of practice (amended as necessary) would apply. The resources involved would vary depending on the approach so to it would be important to clearly establish that the onus would be on the Party to ensure that the ERT has access to the information and to meet the additional cost involved in providing the information. The overall approach here is, to some extent, implicit in the guidelines for national systems [paras 5(c), 6 and 12(e)] and paragraph 58 of the review guidelines could be interpreted as a special case that could also be in line with this approach. In the latter, if the necessary information is not provided, the ERT apparently has no option but to proceed to the adjustment process, which in turn initiates the investigation of the problem from the Party's standpoint.

General Approach 2: *Extend the range of conditions for which adjustments may be applied retrospectively*

The technical guidance on methodologies for adjustments under Article 5.2 of the Kyoto Protocol (FCCC/SBSTA/2003/10/Add.2) specifies that adjustments should not be retroactively applied for any

year preceding the inventory year subject to review, except in cases where recalculated estimates for previous commitment period years were submitted to review. As a result of access to confidential information obtained during an in-country or centralised review, under the provisions of the code of practice, an ERT may conclude that an adjustment to emissions is warranted for a previous year that was subject to a desk review (where such access is not provided for). This outcome presents a situation, outside those currently covered by the technical guidance, for which adjustments could be applied retrospectively.

Allowing the ERT to apply adjustments retrospectively in this situation effectively defers the need for access to confidential information during a desk review to a subsequent centralised or in-country review but the effects of such access on the earlier year can immediately be taken into account. The desk review report would need to clearly specify wherever lack of access to confidential information has not allowed the ERT to review a specific estimate fully, thus indicating where requests for access to that information would be required in subsequent centralized or in-country reviews.

(b) Views on the possible application of the code of practice for the treatment of confidential information to the review of information on assigned amounts pursuant to Article 3, paragraphs 7 and 8, of the Kyoto Protocol, emission reduction units, certified emission reductions, assigned amount units and removal units

The review of information on assigned amounts is part of the annual review of information submitted under Article 7 of the Kyoto Protocol. The confidentiality provisions pertaining to the annual inventory are also relevant to this review and therefore the code of practice for the treatment of confidential data should be applied in full. Paragraph 3(b) (iii) of the guidelines for the review of information on assigned amounts (FCCC/CP/2002/7/Add.3) stipulates that Annex I Parties shall provide the ERT with effective access to their national registry during the review. Given this access and the specific nature of the material subject to review, problem identification and resolution is likely to be more straightforward than in the case of problems associated with the annual inventory.

The code of practice for the treatment of confidential information in the review of information on assigned amounts pursuant to Article 3, paragraphs 7 and 8, of the Kyoto Protocol (*emission reduction units, certified emission reductions, assigned amount units and removal units*) can be developed from the existing code of practice by adapting the text as appropriate to cover the relevant subject matter of that review.

PAPER NO. 2: JAPAN

Japan's view on issues relating to Articles 5, 7 and 8 of the Kyoto Protocol

Japan welcomes the opportunity to submit its views on the issues relating to Articles 5, 7 and 8 of the Kyoto Protocol as reflected in document FCCC/SBSTA/2003/10/Add.2.

a) View on possible ways to ensure access to confidential information during those periods of the inventory review in which experts are neither present in the country under review nor at the office of the secretariat

We recommend the following steps to ensure access to confidential information during the periods in question.

- 1) A reviewer who requests access to confidential information should inform the focal point (national or inventory) of reviewed Parties through the secretariat about the information they need. The reviewer should clarify how detailed the information should be (the aggregated level of the information) and why they need it. The reviewed Party should consider the request and may submit the information to the secretariat when they have no problems in disclosing the information without direct supervision of the secretariat or of the Party. The secretariat shall send the information to the reviewer.
- 2) In case the reviewed Party decides not to send the information according to step 1) above, the reviewer may access the information, choosing the option with no additional cost (ex. travel expense) from the followings.
 - i. The reviewed Party sends the requested information to the embassy or consulate in the country where the reviewer lives. The reviewer would access to the information under the supervision of the staff of the embassy or consulate.
 - ii. The reviewer may contact the staff of the reviewed Party through the secretariat to ensure that they can meet in such opportunities as the COP or SB meetings. If possible, the reviewer would access the information in such opportunities under the supervision of the staff of the reviewed Party.

Where even i. and ii. do not work (ex. the reviewer can not move to the embassy or consulate without additional cost, or attend the COP or SB meetings), other reviewers of the review team may access the information through option i. or ii. in place of the requesting reviewer.

b) Views on the possible application of the code of practice for the treatment of confidential information to the review of information on assigned amounts pursuant to Article 3, paragraph 7 and 8, of the Kyoto Protocol, emissions reduction units, certified emission reductions, assigned amounts units and removal units

The information on ERUs, CERs, AAUs and RMUs is publicly available and accessible according to the draft decision -/CMP.1 (*Modalities for the accounting of assigned amounts*). Therefore, it should be clarified at first what information in the national registry could be confidential and then the application of the code of practice for the treatment of confidential information should be discussed.

PAPER NO. 3: UNITED STATES OF AMERICA

**Submission of the United States
FCCC/SBSTA/2003/10/Add.2
Views on Articles 5, 7, and 8 of the Kyoto Protocol
February 18, 2004**

The Eighteenth Session of the Subsidiary Body for Scientific and Technical Advice in June 2003 (SBSTA-18) invited Parties to submit their views on “possible ways to ensure access to confidential information during the periods mentioned in paragraph 2 ... taking into account their domestic legislation.” The United States welcomes the opportunity to provide views on aspects of the protection of confidential inventory information submitted by Parties under the Convention

As mentioned in previous submissions, the United States notes that a Party might voluntarily choose to provide more disaggregated inventory information to UNFCCC review teams beyond what is required by Convention inventory reporting guidelines. This would further the goal of increasing transparency and furthering the goals of the UNFCCC inventory review process. For this reason, the United States supported the application under the Convention of the Code of Practice for Treatment of Confidential Information in the Technical Review of Greenhouse Gas Inventories Included in Annex I developed at SBSTA18.

The Code of Practice for the Treatment of Confidential Information limits access to confidential information to experts and Secretariat staff that have been trained in the appropriate handling of confidential information and are obligated under an Agreement for Expert Review Services not to disclose the information. The protection provided by the Code of Practice and the Agreement for Expert Review Services is contingent upon secure storage and handling of the information. In the case of an in-country review, the Party itself guarantees this protection, whereas during a Centralized review, the Secretariat is charged with implementing storage and handling procedures. It is the view of the United States that it is impossible to guarantee this protection during a desk review because there are no practical ways for either the Party or the Secretariat to limit access to the confidential information to authorized experts. Without such a guarantee, Parties will have a disincentive to submit confidential information, and the goals of complete inventory reporting and review will be undermined. Therefore, the United States does not support allowing access to confidential information during those periods of the inventory review in which experts are neither present in the country nor at the office of the Secretariat.
