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**AD HOC WORKING GROUP ON FURTHER COMMITMENTS
FOR ANNEX I PARTIES UNDER THE KYOTO PROTOCOL**

Seventh session

Bonn, 29 March to 8 April 2009

Items 3 and 4 of the provisional agenda

**Consideration of the scale of emission reductions to be achieved by Annex I Parties in aggregate
Contribution of Annex I Parties, individually or jointly, to the scale of emission reductions
to be achieved by Annex I Parties in aggregate**

**Possible elements for amendments to the Kyoto Protocol,
pursuant to its Article 3, paragraph 9**

Note by the Chair*

Summary

This note identifies and discusses possible amendments to Annex B to the Kyoto Protocol and consequential amendments to the Protocol that would flow directly from amendments to Annex B. The note also discusses the form that the amendments might take, as well as their adoption and entry into force. It has been prepared in response to a request made by the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its resumed sixth session for its Chair to prepare a note on possible elements for amendments to the Protocol pursuant to its Article 3, paragraph 9.

* This document was submitted after the due date in view of the need for extensive consultations.

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I. Introduction

A. Mandate

1. At its resumed sixth session, the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) requested its Chair to prepare a note on possible elements for amendments, pursuant to Article 3, paragraph 9, of the Kyoto Protocol,¹ for consideration at its seventh session. The request was made with a view to ensuring that the text for any proposed amendments is communicated by the secretariat to Parties no later than six months prior to the proposed adoption of the amendments, with a view to the adoption of these amendments by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) at its fifth session.²

B. Scope of the note

2. This note discusses possible elements for amendments to the Kyoto Protocol pursuant to its Article 3, paragraph 9, that is, amendments to Annex B and consequential amendments flowing from amendments to Annex B. Possible elements for amendments in relation to other issues arising from the implementation of the work programme of the AWG-KP are discussed in the note on possible elements of a text relating to issues outlined in document FCCC/KP/AWG/2008/8, paragraph 49.³ Other notes prepared for the seventh session of the AWG-KP are also relevant, for example, the note further elaborating possible improvements to emissions trading and the project-based mechanisms under the Kyoto Protocol⁴ and the note elaborating how to address, where applicable, the definitions, modalities, rules and guidelines for the treatment of land use, land-use change and forestry.⁵

3. This note is not conceived in terms of a negotiating text. However, the elements identified could enable Parties to move rapidly towards the development of such a negotiating text, as foreseen by the AWG-KP at its resumed sixth session.⁶ Further discussions by the AWG-KP and submissions from Parties may, to the extent that they clarify existing proposals or introduce entirely new proposals, result in the need to include possible further elements for amendments.

C. Possible action by the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol

4. The AWG-KP may wish to consider the elements set out in this note with a view to reaching a conclusion on the elements of a text for proposed amendments to the Kyoto Protocol, pursuant to its Article 3, paragraph 9.

II. Possible elements for amendments to the Kyoto Protocol, pursuant to its Article 3, paragraph 9

A. Introduction

5. Article 3, paragraph 9, provides that: "Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol, which shall be adopted in accordance with the provisions of Article 21, paragraph 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least seven

¹ Article numbers refer to Articles of the Kyoto Protocol unless otherwise noted.

² FCCC/KP/AWG/2008/8, paragraph 57.

³ FCCC/KP/AWG/2009/4.

⁴ FCCC/KP/AWG/2009/INF.2.

⁵ FCCC/KP/AWG/2009/INF.1.

⁶ FCCC/KP/AWG/2008/8, paragraph 60.

years before the end of the first commitment period...” Article 3, paragraph 9, has a clear and specific objective: the consideration of commitments for subsequent periods for Parties included in Annex I as defined in Article 1, paragraph 7 (Annex I Parties). Such commitments are to be established through amendments to Annex B.

6. Annex B consists of a list of Parties together with their respective quantified emission limitation or reduction commitments (QELRCs) expressed as a percentage of base year or period. It is assumed, for the purposes of this note, that amendments to Annex B would principally take the form of quantified emission limitation and reduction objectives for the next commitment period.⁷

7. Amending Annex B would also entail a number of consequential amendments, that is, amendments that flow directly from amendments to Annex B. Such amendments are necessary in order to ensure coherence and avoid contradictions and ambiguities in the provisions of the Protocol.

B. Form of the amendments

8. Amendments can be effected through replacement or deletion of entire blocks of text (Articles, paragraphs or subparagraphs); through addition or insertion of new text (Articles, paragraphs or subparagraphs); or through changing portions of existing text (revising or substituting language, adding language, or deleting portions of text in paragraphs or subparagraphs). If new Articles, paragraphs or subparagraphs are to be inserted they could be numbered as “bis”, “ter”, “quater” and so forth or as A, B, C and so forth. Such new provisions would be forever referred to as such. With respect to an existing Article, paragraph or subparagraph:

- (a) A text could be deleted and replaced with a new text; or
- (b) Text could be added to an existing text through an “insertion”, “substitution” or “addition”.

9. The form of the amendment may depend, among other factors, on the nature of the amendment, whether the amendment is intended to replace existing text upon entry into force, and the extent to which the continued existence and reference to earlier text will be necessary for the effective implementation of the Kyoto Protocol. As regards the last factor, it may be noted that although the first commitment period comes to an end in 2012, end of commitment period accounting⁸ as well as compliance assessment⁹ will not be finalized until 2015. CMP decisions that address these two issues derive their legal force from the provisions of the Protocol relating to the first commitment period. In such cases Parties will need to determine whether replacing existing text would be the best way forward. These factors are further considered in the discussions below on the possible form that each amendment could take.

C. Amendments to Annex B to the Kyoto Protocol

10. Amending Annex B would result in new QELRCs for the Annex I Parties currently listed in Annex B. Any Annex I Party not currently listed in Annex B that may wish to take on QELRCs for the second commitment period may also be included in Annex B as amended. It may be noted that Annex B can be amended without the base year being changed.

⁷ FCCC/KP/AWG/2008/8, paragraph 17.

⁸ In this note the term “end of commitment period accounting” refers to the period following the submission and review of the final annual report of Annex I Parties for the first commitment period, when the final tally of these Parties’ assigned amounts for the first commitment period and determination of whether these Parties are in compliance with their commitments under Article 3, paragraph 1, takes place.

⁹ In this note the term “compliance assessment” refers to the assessment, after the expiration of the additional period for fulfilling commitments, of the compliance of each Annex I Party with its commitment under Article 3, paragraph 1, as described in decision 13/CMP.1, annex, paragraph 14.

11. Upon agreement on new QELRCs for the period beyond 2012, the CMP could adopt an entirely new table for Annex B, which would consist of a list of Annex I Parties in one column and their corresponding QELRCs for the new commitment period in a second column. Names of any additional Annex I Parties and their respective QELRCs would also be inserted at this time. This new table could replace the table that is currently in Annex B.

12. It would also be possible to retain the information on the first commitment period and add a third column to the table in Annex B. This new column would indicate the new QELRCs for the second commitment period. The two QELRC columns for the first and second commitment periods would be distinguished by column headings indicating the period that each column covered (i.e. 2008 to 2012 for the second column and 2013 to the year in which the second commitment period ends in the third column, represented by “V” in this note). Parties that had been added to the list for the second commitment period would be identified by appropriate footnotes. The merit of this approach is that it would ensure that the legal basis of actions relating to the first commitment period that will occur from 2013 to 2015 was preserved even after the entry into force of the amendment to Annex B. The table overleaf illustrates how such an amended Annex B might look.

13. Some Parties have suggested that in addition to expressing QELRCs in terms of a percentage of base year or period, an amended Annex B could also contain a column indicating the QELRCs in terms of gigagrams of carbon dioxide equivalent (Gg CO₂ eq). The inclusion of such a column would require agreement by Parties on how these values are calculated and a provision clarifying the relationship between these values and the Parties’ assigned amounts. Such a column would have implications for a number of provisions of the Kyoto Protocol, including Article 3, paragraph 7, on the fixing of the assigned amount. Some Parties have further suggested that a different base year or period could be adopted for the second commitment period.

D. Consequential amendments

14. Amending Annex B will require amendments to three other provisions of the Kyoto Protocol that directly relate to Annex B and presently refer only to the first commitment period. These provisions are:

- (a) Article 3, paragraph 1;
- (b) Article 3, paragraph 7;
- (c) Article 3, paragraph 9.

1. Article 3, paragraph 1

15. Article 3, paragraph 1, establishes the core commitment of Annex I Parties. This provision:

- (a) Indicates the scale of reductions in CO₂ eq emissions of the greenhouse gases listed in Annex A to be achieved by Annex I Parties in the first commitment period. This scale is defined in terms of aggregate CO₂ eq emissions of those gases not exceeding Parties’ assigned amounts, calculated pursuant to their QELRCs inscribed in Annex B;
- (b) Establishes the link between the scale of emission reductions and Annex B. As presently formulated, this link applies only to the first commitment period;
- (c) Defines the duration of the first commitment period;
- (d) Sets a collective target for all Annex I Parties of reducing their overall emissions by at least 5 per cent below 1990 levels during the first commitment period.

Possible amendments to Annex B to include the quantified emission limitation or reduction commitments for the second commitment period

Annex B^a

Party	Quantified emission limitation or reduction commitment (2008–2012) (percentage of base year or period)	Quantified emission limitation or reduction commitment (2013–V^b) (percentage of base year or period)
Australia	108	
Austria	92	
Belgium	92	
Bulgaria*	92	
Canada	94	
Croatia*	95	
Czech Republic*	92	
Denmark	92	
Estonia*	92	
European Community	92	
Finland	92	
France	92	
Germany	92	
Greece	92	
Hungary*	94	
Iceland	110	
Ireland	92	
Italy	92	
Japan	94	
Latvia*	92	
Liechtenstein	92	
Lithuania*	92	
Luxembourg	92	
Monaco	92	
Netherlands	92	
New Zealand	100	
Norway	101	
Poland*	94	
Portugal	92	
Romania*	92	
Russian Federation*	100	
Slovakia*	92	
Slovenia*	92	
Spain	92	
Sweden	92	
Switzerland	92	
Ukraine*	100	
United Kingdom of Great Britain and Northern Ireland	92	
United States of America ^c	93	

^a As at 25 February 2009.

^b “V” represents the year in which the second commitment period ends.

^c Countries that have not yet ratified the Kyoto Protocol.

* Countries that are undergoing the process of transition to a market economy.

16. With the establishment of a second commitment period, there will be a need to define its duration and maintain the link between the core commitment of Annex I Parties and the QELRCs for beyond 2012 that would be listed in the amended Annex B. There are two options to achieve this.

17. The first option is to amend Article 3, paragraph 1, by changing certain portions of the text, specifically by deleting the reference to the first commitment period and replacing it with a reference to the second commitment period, including its duration (2013 to V).

18. Establishing a second commitment period may also entail setting the overall scale of emission reductions to be achieved by Annex I Parties in aggregate for the second commitment period. Any new overall scale of emission reductions to be achieved by Annex I Parties would replace the current percentage relating to the first commitment period, that is, “at least 5 per cent below 1990 levels”.

19. If Annex B were amended through the insertion of another column for the QELRCs for the second commitment period beside the column that indicates the QELRCs for the first commitment period, the reference in Article 3, paragraph 1, to Annex B would likewise need to be amended to specify which portion of Annex B is being referred to. Following the example of the table above, a revised Article 3, paragraph 1, could refer to “quantified emission limitation and reduction commitments inscribed in the third column of the table contained in Annex B...”

20. The second option is based on the fact that although the first commitment period ends in 2012, the CMP has provided for an additional period for fulfilling commitments under Article 3, paragraph 1.¹⁰ Therefore, there will be a need to refer to Article 3, paragraph 1, and Annex B in their present form even beyond 2012 and continuing into 2015. Parties may thus wish to retain Article 3, paragraph 1, and address the need for provisions for the second commitment period by inserting an entirely new paragraph, that is, Article 3, paragraph 1 bis, which may be similar to Article 3, paragraph 1. The paragraph could read as follows:

Article 3

1. The Parties ... 2012.

1 bis. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least **X**¹¹ per cent below 1990 levels in the commitment period **2013 to V**.¹²

2. Article 3, paragraph 7

21. Although the QELRCs listed in Annex B form part of the calculation of the assigned amount of each Party listed in Annex B, other essential details for the calculation of the assigned amount are provided in Article 3, paragraph 7. The first sentence of Article 3, paragraph 7, refers to the first quantified emission limitation and reduction period, 2008 to 2012, and establishes the method for

¹⁰ In particular, see decisions 13/CMP.1, 15/CMP.1, 22/CMP.1 and 27/CMP.1.

¹¹ Where X is the overall scale of emissions to be achieved by Annex I Parties in aggregate.

¹² Where V is the year in which the second commitment period ends.

calculating the assigned amount for each Annex I Party for that period. An Annex I Party's assigned amount is calculated by multiplying the percentage inscribed for it in Annex B by the CO₂ eq emissions of the greenhouse gases listed in Annex A in the 1990 base year or alternative base year or period,¹³ and further multiplying the product by the length of the first commitment period. The second sentence of Article 3, paragraph 7, establishes the rule for the treatment of land-use change and forestry in relation to the calculation of the assigned amount for the first commitment period.

22. If Annex B were amended to refer to new QELRCs for the second commitment period, an amended Article 3, paragraph 7, that refers to the second, rather than the first, commitment period, would need to be adopted.

23. As with Article 3, paragraph 1, there will be a need to refer to Article 3, paragraph 7, after the end of the first commitment period. The practice of recording the assigned amount of each Party included in Annex B in the compilation and accounting database and the principle that the assigned amount remains fixed for the commitment period¹⁴ derive their legal basis from Article 3, paragraph 7. Moreover, the rule on the treatment of land-use change and forestry in relation to the assigned amount for the first commitment period is also set out in Article 3, paragraph 7. To ensure a continued legal basis for these principles, rules and practices until the completion of the compliance assessment for the first commitment period, Parties may wish to retain Article 3, paragraph 7, and include provisions for the second commitment period in a new paragraph, that is, Article 3, paragraph 7 bis. Article 3, paragraph 7 bis, could read as follows:

Article 3

7. In the ... assigned amount.

7 bis. In the **second** quantified emission limitation and reduction commitment period, from **2013 to V**,¹⁵ the assigned amount for each Party included in Annex I shall be equal to the percentage inscribed for it in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by **Y**.¹⁶ Those Parties included in Annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.

24. If Annex B were amended to indicate QELRCs in terms not only of a percentage of base year or period, but also of Gg CO₂ eq, and if Parties decided that QELRCs expressed as Gg CO₂ eq would be equivalent to assigned amounts, then Article 3, paragraph 7, could be deleted since the assigned amounts would already have been determined. However, since Annex B could also be amended during the second or subsequent commitment periods to include additional Annex I Parties, it may be useful, from a policy perspective, to retain a provision that defines how the assigned amount of such Parties would be calculated.

¹³ See Article 3, paragraph 5, in relation to Annex I Parties undergoing the process of transition to a market economy.

¹⁴ Decision 13/CMP.1, annex, paragraph 10.

¹⁵ Where V is the year in which the second commitment period ends.

¹⁶ Where Y is the number of years of the second commitment period.

3. Article 3, paragraph 9

25. Article 3, paragraph 9, sets out the procedure for the adoption of commitments for Annex I Parties for subsequent periods. The second sentence of Article 3, paragraph 9, indicates when the CMP is to initiate consideration of “such commitments”. According to this sentence as presently formulated, the consideration of commitments for any commitment period subsequent to the first commitment period would also have to have been initiated at least seven years before the end of the first commitment period, that is, in 2005. Since it will not be possible to apply this provision to consideration of commitments for the third and subsequent commitment periods, Parties may wish to consider amending the second sentence of Article 3, paragraph 9, by restricting the reference to “such commitments” to commitments for the second commitment period. A third sentence could thereafter be added to Article 3, paragraph 9, indicating that the CMP will initiate consideration of commitments for Annex I Parties for any subsequent periods at least Z^{17} years before the end of the commitment period that immediately precedes the commitment period under consideration.

26. Alternatively, a stand-alone provision, Article 3, paragraph 9 bis, could contain the rule pertaining to initiation of consideration of commitments for Annex I Parties for the third and subsequent commitment periods. To illustrate this second option, Article 3, paragraph 9, and Article 3, paragraph 9 bis, could read as follows:

Article 3

9. Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol, which shall be adopted in accordance with the provisions of Article 21, paragraph 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of ~~such~~ commitments **for the second commitment period** at least seven years before the end of the first commitment period referred to in paragraph 1 above.

9 bis. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of commitments for the third and subsequent commitment periods at least Z^{18} years before the end of the commitment period that immediately precedes the commitment period under consideration.

III. Other matters

A. Circulation and adoption of amendments

27. At its resumed fourth session, the AWG-KP agreed that its tasks for 2009 will include, inter alia, to forward to the CMP at its fifth session the results of its work on the consideration of commitments for subsequent periods for Annex I Parties under Article 3, paragraph 9, for consideration by the CMP, with a view to their adoption.¹⁹

28. Article 20, paragraph 2, provides that amendments to the Kyoto Protocol are to be adopted at an ordinary session of the CMP. The secretariat is required to communicate the text of any proposed

¹⁷ Where Z is the minimum number of years before the end of the commitment period, by when the CMP is to have initiated consideration of commitments for Annex I Parties for the subsequent commitment period.

¹⁸ Where Z is the minimum number of years before the end of the commitment period, by when the CMP is to have initiated consideration of commitments for Annex I Parties for the subsequent commitment period.

¹⁹ FCCC/KP/AWG/2007/5, paragraph 22 (c).

amendment to the Kyoto Protocol at least six months before the meeting at which it is proposed for adoption. Article 20, paragraph 2, also applies to amendments to Annex B (Article 21, para. 7).

29. It may be noted that Article 20, paragraph 2, refers to circulation of the text of any proposed amendments to the Kyoto Protocol at least six months “before the meeting” and not “before the session” at which it is proposed for adoption. CMP 5 is scheduled to take place from 7 to 18 December 2009.²⁰ If it is assumed that the proposed amendments are to be proposed for adoption at the last plenary meeting of the CMP, which would take place on 18 December 2009, amendments could be communicated to Parties at the latest on 17 June 2009.

30. In accordance with Article 21, paragraph 7, any amendments to Annex B can be adopted only with the written consent of the Party concerned, that is, a Party to be included in Annex B as amended. It would be advisable for each of the Parties concerned to provide their written consent well in advance of CMP 5 and prior to the adoption of the proposed amendments to Annex B.

31. At CMP 5, Parties will be expected to make every effort to reach agreement on the proposed amendments by consensus, in accordance with Article 20, paragraph 3. If all efforts at consensus have been exhausted and no agreement is reached, the amendments will, as a last resort, be adopted by a three-fourths majority vote of Parties present and voting at the meeting.

B. Entry into force

32. Amendments, including amendments to Annex B, would enter into force for those Parties having deposited instruments of acceptance with the Depositary on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to the Kyoto Protocol (Article 20, para. 4). Based on the number of Parties to the Kyoto Protocol as at 25 February 2009, 138 Parties would need to deposit instruments of acceptance for any such amendments to enter into force. Any delay in entry into force may result in a gap between the end of the first commitment period and the beginning of the second commitment period.

33. Entry into force provisions contained in Article 25, paragraph 1, which provide two conditions for entry into force, relate to the entry into force of the Kyoto Protocol as first adopted and are not relevant to subsequent amendments to the Protocol. If Parties wish to apply different provisions for entry into force of amendments to the Kyoto Protocol or Annex B, the CMP will need to adopt amendments to Article 20, paragraphs 4 and 5, and Article 21, paragraph 7. Such amendments would, however, be subject to the acceptance procedures established in Article 20, paragraph 4, and would enter into force after CMP 5. They would not, therefore, apply to any amendments adopted at CMP 5.

²⁰ Decision 9/CP.14.