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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

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Agenda item 6

**REPORT OF THE JOINT WORKING GROUP ON COMPLIANCE
ON ITS WORK DURING THE TENTH SESSIONS OF THE
SUBSIDIARY BODIES**

I. OPENING OF THE MEETINGS

1. The meetings of the joint working group on compliance (JWG) were held at the Hotel Maritim, Bonn from 2 to 10 June 1999. Mr. Espen Ronneberg and Mr. Harald Dovland presided over the meeting.

2. The Co-Chair of the JWG, Mr. Espen Ronneberg, opened the meeting at the first meeting, on 2 June 1999. In welcoming the participants, he recalled that the Conference of the Parties, by its decision 8/CP.4 had established the JWG with the mandate to develop a comprehensive compliance system. He noted that the group had an important task as the compliance system will ensure the credibility of, and confidence in, the Kyoto Protocol. He believed that, despite the complexity of the task, the group should be able to fulfil its task.

3. The JWG agreed to organize its work in the current and subsequent meetings according to the following agenda, with the understanding that it could be modified, if needed, in the future.

1. Opening of the meetings.
2. Procedures and mechanisms relating to compliance under the Kyoto Protocol:
 - (a) Identification of compliance-related elements, including gaps and suitable forums to address them;

- (b) Design of a compliance system;
 - (c) Consequences of non-compliance;
 - (d) Other elements as identified in decision 8/CP.4 and in the progress of work.
3. Work programme.
4. Report on progress to the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI).
5. Other matters.

II. PROCEDURES AND MECHANISMS RELATING TO COMPLIANCE UNDER THE KYOTO PROTOCOL

(Agenda item 2)

Proceedings

4. The JWG had an initial exchange of views on procedures and mechanisms relating to compliance under the Kyoto Protocol, which will be further elaborated, taking into account all submissions from Parties.

Conclusions

5. The JWG discussed compliance-related elements in the Kyoto Protocol in light of substantive rules, procedures for addressing compliance and the consequences of non-compliance. Regarding substantive rules, it was felt that different types of obligations and rules need to be taken into account in designing a comprehensive compliance system. With respect to procedures, it identified Articles 8, 16, 18 and 19 of the Kyoto Protocol as providing elements for the procedures to address compliance issues, but additional procedures may be needed. It noted that further work is needed to design the consequences of non-compliance.

6. The JWG noted that its work is closely linked to that on Articles 5, 7 and 8 as well as the mechanisms in Articles 6, 12 and 17 of the Kyoto Protocol. The JWG needs to follow the development of this work and exchange information with the bodies or groups working on those issues. The Co-Chairs of the JWG could inform the other groups of its work at the joint meeting of the SBI and SBSTA, and address some common issues.

7. The JWG considered that the objectives of a compliance system, consistent with the objectives of the Kyoto Protocol, could be to facilitate compliance, prevent non-compliance or disputes from arising and promote compliance through cooperative means, such as providing advice to Parties. It was indicated that facilitative and enforcement measures could be applied in a balanced way. Views were expressed that the objective of a compliance system could be in line with the objective of the Convention and could as a first priority aim at ensuring that the emission reduction commitments are met by Annex B Parties. Views

were also expressed about the principle of common but differentiated responsibility as an element in the design and implementation of a compliance system under the Kyoto Protocol.

8. The characteristics of a compliance system were discussed. The range of views expressed included that the system could be strong, coherent, unified, comprehensive, fair and equitable, efficient, credible and transparent; be based on reasonable certainty and due process; and respond to different types of obligations. It was also pointed out that domestic compliance systems could be an efficient means of preventing non-compliance from arising at the international level.

9. With regard to institutional issues in the design of a compliance procedure under the Kyoto Protocol, a number of elements were mentioned, including:

- (a) Coverage and application;
- (b) How this procedure would be triggered;
- (c) Whether an ad hoc or standing body should be established;
- (d) Function and mandate;
- (e) Composition and expertise.

10. Different views were expressed as to whether the procedure could operate through one body or more than one body. Concerns were raised about combining the function of facilitation and adjudication in a single body. It was mentioned, for example, that the multilateral consultative process under the Convention, modified if necessary, could be applied to the Kyoto Protocol. Questions were raised concerning the conclusions of the body or bodies that may be established under the procedure, for example, whether such conclusions would be final or whether appeals would be allowed, and the relationship between a body set up under this procedure and the other bodies of the Kyoto Protocol.

11. The consequences of non-compliance were also addressed. It was pointed out that incentives and sanctions could be imposed in a graduated manner, proportionate to the nature of the obligation and seriousness of the breach, taking into account the cause, type, degree and frequency of non-compliance. It was mentioned that financial penalties resulting from non-compliance could be made available to meet costs of adaption. Views were also expressed that a degree of automatic linkage between certain types of non-compliance and binding consequences may need to be established.

III. WORK PROGRAMME

(Agenda item 3)

Conclusions

12. The JWG, having considered a proposal by its Co-Chairs, adopted the following work programme:

- (a) The work of the JWG during the eleventh session of the subsidiary bodies will be organized according to the agenda contained in paragraph 3 of this document, on the

understanding that additional items, if needed, could be taken up at any time in the future;

(b) The JWG invited Parties to make submissions to the secretariat in response to questions related to a compliance system contained in annex I to this document, by 1 August 1999, to be made available by the secretariat in a miscellaneous document. Parties may also wish to address additional issues raised in decision 8/CP.4 to the extent that those issues are not otherwise covered in their previous submissions;

(c) The JWG requested the Co-Chairs, supported by the secretariat, to produce a synthesis of all proposals by Parties to update the non-paper prepared by the secretariat for the consultation on 31 May 1999 and include elements related to a compliance system under the Protocol, for consideration by the JWG at its next meeting. The JWG noted that this document would be available as a late submission for its work during the eleventh session of the subsidiary bodies;

(d) An informal exchange of views and information will be organized early in October 1999 by the Co-Chairs of the JWG, with the assistance of the secretariat, based on the agenda contained in annex II to this document and guided by the views expressed by the Parties during the tenth sessions of the subsidiary bodies. The purpose will be an informal exchange of views and information, including an exchange of information related to experience in other conventions to help Parties obtain a better understanding of a compliance system needed under the Kyoto Protocol, bearing in mind that this workshop will not be a forum for negotiation. The Co-Chairs will make an informal factual report, with no recommendation, on this workshop to the JWG at the eleventh sessions of the subsidiary bodies. This workshop will be open to Parties and observers under rules 6 and 7 of the draft rules of procedure, as applied (see FCCC/CP/1996/2), taking into account the importance of participation of the developing country Parties. Such participation by the developing country Parties should be facilitated to the extent possible. The JWG urged all Parties in a position to do so to make voluntary contributions for this purpose.

(e) The JWG agreed that a workshop on matters related to a compliance system under the Kyoto Protocol is needed after COP 5 between the eleventh and twelfth sessions of the subsidiary bodies. The JWG noted that the secretariat would assess its capacity to carry out the activities requested in the light of the programme budget for 2000-2001 to be recommended by the SBI for approval by COP 5 and of the overall calendar of meetings and workshops.

IV. REPORT ON PROGRESS TO THE SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE AND THE SUBSIDIARY BODY FOR IMPLEMENTATION

(Agenda item 4)

13. The JWG considered and adopted the draft report on its work. The JWG requested the Co-Chairs, with the assistance of the secretariat to complete the report, taking into account the discussions of the JWG, as well as the need for editorial changes.

V. OTHER MATTERS
(Agenda item 5)

14. No other matters were raised by Parties under this agenda item.
15. The Co-Chairs, after thanking all participants for their constructive cooperation, declared the meetings of the JWG closed.

Annex I

**QUESTIONS RELATED TO A COMPLIANCE SYSTEM
UNDER THE KYOTO PROTOCOL**

General issues

1. What should be the objectives and nature of a compliance system?
2. What should be the principles that guide the development of the procedures and mechanisms to implement Article 18 of the Kyoto Protocol?
3. What types of issue should be addressed under this procedure?
4. How might this procedure differentiate between the timing and character of various commitments under the Protocol?
5. 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?
6. Is one integrated procedure sufficient or is more than one procedure needed? Is a separate procedure needed (or sub-procedure within a general procedure) for dealing with compliance elements of the mechanisms in Articles 6, 12 and 17?
7. What should be the relationship between this procedure and (a) the expert review process under Article 8 of the Protocol; (b) any procedures and institution established under Article 13 of the Convention; (c) the procedures under Article 19 of the Protocol?

8. The expert review teams contemplated in 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 Article 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 and 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?

Institutional issues

9. Who should be able to initiate a procedure for determining and addressing non-compliance with the Protocol?

10. From what sources may such an institutional arrangement seek, receive or consider information?

11. Should such an institutional arrangements be ad hoc or standing in nature?

12. If it is a standing body, how frequently should it be convened?

13. What should be the size and composition of such an institutional arrangement?

14. What expertise should be required of its members and in what capacity should they serve?

15. What rules of procedure should govern its operations? How could these best ensure due process, and the transparency of its operation?

Issues related to consequences of non-compliance

16. What role should the Protocol's other institutions play in (a) the determination of compliance; (b) the secretariat; (c) the subsidiary bodies; (d) the operating entity of the financial mechanism; (e) the executive board of the clean development mechanism; (f) the COP/MOP.
17. What types of non-compliance should be associated with specific consequences in advance?
18. Should the idea of "automatic" penalties be used? If so, in what cases?
19. 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.
20. What role should this procedure or institutional arrangement have in approving or reviewing the operation of any "automatic" non-compliance responses provided by the Protocol or agreed by the COP/MOP?
21. What should be the outcome of the compliance system?
22. 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?

Other issues

23. Any other issues related to a compliance system.

Annex II

Agenda for an informal exchange of views and information

1. Opening of the workshop.
2. Exchange of views and information related to relevant experience in other conventions.
3. Informal exchange of views on compliance.
4. Other matters.
5. Closing of workshop.
