
NEW PROPOSALS BY THE PRESIDENT OF COP 6

INTRODUCTION

The aim of resuming COP 6 in July 2001 is to complete work on a set of negotiating texts that address all issues covered by the Buenos Aires Plan of Action and to adopt a comprehensive and balanced package of decisions on these issues.

At the suspension of COP 6 last November, substantial advances had been made on all these negotiating texts, on the basis of the work of the subsidiary bodies and under the responsibility of their Chairmen. However, the consideration of the total package of political “crunch” issues contained in those texts was insufficient to permit agreement on the texts at that time.

It is my judgment as the President of COP 6, taking account of advice received, that the initial focus of resumed negotiations should continue to be on the package of political issues. Consensus on its components will open the way to the further consideration and adoption of the separate draft decisions on the table.

The purpose of this paper containing new proposals is to maintain the required political focus and to propose a balanced set of solutions to the selected “crunch” issues that can provide the basis for the development of revised negotiating text. These new proposals have been developed following in-depth consideration of the comments received from Parties on my informal note of 23 November 2000 and extensive bilateral consultations. For the sake of transparency, these proposals are presented as descriptions of the approaches to be followed rather than as formal decision text. The proposals are supplemented, in some cases, by explanations that appear in italics. Tables illustrating the implications of the LULUCF proposals are contained in the annex to this paper.

In preparation for the resumption of COP 6, I am seeking advice on the package of proposals, which should be evaluated as a whole. In the light of further advice received I intend in due course to reflect my proposals in a consolidated negotiating text, without brackets, that I would present for consideration by the Conference.

1. GOVERNANCE OF NEW BODIES

- ❑ Same 10-member composition for all new bodies to be established by COP or COP/MOP (i.e. CDM Executive Board, Adaptation Fund council, Compliance Committee facilitative branch, Compliance Committee enforcement branch, Intergovernmental consultative group of scientific and technical experts on technology transfer). Composition to be based on equal representation of the five UN regional groups, taking into account interest groups as reflected by the current practice of the UNFCCC bureau; and common but differentiated responsibilities and respective capabilities:
 - 1 member from each of the 5 UN regional groups, plus one member from AOSIS,
 - 2 members from Annex I Parties.
 - 2 members from non-Annex I Parties.
- ❑ Membership in bodies to be based on the principle of rotation.
- ❑ Decisions taken by consensus or, failing that, by three-quarters majority except in enforcement branch where a majority of Annex I Parties and a majority of non-Annex I Parties is also required.
- ❑ Guidance to be provided by COP or COP/MOP. Guidance to be of a general nature only, not for individual cases.
- ❑ All new bodies to be serviced by the UNFCCC secretariat, except the Adaptation Fund council which is to be serviced by the GEF secretariat.

A simple approach is suggested in which the composition of all new bodies is based on the same principles. The composition would normally result in 4 members from Annex I Parties and 6 members from non-Annex I Parties. In case of bodies to be established under the Kyoto Protocol that may be started up before entry-into-force, membership to be drawn from signatories to the Protocol.

A major consideration in relation to the composition of the enforcement branch is the fact that it has no discretionary power in determining the consequences of non-compliance with Article 3.1.

The proposal on decision making in the institutions gives priority to the achievement of consensus and, as a last resort, allows decisions to be adopted by a three-fourths majority. In the case of the enforcement branch, an exception has been made: decisions adopted by a three-fourths majority also require a majority of Annex I Parties and a majority of non-Annex I Parties. This exception is justified, because the mandate of the enforcement branch has been limited to commitments of Annex I Parties. In the absence of consensus, 8 votes would be required for a decision in all bodies. Additionally, in the enforcement branch, at least 3 Annex I Parties and 4 non-Annex I Parties would need to support any decision.

Composition of Expert Review Teams (ERTs) is not included in the formula above. ERTs will be constituted partly from experts selected on an ad hoc basis from the Roster of Experts and partly

from a standing group of experts. The composition will depend on the areas of special interest per document to be reviewed. Experts are expected to serve the review in their personal capacity. Composition of ERTs will be addressed in the context of the negotiations on Articles 5, 7 and 8.

2. FINANCE

Guidance

- COP to strengthen its continuing guidance to GEF.
- GEF to:
 - ensure that projects are responsive to national needs and priorities (“country driven”) and integrated in national programmes (“ownership”).
 - streamline procedures and policies, project cycle and delivery system.

On the basis of Article 11 of the Convention, the GEF functions under the guidance of the COP. The COP decides on policies, programme priorities and eligibility criteria related to the Convention.

Adaptation Fund

- To finance demonstration/pilot adaptation projects and programmes and concrete adaptation projects and programmes in developing country Parties.
- Adaptation projects and programmes, inter alia in the areas of water resources management, agriculture, health, infrastructure development, fragile ecosystems and integrated coastal management, to be eligible for the Adaptation Fund. Capacity-building for adaptation and measures regarding forest conservation, rehabilitation of degraded land and combating desertification, particularly in Africa, also to be eligible for adaptation funding. Centres and information networks for rapid response to extreme weather events to be strengthened or established, utilising information technology as much as possible.
- Funded from share of proceeds of CDM (2% of CERs generated) and contributions from Annex I Parties (the latter in particular during the start-up period).
- New trust fund within GEF managed by a separate council (see “1. Governance of new bodies” above), under the guidance of the COP/MOP.

It may be noted that projects on forest conservation, rehabilitation of degraded land and combating desertification are not eligible as CDM projects. Such projects will be eligible under the Adaptation Fund.

Special Climate Change Fund

- ❑ To finance activities, programmes and measures related to climate change, in the fields of technology transfer, capacity building, economic diversification, energy, transport, industry, agriculture, forestry and waste.
- ❑ These activities, programmes and measures to be additional and complementary to those funded by the resources allocated to the GEF climate change focal area and by multilateral and bilateral funding.
- ❑ Funded by contributions by Annex I Parties in the form of financial contributions and/or units of Assigned Amount.
- ❑ New trust fund within GEF managed by the GEF Council under guidance of the COP.

Least developed countries (LDCs)

- ❑ A separate work programme for LDCs to be established by the COP. The work programme to include national adaptation programmes of action and the establishment of an LDC group of experts to assist in these programmes.
- ❑ Activities in the work programme to be financed by GEF, in accordance with criteria to be developed.
- ❑ Exempt CDM projects in LDCs from share of proceeds for adaptation.

Resource levels

- ❑ Annex I Parties to contribute new and additional resources for climate change activities in non-Annex II Parties, on a grant or concessional basis.
- ❑ Total contributions to rise to a target of US\$ one billion per year as soon as possible and not later than 2005. As an indication, the amount to be used for adaptation to rise to approximately half the resources level, over a number of years.
- ❑ The contributions target to be based on Annex I Parties' relative share of CO₂ emissions in 1990.

- Financial flows entering into the calculation of this target to comprise:
 - Contributions to GEF that are allocated to the climate change focal area.
 - Contributions to the Special Climate Change Fund.
 - Contributions to the Adaptation Fund.
 - Bilateral and multilateral funding for climate change activities that is additional to current funding levels.
- Public funding for CDM projects and the CDM share of proceeds not to enter into the calculation of the target.
- Annex I Parties to report to the COP in their national communications on these financial flows. GEF to assist in identifying the share of its replenishments allocated to climate change activities.
- Based on advice from the Climate Resources Committee, COP to review the percentage allocated to the Adaptation Fund and total funding levels, taking into account resources generated by the CDM share of proceeds.
- COP to provide guidance on the allocation of funds to individual subject areas addressed by the Special Climate Change Fund and the GEF.
- Parties that fail to pay their share of the contributions target to be ineligible for seats in the new bodies.

New and additional funds are necessary for financing activities in non-Annex II Parties. Both the total resource level and the level of individual contributions should be determined. The proposal to link contributions to the share of emissions is designed to promote equity among Annex I Parties in the shares they contribute to the fixed sum. Some of the Annex I Parties both contribute and are eligible for activities to be funded.

Because of the specific nature of the CDM, public funding for CDM projects and the share of proceeds levied on the CDM cannot be entered into the calculation of the resource levels.

In order to avoid leakage of bilateral and multilateral funding, the US\$ one billion should be additional to current bilateral and multilateral financial flows.

Climate Resources Committee

- COP to recommend to the Secretary General of the United Nations, in the context of the preparations for the World Summit on Sustainable Development, the establishment of a high-level Climate Resources Committee.

- Tasks of the Climate Resources Committee include:
 - to develop criteria for the review of climate change contributions.
 - to monitor funding needs and availability.
 - to advise on the allocation of resources.
 - to determine whether the agreed targets for funding have been achieved.
 - to mobilise additional resources, as needed.
 - to develop policy conclusions for consideration by existing financial channels and institutions.

- Membership of the Committee to be limited, and to include the President of the COP; ministers or senior officials dealing with finance, development co-operation and environment; and top level representatives of multilateral banks and the private sector.

3. TRANSFER OF TECHNOLOGY

- To establish an intergovernmental consultative group of scientific and technical experts on technology transfer under SBSTA to address barriers to technology transfer, information needs and progress on technology transfer and to enhance the implementation of Article 4.5 of the Convention.

- Activities, programmes and measures to be funded by the Special Climate Change Fund and the GEF climate change focal area.

Reactions have been received that the above is too brief. However, it is my impression that the proposals above, together with the proposals on finance and response measures allows us to take decisions on all outstanding issues with regard to the transfer of technology.

4. IMPACTS OF RESPONSE MEASURES

- Under Article 3.14 of the Protocol, Annex I Parties to report on actions to minimise the adverse social, environmental and economic impacts on developing country Parties of their implementation of Article 3.1 of the Protocol, such as reducing or phasing out of subsidies for fossil fuel production.

- Under Article 4.8 of the Convention:
 - Annex I Parties to assist non-Annex I Parties by giving full consideration to the impact of response measures and in addressing this through transfer of technologies relating to fossil fuels that capture and store greenhouse gases, capacity building to improve the environmental efficiency of activities related to fossil fuels and economic diversification, based on methodological work.

 - Developing country Parties to report on their needs and concerns.

Response measures might have adverse, social, environmental and economic impacts on developing countries Parties. Therefore Annex I Parties should report on their efforts to minimise these effects. It may be noted that questions of implementation with respect to Article 3.14 of the Protocol fall within the mandate of the facilitative branch of the Compliance Committee.

Developing country Parties have to report on their needs and concerns in order to assess the need for further action. Assistance and concrete action by Annex I Parties should be based on methodological work as reflected in 12/CP.5. Economic diversification activities are eligible for funding under the Special Climate Change Fund.

5. LULUCF

Guiding principles for treatment of LULUCF activities under the Kyoto Protocol

1. Decisions based on sound science.
2. Reliable national system for LULUCF in place (i.e. the capacity to reliably estimate, report and verify emissions and removals from LULUCF).
3. Issuance of credits for LULUCF activities only after review of inventory by Expert Review Teams, pursuant Article 8, has been completed. If analysis of the Expert Review Team indicates a question of compliance, the matter is passed on to Compliance Committee.
4. Ensure time-series consistency and avoid double counting.
5. Accounting for LULUCF activities not to change the global effect of the Kyoto Protocol, which is to mitigate climate change in the first commitment period in a manner equivalent to reducing Annex I emission by sources and removals by sinks by at least 5% compared to 1990.
6. Continued accounting responsibility for lands brought under the accounting system of Article 3.3 and 3.4.
7. Exclude the mere presence of carbon stocks from accounting.
8. LULUCF activities to contribute to biodiversity conservation and sustainable use of natural resources.
9. Only account for direct human-induced effects, as a result of management activities after 1990.

10. Application of IPCC good practice guidance, which is to incorporate the above mentioned principles, for estimating and reporting of LULUCF.

A section on “guiding principles” has been added to help provide overall guidance on the treatment of LULUCF activities under the Kyoto Protocol. Agreement on principles will help facilitate agreement on the operational text below. The Group of 77 & China requested the insertion of a number of guiding principles, while the EU and Umbrella Group also brought forward principles. These sets of principles have been merged into the principles above, or have been addressed in operational paragraphs in the text below.

Article 3.4 of the Protocol

- Eligible activities: forest management, cropland management, grazing land management, and revegetation.
- Invite the IPCC to do further work on degradation and devegetation activities; SBSTA to consider methodologies to account for these activities in the first commitment period and COP 10 to decide on this issue.
- Parties which choose to make use of provisions of Article 3.4 during the first commitment period, to account in accordance with the provisions below:
 - *First tier.* Forest management credited 100% up to the level of the Article 3.3 debit, with a cap of 30 Mt CO₂ times five, if total managed forest since 1990 compensates for this debit.
 - *Second tier.* Forest management beyond first tier: – apply 85% discount
 - *Third tier.* Agricultural management (cropland management, grazing land management, and revegetation): apply “net-net” accounting compared to the base year level (i.e. carbon stock changes in the commitment period minus five times the carbon stock changes in the base year).
- Invite the IPCC to conduct methodological and scientific work, to be completed by the end of 2004, on practicable methodologies to factor out indirect and natural effects (such as those from CO₂ fertilisation and indirect nitrogen deposition) and effects due to past practices in forests (pre-reference year); SBSTA and COP to incorporate this methodological and scientific work into modalities, rules and guidelines for future commitment periods (to be decided as part of the 2nd commitment period negotiations).

Article 12 of the Kyoto Protocol

- Afforestation and reforestation to be the only eligible LULUCF project activities under the CDM during the first commitment period. Modalities for the inclusion of these project activities to be subject to a process under SBSTA considering the following issues related to these project activities: non-permanence, additionality, leakage, scale, uncertainties,

socio-economic and environmental impacts, including impacts on biodiversity and natural ecosystems. These modalities to be decided by COP 8. Treatment of LULUCF under the CDM in future commitment periods is to be decided as part of the 2nd commitment period negotiations. LULUCF activities implemented under Article 12 to be guided by principles 1, 5, 7, 8, and 9 above.

Article 6 of the Kyoto Protocol

- LULUCF projects to conform with definitions, accounting rules, modalities and guidelines for Article 3.3 and 3.4.

Boundary conditions for LULUCF accounting for the first Commitment Period.

- In addition to the modalities above, accounting for LULUCF activities in the first Commitment Period is bound by the condition below.
 - The sum total of:
 1. the second and third tier under Article 3.4; and
 2. ERUs resulting from LULUCF project activities under Article 6; and
 3. CERs resulting from LULUCF project activities under Article 12;
 - is not to exceed 50 % of a Party's emission reduction target, for Annex I Parties whose QELRC in Annex B is less than 100 (i.e. $0.5 \times ((100 - \text{QELRC})/100) \times \text{base year emissions} \times 5$);
 - is not to exceed 2,5 % of a Party's base year emission times five, for Annex I Parties whose QELRC in Annex B is equal to, or greater than, 100."

Eligible activities are those that have been widely discussed amongst Parties and which were included in the last negotiating text (FCCC/SBSTA/2000/CRP.11). Some Parties requested the addition of "degradation" and "devegetation" in order to account symmetrically for both sinks (e.g. revegetation) and sources (e.g. devegetation). However, operationalising "degradation" and "devegetation" would create problems, such as initial stock-taking and monitoring. Therefore, further methodological work through a SBSTA process, supported by the IPCC, is needed to address these issues.

The architecture of the accounting section on Article 3.4, including the boundary condition for LULUCF accounting in the first commitment period, aims to address the following five features:

- a) *Quality of sinks: i.e. meeting the requirements of Article 3.4 of the Protocol, such as "since 1990" and "human induced" (referring to the ninth guiding principle). This, in part, is the rationale for applying a discount factor in the second tier and applying "net-net" accounting in the third tier.*
- b) *Scientific basis: Implementing the requirements under a) is very challenging in the first commitment period, especially for forest management. More scientific and methodological work is needed. Therefore it is proposed to deal with these principles pragmatically during the first commitment period (through discounts), while at the same time establishing a process in*

order to elaborate on modalities for accounting in future commitment periods. The level of the discount-factor (85%) reflects a compromise between values brought forward by Parties, which range from 67% to 97%. The scientific uncertainties surrounding this issue lead to the choice of a discount value which inclines towards the higher end of this range.

- c) Quantity of sinks: Some Parties counted on a minimum of sink credit under Article 3.4. Other Parties prefer to limit the credits of Article 3.4 sinks in order to limit distortion of the Annex B burden sharing and to maintain focus on emissions reduction (achieve decoupling of economic growth and GHG emissions). This is the rationale for proposing a limitation on credits resulting from the second and third tier under Article 3.4 (boundary condition for accounting). Given the uncertainty and non-comparability of available data on LULUCF activities, this limitation is expressed as a percentage of the Party's base year emissions. The value of the cap reflects a compromise between the cap proposals brought forward by Parties, which range from 0,5% for the sum total of all activities to 4% for forest management only.
- d) Anomaly of Article 3.3: It is acknowledged that a decision to use the IPCC definitions under Article 3.3 will create a debit for some Annex I Parties, even though they have an overall increase in their forest carbon stock. This is the rationale for the first tier, which is exempt from the cap.
- e) Incentive Structure: It is important that the accounting system provides appropriate incentives for land managers. Full credit should be granted to activities in the commitment period which are additional, compared to their base year level. Therefore "net-net accounting" for the agricultural sinks is proposed, without discounting.

The "three-tiered" proposal for accounting of Article 3.4 LULUCF activities in the first commitment period seeks to strike a balance between the five considerations mentioned above (quality, scientific basis, quantity, Article 3.3 anomaly, incentive structure).

Views differ widely with regard to the possible inclusion of LULUCF activities in the CDM. It is not possible to decide on modalities for their inclusion without a thorough assessment in SBSTA of the related technical and methodological issues. At the same time, postponement of a decision on eligibility of LULUCF activities is regarded, by many, as a threat to early ratification. Therefore eligibility of only a limited set of project activities for the first commitment period (subject to the boundary condition for LULUCF accounting) is proposed, while at the same time establishing a clear agenda and deadline for consideration by SBSTA and decision-making by the COP on modalities for their inclusion. Projects aimed at "preventing deforestation" are not eligible as LULUCF project activities under the CDM. However, projects on forest conservation, rehabilitation of degraded land and combating desertification, although not eligible under the CDM in the first commitment period, are eligible for funding under the Adaptation Fund (see section 2 on Finance).

Under Article 6, conformity with the modalities under Articles 3.3 and 3.4 is necessary because Article 6 sinks projects should be part of inventories of Parties hosting Article 6 projects. This also prevents "credit laundering" of non-eligible LULUCF activities through Article 6.

In the Annex to this paper, illustrative data are presented. As explained in the Annex the data have limitations. However they indicate that the outcome of the "three tiered" proposal would

allow nearly all Parties, that have shown an interest in using Article 3.4 sinks in the first commitment period, to meet approximately half of their emission reduction commitment in this way. I am proposing this boundary condition in order to make the architecture outlined above effective without losing environmental credibility.

The “three tiered approach” does not respond to the demand for this option from interested Parties with very specific characteristics in their LULUCF sector in particular when their forests already cover a high proportion of the total land area. A limited and partial deviation from the proposed methodology could be formulated to address these specific circumstances.

The inclusion of some LULUCF activities under the CDM may also help to accommodate this issue .

6. MECHANISMS

Principles

- In their use of the mechanisms, Parties to be guided by Articles 2 and 3 of the Convention.

Supplementarity

- Policies and measures to be implemented and/or further elaborated in accordance with national circumstances and with a view to reducing inequalities in per capita emissions between developed and developing country Parties.
- Annex I Parties to meet their emission commitments chiefly through domestic action since 1990.
- Relevant information (qualitative and quantitative) to be provided under Article 7 of the Protocol, for review under Article 8.
- In addition, environmental integrity is achieved through sound modalities, rules and guidelines for the mechanisms, strict principles and rules governing sinks activities and a strong compliance regime.

It may be noted that questions of implementation with respect to supplementarity fall within the mandate of the facilitative branch of the Compliance Committee.

Eligibility

- ❑ Participation in the mechanisms, by Annex I Parties, is allowed dependent on compliance with methodological and reporting requirements under Articles 5.1, 5.2 , 7.1 and 7.4 of the Protocol.
- ❑ To be addressed by the Compliance Committee (enforcement branch). If within 16 months no decision is forthcoming on the report demonstrating that a Party meets the requirements, Parties are eligible to participate.
- ❑ Only Parties that have accepted the agreement on compliance supplementing the Kyoto Protocol to be entitled to use credits generated by the use of the mechanisms towards compliance.

This defines what the eligibility requirements are (methodological and reporting requirements under Articles 5 and 7) and provides for an automatic trigger in case a decision by the Compliance Committee is not taken in a timely manner. In order to stimulate Parties to become party to the agreement on compliance supplementing the Kyoto Protocol, only Parties that have accepted that agreement should be entitled to use the credits generated by the use of the mechanisms.

For participation in emissions trading and “joint implementation” (verification of reductions by meeting eligibility requirements) Parties should meet the eligibility requirements. For participation in the CDM and “joint implementation” (verification procedure), Parties should meet the eligibility requirement once they use the CERs and ERUs for meeting their commitments.

Issues related to Article 12 of the Protocol (CDM)

- ❑ Non-Annex I Party to judge whether project activity is in line with its national strategy and/or priorities on sustainable development.
- ❑ Annex I Parties to refrain from using nuclear facilities for generating CERs.
- ❑ Public funding from Annex I Parties for CDM projects not to result in diversion of ODA.
- ❑ Simplified procedures for small-scale projects. Small scale is, inter alia:
 - a renewable energy project with an output capacity equivalent of no more than 15 megawatts or;
 - an energy improvement project to reduce useful energy consumption by no more than the equivalent of 5 megawatts.
- ❑ Executive Board to review project categories and, if necessary, to recommend additional categories to the COP/MOP.

- Prompt start of CDM with election of Executive Board at COP 7.

A majority of Parties indicated that they wish to exclude nuclear from the CDM. Therefore the text as discussed during the final night of The Hague has been retained.

If public funds are used for financing of CDM projects, this should be additional to the financial obligations of Annex II Parties as well as to current official development assistance flows (ODA). (See also section A on resources)

There is agreement among Parties to give preferential treatment to small-scale projects. In order to operationalise this agreement, scale should be defined. The proposal can be seen as a first step. Because of technical innovation or for other reasons, the Executive Board could review and adjust the scale and eligible project categories, if necessary, for recommendation to the COP/MOP. The issue of sinks in the CDM is dealt with in section 5 on LULUCF.

Parties agree that there should be a prompt start of the CDM. In order to operationalise this the Executive Board should be elected as soon as possible. It is important for a successful implementation of the CDM that, in parallel with the prompt start, institutional and technical capacity building is ensured, especially for LDCs.

Issues related to Article 17 of the Protocol (emissions trading)

- The commitment period reserve to be retained in the national registry not to drop below:
 - 90% of a Party's assigned amount calculated pursuant to Article 3.7 and 3.8,
 - OR
 - five times its most recently reviewed inventorywhichever is lowest.

To prevent Parties from overselling in the context of emission trading Parties will be limited in transferring Units of Assigned Amount by holding a portion of the assigned amount in a commitment period reserve.

For net buyers, 90% of a Party's assigned amount calculated pursuant to Article 3.7 and 3.8 of the Protocol will be the lowest of the two options. This option enables them to devolve sufficient allowances to their legal entities for international transfer. In general, the second option will be the lowest for net sellers. They are allowed to transfer the portion of assigned amount they do not need to remain in compliance.

"Joint implementation" projects verified by the verification procedure should be additional and therefore do not count for the portion which should be retained.

Issues related to Article 6 of the Protocol (“joint implementation”)

- Verification of reductions from Article 6 projects by the host Party if it meets eligibility requirements (reporting requirements under Articles 5.1, 5.2, 7.1 and 7.4 and maintenance of a national registry system), otherwise through the independent verification procedure specified in the negotiating text.
- Annex I Parties to refrain from using nuclear facilities for generating ERUs.

Because the acquisition and transfer of emission reduction units will not affect the overall Annex I target, verification could be limited to meeting the eligibility requirements as used for emission trading. If a transferring Party is not in compliance with the reporting requirements, verification of projects should follow a similar procedure (within JI context) as provided for by the CDM.

Issues related to Article 4 and the mechanisms

- Provisions on the use of the mechanisms should apply individually to the Parties acting under Article 4. The respective assigned amount, in accordance with Article 3.7, is equal to the respective emission levels as set out in the agreement referred to in Article 4.1.

Article 4 is different from the Kyoto mechanisms. If Parties acting under this Article participate in the mechanisms, the rules for the mechanisms should apply individually. If the Regional Economic Integration Organisation (REIO) is acting as a Party and participating in the mechanisms, the rules also apply to the REIO as a whole.

Use of CERs, ERUs and AAUs for compliance with Article 3.1

- Certified Emission Reductions (CERs), Emission Reduction Units (ERUs) and Units of Assigned Amount (AAUs) (under Articles 12, 6 and 17, respectively, of the Protocol) may be used to meet commitments under Article 3.1. CERs may also be banked towards meeting commitments in the second commitment period.
- CERs, ERUs and AAUs can be added and subtracted from the assigned amount without altering the quantified emission limitation or reduction commitments as inscribed in Annex B to the Protocol.

This formulation recognises that the Kyoto Protocol has not created or bestowed - on Parties included in Annex I to the Convention and in Annex B to the Protocol - any right, title or entitlement to emissions of any kind in the pursuance of Articles 3, 6, 12 or 17 of the Kyoto Protocol which affect the consideration of or decision making on subsequent commitments.

Concerns by some Parties regarding excessive banking of CERs into the second commitment period may be appropriately dealt with in the negotiations on commitments for that period.

Discussions on the second commitment period should start not later than 2005 and be concluded by 2008.

7. COMPLIANCE

Mandates and roles

- ❑ Enforcement branch to cover commitments under Articles 3.1, 5.1, 5.2, 7.1 and 7.4 and eligibility requirements under Articles 6, 12 and 17 of the Protocol.
- ❑ Facilitative branch to cover all other commitments and consider the differentiated character of commitments.
- ❑ Flexibility to economies in transition to be allowed by COP/MOP in accordance with Article 3.6 of the Protocol, taking into account Article 4.6 of the Convention.
- ❑ No procedure for appeals.

The mandate of the enforcement branch has been limited to commitments that are incumbent on Parties included in Annex I. The mandate of the enforcement branch does not cover Article 2, the remaining part of Article 3 and Articles 10 and 11, because the degree of discretion left to Parties by these Articles is likely to stand in the way of a determination of non-compliance by the enforcement branch. These cases will be dealt with by the facilitative branch. Even in the absence of a determination of non-compliance, the facilitative branch may, for example, provide advice, facilitate assistance and make recommendations, to promote compliance with these Articles.

The explicit reference to the differentiated character of commitments, which includes common but differentiated responsibilities and respective capabilities, allows for a differentiated treatment of Parties and cases by the facilitative branch.

The proposal does not provide for an appeals procedure. Such a procedure would cause significant delays in an already lengthy compliance procedure. The current negotiating text provides for adequate procedural safeguards to secure due process.

Reports of the expert review teams will be sent to the Compliance Committee and the COP/MOP for assessment. The Compliance Committee is to report to the COP/MOP on the actions it has taken.

Consequences of non-compliance to be applied by the enforcement branch

- For Article 3.1 (quantitative emission commitments):
When a Party's emissions exceed its quantified emission limitation and reduction commitment for the relevant commitment period (no discretion), for the purposes of determining compliance, the provisions of Article 3, paragraphs 3, 4, 10, 11 and 12, will be taken into account.
 - Deduction from its assigned amount of the subsequent commitment period of a number of tonnes of allowable emissions equal to:
 - 1.1 times the tonnes of excess emissions if the Party has exceeded its assigned amount by less than 1%;
 - 1.5 times the tonnes of excess emissions if the Party has exceeded its assigned amount by 1% or more, but by less than 8%;
 - 2.0 times the tonnes of excess emissions if the Party has exceeded its assigned amount by 8% or more.
 - Suspension of eligibility to transfer tonnes until the Party has demonstrated to the satisfaction of the enforcement branch that it has a surplus.
 - Requirement to submit a compliance action plan, with priority to domestic action, for review and assessment.

- For Articles 5.1, 5.2, 7.1 and 7.4 (methodological and reporting requirements):
 - Requirement to submit for review and assessment a plan to meet commitments; enforcement branch to take into account the cause, type degree and frequency of non-compliance.

- For Articles 6, 12 and 17 (based on eligibility requirements):
 - Suspension of eligibility to transfer and acquire tonnes until the Party has demonstrated to the satisfaction of the enforcement branch that it meets the methodological and reporting requirements under Articles 5.1, 5.2, 7.1 and 7.4.

- Commitments for Annex I Parties for second commitment period to be adopted before 2008.

Rates are an essential element of the compliance system. Although they will partly serve as an interest rate for the delays in the achievement of emission reductions, they should also be an incentive to comply and should, therefore, be set at a relatively high level. A higher rate has been proposed for serious cases of non-compliance, a lower rate for cases that may result from miscalculations, and a middle rate for other cases. There are six variables that have to be agreed upon, namely the lower rate, the middle rate, the higher rate and the intervals for each of these three rates.

In the case of non-compliance with Article 3.1, the suspension of eligibility of an Annex I Party has been limited to the transfer of tonnes to enable Annex I Parties to acquire tonnes by the use of the mechanisms in order to return to the allowed level of emissions as soon as possible. As in the case of suspension of eligibility because of non-fulfilment of relevant eligibility requirements

under Articles 6, 12 and 17, an Annex I Party is to be reinstated in its eligibility to transfer tonnes if it has demonstrated to the satisfaction of the enforcement branch that it meets the relevant eligibility requirements.

The compliance action plan has not been made subject to approval by the enforcement branch to respect the sovereignty of Parties. The plan is to be assessed and reviewed by the enforcement branch, which may make recommendations to the Party concerned and will monitor the implementation of the plan by that Party. In the compliance action plan, the Party concerned is to give priority to domestic action, because otherwise meeting the target in the second commitment period and subsequent commitment periods will become even more difficult.

There is agreement on the development of a plan setting out how the Party concerned proposes to meet its methodological and reporting requirements under Articles 5.1, 5.2, 7.1 and 7.4. Furthermore, non-fulfilment of these requirements will lead to the suspension of eligibility for participation in the mechanisms. In addition, such non-fulfilment may have an impact on the determination of non-compliance with Article 3.1.

To ensure that any deductions of excess emissions from the assigned amount of the second commitment period will not become part of the negotiations on the second commitment period targets, the negotiations on such targets for Parties included in Annex I should be concluded before 1 January 2008. If the second commitment period targets were adopted after 1 January 2008, Parties may anticipate their being in non-compliance at the end of the first commitment period and pursue lower targets for the second commitment period.

Basis of adoption

- Adoption of a formal agreement supplementing the Kyoto Protocol.

Important considerations for the choice of the basis of adoption are (a) the timely entry into force of the compliance system and (b) the desire that all Annex I Parties that become a party to the Kyoto Protocol also become a party to the compliance system. In order to enable States to fulfil domestic requirements for early ratification of the supplementary agreement on compliance, the compliance system should be adopted at COP 6.

In order to secure that all Annex I Parties that become a Party to the Kyoto Protocol also become party to the compliance system, the amendment to the Kyoto Protocol establishing the second commitment period could be used. This amendment could provide that these Parties can only participate in the second commitment period if they are a party to the supplementary agreement on compliance. It should be noted that this legal safeguard will not work in the first commitment period, but only in subsequent commitment periods. In the first commitment period, all Parties should be encouraged by political means to become a party to the supplementary agreement on compliance.

The supplementary agreement on compliance could take the form of a protocol to the Convention. The secretariat and the President will consult with legal experts, including the UN Office of Legal Affairs. Text on modalities for the adoption of this agreement to be based on FCCC/CP/2000/5/Add.3 [Vol. IV] and to be circulated to parties in time for its adoption at COP 6 (part 2). Parties should come to COP 6 (part 2) with full powers to adopt the agreement.

Annex

Illustrative data on LULUCF proposal

In this Annex, data are presented on the implications of the proposed accounting approach for LULUCF activities under Articles 3.3 and 3.4. The Annex is attached for *illustrative purposes only*, and is based on best available data.

Table 1 illustrates the outcome of my proposal, using data submitted by Parties on 1 August 2000. However, these data have several shortcomings. The data provided by Parties are not fully comparable. Parties used different methodologies, assumptions and definitions, and carbon uptake rates differ per geographic location, per forest type, and per management regime. Furthermore, the data are not complete. Parties which provided data did not always provide data on the full set of Article 3.4 activities. Many Parties didn't provide any data at all.

To overcome some of the shortcomings of the above mentioned data set, table 2 illustrates an alternative, using a different data set of the United Nations Food and Agriculture Organisation for forest management in the second tier (Temperate and Boreal Forest Resources Assessment, 2000). Estimates using these FAO data are not based on projections but rather on current forest areas under management and on current uptake rates.

Table 3 presents a summary table, incorporating both data-sets, for easier reference.

Specific assumptions are indicated in the footnotes. I have requested the Secretariat to make available additional information on assumptions and data sources.

Table 1Estimates of emissions by sources and removals by sinks under Article 3.3 and 3.4 based on submissions made by Parties 01 August 2000^a

	base year	Art 3.3 credit (+) or debit (-)	Art.3.4 Forest Management (FM)	Art. 3.4 FM (after Art.3.3 debit compensation, apply 85% discount)	Art. 3.4 Agricultural Management (net-net)	QELRC ANNEX B	Boundary condition (cap)	Sum 2nd and 3rd tier (Art.3.4)	Cap applied to sum of 2nd and 3rd tier (Art.3.4)	% of cap filled through Art.3.4	Total Art. 3.3 + 3.4			
	Mt C/yr	Mt C/yr	Mt C/yr	Mt C/yr	Mt C/yr	base year=100	% base year	Mt C/yr	Mt C/yr	Mt C/yr	% base year	%	Mt C/yr	% base year
Australia ^b	134.54	0.00			2.18	108	2.5%	3.36	2.18	2.18	1.6%	64.8%	2.18	1.6%
Austria	21.04	-0.20				92	4.0%	0.84	0.00	0.00	0.0%	0.0%	-0.03	-0.1%
Belgium	37.24					92	4.0%	1.49						
Bulgaria	42.84					92	4.0%	1.71						
Canada	166.17	-4.30	9.11	0.72	5.00	94	3.0%	4.99	5.72	4.99	3.0%	100.0%	4.99	3.0%
Czech Republic	51.74					92	4.0%	2.07						
Denmark	19.08	0.09		0.00		92	4.0%	0.76	0.00	0.00	0.0%	0.0%	0.09	0.5%
Estonia	11.10					92	4.0%	0.44						
Finland	20.51	-0.36	2.20	0.28		92	4.0%	0.82	0.28	0.28	1.3%	33.7%	0.28	1.3%
France	148.96	-0.62	2.59	0.30		92	4.0%	5.96	0.30	0.30	0.2%	5.0%	0.30	0.2%
Germany	330.28	-0.21	8.60	1.26		92	4.0%	13.21	1.26	1.26	0.4%	9.5%	1.26	0.4%
Greece	29.28					92	4.0%	1.17						
Hungary	27.72					94	3.0%	0.83						
Iceland	0.70	0.02		0.00	0.04	110	2.5%	0.02	0.04	0.02	2.5%	100.0%	0.04	5.9%
Ireland	14.59	0.91		0.00		92	4.0%	0.58	0.00	0.00	0.0%	0.0%	0.91	6.3%
Italy	141.64	0.47				92	4.0%	5.67					0.47	0.3%
Japan	334.78	-1.02	9.79	1.32		94	3.0%	10.04	1.32	1.32	0.4%	13.1%	1.32	0.4%
Latvia	9.73					92	4.0%	0.39						
Liechtenstein	0.07					92	4.0%	0.00						
Lithuania	14.06					92	4.0%	0.56						
Luxembourg	3.66					92	4.0%	0.15						
Monaco	0.03					92	4.0%	0.00						
Netherlands	59.77	0.00	0.03	0.00	0.20	92	4.0%	2.39	0.20	0.20	0.3%	8.6%	0.21	0.3%
New Zealand	19.90	7.64		0.00		100	2.5%	0.50	0.00	0.00	0.0%	0.0%	7.64	38.4%
Norway	14.22	0.02	0.15	0.02		101	2.5%	0.36	0.02	0.02	0.2%	6.3%	0.04	0.3%
Poland	153.89					94	3.0%	4.62						
Portugal	17.12					92	4.0%	0.68						
Romania	72.24					92	4.0%	2.89						

Russian Federation	826.56		117.50 ^c	17.63		100	2.5%	20.66	17.63	17.63	2.1%	85.3%	17.63	2.1%
Slovakia	20.79					92	4.0%	0.83						
Slovenia	5.24					92	4.0%	0.21						
Spain	84.13					92	4.0%	3.37						
Sweden	19.25	-0.09	4.50	0.66		92	4.0%	0.77	0.66	0.66	3.4%	85.9%	0.66	3.4%
Switzerland	14.46	-0.02		0.00	0.01	92	4.0%	0.58	0.01	0.01	0.1%	1.4%	0.01	0.1%
Ukraine	250.70					100	2.5%	6.27						
United Kingdom	208.84	0.56	2.45	0.37		92	4.0%	8.35	0.37	0.37	0.2%	4.4%	0.93	0.4%
United States of America	1,655.38	-7.20	288.40	42.18	10.2	93	3.5%	57.94	52.38	52.38	3.2%	90.4%	52.38	3.2%
European Union Total	1,155.39	0.56 ^d	18.17 ^e	2.73	0.20 ^f	92	4.0%	46.22	18.37	18.37	1.6%	39.7%	18.93	1.6%

^a The results presented here are for Parties that provided data in their 1 Aug submissions. Most Parties did not provide data for all activities (Art 3.3, forest management, agricultural management, etc.).

Data are not fully comparable because Parties use different definitions, give data for different non-CO₂ greenhouse gases and carbon pools and use different reference years, methodologies and assumptions.

^b Australia did provide data on deforestation. Australia's submission, however, states that it is expected that Australia's emissions from the land-use change and forestry sector in 1990 would constitute a net source and therefore, Art.3.7 would operate in conjunction with Art.3.3. The debit under Art.3.3 has therefore, been set at zero. The table does not provide data on Art. 3.7.

^c Source: "Full carbon account for Russia", Nilsson et al., August 22, 2000, IIASA (the Russian Federation did not submit data on forest management).

^d based on data from 10 EU member states

^e based on data from 6 EU member states

^f based on data from 1 EU member state

Table 2**Estimates of emissions by sources and removals by sinks under Article 3.3 and 3.4 based on FAO data^a in the second tier (forest management) only**

	base year	Art 3.3 credit (+) or debit (-)	Art.3.4 Forest Management (FM) ^b	Art. 3.4 FM (after Art.3.3 debit compensation, apply 85% discount)	Art. 3.4 Agricultural Management (net-net)	QELRC ANNEX B	Boundary condition (cap)		Sum 2nd and 3rd tier (Art.3.4)	Cap applied to sum of 2nd and 3rd tier (Art.3.4)	% of cap filled through Art.3.4	Total Art.3.3 + 3.4		
	Mt C/yr	Mt C/yr	Mt C/yr	Mt C/yr	Mt C/yr	base year=100	% base year	Mt C/yr	Mt C/yr	Mt C/yr	% base year	%	Mt C/yr	% base year
Australia^c	134.54	0.00	40.49	6.07	2.18	108	2.5%	3.36	8.26	3.36	2.5%	100.0%	3.36	2.5%
Austria	21.04	-0.20	5.14	0.74		92	4.0%	0.84	0.74	0.74	3.5%	88.0%	0.74	3.5%
Belgium	37.24		0.22	0.03		92	4.0%	1.49	0.03	0.03	0.1%	2.2%	0.03	0.1%
Bulgaria	42.84		2.44	0.37		92	4.0%	1.71	0.37	0.37	0.9%	21.4%	0.37	0.9%
Canada	166.17	-4.30	49.43	6.77	5.00	94	3.0%	4.99	11.77	4.99	3.0%	100.0%	4.99	3.0%
Czech Republic	51.74		2.13	0.32		92	4.0%	2.07	0.32	0.32	0.6%	15.4%	0.32	0.6%
Denmark	19.08	0.09	0.31	0.05		92	4.0%	0.76	0.05	0.05	0.2%	6.0%	0.14	0.7%
Estonia	11.10		0.64	0.10		92	4.0%	0.44	0.10	0.10	0.9%	21.7%	0.10	0.9%
Finland	20.51	-0.36	5.65	0.79		92	4.0%	0.82	0.79	0.79	3.9%	96.8%	0.79	3.9%
France	148.96	-0.62	8.95	1.25		92	4.0%	5.96	1.25	1.25	0.8%	21.0%	1.25	0.8%
Germany	330.28	-0.21	14.07	2.08		92	4.0%	13.21	2.08	2.08	0.6%	15.7%	2.08	0.6%
Greece	29.28		0.23	0.03		92	4.0%	1.17	0.03	0.03	0.1%	2.9%	0.03	0.1%
Hungary	27.72		1.92	0.29		94	3.0%	0.83	0.29	0.29	1.0%	34.6%	0.29	1.0%
Iceland	0.70	0.02	0.00	0.00	0.04	110	2.5%	0.02	0.04	0.02	2.5%	100.0%	0.04	5.9%
Ireland	14.59	0.91	0.32	0.05		92	4.0%	0.58	0.05	0.05	0.3%	8.2%	0.05	0.3%
Italy	141.64	0.47	0.71	0.11		92	4.0%	5.67	0.11	0.11	0.1%	1.9%	0.58	0.4%
Japan	334.78	-1.02	13.58	1.88		94	3.0%	10.04	1.88	1.88	0.6%	18.8%	1.88	0.6%
Latvia	9.73		2.52	0.38		92	4.0%	0.39	0.38	0.38	3.9%	97.0%	0.38	3.9%
Liechtenstein	0.07					92	4.0%							
Lithuania	14.06		1.88	0.28		92	4.0%	0.56	0.28	0.28	2.0%	50.1%	0.28	2.0%
Luxembourg	3.66		0.01	0.00		92	4.0%	0.15	0.00	0.00	0.0%	1.0%	0.00	0.0%
Monaco	0.03					92	4.0%							
Netherlands	59.77	0.00	0.40	0.06	0.20	92	4.0%	2.39	0.26	0.26	0.4%	10.9%	0.26	0.4%
New Zealand	19.90	7.64	3.67	0.55		100	2.5%	0.50	0.55	0.50	2.5%	100.0%	8.13	40.9%
Norway	14.22	0.02	3.53	0.53		101	2.5%	0.36	0.53	0.36	2.5%	100.0%	0.37	2.6%
Poland	153.89		5.45	0.82		94	3.0%	4.62	0.82	0.82	0.5%	17.7%	0.82	0.5%
Portugal	17.12		0.51	0.08		92	4.0%	0.68	0.08	0.08	0.4%	11.1%	0.08	0.4%
Romania	72.24		7.35	1.10		92	4.0%	2.89	1.10	1.10	1.5%	38.1%	1.10	1.5%
Russian Federation	826.56		425.54	63.83		100	2.5%	20.66	63.83	20.66	2.5%	100.0%	20.66	2.5%

Slovakia	20.79		3.36	0.50		92	4.0%	0.83	0.50	0.50	2.4%	60.6%	0.50	2.4%
Slovenia	5.24		1.78	0.27		92	4.0%	0.21	0.27	0.21	4.0%	100.0%	0.21	4.0%
Spain	84.13		3.00	0.45		92	4.0%	3.37	0.45	0.45	0.5%	13.4%	0.45	0.5%
Sweden	19.25	-0.09	10.89	1.62		92	4.0%	0.77	1.62	0.77	4.0%	100.0%	0.77	4.0%
Switzerland	14.46	-0.02	0.66	0.10	0.01	92	4.0%	0.58	0.11	0.11	0.7%	18.4%	0.11	0.7%
Ukraine	250.70		7.41	1.11		100	2.5%	6.27	1.11	1.11	0.4%	17.7%	1.11	0.4%
United Kingdom	208.84	0.56	1.67	0.25		92	4.0%	8.35	0.25	0.25	0.1%	3.0%	0.81	0.4%
United States of America	1,655.38	-7.20	101.18	14.10	10.20	93	3.5%	57.94	24.30	24.30	1.5%	41.9%	24.30	1.5%
European Union Total	1,155.39	0.56	52.08	7.59	0.20	92	4.0%	46.22	7.79	6.94	0.6%	15.0%	8.15	0.7%

^a Source: TBFRA - 2000 (UN-ECE/FAO). ESTIMATES NOT BASED ON PROJECTIONS.

^b FAO definitions that were used are 'forest' and 'other wooded lands' (appendix I – TBFRA-2000 terms and definitions, page 386 + 391).

Value for 'forest and other wooded land' taken from Annex 3.B2, page 167.

Percentage of Area under management: Table 10, page 108.

Rate of change in the C store of woody biomass: Annex 3.B3 page 169.

^c Australia did provide data on deforestation. Australia's submission, however, states that it is expected that Australia's emissions from the land-use change and forestry sector in 1990 would constitute a net source and therefore, Art.3.7 would operate in conjunction with Art.3.3. The debit under Art.3.3 has therefore, been set at zero. The table does not provide data on Art. 3.7.

Table 3: Summary

				1 August submissions		FAO data		Maximum values	
	base year	QELRC ANNEX B	Boundary condition (cap)	% of cap filled through Art.3.4	Cap applied to sum of 2nd and 3rd tier	% of cap filled through Art.3.4	Cap applied to sum of 2nd and 3rd tier	% of cap filled through Art.3.4	Cap applied to sum of 2nd and 3rd tier
	Mt C/yr	base year=100	% base year	%	% of base year	%	% of base year	%	% of base year
Australia	134.54	108	2.5%	64.8%	1.6%	100.0%	2.5%	100.0%	2.5%
Austria	21.04	92	4.0%	0.0%	0.0%	88.0%	3.5%	88.0%	3.5%
Belgium	37.24	92	4.0%			2.2%	0.1%	2.2%	0.1%
Bulgaria	42.84	92	4.0%			21.4%	0.9%	21.4%	0.9%
Canada	166.17	94	3.0%	100.0%	3.0%	100.0%	3.0%	100.0%	3.0%
Czech Republic	51.74	92	4.0%			15.4%	0.6%	15.4%	0.6%
Denmark	19.08	92	4.0%	0.0%	0.0%	6.0%	0.2%	6.0%	0.2%
Estonia	11.10	92	4.0%			21.7%	0.9%	21.7%	0.9%
Finland	20.51	92	4.0%	33.7%	1.3%	96.8%	3.9%	96.8%	3.9%
France	148.96	92	4.0%	5.0%	0.2%	21.0%	0.8%	21.0%	0.8%
Germany	330.28	92	4.0%	9.5%	0.4%	15.7%	0.6%	15.7%	0.6%
Greece	29.28	92	4.0%			2.9%	0.1%	2.9%	0.1%
Hungary	27.72	94	3.0%			34.6%	1.0%	34.6%	1.0%
Iceland	0.70	110	2.5%	100.0%	2.5%	100.0%	2.5%	100.0%	2.5%
Ireland	14.59	92	4.0%	0.0%	0.0%	8.2%	0.3%	8.2%	0.3%
Italy	141.64	92	4.0%			1.9%	0.1%	1.9%	0.1%
Japan	334.78	94	3.0%	13.1%	0.4%	18.8%	0.6%	18.8%	0.6%
Latvia	9.73	92	4.0%			97.0%	3.9%	97.0%	3.9%
Liechtenstein	0.07	92	4.0%						
Lithuania	14.06	92	4.0%			50.1%	2.0%	50.1%	2.0%
Luxembourg	3.66	92	4.0%			1.0%	0.0%	1.0%	0.0%
Monaco	0.03	92	4.0%						
Netherlands	59.77	92	4.0%	8.6%	0.3%	10.9%	0.4%	10.9%	0.4%
New Zealand	19.90	100	2.5%	0.0%	0.0%	100.0%	2.5%	100.0%	2.5%
Norway	14.22	101	2.5%	6.3%	0.2%	100.0%	2.5%	100.0%	2.5%
Poland	153.89	94	3.0%			17.7%	0.5%	17.7%	0.5%
Portugal	17.12	92	4.0%			11.1%	0.4%	11.1%	0.4%
Romania	72.24	92	4.0%			38.1%	1.5%	38.1%	1.5%
Russian Federation	826.56	100	2.5%	85.3%	2.1%	100.0%	2.5%	100.0%	2.5%
Slovakia	20.79	92	4.0%			60.6%	2.4%	60.6%	2.4%
Slovenia	5.24	92	4.0%			100.0%	4.0%	100.0%	4.0%
Spain	84.13	92	4.0%			13.4%	0.5%	13.4%	0.5%
Sweden	19.25	92	4.0%	85.9%	3.4%	100.0%	4.0%	100.0%	4.0%
Switzerland	14.46	92	4.0%	1.4%	0.1%	18.4%	0.7%	18.4%	0.7%
Ukraine	250.70	100	2.5%			17.7%	0.4%	17.7%	0.4%
United Kingdom	208.84	92	4.0%	4.4%	0.2%	3.0%	0.1%	4.4%	0.2%
United States of America	1,655.38	93	3.5%	90.4%	3.2%	41.9%	1.5%	90.4%	3.2%
European Union Total	1,155.39	92	4%	39.7%	1.6%	15%	0.6%	39.7%	1.6%