



## NEW ZEALAND

### Submission to the Ad Hoc Working Group on the Durban Platform for Enhanced Action

#### *Work Stream 1*

March 2014

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#### **Context**

This submission responds to the invitation from the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) at the third part of its second session held in Warsaw from 11 to 22 November 2013, to make submissions on the work of the ADP (FCCC/ADP/2012/3 paragraph 22). The submission builds on, and should be read alongside, New Zealand's previous submissions to the ADP Work Stream 1 (March 2012, March 2013 and September 2013).

#### **Summary**

- A commitment by all Parties to a nationally determined commitment, MRV and an agreed 'direction of travel' must be central to the elements of the draft negotiating text to be considered at Lima. Alongside these elements we need anchors (i) for rules and guidelines, to be further developed if necessary by the Parties and (ii) to support existing structures and processes already in place under the Convention;
- The ex-ante information provided with a Party's contribution must make clear the type, coverage and quantified impact of the proposed contribution and indicate any underpinning assumptions about rules and mechanisms;
- The consultative period must allow Parties to attain clarity about rules and others' intentions before locking in final commitments;
- The ADP must commence work on developing a rules framework and should build bounded flexibility into those rules where appropriate.

#### **Introduction**

2 New Zealand believes that the success of the effective new legal agreement will lie in all Parties committing to take meaningful action to minimise human-induced climate change and to manage its impacts. It is self-evident that the diversity of Parties' national circumstances, their economies and emission profiles, will need to be accommodated in both the substance and form of the new agreement. A hybrid agreement combining nationally determined commitments and internationally binding rules offers an efficient and effective way to ensure all Parties can make commitments consistent with their circumstances. If commitments are self-determined within a rule set that is sufficiently flexibility to deal with

national circumstances this will greatly facilitate participation and support sustainable development.

3 To build this hybrid agreement we will need to progress in an iterative manner. We must allow Parties (i) to design the nationally determined commitments they are best placed to deliver within the rule-set to be agreed and (ii) to take into account the commitments proposed by others. Parties took an important first step in this direction at Warsaw, in agreeing to develop and bring back nationally determined contributions.

4 In this submission New Zealand sets out views on:

- the elements of a draft negotiating text which the ADP will consider at the Lima COP;
- the nature of the ex-ante information that will be useful in bringing forward Parties' contributions;
- the consultative process; and
- a rules framework to underpin the 2015 agreement.

### **The elements of the draft negotiating text**

5 New Zealand sees the 2015 outcome as a package. This package is likely to be made up of a concise, legally binding agreement supported by COP decisions, and a national schedule for each Party. Each schedule will be supplementary to the legally binding agreement and will detail the Party's nationally determined commitment. This arrangement will be "applicable to all", consistent with the Durban mandate for Parties' obligations to have the same legal force.

6 In creating an ambitious, effective and durable agreement we must be pragmatic in determining **where and how** different elements fit. The legally binding agreement must focus on those aspects that can stand the test of time. This will minimise the legal and political hurdles to an effective regime and ensure that the more dynamic elements of the agreement can be updated when required. New Zealand sees mitigation as the central, though not the sole, element of the legally binding agreement. However, we fully expect it to contain anchors for other elements of the package. These can be developed separately by the Parties and agreed by way of COP decision. For example, an entitlement to use markets to meet obligations might be confirmed by the agreement, but rules and standards to prevent double-counting of emission reductions, could, if necessary, be agreed later by the COP.

7 Greater certainty about legal obligations is achieved from a simple agreement – a catalogue of rights and obligations binding on all Parties. From New Zealand's perspective, there may be disadvantages in going beyond the essential components. The more text we need to agree on, the harder agreement will be to reach.

8 New Zealand anticipates the legally binding agreement will set the broad parameters for nationally determined commitments (the default settings) while allowing Parties to opt out of one or more of these parameters within limits. The elements we see as central to the agreement are:

- a. broad parameters for mitigation commitments (i.e. the default settings) and a provision allowing Parties to opt out of one or more of these parameters (within agreed limits);
- b. an obligation to apply an agreed universal MRV framework;
- c. an obligation on each Party to increase the ambition of its commitment over time, and - where a Party has opted out of any of the broad parameters agreed for nationally determined commitments - to align with these parameters as national circumstances allow;
- d. confirmation of an optional right to use carbon markets;
- e. confirmation of an optional right to use net land sector removals to help meet mitigation commitments;
- f. a common obligation to apply agreed accounting rules to national, sectoral or sub-sectoral targets and carbon market activity as required to ensure environmental integrity and effectiveness; and
- g. provisions confirming the importance of adaptation, finance, technology transfer and capacity building and establishing the relationship with existing institutions and mechanisms.

9 New Zealand has proposed that nationally determined commitments should sit in national schedules supplementary to, and outside the legally binding agreement. We think this will be effective, because it provides Parties greater flexibility to make ambitious commitments and raise ambition over time. We also think it appropriate because a Party's commitment will be nationally, not internationally, determined and implemented. Moreover, proposed contributions will specify dates and numbers that are likely to require amendment over time as ambition is ramped up. Including these details in the legally binding agreement would require international agreement to effect any subsequent change. This may bring with it a need to renegotiate and re-ratify the agreement every few years, and uncertainty while those negotiations proceed. This is impractical and will compromise the effectiveness and the durability of the agreement.

10 We agreed at Doha that the new agreement will sit under the Convention. Logically, we should not duplicate the rights and obligations created under the Convention. We should include such elements as necessary to give support to the structures and processes we already have in place under the Convention, including those dealing with adaptation, finance, technology and capacity building.

11 Given that adaptation is by its nature a country-driven process, New Zealand suggests that the agreement should focus on enabling practical and effective adaptation actions. The new agreement should reflect the importance of adaptation and encourage Parties to take responsibility for their national adaptation planning, to share their experiences and to cooperate in becoming more resilient.

**At its March meeting the ADP should identify the principles that will help determine the elements needed within the legally binding agreement to be ratified by all Parties.**

## Submission of contributions

12 It is clear that Parties' proposed post-2020 contributions under the new agreement will need to be submitted in 2015 with sufficient and consistent information to enable others to understand the contribution each Party proposes to make. Given that the new agreement is likely to give rise to a range of contributions reflecting varying national circumstances, we anticipate an acute need for transparency in advance. Transparency is needed in relation to assumptions underpinning proposed contributions, particularly in relation to accounting parameters and rules, and any conditions associated with proposed contributions.

13 New Zealand suggests that using a common template for submitting and recording contributions would aid consistency and sufficiency of information. We proposed a possible template in our submission of October 2013. In developing this template we sought to accommodate a wide variety of contribution types. We believe it is possible to design a template that is sufficiently flexible to provide transparency around contributions proposed by countries at all stages of development

14 The specific details necessary for understanding a country's proposed contribution include:

- Type of contribution (for example, absolute reduction target (economy-wide or sectoral), intensity target (economy-wide or sectoral) or a mix of target types);
- Expected emission reductions, (expressed in absolute terms relative to a specified benchmark);
- Time period over which the contribution will be achieved;
- Base year, baseline or base period, as applicable, or methodologies to support the proposed target type, for example in calculating reductions relative to business-as-usual emission levels or emissions intensity targets;
- Sectors covered if contribution is not economy-wide;
- Gases covered;
- Intention to participate in international carbon markets – as a buyer or seller, and the type of units that will be used and approach to be taken to avoid double-counting;
- Intention to account for net changes in emissions and removals from direct human-induced land use change and forestry activities;
- Assumptions and conditions associated with accounting for progress against the contribution, for example, land sector activity definitions and reporting and accounting methodologies to be applied; and
- Policies and measures to be applied, if the nationally determined contribution includes programme-specific components (e.g. research and development).

New Zealand considers that using a template or tabular format to draw out these details will build transparency and confidence and facilitate an effective consultation and finalisation process.

**At its March meeting the ADP should look for convergence on the up-front information necessary for clarity, transparency and understanding, and explore the option of a template for consistent/comparable presentation in 2015 of nationally determined contributions.**

### Process for finalising contributions

15 From a practical viewpoint, we need to give some thought to what it will be essential to have in place in 2015 in time for COP 21. For Parties to be in a position to finalise commitments, amongst other things, we will need clarity about the rules framework that will apply and a fair degree of certainty about the contributions proposed by others. New Zealand suggests the ADP considers an iterative process, allowing Parties to build up their contributions as more information becomes available and greater clarity on the rules framework is achieved.

16 One way to manage the sequencing of contributions and rules could be to use a phased approach along the following lines:

- Step One: In the first half of 2014, Parties may elect to signal the *type* of commitment they expect to make (e.g. economy-wide carbon budget, sector specific intensity target) detailing their assumptions (e.g. use of off-setting or land sector accounting) but without specifying numbers.
- Step Two: Parties use this information to help identify commonalities, as well as reveal differences and potential gaps. This understanding will provide a basis to discuss the necessary rules framework over the remainder of 2014.
- Step Three: By March 2015 Parties submit their contributions. Once a threshold has been reached (e.g. Parties accounting for 75 per cent of global CO<sub>2</sub> emissions have made their submissions) a consultative process commences.
- Step Four: The legal agreement is agreed at COP 21. Parties finalise their nationally determined commitments following adoption of guidelines setting out the rules framework and having satisfied themselves about the nature of participation by others.

17 Advantages of this approach include:

- Disclosure of assumptions helps indicate where work on rules is required.
- Contributions can be developed alongside the rules framework and can take account of progress being made in discussions on the rules.
- Identifying their own assumptions would incentivise Parties to ensure these are addressed in discussions.

- Having a critical mass of intended contributions as a trigger for commencing consultation, or a ‘pay-to-play’ incentive for early submission, increases Parties’ visibility of others’ intentions when considering their own.
- Only once in a position to understand the rules to apply and what represents their ‘fair share’ are national schedules are finalised.

**At its March meeting the ADP should invite Parties in a position to do so to use the June meeting to indicate the type of contribution they expect to make.**

### What sort of rules do we need?

18 National action will only amount to sufficient collective ambition if the agreement gives countries confidence they can take ambitious action. This confidence comes from knowing trading partners and competitors will do likewise and that the rules-based regime will be applicable to all. In addition to rules on the nature of nationally determined commitments, we need rules on MRV, including **accounting**, particularly where this is different from inventory reporting - for example, in the land sector or in the sale or purchase of units.

#### *How bounded flexibility could help*

19 Our rules framework must find the optimal convergence between overly-prescriptive rigidity and free-for-all flexibility. Built-in flexibility, within limits, can incentivise ambition and participation while maintaining integrity and preventing emissions leakage. The much talked of hybrid approach to the 2015 Agreement - comprising top-down, collectively determined rules and bottom-up, nationally determined Party commitments - combines two ideas that potentially pull in opposite directions. One idea (rules) implies rigidity or at least commonality, the other (nationally determined commitments) implies flexibility and diversity. How do these two concepts intersect? Too much flexibility compromises ambition. We need to draw boundaries around the flexibility we allow to ensure the agreement is effective. This requires letting out enough rope to maximise both participation and ambition, without compromising environmental integrity.

20 New Zealand advocates a simple rule set and that we avoid writing a fresh rule for each national circumstance. In this scenario, the default position would be for the rules to apply to all Parties, except to the extent a Party nationally determines it is not in a position to follow a particular rule – this is a form of “opting-out”. By contrast, in a scenario where national determination is the primary driver (i.e. a more bottom-up approach) there would be no default position that all rules apply to all Parties. A more bottom-up scenario would likely see Parties elect to apply a particular rule or rule-set – by “opting in” where they see benefit in doing so. It is important to note that in neither scenario are opt-in and opt-out arrangements mutually exclusive. Parties may opt in to some components of the agreement and opt out of others.

21 Ultimately rules serve to encourage ambition, to ensure consistency and therefore comparability of effort, and to enable accurate assessment of collective progress toward the global goal. Wherever the balance is set between top-down and bottom-up drivers for the agreement, there must be boundaries on the flexibility allowed. Amongst these key caveats, we see the following as critical:

- a requirement for full **transparency** – inventory reporting across all sectors, with the inbuilt flexibility the IPCC Guidelines provide; up-front information on where a Party departs from agreed rules for mitigation/reporting/accounting, explanation of why it is necessary to do so, the quantitative impact of the variance (if applicable), and whether it is time-bound;
- an expectation that each Party's initial commitment will establish a benchmark, and that over time a Party will increase its commitment and, if a Party has utilised built-in flexibility, move toward full conformity with the rules or norms set out in the agreement as its national circumstances allow. This direction of travel is important for the effectiveness of the agreement. We would not contemplate countries moving backward except when required by force majeure.

This type of approach can work well regardless of whether we have a “hard-edged” system of rules or a set of norms or standards.

22 Some examples of boundaries that could be established around flexibility to opt in or out of agreed rules are set out in Appendix 1 to this submission.

## **Conclusion**

New Zealand looks forward to an in-depth discussion of these matters at the ADP meeting in March 2014.

## Appendix 1: Examples of application of bounded flexibility

These are exploratory ideas only put forward to initiate a discussion on the ‘ground rules’ for the 2015 agreement. As such, they do not represent a New Zealand “position”. These ideas are based on the assumption that there is a common rule-set (essential for the agreement to be both durable and universally applicable), with Parties having the ability to self-differentiate – either on the basis of inbuilt flexibility within the rules, or through the application of bounded flexibility as we have broadly described it

### *Flexibility to opt out of agreed rules*

1. If Parties agree a rule or norm that quantified commitments will cover all gases, that rule could build in flexibility for a Party to ‘opt out’ selected gases from their quantified commitment, subject to:
  - a. a minimum obligation that the Party’s commitment will cover CO<sub>2</sub>;
  - b. a requirement to have in place policies and measures to manage emissions of the excluded gas(es); and,
  - c. a requirement that the gas(es) excluded by the Party are covered by its GHG inventory reporting.
2. If Parties agree a norm or rule that quantified commitments must cover all sectors, that rule could build in flexibility for a Party to ‘opt out’ selected sectors, subject to:
  - a. a requirement that the sector(s) excluded by the Party are covered by its GHG inventory reporting;
  - b. and, if the sector(s) contributes more than x% of the global aggregate emissions from that sector, then also a requirement to have in place policies and measures to manage emissions from the excluded sector(s).

### *Flexibility to opt into agreed rules*

1. If the right to use markets to fulfil commitments is reflected in a rule or norm, that rule could build in requirements to ensure:
  - a. Conformance to agreed minimum standards or guidelines that provide assurances of environmental integrity of units generated, with full transparency; and
  - b. Use of agreed transaction tracking procedures to ensure units are not double-counted.
2. Parties could agree guidelines or rules in relation to accounting methods that would provide incentives for the enhancement of land sector greenhouse gas sinks. A Party opting to include the land sector in its commitment in this way would be expected to apply agreed accounting methodologies for the land sector, such as rules or guidelines for how reference levels are constructed.