

**New Zealand Submission to the Ad Hoc Working Group on the
Durban Platform for Enhanced Action: Work-stream 1**

***Implementation of all the elements of decision 1/CP.17, (a) Matters related to
paragraphs 2 to 6***

March 2013

Context

1. This submission responds to the invitation contained in document FCCC/ADP/2012/3, paragraph 29, for additional input on how the ADP can advance its work in 2013. The work programme of in-session roundtable discussions and workshops this year will be guided by focused questions set out by the Co-Chairs of the ADP, which will also take these submissions into account.

2. New Zealand has chosen to respond to the invitation to submit views on matters relating to the work of the ADP, by focusing on “building on the experiences and lessons learned from other processes under the Convention and from other [relevant] multilateral processes”.

Setting the scene for the Durban Platform negotiations

3. In New Zealand’s 2012 submissions on the ADP, we identified the characteristics which, in our view, would be necessary to underpin an ambitious and effective global climate change agreement, capable of securing the participation of all Parties to the UNFCCC. Those characteristics were summarised as:

- **Maximum participation.** The new climate change agreement should, in both substance and form, accommodate Parties with diverse legal and economic structures. It should in particular enable and encourage the active participation of all major developed and emerging economies;
- **Applicable to all** on an equal legal footing, with a common rule-set as its foundation, but also taking into account Parties’ different national circumstances and capabilities;
- **Future-focussed** and durable. The agreement in its application must be dynamic and evolve over time in accordance with changing global – and national – economic and environmental realities;
- **Focussed on key elements.** The Durban Platform negotiations should not re-negotiate issues where relevant bodies or processes have already been put in place. The agreement should determine effective working arrangements with the existing or new structures addressing other fundamental elements of the international climate regime, such as adaptation, finance, technology, and capacity building;
- **Maximises mitigation ambition.** The agreement needs to ensure Parties have confidence in global action on climate change, in order to facilitate domestic political support and to enable effective engagement with the private sector. An agreement that is framed in positive terms, provides incentives for action and looks to realise opportunities, will foster greater ambition;
- Has **transparency at its core.** Transparency, including through MRV, builds confidence that Parties are taking appropriate and effective action against climate change and are doing their share;
- An **effective global carbon market** placing a global price on carbon through a common framework of rules or standards that support environmental integrity. A fully functioning carbon market will help decouple economic growth from increases in

greenhouse gas emissions. Links into the global economic and trading system need to be done in a way that lowers barriers and influences investment decisions, including by reducing or eliminating inefficient subsidies.

4. The context for the ADP is the twenty-year history of the UNFCCC. This is not a “clean slate” exercise: Parties do not intend to re-negotiate the Framework Convention. We will also need to consider the Kyoto Protocol and how the multiple work programmes, institutions and agreements that reflect the successful outcomes of the AWG-LCA will be taken into account in the design of the ADP. The Protocol has served the UNFCCC well by creating a legal basis for binding mitigation commitments, but the ADP is to produce a new legal agreement applicable to all Parties. The Kyoto Protocol was designed around a narrower group of countries, and is not capable of accommodating the diversity of economic and environmental circumstances the ADP will need to address. We should ensure the successful elements of the Kyoto Protocol inform the design of the new agreement, but the Protocol should not be the blueprint for it.

Lessons from other multilateral agreements

5. In New Zealand’s view, the three core components of a multilateral rules-based agreement are: **participation, effectiveness and transparency/compliance**. The inter-play between these components is the key to how effective and therefore successful it will be.

6. Developing a multilateral agreement is driven by science, policy, **negotiating process** and **structural solutions**. In considering the policy and political drivers for the ADP negotiations, New Zealand has looked outside the UNFCCC and selected three multilateral processes that could give us pointers: the WTO, Montreal Protocol and fisheries management under UNCLOS. The reasons for choosing these are:

- Although the UNFCCC is seeking a multilateral solution for a global environmental challenge, the negotiations are about transitioning to a sustainable economic development model. Economic agreements, such as those under the WTO, can therefore usefully inform our work.
- The Montreal Protocol has successfully tackled a significant global environmental issue, and has achieved universal participation.
- Participation in international and regional fisheries regimes was achieved because the economic benefits of working cooperatively to ensure the long-term conservation and sustainable use of fisheries resources were clear, and recognised as a global commons issue.

7. New Zealand does not consider there is a ready-made solution to the design of the new ADP legal agreement. Each multilateral negotiation is unique, with different drivers, dynamics, cost-benefit equations, technologies, and policy solutions. Nonetheless, it seems clear there are reference points in these three different agreements from which the ADP could draw lessons.

8. It is, perhaps, useful to consider questions about the **negotiating process** first, before turning to structural solutions. Our primary objective should be to secure broad participation in the new legal agreement, consistent with its mandate. Getting the “process” right is about building the strongest possible political foundation for a multilateral negotiation.

- No government will be compelled to commit to more than it feels confident of doing, or more than it considers its fair share. Using the transition to the ADP outcome to develop and bed-in policies and measures will enable them to be codified and confirmed. This was certainly the case in the Uruguay Round, which led to the creation of the WTO (transitioning from the GATT).

- Parties need to deliver a clear message to the private sector (“we mean business”) about their determination to negotiate an agreement, to incentivise the development of technological solutions. The Montreal Protocol has been able to reflect meaningful commitments to phase out ozone-depleting substances because industry was willing to engage very early on, and continues to develop alternatives.
- The cost-benefit equation must stack up in favour of cooperative action. While responding to an environmental threat will inevitably imply costs, the economic benefits will need to outweigh them. Parties have concluded there are clear net economic benefits in joining the WTO, the Montreal Protocol and fisheries management agreements.
- A “coalition of the willing” must include those whose stakes are highest. Multilateral agreements have developed using a “variable geometry” process, with a mix of formal and informal groupings. Informal processes, where ideas can be tested and different circumstances explored and understood, can complement and support a formal negotiating process. The WTO has seen numerous “small group” initiatives help the process along over its history.

9. Structures are equally important, not just as the end-point of the negotiations, but because structural solutions can help the negotiating process (i.e. building the political foundations for the agreement) and deal with political constraints.

10. In New Zealand’s view, the experience of the three multilateral processes we have analysed can provide structural pointers for the ADP in the following ways:

Participation

- *This is the first priority for the ADP: there is no point in drafting the perfect agreement if it remains an empty shell.* At the same time, while broad participation is easily achieved (e.g. if the agreement is loose and non-binding), there is little point if that is at the cost of effectiveness or ambition.
- *While it may not be possible to have all states participating from day one, the agreement needs to be politically and legally realistic so that those who matter will be on board early, and so that others will also be persuaded to join.* Around 30 key countries initially got together to develop a set of trade rules, but the WTO (like the Montreal Protocol) has expanded in scope and participation over time.
- *Incentives to join can be framed positively.* An example is the reciprocity of market access rights set out in the WTO) or negatively (relevant trade with non-Parties is restricted under the Montreal Protocol), but wherever possible incentives should be positive.
- *Parties need to be confident of their ability to deliver on commitments and not to fear failure.* The strong signals to business, which made it worth their while to invest in alternative technologies, provided this confidence in the Montreal Protocol context. Another example of a confidence-creating approach is the delayed compliance (10 years) with control measures for certain developing countries, also under the Montreal Protocol.
- *Each Party must be able to conclude the bargain is fair and that the benefits of belonging outweigh the costs.* The successful multilateral processes we have analysed have all Parties operating within the same legal framework, but allow for a spectrum of commitments to reflect differences in economic development: the WTO establishes a balance of rights and obligations, and uses negotiated schedules of commitments; the Montreal Protocol takes a “basket approach” to controlling ozone-depleting substances, with flexibility to implement the limits set; and, in the context of regional fisheries management, allocation is usually a negotiated outcome, which may include factors such as the needs of small island developing states and coastal communities.

Effectiveness

- *An aspirational goal.* All three of these regimes are based on a simple over-arching objective, against which progressive moves to liberalise, phase out, or effectively conserve and manage, can be measured.
- *Designing a framework that enables increasing ambition over time, and encourages Parties willing to do more to record and codify their extra action.* In the WTO context, this has been achieved through successive negotiating rounds – although these rounds have become more complex and difficult to conclude as membership has grown and “easier” trade barriers have been successfully tackled. WTO Members also conduct issue- and sector-specific negotiations (e.g. for environmental goods) that encourage greater ambition. Regular (four-yearly) reviews of control measures under the Montreal Protocol allow them to be strengthened as scientific, environmental and technological conditions change.
- *Multilateral processes are rules-based, but with “safety valves” of one sort or another because rigid application of rules risks discouraging both participation and ambition.* The WTO has done this in several ways: the “single undertaking” components meet different interests through a common, binding rule-set; individualised unilateral commitments are set out in country schedules; plurilateral agreements – government procurement, trade in civil aircraft – have no general obligation to participate; and, the GATS uses a combination of positive and negative list approaches to provide transparency about the sectors in which Parties are making commitments and the rules they are applying. This may help us to find a hybrid solution to the divided views in the UNFCCC about whether the new legal agreement should be “top-down” or bottom-up”.
- *Ambition can be helped if the design of the agreement accommodates a range of actions, so long as these are quantifiable so that outcomes can be assessed and goals adjusted in line with progress that has been made.* The WTO has developed sectoral approaches e.g. for agriculture and textiles that take account of their particular circumstances.
- *Appropriate assistance for those whose limited capacities mean they are unable to fully or immediately fulfil the obligations expected of membership.* The Montreal Protocol provides that developing countries whose annual calculated level of consumption of ozone-depleting substances is <0.3 kg per capita are entitled to financial and technical cooperation, to meet all agreed incremental costs of compliance with the control measures – and are entitled to delay their compliance with the control measures for 10 years.
- *Technological alternatives will be a key to support ambition in any effective climate change agreement.* This is a function of technical feasibility and comparative affordability. Once affordable alternative technologies are available, a transition trajectory can cross a tipping point with a consequent acceleration of take-up and impact: the Montreal Protocol has been an effective catalyst for non-ozone depleting alternatives, for example.

Transparency/Compliance

- *Punitive measures to ensure compliance are not always effective,* and may discourage both participation and ambition, particularly where levels of popular and political support for taking action are low.
- *Full transparency and a review process are cornerstones for ensuring compliance with agreed rules and individualised commitments.* The WTO’s Trade Policy Review Mechanism provides for transparent reporting and a facilitative peer review process that is an opportunity to raise questions of Parties, as well as a tool for improving domestic policies and approaches. The frequency of reviews is variable, depending on shares of global trade. Parties to the Montreal Protocol regularly discuss Party reporting, scientific and technological information and exemptions to controls. The implementation of the ICA and

IAR processes developed in the UNFCCC will be an important confidence-building step in the negotiation of the new ADP agreement.

- Other multilateral agreements have clearly set out *dispute settlement processes*. In the case of the WTO, the dispute settlement rules were developed over time before they became binding on Parties.

Conclusion

11. In work-stream 1 of the ADP, our collective task is to develop an effective new legal agreement. We are doing so because we do not have a fully effective agreement now. The Kyoto Protocol has demonstrated the potential of a rules-based approach to mitigation, but it has become clear it will never attract the broad-based participation we need to give full effect to the Convention.

12. The Convention, along with the multiple institutions and processes we have developed over the years, provide a foundation and some building blocks. This work-stream creates the opportunity to take a fresh look at how these elements can be coherently structured, and how gaps can be filled. In New Zealand's view, the gap is the need for all Parties to commit to take meaningful action to minimise human-induced climate change and to manage its impacts. The two-track approach taken under the UNFCCC has hindered this, and a different solution therefore needs to be found, which prioritises participation – but not at the expense of ambition – and encourages Parties to deliver on their commitments. It is timely to look beyond the UNFCCC to seek guidance on process and structural solutions that could help to bridge our differences.

13. Other multilateral processes have proved effective, to a greater or lesser extent. None is perfect. New Zealand is not proposing any of the specific approaches cited as examples in this submission. Our intention is to stimulate a broader discussion that moves beyond the confines of the UNFCCC discourse that has developed over the years, with the view that an analysis of the policy drivers for a climate change agreement, possible tools for building negotiating momentum, and design options for an effective legally binding agreement will allow the ADP to move to the more focused phase we have agreed is necessary this year. New Zealand looks forward to an in-depth discussion of the scope, structure and design of the “Durban Platform” agreement over the coming months.