



## **NEW ZEALAND**

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

#### ***Work Stream 1***

**September 2013**

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#### **Context**

1 This submission responds to the invitation from the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) at the second part of its second session held in Bonn from 4 to 13 June, 2013, to make further submissions building on the conclusions of the ADP (FCCC/ADP/2012/3 paragraph 32, and FCCC/ADP/2013/L.2 paragraphs 5 and 6 refer). The submission builds on, and should be read alongside, New Zealand's previous submissions to the ADP Work Stream 1 (March 2012 and March 2013).

#### **Introduction**

2 The new agreement needs to accommodate diverse national circumstances in order to ensure universal participation. This means it needs to enable Parties to make the most ambitious contribution their own circumstances will allow. The 2015 outcome must be designed to find a point of optimal convergence between overly-prescriptive rigidity and free-for-all flexibility. New Zealand has chosen to use this submission to flesh out some of the concepts that have been discussed, with a view to helping the ADP as it moves further into the design phase for the new agreement.

#### **Design concepts**

##### *A hybrid approach*

3 Already many Parties have suggested that the most promising approach for maximising participation lies in a hybrid of nationally determined actions (bottom-up) and a collectively determined rule-set (top-down). This design is common to numerous international legal arrangements, including, for example the General Agreement on Trade in Services, the Convention on Biological Diversity, and the Convention to Combat Desertification.

4 New Zealand recognises that this approach offers an efficient and effective way to ensure Parties are able to make mitigation commitments their national circumstances allow

them to deliver on. The elements of the hybrid that are top-down could include a binding obligation for all Parties to take mitigation action, together with an obligation to transparently report and account for actions. The elements that are bottom-up could include national mitigation and finance commitments, and any decision to apply discretionary accounting methodologies.

- *The Warsaw meeting provides an opportunity for the ADP to explore further the “top-down” and “bottom-up” elements of the agreement to enable Parties to build a common understanding of what a hybrid agreement might look like.*

### *Bounded flexibility*

5 An overly rigid rule-set may deter Parties from participating in the new agreement. But negotiating accounting rules to deal with every national circumstance risks adding an unnecessary layer of complexity to both the negotiations and the eventual agreement. New Zealand suggests that we can build flexibility into the hybrid agreement, within parameters, so as to incentivise participation, maintain environmental integrity, prevent emissions leakage, and also increase ambition over time.

6 We think bounded flexibility (i.e. with agreed limitations) can assist Parties to take a more ambitious commitment than they might otherwise make. For example, the flexibility to build on its own national circumstances may enable a Party to extend its emission reduction effort to more sectors of its economy. Similarly the flexibility to use market mechanisms may enable a Party to set a higher emission reduction target than it can contemplate on the basis of domestic abatement alone. However, we need some boundaries around the flexibility a Party has in defining its mitigation commitments to suit its national circumstances. Boundaries are important for maintaining environmental integrity, and for preventing free-riding and carbon leakage.

7 Achieving the right balance between flexibility and rules will help achieve these aims. We suggest that the optimal convergence point might be found through processes that allow Parties to ‘opt-out’ of the application of a rule (e.g. excluding a sector from an otherwise economy-wide quantified commitment, to enable a more appropriate policy to be applied in that sector) or to ‘opt-in’ (e.g. using market mechanisms to supplement domestic mitigation). It is also conceivable that both opt-in and opt-out mechanisms could co-exist within the 2015 agreement, and thus assist it to find the optimal convergence point.

- *The Warsaw meeting provides an opportunity for the ADP to consider areas where delineated bounded flexibility could be built into the new agreement.*

### *Accounting*

8 We expect that Parties will agree on accounting rules for tracking progress against commitments. We recognise that the work done already, reflected in the IPCC greenhouse gas inventory guidelines, provides a sound basis for reporting and accounting under the new agreement. However, in order for Parties to provide a comprehensive account of progress against their targets, a framework of additional accounting rules will be needed in the following circumstances:

- (i) when accounting for land sector emissions and removals (subject to a common obligation to account for deforestation): for example, if a Party wishes to exclude legacy and non-anthropogenic impacts from measured progress against targets; and
- (ii) when accounting for carbon market activity where the sale or purchase of units needs to be reflected in the Parties' (buyer and seller) emissions balance.

9 We note here that accounting is a retrospective activity, and is different to providing up-front information about planned mitigation action at the time it is proposed (although this up-front information may also include information about any accounting methodologies or approaches the Party plans to apply that are outside the commonly agreed set of accounting rules).

10 New Zealand recognises that the design of common accounting rules will also need to reflect the diversity of national circumstances. In the land sector, a set of core rules could, for example, include use of reference levels as an accounting approach to deal with most national circumstances in the forestry sector. Similarly, we recognise that rules for accounting for market activity will need to accommodate the likelihood that Parties will generate and source units through a variety of mechanisms (with the integrity of these units ensured by an overarching market framework).

- *It is important to ensure that Parties know the ground rules for accounting before their nationally-determined commitments are locked in. The Warsaw meeting provides an opportunity for Parties to agree to begin in early 2014 the development of an accounting framework.*

#### *Legal "bindingness"*

11 New Zealand sees the 2015 outcome as a triangular arrangement, the components of which will likely include a concise, legally binding agreement buttressed by important COP decisions, and accompanied by Parties' nationally-determined commitments. This arrangement will be "applicable to all", consistent with the Durban mandate.

12 Parties' undertakings are a mix of universal and selectively applicable obligations. Some will be enduring and some will be time-bound requirements. In determining legal force once we flesh out the functions of the new agreement, we should be thinking about which elements need to be ratified by our parliaments. Given that we want this agreement to be enduring, the first and foremost criterion should be durability. We should avoid placing

elements in the legally binding agreement that will lapse and need to be renegotiated. These time-bound elements are more properly established in COP decisions and associated guidelines that we are able to amend without having to surmount additional legal hurdles. Taking this approach is legally sound, acknowledges our need to respond to changing circumstances efficiently, and supports ambition by enabling new commitments to be scheduled regularly and readily.

13 Taking mitigation as an example, elements meeting the durability criterion set out above could include:

- A shared (aspirational) goal
- A common obligation to take a nationally determined mitigation commitment
- Agreement to apply a common MRV framework
- An optional right to apply the additional accounting approaches referred to above for the land sector and/or the use of carbon markets to help meet mitigation commitments
- A common obligation to improve ambition and to move towards conformity in the application of rules over time

14 We note that aspects of the key elements of the 2015 outcome may be reflected in more than one part of the package. For example, the common obligations in the legally binding agreement would be complemented by detailed rules, as necessary, in COP decisions. Similarly, there would be an internationally legally binding obligation to take mitigation commitments, but we suggest the content of nationally determined commitments would be nationally rather than internationally legally binding. This is logical because such commitments are nationally, not internationally, determined and implemented. Moreover, they will specify dates and numbers that may require amendment over time. Embedding these details in an instrument that requires international agreement to effect change would significantly stifle ambition and compromise universal participation.

15 Other elements, including adaptation and means of implementation, will also be reflected in the 2015 outcome, which must ensure that the importance and urgency of the need for adaptation to the impacts of climate change is acknowledged, and encourage Parties to take responsibility for their national adaptation planning, share their experience and cooperate to become more resilient. The agreement must also facilitate continued support to the most vulnerable countries to meet their obligations under the Convention and this new agreement.

16 We do not expect every "i" to be dotted and every "t" to be crossed by December 2015. Parties will need to give careful thought to what is politically desirable, practically achievable and legally possible for the ADP to conclude at COP 21. Nationally-determined commitments will only be locked in once the deal is done, the ground-rules are confirmed, and each Party can see that the "critical mass" of countries it considers to be significant is playing the game.

17 We also foresee work on detailed guidelines could well be finalised subsequent to COP 21. Part of this work will involve defining relationships between the new agreement and the UNFCCC's existing bodies and processes. New Zealand suggests that the ADP should not duplicate institutions and/or functions but rather should build on and enhance those that already exist.

- *The Warsaw meeting provides an opportunity for the ADP to consider criteria for elements to be included in the new legally binding agreement, including how to use the agreement to build on and enhance existing institutions and processes.*

#### *An iterative process*

18 "Rules before commitments" or "commitments before rules" can rapidly become a circular argument with neither essential process being initiated. One way to manage the linkage between commitments and rules could be to use an iterative approach to finalising both. There seems to be broad agreement that 2014 is the time for Parties to begin "doing their homework". The consultative and constitutional processes in each country are different, and will need to be respected.

19 New Zealand suggests the ADP could kick-start the homework exercise by inviting Parties individually to provide information about their proposed commitments, without necessarily including numbers. When providing this information, each Party should indicate any assumptions (including about accounting approaches) that underpin its proposals. With this information Parties collectively could begin more substantive discussions on the rules, to facilitate the development of more detail, including Parties' quantification of their proposed commitments. We agree with the suggestion made by others that a consultative process - framed to facilitate understanding of proposed commitments, allows for comparability, and to encourage a "race to the top" - should occur following Parties' tabling of proposed quantified commitments.

- *The Warsaw meeting provides an opportunity for the ADP to discuss a process to bring forward national commitments and develop rules concurrently and iteratively.*

#### *Use of a template*

20 New Zealand believes proposed commitments will need to be tabled with sufficient and consistent information to enable Parties to understand the contribution each country proposes to make. This understanding depends on the underpinning assumptions and conditions being made clear and all relevant information being provided. The objective of the consultative process (described above) is to enable comparisons to be made and fairness to be assured. We suggest use of a template for submission of this information would ensure consistency and sufficiency of the information brought forward and also would be a helpful guide for prior domestic processes. A suggested template for proposed commitments is attached to this submission.

- *The Warsaw meeting provides an opportunity for Parties to agree to use a common template to table proposed national commitments in order to facilitate the consultative process.*

#### *Relevance of equity*

21 Equity has underpinned the decisions, processes and institutions that have been adopted in this forum since 1992. We have achieved this without narrowing our conception of equity to a fixed definition, or reducing it to a formula. At the simplest level, equity is about fairness. We know that the new agreement needs to involve a fair distribution of effort. But the new agreement also needs to be politically feasible. A binding commitment requires the consent of treaty partners and so Parties must believe that by making that commitment they are serving their national interests. A workable climate treaty will have to be one that serves the interests of all Parties, whatever their stage of development.

22 Different stages of development will be accommodated in a variety of ways: for example in the breadth and depth of mitigation commitments, in the provision and receipt of support to implement mitigation and adaptation activities, in the application of MRV and accounting rules, the frequency and depth of country reviews. This accommodation is possible without application of formulae.

23 A country's chosen response to climate change will always legitimately correlate to its national circumstances. However, formulaic approaches to equity seldom take account of all nations' circumstances. Most equity formulas weigh heavily on selective indicators and lead to results that feel deeply unfair to some countries. Since no country will commit to a burden it does not believe is fair, pursuing a formulaic approach to equity in the ADP risks driving some Parties away from agreement. It is not feasible that Parties will agree on a burden-sharing formula in any timeframe corresponding to our Durban mandate. Instead, we should recognise that the new agreement will succeed in delivering equity if all view their individual actions as fair in the context of what others are doing to enable them to commit to it. Determining contributions nationally goes some way towards this. However, Parties will need to be able to indicate why and how their proposed actions constitute a fair and equitable contribution to the global effort.

- *The Warsaw meeting provides an opportunity for the ADP to recognise the importance of national perspectives on equity, and to reiterate the need for Parties to be able to demonstrate the fairness of their planned mitigation commitments at the time they are proposed.*

#### **Warsaw outcomes**

24 New Zealand has identified a number of opportunities for the Warsaw meeting to take forward the ADP's work. We suggest that Parties seek an outcome from Warsaw that:

1. invites Parties to begin necessary domestic processes to be able to table commitments under the 2015 agreement;

2. determines the information to be provided in support of proposed commitments, prior to the consultative process, and on the use of a common format to present information; and
3. reflects agreement to begin developing an accounting framework in 2014.

25 We also see opportunities for the ADP to agree to begin work on a number of important aspects of the new agreement, including:

- fleshing out the “top-down” and “bottom-up” elements of the agreement to enable Parties to build a common understanding of what a hybrid agreement might look like;
- considering areas where bounded flexibility could be built into the new agreement;
- identifying the durable elements of the 2015 outcome that will be included in the new legally binding agreement; and
- identifying how to use the agreement to build on and enhance existing institutions and processes.

## **Conclusion**

26 In New Zealand’s view, the step-change between the UNFCCC’s current institutions and the effective new legal agreement we seek through the ADP lies in all Parties committing to take meaningful action to minimise human-induced climate change and to manage its impacts. In both substance and form the new climate change arrangements need to accommodate Parties with diverse national circumstances – whether in terms of their economies or emissions profiles. The mandate of securing an agreement that is applicable to all means we will all take commitments of the same legal form. But that is very different from saying we will all take the same commitments. To be perceived as fair, and to be certain of implementation, commitments need to be determined by each Party for itself. Restricting the legally binding agreement to those aspects that can stand the test of time will minimise the legal and political hurdles to an effective regime. Progressing toward agreement in an iterative and step-wise manner will allow Parties to tailor their commitments to best suit their ability to deliver within the agreed rule-set, and to be able to take into account the commitments made by others. Using a template to draw out the details of proposed commitments by Parties will build transparency and confidence and facilitate an effective consultation and finalisation process.

27 New Zealand looks forward to an in-depth discussion of these matters at the Warsaw meeting.

## Possible template for preliminary mitigation commitments

<b>COUNTRY:</b>		<b>DATE:</b>
<b>Parameter</b>	<b>Action</b>	
Period for defining actions	Start year:	End year:
Type of Commitment	For example, absolute emissions reduction, emissions intensity, economy wide, other	
Reference year or period		
Quantified action(s)		
Sectors	<input type="checkbox"/> Energy <input type="checkbox"/> Industrial processes and product use <input type="checkbox"/> International transport fuels <input type="checkbox"/> Waste <input type="checkbox"/> Land Sector <input type="checkbox"/> Other (specify)	
Gases	<input type="checkbox"/> CO <sub>2</sub> <input type="checkbox"/> CH <sub>4</sub> <input type="checkbox"/> N <sub>2</sub> O <input type="checkbox"/> HFCs <input type="checkbox"/> PFCs <input type="checkbox"/> SF <sub>6</sub> <input type="checkbox"/> NF <sub>3</sub> <input type="checkbox"/> Other (specify)	
Land sector accounting approach	For example, land based, activity based, reference level, other	
Accounting approach for any intended use of market based mechanisms in fulfilment of commitment:	For example, market based mechanisms under the Convention and/or its Protocol; Other market based mechanisms (and evidence of environmental integrity to avoid double counting)	
Description of key domestic policies and measures giving effect to commitment		