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Second review of the Kyoto Protocol pursuant to its Article 9

**Report on the pre-sessional workshop on preparation for the second review
of the Kyoto Protocol pursuant to its Article 9**

Note by the secretariat*

Summary

This document provides a report on the pre-sessional workshop on the second review of the Kyoto Protocol pursuant to its Article 9. The workshop took place in Athens, Greece, on 22–23 October 2008. Participants examined the relevance to the second review of progress achieved by the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol in advancing its work programme; considered updated information on several issues identified in decision 4/CMP.3, paragraph 6; and focused on the question of how issues identified should be addressed in the second review.

* This document was submitted after the due date owing to the timing of the workshop.

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I. Introduction

A. Mandate

1. The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP), by its decision 7/CMP.2, decided that the second review of the Kyoto Protocol pursuant to Article 9 (hereinafter referred to as the second review) shall take place at its fourth session, in 2008.
2. In order to facilitate the preparations for this review, the CMP, at its third session, by its decision 4/CMP.3, requested the secretariat to organize a pre-sessional workshop before its fourth session to consider the relevance to the second review of progress achieved by the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) in advancing its work programme, and to prepare a report on this workshop.

B. Scope of the note

3. This report is organized according to the list of issues contained in decision 4/CMP.3, paragraph 6, taking into consideration the recommendations made by the Subsidiary Body for Implementation (SBI) at its twenty-eighth session.¹ The document reports on the exchange of views on substantive matters and on the question of how to address the identified issues.

C. Possible action by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol

4. The CMP may wish to consider the information reported when determining what appropriate actions should be taken as a result of the second review.

II. Proceedings

5. The workshop took place in Athens, Greece, on 22–23 October 2008. It was co-chaired by Mr. Adrian Macey (New Zealand) and Ms. Ana María Kleymeyer (Argentina). Seventy-nine representatives of Parties attended the workshop, as well as eight representatives from non-governmental observer organizations.
6. At the opening, the co-chairs introduced the mandate, goal and scope of the workshop, and suggested that the workshop could help in providing some orientation to the consideration of issues during the second review at CMP 4.
7. The first session of the workshop allowed participants to take stock of the preparations for the second review and frame the exchange of views according to the recommendations given by the SBI at its twenty-eighth session. For that purpose, the Chair of the SBI, Mr. Bagher Asadi, gave a presentation.²
8. The secretariat introduced the note “Information on the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol in accordance with decision 4/CMP.3, paragraph 10”.³ This was followed by a presentation by the Chair of the AWG-KP, Mr. Harald Dovland, on relevance to the second review of progress achieved by the AWG-KP in advancing its work programme. The Chair observed that the AWG-KP has a broad range of elements to consider. He suggested that in the light of the different views regarding the mandate of the AWG-KP, it may not be helpful to either process to refer issues from the second review to that group, and encouraged

¹ FCCC/SBI/2008/8, paragraphs 99–113.

² All presentations given at the workshop are available at <http://unfccc.int/kyoto_protocol/items/4359.php>.

³ FCCC/KP/CMP/2008/INF.1.

Parties to resolve as many issues as possible in the context of the second review. He noted that there is some difficulty in advancing some issues under consideration by the AWG-KP because of linkages that some Parties are making with work under the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA). During later discussions, participants in the workshop exchanged further views on the relationship between potential progress of the AWG-KP on one hand and the second review on the other.

9. Taking into account the recommendations made by the SBI at its twenty-eighth session,⁴ there followed sessions to discuss relevant additional information requested by the SBI, and a session on how to address issues at CMP 4.

10. At the close of the workshop, participants invited the future co-chairs of the contact group on the second review to present a text early in the session in order to facilitate consideration of this item at CMP 4. Parties were encouraged to send informal inputs to the secretariat to aid in the preparation of this draft. Participants emphasized the need to allow sufficient time for the second review within the Poznan meeting schedule.

III. Second review of the Kyoto Protocol pursuant to its Article 9

A. Extending the share of proceeds to assist in meeting the costs of adaptation to joint implementation and emissions trading

11. An update on the issue of extending the share of proceeds to assist in meeting the costs of adaptation to joint implementation (JI) and emissions trading was introduced with a presentation of a technical paper on this matter.⁵

12. The presentation included an overview of the following options for raising revenues to assist in meeting the costs of adaptation:

- (a) Extending the share of proceeds on the basis of unit transfers;
- (b) Extending the share of proceeds on the basis of unit issuance;
- (c) Contribution from domestic auctioning revenues;
- (d) Contribution from international auctioning revenues.

13. The presentation also examined the scale of funding that could be raised for adaptation in developing countries under each option, possible impacts on the carbon market and, where appropriate, issues involved in the monetization of Kyoto units provided to the Adaptation Fund.

14. Regarding the options presented, a number of participants considered that possible impacts on the carbon market of a levy on transfers (option (a) in para. 12 above) would be greater than those of a levy on issuance (option (b)), and that the revenues raised through levying transfers would be correspondingly lower. Some participants considered that contributions drawn from domestic auctioning (option (c)) is not a viable option, given the prerogative of Parties with regard to domestic actions of this nature and the diversity of domestic approaches. Other participants noted that options (b) and (d) generated the most funding for adaptation, but that this would still fall short of estimates of what will be required for adaptation in developing countries. Some participants also expressed concern that some of the options presented could increase prices and affect liquidity of the market, causing a shift in transactions from 'spot' to forward contracts and thus lead to a lack of transparency in the market. Some

⁴ FCCC/SBI/2008/8, paragraphs 99–113.

⁵ FCCC/TP/2008/6.

participants observed that the underlying assumptions might need to be updated in the light of recent developments in the carbon market and information relevant to economies in transition.

15. A number of participants pointed to the urgent need for new, additional, predictable and sustainable funding for adaptation, and to the concrete opportunity to access this kind of funding through the modalities discussed. They emphasized that the benefits of accessing this additional funding outweigh the potential impact on JI and emissions trading. Some participants highlighted the application of the principle of equity by extending the share of proceeds to JI and emissions trading.

16. Some participants were of the view that this issue should be further considered by the AWG-LCA, in the context of a broader agreement on possible options for raising funding for adaptation purposes. Others stressed that, by its decision 4/CMP.3, the CMP mandated consideration of this issue in the context of the second review.

B. Relevant procedural elements for inscribing commitments for Annex I Parties in Annex B to the Kyoto Protocol

17. Some participants indicated that the current procedure to amend Annex B to the Kyoto Protocol is sufficient, while other participants supported a simplification of the procedure.

18. One participant was of the view that when a Party included in Annex I wishes to be included in Annex B, simplified procedural arrangements in the form of an additional annex to the Kyoto Protocol, a CMP decision on simplified procedures or a procedure for the adjustment of Annex B would suffice. Several participants replied that adding a Party to Annex B to the Kyoto Protocol would, in their view, require an amendment to the Annex.

19. Participants in favour of a simplified procedure suggested that the CMP could agree on the need for streamlining procedures at its fourth session, and identify options for simplification and a process for examining these options more closely. Three options for simplifying the procedure were also presented at the workshop on preparations for the second review that was held before SBI 28. Of these options, a few participants expressed a preference for the tacit acceptance or opt-out procedure⁶ and one participant pointed to the hybrid procedure⁷ as the most promising option. Some participants considered this issue to have some relevance to the work of the AWG-KP and the AWG-LCA, however, participants envisage any future work on the subject to take place under the SBI.

C. Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol

20. Some participants recalled the two-step approach to the issue of privileges and immunities, which involves exploring short-term arrangements as well as a long-term solution in the form of appropriate treaty arrangements.⁸ Some participants are prepared to work towards a long-term solution, but are also open to considering short-term arrangements.

21. One participant presented a non-paper that proposes a legally binding, standalone instrument on privileges and immunities as a long-term solution and draft CMP decisions that would confer legal personality and authority to various institutions under the Convention and its Kyoto Protocol as part of

⁶ Under the opt-out or tacit acceptance procedure, an amendment would enter into force after a certain period has elapsed following its adoption, except for those Parties that have notified the depositary that they cannot accept the amendment.

⁷ The hybrid procedure combines the opt-out or tacit acceptance procedure and the procedure currently in place for amending Annex B. A Party would elect one of the two procedures when it deposited its instrument of acceptance with the depositary.

⁸ FCCC/SBI/2008/8, paragraph 109 (c).

the short-term approach. There was discussion on whether any legally binding solution should be pursued as a standalone agreement or as part of a more general legal instrument. There was a divergence of views on whether legal personality should be granted to institutions under the Convention and its Kyoto Protocol, and whether legal personality could be conferred through a CMP decision.

22. Some participants pointed to the link between improvements in governance and institutional arrangements of the Executive Board of the clean development mechanism (CDM) and the question of privileges and immunities. The need to take a consistent approach to this issue across all constituted bodies under the Kyoto Protocol was noted by some participants, as was the undesirability of uneven application of privileges and immunities.

23. Some participants expressed the hope that progress towards a long-term solution could be achieved at CMP 4, including through the possible adoption of a set of principles to guide future discussions and a narrowing down of options for a legally binding instrument. Some participants suggested that a group of legal experts or the SBI could work on this matter.

D. The scope, effectiveness and functioning of the flexibility mechanisms, including ways and means to enhance an equitable regional distribution of clean development mechanism projects

1. The scope, effectiveness and functioning of the flexibility mechanisms

24. An update on the issue of the scope, effectiveness and functioning of the flexibility mechanisms was introduced with a presentation on the information note FCCC/KP/CMP/2008/INF.3.

25. The presentation summarized proposals for possible improvements that could potentially be made during the current commitment period of the Kyoto Protocol to:

- (a) Institutional arrangements and governance in relation to the CDM Executive Board and the Joint Implementation Supervisory Committee (JISC), including the delegation of decision-making, the consistency and transparency of decision-making, the process for reviews of projects and issuance of certified emission reductions, a process for appeals, selection and role of members, and the management of support to these bodies;
- (b) Institutional arrangements and governance in relation to designated operational entities (DOEs) under the CDM and accredited independent entities (AIEs) under JI, including the accreditation process, guidance provided by the CDM Executive Board and the JISC, the quality and consistency of assessments, and the selection and payment of DOEs and AIEs;
- (c) The rules and procedures for the CDM and JI, including in relation to additionality and methodologies, and programmes of activities.

26. Some participants expressed the view that the CDM and JI are functioning well overall and that the necessity and relevance to the current commitment period of any improvements would have to be carefully considered. Others emphasized the opportunity for strengthening these mechanisms on the basis of the experience gained and the need for increased mitigation. In considering the breadth and variety of recommendations made to enhance the CDM, a number of participants noted that JI could also benefit from many of the same improvements.

27. Some participants proposed focusing the second review on issues not covered by the AWG-KP work programme or the CMP agenda items on the CDM and JI. In this regard, participants recalled that other possible improvements to the flexibility mechanisms that could be applied after the current commitment period are also under consideration by the AWG-KP.

28. Participants who were of the view that the CDM and JI could be improved noted that while some action could be taken by the CMP at its fourth session, other proposals may need further analysis and consideration. Some participants felt that the CDM Executive Board (and the JISC where appropriate) could be best placed to examine these proposals. Participants noted the need for the CMP to provide further guidance to frame any analysis and consideration to be undertaken by these regulatory bodies or by the secretariat. Some participants also noted that, in some instances, decisions on some of the possible improvements would need to be taken by the CMP (e.g. a process for appeals, and the selection and roles of members).

2. Ways and means to enhance an equitable regional distribution of clean development mechanism projects

29. The update on the issue of ways and means to enhance an equitable regional distribution of CDM projects was introduced with a presentation on an information note on this matter.⁹

30. The presentation showed information on the current distribution of CDM projects, identified barriers, summarized actions undertaken so far to improve project distribution, and explored further actions that could be undertaken in the future to improve regional distribution of CDM projects. These include:

- (a) Actions to address financial barriers, including upfront funding for project development, guaranteeing investments in projects, and matching finance to projects;
- (b) Actions to address structural and institutional barriers, including enhancing capacity-building activities under the Designated National Authorities Forum, enhancing capacity-building activities for national legislative and policy frameworks, and broadening investment criteria;
- (c) Actions to address specific capacity barriers, including enhancing targeted capacity-building for local project developers and support services, as well as for local financial institutions;
- (d) Actions to address remaining process barriers, including provisions for additional guidance on the CDM and JI, in particular on the implementation of programmes of activities, the establishment of a smaller-scale category of projects ('micro-scale') and the provision of additional methodologies.

31. Participants exchanged views on the reasons for the present distribution and expressed their support for enhancing participation in the CDM. Some highlighted the need to allow the mechanisms to function as intended – that is, as market mechanisms – while others warned against affecting the mechanisms' environmental integrity. Others felt that there are efforts that could be taken to improve project distribution without jeopardizing the integrity of the CDM, and that the present economic crisis is proof that markets need regulation in order to support sustainable development.

32. As with the discussion on possible improvements to the CDM and JI (see para. 28 above), participants who believe that equitable regional distribution of CDM projects could be enhanced suggested that while significant action could be taken at CMP 4, some proposals may need further analysis and consideration, and that the CMP should provide guidance to frame such analysis. It was also noted that the issue of equitable regional distribution of CDM projects will be addressed in the report of the CDM Executive Board to the CMP at its fourth session.¹⁰

⁹ FCCC/KP/CMP/2008/INF.2.

¹⁰ FCCC/KP/CMP/2008/4.

E. Other issues identified

33. Some participants stated that issues considered as part of the second review should be limited to those identified in decision 4/CMP.3, paragraph 6.

1. Issues relating to reporting by Parties included in Annex I to the Convention and to the review process

34. Some participants highlighted the need to improve the implementation and functioning of the reporting and review process for national communications by Parties included in Annex I to the Convention. Proposals include: making more experts available for expert review teams (ERTs); increasing the funding for training reviewers; strengthening the role of the secretariat in the reporting and review process and allocating more budgetary resources for this purpose; ensuring consistency in the processes; and improving channels of communication between the ERTs and Parties being reviewed. Other participants suggested that improving access for ERTs to data from Parties under review and strengthening the capabilities of experts could address the issue.

35. Some participants recalled that the SBI, under provisional agenda item 10, "Reporting and review of information submitted by Parties included in Annex I to the Convention that are also Parties to the Kyoto Protocol", is expected to address this issue at its twenty-ninth session. Others suggested that appropriate action could be taken by the CMP at its fourth session.

2. Commitments

36. The issue of commitments (nature and modalities, base year and burden sharing) was also raised. Some participants were of the view that the base year should be defined according to the best and most recent data available. Some others were of the view that this issue should be considered by the AWG-KP.

3. Third review of the Kyoto Protocol pursuant to its Article 9

37. Some participants expressed the view that the third review of the Kyoto Protocol pursuant to its Article 9 should take place at the sixth session of the CMP, in 2010, and the scope and content of the third review could be considered at its fifth session, in 2009.
