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Preparations for the second review of the Kyoto Protocol pursuant to its Article 9

**Synthesis of views on how the issues specified in decision 4/CMP.3,
paragraph 6, should be addressed in the second review of the Kyoto Protocol
pursuant to its Article 9**

Note by the secretariat

Summary

This report presents a synthesis of views from Parties on how the five issues specified in decision 4/CMP.3, paragraph 6, should be addressed in the second review of the Kyoto Protocol pursuant to its Article 9. Views on each of the issues are presented, followed by wider views on the nature and scope of the second review.

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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 preparation of this review, the CMP, by its decision 4/CMP.3, invited Parties to submit to the secretariat, by 7 March 2008, for compilation and synthesis, their views on how the issues specified in paragraph 6 of that decision should be addressed in the second review.
3. The CMP, by the same decision, requested the Subsidiary Body for Implementation (SBI) to consider, at its twenty-eighth session, the submissions by Parties and to report to the CMP at its fourth session.

B. Scope of the note

4. This document presents a synthesis of views provided in submissions by Parties on how the issues specified in decision 4/CMP.3, paragraph 6, should be addressed in the second review.¹ Submissions were received from the following Parties: Rwanda, China, New Zealand, Ukraine, Argentina, Colombia, Saudi Arabia, Norway, Panama, Slovenia on behalf of the European Community and its member States, Tuvalu, Sri Lanka, Switzerland on behalf of the Environmental Integrity Group, and Japan. Views on the issues specified in decision 4/CMP.3, paragraph 6, are synthesized first, followed by views on how those issues should be addressed in the second review.

C. Possible action by the Subsidiary Body for Implementation

5. The SBI may wish to consider the synthesis of views contained in this document as part of the preparation of the second review and report to the CMP on how the issues specified in decision 4/CMP.3, paragraph 6, should be addressed in the second review.

II. Synthesis of submissions

A. Views on issues to be addressed in the second review of the Kyoto Protocol pursuant to its Article 9

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

6. Many Parties underlined the need for new and additional funds to assist Parties in meeting the costs of adaptation, including but not limited to the extension of the share of proceeds to joint implementation (JI) and emissions trading. However, some Parties considered that further analysis on this matter was needed, in particular in relation to the possible sources of funds, including market and non-market approaches.

7. A strong objection was expressed by one Party to the notion of extending the share of proceeds to JI. Regarding emissions trading, some Parties proposed that auctioning of emission permits or allowances be further considered, while others proposed a levy.

¹ The submissions are contained in document FCCC/SBI/2008/MISC.2 and Add.1.

8. It was suggested by one Party that the secretariat be requested to prepare a paper on the possible modalities and implications of an international auctioning system.

9. Some Parties also mentioned the need to base considerations of this issue on actual and/or further studies on the costs of adaptation.

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

10. Several Parties expressed an interest in discussions on relevant procedural elements for inscribing commitments for Annex I Parties in Annex B to the Kyoto Protocol. One Party maintained that there were no procedural difficulties in inscribing commitments for Annex I Parties in Annex B and that “any enhancements of the procedures must be limited to Annex I Parties”. Another Party advocated discussion on the procedures in the case of a Party not included in Annex I to the Convention (non-Annex I Party) voluntarily committing to emission reduction obligations. Still another Party argued that the process should be made as simple as possible for those countries that wished to contribute to limitations or reductions in greenhouse gas emissions through quantified emission limitation and reduction commitments.

11. Parties suggested that the following options may be relevant for simplifying the procedure for inscribing commitments in Annex B:

- (a) An **opt-out** or **tacit acceptance** procedure, such as the one already in place for the amendment of annexes to the Kyoto Protocol other than Annexes A and B.² Under this procedure, an amendment would enter into force after a certain period had elapsed following its adoption, except for those Parties that had notified the depositary that they could not accept the amendment;
- (b) A **hybrid procedure** which combines the opt-out or tacit acceptance procedure described above 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;
- (c) An **adjustment procedure**, whereby adjustments are made to annexes through decisions taken by a convention or protocol body. Such adjustments would become binding for Parties on a date specified in the relevant agreement or decision.

12. One Party pointed out that specific modalities for each of the three options discussed in paragraph 11 above would be required. It was indicated in another submission that the “arbitrary nature” of inscribing commitments for Annex I Parties during the first commitment period should not be repeated. According to one Party, if Parties consider extending the tacit acceptance procedure to Annex B, they should also consider the possible broader implications of this option, including any implications for Parties already included in Annex B.

13. It was argued in one submission that any change in the procedure to amend Annex B should be part of a wider package of amendments. This Party noted a link to broader discussions under the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA).

² Article 21, paragraph 5, of the Kyoto Protocol.

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

14. Some of the submissions maintained that it was of utmost importance that individuals serving on constituted bodies under the Protocol be adequately protected from claims in national courts relating to the exercise of their official functions. It was necessary to confer privileges and immunities on such individuals in order to enable them to perform their official functions independently, effectively and with certainty.

15. Some Parties expressed the need to devote more time to examining the content and extent of privileges and immunities that should be conferred, while others stated that they supported the adoption of an interim or short-term solution as well as long-term solutions on this issue, and welcomed the implementation of decision 9/CMP.2 on this matter. However, it was noted that decision 9/CMP.2 did not address the underlying problem of the lack of privileges and immunities, and other Parties stated that a long-term, effective and legally binding solution was necessary. It was suggested in some submissions that such a long-term solution be developed as part of “the broader post-2012 arrangements”.

16. There was also a suggestion that a small, informal working group be established to prepare, in consultation with the Secretary-General of the United Nations, a charter of privileges and immunities for individuals serving on constituted bodies for approval by the General Assembly. Further, some Parties proposed that Article VI of the 1946 Convention on the Privileges and Immunities of the United Nations be reflected in the outcome of the second review with the focus of the consideration being on immunities which are necessary and appropriate for the effective functioning of the constituted bodies.

17. It was recommended by some Parties that the second review consider the following:

- (a) Concrete examples of cases where privileges and immunities would be deemed necessary;
- (b) The content of the privileges and immunities to be conferred;
- (c) The individuals on whom privileges and immunities should be conferred;
- (d) The practical benefits of conferring those privileges and immunities.

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

18. Effectiveness and functioning of the flexibility mechanisms, in particular of the clean development mechanism (CDM), was discussed in almost all submissions.

19. Regarding the functioning of the CDM, the following areas were highlighted for review: the role of the Executive Board of the CDM and its panels; the role of the secretariat; performance of designated operational entities; decision-making and the appeals procedure; and communications.

20. To improve the environmental integrity of the CDM, Parties suggested reviewing: the additionality criteria; the reporting of greenhouse gas emissions in host countries of CDM projects; and the compliance penalties (this in order to minimize fraud and malfeasance and to ensure that any such action could be adequately compensated).

21. Some Parties further proposed a review of the scope of CDM project activities in order to include specific project activities, such as carbon dioxide capture and storage and nuclear technology. Others called for the CDM to be reviewed in order to exclude project activities such as biofuels projects that lead to displacement of people or the destruction of forest or other important habitats, and large-scale

hydropower projects. Enhancing the CDM on a programmatic basis was also identified as a potential area for review.

22. Regarding regional distribution, some Parties expressed the view that a review of the functioning of the CDM, and in particular a revision of the scope, effectiveness and functioning of afforestation and reforestation CDM project activities, may help to achieve a more equitable regional distribution of projects.

23. Some Parties proposed specific solutions to achieve a more equitable regional distribution of CDM project activities, including the approval of an equal and fair share of projects for different regions and the guaranteed distribution of a certain quantity of certified emission reductions to each country.

24. In order to proceed with the second review, some Parties suggested that an assessment of the CDM be undertaken.

25. One Party proposed that if no new arrangements for non-Annex I Parties to undertake reduction commitments were to be agreed under the AWG-LCA, the CDM should remain as it is with the exception of some rule changes to improve its environmental integrity. If a new mechanism were developed to assist non-Annex I Parties in achieving emission reductions, the CDM should serve as a mechanism for non-Annex I Parties that were not “major emitters” and that were unlikely to undertake such commitments.

26. Regarding JI, it was suggested by one Party that it follow the same standards as those applied to the CDM.

27. As for emissions trading, the following areas were suggested for review: allocation of assigned amount units (AAUs); AAUs generated from land use, land-use change and forestry projects; the fungibility of AAUs with other emissions trading arrangements; and environmental and social impact assessment.

5. The minimization of adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention

28. To address the issues specified in decision 4/CMP.3, paragraph 6 (e), Parties recommended the following subjects for consideration in the second review: tools to implement Article 2, paragraph 3, and Article 3, paragraph 14, of the Kyoto Protocol; assistance in gathering information and conducting analysis; localized vulnerability assessments; integrating adaptation within development planning; and funding.

29. Distinction was made between the adverse impacts of climate change and the adverse impacts of response measures. The development of a matrix was proposed to link emission reduction targets with adaptation needs; another Party proposed a mechanism to evaluate sustainable development that includes an index for per capita carbon dioxide emissions.

30. One Party suggested that “lower income non-Annex I countries” be included in the discussion on the impacts of response measures, and that the discussion be widened beyond lost revenue from oil production. It further suggested that the second review include analysis of the implications of the development of biofuels and the adverse impacts due to certain forest plantations.

6. Other issues identified

31. Parties identified other issues than those listed in decision 4/CMP.3, paragraph 6, to be considered in the second review. These included: climate risk insurance; options for and the nature of future commitments; emissions from international aviation and maritime transportation; promotion of research, development and transfer of renewable energy and energy efficiency technologies; and clarification of the concepts “developed country”, “developing country” and “vulnerable country”.

B. Views on how issues identified should be addressed in the second review

32. Some Parties suggested that the second review of the Kyoto Protocol be consistent with other processes under the Convention and its Kyoto Protocol. One Party suggested that the scope of the review be limited to the five issues identified in decision 4/CMP.3, paragraph 6.

33. Regarding specific issues, some Parties suggested that further analysis would be required on the issue of extending the share of proceeds to assist in meeting the cost of adaptation to JI and emissions trading.

34. On the issues of the scope, effectiveness and functioning of the flexibility mechanisms, including ways and means to enhance an equitable regional distribution of CDM projects, some Parties proposed that an assessment of the CDM be undertaken. One Party proposed that the SBI agree on the terms of reference of the assessment at its twenty-eighth session; that the assessment be carried out by an independent third party or a United Nations body; and that the CMP receive the report at its fifth session and take appropriate action.

35. Another Party suggested that the secretariat commission a study into implications of the fungibility of various emissions trading schemes.

36. With regard to adverse effects, one Party recommended that the Subsidiary Body for Scientific and Technological Advice be invited to consider the environmental and social implications of response measures in “lower income developing countries”, to inform the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol of the implications of these considerations and to recommend possible remedial action.
