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

## **Report on the workshop on preparations 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 workshop held on preparations for the second review of the Kyoto Protocol pursuant to its Article 9. The workshop took place in Bonn, Germany, on 28–29 April 2008, and it was chaired by the Chair of the Subsidiary Body for Implementation, Mr. Bagher Asadi. The discussion centred on the five issues identified for review in decision 4/CMP.3, paragraph 6, and additional issues identified by Parties. The report describes the exchange of views that took place on each of the issues and on how they should be addressed in 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 preparations for this review, the CMP, at its third session, by its decision 4/CMP.3, invited Parties to submit to the secretariat, for compilation and synthesis, their views on how the issues specified in paragraph 6 of that decision should be addressed in the second review. These views are contained in document FCCC/SBI/2008/MISC.2 and Add.1–2 and were synthesized by the secretariat in document FCCC/SBI/2008/INF.1.
3. The CMP, by the same decision, requested the secretariat to organize a workshop before the twenty-eighth session of the Subsidiary Body for Implementation (SBI) to consider and discuss the information provided by Parties in the submissions referred to above, and to prepare a report on this workshop.

### B. Scope of the note

4. This report follows the order in which issues were discussed during the workshop; that is, according to the list of issues contained in decision 4/CMP.3, paragraph 6. It reports on the exchange of views on the question of how to address the identified issues, and also reports on additional issues identified during the workshop.

### C. Possible action by the Subsidiary Body for Implementation

5. The SBI will be invited to consider this report as part of the preparations for the second review and to report to the CMP on how the issues specified in decision 4/CMP.3, paragraph 6, should be addressed in the second review.

## II. Proceedings

6. The workshop took place in Bonn, Germany, on 28–29 April 2008. It was chaired by the Chair of the SBI, Mr. Bagher Asadi. Seventy-one representatives of Parties attended the workshop, as well as four representatives from non-governmental observer organizations.
7. In line with decision 4/CMP.3, paragraph 6, the workshop was organized in six segments, one for each of the issues identified in the decision and one for additional issues. Each segment opened with a presentation,<sup>1</sup> followed by a discussion among Parties on the issue in question and an in-depth exchange of views on how the issue should be addressed in the second review.
8. At the opening of the meeting, the chair introduced the mandate, goal and scope of the workshop, highlighting that its focus was the preparations for the second review and that discussions should concentrate on **how** to address the issues identified in decision 4/CMP.3.
9. Furthermore, the chair singled out the five issues listed in that decision as a priority for the second review, notwithstanding additional issues that Parties identified in their submissions. On this subject, some Parties stressed their understanding that the workshop should focus only on the five listed issues, while others expressed the view that decision 4/CMP.3 allows for additional issues to be identified during the preparations for the second review and therefore at the workshop.

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<sup>1</sup> The presentations are available at <[http://unfccc.int/kyoto\\_protocol/items/4369.php](http://unfccc.int/kyoto_protocol/items/4369.php)>.

10. When closing the workshop, the chair provided Parties with a preliminary view of his approach on how to proceed with the consideration of this matter during SBI 28, where he expects the SBI to conclude consideration of preparations for the second review.

### **III. Issues to be addressed in the second review of the Kyoto Protocol pursuant to its Article 9, and how to address them**

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

11. The first segment began with a short overview by the secretariat of the views expressed in the submissions from Parties on the issue. Many Parties underlined in their submissions 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 (ET). However, some Parties considered that further analysis is needed on costs of adaptation and possible sources of funds.

12. During the discussion, several Parties echoed the need for increased adaptation funding and called for an extension of the share of proceeds to JI and ET in order to contribute to predictable and sustainable funding for the Adaptation Fund. Some Parties recalled the 'polluter pays' principle.

13. Notwithstanding the above, some Parties raised the concern that extending the share of proceeds to JI and ET would distort the carbon market by increasing transaction costs, and would lead to fewer JI projects. Others remarked that the clean development mechanism (CDM) has not suffered because of the levy on the share of proceeds that is applied to it.

14. It was suggested by some Parties that a study on the matter could clarify whether a levy similar to that on the CDM would affect the market and whether such an extension would yield significant funds.

15. Some Parties further suggested additional mechanisms, such as auctioning of allowances and levies on bunker fuels.

16. On the distribution of funds of the Adaptation Fund, one Party proposed that a resource allocation framework be established for it, similar to that of the Global Environment Facility.

17. Regarding the question on how to address this issue in the review, some Parties were of the view that this issue will be considered under the Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA) and, as such, it would be a duplication of work to also consider it in the second review of the Kyoto Protocol.

18. One Party disagreed with this, suggesting that the second review of the Kyoto Protocol would provide a different context to the consideration of this issue, owing to the specific mandate of the Protocol.

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

19. The secretariat gave a presentation on the second issue to be addressed, recalling the existing procedure for adoption of amendments to Annex B to the Kyoto Protocol, setting out the possible options for simplifying the process of amending Annex B based on options that had been presented by Parties in their submissions, and explaining the requirements for amending the procedure to amend Annex B.

20. The following possible options for simplifying the procedure for inscribing commitments in Annex B were presented:
- (a) An **opt-out or tacit acceptance** procedure, whereby 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;
  - (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**, which allows adjustments to be made to annexes to an agreement through decisions taken by a convention or protocol body and become binding for Parties on a date specified in the relevant convention or protocol or decision.

21. Several Parties indicated that they were open to discussing the options presented, with some Parties identifying the opt-out or tacit acceptance procedure as the most promising, and other Parties expressing a preference for the adjustment procedure. One Party emphasized the importance of market predictability and the need for political commitment to ensure the timely entry into force of any amendment to Annex B. Some Parties recommended that examples from other multilateral environmental agreements should be considered with caution, in view of the unique nature of the Kyoto Protocol.

22. Parties discussed the scope of any possible amendment to the procedure for amending Annex B. Some Parties were of the view that simplifying the procedure should be discussed only in relation to inscribing commitments for Annex I Parties, while others indicated that a simplified procedure for amending Annex B should enable non-Annex I Parties to take on voluntary commitments. One Party indicated that creating a new Annex C to the Kyoto Protocol should also be considered, which would include Parties that wish to take on particular types of quantified emission limitation and reduction commitments.

23. Parties pointed out the relationship between this issue and other provisions of the Kyoto Protocol, as well as links with other processes, specifically, the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG) and the AWG-LCA. Some Parties argued that simplifying the procedure for amending Annex B is not merely a procedural issue, but a substantive question that is related to the nature of future commitments under the Convention and the Kyoto Protocol. While it was acknowledged that legal work would be required for any new commitment, some Parties noted that the purpose of the second review is not to predict the nature of legal work that would be required in these other processes.

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

24. The secretariat introduced the third segment and presented an overview of the discussions to date by Parties on privileges and immunities as well as the main issues on this item raised by Parties in their submissions pursuant to decision 4/CMP.3. The secretariat explained that the three main issues being considered by Parties are:

- (a) Which privileges and/or immunities should be conferred to individuals serving on constituted bodies;
- (b) How these privileges and immunities should be conferred;

- (c) What procedures and mechanisms should be put in place to review and resolve claims or disputes brought by private entities against these individuals for the activities undertaken and decisions made in the discharge of their official functions under the Kyoto Protocol.

25. The secretariat further noted that this is a complex issue of international and national law as well as international relations for which all Parties are actively trying to find a solution that will be effective in the long term. In the interim, the secretariat is taking action to ensure effective implementation of decision 9/CMP.2.

26. During the discussions following the presentation, Parties stated that this is an important issue of concern to all Parties, and underlined the necessity to provide privileges and immunities to individuals serving on constituted bodies. They also agreed that a legally binding solution is needed. Some Parties expressed surprise that the legal framework on privileges and immunities of the United Nations cannot be extended to the Kyoto Protocol.

27. One Party stressed the need for the secretariat to provide to Parties detailed information on actual cases of claims and/or disputes against individuals serving on constituted bodies, to assist Parties in approving the necessary legislation on privileges and immunities for individuals serving on Kyoto Protocol bodies.

#### **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**

28. The third issue, on the scope, effectiveness and functioning of the flexible mechanisms, was introduced by a presentation of the Chair of the AWG, in the spirit of decision 4/CMP.3, paragraph 4. The presentation focused on the consideration by the AWG of this issue at the first part of its fifth session. This introduction was followed by presentations from Argentina, the European Union and the Environmental Integrity Group.

29. The discussion that followed focused on the CDM and the appropriateness of a review of the CDM. Parties argued for and against such a review. Some Parties proposed an assessment of the CDM, which would concentrate on its governance and be applicable for the first commitment period of the Kyoto Protocol. Some Parties considered, though, that there is not sufficient time for this, in the light of the timing of the second review and other relevant processes. One Party added that it is too early to review the CDM, as many potential stakeholders are still in the process of learning by doing.

30. It was noted that a similar assessment is undertaken every year by the CMP when taking note of the annual report of the CDM Executive Board and that the AWG is considering means to reach emission reduction targets, including the flexibility mechanisms.

31. Regarding ways and means to enhance an equitable distribution of CDM projects, some Parties emphasized that the CDM is an offset mechanism, driven by market dynamics, and as such its equitable distribution is not an issue for consideration. However, others stressed that the CDM is a development assistance mechanism and that therefore ways and means to address its equitable distribution should be considered, in particular through improving the modalities and procedures for afforestation and reforestation project activities, the rules for programmes of activities under the CDM and the rules on land use, land-use change and forestry. Renewable energy and energy efficiency CDM project activities were also identified as relevant.

32. One Party argued 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 is developed to assist non-Annex I Parties in achieving emission reductions, the CDM should serve as a mechanism for non-Annex I Parties that are not "major emitters" and that are unlikely to undertake such commitments.

**E. 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**

33. This fifth issue was introduced by presentations from Tuvalu and Saudi Arabia.
34. Representatives of small island developing States and least developed countries in particular called for additional analysis of negative impacts of climate change and mitigation activities on net fuel importing countries and on countries dependent on tourism, as such countries are particularly vulnerable. An international climate insurance facility was also discussed.
35. It was suggested by one Party that the multilateral response to climate change should be coherent with other multilateral international processes, such as the World Trade Organization.
36. One Party stressed that this issue is being considered both by the subsidiary bodies and by the AWG-LCA. On the other hand, another Party argued that there is a mandate for reviewing this issue under the Kyoto Protocol and that as such Parties should address this issue in the second review.

**F. Other issues identified**

37. The final segment covered additional issues to those identified in decision 4/CMP.3, and began with a presentation from Norway on international aviation and maritime transportation. This was followed by a presentation from Japan on “long-term goal and modality of commitments; base year, the requirement for entry into force of the framework beyond 2012, reporting of emission data of non-Annex I countries; facilitative nature of compliance mechanism; bubble, and technologies”.
38. Some Parties were open to discussing additional issues, although it was noted by others that many of the additional issues identified are subjects of consideration under the AWG and the AWG-LCA. Other Parties were of the view that issues under consideration for the second review should be limited to those identified in decision 4/CMP.3, paragraph 6. It was stressed that the aim of decision 4/CMP.3 is to further enhance the implementation of the Protocol.
39. Many Parties suggested that the information paper referred to in decision 4/CMP.3, paragraph 10, on the work of the AWG, will provide further clarity on the issues to be addressed in the second review.
40. On international aviation and maritime transportation, some Parties were of the view that Article 2, paragraph 2, of the Protocol refers this issue to the International Civil Aviation Organization and the International Maritime Organization; while other Parties suggested that this provision should be revised, and again noted that this issue is a subject of consideration under the AWG and the AWG-LCA.
41. A further additional issue that was suggested by some Parties is that the reporting and review processes for reports should be included in the second review.

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