

China

Submission on agenda item 7 of the Ad Hoc Working Group on the Paris Agreement on “Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement”

September, 15, 2017

In accordance with paragraph 15 of the Conclusion(FCCC/APA/2017/L.2) of the Ad Hoc Working Group on the Paris Agreement on the third part of its first session(hereinafter the APA) and the Informal Note by the Co-Facilitators on Agenda Item 7, China would like to submit the following views on *the modalities and procedures required for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2 of the Paris Agreement* (hereinafter the Article 15 mechanism).

This submission will mainly focus on the three issues proposed in the annex of the Co-Facilitators’ Informal Note on 17 May 2017:

- (a) How can potential linkages to other arrangements under the Paris Agreement be designed to ensure that the Committee operates effectively while still preserving the independence of these arrangements?
- (b) What kind of outputs of the Committee’s activity would effectively facilitate implementation and promote compliance, and how?
- (c) How would the consideration of national capabilities and circumstances of Parties be operationalized in the modalities for the operation of the Article 15 Committee?

I. General comments

In light of Article 15 of the Paris Agreement (hereinafter the PA) and Paragraphs 102 and 103 of decision 1/CP.21, the Committee under Article 15 is a single committee with dual functions, one is to facilitate implementation, and the other is to promote compliance. The Committee shall operate in a transparent, facilitative, non-adversarial and non-punitive manner in every stage, ensuring the adequate participation of the Party concerned. The outputs of the Committee is to facilitate implementation of and promote compliance with the PA, instead of creating confrontation. The respective national capabilities of Parties, and in particular the special circumstances of developing country Parties shall be taken into account for the effective operation of the Article 15 Mechanism.

II. Potential linkages to other arrangements under the PA

1. Potential linkages to Transparency Framework

First, if a Party fails to fulfill its obligations or faces difficulties to report, undergo technical expert review (TER) and facilitative, multilateral consideration of progress (FMCP) under Article 13, the Article 15 mechanism should be triggered in accordance with relevant rules on triggering.

Second, the linkage between the Article 15 mechanism and the output of TER as well as FMCP needs to be further explored. Since the output of TER and the FMCP is still under discussion by APA agenda 5, it is premature to decide whether a linkage exists or what kind of linkage it will be. However, a preliminary analysis on relevant provisions of the PA suggests that with respect to the function of promoting compliance, there seems to be no direct linkage; while with respect to the function of facilitating implementation, the output of TER or FMCP might trigger the work of the Committee or become the source of information for the Committee.

2. Potential linkages to Global Stocktake

In accordance with Article 14 of the PA, the global stocktake will periodically assess the collective progress towards achieving the purpose of PA and its long term goals

and will not evaluate individual Party's actions. So if the Article 15 mechanism will only examine the obligations and actions of individual Parties, there will be no direct linkage between the Global Stocktake and Article 15 mechanism. However, if the Article 15 mechanism is authorized to examine the general or systemic implementation or compliance issues common to all Parties, those findings on general or systemic issues could serve as the source of information for the Global Stocktake.

3. Potential linkages to Finance, Technology and Capacity Building Mechanisms

Given the facilitative nature of the Article 15 mechanism and the fact that many developing countries face difficulties in implementation and compliance due to lack of capacity and support, it is critical to establish linkages between the Article 15 mechanism and the finance, technology and capacity building mechanisms of the Convention and the PA. The specific way to establish linkage could be further discussed and explored. One possible approach is that the Committee would make recommendations to the relevant bodies for their consideration, in order to facilitate the provision of financial, technological and capacity building support to relevant Parties.

4. Potential linkages to CMA

In addition to the procedural and institutional linkages provided in Article 15(3) of the PA and para 102 of Decision 1/CP.21, another potential linkage between the Article 15 mechanism and CMA is that the Committee may provide recommendations to CMA for consideration and adoption under certain circumstances, or seek guidance from CMA to facilitate implementation and promote compliance.

5. Potential linkages to Article 6 mechanism

The design of the Article 6 mechanism has not completed yet, so it is premature to decide a linkage exist or not. Yet based on the understanding that the measures taken by the Committee are non-adversarial and non-punitive, and the application of Article 6 mechanism will be nationally determined, it is not appropriate for the Committee to make a decision that prohibits or affects a Party's participation in the Article 6 mechanism.

III. Output of the Committee's activities

1. Factors to be considered

When the Committee makes decisions on the measures to be taken on the Party in question of implementation or compliance, there are several factors to be considered by the Committee in order to effectively facilitate implementation and promote compliance.

First, the measures taken by the Committee shall be different based on whether the relevant provisions of the PA are legally binding or not. In the case of non-legally binding provisions, the measures taken by the Committee shall be focused on facilitating implementation, such as giving advice on implementation or providing support on capacity building. In the case of legally binding provisions, in addition to the measures on facilitating implementation, the Committee can take further measures, such as assisting the Party concerned to develop a compliance plan, and urge the Party concerned to implement the plan, etc.

Second, it is necessary for the Committee to consider the cause, degree and frequency of the questions of implementation or compliance when deciding on the specific measures.

Third, the output measures taken by the Committee shall be differentiated between those developing country Parties failing to comply due to lack of capacity and those countries failing to comply due to lack of will. For non-compliance of such developing country Parties, focus should be placed on improving the capacity of implementation and compliance, and providing financial, technological and capacity-building assistance.

In a word, when deciding on the measures to be taken, the Committee shall take into account: (a) the legal status of relevant provisions concerned, (b) factors such as the cause, type, degree and frequency, (c) the capacity and the national circumstances of developing country Parties.

2. Specific measures

Pursuant to the national circumstances of the Party concerned, the Committee, with a view to promoting compliance and addressing cases of non-compliance, may take measures including but not limited to:

- (a) Sharing of information, experiences and lessons;
- (b) Providing implementation or compliance advice or recommendations;
- (c) Sending expert groups to provide support;
- (d) Assisting the Party concerned to develop an implementation or compliance action plan where appropriate;
- (e) Recommending relevant Convention/PA bodies on assistance to the Party concerned with financial, technological and capacity-building support, etc.;
- (f) Inviting the Party concerned to update on its efforts.

The specific measures shall be decided by the Committee case by case.

IV. Consideration of national capabilities and circumstances of Parties

1. The relationship between respective national capabilities and circumstances and the principle of common but differentiated responsibilities and respective capabilities

Article 2(2) of the PA stipulates that “This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances”. The principle of common but differentiated responsibilities and respective capabilities is thus established as the general principle applicable to all provisions of the PA, including Article 15. Article 15(2) further stipulates that “The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.” This provision is stipulated due to the fact that whether a Party could fully implement the PA will largely depend on its national capabilities and circumstance. So the Article 15(2) provision should be considered as a supplement to and emphasis on but not a

replacement of the principle of common but differentiated responsibilities and respective capabilities.

2. How to reflect national capabilities and circumstances of Parties in the Article 15 mechanism?

The different national capabilities and circumstances of Parties should be considered and reflected in both procedural and substantive aspects of the Article 15 mechanism. As for the procedural aspect, the developing country Parties should be given more flexibility in some procedural requirements such as the timelines for the Party concerned to respond or provide information. Assistance could be provided to a developing country Party in need during the process before the Committee.

For the substantive aspects, the national capabilities and circumstances of developing country Parties should be an important consideration when the Committee determines the specific measures to be taken. Particularly, the facilitation of providing support or assistance should be considered by the Committee when the Party concerned is facing difficulties of implementation or compliance due to lack of capacity.

V. other important issues

1. Scope of the operation of the Committee

The scope of the operation of the Committee would be different depending on its different functions. In respect of facilitating implementation, all provisions of the PA shall be covered. As to promote compliance, the scope is limited to those provisions establishing legal obligations for the Parties, such as provisions with the wording “Parties shall...”.

2. Commencement of Committee Activities

The Party concerned itself should play a primary role to commence the Article 15 mechanism. When those Parties have difficulties in implementing or compliance with the PA, they may trigger the work of the Committee on their own initiative. Such self-trigger mode is most consistent with the facilitative and non-adversarial nature of the mechanism.

In addition to self-trigger, there might be other modes of commencing the Committee Activities. The Committee and the CMA may trigger the Mechanism with the information collected or received through the secretariat. Those other modes shall meet certain conditions, such as paying prior communication and consultation with the Party concerned.