

16 June 2000

ENGLISH ONLY

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE

Twelfth session

Bonn, 12-16 June 2000

Agenda item 6

SUBSIDIARY BODY FOR IMPLEMENTATION

Twelfth session

Bonn, 12-16 June 2000

Agenda item 6

**MECHANISMS PURSUANT TO ARTICLES 6, 12 AND 17 OF THE
KYOTO PROTOCOL**

**Principles, modalities, rules and guidelines for the
mechanisms under Articles 6, 12 and 17 of the
Kyoto Protocol**

Submissions from Parties

Note by the secretariat

1. In addition to the submissions contained in documents FCCC/SB/2000/MISC.1 and Add.1, a further submission has been received* .
2. In accordance with the procedure for miscellaneous documents, this submission is attached and reproduced in the language in which it was received and without formal editing.

* In order to make this submission available on electronic systems, including the World Wide Web, this contribution has been electronically scanned and/or retyped. The secretariat has made every effort to ensure the correct reproduction of the text as submitted.

FCCC/SB/2000/MISC.1/Add.2

BNJ.00-00631

COSTA RICA, ON BEHALF ALSO OF ARGENTINA, BOLIVIA, CHILE, COLOMBIA, THE DOMINICAN REPUBLIC, ECUADOR, GUATEMALA, HONDURAS, MEXICO, NICARAGUA, PANAMA, PARAGUAY AND URUGUAY

LAND USE, LAND USE CHANGE AND FORESTRY PROJECTS UNDER THE CLEAN DEVELOPMENT MECHANISM

The countries listed above submit to the UNFCCC Secretariat the following document and request its publication as a miscellaneous non-paper during the XII Sessions of the Subsidiary Bodies to the UNFCCC (12-16 June 2000). The aim of this non-paper is to address comments made by some observers suggesting that Land Use, Land Use Change and Forestry (LULUCF) projects are ineligible under Article 12 of the Protocol, which defines the Clean Development Mechanism (CDM of the Kyoto Protocol). In our view, these comments do not have any valid legal or scientific basis, and have become an unwelcome distraction from efforts to develop the rules necessary to ensure that the CDM fulfills its purposes of assisting non-Annex I Parties in achieving sustainable development, and assisting Annex I Parties in achieving compliance with their quantified emission limitation and reduction commitments, with a contribution to the ultimate objective of the Convention.

The above-listed countries emphasize that questions of interpretation of the Kyoto Protocol must be resolved in accordance with Article 2 of the Convention which states: "The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." Consistent with this objective, the above-listed countries state the following:

I. LULUCF projects are eligible under the Article 12 CDM. Article 12 does not explicitly or implicitly exclude LULUCF projects from eligibility.

A number of observers have interpreted Article 12 as excluding from eligibility under the CDM projects from the LULUCF sector. The plain language of Article 12 does not contain *any* explicit exclusion of any category of projects. Nevertheless, these observers argue that an implicit exclusion must be read into Article 12. This exclusionary interpretation of Article 12 is invalid for the following reasons:

- A) The exclusionary interpretation is inconsistent with the guiding principles of the Protocol. The Preamble to the Protocol states that the Parties to the Protocol will be "guided by Article 3 of the Convention," which sets forth the Convention's principles. One of the Article 3 principles is that the policies and measures undertaken by the Parties "should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors." Reading into Article 12 an implicit exclusion of LULUCF projects is inconsistent with this guiding principle of the Protocol. Obviously, the drafters intended to preserve this principle of comprehensiveness established in the text of the Convention.

- B)** The exclusionary interpretation is inconsistent with Article 2 of the Protocol. Article 2 of the Kyoto Protocol sets forth how each Annex I Party is to achieve its quantified emission limitation and reduction commitments (QELRCs) under Article 3 while promoting sustainable development. Article 2 states that each Annex I Party "shall [i]mplement and/or further elaborate policies and measures in accordance with its national circumstances, such as: ... (ii) [p]rotection and enhancement of sinks and reservoirs of greenhouse gases; ... and (iii) promotion of sustainable forms of agriculture in light of climate change considerations." Given that Article 12's stated purposes are to provide a means for Annex I Parties to achieve their QELRC's and to contribute to sustainable development, Article 2 dictates the scope of activities eligible under Article 12.
- C)** The term "emission reductions" as it is used in Article 12 does not imply that only projects that reduce emissions, and not projects that remove emissions, may be considered under Article 12 of the CDM. The term "emission reductions" is not explicitly defined in either the Convention or the Protocol. Throughout the Protocol, it is used as a term of art to refer to particular kinds of units of account rather than particular types of activities.

The term "emission reductions" appears for the first time in Articles 3.10, 3.11 and 3.12. Articles 3.10 and 3.11 use the term "emission reductions units" as the Article 6 unit of account to adjust the assigned amounts of the Parties involved. Similarly, Article 3.12 uses the term "certified emission reductions" as the unit of account to adjust the assigned amount of the acquiring Party in a CDM transaction. The text uses the word "certified" to distinguish the emissions reduction units of account obtained under Article 12 from those obtained under Article 6.

The next appearance of the term "emission reductions" is in Article 6. The plain language of Article 6 states that "emission reduction units" may "result[] from projects aimed at *reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks in any sector of the economy*" (emphasis added).

Accordingly, the Protocol uses the term "emission reductions" in connection with the project-based mechanisms to describe the impact of projects on Parties' accounts, not the type or category of project. Moreover, Article 6 makes clear that the drafters contemplated that "emission reduction units" could result from projects that enhance removals by sinks. Where the drafters intended to distinguish among categories of eligible activities and projects, they did so explicitly, e.g., Article 6's reference to "projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks"; and Article 3.3's reference to "afforestation, reforestation, and deforestation."

However, even if one infers from the use of term "emission reduction" in Article 12 an implicit exclusion of projects that enhance removals by sinks, it is important to note that not all LULUCF projects are sinks projects. As the IPCC has recognized, forests can be sources, sinks, or reservoirs. Many LULUCF projects slow, reduce, or avoid deforestation. Such projects reduce anthropogenic emissions by sources.

- D) The exclusionary interpretation is inconsistent with the mandatory accounting framework for Annex I Parties established under Article 3.3. Article 3.3 states that "net changes in greenhouse gas emissions by sources and removals by sinks, resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, *shall* be used to meet the commitments under this Article of each Party included in Annex I" (emphasis added). Accordingly, Article 3.3 establishes explicitly that Annex I Parties must take into account certain LULUCF activities in meeting their commitments under Article 3. Since Article 3.3 refers explicitly to "net changes" -a phrase which automatically includes emissions by sources and removals by sinks- and since one of the purposes of Article 12 is to assist those Parties in meeting their commitments under Article 3, it would be inconsistent with the mandatory Article 3.3 accounting framework to exclude LULUCF projects from Article 12. Accordingly, the scope of projects eligible under Article 12 should correspond to the activities eligible under Articles 3.3 and 3.4.

To the extent that arguments against the eligibility of LULUCF projects under Article 12 represent a "back-door" effort to renegotiate Article 3 or any other provisions of the Protocol, the above-listed countries condemn such an effort. As Article 26 of the Protocol makes clear, the text of the Protocol is final and whole. It is not subject to renegotiation.

- E) The exclusionary interpretation is inconsistent with the CDM's purpose of assisting Non-Annex I countries in achieving sustainable development and meeting the costs of adaptation measures. The sustainable management of natural resources, including land use, land-use change and forestry activities, is deemed critical for the achievement of sustainable development as well as for addressing vulnerability to climate change. The exclusionary interpretation fundamentally conflicts with the ultimate objective of the Convention expressed in Article 2 and conflicts with the principles expressed in Article 3.1 ("The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.")
- F) In the past, proponents of the exclusionary interpretation of Article 12 have asserted that a lack of full scientific certainty about the validity of LULUCF projects justifies making such projects ineligible under Article 12. This argument is inconsistent with the guiding principles of the Protocol as expressed in Article 3 of the Convention. Article 3.3 of the Convention states that: "The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, *lack of full scientific certainty should not be used as a reason for postponing such measures*, taking into account the policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost" (emphasis added).

Moreover, even if there was at one time a lack of full scientific certainty about the merits of projects from the LULUCF sector, particularly compared to projects from

the energy sector, this uncertainty has been resolved by the authoritative IPCC Special Report on Land Use, Land Use Change, and Forestry. This report cites with approval a review and comparison of projects from both sectors. The IPCC states:

"This assessment found that LULUCF and energy projects face parallel, comparable issues in measurement and in ensuring social and environmental benefits. *In general, it is not possible to assert that energy projects are superior as a class to LULUCF projects on these grounds.*" (Emphasis added).

The IPCC report identified only one significant difference between projects in the two sectors. This issue, duration, is associated with only certain types of LULUCF projects and can be addressed through project design. All in all, the IPCC Special Report does not provide any scientific basis for excluding the entire category of LULUCF projects from eligibility under the CDM.

II. Conclusions

According to the letter of the Protocol, the spirit of the negotiations, and the purpose of the Clean Development Mechanism, LULUCF projects are eligible to receive certified emissions reductions. The scope of eligible LULUCF projects should correspond to the activities established under the Article 3.3 and those to be established under Article 3.4. Projects that effectively and credibly avoid, slow, or reduce deforestation are covered under Article 3.3, whether the project includes total protection or forest management.

Excluding LULUCF projects and other related activities from the CDM will go against the spirit, objectives and principles of the Convention and the Kyoto Protocol.

The time has ended for spurious legal interpretations and invalid scientific claims regarding LULUCF projects. These arguments have distracted from the real task at hand, which is developing the rules that will ensure that all CDM projects have real, measurable, and long-term benefits related to the mitigation of climate change and that those benefits are additional to those that would occur in the absence of those projects. The above-listed countries offer this paper in the hope that we all can move forward in designing a CDM that is characterized by environmental integrity and assists in our achievement of sustainable development.