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**CONFERENCE OF THE PARTIES SERVING AS THE
MEETING OF THE PARTIES TO THE KYOTO PROTOCOL**

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Item 13 of the provisional agenda

Second review of the Kyoto Protocol pursuant to its Article 9

Views from Parties on ways and means to enhance equitable regional and sub-regional distribution of projects under the clean development mechanism

Submissions from Parties

1. The Subsidiary Body for Implementation (SBI), at its twenty-eighth session, recommended that the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) give attention, in particular, to the issues listed in decision 4/CMP.3, paragraph 6, and further recommended that the CMP take appropriate action at its fourth session. The SBI further invited Parties to submit to the secretariat, by 19 September 2008, for compilation and synthesis, their views on ways and means to enhance equitable regional and sub-regional distribution of clean development mechanism projects (FCCC/SBI/2008/8, para. 109 (d) (iii)).
2. The secretariat has received five such submissions. In accordance with the procedure for miscellaneous documents, these submissions are attached and reproduced* in the language in which they were received and without formal editing.
3. The secretariat has also received submissions from accredited non-governmental organizations. In line with established practice, the secretariat has posted these submission on the UNFCCC website at <http://unfccc.int/parties_and_observers/ngo/items/3689.php>.

* These submissions have been electronically imported in order to make them available on electronic systems, including the World Wide Web. The secretariat has made every effort to ensure the correct reproduction of the texts a submitted.

CONTENTS

	<i>Page</i>
1. ARGENTINA (Submission received 23 September 2008)	3
2. COSTA RICA (Submission received 22 September 2008)	5
3. FRANCE ON BEHALF OF THE EUROPEAN COMMUNITY AND ITS MEMBER STATES* (Submission received 18 September 2008)	7
4. NEW ZEALAND (Submission received 1 October 2008)	16
5. SOUTH AFRICA (Submission received 22 September 2008)	20

* This submission is supported by Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey.

PAPER NO. 1: ARGENTINA

Scope and content of the second review of the Kyoto Protocol pursuant to its Article 9

In the draft conclusions proposed by the chair of the Subsidiary Body for Implementation (SBI) in its twenty-eighth session held in Bonn, 4 -13 June 2008, and in relation to Agenda item 12: Preparation for the second review of the Kyoto Protocol pursuant to its Article 9 (FCCC/SBI/2008/L.14), the SBI recommended that the CMP give attention, in particular, to the issues listed in decision 4/CMP.3, paragraph 6, and further recommended that the CMP take appropriate action at its fourth session of, inter alia: “On the issue of the scope, effectiveness and functioning of the flexibility mechanisms, including ways and means to enhance an equitable regional distribution of clean development mechanism (CDM) projects” (Paragraph 8, (d)), and “...invited Parties to submit to the secretariat, by 19 September 2008, for compilation and synthesis, their views on: (1) ways and means to enhance equitable regional and sub-regional distribution of CDM projects; and (2) how the current institutional arrangements, governance, rules and procedures of the CDM and joint implementation may be improved in the first commitment period in order to enhance their functioning and effectiveness” (Paragraph 8, (d), (iii)).

In this regard, the Government of Argentina would like to submit its views and suggestions.

a) On the enhancement of the effectiveness of the Clean Development Mechanism

Argentina believes that carbon markets have a key role to play to mobilize the private sector and its resources to support GHG mitigation activities, in particular mitigation actions in developing countries. The market alone cannot, however, generate the financial flows necessary to address the global challenge of climate change, but must be led by and combined with public initiatives and funding. In addition, current carbon markets need to be scaled up to deliver the amount of financial flows required to accomplish the task. The CDM, in its current form, is a minor portion of the global mitigation requirement and serves only to compliment what should be major efforts by Annex I countries to meet their mitigation commitments under the Kyoto Protocol at the national level.

Under the existing project-by-project approach, the CDM has limited potential for further growth considering the inordinant level of effort required to: define individual baselines, demonstrate additionality case-by-case, and to monitor and verify each individual project. The programmatic CDM could be a step forward to tackle these issues, and thereby increase GHG mitigation, although the effectiveness of the programmatic CDM remains to be proved.

Argentina believes that the goals of the Convention could be further served with an improved approach to this particular market mechanism, based on measurable, reportable and verifiable GHG reductions generated by nationally appropriate mitigation actions by developing countries.

An improved approach should introduce: a) baselines established for each of the main economic sectors in a country by country basis, b) additionality criteria based on common practices and benchmarks also defined for the main economic sectors in a country by country basis, and c) statistically-based monitoring and verification plans together with monitoring based on GHG inventories of the sectors involved. Both baselines and benchmarks should be periodically reviewed and updated according to the evolution of national circumstances.

Additionally, the new approach for the carbon market mechanism should introduce a number of conditions, criteria and factors that allow for, inter alia, a better regional distribution of the mitigation actions and the financial flows needed to overcome the incremental costs involved in the development and implementation of such actions. An improved CDM should also incorporate conditions that avoid market biases, such as those that have arisen in the current CDM, relating to activities that mitigate

gases different from carbon dioxide (see paragraph b) below).

Argentina believes that an approach that is tailored to national sector-specific needs and priorities as well as GHG mitigation contribution provides the appropriate platform to scale up private sector funding and investment in developing countries, thus promoting climate solutions in the context of sustainable development. Such an approach can, in concert with public sector financing from developed countries, further assist in achieving the massive levels of financing and technology transfer necessary to address of climate change in a measurable, reportable and verifiable manner.

b) On including co-benefits as criteria for registration of project activities and/or mitigation actions

As a criteria for registration of project activities and/or mitigation actions, Argentina supports the inclusion of a percentage of incremental costs and of total investment costs paid as advance payment of future credits as well as specific co-benefits such as technology development and transfer to be defined by means of simple-to-calculate indicators. Co-benefits should be evaluated in the first place by the host country using the established indicators, and verify later by a DOE or similar institution.

In pursuing a more balanced regional distribution of project activities as well as a more balanced distribution in terms of type of GHG, Argentina believes that quotas could be explored and established for developed countries to determine the maximum amount of emission reductions allowed from each region and from each type of GHG.

c) On carbon capture and storage

In relation to the inclusion of carbon capture and storage activities in the CDM, we consider the use of this technology only as a possible transitory mitigation activity while the world prepares and moves towards a sustainable development path supported by environmental sound technologies based on renewable resources. Considering their short and long-term liability in relation to leakage and other unforeseen environmental impacts, Argentina could conditionally support CCS activities as temporary CDM activities, with a clear deadline for the use of CERs issued for such project activities.

d) On the institutional arrangement of the future CDM

For the new approach proposed for the carbon market mechanism, Argentina deems necessary a supervisory structure different from the current CDM Executive Board. We believe it is necessary that the new mechanism be regulated by a high-level body that deals with strategic issues such as establishing guidelines to ensure equitable regional distribution of the mitigation activities and associated financial flows, developing and proposing indicators necessary to measure development and transfer of technology as well as other co-benefits that may contribute to sustainable development of mitigation actions, avoiding market biases that favour certain activities, addressing environmental integrity issues with global impacts (e.g. biofuels), etc.

This high-level body could also resolve disputes and controversies that may arise regarding eligibility of mitigation actions among other issues. This body should have a regional representation as other similar bodies under the UNFCCC.

The high-level body should be supported by technical panels integrated by full-time experts from different fields to deal with issues such as country specific sectoral baselines, common practices and benchmarks, GHG inventories, monitoring and verification plans, registration of mitigation activities and actions, issuance of credits, etc.

PAPER NO. 2: COSTA RICA

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

I

THE MANDATE

The Subsidiary Body for Implementation (SBI) on its twenty-eighth session, held in Bonn from 4 to 13 June 2008, in the document FCCC/SBI/2008/8, invited Parties to submit to the Secretariat by 19 September 2008, their views on (1) the issue of extending the share of proceeds to assist in meeting the costs of adaptation to joint implementation and emissions trading (para 109 [a]) and views on (2) ways and means to enhance equitable regional and subregional distribution of CDM projects; and (3) how the current institutional arrangements, governance, rules and procedures of the CDM and joint implementation may be improved in the first commitment period in order to enhance their functioning and effectiveness (para 109 [d] [iii]).

Costa Rica welcomes this opportunity to contribute to the work program on preparations for the second review of the Kyoto Protocol pursuant to its Article 9 and look forward to a constructive exchange of views with other Parties leading to a successful outcome by CMP4 in Poznan.

1. Extending the share of proceeds

It is incontrovertible that the funding needed for adaptation to climate change is far beyond that which is currently available. It is furthermore unquestionable that it is developing countries, particularly SIDS and LDCs which will need most support with adaptation. It is therefore financially insufficient and morally unacceptable to impose the share of proceeds that is destined for adaptation only on the CDM, paid by developing countries themselves. While this was a compromise for the first commitment period of the Kyoto Protocol, the second period must correct this situation by extending the share of proceeds to both Joint Implementation and to emissions trading by imposing the same levy on the issuance of AAs.

2. Improving regional equity and subregional distribution of CDM projects

The CDM is by design a market mechanism and thus responds to the forces of supply and demand. Most CDM projects are concentrated in those developing countries that have the highest level of emissions and hence, the highest potential of emission reductions. However, the emission reduction market was created by a political decision, and Parties are in their right if they choose to intervene in market forces.

CDM projects in LDCs are already exempt from the share of proceeds. Several further options could be considered to improve access to CDM on the part of those countries with lowest participation:

- a. In these countries (e.g. SIDs and LDCs) the threshold for small scale projects could be increased in order to allow them to use the simpler small scale rules.

- b. The requirement to show additionality could be removed from small scale projects, or from any projects in LDCs and SIDs.
- c. The CDM project cycle transaction costs of projects could be funded through the CDM management funds.

3. Improving governance and procedures of the mechanisms during the first commitment period

The CDM has proven to be a success, however it is at the same time evident that many improvements can and should be made to the governance and procedures of the CDM for the first commitment period. Among the most important we highlight:

- a. Delegate technical assessment (for registration and certification) of projects to the Secretariat, bringing to the Board only those that are questionable. For this clear guidelines would have to be established by the Board, and the Secretariat would have to be further staffed up.
- b. Improve transparency and contribute to learning by clearly providing the rationale for decisions on projects. DOEs and project developers are often left in the dark about the reasons for rejecting a project. If the rationale is clearly stated, it can serve as a learning tool for DOEs and project developers.
- c. Deepen the communication between Board and DOEs. DOEs are often not informed of decisions of the Board, or misinterpret these decisions, because there is little direct communication of the Board with DOEs. The Secretariat could have a one day de-brief with DOEs after each EB meeting.
- d. Review the expertise requirements of Board members. The CDM has become more complex and requires deeper knowledge base in the EB. Parties have not been clear enough about the knowledge/expertise that is required by EB members (para 8 of the annex to decision 3/CMP1. Hence members are elected to the Board for political and not technical reasons. This situation must be corrected.

PAPER NO. 3: FRANCE ON BEHALF OF THE EUROPEAN COMMUNITY AND
ITS MEMBER STATES

This submission is supported by Croatia, Turkey, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia

Paris, 18 September 2008

Subject: Preparations for the second review of the Kyoto Protocol pursuant to its Article 9
Views on: (1) ways and means to enhance equitable regional and sub-regional distribution of CDM projects; and (2) how the current institutional arrangements, governance, rules and procedures of the CDM and joint implementation may be improved in the first commitment period in order to enhance their functioning and effectiveness

France, on behalf of the European Community and its Member States, welcomes the opportunity to submit views on ways and means to enhance equitable regional and sub-regional distribution of CDM projects; and how the current institutional arrangements, governance, rules and procedures of the CDM and joint implementation may be improved in the first commitment period in order to enhance their functioning and effectiveness.

GENERAL REMARKS

In order to achieve our common goal of a post-2012 agreement by 2009, all relevant processes need to progress as constructively as possible, coordinate with and draw upon relevant results achieved and work under way in other bodies and processes under the Convention and its Kyoto Protocol. In particular, the work of the AWG-LCA, AWG-KP and the second review of the Kyoto Protocol pursuant to its Article 9 need to progress in harmony and should aim to maximize synergies toward a global and comprehensive agreement in 2009.

We need to build upon and broaden the Kyoto Protocol architecture. The second review should draw on the lessons learned in implementing the Kyoto Protocol and contribute to laying the foundations for a renewed and more efficient instrument, to be envisaged in the context of the broader negotiations for a post-2012 climate regime.

The CDM has been successful in generating significant financial flows to developing countries for climate-friendly projects and has contributed to achieving sustainable development as well as stimulated technology transfer and competence in key sectors. In addition to this the flexible mechanisms are vital in helping Parties meet their Kyoto targets and future commitments. In considering ways to enhance the effectiveness of flexibility mechanisms, the EU believes that improvements to the existing mechanisms may also require consideration of the potential for new and supplemental mechanisms. The EU welcomes the overall success of the CDM yet recognizes that there is still considerable scope for improvement. The EU would like improvements to be adopted by Parties at the earliest opportunity, so as to enhance the overall effectiveness and functioning of the flexible mechanisms.

1. ENHANCING EQUITABLE REGIONAL AND SUB-REGIONAL DISTRIBUTION OF CDM PROJECTS

The current regional distribution of projects is due to a range of factors not least mitigation opportunities and the investment climate of the country concerned. CDM rules themselves are rarely the only barrier to investment in CDM in a specific country, and the liberalization of rules can at best tip the scales in favor of key countries or sectors and at worst undermine the environmental integrity of the whole regime. To maximize the potential of the mechanism, consideration of the role and benefits of the carbon market should be linked to national development policies and priorities.

A more proactive approach to change the regional distribution of CDM projects would require coordination of development and climate policy, in both donor and host countries. Development and climate policy-making should be encouraged to take account of the possibilities of carbon finance as a complementary source of finance to official development assistance.

The EU is of the view that developing countries would increasingly need to contribute to mitigation action domestically, including by moving beyond project-based offsetting approaches such as the current CDM (except in LDCs). This would lead to different regional distribution of CDM projects compared to current situation.

Higher levels of participation from currently underrepresented regions could be enhanced by promoting the CDM in those countries with relatively lower capabilities to contribute to mitigation action e.g. by giving preferential terms of market access to smaller and less developed economies – albeit not at the expense of environmental integrity and market efficiency. It can be possible to find ways to increase the CDM potential in the least developed countries, for example by promoting sectoral crediting and programmatic CDM where feasible, or by improving the current rules of LULUCF building on the lessons learnt in implementing them.

Investments through the CDM in least developed countries could further be encouraged through a differential treatment in respect of fees and levies.

The EU and its Member States implement a number of multilateral and bilateral capacity building initiatives and investment programmes aimed at addressing the issue of regional distribution and many EU Member States have national purchase programmes which prioritise units from LDCs.

The EU welcomes the work conducted by the World Bank (in response to the Nairobi Framework) to assess mitigation potentials in LDCs and Africa and it hopes that this work will help attract investment and allow host countries to plan and coordinate their development and climate change priorities. The EU also welcomes the first African Carbon Forum held in Senegal and encourages future forums of this kind in Africa and in other less developed countries.

2. FUNCTIONING AND EFFECTIVENESS OF THE CLEAN DEVELOPMENT MECHANISM

The CDM has generated significant financial flows to developing countries for climate-friendly projects and has stimulated technology transfer and built capacity in key sectors such as renewable energy and energy efficiency. The EU welcomes the overall success of the mechanism, yet recognizes that there is still considerable scope for improvement. As the CDM is an offset mechanism, it is important to ensure the environmental integrity in the CDM, while enhancing the role of CDM in promoting low carbon economies, sustainable development, capacity building and development, deployment and transfer of technologies at least cost.

We believe the Article 9 review provides an opportunity to discuss potential improvements to the architecture of the CDM based on the experience with the mechanism to date, thereby complementing the work of the AWG-KP.

2.1 Governance of the Clean Development Mechanism

A robust and effective institutional structure is essential to regulate a multibillion-dollar instrument such as the CDM. The Article 9 review should therefore consider improvements in the governance arrangements for the CDM, including the institutional architecture and processes. The current CDM governance structure was designed without prior knowledge and practical experience of the system it was meant to serve. After five years of operation and in the light of the rapidly expanding CDM portfolio and the ever-increasing volume of work for the CDM EB, Parties should take stock and recommend improvements to the current structure. The EU believes that considerable improvements to the governance arrangements of the CDM could be implemented immediately to ensure the effective functioning of the mechanisms for the remainder of the first commitment period. Improvements should only apply to projects registered after such improvements are operational.

While the EU wishes to build upon the current institutional architecture, some of the improvements suggested below may also be relevant in the context of the second commitment period and may be taken up by the AWG-KP when discussing institutional issues related to the mechanisms for the second commitment period.

2.1.1 Nomination and Election of Board Members

Individual Executive Board members play an essential role in the governance of the CDM. Existing rules of procedure establish the roles and responsibilities of Board members and underline the need for a high level of independence and integrity.

These general provisions should be supplemented with more detailed terms of reference for Board members to reinforce these requirements, and to further clarify the roles and restrictions related to EB membership.

Terms of Reference should include:

Confirmation that Board members are appointed:

- to supervise the Clean Development Mechanism by taking decisions, preparing or approving guidance, standards, regulations and rules so that decisions can be taken by the EB's support structures wherever possible in accordance with the Modalities and Procedures of the CDM and further guidance provided by the Subsidiary Bodies and/or the CMP;
- to act on a personal basis in accordance with oath and should not take instructions from any party or external body;
- to dedicate at least 50 working days per annum to Executive Board activities.

Requirement that Board members must avoid any conflicts of interest with their current, previous or following occupation, inter alia:

- Obligation to declare all financial and pecuniary interests both prior to membership and interests arising during the term of EB membership;
- Obligation to resign from any association with a company involved in the CDM including project development, validation or verification or companies or institutions purchasing CERs.

Board members must demonstrate:

- at least 5 years of government/regulatory experience in the area of climate change mitigation at a senior level; or
- at least 5 years of experience in the global carbon market at a senior level.

In addition, rules related to the **nomination and election process** should also be supplemented.

Nominations to the Board should be made public at the Subsidiary Bodies meeting immediately before the CMP at which the election of members takes place. Nominations should be supported by written statements highlighting relevant qualifications and the background of nominees.

The EB should publish as a matter of highest priority a **Code of Conduct** in order to ensure continuing quality and performance and to provide assurance to the market on the impartiality and objectivity of Executive Board members. The Code of Conduct should require that members publish their CVs, along with a statement of all pecuniary and professional interests that may impact upon their impartiality with regard to any decisions. Impartiality should be deemed to be impacted by professional and pecuniary interests, or by conflicts arising from their national provenance. EB members with government functions related to the approval of projects should refrain from active participation in decision-making on CDM projects in which their government organisation is a Party involved. Breach of Code of Conduct shall lead to suspension and/or termination of EB membership.

2.1.2 Chair and Vice-Chair

As the Chair and Vice-Chair of the CDM EB have a considerable role relative to other Executive Board members, Rule 12 of the EB rules of procedure should be amended to allow for the CMP to elect the Chair and Vice-Chair of the CDM on a full-time basis, based on a shortlist of candidates established by the Bureau in consultation with the UNFCCC Secretariat. The positions of Chair and Vice-Chair with one being a member from a Party not included in Annex I and the other being from a Party not included

in Annex I shall alternate bi-annually between a member from a Party included in Annex I and a member from a Party not included in Annex I.

These positions should supplement the full EB membership. The Chair and the Vice-Chair of the CDM, in addition to preparing and chairing the EB meetings, should act as ambassadors for the mechanism and manage external relationships with stakeholders and the public while coordinating the day-to-day functioning of the CDM EB, including the Secretariat and the EB panels and its working groups. To this end, the proposed Chair and Vice-Chair should not be entitled to vote under Rule 29 but should continue to perform services related to presiding over meetings and determining consensus in accordance with Rules 14 and 29. The Chair and the Vice-Chair should also continue to be responsible for the coordination tasks associated with setting meeting dates, agendas and records of meetings under Rules 16, 20 and 40.

2.1.3 Enhancing the Supervisory Role of the Executive Board

The CDM Executive Board should substantially enhance its supervisory role by increasing delegation of decision-making to the Secretariat and focusing on general policy and system improvements. In cases where clear guidance can be applied, the EB should delegate case-specific decision-making to the UNFCCC Secretariat and in this regard, recommendations by the Secretariat related to delegated matters should be considered approved by the EB unless three EB members request a consideration within five weeks of recommendation.

Delegation of decision-making to the EB's support structure, including the UNFCCC Secretariat, its panels and working groups should cover the following areas at a minimum:

- Registration of project activities and issuance of CERs, including requesting reviews and recommendations on reviews. Delegation in the case of registration and issuance should be restricted to case decisions that are based on the application of existing rules, regulations and/or guidance from the EB. New issues emerging from registration or issuance requests should be explicitly decided upon by the EB.
- Accreditation of DOEs.
- Recommendations on the approval, revision or withdrawal of baseline and monitoring methodologies and clarifications to approved baseline and monitoring methodologies.

The EB should supervise the work delegated to the Secretariat and its panels and working groups. The UNFCCC Secretariat, the Panels and working groups shall bring to the attention of the Board any substantial new or general policy related issues arising from all delegated work.

2.1.4 Transparency of decision-making

Consistency and transparency of the EB decision-making process are critical to improve accessibility of Executive Board decisions by stakeholders. To this end, the CMP has repeatedly requested that the EB develop and maintain a catalogue of decisions, including clarifications, guidance and explanations or rationale for its decisions in order to facilitate broader understanding by stakeholders. This has not yet been adopted in practice in a consistent manner.

To address this issue, the EB should:

- Separately classify, publish and index all decisions;
- Regularise decisions through a standardised typography of decisions;

- Adopt a formal hierarchy of decisions for the purposes of interpretation;
- Ensure that reference is made to previous decisions wherever possible in all decisions texts. To this end, when making a recommendation to the Board, the Secretariat should highlight the relevant content of previous decisions.
- Adopt a clear process for amendment or substitution of previous decisions.

2.1.5 Appeals Process

In cases where registration or issuance, following review, has been refused by the EB, project proponents should be entitled to an appeals procedure to ensure due process in decision-making by the EB.

An Appeals Chamber of the Executive Board composed of members with a legal background could be introduced to facilitate the appeals process.

The appeals procedure should be limited to the application of law in case specific decisions of the EB in registration or issuance requests, including issues of grave procedural omission, biased decision-making and/or the violation of the principle of non-discrimination.

2.2 The Role and Responsibility of the Designated Operational Entities

DOEs play a crucial role in ensuring the environmental integrity and effectiveness of the CDM. The EU urges the EB to take special measures to address the current bottleneck issue and enhance DOE capacity as a matter of priority.

2.2.1 A Standard for Validation and Verification of projects

A clear standard for validation and verification is essential to ensure a transparent and uniform approach to project assessment. The EB should finalise its work on the creation of a standard through the Validation and Verification Manual (VVM) at its earliest opportunity. The VVM will provide clarity to DOEs and project proponents in relation to the registration and issuance process. The VVM should also provide guidance to the EB and their support structures in relation to registration and issuance decisions. In order to facilitate understanding and proper use of the VVM, a training programme for DOEs should support the implementation of the standard. Further, the EB should regularly update and supplement the VVM as required. The standard, supplemented by specific guidance, shall be applied by DOEs in their validation and verification activities subject to a grace period for the implementation of new projects undergoing validation.

In line with other professional accredited bodies, the EB should procure a programme of continuing professional training for DOE staff in addition to the current accreditation process. This programme should be initiated at the point of accreditation. Once the training is introduced and has been applied, only staff of DOEs that has successfully participated in the training should be entitled to undertake validation and verification activities.

2.2.2 The accreditation process

In order for the CDM to function properly, high quality DOE services must be available to project proponents. To this end, the EB should continue to review the accreditation process and address bottlenecks as a matter of urgency.

The review should:

- Identify clear roles for each element of the accreditation process - desk review, onsite assessment and witnessing;
- Provide detail on the role of spot checks and regular surveillance;
- Consider the potential for a system of individual accreditation to satisfy competency requirements;
- Establish indicative timelines for each stage in the accreditation process;
- Address issues related to the availability of projects for witnessing activities.

Based on the results of the review, the EB should adopt a single standard for accreditation supported by a continuing training programme for assessors.

2.2.3 Enhancing transparency in the Validation and Verification processes

DOEs should report to the EB on the outcome of validation and verification assessments notwithstanding the result. This will discourage “DOE shopping”, thereby enhancing the environmental integrity of the mechanism while further reducing the delays often associated with the early stages of the registration process. Both positive and negative validation and verification reports should be made available to the EB. Ultimately, the EB should publish the project status (e.g. “in process”, “withdrawn”, “rejected”, “completed”) on the CDM website for all projects that have begun the validation and/or verification process including the final validation/verification result.

Indicative time periods should be established to encompass all elements of the validation and verification processes and a deadline should be set for the initiation of validation activities or the submission of a new methodology relative to the start-date of the project activity

2.2.4 Performance and compliance of DOEs

The Board should strengthen its enforcement functions as a matter of priority. In this regard the EU welcomes the EB announcement in July 2007 that it would initiate work on a policy framework to address non-compliance by DOEs in a systematic manner. The policy framework should establish a matrix for non-compliance leading to suspension and/or withdrawal of DOE accreditation based on the number of reviews initiated, repeat error, non-compliance with standards or proven misconduct. In order to guide project proponents in their choice of a DOE, the EB should publish quality statistics related to DOE performance based on the established matrix.

2.2.5 Selection and payment of DOEs

The EU proposes to explore the option to have DOEs selected and paid by the UNFCCC Secretariat as a means to enhance the impartiality and independence of DOEs. Project participants would still bear a direct cost for each project for validation/registration services but would be invoiced by the Secretariat. The selection of DOEs could be based on a simple bidding procedure where costs as well as previous

performance of the DOE are considered. The EU suggests that the CDM Executive Board, in consultation with the UNFCCC Secretariat, should evaluate how such a procedure could be implemented in practice and the advantages and disadvantages of such a procedure, including its impact on the current validation bottleneck. It could prepare recommendations for COP/MOP5 to decide whether or not to proceed with this option. Such an option should not be at the detriment of implementing the proposed increased delegation of decision-making to the Secretariat, which the EU views as a priority measure to enhance the supervisory role of the CDM EB.

2.3 Determination of Additionality and Baseline Emissions

2.3.1 Enhancing the assessment of additionality

In practice, additionality is demonstrated in many cases through application of the “tool for the demonstration and assessment of additionality” or the “combined tool to identify the baseline scenario and demonstrate additionality”. While these tools have contributed to an effective implementation of the CDM, they are not perfect and could benefit from further improvements or totally different approaches. In this respect parties and project developers are invited to propose new and better concepts.

When applying these tools, one of the options is the investment analysis, comparing the project concerned to a financial benchmark. The EU has observed a wide variety of such benchmarks and encourages the Board to streamline and standardize such financial benchmarks. Another option is the barrier analysis. In many cases, the barriers claimed by the project participants are rather subjective and difficult to validate in an objective manner. More objective criteria should be developed to assess whether projects face barriers. Similarly, quantitative thresholds should be introduced in the common practice test rather than relying on qualitative assessments. Generally, the EU encourages the introduction of more objective criteria to demonstrate additionality, such as ambitious emission benchmarks.

2.3.2 Enhancing standardisation in baseline setting

Standardization in baseline setting and emission calculation is already ongoing through increased use of methodological tools, such as the “tool to calculate the emission factor for an electricity system”. Increased use of such uniform, standardized methods and uniform rules would facilitate speedier development of new methodologies, and further standardization is encouraged.

The EU would like to explore the possibility of a wider approach of the use of sector or sub-sector specific benchmarks at national level in the determination of baseline emissions in the CDM. Benchmarks provide an opportunity to increase the efficiency of the CDM by eliminating the need for subjective project-specific baselines in sectors where the development of benchmarks is possible. Standardization of baselines through the application of ambitious benchmarks may contribute to improving the environmental integrity of the mechanism. The EB should systematically assess approved methodologies for which benchmarks are appropriate and explore the use of benchmarks in these methodologies.

3. FUNCTIONING AND EFFECTIVENESS OF THE JOINT IMPLEMENTATION MECHANISM

There is less experience with JI than with the CDM. Nonetheless, the EU welcomes the recent considerable effort of the JISC to develop rules and practices for JI. To date few JI projects have been submitted and/or passed the JISC final approval as the majority of prospective JI projects await the fulfilment of eligibility criteria by host Parties. The EU continues to support Track 2 JI, particularly in relation to Parties that do not (yet) have the capacity to develop the institutional and legislative framework required for Track 1. We encourage Parties to develop institutional structures and procedures to enable their participation in Track 1.

As JI is a project-based mechanism many parallels can be drawn with the CDM in terms of possible improvements to governance and support structures. In particular, the JISC should take on a supervisory role rather than focusing on caseload management. However it should be underlined that the JI is fundamentally different from the CDM in one respect – JI is applied in Annex I Parties with binding emissions reduction commitments, which implies that host countries are ultimately responsible for overall compliance. The JISC Chair, the Vice-Chair and JISC members should dedicate a minimum number of working days per year as is judged to be commensurate with the workload of JISC activities. Key priorities regarding JI are related to: the accreditation of independent entities; further guidance on the application of baseline and monitoring methodologies approved by the CDM EB, including deviations and specific JI approaches on baseline; guidance on demonstration of additionality; and programme of activities. The introduction of a DVM (Determination and Verification Manual) to provide clear guidelines for IEs should be considered. Similarly to the CDM, an appeals procedure is also needed.

REVIEW OF THE KYOTO PROTOCOL PURSUANT TO ITS ARTICLE 9

September 2008

As invited by the Subsidiary Body for Implementation (SBI), as part of the preparations for the second review of the Kyoto Protocol¹, New Zealand welcomes the opportunity to provide views on two issues: 1) extending the share of proceeds to joint implementation and international emissions trading; and 2) enhancing equitable regional and sub-regional distribution of the CDM. These matters are linked to the work of the AWG-KP² on the analysis of means to reach emission reduction targets and identification of ways to enhance their effectiveness and contribution to sustainable development, and to the work of AWG-LCA³ on enabling the full, effective and sustained implementation of the Convention through long-term cooperative action now, up to and beyond 2012.

Summary

2 The proposal to **extend the share of proceeds to joint implementation and international emissions trading** should be seen in the context of a broader discussion on the funding of adaptation - an issue that cuts across both the Framework Convention and its Kyoto Protocol. New Zealand recognises that additional funding for adaptation is needed. In our view, the correct approach to adaptation funding is a cross-cutting one, first establishing the overall financial framework for adaptation before deciding which specific mechanisms will be used to raise funds. Predictability and sustainability of funding are important.

3 Extending the share of proceeds to joint implementation and international emissions trading raises important questions about the allocation of responsibility for adaptation funding. No changes should be made for the first commitment period. In the case of international emissions trading any levy that applied on transactions of units would present a risk to the efficiency of the carbon market. New Zealand looks forward to the secretariat technical paper for further clarification of the implications of these approaches.

4 New Zealand considers that **regional and sub-regional distribution of CDM** projects depends on the mechanism's design and implementation, and suggests several approaches to identifying and removing barriers, particularly in regions that have few or no projects. Such improvements could be considered for the first commitment period.

5 New Zealand does not support rule changes that seek to explicitly direct in which countries CDM projects should take place, as this would be at odds with the least-cost principle articulated in the Principles (Article 3.3) of the Framework Convention.

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

6 New Zealand agrees with the objective underlying this proposal: to provide increased funding for adaptation and identify means to deliver predictable and sustainable funding. At the

¹ FCCC/SBI/2008/8

² E.g. as presented as agenda item 3(a) for the discussions in Accra, Ghana (FCCC/KP/AWG/2008/4 refers)

³ E.g. as presented as agenda item 3 for the discussions in Accra, Ghana (FCCC/AWGLCA/2008/9 refers)

same time, finance is a cross-cutting issue that needs to be discussed across the negotiating tracks of the Framework Convention and its Kyoto Protocol in a consistent and coherent manner if the current negotiations are to deliver effective decision making and efficient and effective outcomes.

7 Financing is a three-step process: assessing needs, collecting the funds, and delivering (according to need). Before deciding on how funds should be raised, Parties should first focus discussions on what needs to be accomplished through adaptation funding, rather than beginning with the mechanism for collecting funds. They should consider the need, identified in the Bali Action Plan, for financing to be adequate, predictable and sustainable, and for it not to have perverse outcomes for markets. It is important to analyse all options together in order to decide on which option or mix of options will be most effective and efficient in meeting adaptation needs.

8 New Zealand notes that the CDM adaptation levy was introduced to provide some benefits for CDM-eligible countries with an expected low CDM uptake. The proposal to raise funds for adaptation by applying a levy to joint implementation or international emissions trading, with funds to be disbursed to parties uninvolved in either activity, is of a different nature and context.

9 Extending the share of proceeds to **international emissions trading** by means of a levy at issuance, would mean that Parties were contributing to adaptation in direct proportion to their overall emissions allocation, and in inverse proportion to the ambition of their emissions reduction commitments. While this simple principle may have some merit, New Zealand believes that it needs further analysis against the criteria of environmental effectiveness, economic efficiency and equity of burden-sharing.

10 New Zealand also questions the idea of levying both AAUs and ERUs, as this would lead to a double levy on JI projects and could reduce investment in emission reduction activities in Annex 1 Parties.

11 New Zealand also notes that Parties use the flexible mechanisms to varying degrees, with some Parties trading internationally more than others. If the levy was a transaction levy rather than an issuance levy, extending the share of proceeds to international emissions trading would produce an unfair outcome as parties that traded more in units would carry a greater burden of adaptation funding than parties that chose to use regulatory or carbon charge responses. This could have a perverse outcome on the choice of climate change responses, and could result in less mitigation taking place. Any levy that was applied on transactions of units would discourage trading activity and present a risk to the efficiency of the carbon market.

12 Consideration should also be given to the fact that the flexible mechanisms may not offer a predictable and sustainable source of funds due to supply/demand and price uncertainty beyond 2012.

13 New Zealand does not support imposing a levy or other intervention in the market during the first commitment period. Annex 1 Parties have implemented emissions trading schemes and other mechanisms, and businesses have made decisions in the expectation of a period of stability until the end of 2012. New Zealand considers that the introduction of a new intervention, independent of other reforms to the mechanisms, could create undesirable uncertainty in the international carbon market. This issue would be better addressed as part of the comprehensive post-2012 framework.

2) Ways and means to enhance the equitable regional and sub-regional distribution of CDM projects

14 There are a number of issues intertwined in the discussion of the need for more equitable regional and sub regional distribution of CDM projects. It is clear that in the first commitment period, CDM project activities will be concentrated in a relatively small number of countries and that there will be very limited uptake of CDM projects in Least Developed Countries (LDCs). This uneven distribution of projects is seen to be significant in the context of the CDM's role in promoting sustainable development and enhancing technology transfer. In the current CDM, there is a conflict between the principles of achieving the greatest emissions reductions at the least cost (which the current mechanism appears to do) and the effective transfer of low emissions technology (which it does less well, and indeed rewards mainly those countries which are comparatively well advanced in technologies).

15 Addressing this issue requires careful and pragmatic assessment of why the distribution of CDM is unfolding as it is, and more critically, consideration as to whether the CDM is the best mechanism to assist LDCs in achieving their sustainable development objectives or whether other instruments (existing or new, and not necessarily under the UNFCCC or its Kyoto Protocol) need to be developed to achieve these objectives more adequately.

16 It is important to recall that, as pointed out in paragraph 8 above, the CDM levy itself reflects a recognition by Parties that not all eligible countries will provide equally attractive business and investment opportunities for CDM activities.

17 Some of the key factors that are shaping the current distribution of CDM projects are the level of industrialisation of the economy, absolute levels of energy consumption and greenhouse gas emissions and related to these, the magnitude of mitigation potentials. These economic factors will continue in the future to attract project developers seeking profitable investment opportunities that minimise transaction costs.

18 Notwithstanding these economic drivers, there are in New Zealand's view a number of positive steps that should be explored further with the aim of encouraging a more equitable regional distribution of projects. Such improvements could be considered in the first commitment period.

19 Firstly, and perhaps most significantly, proposals that have been put forward in the AWG KP to differentiate the eligibility of Parties to host CDM project activities, provide a real potential to refocus the CDM as an offsets mechanism towards LDCs and Small Island Developing States.

20 Secondly, rule changes to facilitate the uptake of small scale project activities should be considered. For example, increasing the maximum size of small scale project activities for certain host Parties or reducing additionality requirements for such projects being implemented in certain host Parties.

21 Thirdly, addressing the permanence issues under CDM rules on LULUCF could help encourage these types of projects in LDCs and generate important sustainable development co-benefits.

22 Fourthly, and more generally, although much has already been undertaken in programmes such as the Nairobi Framework by agencies such as the World Bank and the

UNDP, there is undoubtedly much more than can still be done to identify and remove barriers to the implementation of CDM.

23 However, there are also in New Zealand's view, suggested rule changes that could be very detrimental to the cost effectiveness of the CDM as a market instrument. Negative developments would be rule changes that seek to explicitly direct in which countries CDM projects should take place. An example of such a rule change would be to require the purchase of minimum quota of CERs from particular host Parties. Such proposals would be practically difficult to administer and enforce (in particular on private sector entities participating in the market), and could significantly detract from the cost effectiveness of the CDM as a market mechanism. In this context such developments would be at odds with the least-cost principle articulated in the Principles (Article 3.3) of the Framework Convention, which state "*policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost*".

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

The Subsidiary Body for Implementation at its twenty-eighth session (SBI 28) invited Parties to submit their views on several issues⁴ relevant to the preparation for the second review of the Kyoto Protocol pursuant to its Article 9. South Africa hereby presents its initial views on several matters in an integrated fashion, reserving the right to further elaborate its views during the negotiations.

General comments

Parties agreed in decision 4/CMP.3 that the second review shall not prejudice action by CMP4 and shall not lead to new commitments, yet also affirmed that CMP4 shall take appropriate action based on the second review. South Africa is of the view that the second review should lead to appropriate action to improve the efficiency and effectiveness of the existing mechanisms under the Kyoto Protocol.

The aim of the review should be to improve the procedures under a relatively young Protocol, without fundamentally changing its structure at this early stage. South Africa believes that this will best be achieved by making real progress on a focused set of issues. Seeking progress on a very large number of issues would result in duplication of work and not yield effective results. South Africa believes the second review should focus on the issues identified in decision 4/CMP.3, paragraph 5 and seek to make progress on them. We recall the agreement in Bali that the implementation of the Protocol should be enhanced for a number of elements, in particular adaptation.

The pre-session workshop shall consider⁵ 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). Focus should be retained on these issues, to best prepare the second review.

In relation to aspects that cannot be dealt with through decisions, we recall that the SBI recommended that CMP4 might wish to identify issues that require further consideration and refer them to the appropriate body.

Those matters that fall outside the scope of the present provisions of the Kyoto Protocol and beyond the guidelines provided through decisions, could be provided for in the agreed outcome of the AWG LCA negotiations under the UNFCCC.

Our initial view is that aspects of the Russian Proposal being considered under the review could be addressed in the form of a procedural Annex to the Kyoto Protocol; privileges and immunities would require both short-term arrangements and appropriate treaty arrangements in the longer-term; and that other aspects in the second review (e.g. improvements to the existing CDM) could be dealt with through decisions.

Views on adaptation funding⁶

In considering the issue of extending the share of proceeds to assist in meeting the costs of adaptation to joint implementation and emissions trading, it is helpful to consider the need for funding adaptation. In decision 7/CMP.2 in Nairobi, we all acknowledged that adaptation should be further elaborated as part of the second review. South Africa's view is that adaptation is not dealt with in a consolidated manner under the Protocol, and a consolidated work programme on the implementation of practical adaptation activities is urgently needed, under both the Convention and its Protocol. South Africa takes the view the

⁴ See the report of SBI 28, FCCC/SBI/2008/8, paragraphs 102-113, noting the requests for submissions of view in paragraph 109. We note that submissions of views on appropriate treaty arrangements on the issue of privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol have been requested by 20th March 2009 (see sub-paragraph 109.c).

⁵ Decision 4/CMP3, paragraph 10.

⁶ SBI-28 report, para 109.a

Protocol could assist in ensuring a more predictable stream of funding for adaptation by considering, for example, the extension of the 'share of proceeds' levy from CDM to joint implementation (JI) and emissions trading, as well as the auctioning of assigned amount units of Annex I Parties.

Currently, a share of proceeds is levied only on the CDM. This disadvantages this mechanism in relation to the other two flexible mechanisms. The share of proceeds from the CDM is an important source of revenue for the Adaptation Fund and thus for supporting the implementation of adaptation activities in developing countries. However, the current scale of funding for adaptation is two to three orders of magnitude smaller than the scale of funding required. Identifying new, additional, predictable source of funding is of the utmost importance in ensuring that funding for adaptation in developing countries reaches adequate levels in the very near future.

In this context South Africa takes the view that CMP4 should take a decision to extend to other Kyoto Protocol flexible mechanisms the share of proceeds to at least the same level (2%) as that applied to the CDM. This would provide an important early signal of seriousness in addressing the challenge in funding adaptation. The scale of resources that will be generated by such an extension is important information, which should be included in the technical paper being prepared by the Secretariat on (1) extending the share of proceeds to assist in meeting the costs of adaptation to joint implementation and emissions trading; and (2) options related to assigned amount units of Annex I Parties, for funding of adaptation in developing countries.⁷ South Africa reiterates its interest in considering the information contained in the technical paper, in particular as it relates to auctioning of assigned amount units, in the Ad hoc Working Group on Long-term Cooperative Action (AWGLCA) and its contact group on adaptation and the associated means of implementation. South Africa looks forward to exchanging views on these options at the pre-session workshop on adequate scale of funding for adaptation and appropriate sources.

Views of procedural elements for inscribing commitments for Annex I Parties in Annex B⁸

SBI-28 recommended that the CMP give attention, in particular, to the issues listed in decision 4/CMP.3, paragraph 6, and further recommended that the CMP take appropriate action at its fourth session. On the issue of relevant procedural elements for inscribing commitments for Annex I Parties in Annex B to the Kyoto Protocol, the CMP may wish to take into account the views of Parties and relevant organizations referred to in paragraph 105 of the SBI-28 report, the report on the workshop referred to in paragraph 106, and any further views submitted by Parties, in order to determine the necessity of simplifying existing procedures and take appropriate action.

In respect of the need for simplified procedures for inscribing commitments for Annex I Parties not listed in Annex B to the Kyoto Protocol where a particular country would request such inclusion, it is our view that this can be done as part of the Article 9 review. The best option available for doing so is to adopt a procedural arrangement that specifically deals with this situation. As it is a different scenario from those covered under the existing procedures, it could not be regarded as an amendment, but an additional procedural arrangement to deal with a situation that was not foreseen at the time of the adoption of the Protocol. It would also be within the competence of the CMP to adopt such an arrangement.

As indicated above, it is possible to adopt simplified procedural arrangements to deal with the situation where a Party included in Annex I but not listed in Annex B to the KP indicates that it intends taking up and inscribe in Annex B, commitments. At present and because of the lack of provisions dealing with this specific situation, the situation is treated as an amendment to Annex B. Any amendment requires that the process and procedures set out in Article 20 be followed. These procedures are difficult and time consuming for Parties to follow and it takes a long time before such amendments enter into force.

A closer reading of the provisions of the UNFCCC and the KP shows that it is not necessarily correct to follow the provisions in Article 20 in a situation where an Annex I Party currently not listed in Annex B will on its own initiative take on commitments similar to those of other Annex I Parties and request that it be inscribed in Annex B.

⁷ SBI-28 report, para 110.

⁸ SBI-28 report, para 109.b

It can be construed from the present wording in the Kyoto Protocol that individual country initiatives such as those envisaged in Article 4(2) (g) of the UNFCCC in respect of Parties not included in Annex I, were not provided for in respect of Annex I Parties listed in Annex B. Therefore and by default the procedures for the amendment of Annexes A and B as stipulated in Article 21(7) of the Kyoto Protocol are now applied to those situations. Article 21(7) to our minds deals with the amendment to Annexes A and B specifically as a result of the negotiation of new commitments for subsequent periods for Parties included in Annex I which shall be established through amendments to Annex B to the Protocol (Article 3(9)), and not to individual undertakings.

It is thus our view that it is possible to elaborate procedures for the specific situation where countries included in Annex I but not listed in Annex B want to unilaterally take on commitments and to have it inscribed in Annex B.

The next question is therefore how this could be done. There are a few options, including the adoption of an additional annex containing the simplified procedures, or a decision containing simplified procedures, or a procedure for the adjustment of Annex B.

The benefit of adopting another annex to the Protocol is that it would create legal certainty as the simplified procedures set out in such an annex would be an integral part of the Protocol.

In terms of Article 16(1) of the UNFCCC and similarly Article 21 of the Kyoto Protocol, the contents of what can be contained in an annex has been defined as being “restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character”.

It is thus possible to make use of this method. It is however also possible to have the simplified procedure reflected in a decision of the CMP.

The procedure for adopting annexes will apply and the annex once adopted will enter into force and bind all Parties except those that submitted their non-acceptance of the annex by notification to the Depository. The annex will thus be automatically applicable once adopted by the CMP through a decision and no further ratification process will be required.

Views on improving the CDM⁹

South Africa considers the Clean Development Mechanism (CDM) to be one of the major achievements to date of the Kyoto Protocol. Improvements to the CDM could be made in the form of decisions, enhancing the process of providing guidance to the Executive Board. One such decision could address the operationalisation of programmatic CDM. South Africa is of the view that improvements to the CDM should not re-open the Marrakech Accords. It has been suggested that there is scope for the further improvement of the CDM mechanism, not only to programmatic levels, but also to include policy dimensions. Without prejudging our views on the substance of these matters, we believe its consideration would be well within the scope of the second review.

South Africa attaches the highest importance to addressing the issue of the geographical distribution of CDM projects. Given the lack of CDM projects on the African continent, our view is that very specific targets have to be set for numbers of CDM projects in each country by 2011. In the process of developing such projects, capacity must be further built, through various measures, including:

1. Identification of larger CDM projects and matching means of implementation – technology (technical assistance and technology transfer), capacity development and finance, to these projects;
2. Giving higher priority to small scale poverty reduction mitigation programmes or projects, identifying types of CDM projects and programmes with high local sustainable development benefits, and scaling these up through new approaches including programmatic CDM, and assisting with the reduction of transaction costs for such projects;
3. Assist African countries in setting up clearing systems for the rapid transaction of carbon credits;

⁹ SBI-28 report, para 109.d

4. Further develop the institutional capacity of African DNAs and DOEs and fully operationalising DNAs in all developing countries;
5. Engage the private sector and particularly the financial sector in Africa; include institutional development and training for financial institutions; jointly investigate risk management tools (e.g. guarantee funds for CDM projects) to redress biased perceptions of investment in Africa

The extent to which market mechanisms will address the needs of African countries may be limited, and so attention should also be given to international public investment in mitigation activities with strong local sustainable development benefits.

In relation to elements included under the heading of “Clean Development Mechanism” in the draft conclusions proposed by the Chair of the AWG-KP,¹⁰ South Africa attaches the highest importance to improving access to CDM project activities by specified host Parties, notably Parties in Africa as outlined above. We recall that sustainable development is an equal objective of the CDM under Article 12 of the Protocol, and strongly believe that including these co-benefits as criteria for the registration of CDM project activities would significantly improve the mechanism. Without expressing a policy preference, South Africa takes the view that sectoral CDM aimed at achieving climate friendly technology transfer is a possible improvement to the existing CDM that could be considered under the second review pursuant to Article 9. However, proposals such as no-lose sectoral crediting baselines would require an entirely new mechanism and should be discussed in the AWG-LCA.

Concluding remarks

South Africa looks forward to hearing the views of other Parties on the preparations for the second review under Article 9 and to exchanging views on the focused set of issues to be addressed at the pre-session workshop, relating to the work of the AWG-KP. We are committed to working constructively with other Parties on these matters before and at Poznań.

¹⁰ FCCC/KP/AWG/2008/L.12, Annex I, section I.