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

Views on how the issues specified in decision 4/CMP.3, paragraph 6, should be addressed in the second review of the Kyoto Protocol pursuant to its Article 9, and information from Parties included in Annex I to the Convention demonstrating progress made in implementing their commitments under the Kyoto Protocol

Submissions from Parties

Addendum

1. In addition to the eight submissions contained in document FCCC/SBI/2008/MISC.2, six further submissions have been received.
2. 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.

* 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 text as submitted.

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* This submission is supported by Bosnia and Herzegovina, Croatia, Serbia and Turkey.

PAPER NO. 1: JAPAN

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

Climate change is a pressing issue which poses serious risks to the mankind. The international community urgently needs to strengthen its cooperative action against it. The Kyoto Protocol is the first step to reduce GHG emissions as a concrete measure to address climate change. However, GHG emissions from Annex I Parties that have concluded the Kyoto Protocol accounts for only approximately 30% of the global emission. Because of the limited number of the countries with reduction obligations, there is a high risk that the ultimate objective of the Convention could not be achieved. In order to achieve the ultimate objective of the Convention, it is necessary to establish a new framework in which all countries participate and take actions for emissions reduction beyond the Kyoto Protocol.

Against this background, a new negotiation process under the Convention to discuss long-term cooperative action including the framework beyond 2012 was decided to be launched at the COP13. The work of this Ad Hoc Working Group on Long-term Cooperative Action (AWGLCA) is to be completed by the end of 2009, along with the work of the AWG on Further Commitments for Annex I Parties under the Kyoto Protocol.

In January 2008, Japan presented "Cool Earth Promotion Programme" to give shape to the proposal "Cool Earth 50" presented in May 2007, and expressed its determination to tackle climate change by setting a quantified national target for the GHG emissions reductions along with other major emitters. In setting this target, Japan proposed a bottom-up approach by compiling on sectoral basis energy efficiency and tallying up the reduction volume that would be achieved based on the technology to be in use in subsequent years. In addition, it expressed the necessity of reviewing the base year.

The second review during COP/MOP4 should deal with substance in an extensive manner, working closely with foregoing negotiation process under the Convention and the process under article 3, paragraph 9, of the Kyoto Protocol. It should widely consider the elements relating to the review of the whole Protocol. The view of Japan concerning each element is as below. The status of the implementation of its commitment under the Kyoto Protocol is described in the 4th National Communication.

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

Extending the share of proceeds to assist in meeting the costs of adaptation to joint implementation and emissions trading requires the following issues to be considered:

(Justification of extending the share of proceeds to JI and Emission Trading)

- JI and Emission Trading are Kyoto Mechanisms which do not involve developing countries. Therefore, a certain justification is required if the share of proceeds to assist adaptation costs in developing countries should be extended to JI and/or Emission Trading. It also needs to be considered whether the same rate of levy as for CDM should be applied for JI and Emission Trading.

(Timing of levy)

- If Emission Trading will be levied, it is most practical to levy when credit transfers are recorded in the national registry. On the other hand, forward contracts without real transfers of credit are difficult to be levied, and this might lead to a low capture rate.

(Negative impacts on transactions)

- Depending on the rate of levy, extending the share of proceeds to emission trading might discourage spot transactions. On the other hand, it might work as an incentive to increase derivative transactions.

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

- In order to promote global actions which are necessary for stabilization of GHG concentrations in atmosphere, we support discussions on the procedures for amendment to the Annex B in case a non-Annex I Party voluntarily commits itself to a reduction obligation.

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

- Japan shares the concern of the Secretariat that there might be necessity to confer privileges and immunities to the members of the constituted bodies established under the Kyoto Protocol.
- We, however, find it difficult at this moment to express our views on them, since the content and the extent of privileges and immunities we should confer have not yet been fully examined.
- Based on the conclusion at COP/MOP3, it is necessary to coordinate views among the Parties and the UNFCCC secretariat during the second review of the Kyoto Protocol pursuant to its Article 9, by examining, in particular, the following points;
 - Concrete examples of cases in which privileges and immunities are deemed necessary (actual precedents, possible cases which are thought to take place in relation to provisions of the Protocol, frequency thereof, other possible measures to address them)
 - Contents of privileges and immunities to be conferred
 - Subjects to which privileges and immunities are to be conferred (including ideas on which constituted bodies established under the Kyoto Protocol, and which individuals serving on these bodies; ideas on their capacities, tasks and responsibilities of those individuals)
 - Practical benefits of conferring those privileges and immunities (possible benefits to the Parties of facilitating activities of those who are conferred privileges and immunities)

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

- Compared with the other Kyoto Mechanisms under the Kyoto Protocol, Clean Development Mechanism (CDM) had been structured in earlier stages, and has been making its achievements in a concrete manner, through project formation, validation, registration and credit issuance.
- On the other hand, it became clear that the current CDM needs fundamental review, because there are some points to be improved, including that it is premised on the dual system of Annex I Parties with emission reduction commitment and Non-Annex I Parties without emission reduction commitment, that the project implementation is unevenly-located, that it excludes nuclear power or CCS from its coverage, and that some policy instruments such as energy saving are difficult to be registered. Discussion on what the CDM structure or similar mechanism beyond 2012 should be like is to be conducted in the process of deepening international dialogue concerning a framework beyond 2012. Now that the first commitment period has started, it is necessary to start necessary improvement for the sound future development of CDM, bearing in mind that project formation and validation should not excessively disturbed. Improvement, in particular, in the following points is needed;

(Review process for registration)

- One of the major challenges for project participants is complicated and multi-layered process of registration for CDM projects. It is possible and necessary that the process of registration for CDM projects could be further streamlined while maintaining the environmental integrity of projects.

(Effective management of the secretariat)

- The secretariat of the UNFCCC should utilize its funds and resources in an efficient and transparent manner to meet expectations of parties and the CDM Executive Board.

(Sound market for DOEs)

- Some project participants and parties question the capabilities of DOEs and Japan also shares this view. Against this backdrop, activities of a DOE should be closely monitored in an appropriate manner by the CDM Executive Board.
- To address the issue of regional distribution for CDM projects, and to establish fair markets for local DOEs which are familiar with local regulations and conditions in environmental issues, some necessary measures should be considered.

(Role of CDM as a policy instrument)

- Review processes for methodologies for projects under the current CDM are initiated with the application basis. In order to promote the CDM projects of specific types and in specific sectors which are considered important in terms of public policy, however, it is necessary to consider the possibility of adopting a top down approach by the CDM Executive Board.
- Specifically, the CDM Executive Board should be entitled to promote CDM projects of some types and in some sectors, which Parties consider as important, by establishing methodologies on its own or instructing a third party to do it on behalf of the CDM Executive Board.

(New approaches to “additionality”)

- In order to facilitate CDM projects in certain sectors such as energy efficiency and renewable energy projects, which would contribute to sustainable development, new approaches to define “additionality”, such as to establish GHG intensity for each sector as baseline, for example, should be considered.

(Small Scale CDM)

- The scheme of small scale CDM projects should have been utilized more effectively by project participants, especially in LDCs. The advantages of small scale CDM projects that the procedures for registration are simple should be clearly shown to project participants so that they are encouraged to participate in CDM projects.

(Extension of the CDM coverage to nuclear power)

- In perspective of mobilizing every available technology which is effective to address climate change, CDM should be made to be technology-neutral mechanism. It is necessary to consider extending the CDM coverage to nuclear power, along with the discussion concerning the framework beyond 2012.

5. The minimization of adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other

The minimization of adverse effects should be considered based on the following principles:

(Accumulation of scientific information)

- According to the scientific findings of the IPCC, all countries will suffer from adverse impacts of climate change. Developing countries, especially LDCs and SIDS, however, are extremely vulnerable to the impacts of climate change and face the lack of capacity to respond. In developing countries, it

is not easy to identify the impact of climate change, due to their insufficient disaster prevention countermeasures, agricultural production infrastructure, and day-to-day infrastructure. However, identification of the impact and the assessment of vulnerability and risk are indispensable to operate necessary adaptation project in appropriate place. Assistance for information gathering and analysis should be provided preferentially.

- Gathering on measures and information at individual and community level which suffer from adverse impact of climate change directly are important, in addition to gathering macro information at national level. In operating concrete projects concerning adaptation, localized assessment of the vulnerability and capacity building are necessary.

(Mainstreaming adaptation measures into development planning)

- All countries should take adaptation measures against climate change, based on the accumulation of scientific information. It is necessary to mainstream adaptation into development planning of developing countries, bearing in mind that adaptation is related to a wide range of development issues. Appropriate mainstreaming should be further promoted, utilizing mainstreaming guidelines under consideration in OECD and other fora.

(Assistance for each adaptation project)

- Enhanced assistance under international cooperation is required to vulnerable countries including LDCs and SIDS, which currently need to implement adaptation measures. Assistance through Adaptation Fund, which is to be in operation this year, Global Environment Facility (GEF), The Least Developed Countries Fund (LDCF) and The Special Climate Change Fund (SCCF) should also be implemented in line with accumulation of scientific information as stated above and the principle of mainstreaming.

(Response measures)

- The necessity to cope with the impact of the measures to address climate change (decrease of fossil fuel use) lacks obvious foundation.

6. Others

(1) Long-term target and modality of commitments

- Long-term target should be considered as a non-legally binding shared vision. The target should aim at striking a balance between global emissions and absorptions of greenhouse gases, thus looking into peaking out of global emissions in the next 10 to 20 years and reducing them by half from the current level in the long term.
- The dual system of Annex I Parties with emission reduction commitment and Non-Annex I Parties without emission reduction commitment should be replaced by an effective framework beyond 2012 in which all major emitters meaningfully participate to exert their best efforts towards emission reduction. In order to achieve such a framework, it is necessary to consider flexible and diverse modalities.
- It is necessary to clarify the definition of “developed countries” and “developing countries” referred in the Bali Action Plan. It is also necessary to identify the scope and criteria of those “developing countries” intended to take actions as well as the scope of vulnerable developing countries which require particular support.
- Regarding the participation of each Party, it is necessary to classify each country to a tier according to objective standards. When a country meets the standard, the country should be moved to the next tier. Examples of the standard could include 1) to be an OECD member country and 2) to have GDP per capita above a certain level.

(2) Commitment period, base year and target year, requirement for entry, and reporting of emission data

- In order to strengthen continuous efforts, consideration should include (1) appropriate lengths of commitment period, on the basis of advantages and disadvantages deriving from different lengths to the target year, and (2) more equitable modality of setting of a target year. In order to consider these elements, it is a prerequisite that Parties consider adopting a system, within the post-2012 framework beyond 2012, that requires latest GHG emission data of Non-Annex I major emitting countries to be reported.
- The base year should be reviewed from the perspective of equity.
- The requirement for entry into force of the framework beyond 2012 needs to be set to ensure the participation of major emitting countries.

(3) Compliance

- It is necessary to consider measures to facilitate and encourage the achievement of subsequent emission reduction target within the next framework in case a Party is not able to achieve target.

(4) Technology

- Consideration is necessary to add the promotion of technological R&D as an element of the framework: in particular, from a long-term viewpoint, measures to develop innovative technologies which aim at long-term emission reduction.

(5) Forests

- Measures to effectively reduce emissions from deforestation and forest degradation in developing countries, including measures against illegally logging, should be considered.

(6) Bubble

- The bubble could make the responsibility of each Party unclear. For this reason, its review should be considered from the perspective of equity and effectiveness. (same as Japan's submission in FCCC/AWGLCA/2008/MISC.1/Add.1)

(7) Bunker

- In order to promote global emissions reduction, undertakings by International Civil Aviation and the International Maritime Organization should further be strengthened and accelerated.

PAPER NO. 2: PANAMA

Second Review of the Kyoto Protocol pursuant to its Article 9:

Strengthening the Effectiveness of the CDM

The third Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP3) in paragraph 6 (d) of the decision *Scope and content of the second review of the Kyoto Protocol pursuant to its Article 9* invited Parties and relevant organizations to submit their views on:

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

We welcome this opportunity to submit our views on ways to improve the scope, effectiveness and functioning of afforestation and reforestation (A/R) activities under the CDM with the recognition that doing so will help enhance the regional distribution of CDM projects.

Enhancement of Regional Distribution

There is significant potential for A/R activities within least developed countries. CDM project activities in the land-use and forestry sector provide the single largest opportunity for countries with largely rural economies to participate in the CDM.

However, until today there is only one CDM A/R project registered, and Sub-Saharan Africa has very few CDM projects of any type. There are a number of reasons for A/R project activities being absent from the CDM, some of which are touched upon in this submission. Improving the effectiveness and functioning of A/R activities will help the implementation of these activities in Africa and other regions that do not have significant opportunities in other sectors.

Definition of Reforestation

The Annex to Decision 16/CMP.1 *Land use, land-use change and forestry* defines reforestation for the purposes of the CDM.¹ This definition states “For the first commitment period, reforestation activities will be limited to reforestation occurring on those lands that did not contain forest on 31 December 1989.”

This rule was introduced to prevent the perverse incentive of deforestation for the purpose of subsequently planting trees to generate credits under the Kyoto Protocol. Significant deforestation has occurred since 31 December 1989 that is completely unrelated to gaining subsequent carbon sink credits under the Kyoto Protocol and reforestation activities on these lands should be eligible under the CDM.

The objective of preventing incentives to deforest can be maintained and the areas of eligible land can be increased if this part of the definition is changed to read for the purposes of the

¹ See paragraph 1 of the Annex to Decision 5/CMP.1 *Modalities and procedures for afforestation and reforestation project activities under the clean development mechanism in the first commitment period of the Kyoto Protocol*

CDM and JI. “Reforestation activities will be limited to reforestation occurring on those lands that did not contain forest 10 years before the project start date.”

Remove Credit Expiration at the End of the Crediting Period

The Annex to Decision 5/CMP.1 *Modalities and procedures for afforestation and reforestation project activities under the clean development mechanism in the first commitment period of the Kyoto Protocol* (A/R Modalities and Procedures) state in paragraph 23 that the crediting period of A/R projects shall be either 20 years which may be renewable twice, or 30 years which can not be renewed.

This rule on its own is reasonable, however, tCERs or ICERs generated by a project either can not be issued after the end of the crediting period (in the case of tCERs), or are cancelled at the end of the crediting period (in the case of ICERs).² As a result, all tCERs and ICERs used by a Party must be ultimately replaced in 20, 30, 40, or 60 years by permanent CERs, even if the underlying carbon stock in the registered CDM project is being maintained. This could produce perverse incentives to liquidate the forest resource base to purchase replacement credits in the marketplace.

Devaluation of CDM A/R credits

The requirement to replace the tCERs or ICERs at some arbitrary point in the future irrespective of project performance means a buyer of the tCERs or ICERs must significantly discount the value of the tCER or ICER. As a result of this discount tCERs and ICERs are given such little value that it is very difficult for the CDM to produce any real financial incentive to implement CDM A/R projects.

This rule should be changed so that credits issued during the crediting period can continue to be issued or remain valid after the end of the crediting period if the underlying carbon stock is maintained.

Flexible Approach to Dealing with Permanence

The A/R Methodologies and Procedures address the risk of permanence by creating tCERs and ICERs.³ This approach means CDM A/R credits are fundamentally different to permanent CERs and contain significantly more risks and costs associated with credit re-issuance (with tCERs) or re-verification (with ICERs). As a result, CDM A/R credits are not fully fungible and their price is heavily discounted as second-rate credits.

There are other approaches to dealing with permanence, such as the pooled buffer approach adopted by the Voluntary Carbon Standard.⁴ This approach allows issuance of permanent credits for A/R projects that are fungible with credits from other sectors, while maintaining the overall environmental integrity of the system. Adopting such an approach for the CDM would significantly increase the value of CDM A/R projects and the appeal of carrying out CDM A/R projects, while lowering transaction costs and promoting the adoption of strong risk mitigation strategies by individual projects.

² See paragraphs 42 and 46 of the A/R Modalities and Procedures.

³ See parts J and K of the A/R Modalities and Procedures

⁴ See <http://www.v-c-s.org/>

Remove the 5-Year Verification Interval

The current A/R CDM rules prescribe periodic 5-yearly verification. The interval of five years is mandatory. The idea of such interval was to synchronize verification with future commitment periods. While it is uncertain that the future will indeed rely on 5-year commitment periods, the verification rule creates cash-flow problems in A/R projects that could be helped to be overcome by allowing project participants to determine the moments in which verification takes place.

Simplify Methodologies

The CDM A/R methodologies are exceedingly complex and must meet far higher standards of rigor than is required in other sectors. This clear discrepancy in accounting rigor between sectors needs to be corrected. The CDM Executive Board should produce consolidated A/R methodologies that are significantly simplified.

Flexible (dynamic) project boundaries

At validation, projects should be allowed to include within their project boundary areas that are not yet under the control of the project participants but that are likely to become under the control of the project participants during the crediting period. This is particularly important for project activities implemented by organizations working with rural communities and small farmers.

Support efficient Programs of Activities

One of the most promising prospects for wide spread implementation of A/R project activities is through programs of activities (PoA). PoAs are of particular importance for A/R activities as it has proven difficult to identify all actors (farmers, land owners) that participate in an A/R activities at the start of a project activity. A/R activities are per definition often programmatic.

A/R rules and procedures for A/R should be designed to minimize transaction costs associated with, for example, overly technical and complicated methodologies, and repeated validation or registration.

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

This submission is supported by Bosnia and Herzegovina, Croatia, Serbia and Turkey

**Subject: Preparations for the second review of the Kyoto Protocol pursuant to its Article 9
Views on how the second review of the Kyoto Protocol pursuant to its Article 9
should address, in particular, the issues identified by COP/MOP at its third session**

Slovenia, on behalf of the European Community and its Member States welcomes the opportunity to submit views on how to prepare during 2008 for the second review under Article 9 of the Kyoto Protocol to be undertaken at CMP4.

I. GENERAL REMARKS

1. The EU welcomes the successful conclusion of COP13/CMP3 in Bali in December 2007. The results of this Conference emphasised the need for a comprehensive post-2012 agreement to be reached until 2009. The EU welcomes the establishment of the Ad hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) and emphasises the need to decide on an ambitious and efficient work programme for the group at its first session. The EU welcomes also the conclusions of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) at its resumed fourth session and the agreement on an ambitious timetable for the further work of the AWG that was achieved. The EU believes that the necessary work should be conducted as effectively as possible for the AWG to be able to complete its mandate as part of a comprehensive global agreement under the UNFCCC
2. Based on the solid scientific message provided by the IPCC in its reports throughout the year 2007, Parties reiterated that there is a need for global emissions to peak within the next 10-15 years and to be reduced to very low levels, well below half of levels in 2000 by the middle of the twenty-first century in order to stabilise their concentrations in the atmosphere at the lowest levels assessed by the IPCC to date. Developed countries need to continue to take the lead in reducing global greenhouse gas emissions by seriously considering emission reduction commitments as a group in the range of 25-40% below 1990 levels by 2020. The IPCC's Working Group 3 report mentions that in order to limit the global average temperature increase to not more than 2°C above pre-industrial levels, there is a need for substantial deviations from baseline (business as usual) emissions in several developing regions in addition to the absolute emission reduction commitments of 25-40 % by industrialised countries by 2020 (compared to 1990) ¹.
3. In addition, the EU emphasises that adaptation to the unavoidable impacts of climate change needs to be addressed as a priority within the negotiations on a post-2012 agreement, especially to enhance the support for adaptation action and capacity building in those developing countries that are most vulnerable to the impacts of climate change. With respect to both mitigation and adaptation, there is a need to discuss the issues for technology cooperation, financing and investment.
4. The EU believes that with a view to achieving 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

¹ IPCC Working Group 3 report, Chapter 13, page 776.

the Kyoto Protocol pursuant to its Article 9 need to progress in harmony and should aim to maximise synergies toward a global and comprehensive agreement in 2009.

5. The EU believes that the second review under Article 9 of the Kyoto Protocol will provide essential input to shaping the post-2012 agreement. In the first years of its existence the Kyoto Protocol has proved to be an innovative and promising instrument that provides tools for concerted international action, involving both developed and developing countries, in order to achieve global, long term and cost efficient emissions reductions. The EU wants to build upon and broaden the Kyoto Protocol architecture without questioning its core provisions and instruments, such as quantified emission limitation or reduction objectives for developed countries. 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. Therefore the EU is of the opinion that the second review needs to be comprehensive addressing provisions and decisions of the Kyoto Protocol.

II. PREPARATIONS FOR THE SECOND REVIEW: SUBSTANCE

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

6. The EU recognizes the crucial need for predictable and secure means to provide funding for adaptation, and looks forward to developing an improved and shared understanding of the financial needs required for adaptation. The UNFCCC Investment and Financial Flows paper indicates that, regardless of the uncertainty attached to the estimation of adaptation costs, adaptation to climate change will require substantial funding.
7. The Bali Action Plan includes consideration of international cooperation to support urgent implementation of adaptation actions, including financial needs assessments. In order to ensure consistency between the various negotiation processes, the EU believes that the outcome of this scoping work should guide our further consideration of adaptation funding mechanisms. A broader discussion on financing will be required before this question can be definitively addressed. The EU stresses therefore that an improved understanding of the financial needs and available means and mechanisms for adaptation is required, before being able to analyze the most adequate means for its funding.
8. The EU thinks it is important in the further work on leveraging finance for adaptation, to consider innovative mechanisms for financing adaptation, bearing in mind the need to scale up the overall level of finance. In that context, both carbon market and non-market related approaches should be scoped, and the EU looks forward to working with other parties in the assessment of different approaches to finance adaptation in the context of the finance and adaptation discussions under the AWG-LCA.
9. In this regard the following considerations, inter alia, are key for the EU:
 - To the extent possible, sourcing of finance for adaptation should not discourage mitigation efforts.
 - Transfer-based levies on emissions trading reduce its cost-effectiveness and discourage trading as these levies may adversely impact the transparency and liquidity in the carbon market and limit its expansion.
 - A levy on the creation of Emission Reduction Units (ERUs) may adversely impact the demand for ERUs relative to Assigned Amount Units (AAUs).

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

10. The EU is of the view that any change in the amendment procedure should be part of a wider package of amendments, rather than being a ‘stand alone’ amendment to the Protocol. In this regard, we welcome the opportunity to discuss this matter in the context of the Article 9 review, noting however, the linkages between this issue and the broader discussion taking place under the AWG-LCA and the need to ensure stable carbon markets and the environmental integrity of the regime when inscribing commitments for Annex I Parties in Annex B of the Kyoto Protocol.
11. Taking account of precedents available in other multilateral environmental agreements (MEAs), the EU has identified three possible options that would enable simplification of the way in which commitments are inscribed in Annex B. Each of these procedures would require an amendment to the current procedure for amendment of Annex B in order to simplify the way in which such an amendment would enter into force. These are:
 - **opt-out procedure**

Under an opt-out procedure, an amendment becomes effective for all Parties after a certain period has elapsed following its adoption, except for those Parties that have notified the depositary that they cannot accept the amendment.² Each Party retains full control over the decision on whether to be bound, although it has to undertake action (notifying its non-acceptance) if it does *not* wish to be bound by the amendment. The amendment will enter into force automatically unless the procedure specifies that, if a certain number of Parties declare their non-acceptance, the amendment will not enter into force.
 - **hybrid procedure**

An amendment procedure may also be of a hybrid character³, combining the opt-out procedure with the ‘classical’ ratification procedure⁴. A hybrid procedure provides Parties with a certain degree of flexibility in that they can choose between two procedures for becoming bound by an amendment. This choice would be made once, upon ratification of the amendment to the Protocol that introduces the new procedure. Introduction of a hybrid procedure enables use of an opt-out procedure in circumstances where it otherwise may not be possible for some Parties to accept it for internal, constitutional reasons. It would also be possible to require a certain number of Parties being bound as a condition for entry into force.
 - **adjustment procedure**

Some MEAs specifically provide for ‘adjustments’ to be made to annexes by means of the adoption of decisions taken by a convention / protocol body with legally binding effect on the Parties⁵. A decision on an adjustment can require consensus/unanimity, or (possibly as a last

² This is the procedure currently used with respect to amendments to Annex I to the Convention. In addition, article 21(5) to the Protocol sets out an opt-out procedure for amendments to annexes other than Annexes A and B.

³ This procedure is used, for example, in the Stockholm Convention on POPs for amending Annexes A, B, and C.

⁴ The ‘classical’ ratification procedure is the procedure currently used for amendments to Annex B to the Protocol, and requires Parties to deposit an instrument of ratification in order to be bound by the amendment in question.

⁵ For example, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals

resort) some kind of majority. The decision would be binding on all Parties on a date specified in the Protocol or the decision.

12. The adjustment procedure has the advantage of enabling a legally binding decision to be taken by means of a decision of the CMP. This in turn enables changes to enter into force quickly, without the need for ratifications or acceptances and thereby ensuring uniform and simultaneous application to all Parties. Whilst open to discuss all options, the EU considers that the adjustment procedure may offer a particularly promising approach.
13. The EU notes that further discussions on the specific modalities for any of these three options will be required. The EU also notes that any one of these procedures could also be used to simplify the procedure for entry into force of amendments to Annex A to the Protocol.

II.3 Privileges and immunities

14. The European Union considers that it is of utmost importance to ensure the effective functioning of Kyoto Protocol bodies. For this purpose, members of constituted bodies must be adequately protected from claims before national courts relating to the exercise of their official functions.
15. The European Union has supported both a short-term and long-term solution on privileges and immunities. With regard to the short-term solution, it welcomes decision 9/CMP.2 and its implementation by the secretariat. The EU is also open to looking into additional short-term solutions once further experience is gained with the implementation of decision 9/CMP.2.
16. Turning to the long-term solution, the EU considers that legally binding provisions should be developed as part of a broader post 2012 arrangement. It welcomes the second review of the Kyoto Protocol pursuant to its Article 9 as an excellent opportunity to explore this issue. In this regard, article VI of the 1946 Convention on the Privileges and Immunities of the United Nations could be reflected in the outcome of the Article 9 review. The focus of the consideration should be on immunities, which are necessary and appropriate for the effective functioning of the constituted bodies. For ease of reference, the text of article VI of the 1946 Convention is annexed to this submission.

II.4 The Scope, effectiveness and functioning of the flexibility mechanisms

17. The European Union welcomes the opportunity to provide its views on the scope, effectiveness and functioning of the flexible mechanisms. The flexible mechanisms are vital in helping Parties meet their Kyoto targets.
18. In the AWG-KP submission on “Means that may be available to Annex I Parties to reach their emission reduction targets”, the EU explained in detail its views on the scope, effectiveness and functioning of the different flexibility mechanisms. In considering ways to enhance the effectiveness of these flexibility mechanisms, the EU believes that improvements to the existing mechanisms may require consideration of the potential for new and supplemental mechanisms. We believe the Article 9 review provides an opportunity to discuss potential improvements to the architecture of the mechanisms, based on the experience with the mechanisms to date, but also an opportunity to consider new and supplemental mechanisms. The EU would like the assessments we have proposed

and Pesticides in International Trade, the 1994 Oslo Protocol on Further Reduction of Sulphur Emissions and the 1999 Gothenburg Protocol to Abate Acidification, Eutrophication and Ground Level Ozone.

to be undertaken as soon as possible, and for any resulting improvements to be adopted by Parties at the earliest opportunity, so as to improve the overall effectiveness and functioning of the flexible mechanisms.

Functioning and effectiveness of International Emission Trading

19. The EU believes that international emissions trading of AAUs in accordance with Article 17 of the Kyoto Protocol should continue to be a flexible mechanism and a crucial instrument to abate greenhouse gas emissions in a cost-effective manner. International emissions trading facilitates the linking of regional and company-based emission trading systems. The EU has already expressed its support and outlined its vision on the future role of international and company-based emissions trading in its AWG-KP submission.

Functioning and Effectiveness of Joint Implementation

20. There is less experience with JI than with CDM, largely due to the late start of the mechanism. The future role of JI is related to the establishment of, and compliance with targets. However, JI could still play a role beyond 2012 to further the utilisation of cost-effective mitigation opportunities. The EU has already outlined its vision on the role of JI in the future in its AWG-KP submission.
21. The EU welcomes the recent considerable effort of the JISC to develop rules and practices for JI. However, 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. Nonetheless, 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.
22. As JI is a project-based mechanism many parallels can be drawn between it and the CDM in terms of possible improvements with regards to governance and support structures (track 2). Furthermore, the EU recognises parallels and improvements related to procedural and approval processes and environmental integrity. For instance, there are possible benefits for JI associated with the introduction of a programmatic approach. Another example are the differences in rules governing methodology choice between JI and CDM. An assessment of the benefits and risks associated with these differences may lead to improvements for both mechanisms.

Functioning and Effectiveness of the Clean Development Mechanism

23. The CDM has generated significant financial flows to developing countries for climate-friendly projects and has stimulated technology transfer and competence 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. In the AWG submission, the EU emphasized already the need to strengthen the CDM as regards environmental integrity while enhancing of the role of CDM in promoting low carbon economies, sustainable development, capacity building, and development, deployment and transfer of technologies at least cost.

Governance of the Clean Development Mechanism

24. A robust and effective institutional structure is essential to regulate any multibillion dollar instrument such as the CDM (in 2007 the total value of the CDM market was € 12 billion according to market information). The EU therefore proposes that the Article 9 review should assess 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, Parties may wish to take stock and suggest improvements to the current structure. The EU suggests that the review includes an assessment of the following:

Role of the CDM Executive Board (EB), its panels and working groups:

- **The Executive and Supervisory Role of the CDM EB:** Although the COP/MOP has repeatedly emphasized that the CDM EB should have a supervisory and executive role, it has become clear that the institutional arrangements do not currently facilitate this function. The EB meetings should focus on provisions for the enhancement of the truly supervisory and executive role of the EB while recognising the authority of the CMP and thus should be dedicated to steering and decision making on a broader level and move away from distinct case decisions and discussions on technical matters. The latter should be delegated to a large extent to subsidiary levels of decision-making. Further, it has become clear that considerable demand is placed on individual EB members and that meeting this demand is not always achievable. The EU therefore suggests that the review includes an assessment of the CDM institutional structures. The assessment should take into account best practice approaches for decision making employed in other international institutions, and support available through panels, technical committees and the Secretariat.
- **Strengthening the support structures of EB:** In order to facilitate the supervisory and executive role of the EB of the CDM it will likely be necessary to improve the effectiveness of the available support structures. The review should assess the potential for further strengthening of the role of the UNFCCC secretariat to enable it to not only prepare decisions but make recommendations and eventually take technical decisions under the supervision of the Board, panels or technical committees as identified above. In addition, the assessment should consider any possible limitations in terms of the viability of expanding the role of the Secretariat and prepare alternative recommendations for the provision of professional staff dedicated to the support of the EB.
- **Revision and strengthening of the rules for decision-making:** An assessment of the institutional elements related to the governance of the CDM will require a revision of the current rules and procedures related to decision making to emphasize a rules-based approach to decision-making. The assessment should include the revision of rules and procedures, as appropriate.
- **The assessment should also consider ways to improve the transparency of decision making,** including explanation of rationale of decisions. For all case-specific decisions, the possibility of establishing an appeals procedures or ombudsman, inter alia, could be considered.
- **The roles and responsibilities of the Designated Operational Entities:** An assessment should be carried out on the role and responsibility of the DOEs for the quality, integrity and effectiveness of the CDM and include recommendations for improvements with regards to the procedures associated with accreditation, validation and verification. To this end the assessment should consider incentives for DOEs to ensure a high compliance standard of projects with the rules and regulations.

This assessment of the governance work of the CDM EB should start as soon as possible and may result in changes before 2012 where appropriate.

Strengthening the environmental integrity of the CDM

25. A key objective of the CDM is the achievement of real, additional and measurable emission reductions. As the CDM is an offset mechanism by design, this objective is important to ensure that global GHG emissions do not increase as a result of the CDM. The EU believes that a review of the CDM should carefully assess ways to strengthen its environmental integrity.
26. Within this context, the EU wishes to explore:
 - More objective, robust and predictable approaches to determine baseline emissions and to demonstrate the additionality of project activities, such as technology penetration rates or ambitious benchmarks on a sectoral basis. This could include a wider use of the approach in paragraph 48 (c) of the modalities and procedures for the CDM. Such approaches should ensure both environmental integrity and drive technology innovation and deployment.
 - Enhanced reporting of GHG emissions in key sectors by the host country DNAs, in order to facilitate the use of benchmarks and the development of project activities.
 - More effective compliance penalties in order to minimize fraud and malfeasance and ensure that any such action can be adequately compensated.

Technology Transfer and Sustainable Development in the CDM

27. The CDM modalities and procedures leave the consideration of the contribution of CDM project activities to sustainable development to the host country, but questions have been raised with regard to this contribution in practice. The EU recognizes the principle of the host countries' prerogative to assess this contribution, but would welcome views from developing country Parties on how the carbon market could enhance support to their policy priorities with regards to sustainable development.
28. The EU believes that any assessment of technology transfer relies on input from host countries. Therefore, the EU would also welcome input from developing country Parties regarding possible ways to increase the level of technology transfer in host countries through the carbon market. This input would also improve the assessment of the actual potential of the CDM in delivering finance and technology in relation to national priorities and further assist in identifying possible complementary and supportive policies and financing sources.

Improving the regional distribution of CDM projects

29. The market-based approach of the CDM has resulted in investors and project proponents focusing on those countries perceived to offer the most conducive business environment. This in turn has led to calls for a more balanced regional distribution of CDM projects. As a mechanism, the CDM has effectively delivered mitigation in countries with the greatest emission reduction potentials. However, the CDM has not been as effectively implemented in some regions particularly in Africa and Least Developed Countries.
30. Carbon finance cannot, on its own, change all fundamental variables influencing investment and development in any particular country. It can, however, greatly contribute to greening development where such a development process is underway. The market can greatly contribute to greening development where such a development process is underway. An enabling investment environment is central in facilitating access to the benefits of the carbon market. Instruments which blend carbon

and alternative sources of finance, including development finance could facilitate greater access to carbon finance (such as those in the IFIs CEIFs) particularly in the provision of access to energy and support to agriculture, and financing the incremental cost of mitigation.

31. This acknowledgment of the central role of enabling environments in providing fertile ground for CDM project development should nevertheless not deter Parties from analysing further possibilities for redressing the regional imbalance in the distribution of CDM project activities. Based on the experience to date, some observations can be made:
- A number of institutional barriers to CDM project development relate to the general investment and regulatory environment in the host country. Overcoming these barriers will require a more thorough consideration of actions required to improve the investment profile in the host country, and some of these actions will be outside of the scope of action of the UNFCCC.
 - A different regional distribution of CDM projects could be supported through more differentiation of mitigation actions, in which more advanced developing countries could adopt sectoral or economy wide approaches that move beyond off setting while the CDM could continue in other developing countries and sectors, as this would concentrate the current offsetting market in those countries with lower levels of development.
 - 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.
32. Some measures that have recently been agreed may help with redressing partly the regional imbalance:
- The adoption of guidance for programmatic CDM may pick up those small-scale projects (particularly in the energy sector) that were previously not economically feasible.
 - The UNFCCC Nairobi Framework and other bilateral and regional capacity-building initiatives are expected to increase the support for the development of capacity building and enabling activities to encourage CDM projects in Africa, small island developing states (SIDS) and least developed countries (LDCs).
 - The adoption of small-scale methodologies for the displacement of non-renewable biomass (i.e. cooking stoves) in Bali provides for a project type that has a considerable benefits for sustainable development, in particular in low-income communities, and that has a large potential in LDCs which heavily rely on biomass as energy source;
 - Finally, the abolition of the administrative share of proceeds on CERs for LDCs in Bali could facilitate project development by decreasing barriers to projects in these countries.
33. It is important to note that new policies working towards redressing the regional distribution of CDM projects should not overburden the mechanisms and should not endanger the environmental integrity of the CDM.

II.5 The minimization of adverse effects

34. The 4th Assessment Report of the IPCC (WG III, chapter 11.7 and SPM) contains information on the adverse effects of climate change. Literature since the TAR confirms with high agreement and medium evidence that there may be effects from Annex I countries' action on the global economy and global emissions, although the scale of carbon leakage remains uncertain. Fossil fuel exporting nations (in both Annex I and non-Annex I countries) may expect, as indicated in the TAR, lower demand and prices and lower GDP growth due to mitigation policies. The extent of this spill over depends strongly on assumptions related to policy decisions and oil market conditions. Critical uncertainties remain in the assessment of carbon leakage. Most equilibrium modeling supports the conclusion in the TAR of economy-wide leakage from Kyoto action in the order of 5- 20%, which would be less if competitive low-emissions technologies were effectively diffused.
35. Under the UNFCCC decisions 1/CP.10 and 5/CP.7 some important work has been undertaken. The EU in particular refers to documents FCCC/SBI/2006/13 and FCCC/SBI/2007/23, the latter synthesizing available information related to the impacts of response measures. Nevertheless, some further work would need to be done to better understand the major impacts of climate change and the minimization of its adverse effects, and to focus this work in the future.
36. The EU is open to continue the constructive discussion under this item and to consider which further actions would be the most appropriate to deal with this issue.

II.6 Issues included in the AWG-KP-work

37. The EU welcomes the possibility to consider the relevance to the second review of the progress achieved by the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol by means of an information paper, prepared by the secretariat, on the work of the AWG KP with regard to: emissions trading and the project-based mechanisms under the Kyoto Protocol; the rules to guide the treatment of land use, land-use change and forestry; the greenhouse gases, sectors and source categories to be covered, and possible approaches targeting sectoral emissions; and methodologies to be applied for estimating anthropogenic emissions and the global warming potentials of greenhouse gases. The EU has given its views on these topics in submission on Views and information on means that may be available to Annex I Parties to reach their emission reduction targets of 14 February 2008.
38. The EU has repeatedly expressed its concern that emissions from international aviation and maritime transport represent one of the fastest growing sources of greenhouse gas emissions. The EU calls upon all Parties to agree to clear, meaningful targets for these sectors within the framework of a future global climate agreement for the post-2012 period and urges parties to work towards stronger leadership by the UNFCCC in this matter. The EU expects that ways for addressing the emissions from international aviation and maritime transport will be discussed in the AWG-KP and is of the view that the results of the AWG-KP deliberations on this subject should be considered in the second review of the Kyoto Protocol. The EU refers to its abovementioned submission for its detailed views on this topic.

II.7 Reporting and Review processes for reports

39. Reporting and review processes for reports is not listed in the CMP3 Decision on scope and content of the second review of the Kyoto Protocol pursuant to its Article 9 and the issue is not covered in the AWG-KP work programme. The EU is, however, of the opinion that this issue should be included in the second review because it is important to draw on the lessons learned in implementing

the Kyoto Protocol and identify ways to improve the current reporting and review processes as regards the quality, consistency, comparability and transparency of the information provided.

40. Kyoto Protocol reporting experience shows that there is scope for enhancing the comparability of information provided by Kyoto Protocol Parties through further streamlining reporting formats. Further development of the UNFCCC GHG data interface is one of the possible options to increase the use of the information provided. This would also facilitate the work of the UNFCCC Secretariat in the preparation of the synthesis and compilation documents and would enable the exchange of best practices among Parties.
41. As regards the compilation and exchange of specific information on projections, policies and measures, the EU has developed electronic reporting templates for use by its Member States which it would be willing to share with the UNFCCC Secretariat.
42. Reviews are conducted by experts nominated by Parties to the roster of experts. The review guidelines under Article 8 request balanced participation between Annex I experts and non-Annex I experts. As stated in §38 of the 2007 Annual Report on the Technical Review of Greenhouse Gas Inventories from Parties included in Annex I to the Convention, it was not possible to ensure a proper balance in the review teams between Annex I and non Annex I experts due to insufficient number of the latter experts on the roster. Following this experience and to avoid further problems with the implementation of key requirements for the composition of Expert Review Teams, the EU believes that the future implementation of the requirement regarding appropriate balance should be dependant on the availability of a sufficient number of experts for the review process from both Annex I and non-Annex I Parties. The EU proposes further that all Annex I Parties commit to making a minimum number of national experts available to the review process in line with their respective capacities and commitments.
43. The Kyoto Protocol reporting and review experience also shows that the reporting and review requires significant amount of time and resources. It is useful to take this experience into account in planning future reporting requirements as regards the reports, their content and timing.

II.8 Progress in implementing commitments related to reporting and review, provision of financial resources and the transfer of technology

44. The full annual reporting under the Kyoto Protocol including all requirements established under Article 7, paragraph 1 of the KP will only begin in 2010 with the 2008 annual greenhouse gas inventory. However, Annex I Parties that are also Parties to the Kyoto Protocol were already required to provide information on the implementation of their various commitments under the Protocol in the:
 - Reports to demonstrate progress (RDP) under the Kyoto Protocol
 - National communications (the fourth was due by 01/01/2006)
 - Initial reports under the Kyoto Protocol.
45. The UNFCCC Secretariat has prepared excellent synthesis and compilation documents presenting the main findings from RDPs and national communications including on the issues related to the provision of financial resources and the transfer of technology (Compilation and synthesis of fourth national communications. Executive summary. Note by the secretariat (FCCC/SBI/2007/INF.6) and Add.2: Financial resources, technology transfer, vulnerability, adaptation and other issues relating to

the implementation of the Convention by Parties included in Annex I to the Convention (FCCC/SBI/2007/INF.6/Add.2)).

46. Individual review reports for both national communications and initial reports are under preparation or have been finalized for many Annex I Parties that are also Parties to the Kyoto Protocol and are an additional source of information on how these Parties are implementing their Kyoto Protocol commitments.
47. The EU believes that there is a wealth of information available on Annex I Parties' implementation of their commitments under the Kyoto Protocol and therefore believes that the second review of the Kyoto Protocol should focus on the potential for improvement of the actual reporting and review processes (see II.7).

III. PREPARATIONS FOR THE SECOND REVIEW: PROCESS

48. The EU welcomes the CMP3 decision to prepare the second review of the Kyoto Protocol by means of submissions, workshops and reports and welcomes the acknowledgement by CMP3 that these preparations should be streamlined with and take account of relevant activities undertaken under the Kyoto Protocol and the Convention. This will allow the review at CMP4 to be carried out in an efficient and meaningful manner.
49. The EU is of the opinion that the first workshop should have a general part to take stock of issues that Parties want to address in the second review. This could be done by introducing the synthesis of the submissions and hearing additional views from Parties and organizations.
50. The EU is of a view that relevant specific topics for the workshop are:
 - The Scope, effectiveness and functioning of the flexibility mechanisms
 - Reporting and Review processes for reports.

The EU is ready to make a presentation in the workshop on these topics and is looking forward to hear presentations by other Parties and also external experts.

51. The second review needs to be based on the best scientific information and assessments, including the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, as well as relevant technical, social and economic information. Therefore the discussions could benefit from external input by expert bodies such as IPCC and experts that can contribute to discussions on specific issues. After the general stocktaking and discussion on specific topics the Parties could give further views as an input to the report to SBI 28.
52. Specifically, the workshop on the scope, effectiveness and functioning of the flexibility mechanisms might benefit from a focus on issues related to the governance structure and the environmental integrity of both project-based mechanisms, and the actual and potential role of the carbon market in assisting technology transfer and contributing to sustainable development in developing countries. On these first set of issues, relevant external input into the workshop could be provided from a variety of institutions:
 - Organisations representing those directly involved in the carbon market, such as the International Emission Trading Association, the CDM DOE Forum, the European Carbon Investment and Services group, selected project participants, and Designated National Authorities.

- Research institutes such as Perspectives GmbH, the World Resources Institute, the International organisations with relevant and potential research, such as the Organisation for Economic Cooperation and Development, the International Energy Agency and the International Standards Organisation.
 - On the second set of issues, relevant external input to the workshop may be sought from WWF, IRN, CSE and other environmental groups active in the assessment of the CDM, along with research institutes and consultants with relevant experience, such as the International Institute for Sustainable Development, the University of Lund, Margaree Consultants, the Wuppertal Institute and the Risoe Center.
53. The EU would appreciate a presentation from the Secretariat on review and training issues. The EU would also invite the Secretariat to contribute to the workshop with a presentation on the most recent updates of the GHG data interface. The EU could contribute with presentations on the experience it has gained through the implementation of its Kyoto commitments addressing among other the barriers in current inventory and projections and policies and measures reporting, its on-going streamlining and harmonization activities and the associated benefits, and finally its views on how to best present and utilize GHG data available.
54. The EU suggests that the first workshop should be organized before the 28th session of the Subsidiary Body for Implementation so that there is sufficient time for the secretariat to prepare a report on this workshop for consideration of the Subsidiary Body for Implementation at its 28th session.

Annex

Article VI of the 1946 Convention on the Privileges and Immunities of the United Nations

Article VI

EXPERTS ON MISSIONS FOR THE UNITED NATIONS

Section 22. Experts (other than officials coming within the scope of article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

- (a) immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- (c) inviolability for all papers and documents;
- (d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

SECTION 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.
[...]

PAPER NO. 4: SRI LANKA

Views on how the second review of the Kyoto Protocol pursuant to its Article 9 should address, in particular the issues identified by COP/MOP at its third session

- a. We believe that the participation of Annex I countries in the CDM process is only in the form of CER buyers. In reality the burden of CDM project development including project risk lie solely with the non Annex I countries. Sri Lanka looks forward for development of a tool which would facilitate channeling of a significant portion of funds to the Adaptation Fund, from Annex I countries who are historically responsible for GHG emissions.
- b. Sri Lanka feels that attainment of reduction objectives by Annex I parties would make an important contribution to overall global efforts required to meet the ultimate objectives of the Convention as set out in Article 2.

Therefore, we would like to suggest that Annex I countries should take urgent measures to curtail GHG emissions, considering the vulnerability of developing countries to be severely affected by Climate Change impacts. As such, we would like to suggest that provisions should be included for the implementation of country specific time bound emission reduction programs in Annex I countries, supported by liability regimes.

We think that the productivity and efficiency in Annex I countries should be evaluated through a life cycle approach rather than through a point productivity basis. We would like the second review to identify necessary tools and parameters to evaluate the productivity and efficiency of the production process of Annex I countries on such a holistic basis.

We also feel that a strong analysis and monitoring regime is needed to accelerate such GHG emission reduction measures.

- d. During the first commitment period which is due to end by 2012, the expectations of the developing countries have not been thus far realized to their fullest satisfaction due to various barriers. While some of these barriers are due to inherent problems of the CDM process itself, some reflect the weak capacities of the countries concerned. This has resulted in inequitable distribution of CDM benefits, where countries like Sri Lanka have been at the losing side. Therefore, Sri Lanka wishes to have some inbuilt mechanism to ensure equitable benefits on regional basis to all developing countries.

In our view, one of the ways to ensure equitable distribution is through guaranteeing a certain quantity of CERs to each country over a specified time period. The determination of this guaranteed access to CERs may be undertaken through a transparent process which takes into account the country's potential and readiness to participate in CDM activities rather than the market forces playing a major role. In the event a country is unable to make use of this quota during the specified period, they can be reallocated to other countries based on an agreed process.

- e. Sri Lanka is of the view that the currently used indices to gauge sustainable development, such as the Human Development Index are not appropriate as they do not have provisions for measuring the environmentally and ecologically sustainable development in countries.

Hence we would like AWG to support the establishment of a Sustainable Development Index where per capita CO₂ emissions are considered as major criteria, together with other criteria such as protected forest cover and biodiversity value. We propose to implement a uniform mechanism to evaluate the adverse environmental impacts caused by Climate Change in economic terms.

The second review should also concentrate on proactive transfer of cleaner technologies in power generation, transport and industrial development. It is necessary that these technologies have high efficiency on a life cycle approach rather than on a point productivity approach.

PAPER NO. 5: SWITZERLAND
ON BEHALF OF THE ENVIRONMENTAL INTEGRITY GROUP

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

1. On behalf of the Environmental Integrity Group that is formed by the Republic of Korea, Mexico, Monaco, Liechtenstein and Switzerland, we would like to present the following views on the scope, effectiveness and functioning of the flexibility mechanisms, including ways and means to enhance an equitable regional distribution of clean development mechanism projects.
2. The flexible mechanisms under the Kyoto Protocol and more specifically the clean development mechanism (CDM), are innovative instruments which have proved to play an important role in the climate regime. The CDM allows industrialized countries to achieve emission reductions at lower costs and contributes to sustainable development of developing countries while attracting investments and new technologies. We are convinced that the CDM is able to deliver a substantial amount of emission reduction and therefore we are keen to further strengthening this mechanism. It is also of crucial importance to assure the continuity of CDM projects after 2012, to give a clear market signal and offer investment security.
3. However, we are also noticing that some criticism has been raised on the CDM in several aspects. Various stakeholders have identified elements in the CDM which are obviously not working perfectly, such as:
 - Bottleneck in the CDM EB and its Panels: the ever increasing number of projects and the limited time and human resources of the EB is slowing down the CDM process and may discourage private investment;
 - Role of Designated Operational Entities (DOEs): DOEs play a vital role in the CDM project cycle. They are performing the independent validation and verification of emission reductions. If their work is performed properly, it could also lead to less workload for the CDM EB. However, some studies have identified differences in the quality of work of the DOEs. This is a dangerous situation, since it could lead to a loss of confidence in the DOEs and as such in the CDM;
 - Improvement of communication: EB decisions are sometimes not or insufficiently communicated to stakeholders. An improvement of the communication channels and a transparent information on decision-making processes would strengthen the CDM and bring more security to project developers;
 - Quality of CDM projects: Some studies have revealed that a certain amount of registered CDM projects are of questionable quality, and additionality is difficult to prove. It is crucial that CDM projects are environmentally integer, so that confidence in the CDM remains.
 - Difficulty of small and medium enterprises and smaller countries to participate in the CDM.
 - Under-representation of some sectors and projects categories
4. It is necessary to continuously improve the CDM. Clear rules, comprehensible decisions, active communication and optimization of procedures and institutions will further foster the mechanism. Improvements will not only strengthen confidence in the CDM but also give more security to the market and its stakeholders.
5. In order to identify bottlenecks and areas that are currently working in a suboptimal manner and to be able to find options to continuously improve the CDM and as such give the right signals to

the market and all its stakeholders, we are proposing to carry out an in-depth assessment of the CDM.

6. This assessment should cover the various actors, institutions and procedures of the CDM. More specifically the assessment could inter alia cover the following areas:
 - The CDM EB and its technical Panels: assessment of the current structure of the EB and its Panels including relevant documents and decisions of these bodies in a view to identify the bottlenecks and the options for improvement;
 - The work of the DOEs: assessment of the quality of work of the DOEs by inter alia analyzing the registered projects and the quality of these in a view to enable DOEs to build up capacities and specify trainings in areas identified as being suboptimal and identify measures to ensure the quality of the CDM also in the future;
 - Communication and decision-making: assessment of the current practice on decision-making and communication of these decisions by the EB in a view to improve the communication channels and enhance transparency and comprehensiveness of the CDM processes;
 - Quality of CDM projects: assessment of the quality of projects registered in a view to identify options to improve the environmental integrity of projects, methodologies and procedures; assess the concept of additionality used and look for (administratively) more economic and (methodologically) more robust alternatives;
 - Geographical distribution of CDM projects; identify bottlenecks why CDM has been dominated by a few host countries (and some regions such as Sub Saharan Africa are under-represented) and propose approaches for a broader coverage.
 - Reduction of transaction costs/inclusion of SMEs: Assess the impact of newly introduced modalities such as small scale CDM or programmatic CDM, in order to enhance the scope of CDM for smaller actors.
7. We propose that the SBI 28 adopt terms of reference for the review of the CDM and recommend them to the CMP 4 for adoption.
8. This assessment should be carried out by a third party or a UN body specialized in performance review in close cooperation with the Parties and other relevant stakeholders of the CDM using available information from the EB of the CDM. The CMP 5 has to receive the report on this assessment and take appropriate action.

PAPER NO. 6: TUVALU

Submission on views regarding the Second Review of the Kyoto Protocol pursuant to Article 9

The Government of Tuvalu has pleasure in presenting its views regarding the second review of the Kyoto Protocol pursuant to Article 9. Tuvalu will address the issues identified in paragraph 6 of FCCC/KP/CMP/2007/L.8. As a fundamental principal, Tuvalu strongly believes that the architecture of the Kyoto Protocol should not be fundamentally changed. Most changes will relate to provisions for the next commitment period and other minor adjustments that may be necessary to make it more effective. Actions to undermine the environmental integrity of the Protocol should not be entertained.

(a) Extending the share of proceeds to assist in meeting the costs of adaptation to joint implementation and emissions trading;

As indicated in various international reports, the costs for countries needing to adapt to the impacts of climate change are substantial and will become increasingly more so. For instance, a report released last year by Oxfam suggests that the costs of meeting the adaptation needs of developing countries will be a minimum of \$US50 billion per year – a figure higher than the current World Bank estimate of \$10–40bn annually.¹ Tuvalu believes that every effort should be made to raise funds to meet these costs through approaches based on the polluter pays principle. In this regard Tuvalu strongly supports the extension of the adaptation levy currently applied to the Clean Development Mechanism to Joint Implementation projects undertaken under Article 6 of the Kyoto Protocol. The percentage levy fee applied to ERUs would need to be considered carefully to ensure an adequate supply of funds. Furthermore, Tuvalu believes that new arrangements should be developed with respect to the allocation of AAUs under Emissions Trading pursuant to Article 17 of the Kyoto Protocol. All AAUs could be allocated through an international auctioning system. The proceeds from this auction could be allocated to an international fund to support mitigation and adaptation activities in developing countries (see discussion below).

As an interim step towards developing a policy on emissions trading, we would consider it appropriate for the UNFCCC Secretariat to be asked to prepare a paper on the possible modalities and implications of an international auctioning scheme for emissions trading under the Kyoto Protocol.

(b) Relevant procedural elements for inscribing commitments for Annex I Parties in Annex B of the Kyoto Protocol;

The arbitrary nature of inscribing commitments for Annex I Parties in the first commitment should not be repeated. It is important that an overall target is established that fits within the considerations of a global greenhouse gas concentration reaching a peak well below 450ppm. Unless an overall target is set, highly vulnerable countries like Tuvalu face an uncertain future. There are some fundamental considerations in setting this target. Some of these include:

- i. **Commitment Period:** As indicated in our submission on Article 3.9 we note that there is a general trend to support a 2013-2020 commitment period for the next term of the Kyoto Protocol. While we respect the need for market certainty, the time delay if the targets are not reached is too risky, particularly for vulnerable countries. Tuvalu believes that the second commitment period should be divided into two assessment phases - phase one 2013-2016 and phase two 2017-2020. Annex I Parties would be required to set two targets – one for each phase. Initial emissions reduction allowances would be allocated for phase one (see details below). At the end of phase one, Annex I Parties would be assessed on how they had achieved their phase-one target. If they

¹ See “Adapting to climate change: What’s needed in poor countries, and who should pay”, *Oxfam Briefing Paper*, N 104, May 2007.

had achieved this target they would be granted phase-two allocations. Reporting requirements would be similar to those required for the first commitment period.

- ii. **Target Phases:** As a primary objective for achieving effective action under the Kyoto Protocol, Tuvalu believes that Annex I Kyoto Parties should work towards the following targets:

Target 1: (first phase of second commitment period 2013-2016)

Annex I Kyoto Parties: 20% reduction by 2016 compared with 1990 levels

Target 2: (second phase of second commitment period 2017-2020)

Annex I Kyoto Parties 35% reduction by 2016 compared with 1990 level

NOTE: These targets are contingent on the following targets being set by other Convention Parties under the AWG LCA (see below). Adjustments would need to be made if the United States or Non Annex I countries were not willing to commit to these levels of reductions under the Bali Action Plan.

Target 1: 2015

The United States: 20% reduction by 2015 compared with 1990 levels

Non Annex I Parties: 5% reduction by 2015 compared with 1990 levels

Target 2: 2020

The United States: 35% reduction by 2020 compared with 1990 levels

Non Annex I Parties: 7% reduction by 2020 compared with 1990 levels

The combined effect of the Annex I targets and the Convention Party targets would equate to a global emission reduction of 4% below 1990 levels in 2015 and a global emission reduction of 20% by 2020.

- iii. **Base year:** All Annex I countries should base their emission reductions on a 1990 base year for all future emission reduction commitments. Allowing countries to choose their base year, undermines efforts to reduce overall emissions and complicates procedures for determining comparable effort.

(c) Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol;

Tuvalu believes that a *Charter of Privileges and Immunities for Individuals Serving on Constituted Bodies Established under the Kyoto Protocol* should be drafted in consultation with the Secretary-General of the United Nations. This Charter should be presented to the UN General Assembly for approval as it is our belief that the creation of a legal regime on privileges and immunities needs to come from the United Nations. The drafting of the Charter should be undertaken as soon as possible. To help facilitate this process, it would be useful to create a small informal working group of legal experts to draft such a Charter for consideration by the COP at its next session. The COP would then forward this Charter to the United Nations General Assembly for formal approval.

(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;

Tuvalu believes that a review of the flexibility mechanisms under the Kyoto Protocol should be contingent on the outcomes of the work under the AWG on Long-term Cooperative Action. Both the

review of the Kyoto Protocol and the work of the AWG on Long-term Cooperative Action need to be undertaken in parallel.

The Clean Development Mechanism: The need for make a link between the outcomes of the AWG LCA and the review of the Kyoto Protocol has considerable significance with respect to the future of the CDM. There are two potential pathways for the CDM:

1. Linked to Non Annex I Party reduction commitments:

If a new mechanism is developed to assist Non Annex I Parties achieve emissions reductions under new arrangements established by the AWG LCA, then the role of the CDM should change. It should then serve as a mechanism for Non Annex I Parties which are not major emitters and who are unlikely to participate in new commitment arrangements. The CDM would then serve more of a sustainable development role for low emitting Non Annex I Parties. The major recipients of CDM project finance would then likely be LDCs, SIDS and low emitting African countries. If this occurs, then the rules of the CDM could be changed to facilitate greater access for low emitting Non Annex I Parties and make it harder for high emitting Non Annex I Parties to dominate the CDM. These new rules would need to be developed carefully to ensure that environmental integrity provisions of the CDM are not undermined, particularly as the CDM will remain as an emissions offsetting mechanism.

2. No Non Annex I Party reduction commitments

If no new arrangements are developed under the AWG LCA, then the CDM should remain ostensibly as it is, with some rule changes to improve its environmental integrity. As the CDM is an emission offsetting mechanism, the rules must remain stringent. This is vitally important for the sustainable development of highly vulnerable countries like Tuvalu. Offset emission reductions that are not real or additional harm the countries most vulnerable to the impacts of climate change. Under the “No new arrangements under the AWG LCA” scenario there are some fundamental considerations with respect to ensuring the environmental integrity of the CDM:

- i. **Additionality:** There should be no relaxing of the rules relating to additionality. Rules regarding the allowance of unilateral projects should be reviewed as these tend to undermine principles of additionality.
- ii. **Reductions in Existing Emissions:** There has been a tendency for the CDM to move away from actual emissions reductions to the consideration of possible emissions reductions in future activities. This relates particularly to the approval of technologies associated with new and expanding energy production projects. To achieve real emissions reductions the CDM should be used to replace existing high carbon intensive technologies with renewable energy or energy efficiency projects.
- iii. **Sectoral approaches:** A sectoral approach (or programmatic approach) should not be considered under the CDM. It is already difficult to show that emissions reductions undertaken within the CDM are real, measurable and additional. Expanding the CDM to take on a sectoral approach would further undermine its environmental integrity. Issues relating to sectoral approaches should be taken up in discussions concerning new commitments for Non Annex I Parties under the AWG LCA. Furthermore expanding the CDM to include sectors or programmes only increases the emissions reduction burden on Annex I Parties.
- iv. **Environmental and social integrity:** Projects that may have adverse environmental or social consequences should not be included in the CDM. This means that nuclear, carbon capture and storage, some biofuel projects (that lead to displacement of people or the

destruction of forests or other important habitats) and large scale hydro projects should not be included.

- v. **Deforestation:** Projects that avoid deforestation or reduce emissions from deforestation or forest degradation should not be included in the CDM. Ongoing and unresolved difficulties with measurement, baseline setting, permanence, governance, land ownership and leakage make 'avoided deforestation' or projects aimed at reducing emissions from deforestation or forest degradation environmental unsound from a perspective of global reductions in greenhouse gas emissions. Efforts to reduce emissions from deforestation and forest degradation should be actively pursued under the AWG LCA.

- vi. **LULUCF:** Tuvalu believes that the principle function of the CDM should be to foster the deployment of renewable energy and energy efficiency technologies in Non Annex I countries. This should help drive the global market towards low carbon economies worldwide. Therefore we do not believe that land use, land-use change and forestry (LULUCF) activities (beyond those that have already been approved) should be included in the second commitment period. Many commentators claimed that LULUCF was needed in the CDM in the first Commitment Period as a bridging strategy to allow renewable energy and energy efficiency technologies to be developed. This bridging period has now passed and the CDM should focus on decarbonising energy markets by facilitating the deployment of renewable energy and energy efficiency technologies.

It is important to reiterate the point that the five points mentioned above only apply if no new arrangements for Non Annex I emissions reduction commitments are developed under the AWG LCA. It makes little sense to both expand the CDM and create new commitment arrangements for Non Annex I Parties. It would be far preferable to use the CDM as a sustainable development tool for low-emitting Non Annex I Parties and to create new arrangements for the higher emitting Non Annex I Parties under the Convention.

Joint Implementation: The same standards that apply to the CDM should also apply to Joint Implementation projects. Therefore the key elements prescribed about in relation to additionality, sectoral approaches, environmental and social integrity, deforestation and LULUCF should also apply to JI projects in the Second Commitment Period.

Emission Trading:

The emission trading scheme at the international level is only in its infancy and the full implications of the scheme will not be known until the end of the first commitment period. There are, however some essential elements that need to be reviewed and developed without unnecessarily disturbing the basic architecture of the scheme. These include:

Central Allocation of AAU: An international AAU allocation mechanism should be established that provides for the auctioning of AAUs. This would then generate funds that could be placed into a central Climate Change Fund, operated under the Convention, to assist Non Annex I countries mitigate and adapt. Separate accounts would be established under the central Climate Change Fund. These accounts would be established for:

- i. Development effective mitigation strategies,
- ii. Facilitating the transfer and deployment of renewable energy and energy efficiency technologies;
- iii. Facilitating specific actions on REDD actions;
- iv. Facilitating adaptation action.

Within countries, it may be desirable to establish a mandatory requirement that a certain percentage of allocated emissions reduction allowances are auctioned and the revenue generated from this auction placed in the central Climate Change Fund (see comments below on Article 3.14 of the Kyoto Protocol.)

Removal Units excluded: All AAUs generated from any LULUCF activity should be excluded from emissions trading. Currently there is a loophole that allows Removal Units to be converted into AAUs. This undermines global efforts to develop decarbonised energy and energy efficiency.

Fungibility of AAUs across other Emissions Trading Arrangements?: Should emissions trading units generated outside the Kyoto Protocol be fungible with AAUs generated within the Kyoto Protocol? Further analysis is needed to decide whether this is desirable or feasible.

Tuvalu believes that the Secretariat should be asked to commission a study into implications of the fungibility of various emissions trading schemes. Basic questions that should be considered in such a study include:

- i. Would fungibility undermine existing review procedures established under the Kyoto Protocol?
- ii. Would fungibility allow some countries to drop national targets established under the Kyoto Protocol and subsequently take on sector specific actions? What implications would this have for global efforts to reduce greenhouse gas emissions?
- iii. Could sectoral targets set by Non Annex I Parties be included in a fungibility arrangement with Emissions Trading? Would these sectoral targets be included in an Annex to the Kyoto Protocol to ensure consistency with reporting requirements?
- iv. Would emissions trading units generated by existing Kyoto Protocol Annex I Parties be eligible for trading even if the units are generated from non-Kyoto sectors (e.g. aviation under the EU ETS)?
- v. How could emissions trading be expanded within the Kyoto Protocol to incorporate new sectors not currently covered under the Kyoto Protocol (e.g. emissions from international aviation and maritime transport)?

Environmental and Social Impact Assessment: The development of an international emissions trading scheme while helping to foster collaboration in reducing global greenhouse gas emissions may also generate an impetus to support environmentally and socially unacceptable mitigation actions. Tuvalu believes it would be desirable to develop environmental and social impact assessment procedures (E&SIA) within the Kyoto Protocol to ensure that any AAUs generated under the Kyoto Protocol do not have adverse environmental and social effects. For example, E&SIA procedures may be necessary for the use of biofuels, expansion of nuclear energy, expansion of large scale hydro, etc. If fungibility was to be considered with other trading schemes, commensurate E&SIA procedures to be ensured.

(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;

The consideration of issues relating to minimizing the adverse effects of climate change in the context of the Kyoto Protocol are found in Article 3.14 (though the wording is a little different to that found in Article 4.8). Contextually this has two key elements:

- i. The adverse effects of climate change;
- ii. The impacts of response measures

Critically the last sentence of Article 3.14 has not been fully articulated (establishment of funding, insurance and transfer of technology) and this needs to be elaborated under a review of the Protocol. The development of the Adaptation Fund appears to be the only response to this Article. Following the two key elements mentioned above, Tuvalu proposes the following actions:

The adverse effects of climate change:

With respect to the elaboration of provisions relating to funding, insurance and transfer of technology, Tuvalu has spelt out a pathway for addressing action on adaptation to the impacts of climate change in the “*International Blueprint on Adaptation*” (see FCCC/KP/CMP/2007/MISC.3). This Blueprint outlines a number of actions. These are covered under the following thematic areas:

- a. Developing tools to understand and assess vulnerabilities;
- b. Developing policy and legal frameworks to climate-proof development and poverty alleviation strategies;
- c. Developing rapid response assessment processes to allow the most vulnerable to assess their vulnerabilities to the immediate impacts of climate change and to develop adaptation plans;
- d. Providing a rapid response mechanism to allow vulnerable countries to build their resilience to the immediate impacts of climate change through undertaking adaptation projects
- e. Building resilience to the impacts of climate change by providing resources for vulnerable communities to protect themselves against the impacts of climate change
- f. Undertaking measures to protect vulnerable species and habitats from the impacts of climate change
- g. Creating compensation mechanisms (i.e. insurance) to assist vulnerable communities recover from the impacts of climate change.

It is our view that Article 3.14 of the Kyoto Protocol could be elaborated further to make provision for these aspects. The IPCC and the Stern Review clearly articulated the fact that efforts to mitigate climate change are closely linked to the costs of adaptation. The greater the effort to mitigate the lesser the costs needed for adaptation. Therefore it is important to develop a metric linking target setting for reducing emissions with efforts needed to address adaptation to the impacts of climate change. This metric is currently absent in the Kyoto Protocol. It may be possible to generate a metric associated with the target setting and national permits required to be auctioned. The lower the target set by an Annex I country, the higher the percentage of national permits that would be required to offered through an auction. Funds generated through these auctions would be directed to the central Climate Change Fund Adaptation Account. (Countries may chose to have a high auction ratio if they so chose).

The impacts of response measures:

Discussions within the context of impacts of response measures have primarily been focussed on lost revenue from oil production. Considering the high cost of oil and the elaborate schemes that oil producing countries already have in place to diversify their incomes, Tuvalu believes that the discussion on the impacts of response measures must now be directed to lower income Non Annex I countries where the possibility of impacts may have far more significant implications for their economy and/or sustainable development. For instance, there have been various workshops and scientific papers associated with the implications of the development of biofuels. Some of this work suggests that some biofuels as a response measure to climate change, may have adverse impacts on some countries or regions within countries. Consideration of these impacts is already underway in discussions associated

with the Convention on Biological Diversity. This is not to say that all biofuels are undesirable. Some scientific literature also notes that certain forest plantations developed as mitigation measures may also have adverse environmental and social impacts. These have also been considered in the context of discussions under the Convention on Biological Diversity.

Tuvalu believes that it would be desirable to ask SBSTA to consider the environmental and social implications of response measures (such as those mentioned above) in lower income developing countries, to inform the AWG on the implications of these considerations and to recommend possible remedial actions.
