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SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE

Tenth session

Bonn, 31 May - 11 June 1999

Agenda item 10

SUBSIDIARY BODY FOR IMPLEMENTATION

Tenth session

Bonn, 31 May - 11 June 1999

Agenda item 6

**JOINT WORKING GROUP ON COMPLIANCE:
WORK PROGRAMME ON PROCEDURES AND
MECHANISMS RELATING TO COMPLIANCE
UNDER THE KYOTO PROTOCOL**

Proposal by the Co-Chairs

1. The joint working group on compliance (JWG), having considered a proposal by its Co-Chairs, adopted the following work programme on procedures and mechanisms relating to compliance under the Kyoto Protocol:

(a) The work of the JWG during the eleventh session of the subsidiary bodies will be organized according to the agenda contained in document FCCC/SB/1999/CRP.1/Rev.1, on the understanding that additional items, if needed, could be taken up at any time in the future;

(b) The JWG invited Parties to make submissions to the secretariat in response to questions related to a compliance system contained in the annex to this document, by 15 August 1999, to be made available by the secretariat in a miscellaneous document;

(c) The JWG requested the Co-Chairs, supported by the secretariat, to produce a synthesis of all proposals by Parties to update the non-paper prepared by the secretariat for the consultation on 31 May 1999 and include elements related to a compliance system under the Protocol, for consideration by the JWG at its second session. The JWG noted that this document would be available in English only;

(d) The JWG agreed that an informal exchange of information and discussion related to ongoing work under the SBI/SBSTA and experience in other conventions would help Parties obtain a better understanding of the compliance system needed under the Kyoto Protocol. The discussion will be organized by the Co-Chairs of the JWG, with the assistance of the secretariat, taking into account the overall calendar of workshops and other events in preparation for COP 5.

Annex

**QUESTIONS RELATED TO A COMPLIANCE SYSTEM
UNDER THE KYOTO PROTOCOL**

General issues

1. What should be the objectives and nature of a compliance system?
2. What should be the principles that guide the development of the procedures and mechanisms to implement Article 18 of the Kyoto Protocol?
3. What types of issue should be addressed under this procedure?
4. How might this procedure differentiate between the timing and character of various commitments under the Protocol?
5. Should procedures and mechanisms "entailing binding consequences" be adopted concerning non-compliance with respect to:
 - (a) "Guidelines" for the national systems for estimating emissions of greenhouse gases and removals by sinks, which may be established pursuant to Article 5.1; or "guidelines" for the implementation of Article 6, as provided for in Article 6.2; or "guidelines" for the reporting of certain information in national communications, as provided for in Article 7.4?
 - (b) "Modalities, rules and guidelines" adopted pursuant to Article 3.4, concerning how, and which, additional categories of sinks may be added to those contained in Article 3.3?
 - (c) "Modalities and procedures" concerning the clean development mechanisms, which may be adopted pursuant to Article 12.7?
 - (d) "Principles, modalities, rules and guidelines" concerning emissions trading, which may be adopted pursuant to Article 17?
6. Is one integrated procedure sufficient or is more than one procedure needed? Is a separate procedure needed (or sub-procedure within a general procedure) for dealing with compliance elements of the mechanisms in Articles 6, 12 and 17?
7. What should be the relationship between this procedure and (a) the expert review process under Article 8 of the Protocol; (b) any procedures and institution established under Article 13 of the Convention; (c) the procedures under Article 19 of the Protocol?

8. The expert review teams contemplated in Article 8 of the Kyoto Protocol review information submitted under Article 7, by each Party included in Annex I. In this regard:

(a) Should we integrate the requirements of Article 8.3 and 8.5 with the procedures that may be developed to implement Articles 18, 16, and 19? If so, how?

(b) Although the expert review teams may provide information relevant to whether an Annex I Party is at risk of non-compliance or may not be in compliance, do the teams have authority to make any determination (initial, provisional, or otherwise) that such Party is in non-compliance?

(c) If the report of the review team (issued after the end of a commitment period of an Annex I Party) does not indicate non-compliance by the Annex I Party with its emissions limitation and reduction commitment under Article 3 of the Protocol, does that preclude any Party from being able to raise an issue of non-compliance?

(d) Should a review team possess authority to initiate, by its own determination, a procedure adopted pursuant to Article 18 that could result in binding consequences to a Party?

(e) Should a review team possess authority to initiate, by its own determination, a procedure that may be developed to implement Article 16?

Institutional issues

9. Who should be able to initiate a procedure for determining and addressing non-compliance with the Protocol?

10. From what sources may such an institutional arrangement seek, receive or consider information?

11. Should such an institutional arrangements be ad hoc or standing in nature?

12. If it is a standing body, how frequently should it be convened?

13. What should be the size and composition of such an institutional arrangement?

14. What expertise should be required of its members and in what capacity should they serve?

15. What rules of procedure should govern its operations? How could these best ensure due process, and the transparency of its operation?

Issues related to consequences of non-compliance

16. What role should the Protocol's other institutions play in (a) the determination of compliance; (b) the secretariat; (c) the subsidiary bodies; (d) the operating entity of the financial mechanism; (e) the executive board of the clean development mechanism; (f) the COP/MOP.
17. What types of non-compliance should be associated with specific consequences in advance?
18. Should the idea of "automatic" penalties be used? If so, in what cases?
19. Should financial penalties be used? If so, in what cases? Elaborate, including a description of how and for what purposes the proceeds of financial penalties should be used.
20. What role should this procedure or institutional arrangement have in approving or reviewing the operation of any "automatic" non-compliance responses provided by the Protocol or agreed by the COP/MOP?
21. What should be the outcome of the compliance system?
22. What procedures and mechanisms under Article 18 entail binding consequences? What are the implications of "binding consequences" *vis-à-vis* other consequences of non-compliance, and the amendment of the Protocol?

Other issues

23. Any other issues related to a compliance system.
