

21 September 1999

ENGLISH ONLY

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE

Eleventh session

Bonn, 25 October - 5 November 1999

Item 4 of the provisional agenda

SUBSIDIARY BODY FOR IMPLEMENTATION

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**PROCEDURES AND MECHANISMS RELATING TO COMPLIANCE UNDER
THE KYOTO PROTOCOL**

Submissions from Parties

Note by the secretariat

Addendum

1. In addition to the submissions already received (see FCCC/SB/1999/MISC.12), a further submission* has been received from the Republic of Korea.
2. In accordance with the procedure for miscellaneous documents, this submission is attached and is reproduced in the language in which it was received and without formal editing.

* In order to make this submission available on electronic systems, including the World Wide Web, this contribution has been reformatted. The secretariat has made every effort to ensure the correct reproduction of the texts as submitted.

FCCC/SB/1999/MISC.12/Add.1

GE.99-65980

**SUBMISSION BY THE REPUBLIC OF KOREA IN RESPONSE TO
QUESTIONS RELATED TO A COMPLIANCE SYSTEM
UNDER THE KYOTO PROTOCOL**

General issues

1. What should be the objectives and nature of a compliance system?

- To achieve the ultimate goal of the UNFCCC, the system should aim to facilitate compliance, prevent non-compliance or disputes, and ensure/promote compliance.
- The nature of the system should be coherent, comprehensive, fair, equitable, efficient, credible, and transparent. The principle of common but differentiated responsibilities should be incorporated.

2. What should be the principles that guide the development of the procedures and mechanisms to implement Article 18 of the Kyoto Protocol?

- When developing the procedures and mechanisms to implement Article 18 of the Kyoto Protocol, the objectives of the system as described above should be borne in mind. The procedures and mechanisms should be developed to be workable, predictable, cost-effective, consistent and credible.

3. What types of issue should be addressed under this procedure?

- The primary task of this procedure is to determine a Party's or a group of Parties non-compliance with a central obligation of Article 3 of the Kyoto Protocol, that is Annex I Parties quantified emission limitation and reduction commitments. Additionally, this procedure should handle cases of non-compliance with other provisions of the Kyoto Protocol. This procedure will apply to all central and subsidiary and procedural obligations during the commitment period.
- See also the response to question no. 6.

4. How might this procedure differentiate between the timing and character of various commitments under the Protocol?

- The indicative list of consequences, which will be developed in consideration of the cause, type, degree and frequency of non-compliance, will serve as a useful tool to differentiate between the timing and character of various commitments under the Protocol.
- The various commitments can be categorized as (1) central, and (2) subsidiary and procedural. Regarding QELROs-related central commitments, the COP/MOP should make a final decision on the basis of the outcome of the "Compliance Committee", while

others could be handled by the "Compliance Committee". In case Parties question a decision of the "Compliance Committee", such issue could be appealed and discussed at the COP/MOP.

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?

- The procedures and mechanisms "entailing binding consequences" should, in principle, be adopted in all of the above cases. However, when the procedures and mechanisms are applied, the nature of the obligations and the seriousness of the breaches based on the cause, type, degree and frequency of non-compliance should be taken into account. Furthermore, it should be noted that "guidelines, modalities, rules, and principles" mentioned above have not yet been elaborated upon.

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?

- In principle, one comprehensive and integrated procedure is appropriate. However, it seems to be too early to determine whether a sub-procedure within a general procedure is needed for the Kyoto Mechanisms because the rules, modalities, and guidelines for the Kyoto Mechanisms are still currently under discussion.

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?

- The review process by expert review teams is an element of the compliance regime, which will provide factual and technical information regarding a Party's (non-) compliance.

- The MCP under Article 13 of the Convention will be considered at the COP/MOP as the multilateral consultative process for the Protocol. The multilateral consultative process for the Protocol will be involved in assisting a Party to comply with the obligations of the Protocol, whenever and at whatever stage this kind of assistance is required. However, it should be implemented without prejudice to the procedures and mechanisms established under Article 18.
- The procedure under Article 18 should be applied without prejudice to the procedures under Article 19 of the Protocol. This traditional dispute settlement procedures under Article 19 could be employed to resolve any disputes between Parties regarding the interpretation or application of the Kyoto 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?

- The requirements of Article 8.3 and 8.5 should be integrated with the procedures under Articles 18, 16, and 19 through the adoption of guidelines for the expert review teams at the COP/MOP 1.

(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?

- It is not appropriate to authorize them to make any determination with respect to non-compliance. Their role should be limited to a technical assessment of all aspects of the implementation by a Party of the Kyoto Protocol, and to prepare a report for the COP/MOP.

(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?

- No. Any Party that has reservations regarding an other Party's implementation of its obligations under the Kyoto Protocol can 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?

- No. In consideration of the role of the review team as mentioned in the response to question no. 8(b), the fact that a review team possesses authority to initiate a procedure under Article 18 is beyond a task of a review team.

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

- No. The procedure under Article 16 of the Protocol should be initiated by a Party or a group of Parties or the COP/MOP as defined in the procedure under Article 13 of the UNFCCC.

Institutional issues

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

- A Party that has reservations regarding another Party's compliance can initiate a procedure under Article 18 for determining and addressing the cases of non-compliance with the Kyoto Protocol. The Secretariat should also be allowed to initiate the procedure under Article 18.

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

- The main sources will be national inventory data and communications, and reports by expert review teams. Additional information can be obtained through the Secretariat. Publications and statistics by International Organizations may also be used as supplementary information.

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

- Given the potentially large workload and the importance of ensuring continuity and consistency of work, a standing body, which could be named the "Compliance Committee", should be established.

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

- It would be appropriate for the standing body to meet biannually, unless it decides otherwise, in conjunction with the biannual meetings of UNFCCC Subsidiary Bodies

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

- In order to maintain efficiency the "Compliance Committee" should consist of a limited number of members, for example, 10 or so as in the case of the Implementation Committee of the Montreal Protocol. The election of members should be based on the principle of equitable geographic distribution.

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

- Members, who will serve according to their personal expertise and merits, should be experts in relevant fields, such as those of law, inventory, science, socio-economics, and the environment.

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

- Due process and transparency could be better ensured by establishing clear operational rules including providing the Party concerned opportunities to explain and furnish information about the matter, and to participate in the deliberation stage of the “Compliance Committee”. In addition, as much information as possible should be available to any Party who has interest in the matter in question.

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) executive board of the clean development mechanism; (f) the COP/MOP

- Regarding the determination of compliance, the COP/MOP should make a final decision on the basis of the outcome of the “Compliance Committee”. The “Compliance Committee” should be allowed to have a certain degree of leeway to decide whether a case of non-compliance should be brought to the attention of the COP/MOP or it could be handled at the “Compliance Committee” level.
- The secretariat will play a role in initiating a procedure under Article 18 against a non-compliance case, and supplying information and materials required by the “Compliance Committee”.
- The subsidiary bodies, especially SBI, will consider the outcome of the “Compliance Committee” before the COP/MOP make a final decision thereon.
- The operating entity of the financial mechanism will be consulted by the “Compliance Committee” to draw up measures against non-compliance, in case the case can be addressed through financial assistance.
- The executive board of the CDM will supervise the operation of the CDM and try to ensure that CDM rules and guidelines are observed.

17. What types of non-compliance should be associated with specific consequences in advance?

- A wide spectrum of possible consequences, taking into account the cause, type, degree and frequency of non-compliance, should be developed in the form of an indicative list. The following consequences can be considered among others : appropriate assistance; issuing cautions; suspension of specific rights and privileges under the Protocol; and financial penalties.

18. Should the idea of "automatic" penalties be used? If so, in what cases?

- The idea of “automatic” penalties is valuable in that it guarantees predictability. However, “automatic” penalties should be only used in limited cases which are clearly stipulated in the Kyoto Protocol and agreed upon at the COP/MOP.

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.

- Financial penalties should be considered as one option to guard against non-compliance. The proceeds can be used for assisting developing countries’ adaptation to the adverse effects of climate change and/or the impact of the implementation of response measures. And they can also be channeled into GHG reduction projects of developing countries, which can contribute to the ultimate objective of the UNFCCC.

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?

- Drawing on accumulated expertise, the procedure or institutional arrangement may express its views on any “automatic” non-compliance responses, which will be a valuable contribution to the deliberations of the COP/MOP.

21. What should be the outcome of the compliance system?

- The outcome of the compliance system will be to promote and ensure compliance with the provisions of the Kyoto Protocol.

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?

- Whether the consequences of non-compliance are binding or not depends on the cause, type, degree and frequency of non-compliance . Determining and addressing cases of non-compliance should be done according to procedures and mechanisms under Article 18.

Other issues

23. Any other issues related to a compliance system.

- A system should be allowed to evolve over time to benefit from the initial stage of operation.
- It is desirable that the system should be designed so as to adequately take into account each country's special circumstances during the commitment period, for example unexpected exogenous shocks or natural disaster.

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