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**SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE**

Thirteenth session

The Hague, 13-18 November 2000

Agenda item 5

**SUBSIDIARY BODY FOR IMPLEMENTATION**

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

**Report of the Joint Working Group on Compliance on its work during  
the second part of the thirteenth sessions of the subsidiary bodies**

**I. INTRODUCTION**

1. The meetings of the Joint Working Group on Compliance (JWG) were presided over by the Co-Chairmen, Mr. Harald Dovland (Norway) and Mr. Tuiloma Neroni Slade (Samoa).
2. The Co-Chairmen opened the meetings of the JWG on 14 November. They recalled that the JWG had requested them to further develop the text on procedures and mechanisms on compliance. In order to fulfil their mandate, the Co-Chairmen had drawn on the discussions at the first part of the thirteenth session as well as at informal consultations held from 12 to 14 October 2000 in New Delhi, India. Based on those discussions, the Co-Chairmen had prepared the text on compliance contained in document FCCC/SB/2000/11.

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

**A. Proceedings**

3. The JWG held four meetings from 14 to 17 November. Statements were made by the representatives of 20 Parties, including one speaking on behalf of the Group of 77 and China, one speaking on behalf of the European Union and its member States and one speaking on behalf of the Alliance of Small Island States.

## **B. Conclusions**

4. At its 4<sup>th</sup> meeting, on 16 November, the JWG, on the basis of a proposal by the Co-Chairmen, recommended for consideration by the Conference of the Parties at its sixth session, the draft decisions contained in annex I below, the text on procedures and mechanisms contained in annex II below, and the text on final clauses contained in annex III below.

## **III. REPORT ON THE MEETINGS**

5. At its 4<sup>th</sup> meeting, on 16 November, the JWG considered and adopted the report on its meetings prepared by the Co-Chairmen.

Annex I

**DRAFT DECISION .../CP.6**

*Option 1*

**Procedures and mechanisms on compliance under the Kyoto Protocol**

*The Conference of the Parties,*

*Recalling* its decisions 8/CP.4 and 15/CP.5,

*Having considered* the report of the Co-Chairmen of the Joint Working Group on Compliance on the outcome of the work of the Group, submitted through the Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice,

*Noting with appreciation* the work done by the Joint Working Group on Compliance on the development of procedures and mechanisms on compliance under the Kyoto Protocol,

*Recognizing* the need to prepare for the early entry into force of the Kyoto Protocol to the United Nations Framework Convention on Climate Change,

*Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol adopt the following decision at its first session:

**Decision ../CMP.1**

*The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,*

*Having considered* decision .../CP.6 adopted by the Conference of the Parties at its sixth session,

*Decides* to adopt the procedures and mechanisms on compliance under the Kyoto Protocol set out in annex II below.

*Option 2*

**Procedures and mechanisms on compliance under the Kyoto Protocol**

*The Conference of the Parties,*

*Recalling* its decisions 8/CP.4 and 15/CP.5,

*Having considered* the report of the Co-Chairmen of the Joint Working Group on Compliance on the outcome of the work of the Group, submitted through the Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice,

*Noting with appreciation* the work done by the Joint Working Group on Compliance on the development of procedures and mechanisms on compliance under the Kyoto Protocol,

*Recognizing* the need to prepare for the early entry into force of the Kyoto Protocol to the United Nations Framework Convention on Climate Change,

*Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol adopt the following decision at its first session:

**Decision ../CMP.1**

*The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,*

*Recalling* Article 18 of the Kyoto Protocol,

*Having considered* decision .../CP.6 adopted by the Conference of the Parties at its sixth session,

1. *Decides*

(a) To adopt the procedures and mechanisms on compliance under the Kyoto Protocol set out in annex II below and to bring them into operation;

(b) To adopt, pursuant to Article 18 of the Protocol, the procedures and mechanisms on compliance under the Kyoto Protocol referred to in subparagraph (a) above in the form of an amendment to the Protocol;

[2. *Further decides* that it will provide, in the amendment [under Article 3.9] for establishing commitments for the second commitment period, a requirement that no State or regional economic integration organization may deposit an instrument of acceptance in respect of such amendment unless it has previously deposited, or simultaneously deposits, an instrument of acceptance of the amendment on procedures and mechanisms on compliance referred to in paragraph 1 (b) above.]

*Option 3*

**Procedures and mechanisms on compliance under the Kyoto Protocol**

*The Conference of the Parties,*

*Recalling* its decisions 8/CP.4 and 15/CP.5,

*Having considered* the report of the Co-Chairmen of the Joint Working Group on Compliance on the outcome of the work of the Group, submitted through the Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice,

*Noting with appreciation* the work done by the Joint Working Group on Compliance on the development of procedures and mechanisms on compliance under the Kyoto Protocol,

*Recognizing* the need to prepare for the early entry into force of the Kyoto Protocol to the United Nations Framework Convention on Climate Change,

**Alternative 1**

1. *Decides* to adopt the “Agreement on procedures and mechanisms on compliance under the Kyoto Protocol” set out in annex II below as an integral part of the Kyoto Protocol;

[2. *Further decides* that it will provide, in the amendment [under Article 3.9] for establishing commitments for the second commitment period, a requirement that no State or regional economic integration organization may deposit an instrument of acceptance in respect of such amendment unless it has previously deposited, or simultaneously deposits, an instrument of acceptance of the agreement on procedures and mechanisms on compliance referred to in paragraph 1 above.]

**Alternative 2**

1. *Approves* the procedures and mechanisms on compliance set out in the Annex II below;

2. *Decides* that the procedures and mechanisms on compliance referred to in paragraph 1 above shall be developed into a legally binding instrument to be known as the “Agreement on procedures and mechanisms on compliance under the Kyoto Protocol”, which shall become an integral part of the Protocol;

3. *Requests* the Joint Working Group on Compliance, on the basis of the text set out in annex III below, to complete the necessary technical and legal work in time to enable the Conference of the Parties to adopt the agreement referred to in paragraph 2 above at its seventh session;

[4. *Further decides* that it will provide, in the amendment [under Article 3.9] for establishing commitments for the second commitment period, a requirement that no State or regional economic integration organization may deposit an instrument of acceptance in respect of such amendment unless it has previously deposited, or simultaneously deposits, an instrument of acceptance of the agreement on procedures and mechanisms on compliance referred to in paragraph 2 above.]

Annex II

**PROCEDURES AND MECHANISMS ON  
COMPLIANCE UNDER THE KYOTO PROTOCOL**

**Section I. General provisions**

**Objective**

1. The objective of the procedures and mechanisms on compliance is to facilitate, promote and enforce compliance with the commitments under the Protocol, as specified in the following provisions.

**Principles**

*Option 1*

2. The operation of the procedures and mechanisms on compliance shall be guided by the provisions of Article 3 of the Convention, designed with a view to ensuring effectiveness, fairness, credibility, transparency, due process, equivalent treatment of Parties with the same commitments, reasonable certainty, adherence to common but differentiated responsibilities and respective capabilities.

*Option 2*

3. *Provisions on principles may be reflected in a preamble.*

*Option 3*

4. *No such provision is needed.*

**Section II. Establishment and structure**

**Compliance Committee**

5. A Compliance Committee (hereinafter referred to as the “Committee”) is hereby established by the Conference of Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP), (pursuant to Article 18<sup>1</sup>).

6. The Committee shall function through [a plenary and] two branches, namely, a facilitative branch and an enforcement branch.

7. The Committee shall consist of [15] [...] members elected by the COP/MOP, [10] [...] of whom to be appointed by the COP/MOP to serve in the facilitative branch and [5] [...] to serve in the enforcement branch on the basis of

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<sup>1</sup> All Articles referred to in this text are those of the Kyoto Protocol, unless otherwise specified.

[equitable geographical representation of the five United Nations regional groupings, taking into account the interest groups as reflected by the current practice in the UNFCCC Bureau]

*Or*

[a larger majority of members of Parties included in Annex I].

8. Each branch shall elect a Chairperson and Vice-Chairperson from amongst its members [, such persons to constitute the bureau].[The chairmanship of each branch shall rotate between Parties included in Annex I and Parties not included in Annex I]. The Chairpersons of the facilitative and enforcement branches shall be the Co-Chairpersons of the Committee.

9. [The COP/MOP shall elect and appoint an equal number of alternate members of the Committee on the same basis as the members of the Committee].

10. Members of the Committee and their alternates shall serve in their individual capacity. They shall have recognized competence relating to climate change and in relevant fields such as the scientific, technical, socio-economic or legal fields.

11. The facilitative branch and the enforcement branch shall interact and cooperate in their functioning and, as necessary, on a case-by-case basis, the [plenary][bureau] may designate one or more members of one branch to contribute to the work of the other branch on a non-voting basis.

#### **[Plenary**

12. The plenary shall consist of all members of the facilitative and enforcement branches.

13. The functions of the [plenary] [bureau] [Co-Chairpersons] [relevant branch] shall be to:

[(a) Undertake the preliminary examination of questions as referred to in paragraphs ...];

[(b) Allocate questions to the appropriate branches as referred to in paragraph ...];

[(c) Report [annually] to the COP/MOP on its work [including a list of decisions taken by the two branches,] in accordance with paragraph ... below;

[(d) Receive guidance from the COP/MOP [on issues of implementation] in accordance with paragraph ... below;

[(e) Submit budgetary proposals to the COP/MOP for approval in order to ensure the effective functioning of the Committee;

[(f) Appoint the Chairperson of each branch as Co-Chairpersons of the Committee;

[(g) Develop further rules of procedure; and

[(h) [Perform such other administrative functions as may be required by the COP/MOP for the effective functioning of the Committee]].

## **Facilitative branch**

### Membership

14. The members of the facilitative branch shall be appointed by the COP/MOP on the basis of

[equitable geographical representation of the five United Nations regional groupings, taking into account the interest groups as reflected by the current practice in the UNFCCC Bureau]

*Or*

[[seven members] [one half] nominated by Parties included in Annex I to the Convention and [three members] [one half] nominated by Parties not included in Annex I to the Convention].

15. The COP/MOP shall appoint [five] [...] members for a term of two years and [five] for a term of four years. Every two years thereafter, the COP/MOP shall appoint [five] [...] new members for a term of four years. Outgoing members may be re-appointed for one consecutive term.

16. The membership of the facilitative branch shall reflect in a balanced manner competence in the fields referred to in paragraph... above.

### Mandate

17. The facilitative branch shall be responsible for providing advice and facilitation to all Parties in implementing the Protocol, and for promoting compliance of [all] Parties [included in Annex I] with their commitments under the Protocol, as specified in section IV, paragraphs....

18. [Taking into account the differentiated responsibilities of Parties included in Annex I and Parties not included in Annex I, the facilitative branch shall, with regard to Parties not included in Annex I, apply the consequences set out in section IV, paragraphs...below and, with respect to Parties included in Annex I, the consequences set out in section IV, paragraphs ... to ....below.] [Depending on the particular question and the circumstances pertaining to the question before it, the facilitative branch shall apply one or more consequences set out in section IV, paragraph ...below.]

## **Enforcement branch**

### Membership

19. The members of the enforcement branch shall be appointed by the COP/MOP on the basis of

[equitable geographical representation of the five United Nations regional groupings, taking into account the interest groups as reflected by the current practice in the UNFCCC Bureau]

*Or*



[[four] [five] members nominated by Parties included in Annex I to the Convention]

*Or*

[a larger representation nominated by Parties included in Annex I to the Convention on the basis of equitable geographical representation of the relevant regional groups of such Parties].

20. The COP/MOP shall appoint [two] [...] members for a term of two years and [three] [...] members for a term of four years. Every two years thereafter, the COP/MOP shall alternately appoint [two] [...] or [three] [...] new members, as appropriate, for a term of four years. Outgoing members may be re-appointed for one consecutive term.

21. The [majority of] members of the enforcement branch shall have legal experience.

*Mandate*

22. The enforcement branch shall be responsible for determining whether:

(a) A Party [included in Annex I] is in non-compliance with its commitments under [Article 3.1] [, Articles 2 and 3];

(b) A Party [included in Annex I] is in non-compliance with its commitments under Article 3.14];

(c) [A Party [included in Annex I] is in non-compliance with its commitments under Articles 5.1, 5.2 and/or Articles 7.1, [7.2] and 7.3;];

(d) In the event of a disagreement between an expert review team and the Party involved, to apply adjustments to inventories under Article 5.2 [and to resolve issues relating to Article 7.4];

(e) A Party [included in Annex I] [is] [or] [is not] meeting the requirements [of Parties included in Annex I] for participation under Articles 6, [12] and/or 17;

23. The enforcement branch shall also be responsible for applying the consequences set out in, paragraphs ... to ... below.

24. [[The proceedings of the enforcement branch shall apply to Parties included in Annex I only.] [The coverage of the enforcement branch shall be based on the nature of commitments, not on Party status.]

*Option 1*

25. A certain degree of flexibility allowed by the Convention and the Protocol to the Parties included in Annex I undergoing the process of transition to market economy shall be taken into account.

*Option 2*

26. The facilitative and enforcement branches shall take into account the certain degree of flexibility provided by the COP/MOP, pursuant to Article 3.6 of the Protocol, to the Parties included in Annex I undergoing the process of transition to a market economy.

*Option 3*

27. *No such provision is needed.*

**Section III. Procedures**

**Submission of questions of implementation**

28. The Committee shall receive through the secretariat questions of implementation [indicated in reports of expert review teams under Article 8, or] submitted by:

(a) Any Party with respect to itself; or

(b) Any Party with respect to another Party, supported by corroborating information. [, with respect to the facilitative branch.];

29. [The Committee shall also receive through the secretariat questions of implementation contained in reports of expert review teams together with the relevant report of the panel set up under paragraph ...]

30. The secretariat shall forthwith make available to the Party concerned any question of implementation submitted under paragraph ... above.

31. In addition to the reports referred to in paragraph ... above, the Committee shall also receive all other final reports of the expert review teams. In the case of the first review of eligibility requirements for a Party under Articles 6, [12] and 17, and where no question of implementation has been indicated in the expert review team report, the Committee shall notify the secretariat accordingly.

*[Panel relating to reports under Article 8*

32. Pursuant to Article 8.3 of the Protocol, the reports of the expert review teams shall be considered by a panel to be established by the COP/MOP.

33. The panel shall consist of six members elected annually by the COP/MOP on the basis of equitable geographical representation of the five United Nations regional groupings, taking into account the interest groups as reflected by the current practice in the UNFCCC Bureau. In order to carry out its functions, the panel shall meet as often as may be required during the inter-sessional period of the COP/MOP.

34. The functions of the panel shall be to:

(a) Consider and confirm to the Committee that the reports of the expert review teams are in accordance with the guidelines established by the COP/MOP, and inform the Committee of any discrepancy;

(b) Examine the identification in the reports of potential problems and factors that influence the fulfillment of commitments by the Parties;

(c) Propose to the Committee any additional questions that may arise from the panel's consideration of the reports of the expert review teams; and

(d) Report annually to the COP/MOP on its activities.

35. The panel's report shall be limited to its conclusions on paragraph ... (a) to (d) above and shall be delivered to the Committee within four weeks of receiving the reports of the expert review team.]

### **Preliminary procedures**

#### Allocation

36. The [Co-Chairpersons] [bureau] [plenary] shall allocate questions of implementation to the appropriate branch in accordance with the responsibilities of each branch set out in paragraphs ... and ... above.

#### Preliminary examination

37. The [relevant branch] [plenary] shall [in accordance with agreed criteria adopted by the COP/MOP,] undertake a preliminary examination of questions of implementation to ensure that, except in the case of a question raised by a Party concerning itself, the question before it:

- (a) Is supported by sufficient information;
- (b) Is not *de minimis* or ill-founded, and
- (c) Is based on the requirements of the Protocol.

38. The preliminary examination of a question of implementation shall be completed within three weeks.

39. After the preliminary examination of a question of implementation, the Party in respect of which the question is raised (hereinafter referred to as "the Party concerned") shall be notified in writing and, in the event of a decision to proceed, shall be provided with a statement identifying the question of implementation, the information on which the question is based and the branch that will consider the question.

40. In the case of the first review of eligibility requirements for a Party under Articles 6, [12] and 17, [the enforcement branch] shall also notify the secretariat of a decision not to proceed with any question of implementation relating to eligibility requirements under those Articles.

41. The Party concerned shall be given an opportunity to comment on all information relevant to the question of implementation and the decision to proceed.

### **General Procedures**

42. The procedures set out in paragraphs ... to ... shall apply to [the plenary], the facilitative branch and the enforcement branch, except where otherwise provided in the case of the enforcement branch.

Participation of Parties

43. The Party concerned shall be entitled to designate one or more persons to represent it during the consideration of the question of implementation. The Party concerned shall not participate in the elaboration and adoption of a recommendation or decision of the branch.

Sources of information

44. The branch shall base its deliberations on any relevant information provided by:

- (a) Reports of the expert review teams under Article 8 of the Protocol;
- (b) The Party concerned;
- (c) Reports of the Conference of the Parties (COP), the COP/MOP, and the subsidiary bodies; and
- (d) The other branch.

45. In addition, competent intergovernmental and non-governmental organizations with relevant factual and technical information may submit such information to the branch.

46. The Committee may seek expert advice.

47. Any information utilized by the branch shall be made available to the Party concerned and, subject to any rules relating to confidentiality, to the public. The branch shall indicate to the Party concerned which of this information it considers relevant. The Party concerned shall be given an opportunity to comment in writing on such information.

Recommendations and decisions

48. The adoption of recommendations and decisions shall require a quorum of at least ... of the members to be present.

49. The members of the Committee and of the branches shall make every effort to reach agreement on any recommendations or decisions by consensus. If all efforts at reaching consensus have been exhausted, the recommendations or decisions shall as a last resort be adopted by a majority of at least [three quarters] of the members of the Committee or the branch present and voting.

50. The branch shall forthwith notify the Party concerned in writing of its recommendation or decision, with conclusions and reasons therefor, which shall be made available to other Parties and to the public.

51. The Party concerned shall be given an opportunity to comment on any recommendation or decision of the branch.

Translation

52. Any question of implementation submitted under paragraph..., any notification under paragraph... above, information under paragraph ... and any recommendation or decision of the relevant branch, including the information on which it is based, shall be translated into one of the United Nations official languages, if the Party concerned so requests.

Rules of procedure

53. Further rules of procedure, including rules on confidentiality, conflict of interest, submission of information by intergovernmental and non-governmental organizations, and translation, may be developed for adoption by [the Committee] [the COP/MOP] by consensus.

**Procedures pertaining to the enforcement branch**

Written submission

54. Within 10 weeks after the receipt of the notification under paragraph ... above, the Party concerned may make a written submission to the enforcement branch, including rebuttal of information submitted to the branch.

Hearing

55. If so requested in writing by the Party concerned within 10 weeks of the receipt of notification, the enforcement branch shall hold a hearing at which the Party concerned shall have the opportunity to present its views. The hearing shall take place within four weeks after receipt of the request or of the written submission under paragraph ... above, whichever is the later. The Party concerned may present expert testimony or opinion at the hearing. Such a hearing shall be held in public unless the branch decides that part or all of the hearing shall take place in private.

56. The enforcement branch may put questions to and seek clarification from the Party concerned, either in the course of such a hearing or at any time in writing, and the Party concerned shall provide a response within six weeks thereafter.

Reference to the facilitative branch

57. Where appropriate, the enforcement branch may, at any time, refer a question of implementation to the facilitative branch for consideration.

Preliminary finding

58. Within four weeks from receipt of the written submission of the Party concerned under paragraph ..., above or within four weeks from the date of any hearing pursuant to paragraph ... above, or within 14 weeks from the notification under paragraph ... above if the Party has not provided a written submission, whichever is the latest, the enforcement branch shall:

- (a) Make and issue a preliminary finding that the Party concerned is in non-compliance under the articles referred to paragraphs... above; or
- (b) Otherwise determine not to proceed further with the question.

59. The preliminary finding, or the decision not to proceed, shall include conclusions and reasons therefor.

60. The enforcement branch shall forthwith notify the Party concerned in writing of its preliminary finding or decision not to proceed. The decision not to proceed shall be made available to the other Parties and to the public.

Final decision

61. Within 10 weeks from the receipt of the notification of the preliminary finding, the Party concerned may provide a further written submission. If that Party does not do so within that period of time, the enforcement branch shall issue a final decision confirming its preliminary finding.

62. If the Party concerned provides a further written submission, the enforcement branch shall, within four weeks from the date it received the further submission, consider it and make a final decision, indicating whether the preliminary finding is confirmed and, if so, which part.

63. The final decision shall include conclusions and reasons therefor.

64. The enforcement branch shall forthwith notify the Party concerned in writing of its final decision, which shall be made available to the other Parties [, in all United Nations official languages,] and to the public.

65. The enforcement branch, when the circumstances of an individual case so warrant, may extend any time frames provided for in paragraphs ... to ... above.

Expedited procedures

66. Where a question of implementation relates to the eligibility requirements of Parties included in Annex I under Article 6, [12] or 17, [,including adjustments related to the observance of eligibility requirements], paragraphs ... to ... shall apply, except that:

(a) [The preliminary examination referred to in paragraph ...shall be conducted within [one] [two] week[s]];

(b) [The Party concerned may make a written submission within four weeks of notification under paragraph ...above];

(c) [If so requested in writing by the Party concerned within two weeks of the notification under paragraph... above, the enforcement branch shall hold a hearing referred to in paragraph... above. The hearing shall take place within two weeks after receipt of the request or of the written submission under subparagraph (b) above, whichever is later.]

(d) The enforcement branch shall issue its preliminary finding or decision not to proceed within six weeks from the notification under paragraph ... above [or within two weeks of a hearing under paragraph ... above, whichever is the shorter];

(e) The Party concerned may make a written submission within four weeks after receipt of the notification referred to in paragraph... above;

(f) The enforcement branch shall issue its final decision within two weeks after receiving any submission referred to in paragraph ... above;

(g) [The timings referred to in paragraphs ..., ... and ... shall apply only to the extent that they do not interfere with the taking of decisions in accordance with paragraphs ... and... above.].

67. Where a Party's eligibility has been suspended under Article 6, [12] or 17, and if the Party concerned requests the enforcement branch to reinstate its eligibility, the enforcement branch shall decide on such requests as soon as possible.

68. In the event of a disagreement whether to apply an adjustment to inventories [related to observance of eligibility requirements], the enforcement branch shall decide the matter within [twelve] weeks of being informed in writing of such a disagreement. In doing so, the enforcement branch may consult experts to obtain their opinion.

#### Adoption of decisions

69. The adoption of decisions of the enforcement branch shall require a quorum of at least ... of the members.

70. The members of the enforcement branch shall make every effort to reach agreement on decisions by consensus. If all efforts at reaching consensus have been exhausted, the decisions shall as a last resort be adopted by a majority of at least [three quarters] of the members of the branch present and voting.

#### **Appeal**

##### *Option 1*

71. The Party in respect of which a final decision has been taken may appeal to the COP/MOP against a decision of the enforcement branch involving consequences relating to its non-compliance with [Article 3.1] [Articles 2 and 3].

72. The COP/MOP may agree by [a majority of at least ... of the members] [consensus] to override a decision of the enforcement branch. The Party appealing may not participate in the determination of the COP/MOP concerning itself.

73. The decision of the enforcement branch shall stand pending the decision on appeal.

74. The working procedure for appeals shall be developed by the COP/MOP.

##### *Option 2*

75. The Party in respect of which a final decision has been taken may appeal to the COP/MOP against a decision of the enforcement branch related to Article 3.1 if that Party believes it has been denied due process through a violation of the rules and procedures of the Committee.

76. The appeal shall be lodged with the [Bureau] [Secretariat] of the COP/MOP within 45 days after the Party has been informed of the decision of the enforcement branch. The COP/MOP shall consider the appeal at its first session after the lodging of the appeal.

77. The COP/MOP may agree by [a majority of at least three-quarters of the members] [consensus] to override the decision of the enforcement branch, in which event the COP/MOP shall refer the matter of the appeal back to the enforcement branch.

78. The decision of the enforcement branch shall be final if after 45 days no appeal has been made against the decision.

*Option 3*

79. An appeal against a final decision of the enforcement branch relating to Article 3.1 shall be allowed, and to be made to an appellate body comprising of three persons with relevant expertise.

*Option 4*

80. *There should no provision allowing appeals.*

**COP/MOP**

81. The Committee shall report on all its activities to each session of the COP/MOP.

82. [The COP/MOP shall [receive] [consider] [review] [and adopt] the reports of the Committee on the progress of its work, [take decisions, [on administrative and budgetary matters,] as appropriate] and [may] [shall] provide general policy guidance, including on any issues regarding implementation that may have implications for the work of the subsidiary bodies.]

83. [The COP/MOP shall provide general policy guidance to the Committee].

**Additional period for fulfilling commitments**

84. For the purpose of fulfilling its commitment under Article 3.1 a Party may, until [one] [...] month[s] after the date set by the COP/MOP for the completion of the expert review process for the last year of the commitment period:

(a) Continue to acquire [and transfer] [emission reduction units (ERUs)], [certified emission reductions (CERs)] and parts of assigned amounts (PAAs)<sup>2</sup> under Articles 6, [12] and 17 from the preceding commitment period, provided it has not been found ineligible to participate in the relevant mechanism under these Articles; or

[(b) Make a voluntary payment into a climate change fund or funds, the modalities of which shall be decided by [COP 7]].

**Section IV. Consequences**

**Facilitative branch**

*Option 1*

85. The facilitative branch shall, with regard to Parties not included in Annex I, depending upon the particular question before it, decide upon one or more of the following consequences:

(a) Provision of advice and assistance to individual Parties regarding the implementation of the Protocol;

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<sup>2</sup> The exact term to be used has yet to be determined.



(b) Facilitation of financial and technical assistance, including technology transfer and capacity-building, taking into account the provisions of Articles 4.3, 4.4, 4.5 and 4.7 of the Convention and the relevant decisions of the COP.

86. The facilitative branch shall, with regard to Parties included in Annex I, depending on the particular question before it and taking into account the cause, type, degree and frequency of the non-compliance, decide upon one or more of the following consequences:

(a) Provision of advice and assistance to individual Parties regarding the implementation of the Protocol;

(b) Formulation of recommendations to the Party concerned;

(c) Publication of non-compliance or potential non-compliance;

(d) Issuing of cautions; and

(e) Initiation by the facilitative branch of the enforcement procedure set out in section III above.

*Option 2*

87. The facilitative branch shall, depending upon the particular question before it, decide upon one or more of the following consequences:

(a) Provision of advice and facilitation of assistance to individual Parties regarding the implementation of the Protocol;

(b) Facilitation of financial and technical assistance, including technology transfer and capacity-building;

(c) [Formulation of recommendations];

(d) Publication of non-compliance [or potential non-compliance]; and

(e) [Issuing of cautions].

*Option 3*

88. The facilitative branch shall, depending on the particular question and the circumstances of the question before it, decide upon one or more consequences in accordance with its mandate as described in paragraphs ..., which may include:

(a) Provision of advice to the Party concerned regarding its implementation of the Protocol;

(b) Provision of advice to the Party concerned on the compilation and communication of information;

(c) Provision, as appropriate, of advice and recommendations to the Party concerned on possible modalities for the procurement of technical and financial resources to overcome its difficulties encountered in implementation of the Protocol ;

(d) Provision of guidance to the Party concerned in establishing, where appropriate, relevant contacts ;

(e) Formulation of recommendations regarding co-operation between the Party concerned and other Parties to promote its compliance with the Protocol ;

(f) Formulation of recommendations on actions to be taken by the Party concerned for its implementation of the Protocol ;

(g) Formal statement of concern regarding potential non compliance ;

(h) Issuing of cautions; and

(i) Declaration of non-compliance.

*Option 4*

89. The facilitative branch may, as appropriate:

(a) Recommend an indicative list of organizations with expertise that may assist a Party in its implementation of the Protocol;

(b) Arrange for individuals from the roster of experts to advise on and participate in measures to assist a Party in the implementation of its commitments and/or to help it return to compliance;

(c) Mediate in a Party's efforts to approach relevant international organizations for assistance, including financial assistance; and

(d) Facilitate and mediate a Party's easier access to and acquisition of technology appropriate to the implementation of its commitments.

*Option 5*

90. The facilitative branch [shall][may as appropriate],[depending on the particular question before it][and taking into account the cause, type, degree and frequency of the non-compliance][and the circumstances of the question before it] [decide upon one or more][of the following][consequences][*inter alia*][in accordance with its mandate as described in paragraphs..., which may include:] [Consequences in paragraphs...shall apply only to Parties included in Annex I].

(a) Provision of advice [and assistance] to [individual Parties] [the Party concerned] regarding [the] [its] implementation of the Protocol;

(b) [Facilitation of financial and technical assistance, including technology transfer and capacity building,[taking into account the provisions of Article 4.3, 4.4, 4.5 and 4.7 of the Convention and the relevant decisions of the COP;][Provision, as appropriate, of advice and recommendations to the Party concerned on possible modalities for the procurement of technical and financial resources to overcome its difficulties encountered in implementation of the Protocol];

(a) [Mediation in a Party's efforts to approach relevant international organizations for assistance, including financial assistance.];

- (b) [Facilitation and mediate a Party's easier access to an acquisition of technology appropriate to the implementation of its commitments.];
- (c) [Provision of advice to the Party concerned on the compilation and communication of information];
- (d) [Provision of guidance to the Party concerned in establishing, where appropriate, relevant contacts];
- (e) [Arrangement for individuals from the roster of experts to advise on and participate in measures to assist a Party in the implementation of its commitments and/or to help it return to compliance];
- (f) [Recommendation of an indicative list of organizations with expertise that may assist a party in its implementation of the Protocol];
- (g) [Recommendations [on actions to be taken by][to] [the Party concerned]][for its implementation of the Protocol];
- (h) [Recommendations regarding co-operation between the Party concerned and other Parties to promote its compliance with the Protocol.];
- (i) [Issuing of cautions];
- (j) [Publication of non-compliance [or potential non-compliance]];
- (k) [Declaration of non-compliance];
- (l) [Formal statement of concern regarding potential non-compliance];
- (m) [Initiation by the facilitative branch of the enforcement procedure set out in section III above].

### **Enforcement branch**

91. [The consequences set out in paragraphs ... to ... above shall apply only to Parties included in Annex 1.] [The coverage of the enforcement branch shall be based on the nature of commitments, not on Party status.]

92. [Where appropriate, the enforcement branch [may refer the application of an appropriate consequence to the facilitative branch,] [or may itself apply one or more of the consequences set out in paragraphs... above].]

### Articles 5 and 7

#### *Option 1*

93. Where the enforcement branch has determined that [a Party is not in compliance with Article 5 or 7.1[7.2], and [7.3,] [the inventory of a Party has been adjusted by [... per cent]], it [may] [shall] apply one or more of the following consequences, taking into account the cause, type, degree and frequency of that Party's non-compliance:

(a) [Declaration of non-compliance;]

(b) The Party not in compliance shall, within three months of the determination of the enforcement branch, develop and commit itself to an “Articles 5 and 7 plan” to be approved by the enforcement branch, which shall include, *inter alia*:

- (i) An analysis of the causes of the Party’s non-compliance;
- (ii) Measures that the Party intends to implement in order to remedy the non-compliance;
- (iii) A timetable for implementing such measures within a time-frame not exceeding [x] months, including clear benchmarks for measuring regular progress in their implementation;

The Party shall submit to the enforcement branch progress reports on the implementation of the Articles 5 and 7 plan on a [quarterly] [regular] basis. On the basis of the progress report, the enforcement branch may decide on further measures, as appropriate;

(c) Suspension of rights and privileges of the Party concerned under terms to be specified by the enforcement branch.]

*Option 2*

94. Where the enforcement branch has determined that an Annex I Party is not in compliance with Articles 5 or 7.1, 7.2 and 7.3, it shall suspend the eligibility of that Party to participate under Article 6, [12] or 17 until the enforcement branch has decided to reinstate such Party’s eligibility.

95. In addition the Party concerned shall, within three months of the determination of the enforcement branch, develop and commit itself to an “Articles 5 and 7 plan”, to be approved by the enforcement branch, which shall include, *inter alia*:

- (a) An analysis of the causes of the Party’s non-compliance;
- (b) Measures that the Party intends to implement in order to remedy the non-compliance;
- (c) A timetable for implementing such measures within a time-frame not exceeding 12 months, including clear benchmarks for measuring regular progress in their implementation.

The Party concerned shall submit to the enforcement branch progress reports on the implementation of Articles 5 and 7 plan on a quarterly basis. On the basis of the progress report, the enforcement branch may decide to reinstate such a Party’s eligibility.

96. The enforcement branch shall also apply one or more of the following consequences, taking into account the cause, type, degree and frequency of that Party’s non-compliance:

- (a) Declaration of non-compliance;
- (b) Suspension of rights and privileges of the Party concerned under terms to be specified by the enforcement branch.

[Articles 5.2, 7.1 and 7.4]

97. Where the enforcement branch has determined that a Party does not meet a requirement under Articles 5.2, and 7.1 and 7.4 in relation to the issuance and cancellation of assigned amounts [under Article 3.3 and 3.4], the Party shall not issue such assigned amounts until the enforcement branch has determined otherwise and has determined the relevant change to that Party's assigned amounts.]

Articles 6, [12] and 17

98. Where the enforcement branch has determined that a Party does not meet an eligibility requirement under Article 6, [12] or 17, it shall suspend that Party's eligibility [and the eligibility of other Parties operating under an Article 4 agreement] for the mechanism in question, in accordance with the provisions under that Article, until the enforcement branch has decided to reinstate such Party's eligibility.

Article 3.1

*Option 1*

99. Where the enforcement branch has determined that a Party, following the period referred to in paragraph..., is not in compliance with commitments under Article 3.1, it shall [apply] [request the Party to choose] [one or more of] the following consequences [, or combination thereof,] [taking into account the cause, type, degree and frequency of that Party's non-compliance]:

(a) [Recommendation by the enforcement branch to the Party not in compliance of policies and measures for implementation [taking into account Articles 2.3 and 3.14]];

(b) [Publication of the Party's non-compliance];

(c) [Deduction of [1.3][1.x][x] times the [number of] excess emissions from the Party's assigned amount for the commitment period following the period for which the non-compliance with Article 3.1 occurred];

(d) [Acquisition of units of assigned amount originating in the commitment period under consideration [at a rate of 1.1] or originating in the subsequent commitment period [at a rate of 1.3], or a combination thereof, provided that in each case the proportion of parts that exceed the amount needed to meet the Party's commitment under Article 3.1 shall be transferred to the relevant fund to be established under the clean development mechanism (CDM) for its use for adaptation purposes];

(e) [Payment by the Party concerned into a compliance fund, in accordance with paragraph... below];

(f) [Development of a compliance action plan, in accordance with paragraphs... below] [taking into account Articles 2.3 and 3.14]; and

(g) [Restriction on transferring [and acquiring] units of assigned amount under Articles [3], [4], [6], [12] and [17] [above a level and for a period of time to be determined by the enforcement branch] [until the Party has demonstrated to the enforcement branch that it will have a surplus of assigned amount in the subsequent commitment period]].

100. [In addition, the enforcement branch may apply one or more of the following consequences, taking into account the cause, type, degree and frequency of such non-compliance]:

(a) [Restriction on transferring [and acquiring] units of assigned amount under Articles [3], [4], [6], [12] and [17] [above a level and for a period of time to be determined by the enforcement branch] [until the Party has demonstrated to the enforcement branch that it will have a surplus of assigned amount in the subsequent commitment period]];

(b) [Financial penalty];

(c) [Suspension of rights and privileges]; and

(d) [[Development of a compliance action plan, in accordance with paragraphs... below] [taking into account Articles 2.3 and 3.14]].

101. [In a case of non-compliance in a second successive commitment period, or where the enforcement branch applies another consequence in accordance with paragraph ... or..., it may multiply the rate applied in consequence of paragraph ... or ... by up to a factor of between 1.5 and 2.]

[Compliance fund]

102. The Party not in compliance [shall] [may] make payments at a rate to be determined by the enforcement branch that shall be no less than [1.5 times] and no more than twice the average market price for parts of assigned amounts over the commitments period in question or during the last six months of the additional period referred to in paragraph..., whichever is the higher, per excess tonne into a compliance fund to be established by the Party.

103. Each such compliance fund shall be administered by an appropriate body nominated by the Party not in compliance, the details of which shall be notified by the Party to the enforcement branch.

104. The body administering the compliance fund shall use the income and any interest earned:

(a) To acquire parts of assigned amounts originating in the commitment period in which the non-compliance occurred, or, if no such parts of assigned amounts are available, at a reasonable price that shall not be higher than the rate of payment per excess tonne into the fund;

(b) To reduce anthropogenic emissions of greenhouse gases [or enhance anthropogenic removals by sinks] on one or more domestic and/or international projects. Such projects shall, within [three] months of the date of the determination of non-compliance by the enforcement branch, be submitted by the Party to the [enforcement branch] [appropriate body under paragraph ... above] for its approval which shall take into account the short-and medium-term environmental benefits as well as their cost-effectiveness.

(c) The parts of assigned amount acquired by the compliance fund or the excess emissions restored by such projects shall not be double-counted towards the Party's compliance with its quantified emission limitation reduction commitments during the commitment period in which the compliance fund is in operation.

105. The Party shall submit to the enforcement branch a progress report on the operation and the results of the fund annually, no later than 15 April, as well as audited accounts. On the basis of that report and the accounts, the enforcement branch may decide upon one or more of the consequences set out in paragraphs ... above, and/or apply another consequence set out paragraph ... above.]

Compliance action plan

106. [[The Party not in compliance shall restore [1.x times] the excess emissions.]

107. [The Party not in compliance shall, within [3] months after the determination of non-compliance,[or such other period that the enforcement branch considers appropriate,] develop [in cooperation with the enforcement branch, as appropriate,] and submit to the enforcement branch [for its [approval] [advice]] a compliance action plan setting out how it proposes to restore [an amount of tonnes at a rate determined by the enforcement branch that shall be no less than [1.5 times] and no more than [[twice] [1.x][x] times]] the excess emissions, which [shall] [may] include:

(a) An analysis of the causes of the Party's non-compliance ;

(b) [[Domestic policies and measures] [one or more means, including for example [domestic measures (such as non-allocation of tonnes under a domestic cap-and-trading system);] [use of Articles 6, [12] and/or 17;] [use of a voluntary compliance fund in accordance with paragraph X;]] by which it proposes to restore [[1.x][x] times] the excess emissions, and an analysis of their expected impact on the Party's greenhouse gas emissions];

(c) [A declaration not to make transfers under Article 3.11, [for the duration of the implementation of the compliance action plan][until the Party has demonstrated to the enforcement branch that it will have a surplus of assigned amount in the subsequent commitment period]];

(d) [Detailed information on the economic dimension of the implementation of any action under subparagraph (b) above] ;

(e) [A timetable for implementing the action under subparagraph (b) within a time-frame not exceeding [three] years, or such other period that the enforcement branch considers appropriate and which shall enable measuring annual progress in the implementation];

(f) [An assessment of the compatibility of the compliance action plan with the strategy developed by the Party [and, in the case of a Party in an Article 4 agreement, developed by the Parties under that agreement] to comply with its obligations during the commitment period in which the compliance action plan is implemented];

(g) [An assessment of whether or not the compliance action plan complies with Articles 2.3 and 3.14].

108. [Units of assigned amount originating in the first commitment period shall be applied toward restoring excess emissions at a rate of [...]].

109. [The enforcement branch shall [review] [advise on] the compliance action plan to ensure that it is [complete and] [reasonably] calculated to restore [an amount of tonnes at a rate

determined by the enforcement branch that shall be no less 1.5 times and no more than twice] [[1.x][x] times] the excess emissions [and, if so, approve it]].

110. [The excess emissions restored under the compliance action plan may not be double-counted toward the Party's compliance with its quantified emission limitation or reduction commitment during the commitment period in which the compliance action plan is implemented.] [To that end, the Party shall transfer to a cancellation account the equivalent of the emissions in question.]

111. The Party concerned shall submit a progress report on the implementation of the compliance action plan to the enforcement branch annually no later than [...]].

112. [On the basis of that progress report, the enforcement branch [may decide upon one or more of the consequences related to facilitation set out in section IV, paragraphs.... Where it determines that the Party has failed to implement part or all of the compliance action plan as approved and has therefore not restored the emissions in questions, it shall apply to that end one or more of the other consequences set out in section IV, paragraph ... .] [shall determine whether the requisite emissions have been restored]. In the case where the enforcement branch determines [within a specific time-frame], that some or all of the requisite emissions have not been restored, it shall deduct the remaining emissions from the Party's assigned amount for the commitment period following the period in respect of which the non-compliance with Article 3.1 occurred.]]

#### *Option 2*

113. Where the enforcement branch has determined that a Party, following the additional period or time referred to in paragraph ... above, is not in compliance with Article 3.1, the enforcement branch shall apply the following consequences:

(a) The Party shall forthwith acquire and retire in the account in their national registry for the commitment period under consideration units of assigned amount originating in this period at a rate of 1.1, or units originating in subsequent period at a rate of 1.3, or a combination thereof, provided that in each case the proportion of units that exceed the amount needed to meet the Party's commitment under 3.1 shall be transferred to the registry established under the CDM for adaptation purposes.

(b) The Party shall be restricted from transferring any units of assigned amount under Article 17 until the Party has demonstrated to the enforcement branch that it is in compliance.

#### *Option 3*

114. Where the enforcement branch has determined that a Party, following the additional period referred to in paragraph ... , is not in compliance with Article 3.1, it shall apply each of the consequences set out in the following subparagraphs (a) to (c) together to that Party:

(a) A contribution to the compliance fund established under paragraph ... of an amount in US dollars equal to the greater of:



- (i) 60 percent of the market value in US dollars of one carbon tonne at the end of the additional period multiplied by the total number of carbon tonnes by which the Party has exceeded its assigned amount; or
- (ii) US dollars [...] for each carbon tonne by which the Party has exceeded its assigned amount.

(b) The deduction from its assigned amount as defined in Article 3.7 in the subsequent commitment period of (x) multiplied by (1.y) tonnes, where x equals the number of tonnes by which the Party exceeded its assigned amount at the end of the relevant commitment period, and where y represents the magnification of climatic effects caused by such Party's [projected/actual/anticipated] delay in meeting its commitments, and shall be determined by the COP/MOP working through SBSTA; and

(c) The development and submission to the enforcement branch for its approval of a compliance action plan for the subsequent commitment period in order to bring the Party into compliance by the end of such subsequent commitment period. The compliance action plan shall:

- (i) Provide an analysis of the causes of the Party's non-compliance;
- (ii) Elaborate the means by which the Party shall achieve its reduced assigned amount through domestic reduction efforts;
- (iii) Provide an assessment of the compatibility of the compliance action plan with any strategy previously developed by the Party to comply with its obligations during the commitment period in which the compliance action plan will be implemented, including an assessment of whether or not the compliance action plan complies with Articles 2.3 and 3.14;
- (iv) Provide a time-frame for implementing the action required;
- (v) Establish benchmarks by which progress may be measured;
- (vi) Establish a time-frame for reporting progress to the enforcement branch at regular intervals; and
- (vii) Contain restrictions on transfers under Articles 3, 4, 6, 7, [12] and 17, including acquisitions under Article 17, until the Party has demonstrated through its progress reports, to the satisfaction of the enforcement branch, that it will have a surplus of assigned amount in the subsequent commitment period.

115. Where the enforcement branch has determined that a Party, following the period referred to in paragraph ... above, is not in compliance with Article 3.1, it may in addition to those referred to in paragraph ... also apply the following consequences:

- (a) Recommendation by the enforcement branch to the Party not in compliance of policies and measures for implementation, taking into account Articles 2.3 and 3.14;
- (b) Publication of the Party's non-compliance;
- (c) Suspension of rights and privileges; and

(d) Suspension of rights and privileges of the Party concerned under terms to be specified by the enforcement branch.

116. The compliance fund referred to in paragraph ... above is hereby established.

(a) Parties included in Annex I that have exceeded their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments shall make payments into a compliance fund as determined under paragraph .. above.

(b) The amount payable to the compliance fund shall increase by [y] [0.5]% for each month between the end of the period for fulfilling commitments referred to in paragraph ... and the date when the Party tenders full payment to the compliance fund.

(c) The operational modalities, rules and guidelines for the use of the financial resources as well as the administrative arrangements of the compliance fund shall be decided by the COP/MOP.

(d) The financial resources of the compliance fund shall be utilized to finance mitigation projects in developing countries that reduce anthropogenic emissions of greenhouse gases on the basis of a list of projects approved by the COP/MOP, which shall ensure that the reductions required by the fund represent true and additional greenhouse gas reductions that offset excess emissions and achieve the goal of preventing dangerous anthropogenic interference with the climate system. At least 10 per cent of the financial resources shall be used to assist developing country Parties.

(e) The modalities, rules and guidelines of the compliance fund shall be reviewed by the COP/MOP within 3 years after it becomes operational, and periodically thereafter.

(f) Projects undertaken through the compliance fund shall not yield tradable, saleable or creditable CERs or parts of assigned amount to either the Party making the payment into such Fund or to the project's host country.

[Articles 2 and 3]

117. Where the enforcement branch has determined that a Party does not meet any eligibility requirement under Articles 2 and 3, it shall:

(a) Declare the non-compliance of the Party concerned;

(b) Suspend that Party's eligibility under Articles 6, [12] and 17 until the enforcement branch has determined to reinstate such Party's eligibility.]; and

(c) Suspend the rights and privileges of the Party concerned.]

[Article 3.14]

*Option 1*

118. Where the enforcement branch has determined that a Party is not in compliance with Article 3.14, it shall apply the following consequences:

(a) Declaration of non-compliance in accordance with paragraph ... above;

(b) The Party not in compliance shall, within 3 months of the determination of the enforcement branch, develop and commit itself to an “Article 3.14 plan” approved by the enforcement branch, which shall include *inter alia*:

- (i) An analysis of the reasons for the Party’s non compliance;
- (ii) Measures that the Party intends to implement in order to remedy the non-compliance; and
- (iii) A timetable for implementing the measures within a time-frame, including benchmarks for measuring regular progress in the implementation.

The Party not in compliance shall submit a progress report on the implementation of the Article 3.14 Plan to the enforcement branch on a quarterly basis.

119. On the basis of the progress report, the enforcement branch may also, taking into account the cause, type, degree and frequency of that Party’s non-compliance, suspends rights and privileges of the Party under the Convention.

*Option 2*

120. Where the enforcement branch has determined that a Party is not in compliance with Article 3.14, it shall apply the following consequences:

- (a) Declaration of non-compliance in accordance with paragraph ... above;
- (b) The Party not in compliance shall, within three months of the determination of the enforcement branch, develop and commit itself to an “Article 3.14 plan” approved by the enforcement branch, which shall include *inter alia*:
  - (i) An analysis of the reasons for the Party’s non-compliance;
  - (ii) Measures that the Party intends to implement in order to remedy the non-compliance; and
  - (iii) A timetable for implementing the measures within a time-frame not to exceed 15 months, including milestones for measuring regular progress in the implementation.

The Party not in compliance shall submit a progress report on the implementation of the Article 3.14 plan to the enforcement branch on a quarterly basis. On the basis of the progress report, the enforcement branch may decide on further recommendations, measures or consequences, as appropriate, from the following list, taking into account the cause, type, degree and frequency of non-compliance;

- (c) Loss of eligibility for the mechanisms; and
- (d) Financial penalty.

*Option 3*

*There is no need for such provisions.]*

*[Application of Article 4.5 and 4.6]*

121. If at the end of the commitment period one or more Parties operating under an agreement under Article 4 are found to be in non-compliance with Articles 5 and 7, each Party to an agreement under Article 4 shall be responsible for its own level of emissions set out in the agreement.

122. In accordance with Article 4.6, any non-compliance consequences under this paragraph shall apply to both the regional economic integration organization and any Party that has exceeded its level of emissions as notified in accordance with Article 4.

123. Where Article 4.5 applies, the Parties operating under such an agreement shall not be able to operate under an Article 4 agreement with respect to the commitment period following the period for which the non-compliance with Article 3.1 occurred, and Annex B commitments shall apply.

124. Where Article 4.5 applies, any Party operating under that Article 4 agreement other than the Party not in compliance shall be able to carry over the surplus emissions under Article 3.13 only to the extent that the difference between its emissions and its assigned amount under Article 3 is greater than the amount by which the Parties not in compliance under Article 4 have exceeded their respective levels of emissions.

125. Where Article 4.5 applies, a Party operating under that agreement shall not be entitled to add parts of assigned amount originating in any other Party, whether gained under the agreement itself, under any other agreement or under Articles 3.3, 3.4, 6, [12] or 17, in meeting its own level of emissions set out in the agreement.]

**Section V. Other provisions**

**Relationship with Article 16**

126. [The multilateral consultative process under Article 16 shall provide advice and facilitate assistance [to Parties not included in Annex I] with respect to issues relating to their compliance with the Protocol.] [The facilitative branch shall constitute the multilateral consultative process referred to in Article 16 of the Protocol.]

**Relationship with Article 19**

127. The procedures and mechanisms on compliance shall operate without prejudice to Article 19.

[Annex III

**Final Clauses**<sup>1</sup>

1. This Agreement shall form an integral part of the Kyoto Protocol.
2. This Agreement shall remain open for signature at United Nations Headquarters in New York from...to ...by States and regional economic integration organizations that are Parties to the Convention for 12 months from the date of its adoption.
3. [After the adoption of this Agreement, any instrument of ratification, acceptance, approval or accession to the Kyoto Protocol deposited shall also represent consent to be bound by this Agreement.]
4. No State or regional economic integration organization may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Kyoto Protocol.
5. A State or regional economic integration organization may express its consent to be bound by this Agreement by:
  - (a) Signature not subject to ratification, acceptance or approval, or the procedure set out in paragraph 7 of this Agreement;
  - (b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance, or approval;
  - (c) Signature subject to the procedure set out in paragraph 7 below; or
  - (d) Accession.
6. Instruments of ratification, acceptance, approval, or accession shall be deposited with the Secretary-General of the United Nations.
7. A State or regional economic integration organization which has deposited before the date of the adoption of this Agreement an instrument of ratification, acceptance, approval or accession to the Kyoto Protocol and which has signed this Agreement in accordance with paragraph 5(c) shall be considered to have established its consent to be bound by this Agreement 12 months after the date of its adoption, unless that State or regional economic integration organization notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this paragraph.
8. In the event of such notification, consent to be bound by this Agreement shall be established in accordance with paragraph 5(b) above.
9. Any amendment to this Agreement is subject to Article 20 of the Kyoto Protocol [, save that any amendment to paragraphs...shall be subject to Article 21 of the Protocol].
10. This Agreement shall enter into force [at the same time as the Kyoto Protocol] [...].
11. The Secretary-General of the United Nations shall be the depositary of this Agreement.

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<sup>1</sup> To appear as section VI of the text set out in Annex II above.

12. The original of this Agreement, of which the Arabic, Chinese, English, French, Russian, and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Agreement.

DONE AT [ ] this [ ] day of [ ][ ].

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