

## COPENHAGEN HIGHLIGHTS: THURSDAY, 10 DECEMBER 2009

On Thursday, the COP/MOP considered compliance, Kazakhstan's proposal to amend Protocol Annex B and proposals by parties to amend the Protocol. In addition, contact groups and informal consultations convened on a range of issues, including a shared vision, mitigation, adaptation, finance and technology under the AWG-LCA, Annex I emission reductions and other issues under the AWG-KP, and various topics under the SBSTA and SBI.

### COP/MOP

**PROTOCOL AMENDMENT IN RESPECT TO COMPLIANCE PROCEDURES:** Parties agreed to defer the consideration of the item to COP/MOP 6.

**KAZAKHSTAN'S PROPOSAL TO AMEND PROTOCOL ANNEX B:** The Secretariat explained that Kazakhstan will be considered an Annex I party under the Protocol while remaining a non-Annex I party under the Convention (FCCC/CP/2001/13/Add.4). He specified that Kazakhstan has ratified the Protocol and submitted an amendment proposal to be included in Annex B in September 2009.

KAZAKHSTAN highlighted its proposed level of commitment as "unprecedented" and said her country's transition to a low-emission economy requires using the carbon market and private investment. The RUSSIAN FEDERATION and KYRGYZSTAN supported the proposal.

AUSTRALIA welcomed mitigation commitments from new countries and supported discussing the item. The EU recognized Kazakhstan's aspiration to join Annex B, while highlighting the need to comply with legal requirements relating to Annex B amendments. She supported deferring the issue to COP/MOP 6. KAZAKHSTAN stressed that her country has been communicating relevant information to parties since June. Stephan Michel (Switzerland) will consult informally.

**PROPOSALS BY PARTIES FOR PROTOCOL AMENDMENTS:** The Secretariat introduced twelve proposed Protocol amendments (FCCC/KP/CMP/2009/2-13), which had been received from: Australia; Belarus; Bolivia for several countries; Colombia; Japan; the EU; New Zealand; Papua New Guinea; the Philippines; China for several non-Annex I countries; and two from Tuvalu.

TUVALU, supported by Grenada, for AOSIS, stressed the Protocol's importance now and in the future and elaborated on its two proposals to amend the Protocol. He highlighted, *inter alia*, proposals on: the second commitment period and new commitments in Annex B; extending the share of proceeds;

giving legal authority to the Compliance Committee; and including new greenhouse gases, as well as international aviation and maritime emissions.

AUSTRALIA emphasized that her country needs more than a Protocol amendment from Copenhagen. She said a unified protocol would have certain advantages but that an outcome with two protocols is possible if they are linked as a package.

The EU stressed its commitment to safeguarding the Kyoto Protocol's key elements. He said the AWG-KP process allows for comprehensive consideration of issues raised by the amendment proposals and underlined that a decision on Protocol amendments must be taken in the context of an overall agreement.

JAPAN outlined its proposed draft protocol, saying it relates to the Protocol's deficiencies, including that the Kyoto Protocol only covers 30% of global emissions. He stressed that a "simple" Protocol amendment would not be an effective post-2012 legal framework, expressing preference for a single new Protocol. JAPAN emphasized that the intention is not to ignore and bury the Kyoto Protocol, but "expand the scope of responsibility and construct on the Kyoto foundation an expanded and more durable vehicle."

Ethiopia, for LDCs, said the issue is a controversial one as it is being discussed under both the AWG-KP and the COP/MOP. He expressed willingness to consider the issue in a contact group to see if the proposals contain ambitious targets and promote LDCs' interests.

BRAZIL, supported by many developing countries, noted a proposal by 35 countries to amend Protocol Annex B based on the mandate in Protocol Article 3.9 (Annex I parties' further commitments). He said the proposal reflects the high end of the 25-40% range in the IPCC AR4 as well as Annex I countries' historical responsibility. Many developing countries stressed that the most important task of COP/MOP 5 is to adopt a Protocol amendment to inscribe new commitments for developed countries in Annex B based on the mandate in Protocol Article 3.9. Many developing countries also highlighted the Kyoto Protocol as the only legally-binding instrument to mitigate climate change, urged continuing it in the second commitment period and opposed attempts to "kill" or supersede it, or make it redundant. Many also underscored continuation of the Protocol as a condition for an outcome in Copenhagen.

EGYPT, supported by several developing countries, said elements of the proposed Protocol amendments have also been submitted under the Convention and the AWG-LCA, lamenting this "triplication" of efforts and urging focusing on "the real thing."

NEW ZEALAND said her country's preference would be a single and unified post-2012 legal outcome avoiding duplication of efforts and institutions. Without prejudice to this, she said her country has proposed Protocol amendments, envisaging the Kyoto Protocol as part of a fully integrated package with a legally-binding outcome under the Convention.

BOLIVIA outlined a proposed Protocol amendment, emphasizing that developed countries have "expropriated more than their fair share of the earth's environmental space." She said repayment of this "climate debt" is simple: those who became wealthy while causing climate change are responsible for compensating those who are poor. She called for strong efforts by developed countries to reduce their over-pollution and over-consumption.

PAPUA NEW GUINEA agreed with the focus on Protocol Article 3.9 but, supported by others, called for also considering forest issues and REDD. COLOMBIA also noted her country's proposals to amend other aspects of the Protocol and expressed interest in discussing other countries' proposals.

TUVALU emphasized that unlike the AWG-KP's mandate, this agenda item relates to Protocol Article 20 under which any party may propose amendments. He stressed that if unable to reach consensus, the COP/MOP may take a decision by a three-quarters majority of parties present and voting.

PALESTINE highlighted their unique situation and said he is looking forward to becoming an official Protocol party. PAN-AFRICAN CLIMATE JUSTICE ALLIANCE stated that warming of 2°C is a "death sentence" for Africa. She accused rich countries of stealing the shared atmospheric space, which amounts to "climate colonialism" and said the proposed adaptation funding would not be sufficient even for "buying their coffins."

On the way forward, COP/MOP President Hedegaard noted that many countries had supported a contact group while many others preferred focusing on the AWG-KP. She proposed that John Ashe (Antigua and Barbuda) consult on the way forward and report back to the COP/MOP on Saturday.

TUVALU, supported by GRENADA, KIRIBATI, EL SALVADOR, COSTA RICA, the COOK ISLANDS, the MARSHALL ISLANDS, PALAU and BELIZE, stressed the importance of the issue, urged its proper substantive consideration through a contact group and said delaying the issue until Saturday will not allow this.

CHINA, supported by VENEZUELA, PAPUA NEW GUINEA, UNITED ARAB EMIRATES, BRAZIL, NIGERIA and SAUDI ARABIA, expressed sympathy for Tuvalu's proposal, but opposed discussing such proposed Protocol amendments that "do not enhance the Protocol." He said issues such as share of proceeds and compliance could be discussed further, and suggested that: proposals related to Protocol Article 3.9 be referred to the AWG-KP; and a "limited number" of other proposals be selected for discussion under this agenda item. The EU opposed limiting issues for further consideration, identifying the need to reflect all proposals.

The COP/MOP was then suspended for informal discussions in the plenary hall. COP/MOP President Hedegaard reported that no solution had been found and adjourned the meeting.

#### **CONTACT GROUPS AND INFORMAL CONSULTATIONS**

**CDM (COP/MOP):** During the contact group, Co-Chair Figueres informed parties that the Co-Chairs had prepared draft decision text, based on the CDM Executive Board (EB) report to the COP/MOP and parties' statements during the COP/MOP Plenary.

Parties discussed the CDM EB's study on the implications of including CCS under the CDM. The Secretariat provided clarification on the process by which the CDM EB conducted the study, as requested by the COP/MOP President during the COP/MOP plenary.

GRENADA and SAUDI ARABIA asked how the second report from the consultants tasked with conducting the study had been dealt with, with GRENADA noting that the CDM EB did not endorse this second report. The Secretariat clarified that consultants had been requested to conduct the study, that their first report did not adequately fulfill the mandate given to them and they had been asked to prepare a second report, but the CDM EB had been unable to make a decision on this report. He further explained that: the consultants' first report was part of the annotated agenda of the 49<sup>th</sup> meeting of the Board; the consultants' second report was part of the annotated agenda of the 50<sup>th</sup> meeting and considered during the meeting; and the main outcome of the CDM EB's study is contained in Annex II of its report (FCCC/KP/CMP/2009/16). Co-Chair Figueres noted that because the CDM EB had been unable to conclude on the study and mandate given to it by the COP/MOP, the matter was now back before the COP/MOP.

Co-Chair Figueres then asked parties to identify issues which should be discussed by the group. The EU highlighted: the issue of unmet need, particularly in order to improve regional distribution of CDM projects; standardized baselines; understaffing of the Secretariat; terms of reference for CDM EB members; and the possibility of a full-time CDM EB chair. CHINA identified the need to improve transparency, fairness and efficiency in decision-making. Ethiopia, for the LDCs, underscored regional distribution, and proposed exempting small-scale projects in LDCs from the additionality requirement. He also noted that many LDCs have unmet energy needs and requested that this be considered for the establishment of baselines. GRENADA and BRAZIL opposed the proposal for a full-time chair, noting the existence of a full-time Secretariat and highlighting that the proposal would only favor those countries that can afford to support a full-time chair. GRENADA also objected to adopting terms of reference for CDM EB members, highlighting that it may bias countries with limited CDM knowledge and expertise. SAUDI ARABIA supported consideration of terms of reference.

Co-Chair Figueres then introduced the Co-Chairs' draft text, provided an overview of its content and asked parties if it was an acceptable starting point. GRENADA and JAPAN expressed support for using the text as a starting point.

The INTERNATIONAL EMISSIONS TRADING ASSOCIATION (IETA) supported establishment of standardized baselines, stating this would improve regional distribution. She also highlighted, *inter alia*: lack of due process and transparency in the CDM EB's decision-making process and the need to establish an independent appeal body; and the prerogative of the host country to set the level of incentives to promote CDM projects. CDM Watch, for CAN, expressed concern about the code of conduct for CDM EB members, particularly regarding declaration of conflicts of interest, and called for strengthening of the code of conduct and establishing procedures for declaring such conflicts. She also opposed the definition of forests in exhaustion and the inclusion of CCS under CDM projects.

**JOINT IMPLEMENTATION (JI) (COP/MOP):** Co-Chair Lesolle identified the following issues as requiring consideration: resources for the JI Supervisory Committee (JISC), including the JI management and budget plans for 2010-2011 and the need for predictable and adequate funding; further guidance to the JISC as appropriate; and guidance to the Secretariat regarding the JI track 1 procedure, including information from parties and input by the Secretariat.

The Secretariat presented a summary of the JISC report, including an overview of the operation and status of JI. CHINA noted that the Chair had not mentioned the issue of extending the share of proceeds levy to JI, as raised by parties in plenary. Co-Chair Lesolle noted that this could be included under further guidance on JI.

IETA lamented the lack of sufficient funding for JISC. He noted that lack of progress on aspects of JI lies in inadequacy of host country mechanisms to facilitate JI tracks 1 and 2 procedures. The Co-Chairs will prepare a draft decision for consideration on Friday.

**SHARED VISION (AWG-LCA):** In the afternoon informal consultations, parties focused on draft text. Many developing countries proposed new language to condense several introductory paragraphs. Some developed countries opposed a reference to addressing implementation gaps in the Convention. Parties also deliberated on the role of the Protocol. Informal consultations continued into the night aimed at completing the first reading of the draft text.

**FINANCE (AWG-LCA):** In the morning drafting group on finance, delegates considered the co-facilitators' text on institutional arrangements, proposing changes to the text. Several parties expressed difficulty with, amongst other things, listing commitments contained in Convention Article 4 (commitments) and language on a governing body allocating funds among thematic areas. Revised text will be produced.

**TECHNOLOGY (AWG-LCA):** In informal consultations on technology, parties worked line-by-line through new draft text. Some developing countries expressed interest in inserting preambular language and principles. Parties exchanged views on what a technology mechanism would consist of.

**ADAPTATION (AWG-LCA):** In the morning informal consultations on adaptation, parties continued paragraph-by-paragraph discussions of draft text with a view to streamlining and shortening it.

**MITIGATION - sub-paragraph 1(b)(i) of the BAP (AWG-LCA):** In informal consultations on mitigation by developed countries, parties focused on the introductory paragraph of non-paper No. 50 forwarded from the Barcelona session. Some parties suggested that sub-paragraph 1(b)(i) of the BAP applies to developed countries, while a group of developing countries underlined that it covers Annex I countries that are not Protocol parties. Differences also persisted on specific quantifications of mitigation commitments or actions by developed countries.

**MITIGATION – sub-paragraph 1(b)(iii) of the BAP (AWG-LCA):** In the morning, the informal group on REDD-plus met to continue working through draft text. Parties considered text on safeguards and began discussing reference levels. Informal consultations continued in the evening.

**MITIGATION – sub-paragraph 1(b)(iv) of the BAP (AWG-LCA):** In the morning informal consultations, the drafting group on sectoral approaches had a general exchange of views on bunker fuels. The Co-Chairs will develop a draft text.

In the afternoon informal consultations, parties discussed draft text on agriculture.

**MITIGATION – sub-paragraph 1(b)(v) of the BAP (AWG-LCA):** Informal consultations on various approaches to enhance the cost-effectiveness of, and to promote, mitigation actions, including markets, focused on how to organize the group's work.

Many parties supported discussing both market- and non-market-based approaches, while some preferred discussing only non-market-based approaches. Some parties also questioned the appropriateness of discussing the issue of hydrofluorocarbons (HFCs). Most parties urged continuing discussions in a smaller drafting group in order to facilitate the work.

A new draft text will be prepared for discussions on Friday.

**FINANCE AND MITIGATION (AWG-LCA):** Joint informal consultations were held between the drafting group on finance and the group on sub-paragraph 1(b) (ii) of the BAP on mitigation by developing countries. The aim of the joint consultations was to discuss placement of issues being considered under both groups with a view to avoiding duplication.

Delegates began by addressing a section on support for NAMAs reflected in non-paper No. 51 on sub-paragraph 1(b) (ii) of the BAP. Several parties advocated moving all paragraphs containing financial provisions to the finance group. Others maintained that text on new and additional support should remain under consideration by the mitigation drafting group. The need to consider the “what” and “how” of support and reach agreement on principles regarding what is specific to NAMAs and their implementation were also raised. Parties agreed to place markers on text to be considered by the finance group.

Delegates then addressed modalities for matching action and support through a mechanism to register or record and facilitate implementation of NAMAs. Some parties preferred to house a matching function or registry within a financial mechanism, while others said that matching functions should remain within the purview of the drafting group on sub-paragraph 1(b)(ii) of the BAP. Informal discussions among several parties will continue on the matching function.

**POTENTIAL CONSEQUENCES (AWG-KP):** The contact group on potential consequences met to continue working line-by-line through the text, discussing “deepening understanding” and designing policies and measures. Co-Chair Ure informed delegates of the absence of the G-77/China coordinator and noted that members of the G-77/China would not be speaking as a group.

On deepening understanding, NEW ZEALAND preferred removing reference to the AWG-LCA, noting it was captured under other UNFCCC bodies and would not be in existence much longer.

On policies and measures, the EU and ARGENTINA worked on crafting a compromise based on the second option on the careful design of policies and measures. ARGENTINA expressed concern with the word “careful” and the EU noted that reference to “careful” aimed to convey that action should be consistent with Protocol article 2.3 (adverse effects of policies and measures).

ARGENTINA, supported by SAUDI ARABIA, also preferred reference to Convention Article 3.5, which addresses trade. The EU opposed reference to a specific article, noting that there is no hierarchy of Convention principles. While no options were removed from the text, a footnote was added to indicate that parties had focused discussions on modifying the second option. Parties also discussed combining options on text on designing policies and measures.

**OTHER ISSUES – LULUCF (AWG-KP):** In informal consultations on LULUCF, parties attempted to reduce options on forest management, with discussions on caps and discount factors. Informal consultations will continue.

**OTHER ISSUES - FLEXIBILITY MECHANISMS (AWG-KP):** During the informal consultations, parties continued discussion of Annex I of document FCCC/AWG/KP/Add.3/Rev.3. Discussions focused on streamlining and removing brackets from the various options on the elements in the text. On crediting on the basis of NAMAs, several developing countries, opposed by some countries, proposed deletion of the text.

**ANNEX I EMISSION REDUCTIONS (AWG-KP):** In the evening, the contact group on AWG-KP Annex I emission reductions convened. Co-Chair Leon Charles reported on the informal consultations, noting that on length and number of commitment periods, parties had identified domestic policy processes as a constraint as well as the importance of taking science into account.

The FEDERATED STATES OF MICRONESIA gave a presentation highlighting the need to cap the use of LULUCF and address the issue of surplus Assigned Amount Units (AAUs). She noted that there are many ways to address AAUs, including requesting parties not to use them in the second commitment period, capping carryovers, and discounting. NEW ZEALAND suggested using actual emissions as a starting point

for calculating quantified emission limitation and reduction objectives (QELROs) as a means of eliminating surplus AAUs. The EU and AUSTRALIA expressed concern that this rewards countries that overshoot first commitment period targets. BRAZIL said this would create more “hot air.” BANGLADESH, the FEDERATED STATES OF MICRONESIA and EGYPT stressed a single starting point. NEW ZEALAND emphasized that the starting point with the greatest environmental benefit is from actual emissions.

The Secretariat will prepare a paper to capture the various options and clarify terms such as “base year” and “starting point.”

**TECHNOLOGY (SBI/SBSTA):** The joint SBI/SBSTA group on technology transfer met briefly in informal consultations before reconvening in a contact group and agreeing on draft conclusions.

**REDD (SBSTA):** The informal consultations on REDD continued to work through draft decision text. Parties considered topics including guidance from the IPCC and reference levels, with discussions on language on national circumstances. Informal consultations will continue.

**ANNEX I NATIONAL COMMUNICATIONS AND GHG INVENTORIES, REPORTING AND REVIEW, AND COMPILATION AND ACCOUNTING FOR ANNEX B PARTIES (SBI):** Parties met in a contact group and informal consultations to address SBI agenda items on Annex I national communications and greenhouse gas (GHG) inventory data, reporting and review of information submitted by Annex I parties to the Protocol, and the annual compilation and accounting report for Annex B parties under the Protocol.

Regarding the report on GHG inventory data for 1990–2007, China, for the G-77/CHINA, with BRAZIL, expressed concern at the trend of increase of GHG emissions in Annex I parties and suggested reflecting this concern in SBI conclusions. The EU noted that its member states are undertaking significant reductions and proposed that SBI conclusions take note of the report (FCCC/SBI/2009/12). The US suggested using language from previous SBI conclusions, and the Secretariat explained that relevant language on emission trends is contained in decision 1/CP.9.

Regarding the report on the review of fourth national communications and preparations for the review of the fifth national communications, Co-Chair Herold reminded parties that according to decision 10/CP.13, Annex I parties are expected to submit a fifth national communication on 1 January 2010 “with a view to submitting the sixth national communication four years after this date,” that is on 1 January 2014. The US, EU, AUSTRALIA and RUSSIAN FEDERATION suggested deciding on the exact date for submitting the sixth national communication at a later stage, pending the outcome of AWG-LCA discussions. The G-77/CHINA, with BRAZIL, proposed fixing the date at this session.

On reporting and review of information from Annex I parties under the Protocol, Co-Chair Herold proposed the SBI conclusions take note of the report (FCCC/SBI/2009/INF.8), and parties agreed.

Regarding the annual compilation and accounting report for Annex B parties under the Protocol, Co-Chair Herold noted two documents under this agenda item (FCCC/KP/CMP/2009/15 and Add.1), and parties requested more time to study them.

In informal consultation held in the afternoon, the Co-Chairs presented draft conclusions relating to these agenda items. One developing country said the text could reflect the fact that emissions from Annex I parties actually increased if countries with economies in transition are excluded.

Some developed countries said text on commitments was outside the group’s mandate, and asked that it be deleted and the document simplified.

Regarding text on the timing of Annex I parties’ submission of their sixth national communications, several developed countries preferred to defer further consideration to SBSTA 32. Citing the heavy workload in Copenhagen, one party proposed deferring consideration of the broader agenda item to SBSTA 32.

The contact group will resume on Friday morning to discuss these items, with the exception of the item on reporting and review of information from Annex I parties under the Protocol.

### IN THE CORRIDORS

Much of the talk in the corridors on Thursday afternoon and evening was focused on the suspension of both the COP and COP/MOP, pending consultations on whether to establish contact groups to consider proposed new protocols under the Convention and proposed amendments to the Kyoto Protocol. As on Wednesday when the COP was suspended, Tuvalu led a group of African, Latin American and AOSIS parties in urging a formal contact group to consider the proposed Protocol amendments, and resisted proposals to move the procedural question to an informal setting with a review of progress in plenary on Saturday.

Many noted that these disputes were closely related to the question concerning the legal form of the outcome: “We have still not resolved the critical question of the legal outcome of these negotiations,” noted one old hand in the process. “Developing countries want to preserve and strengthen Kyoto, while most Annex I countries are seeking a comprehensive legal framework that also engages the US and developing countries in mitigation efforts.” Differences were also detected among developing countries as to whether the outcome from the AWG-LCA should be legally-binding.

The wisdom of suspending work under COP and COP/MOP and its implications were also being discussed around the Bella Center. Some viewed the request to also suspend the COP/MOP as a good strategic move, while others feared it could delay work on other issues. “It hasn’t slowed the informals under the AWG-LCA,” said one NGO who was supportive of AOSIS’ stand. “I’m just not sure how they’ll break the deadlock,” she added.

Meanwhile, delegates were also reacting to the leak of a proposed outcome document – the “Copenhagen Accord” – by French newspaper *Le Monde*. The text, which was said to have been developed by China, India, Brazil, and South Africa, had apparently been distributed among G-77/China parties earlier in the week before the leak on Thursday. While the initial response to the text was cautious, some developed country delegates seemed positively surprised by what they characterized as a relatively “realistic” text. For their part, some of those connected with the text were playing down its significance at this stage, with delegates noting that it has “limited status” and is “just a working draft.”

People were also commenting on the increasing number of people at the Bella Center on Thursday, as more ministers arrived and delegations continued to grow. Lines to get into the building were noticeably longer than in previous days, and there was talk of limits on observer numbers next week. “The place is already packed and there’ll be thousands more next week,” noted one insider. Rumors were also circulating about large-scale protests planned for Saturday.