



### FCCC COP-5 HIGHLIGHTS FRIDAY, 29 OCTOBER 1999

Delegates met in a joint session of the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI) to take stock of progress in the Joint Working Group (JWG) on compliance and in the joint contact groups. The JWG on compliance discussed procedures and mechanisms relating to compliance under the Protocol. Contact groups met to consider: adverse effects; activities implemented jointly (AIJ); Annex I communications; capacity building; land use, land-use change and forestry (LULUCF); national systems, adjustments and guidelines under the Protocol; non-Annex I communications; and the Protocol mechanisms.

#### JOINT SBI/SBSTA SESSION

Chairs of the joint contact groups and the JWG on compliance gave brief presentations to update delegates on progress made on items on the joint SBI/SBSTA agenda. Their presentations related to progress made on: adverse effects; compliance; AIJ; mechanisms; and capacity building. SBSTA Chair Dovland (Norway) urged the Parties to intensify their efforts to reach agreement on these issues.

#### JOINT WORKING GROUP ON COMPLIANCE

AUSTRALIA presented its diagrammatic submission on a compliance procedure focused on Protocol Article 3.1 (greenhouse gas reduction and limitation commitments). She highlighted that facilitation would be available on any issue relating to the target and that the outcome of the compliance procedure would be a COP/MOP decision applying the negative consensus rule.

Delegates then addressed the structure of a compliance body. On the nature of a compliance body, a number of delegates said it should be a standing body in order to allow consistency and continuity in its practice, as well as build confidence in its work. On the frequency of the compliance body's meetings, AOSIS and SOUTH AFRICA said it would depend on the amount of work it had before it and that meetings should be held together with other meetings under the FCCC. The EU said meetings should be held regularly, and SWITZERLAND suggested it meet at least once a year, given the continuous work of the compliance body. On the body's size and composition, a number of delegates suggested a small body composed of scientific, technical and legal experts appointed by governments yet acting in their personal capacity. They said the composition of the body should ensure equitable geographic distribution. POLAND said there should be an equal number of Protocol Annex B and non-Annex B Parties, and AUSTRALIA, supported by the US, added that the composition would depend upon the article under review. SWITZERLAND, with SOUTH AFRICA, said it should be possible to call on outside experts. He added that

additional Annex I Parties' experts should be called on when considering Protocol Article 3. A number of delegates, opposed by SAUDI ARABIA, stressed the need for the body to have its own rules of procedure. The EU said these rules should be adopted by the body itself, while KUWAIT, BRAZIL and CHINA said the COP/MOP should adopt these rules.

On the relationship of the compliance system with Protocol Article 19 (dispute settlement), several Parties said these two procedures should be kept separate. The US said it envisioned the compliance system being structured in such a way that a Party would present information on non-compliance to the compliance committee, which would follow-up on the matter. Within such a framework, the Party would decide whether it would raise a bilateral dispute under Article 19 or initiate the multilateral process under the compliance system. The UAE said the suggestion by the US would cause confusion, as similar cases taken through Article 19 and the compliance system would have differing results. NEW ZEALAND said the Article 19 process could be the basis for a final appeal procedure. The UK responded that a bilateral appeal could not flow from a multilateral process. He highlighted the need to determine whether the compliance system or the dispute settlement process would take precedence where the two are in action simultaneously.

On the consequences of non-compliance, JAPAN, AUSTRALIA and the US said the term "consequence" could be replaced by "outcome," in order to better reflect the possible use of facilitative measures. CHINA, with SOUTH AFRICA, specified that Protocol Article 18 (compliance) refers to "binding consequences" and opposed the proposed terminology change. On the types of consequences, a number of delegates emphasized that knowing them in advance would ensure predictability and deter non-compliance. Several delegates suggested an indicative list of consequences that would be applied gradually, taking into account the cause, type, degree and frequency of non-compliance. They opposed the US suggestion for automatic sanctions. JAPAN said the cost of sanctions should be lower than the cost of withdrawal from the Protocol. The US, NEW ZEALAND, AUSTRALIA and CANADA said a possible sanction could be the subtraction of excess emissions from the levels permitted during the subsequent period, with a penalty rate applied. SWITZERLAND, BRAZIL and IRAN supported financial penalties as a last resort. AUSTRALIA said the Party concerned should have the option to choose from a menu of consequences.

#### CONTACT GROUPS

**AIJ:** Chair de Boer (Netherlands) presented an overview of the Chair's proposal for a draft decision on AIJ. He said the proposal takes into account the differences of opinion expressed on whether to stop the AIJ pilot phase, as well as on the form AIJ should take if

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continued. He noted the proposal by some Parties to introduce incentives, possibly in the form of crediting AIJ activities, in order to sustain the momentum. He said the draft proposal tries to find middle ground to accommodate the various views expressed. The EU introduced its draft proposal that seeks to stop the non-credited pilot phase now and start an AIJ phase with possible crediting, subject to decision-making in the mechanisms negotiation. The contact group will reconvene to consider the two proposals.

**ADVERSE EFFECTS:** A Co-Chairs' draft decision was distributed to the contact group for consideration at its next session. Delegates then heard presentations from the IPCC, followed by a question-and-answer session. The IPCC said, *inter alia*, that its Third Assessment Report (TAR) would provide more details on regional impacts and other issues relating to implementation of FCCC Articles 4.8 and 4.9. Concerning the impact of implementing response measures, he said that modeling is purely speculative and that it was very difficult to predict changes in the price of oil because of the many variables involved. He added that countries take actions that may counter an adverse effect, but that these are seldom identified as "climate interventions" and are motivated by factors other than FCCC implementation.

**ANNEX I COMMUNICATIONS:** This contact group continued consideration of the draft text on guidelines for reporting other issues in Annex I communications. Participants negotiated wording on a number of outstanding paragraphs, focusing primarily on the section relating to research and systematic observation. Proposed text prepared by the Global Climate Observing Systems (GCOS) Secretariat on draft guidance for reporting on GCOS was presented to the group for consideration at its next meeting.

**CAPACITY BUILDING:** This contact group considered the Co-Chairs' draft proposal for a draft decision on capacity building for developing countries that was prepared on the basis of Parties' comments on the G-77/CHINA's proposal. Some delegates noted that the revised document did not fully take account of their submission. There was disagreement on whether the draft decision should address countries with economies in transition. The group discussed preambular paragraphs that: recognize the importance of taking stock of existing capacity-building activities, acknowledge that, though work has begun, substantial work remains to be done; recognize the main constraints to implementing the FCCC in developing countries; underline that capacity-building must be country driven in accordance with the FCCC provisions; and emphasize the continuous nature of the capacity-building process.

**LULUCF:** This contact group continued discussing the need for data and information in relation to consideration of the IPCC Special Report and a decision-making framework in the context of Protocol requirements. On reporting formats, some delegates noted that guidelines for the provision of data relating to Article 3.3 (net changes in GHG emissions and removals) were already provided for by the IPCC 1996 guidelines and said Parties should abide by them. Others considered that additional and more specific data and information were needed. Timing, application and criteria for data under Articles 3.3 and 3.4 (additional human-induced activities relating to changes in emissions and removals) and 3.7 (assigned amounts and LULUCF as a net source of emissions) were discussed. The group identified transparency, verifiability, accounting for uncertainties and attribution as criteria under Articles 3.4 and attempted to identify additional criteria including: measurability; permanence; prevention of perverse incentives; avoidance of double accounting; symmetry; conformity with the FCCC, the Protocol and other conventions; and the "leakage effect."

**MECHANISMS:** This contact group deliberated on a possible workplan up to COP-6. The EU and the US sought intensification of the process, in particular through technical workshops. CHINA, INDONESIA and IRAN highlighted the need to convene interses-

sional meetings to strengthen intergovernmental work. JAPAN and CANADA said both technical workshops and intersessional meetings should be held prior to COP-6. CANADA added that it would like to see a refined negotiating text at COP-6. The G-77/CHINA and others highlighted the need for transparency in the process and adequate developing country expert participation in the technical workshops. SUDAN said Parties needed time to review the information and findings of technical workshops.

The G-77/CHINA said it was premature to work toward a draft negotiating text, as Parties were still at the stage of making submissions, noting convergence/divergence and synthesizing views. In response to a query by Chair Chow, the G-77/CHINA defined a draft negotiating text as "the penultimate stage in the text that the COP will finally adopt." JAPAN, the US and AUSTRALIA defined it as a living document that would go through several drafts. Chair Chow noted that the text would be a living document synthesizing the views of all Parties to facilitate the negotiating process. He said he will prepare conclusions on the timetable of work leading to COP-6.

**NATIONAL SYSTEMS:** This contact group considered draft conclusions on national systems, adjustments and guidelines under Protocol Articles 5 (methodology), 7 (communication of information) and 8 (review of information). It also considered a draft annex setting out basic elements of national systems under Protocol Article 5.1 (national systems for GHG emissions and removals) that had been presented by JAPAN and amended after informal consultations by a smaller group of Parties. Discussion focused on a paragraph relating to adjustments under Protocol Article 5.2 (methodology). After considerable discussion, the group agreed to wording noting that the SBSTA "considered" rather than "agreed" that adjustments referred to in this Article should only be applied when inventory data submitted by Parties are incomplete and/or are calculated in a way that is not consistent with the IPCC 1996 Revised Guidelines as set out by any good practice agreed on by the COP. The group concluded its work on both documents, which will be submitted to SBSTA for its consideration.

**NON-ANNEX I COMMUNICATIONS:** Chair El Ghaouth (Mauritania) informed delegates that a drafting group had been working on a draft text compiling proposals by the EU, the G-77/CHINA and others, and suggested that the contact group adjourn to allow the drafting group to continue its work.

### IN THE CORRIDORS

The need for country-specific data related to LULUCF activities, including additional human-induced activities related to changes in GHG emissions and removals, continues to be a contentious issue. Some participants feel that hesitation on the part of some Annex I Parties to provide country-specific data stems from a reluctance to reveal the implications of Article 3.4 activities (such as agriculture and land-use change) on the amount of their overall emissions and their ability to meet their Protocol targets. Others are of the view that the more data available, the greater the prospects for informed decision-making about sinks. The concern is that this controversy could have an impact on the timing of a conclusive decision on LULUCF, and therefore the entry into force of the Protocol.

### THINGS TO LOOK FOR TODAY

**JWG:** The JWG on compliance will meet at 3:00 pm.

**CONTACT GROUPS:** Contact groups will be held throughout the day. Consult the announcement board for details.