



AUSTRALIA

Second Review of the Kyoto Protocol

Submission to the CMP

This submission provides further views of Australia on the second review of the Kyoto Protocol pursuant to its Article 9.

Australia considers the second review of the Kyoto Protocol, which will conclude in Poznan, timely and important. The review's mandate is to identify practical improvements to the current operation of the Kyoto Protocol. The review should not address issues that cut across post-2012 negotiations or impose new commitments on Parties.

Following rich and fruitful discussion, drawing on lessons learned from the early years of implementing the Protocol, Australia considers Parties can deliver a strong review in Poznan consisting of four strands.

First, the review can identify a number of practical improvements to the Protocol, ready for immediate implementation. For example, tangible enhancements can be made to the flexibility mechanisms by improving capacity building, institutional and governance arrangements relating to the CDM and JI (see elaborated views in Attachment A). Reporting and review of national inventories, which underpin the Protocol's credibility, can also be strengthened, including by bolstering Expert Review Teams (ERTs).

Second, the review can identify practical improvements not yet ready for implementation and establish work streams for further development. For example, with some further legal work, the process for amending the Protocol when Annex I Parties voluntarily take on targets can be simplified and accelerated. Flexibility mechanisms too can be bolstered by further improvements to rules for CDM and JI projects (see elaborated views in Attachment A), and a regime of immunities for individuals serving on constituted bodies can be developed.

Third, the review can record, and where relevant refer to other bodies, issues that more appropriately fall within other mandates. Proposals such as a possible levy on the proceeds from JI projects and emissions

trading would fall into this category. The mandate for the Article 9 review specifically excludes actions that would impose new commitments on Parties. Such a levy represents a significant new commitment for Parties, and as such, falls outside the scope of the Article 9 review.

The Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) is mandated to address further actions to enhance financing. Australia considers the objective of scaling up financial support for clean development and adaptation to be a crucial part of an effective post-2012 outcome. Financing proposals, such as those seeking to impose levies, are aptly within the purview of the AWG-LCA, where they may be evaluated against other proposals that may arise for financing support as part of the post-2012 outcome.

Fourth, the review must signal a timeframe for the third review. The Protocol mandates that reviews must occur “at regular intervals and in a timely manner” and Parties continue to gain valuable experience in implementing the Protocol which should be harnessed.

Australia’s Proposals on Inscribing Commitments, Privileges and Immunities, and Reporting and Review

The following builds on Australia’s previous submission on the second review of the Protocol under Article 9¹ and our comments during intersessional workshops, elaborating Australia’s proposals on three issues under consideration – (a) reporting and review of national inventories submitted by Annex I Parties (b) inscribing voluntary commitments for Annex I Parties in Annex B to the Kyoto Protocol and (c) privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol.

Reporting and Review

Reporting and review of national inventories submitted by Annex I Parties is fundamental to the Protocol’s credibility and success. Consistent and high quality reporting and review is critical, providing the basis for determining whether Protocol commitments have been met.

Parties and lead reviewers have repeatedly expressed concern that the quality, consistency and timeliness of the reporting and review process may be compromised by an insufficient number of qualified experts and insufficient funding to support expert training and review tools. Australia shares this concern and proposes that Parties consider *strengthening the secretariat’s capacity*, through reallocating core budget funding, to place the reporting and review process on a more professional footing.

¹ FCCC/SBI/2008/MISC.2/Add.3

Additional in-house capacity would deliver enhanced training and review tools to experts, greater consistency between review teams, enhanced professional expertise and knowledge available to Parties and ERTs, and reduced burden on lead reviewers. An enhanced training and review tool program would cover all aspects of review responsibilities and address the new complexities and sophistication of Parties' inventory systems. Experts' participation in reviews should continue to be conditional upon successful completion of the program.

To further enhance reporting and review, Australia proposes:

- (a) a *formal feedback mechanism* – through regular meetings of inventory compilers or submissions – to allow for common issues to be promptly addressed, and enhance transparency and consistency; and
- (b) a provision for a *Party subject to a review to request meetings* with the ERT - following notification of potential issues and receipt of the draft ERT report – to augment existing dialogue between reviewers and Parties, which is critical to concluding robust, high quality reviews.

Inscribing commitments

Australia shares concerns that existing procedures for Annex I Parties to voluntarily take on emissions targets under the Protocol can result in serious delay, potentially discouraging willing countries and reducing mitigation action. Belarus' experience exemplifies the problem. As such, Australia supports a smoother, more timely procedural path and outlines its two preferred options.

In both options (a) an amendment to include an emissions target can only be proposed voluntarily by the Party assuming the target and (b) an amendment must first be adopted by the COP/MOP.

Option one: "Two-path approach"

At the time the new procedure is ratified, Parties select between:

- . a "ratification path" - an Annex B amendment would not enter into force for a Party that selects this path until it submits an instrument of acceptance; or
- . a "tacit acceptance path" - an Annex B amendment enters into force for all Parties that selects this path twelve months after the date the depositary communicates the amendment to Parties, unless a Party notifies in writing of its non-acceptance within twelve months (in the case of non-acceptance by a Party, the amendment enters into force for that Party upon its withdrawal of its notification).

Option two: “Adjustment with opt-out” or “Tacit Acceptance” approach

Option two is essentially the “tacit acceptance” path of option one. Should a Party not “opt-out”, an amendment to Annex B would enter into force twelve months after the date the depositary communicated the adopted amendment to Parties.

Both options achieve a balance between reducing the time for the entry into force of an amendment, while accommodating Parties’ different domestic treaty action arrangements. As both options require an amendment to the Kyoto Protocol, further legal drafting and discussion is warranted. This work could appropriately be progressed by an SBI work stream established in Poznan and report to the COP/MOP.

Privileges and immunities for individuals serving on constituted bodies

Australia shares concerns with the limited immunities accessible to individuals serving on Kyoto Protocol bodies, particularly immunity from legal action. The threat of legal action can undermine the Protocol’s operation by hindering qualified participation and the ability of persons on the constituted bodies to properly discharge their duties.

Australia supports conferring immunities on members, alternates and experts of all constituted bodies. The appropriate scope for immunity should relate to all words and acts by individuals in their official capacity, and other immunities necessary to enable individuals to professionally and conscientiously discharge their official duties.

Australia considers treaty action the most effective and certain means of implementing this improvement in the long term. Given the legal complexity of the issue, it is not yet ready for immediate implementation. As foreshadowed in SBI 28, the review should confirm that this improvement to the Protocol’s operation be progressed in the SBI.

The review, however, can implement the following practical options suitable for early implementation that can reduce risk of legal action:

(a) direct constituted bodies, where feasible, to hold meetings in Germany or in countries where either the Headquarters or a conference agreement confers immunity;

(b) align the Adaptation Fund Board’s draft rules of procedure with other constituted bodies by deeming inter-sessional decisions to be made in Bonn, conferring immunity under the Headquarters Agreement; and

(c) align the constituted bodies’ procedures relating to alleged breaches of conditions of service, such as failure to disclose conflicts of interest,

to promote transparency, accountability and build third party confidence, thereby reducing interest in pursuing legal claims. Existing procedures vary among bodies. The Compliance Committee's rules of procedure provide a useful basis for developing an aligned procedure. Key elements are contained in Attachment B.

Attachment A

Further views on improvements to the CDM and JI

Australia welcomes improvements to the Clean Development Mechanism (CDM) and Joint Implementation (JI) consistent with the following overarching principles:

- Abatement must be genuine, and environmental integrity must be assured;
- All improvements must preserve the integrity of the market mechanisms; and
- Abatement must be delivered in an accountable, transparent and effective way.

The second review can deliver immediate implementation of many improvements relating to institutional arrangements and governance. Implementation of improvements relating to rules and procedures may require further development and could be progressed through established work streams.

1. Improvements to the institutional arrangements and governance of the CDM and JI

The CDM Executive Board (EB) is an executive decision-making body, and as such should have an oversight role and be responsible for strategic issues rather than administrative and technical details.

Australia supports delegation of technical decision making to the EB's support structure. Decisions on delegated matters should be considered as approved unless three EB members request consideration within a specified time period. This approach would enable the EB to retain decision-making authority on issues of strategic significance.

The EB's assumption of an oversight role is contingent upon its provision of strong and clear guidance on issues including:

- guidance to Designated Operational Entities (DOEs). The Validation and Verification Manual (VVM) is an example of the type of engagement with and guidance to DOEs that should be strengthened and continued. Guidance to DOEs could be further strengthened through regular EB engagement with DOEs, such as via an EB-DOE forum.
- strong and clear guidance on the development and implementation of methodologies, especially Programmes of Activities (PoAs). PoAs have considerable potential for further emissions abatement

and engagement of under- or un-represented non-Annex I Parties. PoAs have had limited uptake due to a range of issues including uncertainties which limit incentives for private sector engagement.

Transparency of decision-making – both by the EB and DOEs – should be encouraged and strengthened; both in regard to how decisions are made (particularly relevant for the EB) and what decisions are made (particularly relevant for DOEs). Such measures will lead to a more predictable and stable business environment; fostering private sector investment and effective functioning of the mechanisms.

Transparency and communication between the EB and DOEs should be enhanced. Such measures would build EB confidence in the DOEs, minimising requests for review and accelerating the approvals process. This should help reduce the current backlog experienced by project developers along the chain of the approvals process.

Improved communication between the EB and DOEs would enhance DOEs' capacity to validate, verify and certify projects. Enhanced DOE capacity is key to realising the CDM's full potential. Australia would be willing to consider additional measures to improve the capacity and encourage the formation and accreditation of DOEs.

Australia supports consideration of measures to enhance the enabling environments in Parties and regions that are currently under-represented in the CDM. A country's enabling environment, particularly with relation to robust and transparent governance arrangements, is a critical factor in attracting investment flows.

Australia welcomes information-sharing and other facilitative initiatives such as the DNA Forum and the promotion of CDM champions. These are useful and cost-effective means to build understanding and ultimately strengthen a Party's capacity to participate in carbon markets. The DNA Forum could usefully focus on building the institutional and administrative capacity needed to assess and approve CDM projects. Activities to 'promote' CDM projects in under-represented countries would be more useful and effective after their institutional capacity has been strengthened.

2. Improvements to rules and procedures of CDM and JI

Australia welcomes consideration of proposed changes to the CDM and JI rules and procedures that would broaden the mechanisms' mitigation potential, and could facilitate broader geographical distribution of projects. In particular :

- reviewing the restrictions on the permanence of Kyoto units related to the LULUCF sector;

- including REDD projects in future international carbon markets; and
- inclusion of carbon capture and storage activities as eligible projects under the CDM.

Changes to project rules and procedures should not be applied retrospectively to projects already registered. A predictable, stable business environment helps the private sector make the investment decisions central to the functioning of the CDM and JI.

Australia does not support proposals for rules and procedures that would dictate how Kyoto units could be used in national emissions trading schemes. This is a matter for national consideration.

Proposals to arbitrarily limit abatement sources and location, such as quotas for projects or credits from particular areas of the world, should be avoided. Such proposals could compromise market integrity and abatement at lowest cost to the global economy.

Attachment B

Key Elements of Aligned Procedures: Breaches of conditions of service by persons serving on constituted bodies

- . Any Party to the Kyoto Protocol may allege a breach to the Executive Secretary.
- . The allegation must be accompanied by supporting evidence.
- . The individual and the constituted body in question are notified of the allegation.
- . The individual has the opportunity to recuse themselves from involvement in the matter to which the allegation relates.
- . The individual has the opportunity to be heard by the constituted body.
- . In light of the information submitted by the complainant and the individual, the constituted body may decide to:
 - a. recuse the individual from involvement in the matter to which the allegation relates; or
 - b. in the case of material violation,
 - i. suspend the individual from service; or
 - ii. recommend the CMP revoke the individual's term of service.