



Appendix I

Reform and Expansion of JI: Proposals for Reform

Joint Implementation Action Group

Legal Paper
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1. INTRODUCTION

The Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (“AWG-KP”) is currently considering possible improvements to emissions trading and the project-based mechanisms under the Kyoto Protocol with the objective

- a. to enhance the effectiveness of these mechanisms; and
- b. to increase their contribution to sustainable development; and
- c. to achieve the ultimate objective of the Convention.

At the occasion of its 5th meeting the AWG-KP has compiled the views of Kyoto Protocol Parties with respect to a possible reform of the Kyoto mechanisms. The group is convening in Accra from 21st to 27th August to consider the proposals put forward.

This paper presents a number of reform proposals for the Joint Implementation (“JI”) mechanism. The proposal is supported by a group that brings together the most active JI project developers, the Joint Implementation Action Group. The group wishes to make available its practical experiences and lessons learned implementing JI projects over the last ten years and seeks to share their insights with a broader set of policy makers. The group is concerned that the current discussions of the AWG-KP on the Kyoto mechanisms largely focuses on CDM reform leaving JI at the margins. We think this is a mistake. JI is an essential policy tool to incentivize emission reductions within an environment of emission targets. It reaches activities and sectors not covered by domestic emissions trading, creates an effective project finance mechanism, raises awareness on climate change and mitigation efforts and involves new players into mitigating global warming. In order to further expand and strengthen JI, we suggest the reforms outlined below.

2. PROPOSAL FOR REFORM

A. Scope: Graduation from CDM to Art. 6 Projects

It is essential to establish the rules that allow the migration of CDM project activities to a capped environment of assigned allowances, be it in the context of a sectoral emission limitation target or an economy wide (Annex I) target. The following needs to be considered in the process of graduation from CDM to JI:

- *Emission reductions need to be linked to AAUs (or equivalent internationally assigned allowances).*

Under JI each ERU is backed by an AAU. In contrast CERs from CDM projects are newly created off-set credits. When CDM project activities graduate to JI, future verified emission reductions will have to be linked to AAUs, or any other unit that will replace AAUs for this purpose. These AAUs may come from the relevant sectoral or national allocation, or the host countries may negotiate an additional allocation reflecting the size of existing and approved CDM project activities under implementation in the country. The assigned allocation could be under the host country's administration to facilitate the host country's issuance of ERUs. Alternatively, countries could opt to have the allocation of allowances to match CDM emission reductions administered on the international level.

- *Crediting periods need to be aligned.*

When transiting to JI, we suggest harmonizing the crediting period of existing CDM and JI projects and establish common rules for all JI projects. The crediting period of graduating and new JI project activities could be set at a fixed period of, for example, 10 years, except for those CDM projects that had applied for a ten year crediting period in which case the initially approved period remains unaffected from the transition to JI. To encourage continued JI project development, the crediting period of pre-2012 JI projects should be expanded to cover a total of 10 years.

Proposed wording for a relevant resolution in Accra:

Modalities for graduation from a CDM project activity to a JI project

The Parties have agreed to adopt modalities for the graduation of clean development mechanism project activities into Article 6 projects, and decide as follows:

1. *Registered CDM project activities which fall under a sector for which the host Party has received assigned amounts graduate to Article 6 projects.*
2. *Graduating CDM project activities will be considered in a Party's allocation of assigned amount units for the relevant sector.*
3. *The following shall apply to graduating CDM project activities:*
 - a. *the graduating project activity shall have its crediting period adjusted to [10] years counting from the moment the relevant Non-Annex I Party has become eligible to host Article 6 projects, with the exception of CDM project activities that applied for a 10 years crediting period in which case the crediting period shall remain unaffected by the graduation of the CDM project activity;*
 - b. *until the host Party meets the requirements set forth in para 21 of the Annex to Decision 9/CMP.1 the verification of reductions in anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks from a graduating CDM project activity as being additional to any that would otherwise occur, in accordance with Article 6, paragraph 1 (b), shall occur through the verification procedure under the Article 6 Supervisory Committee;*
 - c. *the approved and registered project design document and monitoring plan shall continue to apply to a graduating CDM project activity;*
 - d. *future emissions reductions achieved by the graduating CDM project activity*

shall be issued as emission reductions units (ERUs) converted from the host Party's assigned amount.

- 4. Project participants of graduating CDM project activity may decide to withdraw the relevant project activity from the process of graduation, in which case the CDM project activity would be cancelled and verified emission reductions of that project activity would not any longer be eligible for issuance as certified emission reduction units (CERs). CERs already issued for the cancelled project activity would not be affected and remain valid.*
- 5. Art 6 projects that started before 31 December 2012 will have a crediting period of 10 years from the start of the project activity.*

B. Effectiveness and Efficiency: JI Governance

Recognizing the hard and widely recognized work of the JI Supervisory Committee (“JISC”) and its members, it is important that the Joint Implementation mechanism - in view of an enhanced role in a post-2012 framework - adopts a number of procedural changes. From the CDM we have learned that it is essential that entities are provided with a reasonable degree of regulatory certainty. Consequently, it is important to review the JI mechanism, in particular the JISC coordinated part of the mechanism, to ensure it is a robust international regulatory system. In order to ensure continued efficiency of the Track II JI process, we propose the following:

- *Secure due process*

In order to avoid lack of transparency regarding the decisions taken by the JISC standard procedural rights should be made available to project participants. These include the right to be heard before a final decision is taken by the JISC and the establishment of set response times. The rules governing JI Track II should be compiled and made publicly available.

- *Promote transparency*

Transparency increases the legitimacy of JI procedures. We therefore recommend regulating and thus improving communication channels between project participants and JI regulatory bodies. JISC meetings should be public to project participants and observers.

- *Promote efficiency and quality*

The JI decision making process should be subject to clear timelines and process requirements. Reforming the JISC would be another important step to promote efficiency of the mechanism.

- We recommend the recruitment of full-time salaried individuals whose collective experience spans the entire range of sectors (including project finance, law, business management, engineering and science) and is grounded in practical, project-level experience and knowledge of the JI. Technical expertise should be the governing criterion for the selection of JISC members.
- In addition, adequate staff should be made available to support the expected increase in workload of the JISC. A share of proceeds levied based on project ERU would provide an adequate source of funding to cover for administrative costs of the JISC.
- Finally, JISC members should be limited to individuals from countries that are eligible to participate in the mechanism.

- *Create a review process of decisions of the JISC*

An independent review process which gives standing to entities that are granted rights and obligations under the new JI should be established. The review body could consist of a small number of individuals nominated by the COP/MOP competent to hear cases and pass judgment upon claims alleging the violation of procedural or substantial rules governing the JI by the relevant regulatory bodies. The UNFCCC Secretariat will support the appeal and dispute settlement body.

Proposed wording for a relevant resolution in Accra:

Institutional review of the joint implementation mechanism

- 1. The Parties underscore the importance of a transparent, efficient, and environmentally credible administration of the Joint Implementation mechanism.*
- 2. The Parties requests the Joint Implementation Supervisory Committee to revise its rules of procedure taking into account the following priorities:*
 - a. To establish clear, binding, and reasonable timelines for the decision making of the Joint Implementation Supervisory Committee, its subordinated bodies and panels;*
 - b. To publish an authoritative compilation of all modalities, procedures, guidelines and relevant decision concerning the Joint Implementation mechanism;*
 - c. To ensure that all project participants and accredited independent entities have the right to be heard in person on decisions that affect their rights and obligations;*
 - d. Publish the considerations of the Joint Implementation Supervisory Committee that lead to a final decision with respect to the rejection of a Art.6 project or the accreditation of an independent entity;*
 - e. Ensure an open and transparent process that makes available the meetings of the Joint Implementation Supervisory Committee to accredited observers and project participants.*
- 3. The members of the Joint Implementation Supervisory Committee shall be selected in a competitive and open process on the basis of their relevant expertise in areas of project development, finance, legal or policy. They shall be selected by the Parties that are eligible to participate in the Joint Implementation mechanism from a shortlist compiled by the Secretariat based on the recommendations of Parties and accredited observers. The selected members shall be confirmed by the COP/MOP and serve for a period of five years that can be renewed once.*
- 4. The COP/MOP approves the establishment of a Joint Implementation dispute settlement mechanism. Such dispute settlement mechanism will be independent from the COP/MOP and its bodies and shall provide for a full and independent review of claims. The decisions of the dispute settlement body will be final and binding.*

C. Effectiveness and Efficiency: Setting Baselines and Establishing Additionality

The current concept of project additionality has clear shortcomings by assigning relevance to subjective decision procedures. Without taking position on the interpretation of additionality in the CDM context, we would like to stress that additionality in the context of AAU backed JI projects has less relevance. We propose the following adjustments to the concept of additionality in a post-2012 JI framework:

- *A focus on environmental additionality*

The concept of additionality should have a shift in focus from a financial perspective to an environmental one. That means that the additionality of a project should not be measured by its economic dependence on revenues from the sale of ERUs, but its ability to deliver emissions reductions below a conservative emissions baseline. In addition, since JI credits are created by converting AAUs into ERUs, the environmental integrity of JI projects is to a great extent ensured by the host country's motivation to have their ERUs backed by real emission reductions.

- *Promote harmonizing of baseline setting*

Project participants should be authorized to establish the baseline scenario by (i) using existing CDM methodologies; (ii) by applying generic principles in an open and transparent manner. The generic guidance would describe how the baseline emissions can be set using historic emission data and/or average emission factors in the sector.

- *Prioritization by host countries*

JI host countries are ultimately responsible for the credible establishment of baseline scenarios. They further have to make sure that Art.6 projects fit into the development programme of the country. They should be trusted to approve projects according to their national priorities.

Proposed wording for a relevant resolution in Accra:

Establishment of additionality and baseline scenarios

1. *An Article 6 project is additional if anthropogenic emissions of greenhouse gases by sources are reduced below a baseline.*
2. *Baseline scenarios for Art. 6 projects shall be established in the following manner:*
 - a. *Project participants may apply baseline and monitoring methodologies approved for CDM project activities; or*
 - b. *Project participants may establish a baseline scenario by using the following guidance:*

Projects at existing installations: The baseline should be based on historic specific emission factors. The baseline emissions are calculated by taking the activity level of the project multiplied with the historic specific emission factors corrected for legislative changes or the anticipation thereof. Should the activity level increase the production capacity the baseline for the capacity increase shall be set as per the guidance for new installations;

Projects entailing new installations: The baseline should be based on specific emission factors. The specific baseline emission factor shall taking into account

the current emission factors of the sector and most recent construction of comparative projects not developed as Article 6 projects. The baseline emissions are calculated by the activity level of the project multiplied by the specific baseline emission factor.

D. Contribution to sustainable development, capacity to generate co-benefits and the transfer of technology

- *Allowing for programmatic and sectoral JI*

Encouraging the development programmatic and sectoral JI projects will allow Kyoto parties to achieve considerable quantities of emissions reductions in a cost-effective way, reaching areas and sectors not usually covered by domestic or regional emissions trading scheme. In essence, allowing for sectoral approaches under JI can increase participation of countries in mitigation efforts, targeting key emitting sectors without losing the rigor required to measure the environmental integrity of the mechanism.

- *Authorizing domestic JI*

Domestic JI gives countries and project participants in host countries the opportunity to take the lead in the development of internal offset projects. Authorizing unilateral JI means that project developers can develop internal projects for which tradable ERUs are issued without the involvement of another Annex I party. Domestic JI creates the flexibility to engage in GHG emissions abating projects regardless of the existence of any initial external funding or domestic policy incentives. It also works as a tool to promote GHG abatement initiatives that complement other domestic climate policies.

Proposed wording for a relevant resolution in Accra:

Sectoral, programmatic, and unilateral Joint Implementation

The Parties encourage the development of programmatic and sectoral Joint Implementation activities. The Joint Implementation Supervisory Committee is mandated to develop guidelines for the design and approval of such approaches.

Article 6 projects may be developed by a host Party and resulting ERU issued without the involvement of another Annex I Party.

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