

Assessment and Review under Other Multilateral Agreements

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Yukari TAKAMURA (Nagoya University)
E-mail: takamura.yukari@g.mbox.nagoya-u.ac.jp

- Some precedents of “assessment and review” under multilateral agreements
- Some concluding remarks

MRV for mitigation by developed countries

Biennial Report
* National Communication (per 4 years)

BR
Guidelines
(adopted at
COP17)

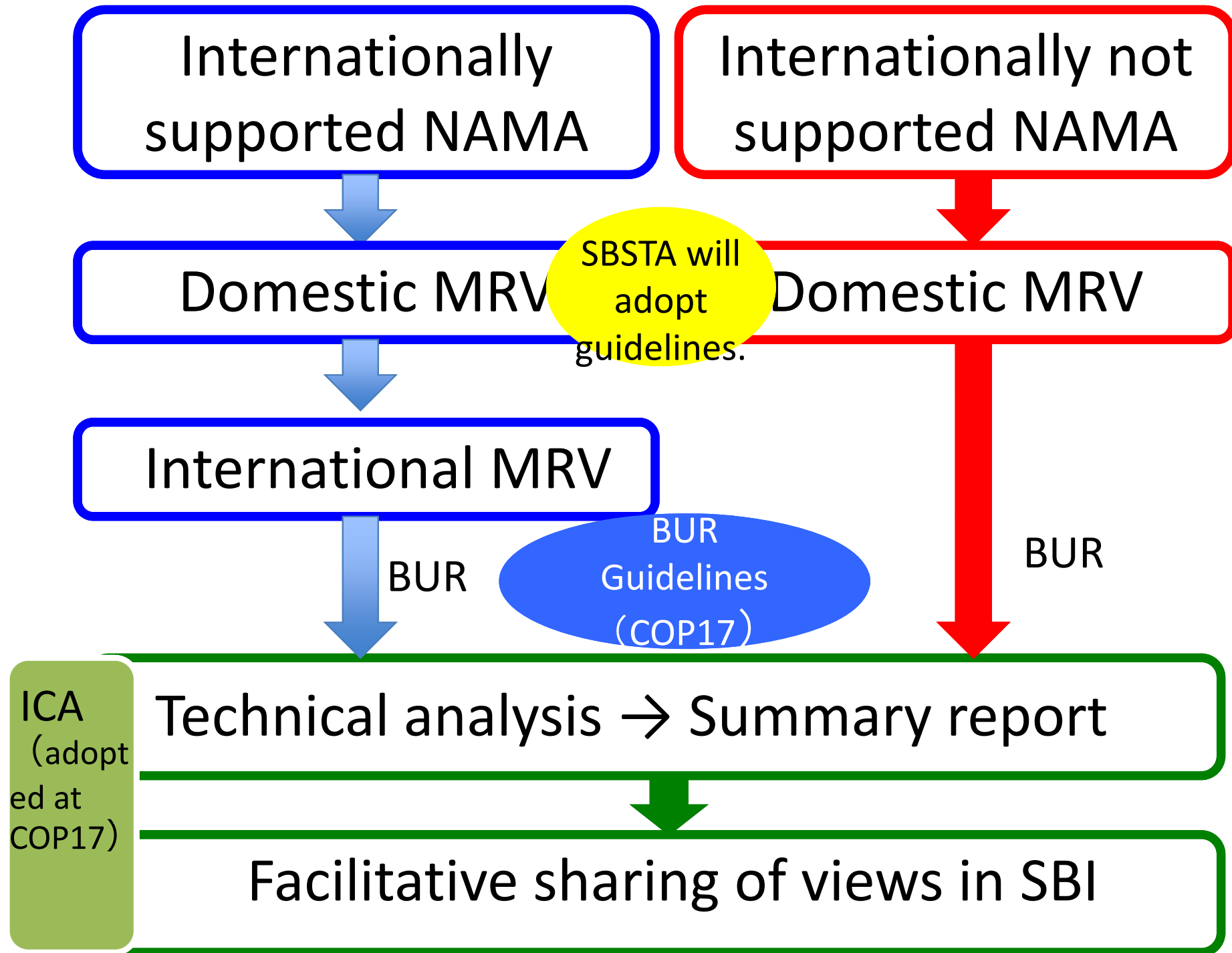
Information on quantified target (conditions/
assumptions/ base year/ approaches to counting
emissions and removals/ use of market based
mechanisms)
Information on mitigation actions
Progress made towards the target
Projection for 2020 and 2030 emissions
Information on support etc

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(adopted
at
COP17)

Technical review → Technical review report

Multilateral assessment in SBI

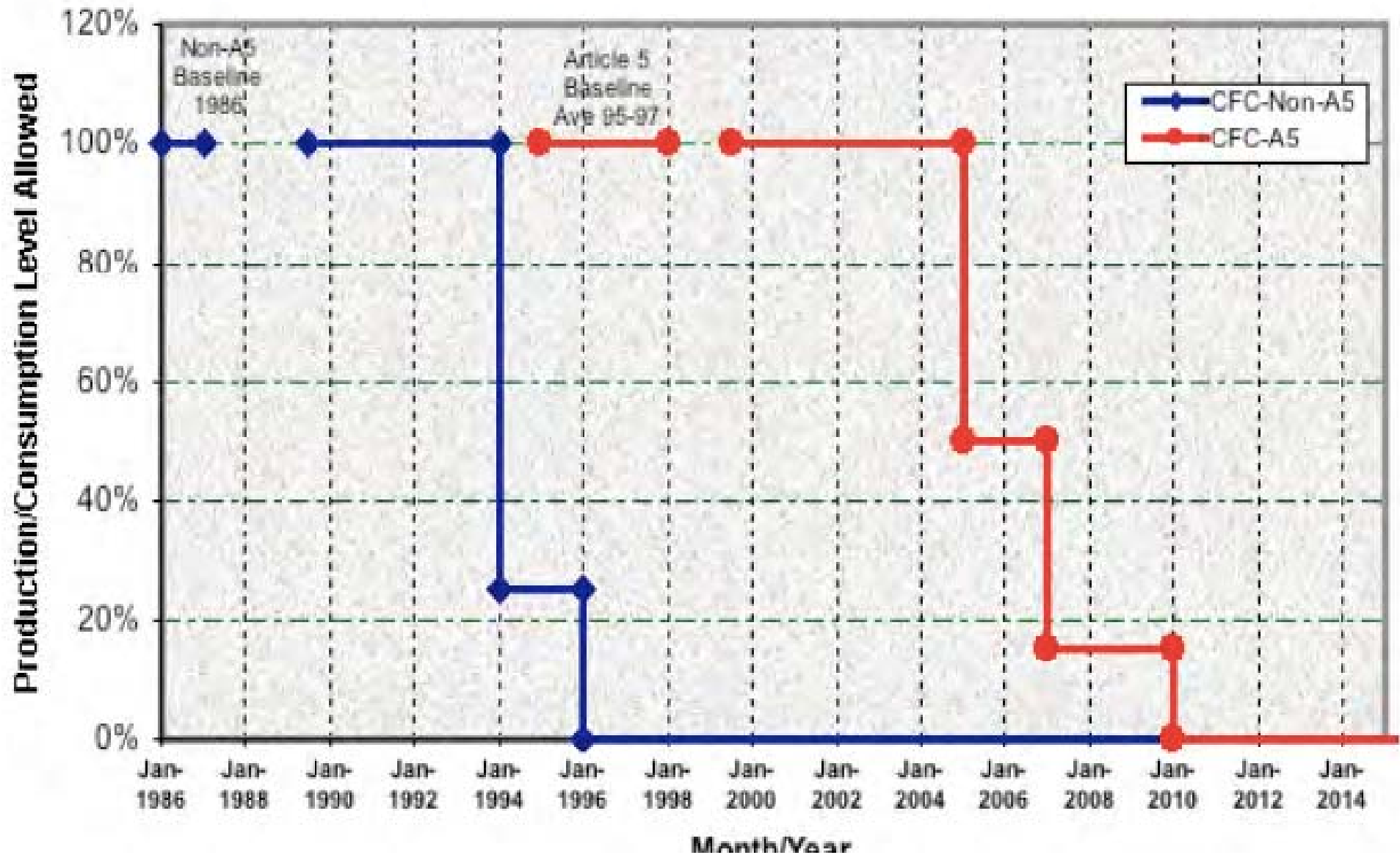
MRV for mitigation by developing countries



Montreal Protocol(1)

- Main obligations of Parties
 - Phase out/down of ozone depleting substances (ODSs) with schedule (Art. 2)
 - Differentiation between developing countries with low level of per capita consumption and other countries: grace period, provision for assistance (Art. 5)
 - Restriction of trade in ODSs and in product contained in some ODSs with non party (Art. 4)

Phase out schedules of CFCs



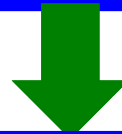
Montreal Protocol(2)

- Assessment and review mechanism
 - Model of other multilateral environmental agreements (MEAs)
 - Annual reporting of productions, imports and exports of ODSs by Parties (Art. 7)
 - Non compliance procedure (Art. 8)
 - Implementation Committee (IC) addresses cases of non-compliance submitted by (i) non-compliant Party itself, (ii) other Party, and (iii) the secretariat. IC determines whether the party in question is in compliance with its obligations.
 - Indicative list of measures against non compliance to be recommended by IC to MOP for its decision.
 - Appropriate assistance
 - Issuing cautions
 - Suspension of specific rights and privileges under the Montreal Protocol (ex. Suspension of the status of Parties under Art. 5 with regard to non reporting)
 - Empirical studies shows: for Parties doing *bona fide* efforts to implement their commitments, IC has recommended to provide assistance; in other cases such as cases of persistent non compliance, more stringent measures have been recommended. (carrots and teeth)

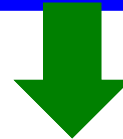
Common features of AR mechanism under MEAs

- **Appropriate reporting requirements** of Parties to assess their compliance
- Information reported are compiled by the secretariat and assessed by a treaty body (the secretariat or experts) to be submitted to a body that undertakes review (IC or Compliance committee).
- **Interactive process between the party in question and other parties within the multilateral framework.**
- **Basically, AR mechanism under MEAs is facilitative:**
 - By allowing **self submission of its non compliance case to seek assistance.**
 - While determining non compliance rigidly, compliance committee is allowed to exercise its **discretion to decide what measures are to be taken** against non compliance.
 - For non compliance due to lack of capacity to implement despite of *bona fide* efforts, **assistance is provided rather than penalty.**
- In exceptional cases, **more stringent measures are taken against persistent non compliance.**
- **Information from other sources than Parties** are used by AR mechanism formally or informally.

Reporting by Parties



Compilation of information by the Secretariat



Technical assessment by a treaty body
(the secretariat or body of experts)



Review by a treaty body
(IC or Compliance Committee)
(for the decision by COP or MOP)

MEAs with some unique features

- Basel convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)
 - Bilateral consultation prior to submission of non compliance
- CITES (1973)
 - **Trade restriction measures** against non compliant Party
- Kyoto Protocol
 - **Automatic consequences** by enforcement branch
 - For fear of impact of non compliance on international competitiveness; and for keeping sound operation of carbon market

WTO TPRM (1)

- **WTO trade policy review mechanism (TPRM)**
 - Provisionally established in December 1988, TPRM has been put in place by Article III of the Marrakesh Agreement (MA), covering trade in goods and services and intellectual property.
 - The purpose of the TPRM (Annex 3 of MA)
 - “to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements” ... “and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members”.
 - “not ... intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures”.
 - Besides, WTO has a quasi judicial dispute settlement mechanism unilaterally triggered by a member’s request.

WTO TPRM (2)

- All members are subject to the TPRM.
 - But frequency of the review is differentiated according to member's share of world trade.
 - 4 members with the largest shares of world trade (currently, EU, US, Japan and China) are to be reviewed each 2 years.
 - The next 16 members reviewed each 4 years; and others each 6 years.
 - A longer period may be allowed for LDCs.
 - Frequency of review for one member would change over time in light of change in its share of world trade.

WTO TPRM (3)

- Review is undertaken by **the Trade Policy Review Body (TPRB)** based on **the statement by the member**.
 - **A report is produced by the secretariat** (economist therein), including **Summary Observation**.
 - TPRB discusses the report, starting with comments by 2 discussants.
 - TPRB chairperson delivers Concluding Remarks.
 - The statement, the report, the minutes of meeting Q and A by members and the concluding remarks are **published after the meeting** (including on the website).

Review under the Human Rights Conventions (1)

- In principle, **all Parties** have the same obligations under human rights conventions.
 - Some discretion is allowed to developing countries with regard to the extent of guarantee of economic rights (ex. Art. 2.3 of the International Covenant on Economic, Social and Cultural Rights)

Review under the Human Rights Conventions (2)

- Monitoring system under the International Covenant on Civil and Political Rights
 - **Human rights committee**, composed of 18 **independent experts working in their personal capacity** with a term of 4 years, has the role of monitoring implementation of the Covenant.
 - 3 Monitoring functions
 - **Examination of reports submitted by States**
 - Consideration of Individual Complaints Under the Optional Protocol
 - Assessment of Inter-State Complaints

Review under the Human Rights Conventions (3)

- Examination of reports submitted by States
 - All Parties have obligations to submit a report to the Committee on the status of implementation initially 1 year after the entry into force and then on a regular basis (usually each 4-5 years).
 - The Committee reviews the report together with any information from other sources including from NGOs.
 - Members of the Committee prepares questions and the Government under review answers in the review. The review session is open and all related documents are available to the public.
 - After the review, the Committee addresses its concerns and recommendations to the Party in the form of "concluding observations".
 - In the next report, the Party has to explain the progress of the issues on which the Committee expressed its concerns. (Follow up procedure)

Review under the Human Rights Conventions (4)

- Advantages and impacts of monitoring system
 - During the monitoring process, Parties **could identify good practices and recognize barriers of implementation.**
 - The process of elaborating the report provides an opportunity for a Party **to take stock of current situation of its implementation and to identify the problems by itself.**
 - The process of monitoring **also raises the attention of the public at the national level** about the status and the problems.

Concluding remarks (1)

- An appropriate mechanism for assessment and review could differ depending on some factors, such as **type of commitments under the review**.
 - Appropriate system for quantified national economy wide target and the one for commitment to implementation of specific policies could be different.
 - Broadening participation in 2015 agreement, leading to a diversity of commitments, could **need some device to address such diversity**.
 - **Differentiation would also be possible in terms of assessment and review.**
 - **Different frequency of review depending on climate impact (ex. WTO TPRE)**
 - **Flexibility at the operational level, by considering the cause of non compliance and national circumstances.**

Concluding remarks (2)

- Regardless of type of commitments, **regular review on national climate policy at the international level** would have a clear value to enhance effectiveness.
 - Case of human rights conventions.
- Some key factors which impacts the level of effectiveness: **clear definition of commitment(s), transparency, publicity, information from other sources especially experts and NGOs.**
- **To what extent would stringency of measures against compliance be necessary** to avoid free riding and/or keep sound operation of carbon market?

Thank you so much for your attention.

Yukari TAKAMURA

e-mail: takamura.yukari@g.mbox.nagoya-u.ac.jp