

Japan's Preliminary Proposal on Procedures and Mechanisms relating to a Compliance System under the Kyoto Protocol

Japan

This proposal is submitted by the Government of Japan in response to the passage contained in the "Report of the Joint Working Group on Compliance on its work during the eleventh sessions of the subsidiary bodies" (FCCC/SB/1999/CRP.7) to invite comments from Parties. This submission should be considered preliminary.

1. Objective

1.1. The objective of these procedures and mechanisms is to promote implementation of the Kyoto Protocol, to ensure the implementation of commitments under the Protocol, and to deter non-compliance by:

- (a) Determining the cases of non-compliance;
- (b) Providing advice and assistance to Parties to overcome difficulties encountered in their implementation of the Protocol;
- (c) Providing both facilitative and enforcement tools to promote compliance with the Protocol.

1.2. The compliance system applies to all commitments under the Protocol.

Note. "Nature and Principles"¹ of the compliance system should be as follows:

- (a) Nature: credible, coherent, effective, predictable, and transparent;
- (b) Principles: due process, proportionality, efficiency.

2. Bodies

2.1. Compliance Body

¹ These elements are to be taken into account in developing the detailed procedures and mechanisms on compliance, but need not be spelled out in the final legal text of the COP/moP decision on Compliance.

2.1.1. A Compliance Body is hereby established as a standing body. It consists of X² members elected for X years by the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP/moP). A majority of them should be from Parties included in Annex I. Members may be re-elected for one immediate consecutive term.³

2.1.2. The Body will elect its own President and Vice-President. Each will serve for one year at a time. The Vice-President will, in addition, serve as the rapporteur of the Body.

2.1.3. The Body will, unless it decides otherwise, meet twice a year. The UNFCCC Secretariat will provide services for the meetings.

2.2. Committee on the Kyoto Mechanisms

2.2.1. A committee on the Kyoto Mechanisms will be established under the Compliance Body, as a standing body which will meet as necessary to perform its functions mentioned in 4.2. A majority of the members will be from Parties included in Annex I.⁴

2.2.2. The Committee will elect its own Chair and Vice-Chair. Each will serve for X years at a time. The Vice-Chair will, in addition, serve as the rapporteur of the Committee. A Chair may be re-elected for one immediate consecutive term.

3. Issues to be treated by the Bodies

3.1. issues to be treated by the Compliance Body

The Compliance Body will consider any kind of non-compliance issues other than those related to the Kyoto Mechanisms mentioned in 3.2, if these issues are:

(a) indicated in the report of expert review teams prepared under Article 8 of the Protocol;

(b) raised by a Party or a group of Parties with respect to its/their own implementation;

or

² The number should be small enough for the Body to be efficient.

³ Membership and methods for the selection should be further elaborated.

⁴ Membership and methods for the selection should be further elaborated.

- (c) raised by a Party or a group of Parties with respect to the implementation of another Party or group of Parties with sufficient evidence;
- (d) forwarded by the Committee on the Kyoto Mechanisms after the Committee has determined on non-compliance, for the Compliance Body to decide on consequences;
- (e) appealed by a Party or a group of Parties over a determination made by the Committee.

3.2. Issues to be treated by the Committee on the Kyoto Mechanisms

The Committee on the Kyoto Mechanisms will consider the following issues:

- (a) A question on whether a Party included in Annex I is in non-compliance with Articles 5 and 7 in relation to its eligibility for transaction of units through Articles 6, 12 and 17 ⁵ indicated in the report of expert review teams or raised by a Party or a group of Parties with sufficient evidence;
- (b) A question of implementation of a Party included in Annex I of the requirements referred to in Article 6, indicated in the report of expert review teams or raised by a Party or a group of Parties with sufficient evidence;
- (c) Other questions relating the Kyoto Mechanisms.

4. Functions ⁶

4.1. Compliance Body

4.1.1. The Body decides whether it proceeds with the issue listed in 3.1.

4.1.2. The Body determines if the Party or the group of Parties is in non-compliance with respect to issues other than those related to the Kyoto Mechanisms.

4.1.3. The Body may provide advice and assistance to the Party or the group of Parties in order to prevent non-compliance.

4.1.4. The Body decides on a consequence or a combination of consequences from the indicative list in case non-compliance is determined by itself or by the Committee.

⁵ Article 6.1 (c) provides that a party does not acquire any ERUs under Article 6 if it is not in compliance with the obligations under Article 5 and 7. The Umbrella Group, of which Japan is a member, is of the position that the same condition should be used for acquiring CERs under Article 12 and acquiring/transferring AAUs in Article 17.

⁶ "Functions" might be incorporated into the "Procedures".

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4.2. Committee on the Kyoto Mechanisms

4.2.1. The Committee decides whether it proceeds with the issues listed in 3.2.

4.2.2. The Committee determines if a Party or a group of Parties is in non-compliance with respect to issues referred to in 3.2.

4.2.3. The Committee may forward its determinations to the Compliance Body when the Committee deems that the Body should decide on the consequences of the case of non-compliance.

5. Secretariat

The UNFCCC Secretariat provides the Compliance Body and the Committee on the Kyoto Mechanisms with the following information:

- (a) Reports by expert review teams under Article 8 of the Protocol;
- (b) Questions of implementation identified in accordance with the relevant provisions of Article 8 of the Protocol.

6. Procedure

6.1. General

The Compliance Body and the Committee on the Kyoto Mechanisms will follow decisions and guidance of the COP/moP.

6.2. Sources of Information

The Compliance Body/the Committee on the Kyoto Mechanisms will consider the following informations.

- (a) Information provided by Parties concerned;
- (b) Report by expert review teams under Article 8 of the Protocol;
- (c) Information from outside experts;⁷
- (d) Information from any other sources that the Compliance Body/the Committee on the Kyoto Mechanisms deems appropriate.

6.3. Compliance Body ⁸

⁷ The current roster of experts of UNFCCC might be further elaborated and utilized for this purpose.

6.3.1. In addition to its regular meetings, the Chair of the Compliance Body may call a special meeting when it is necessary to address the issues brought to the Body's attention in accordance with 3.1.

6.3.2. As provided in 4.1.1, the Body decides whether it proceeds with the issues listed in 3.1. In case of 3.1(c), the first meeting of the Body on the issue will consider whether the question raised has sufficient evidence. If found negative, the question is dismissed. If found positive, it proceeds with the issue.

6.3.3. The Body may request, where it considers necessary, through the UNFCCC Secretariat, further information on matters under its consideration by the following means:

- (a) The Parties concerned may be requested to submit further information;
- (b) Expert review teams under Article 8 of the Protocol may be requested to re-examine the facts;
- (c) Outside experts⁹ may be requested to clarify the facts.

6.3.4. The Body examines the relevant issues listed in 3.1, considering information provided in accordance with 6.3.3, and from any other sources that the Compliance Body deems appropriate.

6.3.5. The Party or the group of Parties concerned will be given opportunities to express its/their views to the Body prior to and after the determination/decision made by the Body.

6.3.6. As provided in 4.1.2, the Body considers and determines if the Party or the group of Parties is in non-compliance.

6.3.7. As provided in 4.1.4, the Body decides on a consequence or a combination of consequences of a non-compliance case from the indicative list.

6.3.8. When the Body makes a determination/decision, it will be informed to all Parties. The determination/decisions will be made public. The Body will submit a report on its actions taken to the COP/moP.

⁸ Timeframe of the procedures, as well as voting rules should be written out elsewhere.

⁹ The current roster of experts of UNFCCC might be further elaborated and utilized for this purpose.

6.3.9. The Party or the group of Parties whose implementation of the commitment was in question is entitled to request re-examination to the COP/moP.

6.3.10. The Body will re-examine the issue when so requested by the COP/moP.

6.4. Committee on the Kyoto Mechanisms

6.4.1. The Chair of the Committee on the Kyoto Mechanisms will expeditiously call a meeting when an issue is brought to the Committee's attention in accordance with 3.2. The Chair may decide to hold a committee meeting in an electronic form for the sake of efficiency.

6.4.2. As provided in 4.2.1, the Committee decides whether it proceeds with the issues listed in 3.2. If a question is raised by a Party or a group of Parties other than the Party or the group of Parties directly involved in the transaction of the units, the first meeting of the Committee on a case will consider whether the question raised has sufficient evidence. If found negative, the issue is dismissed. If found positive, it proceeds with the issue.

6.4.3. The Committee will resolve the question expeditiously. In principle, it should make a determination on a issue within 60 days after the issue is brought to the Committee's attention.

6.4.4. The Committee may request, where it considers necessary, through the UNFCCC Secretariat, further information on matters under its consideration by the following means:

- (a) The Parties concerned may be requested to submit further information;
- (b) Expert review teams under Article 8 of the Protocol may be requested to re-examine facts;
- (c) Outside experts may be requested to clarify facts.

6.4.5. The Committee will examine the relevant issues listed in 3.2, considering information provided in accordance with 6.4.4, and from any other sources that the Committee deems appropriate.

6.4.6. The Party or the group of Parties concerned will be given opportunities to express its views to the Committee prior to and after the determination made by the Committee.

6.4.7. When the Committee makes determinations, it will be informed to all Parties. The determination will be made public. The Committee will submit a report on its determination to the Compliance Body and the COP/moP.

6.4.8. The Party or the group of Parties whose implementation was in question is entitled to request re-examination to the Compliance Body.

7. Role of COP/moP

7.1. COP/moP should provide general policy guidance to the Compliance Body and the Committee on the Kyoto Mechanisms;

7.2. COP/moP should receive and review reports from the Compliance Body and the Committee on the Kyoto Mechanisms.

7.3. After reviewing the reports from the Compliance Body and the Committee on the Kyoto Mechanisms, COP/moP should either authorize them or request the Compliance Body to re-examine the case when appropriate.¹⁰

8. Indicative List

The Indicative list of possible consequences of non-compliance will be as follows:

- (a) Appropriate technical and/or financial assistance, including providing advice;
- (b) Issuing caution;
- (c) Recommendation;
 - strengthening of reporting requirements;
 - acceptance of teams to examine policies and measures;
 - policies and measures;
- (d) Recommendation to the Cop/moP to suspend specific rights and privileges under the Protocol in accordance with the applicable rules of international law concerning the suspension on the operation of a treaty ¹¹ (after having exhausted measures (a)-(c) above).

¹⁰ "Negative consensus" system as in WTO case might be considered as an option.

¹¹ This should be further elaborated.