

The Preliminary Views of Japan on Compliance under the Kyoto Protocol

At COP4, the Buenos Aires Plan of Action was adopted, setting up the work programmes in order to resolve various issues toward early entering into force of the Kyoto Protocol. Regarding the issue of compliance, a joint working group was established under the SBI/SBSTA, and discussions are to be commenced in this working group at the next meeting of subsidiary bodies. Since discussions on the issue of compliance made little progress to date, this issue needs to be discussed efficiently under the working group.

Japan believes that at the first place the efforts of the working group should focus on stock-taking on the relevant provisions of the Kyoto Protocol in order to consolidate the basis of the discussion.

1. Guiding Factors of the Compliance Regime

(i) Basic Thoughts

The compliance regime must ensure public confidence in the Kyoto Protocol and contribute to environmental protection. In order to achieve these objectives, it is necessary to design the compliance regime so that it has the following characteristics:

- to contribute toward achieving the objectives of the Convention and the Protocol and be efficient and workable;
- to promote compliance and prevent non-compliance by each Party. For this purpose, the regime needs to be not only strong and effective but also facilitative and preventive. In order to achieve the objectives of the Convention, it is necessary to consider a feasible design, taking into account the experience of other existing multilateral environmental agreements (MEAs);
- to ensure transparency and credibility. Transparent and credible procedures for determination of and addressing cases of non-compliance are needed.
- to ensure equal treatment among non-compliance Parties. If some Parties are found to be in non-compliance on the same obligation, the consequences of them should be the same.

(ii) Points to Note

In formulating a compliance regime, it is necessary to proceed with the work taking into account the following points:

(a) Necessity of considerations taking into account different types of obligations/requirements in the Protocol

Various kinds of obligations/requirements exist in the Protocol, such as quantified commitments, reporting obligations and methodologies. It is important to clarify how these obligations/requirements should be handled respectively in terms of compliance. There are a lot of provisions in the Protocol, that are yet

to be elaborated according to their respective work programmes, such as those relating to Articles 5, 7 and 8 and provisions on the Kyoto mechanisms. In making such elaborations, it is necessary to ensure that inconsistency among these provisions and provisions under Article 3 will not occur.

Some provisions, typically Article 6.4, already contain elements of compliance. (e.g. Article 6.4 provides the consequence when a question of implementation of the requirements referred to in Article 6 is identified.) In order to avoid the duplication of work in working groups, it would be desirable to have the joint working group handle these types of provisions from the stock-taking stage.

(b) Utilization of the provisions of the Convention and the Protocol

The provisions of Article 5 (national system and methodologies for the estimation of greenhouse gas emissions), Article 7 (communication of information), and Article 8 (review of information) of the Protocol are an important basis for constructing a framework of compliance. In formulating a compliance regime, these existing provisions should be utilized as much as possible, together with other provisions of the Convention and the Protocol.

(c) Reviewing the experience of other multilateral environmental agreements (MEAs)

The experiences obtained in development and operation of the compliance regime under other MEAs could be informative for the development of the compliance regime under the Kyoto Protocol. It would be valuable to identify any useful experience through reviewing other MEAs,

Japan believes that at least the following two points can be the main points of discussion.

- procedures for assessing compliance;
- consequences for non-compliance.

2. Procedures for Assessing Compliance

As for procedures for assessing compliance, the first issue, as indicated in 1. (ii) (b) above, concerns how existing provisions in the Protocol could be properly utilized.

Articles 5 and 7 of the Protocol stipulate the obligations of estimating emissions and reporting. These provisions can be useful in assessing compliance with various provisions in the Protocol, such as Article 3 and provisions on the Kyoto mechanisms. These existing provisions should be incorporated in procedures for assessing compliance with necessary adjustments.

For example, the respective guidelines referred to in Articles 5, 7 and 8 should be formulated and revised in a manner suitable for the purpose of assessment.

Article 8.3 of the Protocol stipulates that expert review teams prepare a

report to the Conference of the Parties serving as the meeting of the Parties (COP/moP), "assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments." Thus the expert review teams would assess the implementation, however, determination of non-compliance is not in the mandate of the teams. Therefore, an additional procedure would be needed for determining non-compliance. In general, such procedure should be efficient, transparent and credible, and also should have a function to prevent non-compliance by helping Parties facing problems in implementing the Protocol. In developing the procedure, questions such as what initiates the procedures, who determines a Party's non-compliance and how to address it, need a careful consideration.

At COP4, future work programmes relating to the Kyoto mechanisms and Articles 5, 7 and 8 of the Protocol were set forth. The elaboration of these provisions is closely related to the overall framework of the procedures for assessing compliance. Accordingly, a proper elaboration of these provisions is extremely important. For building a compliance regime, it is desirable that priority should be placed on the steady progress of these work programmes.

3. Consequences for Non-compliance

First, it should be noted that various kinds of obligations or requirements exist in the Protocol. The violations or failures of these obligations vary, ranging from light ones to serious ones. Accordingly, it is necessary to consider the consequences for non-compliance with these obligations in accordance with the nature and extent of violations or failures of each obligation.

Second, the compliance regime should provide reasonable certainty. Parties must know in advance what the consequences will be for a particular violation. Identifying consequences in advance will provide the proper incentives to comply and promote equal treatment among Parties.

Furthermore, it is necessary for the compliance regime to have the nature of facilitating compliance as well. Some Parties may find it difficult to comply with the provisions of the Protocol in lack of capacity or other reasons. It would be important that the compliance regime contains elements to facilitate or help such Parties.

Regarding the obligation in Article 3 (quantified emission limitation and reduction commitments), for example, a certain period of time is required after the end of a commitment period for a Party to figure out its own situation collecting inventory data including emissions during the commitment period and to take necessary actions in order to ensure its compliance. From the perspective that it is important to facilitate the compliance by Parties, it might be necessary to have a short grace period after the end of a commitment period.

