Article 6 of the Paris Agreement:

Reflections on Party Submissions before Marrakech

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International Centre for Trade
and Sustainable Development

Background paper

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Published by

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Publisher and Chief Executive: Ricardo Meléndez-Ortiz
Director, Climate, Energy, and Natural Resources: Ingrid Jegou
Programme Officer: Sonja Hawkins

Acknowledgements

This paper has been produced under the ICTSD Programme on Climate and Energy. It has been prepared as a background paper for an ICTSD workshop before the 45th sessions of the Subsidiary Body for Implementation (SBI 45) and Subsidiary Body for Scientific and Technological Advice (SBSTA 45) of the United Nations Framework Convention on Climate Change (UNFCCC) at the 22nd Conference of the Parties (COP 22). It is the second of a series of papers prepared by ICTSD under a project on the interpretation of Article 6 of the Paris Agreement.

ICTSD is grateful for generous support for the project from Australia, France, Germany, Japan, New Zealand, Norway, Sweden, Switzerland and the World Bank. ICTSD is also grateful for the generous support from its core donors including the UK Department for International Development (DFID); the Swedish International Development Cooperation Agency (SIDA); the Ministry of Foreign Affairs of Denmark (Danida); the Netherlands Directorate-General of Development Cooperation (DGIS); and the Ministry of Foreign Affairs of Norway.

ICTSD welcomes feedback on this publication. This can be sent to Sonja Hawkins (shawkins@ictsd.ch) or Fabrice Lehmann, ICTSD's Executive Editor (flehmann@ictsd.ch).

Citation: Marcu, Andrei. 2017. *Article 6 of the Paris Agreement: Reflections on Party Submissions before Marrakech*. Geneva: International Centre for Trade and Sustainable Development (ICTSD).

ISSN 2225-6679

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LIST OF ABBREVIATIONS

AAU	assigned amount unit
CDM	Clean Development Mechanism
CER	certified emissions reduction
CMA	Conference of the Parties serving as the meeting of the Parties to the Paris Agreement
COP	Conference of the Parties
CO2e	carbon dioxide equivalent
ETS	emissions trading system
ITMO	internationally transferred mitigation outcome
JI	joint implementation
MRV	measurement, reporting and verification
NDC	nationally determined contribution
REDD+	reduced emissions from deforestation and forest degradation in developing countries
SB	subsidiary bodies
SBSTA	Subsidiary Body for Scientific and Technological Advice
SMM	sustainable mitigation mechanism
UNFCCC	United Nations Framework Convention on Climate Change

ABSTRACT

Article 6 of the Paris Agreement on cooperative approaches can be considered a major success, and a minor miracle, by those who believe that international cooperation can play an important role under the new climate regime. During the discussions leading to the Paris climate talks, as well as during negotiations at the UNFCCC COP21, the very presence of Article 6 was unexpected. Making the article operational will however require a lot of technical and political work. This paper examines submissions made prior to COP 22 on views related to guidance for the Article 6 items, highlights the important issues covered in them, and discusses their interpretation as well as the implications of the various interpretations. It also identifies issues that would require clarification and may need to be part of a work programme.

1. INTRODUCTION

The conclusions from the May 2016 session of the Subsidiary Body for Scientific and Technological Advice (SBSTA) under the United Nations Framework Convention on Climate Change (UNFCCC), as referred to in FCCC/SBSTA/2016/L.11–13, asked parties and observer organisations to make submissions on their views related to guidance for the Article 6 items on cooperative approaches ahead of the 22nd session of the Conference of the Parties (COP 22). This paper examines these submissions, highlights the important issues covered in them, and discusses their interpretation as well as the implications of the various interpretations. It also identifies issues that would require clarification and may need to be part of a work programme adopted at COP22/the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA1).

2. POST-COP 21 VIEWS

Discussions under SBSTA at the 44th session of the subsidiary bodies (SB 44) have shown that many parties, while acknowledging that this is the implementation phase of the Paris Agreement, also feel that there is "constructive ambiguity" built into the Paris Agreement and that these ambiguities need to be identified, discussed, and resolved before some of the items can progress.

Informal discussions since the adoption of the Paris Agreement have shown that there are two schools of thought. One school believes that there is an institutional memory from the negotiations of the Paris Agreement and that this should be respected and used. In other words, there are different versions of the text that now constitute Article 6 which were produced in the run-up to and during COP 21. These texts show a certain logic and shed some light on the intent in the constructive ambiguity that exists in certain parts of Article 6 as well as in the Paris Agreement in general.

There is a second school of thought, especially among civil society, which postulates that once the Paris Agreement was produced at COP 21, it is fair game for any interpretation, no matter what the generally acknowledged original intent was in the negotiating room. Post-COP 21 we have *tabula rasa*.

The post-COP21 discussions in SBSTA, and elsewhere, continue to acknowledge the fact that Article 6 does not create a market, but creates the framework for an international market to emerge bottom-up and over time to converge naturally. This vision is bound to affect the positions and negotiating stances of parties, which may want to ensure that this ethos is maintained in whatever emerges when Article 6 is operationalised.

3. SBSTA 44 CONCLUSIONS

The work during SBSTA 44 resulted in three reflection notes by the co-facilitators of the Article 6 negotiations and three SBSTA conclusions. There were objections from many parties to allow for inter-sessional workshops or technical papers by the UNFCCC secretariat. This was mainly driven by the fear that papers could narrow the scope of discussions and eliminate certain options from the interpretation of the Article 6 text. This reaction was somewhat contradicted by the text of the SBSTA conclusions which, in objective terms, seemed to narrow the discussion at SBSTA 45 during COP 22 in Marrakech, as well as the scope of the submissions.

As an example, SBSTA decision on Article 6.2 stated that parties:

> *…agreed to focus on establishing common understanding at SBSTA 45 (November 2016) of the matters related to the guidance referred to in Article 6, paragraph 2, of the Paris Agreement.*
>
> *The SBSTA invited Parties and observer organizations to submit by 30 September 2016 their views on the guidance referred to in paragraph 1 above.*

This decision could imply, if taken literally, that parties agreed that at SBSTA 45 they would only discuss the issue of the guidance specifically referred to in Article 6.2. However, this may have opened the door for a procedural discussion as the interpretation of what the "guidance" refers to is an open issue.

Some see it as related only to the "shall" that covers "robust accounting and double counting," while other parties see it as also applying to the other "shalls," which cover sustainable development, environmental integrity, and transparency in governance. In any case, as we shall see below, submissions by parties have covered all aspects and have not restricted themselves to issues related to accounting.

4. GENERAL COMMENTS ON SUBMISSIONS

The submissions can be seen as broad and covering a significant number of topics. Some are separated in the three areas that come from the SBSTA conclusions: Articles 6.2, 6.4, and 6.8. Other submissions speak to Articles 6.2 and 6.4 jointly, as they wish to highlight the strong correlation between these two components of Article 6.

4.1 Function

Article 6.1 of the Paris Agreement is only referred to indirectly by those that see it as playing an important role in defining the functions of Article 6. In general, parties in their submissions for Articles 6.2 and 6.4 seem to agree that the purpose of Article 6 is to: use markets to promote ambition; allow for a higher level of ambition; and engage in voluntary cooperation between parties which would allow for a higher level of ambition in their mitigation and adaptation.

This understanding of the function is broadened in the submissions for Article 6.8, which argues for an even broader definition of the function of Article 6: to promote integrated, holistic, and balanced approaches that will assist parties to implement their nationally determined contributions (NDCs).

The debate during COP 21, as to whether Article 6 was meant to be used only in cases where the level of ambition has been increased from the intended NDCs, has not re-emerged in the submissions.

4.2 Linkages

Another view that appears in submissions is that Article 6 cannot be seen in isolation, but needs to be seen as part of the Paris Agreement as a whole, and that there are many linkages. These linkages refer to Article 4 (mitigation), Article 13 (transparency), and Article 15 (compliance). A strong reminder is also given that Article 6 must be seen in relation to Article 2, which sets out the objectives of the Paris Agreement. However, one linkage that is specifically referred to as not being part of the scope of Article 6 is a linkage to Article 5 (REDD+—reduced emissions from deforestation and forest degradation in developing countries). This is not a view shared by all, as there are other references to Article 5. This issue will be covered further in this paper.

4.3 Cohesion

The three components of Article 6 (6.2, 6.4, and 6.8) are seen as having a different governance. However, they are all seen as having to be implemented in the context of sustainable development and environmental integrity. Others point to the horizontal integration that sustainable development, environmental integrity, and no double counting provide in terms of the need for all three components of Article 6 to adhere to these principles, and that they should converge over time.

Views have been expressed in informal talks that since these three elements (sustainable development, environmental integrity, and double counting) appear in all components of Article 6, it would seem difficult to justify that the standards applied to them could vary and that in the long term they would naturally converge in a bottom-up fashion. The submissions do not go that far, but the glue that the commonality of these elements presents is nevertheless noted.

4.4 Price

While not overwhelming, there is reference in the submissions to the price collapse associated with the Clean Development Mechanism (CDM) and joint implementation (JI), and the lack of confidence that this creates for new forms of cooperative approaches which will result in carbon markets. A concrete proposal is included to ensure a price floor for international transfers. This is a suggestion that has been heard before in terms of carbon markets, and prior to that for natural

resources. The proposal does not elaborate on what institution would support such a price floor or how that would be operationalised. These concerns are real, especially for the countries that have taken longer to be ready for the CDM market only to find out that the bottom had fallen from under the market and their efforts were too late.

4.5 Sustainable Transition

Article 6.2 is connected to the concept of sustainable transition, as a crucial aspect of the three dimensions of sustainable development (economic, social, and environmental). It is unclear how the connection is to be made and would benefit from further clarification.

5. ARTICLE 6.2—COOPERATIVE APPROACHES

Prior to SB 44, in informal discussions, we had provided a summary of issues in Article 6, divided into two categories: "generally accepted provisions" and "issues for clarification."

Generally accepted interpretations refer to issues that most parties will have similar views on. Issues for clarification refer to issues that would need further discussions to eliminate ambiguity in the Paris Agreement text. At that time the two buckets were aligned as follows.

5.1 Generally Accepted Provisions

1. Article 6.2 recognises cooperation between parties, not a function of approval by the CMA.

2. Article 6.2 places no restrictions on the type of cooperation that may result in internationally transferred mitigation outcomes (ITMOs) that can be used towards NDCs. This cooperation may, therefore, take any of the following forms:

    a. bilateral, plurilateral, and possibly multilateral cooperation

    b. linking of cap-and-trade systems, or other types of trading systems

    c. the transfer of units, or blocks of mitigation, resulting from cooperation between parties (e.g. joint crediting mechanisms created by Japan)

    d. no limitation to greenhouse gases.

3. Cooperation needs to be approved by the parties involved.

4. In order for ITMOs to be usable towards NDCs, the parties involved "shall" develop accounting systems that will be consistent with accounting guidance developed by the SBSTA.

5. In order for ITMOs to be counted towards NDCs, the parties involved will "promote sustainable development and ensure environmental integrity, including transparency."

5.2 Issues for Clarification

1. Implications for governance: from totally decentralised to shades of the Kyoto Protocol;

2. Provisions that simply need interpretation—may be simple, but needed;

3. Any interpretation that would require/allow the CMA to develop and operationalise sustainable development and environmental integrity, as referred to in Article 6.2 under Article 4.13;

4. There is no work programme under SBSTA for "transparency, including in governance." However, can it be considered that there is a mandate under paragraph 13.13?

5. Article 6.2 has no provisions for compliance. Can there be one under Article 15 of the Paris Agreement, operationalised under paragraph 104 of the decision?

Many of the issues that were highlighted above are included in submissions, and can be grouped under a number of headings.

5.3 Scope of Article 6.2

This article emanates from an initial Brazilian submission on economic instruments. It is therefore not surprising that some submissions see the scope of Article 6.2 as analogous to emissions trading under Article 17 of the Kyoto Protocol. Article 6.2 is seen as a way of linking emission trading systems (ETSs), or trading allowances.

In the same frame, Article 6.2 is seen as not covering subnational or regional ETSs. It is interesting to note that submissions see that, for the purpose of Article 6.2, both the allowance, which is internationally recognised and represents the NDC communicated, and the

sustainable development mechanism (Article 6.4) certified emission reduction are relevant. In this instance, there is no clear and direct reference if REDD+ is seen, or not, as being covered by Article 6.2.

There are a number of implied issues that emerge from this view, which would require clarification. While there is reference to internationally recognised allowances, there is no provision in the Paris Agreement text for anything similar to an assigned amount unit (AAU). ITMOs—an acronym that has gained some currency—are specifically referred to in a number of submissions as being a generic term rather than international units.

The reference being made that Article 6.2 is concerned with ITMOs (that are seen by some as allowances) and Article 6.4 with certified emissions reductions, merits further discussion. The logic would be that certified emissions reductions, which may emerge from the mechanism under Article 6.4, would be issued initially into a central CDM-like registry, as is the case for CDM certified emissions reductions (CERs) now. However, any further transfers, as a result of a secondary market, would also have to take place under Article 6.2.

Another important element that appears in submissions is the fact that while Article 6.2 is seen as being concerned with transfers of ITMOs, its scope is not understood to reach into the national and regional schemes. That is, Article 6.2 is purely a transfer provision, with the implication that it does not get involved in how the ITMOs were created, nor in the quality of the ITMOs. Sustainable development and environmental integrity, as applied to ITMOs, are seen as somehow being addressed through internationally agreed rules but not the concern of Article 6.2.

Not all parties necessarily share these views of the scope of Article 6.2. Reconciliation of different views could be found between submissions, if further clarification is provided. Parties that have active subnational jurisdictions see Article 6.2 as possibly recognising bottom-up approaches, such as subnational linkages between ETSs. This view does not necessarily contradict the view that Article 6.2 does not apply to subnational jurisdictions, given the provisions in Article 6.3, through which parties may provide such authorisation and recognition. Therefore, this concern can be addressed through a party authorisation.

There are further disagreements over the scope, with some parties specifically referring to REDD+ as being covered under Article 6.2. Some also see the scope as covering any cooperation that involves more than two parties. Another view is that Article 6.2 covers national and linked ETS, as well as nationally elaborated bilaterally or plurilaterally agreed bottom-up approaches (e.g. Japan's Joint Crediting Mechanism). This would also match the views of parties that are experimenting with such bottom-up approaches and which clearly see Article 6.2 as covering them. They see it to be the prerogative of parties involved to generate, issue, and transfer ITMOs.

There are therefore a number of issues that would benefit from clarification. Some of these issues are of a technical nature, while others are clearly political in nature:

- Does Article 6.2 cover more than emissions trading? Does it cover bottom-up approaches that emerge bilaterally?
- Is there an internationally defined allowance?
- Is REDD+ covered under Article 6.2?

5.4 Accounting and Double Counting

It is generally accepted in the party submissions that accounting, including the avoidance of double counting, is a critical component of Article 6.2. However, different aspects of accounting are being emphasised in different submissions, and there are implicit contradictions in some cases.

One issue, mentioned above, is the fact that accounting guidance developed and used for Article 6.2 will also cover the output of Article 6.4. This is repeated in a number of submissions,

and is not directly questioned—yet. It remains to be seen how it will be received.

One view expressed is that accounting under Article 6.2 could be operationalised as a module of the broader accounting provisions under Article 4.13. This would imply that accounting provisions would not be developed under Article 6, but taken from the work done under Article 4.13. If this vision is extrapolated, then Article 6.2 could almost become a puzzle put together from what is being developed under Articles 13, 15, and 4.13.

Another view is that Article 6.2 represents accounting arrangements which are additional to those specified under Article 4.13. It is unclear what "additional" means, but it could be interpreted as meaning that this guidance would be developed separately, or that it represents an additional and separate module. Where the guidance is developed is, however, important.

Robust accounting is also seen as covering more than double counting and addressing other issues such as: which is transferred, between which parties, using which measurements, and in which time periods. In the same spirit, double counting is seen as covering accounting of units, design of the mechanisms that issue units, and consistent tracking and reporting of units.

In a further reference and analogy to the Kyoto Protocol, accounting guidance under Article 6.2 is compared to Articles 3.10 and 3.11 of the Kyoto Protocol (accounting articles under the Kyoto Protocol). Again, the issue of international compliance and accounting units, existent under the Kyoto Protocol but absent under the Paris Agreement, emerges as an issue that needs to be addressed in this scenario.

Many parties have also expressed the view that, in order for accounting and the avoidance of double counting to be addressed under Article 6.2, there need to be quantified NDCs with a budget, and that ITMOs would need to be expressed in units of carbon dioxide equivalent (CO_2e).

Some discontinuity also appears to exist between different views on tracking. Some see an important role for the tracking of transfers and the need to create an international transaction log-like instrument to help in this task. Others see tracking as a netting bilateral exercise between parties. This points to different visions—between a more centralised and a decentralised system of accounting.

Another issue that surfaces in different submissions, sometimes with different interpretations, is that of "what is being adjusted." The text in 1/CP.21 makes reference to "corresponding adjustment" in respect to emissions and removals, but there is no reference to what is being adjusted. Options included in submissions are:

- The NDC
- Emissions and removal levels as expressed in the inventory
- Not the relevant NDC and the reported emissions

Some parties see inventories as being untouchable, representing a snapshot. However, there is a difference between inventories and what is reported for NDCs. In the case where transfers do take place, parties are seen as retaining the benefit of their mitigation action in their inventories, but that cannot be used towards their NDCs.

Others questions being raised include: 1) "how" will the adjustment be made—will this require adjustments by at least two parties (can it be more than two parties)?; and 2) "when" will the adjustment be made? This also raises issues of linkages to the timescales in Articles 13 and 15.

One solution, which is being proposed in several submissions, is the use of tabular reporting formats, similar to what is being used for biennial reports.

The "nature" of double counting is being raised in submissions, and the fact that it needs to be addressed at different levels. A

number of definitions are being enumerated: double counting for registration, for issuance, for usage, and claiming. At the same time, as governance is recognised as an important issue, there should be clarity on who is responsible for addressing each aspect of double counting. This very important issue is not treated in detail.

Given the diversity of mitigation actions that are expected to take place in each country, is double counting at issuance better addressed at the party level, and is double counting at use towards NDCs better addressed at the multilateral level?

A two-way connection with Article 13.7 is also raised, given that the accounting under Article 6.2 would be needed to track progress, as well as to inform the creation of the broader framework.

Finally, the complexity presented by the different types of NDCs (e.g. quantified economy-wide reduction targets, emissions intensity targets, etc.) is recognised. A number of submissions refer to the fact that guidance should be developed for different types of NDCs, and some ask that technical work be undertaken in this respect.

There are therefore a number of issues that would benefit from clarification. Some of these issues are of a technical nature, while others are clearly political in nature:

- Does Article 6.2 cover the product of Article 6.4, after what may be an initial issuance? Is the initial issuance and transfer of products of Article 6.4 in a national registry covered by Article 6.2?
- What is the definition of accounting? Is accounting the same as in Articles 3.10 and 3.11 of the Kyoto Protocol or is it something more in this case?
- Is the governance centralised and does it include tracking, or is it decentralised, a bilateral netting exercise?
- What is adjusted? Are inventories adjusted?
- What are the types of NDCs that require different treatment for accounting purposes?
- Is all accounting to be done in one unit, e.g. tons of CO_2e?

5.5 Environmental Integrity

As mentioned, Article 6.2 includes three "shalls." The one that refers to accounting guidance, including the avoidance of double counting, is not contested, even if there are issues that need further clarification and a lot of elaboration. Nor is the fact that environmental integrity is an integral part of Article 6.2 contested. It is even referred to by many as one of the three elements that glue Article 6 together. What is being disputed is the governance of environmental integrity in the context of this article.

As with the previous issues discussed, different aspects of environmental integrity are being raised in submissions. Given the experience with the Kyoto Protocol and the trading of AAUs, whose mitigation value of 1 ton was widely contested, one approach proposed is to ensure the environmental integrity of ITMOs, by limiting the amounts that can be transferred and are available on the market. The limit proposed is the difference between current emissions and the average of the previous three years of emissions.

This is meant to ensure that ITMOs are the result of real mitigation efforts. Given the experience at the national level with ETSs, this may or may not address the problem, but it needs to be considered. It can also be seen as an attempt to avoid hard political decisions and have "objective rules" applied without human intervention.

Little detail is provided on how environmental integrity can be certified. Many of the submissions address issues of a technical nature and make the case that the key is that ITMOs should be real, permanent, and verifiable;

that there should be a common measurement, reporting and verification (MRV) system; and that there should be standardised emissions coefficients, etc.

The more difficult issue, and the one that seems to be the most contentious, is that of governance. Is there a check on environmental integrity; how is this check to be accomplished, and by whom? From the little detail that is gleaned, governance will be the problem, as the nature of the "shall" related to environmental integrity remains unresolved. Some parties see this as a reporting obligation—the responsibility of parties under Article 6.2. The reporting could then be open to a technical expert review. However, more than one submission also makes the case that the only way to ensure environmental integrity is to apply international oversight, including international rules decided *ex-ante*. The example of oversight at the national level is given in the case of JI, where the environmental integrity of the product is being questioned in some cases.

There are additional references in some submissions to the need for further guidance on the core requirements that will guide participation in Article 6.2. In this case, core requirements include sustainable development, environmental integrity, and double counting. Little is said about how this is to be done. Also reference to how NDCs are expressed (in budgets, tons of CO2e), as well as how ITMOs are expressed, seem to be a way that parties see to enhance transparency and ensure environmental integrity. Other aspects, such as robust accounting and tracking, also come into play to ensure environmental integrity.

All these points seem to highlight the fact that there needs to be some level of international coordination of standards, and that a complete *laissez-faire* makes some parties uneasy. This leads us to a number of issues that would benefit from being clearly articulated and addressed:

- What is the governance of the environmental integrity "shall"? Parties only, or does the CMA have a role?
- If the CMA has a role, how far does it "reach" in the creation of ITMOs?
- Is environmental integrity limited to a reporting obligation? If yes, is there a technical peer review as part of the transparency and reporting provisions in the Paris Agreement?
- Are there environmental integrity guidelines that will be developed internationally? If yes, who will develop them? Is there a technical expert peer review?
- Is there a limitation to be considered to the quantity of ITMOs? Expressed as function of current and past inventories?

5.6 Sustainable Development

Promoting sustainable development is in the same situation as environmental integrity, in terms of issues that it is facing, especially regarding the governance of the "shall" which is associated with it. There are two significant differences.

First, there is the experience that is available from how it was addressed under the Kyoto Protocol mechanisms, especially under CDM. The second issue is that few question that sustainable development is the prerogative of parties in terms of priorities, and the mode of implementation and operationalisation. It is therefore not a great surprise that the submissions provide somewhat different views in terms of how this issue should be treated. The call for learning from the CDM and other forms of cooperation is present, including from results-based payments such as REDD+.

Other submissions call for the approach to address sustainable development to be, at a minimum, consistent with the sustainable development goals, the sustainable development objectives and strategies of the parties involved, and human rights (as a reference to issues with human rights in CDM projects). There are also calls for some commonality in approach, especially through submissions, which ask that

core requirements of sustainable development, environmental integrity, and double counting must benefit from further guidance.

As with environmental integrity, there are calls for parties to communicate their engagement in cooperative approaches and how this promotes sustainable development through the reporting processes that will be part of the operation of the Paris Agreement. In this case, given the sensitivity of the issue, and the recognition of the country prerogative and different circumstances, it is recognised that it may not be productive to have a prescriptive approach in reporting.

There is at the same time an innovative view that both parties involved in cooperative approaches may have to show how this cooperative approach furthers their own sustainable development goals.

There is, in this case, less discussion about the governance of sustainable development than there is with respect to environmental integrity. This makes it an interesting analysis as there is little insistence on any aspects of centralised governance and guidance to be provided under this "shall", which is the same as for environmental integrity and transparency in governance. It may become difficult to justify a call for strong guidance and governance for environmental integrity and apply different approaches for sustainable development. In any case, this is an issue to watch as discussions continue.

This brings a number of issues that may be worth discussing under the topic of sustainable development:

- What lessons can be learned from other activities, such as CDM, regarding the provision of promoting sustainable development?
- Being cooperative approaches, do both parties have to "certify" that it meets their sustainable development goals?
- Who certifies, and in what form, that the sustainable development objectives of the parties involved are met?
- In the case of baseline-and-credit, it is more obvious and there is the CDM experience to fall back on. In other cases, e.g. that of linking ETS, how can that be demonstrated?

5.7 Share of Proceeds

Share of proceeds is not something that is in any way directly referenced in Articles 6.2–6.3. It is, however, mentioned in the submissions of parties who would like to ensure an equivalency between ITMOs and the product of Article 6.4. This was, and is, an issue under the Kyoto Protocol, where there is a share of proceeds for CDM but not on the transfer of AAUs, which may also accompany the international transfer of domestically issued units between linked systems.

The submissions suggest that a share of proceeds be levied on first transfers of both ITMOs and products of Article 6.4. The logic that could justify this demand could be that since Article 6.4 transfers also fall under the same accounting rules as those of Article 6.2, there is no logic to exempt one product versus the other.

Question for discussion:

- Is there a share of proceeds on ITMOs, and how can it be justified in relation to the text of the Paris Agreement?

5.8 Nature of ITMOs

ITMOs were conceived as a "no brand name" product during COP 21, and some submissions still see them as generic. They were initially seen by some as taking any form—credits, allowances, tons, green certificates, energy efficiency certificates, etc.

A school of thought had developed after Paris that seemed to imply that ITMOs were a new

international compliance unit, meant to replace the AAUs, which were disliked for a number of reasons but now are missed in some ways. Their existence made accounting much easier.

That is why the submissions do address this issue, with some parties clearly stating that ITMOs are not a new international unit. Other parties refer to an international allowance, without specifying at all who would issue it, under what circumstances they would be issued, and what would be their specifications.

Another issue that is raised with respect to the nature of ITMOs, as a generic term this time, is how they would be denominated. Those who address this issue emphasise that it only makes sense to denominate them (or convert them for the purpose of ITMOs) to CO_2e as this common metric would ensure transparency and reporting. This implies some mechanism or institution that would determine conversion factors for different NDCs to CO_2e. This is a very loaded issue as it would imply that international institutions (CMA mandated) would start examining and determining the mitigation value of different NDCs.

Such an approach is not impossible, but it is only possible in the context of bilateral or plurilateral agreements for the foreseeable future—the so-called "club" approach that Article 6.2 seems to provide some impetus for.

Questions for discussion:

- Are ITMOs an international unit? What are its specifications?

- What are the benefits of mandating that ITMOs be denominated in tons of CO_2e? What are the implications of such a decision for NDCs and in operational terms?

6. ARTICLE 6.4—NEW MECHANISM

Prior to SB 44, in informal discussions, we had provided a summary of issues under all three components of Article 6.4, dividing them into two categories: "generally accepted provisions" and "issues for clarification." At that time, for Article 6.4, the two buckets were aligned as follows.

6.1 Generally Accepted Provisions

1. The sustainable mitigation mechanism (SMM) is under the authority of the CMA. A body designated by the CMA will supervise it.

2. There are no restrictions on where it can produce mitigation outcomes.

3. There are no restrictions on who can use the mitigation outcomes resulting from the SMM.

4. There is no specific provision on supplementarity.

5. The private sector can participate under the authority of the party.

6. Modalities and procedures will be developed under SBSTA and will consider the experience of the Kyoto Protocol mechanisms.

7. Paragraph 38 (d) describes additionality—SMM to be seen as a baseline and credit mechanism

8. Article 6.6 of the Paris Agreement refers to a share of proceeds from the activities of the SMM being devoted to the administration of the mechanism and to adaptation.

9. There is a reference to "overall net mitigation in global emissions."

6.2 Issues for Clarification

1. Do Articles 6.4–6.7 refer to one or more than one mechanism, or windows?

2. The "overall mitigation in global emissions" concept needs to be explained in order to be operationalised.

3. Relationship between Articles 6.4–6.7 and Articles 6.2–6.3.

6.3 General

6.3.1 Name

One issue that has emerged for this mechanism is the name. This may seem unimportant, except that a name will also give it a certain orientation and a specific focus. Some have adopted the name of sustainable development mechanism, which would give a significant preponderance to the sustainable development objective, while completely leaving out its delivery of mitigation outcomes. Others are using different names such as the SMM, which emphasises its mitigation mission within the context of sustainable development. The name CDM+, which was used in the original Brazilian submission, can be seen as proving it to be a narrow orientation with a strong resemblance to CDM with some modifications and improvements—but certainly a take on CDM.

Finally, one submission highlights the fact that parties in the Paris Agreement have not given this new mechanism a specific name and have left it under the generic "mechanism." This is not an illogical statement, but somehow leaving it with "no brand name" after the CDM, seems unfair and unfeasible. Maybe, like everything else in the Paris Agreement, the name will evolve bottom-up.

6.3.2 Price

The issue that was raised for ITMOs under Article 6.2, but which is also raised in the context of Article 6.4, is that of a price floor. Given the disappointment experienced by many developing countries in the CDM, it is not surprising. As in the case of ITMOs, the disappointment is understandable, but the

remedy, at the international level, is more difficult to envisage.

There were price floors at the national level imposed in the CDM, but imposing an international price floor implies there should be either someone to manage the market and price support or an international agreement. The first question that would emerge relates to the level of that price floor and future adjustments in a very dynamic situation where abatement costs vary from jurisdiction to jurisdiction and change with the rapid technological evolution.

6.3.3 Benefits of a UN mechanism

The Article 6.4 mechanism is seen by some parties as being very useful and addressing a number of problems. First, the avoidance of proliferation of different mechanisms. The existence of many alternatives could be welcome, except that parties with limited resources may have to evaluate the different alternatives and this may be more demanding than some could anticipate.

Some other benefits are seen as emerging for the creation of a UN-run mechanism. In some jurisdictions, stakeholders value the guarantee of "quality," which the UN stamp of approval provides. In the CDM, many of the concerns regarding the complexity of the regulatory system were to some degree offset by the guarantee of delivery from a UN registry, which was seen as being very valuable. Finally, the creation of an Article 6.4 mechanism may also help to ensure that one standard may be prevalent and provide some stability and liquidity in the market.

6.3.4 Review

One issue not included in the Paris Agreement text or in 1/CP.21 is that of a mandated review of the functioning of the mechanism under Article 6.4. This is raised in one submission and is an issue that may warrant further consideration. While at every COP there has been a guidance from the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to the CDM Executive Board, it should be considered useful to have a periodic review of the mechanism under Article 6.4 in the overall context of Article 6, in relation to Articles 6.2 and 6.8 and the rest of the Paris Agreement.

6.4 Governance

There is little doubt left by the Paris Agreement text that Article 6.4 created this mechanism; that its governance is under the authority of the CMA; and that a body appointed by the CMA supervises it. Beyond this, the submissions will focus on a number of issues.

Some submissions see the governance of the mechanism as almost a copy-paste of the CDM Executive Board in virtually all aspects, including rules of procedures, code of conduct, etc. This would include the adoption of the modalities and procedures for the CDM and CDM Executive Board into the new mechanism.

Others have different views regarding the governance of the new mechanism. While they point to decision 1/CP.21 paragraph 38 (f) that experience learned from the Kyoto Protocol mechanisms should be incorporated, they also see significant departures from the CDM approach. There are references in many submissions to simplifying governance, but few clear and concrete proposals are forthcoming. However, a few suggestions would need to be retained and examined. One suggestion is the membership of the supervisory body, which is seen in some submissions as diverging from what was used in the CDM. A greater level of diversity is seen as needed in the supervisory body and operational bodies.

Another issue that is seen, and is in need of further examination for the new mechanism, is the relationship between the different bodies involved in the process—regulator, secretariat, designated operational entities, designated national authorities, project proponents, etc.—in order to avoid duplication of efforts and have clarity on responsibility and accountability. Concerns with respect to the relationship between the bodies are being expressed, especially the board-secretariat

relationship. The role of the governing body is also important to solidify as some parties see the governing body being engaged in building capacity in developing countries.

In general, the roles of the governing body, host country, and private sector may be different given that the setting under the Paris Agreement is different from the Kyoto Protocol. Under the Paris Agreement there are no pre-set buyers and sellers as all parties have NDCs to fulfil obligations. As such, how projects are approved, what the host country provides in term of approval, etc. should be re-examined. The decisions to be left to the CMA—what should be left to national authorities, and what is left to the governing body—are issues for discussion.

Questions for discussion:

- Composition of the supervisory body
- Role of the supervisory body
- Responsibilities of the different bodies involved in the process
- Communication processes
- Any functions currently not fulfilled
- Relationship between the regulator and the other bodies for the different scopes of the mechanism: how to adapt a supervisory body to more than one scope
- What is the procedure to ensure that participation is voluntary and authorised? What can be learned from CDM, JI, as well as from other baseline and credit mechanisms in this respect?

6.5 Scope

A number of issues related to the scope of Article 6.4 were hotly debated during COP 21:

- Which parties can host activities under Article 6.4?
- Which parties can use the mitigation outcomes of Article 6.4 towards NDCs?
- Does the new mechanism have one or more than one scope?

The first two issues can be seen as being in the category of issues that are generally agreed. They have been heavily discussed at COP 21 and do not seem to be contested. The issue of the number of scopes could be more contentious and parties may disagree, or simply use different language, which creates misunderstanding. Language that would have referred to “more than one window” or “multiple applications under one framework” was rejected during COP 21 negotiations.

On the other hand, we now have submissions with language which refers to Article 6.4 as covering a number of scopes, and allowing for coverage of the scopes to evolve over time. Other submissions refer to projects, programme of activities, and sectoral approaches as being included, and suggest that the mechanism should support diverse approaches to emissions reductions. Reference is also made to a definition of scopes through a bottom-up approach, which would imply a fairly broad definition.

There are also submissions that see the reference to “scope of activities” under paragraph 37(c) as referring to types of methodologies for the mechanisms’ activities. One scope, which, according to one submission is clearly not included in Article 6.4, is that of REDD+. Attempts to link Articles 5.2 and 6.4 are seen as equivalent to reopening the discussion on the scale of REDD+ activities. Other submissions refer to the fact that the scopes should be inclusive, subject to the nationally determined nature of the parties’ contributions.

Questions for discussion:

- What is included in the scope of the SMM? Is it more than different CDM scopes?
- Is REDD+ excluded from the scope of Article 6.4? What is the basis of that exclusion?
- How would multiple, very different scopes, be accommodated under one regulatory

body? Would the same body serve multiple scopes? How would that affect the composition and the functions and responsibilities of the regulatory body?

6.6 Overall Mitigation

This is a new concept which appeared in the Paris Agreement. It is not defined, and clearly has multiple interpretations. That is reflected in the submissions received and makes it an issue that would benefit from additional debate and discussions on the options for operationalising it.

Some see this as a leftover from the Kyoto Protocol and CDM days, when the CERs were used as offsets. This raised concerns of many who question the environmental quality of CERs, the general use of markets to meet compliance, or, for those who are more precise, the use of CERs as offsets. It must be recalled that the CERs are the product of a baseline-and-credit mechanism, which were used as offsets in the Kyoto Protocol not due to a Kyoto Protocol rule but as a choice of the user (Annex 1 Parties). How this concept is interpreted may have far-reaching consequences, including in accounting.

However, one submission gives it a simple interpretation as being related to the additionality which is mentioned in 1/CP.21 paragraph 37(d). While tempting, this is not, in the view of the author, a definition that will receive the consensus that it needs to reach acceptance. Other submissions refer to this concept and seem to associate this with new approaches for methodologies for its MRV, which should be different from the CDM. A more classical approach suggested by others is the use of conservative baselines and reference levels, which would guarantee that the reductions go beyond business as usual.

Some of the questions that are related to the concept of overall mitigation, and referred to in submissions also include:

- How is it determined and assessed?
- To whom does it accrue?
- How does this relate to the NDCs in terms of scope and ambition?

Issues that were not raised directly in the submissions, but could be also interesting to examine may include:

- Is overall mitigation a voluntary approach or obligatory?
- Who should operationalise it in the chain of this mechanism: the producer, the user, any of the potential intermediaries between these two points? This will include a discussion on the mechanics of operationalising overall mitigation.
- What is the timing when it is produced: at issuance, and at usage?

6.7 Additionality

Additionality is referred to in 1/CP.21, paragraph 38(d). Since additionality is related to a baseline-and-credit system, the implication could be that the Article 6.4 mechanism is a baseline-and-credit approach, and will not include cap-and-trade systems in its scope. It is true that additionality could be extrapolated to setting stringent caps, but in the view of the author that was not the intent of the framers of this article.

How to define additionality remains as thorny an issue as ever, and different views are present in the submissions. Some simply reiterate the concepts and its importance, without offering solutions, or at least not directly, but referring to higher ambition than was experienced through the Kyoto Protocol and Doha amendments. Other interpretations refer to putting additionality in the context of the NDCs and national policies. This seems to be an especially important issue.

Questions for discussion:

- Is the CDM approach to additionality usable?
- How would the demonstration of additionality vary with the type of NDC?
- Is the concept applicable beyond baseline-and-credit types of activities?

6.8 Transitional Issues

1/CP.21 paragraph 38 (f) refers to using experience gained from the existing mechanisms under the UN Climate Convention to define the modalities and procedures of the new mechanism. The CDM and JI have been criticised but have also created an enthusiastic following, both in host countries as well as among investors who have put significant amounts of resources not only into investing in projects, but also into learning to navigate what is a relatively complex regulatory regime.

The transition of the CDM and JI to the Paris Agreement is important as it represents a signal of the stability and credibility of investment in a market created under a regulatory regime which is expected to evolve over time. The collapse of prices for CERs and emission reduction units has already dented the credibility of the regulator. A further abrupt transition may drive away future investors, while Article 6.4 (b) refers to the aim of incentivising private investors.

The way the CDM and JI move from the Kyoto Protocol to the Paris Agreement is well recognised and has been the subject of many discussions in informal forums. It is also mentioned in the submissions from parties, in many cases under the heading of "transitional issues." Some submissions advocate for, if not a copy-paste, certainly the adoption of a large part of the modalities and procedures of the CDM for the new mechanism under the Paris Agreement. This in itself is a strong signal that these parties would support a strong connection and continuity between the two mechanisms.

At the same time, it is interesting to note that JI is hardly mentioned in the submissions, in spite of the fact that paragraph 38 (f) refers to all existing mechanisms and that the new mechanisms can be used by all parties, developed and developing. There are, in the author's view, significant lessons to be learned for JI.

There are references in the submission to ensuring continuity and a smooth transition between the CDM and the new mechanism. This is in the context of the Paris Agreement and pre-2020 action. There is also one reference to ensuring that CDM activities with crediting periods beyond 2019 should be able to issue after 2020, but there is no indication of the proposed treatment of projects and CERs under the new mechanism of the Paris Agreement.

With respect to the treatment of the CDM post-2020, it is also noted in one submission that continuing to operate the CDM under the Kyoto Protocol may not be worthwhile and that the CDM, and presumably some of its projects, should be adapted and imported into the Paris Agreement Article 6.4 mechanism.

There is therefore a strong sense of recognition of this issue, of the need to discuss it, and to find a solution. A number of issues that would be useful to include as part of the post-COP 22 discussions are:

- What happens to CERs already issued prior to entry into force of the CMA?
- What happens to CDM and JI projects registered prior to entry into force of the CMA?
- Do these instruments continue to issue credits? Until the end of their current crediting period? Until the end of the true-up period of the Kyoto Protocol's second commitment period?
- Are some CDM and JI projects grandfathered under the new Paris Agreement mechanism? Is there a re-

qualification test, and what are the filters or criteria in that case?

6.9 Sustainable Development

Promoting sustainable development is one of the two objectives for the new mechanism mentioned in Article 6.4. It is also one of the horizontal issues which glue together the components of Article 6. It is referred to in many submissions with reference to the fact that it is a national prerogative and that it should not be subject to multilateral analysis under the UNFCCC.

Some parties see a connection between the standards of sustainable development utilised under Articles 6.2 and 6.4 and the sustainable development goals. The host country is seen as the entity needing to certify conformity with national sustainable development goals and objectives.

Under this topic the issues to address may include:

- What are the lessons learned from existing mechanisms, and how do we operationalise the certification so that the activities under the Paris Agreement mechanism promote sustainable development?
- Are there international guidelines for such a certification?
- Once issued, can it be withdrawn?
- Can the issuance be challenged or appealed? By whom and under what circumstances?

6.10 Participation of the Public and the Private Sectors

Incentivising participation of the public and private sectors is one of the aims of the new mechanism and is referred to in Article 6.4 (b). It is also referred to in many submissions and supported, including through ensuring the credibility and continuity of the existing mechanisms and their products. There is, however, also reference for the need to show complementarity, possibly through a threshold, even if there is no direct text provision to this effect.

The provision on the participation of the private sector and other actors is seen as connected to the provision on voluntary participation and the authorisation that parties have to provide, referred to under Article 6.3. Therefore, it seems that parties would need to provide some sort of approval before subnational entities can engage in activities under Article 6.4 (as well as Article 6.2).

Another issue that is mentioned in submissions refers to the use of credits. The case is made that CERs were used for purposes other than compliance with the Kyoto Protocol, and that the modalities and procedures of the new Paris Agreement mechanisms should take that into account and make provisions for the continuation and expansion of that practice. At the same time, it is also recognised that the Paris Agreement is different from the Kyoto Protocol and that all parties will be able to host Article 6.4 activities. This needs to be recognised in the modalities and procedures on how parties provide the authorisation for participation.

Some of the issues that would need to be addressed may include:

- What form would the authorisation of parties take? Will there be a standard text?
- Can such authorisation be withdrawn and under what circumstances?
- Who issues such authorisation, and where is it registered?

6.11 Accounting

Accounting, including the avoidance of double counting, is directly referred to in Article 6.5 where it is described at length. This shows the concerns that parties had with respect to the double counting of transferred mitigation outcomes emanating from Article 6.4. At the

same time, we must also recall that accounting constitutes the major issue under Article 6.2. Therefore, it is only natural to find references made in submissions to the connection between Articles. 4.13, 6.3, and 6.5. In the CDM model, the new mechanism would have issued credits into a centralised register, which would then transfer them to accounts in national registers as instructed.

It is important to note that parties are concerned about the scope of the modalities and procedures for Article 6.4 and feel that these procedures should not prejudge how certified emissions reduction from this mechanism would be used. The decision on how to use the units issued for each activity lies with the project activity participant.

It must also be noted that there is currently no mention in any text related to the Paris Agreement of a central register for the new Paris Agreement mechanism. However, the need for one is referred to in submissions. Also, how are units issued under Article 6.4 denominated? This is not referred to in the Paris Agreement text, nor in 1/CP.21. In this respect, it is, however, mentioned in submissions that the mitigation outcomes issued under Article 6.4 should be measured in metric tons of CO_2e.

Some of the questions that will require discussions, clarifications and answers, may include:

- What is the relationship between the accounting provisions in Articles 6.2 and 6.5?
- Are Article 6.4 outcomes issued in CO_2e units?
- What are the mechanics for the issuance of credits from this mechanism?

7. NON-MARKET APPROACHES

Non-market approaches are seen as an integral part of Article 6, and parties are making evident efforts to ensure that progress is made in this section. However, there is little connection, if any, being made in submissions between Articles 6.8 and 6.9 and the rest of Article 6. This has to be a concern to all. The activities covered under this Article continue to require definition. Some parties try to address this lack of definition by providing examples as a good way forward which would further clarify the concepts.

One point that is, however, clearly made is that what is covered under Article 6.8 cannot involve the transfer of ITMOs. Article 6.8 is seen as providing synergy and coordination only between existing non-market approaches under the Convention and the Paris Agreement. In addition, the scope of Article 6.8 is limited in some submissions to international collaborative approaches not developed anywhere else under the UNFCCC. It is important to note that Article 6.8 is seen as exclusively referring to non-market approaches which are developed internationally, and it does not cover domestic non-market approaches.

In this context, a number of questions are proposed in submission, which include the identification of non-market approaches, the identification of existing linkages and synergies, the enhancement of these linkages, and the measurement of success of these actions. It is fully recognised that a significant amount of work is needed under this file before clarity starts to emerge.

Other issues that are being referred to as being covered under Article 6.8 include assisting countries to implement their NDCs in a holistic manner, mapping the needs of countries to implement their NDCs through non-market approaches, and strengthening the capability of countries to access means of implementation.

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