



COP 9

Issues for Discussion to Operationalise Article 6 of the Paris Agreement

Andrei Marcu



International Centre for Trade
and Sustainable Development

Background paper

Issues for Discussion to Operationalise Article 6 of the Paris Agreement

Andrei Marcu
ICTSD



Published by

International Centre for Trade and Sustainable Development (ICTSD)

International Environment House 2

7 Chemin de Balexert, 1219 Geneva, Switzerland

Tel: +41 22 917 8492

ictsd@ictsd.org

Fax: +41 22 917 8093

www.ictsd.org

Publisher and Chief Executive:

Director, Climate, Energy, and Natural Resources:

Programme Officer:

Ricardo Meléndez-Ortiz

Ingrid Jegou

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 on Article 6 of the Paris Agreement in Ottawa, Canada in February 2017. It is the third 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. *Issues for Discussion to Operationalise Article 6 of the Paris Agreement*. Geneva: International Centre for Trade and Sustainable Development (ICTSD).

Copyright © ICTSD, 2017. Readers are encouraged to quote and reproduce this material for educational and non-profit purposes, provided the source is acknowledged. This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivates 4.0 International License. To view a copy of this license, visit: <https://creativecommons.org/licenses/by-nc-nd/4.0/>

The views expressed in this publication are those of the author and do not necessarily reflect the views of ICTSD or the funding institutions.

ISSN 2225-6679

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	iv
ABSTRACT	v
1. OBJECTIVE	1
2. BACKGROUND	2
3. WHAT IS NEEDED TO OPERATIONALISE ARTICLE 6?	3
4. FUNDAMENTAL PRINCIPLES	4
5. ELEMENTS OF THE WORK PROGRAMME	5
5.1 Article 6.1	5
5.2 Article 6.2	5
5.3 Article 6.4	7
6. METHOD OF WORK	10

LIST OF ABBREVIATIONS

CDM	Clean Development Mechanism
CMA	Conference of the Parties serving as the meeting of the Parties to the Paris Agreement
COP	Conference of the Parties
CO ₂ e	carbon dioxide equivalent
ETS	emissions trading system
ITMO	internationally transferred mitigation outcomes
JI	joint implementation
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
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. This paper focuses on the issues that emerged from previous discussions and submissions, and which the author believes will require further examination as part of the effort to make Article 6 operational. Specifically, the paper identifies a set of questions that need to be defined before negotiators start work. While this is not to be seen as a complete list of issues and questions associated with each item, the paper shows that as complete a list as possible should be developed in the contact group before proceeding with the substantive work.

1. OBJECTIVE

This paper was intended to provide a reflection for a workshop that took place in Ottawa, Canada in February 2017 under the project “Informal Dialogue on the Implementation of Article 6 of the Paris Agreement.” The paper builds on previous publications from this informal dialogue. It does not discuss the distinct elements in the different components of Article 6, but focuses on the issues that emerged from discussions and submissions, and which the author believes will require further examination as part of the effort to make Article 6 operational.

It will be difficult and, at a minimum, disorganised and inefficient, if negotiators do not

define the questions before they start work. Further issues may be discovered later in the course of the work in the contact group, but this does not preclude good planning, in terms of a set of issues and questions that can be started from.

What is presented in this paper is a “sample” that is in no way to be seen as a complete list of issues and questions associated with each issue. The point it makes is that as complete a list as possible should be developed in the contact group before proceeding with the substantive work.

2. BACKGROUND

The Paris Agreement outlines the broad lines for international cooperation, including internationally transferred mitigation outcomes (ITMOs), as well as the new market mechanism under Article 6.4. In order to operationalise the Paris Agreement, a number of work programmes have been put in place for Articles 6.2, 6.4, and 6.8.

At the 45th session of the subsidiary bodies (SB 45) in Marrakech there was an attempt to define a two-year work programme. The intention was to ensure that the 24th Conference of the Parties (COP 24)/ Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) 1-3 in 2018 in Poland, when CMA 1 must also close according to decisions 1/CMA.1 and 1/CP.23, would also see the work programmes on Article 6 completed. Unfortunately, that was not possible.

The intention of this paper is to identify the main elements of what could be included in the work programme in order to assist the

participants in the International Centre for Trade and Sustainable Development project on Article 6 in their thinking, and in defining a work programme in United Nations Framework Convention on Climate Change (UNFCCC) negotiations, as well as others who may find the paper useful.

The work programmes identified under Article 6 refer to accounting guidelines (Article 6.2—paragraph 36 1/CP.21), modalities and procedures (Article 6.4—paragraph 38, 1/CP.21), and a work programme on non-market approaches (Article 6.8—paragraph 39 1/CP.21). However, discussions in the Subsidiary Body for Scientific and Technological Advice (SBSTA) contact group, informal discussions as part of this project, as well as the submissions ahead of SB 45, have identified a number of other issues that need to be debated and outcomes that need to be agreed by parties. These will need to be addressed if Article 6 is to be a viable tool in meeting nationally determined contributions (NDCs).

3. WHAT IS NEEDED TO OPERATIONALISE ARTICLE 6?

So what is needed to start working to make Article 6 operational, and meet the mandates in the Paris Agreement and 1/CP.21? Three elements could form the core of a way forward and should be defined:

- 1) **Fundamental principles.** Define fundamental principles that should be observed in producing outcomes for the issues in the work programme. There will be many views, and some principles may help provide guidance that will keep the choice between options more consistent.
- 2) **Elements of the work programme.** What are the issues that need to have a solution, or an answer? This is what this paper is about. At this stage it is not about the substance of answers, but about identifying the questions we need answers to.
- 3) **Method of work.** It is important to identify how the work to produce solutions to the issues in the work programme should proceed.

4. FUNDAMENTAL PRINCIPLES

While issues will vary, there are a number of “principles” that we should remind ourselves of in making choices between the options that will be presented and advocated. These principles will in some cases be more concrete, while in other cases they may simply reflect the ethos of the Paris Agreement and may therefore not be directly captured in words anywhere in the agreement.

- 1) **Bottom-up.** The ethos of the whole Paris Agreement is bottom-up and this should relate to our thinking in making decisions. This is especially true about the governance that we choose. While the governance is certainly much more decentralised than in the Kyoto Protocol, it is not a one-way street. However, the balance between centralisation and decentralisation is remarkably different from the Kyoto Protocol.
- 2) **Article 6 is unitary.** For illustration purposes, sustainable development and environmental integrity are horizontal issues present in all components of Article 6. It

would be difficult to rationalise if in the long term the standards used in horizontal issues result in very different outcomes. Also, Articles 6.2, 6.6, and 6.8 must be seen as complementary—all bringing something different but complementary to the table that make cooperative approaches complete.

- 3) **Paris Agreement is unitary.** Article 6 must not be seen in isolation, but in the context of the whole Paris Agreement. Sustainable development, environmental integrity, and accounting are present not only in Article 6, but throughout the Paris Agreement. Article 6 will have to build and be connected with Articles 4, 13, and 15. At the same time, Article 6 will also inform the more general framework. (Article 13.7 information “to track progress” will necessarily include information with respect to use of ITMOs pursuant to Article 6.2.) Conversely, Article 6.2—including arrangements for “corresponding adjustment”—may inform the format and timing of that information under Article 13.7.

5. ELEMENTS OF THE WORK PROGRAMME

This section will try to identify issues that may need to be addressed as part of the work programme to make Article 6 operational. It will mainly raise questions, but in order to avoid taking the spotlight from the discussions on the list of questions and issues, it will largely refrain from entering into substantive discussions.

5.1 Article 6.1

5.1.1 Scope

While it has no direct bearing at this time on making Article 6 operational, it would be useful to reach a working consensus with regards to the scope of Article 6, which emerges from Article 6.1. Does Article 6 cover only certain types of international cooperation or does it cover all types of international cooperation, such as technology and finance capacity building?

- What would that mean, if anything, in operational terms?

5.2 Article 6.2

A number of issues can be identified in this article.

5.2.1 Scope

What is the scope of Article 6.2 and what is covered? Different points of view have been expressed as to what is covered by Article 6.2. They range from a very limited scope, something similar to Article 17 of the Kyoto Protocol which would be an emissions trading system (ETS) between countries with budgets, to a very broad interpretation which would include any international cooperation that involves the transfer of ITMOs, including reduced emissions from deforestation and forest degradation in developing countries (REDD+). For illustration, this is a sample of specific questions that have emerged from submissions to SB 45 and discussions:

- Does Article 6.2 cover more than emissions trading?
- Does a party need to have an economy-wide cap to use Article 6.2?
- Does Article 6.2 cover bottom-up approaches that emerge bilaterally or through a “carbon market club?”
- Is REDD+ covered under Article 6.2?

5.2.2 Accounting

Accounting is seen as a critical element if Article 6 is to function and be credible. The only work programme in 1/CP.21 which is related to Article 6.2 is on accounting. There are different interpretations as to what is understood and included in accounting, which could transform what would seem a simple discussion into a very complex one. While the avoidance of double counting is what is most mentioned, many other aspects were brought up and will require agreement before Article 6 can become operational. Some of the questions that will require discussion under this item may include:

- 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, including 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 carbon dioxide equivalent (CO₂e)?

5.2.3 Environmental integrity

Article 6.2 includes three “shall(s),” one of which refers to environmental integrity. There is no work programme associated with it. The most contentious issues would be related to governance, and implicitly to the connection, if any, with Article 13 (transparency) and Article 15 (compliance). Some of the questions that have emerged so far, and that would need to be examined, may include:

- 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 a function of current and past inventories?

5.2.4 Sustainable development

The issue of promoting sustainable development is in roughly the same position as the issue of environmental integrity. However, it has been traditionally recognised that sustainable development is a national prerogative and therefore the issues that are emerging, while similar to environmental integrity, are less contentious, especially when it comes to governance. Some of the issues that could be addressed may include:

- What lessons can be learned from other activities, such as the clean development mechanism (CDM), regarding the provision of promoting sustainable development? Does “promoting” imply an active function?
- 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?

5.2.5 Share of proceeds

As Article 6.2 is in some cases compared to Article 17 of the Kyoto Protocol, the issue of share of proceeds will rapidly emerge. As there is a share of proceeds provision in Article 6.4 for the new mechanism, the issue of equal treatment has been raised.

- Is there a share of proceeds on ITMOs and how can that be justified in relation to the lack of any reference in the text of the Paris Agreement?

5.2.6 Nature of ITMOs

ITMOs were conceived as “no brand name,” applied to any type of international transfer. A number of issues have been raised in submissions and discussions, which may require examination in the context of a work programme to make Article 6 operational:

- Are ITMOs an international unit? What are its specifications?
- What are the benefits of mandating that ITMOs be denominated in tons of CO₂e? What are the implications of such a decision for NDCs and in operational terms?

5.2.7 Relationship with other parts of Article 6 and the Paris Agreement

As mentioned, Article 6.2 cannot be seen in isolation. Some elements will potentially interact with the other components of Article 6, in both Article 6.4 and 6.8. A number of questions could be among those that may benefit from examination:

- Will the accounting provisions of Article 6.2 apply to secondary transactions for any units/mitigation outcomes issued under Article 6.4?
- What, if any, is the interaction between Articles 6.2 and 6.8? This may deserve examination in the context of sustainable development and any cooperative tools that could emerge from Article 6.8.

5.3 Article 6.4

Article 6.2, with its decentralised governance, is somewhat of a novelty in the UNFCCC, given the centralised governance of markets under the Kyoto Protocol. Article 6.4 seems to be closer to “CDM classic,” and it is actually referred to by some as a “CDM+.” However, while the governance will be centralised, and learning from the Kyoto Protocol mechanisms is mandated in paragraph 37 of 1/CP.21 (f), submissions and discussions in SBSTA and in informal forums have revealed a number of issues that would benefit from being part of the work programme that is mandated in paragraph 33 of 1/CP.21.

5.3.1 Governance

While the governance is fairly well defined in Article 6.4, there are a number of issues that may benefit from further review, taking into account the lessons learned from the CDM and joint implementation (JI):

- 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 and JI, as well as from other baseline-and-credit mechanisms in this respect?

5.3.2 Scope

This has been a hotly debated issue in Paris, and some still see it as an important issue. In simple terms, is Article 6 a project based mechanism, like the CDM, or does it have a broader scope. And can it have more functions and serve additional purposes? Some of these issues that may benefit from examination may include:

- What is included in the scope of Article 6.4? Is it more than different CDM scopes?
- Is REDD+ excluded from the scope of Article 6.4? What is the basis of that exclusion?
- Can Article 6.4 play the role of UN certifier for those voluntarily seeking certification of bilateral market initiatives by a UN body?
- 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?

5.3.3 Overall mitigation

This is a topic that has attracted significant interest and on which we are far from having a common understanding, especially in terms of how it would be operationalised.

- How is it determined and assessed?
- To whom does it accrue?

- When is it implemented: at issuance of units? At usage for meeting NDCs?
- Is it voluntary or an obligation?
- How does this relate to the NDCs in terms of scope and ambition?

5.3.4 *Additionality*

Additionality is referred to in 1/CP.21, paragraph 37(d). It could be extrapolated beyond a baseline-and-credit mechanism, which would require additional work, and may be interpreted as setting stringent caps. Being counterfactual, it will always remain a thorny issue, but at the same time a fundamental issue, in any baseline-and-credit approach. Some issues that may be examined include:

- 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?

5.3.5 *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. At the same time, much has been invested in the CDM and JI over the years in terms of resources and also in terms of trust. Not ensuring a smooth transition from the Kyoto Protocol mechanisms to the new Article 6.4 will certainly further erode trust in carbon markets already suffering from the battering they have taken over the last few years. This will be a key issue as we move forward:

- What happens to certified emissions reductions 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 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?

5.3.6 *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. Under this topic the issues to address may include:

- What are the lessons learned from existing mechanisms, and how do we operationalise the certification 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?

5.3.7 *Participation of the private sector*

Participation of the private sector is directly referred to in Article 6.4 (b). There is clearly significant experience of interaction with the private sector in both CDM and JI. Over the years the private sector has raised many issues and has made the benefits and drawbacks of the system under the CDM and JI well known to the regulators. Also, a number of issues have been raised in the context of the CDM review and reform, a process that has not yet been completed. The issues which may benefit from examination 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?

5.3.8 Accounting

Accounting, and especially double counting, is also a significant element in Article 6. It has its own special article (Article 6.5), which defines in detail how to avoid double counting. There are many infrastructure and procedural elements that were used in the Kyoto Protocol,

especially the CDM. They are not currently detailed anywhere, and will need to be inserted into the operationalisation of Article 6.4. In this case, a sample of issues that will need to be addressed may include:

- What is the relationship between the accounting provisions in Articles 6.2 and 6.5?
- Are Article 6.4 outcomes issued in CO₂e units?
- What are the mechanics for the issuance of credits from this mechanism?

6. METHOD OF WORK

As we move forward and work towards making Article 6 operational, it is important to identify a number of ways in which the work under Section 4 (above) will be carried out.

The output, which is needed, is sometimes compared to the Marrakech Accords, reached at COP7 in 2011 in the Moroccan city, and called Marrakech 2 after the most recent COP took place there in 2016. However, many things have changed since the Kyoto and Marrakech COPs, and the method of work, which produced Marrakech 1 may not work for Marrakech 2.

New approaches may need to be identified to allow for progress in time for COP 24/CMA 1. What may be needed is a menu of approaches, depending on what would best fit the circumstances (such as the stage of maturity of the discussion) and the type of output required.

Original contributions by parties and other actors may provide an initial impulse and help move the work forward. This work could be undertaken or commissioned, depending on the expertise available in-house. It could be done by one entity (organisation/party), or emerge from a group effort. It could take the form of a technical paper, which could be subject to discussions in workshops, to be followed by an options paper outlining possible solutions to issues identified.

From the way discussions have progressed, it is becoming increasingly clear that developing

Marrakech 2 from scratch, in a contact group, is an increasingly tenuous proposition. Proposals for discussions could emerge in many ways: through submissions, invited, or otherwise; through mandates being given to the UNFCCC secretariat; or through mandates given to co-facilitators.

Two things need to be said. One is that the idea of applying perfect symmetry between the three parts of Article 6 needs to be constantly monitored and considered. It is important, as a political statement, to ensure that all parts of Article 6 (markets and non-markets) progress. However, it may be difficult to clearly align progress, given the different nature of the work, the different levels of maturity, and the technical requirements and capacity needed to make progress.

As a second observation, it is also becoming increasingly clear that the knowledge and expertise required to achieve results in Articles 6.2 and 6.4, and in Article 6.8, are very different. Organically linking negotiating sessions between Articles 6.2/6.4 and Article 6.8 continues to send the signal that having the same negotiators in the room is the norm. However, this will detract from the ability to make progress as the right expertise will be missing from the negotiating room, especially in Article 6.8.

These are some of the considerations that need to be taken into account in discussing the method of work.

Other recent publications from ICTSD's Programme on Climate and Energy include:

- Article 6 of the Paris Agreement: Reflections on Party Submissions before Marrakech. Andrei Marcu, 2017.
- Trade Elements in Countries' Climate Contributions under the Paris Agreement. Clara Brandi, 2017.
- The Role of Response Measures in Ensuring the Sustainable Transition to a Low-GHG Economy. Andrei Marcu and Wijnand Stoefs, 2017.
- The Relevance of the Environmental Goods Agreement in Advancing the Paris Agreement Goals and SDGs: A Focus on Clean Energy and Costa Rica's Experience. Monica Araya, 2016.
- Carbon Market Clubs under the Paris Climate Regime: Climate and Trade Policy Considerations. Sonja Hawkins, 2016.
- International Cooperation Under Article 6 of the Paris Agreement: Reflections before SB 44. Andrei Marcu, 2016.
- Global Rules for Mutually Supportive and Reinforcing Trade and Climate Regimes. James Bacchus, 2016.

About ICTSD

The International Centre for Trade and Sustainable Development (ICTSD) is an independent think-and-do-tank, engaged in the provision of information, research and analysis, and policy and multistakeholder dialogue, as a not-for-profit organisation based in Geneva, Switzerland. Established in 1996, ICTSD's mission is to ensure that trade and investment policy and frameworks advance sustainable development in the global economy.