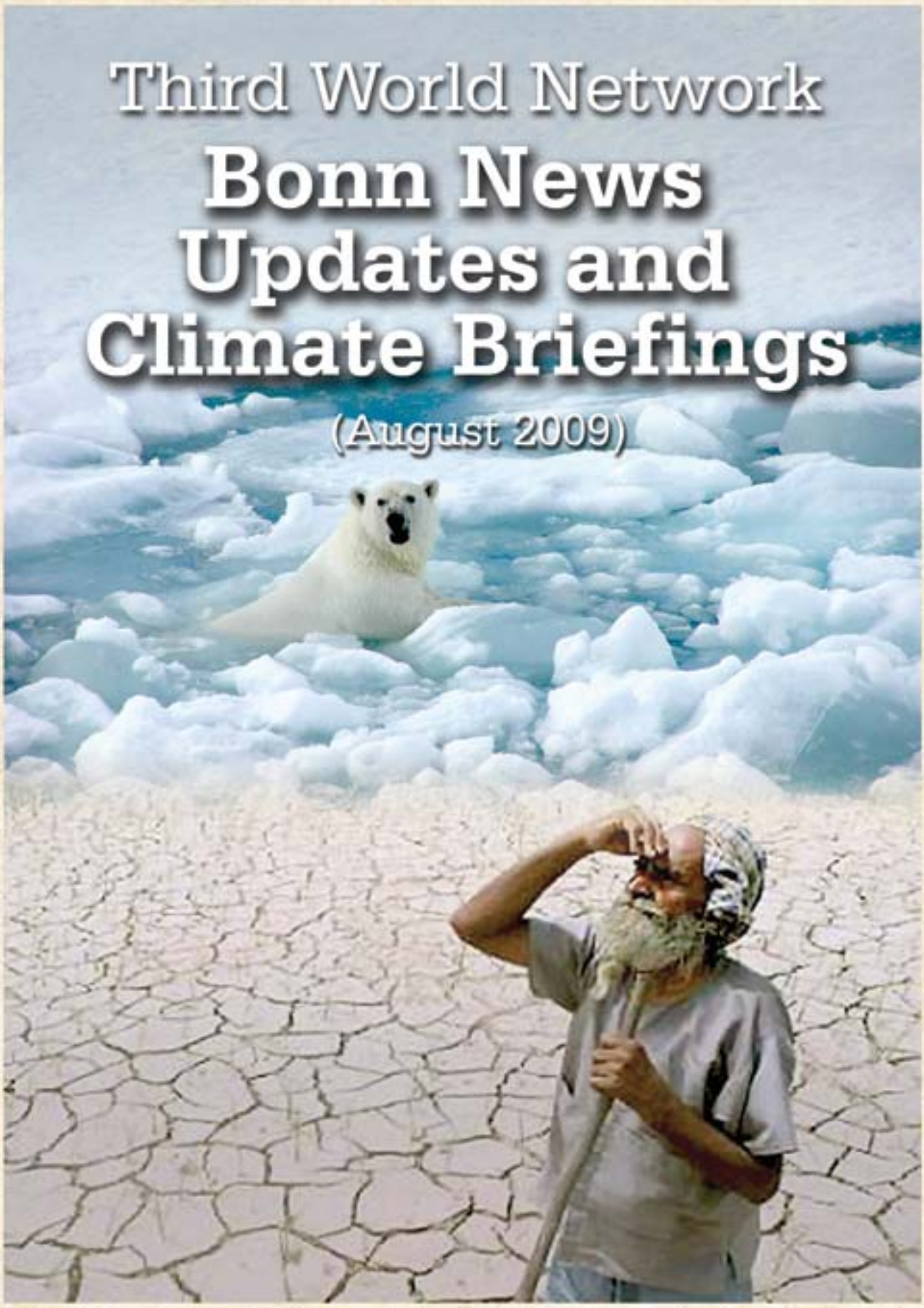
Third World Network

Bonn News Updates and Climate Briefings

(August 2009)



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BONN NEWS UPDATES AND CLIMATE BRIEFINGS (August 2009)

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NOTE

This is a collection of the 10 News Updates and two Briefing Papers prepared by the Third World Network for and during the United Nations Climate Change Talks in Bonn, Germany, from 10-14 August 2009.

Bonn News Updates

TWN
Bonn News Update 1

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Developing Countries Call for Negotiating Text to be Party-driven

Bonn, 10 August (Meena Raman) – Developing countries said that the negotiating text for the consideration of Parties at the climate change talks should be the responsibility of Parties and not that of the Chair of the Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA) under the United Nations Framework Convention on Climate Change.

Ambassador Lumumba D'aping of Sudan, speaking for the **G77 and China**, said that from now until Parties came to a conclusion, the Group would not mandate the Chair to prepare a text but that it was the responsibility of Parties to do so.

D'aping was speaking at the opening of the intersessional informal consultations of the AWG-LCA which began its first meeting in Bonn, on 10 August 2009. The Bonn session is set to end on 14 August 2009.

The AWG-LCA concluded its sixth session in June 2009 by producing a 200-page revised negotiating text, compiling inputs provided by Parties. Parties had provided inputs to a negotiating text dated 19 May 2009, originally produced by the Chair, Michael Zammit Cutajar, of Malta, at the beginning of the June session.

Cutajar said that the 'August informals' begin the start of a new phase of work on the revised text and continue through the first part of its seventh session in Bangkok, (to be held from 28 September to 9 October). The August informals are considered as the first part of a three-week phase of negotiations on the revised negotiating text.

He said that the proposed outcome of the informal week will be a further revision of the text, for its consideration at the Bangkok session. It was in this regard that the G77 and China stressed the need for a Parties' text rather than a further Chair's text.

Cutajar also proposed that the Bonn session will involve two groups working in parallel every day to consider the five building blocks of the Bali Action Plan viz. shared vision, adaptation, mitigation, technology and finance.

The mitigation element will include the consideration of mitigation by developed and developing countries and further sub-groups dealing with the issue of forests, cooperative sectoral approaches, market-mechanisms and economic and social consequences of response measures.

The G77 and China had a counter proposal to that proposed by the LCA Chair. Ambassador Lumumba D'aping said that the task for the Parties now is to get into direct negotiations to make real progress. He said that the massive text should be reduced and Parties should start full discussions to reach for reduction. There was a need to reach a common agreement or an understanding to eliminate duplication, correct misrepresentations, and omissions in the current text. Time allocation must be sufficient to do this.

D'aping said that the timetable suggested by the Chair was not workable and proposed that each topic be allocated 3 hours to have general dicussions on substantive issues. Otherwise, it would be difficult to delve into the text, he said. He proposed that topics be considered in half-day blocks, beginning with technology, finance, adaptation and mitigation during the first part of the week, and shared vision be dealt with at the end of the week.

Cutajar then proposed that Parties meet informally to consider the proposal of the G77 and China on the organisation of work. Later in the afternoon, Parties met to discuss the topic of 'technology and capacity building' for 3 hours.

The session was facilitated by Kishan Kumarsingh from Trinidad and Tobago. Kumarsingh said that the goal of the session was to further advance substantive issues on the text and to revise the text, modifying it in the direction of consolidation and convergence.

Kumarsingh said that the aim was not to agree to the language in the text but rather to reach an agreement on the concepts. Once there is clarity on the point of convergence, Parties can work on points of divergence, with the aim of reducing the divergence. He said that there were three key themes – what are future actions on technology transfer for the Copenhagen agreement; how to implement the future actions and what are the supporting arrangements that are needed. He suggested that Parties consider the 'what' issue first, and gain convergence and then move to the 'how' question.

The Philippines spoke for the G77 and China and was assisted by Ghana. It said that the objective of the Bali Action Plan is for the full, effective, and sustained implementation of the Convention and to address the implementation gaps of which technology transfer is most glaring. There was a need to consider which articles of the Convention are being implemented by the proposals. Any proposal which is inconsistent with the Convention or the Bali Action Plan will not be considered by the Group as relevant. The Convention has been in existence for the past 15 years. On technology transfer and development, there has been work done by the Expert Group on Technology Transfer as well as the development of frameworks on implementation. Fifteen years is enough to look at the issue of 'what'. What Parties need to look at now is how it will be implemented and financed. The Group was guided by the proposals on institutional arrangements. This is an essential part of the agreed outcome. There was also a need to consider the barriers to technology transfer and development including the issue of intellectual property rights (IPRs).

It said that there was clearly a need for policy debate as there was divergence between Parties. What developing countries want are actions and institutional arrangements. What developed countries want is something else, such as technology needs assessments, enabling environments, workshops etc.

Ghana, also speaking for the G77 and China, said that there was a need to be cautious in looking at paragraphs in the text. It said that some paragraphs appear to address the same issue, but their intention is different. It gave the example that technology action plans that would be implemented by an executive body are different from action plans implemented by Parties. Hence, there was a need to appreciate the differences.

Tanzania spoke for the G77 and China on the issue of capacity-building. It stressed that new areas of capacity-building needs are important. There was a need to strengthen national institutions in the areas of systemic observation, research, modelling, disaster preparedness, and capacity-building for monitoring.

China suggested three areas of priorities – institutional arrangements that are critical to promote action in relation to technology transfer under the UNFCCC; a fund mechanism to ensure financing for technology transfer and an international action plan that deals with elements like research, development and deployment as well as the IPR issue, performance assessment and innovation centres. It said that details are in the G77 and China proposals.

India said that while there was a need for consolidation, it was important not to leave out ideas. Ideas may seem similar, yet there are variations. There was a need to identify which paragraphs and proposals are inconsistent with the Bali Action Plan and the Convention. Once those prospoals are eliminated, Parties would have made some progress. Parties are up against fundamental divergences. Parties have different ideas on what is meant by technology transfer. Developing countries mean affordable access which involves reform of the IPR regime. Also, there is a need for collaborative research and development capacity across the board of technologies and not just those which are cherry-picked by countries. On capacity-building, it was talking about transformational technologies and not marginal development of technologies. There is a need for global collaborative projects in areas where technologies are still rudimentary.

South Africa speaking for the **Africa Group** said that there was a need for attribution of proposals by Parties as there were subtle differences between proposals by developed and developing countries. It said that there was a need to remove duplication in the text and for proposals that are not compatible with the Convention and the Bali Action Plan. Technology transfer is a commitment by developed countries and what is important is enhanced implementation. Hence, focus should be on addressing the barriers such as finance and IPRs.

The **EU** said that it saw four areas of convergence – technology needs assessments, capacity-buiding, the enabling enviroment and the issue of technology research, development, deployment and cooperation.

On the suggestion by the Philippines and South Africa that it would be useful to have attributions in the text as to which proposals came from which Parties, the US and Australia did not support the idea.

In conclusion, the facilitator suggested that interested Parties can meet together to see how to move the dicussion forward.

The facilitator informed Parties that another dicussion will follow on technology, in parallel with the topic of mitigation.

TWN
Bonn News Update 2

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Mitigation: No Re-negotiation of Climate Convention, Say Developing Countries

Bonn, 12 August (Meena Raman) – Developing countries were firmly opposed to any attempt by developed countries to re-negotiate the United Nations Framework Convention on Climate Change, at the inter-sessional informal meeting of the Ad-Hoc Working Group on Long-term Cooperative Action (AWG-LCA) in Bonn. Parties met at the informal group on mitigation on 11 August and were deliberating on the revised negotiating text.

Brazil, speaking for the **G77 and China**, said that the AWG-LCA should respect the Bali Action Plan (BAP) mandate which is the full, effective and sustained implementation of the Convention. The BAP must guide what proposals should be in and what proposals should be out of the negotiating text. To achieve progress, Parties should reflect this mandate without altering the principles or provisions of the Convention and without changing who are Annex 1 Parties (developed countries) and who are non-Annex 1 (developing countries). Parties are not here to re-negotiate the Convention.

These remarks were made in reference to proposals by developed country Parties to have some developing countries, especially 'major emitters' or 'advanced developing countries', take on quantified emission reduction targets. They are not obliged to do so currently under the climate Convention.

In an interesting exchange, the United States said that its proposals (for mitigation actions by developing countries) were not outside the Convention, citing Article 4(1)(b), while India responded that it disagreed that the actions referred to in Article 4(1)(b) of the Convention are subject to measurement, review or verification.

The link between climate change and trade measures was referred to during the session. Saudi Arabia remarked that some industrialised countries have "poisoned" the atmosphere of the negotiations by wanting to take trade protectionist measures in relation to the products of developing countries in the name of climate change, but actually intend to secure their economic interests.

(They were apparently referring to the Waxman-Markey Bill, relating to climate change measures, which has been passed by the US House of Representatives, which mandates the US President to impose charges on the import of certain products from developing countries that are linked to their emissions of greenhouse gases.)

Brazil for the **G77 and China** said that paragraph 1(b)(i) of the BAP (which relates to the mitigation commitments of developed countries) must reflect the commitments of developed country Parties to economy-wide quantified emission reductions and proposals and must not be limited to bottom-up national actions. There must also be adequate comparability in relation to the magnitude of the efforts (between developed countries who are Parties to the Kyoto Protocol and those who are not, like the United States). The magnitude of efforts depends on both form and compliance. It must also ensure adequacy of mid-term and long-term emission reduction ambition.

In relation to the nationally appropriate mitigation actions (NAMAs) by developing countries under paragraph 1(b)(ii) of the BAP, Brazil said that NAMAs are distinct and different from the quantified emission reduction commitments of developed countries. Proposals must therefore respect this distinction and avoid mitigation by all Parties in a non-differentiated manner. NAMAs are distinct in terms of magnitude and legal nature. It is not an issue of developing countries doing the same thing as developed countries in a lesser way. NAMAs must be compatible with the legitimate priorities of developing countries in the context of their sustainable development.

Proposals should ensure support for enhanced voluntary actions by developed countries and avoid actions that are funded by developing countries

themselves. The support for NAMAs and the mitigation actions are to be measured, reported and verified (MRV). The enhanced responsibilities in MRV of actions cannot be de-linked from the associated MRV support.

India gave suggestions on how to reduce the current negotiating text. Where there are similar texts, they can be merged or consolidated into a single formulation. Concerned delegations can get in touch with one another to achieve this. Then, texts that are not in conformity or imply amendments or revision of the Convention can be eliminated. Any delegation can submit proposals for revision or amendment of the Convention but such proposals should be considered in the proper forum and the AWG-LCA is not the proper forum.

In addition, some texts or formulations in the negotiating text are taken from draft protocols or proposals for implementing agreements which have been submitted as draft legal texts for the consideration of the Conference of Parties. In order to avoid duplication, there is no point in considering the elements of these proposals here but instead they should be taken up in Copenhagen (where the COP will be held in December). If the elements of these draft protocols or agreements are pursued in the negotiating text, then they should not be pursued again in Copenhagen to avoid duplication.

South Africa for the **Africa Group** said that the negotiating text was long and complicated. Many proposals are broken up and have no logic or coherence. There are proposals which are outside of the Convention and the BAP which call for differentiation of developing countries. Parties must be faithful to the Convention as it exists. As regards the mitigation commitments of developed countries, there must be comparability in the legal form and compliance, and the rules of the Kyoto Protocol can be the basis for the comparability.

Tanzania for the **LDCs** said that all developed countries must take economy-wide legally binding commitments in terms of quantified targets. There is a need to ascertain what amount of mitigation efforts is through domestic actions and what is through international offsets. There should be more domestic efforts in reduction of emissions in developed countries. NAMAs in developing countries should be supported and enabled, including sustainable development measures.

Barbados for the **Alliance of Small Island States (AOSIS)** said the mandate of the BAP is to enhance the implementation of the Convention's ultimate objective, which is to stabilise the GHG concentrations at a level that would prevent dangerous athropogenic interference with the climate system. Hence, mitigation should aim at keeping GHG concentrations at 350 ppm and limit temperature rise to 1.5°C, with global peaking (of emissions) by 2015.

China said that there are proposals in the text that are not consistent with the principles and provisions of the Convention and it was unacceptable to re-negotiate or re-interpret the principle of common but differentiated responsibility. It also found that there are proposals that prejudge the form of the agreed outcome of the LCA process. China said that it was too early to talk of convergence and divergence. It was necessary to look at what are key issues to see if there is common ground.

It said that Parties had fundamentally different ideas. NAMAs are concrete mitigation policies by developing countries themselves that are enabled and supported in the context of their sustainable development, in line with their legitimate priority need for development and eradication of poverty. NAMAs do not involve targets in emission reductions. NAMAs should not be used as an offset mechanism by developed countries. Mitigation efforts that are not supported by developed countries should be recognised and are not subject to MRV requirements.

Bolivia said that its proposals were not reflected in the negotiating text despite its submission in time. In relation to the mitigation by developed countries, it emphasised the historical responsibility of developed countries in causing the emissions. Earlier emissions and proposed future emissions of developed countries have led to an inequitable use of the atmospheric space which has led to reduced space for developing countries. Developed countries have accumulated a climate debt and developing countries must be compensated for the loss of their atmospheric space and the effect on their development due to the rise in temperatures. There must be a clear methodology for ambitious emission reductions by developed countries, taking into account their historical responsibility for the GHG concentrations, the per capita historical emissions and the emissions required by developing countries to meet their development needs and for poverty eradication.

The United States said that Article 4(1)(b) of the Convention refers to "all Parties" taking into account their common but differentiated responsibilities "...shall formulate, implement, publish and regularly update...programmes containing measures to mitigate climate change." The BAP is a comprehensive process for the full,

effective and sustained implementation of the Convention and this includes the implementation of Article 4(1)(b). The US proposals are not outside the Convention but are "enhanced implementation" of the Convention. In the consideration of the kinds of common actions to be pursued by Parties, it said that one might want to include a mechanism for all Parties to inscribe, formulate and publish their actions. The US also referred to a global objective of addressing the long-term nature of the climate problem. Long-term low greenhouse gas national strategies are appropriate and common to all Parties. There are different ways to get there.

In response to the US, **India** welcomed the US intervention that it intends to abide by the letter of Convention and did not seek amendments or re-interpretation. India however did not agree that the actions referred to in Article 4(1)(b) of the Convention are subject to measurement, review or verification. All countries have to comply with reporting as in Article 12.1 but there is no question of this being verified.

Australia said that its reference to common responsibilities of Parties is consistent with the Convention. Differentiated responsibilities lie in view of the different capacities and stages of development of countries.

The **EU** referred to three layers of the mitigation block. The first layer relates to what Parties must do collectively as a global community to combat climate change. There were some notions in the text about this about the need for a global goal for 2050 and with the peaking of emissions collectively. It referred to the 2°C objective as reflected in the Major Economies Forum. The second layer refers to quantified emission reduction objectives which are economy-wide for developed countries which are comparable and a collective effort around 2020. The third layer relates to actions by developing countries that are low-carbon development strategies or low-carbon growth plans. The Copenhagen agreement must capture and reflect the deviation from business-as-usual by developing countries.

Japan echoed the US view that its proposals were consistent in enhancing the implementation of the Convention. It said that the collective effort is to achieve a global goal by 2050 and peaking of emissions is key between 2015 and 2025. Developed countries have to set a mid-term target for quantified emission reductions, while developing countries undertake NAMAs to establish low-carbon growth strategies that lead to meaningful deviation from business-as-usual. These are important elements for a Copenhagen agreement.

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Technology: US Proposal to Remove IPRs from the Table Arouses Developing Countries' Objections

Bonn, 11 August (Hira Jhamtani) – The very sharp differences on intellectual property were fully exposed at the Bonn climate talks on 11 August when the United States starkly stated that it wanted the issue "off the table" in the negotiations on technology transfer.

This drew a rebuke from many developing countries that continued to insist that IPRs can be a barrier to technology transfer and that it is a key issue on the climate change agenda.

The **United States** statement that "We want discussion on Intellectual Property Rights to be taken off the table" was expressed at the session of the working group on technology transfer during the inter-sessional informal consultation of the Ad Hoc Working Group on Long-term Cooperative Action of the UN Framework Convention on Climate Change.

The US delegate said, "We cannot and will not support discussions that seek to undermine enforcement of IPR. It is an essential building block for innovation." She added that some proposals put forward by UNFCCC parties will undermine IPRs and this will hinder the development of new environmentally sound technologies. We need the technologies and changing the IPR regime will not achieve this, she said, adding, "we do not see that IPR should be discussed in the Convention, and want to see the discussion taken off from the table."

The informal group on technology was facilitated by Kishan Kumarsingh from Trinidad and Tobago. In response to the US statement, the facilitator said he has no mandate to take the issue off the table as the IPR issue is contained in the 200-page negotiating text.

In contrast to the US, **the Philippines, speaking on behalf of the G77 and China,** said that it is important to address the IPR issue. The group has put in proposals on innovative partnerships on the IPR regime, to look at flexibilities offered by the WTO's TRIPS Agreement, and to look at practices that exist such as compulsory licensing to remove barriers to transfer of technology.

Belize on behalf of the AOSIS (Alliance of Small Island States) agreed with the facilitator that he does not have the mandate to remove anything from the text. **Ghana** said that IPR is an issue we are grappling with and developing countries have made proposals to address the problem. There is no reason to say we do not want to address the issue. IPR is an important issue for developing countries and must be addressed.

Bangladesh said that we must look at IPR related to climate change issues in a different way from the way we look at IPR at the WTO. We are dealing with climate change, and this will need all kinds of technologies for mitigation and adaptation. Developing countries like Bangladesh need technologies for adaptation, which means looking at water security, food security and survival issues. So we must be innovative in looking at the IPR issues in this way. We need some collaboration for Research and Development as ways to overcome the IPR issues.

Uganda, speaking on behalf of LDCs, said the IPR discussion is not aimed at discouraging innovations. It is an important issue and must be addressed. **Indonesia** said that IPRs should not be a barrier for technology transfer and there must be discussions on how to solve the issue. **Argentina** said IPR is an important issue for developing countries and should be given due attention. We need to face the issue in a serious and urgent way.

Bolivia said it sees IPR as a barrier for technology transfer and hurts the full compliance of achieving the objectives of the Convention. The flexibilities in TRIPS currently are not enough. We face issues such as multiple patents taken out in different countries that would cost developing countries time and money to trace the multiple

patents before the technologies can be acquired or transferred. Thus the revision of the current IPR regime is important and the G77 and China has put forward proposals to that effect.

The division on IPRs at the technology working group once again showed this is one of the most contentious issues at the climate talks. The differences are also evident in the section on Enhanced Action on Development and Transfer of Technology in the current 200-page negotiating text.

During the 11 August meeting, the facilitator distributed a paper with a table summarizing his view on the issues of convergence and divergence in the text on technology within the 200-page document. The table lists the issues according to the sub-headings of the scope and objectives; technology needs assessments (TNA); technology action plan; cooperative Research and Development; IPRs, institutional arrangement, and financing technology.

In the table, the biggest issue on which there is divergence is IPRs (paras 187-189 of the negotiating text). There is a divergence on "enhanced protection of IP to enhance innovation" versus "options for flexibility to address IPRs." On the options for flexibility, the table includes the following: compulsory licensing, patent pooling, preferential/ differential pricing; IPR sharing for collaborative R&D; review of all IPR regulations; revoking patent rights, limited time patents, proposed Declaration on IPRs and environmentally sound technologies, exemption of LDCs/vulnerable countries from patent protection for climate-related technologies, institutional arrangements to address IPR issues.

[These options listed in the table are a summary of proposals made by several developing countries and their groupings, including the G77 and China, and which are included in the 200-page negotiating text].

Two other divergent issues listed in the table are linked to IPR. One is about technology information, where some countries would like to include the information on IPR and licensing as part of the platform. The second is on technology innovative centres, where there are views that the network of these centres is also linked to sharing of IPRs.

On objective, scope and guiding principles, the divergent issues were: (a) the different characteristics of a technology mechanism versus a framework for technology versus a set of actions; (b) the scale and role of public and private financing; (c) the nature of national actions.

On the technology action plan, some countries ask for an international technology action plan to be elaborated by a new constituted body on technology which would oversee implementation while others only want an international or national action plans and roadmaps. There is also divergence on the scope of the international technology action plan, whether the plan should be linked to a financing scheme, and who should be the beneficiaries and who should provide financial resources.

Another important divergent issue was on institutional arrangement. Some countries want a subsidiary body on technology, while others prefer only an advisory group or the existing expert group on technology transfer. On financing, some countries would like to form a specialized technology fund under the Convention, while others do not.

The table also lists several areas of convergence, for example five points on scope and principles, and two points on technology action plan. However some developing countries questioned whether there is indeed convergence on some of these issues.

The Philippines, speaking on behalf of the G77 and China, said that the way convergence is interpreted in the chapeau of the facilitator's table will take one day to negotiate, as there are differences in interpretation of an issue, even if there is agreement that an issue should be included. (In the table, convergence is interpreted as where there are no opposing alternative options and where brackets have not been used to identify objections to elements of the text).

The Philippines said that convergence means the meeting of minds and a common understanding. It gave an example that the need to refer to proposed texts to provisions and decisions in the Convention has been listed as an issue where there is convergence of issues. It said that to the G77 and China, this means that any text outside of the Convention and the Bali Action Plan must be taken out, and questioned whether the other partners have the same interpretation.

The parties agreed to use the table as a tool for further discussions, not as a basis for negotiating text. Several developing countries emphasised that they have agreed to this on the basis of trust in the facilitator, and that this should by no means set a precedent for this same process to be used in the other groups.

During the session, Australia suggested that the technology issue be discussed in a smaller group, but this was not agreed to by many developing countries. The G77 and China said that the group is not ready to meet in smaller meetings on this issue.

At the end of the session, the US said that it would be happy to meet with other parties to discuss the IPR issues, but has a strong preference to talk about issues on which Parties can go forward.

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Annex I Emission Reduction Pledges: Low Figures, with Conditionalities

Bonn, 11 August (Hira Jhamtani) – The UNFCCC Secretariat issued an informal note on Monday, 10 August 2009 which compiles information relating to possible quantified emission limitation and reduction objectives (QELROs) of some Annex I (developed country) Parties. This note was further updated and re-issued on 11 August.

The compilation is only of the so-called "bottom up" pledges of some Annex I Parties. The Annex I Parties are Australia, Belarus, Canada, the European Community, Iceland, Japan, Liechtenstein, Monaco, New Zealand, Norway, Russian Federation, Switzerland and Ukraine.

It does not contain the proposals and submissions by non-Annex I Parties for quantified emission limitation and reduction commitments (QELRCs) which have called for much higher figures.

The note also aggregates the values relating to possible QELROs, which are based on the most recent inventory data available on the UNFCCC website, which are based on submissions by the Parties, and which were reviewed by expert review teams.

Based on the data, the secretariat has calculated two sets of figures for emission reductions by these Annex I Parties in aggregate.

The first set of emission reductions was calculated using emissions in 1990 or any other reference year specified by the Parties, excluding emissions from the Land Use, Land Use Change and Forestry (LULUCF) sector, but including emissions from deforestation in accordance with the current accounting rules under the Kyoto Protocol. Based on this, the emission reductions in aggregate for these Annex I Parties are expected to be between 15 and 21 per cent below 1990 levels in 2020.

The second set of figures was calculated using emissions in 1990 or any other year specified by the Parties including emissions and removals from the LULUCF sector. Based on this, the emission reductions in aggregate for these Annex I Parties are expected to be between 13 and 20 per cent below 1990 levels in 2020.

The secretariat noted that these figures need to be considered as preliminary given the uncertainties associated with the information relating to possible QELROs, including the lack of clarity over the accounting rules for the LULUCF sector.

Developed countries, known as Annex I Parties in the UNFCCC, are supposed to commit to reduce their greenhouse gas (GHG) emissions in subsequent commitment periods under the UNFCCC's Kyoto Protocol, beginning in 2013. The first commitment period ends in 2012. The Ad hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) was established in 2005 to consider the further commitment periods for Annex I Parties, as mandated by Article 3.9 of the Kyoto Protocol.

The Annex I Parties that have put forward figures for emission reductions in aggregate, have put forward low figures, with conditionalities, and which are based on different reference years (not 1990). Some have included LULUCF and the flexible mechanisms under the Kyoto Protocol in their calculations.

One of the conditionalities proposed by some Annex I Parties (e.g. Australia, the EC) is that "major developing economies" or "economically more advanced developing countries" contribute to emission reductions. It is not clear what are the criteria and meaning of "major developing economies" and this conditionality has been objected to by many developing countries.

Another conditionality is that other developed countries take on comparable emission reduction or commitments. This refers to the US, which is not a Party to the Kyoto Protocol, although included as an Annex I Party under the UNFCCC. Some Annex

I Parties also asked that accounting rules in the LULUCF sector be clarified before the figures for emission reduction can be estimated.

One of the most recent examples is New Zealand, which announced its 10-20 percent target for GHG emission reductions below 1990 levels by 2020 on Monday, 10 August. New Zealand's target is conditioned on a "comprehensive global agreement". If the international agreement falls short of meeting this condition, New Zealand reserves the right to reconsider the stringency of its target, said the New Zealand Ambassador for Climate Change.

New Zealand's Ambassador for Climate Change made the statement at the opening of the intersessional informal consultation of the UNFCCC, currently being held in Bonn, Germany, from 10-14 August 2009. New Zealand said that it wanted to signal its commitment to a successful and ambitious outcome from the UN Climate Change Conference in Copenhagen in December.

New Zealand's condition that there must be a "comprehensive global agreement" means that: (a) the global agreement sets the world on a pathway to limit temperature rise to not more than 2°C; (b) developed countries make comparable efforts to those of New Zealand; (c) advanced and major emitting developing countries take action fully commensurate with their respective capabilities; (d) there is an effective set of rules for land use, land-use change and forestry (LULUCF); and (e) there is full recourse to a broad and efficient international carbon market.

It is expected that New Zealand would meet its target through a mixture of domestic emission reductions, the storage of carbon in forests, and the purchase of emission reductions in other countries.

Whether the world achieves this comprehensive global agreement, where New Zealand's final target will lie within the 10% to 20% range, will depend on the overall ambition of the agreement and the effectiveness of the rules.

Similarly, other Annex I Parties' targets that have been officially announced, are provided in Annex I of the secretariat's informal note.

For instance, Australia announced that it would reduce emissions by 25 per cent from 2000 levels by 2020 if the world agrees to an ambitious global deal capable of stabilizing GHGs in the atmosphere at 450 ppm CO2 equivalent or lower. It retains a previous policy commitment to unconditionally reduce its emission by 5 per cent below 2000 levels by 2020, and to reduce emissions by up to 15 per cent by 2020 if there is global agreement which falls short of securing stabilization at 450 ppm CO2 equivalent, and under which major developing economies commit to substantially restrain emissions and advanced economies take on commitments comparable to Australia.

Canada has a domestic goal to reduce its total GHG emissions by 20 percent by 2020 relative to 2006 levels, and a longer-term goal of 60-70 per cent below 2006 levels by 2050. It does not assume or provide significant use of the Kyoto Protocol flexible mechanisms, in particular emission trading.

The EU has legislation that provides for unilateral emission reductions of at least 20 per cent below 1990 levels by 2020 and by 30 per cent if other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries contribute adequately according to their responsibilities and capabilities.

Japan announced a target of 15 per cent reduction from 2005 levels by 2020, based on pure domestic reductions. This will pave the way for 60-80 per cent reduction by 2050. Japan will consider how to treat credit offsets and sinks during the course of the negotiations.

Norway intends to undertake a total GHG emission reduction of 30 per cent by 2020 relative to 1990 levels. It aims to reduce two-thirds of the emissions domestically. In the context of a global agreement, it intends to cut global emissions equivalent to 100 per cent of its own GHG emissions, and become "carbon neutral" by 2030.

The US, which is not a Party to the Kyoto Protocol, but is the world's largest historical and current GHG polluter, is proposing zero percent reductions below 1990 levels by 2020. The US House of Representatives' American Clean Energy and Security Act of 2009, provides for a reduction target of one to four percent below 1990 levels by 2020 and provisions that allow 2 billion tons of offsets to be used. According to some NGOs, this means that if all offset credits are used, domestic emissions from fossil fuels will continue to rise until 2026 before declining.

In contrast, developing countries are calling for deeper cuts in GHG emissions by Annex I Parties commensurate to their historical responsibility, current per capita emissions, their capabilities in technology, finance and institutions, and in accordance with the share of global emissions required by developing countries in order to meet their social and economic development needs, to eradicate poverty and to achieve the right to development.

Bolivia, Malaysia, Paraguay and Venezuela, supported by Sri Lanka, have proposed that Annex I Parties reduce their domestic GHG emissions by

more than 49 per cent below 1990 levels in the commitment period 2013-2017. Their total emission reductions will be determined by applying the principle of historical responsibility/debt and addressing the needs of developing countries. The difference between the total and domestic figures can be met through financial transfers under the UNFCCC.

A coalition of 37 developing countries proposed that the emission reductions by Annex I Parties in aggregate be at least 40% below 1990 levels by 2020.

The Alliance of Small Island States (AOSIS) has called for a reduction of at least 45 per cent below 1990 levels by 2020 and more than 95% below 1990 levels by 2050.

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Finance Group: South Calls for Scaling up Climate Funds

Bonn, 12 August (Meena Raman) – Developing countries called for the scaling up of financial resources from developed countries to address climate change under the United Nations Framework Convention on Climate Change.

The Africa Group represented by South Africa said that it would not be able to accept any financial commitment which is not at least 1% of the global GDP, amounting to about $400 billion a year for climate finance. Comparing this with the amounts provided by developed countries for their economic stimulus packages, it said that its proposal was reasonable for a global humanitarian crisis such as climate change.

Other proposals for innovative financing included the use of special drawing rights for sustainable development, proposed by Indonesia.

Developing countries also rejected proposals by developed country Parties for developing countries to contribute to climate financing, stressing that this was a commitment of developed countries under the Convention to provide the financing needed to developing countries.

They stressed the need for a new financial mechanism that was more effective under the Convention to address the problems they faced under the existing operating entities.

These views were expressed at a session of the informal group on finance on 11 August under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA). The informal group was facilitated by Ambassador Luiz Machado of Brazil.

The Philippines speaking for the **G77 and China** said that as in the case of technology transfer, agreement and forward movement on the issue of financing for developing countries is crucial for any agreed outcome in Copenhagen.

In reference to the Group's proposal for a new financial mechanism under the Convention, the Philippines explained the reason for its proposal. For so long, Parties have provided initial guidance for the functioning of the financial mechanism. After the first review, there was an operating entity which was the Global Environment Facility (GEF) and Parties have been providing guidance to that through the years. The Group's proposals for a new financial mechanism are from practical experience, to address the problems that were found. This relates not only to the issue of governance, but also the multiplicity of governance outside the UNFCCC. This should be assessed in terms of coherence but that is an impossible task, for how can Parties assess the World Bank financing? Parties have not been able to do that under the GEF, what more institutions like the World Bank that are outside the UNFCCC.

If Parties are serious about addressing the grave threat of climate change, governance of the financial mechanism must be under the authority of the Conference of Parties. The Group has proposed a quantum for the financing as a percentage (of the GNP of Annex 1 Parties of between 0.5%-1%). The financial resources should be scaled up and must come mainly from public funds. It does not preclude the possibility of other sources of funds in terms of venture funds for technology transfer. There is also a need for a compliance mechanism to ensure that the commitment for financing by developed countries is complied with. On the guiding principles for the financial mechanism, the Group reiterated the principle of equity and common but differentiated responsibility, direct access, country-driveness and for the mechanism to be under the authority of the COP.

On the negotiating text, the Group expressed difficulties in locating its inputs in the negotiating text. The Group once again requested for attributions to be placed in the text so Parties can determine whose proposals the various paragraphs reflected.

South Africa, speaking for the **Africa Group**, said that the question of institutional arrangements

is only one part of the financing issue. The scale of financing, sources of funding, a facility for access and delivery would inform how Parties design an institutional framework.

The Convention provides the framework for negotiation. Referring to Article 4.7 of the Convention (which states that the extent to which developing countries are able to undertake adaptation and mitigation measures would depend upon the extent to which developed countries provide technology and financing) South Africa said that the Group would not be in a position to support proposals that call for all Parties to contribute to finance. It would also not be in a position to support an approach that differentiates access to funding among developing countries.

It also said that financing should be new, additional and predictable. On the sources of finance, it proposed the following criteria viz. recognition that climate change is an additional burden for developing countries; climate funding is new and additional; support for proposals that place emphasis on public finance and not those that emphasise the role of markets over and above public funding. Access to financing should be simple and improved and ensure direct access. Africa would not support text that sets condition**s** such as specific enabling environments; fiduciary standards or planning requirements.

There is convergence of views that finance is important. There is divergence on the scale of finance, balance between public and private approaches, institutional arrangements as to whether to have new mechanisms or use existing ones and the type of finance to be provided i.e. whether full costs or incremental costs. These are quite fundamental issues of divergence.

Barbados, speaking for **AOSIS**, said that on guiding principles, financing needs to be additional and predictable, for enhancing implementation. It must significantly deliver resources in terms of magnitude. It said that it was ironic that there are many proposals for enhanced action by developing countries for more National Adaptation Plans (NAPAs) and plans for mitigation actions.

The question is what do countries do after developing these plans? Do developing countries have to shop around for funding to implement them? As was the experience with the NAPA process, the immediate needs of developing countries were identified, the plans were costed but they were under-funded. Parties should not call for development of plans of action by developing countries without accompanying that with the support needed. Access to funds must be direct and simplified. In relation to the support to be provided, there should be prioritisation for the needs of the LDCs and the small-island states and this is consistent with the BAP and the Convention.

Uganda speaking for the **LDCs** said that the implementation of NAPAs has been disappointing. The problem arises with inadequate resources for their implementation. Mobilisation of adequate and predictable resources is key for a Copenhagen outcome. These funds must come largely from the public sector. The private sector can only play a complementary role.

Indonesia echoed the need for scaling up the level of financial resources. As an innovative source of finance, it proposed the implementation of the principle of external debt swap or debt relief for the sustainable development of developing countries that arose from ODA and other bilateral/multilateral sources, or the usage of special drawing rights for sustainable development.

Saudi Arabia said that proposals in the text that ask developing countries to also bear the responsibility for financing are unacceptable. Such proposals should be eliminated. Financing has to be by developed country governments and not through market-mechanisms such as taxes on developing country exports. It also called for a percentage of not less than 1% of the GDP of developed countries for climate financing.

China expressed concern over proposals regarding sources of financing that called for all Parties under the Convention to be involved in the mobilisation of the resources. Such proposals contradict the Convention and the principle of common but differentiated responsibilities and must therefore be deleted. Developing countries are not begging for assistance but want their right to development to be defended and for the fulfilment by developed country Parties of their obligations under the Convention. They should not shift their responsibility and place more emphasis on the markets. Markets are not predictable, as has been experienced following the financial crisis.

Colombia and **Costa Rica** said that a shared vision cannot be complete without a financial mechanism. They called for $30 billion for adaptation funding and $65 billion for mitigation actions to be provided on an annual basis. They also called for a share of proceeds of 8 per cent on joint implementation and emissions trading and market-based mechanisms under the Kyoto Protocol.

Bolivia said that the guiding principles for the financial mechanism should be effective and transparent, with no conditionalities. It must be additional to ODA and must be predictable and come

from public funds directly to developing countries. Markets should not be relied on as they cannot regulate GHGs and they are a problem rather than the solution.

India supported the views of the G77 and China as well as the views of South Africa. It said that Parties have not reached convergence. It was clear that a large majority of delegations have reached convergence on the financial mechanism approach and that is the mainstream which is loud and clear. It was only logical therefore to seek an overall consensus to focus on the mainstream view as set out by the G77 and China and the Africa Group. If there are delegations that disagree with the individual elements, they should explain why they defer from this view.

Pakistan said that the business–as-usual approach in relation to finance will not work. The fragmentation of funding resources is at the heart of the issue. There is a need to improve this. There is a need for additionality of resources, predictability and stability of funding. The Adaptation Fund (under the Kyoto Protocol) hinges on the carbon market which goes up and down. Such funding is not capable of being stable. It is premature to consider the sources of funding when the scale of effort needed is still unknown.

Mexico said that the revised negotiating text contains additions that it could no longer recognise. Referring to the economic crisis, it said that the experience showed that it was possible to mobilise large sums of money. The BAP should lead to an increase in mobilisation of funding. The Mexican proposal attempts to measure the capacities and responsibilities of countries to make contributions. Some developing countries have more capacities than others to make contributions and those who are in a position to do so must contribute to providing financial resources.

The **United States** said that there were new developments in the country and that the US is back at the table and would be constructive. It will triple its financing and there would be a nine-fold increase of resources for adaptation. The share of financing for adaptation should go mostly to vulnerable countries. For the first time, the US has money for the Least Developed Country Funds and the Special Climate Funds. The US domestic legislation includes a financial component.

Through domestic trading programmes, funds will be set aside for additional funds for technology, adaptation and forests. It estimates this to be several billions of USD per year. Offset programmes would also be larger. The US said that the larger and wealthier developing countries that are capable of contributing financial resources should do so to those who are less able to cope due to climate change.

It said that both public and private sources of funding including the carbon markets must play an important role in climate financing. Existing bilateral and multilateral sources of funding should also be available. It said that there were broad areas of agreement in relation to agreement on the institutional arrangements that must be transparent, effective and have balanced representation. The financial architecture must match needs with resources.

Japan said that financial resouces for mitigation and adaptation should be scaled up urgently and substantially and this was an area of convergence. Financing to address climate change should be from multiple sources, including public and private funds. It said that expertise present in the existing institutions should be utilised to the maximum. Transparency, fairness, efficiency, and balanced representation are pre-requisites for a financial mechanism. Parties should not underestimate the value of private finance as well as bilateral, regional and multilateral channels.

Luiz Machado, the facilitator of the informal group, said that he would provide Parties with a table indicating areas of convergence and divergence for the deliberation of Parties at the next meeting of the group.

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Shared Vision Group Discusses "Jigsaw Puzzle" and Clashes over Work in Other Fora

Bonn, 13 August (Meena Raman) – Developed and developing countries expressed divergent views over what the shared vision must be in addressing climate change at an informal group meeting under the United Nations Framework Convention on Climate Change in Bonn.

At the meeting on 12 August of the informal group on 'shared vision' under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) to further work under the Bali Action Plan, the G77 and China gave a long elaboration of its views on shared vision. It called for a holistic approach and used the analogy of a jigsaw puzzle and the need for all the pieces to be created and to be put in their proper place for the whole picture to be completed.

An important exchange took place about the relation between the UNFCCC talks and the process in other fora. The United States, the European Union and Australia drew reference to 'agreements' reached in fora outside the UNFCCC such as in the Major Economies Forum (MEF) to advance the concept of the shared vision under the AWG-LCA process.

The United States, represented by Jonathan Pershing, referred to the MEF and said that there was agreement to recognise the scientific view that the increase in global temperature above pre-industrial levels ought not to exceed 2 degrees C.

The US and other developed countries said that they were encouraged by these processes in deliberating what the shared vision of Parties must be under the Bali Action Plan.

India, represented by its special climate envoy, Shyam Saran, took issue with these statements and said that its participation in these other processes was with a clear understanding that these fora were not where negotiations on climate change are taking place. It said that negotiations on climate change are under the UNFCCC. It was not correct to use the formulations or text agreed in other fora to influence negotiations under the UNFCCC, said India.

India said that the MEF Declaration which recognised the scientific view that the increase in global average temperature above pre-industrial levels ought not exceed 2 degrees C was premised on acceptance of the fact that peaking will be longer in developing countries, bearing in mind that social and economic development and poverty eradication are the first and overriding priorities of the developing country Parties. There should not be selective quoting of what was stated, said India.

It added that it has consistently taken the position that any long-term stabilization goal must be achieved on the basis of an equitable sharing of the atmospheric resource, since denial of their equitable share would prevent developing countries from reaching their development potential. This point is accommodated in the MEF Declaration, which recognises that economic and social development and poverty eradication are not only the first but also overriding prorities of the developing countries. Developing countries cannot be expected to sacrifice these priorities, it said.

It may also be noted, said India, that while it recognised a scientific "view", it was not endorsing a scientific finding because this does not exist at this point in time.

The informal group on shared vision was facilitated by the Chair of the AWG-LCA, Michael Zammit Cutajar of Malta.

The G77 and China also gave a comprehensive statement on how it viewed the shared vision.

Ambassador Lumumba Di-Aping of **Sudan**, speaking for the **G77 and China** said that the shared vision encompasses all the four building blocks of finance, technology, adaptation and mitigation into a coherent whole. "It should express our shared and collective goal of taking enhanced actions on all

relevant fronts to address climate change. However looking at the 200-page revised text, there is no consensus yet." Though there is aspiration of a shared vision, there is no agreement on it.

The G77 and China would like a holistic and comprehensive view and an ambitious set of goals within the framework of our shared principles enshrined in the Convention.

Like all visions, our shared vision in the AWG-LCA must have all the important pieces as in a jigsaw puzzle, and all these pieces have to be placed in exactly the right places, so that the parts become part of a whole, and the whole is more than the sum of its parts.

Lumumba pointed to the G77-China text on shared vision in the 200-page text. The group's text states that the shared vision integrates the 4 building blocks in a comprehensive and balanced manner to enhance the full, effective and sustained implementation of the Convention, to achieve sustainable development, enhance actions and integrating the means of implementation needed to support action on adaptation and mitigation, to achieve the ultimate objective of the Convention.

The G77 and China proposal reminds us that the ultimate objective includes "to enable economic development to proceed in a sustainable manner." Lumumba said that rapid economic growth for developing countries is a pillar of the global deal.

The shared vision must be pursued in accordance with the principles and provisions of the Convention, including equity and common and differentiated responsibilities. It must take full account of the economic and social impacts of any global goal for emission reductions on developing countries. It must recognize the right to development. It must address all implementation gaps especially on finance and technology commitments. Lumumba stressed that "it is impossible to envisage a deal where rapid economic development is not at its heart."

The G77 and China proposal envisions that a long-term goal must successfully integrate the means of implementation (technology, finance and capacity building) to enable and support mitigation and adaptation actions in developing countries. The group's text reminds us of the key article 4.7, that the extent to which developing countries can take action depends on the extent to which developed countries meet their finance and technology commitments.

This, said Lumumba, is an "article of faith." It is critical that this is taken into any assumption of finding convergence or reaching agreement.

He added that the G77/China proposal also wants a shared vision that demonstrates that developed countries are taking the lead in modifying long-term trends in anthropogenic emissions. In other words, the developed countries have to prove that their recent actions and their future targets and actions must be in line with the deep emission cuts that the most recent science says are needed.

"We envision that if we are to strive towards a global goal for long-term emission reduction, all the pieces of the jigsaw have to be created and put in their proper place," said Lumumba. "The long-term goal would also be a piece of the jigsaw, also put in its proper place.

"The long-term goal cannot be the whole of the jigsaw, nor can it be a distorted piece either in size or shape or content, for then it would cause a distortion of the whole jigsaw. An over-concentration of the discussion on this global goal without placing it in its proper context and its proper place would be missing out and neglecting all the other essential pieces of the picture."

This places an "unimaginable burden" on the shoulder of the Chair, said Lumumba, as attaining the balance is not an easy task.

He said that the G77 and China had criteria on what should be in the shared vision text, and that some of the proposed texts do not fall under the criteria. These criteria include that the shared vision must be about implementing the finance and technology that enables developing countries to act; including that the vision must be in accordance with the principles and provisions of the Convention; and that the vision fully respects and articulates the equity and common and differentiated responsibilities principle that infuses the whole Convention.

"We suggest that any proposed texts that are not in line with these criteria should be removed," said Lumumba. For example, any language that implies that developing countries have to undertake more than their present obligations under the Convention does not have merit, even if this is used to pressurise developing countries to agree.

He said that on the other hand, there is language in several paragraphs that the Group could consider to include. He cited language in the text that current atmospheric concentrations are principally the result of historical emissions of greenhouse gases, the largest share of which has originated in developed countries and that developing countries face serious adverse effects of climate change as well as threats to their future economic potential due to insufficient access to shared global atmospheric resources.

The concept of historical responsibility, and its use in helping us to reach a fair and just balance in our agreed actions and measures, should be part of a shared vision, which the Group can consider working further on, and would welcome further elaboration along these lines.

The G77 and China said that according to science the world has only some years ahead to curb global emissions so as to limit the concentration of greenhouse gases. However before we translate the scientific facts into a policy statement to which we can all commit, the many pieces of the jigsaw picture have to be in place. There is a need to balance the need for global emission reduction and rapid economic development in developing countries.

For example, the principles of equity, CDR and historical responsibility have to be a very central part of the answer to many pressing questions. Lumumba posed the following questions. If there is a global goal for emission cuts, we need to know how much the developed countries are going to do first, and whether developing countries are being asked, directly or indirectly, to do something.

What is that something they are asked to do in concrete terms as a residual after the developed countries state what they are prepared to do? Is the sharing of responsibilities fair or unfair? What should we do about it, and how do we go about this? These are the hard questions, and if they are answered, they would be the important pieces on which to proceed.

He mentioned another set of questions which has to be resolved though equity. What are the financial resources and technology transfers that are required in adequate amounts and in correct qualities or conditions, if the developing countries are to be enabled and supported to enhance their adaptation and mitigation actions sufficiently to meet the climate challenge? This issue, he said, has to be pinned down.

Other questions are whether these means of implementation are forthcoming. What are the structures and mechanisms we need to put in place to ensure that the adequate funds and technologies are flowing, and that they lead to the actions we all want to see?

As the Convention's article 4.7 and as the Bali Action Plan confirm, the actions of developing countries depend on the finance and technology commitments of developed countries being met. Again, these are hard questions that need answering upfront. "We have a very short time (before Copenhagen). Finding the answers to these questions is the only way to articulate a real and implementable shared vision."

Gambia speaking for the **Africa Group** supported the statement of the G77 and China and said that an economic transition is needed to a low-emission economy promoting sustainable lifestyles and climate-resilient development while ensuring a just transition of the workforce. Developed countries must show their leadership in this regard. There was a need for political determination for an inclusive, fair and effective climate regime.

Antigua and Barbuda speaking for **AOSIS** said that the shared vision will tell Parties what their collective efforts will be. The long-term global goal is an important and central element for all Parties to take action. The shared vision should be a political vision.

Maldives for the **LDCs** said that ambitious action is required to stabilise GHG concentrations in the atmosphere to a safe level. This requires deep emission reductions by developed countries and nationally appropriate mitigation actions by developing countries. The provision of financial resources and technology transfer is also important. The shared vision should be aspirational. Temperature increase should be limited to well below 1.5 degrees C and CO2 levels should be well below 350 ppm.

Algeria said that there was a need to ensure coherence between the elements in the shared vision. Coherence between any global goal and other goals is important as whatever is stated in mitigation requires funding to support actions by developing countries. Developed country Parties should not lose sight of their historical responsibility including for funding adaptation needs.

Micronesia said that the shared vision must be aspirational. It took issue with the numbers expressed in the shared vision part of the negotiating text and said that there was a need to look at the numbers carefully as this can prejudice other decisions.

The **United States,** represented by delegation head Jonathan Pershing, said that the shared vision should be concise and inspirational and be contained in a chapeau of the text. It should reflect the science and the appropriate temperature goal. The Major Economies Forum has agreed to recognise the scientific view that the increase in global temperature above pre-industrial levels ought not to exceed 2 degrees C. There should also be the notion of peaking years. Poverty eradication is the first and overriding priority of developing countries and low-carbon development is indispensable. On the long-term goal, global emissions should be cut by 50% by 2050 and developed countries should reduce their emissions by 80% by 2050.

Australia echoed the views of the US and said that there was progress in high-level fora and meetings such as the G8, the MEF etc where texts from these fora could be useful to look into in the context of the shared vision.

The **European Union** said that the shared vision is an important part of the work of Parties as it provides the narrative that links the building blocks of the BAP. The long-term global goal is a crucial element and all Parties must collectively contribute to fight climate change. It noted developments in other fora (outside the UNFCCC) which are encouraging with agreement on the mid-century global goal and the limit of temperature to 2 degrees C (in an apparent reference to the MEF process). There is a need to also reflect the peaking as well as low-carbon economies and trajectories.

Japan also echoed the US and said that the long-term global goal involved all Parties. Global GHG emissions must be reduced by 50% by 2050 and by 80% by developed countries. There was a need for global peaking and for low-carbon development strategies. The shared vision should also have a mid-term target.

India, represented by its special climate envoy, Shyam Saran, then made a statement that the climate negotiations are only taking place at the UNFCCC and it was not correct to use the formulations or text which are agreed in other fora to influence negotiations under the UNFCCC. It also criticised the "selective quoting" from statements from other fora. (See details at start of article).

At the conclusion of the meeting, Cutajar informed the Parties that the next meeting on shared vision will be held on Friday.

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Unilateral Trade Measures to Protect Climate Change Violate Climate Treaty – Say Developing Countries

Bonn, 13 August (Hira Jhamtani) – Developing countries called on developed countries not to resort to any form of unilateral measures against goods and services imported from developing countries on grounds of protecting the climate as such measures violate the provisions of the United Nations Framework Convention on Climate Change.

In deliberations at an informal group meeting on the 'economic and social consequences of response measures' under the Ad Hoc Working Group on Long Term Cooperative Action (AWG-LCA) held on 12 August, India proposed the inclusion of a draft paragraph for inclusion in the negotiating text. The suggested paragraph reads as follows -

"Developed country Parties shall not resort to any form of unilateral measures including countervailing border measures, against goods and services imported from developing countries on grounds of protection and stabilisation of climate. Such unilateral measures would violate the principles and provisions of the Convention, including, in particular, those related to the principle of common but differentiated responsibilities (Article 3, Paragraph 1); trade and climate change (Article 3 paragraph 5); and the relationship between mitigation actions of developing countries and provision of financial resources and technology by developed country Parties (Article 4, Paragraphs 3 and 7)."

India's proposal was supported by other developing countries including Saudi Arabia, South Africa and Brazil.

The informal group on 'economic and social consequences of response measures' is one of the sub-groups formed to further work under the mitigation building block of the Bali Action Plan.

Australia agreed to the inclusion of the paragraph in the negotiating text but wanted it to be bracketed and said that it needed some more time to study the text as the WTO was the appropriate forum to discuss trade and found it problematic for such issues to be discussed in the AWG-LCA.

In response, India said that the proposal is about the impact of response measures by Parties to address climate change and that this was a matter for this working group and not just the WTO.

Developing countries also said that they faced economic and social consequences of some response measures by developed country Parties which are used to address climate change concerns.

Brazil on behalf of the **G77 and China** said that some actions have more impacts. For instance, the concept of "food miles" will have impacts on the exports of developing countries. Therefore, there must be convergence of efforts between tackling climate change and the economic and social development concerns of developing countries.

Saudi Arabia said the Convention called on Parties not to use climate policy as disguised restriction on international trade, in particular, the exports of developing countries. It urged Parties to remember this principle. All developing countries will be affected by response measures, even the small island states. When greenhouse gas emission taxes are applied to air travel, this will affect tourism on these islands. Applying carbon tariff to goods will affect trade from developing countries. So this issue is very crucial and there must be a clear guidance to have a process on how to alleviate such an impact.

South Africa, speaking for the **Africa Group**, said that Africa should be compensated for the environmental, social and economic consequences of climate change and loss of livelihood. All response measures also affect Africa such as reduction in exports due to concepts such as the "food miles."

Argentina said that there must be concrete actions and measures so that developing countries have assistance to overcome impacts of response measures. There was a need to elaborate what kind of actions is needed to avoid the impacts of response

measures on trade of developing countries and on the economic conditions of developing countries.

Australia said that there is agreement on the need for more information. The question is how better information can be forthcoming, through the national communications and other mechanisms.

Using the national communications to report about the impacts of response measures was also voiced by Japan and New Zealand. Canada said it is important to take a comprehensive approach, and consider the negative and positive consequences.

The **European Union** said there was a convergence of view that this was a complex issue and therefore the need for a better exchange of information. Attention must be given to the most vulnerable countries as they are least able to cope. Parties have to make the transition to a low-emission economy. This poses opportunities but also has socio-economic challenges but addressing response measures should not divert actions from mitigation.

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Mitigation: Call for Separate Discussions on Actions of Developed and Developing Countries

Bonn, 14 August (Meena Raman) – Developing countries called for the separation of dicussions on mitigation actions of developed and developing countries under paragraphs 1(b)(i) and (b)(ii) of the Bali Action Plan. This call was made at the meeting of the informal group on mitigation on 13 August under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) in Bonn.

Several developing countries like Brazil, South Africa, India, China and Pakistan wanted to keep separate the discussions between paragraph 1(b)(i) and 1(b)(ii) of the BAP given the different and distinct nature of both paragraphs in terms of the mitigation commitments of developed country Parties and nationally appropriate mitigation actions (NAMAs) of developing countries.

Japan opposed the idea while the US wanted to integrate the MRV (measurable, reportable and verifiable actions) sections of both paragraphs in the negotiating text.

Developing countries also expressed concerns that there were many conceptual differences in the understanding of what constituted NAMAs, including proposals in the revised negotiating text that go beyond the mandate of the BAP. Pakistan said that the concept of NAMAs had "acquired a life of its own" akin to a virus, which was not the understanding it had under the BAP.

The United States spoke at length and said that there was a need for differentiation among developing countries, with those with greater capacity and responsibility undertaking greater ambition in emission reductions.

Brazil addressed what it saw as essential points in dealing with paragraph 1(b)(i) of the Bali Action Plan (mitigation by developed country Parties). The comparability issue is essential. The commitments of Annex 1 Parties under the Convention provide a very strong basis to guide the work of Parties. The issue is in establishing comparability between these commitments. In this context, there should be negotiations on comparability to rules in the Kyoto Protocol and norms defined by the Conference of Parties (COP).

As regards paragraph 1(b)(ii) of the BAP (relating to nationally appropriate mitigation actions by developing countries), looking at the proposals in the text, there were quite different views on the concept of NAMAs, said Brazil. Many proposals refer to NAMAs and there are conceptual differences regarding them. The issue has to do with proposals that go beyond NAMAs being actions with wider references to strategies, schedules, etc. There is no consensus here and there is a need to have discussions based on previous agreements and on the mandate of the negotiations. Another issue is the idea of the MRV support for NAMAs.

Regarding the specificity of paragraphs 1(b)(i) and 1(b)(ii), there is consensus to deal with different things. There is therefore a need for separate time for discussions for each of the paragraphs in our future work.

South Africa supported Brazil and said that NAMAs are distinct. They are not binding obligations and are not to be used for the basis of differentiation. They are voluntary actions and can include individual actions, sustainable development policies and measures (SD-PAMs), etc. NAMAs are not a crediting mechanism and there is a possibility of double counting of emission reductions. NAMAs are actions at national level. On the MRV support for NAMAs, there is a need to engage in discussions on the details and confront the problem. This appears to be a "chicken or egg comes first" problem. Does one have to register NAMAs first before getting support for finance or does finance have to come first to put NAMAs forward? There are a number of variances. The issue is how the development of NAMAs and the mobilisation of support would enable speedy action.

China echoed the need for a separation of discussions in two parts between paragraphs 1(b)(i) and 1(b)(ii) as they are distinct in terms of form, legal nature and MRV linkage. Parties should respect this. It also shared the concerns of South Africa on the crediting of NAMAs and in the double counting of emission reductions. Emission reductions of developed countries and their providing finance to developing countries are two separate commitments of developed countries.

Malaysia said that Parties were not here to re-negotiate the Convention. The Bali mandate was on how to enhance implementation. This is a red line that should not be crossed. Proposals for new protocols and implementing agreements are matters for the COP and not within the mandate of the AWG-LCA. NAMAs are voluntary in nature. They are conditional upon the support provided and are consistent with Article 4.7 of the Convention.

India agreed with Brazil, China and Malaysia. It said that discussions on paragraphs 1(b)(i) and 1(b)(ii) need to be separated with adequate time for each paragraph. The proposal of one delegation (in an apparent reference to the US) to integrate the MRV sections of developed and developing countries is not acceptable. The MRV of developed country actions have different significance from that of developing country NAMAs which are enabled and supported. It had similar concerns with proposals for the review of mitigation actions in the text.

Pakistan also called for separate slots for discussion of paragraphs 1(b)(i) and 1(b)(ii). The negotiating text was going in too many directions with NAMAs aquiring "a life of its own like a virus". In its view, NAMAs are that which are supported and enabled as in the BAP. If there are to be other actions, they can be called by other names. Pakistan also said that it did not understand what 'BAU' (business as usual) was and it is also not clear on the idea of the registry. The best place for the registry is in the finance chapter.

South Korea said that as regards paragraph 1(b)(ii) there were two points – the legal nature of NAMAs and unilateral NAMAs. There were divergent views on the legal nature of NAMAs — whether they should be legally binding, voluntary or non-binding. This blocks progress in the negotiations. It was important to focus in the agreed outcome that encourages developing countries to voluntarily undertake NAMAs. In the future climate regime, developing countries should be able to freely do NAMAs without fear of its legal "bindingness". The focus should be on the action and not the definition. International recognition is important. It referred to South Korea's own mid-term goal to deviate from business-as-usual emissions. It supported the idea of NAMAs in a registry, schedules or appendix and to consolidate these proposals.

New Zealand said that the products of discussions in other processes (outside the UNFCCC) can be used to borrow language into this process. It said that in relation to paragraph 1(b)(i) there was a need for consistency with the Kyoto Protocol. It questioned the need for the level of prescription in the negotiating text in relation to the types of actions. There was no need to spend time with a long list of criteria for comparability of efforts.

The **US** saw paragraph 1(b)(i) as being quantified emission reductions which would be legally binding. It can be characterised as an appendix or schedule but incorporated into an agreement. That is distinct from developing country actions. Developed countries would be bound to the outcome and a quantitative formulation; a trajectory with near-term and long-term components.

For developing countries, there is a further differentiation. Developing countries with greater responsibility and greater capacities should have bigger ambitions. Actions that they take should be quantified but that does not mean the outcome is legally binding. There is clear differentiation between developed and developing country actions. Not all developing countries have such capacity or capability to act. For LDCs, action can legitimately be expected or likely with a need for support. This does not speak to all countries.

On the question of comparability of efforts, ex-ante initial framing would be a political exercise. What Parties are doing is evaluating the adequacy of each other's proposal here and also between diplomatic efforts elsewhere. There are elements and criteria as Parties evaluate the actions of others. This will include responsibility and capability, measured in terms of emissions, income, costs and circumstances, adaptive responsibility and these will differ from country to country. It is implausible to have a single list or formula that would be appropriate to evaluate comparability.

On MRV, it was useful to integrate the MRV sections. Developed and developing countries have to be varied but the requirement is a common responsibility. It referred to paragraph 66 of the revised negotiating text as a useful model and also to Article 12 of the Convention. It said that there were useful methodologies in the Kyoto Protocol which require a more comprehensive discussion.

On compliance, the US said that the focus should be more on review, facilitation and verification. There was a need for effective MRV and facilitation. The Kyoto Protocol compliance does

not appear to be suited to this forum for NAMAs. The Kyoto Protocol does not apply to countries that have not joined the Protocol.

Australia said that there was a need for annual GHG inventories by all Parties. This can be supported by national communications. The focus is on qualitative actions. There is a need for independent expert reviews of emission outcomes.

Japan did not agree with the suggestions for the separation of deliberations on paragraphs 1(b)(i) and 1(b)(ii). The two NAMAs will be subject to MRV anyway and it wanted them discussed together. It wanted discussion on what will be MRVed: is it policies, actions or measures and who will verify – member States, third parties or others?

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G77/China Criticises Developed Countries' Trade Measures as Being Against Convention

Bonn, 14 August (Martin Khor and Hira Jhamtani) – The Group of 77 and China has called on developed countries not to adopt unilateral trade-restrictive measures against developing countries. If they adopt these trade measures, the developed countries would be passing their mitigation burden onto developing countries, and this would contravene the principles and provisions of the Climate Change Convention, said the G77 and China.

The G77 and China stated that the measures would in particular be contravening the Convention's principles of equity, common but differentiated responsibility and respective capabilities, and the principle enshrined in article 3.5 that the Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties.

[Article 3.5 also states that "Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade"].

The G77 and China made these points on 13 August in a statement of the group presented by Brazil at the sub-group on "economic and social consequences of response measures" during the informal session of the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) at the UNFCCC climate talks in Bonn. The sub-group was formed to discuss Section F of the Mitigation Chapter in the AWG-LCA Negotiating Text, which in turn is dealing with Paragraph 1(b)(iv) of the Bali Action Plan.

The G77 and China also proposed to establish a mechanism, such as a Forum, to identify and minimize the adverse economic consequences of response measures. It also provided the terms of reference of this mechanism.

The statement of the G77 and China commented that developed countries are in the process of designing and implementing trade-distorting measures to combat climate change. The measures mentioned by the G77 and China include carbon border adjustment measures, carbon tariffs, and carbon footprint labeling.

"These measures could have distortive effects on international trade, restrict the exports of developing countries and negatively affect the workers of those sectors that would have response measures, and therefore hinder the social and economic development of our countries," said the group.

"Developed country Parties should not adopt unilateral trade restrictive measures against developing countries in contravention of the provisions of the UNFCCC, as suggested in India's proposal presented during yesterday's meeting," added the statement.

[At the sub-group's meeting on 12 August, India proposed addition to the text as follows: "Developed country Parties shall not resort to any form of unilateral measures including countervailing border measures, against goods and services imported from developing countries on grounds of protection and stabilisation of climate. Such unilateral measures would violate the principles and provisions of the Convention, including, in particular, those related to the principle of common but differentiated responsibilities (Article 3, Paragraph 1); trade and climate change (Article 3 paragraph 5); and the relationship between mitigation actions of developing countries and provision of financial resources and technology by developed country Parties (Article 4, Paragraphs 3 and 7)."]

At the 13 August meeting of the sub-group, besides this Indian draft text being supported by the Group of 77 and China, several developing countries not only supported this text but also proposed that it be included in the 200-page draft text in other sections as well.

India had proposed that its text be incorporated into the mitigation section of the text that deals with response measures.

At the 13 August meeting, China referred to the Indian text and said since the text deals with a broader issue (beyond response measures), it wanted the text to be put as part of the text on the preambular part of the shared vision chapter.

India supported China's proposal but said that its proposed paragraph should figure here (in the response measures section) as well as in shared vision. It has a proper presence in both the sections.

The United States said that on China's proposal, it is true that parties can put new text into the process, but we do have an issue of efficiency of our work and it is a very serious issue. If there is a proposal, a decision should be made on where it should go.

Singapore said it supported China about replicating India's paragraph in shared vision and supported the principles behind the Indian proposal.

The facilitator, Mamadou Hondia from Burkina Faso, said parties can raise issues, and invited parties that support China's proposal to raise the issue in the shared vision group. It is difficult for him to ask another group to take up the proposal.

Saudi Arabia supported China's proposal to transmit the paragraph to the shared vision group, and said it would present it during the shared vision meeting. China also asked for clarification whether procedurally it can request the facilitator to transmit the paragraph to the shared vision group. If not, China can raise the issue at the shared vision group.

The Secretariat said any party can submit a submission, with suggestion to include it in the text. The best is to do it through an official submission process in writing and indicating in which page and which part it should be included, and the submissions will be incorporated.

The G77 and China statement presented to the sub-group also dealt with other matters. It said that "all developing countries will suffer economic and social consequences of response measures. Policies and measures to mitigate emissions should take into account the potential negative environmental, social and economic consequences of response measures on developing countries and consideration must be given to concrete remedies and effective actions to minimize any such consequences."

It added: "There is a need for concrete action related to funding, and the transfer of technology for developing country parties, and to establish a mechanism, such as a Forum, to identify and minimize the adverse economic consequences of response measures as follows:

•Identifying, quantifying and considering means to address the adverse impacts of measures taken to mitigate climate change on developing country Parties.

•Providing support for the integration of economic diversification into sustainable development strategies and for facilitating efforts to achieve economic diversification in developing countries.

•Encouraging direct investment, in particular through technology transfer from developed countries to assist and promote the economic diversification of developing countries.

•Addressing the extent to which measures taken to mitigate climate change that constitute restrictions to trade raise concerns for developing country Parties with respect to their impact on social and economic development in developing countries.

•Removing the barriers to effective technology transfer and of financial resources necessary to respond to mitigation measures."

The facilitator provided a non-paper with a table that provides information on the reordering of the options and alternatives. He also provided titles to the new clustering of paragraphs. The titles are: Proposal for preambular paragraphs; differentiated commitments/responsibilities to address response measures; Financial and technological support; Institutional arrangements.

He said the parameters are: maintain the position of parties, keep all proposals and ideas; and no judgment on whether proposals are in line with the BAP and Convention – that should be done by parties. The restructuring is based on discussion on August 12. The proposal of India has been inserted in the preambular part. It is bracketed as requested by Australia and the US, and as requested by India the entire text has been bracketed. It is clear that the entire text is under negotiation and nothing is agreed until everything is agreed.

He envisaged the following steps: the non-paper will be introduced during the LCA plenary. It will be translated and transmitted to the Bangkok process, with slight editorial changes.

Venezuela said it is concerned about procedural issues. Rules of procedure are made for a specific reason, to build confidence of the parties regarding transparency. It said this is an informal group and the Chair does not have the mandate of the parties to edit the non-paper. If the paper is translated it will become a negotiating text and Venezuela is not ready for that.

Argentina also made a submission during the meeting, and it was announced that this submission is on the website.

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UNFCCC is the Proper Forum for Climate Negotiations – Say Developing Countries

26 August 2009 (Meena Raman) – Developing countries stressed that the United Nations Framework Convention on Climate Change (UNFCCC) is the proper forum for negotiations on climate change and not discussions taking place outside the Convention's process.

India, Ecuador, Colombia and Saudi Arabia made these remarks in response to the United States at the closing session of the informal intersessional meeting of the Ad-Hoc Working Group on Long-term Cooperative Action (AWG-LCA) which ended its session in Bonn on 14 August 2009.

The United States, represented by its lead negotiator, Jonathan Pershing, said that Parties were not moving rapidly enough in the negotiations in the AWG-LCA. Hence, all dicussions at alternative fora including that of the United Nations summit (to be convened by the UN Secretary-General in September in New York) should be advanced. Ideas from those fora should come to the UNFCCC to solve critical problems, said Pershing.

India's climate envoy, Mr. Shyam Saran, said in response that while it would like to see the work of the Parties advance rapidly and was conscious of the deadline imposed upon Parties by Copenhagen, it is the UNFCCC that is the multilateral negotiating forum and consensus must be sought and reached here. Impatience with the proceedings does not justify seeking solutions in fora outside the UNFCCC.

India has been participating in those other fora on the explicit understanding that deliberations there are not in the nature of parallel negotiations, nor aimed at pre-empting in any manner decisions which must be taken under the UNFCCC. The deliberations in those fora are seen as helping in providing momentum to the negotiations here, not substitute them, said Saran.

In India's assessment Parties were making what appears to be slow progress due to attempts to diverge from principles and provisions of the UNFCCC and to go beyond the Bali Action Plan. Saran was of the view that if Parties proceeded to work to adhere scrupulously to the principles and provisions of the UNFCCC rather than seek to re-interpret its provisions selectively, the work would be easier. For example, the principle of common but differentiated responsibility cannot be interpreted to set aside the aspect of historical responsibility, he said. Another example is the extension of the review procedure to all countries, instead of forming the differentiation between developed and developing countries, already recognised in the UNFCCC.

Saran expressed hope that in future work, Parties recognise that what is sought to be achieved in these negotiations is not to arrive at a new climate treaty but rather to enhance the implementation of the existing treaty. This was the mandate given to Parties by the Bali Conference of Parties and incorporated in the Bali Action Plan, he added.

Ecuador said that the UNFCCC is the only forum where decisions are taken on the negotiations. It recalled that the commitments of Annex 1 countries go beyond global cooperation and they have a social and historical responsibility to fulfil their commitments.

Colombia agreed with India that the UNFCCC is the principal forum for negotiations.

Saudi Arabia said that the UNFCCC is the only negotiating body and the meetings of the G8, Major Economies Forum etc are not binding on the negotiations. Parties cannot say that whatever is agreed in those fora outside the UNFCCC has agreement here.

The **European Union** said that serious progress needs to be made in the months ahead. There was need for further consolidation and negotiation. Concentration is needed on substantive political issues. Parties should not lose the overall goal of preventing serious consequences of climate change.

There is a window of opportunity and unprecedented effort of global cooperation was now needed.

On the way forward to the next meeting in Bangkok in late September, Chair of the AWG-LCA, Michael Zammit Cutajar of Malta, said that Parties have the revised negotiating text (a 200-page document) as a starting point. It was the repository of the proposals of Parties and attribution is now provided (indicating in the text which proposals are from which Parties. The G77 and China had at the start of the August Bonn meeting asked for attributions to be provided to guide Parties). He said that this revised negotiating text would not be translated to the other UN languages.

Referring to the five open-ended informal groups (on adaptation, mitigation, technology and capacity-building, finance and shared-vision), Cutajar said that work in the Bonn session had advanced at different speeds. (The mitigation session had five sub-groups dealing with mitigation in developed and developing countries, forests, cooperative sectoral approaches, market-mechanisms and the economic and social consequences of response measures).

Facilitators of the informal groups on adaptation and technology, of the mitigation sub-groups on forests, co-operative sectoral approaches and economic and social consequences of response measures had facilitated new textual proposals as well as tables indicating areas of convergence and divergence as regards the issues. Cutajar said that the work of the informal groups will be part of the background documents for the work of Parties at the session in Bangkok.

He also said that a scenario note will be prepared for the Bangkok session, and that it may not be wise to schedule work for the whole two weeks. Instead, Cutajar said that he will provide a workplan for the first part of the session. Unlike the Bonn session which was informal, the Bangkok meeting will be a formal one and will constitute the first part of the AWG-LCA's seventh session, while the meeting in Barcelona in November will be the second part. Consequently, Cutajar said that the informal groups would be contact groups and the facilitators will be termed as chairs of the contact groups.

In relation to the work of Parties, **Venezuela** reaffirmed the need to implement the mandate of the Bali Action Plan. It is crucial that work of Parties at next meeting is conducted in an environment of transparency. Non-papers are to provide guidance to Parties. It is important for the process to have an equitable and balanced agenda so that small delegations can equitably participate.

Climate Briefings for Bonn

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Briefing Paper 1

UN Climate Change Talks

Intersessional Informal Consultations

10 August – 14 August 2009, Bonn

Move to Tax South's Imports on Climate Grounds is Unfair[1]

By Martin Khor, Executive Director, South Centre

Developing countries are opposing a move by the United States Congress to impose charges on developing countries' imports linked to their emissions of gases that cause climate change as this unfairly pushes the costs of coping with climate change onto them.

Can and should developed countries impose extra charges on the imports of developing countries based on the level of carbon dioxide and other Greenhouse gases that are linked to producing the imports?

This has become a burning issue, especially since the United States' House of Representatives passed an energy bill (that deals mainly with climate change) at the end of June.

Part of that legislation (known as the Waxman-Markey bill) obliges the US President to place a charge on importers of certain products that come from large numbers of developing countries by 2020.

The importers will have to buy "allowances" for the emissions of the products they bring into the country. In effect, this is like putting an extra tax or duty on the developing countries' imports, and the rate depends on how much carbon dioxide is emitted during the manufacture of these products.

The bill's advocates say this is needed so that the United States' domestic firms, which will also have to pay for emission allowances, can maintain their competitiveness vis-à-vis imports.

The US bill will limit the total level of emissions for the country. Since other developed countries are obliged to cap their emissions at a level still to be negotiated, the United States' proposed import measure will apply only or mainly to developing countries. Least developed countries are exempted, as also those developing countries accounting for a small share of the world's total emissions.

The middle-income developing countries and those with large populations will be affected. Importers of their heavily-traded energy-intensive products will have to buy emission allowances, a measure that will raise the prices of the imports, which could affect their sales.

The products to be subjected to this new import charge are expected to include chemicals, iron and steel, cement, glass, lime, some pulp and paper products, and non-ferrous metals such as aluminum and copper.

The two biggest developing countries – India and China – have already attacked this part of the Waxman-Markey bill as constituting disguised protectionism and being against the rules of the World Trade Organisation.

[1] Published in *The Star*, Malaysia, on 6 July 2009

The Indian Environment Minister Mr. Jairam Ramesh described carbon tariffs as "pernicious". He said that climate change should not be negotiated at the WTO.

Mr. Yao Jian, a spokesperson of China's Ministry of Commerce, on 3 July criticised developed countries for proposing to impose carbon tariffs. "China has consistently advocated that the international community faces climate change together, but some developed countries have advocated using carbon tariffs against imports," Mr. Yao said. "This violates basic WTO rules. It only pretends to protect the environment, but really it protects trade….To put out carbon tariff policies during the economic crisis and ahead of the annual climate change conference this year is not timely. It doesn't strengthen faith in the international community's cooperation against the crisis."

The Waxman-Markey bill was passed by a small majority the US House of Representatives in the last week of June. The US Senate has also to vote on the bill, and it is uncertain whether the vote will succeed. A final Congress bill will then have to be sent to President Obama for his approval.

Under the Waxman-Markey bill, the import measures will be automatically applied by 2020, unless the President declares that the measures are against the national economic interest, and Congress approves this declaration.

The use of trade measures with the effect of blocking out developing countries' imports on climate grounds is about to generate great controversy and may result in a severe blow to the WTO and the multilateral trading system, as well as sour the atmosphere in the negotiations taking place in the UN's climate convention.

Many developing countries will read the US bill as an attempt to evade its commitment to assist developing countries, and instead to shift the burden of adjustment onto these developing countries.

Under the climate convention, only developed countries have to undertake legally binding commitments to cut emissions, in recognition that they are resposible for much of the emissions in the past.

Under the convention, the developed countries also committed to pay for the costs incurred by developing countries when they take actions on climate change. The convention also says that the extent to which the developing countries act against climate change depends on the extent to which developed countries provide them with finance and technology transfer.

The import measures proposed in the US bill will be seen as an attempt to escape these provisions of the convention, and instead to push the costs of adjusting to a climate-friendly world onto the developing coountries.

Meanwhile controversy is brewing as to whether the proposed US measures are allowed in the WTO. For a measure to be legal under the WTO, it must meet two tests. Firstly, there must be "national treatment", in that the local product is subjected to the same charges as the imported product.

Secondly, products that are like one another should be treated the same way. But the term "like product" is taken to mean an imported good that has the same physical characteristics as the local good. Both should be charged the same rate.

In considering import taxes or charges, it is the physical characteristics of the import that should be considered, and not the processes and production methods (PPMs) that are used in making the product.

Many argue that since the climate-related charges to be imposed are based on PPMs (that is, on how much emissions were generated by the production), this is not compatible with the WTO rules or spirit.

However, others point out that there have been a number of panel cases in the WTO on the PPM issue, and that the decisions of the panels have not been conclusive as to whether an import measure based on PPMs is allowed by the WTO.

If the measure does not clear these two tests, its advocates can try a third method, which is to rely on Article XX of the GATT agreement, which allows for an exemption (from following the GATT rules) on environmental grounds, provided certain conditions are met.

Making use of this environmental exception to impose an extra tax on developing countries' imports based on their pollution levels is unfair to developing countries, because their levels of development, access to financial resources and technology are much lower than those of developed countries.

As the veteran journalist C. Raghavan remarked some years ago, it is an imbalance and unfair to developing countries to have an environment exception to the rules (this favours the developed countries) while the WTO does not have an exception to the rules on developmental grounds (which would favour developing countries).

In any case, this issue can be expected to be brought up at both the WTO and the climate convention, as the developing countries are suspicious that the trade measures proposed in the US Congress would be used to unfairly block their exports. It is one of the issues that will be hotly debated, and that will be for us for many years to come.

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Briefing Paper 2

UN Climate Change Talks

Intersessional Informal Consultations

10 August – 14 August 2009, Bonn

US Protectionism Increases Barriers to Climate-friendly Technologies[1]

By Sangeeta Shashikant, Geneva

The urgent need for affordable technologies to be used as widely as possible to deal with the climate change crisis is facing barriers in new United States policies with protectionist elements.

There is scientific consensus on the seriousness of climate change and recognition of the need for swift worldwide deployment of low greenhouse gas (GHG) emission technologies. Yet, the US, which is potentially the source of crucial climate-friendly technologies, is adopting policies that will strengthen barriers to access those technologies.

Of concern are three laws: the American Clean Energy and Security Act 1978 (amended 2009), the Foreign Operations and Related Programs Appropriations Act 2010, and the Foreign Relations Authorization Act for fiscal years 2010 and 2011 recently approved by the House of Representatives and pending in the Senate.

These contain provisions that condition US participation in any global climate deal and provision of funding (bilateral and multilateral assistance) for climate-related purposes to robust compliance and enforcement of existing international legal requirements for the protection of intellectual property rights (IPRs). The IPRs to be applied and enforced are those formulated in the World Trade Organisation Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement) and bilateral trade agreements.

These developments come as developing countries call for an appropriately balanced IPR system to enable effective transfer of technologies to deal with climate change.

The new US policies raise questions over whether developed countries are serious about fulfilling their commitments made in the UN Framework Convention on Climate Change (UNFCCC), in particular, that the "developed country Parties ... shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention" [Article 4(5) of the UNFCCC.]

Policies pertaining to intellectual property as well as other protectionist policies (e.g. subsidies and border adjustment measures) found in the recent ACES and other Acts being considered by the Congress are likely to have detrimental effects on the ability of UNFCCC Parties to engage constructively and to achieve an ambitious and equitable outcome to deal with the climate problem.

[1] Published in *SUNS* #6750 dated 28 July 2009

Dealing appropriately with the intellectual property (particularly patents) barrier is central to any discussion on technology transfer as patents are monopolies that give the holder the right to exclude others from using the technology for at least 20 years.

There is clear evidence of an upward trend in the patenting of climate-related technologies since the mid-1990s. This trend is likely to continue robustly as climate concerns heighten, funding for research and development increases, and governments adopt frameworks for a greener economy.

In addition, entities of industrialized countries hold most of the technology raising fundamental questions especially on whether developing countries (that are historically least responsible for the climate problem) will be hampered in their ability to gain, on reasonable terms, timely access to the latest mitigation and adaptation technologies as well as associated know-how.

Mark Weisbrot, an economist and co-director of the Centre for Economic and Policy Research, recently noted that "international efforts to slow the pace of worldwide climate disruption could also run up against powerful interests who advocate a fundamentalist conception of intellectual property".

He further noted that the "US Chamber of Commerce is gearing up for a fight to limit the access of developing countries to Environmentally Sound Technologies (ESTs)" as they "fear that international climate change negotiations ... will erode the position of corporations holding patents on existing and future technologies".

Strong provisions on intellectual property in US policies under Congressional consideration, reflect a dogmatic protectionist agenda in favour of its corporations to the detriment of innovation and widespread dissemination of technologies that could potentially save the planet.

The House of Representatives voted on 10 June 2009 to establish a new US policy that will oppose any global climate change treaty that weakens the IPRs of American green technology. The measure is part of the Foreign Relations Authorization Act (H. R. 2410) that has been referred to the Senate Committee on Foreign Relations. An authorization bill is a proposed public law that permits the federal government to carry out various functions and programs.

Section 1120A of the Act states the policy regarding climate change: "To protect American jobs, spur economic growth and promote a `Green Economy', it shall be the policy of the United States that, with respect to the United Nations Framework Convention on Climate Change, the President, the Secretary of State and the Permanent Representative of the United States to the United Nations should prevent any weakening of, and ensure robust compliance with and enforcement of, existing international legal requirements as of the date of the enactment of this Act for the protection of intellectual property rights related to energy or environmental technology, including wind, solar, biomass, geothermal, hydro, landfill gas, natural gas, marine, trash combustion, fuel cell, hydrogen, micro-turbine, nuclear, clean coal, electric battery, alternative fuel, alternative refueling infrastructure, advanced vehicle, electric grid, or energy efficiency-related technologies".

This section is in addition to other general extensive provisions about the Secretary of State ensuring the protection of the IPRs of US persons in foreign countries as a significant component of US foreign policy and for this purpose ensuring the provision of adequate resources at diplomatic missions to support enforcement action and to assist countries to reform their IPR laws.

Another protectionist policy is the amendment of the American Clean Energy and Security Act (ACES) 1978 authored by US Representatives Henry Waxman and Edward Markey of the Democrat party and passed by the House of Representatives on 26 June 2009 (H. R. 2454). It is now awaiting US Senate action and adoption before it becomes US law.

Extensive provisions on intellectual property are found in the Chapter on "Exporting Clean Technology". The stated purpose of the Chapter is to: (i) encourage countries to adopt policies and measures that substantially reduce, sequester or avoid GHG emissions; (ii) promote successful negotiation of a global agreement to

reduce GHG emission under the UNFCCC; and (iii) promote robust compliance with and enforcement of existing international legal requirements for the protection of IPRs as formulated in the TRIPS Agreement and bilateral trade agreements.

It recognizes that developing countries are historically least responsible for the cumulative GHG emissions that are causing climate change and they "lack the financial and technical resources to adopt clean energy technologies and absent assistance their greenhouse gas emissions will continue". It also acknowledges its commitment to transfer technology under the UNFCCC and the Bali Action Plan adopted by UNFCCC Parties in December 2007 which is the mandate for ongoing climate negotiations.

However, it sees "Investments in clean technology in developing countries" as an opportunity to "open up new markets for United States companies" and stresses that "Any weakening of intellectual property rights protection poses a substantial competitive risk to US companies and the creation of high-quality US jobs, inhibiting the creation of new green' employment and the transformational shift to the Green Economy' of the 21st Century".

These provisions create a mechanism whereby allowances generated under a cap-and-trade system would be directed toward developing countries for "qualifying activities". [One allowance represents the permission to emit one ton of GHG emissions. The value of one allowance is not fixed and therefore the value of any assistance provided for under the Provisions is currently indeterminable.]

The Chapter essentially is about conditions that would govern provision of bilateral and multilateral assistance, through multilateral funds or institutions pursuant to the UNFCCC such as the Global Environment Facility or an agreement negotiated under the UNFCCC.

Assistance will only be provided to an "eligible" country for "qualifying" activities. An eligible country is a developing country that must have entered into an international agreement with the US to mitigate GHG emissions or have in force national policies that are capable of mitigating GHG emissions.

To qualify for assistance, the activities must contribute to "substantial, measurable, reportable and verifiable reductions, sequestration or avoidance of greenhouse gas emissions". The Act then provides a non-exclusive list of activities that would be considered as qualifying activities.

For distribution through an international fund or institution, one key condition is that the Secretary of State (or such other Federal Agency head as the President may designate) is required to ensure that the fund or institution contains adequate mechanisms to require that no funds are expended for the benefit of any activity that undermines the robust compliance with and enforcement of existing legal requirements for the protection of IPRs as formulated in the TRIPS Agreement.

Provision of bilateral assistance is conditioned on the activity not undermining the protection of IPRs for clean technology as formulated in the TRIPS Agreement and in bilateral trade agreements. The Act also gives the President the authority to exclude otherwise eligible countries based on the degree of IPR protection in that country.

The Act further contains elements on annual reporting that state that not later than 1 March 2012 and annually thereafter, the President shall submit to the appropriate Congressional committees a report on the assistance provided under the chapter. One element that will be included in the report is an assessment of whether any funds expended for the benefit of any qualifying activity undermined the protection of IPRs for clean technology as formulated in the TRIPS Agreement and bilateral trade agreements.

Failure to protect IPRs sufficiently as required by the US could then result in the suspension and termination of assistance in whole or in part.

The House of Representatives also approved on 9 July 2009 the Foreign Operations, and Related Programs Appropriations Act, 2010 (H. R. 3081) that in Title V provides for funds appropriated to the President for multilateral assistance for the fiscal year ending September 30, 2010. An appropriation Act authorizes the government to spend money.

The Act makes available $225 million for contribution to a Clean Technology Fund and $75 million to a Strategic Climate Fund of the World Bank. While both are available only with specific authorization in another Act of Congress, in the latter case, the Secretary of the Treasury shall consult with the Committees on Appropriations on the proposed uses of these funds prior to making a contribution to the Strategic Climate Fund.

However, the Act conditions transfer of funds to the World Bank on the Secretary of State certifying to the Committees on Appropriations "that all actions taken during the negotiations of the United Nations Framework Convention on Climate Change ensure robust compliance with and enforcement of existing international legal requirements as of the date of the enactment of this Act that respect intellectual property rights and effective intellectual property rights protection and enforcement for energy and environment technology, including wind, solar, biomass, geothermal, hydro, landfill gas, natural gas, marine, trash combustion, fuel cell, hydrogen, micro-turbine, nuclear, clean coal, electric battery, alternative fuel, alternative refueling infrastructure, advanced vehicle, electric grid, or energy efficiency-related technologies".

The protectionist nature of the IPR policies and other policies (e.g. subsidies and border adjustment measures) contained in the recent spate of laws being considered by the Congress threatens a positive outcome in the climate change negotiations when UNFCCC Parties meet in Copenhagen in December this year.

These policies are essentially a response to recent proposals of developing countries on IPRs made in the context of the ongoing climate negotiations to enable effective transfer of technology, an obligation of developed countries under the UNFCCC.

This includes a proposal by the Group of 77 and China calling for climate-friendly technologies to be excluded from patenting as well as proposals by other developing countries in their individual capacity calling for: (i) adoption of a Declaration on IPRs and Environmentally Sound Technologies in relevant fora; (ii) using to the full, flexibilities contained in the TRIPS Agreement including compulsory licensing to access intellectual property protected technologies; (iii) steps to ensure sharing of publicly funded technologies and related know-how; (iv) creation of a "Global Technology Pool for Climate Change" that ensures access to technologies including on royalty-free terms.

A call to share technology has also been made by the US Energy Secretary Steven Chu. A *New York Times* article titled "Energy Chief Seeks Global Flow of Ideas" (March 2009) reported Chu as stating: "If countries actively helped each other, they would also reap the home benefits of using less energy. So any area like that I think is where we should work very hard in a very collaborative way - by very collaborative, I mean share all intellectual property as much as possible. And in my meetings with my counterparts in other countries, when we talk about this they say, yes, we really should do this. But there hasn't been a coordinated effort."

Chu's proposal of letting ideas flow unprotected has made the industry uncomfortable and some experts view these recent policies of the US as an attempt to clarify the US position on intellectual property.

Such a position will not only result in severe consequences for the widespread dissemination of present and future green technologies and the ability of developing countries to reduce emissions without prejudicing their right to development.

It is also likely to have serious implications for development as well as areas ranging from medicines to arts and culture as countries are pressured to adopt higher and higher frameworks of intellectual property protection and enforcement to satisfy developed-country governments and their industry.

The current US policies could also become the basis to deny developing countries the right to use existing flexibilities such as compulsory licensing, exceptions to patents etc, that are embedded in the TRIPS Agreement.

Thus, it is crucial for developing countries to urgently take steps in all relevant multilateral fora but particularly under the UNFCCC to: (i) reaffirm the right to use the existing flexibilities that are available in the TRIPS Agreement to access climate-friendly technologies; (ii) reaffirm that nothing should prevent governments from taking steps to deal with the climate problem; and (iii) implement measures that would overcome barriers (including the intellectual property barrier) to effective transfer of technology for adaptation and mitigation technologies.

Previous compilations of the News Updates and Briefing Papers prepared by the Third World Network for and during the United Nations Climate Change Talks are:

1. Bali News Updates and Climate Briefings
2. Bangkok News Updates and Climate Briefings
3. Bonn News Updates and Climate Briefings
4. Accra News Updates and Climate Briefings
5. Poznan News Updates
6. Bonn News Updates and Climate Briefings (March/April 2009)
7. Bonn News Updates and Climate Briefings (June 2009)

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