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India proposal on neglected issues for Durban discussions raises controversy

Geneva, 22 June (Meena Raman) – The Indian Government has submitted a proposal to the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) to include three contentious but very important issues on 'unilateral trade measures', 'intellectual property rights' and 'equitable access to sustainable development' for inclusion in the provisional agenda of the 17th meeting of the Conference of Parties (COP 17) to be held in Durban, South Africa in late November this year.

These issues have been neglected and not properly addressed in the 2010 Cancun decision on the outcome of the Ad-hoc Working Group on Long-term Cooperative Action under the Convention (decision 1/CP 16) despite being raised by India and a large number of developing countries prior to and in Cancun.

Developed countries, especially the United States, are of the view that these issues have been settled in Cancun. However, most developing countries are of the view that not all the issues were addressed in Cancun and are still unresolved, and therefore legitimate to be brought up as they are part of the Bali Action Plan elements. In this context, India submitted the proposal on the three issues to the Secretariat, in accordance with rule 10 of the UNFCCC's draft rules of procedure.

(The Bali Action Plan was adopted by COP 13 in 2007 and is the mandate for the Working Group negotiations.)

The Indian proposal is for the inclusion of these issues as follows: (i) under the agenda item 'Development and transfer of technologies', a sub-item on 'Mitigation and adaptation actions and technology related Intellectual Property Rights'; (ii) under the agenda item 'Review of implementation of commitments and other provisions of the Convention', to include 'Equitable access to sustainable development' and 'Unilateral trade measures'.

The Indian submission provided the explanatory notes in respect of each additional agenda item as proposed.

On the intellectual property rights (IPRs) issue, the Indian explanatory note states that "at Cancun, Parties to UNFCCC agreed to set up a Technology Mechanism and Networks of Climate Technology Centres with a view to promote cooperation amongst Parties for development and transfer of technologies. While the Technology Mechanism will help build capacity for deployment of existing technologies and dissemination of environmentally sound technologies, there is a need to augment this arrangement in form of removal of constraints at the global level on the development and availability of climate friendly technologies. An effective and efficient global regime for management of (IPRs) of climate friendly technologies is critical to the global efforts for development, deployment, dissemination and transfer of such technologies. In the absence of such an arrangement, the objective of advancing the nationally appropriate mitigation and adaptation actions at the scale and speed warranted by the Convention cannot be met effectively and adequately. Such a regime should promote access to (IPRs) as global public good while rewarding the innovator and enhance the capacity of developing countries to take effective mitigation and adaptation actions at the national level. Conference of Parties should urgently decide on addressing the issue of treating and delivering climate technologies and their IPRs as public good in the interest of the global goal of early stabilization of climate and advancing developing country efforts aimed at social and economic development and poverty eradication."

On the issue of 'equitable access to sustainable development', the explanatory note states that "at Cancun, Parties agreed to a global goal for climate stabilization with a view to hold the increase in global average temperature below 2 degree C above pre-industrial levels and decided that urgent actions be taken to meet this long term goal consistent with science and on the basis of equity. Parties also decided to work towards identifying a time frame for global peaking of green house gas emissions based on the best available scientific knowledge and equitable access to sustainable development. The decisions at Cancun imply that the global goal of climate stabilization in terms of limiting the temperature rise to 2 degrees Celsius above pre-industrial levels should be preceded by a paradigm for equitable access to sustainable development. The achievement of the global goal must not compromise the sustainable development imperatives of developing countries and must fully take into account the overriding priority of social and economic development and poverty eradication in such countries. Keeping in mind the objective of identifying the suitable timeframe for reducing the global emissions on the basis of equitable access to sustainable development, the principle of equity must be defined so as to recognize that the global atmospheric resource is the common property of all mankind and each human being has equal entitlement to use of this resource in the interest of meeting the overriding priorities of developing countries."

On the issue of 'unilateral trade measures', the note states that, "at Cancun, Parties agreed to promote a supportive and open international economic system. Parties decided, inter-alia, 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. Unilateral Trade Measures (UTMs) include tariff, non-tariff, and other fiscal and non-fiscal border trade measures that may be taken by developed country Parties, against goods and services from developing country Parties. Recourse to UTMs on any grounds related to climate change, including protection and stabilization of climate, emissions leakage and/or cost of environment compliance would be tantamount to passing mitigation burden onto developing countries, and would clearly contravene the fundamental principles and provisions of equity, common but differentiated responsibility and respective capabilities, and the principle enshrined in Article 3 of the Convention. Parties should expressly prohibit use of unilateral trade measures on such grounds, as they will have negative environmental, social and economic consequences for developing countries and compromise the principles and provisions of the Convention."

India requested that the 3 issues be included in the COP 17 provisional agenda and developing countries in the Bonn talks that ended on 17 June objected to attempts to have these items addressed by the Subsidiary Body on Implementation (SBI) that has no mandate to provide guidance (thereby influencing) the COP agenda.

Attempts were made to negotiate and amend the elements of the provisional agenda for COP 17 that included the new issues proposed by India, under the discussions on 'arrangements for intergovernmental meetings' (AIMs) in a contact group of the SBI. This was thwarted following strong reactions from the G77 and China and several developing countries who saw the move as being contrary to the mandate of the SBI.

On Wednesday, 15 June, a non-paper was produced by the Secretariat on the 'possible elements' for the provisional agenda of COP 17, for discussion in the contact group on AIMs, which met on 15 and 16 June. In a footnote, the non-paper said that, "these elements will be amended as appropriate to reflect guidance from the SBI at its 34th session, through discussions …"

Developing countries, led by the **G77 and China,** questioned the Chair, Mr. Robert Owen Jones (Australia) on the footnote as it implied making amendments to the elements of the agenda when this, they said, was not the mandate of the SBI and they thus asked the Chair to follow the rules of procedure. The Chair responded that there was not going to be a negotiation of the elements for the agenda, but only an exchange of views. Following strong reactions from developing countries, the footnote was deleted and the possible elements of the provisional agenda for COP 17 (which included the issues from the Indian proposal) were put in an addendum to the background note by the UNFCCC Executive Secretary on arrangements for intergovernmental meetings.

Developed countries including **Australia, the US, the European Union, Canada** and **Mexico** all said that it was good to have an exchange of views on the elements of the COP 17 agenda and were opposed to the issues raised by India to be included in the Durban agenda.

The **US** said it was opposed to the issues on the agenda, which "have been contentious in the process" and had been discussed in Copenhagen and Cancun and there has been no agreement, and no prospects for any agreement on these issues. It said that the trade issue was a matter for the World Trade Organisation and the UNFCCC had no competence over this. On the issue of intellectual property rights (IPRs), the US said that there was a mistaken impression that strong IPRs are a barrier for clean technologies when IPRs are a foundation for technology transfer.

China said that it was clear from the rules of procedure that the normal practice was for the elements of the agenda to be attached to the background document (for the AIMs) as was done last year. It said that it was clear that the agenda would be drafted by the Secretariat in agreement with the COP President and it was not the role of the SBI to provide guidance.