

Divergence over further work on economic and social consequences of response measures

Bangkok, 2 September (Hilary Chiew and Chee Yoke Ling) – Parties differed in their views on preparing a negotiating text on the economic and social consequences of the implementation of response measures after two meetings in Bangkok of the contact group of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA), held on 31 August and 1 September.

A significant number of developing countries disagreed that their concerns about unilateral measures taken by developed countries to combat climate change are sufficiently addressed while developed countries and the Alliance of Small Island States (AOSIS) insisted that the issues are being dealt with under the forum and work programme mandated by the Durban decision.

In Durban, the 17th meeting of the Conference of Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC) through Decision 8/CP.17 adopted a work programme on the impact of implementation of response measures under the UNFCCC subsidiary bodies with the objective of improving the understanding of the impacts. It also adopted the modalities for the operationalisation of the work programme.

By the same decision, the COP established a Forum to be convened by the Chairs of the Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice to implement the work programme and to provide a platform for Parties to share, in an interactive manner, information, experiences, case studies, best practices and views. The first meeting of the Forum was held in May 2012 in Bonn.

Argentina, speaking on behalf of the Group of 77 and China said it believed there is unfinished work to enable the full implementation of the

Convention by Doha (venue of COP 18 at the end of this year) so the Group is willing to work to ensure progress on this issue. It welcomed the informal note prepared by the Chair of the AWG-LCA as it contained good elements and useful information.

It further reiterated that policy measures taken by developed countries should not result in transferring of the burden to mitigate climate change to developing countries, noting that it is happy with the progress of the Forum which enabled Parties to share best practices and to avoid the negative consequences of response measures that undermine developing countries' development prospects.

Representing the African Group, Sierra Leone said it too believed that there are issues to be discussed before Doha. In May (at the AWG-LCA meeting in Bonn), it added, Swaziland made a submission on this matter on behalf of the Africa Group and that document has not been discussed. It contains issues that had not been discussed fully and should be done before Doha.

St Vincent and Grenadine, on behalf of the **Alliance of Small Island States**, said it remained convinced that the place to discuss the matter is in the Forum, citing decision 8/CP.17 and paragraph 91 of 2/CP.17 (from Durban), and which was carried out in the Bonn (AWG-LCA) session this year.

Kenya said issues specifically undermining development of developing countries are of concern and it felt that if a decision does not come out clearly in the AWG-LCA, the issue will not be taken further and developing countries will suffer severely.

India acknowledged the Chair's effort and suggested putting up submissions by the like-minded group (of developing countries) as an

option to be displayed on the screen.

[In the May meeting of the AWG-LCA a submission containing a draft decision was made jointly by India, Argentina, the African Group, China, Saudi Arabia, Kuwait, Egypt, Algeria, Iraq, Thailand, the Philippines, Libya, Iran, Indonesia, Nicaragua, Cuba, Bolivia, Malaysia and Ecuador. In the 31 August discussion of the contact group in Bangkok, Argentina, India and Saudi Arabia requested that this submission be treated as a CRP and a basis for negotiation for Doha. At the 1 September discussion in Bangkok, Argentina said that we need to start discussing the content and then we can see whether we agree or disagree.]

In supporting India, **South Africa** said CRP 39 (from the 14th session of the AWG-LCA prior to the Durban COP 17) clearly illustrates that there is unfinished work (on this matter) at Durban.

[When it became clear that several key contentious issues would not be resolved at the Durban COP 17, the former AWG-LCA Chair Dan Reifsynder of the United States submitted draft conclusions under his own responsibility to the COP, over the objections of several developing country Parties. A conference room paper - CRP 39 - was separately prepared containing “texts reflecting work undertaken (at the last pre-COP 17 meeting of the AWG-LCA), in order to carry forward ideas and proposals in areas in which continued discussions are envisaged” in 2012. One of the areas is economic and social consequences of response measures in enhanced mitigation action.]

To this, the **European Union** replied that CRP 39 was prepared by the former Chair (of the AWG-LCA) and it does not have any status and was not agreed on and that the issues in it are finished in Durban. It said any Parties are free to submit proposals but Parties know very well that unilateral measures should not impede trade which is a principle of the Convention.

It said Article 3.5 of the Convention recognises that there will be unilateral measures and that they will be taken but it does not provide for a ban on unilateral measures. It also stressed that unilateral measures could be domestic policies (to mitigate climate change) and although Parties agreed that it should minimise the impacts on others but it does not mean accepting a ban (on unilateral measures).

It said Parties are working to strengthen the multilateral process and agreed in Durban to work towards a much stronger multilateral deal but it cannot accept a text that said developed countries

should not resort to any form of unilateral measures. To do so is contrary to the principle of the Convention and international law, adding that debates on this matter ended in a stalemate but the decisions from Durban and COP 16 at Cancun recognised that concessions can be achieved.

The EU also said no Party will disagree that domestic policy is an issue of national sovereignty. It urged Parties to compromise to reach consensus as it is normal for Parties to put up proposals but later drop them, cautioning that divergence between Parties will lead to disagreements.

Earlier, it also expressed frustration over the repeated discussions on unilateral measures where differences remained when decisions for a number of elements had already been taken, referring to the elements in the work programme (adopted in Durban).

To this, the Chair of the contact group as well as AWG-LCA, Mr. Aysar Tayeb said from the elements of the work programme, unilateral measures is not included, or at least as it currently stands.

[In the 31 August contact group discussion, Argentina said that the previous AWG-LCA Chair Reifsynder had made it very clear these are unresolved issues. The Ministerial level in Durban was supposed to discuss these issues among Parties but we were not given the chance to do so. Discussions never took place on those issues. It said that Parties need to see the content – we cannot discuss if we do not see what the issues are. This is a Party-driven process. CRP 39 specifically talks about response measures. We do not want to specifically talk about trade measures. We want to discuss the political parameters. The Forum is not the place to discuss the political parameters. We decide here, and then the Forum discusses.

[Argentina reminded the contact group that in Durban, Ms. Claudia Salerno Caldera of Venezuela who facilitated the COP 17 ministerial consultations on response measures explained clearly and she explained again in Bonn in May 2012 that in the Durban decision there are 2 issues – first is the setting up of the forum, and secondly, with a comma, the consolidation of discussions under the Convention and this is the AWG-LCA. This is the logic she clearly explained and this is correct legal interpretation. Argentina

made a plea for no delay with procedural matters, adding that on just transition of workforce, we also need political parameters.]

Canada said it wonders about the merit of having the Forum (on response measures) when Parties are starting another discussion here (in the contact group).

Singapore said its submission (dated 6 August) is to reiterate its position which has consistently opposed unilateral measures as it creates serious distorting effects and leads to retaliation. It said strong rules could reduce risks of harmful unilateral measure. It, however, does not see the need for text but just a paper submitted for discussion.

Saudi Arabia said the matter needs to be decided in the AWG-LCA as it is the place to set political parameters. It said this will not undermine the Forum which has specific functions and will be concluded by next year with a report to the Parties and that's the end of it. But in the AWG-LCA, Parties are setting parameters for the future. It sought constructive discussion with partners on crucial areas to add to and a decision from the AWG-LCA in order to achieve a proper closure on this agenda item in Doha.

China said some Parties tried to confuse the matter; that Parties are here to generate some legal parameters and not to organise the Forum. It concurred that the Forum can contribute to understanding but after that it should help Parties to develop political parameters.

It said it is clear that discussion should continue and there is no mandate to close it; and in this context, Parties need some negotiation text and fortunately there are some submissions and the Secretariat should generate some texts for Parties to continue their work.

India clarified that there is no decision taken to discuss all the issues in the Forum and urged Parties not to cite this as a reason when they don't like to discuss this issue. It reiterated that Parties put forward their submissions including those of the view that there is no need for discussion.

Saudi Arabia reminded Parties that they are discussing the issue of social and economic consequences of implementation of response measures and not just addressing trade in general and it does not see any item to deal with unilateral measures. It asked the Chair to organise the

elements of the submissions. It stressed that the adverse impacts from the implementation of response measures are real and happening and Parties need to decide on them.

Argentina in explaining the rationale of the group of developing countries for its proposal that unilateral measures must not undermine development and result in transfer of responsibility from developed countries to developing countries, said the group would like the work of the AWG-LCA to move forward as the issues were not resolved by Parties in Durban although the matter was taken to the ministerial level. Therefore, the option is still on the table.

The **European Union** called for a point of order. It insisted that decisions were taken by Parties irrespective of who represented them at the ministerial level.

Argentina replied that the matter was taken to the ministerial level and was supposed to be brought back to the Parties but it never did. It said, therefore, Parties must still be given the chance to negotiate and take decisions.

On specific proposals, Argentina said the group of developing countries concerned is seeking to enhance Article 3.5 and it does not want to reinterpret the Convention. Parties need to understand how this Article could disguise transfer of responsibilities to developing countries and the proposed wordings reflect the principle of common but differentiated responsibilities.

It further said it was agreed at the recently concluded Rio+20 Conference that certain wordings for unilateral measures and environmental measures should have international consensus and unilateral measures must be avoided, adding that the AWG-LCA is the place to set political parameters.

In conclusion, Chair Aysar Tayeb said there is more understanding on unilateral measures, the application of Article 3.5 and what the Convention says about them, that the Convention does not put a ban on unilateral measures and let's not rewrite Article 3.5 but enhance its implementation.

He acknowledged that the views are still in divergence but there are some proposals and submissions to take the work forward and to build convergence.