



**CONFERENCE OF THE PARTIES SERVING AS THE
MEETING OF THE PARTIES TO THE KYOTO PROTOCOL**
Fifth session
Copenhagen, 7–18 December 2009

Item X of the provisional agenda

Proposal from New Zealand for an amendment to the Kyoto Protocol

Note by the secretariat

1. Article 20, paragraph 1, of the Kyoto Protocol states that “any Party may propose amendments to this Protocol”. Article 20, paragraph 2, of the Kyoto Protocol stipulates that “amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed amendments to the Parties and signatories to the Convention and, for information, to the Depository”.
2. Article 21, paragraph 2, of the Kyoto Protocol states that “any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol”. Article 21, paragraph 3, of the Kyoto Protocol provides that “annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depository”.
3. In accordance with these provisions, New Zealand, by a letter dated 12 June 2009, transmitted to the secretariat the text of a proposal for an amendment to the Kyoto Protocol. Pursuant to Article 20, paragraph 2, and Article 21, paragraph 3, of the Kyoto Protocol, the secretariat will send a note verbale containing this text to all National Focal Points for climate change and Permanent Missions to the United Nations by 17 June 2009. In accordance with the same provisions, the secretariat will also communicate the proposed amendment to the signatories to the Convention and, for information, to the Depository.

4. The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol is invited to consider this proposal at its fifth session.

**Letter dated 12 June 2009 from New Zealand addressed to the
Executive Secretary of the secretariat of the United Nations Framework
Convention on Climate Change proposing an amendment to the
Kyoto Protocol**

During 2009, New Zealand has submitted to the secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) a number of submissions containing draft amendments to the Kyoto Protocol for the second commitment period. These proposals have been further updated over the past days and weeks to reflect progress in the course of the current negotiating session, and are now contained in the attached document.

I request the secretariat to make the necessary arrangements pursuant to Articles 20 and 21 of the Kyoto Protocol for the circulation of these proposed amendments to the Parties in order that they may be adopted at the fifth session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

New Zealand thanks the secretariat for its assistance in facilitating this request, and looks forward to discussing our proposals with other Parties.

Adrian Macey
Climate Change Ambassador

AMENDMENTS PROPOSED PURSUANT TO ARTICLES 20 AND 21 OF THE KYOTO PROTOCOL

INTRODUCTION

As outlined in previous submissions, New Zealand considers that negotiations from both the Ad Hoc Working Group on Further Commitments by Annex I Parties (AWG-KP) and the Ad Hoc Working Group on Cooperative Long Term Action (AWG-LCA) should feed into a single post-2012 treaty instrument within the United Nations Framework Convention on Climate Change (UNFCCC) framework. New Zealand's preference would be for this to take the form of a new treaty instrument, covering commitments and actions for both developed and developing countries, as mandated under the Bali Action Plan. The advantages of a unified instrument include enhanced coherency and consistency, and greater efficiency through the avoidance of duplication of effort and institutions.

2. Without prejudice to our position on the legal form of the Copenhagen outcome as elaborated above, New Zealand proposes a number of amendments to the Kyoto Protocol pursuant to Article 20, paragraph 2, and Article 21, paragraph 3, should the Protocol be extended for a second commitment period (CP2) in substantially its current form with a separate, but fully integrated, agreement adopted under the AWG-LCA.

3. The amendments proposed in the attached document cover some key elements for extending the Kyoto Protocol into CP2. The document includes draft text for consequential amendments to Article 3, paragraphs 1, 7 and 9, as well as a new table for inclusion in Annex B or C, and some broader amendments for enhancing the functioning and content of the Kyoto Protocol. Further explanation of the amendments proposed by New Zealand can be found in previous submissions by New Zealand on these issues.¹

4. Should the Kyoto Protocol be extended for a second commitment period, it will be important that key decisions affecting the quantification of commitments, for example on land use, land use change and forestry (LULUCF), are adopted by the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (COPMOP) at the same time as these amendments. This will allow all Parties to fully understand the nature and extent of the commitments that are being undertaken.

TEXT OF PROPOSED AMENDMENTS

New Article 3 paragraph 1 bis

In the second commitment period, the Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex [B] [C] and in accordance with the provisions of this Article.

¹ Please refer to documents FCCC/KP/AWG/2009/MISC.6; FCCC/KP/AWG/2009/MISC.1 –; FCCC/KP/AWG/2009/MISC.9 and FCCC/KP/AWG/2009/MISC.9/Add.1 and NAMA trading ; FCCC/AWGLCA/2009/MISC.4 (Part I) and REDD and FCCC/AWGLCA/2009/MISC.4/Add.1; and FCCC/SBI/2009.MISC5).

New Article 3 paragraph 1 ter

The quantified emission limitation or reduction commitments [and other quantified mitigation commitments] inscribed in Annex [B] [C] shall only apply once [*specific conditions have been met, for example linkages to the entry into force of the instrument emerging from the AWG-LCA process and coverage of a certain percentage of global emissions*].

New Article 3 paragraph 7 bis²

In the second commitment period, from 2013 to [X], each Party included in Annex I shall elect to use either the number of gigagrams of carbon dioxide equivalent or the percentage of its aggregate anthropogenic carbon dioxide equivalent emissions relative to the base year or period as listed in Annex [B] [C] for the purposes of calculating its assigned amount in the commitment period. Where no election is made, the percentage of base year or period shall be used to determine the assigned amount. The decision of a Party shall be fixed for the duration of the commitment period.

(a) For each Party included in Annex I which elects to use the number of gigagrams of carbon dioxide inscribed in Annex [B] [C] to express its binding emission limitation or reduction commitment under this Protocol, that number shall constitute its assigned amount.

(b) For each Party included in Annex I which elects to use the percentage of its carbon dioxide equivalent emissions in the base year or period inscribed in Annex [B] [C] to express its binding emission limitation or reduction commitment under this Protocol, its assigned amount shall be equal to that percentage of its aggregate anthropogenic carbon dioxide equivalent emissions for the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by the number of years in the commitment period.

Article 3 paragraph 9

Existing text to be replaced with:

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of any subsequent commitment period [x] years before the end of the commitment period that immediately precedes the commitment period under consideration.

² Comment: Should Parties not agree that Annex I Parties can express their quantified emission reduction or limitation commitment as a number of gigagrams of carbon dioxide, the second sentence of Article 3.7 may need to be retained in Article 3.7 bis. This may also be required for calculating the reference percentage ranges for Parties who elect to use the gigagrams option for calculating their assigned amount.

New Article 3 paragraph 12 [bis]

Any [names of units generated from REDD, NAMA, and sectoral crediting and/or trading mechanisms] which a Party acquires from another Party in accordance with the provisions of [Article [X]³], [Article [Y]⁴] and Article [Z]⁵ shall be added to the assigned amount of the acquiring Party.

Article 4 paragraph 1

The reference to “Annex B” in Article 4 paragraph 1 will need to be updated to relate to the new table proposed by New Zealand if this is adopted in the form of an Annex C for the second commitment period.

Article 4 paragraph 3

Existing text to be replaced with:

Any such agreement shall remain in operation for the full duration of any commitment period established by the Conference of the Parties serving as the meeting of the Conference of the Parties to this Protocol to which that agreement applies.

New Article 12 bis

1. A crediting and trading mechanism for nationally appropriate mitigation actions is hereby defined.
2. The purpose of the mechanism shall be to assist Parties not included in Annex I in undertaking nationally appropriate mitigation actions that produce a net mitigation benefit to the atmosphere, to promote cost-effective global mitigation through the use of markets, and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation and reduction commitments under Article 3.
3. Participation in the mechanism by any Party shall be voluntary.
4. Subject to the requirements in Article 17bis, each participating Party not included in Annex I may participate in the mechanism on the basis of a quantified crediting or trading threshold for that Party:

³ “X” refers to the article(s) of an agreement emerging from the AWG-LCA dealing with NAMA crediting and/or trading and sectoral crediting and/or trading if such mechanism(s) is(are) established under that agreement.

⁴ “Y” refers to the article(s) of the Kyoto Protocol dealing with NAMA crediting and/or trading and sectoral crediting and/or trading if such mechanism(s) is(are) established under that agreement.

⁵ “Z” refers to the article(s) of an agreement emerging from the AWG-LCA dealing with a REDD mechanism established under that agreement.

- a. established in accordance with rules, procedures, modalities and guidelines to be adopted by the Conference of the Parties serving as the meeting of the Parties to the Protocol; and
 - b. approved by the Conference of the Parties serving as the meeting of the Parties to the Protocol.
5. A crediting or trading threshold shall cover one or more eligible sectors elected by the participating Party not included in Annex I.
6. A crediting or trading threshold shall be set at a level significantly below projected anthropogenic emissions, or above projected anthropogenic removals, of greenhouse gases within the sector boundary, taking into account the national circumstances and respective capabilities of the participating Party not included in Annex I.
7. For each Party not included in Annex I that elects to participate on the basis of a crediting threshold:
 - a. NAMA units shall be issued to the Party following the verification of the Party's actual reductions in emissions and/or removals by sinks within the sector boundary relative to the threshold.
 - b. Where the Party's actual emissions within the sector boundary exceed the threshold, or the Party's actual removals within the sector boundary are below the threshold, no NAMA units shall be issued and there shall be no further consequences under the Protocol.
8. For each Party not included in Annex I that elects to participate on the basis of a trading threshold:
 - a. NAMA units shall be issued to the Party at the start of each trading period in an amount calculated in accordance with that Party's trading threshold;
 - b. At the end of each trading period, the Party shall retire a number of NAMA units, or other eligible units acquired in accordance with Article 17bis, equal to its actual net emissions within the sector boundary during the trading period.
9. The mechanism shall function under the guidance of and be accountable to the Conference of the Parties serving as the meeting of the Parties to the Protocol and shall be supervised by a body to be established or appointed by the Conference of the Parties serving as the meeting of the Parties to the Protocol.
10. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall adopt the definitions, rules, modalities and guidance for the mechanism, including in relation to: the determination of eligible sectors and sector boundaries; requirements for measurement, monitoring, reporting and verification; ensuring real, measurable and long-term benefits related to the mitigation of climate change; the duration

of crediting and trading periods; the carry-over of units between periods; issuance and accounting of NAMA units; treatment of potential leakage across sectors; and the consequences for not meeting a trading threshold including facilitative measures.

New Article 12ter

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall define modalities and procedures to ensure that there is no double counting under the mechanisms established under this Protocol or in relation to any other legal instrument under the Convention.

Article 17

The reference to “Annex B” in Article 17 will need to be updated to relate to the new table proposed by New Zealand if this is adopted in the form of an Annex C for the second commitment period.

New Article 17 bis

1. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability, for emissions trading by Parties not included in Annex [I] [B] [C]. Such Parties shall meet the following eligibility requirements and any other requirements established by the Conference of the Parties serving as the meeting as the Parties to this Protocol:

- a. Establishment of a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, in accordance with the requirements in the guidelines decided pursuant to this Article;
- b. Establishment of a national registry, in accordance with the requirements in the guidelines decided pursuant to this Article; and
- c. Annual submission of the most recent inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, in accordance with the requirements in the guidelines decided pursuant to this Article and taking fully into account any relevant decisions by the Conference of the Parties.

2. Parties not included in Annex [I] [B] [C] may participate in emissions trading for the purpose of participating in or meeting their obligations, if any, under the mechanisms defined under this Protocol or any other legal instrument under the Convention, subject to the requirements specified in relation to those mechanisms. Any such trading shall be supplemental to domestic actions by those Parties for the purpose of participating in or meeting their obligations, if any, under such mechanisms.

Article 21

Existing text in paragraphs 4, 5 and 7 to be replaced with:

4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority of the Parties present and voting at the meeting. Amendments to Annexes [B][C] shall only be adopted with the written consent of the Party concerned. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or an amendment to an annex other than Annex A, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex other than Annex A shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

7. Amendments to Annex A to this Protocol shall be adopted and enter into force in accordance with the procedure set out in Article 20.

New Article [Y]

1. Individuals elected, selected, or appointed to serve on the constituted bodies and entities established under this Protocol and listed in Annex [Z] shall be accorded immunities consistent with the provisions of this Article.

2. The individuals identified in paragraph 1 shall be accorded such immunities as are necessary for the independent exercise of their official functions. While exercising their official functions, including for the time spent on journeys in connection with their functions, they shall be accorded:

- (a) immunity from personal arrest or detention;
- (b) immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their official functions. Such immunity shall continue to be accorded notwithstanding that the persons concerned are no longer serving on a constituted body or expert review team established under this Protocol;
- (c) inviolability for all papers and documents.

3. Immunities are granted to the individuals identified in paragraph 1 in the interest of the independent exercise of their official functions, and not for the personal benefit of the individuals themselves. The Executive-Secretary shall have the right and the duty to waive the

immunity of any individual in any case where, in the Executive-Secretary's opinion, the immunity would impede the course of justice and can be done without prejudice to the implementation of this Protocol.

New Annex [Z] for listing constituted bodies and entities

This Annex includes the list of constituted bodies and entities to be accorded immunities pursuant to Article [Y], as follows:

- The Executive Board of the Clean Development Mechanism
- The Joint Implementation Supervisory Committee
- [The Adaptation Fund Board]
- [The Compliance Committee]
- Expert review teams established pursuant to Article 8 of this Protocol

New table for inclusion in Annex B or the creation of a new Annex C:

The following table could be inserted in Annex B to the Kyoto Protocol, after the existing table, to record commitments for the second commitment period. Alternatively, it could also be included separately as a new Annex C.

Party	Base year or period (%)	Reference year 2007 (%)	Budget (Gg-CO ₂ e)	Other quantified mitigation commitments
A ⁶	xx	xx	xx	
B	xx	xx	xx	xx
C	xx	xx	xx	
D ⁷	-	-	-	xx

⁶ The Parties included in Annex I would be expected to take a QELRC.

⁷ Parties not included in Annex I would be able to inscribe other quantified mitigations commitments in this column also.