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**Conference of the Parties serving as the meeting  
of the Parties to the Kyoto Protocol**

**Ninth session**

**Warsaw, 11–22 November 2013**

Item 11 of the provisional agenda

**Clarification of the text in section G (Article 3, paragraph 7 ter) of the Doha Amendment to the Kyoto Protocol, in particular the information to be used to determine the “average annual emissions for the first three years of the preceding commitment period”**

**Request from Kazakhstan for clarification of the text of  
Article 3, paragraph 7 ter, (section G) of the Doha  
Amendment**

**Note by the secretariat**

1. By decision 1/CMP.8, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) adopted an amendment to the Kyoto Protocol (the Doha Amendment). Section G of annex I to decision 1/CMP.8 reads “Article 3, paragraph 7 ter. The following paragraph shall be inserted after paragraph 7 bis of Article 3 of the Protocol: 7 ter. Any positive difference between the assigned amount of the second commitment period for a Party included in the Annex I and average annual emissions for the first three years of the preceding commitment period multiplied by eight shall be transferred to the cancellation account of that Party.”
2. Kazakhstan, by a letter dated 29 January 2013, as contained in annex I, requested the secretariat to confirm the understanding of Kazakhstan in relation to the application to it of the above provision.
3. In its response, dated 19 March 2013, as contained in annex II, the secretariat pointed to some ambiguity as to how the provisions of Article 3, paragraph 7 ter, contained in section G, are to be interpreted and suggested that guidance from the CMP would be the most appropriate source of definitive interpretation.
4. In a letter dated 28 June 2013, as contained in annex III, Kazakhstan requested that an agenda item be added to the provisional agenda for CMP 9 for the purpose of seeking clarification of the text of Article 3, paragraph 7 ter, of the Doha Amendment, in particular with regard to what information is to be used to determine the “average annual emissions for the first three years of the preceding commitment period”. In accordance with rule 10(d) of the draft rules of procedure being applied, the item was included on the provisional agenda of CMP 9.
5. The CMP is invited to consider this matter at CMP 9.

## Annex I

### **Letter dated 29 January 2013 from the Vice-Minister of the Ministry of Environmental Protection of Kazakhstan to the Executive Secretary**

The Ministry of Environment Protection of the Republic of Kazakhstan would like to congratulate you with the successful conclusion of the COP18 and CMP8 in Doha. Kazakhstan adheres to the prolongation of the Kyoto Protocol and will put every effort to achieve the committed target for the second period along with the development towards green economy.

According to our understanding, Paragraph G (Article 3, paragraph 7 ter) of the Annex I of the decision FCCC/KP/CMP/2012/L.9 on the amendments to the Kyoto Protocol does not apply to Kazakhstan, as it is not in the first commitment period, as well as non-Annex I Party under the Convention. However, in order to proceed with the ratification of amendments to KP in the country official confirmation of this matter is required. Therefore we would be grateful for such confirmation from the Secretariat.

*(Signed)*

M. Iskakov  
Vice-Minister

## Annex II

### **Response dated 19 March 2013 from the Executive Secretary to the Vice-Minister of the Ministry of Environmental Protection of Kazakhstan**

I wish to acknowledge with thanks receipt of your letter dated 29 January 2013 (Ref. No. 05-36/267-U).

With regard to your inquiry concerning the application of Section G of the Doha amendment (adopted through decision 1/CMP.8) to Kazakhstan in the second commitment period, we note that there is some ambiguity as to how the provisions of Article 3, paragraph 7 ter, contained in section G is to be interpreted. Where a text of a treaty is ambiguous, guidance from its supreme body generally provides an authoritative means of interpretation.

Some of the relevant considerations in relation to possible application of Article 3, paragraph 7 ter, to Kazakhstan are set out below.

We note that in the first commitment period Kazakhstan was considered a Party included in Annex I for the purposes of the Protocol in light of its having notified the Depository of its intention to be bound by Article 4, paragraphs 2 (a) and (b), of the Convention (see Article 1, paragraph 7, of the Protocol). However, since the consideration by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) of Kazakhstan's proposal to amend Annex B did not result in the adoption of the proposed amendment containing Kazakhstan's quantified emission limitation or reduction commitment for the first commitment period, Kazakhstan did not have legally-binding commitments under Article 3 in that period.

Although, in the absence of Article 3 commitments, Kazakhstan was not under any obligation to produce or report information required under Article 7, paragraph 1, of the Protocol, it was requested by the Conference of the Parties to submit both its national communication and annual greenhouse gas inventories in accordance with Article 4, paragraph 2 (b), and Article 12 of the Convention using the guidelines for the preparation of national communications by Parties included in Annex I (see FCCC/CP/2006/5, paragraph 96, and FCCC/CP/2008/7, paragraph 68). Such reporting would produce data on greenhouse gas emissions of Kazakhstan.

Article 3, paragraph 7 ter reads: "Any positive difference between the assigned amount of the second commitment period for a Party included in Annex I and average annual emissions for the first three years of the preceding commitment period multiplied by eight shall be transferred to the cancellation account of that Party".

In our view, there are two possible readings of this paragraph:

- On the one hand, the reference to "average annual emissions" could be read to refer to data reported under the Protocol (i.e. in accordance with Article 7, paragraph 1, of the Protocol). Under such interpretation, the requirement of Article 3, paragraph 7 ter, would not extend to an Annex I Party that did not have an obligation under the Protocol to report such data in the first commitment period.
- On the other hand, the text could be understood as referring to any data on average annual emissions of an Annex I Party, regardless of whether or not it was reported under Article 7, paragraph 1, of the Protocol (particularly since the provision of Article 3, paragraph 7 ter, itself does not make an explicit reference to the source of such data). Under such interpretation, the requirements of Article 3, paragraph 7 ter, would apply to any Annex I Party whose information on annual greenhouse gas emissions is generally supposed to be available, even where such Party had no commitments under Article 3 of the Protocol in the first commitment period.

As noted earlier, where the text of the Protocol is ambiguous, guidance from the CMP would be the most appropriate source of definitive interpretation. Kazakhstan, therefore, may wish to seek further clarification from the CMP as to whether the provisions of Article 3, paragraph 7 ter, would be applicable to it and if so, what information is to be used to determine the “average annual emissions for the first three years of the preceding commitment period”.

*(signed)*

Christiana Figueres  
Executive Secretary

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## Annex III

### **Letter dated 28 June 2013 from the Vice-Minister of the Ministry of Environmental Protection of Kazakhstan to the Executive Secretary**

Ministry of Environment Protection of the Republic of Kazakhstan would like to express its highest consideration to the Secretariat and to communicate the following.

Article 3, paragraph 7 ter (Section G) of the Doha amendment (adopted through decision 1/CMP.8) reads: “Any positive difference between the assigned amount of the second commitment period for a Party included in Annex I and average annual emissions for the first three years of the preceding commitment period multiplied by eight shall be transferred to the cancellation account of that Party.”

In a letter to the United Nations Climate Change Secretariat dated 29 January 2013 (Ref. No. 05-36/267-U), Kazakhstan made an inquiry concerning the application of Section G of the Doha amendment (adopted through decision 1/CMP.8) to Kazakhstan in the second commitment period. In the response letter from the United Nations Climate Change Secretariat dated 19 March 2013, it was noted that there is some ambiguity as to how the provisions of Article 3, paragraph 7 ter, contained in Section G is to be interpreted. It was recommended to Kazakhstan that guidance from the CMP would be the most appropriate source of definitive interpretation where text of the Protocol is ambiguous.

Kazakhstan therefore wishes to seek further clarification from the CMP on the text of Article 3, paragraph 7 ter, in particular what information is to be used to determine the ‘average annual emissions for the first three years of the preceding commitment period’.

**Proposed Agenda Item:**

Clarification on the text of Article 3, paragraph 7 ter (Section G) of the Doha amendment (adopted through decision 1/CMP.8), in particular what information is to be used to determine the ‘average annual emissions for the first three years of the preceding commitment period’.

*(signed)*

M. Iskakov  
Vice-Minister

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