

Entry Into Force

Proposal

- o Structure entry into force trigger so that:
 - U.S. ratification is not a precondition;
 - ratifications of some developing countries is a precondition.
- o The exact percentage of global greenhouse gas emissions that should be required for entry into force will be addressed separately.

Discussion

- o Most countries have indicated support for an entry into force clause that requires not only a specific number of countries to have ratified, but a certain level/percentage of emissions as well.
- o In our January draft protocol, we supported the notion of a "weighted" entry into force clause, without specifying what the trigger would be.
- o Two issues have arisen in connection with the emissions trigger:
 - whether U.S. ratification should be a precondition for entry into force;
 - whether developing country ratifications should be a precondition for entry into force.

U.S. Ratification

- o In Bonn, it became apparent that some countries (such as Japan, Canada, and Australia) believe that the trigger should be crafted so as to require U.S. ratification before the protocol could enter into force; other countries (such as Switzerland and likely the EU) disagree.
- o We therefore need a position on whether U.S. ratification should be a precondition to entry into force.
- o If U.S. ratification were required:
 - a disadvantage is that the Senate would be able to hold up the entire agreement, not just U.S. participation;

- an advantage is that implementation of the agreement, including decision-making, could not begin without us (contrast the Biodiversity Convention);
- an advantage or disadvantage, depending on one's point of view, is that there would likely be substantial international pressure on the United States to ratify.

Developing Country Ratification

- o When we proposed our "evolution" article, we contemplated an entry into force clause that would require a certain level of developing country ratifications (e.g., China, India) for entry into force; that way, such countries would be bound to the evolution obligation at the same time that we were bound to take on our emissions obligation.
- o It now appears that the evolution article will not be in the protocol.
- o As such, it could be argued that it is not helpful to include developing countries in the entry into force trigger -- their ratification would not commit them to anything beyond "advancing existing commitments;" however, they could potentially block entry into force of the agreement.
- o On the other hand, from an optical point of view, carving developing countries out of the entry into force clause could make the protocol look like an "Annex I only" agreement; this would not be helpful domestically.

903**OUTCOMES IN KYOTO**

11/18/97 draft #2

I. Full Success

- All elements of the US proposal are accepted, or we are prepared to accept modifications to our current demands sufficient to ensure an agreement in Kyoto:
 - provisions on JI
 - emissions trading
 - stabilization target set between 2008-12
 - participation of developing countries through Article 10 – including some announcements by key countries that they will accept targets, and adequate provisions in Article 12 and 13 (on advancing the implementation of Article 4.1)
- No action is needed post-Kyoto except to follow up on operationalizing agreement

II. An agreement is reached that is unacceptable to the U.S., but broadly accepted internationally

- Key elements of the US proposal are rejected or modified too extensively to prove acceptable:
 - provisions on JI: e.g., agreement excludes entirely or delays decision until after the pilot phase is completed
 - emissions trading: e.g., agreement allows additional (and possibly constraining) rules to be developed; allows only limited amount to be counted toward budget
 - target: agreement calls for budget period to begin before 2008 or sets a more ambitious target than stabilization
 - developing countries: Article 10 is not incorporated into agreement; additional pernicious language is added to Article 13 (on financial assistance to developing countries); Article 12 is too weak and does not actually “advance the implementation” of developing country commitments.
- Due to such modifications, the U.S. and a few others would not be able to accept the agreement in Kyoto – but most other countries could:
 - Within JUSCANZ, Australia is likely to be unable to accept any legally binding agreement, as is OPEC, but Japan, Canada, Norway, New Zealand, Switzerland and Iceland may all be able to accept what is essentially a constrained Annex I obligation with no developing country commitments.

Outcomes in Kyoto

DRAFT 11/18/97

- Other Annex I countries, in particular Russia and Eastern Europe, will be able to accept any agreement provided it allows them to grow to at least their 1990 levels – and offers them some compensation in the form of emissions trading to sell excess tons.
 - Developing countries will be able to accept the agreement provided it does not require action on their part.
 - We have two choices: (1) block consensus (and either walk away or seek to continue the process beyond Kyoto), or (2) not block adoption of the agreement, but work outside of the agreement to make it more acceptable. The following points outline a course of action should we not choose to block adoption in Kyoto.
 - If the agreement is problematic because JI does not succeed, we may be able to ratify once the AIJ pilot phase has been completed, and JI becomes a fully allowable action under the FCCC itself. Given that we will remain Party to the Convention even if we do not become Party to the protocol, we may be aggressive in pushing for JI in that forum.
 - If the agreement is problematic because of developing countries (e.g., Article 10 is not accepted, or provisions in Article 12 or 13 are egregious), we may work bilaterally with key developing countries to bring them to take commitments on action. We may also seek to use the second review of adequacy (called for in Article 7(2)(a) of the FCCC to consider next steps for developing countries. Either action will be difficult if not impossible unless we have taken unilateral action to reduce emissions, and to demonstrate our good faith efforts to address the climate change problem.
 - If the agreement is problematic because the target is too aggressive (e.g., the period begins too soon or is set at too ambitious a level), we may have little recourse with respect to revising the agreement. However, we will need to rapidly move to implement policies and measures to reduce our emissions domestically so that any next step (e.g., in a later budget period or negotiated through a follow-on agreement) is still within our reach.
- III. An agreement is reached that is unacceptable to the U.S. and a significant group of other countries
- As with Alternative II above, key elements of the US proposal are rejected or modified too extensively to prove acceptable. Given that we currently have the hardest line on developing countries (with few others supporting proposals as aggressive as ours), this option assumes that the key provisions in which other countries would join us in considering unacceptable will be related to flexibility or the level of the target.
 - Like-minded countries can be expected to include Australia, Canada and Russia, as well as OPEC and possibly Japan (although Japan will be significantly constrained by its role as Kyoto host)
 - If the agreement is not acceptable because the target is too aggressive, we may seek a declaration of intent with the group of like-minded countries toward an alternative target (either through the development of an alternative multilateral agreement, or through agreement to take "common" unilateral targets); this could allow us to maintain our stabilization goal, and would likely bring in Russia, Canada and Japan – although probably not Australia.

- If the agreement is problematic with respect to flexibility, we may have fewer supporters (i.e., possibly Russia, Canada, Australia and New Zealand but probably not Japan) we may seek:
 - (1) to create a bubble including this group of like-minded countries in lieu of emissions trading (thus taking advantage of Russia's tons); or
 - (2) to work with key developing countries to insure that JI and trading become a fundamental part of any subsequent budget period under the protocol.

IV. Process Outcomes

- Proposing to continue to work on the agreement post-Kyoto:
 - It will be extremely difficult (if not impossible) to change the terms of the Berlin Mandate during any extension of the negotiations. Thus, if the reason for opposing agreement in Kyoto is inadequate response on the developing country front, we may not find a formal extension useful. However, if we are close to agreement on most issues, and only need slightly more time to resolve outstanding technical questions (e.g., on gases or sinks, or even on emissions trading or JI), the extension may be valuable.
 - Note that during this period, we will need to establish meetings (currently unplanned beyond the two weeks of sessions of the FCCC subsidiary bodies for Spring/Summer 1998 and COP-4 in late Fall/Winter 1998). Delay will also provide time for "naysayers" to work to void areas where agreement has been achieved.
 - Such an outcome will be something of a "black eye" for Japan; efforts at the highest levels, including both the President, and possibly the Vice President (during his COP-3 attendance?) will be required to convince Japan this is a better outcome than full failure in Kyoto.
- Proposing to block consensus in Kyoto:
 - Theoretically, any individual country can block consensus in Kyoto; Rules of Procedure (which would allow for a vote to decide substantive issues) have not yet been adopted. While we have been unwilling to raise too many procedural objections to the chairman's handling of the meetings, we have been reluctant to force the consensus issue too far – as the OPEC group, which is opposed to any agreement in Kyoto, could then use the procedure to block any agreement.
 - However, given that OPEC will likely join any effort to block agreement in Kyoto (as will Australia), we are unlikely to ever be a minority of one. We will thus be faced with a question of whether we want to block any agreement – or whether we are willing to let the agreement proceed without us.

- Note that blocking an agreement (particularly one that might be acceptable to most other countries) would create significant difficulties for Japan as host. Thus, should we choose to block consensus, we will want to have a clear strategy for dealing with the international pressure that will follow – including from host country Japan, as well as from the EU, and even most developing countries. This could include:
 - (1) an announcement of a domestic policy we intend to take independent of any agreement in Kyoto; and/or,
 - (2) announcing an effort to work bilaterally with key countries (developed and developing) to design a longer term strategy; and/or
 - (3) an announcement to create an alternative international process (e.g., creating something like a “climate change security council” to bring in the key developed and developing countries to plan global programs to reduce long-term emissions, perhaps including the U.S., Japan, the EU, China, India and Brazil). This would require some time to arrange, and likely could not be done at Kyoto but only in the post-Kyoto timeframe; and/or,
 - (4) calling for a new mandate (e.g., either in or post-Kyoto) that would focus on the areas we believe are critical – including not only a target, but also on flexibility and on developing country actions. This would be difficult to achieve in Kyoto for all the reasons outlined in the developing country paper, but might be a welcome step at a future date (e.g., in the SBI meeting in summer 1997, or at COP-4). We may even wish to host a meeting to set a new agenda – either for this option or for option (3) above.
- Depending on why the agreement is stalled, we may want to consider promoting an amendment instead of a protocol in Kyoto:
 - While the rules of procedure have not been adopted (and therefore a consensus would be required to adopt a protocol), if an amendment is the instrument of choice, it could be adopted by $\frac{3}{4}$ of the Parties present and voting (currently, with the 160 Parties to the Convention, this would mean that an instrument could be adopted by 120 countries). This could have the principal advantage of not allowing the OPEC countries to block an agreement with which they disagreed.
 - However, an amendment may also be used by countries not wishing to allow the US to block an agreement with which we disagree. Thus, this may become the procedural mechanism through which our interest in blocking any agreement may be thwarted.

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OFFICE OF THE LEGAL ADVISER
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TELEFAX COVER SHEET

TO: **Todd Stern**
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FROM: **Ms. Susan Biniarz**
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DATE: November 20, 1997

SUBJECT: **Options for Kyoto Mandate**

Number of Pages Including This Cover Page: 5

Message:

11/20

Options for Kyoto Mandate

Attached are three different options for a Kyoto Mandate:

- (1) our specific Mandate;
- (2) our "Blandate;" and
- (3) the informal Japanese draft, as marked up by us, including White House comments.

They have differences in terms of:

- o what is to be negotiated;
- o by when;
- o what is the timeframe for the developing country commitment;
- o which developing countries are included.

In terms of the issues above:

- o our specific Mandate calls for:
 - Annex I emissions budgets for second budget period; emissions budgets for developing countries;
 - negotiated by 1999;
 - timeframe for developing country commitment is same as Annex I second budget period;
 - key developing countries only.
- o our "Blandate" calls for:
 - Annex I emissions budgets for second budget period; unspecified "commitments" for developing countries
 - negotiated by [];
 - timeframe for developing country commitment is left open;
 - all developing countries included (but reference to "common but differentiated responsibilities and respective capabilities" could imply different commitments among them).
- o modified Japanese proposal:
 - Annex I emissions budgets for second budget period; "legally binding commitments" for developing countries, with examples such as energy efficiency or quantified target
 - negotiated by 2000;
 - timeframe for developing country commitment is left open;
 - all developing countries included (but, as noted above, could have different commitments).

Decision X

The Kyoto Mandate

this mandate
includes 2nd budget
period for
Annex I

The Conference of the Parties, at its third session,

Having adopted [a protocol] [an amendment] setting forth the first step to be taken in the period beyond 2000, as part of a long-term, multi-step response to climate change,

Recognizing the need for additional steps to be taken by all countries,

Agrees to begin a process, to be concluded by [1999], to decide upon appropriate action in the period following the budget period specified in the [protocol] [amendment], through the adoption of an appropriate legal instrument(s):

1. The process will, inter alia:

- (a) for Annex I parties, set emissions budgets for a second budget period, to follow the budget period specified in the protocol;
- (b) in determining which parties are to be considered as Annex I parties, take into account the results of the review referred to in Article 4.2(f) of the Convention, as well as any notification under Article 4.2(g) of the Convention or Article ____ of the Protocol;
- (c) set emissions budgets, for a budget period coinciding with the second budget period for Annex I parties, for non-Annex I parties that either:
 - (1) have per capita incomes higher than...; or
 - (2) emit more than ... % of the total global emissions of greenhouse gases;

[Anything about the substance of their budgets?]

- (d) provide an automatic mechanism for the application of emissions budgets under (c) above to non-Annex I parties once they meet either of the criteria in that subparagraph; and
- (e) provide for the review of emissions budgets and criteria related to applicability of such budgets.

Mandate for Kyoto

"Blamdate."

The Conference of the Parties, at its third session,

Having adopted a [protocol][amendment] to the Framework Convention on Climate Change,

Considering that additional steps are necessary, in light of the objective of the Convention,

Decides to begin a process, to be concluded by [], to agree on such steps.

1. The process will:

- (a) set quantified emissions limitation and reduction objectives for Annex I Parties for the second budget period, namely, 2013-2017; and
- (b) set commitments for all other Parties, taking into account common but differentiated responsibilities and capabilities.

Post Kyoto Process

(Japan)

1. The Conference of Parties, at its third session,

In accordance with Article 7, ~~paragraph 2, subparagraph (a)~~ of the United Nations Framework Convention on Climate Change,

Agrees to start a new process to review the obligations of the Parties and the institutional arrangements under the Convention and the Protocol, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge.

2. This process will, inter alia:

(a) decide on ^{legally binding} commitments by all non-Annex I countries concerning limitation of GHG emissions through such a way as improvement of energy ^{or quantified target} efficiency, by the Meeting of Parties in ²⁰⁰⁰ ~~2002~~.

(b) consider appropriate ways and means to assist non-Annex I countries with the view that non-Annex I countries which make efforts in limitation of GHG emissions ~~through such a way as improvement of energy efficiency~~ should be granted with ^{supportive} ~~favorable~~ terms and conditions in financial and technical assistance from Annex I countries, and from international financial institutions.

(c) review the adequacy of the commitment by the Annex I countries by the Meeting of Parties in ²⁰⁰⁰ ~~2002~~ in the light of the latest scientific knowledge and technological development and reflect results of the review in setting legally binding quantified emission reduction targets by Annex I countries for the second budget period starting in 2013.

1997 NOV 24 14:21:45

To: Todd Stern
x6-2215

From: David Sandalow

Materials received yesterday from Japanese, attached

9 pages, incl. cover

Key points to be addressed to resolve problems with EU Bubble

(Fairness / equity)

- (i) The average reduction rate for all countries in a bubble shall be by 5-10% deeper than those of other Annex I countries.

(Accountability / legal responsibility)

- (ii) The target for each country inside a bubble shall also be legally binding.
- (iii) An agreement of burden sharing inside a bubble shall be subject to the acceptance of Meeting of the Parties (MOP) .
The amendment of an agreement, inter alia that for the enlargement of a bubble shall also be subject to its acceptance

(Example for Developing Countries)

- (iv) The target for each country inside a bubble shall not be more than X%(c. g. 5%) increase from 1990 level.

17/11/97 14:27:21

Problems with EU Bubble

The proposal for the bubble made by the EU in the last AGBM does not fully resolve the serious concerns that we have in this regard.

1. Accountability

(1) The legal character of QELROs should be the same for each Party. If QELROs of Parties not part of a bubble are legally-binding, QELROs of Parties within a bubble should also be legally binding. Parties should not be treated in a different manner. On this critical point, the EU proposal is quite ambiguous.

(2) According to the EU proposal on the bubble (REIO bubble), each member countries are free from any responsibility in case of overall success in reaching the target, even if some of EU countries do not comply with their own QELROs. However, only countries not complying with their own burden-sharing are responsible in case of failure to reach the QELROs of the EU as a whole. The rationale for doing so is not understandable.

2. Relationship to trading

Why don't the EU countries each make a commitment and then trade?

3. Fairness and Transparency

(1) It is not fair that Parties inside a bubble do not have QELROS of the same legal character as Parties that are not part of a bubble.

(2) Why does the EU proposal give Parties inside the bubble complete freedom(i. e. without agreement by COP/MOP), to modify the reduction level of each Party in the bubble while Parties not part of a bubble have to comply with the QELROS agreed by the COP? This is neither fair nor transparent.

(3) In the case of EU bubble, is it fair and equitable to impose a flat reduction rate($\Delta 15\%$) on non-EU countries while setting differentiated targets for the EU member states in accordance with their individual conditions($\Delta 30\% \sim +40\%$)?

4. Reality of Reductions

(1) In the case of the EU bubble, are we getting real reductions or "paper tons" from East Germany (While Germany continues to subsidize coal)?

(2) According the EU burdensharing with a 10% reduction, each EU country (with the exception of Germany and UK) is allowed to stabilize or slightly increase. Is this a real reduction agreement?

5. Example for Developing Countries

Some Annex I countries going up 40%. Is it really possible to call upon non-Annex I countries to enlarge their efforts for mitigating global warming?

6. Enlargement

How will new EU members be brought in?

Non-paper

The outline of Kyoto Initiative(tentative)

(Support for the efforts of developing countries concerning combat against global warming)

support for the efforts of developing countries as a link in the chain of "Initiative for Sustainable Development" which was mentioned by Prime Minister Hashimoto at Denver Summit and United Nations Special Session of General Assembly in June.

1. Human resource development cooperation

-During the next five years, Japan cooperates with developing countries in training 3000 experts in the field of technology to combat global warming

2. Yen loan with the most favorable conditionality

- the rate of interest : 0.75%
- the repayment term : 40 years

3. Practical use and transfer of Japanese technology and experience(know-how)

- dispatch of survey mission
- information networking
- development and dissemination of appropriate technology in developing countries
- workshop

An idea on a formula

[Background]

1. HFCs and PFCs are solutions to ozone layer protection

- (1) HFCs and PFCs are alternative substances that are forced to start to serve since CFCs and HCFCs have been designated as ozone layer depleting substances and being phased out in accordance with obligations under the Montreal Protocol.

It should be noted that HFCs and PFCs are recommended alternative substances in the report assessed by UNEP Technology and Economic Assessment Panel under the Montreal Protocol and IPCC Guidelines.

- (2) In the case future use of HFCs and PFCs is limited unfairly and inadequately, the development of ozone layer protection policy would be adversely affected.

Especially early phase out of HCFCs would be discouraged as production and consumption of HCFCs is allowed by 2020.

[Need for Consideration]

2. Special character of HFCs and PFCs as alternatives to CFCs and HCFCs

- (1) In the base year, 1990, emissions of HFCs and PFCs from their main use sectors amount to either very limited level or zero(0), when replacement from CFCs and HCFCs is scarcely found under regulation schedule(*).

(*) CFC: start regulation from 1989, phase out by 1996

HCFC: start regulation from 1996, phase out by 2020

In light of special character of HFCs and PFCs that are forced to start to serve as alternative substances to CFCs and HCFCs, it is a really relevant perception that amount of emissions of CFCs and HCFCs should be taken into consideration in identifying the base level of actual emissions of HFCs and PFCs.

- (2) In the course of this consideration, the fact of existence of replacement by other non-HFC, PFCs alternatives in some area and difference of GWP between CFCs, HCFCs and HFCs, PFCs should be reflected.

3. Idea on a formula

(1) A precedent in the Montreal Protocol

HCFCs consumption cap

$$= \text{HCFCs consumption in 1989} + \text{CFCs consumption in 1989} \times [0.031]$$

*[0.031] was reviewed and changed to [0.028] in 1995

- Regulation on consumption of HCFCs, that were transitional alternatives to CFCs was introduced in the Montreal Protocol in addition to regulation on that of CFCs in 1992.
- At that time a formula was carefully elaborated to establish a cap of consumption of HCFCs, reflecting the fact that level of consumption of HCFCs as alternatives to CFCs is very small in the base year 1989 and increased consumption was projected in accordance with CFCs phaseout.

(2) An idea on a formula

Base level of HFCs, PFCs and SF6

$$= \text{HFCs, PFCs and SF6 actual emissions in 1990}$$

$$+ \text{CFC and HCFC actual emissions in 1990} \times [p]$$

- Under a formula some proportions of actual emissions of CFCs and HCFCs in 1990 are incorporated into the base level of HFCs, PFCs and SF6.

(3) An idea on how to determine [p]

$$\Sigma \text{ HFCs, PFCs (to replace CFC, HCFC) emissions in meteoric tons} \times \text{GWP}$$

[p] =

$$\Sigma \text{ CFCs, HCFCs emissions in meteoric tons} \times \text{GWP}$$

Σ : sector (aerosol, foam blowing, refrigeration, etc.)

- Under [p], the scope of sectors where HFCs and PFCs are alternatives to CFCs and HCFCs and the difference of GWP between CFCs, HCFCs, HFCs and PFCs are to be considered.

NON PAPER

GAS COVERAGE

[Basic position]

- 1 Since the quantified targets will be legally binding, emissions should be measured with high accuracy and international agreement on reasonable and fair measurement methods is required. As for HFCs, PFCs and SF6, there remain some issues to be further studied and decided. We proposed these gases should be covered not at the COP3 but be covered by the year 2000 after reaching a conclusion on the following three points.

- (1) We should determine methodology for estimating emissions of these gases ;actual emission estimate or potential emission estimate.
- (2) We should determine guidelines to develop detailed method of estimating emissions of these gases and national statistics to implement accurate estimate.
- (3) We should determine a mechanism to adjust the base level of these gases to take into account the special character of these gases.

- HFCs and PFCs are forced to serve as alternatives to CFCs and HCFCs, since the Montreal Protocol imposes strict limitation on the use of these gases.
- In 1990 emissions of these gases were very limited, since the shift from CFC and HCFC occurred mainly after 1990.
- An adjustment is needed to reflect this special character, for example, by adjusting the base level.

[Conditions]

- 2 HFC, PFC and SF6 could be included in emission reduction or limitation target at the COP3 only when the following conditions are secured.

- (1) Actual method should be adopted for estimating emissions of these gases as same as CO2, CH4 and N2O.
- (2) In order to develop detailed method for accurate estimate, experts should start further study to establish guidelines for this purpose. And guidelines should be determined at the COP4.
- (3) A formula should be established in order to incorporate some proportions of actual emissions of CFCs and HCFCs in 1990 into the base level of HFCs and PFCs (*).

This formula is necessary to be stipulated in KYOTO Protocol or another legal instrument.

(*) a formula (for an example)

base level of HFCs, PFCs and SF6 actual emissions in 1990

= HFCs, PFCs and SF6 actual emissions in 1990

+ CFC and HCFC actual emissions 1990 x [p]

[p] (for an example)

$$[p] = \frac{\sum \text{HFCs, PFCs (to replace CFC, HCFC) emissions in meteoric tons} \times \text{GWP}}{\sum \text{CFCs, HCFCs emissions in meteoric tons} \times \text{GWP}}$$

Σ :sector(aerosol, foam blowing, refrigeration, etc.)

The Outline of Control by the Montreal Protocol

CFC (Chlorofluorocarbons) (agreed in 1987)

- ODP : 0.6-1.0
- GWP : 8,500 (CFC-12)
- main use : air-conditioner for car, refrigerator for ice box etc., foaming agent for heat insulator etc., lotion for electric parts

Control Schedule

1989 Start Control, 1995 Phaseout

< Base Level > the actual results of the production and the consumption in 1986

< Schedule > After July 1st, 1989 $\leq$ 100% of baseline year

After January 1st, 1994 $\leq$ 25% of baseline year

After January 1st, 1996 Phaseout※

※The production for the essential use is excepted.

HCFC (Hydrochlorofluorocarbons) (agreed in 1992)

- ODP : 0.025-0.11
- GWP : 1,500 (HCFC-22)
- main use : refrigerator for air-conditioner for home use, foaming agent for heat insulator etc., lotion for electric parts

Control Schedule

1996 Start Control, 2020 Phaseout (plan)

< Base Level > the actual results of the consumption in 1989※

< Schedule > After January 1st, 1996 $\leq$ 100% of baseline year

After January 1st, 2004 $\leq$ 65% of baseline year

After January 1st, 2010 $\leq$ 35% of baseline year

After January 1st, 2015 $\leq$ 10% of baseline year

After January 1st, 2020 Phaseout (useable for 10 years for ref. of existing units)

※(Base Level) = (the consumption of HCFC in 1989) + (the consumption of CFC in 1989) $\times$ 2.8%

*The consumption is based on ODP ton.

Issues for Resolution

Targets

- o Can we move on our target in real terms (with respect to the number of tons and/or timeframe)?
- o Can we move on our target in optical terms, e.g.:
 - by changing baseyear to 1995?
 - by dropping some or all sinks or modifying how we count them?
 - by moving from 6 to 3 gases in the first budget period (with all six covered in the next period)? (if so, it would be harder to "reduce" further in the second budget period) (if so, could we accept policies and measures on the other three?)
- o Can we support differentiation, e.g.:
 - by allowing choice of baseyears (1990/1995)?
 - by accepting the Japanese formula-based model (which allows targets between stabilization and 5% reduction)?
 - by allowing each country to decide its own target?
- o What should we do about a second budget period in the protocol (noting relevance to developing country issue)?
 - not include anything
 - include targets for the second budget period
 - include timeframe of second budget period (and possibly that there will be a "reduction") but leave the negotiation of actual targets until later

Emissions Trading

- o Could we accept having the existence of trading depend upon a future decision of the parties regarding modalities, etc.?
- o Could we accept that domestic measures (as opposed to trading) must be the "main" means of meeting targets? Any other limits, e.g., a certain percentage?

Joint Implementation with Developing Countries

- o Could we accept having the existence of JI with credit depend upon the decision of the Parties after the end of the pilot phase in 2000?
- o Could we accept that domestic measures (as opposed to JI) must be the "main" means of meeting targets? Any other limits, e.g., a certain percentage?

-2-

- o Could we accept the hybrid JI/Brazil concept that we have floated informally?
- o Even if we dropped certain sinks for our target, would we still need sink projects to be allowed under JI?

Developing Countries

- o What happens if we cannot get an article "advancing implementation of existing commitments" that actually advances anything? What if it actually goes backwards?
- o Can we abandon "evolution" (i.e., a procedural commitment now to negotiate commitments later) and move instead to:
 - Article 10 (voluntary opt-in), coupled with U.S. linkage between first budget period commitments and intent by key countries to join Article 10; and
 - a "review of commitments," as already envisioned under Article 7(2)(a) of the Convention, which does not specifically say that such review will lead to negotiation of commitments?

Entry into Force

- o Should U.S. ratification be required for entry into force?
- o Should developing country ratifications be required for entry into force?

Additional Issues

- o Russian tons: What can we give Russia concerning its ability to sell "hot air" that it has accumulated before the first budget period?
- o Policies and Measures: Can we ultimately agree to a few mandatory policies and measures, provided they are benign (such as energy efficiency) and are not subject to mandatory coordination?
- o National Security: What do we do if our proposal for a decision of the parties does not succeed?
- o "Compensation": Beyond having the parties periodically review implementation of the protocol in terms of impacts on other parties, is anything related to compensating OPEC countries for economic impacts flowing from our measures to meet our target totally unacceptable?
- o Banking/Borrowing: Do we need to insist on retaining banking (i.e., the ability to carry over to the next budget period any underages) and/or borrowing (i.e., the ability to legally borrow a limited amount from the next budget period, to be paid back with a penalty)?

Policies and Measures

Issues

- o There are three major issues:
 - whether a list of policies/measures should be non-existent, voluntary, or mandatory;
 - whether there should be any requirement to participate in a process to "coordinate" policies/measures, even if the resulting policy/measure is not binding; and
 - how to handle the G-77 demand for policies/measures not to have adverse environmental (AOSIS) or economic (OPEC) impacts on developing countries; this is linked to the "compensation" issue.

Proposed Positions

- As to the first issue, it is unlikely that we can prevail on having no list of policies/measures at all. As such, we should seek a voluntary list (with appropriate changes made to the list), falling back, if necessary, to a mandatory list consisting of the first four policies/measures in Alternative A.
- o As to the second issue, we should not support a mandatory process for "coordinating" policies/measures, even if the result is not binding. There are numerous reasons why a policy/measure might not be amenable to coordination under the Protocol (e.g., because it was not amenable to coordination at all, because it was not amenable to coordination by Annex I countries alone, because it should be handled by an organization outside the Protocol). Any formulation of a requirement to participate would need to leave us the flexibility not to participate if we did not think it appropriate.
 - o As to the third issue, we cannot support any call for "compensation" to developing countries for either environmental or economic damage. We could, however, support reviewing (e.g., as part of the general review of implementation of the Protocol) the impacts that the implementation of Annex I commitments are having on other Parties.

Reservations

- o The draft protocol currently contains a "no reservations" clause.
- o A footnote makes clear that a country, namely us, objected to the clause.
- o In the absence of a "no reservations" clause, the rules governing reservations would be those found in the Vienna Convention on the Law of Treaties, which reflects customary international law in this area:
 - In essence, a State would be able to make a reservation, unless it were "incompatible with the object and purpose of the treaty."
- o Since the 1992 Framework Convention on Climate Change, which contains a "no reservations" clause, the Senate has become increasingly concerned about such clauses, which it believes impinge on its Constitutional prerogatives regarding advice and consent.
 - Most recently, in the resolution approving the Chemical Weapons Convention, the Senate expressed its (non-binding) view that the Executive Branch should not negotiate treaties with "no reservations" clauses.
- o As noted above, there is no international support for deleting the "no reservations" clause in the protocol:
 - Most countries do not have a separation of powers issue.
 - Most countries suspect our motives for wanting to allow -- in addition to all our other proposals for "flexibility" -- the ability to make reservations.
- o We are left with three options:
 - Oppose the protocol because it contains a "no reservations" clause.
 - Continue to oppose the "no reservations" clause (to show the Senate that we tried), but ultimately live with it.
 - Seek to negotiate a limited "no reservations" clause that would permit reservations to be made to certain articles (presumably not including the target).

- o In terms of the relative merits of the last two options, it needs to be considered:
 - whether we would support opening the door to reservations from other countries;
 - whether the Senate would view the ability to make limited reservations (but not to the target) to be any more valuable than a complete prohibition on reservations; arguably, a reservation to the target would be incompatible with the object and purpose of the protocol in any event.
- o The question has been raised whether it might be possible to deal, through reservations, with the developing country linkage and/or the national security issue.

Developing Countries

- o Concerning the developing country linkage, it has been suggested that the United States might seek to link fulfilment of its commitment with developing country action through a reservation.
- o Even assuming that we were to pursue the limited "no reservations" approach, it is highly unlikely that reservations would be permitted to Article 3 (the target).
- o Indeed, even if the "no reservations" clause were deleted entirely, linking our commitment to developing country action would be unlikely to be consistent with the requirement that reservations not be incompatible with the object and purpose of the treaty.
- o The only way to allow for a reservation along the lines above would be to specifically provide in the Protocol that reservations could be taken for that purpose. It is unlikely that such a clause could be negotiated, given that setting up developing country action as a precondition for fulfilment of the Annex I obligation goes beyond even our "evolution" proposal.

National Security

- o It has been suggested that the United States might seek to deal with the national security issue through a reservation.

Developing Country Options

Proposal

- o There would be two key components:
 - In terms of the first budget period, the Executive Branch would unilaterally link U.S. commitments to key developing countries' making clear their intent to join Article 10.
 - In terms of the second budget period, there would be a decision in Kyoto to review the adequacy of commitments under Article 7(2) (a) of the Convention by a date certain; the review of adequacy for Annex I countries would focus on the second budget period and not re-open the first budget period obligations.
- o In addition, it would be desirable, particularly for domestic reasons, to seek a Declaration among like-minded countries in Kyoto expressing the expectation that key developing countries will join Article 10.

Discussion

- o This discussion is premised on three assumptions:
 - that the protocol's article "advancing existing commitments under Article 4.1 of the Convention" is satisfactory; (the developing countries are currently seeking text that goes backwards from the Convention);
 - that the Protocol would contain an Article 10 (i.e., voluntary commitments); and
 - that the Protocol would not contain an article on "evolution."
- o The question is what else, if anything, do we need.
- o As a matter of substance, an issue is whether the developing country action is linked to U.S. commitments for the first budget period, second budget period, or both.
- o In terms of process, options fall into three basic categories:
 - unilateral options;
 - multilateral options that require the agreement of all parties; and
 - multilateral options that do not require the agreement of all parties.

- o A unilateral option could also be combined with one of the multilateral options.

Unilateral Options

- o An example of a unilateral option would be for the Executive Branch to state that the U.S. would not take on legally binding obligations until key developing countries had made clear their intent to join Article 10. (Note that the U.S. could sign earlier; we just would not submit the protocol to the Senate.)
- o Advantages of unilateral options are that:
 - they are the easiest to achieve, in that they do not require the concurrence of any other country;
 - they are the most flexible, in that the Executive Branch can judge when the linkage has been met (e.g., in the above example, which countries are "key").
- o The potential disadvantage is that there is no agreed document to show that developing countries intend to move in this direction or even that other developed countries agree with our linkage/expectation.

Multilateral Options Requiring Consensus

- o An example of such an option is a decision of the Parties at Kyoto, which would require consensus.
- o A decision could establish a mandate for future negotiations:
 - a bland "mandate" could call for negotiations by a date certain, without specifying what kind of commitments we are seeking from developing countries;
 - a specific "mandate" could call for negotiations by a date certain and also specifies the kind, and date for implementation, of commitments we are seeking (e.g., legally binding emissions targets) and from which countries we are seeking them (e.g., countries with certain percentage of global emissions).
- o Alternatively, a decision could more generally call for a review of adequacy of commitments, without actually saying that negotiations on developing country commitments would follow from such a review.
 - The latest EU approach is a decision in Kyoto to review the adequacy of commitments under Article 7(2) (a) of the Convention by a date certain.

- o Although there are theoretical advantages to a consensus document, it is extremely unlikely that anything that could be agreed to by all parties would be worth much. It might even be harmful:
 - Developing countries would likely seek to load up any mandate with all kinds of elements unacceptable to us (e.g., additional Annex I commitments, financial and technology transfer requirements).
 - Even a decision limited to a "review of adequacy" could come back to haunt us; unless it specifically provided otherwise, it could be open-ended enough to include renegotiation of our first budget period commitment.
- o Further, even if we were to achieve a consensus agreement on a future process, that document in and of itself would not create the kind of linkage that the President set up. (In other words, establishing a future negotiating process does not necessarily mean that Annex I Parties will not implement their Kyoto commitments until that process has taken place.)

Multilateral Options Not Requiring Consensus

- o An example of such an option would be a "Declaration" among like-minded countries at Kyoto expressing the expectation that key developing countries will join Article 10.
- o An advantage of such an option is that, while the international document would not reflect the agreement of the countries at issue, it could show some international backing for whatever our domestic linkage is.

Other

- o It has also been suggested that the United States might seek to link fulfilment of its commitment with developing country action through a reservation.
- o The text currently contains a "no reservations" clause. Although the U.S. has opposed this clause (due to escalating Senate concerns about such clauses, which the Senate believes infringe on its Constitutional prerogatives), no other country supports deletion of the clause.

- o Even if the clause were deleted, customary international law, as reflected in the Vienna Convention on the Law of Treaties, would limit permissible reservations to those that do not defeat the object and purpose of the treaty; a reservation along the lines above would go to the very heart of the treaty.
- o The only way to allow for a reservation along the lines above would be to specifically provide in the Protocol that reservations could be taken for that purpose. It is unlikely that such a clause could be negotiated, given that setting up developing country action as a precondition for fulfilment of the Annex I obligation goes beyond even our "evolution" proposal.

- o A different approach might be to link the second budget period commitment with action by developing countries. For example, the Protocol itself could include a provision such as:

"The second budget period shall be from 2013 to 2017. The Parties shall decide, through an amendment, on their emissions budgets for that period, taking into account the extent to which non-Annex I countries [have taken] [have committed to] actions to limit greenhouse gas emissions."

Entry Into Force

Proposal

- o Structure entry into force trigger so that:
 - U.S. ratification is not a precondition;
 - ratifications of some developing countries is a precondition.
- o The exact percentage of global greenhouse gas emissions that should be required for entry into force will be addressed separately.

Discussion

- o Most countries have indicated support for an entry into force clause that requires not only a specific number of countries to have ratified, but a certain level/percentage of emissions as well.
- o In our January draft protocol, we supported the notion of a "weighted" entry into force clause, without specifying what the trigger would be.
- o Two issues have arisen in connection with the emissions trigger:
 - whether U.S. ratification should be a precondition for entry into force;
 - whether developing country ratifications should be a precondition for entry into force.

U.S. Ratification

- o In Bonn, it became apparent that some countries (such as Japan, Canada, and Australia) believe that the trigger should be crafted so as to require U.S. ratification before the protocol could enter into force; other countries (such as Switzerland and likely the EU) disagree.
- o We therefore need a position on whether U.S. ratification should be a precondition to entry into force.
- o If U.S. ratification were required:
 - a disadvantage is that the Senate would be able to hold up the entire agreement, not just U.S. participation;

- an advantage is that implementation of the agreement, including decision-making, could not begin without us (contrast the Biodiversity Convention);
- an advantage or disadvantage, depending on one's point of view, is that there would likely be substantial international pressure on the United States to ratify.

Developing Country Ratification

- o When we proposed our "evolution" article, we contemplated an entry into force clause that would require a certain level of developing country ratifications (e.g., China, India) for entry into force; that way, such countries would be bound to the evolution obligation at the same time that we were bound to take on our emissions obligation.
- o It now appears that the evolution article will not be in the protocol.
- o As such, it could be argued that it is not helpful to include developing countries in the entry into force trigger -- their ratification would not commit them to anything beyond "advancing existing commitments;" however, they could potentially block entry into force of the agreement.
- o On the other hand, from an optical point of view, carving developing countries out of the entry into force clause could make the protocol look like an "Annex I only" agreement; this would not be helpful domestically.

Todd:

Attached are papers that Eizenstat / you asked for on:

- 1) Russian Tons
- 2) Statement on Nat'l Security (if we don't seek language)
- 3) Statement on Dev'g Countries
- 4) EU Bubble

Sue

Russian Tons Language

In Article 6 (trading), fix paragraph 3 as follows:

3. Emissions trading, as defined in paragraph 1 above, shall be subject to the following criteria:
 - (a) Emission levels achieved before the start of any trading system established this Protocol can only be used as the basis for emissions trading if:
 - (i) the amount a Party transfers does not exceed [X% -- (i.e., the amount we think Russia will have to trade in the first budget period)] of the levels referred to in paragraph 3(a); and
 - (ii) any such amount transferred by a Party could not also be transferred from that Party's emission budget under Article 3.
 - (b) ...

U.S. Statement on National Security

- o The President is committed to ensuring that, should the United States become party to the Kyoto agreement, it would be implemented in a manner consistent with our national security, including military readiness.
- o In terms of domestic emissions related to U.S. military operations, including training and preparedness, the President would work with Congress to ensure that the legislation implementing U.S. obligations under the agreement did not impair the needs of the U.S. military.
 - We would work within NATO to promote similar approaches by our allies in terms of their domestic implementation.
- o In terms of emissions in other countries attributable to the U.S. military, such as those deriving from U.S. forces stationed abroad, the United States would work out arrangements, for example through emissions trading, to ensure that such emissions will count against U.S. obligations under the agreement. Such an approach would give the United States control over such emission levels and avoid putting other countries in the position of potentially having to choose between U.S. military activities in their territories and the desire to reduce the emissions stemming from such activities.

U.S. Statement on Developing Countries

[issue whether this statement would be made before, upon, or after adoption of an agreement]

- o As is known, the United States believes that climate change is a global issue that calls for a global response.
- o Given the rate at which emissions are growing around the world, a response to climate change that includes only Annex I countries cannot address the environmental problem.
- o Further, there are unacceptable economic implications attached to going forward with significant constraints on Annex I emissions, while allowing emissions from key developing countries to go entirely unchecked.
- o In this regard, we are pleased that the Kyoto package includes several elements that recognize the important role of non-Annex I countries. These include [advancing the implementation of Article 4.1] [JI] [Article 10] [post-Kyoto process].
- o At the same time, it cannot be said today that these elements, many of which depend upon future intentions and commitments, meet the expectations of either the President or the Senate regarding meaningful participation of key developing countries.
- o As a result, we will be working with both the Senate and key developing countries on ways to structure participation so that ratification by the United States can succeed.
- o We note that, under the President's plan, there are numerous steps that we intend to take before the agreement's first budget period even takes effect, including...

for
vaz

EU Bubble Issues

- o The EU Bubble raises legal/policy issues, as well as strategic issues concerning the timing, linkages, and conditions surrounding its ultimate acceptance.

Legal/Policy Issues

- o Of the many concerns expressed by countries, the following four appear to be the key ones for us:
 - the potential disparity between the agreement's treatment of, on the one hand, the bubble, and, on the other hand, emissions trading;
 - the EU's failure to clarify how new EU member States would be handled;
 - in terms of bringing in developing countries, the precedential problem of allowing Portugal a 40% increase over 1990 levels;
 - the inequity that results from allowing the EU to meet its target through means that are advantageous and not available to other countries.

Bubble vs. Trading

- o Regarding bubble vs. trading:
 - the ability to bubble is automatic, whereas trading depends upon future decisions of the COP/MOP;
 - under the bubble, all of a Party's reductions can take place outside its borders, whereas, under trading, domestic measures would need to be the "main" source of reductions; and
 - the ability to bubble does not depend upon a Party's compliance with any particular provisions, whereas the ability to trade does.
- o At a minimum, we need to ensure, with EU support:
 - that trading does not depend upon future decisions (although decisions could provide supplementary rules); and
 - that the "main" language comes out of trading.

Enlargement

- o As many JUSCANZ States have argued, the issue of new EU member States raises fundamental concerns:
 - The EU proposal does not deal explicitly with the enlargement issue. EU delegates have explained that it is implicit that new membership would be addressed through renegotiation of the internal EU burden-sharing arrangement -- a matter entirely for the EU to decide. However, enlargement could well create windfalls for existing EU members if economies in transition, whose emissions had fallen well below target levels, joined the EU. Such a situation would not only lighten the load of existing EU member States, but could also make it easier for the EU to call for reductions from other Parties, with no action on their part; this will inevitably put us on the defensive.
- o We should insist that any alteration in the composition of the EU would not result in an EU-only decision on the internal allocation of obligations; rather, the Parties to the Protocol should have to approve any new burden-sharing agreement. (Australia has proposed text on this point.)

Adverse Precedent

- o It will not be helpful in setting targets for developing countries to have an Annex I country, namely Portugal, with an obligation to increase by 40% over 1990 levels.
- o In this regard, Japan's suggestion may be useful, i.e., to set a upward cap on EU member States. However, we would need to be careful that any initial cap is without prejudice to trading/JI. (In other words, through our positions on trading/JI, we are in essence allowing countries to exceed their initial caps by an unlimited amount; we would not want to indirectly end up limiting the amount that we could increase our initial budgets.)

Equity

- o The Bubble would give the EU advantages (e.g., through non-market trading) that would not be available to other parties). As such, it could be argued that the EU should take on a greater commitment than other Annex I countries.
- o If we move to limited differentiation, this inequity could be remedied.

Other

- o A concern raised by several JUSCANZ countries is that, under the EU proposal, each EU member State would, in terms of non-compliance, be responsible not for the uniform target in the agreement, but only for its revised, internal EU target. The critics of such an approach see it as a form of differentiation that is not available to other countries. In fact, the EU approach is analogous to our own proposal, which actually allows the international obligation of Annex I parties to change based on trading, JI, banking, borrowing, etc. The EU approach could be tacked on to our approach by adding a new provision to Article 3 (target) such as the following:

"Any part of an emissions budget which a Party acquires from or transfers to another Party in accordance with Article X (Bubble) shall be added to or subtracted from, as the case may be, the emission budget of that Party."

- o A related issue is whether, even if individual EU member States are not responsible for each other in the case of non-compliance, the European Commission should be co-responsible with any member State in non-compliance. (Australia has proposed this as a fallback.)

Strategic Issues

Timing

- o Agreement on the Bubble must await resolution of all outstanding issues. Because many of the elements that we need (e.g., JI, developing countries) require agreement of countries other than the EU, it would not be good enough to get EU agreement in principle to support such elements; we could end up giving the EU the Bubble in exchange for getting nothing on the elements we need.

Linkages

- o As the Bubble is our greatest piece of leverage with the EU, we must link everything we need with giving away the Bubble.

Conditions

- o As noted above, we should condition the Bubble as follows:
 - Concerning enlargement, we should adopt elements of the Australian proposal, including the need for the Meeting of the Parties to approve any EU proposal to include a new member State in its burden-sharing arrangement.
 - We should explore Japan's idea of setting an upward cap on EU member States, while ensuring that initial caps are without prejudice to increasing emission budgets through trading/JI.
 - In terms of remedying the inequity of the Bubble, if we ultimately go to a differentiated scheme, the EU should have to take on a more stringent target than other countries.
 - [Do we agree with Australia's view that the EU should have to inform us of its burden-sharing arrangement upon ratification and should not be allowed do it "thereafter"?]



United States Department of State

Bureau of Oceans and International
Environmental and Scientific Affairs

Washington, D.C. 20520

DATE: 12-1-97 '97 DEC 1 PM2:41

NUMBER OF PAGES TO FOLLOW: 6

FAX TO: Todd STERN

TELEPHONE: 456-2702 FAX: 456-2215

OFFICE: _____

FAX FROM: Rafe Pomerance

TELEPHONE: _____ FAX: _____

OFFICE: _____

MESSAGE: Revised version per telecon
w/ STUART EIZENSTAT.

As of 11/29/97

ISSUES AND TACTICS

Targets:

- Current position: stabilization, six gases, all sources and all sinks
- First fall back: six gases, no sinks (except for specific projects); technically allows reduction of about 1-3% (after 2.5% to POTUS).
- Second fallback: (a) 1-2% real reduction with 6 gases, no sinks, or (b) 5% reduction 2nd budget period.
- Third fallback: 3 gases without sinks; technically allows reduction of about 5-7%
- May need additional flexibility for negotiators in session to change specific numbers, possible other small changes (e.g., adding a year to the length of the budget period, etc.); negotiators will also seek to prevent outcome of individual options being additive.

Tactics:

- any changes in our targets should be reserved for late in the negotiations (i.e., at the Ministerial portion)
- may create some problems with respect to the first day's AGBM session (which so far is to focus solely on sinks; we will need to insure our options are all preserved)

Differentiation

- current option: flat rate, all agree on stabilization
- proposed new position: allow differentiation, but indicate it would be bounded (e.g., 0-5% reduction; to be achieved on basis of target structure identified above)
- first fallback: apply Japanese formula using criteria of population growth (note: other two criteria of emission per GDP and emission per capita do not help us), with modification to allow US to remain at (or as close as possible to) stabilization (Note: in this case, the formula may be used to determine the target, but would not itself be inserted into the text)

Tactics

- give an indication of our new position early to show movement
- share with Japan (and other JUSCANZ, particularly Australia) early, and seek to call for their support on other issues, including JI, emissions trading, developing countries, and six gas target
- announce at first opening plenary in US statement

Russian tons

- current position: allow Russian "hot-air" during the budget period, but do not allow pre-budget period tons; seek as preferred option to convince Russia that this is enough
- fallback: for 2008-2012, allow Russia to sell tons up to amount (or some portion of the amount) we estimate they will have in the period – drawing any shortfall from the pre-period tons, and being allowed also to sell any excess that they have where emissions during the budget period are below the 1990 levels

Tactics:

- talk to Russia early
- seek VP telcon with Chernomyrdin to persuade Russia to accept our position (Note: Russia has been reluctant to part with any pre-budget period tons – but it may be impossible to get EU acceptance for this)

EU Bubble

- Current position: oppose the bubble short of a final package that includes all the elements we consider essential (including with respect to JI, trading and developing countries)
- Propose to condition several aspects, particularly those related to enlargement and competitive advantages:
 - (1) no country within the bubble may increase its emissions beyond a certain level (apart from market-based trading and JI), perhaps 10%. For example, Portugal would not be allowed to increase emissions by 40% but would be limited
 - (2) if countries choose to take advantage of the bubble, they should take on more significant commitments
 - (3) no new members should be allowed in the bubble until the negotiation of the budget period following their entry into the bubble

Tactics

- talk to Estrada early, indicating this is very important to us
- seek support from other countries (including JUSCANZ) in opposing bubble giveaway
- introduce any softening late in the process (e.g. at end of Ministerial in exchange for deal)
- any agreement at all on bubble will be in context of agreement with all Parties – including G-77 (i.e., exchange for EU bubble is package including JI, trading, and a strong developing country commitment)

- explore processes for standstill if other elements are not in place for developing countries

Borrowing

- Current proposal: support limited borrowing (10-15%) with payback across budget periods
- if no support for latter, delete former too.

Tactics

- discuss early with EU and JUSCANZ – particularly focusing on elements of non-compliance
- discuss issue with Estrada
- hold as “green” issue until late to help push EU on other issues

Domestic Measures

- language calling for trading or JI to be supplemental, or for domestic action to be “significant” or “substantial” is acceptable; language calling for domestic measures to be the “main” means of meeting the goal, or in any way to quantify the extent to which the goal can be met through such mechanisms is unacceptable.
- Fallback may be to allow review process to consider how JI for credit or emissions trading was used during the first period, and assess extent to which domestic action was employed. But no conditions on amount in first period.

Tactics

- Use EU bubble leverage (noting that if within bubble limits are not allowed, then neither should limits outside of bubble; but if bubble permits some members to emit 40% over 1990, then JI and emissions trading, which effectively increase a Party's budget, should also be allowed with no limits)
- Work with JUSCANZ allies that favor unrestrained trade (e.g., NZ, Australia, and Canada)
- Work with small developing countries that would likely be excluded from projects if total number was limited

DTSS note to JS 11/22

Climate Treaty - National Security Exemption

Question 1: Do we propose a national security exemption, in any form, at Kyoto?

State Dept. is resisting this strongly. Stu appears to believe that the risk of failure is too high, and that the domestic political cost of trying and failing exceeds the cost of not having tried. Todd and Katie appear to share this view.

State Dept. staff have recommended ways of proceeding at Kyoto that would improve chances of success. Specifically, they recommend seeking a Decision of the Parties or statement by the Chair (rather than a protocol provision) that countries would not be deemed in non-compliance due to certain categories of emissions related to national security (see discussion of scope, below).

Either a Decision or statement could be taken up in a lower-profile way than a protocol provision; either could be pushed toward the end of the Kyoto meeting, enhancing prospects for success. However, there is a risk of failure even for these approaches.

Question 2: Can we provide the assurances DoD seeks to avoid appeal?

At the DC, DoD sought a blanket exemption under the treaty for all military operations and training. No other agency or WH office supported this position.

In lieu of appeal, DoD indicated it would work with agencies on a package of substitute measures to accomplish its goals. In meetings Friday with staff, and conversations last night with Walt Slocombe, DoD appears to be seeking:

A. Exemption for military bunker fuels under the treaty.

Bunker fuels are not currently covered by the climate treaty and will not be addressed at Kyoto. However, they are a growing source of greenhouse gas emissions and will likely be on the agenda in technical discussions under the treaty during the next few years.

B. Attribution of emissions from overseas U.S. military facilities to the U.S.

Neither the current climate treaty nor draft Kyoto text address this issue. The draft text may leave room for the U.S. to assert, as a matter of interpretation, that such emissions should be included within our national totals. A provision along these lines might be well-received at Kyoto (by countries who would see this as the U.S. accepting responsibility for its emissions), although opposition might develop if it became clear that such a proposal would make it easier for the U.S. to meet its emissions goals (due to downsizing and reductions in forward-deployed troops).

C. Some agreement at Kyoto (a Decision of the Parties or statement by the Chair would be fine) exempting emissions related to "multilateral operations conducted by militaries for collective self-defense, peacekeeping, peace enforcement, and humanitarian assistance purposes, including operations under United Nations mandates."

In DoD's view, this would include all overseas training and all multilateral operations. DoD specifically rejects limiting this to surge ops or national security emergencies. Other agencies would support such a narrowing construction, if there is a decision to try to address this issue at Kyoto.

D. Assurance that the administration supports an exemption for operations and training under any domestic implementation program

Obviously, not current administration policy. Several agencies and WH offices would oppose, both on substantive grounds and due to timing (i.e., premature before other details of implementation scheme addressed).

U.S. DELEGATION TEAM TO THE COP-3

Final as of 11-23-97

Approved by DOS and The White House

Senior Officials (Possible Attendance)

Stuart E. Eizenstat, Under Secretary for Economic, Business and Agricultural Affairs

Timothy E. Wirth, Under Secretary for Global Affairs

Ambassador Thomas Foley, American Embassy-Japan

Senior Negotiating Coordination Team

Melinda L. Kimble, Acting Assistant Secretary for Oceans, and International Environment and Scientific Affairs (OES)

Rafe Pomerance, Deputy Assistant Secretary, OES

Ambassador Mark G. Hambley, OES

White House Team (11)

Katie McGinty

Todd Stern

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Lucia Wyman

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Negotiation Team

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Sue Biniaz, Legal

Evan Bloom, Legal

Mario Merida, Economic

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Claire Breidenich, OPPE
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David Doniger, OAR
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DOE

Linda Silverman
Abe Haspel
Rick Bradley
Debbie Stowell
Bill Breed

USDA

Carol Whitman

DOD

Ray Salomon
Chris Weaver

USAID

Jeff Seabright
Leslie Cordes

Treasury

GEF expert – to be named

Justice

Jim Rubin

NOAA

Dan Albritton or Tom Karl

Department of Labor

Bill Samuels or Ed Montgomery

Executive Assistant/Special Assistant Staff

Department of State

Peter Bass, Economic Affairs

Jim Desler, Special Asst. to E (possibly also Carolyn Keene)

Rodrigo Prudencio, Global Affairs

Barbara DeRosa-Joynt, OES (also, see logistics)

Victoria Greenfield, Economic and Business

Mark Lambert, East Asia Pacific Bureau

Jack Schick, Intelligence and Research

Bob Boynton, Am. Embassy-Beijing

Department of Treasury

John Gruber

U.S. United Nations

Burgess Laird

U.S. Initiative on Joint Implementation (USIJI)

Bob Dixon

Paul Schwengels

Management of Outside Constituencies

Department of State

Susan Gordon, OES (Front Office)

Susan Povenmire, OES (Press Relations)

Arthur Green (Foreign Press Relations; on loan from USIA)

Peter Yeo, Legislative Affairs

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Logistical Support Team

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Barbara DeRosa-Joynt, OES

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Angela Barber-Wilson, OES

(4 staff from conference coordination)

Senior Policy Advisors

David Gardiner, EPA

Jeffrey Hunker, Commerce

David Hales, USAID

Mark Mazur, DOE (may not be final decision)

Bob Boorstin, Treasury

Charlie Rawls, USDA

Total Delegation Count: 73 (includes 2 USIJI presenters, and Arthur Green, USIA)

Please note that this list does not include the official USIA/USIS staff, nor the staff of the American Embassy in Tokyo and the Consulate in Osaka.

203

Issues for ResolutionTargets

- o Can we move on our target in real terms (with respect to the number of tons and/or timeframe)?
- o Can we move on our target in optical terms, e.g.:
 - by changing baseyear to 1995?
 - by dropping some or all sinks or modifying how we count them?
 - by moving from 6 to 3 gases in the first budget period (with all six covered in the next period)? (if so, it would be harder to "reduce" further in the second budget period) (if so, could we accept policies and measures on the other three?)
- o Can we support differentiation, e.g.:
 - by allowing choice of baseyears (1990/1995)?
 - by accepting the Japanese formula-based model (which allows targets between stabilization and 5% reduction)?
 - by allowing each country to decide its own target?
- o What should we do about a second budget period in the protocol (noting relevance to developing country issue)?
 - not include anything
 - include targets for the second budget period
 - include timeframe of second budget period (and possibly that there will be a "reduction") but leave the negotiation of actual targets until later

Emissions Trading

- o Could we accept having the existence of trading depend upon a future decision of the parties regarding modalities, etc.?
- o Could we accept that domestic measures (as opposed to trading) must be the "main" means of meeting targets? Any other limits, e.g., a certain percentage?

Joint Implementation with Developing Countries

- o Could we accept having the existence of JI with credit depend upon the decision of the Parties after the end of the pilot phase in 2000?
- o Could we accept that domestic measures (as opposed to JI) must be the "main" means of meeting targets? Any other limits, e.g., a certain percentage?

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- o Could we accept the hybrid JI/Brazil concept that we have floated informally?
- o Even if we dropped certain sinks for our target, would we still need sink projects to be allowed under JI?

Developing Countries

- o What happens if we cannot get an article "advancing implementation of existing commitments" that actually advances anything? What if it actually goes backwards?
- o Can we abandon "evolution" (*i.e.*, a procedural commitment now to negotiate commitments later) and move instead to:
 - Article 10 (voluntary opt-in), coupled with U.S. linkage between first budget period commitments and intent by key countries to join Article 10; and
 - a "review of commitments," as already envisioned under Article 7(2)(a) of the Convention, which does not specifically say that such review will lead to negotiation of commitments?

Entry into Force

- o Should U.S. ratification be required for entry into force?
- o Should developing country ratifications be required for entry into force?

Additional Issues

- o Russian tons: What can we give Russia concerning its ability to sell "hot air" that it has accumulated before the first budget period?
- o Policies and Measures: Can we ultimately agree to a few mandatory policies and measures, provided they are benign (such as energy efficiency) and are not subject to mandatory coordination?
- o National Security: What do we do if our proposal for a decision of the parties does not succeed?
- o "Compensation": Beyond having the parties periodically review implementation of the protocol in terms of impacts on other parties, is anything related to compensating OPEC countries for economic impacts flowing from our measures to meet our target totally unacceptable?
- o Banking/Borrowing: Do we need to insist on retaining banking (*i.e.*, the ability to carry over to the next budget period any underages) and/or borrowing (*i.e.*, the ability to legally borrow a limited amount from the next budget period, to be paid back with a penalty)?

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To: Jonathan Adashek

Date: November 20, 1997

Fax #: 456-2215

Pages: 4, including this cover sheet.

From: William N. White

Subject: Russian tons options

COMMENTS:

Here is the revised options paper. Please call with questions, my direct line is 260-1345.

Options for Addressing "Hot" and "Super Heated Air" In A Post-2000 Kyoto Agreement

Problem Statement: Russia and Eastern Europe carbon emissions from the energy sector have declined significantly since 1990 and are expected to be below 1990 levels through 2012. Emissions are expected to bottom out in 1995 at 67% of 1990 levels and to rise gradually through 2012 when they will be roughly 90% of 1990 levels. Internal Russian energy projections are consistent with US EIA projections. Russian estimates forecast that emissions will be 84-91% of 1990 levels in 2010. These trends raise two issues for an emissions trading system.

Hot Air: Should Russia and Eastern Europe be allowed to "trade" the residual amount below their 1990 levels during the first budget period to other Annex I countries. The US position supports international emissions trading during budget periods, even though we recognize that the Russians and Eastern Europeans will be below 1990 levels during the first budget period (2008-2012). The European Union has referred to these credits as "hot air". We estimate that Russia and Eastern Europe will have 810 MMTC of hot air.

Super-heated Air: In addition, the Russians and Eastern Europeans would like "early credit" starting in 1990 -- basically allowing them to sum the entire amount below 1990 levels for use in the first budget period and beyond. The European Union refers to these credits as "super heated air". Allowing Russia and Eastern Europe to bank all of their reductions below 1990 levels results in 5,916 MMTC of credits by 2012 (the end of the first budget period), of which 5,106 MMTC are "super heated air".

The Options

There are several options to engage Russia and Eastern Europe (who will negotiate for as many credits as possible) and the European Union (who will want to minimize the use of hot and super heated air).

Option I: Allow Russia and Eastern Europe to bank from their 1990 baseline: Allowing Russia and Eastern Europe to bank and trade their super heated air will mean that Annex I will have to do nothing to meet a stabilization commitment. This is because the other Annex I countries will only have baseline growth of 3,998 MMTC over 1990 levels during the entire first budget period.

Option II: Select a 1995 base year: This option would eliminate the Russia all "super heated and hot air", since Russia and Eastern Europe were at 67% of their 1990 emissions in 1995. Russia would have an extremely difficult time meeting a commitment to stabilize emissions at 1995 levels since emissions are expected to increase by 31% from 1995 to 2010, and of course would be highly unlikely to agree to this new baseline. An important consideration with this option is that the US becomes the low-cost country and "sells" permits to other countries.

Option III: Select a 1990 base year -- constrain banking to first budget period: Russia and Eastern Europe could be constrained from banking "super heated air" and only allowed to trade credits derived during the first budget period. Since Russia and Eastern Europe are expected to be under 1990 levels throughout the 2008-2012 time period, they will be in a position to trade credits before they take any action ("hot air"). EIA estimates that the amount of "hot air" is roughly 810 MMTC of credits during the first budget period before taking any action. (20% of the overall Annex I emissions reduction goal for the first budget period).

Option IV: Cap the level of banking at a fixed amount tons. This option would allow negotiators to broker a deal. The environmental, cost, and equity implications of this option would be determined by how the deal is structured. For our analysis we assumed that Russia would be allowed to bank tons beginning in 2005. The pool of "super heated tons" could be restricted or expanded by choosing alternative "start years" or by negotiating a fixed amount.

Option V: Exclude Russia and Eastern Europe from Annex I trading: The EU has threatened to push for this if the Russian and Eastern Europe "super heated air" are not taken off the table. This would severely constrain the availability of low cost reductions. Russia and Eastern Europe are expected to be the major emissions trading partner with the US. Under a scenario where Russia and Eastern Europe were excluded, the US would become the low-cost producer of emission credits and would be in a position to "sell" credits. In fact, SGM analysis indicates that the "Annex I Trading" permit price is roughly \$130/ton. The US can meet its commitments without trading for \$82/ton.

Option VI: Cap emissions at 2000 levels from 2003-2007: This option will substantially reduce (but not entirely eliminate) the Russian hot air problem. Russian emissions are expected to grow by 417 MMTC over 2000 levels between 2003 and 2007. Capping emissions from 2003-2007 at 2000 levels will force Russia and Eastern Europe to borrow against the 2008-2012 budget period. As a result, Russia and Eastern Europe will have only 393 MMTC of hot air remaining in the 2008-2012 budget period -- if they remain on their baseline trajectory. This option meets EU requests to start actions before 2008. It would allow the US to credit early action by US companies and to begin the process of compliance before the much more stringent budget period of 2008-2012.

Recommendation:

Support Option III: Constrain banking to the first budget period. This option provides Russia and Eastern Europe with a target that will require them to do nothing during the first budget period while receiving a large amount of financial assistance. We estimate the total value of this package to Russia and Eastern Europe is \$18.6 Billion over 5 years. The US alone will most likely purchase 331 MMTC of hot air over the 5 year budget period and spend \$7.6 Billion -- reducing our domestic commitments by 17.5%. This option also provides Russia and Eastern Europe the opportunity to begin to pursue financing and trades before 2008. Early trading agreements will allow Russia and Eastern Europe to rebuild its infrastructure and to finance low-greenhouse gas emitting technologies well before 2008. The Russians and Eastern Europeans may not agree to this. As a fall back position, the US could consider Option 4, which would allow Russia and Eastern Europe a limited volume of "super heated air".

Table 1: Cumulative Emission Reduction Commitments 2008-2012

Region	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6 (2003- 2007)	Option 6 (2008- 2012)	Option 6 Total
US	1,888	1,490	1,888	1,888	1,888	472	1,888	2,360
Japan	785	522	785	785	785	156	785	941
Canada	226	197	226	226	226	60	226	286
Australia/NZ	135	75	135	135	135	34	135	169
European Union	964	974	964	964	964	325	964	1,290
Russia/ Eastern Europe	-5,916	1,419	-810	-1,491		417	-810	-393
Annex I Reductions	-1,918	4,677	3,188	2,507	3,998	1,465	3,188	4,653

ata source: EIA International Energy Annual, 1997

Option 6 totals include reductions taken from 2003-2007.

Table II: Costs of the Hot Air and Super Heated Air Options

	Option 1 ¹	Option 2 ²	Option 3	Option 4 ⁴	Option 5	Option 6
Annex I Permit Price (\$96)	\$9	\$76	\$23	\$19 ⁵	\$131	\$40
Russian and Eastern Europe Hot Air Sales 2008- 2012 (MMTC)	3998	0	810	1491	0	393
Total Value of Russian and Eastern Europe Hot Air (Billion \$96)	\$36.0	\$0.0	\$18.6	\$28.3	\$0.0	\$15.7
US Purchases of Hot Air 2008-2012 (MMTC)	1,888	0	331 ³	609	0	160
US Expenditures on Hot Air Sales 2008-2012 (Billion \$96)	\$17.0	\$0.0	\$7.6	\$11.6	\$0.0	\$6.4

Based on Second Generation Model Analysis

1. Assumes Russia charges \$9/ton — the value available from unlimited global JI
2. NOTE: The US sells permits under this option (the US permit price w/out trading is \$66/ton)
3. Based on the proportion of hot air purchased by the US from SGM analyses
4. Assumes that Russia and Eastern Europe get "super heated air" from 2005 -2008
5. Interpolated from other data

203

Outstanding Issues for Kyoto and Diplomatic Game Plan

1. Emissions Targets

State of Play: While a number of important countries have coalesced around stabilization at 1990 levels by 2010 or so (i.e., U.S., Canada, Japan, Russian Federation), we have not bridged the gap with the EU. The numbers from the developing countries (i.e., a 35 percent reduction by 2020) can be dismissed as negotiating tactics. OPEC nations remain opposed to any agreement.

Objective: We will need the support of key EU members (U.K., France, Germany, Luxembourg as holder of EU presidency) and more firm backing from Japan and the Russian Federation to keep the number close to stabilization. This may entail some kind of compromise between U.S. and the EU that embraces realistic targets, i.e., one much closer to the U.S. proposed level. Overall, we would also have to acknowledge OPEC (namely Saudi and Kuwaiti) concerns over a climate change agreement, urge them to stop their obstructionist ways and to support the proposed U.S. emissions target as it is the most realistic and sensible approach.

Recommended Actions to Achieve Objective: Use Bilateral with the EU (PM of Luxembourg, President of European Commission and Sir Leon Brittan, including Eizenstat preparatory discussions); Possible POTUS telephone calls to President Kohl, PM Blair, and the PM of Luxembourg; VP telephone call to French PM Jospain; Possible VP telephone call to U.K. Deputy PM Prescott as follow up on Prescott's recent Washington visit; Wirth telephone call Italian Deputy FM (Italians have been helpful and might have some influence in EU); and Summers telephone call to German counterpart; Possible VP telephone call Russian PM Chernomyrdin; Pull-aside/bilateral at APEC at POTUS or SecState levels with Japan. SecState telephone calls to Prince Bandar and either Kuwait PM and Crown Prince Shaykh Saad Al-Abdallah Al-Sabah or FM and First Deputy PM Shaykh Sabah Al-Ahmad Al-Sabah.

2. "Evolution"

State of Play: It is increasingly clear that we will not get "evolution" in the agreement (i.e., a commitment from developing countries to take on future quantitative emissions limitations). The current proposed position is a two-part approach: a decision at Kyoto to review the adequacy of all Parties' commitments under Article 7(2)(a) of the Convention by a date certain, but in the case of developed countries, it would be limited to the second budget period; and a Declaration formulated by like-minded countries expressing the expectation that key developing countries will join Article 10 (combined with a U.S. unilateral linkage between U.S. commitments and key developing countries' clear intention to accede to Article 10).

Objective: Because there are two elements, we must tailor our strategy appropriately. The review aspect will appeal to the EU as its members have been advocating an approach along these lines. We need to make clear to the critical EU members that the review will not look at the first emissions budget period and that they will need to push this concept hard to ensure future developing country commitments. In addition to selling the Declaration concept to the EU, we will also need to convince our JUSCANZ partners to support this modification of our "evolution" position. For both components, we will have to overcome fierce developing country opposition and persuade them that this is the most logical and environmentally beneficial means to address their future commitments. The key countries include China, India, and Brazil, Indonesia, Korea, Philippines, Thailand, Mexico, Egypt, South Africa, and Senegal.

Recommended Actions to Achieve Objective: EU Bilateral (including Eizenstat preparatory discussions); Pull-asides/bilaterals at APEC at all levels (POTUS, SecState, Acting A/S Kimble) with China, Indonesia, Korea, the Philippines, Thailand, Mexico as well as Japan, Canada, Australia, and New Zealand; Possible POTUS telephone call to President Cardoso of Brazil; Possible POTUS call to PM Gujral of India as follow up to SecState visit and DOC Secretary Daley visit; VP telephone call to President Mubarak (Egypt has shown some willingness to break away from other Arab states); VP telephone call to Vice President Mbeki; Wirth telephone call to appropriate Thai official; and OES DAS Pomerance telephone call to Senegalese negotiator (plays somewhat prominent role in negotiations).

3. Article 10 ("Graduation")

State of Play: We may have enough support from different quarters to retain Article 10 in the agreement (Article 10 encapsulates the "graduation" concept of a threshold that once passed, developing countries should take on quantitative commitments). The key will be whether we can get near term Article 10 "candidates" such as Mexico, Korea, and Singapore and some wealthier Caribbean nations not only to support its inclusion but more importantly, indicate that they will take on future commitments through it. We also need support from longer term prospects such as China, Israel, Thailand, Chile and Argentina. Other critical developing countries will also need to allow it to go forward (the whole article is bracketed to show the G-77/China's opposition)

Objective: In order to assure Article 10's retention in the Kyoto agreement, we will need to reinforce the support expressed by JUSCANZ partners and EU members. We will also need to target both types of Article 10 "candidates" as well as the usual other key developing countries (i.e., India, Brazil and the Philippines).

Recommended Actions to Achieve Objective: Pull-asides/bilaterals at APEC at all levels (POTUS, SecState, Acting A/S Kimble) with Mexico, Korea, Singapore, Thailand and Chile as well as with China, Indonesia, and the Philippines; Possible POTUS calls to

President Cardoso and PM Gujral; DOC Secretary Daley visit to India; Summers telephone call to appropriate Korean official; Wirth telephone call to appropriate Thai official; DAS Pomerance telephone call or lunch with Trinidad and Tobago and the Bahamas; DAS Pomerance to call in Israeli Embassy official to Department and telephone call to appropriate Israeli official; Bilateral with the EU (including Eizenstat preparatory discussions); Possible telephone calls (POTUS, VP, Summers, Wirth) to U.K., Germany, France, Luxembourg and Italy; Pull-asides/bilaterals at APEC at all levels (POTUS, SecState, Acting A/S Kimble) with Japan, Australia, Canada, and New Zealand.

4. Emissions Trading

State of Play: The odds of getting emissions trading in the agreement are favorable, although the EU is still holding its inclusion hostage to progress on the Bubble. There is also considerable opposition among developing countries, but that may be largely pre-Kyoto posturing/positioning. We are still trying to equate emissions trading with burdensharing under the Bubble (although it is unclear whether the "horsetrade" of emissions trading for the Bubble is the best deal). In addition, we're emphasizing the incentives of an emissions trading system for those contemplating Article 10 status.

Objective: We need to secure emissions trading at the least possible cost in terms of other negotiating "chips" with both the EU and developing countries. We must work to convince the EU and others that emissions trading is in all Parties' best interest in terms of its cost-effectiveness and environmental benefits. We can also appeal to Saudi Arabia and Kuwait in stressing that as mitigation costs are reduced, other "impacts" are diminished as well.

Recommended Actions to Achieve Objective: Bilateral with the EU (including Eizenstat preparatory discussions); Possible telephone calls (POTUS, VP, Summers, Wirth) to U.K., Germany, France, Luxembourg, Sweden and Italy; Pull-asides/bilaterals at APEC at all levels (POTUS, SecState, Acting A/S Kimble) with Mexico, Korea, Singapore, Thailand, Chile Indonesia, and the Philippines; DAS Pomerance telephone call to/visit from appropriate Israeli officials.

5. Joint Implementation

State of Play: Joint implementation is very much up in the air. It is clear that it will be nearly impossible to get JI in the format originally conceived. Much hinges on the ongoing talks with Brazil as to whether some hybrid of the U.S. approach and the Brazilian "Clean Development Fund" emerges from bilateral discussions. If we are to go down the road of some centralized pool of JI credits (or competing regional pools), we will need to launch an intensive effort to sell this new approach, even among our few

friends on this issue. However, it may still prove to be impossible to obtain a decision on the credit issue before the end of the JI pilot phase (EU favors waiting).

Objective: We need to have some form of JI that our industry and NGO stakeholders will find acceptable. In order to secure support from key developing countries, we will have to overcome long-standing opposition in most cases. The hope is that a new formulation of JI along Brazilian lines will achieve that goal.

Recommended Actions to Achieve Objective: Continue bilateral efforts with Brazil (DAS Pomerance visit and follow-up; Possible POTUS call to President Cardoso); ; Pull- asides/bilaterals at APEC at all levels (POTUS, SecState, Acting A/S Kimble) with China, the Philippines, Korea, Singapore, Indonesia, Chile, as well as Japan, Australia, Canada, and New Zealand; Possible POTUS telephone call to PM Gujral of India; VP telephone calls to President Mubarak and Vice President Mbeki; DOC Secretary Daley visit to India; Summers telephone calls to Brazilian and Singaporean counterparts; Bilateral with the EU (including Eizenstat preparatory discussions); Possible telephone calls (POTUS, VP, Summers, Wirth) to U.K, Germany, France, Luxembourg, Sweden and Italy.

Summary of Action

1. Presidential Action

- Pull-aside/bilateral at APEC with Jiang Zemin
- Pull-aside/bilateral at APEC with President Ramos
- Pull-aside/bilateral at APEC with President of Korea
- Pull-aside/bilateral at APEC with President of Singapore
- Pull-aside/bilateral at APEC with President Frei of Chile
- Pull-aside/bilateral at APEC with President Soeharto of Indonesia
- Bilateral with the EU (PM of Luxembourg, President of European Commission and Sir Leon Brittain)
- Possible Telephone call to PM Gujral of India as follow up to SecState visit
- Possible telephone call to President Cardoso
- Possible telephone calls to President Kohl, PM Blair, and the PM of Luxembourg

2. Vice Presidential Action

- Telephone call to President Mubarak
- Telephone call to Vice President Mbeki
- Telephone call to French PM Jospain
- Possible telephone call to Russian PM Chernomyrdin
- Possible telephone call to U.K. Deputy PM Prescott

3. Secretary of State Action

- Bilateral with Indian Prime Minister
-

- Pull-aside/bilateral at APEC with Mexican Foreign Minister
 - Telephone call to Prince Bandar
 - Telephone call to either Kuwait PM and Crown Prince Shaykh Saad Al-Abdallah Al-Sabah or FM and First Deputy PM Shaykh Sabah Al-Ahmad Al-Sabah
4. Action by Commerce Secretary Daley
- Visit to India, December 6-12
5. Action by U/S Wirth
- Telephone call to Italian Deputy FM
 - Telephone call to Swedish Deputy FM
 - Telephone call to appropriate Thai official
6. Action by U/S Eizenstat
- Preparatory discussions with senior EU officials
7. Action by Treasury U/S Larry Summers
- Telephone call to appropriate Korean official
 - Telephone call to appropriate Brazilian official
 - Telephone call to appropriate Singapore official
 - Telephone call to appropriate German official
8. Action by Acting A/S Kimble, and DAS Pomerance
- Various APEC discussions - Kimble
 - Bilateral visit to Brazil - Pomerance

- Call in Israeli Embassy official to Department and telephone call to appropriate Israeli official - Pomerance
- Telephone call to Senegalese negotiator, Bakary Kante - Pomerance
- Lunch in New York - Pomerance (?) / Telephone calls to appropriate Bahamian and Trinidad and Tobago officials

Other opportunities

- Visit of President Nazarbayev of Kazakhstan (DepSec to meet with him – points provided to desk), November 17-19
- Visit of President Konare of Mali, November 19

Other possible countries

- Venezuela
- Argentina

Alternative Approach to JI

Two pieces:

- o combine trading and Annex I JI into one Article (Art. 6)
- o place revised approach on JI with developing countries into new Article 7

New Article 6

1. Parties included in Annex I [or acting under Article 10] may, for the purpose of meeting commitments under Article 3, transfer to or acquire from other such Parties:
 - (a) any part of an emission budget under Article 3;
 - (b) any emission units resulting from projects aimed at reducing anthropogenic emissions or enhancing anthropogenic removals of greenhouse gases listed in Annex A in any sector of the economy.
2. With respect to Article 1(a) above:
 - (a) a Party may not transfer or acquire any part of an emission budget if it is not in compliance with its obligations under Article 5 and 8 or if it does not have in place a national mechanism for certification and verification of trades;
 - (b) a Party may not transfer in a given budget period any part of its emission budget if it has exceeded its emission budget for that period.
3. With respect to paragraph 1(b) above:
 - (a) projects must have the approval of the host country government;
 - (b) projects must provide a reduction in net emissions that is additional to any that would otherwise occur;
 - (c) a Party may not acquire any emission units if it is not in compliance with its obligations under Articles 5 and 8;
4. With respect to both paragraphs 1(a) and 1(b) above:
 - (a) acquisitions of emission units or any part of an emission budget shall be supplemental to domestic policies and measures for meeting commitments under Article 3;

- (b) the MOP/COP may, at its first session or as soon as practicable thereafter, further elaborate guidelines, including for verification and reporting;
- (c) a Party may authorize intermediaries to participate, under the responsibility of that Party, in actions leading to the transfer or acquisition, under this Article, of emission units or parts of emission budgets;
- (d) if a question of a Party's implementation of the requirements referred to in paragraph 2 or 3 above is identified by a review process under this Protocol, transfers and acquisitions of emission budgets and emission units may continue to be made after the question has been identified, provided that any such tonnes may not be used by any Party to meet its obligations under Article 3 until any issue of compliance is resolved; issues of compliance shall be resolved as expeditiously as possible.

New Article 7

1. A Clean Development Enterprise, which shall operate through one or more entities as decided by the Parties, is hereby established to assist in the implementation of this Article, as specified below.
2. Any Party that is neither included in Annex I nor acting under Article 10 may generate emission units resulting from projects aimed at reducing anthropogenic emissions or enhancing anthropogenic removals of greenhouse gases listed in Annex A in any sector of the economy, provided that:
 - (a) participation in the project is voluntary and has the approval of the host country government;
 - (b) the project will bring about real, measurable, and long-term environmental benefits related to the mitigation of climate change;
 - (c) the project will provide a reduction in net emissions that is additional to any that would otherwise occur.

3. The Clean Development Enterprise shall:
 - (a) operate under the authority and guidance of the COP/MOP;
 - (b) review proposed projects in terms of the requirements set forth in paragraph 2 above;
 - (c) certify proposed projects that meet the requirements of paragraphs 2(a), 2(b), and 2(c) above;
 - (d) certify, on an annual basis, the number of emission units attributable to a project, using stringent emission reduction/removal verification and accountability methodologies; for each project, a baseline shall be established, against which the net environmental benefits of greenhouse gas emission mitigation and reduction achieved by the project can be compared;
 - (e) [impose a per/unit operational fee upon all units that it certifies and distribute funds so collected to projects related to adaptation to climate change;]
 - (f) [in the case where one or more projects need funding, act as a clearinghouse for purposes of matching potential investors with projects, including bundling several projects where appropriate.]
4. A Party that generates emission units, as certified by the Clean Development Enterprise, may:
 - (a) hold such units; or
 - (b) transfer any portion thereof to any Party included in Annex I [or operating under Article 10], which may use such units for the purpose of meeting its obligations under Article 3, provided it is in compliance with its obligations under Articles 5 and 8 and provided such units are supplemental to domestic policies and measures for meeting commitments under Article 3.
5. A Party may authorize intermediaries to participate, under the responsibility of that Party, in actions leading to the generation and transfer of units for projects under this Article.
6. If a question of a Party's implementation of the requirements of this Article is identified by a review process under this Protocol, transfers of emission units may continue to be made after the question has been identified, provided that any such tonnes may not be used by any Party to meet its obligations under Article 3 until any issue of compliance is resolved; issues of compliance shall be resolved as expeditiously as possible.

Developing Country Options

Proposal

- o There would be two key components:
 - In terms of the first budget period, the Executive Branch would unilaterally link U.S. commitments to key developing countries' making clear their intent to join Article 10.
 - In terms of the second budget period, there would be a decision in Kyoto to review the adequacy of commitments under Article 7(2)(a) of the Convention by a date certain; the review of adequacy for Annex I countries would focus on the second budget period and not re-open the first budget period obligations.
- o In addition, it would be desirable, particularly for domestic reasons, to seek a Declaration among like-minded countries in Kyoto expressing the expectation that key developing countries will join Article 10.

Discussion

- o This discussion is premised on three assumptions:
 - that the protocol's article "advancing existing commitments under Article 4.1 of the Convention" is satisfactory; (the developing countries are currently seeking text that goes backwards from the Convention);
 - that the Protocol would contain an Article 10 (i.e., voluntary commitments); and
 - that the Protocol would not contain an article on "evolution."
- o The question is what else, if anything, do we need.
- o As a matter of substance, an issue is whether the developing country action is linked to U.S. commitments for the first budget period, second budget period, or both.
- o In terms of process, options fall into three basic categories:
 - unilateral options;
 - multilateral options that require the agreement of all parties; and
 - multilateral options that do not require the agreement of all parties.

- o A unilateral option could also be combined with one of the multilateral options.

Unilateral Options

- o An example of a unilateral option would be for the Executive Branch to state that the U.S. would not take on legally binding obligations until key developing countries had made clear their intent to join Article 10. (Note that the U.S. could sign earlier; we just would not submit the protocol to the Senate.)
- o Advantages of unilateral options are that:
 - they are the easiest to achieve, in that they do not require the concurrence of any other country;
 - they are the most flexible, in that the Executive Branch can judge when the linkage has been met (e.g., in the above example, which countries are "key").
- o The potential disadvantage is that there is no agreed document to show that developing countries intend to move in this direction or even that other developed countries agree with our linkage/expectation.

Multilateral Options Requiring Consensus

- o An example of such an option is a decision of the Parties at Kyoto, which would require consensus.
- o A decision could establish a mandate for future negotiations:
 - a bland "mandate" could call for negotiations by a date certain, without specifying what kind of commitments we are seeking from developing countries;
 - a specific "mandate" could call for negotiations by a date certain and also specifies the kind, and date for implementation, of commitments we are seeking (e.g., legally binding emissions targets) and from which countries we are seeking them (e.g., countries with certain percentage of global emissions).
- o Alternatively, a decision could more generally call for a review of adequacy of commitments, without actually saying that negotiations on developing country commitments would follow from such a review.
 - The latest EU approach is a decision in Kyoto to review the adequacy of commitments under Article 7(2)(a) of the Convention by a date certain.

- Although there are theoretical advantages to a consensus document, it is extremely unlikely that anything that could be agreed to by all parties would be worth much. It might even be harmful:
 - Developing countries would likely seek to load up any mandate with all kinds of elements unacceptable to us (e.g., additional Annex I commitments, financial and technology transfer requirements).
 - Even a decision limited to a "review of adequacy" could come back to haunt us; unless it specifically provided otherwise, it could be open-ended enough to include renegotiation of our first budget period commitment.
- Further, even if we were to achieve a consensus agreement on a future process, that document in and of itself would not create the kind of linkage that the President set up. (In other words, establishing a future negotiating process does not necessarily mean that Annex I Parties will not implement their Kyoto commitments until that process has taken place.)

Multilateral Options Not Requiring Consensus

- An example of such an option would be a "Declaration" among like-minded countries at Kyoto expressing the expectation that key developing countries will join Article 10.
- An advantage of such an option is that, while the international document would not reflect the agreement of the countries at issue, it could show some international backing for whatever our domestic linkage is.

Other

- It has also been suggested that the United States might seek to link fulfilment of its commitment with developing country action through a reservation.
- The text currently contains a "no reservations" clause. Although the U.S. has opposed this clause (due to escalating Senate concerns about such clauses, which the Senate believes infringe on its Constitutional prerogatives), no other country supports deletion of the clause.

- Even if the clause were deleted, customary international law, as reflected in the Vienna Convention on the Law of Treaties, would limit permissible reservations to those that do not defeat the object and purpose of the treaty; a reservation along the lines above would go to the very heart of the treaty.
- The only way to allow for a reservation along the lines above would be to specifically provide in the Protocol that reservations could be taken for that purpose. It is unlikely that such a clause could be negotiated, given that setting up developing country action as a precondition for fulfilment of the Annex I obligation goes beyond even our "evolution" proposal.

- A different approach might be to link the second budget period commitment with action by developing countries. For example, the Protocol itself could include a provision such as:

"The second budget period shall be from 2013 to 2017. The Parties shall decide, through an amendment, on their emissions budgets for that period, taking into account the extent to which non-Annex I countries [have taken] [have committed to] actions to limit greenhouse gas emissions."

Key Country Positions – Climate Change Negotiations (As of 10-30-97)

	U.S.	Japan	Australia	NZ	Canada	EU	G77/China*	Russia	Brazil
Budget periods	yes	yes	yes	yes	yes	probably	maybe	yes	yes-diff. form
Target: Uniform or Differentiated	uniform	differentiated	differentiated	differentiated	uniform, but hinting at differentiation	uniform, but EU "bubble"	uniform, for Annex I only	differentiated, in Annex I "bubble"	differentiated
Has Country or Group Tabled Its Target?	yes (0%)	yes (0-5%)	no	no	no, but announcement expected 10/31	yes (15%)	yes, for Annex I only	yes (?)	yes (?)
Baseline	1990	1990	1990	1990	1990	1990	1990	1990	multi-year
International Emissions Trading	yes	yes, w/conditions	yes	yes	yes	no, limited JI in Annex I only in lieu of trading	no	yes**	yes
Carbon Taxes	no	no	no	maybe	no	maybe	no	no	no
Joint Implement. w/Credit	yes	yes, w/conditions	yes, but light	yes, but light	yes, but light	limited JI in Annex I only	clean development fund	?	clean development fund
Developing Country Commitments/ Evolution***	yes	light	yes	yes	yes	conditional, tied to early review	no	yes	no
Harmonized Policy & Measures	no	yes, but light	no	yes, but light	yes, but light	yes	no	no	no
Annex B	yes	light	yes	yes	yes	Annex X****	no	yes	no
Compensation	no	no	no	no	no	no	yes	no	yes

* G77/China has put forth a unified position, but that position masks substantial differences within its ranks.

** Russia would like trading to include "paper tons" for its below-baseline emissions prior to the first budget period.

*** Chairman has omitted evolution from the text of the protocol, but not ruled out possibility of inclusion in a "Kyoto Mandate."

**** Annex X is the EU's name for a proposal that is very similar to the U.S. proposal.

DRAFT

Issues for White House Consideration

Target:

We are assuming we have the flexibility to repackage our existing number as a reduction (for example, by using a 1995 baseyear), but do we have any flexibility to change our number as a matter of substance?

Are we supposed to negotiate a second budget period in Kyoto or not?

Flexibility:

Regarding emissions trading:

- can it depend upon a future decision of a Meeting of the Parties (i.e., because it depends upon modalities that need to be agreed by consensus in the future)?
- can it be limited (e.g., to only a certain percentage of a country's budget obligation)?

What position should we take on the "paper tons" issue (for example, exclude totally, include totally, include a certain portion)?

Regarding JI:

- can it be limited (e.g., to only a certain percentage of a country's budget obligation)?
- can we move from JI with credit to a variation of the Brazilian proposal, i.e., one or more institutions that provide funding for developing country projects that, in turn, sell credits to Annex I countries?

How critical are banking and borrowing?

National Security:

Is a specific "national security provision" a must-have for us? (If so, is this still true if we get an acceptable emissions trading provision?)

Developing Countries:

Assuming an Article 10, i.e., voluntary commitments, what else do we need, for example:

- no other internationally agreed document – rather, unilateral US linkage between our ratification and intention on the part of the key countries to join Article 10

- the latest EU approach, namely a decision in Kyoto to review the adequacy of commitments under Article 7(2)(a) of the Convention by a date certain (which, unless it specifically provides otherwise, would be open-ended enough to include renegotiation of our first budget period commitment)
- a bland “mandate” that calls for negotiations by a date certain, without specifying what kind of commitments we are seeking from developing countries
- a specific “mandate” that calls for negotiations by a date certain and also specifies the kind of commitments we are seeking (e.g., legally binding emissions targets) and from which countries we are seeking them (e.g., countries with certain percentage of global emissions)
- a “Declaration” among like-minded countries (i.e., that would not require consensus) calling for whatever kind of action we are seeking from developing countries

Entry into Force

Should the entry into force trigger be crafted so that, in effect, US ratification is required for the Protocol to enter into force? (Other developed countries are divided on this issue.) (A separate paper is being prepared on this topic.)

Process

DRAFT**Proposed Gameplan for the Kyoto Countdown**

The chief message for all of the contacts is that the United States wants a successful outcome in Kyoto. With particular countries, we want to tailor our message based on the relevant issues and the level of the officials involved.

1. Presidential Action

- Pull-aside/bilateral at APEC with Jiang Zemin (necessity of Chinese participation in the Kyoto outcome)
- Pull-aside/bilateral at APEC with President Ramos (developing countries must be involved; urge support for inclusion of "Article 10" in the Kyoto agreement – voluntary adoption of binding emissions commitments; encourage support for JI; send clear signal to climate change negotiators to be constructive in Kyoto)
- Pull-aside/bilateral at APEC with President of Korea (urge Korean voluntary adoption of binding emissions commitments as part of Kyoto agreement; encourage support for JI with credit and emissions trading)
- Pull-aside/bilateral at APEC with President of Singapore (urge Singapore's voluntary adoption of binding emissions commitments as part of Kyoto agreement; encourage support for JI with credit and emissions trading)
- Pull-aside/bilateral at APEC with President Frei of Chile (urge support for inclusion of "Article 10" in the Kyoto agreement; encourage support for JI with credit and emissions trading)
- Pull-aside/bilateral at APEC with President Soeharto of Indonesia (developing countries must be involved; urge support for inclusion of "Article 10" in the Kyoto agreement; encourage support for JI)

meaning
what?
need to be
asking for a
specific commitment
that makes a
difference

• Possible Telephone call to PM Gujral of India as follow up to SecState visit (make clear that developing countries must be involved; encourage support for JI with credit)

- Possible telephone call to President Cardoso (urge Brazil to support for JI with credit; encourage support for proposed U.S. emissions target)
- Possible telephone calls to President Kohl, PM Blair, and the PM of Luxembourg (when appropriate as negotiations proceed, encourage compromise between U.S. and

me. if they involved - they say yes,
what do we have? where do we go
with that?

EU that embraces realistic targets, flexibility mechanisms – emissions trading and JI with credit, and developing country involvement)

- (Watch out) Approach from Australia at APEC (will likely raise its need to have differentiated targets for developed countries; we have opposed that approach from the beginning; on most other climate change issues, we share similar views)

2. Vice Presidential Action

- Telephone call to President Mubarak (Egypt has shown some willingness to break away from other Arab states; seek support for JI with credit and meaningful role for key developing countries)
- Telephone call to Vice President Mbeki (South Africa will participate as a Party for the first time at Kyoto although it has attended negotiations as observer; seek to have South Africa influence other African nations to support JI with credit and the proposed U.S. emissions target)
- Telephone call to appropriate French PM Jospain (Encourage compromise between U.S. and EU that embraces realistic targets and flexibility mechanisms – emissions trading and JI with credit, and developing country involvement)
- Possible telephone call to Russian PM Chernomyrdin (Russian adoption of treaty essential; if necessary, seek support for U.S. emissions target, JI with credit and emissions trading; may have to address “paper tons” issue)
- Possible telephone call to U.K. Deputy PM Prescott (Follow up on Prescott’s recent Washington visit; encourage compromise between U.S. and EU that embraces realistic targets and flexibility mechanisms – emissions trading and JI with credit, and developing country involvement)

3. Secretary of State Action

- Bilateral with Indian Prime Minister (also Minister of External Affairs) Gujral (make clear that developing countries must be involved; encourage support for JI with credit)
- Pull-aside/bilateral at APEC with Mexican Foreign Minister (follow up on Presidential visit to Washington; urge Mexican voluntary accession to Kyoto agreement to take on binding emissions limitations; encourage support for JI with credit and emissions trading)

- Telephone call to Prince Bandar (acknowledge Saudi concerns over climate change agreement; urge them to stop their obstructionist ways and to support the proposed U.S. emissions target as it is the most realistic and sensible)
- Telephone call to either Kuwait PM and Crown Prince Shaykh Saad Al-Abdallah Al-Sabah or FM and First Deputy PM Shaykh Sabah Al-Ahmad Al-Sabah (acknowledge Kuwaiti concerns over climate change agreement; urge them to stop their obstructionist ways and to support the proposed U.S. emissions target as it is the most realistic and sensible)

4. Action by U/S Wirth

- Telephone call to Italian Deputy FM (Italians have been helpful and might have some influence in EU; encourage support for JI with credit, emissions trading and reasonable target)
- Telephone call to Swedish Deputy FM (Swedes have indicated support for JI; encourage support for JI with credit, emissions trading and reasonable target)
- Telephone call to appropriate Thai official (developing countries must be involved; urge support for inclusion of "Article 10" in the Kyoto agreement; encourage support for JI)

5. Action by Treasury U/S Larry Summers

- Telephone call to appropriate Korean official (urge Korean voluntary adoption of binding emissions commitments as part of Kyoto agreement; encourage support for JI with credit and emissions trading)
- Telephone call to appropriate Brazilian official (if necessary, shore up Brazil's support for JI with credit; encourage support for proposed U.S. emissions target)
- Telephone call to appropriate Singapore official (urge Singapore's voluntary adoption of binding emissions commitments as part of Kyoto agreement; encourage support for JI with credit and emissions trading)
- Telephone call to appropriate German official (encourage consideration of realistic U.S. emissions target; encourage compromise between U.S. and EU on market-based mechanisms – emissions trading and JI with credit and developing country involvement)

7. Action by Acting A/S Kimble, and DAS Pomerance

- Various APEC discussions - Kimble (use occasion of APEC to raise issues with Annex I and non-Annex I countries, as appropriate)
- Bilateral visit to Brazil - Pomerance (seek Brazil support for merged JI proposal; secure agreement that it will support proposal in Kyoto)
- Call in Israeli Embassy official to Department and telephone call to appropriate Israeli official - Pomerance (encourage consideration of "Article 10" status; urge support for U.S. proposal - target level and timeframe, emissions trading, JI with credit)
- Telephone call to Senegalese negotiator, Bakary Kante - Pomerance (Plays somewhat prominent role in negotiations; could be useful with other francophone African countries to support JI with credit and reasonable U.S. target proposal)
- Lunch in New York - Pomerance (?)/Telephone calls to appropriate Bahamian and Trinidad and Tobago official (have relatively high per capita GDPs; could ask them to demonstrate their commitment to addressing climate change by signing up for "Article 10")

Other possible countries/opportunities

- Venezuela
- Argentina
- Visit of Sir Leon Brittain
- U.S.-EU Summit, December 5

What we need is a more strategic memo.

Target

51

Derivatives Conting

Trading

On each pt -- this is what we want,
this is current state of play. To get
close to what we want we need to get
support of $\$X$ & Y & Z countries -- [eg --
need Brazil & can then fan out; or need
England then EN then fan out, etc.]

To get such support, we ~~shall~~ recommend
proceeding as follows.

At end of the issues, can sum up the
calls, pull assets, etc by P, R, etc.

Banking and Borrowing: Decisions for Kyoto

Both banking and borrowing are currently included in the draft text for Kyoto (Article 3, paragraphs 13 and 14) – although both are bracketed, indicating the lack of agreement for their inclusion. Currently, there are also some blanks in the borrowing text – including with respect to what limit might be imposed on the amount that can be borrowed, and on what “penalty” would be assessed on countries that choose to borrow.

The issue of banking is not particularly problematic; most countries understand the value of early action. Its principal detractors have raised concerns about the complexity of implementation – and the need it implies for a second budget period. Problems with banking have also been raised in connection with JI – in which the concept of early action has been supported by many in industry, including most aggressively by those undertaking JI projects. It would be useful to deal with the early credit for JI separately, noting in particular the implications it has for Russia and Eastern Europe.

Borrowing has received significantly more attention – little of it positive. Internationally, the only supporters of borrowing have been the New Zealanders, who see the concept in the same light we do; all others have been opposed to providing the additional element of flexibility, in particular noting the problems the concept imposes for determining compliance. Some of these countries have suggested that borrowing be adopted as a form of non-compliance – i.e., that countries which exceed their budget allocations would have to repay with a penalty. However, no text has been inserted into the chairman’s current draft to this end.

Recommendations

Banking: Continue to support. Allow delegation flexibility to drop the concept if it becomes non-negotiable.

Borrowing:

- Continue to support, noting that borrowing could only be accommodated if a second budget period is explicitly set forth in the agreement – even if the level/target for that period is not adopted.
- If unacceptable as drafted, propose modifying the amount that may be borrowed, and the penalty assessed on borrowers to attract support (beginning with allowing no more than 20 percent to be borrowed, i.e., approximately one year’s worth of the five year budget allocation), and a penalty of 25 percent.
- May seek to further address concerns about borrowing by adding language to restrict it to emissions for which a Party has provided detailed plans regarding repayment (and possibly require that guidelines for such proposals to be developed and adopted by the Parties at their first meeting). This addition would obligate a Party to develop, make public, have reviewed and have agreed specific proposals on how it would make up the additional obligations in the subsequent budget period. It would prohibit borrowing by Parties not having such plans.
- If these options fail, allow delegation flexibility to drop the concept if it becomes non-negotiable.

Options for Addressing "Hot" and "Super Heated Air" In A Post-2000 Kyoto Agreement

Problem Statement: Russia and Eastern Europe carbon emissions from the energy sector have declined significantly since 1990 and are expected to be below 1990 levels through 2012. Emissions are expected to bottom out in 1995 at 67% of 1990 levels and to rise gradually through 2012 when they will be roughly 90% of 1990 levels. Internal Russian energy projections are consistent with US EIA projections. Russian estimates forecast that emissions will be 84-91% of 1990 levels in 2010. These trends raise two issues for an emissions trading system.

Hot Air: Should Russia and Eastern Europe be allowed to "trade" the residual amount below their 1990 levels during the first budget period to other Annex I countries. The US position supports international emissions trading during budget periods, even though we recognize that the Russians and Eastern Europeans will be below 1990 levels during the first budget period (2008-2012). The European Union has referred to these credits as "hot air". We estimate that Russia and Eastern Europe will have 810 MMTC of hot air.

Super-heated Air: In addition, the Russians and Eastern Europeans would like "early credit" starting in 1990 -- basically allowing them to sum the entire amount below 1990 levels for use in the first budget period and beyond. The European Union refers to these credits as "super heated air". Allowing Russia and Eastern Europe to bank all of their reductions below 1990 levels results in 5,916 MMTC of credits by 2012 (the end of the first budget period), of which 5,106 MMTC are "super heated air".

The Options

There are several options to engage Russia and Eastern Europe (who will negotiate for as many credits as possible) and the European Union (who will want to minimize the use of hot and super heated air).

Option I: Allow Russia and Eastern Europe to bank from their 1990 baseline: Allowing Russia and Eastern Europe to bank and trade their super heated air will mean that Annex I will have to do nothing to meet a stabilization commitment. This is because the other Annex I countries will only have baseline growth of 3,998 MMTC over 1990 levels during the entire first budget period.

Option II: Select a 1995 base year: This option would eliminate the Russia all "super heated and hot air", since Russia and Eastern Europe were at 67% of their 1990 emissions in 1995. Russia would have an extremely difficult time meeting a commitment to stabilize emissions at 1995 levels since emissions are expected to increase by 31% from 1995 to 2010, and of course would be highly unlikely to agree to this new baseline. An important consideration with this option is that the US becomes the low-cost country and "sells" permits to other countries.

Option III: Select a 1990 base year -- constrain banking to first budget period: Russia and Eastern Europe could be constrained from banking "super heated air" and only allowed to trade credits derived during the first budget period. Since Russia and Eastern Europe are expected to be under 1990 levels throughout the 2008-2012 time period, they will be in a position to trade credits before they take any action ("hot air"). EIA estimates that the amount of "hot air" is roughly 810 MMTC of credits during the first budget period before taking any action. (20% of the overall Annex I emissions reduction goal for the first budget period).

Option IV: Cap the level of banking at a fixed amount tons. This option would allow negotiators to broker a deal. The environmental, cost, and equity implications of this option would be determined by how the deal is structured. For our analysis we assumed that Russia would broker a deal to allow them to bank tons beginning in 2005.

Option V: Exclude Russia and Eastern Europe from Annex I trading: The EU has threatened to push for this if the Russian and Eastern Europe "super heated air" are not taken off the table. This would severely constrain the availability of low cost reductions. Russia and Eastern Europe are expected to be the major emissions trading partner with the US. Under a scenario where Russia and Eastern Europe were excluded, the US would become the low-cost producer of emission credits and would be in a position to "sell" credits. In fact, SGM analysis indicates that the "Annex I Trading" permit price is roughly \$130/ton. The US can meet its commitments without trading for \$82/ton.

Option VI: Cap emissions at 2000 levels from 2003-2007: This option will substantially reduce (but not entirely eliminate) the Russian hot air problem. Russian emissions are expected to grow by 417 MMTC over 2000 levels between 2003 and 2007. Capping emissions from 2003-2007 at 2000 levels will force Russia and Eastern Europe to borrow against the 2008-2012 budget period. As a result, Russia and Eastern Europe will have only 393 MMTC of hot air remaining in the 2008-2012 budget period -- if they remain on their baseline trajectory. This option meets EU requests to start actions before 2008. It would allow the US to credit early action by US companies and to begin the process of compliance before the much more stringent budget period of 2008-2012.

Recommendation:

Support Option III: Constrain banking to the first budget period. This option provides Russia and Eastern Europe with a target that will require them to do nothing during the first budget period while receiving a large amount of financial assistance. We estimate the total value of this package to Russia and Eastern Europe is \$18.6 Billion over 5 years. The US alone will most likely purchase 331 MMTC of hot air over the 5 year budget period and spend \$7.6 Billion -- reducing our domestic commitments by 17.5%. This option also provides Russia and Eastern Europe the opportunity to begin to pursue financing and trades before 2008. Early trading agreements will allow Russia and Eastern Europe to rebuild its infrastructure and to finance low-greenhouse gas emitting technologies well before 2008.

Table 1: Cumulative Emission Reduction Commitments 2008-2012

Region	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6 (2003- 2007)	Option 6 (2008- 2012)	Option 6 Total
US	1,888	1,490	1,888	1,888	1,888	472	1,888	2,360
Japan	785	522	785	785	785	156	785	941
Canada	226	197	226	226	226	60	226	286
Australia/NZ	135	75	135	135	135	34	135	169
European Union	964	974	964	964	964	325	964	1,290
Russia/ Eastern Europe	-5,916	1,419	-810	-1,491		417	-810	-393
Annex I Reductions	-1,918	4,677	3,188	2,507	3,998	1,465	3,188	4,653

Data source: EIA International Energy Annual, 1997
 Option 6 totals include reductions taken from 2003-2007

Table II: Costs of the Hot Air and Super Heated Air Options

	Option 1 ¹	Option 2 ²	Option 3	Option 4 ⁴	Option 5	Option 6
Annex I Permit Price (\$96)	\$9	\$76	\$23	\$19 ⁵	\$131	\$40
Russian and Eastern Europe Hot Air Sales 2008- 2012 (MMTC)	3998	0	810	1491	0	393
Total Value of Russian and Eastern Europe Hot Air (Billion \$96)	\$36.0	\$0.0	\$18.6	\$28.3	\$0.0	\$15.7
US Purchases of Hot Air 2008-2012 (MMTC)	1,888	0	331 ³	609	0	160
US Expenditures on Hot Air Sales 2008-2012 (Billion \$96)	\$17.0	\$0.0	\$7.6	\$11.6	\$0.0	\$6.4

Based on Second Generation Model Analysis

1. Assumes Russia charges \$9/ton — the value available from unlimited global II
2. NOTE: The US sells permits under this option (the US permit price w/out trading is \$66/ton)
3. Based on the proportion of hot air purchased by the US from SGM analyses
4. Assumes that Russia and Eastern Europe get "super heated air" from 2005 -2008
5. Interpolated from other data

705

Policies and Measures

Issues

- o There are three major issues:
 - whether a list of policies/measures should be non-existent, voluntary, or mandatory;
 - whether there should be any requirement to participate in a process to "coordinate" policies/measures, even if the resulting policy/measure is not binding; and
 - how to handle the G-77 demand for policies/measures not to have adverse environmental (AOSIS) or economic (OPEC) impacts on developing countries; this is linked to the "compensation" issue.

Proposed Positions

As to the first issue, it is unlikely that we can prevail on having no list of policies/measures at all. As such, we should seek, in the following order of desirability:

- a voluntary list (with appropriate changes made to the list);
 - a mandatory list, with the policies/measures cast as "objectives" (with appropriate changes made to the list); and
 - a mandatory list of policies/measures (with appropriate changes made to the list).
- unacceptable
- o As to the second issue, we should not support a mandatory process for "coordinating" policies/measures, even if the result is not binding. There are numerous reasons why a policy/measure might not be amenable to coordination under the Protocol (e.g., because it was not amenable to coordination at all, because it was not amenable to coordination by Annex I countries alone, because it should be handled by an organization outside the Protocol). Any formulation of a requirement to participate would need to leave us the flexibility not to participate if we did not think it appropriate.
 - o As to the third issue, we cannot support any call for "compensation" to developing countries for either environmental or economic damage. We could, however, support reviewing (e.g., as part of the general review of implementation of the Protocol) the impacts that the implementation of Annex I commitments are having on other Parties.

703

Draft #4

Developing Country Options

- o Assuming the Protocol contains an Article 10 (i.e., voluntary commitments) but does not contain an article on "evolution," the question arises what else, if anything, do we need.
- o As a matter of substance, an issue is whether the developing country action is linked to U.S. commitments for the first budget period, second budget period, or both.
- o In terms of process, options fall into three basic categories:
 - unilateral options;
 - multilateral options that require the agreement of all parties; and
 - multilateral options that do not require the agreement of all parties.
- o A unilateral option could also be combined with one of the multilateral options.

Unilateral Options

- o An example of a unilateral option would be for the Executive Branch to state that the U.S. would not take on legally binding obligations until key developing countries had made clear their intent to join Article 10. (Note that the U.S. could sign earlier; we just would not submit the protocol to the Senate.)
- o Advantages of unilateral options are that:
 - they are the easiest to achieve, in that they do not require the concurrence of any other country;
 - they are the most flexible, in that the Executive Branch can judge when the linkage has been met (e.g., in the above example, which countries are "key").
- o The potential disadvantage is that there is no agreed document to show that developing countries intend to move in this direction or even that other developed countries agree with our linkage/expectation.

Multilateral Options Requiring Consensus

- o An example of such an option is a decision of the Parties at Kyoto, which would require consensus.

-2-

- o A decision could establish a mandate for future negotiations:
 - a bland "mandate" could call for negotiations by a date certain, without specifying what kind of commitments we are seeking from developing countries;
 - a specific "mandate" could call for negotiations by a date certain and also specifies the kind, and date for implementation, of commitments we are seeking (e.g., legally binding emissions targets) and from which countries we are seeking them (e.g., countries with certain percentage of global emissions).
- o Alternatively, a decision could more generally call for a review of adequacy of commitments, without actually saying that negotiations on developing country commitments would follow from such a review.
 - The latest EU approach is a decision in Kyoto to review the adequacy of commitments under Article 7(2) (a) of the Convention by a date certain.
- o Although there are theoretical advantages to a consensus document, it is extremely unlikely that anything that could be agreed to by all parties would be worth much. It might even be harmful:
 - Developing countries would likely seek to load up any mandate with all kinds of elements unacceptable to us (e.g., additional Annex I commitments, financial and technology transfer requirements).
 - Even a decision limited to a "review of adequacy" could come back to haunt us; unless it specifically provided otherwise, it could be open-ended enough to include renegotiation of our first budget period commitment.
- o Further, even if we were to achieve a consensus agreement on a future process, that document in and of itself would not create the kind of linkage that the President set up. (In other words, establishing a future negotiating process does not necessarily mean that Annex I Parties will not implement their Kyoto commitments until that process has taken place.)

-3-

Multilateral Options Not Requiring Consensus

- o An example of such an option would be a "Declaration" among like-minded countries at Kyoto expressing the expectation that key developing countries will join Article 10.
- o An advantage of such an option is that, while the international document would not reflect the agreement of the countries at issue, it could show some international backing for whatever our domestic linkage is.

Other

- o It has also been suggested that the United States might seek to link fulfilment of its commitment with developing country action through a reservation.
- o The text currently contains a "no reservations" clause. Although the U.S. has opposed this clause (due to escalating Senate concerns about such clauses, which the Senate believes infringe on its Constitutional prerogatives), no other country supports deletion of the clause.
- o Even if the clause were deleted, customary international law, as reflected in the Vienna Convention on the Law of Treaties, would limit permissible reservations to those that do not defeat the object and purpose of the treaty; a reservation along the lines above would go to the very heart of the treaty.
- o The only way to allow for a reservation along the lines above would be to specifically provide in the Protocol that reservations could be taken for that purpose. It is unlikely that such a clause could be negotiated, given that setting up developing country action as a precondition for fulfilment of the Annex I obligation goes beyond even our "evolution" proposal.

- o A different approach might be to link the second budget period commitment with action by developing countries. For example, the Protocol itself could include a provision such as:

"The second budget period shall be from 2013 to 2017. The Parties shall decide, through an amendment, on their emissions budgets for that period, taking into account the extent to which non-Annex I countries [have taken] [have committed to] actions to limit greenhouse gas emissions."

-4-

Proposed Position

- o There would be two key components:
 - In terms of the first budget period, the Executive Branch would unilaterally link U.S. commitments to key developing countries' making clear their intent to join Article 10.
 - In terms of the second budget period, there would be a decision in Kyoto to review the adequacy of commitments under Article 7(2)(a) of the Convention by a date certain; the review of adequacy for Annex I countries would focus on the second budget period and not re-open the first budget period obligations.
- o In addition, it would be desirable, particularly for domestic reasons, to seek a Declaration among like-minded countries in Kyoto expressing the expectation that key developing countries will join Article 10.

703

Entry Into Force

- o Most countries have indicated support for an entry into force clause that requires not only a specific number of countries to have ratified, but a certain level/percentage of emissions as well.
- o In our January draft protocol, we supported the notion of a "weighted" entry into force clause, without specifying what the trigger would be.
- o Two issues have arisen in connection with the emissions trigger:
 - whether U.S. ratification should be a precondition for entry into force;
 - whether developing country ratifications should be a precondition for entry into force.

U.S. Ratification

- o In Bonn, it became apparent that some countries (such as Japan, Canada, and Australia) believe that the trigger should be crafted so as to require U.S. ratification before the protocol could enter into force; other countries (such as Switzerland and likely the EU) disagree.
- o We therefore need a position on whether U.S. ratification should be a precondition to entry into force.
- o If U.S. ratification were required:
 - a disadvantage is that the Senate would be able to hold up the entire agreement, not just U.S. participation;
 - an advantage is that implementation of the agreement, including decision-making, could not begin without us (contrast the Biodiversity Convention);
 - an advantage or disadvantage, depending on one's point of view, is that there would likely be substantial international pressure on the United States to ratify.

Developing Country Ratification

- o When we proposed our "evolution" article, we contemplated an entry into force clause that would require a certain level of developing country ratifications (e.g., China, India) for entry into force; that way, such countries would be bound to the evolution obligation at the same time that we were bound to take on our emissions obligation.

If we can't block entry into force, still pressure on U.S. to ratify since other countries won't want to be competitively disadvantaged

-2-

- o It now appears that the evolution article will not be in the protocol.
- o As such, it does not appear helpful to include developing country ratification in the entry into force trigger -- their ratification would not commit them to anything beyond "advancing existing commitments," however, they could potentially block entry into force of the agreement.

TOS

Reservations

- o The draft protocol currently contains a "no reservations" clause.
- o A footnote makes clear that a country, namely us, objected to the clause.
- o In the absence of a "no reservations" clause, the rules governing reservations would be those found in the Vienna Convention on the Law of Treaties, which reflects customary international law in this area:
 - In essence, a State would be able to make a reservation, unless it were "incompatible with the object and purpose of the treaty."
- o Since the 1992 Framework Convention on Climate Change, which contains a "no reservations" clause, the Senate has become increasingly concerned about such clauses, which it believes impinge on its Constitutional prerogatives regarding advice and consent.
 - Most recently, in the resolution approving the Chemical Weapons Convention, the Senate expressed its (non-binding) view that the Executive Branch should not negotiate treaties with "no reservations" clauses.
- o As noted above, there is no international support for deleting the "no reservations" clause in the protocol:
 - Most countries do not have a separation of powers issue.
 - Most countries suspect our motives for wanting to allow -- in addition to all our other proposals for "flexibility" -- the ability to make reservations.
- o We are left with three options:
 - Oppose the protocol because it contains a "no reservations" clause.
 - Continue to oppose the "no reservations" clause (to show the Senate that we tried), but ultimately live with it.
 - Seek to negotiate a limited "no reservations" clause that would permit reservations to be made to certain articles (presumably not including the target).

-2-

- o In terms of the relative merits of the last two options, it needs to be considered:

- whether we would support opening the door to reservations from other countries;
- whether the Senate would view the ability to make limited reservations (but not to the target) to be any more valuable than a complete prohibition on reservations; arguably, a reservation to the target would be incompatible with the object and purpose of the protocol in any event.

- o The question has been raised whether it might be possible to deal, through reservations, with the developing country linkage and/or the national security issue.

Developing Countries

- o Concerning the developing country linkage, it has been suggested that the United States might seek to link fulfilment of its commitment with developing country action through a reservation.
- o Even assuming that we were to pursue the limited "no reservations" approach, it is highly unlikely that reservations would be permitted to Article 3 (the target).
- o Indeed, even if the "no reservations" clause were deleted entirely, linking our commitment to developing country action would be unlikely to be consistent with the requirement that reservations not be incompatible with the object and purpose of the treaty.
- o The only way to allow for a reservation along the lines above would be to specifically provide in the Protocol that reservations could be taken for that purpose. It is unlikely that such a clause could be negotiated, given that setting up developing country action as a precondition for fulfilment of the Annex I obligation goes beyond even our "evolution" proposal.

National Security

- o It has been suggested that the United States might seek to deal with the national security issue through a reservation.

-3-

- o As with the developing country linkage above, even assuming that we were to pursue the limited "no reservations" approach, it is highly unlikely that reservations would be permitted to Article 3 (the target). Thus, dealing with this issue through a reservation is unlikely.
- o If, hypothetically speaking, the "no reservations" clause were deleted entirely, excluding certain national security-related emissions might meet the requirement that reservations not be incompatible with the object and purpose of the treaty.
- o Alternatively, it might be agreed in the protocol that such a reservation could be taken. (Note that this would be tantamount to agreeing the protocol on the exception, which would be preferable.)
- o In order to meet DOD's objective of excluding such emissions also from other countries' obligations, they would also need to take such a reservation when signing or joining the protocol. Assuming such a reservation could be coordinated among like-minded countries, there would still be an issue of countries that did not accept such a reservation (unless, as noted above, such a reservation were explicitly permitted). The resulting legal situation would be murky.
- o The only way to allow for a reservation along the lines above would be to specifically provide in the Protocol that reservations could be taken for that purpose. It is unlikely that such a clause could be negotiated, given that setting up developing country action as a precondition for fulfilment of the Annex I obligation goes beyond even our "evolution" proposal.

Again,

DISCUSSION PAPER: DEVELOPING COUNTRY COMMITMENTS

1. Background

Developed countries are responsible for more than 75% of the increase in greenhouse gas concentrations since the beginning of the Industrial Revolution. In the decades ahead, however, emissions from developing countries are expected to grow sharply. By 2035, developing country emissions are expected to exceed those from the developing world.

Per capita emissions of greenhouse gases vary widely. In the United States, the figure is roughly 20 tons per person; for the OECD as a whole, roughly 16 tons per person; and for developing countries as a whole, roughly 2 tons per person.

The Framework Convention on Climate Change, signed at the Rio "Earth Summit" in 1992, established differentiated levels of commitments for developed and developing countries. It called upon developed countries to take the lead in addressing climate change and to aim to return emissions to 1990 levels by the year 2000. It called upon developing countries to adopt policies and measures to address climate change, but provided no aim for developing countries similar to the year 2000 goal. These differentiated commitments were intended to recognize both the unequal contribution of developed and developing countries to global greenhouse gas concentrations and the unequal capacity of those countries to control emissions.

In 1995, in Berlin, the Parties to the climate treaty agreed to negotiate steps for controlling greenhouse gas emissions beyond the year 2000. The negotiating mandate calls on developed countries to set quantified emissions limits for the "medium term (e.g. 2005, 2010 and 2020)." In Berlin, the United States argued strongly that developing countries must participate meaningfully in negotiations over next steps. There was little support for the U.S. position on this point, with many Parties noting the failure of most developed countries to take significant steps toward meeting the year 2000 goal. The Berlin Mandate states that there will be "no new commitments" for developing countries in the current round of negotiation, but that developing countries will be required to advance the implementation of their existing commitments.

2. Kyoto Negotiations: Current Status

This is the most difficult issue in the current round of negotiations. There is a vast gulf between the dialogue abroad (where the U.S. proposal for developing country participation is almost uniformly considered too aggressive) and at home (where more than 60 Senators have signed a resolution insisting on developing country commitments beyond those contemplated in either the U.S. proposal or current negotiating mandate).

A. U.S. Protocol Proposal

In January, 1997, the U.S. submitted a draft protocol proposal. Provisions on developing countries included three elements: (1) calling for the negotiation by 2005 of a new agreement with legally binding emissions targets for all countries, including developing countries, and a "graduation mechanism" under which Parties would automatically assume additional obligations as they become more developed (the "evolution" concept); (2)

voluntary

establishing a new category (Annex B) of commitments for the most advanced developing countries (providing a halfway house between commitments of developing countries and the more extensive obligations of OECD members); and (3) an elaboration of existing commitments (defining what would be meant by "continuing to advance the implementation of existing commitments"). This final element contained several components, including a requirement to report annually on emissions and actions taken to reduce emissions and take "no regrets" actions (actions which would benefit the climate system, but which might be taken for other economic or environmental reasons).

B. Reaction Abroad

Support for the U.S. proposal is scant. While the third element is considered within the ambit of the Berlin Mandate by nearly all Parties, most countries have argued that the other two elements (i.e., evolution and Annex B) are beyond its scope. The U.S. has been urged to drop its proposal for a new annex. We have also been urged to drop our proposal for evolution (in favor of a separate agreement at some future date).

The following blocs are active in the negotiations:

European Union. EU support for developing country commitments has been very soft. They have supported U.S. proposals for advancing existing commitments, and have proposed that Mexico and Korea take on stronger commitments (not too far removed in substance from the U.S. Annex B), but are not prepared to accept the U.S. language on "Evolution" adopted as part of the Kyoto agreement. They do not support joint implementation with developing countries.

Non-EU OECD Members (principally Japan, Canada, Australia). This group of countries broadly supports including developing country obligations under the Kyoto Agreement. Australia and Canada are the most vocal in support of action, while Japan, as host of the December session, is concerned that an aggressive approach would potentially derail the negotiations. As nearly all countries in this bloc have extensive competitive trade outside of the OECD, they are more aggressive in demanding developing country action. With the exception of Japan, this group supports joint implementation.

Big Developing Countries (China, India and Brazil). These three countries are the primary drivers of the developing country position – and some of the world's largest emitters (China is second after the U.S., and India is number six). These countries have taken a standard north-south line, arguing that global warming has been caused by the developed world, and calling upon the industrialized countries to pay for the clean-up. They claim that when developing countries have incomes and per capita emissions equal to those of the North, they will then participate in the clean-up effort. In spite of their often strident public rhetoric, these countries (particularly China and Brazil) have shown a willingness to engage on this issue on a bilateral basis. They have active domestic climate change mitigation efforts, and have privately indicated a support for many elements of the U.S. proposal. However, they all oppose joint implementation.

OPEC. Well organized in the climate negotiations, the OPEC countries have been led by Saudi Arabia and Nigeria, and advocate positions designed to slow or block the negotiations. These countries have strongly urged: (1) that developing countries should not have to act now, and (2) that industrialized countries should compensate developing

countries that might be affected by any action taken in industrialized countries to reduce emissions (principally noting that reduction in oil revenues should be compensated).

Small Island States. A group of 37 small island states have banded together to create an alliance (AOSIS) that seeks to balance OPEC's influence. Largely composed of member countries with low lying territory which will be gradually inundated by climate-associated sea level rise, these countries have pushed an aggressive next steps to combat the problem – calling for a 20 percent reduction in industrialized country emissions below 1990 levels by the year 2005. The AOSIS countries have been reluctant to support U.S. calls for developing country action; their proposal omits any mention of any developing country commitments to be undertaken as part of the Kyoto agreement, and they oppose II.

An agreement in Kyoto that includes the current U.S. developing country position will be extremely difficult to achieve. State Department believes that, at a minimum, this would require U.S. support for a target and timetable perceived by the rest of the world to be serious, an aggressive effort to support replenishment of the Global Environment Facility, and an intensive diplomatic campaign. Even with these elements, an agreement that includes the U.S. developing country position will be very difficult to achieve.

C. Reaction At Home

The domestic dialogue on this issue stands in stark contrast to discussions abroad. Many in the business and labor community are deeply concerned about the trade and competitiveness impacts of “differentiated” commitments for developing countries under the climate treaty. Particular concern has focused on China and “newly industrialized countries,” such as Korea.

Last month, Senator Robert Byrd proposed a sense of the Senate resolution opposed to any agreement that does not contain “specific scheduled requirements” for developing countries during the same compliance period as those for developed countries. The resolution quickly garnered 60 co-sponsors. As drafted, the resolution appears inconsistent with the current negotiating mandate (which does not envision quantified emissions limits for developing countries). During the past several weeks, however, there has been considerable discussion with Senator Byrd and others about the exact meaning of the resolution. Senator Byrd has stated that commitments of developing countries should be based upon their own “pace of industrialization.” Senator Chaffee has prepared a more moderate resolution that would require developing countries to take on commitments with a 10-year lag behind the commitments of developed countries.

3. **Engaging Developing Countries in the Long-Term**

Any solution to the problem of climate change requires the participation of developing countries. The long-term issue is how best to engage developing countries in global efforts to address greenhouse gas emissions.

The original vision of the Framework Convention on Climate Change is that developed countries would lead in controlling greenhouse gases, and developing countries would follow. This is similar to the approach in the Montreal Protocol (the 1987 treaty that addresses stratospheric ozone depletion). Under that agreement, developing country obligations generally follow 10 years behind those of developed countries. Developing countries receive

financial assistance for their efforts from a multilateral fund.

Under this model, long-term engagement of developing countries depends on action by developed countries to control emissions. However, the Byrd resolution underscores the domestic political difficulties associated with differentiated commitments between developing and developed countries. In addition, any competitiveness or leakage issues would present substantive concerns.

Various efforts are underway to encourage developing country efforts to control greenhouse gas emissions. These include: U.S. bilateral assistance; multilateral assistance through the Global Environment Facility (GEF); calls for reorienting the loan guidelines for the international lending institutions; and work on joint implementation (which would encourage the private sector to undertake projects in developing countries to reduce emissions and claim credit for these reductions against a domestic obligation).

The first of these, announced in the President's New York statement at the U.N. Special Session on the Environment, establishes a \$1 billion, five-year package to help developing countries plot a climate friendly path to development. The primary component of this initiative will be a five year minimum of at least \$150 million per year in bilateral assistance for climate related programs, and the potential to use development credits dedicated to climate friendly investment projects. The initiative will also include a \$25 million 5-year interagency program to assist developing countries to meet the terms of the climate treaty. A significant focus in this initiative will be on using credit tools to induce greater U.S. private sector involvement in transferring climate friendly technologies.

Our financial contribution to the GEF was one of the original incentives to developing countries to support the Framework Convention on Climate Change – and to take action to mitigate climate change. However, while the U.S. had pledged a contribution of \$430 million to the GEF over a three year period, Congressional funding has lagged considerably. FY96 contributions were at \$35 million rather than \$110 million. The reduced U.S. contribution to the GEF will make any subsequent calls for developing country action much more difficult to sustain.

One of the most significant elements of the U.S. approach to encourage developing country participation is joint implementation (JI). Similar to the concept of emissions trading, JI allows countries to offset emissions at home through projects undertaken elsewhere. However, unlike the situation in emissions trading, under a JI regime, projects could be undertaken in developing countries – countries without legally binding emissions budgets. The analytic work performed to date suggests that allowing JI could reduce costs within the U.S. substantially. Developing countries see enormous benefits as well, in the form of technology transfer and private sector investment flows. In spite of the potential benefits, significant opposition remains: developing countries are concerned at the loss of control over domestic emissions; environmentalists are concerned that it may be impossible to measure project based emission reductions, and some in the private sector and Congress have suggested that JI will result in significant transfers of wealth overseas.

Talking Points: U.S. Proposal on Developing Countries

Background

- Climate change is caused by emissions of greenhouse gases from around the world – the source of the emissions is irrelevant to the environmental change.
- Presently, developed country emissions (including those from the OECD, from the former Soviet Union, and from Eastern Europe) account for approximately 60 percent of the global total.
- However, developing country emissions are growing rapidly, and by 2020, will account for more than half of the world's emissions.
- China, the world's second largest emitter, will surpass the U.S. within 15 years.
- Recognizing the importance of controlling global aggregate emissions in order to mitigate climate change, it is imperative that any next step we take include action from both developed and developing countries.

Current U.S. Proposal

- The U.S. continues to strongly support the ongoing negotiations under the Berlin Mandate, and seeks to see them successfully completed in Kyoto at the third meeting of the Conference of the Parties to the Framework Convention on Climate Change (FCCC).
 - In particular, we recognize the language that precludes establishing new commitments for developing countries in the agreement concluded in Kyoto beyond their current agreement to advance commitments under article 4.1;
 - Our proposals thus create a structure which, while not creating new mandatory commitments, more closely define what we believe the 4.1 commitments to be, and thus provide an opportunity for developing countries to participate in the mitigation of climate change in a manner commensurate with their respective responsibilities and capabilities.
- As part of the Kyoto agreement, in addition to establishing legally binding commitments for developed countries and creating a flexible implementation structure, the U.S. proposal specifies three elements which would apply to developing countries:
 - (1) **4.1:** We call on all Parties to advance the implementation of their commitments under Article 4.1;
 - (2) **Annex B:** We create a new category of countries which would voluntarily undertake quantified emission limitations; and
 - (3) **Evolution:** We call for a new negotiation to develop quantified targets that would apply to all countries.

The U.S. Proposal in Greater Detail

- In light of the enormous concern over the importance of establishing a global solution to this problem, we are now seeking to be more explicit about each of these elements.
- **(1) 4.1** -- Under advancing the implementation of existing commitments under the Convention, and as we clarified at the August negotiating session in Bonn, we propose that Parties:
 - develop legal and institutional frameworks;
 - facilitate investment in climate-friendly technologies;
 - increase energy efficiency and emphasizing market oriented pricing;
 - increase the use of renewable energies;
 - make improvements in the transport sector;
 - improve efficiencies in industrial production processes;
 - promote the development and sustainable management of sinks and reservoirs;
 - improve integration of climate change considerations into agriculture;
 - remove obstacles to the limitation of greenhouse gas emissions and to the enhancement of sinks [e.g., subsidies];
 - establish energy sector privatization plans;
 - establish appropriate energy regulatory structure; and
 - take actions to address climate change that are justified economically in their own right and can also help in solving other environmental problems.
- **(2) Annex B** -- While we believe that Parties voluntarily undertaking commitments should have some flexibility with respect to the stringency of their obligations, we recognize that some countries are either more capable of action (because of their national wealth), or must act for the global good to prevent global warming (because of the level of their gross national emissions). Thus we are more specifically defining what we mean by Annex B.
- We propose that countries that are responsible for a significant portion of the global emissions (e.g., that emit more than 1/2 of 1 percent of the global total) or that have the capacity to help the international community in its quest for remedial action (e.g., that have per capita incomes higher than the average of the existing countries in the developed world) be strongly urged to take on such obligations as part of the next step agreed in Kyoto.
- **(3) Evolution** -- Noting the urgency for creating a regime in which all countries are full partners in a global response, we call for the new negotiation to conclude by the year 2000; this date replaces the bracketed date of 2005 in the earlier U.S. proposal.

- The outcome of that negotiation should establish quantified commitments for all countries, and establish a mechanism for automatic application of progressive greenhouse gas emissions obligations to Parties, based upon agreed criteria.
- Further, in an elaboration of our earlier statement related to the timing of U.S. ratification, we would link the successful conclusion of this next negotiation with our own ratification of the Kyoto agreement; we would not intend to submit the Kyoto agreement to our Senate for its advice and consent to ratification – which would be necessary for the U.S. to become a Party – until the next agreement was successfully completed.

Summary

- These proposals are not meant as a comprehensive presentation of the U.S. position on what elements we must have to adopt any agreement in Kyoto.
- For example, it does not address issues of emissions trading, joint implementation, multi-year budgets, a comprehensive approach (i.e., including all sources and sinks of all greenhouse gases), or proposals for monitoring and verification of compliance – each of which, like global participation in the agreement, are also critical to a successful outcome, and to U.S. ratification of the Kyoto agreement.
- Neither is this presentation meant to imply a trade-off between the setting of a global regime in which all countries participate and the level of the U.S. target.
- We are currently engaged in a domestic review to determine the commitment we would take to fulfill our own obligation under the Berlin Mandate – a determination which is independent of the discussion on this issue. Highlights of this review include the President's scientific forum at the White House, a series of public events by the President, Vice-President, members of the Cabinet and other key Administration officials, and the President's White House Conference on Climate Change scheduled for October 6.
- We believe that our proposal, in addition to being consistent with both the letter and the spirit of the Berlin Mandate, also brings us closer to finding a global solution to a global problem.

Combined with an eventual target which is realistic, achievable and equitable, we believe the agreement reached in Kyoto will protect both the international economy while providing maximum environmental benefits in addressing the problem of greenhouse gas emissions.

Outstanding Issues for Kyoto and Diplomatic Game Plan

D, M -
Pre-Kyoto
State Dept
Papers

1. Emissions Targets

State of Play: While a number of important countries have coalesced around stabilization at 1990 levels by 2010 or so (i.e., U.S., Canada, Japan, Russian Federation), we have not bridged the gap with the EU. The numbers from the developing countries (i.e., a 35 percent reduction by 2020) can be dismissed as negotiating tactics. OPEC nations remain opposed to any agreement.

Objective: We will need the support of key EU members (U.K., France, Germany, Luxembourg as holder of EU presidency) and more firm backing from Japan and the Russian Federation to keep the number close to stabilization. This may entail some kind of compromise between U.S. and the EU that embraces realistic targets, i.e., one much closer to the U.S. proposed level. Overall, we would also have to acknowledge OPEC (namely Saudi and Kuwaiti) concerns over a climate change agreement, urge them to stop their obstructionist ways and to support the proposed U.S. emissions target as it is the most realistic and sensible approach.

Recommended Actions to Achieve Objective: Use Bilateral with the EU (PM of Luxembourg, President of European Commission and Sir Leon Brittan, including Eizenstat preparatory discussions); Possible POTUS telephone calls to President Kohl, PM Blair, and the PM of Luxembourg; VP telephone call to French PM Jospin; Possible VP telephone call to U.K. Deputy PM Prescott as follow up on Prescott's recent Washington visit; Wirth telephone call Italian Deputy FM (Italians have been helpful and might have some influence in EU); and Summers telephone call to German counterpart; Possible VP telephone call Russian PM Chernomyrdin; Pull-aside/bilateral at APEC at POTUS or SecState levels with Japan. SecState telephone calls to Prince Bandar and either Kuwait PM and Crown Prince Shaykh Saad Al-Abdallah Al-Sabah or FM and First Deputy PM Shaykh Sabah Al-Ahmad Al-Sabah.

2. "Evolution"

State of Play: It is increasingly clear that we will not get "evolution" in the agreement (i.e., a commitment from developing countries to take on future quantitative emissions limitations). The current proposed position is a two-part approach: a decision at Kyoto to review the adequacy of all Parties' commitments under Article 7(2)(a) of the Convention by a date certain, but in the case of developed countries, it would be limited to the second budget period; and a Declaration formulated by like-minded countries expressing the expectation that key developing countries will join Article 10 (combined with a U.S. unilateral linkage between U.S. commitments and key developing countries' clear intention to accede to Article 10).

Objective: Because there are two elements, we must tailor our strategy appropriately. The review aspect will appeal to the EU as its members have been advocating an approach along these lines. We need to make clear to the critical EU members that the review will not look at the first emissions budget period and that they will need to push this concept hard to ensure future developing country commitments. In addition to selling the Declaration concept to the EU, we will also need to convince our JUSCANZ partners to support this modification of our "evolution" position. For both components, we will have to overcome fierce developing country opposition and persuade them that this is the most logical and environmentally beneficial means to address their future commitments. The key countries include China, India, and Brazil, Indonesia, Korea, Philippines, Thailand, Mexico, Egypt, South Africa, and Senegal.

Recommended Actions to Achieve Objective: EU Bilateral (including Eizenstat preparatory discussions); Pull-asides/bilaterals at APEC at all levels (POTUS, SecState, Acting A/S Kimble) with China, Indonesia, Korea, the Philippines, Thailand, Mexico as well as Japan, Canada, Australia, and New Zealand; Possible POTUS telephone call to President Cardoso of Brazil; Possible POTUS call to PM Gujral of India as follow up to SecState visit and DOC Secretary Daley visit; VP telephone call to President Mubarak (Egypt has shown some willingness to break away from other Arab states); VP telephone call to Vice President Mbeki; Wirth telephone call to appropriate Thai official; and OES DAS Pomerance telephone call to Senegalese negotiator (plays somewhat prominent role in negotiations).

3. Article 10 ("Graduation")

State of Play: We may have enough support from different quarters to retain Article 10 in the agreement (Article 10 encapsulates the "graduation" concept of a threshold that once passed, developing countries should take on quantitative commitments). The key will be whether we can get near term Article 10 "candidates" such as Mexico, Korea, and Singapore and some wealthier Caribbean nations not only to support its inclusion but more importantly, indicate that they will take on future commitments through it. We also need support from longer term prospects such as China, Israel, Thailand, Chile and Argentina. Other critical developing countries will also need to allow it to go forward (the whole article is bracketed to show the G-77/China's opposition)

Objective: In order to assure Article 10's retention in the Kyoto agreement, we will need to reinforce the support expressed by JUSCANZ partners and EU members. We will also need to target both types of Article 10 "candidates" as well as the usual other key developing countries (i.e., India, Brazil and the Philippines).

Recommended Actions to Achieve Objective: Pull-asides/bilaterals at APEC at all levels (POTUS, SecState, Acting A/S Kimble) with Mexico, Korea, Singapore, Thailand and Chile as well as with China, Indonesia, and the Philippines; Possible POTUS calls to

President Cardoso and PM Gujral; DOC Secretary Daley visit to India; Summers telephone call to appropriate Korean official; Wirth telephone call to appropriate Thai official; DAS Pomerance telephone call or lunch with Trinidad and Tobago and the Bahamas; DAS Pomerance to call in Israeli Embassy official to Department and telephone call to appropriate Israeli official; Bilateral with the EU (including Eizenstat preparatory discussions); Possible telephone calls (POTUS, VP, Summers, Wirth) to U.K., Germany, France, Luxembourg and Italy; Pull-asides/bilaterals at APEC at all levels (POTUS, SecState, Acting A/S Kimble) with Japan, Australia, Canada, and New Zealand.

4. Emissions Trading

State of Play: The odds of getting emissions trading in the agreement are favorable, although the EU is still holding its inclusion hostage to progress on the Bubble. There is also considerable opposition among developing countries, but that may be largely pre-Kyoto posturing/positioning. We are still trying to equate emissions trading with burdensharing under the Bubble (although it is unclear whether the "horsetrade" of emissions trading for the Bubble is the best deal). In addition, we're emphasizing the incentives of an emissions trading system for those contemplating Article 10 status.

Objective: We need to secure emissions trading at the least possible cost in terms of other negotiating "chips" with both the EU and developing countries. We must work to convince the EU and others that emissions trading is in all Parties' best interest in terms of its cost-effectiveness and environmental benefits. We can also appeal to Saudi Arabia and Kuwait in stressing that as mitigation costs are reduced, other "impacts" are diminished as well.

Recommended Actions to Achieve Objective: Bilateral with the EU (including Eizenstat preparatory discussions); Possible telephone calls (POTUS, VP, Summers, Wirth) to U.K., Germany, France, Luxembourg, Sweden and Italy; Pull-asides/bilaterals at APEC at all levels (POTUS, SecState, Acting A/S Kimble) with Mexico, Korea, Singapore, Thailand, Chile Indonesia, and the Philippines; DAS Pomerance telephone call to/visit from appropriate Israeli officials.

5. Joint Implementation

State of Play: Joint implementation is very much up in the air. It is clear that it will be nearly impossible to get JI in the format originally conceived. Much hinges on the ongoing talks with Brazil as to whether some hybrid of the U.S. approach and the Brazilian "Clean Development Fund" emerges from bilateral discussions. If we are to go down the road of some centralized pool of JI credits (or competing regional pools), we will need to launch an intensive effort to sell this new approach, even among our few

friends on this issue. However, it may still prove to be impossible to obtain a decision on the credit issue before the end of the JI pilot phase (EU favors waiting).

Objective: We need to have some form of JI that our industry and NGO stakeholders will find acceptable. In order to secure support from key developing countries, we will have to overcome long-standing opposition in most cases. The hope is that a new formulation of JI along Brazilian lines will achieve that goal.

Recommended Actions to Achieve Objective: Continue bilateral efforts with Brazil (DAS Pomerance visit and follow-up; Possible POTUS call to President Cardoso); ; Pull-
asides/bilaterals at APEC at all levels (POTUS, SecState, Acting A/S Kimble) with
China, the Philippines, Korea, Singapore, Indonesia, Chile, as well as Japan, Australia,
Canada, and New Zealand; Possible POTUS telephone call to PM Gujral of India; VP
telephone calls to President Mubarak and Vice President Mbeki; DOC Secretary Daley
visit to India; Summers telephone calls to Brazilian and Singaporan counterparts;
Bilateral with the EU (including Eizenstat preparatory discussions); Possible telephone
calls (POTUS, VP, Summers, Wirth) to U.K, Germany, France, Luxembourg, Sweden
and Italy.

Summary of Action

1. Presidential Action

- Pull-aside/bilateral at APEC with Jiang Zemin
- Pull-aside/bilateral at APEC with President Ramos
- Pull-aside/bilateral at APEC with President of Korea
- Pull-aside/bilateral at APEC with President of Singapore
- Pull-aside/bilateral at APEC with President Frei of Chile
- Pull-aside/bilateral at APEC with President Soeharto of Indonesia
- Bilateral with the EU (PM of Luxembourg, President of European Commission and Sir Leon Brittain)
- Possible Telephone call to PM Gujral of India as follow up to SecState visit
- Possible telephone call to President Cardoso
- Possible telephone calls to President Kohl, PM Blair, and the PM of Luxembourg

2. Vice Presidential Action

- Telephone call to President Mubarak
- Telephone call to Vice President Mbeki
- Telephone call to French PM Jospain
- Possible telephone call to Russian PM Chernomyrdin
- Possible telephone call to U.K. Deputy PM Prescott

3. Secretary of State Action

- Bilateral with Indian Prime Minister

- Pull-aside/bilateral at APEC with Mexican Foreign Minister
 - Telephone call to Prince Bandar
 - Telephone call to either Kuwait PM and Crown Prince Shaykh Saad Al-Abdallah Al-Sabah or FM and First Deputy PM Shaykh Sabah Al-Ahmad Al-Sabah
4. Action by Commerce Secretary Daley
- Visit to India, December 6-12
5. Action by U/S Wirth
- Telephone call to Italian Deputy FM
 - Telephone call to Swedish Deputy FM
 - Telephone call to appropriate Thai official
6. Action by U/S Eizenstat
- Preparatory discussions with senior EU officials
7. Action by Treasury U/S Larry Summers
- Telephone call to appropriate Korean official
 - Telephone call to appropriate Brazilian official
 - Telephone call to appropriate Singapore official
 - Telephone call to appropriate German official
8. Action by Acting A/S Kimble, and DAS Pomerance
- Various APEC discussions - Kimble
 - Bilateral visit to Brazil - Pomerance

- Call in Israeli Embassy official to Department and telephone call to appropriate Israeli official - Pomerance
- Telephone call to Senegalese negotiator, Bakary Kante - Pomerance
- Lunch in New York - Pomerance (?) / Telephone calls to appropriate Bahamian and Trinidad and Tobago officials

Other opportunities

- Visit of President Nazarbayev of Kazakhstan (DepSec to meet with him – points provided to desk), November 17-19
- Visit of President Konare of Mali, November 19

Other possible countries

- Venezuela
- Argentina

Issues for Resolution

Targets

- o Can we move on our target in real terms (with respect to the number of tons and/or timeframe)?
- o Can we move on our target in optical terms, e.g.:
 - by changing baseyear to 1995?
 - by dropping some or all sinks or modifying how we count them?
 - by moving from 6 to 3 gases in the first budget period (with all six covered in the next period)? (if so, it would be harder to "reduce" further in the second budget period) (if so, could we accept policies and measures on the other three?)
- o Can we support differentiation, e.g.:
 - by allowing choice of baseyears (1990/1995)?
 - by accepting the Japanese formula-based model (which allows targets between stabilization and 5% reduction)?
 - by allowing each country to decide its own target?
- o What should we do about a second budget period in the protocol (noting relevance to developing country issue)?
 - not include anything
 - include targets for the second budget period
 - include timeframe of second budget period (and possibly that there will be a "reduction") but leave the negotiation of actual targets until later

Emissions Trading

- o Could we accept having the existence of trading depend upon a future decision of the parties regarding modalities, etc.?
- o Could we accept that domestic measures (as opposed to trading) must be the "main" means of meeting targets? Any other limits, e.g., a certain percentage?

Joint Implementation with Developing Countries

- o Could we accept having the existence of JI with credit depend upon the decision of the Parties after the end of the pilot phase in 2000?
- o Could we accept that domestic measures (as opposed to JI) must be the "main" means of meeting targets? Any other limits, e.g., a certain percentage?

-2-

- o Could we accept the hybrid JI/Brazil concept that we have floated informally?
- o Even if we dropped certain sinks for our target, would we still need sink projects to be allowed under JI?

Developing Countries

- o What happens if we cannot get an article "advancing implementation of existing commitments" that actually advances anything? What if it actually goes backwards?
- o Can we abandon "evolution" (*i.e.*, a procedural commitment now to negotiate commitments later) and move instead to:
 - Article 10 (voluntary opt-in), coupled with U.S. linkage between first budget period commitments and intent by key countries to join Article 10; and
 - a "review of commitments," as already envisioned under Article 7(2)(a) of the Convention, which does not specifically say that such review will lead to negotiation of commitments?

Entry into Force

- o Should U.S. ratification be required for entry into force?
- o Should developing country ratifications be required for entry into force?

Additional Issues

- o Russian tons: What can we give Russia concerning its ability to sell "hot air" that it has accumulated before the first budget period?
- o Policies and Measures: Can we ultimately agree to a few mandatory policies and measures, provided they are benign (such as energy efficiency) and are not subject to mandatory coordination?
- o National Security: What do we do if our proposal for a decision of the parties does not succeed?
- o "Compensation": Beyond having the parties periodically review implementation of the protocol in terms of impacts on other parties, is anything related to compensating OPEC countries for economic impacts flowing from our measures to meet our target totally unacceptable?
- o Banking/Borrowing: Do we need to insist on retaining banking (*i.e.*, the ability to carry over to the next budget period any underages) and/or borrowing (*i.e.*, the ability to legally borrow a limited amount from the next budget period, to be paid back with a penalty)?

Agenda
November 20 Working Group Meeting on Climate Change
2:00 p.m.

I. Developing Countries

- What we get for moving off evolution
- Timing of ratification statement

II. Hybrid II -- Update

III. Process Outcome

003**OUTCOMES IN KYOTO**

11/18/97 draft #2

I. Full Success

- All elements of the US proposal are accepted, or we are prepared to accept modifications to our current demands sufficient to ensure an agreement in Kyoto:
 - provisions on JI
 - emissions trading
 - stabilization target set between 2008-12
 - participation of developing countries through Article 10 – including some announcements by key countries that they will accept targets, and adequate provisions in Article 12 and 13 (on advancing the implementation of Article 4.1)
- No action is needed post-Kyoto except to follow up on operationalizing agreement

II. An agreement is reached that is unacceptable to the U.S., but broadly accepted internationally

- Key elements of the US proposal are rejected or modified too extensively to prove acceptable:
 - provisions on JI: e.g., agreement excludes entirely or delays decision until after the pilot phase is completed
 - emissions trading: e.g., agreement allows additional (and possibly constraining) rules to be developed; allows only limited amount to be counted toward budget
 - target: agreement calls for budget period to begin before 2008 or sets a more ambitious target than stabilization
 - developing countries: Article 10 is not incorporated into agreement; additional pernicious language is added to Article 13 (on financial assistance to developing countries); Article 12 is too weak and does not actually “advance the implementation” of developing country commitments.
- Due to such modifications, the U.S. and a few others would not be able to accept the agreement in Kyoto – but most other countries could:
 - Within JUSCANZ, Australia is likely to be unable to accept any legally binding agreement, as is OPEC, but Japan, Canada, Norway, New Zealand, Switzerland and Iceland may all be able to accept what is essentially a constrained Annex I obligation with no developing country commitments.

Outcomes in Kyoto

DRAFT 11/18/97

- Other Annex I countries, in particular Russia and Eastern Europe, will be able to accept any agreement provided it allows them to grow to at least their 1990 levels – and offers them some compensation in the form of emissions trading to sell excess tons.
 - Developing countries will be able to accept the agreement provided it does not require action on their part.
 - We have two choices: (1) block consensus (and either walk away or seek to continue the process beyond Kyoto), or (2) not block adoption of the agreement, but work outside of the agreement to make it more acceptable. The following points outline a course of action should we not choose to block adoption in Kyoto.
 - If the agreement is problematic because JI does not succeed, we may be able to ratify once the AIJ pilot phase has been completed, and JI becomes a fully allowable action under the FCCC itself. Given that we will remain Party to the Convention even if we do not become Party to the protocol, we may be aggressive in pushing for JI in that forum.
 - If the agreement is problematic because of developing countries (e.g., Article 10 is not accepted, or provisions in Article 12 or 13 are egregious), we may work bilaterally with key developing countries to bring them to take commitments on action. We may also seek to use the second review of adequacy (called for in Article 7(2)(a) of the FCCC to consider next steps for developing countries. Either action will be difficult if not impossible unless we have taken unilateral action to reduce emissions, and to demonstrate our good faith efforts to address the climate change problem.
 - If the agreement is problematic because the target is too aggressive (e.g., the period begins too soon or is set at too ambitious a level), we may have little recourse with respect to revising the agreement. However, we will need to rapidly move to implement policies and measures to reduce our emissions domestically so that any next step (e.g., in a later budget period or negotiated through a follow-on agreement) is still within our reach.
- III. An agreement is reached that is unacceptable to the U.S. and a significant group of other countries
- As with Alternative II above, key elements of the US proposal are rejected or modified too extensively to prove acceptable. Given that we currently have the hardest line on developing countries (with few others supporting proposals as aggressive as ours), this option assumes that the key provisions in which other countries would join us in considering unacceptable will be related to flexibility or the level of the target.
 - Like-minded countries can be expected to include Australia, Canada and Russia, as well as OPEC and possibly Japan (although Japan will be significantly constrained by its role as Kyoto host)
 - If the agreement is not acceptable because the target is too aggressive, we may seek a declaration of intent with the group of like-minded countries toward an alternative target (either through the development of an alternative multilateral agreement, or through agreement to take "common" unilateral targets); this could allow us to maintain our stabilization goal, and would likely bring in Russia, Canada and Japan – although probably not Australia.

Outcomes in Kyoto

DRAFT 11/18/97

3

- If the agreement is problematic with respect to flexibility, we may have fewer supporters (i.e., possibly Russia, Canada, Australia and New Zealand but probably not Japan) we may seek:
 - (1) to create a bubble including this group of like-minded countries in lieu of emissions trading (thus taking advantage of Russia's tons); or
 - (2) to work with key developing countries to insure that JI and trading become a fundamental part of any subsequent budget period under the protocol.

IV. Process Outcomes

- Proposing to continue to work on the agreement post-Kyoto:
 - It will be extremely difficult (if not impossible) to change the terms of the Berlin Mandate during any extension of the negotiations. Thus, if the reason for opposing agreement in Kyoto is inadequate response on the developing country front, we may not find a formal extension useful. However, if we are close to agreement on most issues, and only need slightly more time to resolve outstanding technical questions (e.g., on gases or sinks, or even on emissions trading or JI), the extension may be valuable.
 - Note that during this period, we will need to establish meetings (currently unplanned beyond the two weeks of sessions of the FCCC subsidiary bodies for Spring/Summer 1998 and COP-4 in late Fall/Winter 1998). Delay will also provide time for "naysayers" to work to void areas where agreement has been achieved.
 - Such an outcome will be something of a "black eye" for Japan; efforts at the highest levels, including both the President, and possibly the Vice President (during his COP-3 attendance?) will be required to convince Japan this is a better outcome than full failure in Kyoto.
- Proposing to block consensus in Kyoto:
 - Theoretically, any individual country can block consensus in Kyoto; Rules of Procedure (which would allow for a vote to decide substantive issues) have not yet been adopted. While we have been unwilling to raise too many procedural objections to the chairman's handling of the meetings, we have been reluctant to force the consensus issue too far – as the OPEC group, which is opposed to any agreement in Kyoto, could then use the procedure to block any agreement.
 - However, given that OPEC will likely join any effort to block agreement in Kyoto (as will Australia), we are unlikely to ever be a minority of one. We will thus be faced with a question of whether we want to block any agreement – or whether we are willing to let the agreement proceed without us.

- Note that blocking an agreement (particularly one that might be acceptable to most other countries) would create significant difficulties for Japan as host. Thus, should we choose to block consensus, we will want to have a clear strategy for dealing with the international pressure that will follow – including from host country Japan, as well as from the EU, and even most developing countries. This could include:
 - (1) an announcement of a domestic policy we intend to take independent of any agreement in Kyoto; and/or,
 - (2) announcing an effort to work bilaterally with key countries (developed and developing) to design a longer term strategy; and/or
 - (3) an announcement to create an alternative international process (e.g., creating something like a “climate change security council” to bring in the key developed and developing countries to plan global programs to reduce long-term emissions, perhaps including the U.S., Japan, the EU, China, India and Brazil). This would require some time to arrange, and likely could not be done at Kyoto but only in the post-Kyoto timeframe; and/or,
 - (4) calling for a new mandate (e.g., either in or post-Kyoto) that would focus on the areas we believe are critical – including not only a target, but also on flexibility and on developing country actions. This would be difficult to achieve in Kyoto for all the reasons outlined in the developing country paper, but might be a welcome step at a future date (e.g., in the SBI meeting in summer 1997, or at COP-4). We may even wish to host a meeting to set a new agenda – either for this option or for option (3) above.
- Depending on why the agreement is stalled, we may want to consider promoting an amendment instead of a protocol in Kyoto:
 - While the rules of procedure have not been adopted (and therefore a consensus would be required to adopt a protocol), if an amendment is the instrument of choice, it could be adopted by $\frac{3}{4}$ of the Parties present and voting (currently, with the 160 Parties to the Convention, this would mean that an instrument could be adopted by 120 countries). This could have the principal advantage of not allowing the OPEC countries to block an agreement with which they disagreed.
 - However, an amendment may also be used by countries not wishing to allow the US to block an agreement with which we disagree. Thus, this may become the procedural mechanism through which our interest in blocking any agreement may be thwarted.

Policies and Measures

Issues

- o There are three major issues:
 - whether a list of policies/measures should be non-existent, voluntary, or mandatory;
 - whether there should be any requirement to participate in a process to "coordinate" policies/measures, even if the resulting policy/measure is not binding; and
 - how to handle the G-77 demand for policies/measures not to have adverse environmental (AOSIS) or economic (OPEC) impacts on developing countries; this is linked to the "compensation" issue.

Proposed Positions

- As to the first issue, it is unlikely that we can prevail on having no list of policies/measures at all. As such, we should seek a voluntary list (with appropriate changes made to the list), falling back, if necessary, to a mandatory list consisting of the first four policies/measures in Alternative A.
- o As to the second issue, we should not support a mandatory process for "coordinating" policies/measures, even if the result is not binding. There are numerous reasons why a policy/measure might not be amenable to coordination under the Protocol (e.g., because it was not amenable to coordination at all, because it was not amenable to coordination by Annex I countries alone, because it should be handled by an organization outside the Protocol). Any formulation of a requirement to participate would need to leave us the flexibility not to participate if we did not think it appropriate.
 - o As to the third issue, we cannot support any call for "compensation" to developing countries for either environmental or economic damage. We could, however, support reviewing (e.g., as part of the general review of implementation of the Protocol) the impacts that the implementation of Annex I commitments are having on other Parties.

Reservations

- o The draft protocol currently contains a "no reservations" clause.
- o A footnote makes clear that a country, namely us, objected to the clause.
- o In the absence of a "no reservations" clause, the rules governing reservations would be those found in the Vienna Convention on the Law of Treaties, which reflects customary international law in this area:
 - In essence, a State would be able to make a reservation, unless it were "incompatible with the object and purpose of the treaty."
- o Since the 1992 Framework Convention on Climate Change, which contains a "no reservations" clause, the Senate has become increasingly concerned about such clauses, which it believes impinge on its Constitutional prerogatives regarding advice and consent.
 - Most recently, in the resolution approving the Chemical Weapons Convention, the Senate expressed its (non-binding) view that the Executive Branch should not negotiate treaties with "no reservations" clauses.
- o As noted above, there is no international support for deleting the "no reservations" clause in the protocol:
 - Most countries do not have a separation of powers issue.
 - Most countries suspect our motives for wanting to allow -- in addition to all our other proposals for "flexibility" -- the ability to make reservations.
- o We are left with three options:
 - Oppose the protocol because it contains a "no reservations" clause.
 - Continue to oppose the "no reservations" clause (to show the Senate that we tried), but ultimately live with it.
 - Seek to negotiate a limited "no reservations" clause that would permit reservations to be made to certain articles (presumably not including the target).

- o In terms of the relative merits of the last two options, it needs to be considered:
 - whether we would support opening the door to reservations from other countries;
 - whether the Senate would view the ability to make limited reservations (but not to the target) to be any more valuable than a complete prohibition on reservations; arguably, a reservation to the target would be incompatible with the object and purpose of the protocol in any event.
- o The question has been raised whether it might be possible to deal, through reservations, with the developing country linkage and/or the national security issue.

Developing Countries

- o Concerning the developing country linkage, it has been suggested that the United States might seek to link fulfilment of its commitment with developing country action through a reservation.
- o Even assuming that we were to pursue the limited "no reservations" approach, it is highly unlikely that reservations would be permitted to Article 3 (the target).
- o Indeed, even if the "no reservations" clause were deleted entirely, linking our commitment to developing country action would be unlikely to be consistent with the requirement that reservations not be incompatible with the object and purpose of the treaty.
- o The only way to allow for a reservation along the lines above would be to specifically provide in the Protocol that reservations could be taken for that purpose. It is unlikely that such a clause could be negotiated, given that setting up developing country action as a precondition for fulfilment of the Annex I obligation goes beyond even our "evolution" proposal.

National Security

- o It has been suggested that the United States might seek to deal with the national security issue through a reservation.

Developing Country Options

Proposal

- o There would be two key components:
 - In terms of the first budget period, the Executive Branch would unilaterally link U.S. commitments to key developing countries' making clear their intent to join Article 10.
 - In terms of the second budget period, there would be a decision in Kyoto to review the adequacy of commitments under Article 7(2)(a) of the Convention by a date certain; the review of adequacy for Annex I countries would focus on the second budget period and not re-open the first budget period obligations.
- o In addition, it would be desirable, particularly for domestic reasons, to seek a Declaration among like-minded countries in Kyoto expressing the expectation that key developing countries will join Article 10.

Discussion

- o This discussion is premised on three assumptions:
 - that the protocol's article "advancing existing commitments under Article 4.1 of the Convention" is satisfactory; (the developing countries are currently seeking text that goes backwards from the Convention);
 - that the Protocol would contain an Article 10 (i.e., voluntary commitments); and
 - that the Protocol would not contain an article on "evolution."
- o The question is what else, if anything, do we need.
- o As a matter of substance, an issue is whether the developing country action is linked to U.S. commitments for the first budget period, second budget period, or both.
- o In terms of process, options fall into three basic categories:
 - unilateral options;
 - multilateral options that require the agreement of all parties; and
 - multilateral options that do not require the agreement of all parties.

- o A unilateral option could also be combined with one of the multilateral options.

Unilateral Options

- o An example of a unilateral option would be for the Executive Branch to state that the U.S. would not take on legally binding obligations until key developing countries had made clear their intent to join Article 10. (Note that the U.S. could sign earlier; we just would not submit the protocol to the Senate.)
- o Advantages of unilateral options are that:
 - they are the easiest to achieve, in that they do not require the concurrence of any other country;
 - they are the most flexible, in that the Executive Branch can judge when the linkage has been met (e.g., in the above example, which countries are "key").
- o The potential disadvantage is that there is no agreed document to show that developing countries intend to move in this direction or even that other developed countries agree with our linkage/expectation.

Multilateral Options Requiring Consensus

- o An example of such an option is a decision of the Parties at Kyoto, which would require consensus.
- o A decision could establish a mandate for future negotiations:
 - a bland "mandate" could call for negotiations by a date certain, without specifying what kind of commitments we are seeking from developing countries;
 - a specific "mandate" could call for negotiations by a date certain and also specifies the kind, and date for implementation, of commitments we are seeking (e.g., legally binding emissions targets) and from which countries we are seeking them (e.g., countries with certain percentage of global emissions).
- o Alternatively, a decision could more generally call for a review of adequacy of commitments, without actually saying that negotiations on developing country commitments would follow from such a review.
 - The latest EU approach is a decision in Kyoto to review the adequacy of commitments under Article 7(2) (a) of the Convention by a date certain.

- o Although there are theoretical advantages to a consensus document, it is extremely unlikely that anything that could be agreed to by all parties would be worth much. It might even be harmful:
 - Developing countries would likely seek to load up any mandate with all kinds of elements unacceptable to us (e.g., additional Annex I commitments, financial and technology transfer requirements).
 - Even a decision limited to a "review of adequacy" could come back to haunt us; unless it specifically provided otherwise, it could be open-ended enough to include renegotiation of our first budget period commitment.
- o Further, even if we were to achieve a consensus agreement on a future process, that document in and of itself would not create the kind of linkage that the President set up. (In other words, establishing a future negotiating process does not necessarily mean that Annex I Parties will not implement their Kyoto commitments until that process has taken place.)

Multilateral Options Not Requiring Consensus

- o An example of such an option would be a "Declaration" among like-minded countries at Kyoto expressing the expectation that key developing countries will join Article 10.
- o An advantage of such an option is that, while the international document would not reflect the agreement of the countries at issue, it could show some international backing for whatever our domestic linkage is.

Other

- o It has also been suggested that the United States might seek to link fulfilment of its commitment with developing country action through a reservation.
- o The text currently contains a "no reservations" clause. Although the U.S. has opposed this clause (due to escalating Senate concerns about such clauses, which the Senate believes infringe on its Constitutional prerogatives), no other country supports deletion of the clause.

- o Even if the clause were deleted, customary international law, as reflected in the Vienna Convention on the Law of Treaties, would limit permissible reservations to those that do not defeat the object and purpose of the treaty; a reservation along the lines above would go to the very heart of the treaty.
- o The only way to allow for a reservation along the lines above would be to specifically provide in the Protocol that reservations could be taken for that purpose. It is unlikely that such a clause could be negotiated, given that setting up developing country action as a precondition for fulfilment of the Annex I obligation goes beyond even our "evolution" proposal.

- o A different approach might be to link the second budget period commitment with action by developing countries. For example, the Protocol itself could include a provision such as:

"The second budget period shall be from 2013 to 2017. The Parties shall decide, through an amendment, on their emissions budgets for that period, taking into account the extent to which non-Annex I countries [have taken] [have committed to] actions to limit greenhouse gas emissions."

Entry Into Force

Proposal

- o Structure entry into force trigger so that:
 - U.S. ratification is not a precondition;
 - ratifications of some developing countries is a precondition.
- o The exact percentage of global greenhouse gas emissions that should be required for entry into force will be addressed separately.

Discussion

- o Most countries have indicated support for an entry into force clause that requires not only a specific number of countries to have ratified, but a certain level/percentage of emissions as well.
- o In our January draft protocol, we supported the notion of a "weighted" entry into force clause, without specifying what the trigger would be.
- o Two issues have arisen in connection with the emissions trigger:
 - whether U.S. ratification should be a precondition for entry into force;
 - whether developing country ratifications should be a precondition for entry into force.

U.S. Ratification

- o In Bonn, it became apparent that some countries (such as Japan, Canada, and Australia) believe that the trigger should be crafted so as to require U.S. ratification before the protocol could enter into force; other countries (such as Switzerland and likely the EU) disagree.
- o We therefore need a position on whether U.S. ratification should be a precondition to entry into force.
- o If U.S. ratification were required:
 - a disadvantage is that the Senate would be able to hold up the entire agreement, not just U.S. participation;

- an advantage is that implementation of the agreement, including decision-making, could not begin without us (contrast the Biodiversity Convention);
- an advantage or disadvantage, depending on one's point of view, is that there would likely be substantial international pressure on the United States to ratify.

Developing Country Ratification

- o When we proposed our "evolution" article, we contemplated an entry into force clause that would require a certain level of developing country ratifications (e.g., China, India) for entry into force; that way, such countries would be bound to the evolution obligation at the same time that we were bound to take on our emissions obligation.
- o It now appears that the evolution article will not be in the protocol.
- o As such, it could be argued that it is not helpful to include developing countries in the entry into force trigger -- their ratification would not commit them to anything beyond "advancing existing commitments;" however, they could potentially block entry into force of the agreement.
- o On the other hand, from an optical point of view, carving developing countries out of the entry into force clause could make the protocol look like an "Annex I only" agreement; this would not be helpful domestically.

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Recap on Target Issues

Current decisions on target issues are as follows:

- **Differentiation by baseline year.** Going to another baseline year (e.g., average of 1990-95, or choosing any year between 1987-96) as a way of stating our target as a reduction without actually changing it would be fine. Negotiators free to go down this road, though we recognize that moving off 1990 at this point seems unlikely.
- **Differentiation -- Japanese proposal.** Do not indicate support at this time. Could consider in end game if tweaked so as not to require actual reduction off current U.S. target.
- **Differentiation -- "pledge and negotiate".** Do not indicate support at this time. Could consider in end game, depending on what a proposal actually looked like.
- **Actual reduction below 1990 in first budget period.** No flexibility on this at this time. There may not be any in the end game either. Further instructions would be required before any movement off this position.
- **Reduction in second budget period.** Do not indicate support at this time. No decision yet on whether we could move here in end game.

Pro: might allow us to close deal with EU without accepting a reduction in first budget period. Con: would forfeit leverage for getting developing countries to accept binding targets in a second budget period; could subject us to intense criticism on Hill that we not only accepted targets when LDCs didn't, but did so for two budget periods.

- **Six gases vs. three gases.** Stick with our six-gas position. Use fact that this represents several percentage points more than the EU three-gas position as a negotiating point, but do not adopt three-gas position as part of a move by us to a reduction target.
- **Sinks.** We potentially have flexibility to try to pick up a few percentage points through, e.g., excluding soil carbon from the protocol or through a modified New Zealand approach. But we need more analysis, particularly of how the modified New Zealand approach would work. This can be dealt with at Working Group level.