Oversight

JI/Brazil

'97 NOV 13 PM 6:30

Summary

JI: Annex I Parties can get credits towards their budgets from private-sector-initiated projects in developing countries.

Brazil Annex I Parties pay into a Clean Development Fund if they exceed their budgets; the Fund selects and pays for projects in developing countries.

Major Differences:

- Whereas JI can be used to meet budget obligations, the Brazilian proposal only comes into play when an Annex I Party is in non-compliance.
- Whereas JI allows the cost/ton to be negotiated on a project-by-project basis, the Brazilian proposal calls for negotiating a set cost/ton.
- Whereas JI allows the private sector to be donors and recipients of funds (with the approval of governments), the Brazilian proposal receives funds only from governments and most likely also disburses funds to governments.
- Whereas JI envisions having the private sector find its own partners throughout the world, the Brazilian proposal centralizes funding and disbursements.
- Whereas JI leaves to individual Parties (and potential review by all Parties) consistency of JI projects with any rules under the Protocol (such as additionality, monitoring for real reductions), the Brazilian Fund would be in charge of ensuring consistency.
- Whereas JI might impose limited funding obligations on the US Government (e.g., management costs), the Brazilian proposal would place a funding obligation on the U.S. Government if it were in non-compliance with its emissions budget obligation.
- Whereas under JI projects could occur anywhere that participants (and the host government) choose, the Brazilian Fund would choose recipients of funding.

Possible Merger

- The concept would be to create a centralized clearinghouse for JI with credit.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ► 2

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- One or more mechanisms (e.g., regional ones) would sponsor projects in developing countries that will reduce or sequester emissions. (The issue of start-up costs and initial capitalization would have to be addressed.)

- The mechanism(s) should select projects, potentially on the basis of private sector bids, based on guidelines akin to those already adopted by the Convention for AIJ.

- The mechanism(s) would sell credits to Parties (or entities within such Parties) for purposes of meeting their emissions budgets.

- The buying of credits and participation in projects would be completely voluntary; host governments would need to approve any project.

- The cost/ton would be market-based; a small overhead fee might also be necessary.

Possible Advantages

- Advantages of such an approach for us might be:

  - that this might be the only way to achieve a JI-like mechanism in the Kyoto agreement;

  - that individual companies would not have to comb the world for possible investment opportunities;

  - that transaction costs would likely be lower;

  - that the burden of demonstrating that projects were consistent with JI criteria (such as that reductions were "additional") would not fall on individual Parties;

  - that astertaining compliance by other Parties would be greatly simplified.

- Advantages of such an approach for developing countries might be:

  - the appearance of a greater governmental imprimatur than with JI;

  - that it would de-politicize the process, i.e., they would not have to pick and choose among potential investors;

  - for Brazil in particular, a sense of ownership in the proposal, despite the fact that it would not be related to penalties for non-compliance.

Oversight

Agenda
November 18 Working Group Meeting on Climate Change
3:30 p.m.

I. Brazil Report

II. Game Plan

III. Process Outcome

IV. Substantive Issues

- Russian tons
- National Security
- Banking and borrowing

V. Meeting schedule

Working Group (daily)
Oversight Group

Nov. 19 2 pm (Roosevelt Room)
Nov. 21 11 am (Roosevelt Room)
Nov. 22 (if necessary)

oversight

THE WHITE HOUSE
Washington, DC

OFFICE OF THE STAFF SECRETARY

Fax Transmittal Sheet

To: Jonathan Gruber

Fax Number: 622-2633 **Telephone Number:**

From: Todd Stern

Subject: Paper for the [illegible] mtg.

Date: 11/18

Number of Pages (including cover sheet): 16

Message:

(If all pages are not received, please call (202) 456-2702.)

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 Gujural 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

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President Cardoso and PM Gujural; 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 Gujural 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 Gujural 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 Bahamanian and Trinidad and Tobagan 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

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 able to accept what is essentially a constrained Annex I obligation with no developing country commitments.

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- 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.

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- 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.

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- 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.

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 then 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	984	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 I [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

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.

oversight

Draft #2

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.

Oversight

Draft #2

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 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.

overs/sight

Reservations

- The draft protocol currently contains a "no reservations" clause.

- A footnote makes clear that a country, namely us, objected to the clause.

- 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."

- 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.

- 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.

- 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.

<u>Developing Countries</u>

- 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.

<u>National Security</u>

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

Oversight

Agenda
November 18 Working Group Meeting on Climate Change
3:30 p.m.

I. <u>Brazil Report</u>

II. <u>Game Plan</u>

III. <u>Process Outcome</u>

IV. <u>Substantive Issues</u>

- Russian tons
- National Security
- Banking and borrowing

V. <u>Meeting schedule</u>

Working Group (daily)
Oversight Group

Nov. 19 2 pm (Roosevelt Room)
Nov. 21 11 am (Roosevelt Room)
Nov. 22 (if necessary)

oversight

– 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 ¾ 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.

overtig 4+

As negotiations of a new climate change protocol (or another legal instrument) proceed to their climax at COP-3 in Kyoto, mid-level-to-senior representatives of about 20 of the nations that are "major players" met in Tokyo on November 8-9. The purpose of the meeting was to attempt to bridge at least some of the major differences of opinion among those nations on key issues.

Among other things, the media reported (and others confirmed) that the E.U. representatives signalled the E.U.'s willingness to be somewhat flexible in Kyoto concerning its proposed QELROs: reduce emissions by 7.5% below 1990 levels by 2005 and reduce them by 15% below 1990 levels by 2010.

An exceptionally reliable source reports that, near the very end of the meeting, a State Department official (unnamed, but speculated as being either Under Secretary Wirth and/or Ambassador Hambley) indicated in essence that, if the E.U. would significantly move away from its position, the U.S. was prepared to be "flexible" concerning its proposed emissions cap *during the first budget period* (2008 through 2012).

It widely has been assumed that, especially since the U.S. position was announced by the President (rather than by a mid-level official) in a highly publicized appearance, the U.S. proposal for the *first budget period* was its "bottom line" *for that five-year period*, rather than a "negotiating position." It further has been assumed that any "wiggle room" in the U.S. position on QELROs would be found in the *second budget period* (2013 through 2017), since the President merely referred to an unquantified commitment "to reduce emissions below 1990 levels" in the second budget period.

Many nations are well aware of the rumor, which was widely circulated during the several hours before the President's speech, that he would propose reducing emissions 5% below the 1990 levels during the second budget period. Now, in view of the alleged DOS indication of flexibility, some are wondering whether, in order to accommodate the E.U.[1] and others, the United States would be willing to agree to a reduction of as much as 5% below 1990 levels *during the first budget period.*

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1 It long has been assumed that the United States eventually would agree to the "E.U. bubble" in exchange for the E.U.'s agreeing to emissions trading among Annex I Parties. During the past week, it has been reported that Administration officials *already* have so informed the E.U.

oversight

Agenda
November 19 Meeting on Climate Change
2:00 p.m.

I. Developing countries

II. JI/Brazil Proposal

III. Targets

IV. Entry into force

Oversight

Agenda
November 17 Working Group Meeting on Climate Change
3:30 p.m.

I. <u>Game Plan</u>

II. <u>Process Outcome</u>

III. <u>Substantive Issues</u>

Papers Received

- Developing countries
- Entry into force
- Policies and Measures
- Reservations

Papers to come

- Russian tons
- National Security
- Banking and borrowing

IV. <u>Meeting schedule</u>

Working Group (daily)
Oversight Group

Nov. 19 2 pm (Roosevelt Room)
Nov. 21 11 am (Roosevelt Room)
Nov. 22 (if necessary)

THE WHITE HOUSE

WASHINGTON

Gruber
622-2633

Gardiner

260-~~[illegible]~~
-0275

oversight

Reservations

- The draft protocol currently contains a "no reservations" clause.
- A footnote makes clear that a country, namely us, objected to the clause.
- 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."
- 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.
- 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.
- 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).

- 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.

- 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.

<u>Developing Countries</u>

- 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.

- 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).

- 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.

- 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.

<u>National Security</u>

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

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- 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,

Draft #4

Developing Country Options

- 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.

- 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.

- 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.

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

Unilateral Options

- 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.)

- 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").

- 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

- 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 (<u>e.g.</u>, legally binding emissions targets) and from which countries we are seeking them (<u>e.g.</u>, 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 (<u>e.g.</u>, 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 <u>until</u> that process has taken place.)

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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."

6

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.

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).

- 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.

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8

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- 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.

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- 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.

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  -- a disadvantage is that the Senate would be able to hold up the entire agreement, not just U.S. participation;

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9

- o It now appears that the evolution article will not be in the protocol.

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- 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.)

- 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.

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Again,

3

Draft #4

Developing Country Options

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  - unilateral options;

  - multilateral options that require the agreement of all parties; and

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

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- 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").

- 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

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

- 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).

- 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 <u>until</u> that process has taken place.)

5

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."

6

Proposed Position

- 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.

- 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.

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).

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.

8

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.

- It now appears that the evolution article will not be in the protocol.

- 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.

10

Oversight

Draft #5

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.

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

Unilateral Options

- 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.)

- Advantages of unilateral options are that:

  -- they are the easiest to achieve, in that they do not require the concurrence of any other country;

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- 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."

Oversight

DRAFT

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11/19

DISCUSSION PAPER

CLIMATE CHANGE TREATY/NATIONAL SECURITY EXEMPTION

ISSUE: In climate change negotiations at Kyoto, what should be the U.S. position with respect to a "national security exemption"?

BACKGROUND

In his October 22 speech, President Clinton committed the federal government to leading the U.S. effort to reduce greenhouse gas emissions. He also said that regular reviews would consider "what works best for the environment, the economy, and our national security."

1. DOD greenhouse gas emissions

The Department of Defense accounts for 73% of the federal government's energy consumption, and 1.4% of all energy used in the United States. From 1990 to 1996, DOD's share of total U.S. carbon emissions fell from 1.7% to 1.4% -- a 22% decrease -- both as a result of military downsizing and of energy conservation measures. If present trends continue, DOD emissions would be well below 1990 levels during the 2008-2012 budget period. (If domestic permits were "grandfathered" to existing emitters, DOD could reap a considerable windfall.) However, DOD's mission requirements are by their nature unpredictable and subject to rapid change.

Training and tactical vehicles currently account for 58% of all DOD emissions, and include combat training, weapons systems, active military deployments and operations for peacekeeping, border security and drug interdiction. Carbon emissions from Desert Storm operations (1991) were 4.9 million metric tons -- which, if counted as part of DOD's total emissions, would have led to a total DOD emissions increase in 1991 of about 17% over its 1990 levels. Desert Storm emissions were roughly 11% of total Saudi emissions. During Desert Shield/Desert Storm, U.S. fuel purchases from Spain for aircraft refueling equaled roughly 6% of Spanish daily fuel consumption.

For 1998, DOD emissions in Germany are projected to be roughly 0.8% of that country's totals; DOD emissions in Korea are projected to be roughly 0.7% of that country's totals; DOD emissions in Japan are projected to be roughly 0.3% of that country's totals; and DOD emissions in Italy are projected to be roughly 0.2% of that country's totals.

For FY96, DOD's operations and maintenance budget was $82.5 billion. Total energy expenses were $5.6 billion. Assuming no improvements in energy efficiency and renewable energy use at current levels, the incremental cost to DOD of a $25 per ton carbon price increase would be $334 million and the incremental cost to DOD of a $50 per ton carbon price increase would be $671 million.

2. Climate treaty exemptions

The current climate treaty contains no special provisions for military operations. The specific practices of many countries in accounting for military emissions are unclear, in part because military emissions are typically small fractions of national totals and not addressed separately in national communications. The United States does not include emissions from military operations abroad in its national totals. As a general matter, the United States takes the position that environmental treaties do not apply in wartime, unless an express provision in the treaty so provides.

Among the factors to be considered in negotiating and implementing the climate treaty are:

1. The impact, if any, on DOD costs.

2. Whether emissions restrictions applicable to operations and training would affect military readiness.

3. Whether emissions restrictions in other countries would diminish the willingness of those countries to allow the U.S. military basing or access rights.

4. Whether emissions restrictions in other countries would diminish the willingness of those countries to engage in multinational military exercises.

In considering the foregoing, the role of domestic implementation measures will be important. There may be instances in which issues are more readily addressed through domestic implementation measures than treaty provisions. In some cases, a combination of domestic implementation measures and treaty provisions may be appropriate. Another issue is the role of international emissions trading. Some of these considerations may be addressed in part by the flexibility provided under an international emissions trading regime.

The role of baselines is also important. If military emissions are included when calculating national totals subject to limits under the treaty, military emissions should also be included when calculating a nation's baseline. We should consider whether, in light of trends in military emissions, U.S. interests are best served by including or excluding military emissions from these calculations.

The treatment of military emissions under the climate treaty was addressed by the United States in a preparatory meeting for the Kyoto conference held last month in Bonn. At that meeting, the United States made the following statement:

> Our delegation would appreciate the support of all members of this body in examining how we can protect world peace while preserving our planet through some kind of

national security or national emergency provision. This Protocol must not create a conflict between our collective ability to preserve peace and our desire to reduce greenhouse gas emissions. We must pursue both goals. We believe we have an obligation to the world community, our individual nations, and ultimately to the men and women who serve in our military forces to carefully consider how we address military operations in this Protocol. We look forward to discussing this issue further in the preparations for Kyoto.

Diplomatic reaction has been mixed. In late October, the idea of an exemption for multilateral military operations was raised through diplomatic channels with NATO allies, many of whom indicated a willingness to consider the idea. In early November, the issue was raised in ministerial meetings with the E.U., which reacted generally favorably. However, in ministerial meetings in Tokyo in mid-November, the chair of the Kyoto negotiations reacted negatively to the idea. He argued that the exemption would draw opposition at Kyoto and that any attempt to introduce it would violate a rule requiring all substantive ideas to be proposed no less than six months prior to the Kyoto meeting.

This issue has received attention on Capitol Hill and has been the topic of editorials in the Wall Street Journal and Washington Times.

OPTIONS

Following are some of the principal options that have been identified:

1. *Propose exemption for all military operations and training*

+ all four considerations noted above would be addressed
- unlikely to gain support at Kyoto; could be seen at home as inconsistent with commitment to federal government leadership

2. *Propose exemption for military operations and training when troops are stationed abroad*

+ eliminates any risk that emissions restrictions would be a factor in host country basing and access decisions, or in decisions to participate in multinational military operations
- more clearly a special U.S. request; does not affect any constraints on domestic training and operations; less impact on DOD costs

3. *Propose exemption for multinational operations and training*

+ eliminates any risk that emissions restrictions would be a factor in decisions to participate in multinational military operations; better chance of success at Kyoto

- does not affect any constraints on domestic training and operations or host country basing or access decisions; less impact on DOD costs

4. Propose an exemption for "national security emergencies"

+ could encompass multinational military operations and other situations that may arise; better chance of success at Kyoto
- little impact on domestic training and operations constraints, host country basing/access decisions or DOD costs; could be construed too narrowly

5. *Propose that treaty be clarified to require country of origin to claim its military emissions, wherever troops are deployed.*

+ would likely make it easier for US to meet its emissions reductions goals (due to military downsizing since 1990); would eliminate any problems with host country basing/access decisions; could probably be achieved in Kyoto
- does not affect DOD costs, any risk that treaty would influence host country basing/access decisions or willingness of other countries to engage in multinational operations

6. Do not propose any provision in treaty

+ could make negotiations easier at Kyoto; would avoid charge of weakness on federal leadership
- does not affect any of the considerations noted above

Any of the foregoing options could be combined with administration statements concerning the importance of protecting national security in domestic implementation programs. These statements could be more or less specific, depending on the goals to be served.

Oversight

Draft #2

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 (<u>e.g.</u>, 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 (<u>e.g.</u>, 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

- The draft protocol currently contains a "no reservations" clause.

- A footnote makes clear that a country, namely us, objected to the clause.

- 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."

- 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.

- 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.

- 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).

- 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.

- 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.

<u>Developing Countries</u>

- 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.

- 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).

- 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.

- 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.

<u>National Security</u>

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

Draft #5

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);

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- 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.

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

Unilateral Options

- 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.)

- 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").

- 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.

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

- 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).

- 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.

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- 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."

Oversight

Draft #2

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

- 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.

- It now appears that the evolution article will not be in the protocol.

- As such, it could 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.

- 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.

oversight

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 JI -- Update

III. Process Outcome

Doss oversight

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 able to accept what is essentially a constrained Annex I obligation with no developing country commitments.

- 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 ¾ 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.

oversight

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FAX TRANSMISSION

U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF POLICY, PLANNING AND EVALUATION

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To: Jonathan Adashek

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From: William N. White

Subject: Russian tons options

Date: November 20, 1997

Pages: 4, including this cover sheet.

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 then 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	874	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

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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 I[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

oversight

'97 NOV 20 PM5:2

OFFICE OF THE LEGAL ADVISER
UNITED STATES DEPARTMENT OF STATE

TELEFAX COVER SHEET

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FROM: **Ms. Susan Biniaz**
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Telephone Number: (202) 647-1370

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:

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

In terms of the issues above:

- 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.

- 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).

- 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, <u>inter alia</u>:

   (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.

"Blandate"

Mandate for Kyoto

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 efficiency or quantified target by the Meeting of Parties in ~~2002~~ 2000.

(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 ~~favorable~~ supportive 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 ~~2002~~ 2000 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.

oversight

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 JI -- Update

III. Process Outcome

Oversight

Recap on Target Issues
(11-20-97)

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. [State has raised possibility of indicating flexibility on this before end game in order to build coalition among JUSCANZ.]

- **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 <u>two</u> budget periods.

- **Six gases vs. three gases.** We previously decided to 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 not adopt three-gas position as part of a move by us to a reduction target. *State now proposes to move toward three-gas position so that we can produce an optical reduction number on theory that this will help with EU and developing countries. The full six-gas basket would kick in in second budget period.*

Questions for Resolution

Targets (see attached "Recap" page)

- Can we move on our target in real terms?

- Can we support differentiation?

  -- By baseline year
  -- Japanese model
  -- "Pledge and negotiate"

- Can we support an explicit reduction in second budget period?

- Can we move from a six-gas to a three-gas basket (with six gases to begin in second budget period) in order to produce an optical move in our target?

Joint Implementation with Developing Countries

- Can we accept a two-step on JI?

- What limits (e.g., percent of total reductions) can we accept on JI?

- [Potentially, is there a hybrid Brazil/JI concept we can accept?]

Developing Countries

- Can we abandon evolution (in a Kyoto Mandate) and move instead to a combination of Article 10 (voluntary opt-in) and a bland mandate such as a review of commitments contemplated by Article 7(a)(2)?

Entry into Force

- Should U.S. ratification be required for entry into force?

- Should developing country ratification be required for entry into force?

Additional Issues to be Resolved

- Russian tons
- Policies and measures
- National Security

oversight

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?

- Could we accept the hybrid JI/Brazil concept that we have floated informally?

- Even if we dropped certain sinks for our target, would we still need sink projects to be allowed under JI?

<u>Developing Countries</u>

- What happens if we cannot get an article "advancing implementation of existing commitments" that actually advances anything? What if it actually goes backwards?

- Can we abandon "evolution" (<u>i.e.</u>, 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?

<u>Entry into Force</u>

- Should U.S. ratification be required for entry into force?

- Should developing country ratifications be required for entry into force?

<u>Additional Issues</u>

- <u>Russian tons</u>: What can we give Russia concerning its ability to sell "hot air" that it has accumulated before the first budget period?

- <u>Policies and Measures</u>: 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?

- <u>National Security</u>: What do we do if our proposal for a decision of the parties does not succeed?

- <u>"Compensation"</u>: 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?

- <u>Banking/Borrowing</u>: Do we need to insist on retaining banking (<u>i.e.</u>, the ability to carry over to the next budget period any underages) and/or borrowing (<u>i.e.</u>, the ability to legally borrow a limited amount from the next budget period, to be paid back with a penalty)?