

## **Submission of the United States to the AWG-LCA Chair**

**April 26, 2010**

### **Introductory Comments**

The United States looks forward to making progress this year in the LCA, including the near-term prospect of a working text that is more advanced from both substantive and workability points of view.

In this regard, the United States would like to offer comments on certain aspects of such a text.

The LCA text is, of course, a relevant document. As is known, COP 15 decided that the Parties are to “draw on” the LCA text, rather than to use it as *the* basis of negotiations. Accordingly, the LCA text does not have the status of either the negotiating text or the basis for future negotiations. This was a sensible result for several reasons, including, e.g., that the LCA text was not favorably received by many Parties, that it includes and omits views of Parties on a selective basis, and that it barely addresses MRV, a key element of the Bali Action Plan.

In the U.S. view, the Chair should import LCA text into her text on a provision-by-provision basis when it would facilitate progress in the negotiations. Where progress would be facilitated by reflecting aspects of the Copenhagen Accord, or other submissions, the Chair should import those provisions.

In terms of scope, we consider that the text should address all the Bali elements, i.e., mitigation, MRV, adaptation, finance, technology, and REDD-plus. This is an issue of both balance and coherence, given the relationship between and among issues substantively and politically. We are flexible as to whether that is achieved with or without an overarching instrument, as there could be either a series of decisions or a cover decision handling certain issues, with other issues handled in companion decisions.

In terms of substance, we consider that most issues were substantially advanced over the course of 2009. In some cases, the advancement took place largely through the LCA process. In the case of certain crunch issues, the LCA process was not able to crack through them, and the Copenhagen Accord was the locus of progress. It is recognized that the COP did not formally adopt the Accord but rather took note of it; all the same, a large majority of Convention Parties have “signed onto” the Accord, making its substantive outcomes unarguably relevant to progress under the Convention.

In terms of level of detail, many issues are already well on their way to elaboration (e.g., REDD-plus, adaptation). Others need to be similarly elaborated before a balanced package can be achieved (e.g., reporting and international procedures regarding transparency of mitigation actions, including those of non-Annex I Parties).

In terms of legal form, the United States continues to support the goal of a legally binding outcome, provided that the legally binding elements of an otherwise acceptable text are legally binding with respect to all relevant Parties – not just Annex I or developed country Parties. We see no rationale for legal asymmetry, in the Convention or otherwise, noting that all Parties have existing legally binding obligations under the Convention.

As a drafting matter, we consider it both confusing and difficult (from both textual and structural viewpoints) to negotiate simultaneously, in a single text, an instrument that is potentially legally binding and one that is not. For that reason, our suggestions below are drafted in the form of COP decisions. At such time as the COP is able to agree on concluding a legally binding outcome, corresponding changes would need to be made, e.g., with respect to verbs, the addition of final clauses that are integral to a legal instrument, etc. Substantive additions would also be warranted in some areas. For example, with respect to the mitigation contributions of developing country Parties with greater responsibility and capability, the United States would stand by the more explicit text contained in its 2009 submission.

Finally, we consider that the absence of titles/headings in the Copenhagen Accord would be a useful idea to pick up in the Chair's text.

### **Preamble**

We consider that, as is usually the case in international negotiations, the preamble should be left to the end of the negotiating process. Sometimes, the winning approach to a preamble is short and sweet (e.g., the Kyoto Protocol). Sometimes, the preamble is used to address, in softer terms, issues that cannot be agreed in starker terms in operative provisions. At this stage, we would recommend an empty set of brackets as a placeholder. When we return to the preamble, we think it will be important to consider that, in Copenhagen, Parties were nearing agreement on the need to promote a just transition of the workforce and the need to be mindful that the effects of climate change will be felt most acutely by populations that are already vulnerable, including women.

## **Shared Vision**

It appears to us that it is a widely shared view that the text should recognize the scientific view that the increase in global temperature should be below 2 degrees Celsius. To address the view of some Parties that a 2 degree goal is inadequate, the text could also provide that a review process (drawing on the language in the Copenhagen Accord and/or paragraphs 6, 7, and 8 of the LCA text) should, among other things, consider strengthening this long-term goal in light of science.

Other proposals regarding shared vision have been much more controversial and, in our view, are unlikely to achieve (or are incapable of achieving) agreement. The Copenhagen Accord is instructive in this regard, recalling that its shared vision provisions, beyond the 2 degree goal, are minimal. While some Parties may take the view that the other aspects of shared vision were simply not addressed, as far as the United States is concerned, the absence of such aspects was critical to the balanced nature – and thus acceptability -- of the Accord. We consider that it would not be productive to introduce a long series of proposals on shared vision in the Chair's text; should the Chair decide to do so, the United States reserves the right to continue opposing such provisions and/or introduce counterproposals on each point.

## **Mitigation/MRV**

### **Mitigation**

As noted, mitigation has been an area of substantial stalemate in the LCA process. There have been serious differences of view regarding fundamental points, e.g., the interpretation of existing commitments under the Convention, the application of the principle of common but differentiated responsibilities and respective capabilities, the meaning of the Bali Action Plan, etc.

In the U.S. view, navigating this issue successfully will require the kind of nuanced, practical, and balanced approaches and formulations that appear in the Copenhagen Accord. Parties with very different views must be able to walk away feeling that their interests have been protected, including that the environmental purpose of the Convention has been served.

A feature of the Accord that the Chair's text should draw on is the treatment of mitigation contributions, under which both Annex I and non-Annex I Parties communicate their mitigation contributions for international listing and stand behind them in terms of implementation.

Another helpful feature of the Accord is the disentangling in paragraph 5 of various non-Annex I Party actions, i.e., (i) actions that are domestically funded; (ii) actions that have secured external support (whether by virtue of the registry or otherwise); and (iii) actions that are still seeking support. Paragraph 5 contemplates listing *only* actions in the first and second categories – actions that are domestically funded or that have secured external support. Actions in the third category – those still seeking support -- get automatically listed if and when they secure support but are not listed before that point because they are still in the conditional stage. Therefore, the *listing* of actions with the proviso that their implementation is contingent on the receipt of external support is not consistent with paragraph 5.

The Accord text also usefully bows in the direction of national sovereignty, not only through specific reference to the concept in the context of international consultation and analysis but more broadly by deferring to Parties in terms of deriving their respective mitigation undertakings. Such an approach, in our view, promotes widespread contributions and actual implementation.

While we do not necessarily advocate that the Chair import the precise mitigation and transparency language of the Accord verbatim, significant areas of agreement, as reflected in the Accord, clearly should be mirrored in the Chair's text. With respect to the LCA text, we consider that it would generally *not* be constructive in terms of making progress to import the LCA mitigation provisions, which were a source of widespread disagreement and stalemate.

There are two areas where the LCA mitigation text would usefully be utilized:

- the Annex V provisions on REDD-plus, on which the LCA made substantial progress; and
- various ideas for a “registry” where non-Annex I Parties could list mitigation actions in search of international support. As noted above, this concept is endorsed in paragraph 5 of the Copenhagen Accord, with registered actions that secure such support moving automatically to the Appendix of mitigation undertakings. (As noted below, we would propose that such text be included in the provisions on finance.)

Further, in the U.S. view, the Chair's text should address the issue of the evolving status/contributions of countries. The Convention is not a static instrument. Rather, it is a framework that is built to evolve based on, *inter alia*, its ultimate objective (which cannot be achieved without ever-evolving contributions); the principle of common but differentiated responsibilities and respective capabilities (which inherently recognizes a spectrum or continuum of effort among all countries, not just between categories of countries); and the express invitation to non-Annex I Parties in Article 4.2(g) to take on Annex I duties. If the Convention stagnates, based on country circumstances from 1992, it will not remain an

effective vehicle for addressing climate change. The attached mitigation text provides one suggested way forward in this regard.

It should be noted that, as in the case of shared vision, certain mitigation issues do not appear in the Accord. For the United States, the absence of many of these elements was critical to making the Accord acceptable; however, we acknowledge that others may consider such issues simply to have been unaddressed by the Accord and still “on the table.” As such, while we do not support the inclusion of such issues in the Chair’s text, we include text on these issues so as to preserve the U.S. positions on them.

## **MRV**

Turning to MRV, there are issues of balance, placement, and substance.

In terms of balance, MRV is an area that needs further elaboration to achieve balance with other topics (such as finance, adaptation, REDD-plus, technology), as well as to provide the necessary “sunshine” to ensure that Parties are carrying out their promises and that the world is on track in relation to the ultimate objective of the Convention.

In terms of placement, MRV provisions might be placed, at least partially, in a companion decision (akin to, e.g., adaptation, REDD). While the Accord places mitigation and MRV together in paragraphs 4 and 5, it is likely more workable to separate them, given the need for more elaborated MRV provisions (e.g., on inventories, national communications, international consultation and analysis).

Turning to substance, it should be noted that the LCA text contains almost no provisions on MRV, notwithstanding Party submissions on the subject (including from the United States). As such, the Chair will need to draw on the Accord, as well as earlier and current Party submissions.

The Bali Action Plan refers to “MRV” twice:

- with respect to developed country nationally appropriate mitigation commitments or actions (in subparagraph 1(b)(i); and
- with respect to developing country nationally appropriate mitigation actions (in subparagraph 1(b)(ii).

The Bali provision that refers to developing country mitigation actions includes a reference to the fact that such actions are “supported and enabled by technology, financing and capacity-building.” A comma after this clause (which was the last issue resolved in Bali) makes clear that the phrase “in a measurable, reportable and verifiable manner” refers both to technological/financial support and to developing country mitigation actions.<sup>1</sup>

The Copenhagen Accord confirmed that the MRV clause applies to financial/technological support and developing country mitigation actions, whether supported or unsupported. It provides for “international” MRV of supported actions and for “domestic” MRV, plus “international consultation and analysis,” for all mitigation actions, whether supported or unsupported.

The result is essentially four baskets of MRV:

1. International MRV of Annex I mitigation;
2. Domestic MRV/international consultation and analysis of non-Annex I mitigation actions, whether supported or unsupported;
3. International MRV of the financial/technological support of actions that are supported; and
4. An additional layer of international MRV of those non-Annex I actions that are supported.

Basket 1 is to be in accordance with existing COP guidelines, as well as any additional guidelines that the COP might adopt. Last year, the United States proposed procedures that would augment existing guidelines in terms of rigor and transparency and would like those to be further considered by the Parties.

Basket 2 requires further discussion and textual elaboration, both with respect to the procedures for international consultation and analysis and the extent to which domestic MRV should be carried out by Parties in a standardized or comparable manner.

- Recalling procedures in other international fora, as well as climate-related procedures, it should be fairly straightforward to provide an appropriate international layer on top of domestic MRV.

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<sup>1</sup> Post-Bali, some Parties advocated a reading of Bali in which the “supported by...” clause in 1(b)(ii) would simultaneously have two different meanings: that the MRV clause applies only to mitigation actions that are supported, and that the MRV clause applies to the support itself. An examination of the provision reveals that the clause cannot, as a matter of drafting, mean both things. Consistent with the actual intent of the Bali negotiators, the Copenhagen Accord indicates that the MRV clause applies to all mitigation actions, whether supported or unsupported.

- One issue will be how guidelines should ensure respect for national sovereignty, e.g., there may be a situation where a Party would be permitted to opt out of a particular aspect of the procedure.

Baskets 3 and 4, as noted, are two sides of the same coin, per subparagraph 1(b)(ii) of the Bali Action Plan. Textually, they should be treated together, whether under mitigation or finance. The Registry, which ties together funding and actions in need of support, may be able to play a role with respect to this double-sided MRV.

At a minimum, placeholders should be inserted into the Chair's text with respect to all four of these aspects of MRV. As near-term international discussion puts flesh on the bones of MRV, elaborated textual provisions will need to be added to the text.

In addition, provision for increased frequency of inventories (every two years) should be included.

### **Adaptation**

Adaptation is an area where the LCA made substantial progress and the LCA provisions should, as a result, be drawn on.

Adaptation is a challenge faced by all countries; an international adaptation program should therefore include all countries, even as it provides funding for developing countries.

We would urge the Chair to import into her text the Copenhagen Accord's enumeration of countries that are particularly vulnerable, i.e., least developed countries, small island developing States, and Africa. At the same time, as the impacts of climate change will fall hardest on vulnerable groups and communities in all countries, current LCA text that includes these groups should also be included.

The Chair's text should formally acknowledge the critical role of entities engaged in adaptation work outside the Convention, and should invite their input and participation in climate adaptation activities.

### **Finance**

Finance is a core, cross-cutting issue and should be addressed in conjunction with other core provisions, including mitigation.

We consider that the Chair's text should reflect important understandings reached in the Accord, e.g.:

- The collective political commitment by developed countries to provide new and additional resources approaching \$30b for the period 2010-2012 (noting that, should there be agreement to conclude a legally binding outcome, it would not likely enter into force in time to make such a political commitment relevant and that, in any event, the Accord does not envision any FCCC decision-making processes related to "fast start" funding, which will take place through existing channels/institutions);
- Priorities regarding adaptation funding;
- The collective political commitment by developed countries – importantly, "in the context of meaningful mitigation actions and transparency on implementation" – to a goal of mobilizing jointly, from a wide variety of sources, \$100b a year by 2020;
- Agreement that a Copenhagen Green Climate Fund will be established as an operating entity of the Convention's financial mechanism;
- Endorsement of a governance structure for adaptation providing for equal representation of developed and developing countries, which the United States considers should be broadened to cover the new Fund generally; and
- A Registry for the listing of mitigation actions in need of external support, noting the need to further refine Registry-related provisions (and noting that such provisions are better placed under finance, while recognizing that they are cross-cutting with mitigation issues).

The Parties will need to discuss and decide upon many aspects of the Copenhagen Green Climate Fund (e.g., Board composition, modes of access, MDB involvement); however, we do not envision textual provisions on these issues. As the Fund will be an operating entity of the financial mechanism, its establishment should follow the precedent of the GEF (an existing operating entity of the Convention's financial mechanism); it was constituted through a separate process involving financial experts, and an MOU was concluded between the GEF and the Convention specifying those elements called for under Article 11 of the Convention. To this end, we would consider it desirable for the text to invite the World Bank to serve as Trustee of the new Fund and, in this regard, to organize a process to take steps to establish the Fund.

We do not envision the Accord's "High Level Panel" (to study the contribution of potential sources of revenue toward the \$100b goal) as being reflected in the Chair's text; a group with this mandate has already been set up by UN Secretary General Ban Ki-Moon under the chairmanship of Prime Ministers Brown and Meles, which is scheduled to have completed its work before COP 16.

## **Technology**

Like adaptation and REDD-plus, technology is an area in which the LCA process was able to make substantial progress. As such, it would be conducive to progress if the Chair's text were to include Annex IV of the LCA text (FCCC/CP/2010/2). Use of this text would be on the understanding that it does not reflect the full discussion among, and in some cases agreement reached by, the technology working group. For example:

- The text does not reflect an alternative chapeau for the fourth paragraph tabled by the United States, which reads: "Decides that activities under the Convention related to technology development and transfer should promote country-driven processes based on national circumstances and priorities with a view to ensuring overall efficiency and effectiveness and support the efforts of developing country Parties related to:"
- It was our understanding that the negotiating group agreed to work off of paragraph 10(d)(vi) Option 1.
- The section on national and cooperative actions should be located after the section outlining the objective.
- We consider it important to increase private and public energy-related research, development, and demonstration compared with current levels, working towards at least doubling of global energy-related research, development, and demonstration by 2015 and working toward an increase to four times its current level thereafter, with a significant shift in emphasis towards safe and sustainable low greenhouse-emitting technologies.

In our view, the Technology Executive Committee (TEC) and the Climate Technology Center and Network (CTC&N) have different, but mutually reinforcing, functions. We do not see either of these bodies as being subservient to the other. Both bodies should report to the COP through the SBSTA, making use of, and recognizing the authority of, existing bodies. While neither body would be an operating entity of the financial mechanism, both could provide information and advice on matters related to technology development and transfer that could be included, as appropriate, in COP guidance to the financial mechanism.

Finally, innovation is essential to develop the technology necessary for achievement of the convention's ultimate objective. This innovation will not happen absent the protection of intellectual property rights. The United States cannot support any text that would undermine or weaken protection or enforcement of intellectual property rights. Moreover, multiple fora with deep expertise are dedicated to this important issue. Consequently, we do not support addressing it here.

### **Capacity-Building**

Capacity-building is a critical issue. Structurally, however, we suggest that the Chair's text incorporate language on capacity-building within the various Bali elements (e.g., adaptation, finance), rather than include a free-standing, redundant, and potentially confusing, section on this subject.

In our view, the capacity-building text being discussed by Parties last year is unlikely to advance efforts on this subject. As a practical matter, the version in the LCA text that reflects changes from the final days in Copenhagen is potentially misleading – it contains unbracketed text in some instances that was never considered by Parties; in other instances, it contains text that the Parties did not agree to be “clean text.”

### **Attachments**

As noted above, we attach suggested mitigation text; on this issue, we do not support inclusion of the LCA text on mitigation, particularly in the form presented by the previous LCA Chair before Parties provided input in the final days of Copenhagen to make it more balanced.

On other issues, as noted above, we have suggested either using the LCA text or listing elements and/or placeholders.

### **Mitigation Text**

1. The Parties to the Convention recognize that low-emission growth strategies are essential to sustainable development and can make a substantial contribution to the achievement of the Convention's ultimate objective, as reflected in Article 2 of the Convention and as further referenced in paragraph X above [comment: reference to 2 degrees]. As such, all Parties to the Convention commit to prepare and submit low-emission strategies for long-term emission reductions as part of their national communications under Article 12 of the Convention, in accordance with the content and timing provisions set forth in Appendix X.

2. Building upon, and without prejudice to, existing mitigation commitments under the Convention, the Parties to the Convention commit to take the following steps:

a. Parties to the Convention included in Annex I: to implement the quantified economy-wide emissions targets for 2020 they have chosen to list in Appendix 1, as submitted by such Parties to the secretariat in the indicated format by [date];

b. Parties to the Convention not included in Annex I: to implement mitigation actions, including those they have chosen to list in Appendix II, as submitted by such Parties to the secretariat in the indicated format by [date]. Listed actions are either those that are autonomously funded or those that have secured international support, including through the Registry referred to below;

c. Parties to the Convention that are least developed countries or small island developing States: to undertake actions voluntarily and on the basis of support.

3. Recalling Article 4.7 of the Convention, Parties to the Convention not included in Annex I seeking international support for a particular mitigation action may record such action in the Registry referred to below, along with the requested technology, finance, and/or capacity-building support. Those actions that secure support will be added to Appendix II.

4. [The text should include a cross-reference to the finance provisions, which should request [X] to establish a Registry to serve as a mechanism for recording mitigation actions in need of international support and for facilitating the matching of international support. That section should also include other provisions/options regarding a Registry from the LCA text.]

5. Parties to the Convention included in Annex I:

a. may implement their respective emissions targets jointly, consistent with the following rules: [ ]

b. may achieve their respective emissions targets through the combination of domestic efforts; land-use, land-use change and forestry; international emissions trading; international offsets; and/or other means provided for under their respective laws and policies.

6. The following provisions apply in relation to paragraph 2(a) above:

a. As of [date], Annex I of the Convention will be deemed to include those Parties that meet the following criteria: [ ].

b. Recalling Article 4.2(g) of the Convention, any Party to the Convention not included in Annex I may at any time inform the secretariat that it intends to implement paragraph 2(a).

7. Parties are encouraged, bilaterally, regionally, and/or multilaterally, to pursue various approaches, including opportunities to use markets, to enhance the cost-effectiveness of, and to promote, mitigation actions.

8. The Parties recognize the importance of addressing emissions from the international aviation and maritime sectors and consider that the limitation or reduction of emissions of greenhouse gas emissions not controlled by the Montreal Protocol from aviation and marine bunker fuels should be pursued working through the International Civil Aviation Organization and International Maritime Organization, respectively.

9. The Parties will consider pursuing the implementation of Article 13 of the Convention.