

U.S. Submission on Elements of the 2015 Agreement

Introduction

- The United States is pleased to present its views on elements of the 2015 agreement.
- Before turning to specific elements, we would like to make three introductory comments.
- First, the United States supports a Paris agreement that reflects the seriousness and magnitude of what science demands. As such, it should be designed to promote ambitious efforts by a broad range of Parties.
- Second, regarding the principles of the Convention, including but not limited to common but differentiated responsibilities and respective capabilities (CBDR/RC), there is no question that they continue to apply to future efforts under the Convention. The issue is their meaning as we contemplate the period immediately post-2020 and beyond. With respect to CBDR/RC in particular, we endorse the view that national efforts will be differentiated across a broad continuum of all Parties based on a range of factors, including circumstances, level of development, mitigation opportunities, capabilities, etc. However, we would not support a bifurcated approach to the new agreement, particularly one based on groupings that may have made sense in 1992 but that are clearly not rational or workable in the post-2020 era. There have been, and will continue to be, dramatic and dynamic shifts in countries' emissions and economic profiles that make such an approach untenable, environmentally and otherwise.
- Third, the agreement will be a component of the larger package to be adopted in Paris. The agreement per se should be built to last, for example, so that it does not have to be amended every time there are refinements to the details of reporting. In addition, it will promote ambition if it is designed to remain sound in the context of changing scientific, economic, and technological circumstances. As a result, the agreement should include provisions that, among other things, are sensible to include in an instrument of long duration. Other provisions should be included in related instruments

that are easy to modify over time. This approach will have the added benefit of producing a concise agreement that is more easily negotiated and understood.

Preamble

- The preamble need not contain more than a few provisions:
 - First, it should recall the Convention.
 - Second, it should provide that the agreement is pursuant to the Durban decision that called for its negotiation.
 - Third, the preamble should state that the new agreement is in pursuit of the "ultimate objective" set forth in Article 2 of the Convention. (The Kyoto Protocol takes a similar approach.)
 - Finally, the preamble should note that, in developing the agreement, the parties were guided by the principles of the Convention as applied to the post-2020 period.

Definitions

- Whether there is a need for a definitions article should be revisited at a later stage.
- There may also be a need, for clarity's sake, to define terms that also appear in the Convention. (For example, it will likely need to be made clear that the term "Party," when used in the new agreement, means Party to the new agreement, not the Convention.)

Mitigation

- The mitigation section of the new agreement should contain six main elements.
- First, each Party to the new agreement should be required to maintain a "schedule" (or whatever other term is chosen) that reflects its contribution to the global effort to limit/reduce GHG emissions:
 - Contributions should be nationally determined by the Party in question, taking into account the factors it considers relevant (e.g.,

national circumstances, capability, mitigation opportunities, level of development, etc.)

- Initial contributions should relate to a common timeframe.
- Contributions should be specific, i.e., go beyond the very general commitments contained in the Convention.
- In general, contributions would be expected to be expressed in quantified terms or, if qualitative, to be quantifiable (either by the country or others) in terms of its anticipated effect on overall emissions. For countries with limited capabilities and whose contributions to global emissions are not significant, it may be more appropriate for a contribution to be purely qualitative, such as a set of policies in the energy and/or land-use sector in the context of an overall analysis of opportunities available to reduce emissions. In addition, some Parties may choose to supplement a quantified/quantifiable contribution with other measures that will have the effect of reducing emissions but that are not quantified or quantifiable, such as research and development investments.
 - Schedules may include more than one mitigation contribution, for example, a hard cap in one sector with emissions that are easy to project, an intensity target in another sector, and policies in a third sector.
- Mitigation efforts in the land sector, including REDD+, are an important contribution to overall ambition and would, as appropriate, be reflected in schedules.
- External financing will continue after 2020, and we expect that Parties taking ambitious actions in the context of effective enabling environments will continue to attract support. In addition, Parties would continue to report on mitigation measures they have taken or are taking that go beyond their schedules. However, the general expectation should be that a Party's listed contribution will not be conditional on external support.
- A Party would need to submit its schedule upon joining the agreement.

- It would be desirable to develop a notional format for schedules, in order to facilitate understanding, as well as comparison, of contributions. It could be part of the agreement (in an annex or appendix) or in a decision adopted before or at the same time as the new agreement. (The United States proposed a notional format last fall.)
- Schedules should be housed separately (for example, by the Secretariat), both because this will facilitate updating over time and because national schedules are not “approved” by other Parties in the same sense as either provisions of the agreement or decisions of the Parties.
- Second, each Party should be required to accompany its schedule with information that helps ensure that it is readily understood. In other words, contributions should not only be specific, but they need to be clear:
 - Per the Warsaw outcome, the FCCC parties will identify in the near term which types of information are necessary for “clarity, transparency, and understanding” in relation to the submission of intended nationally determined contributions.
 - The same types of information should apply to the submission of finalized nationally determined contributions that are submitted when countries join the agreement.
 - The accompanying information should include:
 - the relevant time period;
 - the base year/period;
 - the gases/sectors covered; and
 - the percentage of national emissions covered; and the overall emissions reductions anticipated.
 - If any of the following are applicable, they should also be included:
 - if the land sector is included, a specification of how the Party will account for all significant lands, activities, pools, and gases;
 - if a Party intends to use market mechanisms, a description of the intended use (including source/type) and how it intends to avoid double-counting;

- for any emissions projection, BAU projection, or intensity target, a description of the methodology and assumptions (including key data sources).
- Third, each Party should be required to report periodically on its progress in implementing its schedule. Reporting will enhance ambition by promoting accountability, by making countries take a hard look at their inventories and mitigation opportunities, by revealing best practices, and by enabling assessment of the aggregate global effort. Reporting should be based on a single system with built-in flexibility. In other words, all Parties should be expected to follow the same set of agreed guidelines, recognizing that such guidelines should provide for appropriate differentiation in light of capabilities and circumstances. The requirement to report should be in the agreement itself; however, the guidelines should be contained in a decision of the Parties, given their expected level of detail and likely need for updating over time.
- Fourth, there should be provisions regarding certain aspects of accounting:
 - They would apply to all Parties.
 - Land use accounting should include all significant land use sinks and sources. It should also require a Party to take the same approach in the base year(s) and target year(s).
 - Any use of market mechanisms must be accounted for so as to avoid double-counting.
 - There should be no changes to baselines with respect to contributions employing BAU.
 - Provisions should allow for appropriate flexibility.
- Fifth, the agreement should provide for Parties' implementation of their schedules to be reviewed. Such reviews are essential: they will enable other Parties and the international community to know the extent to which schedules are being implemented; they will allow the Parties to assess the sufficiency of the global effort in the aggregate; and they will provide a powerful incentive for Parties to engage in meaningful implementation of their schedules. Reviews should be based on a single system, with

appropriate differentiation provided for based on capabilities and circumstances. The details should be set forth in a decision.

- Finally, certain steps related to mitigation will have taken place before the agreement is concluded, including:
 - that FCCC Parties will have set forth their intended nationally determined contributions (those that are ready will have done so by the first quarter of 2015);
 - that they will have accompanied their contributions with clarifying information;
 - that there will have been an opportunity for others to analyze, and pose clarifying questions regarding, such contributions before they are finalized; and
 - that FCCC Parties will have had an opportunity, if they so choose, to adjust their contributions before finalizing them.
- Although these steps will have already taken place, and they will therefore not serve a purpose with respect to the first time period covered by the new agreement, the new agreement should nevertheless make reference to such steps. The concepts reflected in such steps (i.e., putting forward intended contributions, allowing a period for analysis by others, etc.) will have continuing value for subsequent time periods covered by the agreement, even if the specific details are left to future decisions of the parties. In addition, further consideration will need to be given to how the process of putting forward intended contributions and allowing for a period of analysis will work with respect to countries that enter the process after the agreement is concluded and enters into force.
- There are important open questions concerning the legal nature of mitigation contributions. The Durban mandate makes clear that we are pursuing an agreement with some kind of legal force but leaves for further discussion which elements of the agreement should have which kind of legal force. The Warsaw outcome also leaves open the legal nature of mitigation "contributions."

- We assume that certain elements set forth above will be internationally legally binding, including that a Party maintain a specific commitment in a schedule, provide clarifying information, report on implementation, follow accounting provisions, and subject its implementation to review by others.
- A key question, however, concerns the "content" of a contribution. Specifically, when a party to the new agreement sets forth its nationally determined contribution in its schedule, what is its legal nature?
- One option is for contributions to be internationally legally binding. Another option, put forward by some Parties, is for contributions not to be legally binding at the international level. A third option is to meld the second option with an approach that emphasizes the importance of the domestic measures that underpin a Party's international contribution and the legal force that they have at the domestic level (e.g., laws, regulations, etc.). Further consideration should be given to which of these, or other, options is likely to promote ambitious undertakings, serious domestic implementation, broad participation, and an agreement that can serve us in the long term.

Adaptation

- Adaptation will be an important component of the Paris outcome.
- While vulnerability to climate change differs across countries, communities, and even households, all Parties will continue to prepare themselves in the post-2020 era for the unavoidable impacts of climate change and to enhance resilience in the face of future climate uncertainties.
- Adaptation actions are ultimately undertaken at the local level. They will vary from location to location, and their benefits will be felt most directly at the local, rather than global (or even national), level. Each Party will therefore continue developing and implementing its adaptation plans and policies in a manner that fits its circumstances and priorities.
- The agreement should underscore the importance of Parties enhancing their efforts to:

- integrate adaptation into national planning and development processes in order to strengthen resilience to immediate, medium-, and long-term climate change impacts;
 - undertake assessments of climate change impacts and vulnerability;
 - prioritize action with respect to the people, places, ecosystems, and sectors that are most vulnerable to climate change impacts;
 - understand the costs and benefits of adaptation at the local level;
 - strengthen governance and enabling environments for adaptation; and
 - monitor, report, evaluate, and learn from adaptation plans, policies, and programs.
- The agreement should also stress the importance of Parties' enhancing cooperation to address adaptation.
 - Such cooperation includes efforts undertaken by the subsidiary bodies.
 - The agreement should support and build on such efforts by further:
 - strengthening linkages with, and encouraging actions and support by, institutions and organizations outside the Convention (such as those at the regional, national, and sub-national levels, universities, civil society organizations, intergovernmental organizations, and the private sector), which can contribute much-needed expertise, capacity, and resources to advance work in the areas that Parties identify as critical;
 - supporting the synthesis of information and knowledge about good adaptation practices;
 - supporting the provision of technical guidance on good adaptation practices, including on integrating adaptation into national and development planning and policies; and
 - improving national communications so that they can more effectively capture and support national adaptation planning processes and, as a result, facilitate accountability and exchange of knowledge, lessons, and good practices.

- Taken together, such elements will not only significantly enhance the management of climate risks, but will also send an important signal for bolder action by international organizations, sub-national entities, and the non-governmental community.

Finance

- Climate finance has substantially evolved since the Convention's early days. In terms of institutions, it largely involved the GEF. In terms of sources, it largely involved grant-based public funding. In terms of donors, it involved Annex II Parties. In terms of purpose, it was largely aimed at mitigation. In terms of magnitude, the scale was not extremely large. In terms of transparency, it was not always clear how much finance was flowing from whom to whom.
- Since that time, almost every aspect of funding has seen a change:
 - Institutions now include a major climate-dedicated fund, the Green Climate Fund, as well as the Standing Committee and the CTC&N.
 - Significantly more attention is now paid to private sources of funding, including ways in which public resources and policies can help mobilize such funding. The donor commitment expanded in Copenhagen/Cancun from Annex II Parties to developed countries more generally.
 - Adaptation finance is now a major component of climate finance.
 - The magnitude has greatly increased, including "fast start finance" between 2010-2012. (At over \$30 billion, the amount delivered exceeded the commitment made; the United States alone provided \$7.5 billion over that three-year period.) Developed country Parties are also working hard, including in a coordinated fashion, to meet the Copenhagen goal of collectively mobilizing \$100 billion in climate finance per year by 2020. They have intensified their efforts to use a strong core of public resources to mobilize private investment, working through a variety of institutions including development finance institutions, export credit agencies, bilateral aid agencies, multilateral development banks, and multilateral climate funds. (The Copenhagen goal acknowledges the role of private sector finance by calling for

mobilization, rather than provision, of funds.) They have also laid the groundwork for an ambitious and wide-ranging set of efforts aimed at using public resources and smart public policies to catalyze low-carbon investment throughout the developing countries.

- Transparency has greatly increased as "MRV" now more specifically addresses "from whom," "how much," "over which time frame," and "to whom." The need for transparency on the receiving end, in terms of implementation, has also increased -- with the \$100b goal expressly linked to such transparency, in addition to mitigation.
- Finally, significantly more attention is being paid to the creation of enabling environments in recipient countries, i.e., the need to take steps to attract investment.
- These institutional and other advances in climate finance will continue to be relevant in the post-2020 period. Indeed, we can expect even more re-shaping, with the increasing need to attend to the poorest and most vulnerable, with changing capabilities (affecting both the donor and recipient bases), with the need to maximize the impact of public sector resources by focusing on targeted forms of assistance that incentivize private sector engagement, with a necessary focus on "pull" as well as "push" (i.e., creating attractive investment environments), etc.

Institutional Provisions

- There will need to be various provisions regarding institutions servicing the new agreement. They could generally mirror the institutional provisions of the Kyoto Protocol with respect to the COP, secretariat, and subsidiary bodies (SBSTA and SBI).

Final Clauses

- Many of the final clauses can be standard ones, e.g., concerning voting, signature, withdrawal, etc.
- Particular attention will need to be given to the provisions regarding amendments (including with respect to annexes, if any), as well as the trigger

for entry into force of the agreement (which is intended to become effective from 2020). Such trigger should be neither over-inclusive (in terms of the number of Parties) nor under-inclusive (in terms of the types of Parties whose participation is needed).