COUNTRY REPORT: THE PEOPLE'S REPUBLIC OF CHINA
Interim Measures for Voluntary Greenhouse Gas Emissions Trading

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Introduction

Although China has historically accounted for only a relatively low percentage of globally cumulative GHG emissions (7.3 per cent from 1850 to 2000), it has increased its share to 14.8 per cent in 2003.[1] China is projected to surpass the United States as the world's largest emitter.[2] Recognizing the serious threat posed by global warming to public health, natural resources, and environment, China's Central Government has taken steps to reduce the country's GHGs emissions. It has pledged to lower China's carbon dioxide emissions per unit of GDP by 40–45 per cent by 2020 compared to the 2005 level;[3] this is the domestic voluntary emission reduction (VER) target.

China has signed the *Kyoto Protocol*, although it has not undertaken any mandatory emission reduction targets. Apart from the *Annual Progress Report of China's Policies and Actions for Addressing Climate Change* (*White Paper*), various documents concerning the emission reduction issues have been published. These are: (1) *12th Chinese Five-Year-Plan* (FYP, from 2011–2015) adopted by the National People's Congress; (2) *Resolution of the Standing Committee of the National People's Congress on Making Active Responses to Climate Change*; (3) *2012 Comprehensive Working Programme on Energy-Saving and Emission Reduction*; and (4) *Working Programme on Greenhouse Gas Emission Reduction During the 12th FYP Period*, adopted by the State Council.

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[1] M. Bo, 'Emissions Trading: A Fantasy for China to Combat Global Warming?' in M. Jeffery & K. Bubna-Litic (eds), *Biodiversity Conservation, Law and Livelihoods: Bridging the North-South Divide* (2008) Cambridge University Press, 400.
[2] K. Baumert & J. Pershing, *Climate Data: Insights and Observations*, Report prepared for the Pew Centre on Global Climate Change, 16.
[3] A. Kossoy & P. Ambrosi, *State and Trends of the Carbon Market* (2010) Report prepared for Environment Department of the World Bank, 30.

The above documents represent China's climate change policy and national actions. They are all political in nature, other than numbers (3) and (4), which are normative[4] (*guifanxing wenjian*). Document 4 mentions the aim of establishing a carbon trading system, without giving details. None of these documents stipulates the legal framework for China's carbon trading system.

On 13 June 2012, the National Development and Reform Commission (NDRC) adopted *The Interim Measures on Voluntary Greenhouse Gases Emissions Trading* (*2012 Interim Measures*), which has a higher legislative status as Ministry Rules (*bumen guizhang*)[5] than the normative documents. The Ministry Rules stipulate the legal framework for China's voluntary GHGs emissions trading system (ETS).

Contents

The *2012 Interim Measures*, contain six chapters with 31 clauses and one annex. It deals with: (1) general principles; (2) management of VER projects; (3) management of the emission reduction created by the projects; (4) trading emission reduction; (5) management of validation and certification; and (6) miscellaneous provisions.

Chapter 1 contains general provisions. The *2012 Interim Measures* aim to encourage project-based voluntary GHGs emissions trading, and ensure that the trading transactions comply with the law (article 1). CO_2, CH_4, N_2O, HFC_s, PFC_s and SF_6 are the targeted gases for China's voluntary emissions trading transactions (article 2). Voluntary emissions trading should comply with the principles of transparency, equitability, impartiality and credibility; and the emission reduction resulting from the concrete projects should be authentic, measurable and additional (article 3). The competent administrative authority at the national level is the NDRC (article 4). Institutions, enterprises, organizations and individuals from China and other countries can participate in the voluntary ETS (article 5). The official record system will administer the voluntary ETS. Projects and the emission reductions created from these projects will be registered by the NDRC (article 6).

The NDRC is responsible for establishing the national registry system (NRS). Authorised VER projects and their emission reductions should be registered in the NRS, including basic

[4] The normative document remains at the lowest legislative hierarchy of China's legal system. Its concrete definition and range can be found in the book: R. Peerenboom, *China's Long March Toward Rule of Law* (2002) Cambridge University Press, New York, 261 and 271.
[5] Ministry Rules (*bumen guizhang*) passed by central-level ministries, commissions, agencies, or entities directly under the State Council. See Peerenboom (supra note 4), 271.

information, the recording, transactions and annulments (article 7). Within 10 working days of the completion the official record procedure, the NDRC will publish the transaction information, provide an inquiry service based on NRS and support transactions of trading emission reduction with features of credibility and authenticity (article 8).

Chapter 2 deals with the management of VER projects, including provisions on methodology and applications for recording VER projects in official records. Methodologies provide guidance on how to set baselines, prove additionality,[6] calculate emissions reduction, and create a monitoring and measuring plan (article 10(1)). These methodologies should be authorised by the NDRC and verified by a validation institution approved by the NDRC (article 9). Methodologies approved by the clean development mechanism (CDM) Executive Board (EB) of the United Nations can be authorised in the NDRC if they are shown to be appropriate by experts appointed by the NDRC (article 10(2)). For a new methodology, based on an experts' opinion, the NDRC can authorise the methodology if it satisfies the requirements of rationality and feasibility.

Prior to the application for official recording of the VER projects,[7] a validation report on the projects must be prepared by a qualified validation institution authorised by the NDRC. The report must address validation procedures, the baseline and the accuracy of the emission reduction calculation, additionality, the monitoring and measurability, and the validation conclusion (article 12).

Enterprises domiciled within the Chinese jurisdiction can apply for approval of voluntary GHG emission reduction projects and for official registration of the emission reduction, based on the *2012 Interim Measures* (article 6). State-owned enterprises involved directly in GHG emission reduction projects can apply for the VER registration directly to the NDRC.[8] Other enterprises apply through the Development and Reform Commissions (DRC) at the

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[6] Additionality is the 'requirement that the greenhouse gas emissions after implementation of a CDM project activity are lower than those that would have occurred in the most plausible alternative scenario to the implementation of the CDM project activity'. C. Streck, 'The Concept of Additionality under the UNFCCC and the Kyoto Protocol: Implications for Environmental Integrity and Equity' (available at http://www.ucl.ac.uk/laws/environment/docs/hong-kong/The%20Concept%20of%20Additionality%20(Charlotte%20Streck).pdf). This concept is also explained by the *Kyoto Protocol* as 'real, measurable, and long-term benefits related to the mitigation of climate change" and "reduction emissions that are additional to any that would occur in the absence of the certified project activity' (Article 6(1)(b)).

[7] This means the VER projects that are about to become recorded VER projects by the NDRC, after the application procedure. The type of the VER projects is stipulated in article 13.

[8] Article 14(1) lists state-owned enterprises managed by the State-owned Assets Supervision and Administration is attached to the Interim Measures.

provincial level.[9] The provincial DRC shall submit the applications to the NDRC after commenting on the authenticity and completeness of the applications documents.[10]

Chapter 3 focuses on management of emission reductions created through recorded VER projects. It outlines the procedures for the official recording of emission reductions.

Certification procedure: the emission reduction should be certified by a qualified certification institution approved by the NDRC. The certification institution should provide a report that includes the contents of "the certification procedures", "the implementation of the plan of monitoring and measuring", and a "conclusion" (article 18).

Application and decision procedure: Based on the experts' technical evaluation, the NDRC will make the decision on application for entry on the official record. The application shall include the "application form", the "monitoring and measuring report made by the project owner or consulting institution", and the "certification report".

Offsetting programme: Emission reductions are referred to as "China's certified emission reduction" (CCER) after official recording.[11] The CCER should be registered in the NRS and can be traded using the trading platform. CCER should be annulled in the NRS after trading or use (article 22).

Chapter 4, "Trading emission reduction", refers to the recording procedures within the trading platform. The trading platform is intended to document and support emission reduction transactions; the electronic trading system should be connected with the NRS, and update the transaction information (article 23). The NDRC will review all applications for registration and decide within six months whether to record applicants to use the trading platform. The requirements provided in article 25, include:

- Authorized share capital of the legal person domiciled in China and investing in Chinese capital of not less than 100 million RMB.
- The business outlets, trading system, calculation system, business information, reporting, and other systems are qualified.

[9] Article 14(2) defines "other enterprise" to mean those enterprises that are not in the attached list of state-owned enterprises. Here, the "DRC" means the provincial Development Reform Commission of the place where the projects are located, not where the enterprises are domiciled.
[10] Article 14(2). The Interim Measures stipulate the required documents for VER projects application in article 15.
[11] Article 21(2). One CCER means one tonne of CO_2 e(q).

- The employees have relevant professional information and experience.
- The applicant has a strict internal inspection and supervision system and risk control system.
- The rules on trading transactions should be integrated, explicit, and operational

Improper transactions should be rectified as the NDRC requires. If the impropriety is severe, the NDRC should publicise the traders default and cancel its record-keeping qualification (article 26).

Chapter 5 deals with the authorisation of validation and certification institutions. The independently qualified validation institution, mentioned in chapter 2, is responsible for validating the VER projects and creating a validation report. The qualified certification institution, mentioned in chapter 3, is responsible for certifying the emission reduction and forming a certification report.

Qualified verification institutions and certification institutions are required to be authorised by the NDRC (article 27). Application documents for the recording issue include the "business license", "the identity documents of the representative of the legal person", "documents that can prove the contributory performance of the verification work or certification work", and "the auditors' names and their responsibilities".

The NDRC will make its decision if the following requirements are met:

- Establishment and operation of the enterprise is in compliance with Chinese law.
- The institution has its performance formally regulated.
- The institution has a good performance record in the verification or certification area.
- The institution has adequate expertise with experiences and non-illegal records.
- The institution is solvent (article 28).

If there is improper behaviour in the validation or certification process, the NDRC should order the institution to correct this. If the behaviour is severe, the NDRC will publicise the trading platform's illegal performance and cancel its qualification (article 29).

Critical Comments and Expectations

The promulgation of the *2012 Interim Measures on Voluntary Greenhouse Gases Emissions Trading* is a remarkable improvement. It clarifies the legislative position for GHGs emission trading which ought to lead to stronger legal enforcement and compliance regime. It reflects the domestic concern for GHG emission trading and the Government's ambitions to reduce GHG emissions.

The law will provide substantial and procedural provisions on GHGs emission trading. The promulgation of the *2012 Interim Measure* will ensure that a voluntary emission trading system will be established by using the offsetting method. The *Measure's* 31 articles have set up the legal framework of voluntary emission trading in China. The official record of the project and its emission reduction, the trading platform, the validation institution and certification institution are all mandatory, indicating a strong administrative intervention from the NDRC regarding voluntary emission trading.

However, there is still room for improvement. The language of the *2012 Interim Measures* is ambiguous. Articles 26 and 29 are the two legal sanctions provisions but the term "severe illegal behaviour" is so broad and general that it allows too much flexibility in its implementation.

Specialist terminology should be made more specific. For instance, does the term "t CO_2 e" mean "t CO_2 eq"? What is the meaning of "additionality" in articles 3 and 12? What are the requirements for assessing whether a project is additional or not? Regarding the CCER mentioned in article 21, can a CCER be transferrable with a CER created from a CDM project? Essentially, one unit of CER and CCER both indicate the emission reduction of one tonne of GHG. Does this mean that they are equivalent by linking the CDM with the voluntary emission trading system?

The legal responsibilities of the validation institution and certification institution have not been adequately specified. It is not clearly stipulated whether these two types of institutions are independent institutions or may be affiliated to the administrative competent authority. The policy should better specify the qualification of these institutions, to ensure the transparency, equitability, impartiality, and credibility of trading transactions. Furthermore, it is not clear how to deal with the legal relationship between validation/certification institutions and the legal person who owns or develops the projects. The requirements in article 28 need to be more explicit, addressing how to assess the concept of "adequate expertise", "good performance”, and “adequate solvent capacity”. We can expect that more explicit legal provisions will be developed, as lessons are learned from the implementation of the new trading practices.