DRAFT SUBJECT TO REVISION AND COMPLETION

International Climate Policy and Developing Countries' national development policies: A necessary link for a successful international agreement**.**

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1. Introduction.

Developing Countries face major development and economic growth challenges. In this context the negotiations towards a new climate change international agreement that according to the Bali Roadmap will aim to include all countries, might be an opportunity to join Developing Countries to actively contribute to the global effort to tackle climate change, as far as the climate policy to be adopted is aligned to developing countries' developments needs.

On the basis of the principles of the Convention ("UNFCCC"), the Kyoto Protocol, and especially the Bali Action Plan, this paper will explore, the basic legal principles and criteria that a new international agreement on climate change issues should incorporate, in order to be considered fair by Developing Countries and consistent to the mentioned principles. For that purpose it will analyze and develop the possible form and content of the "*Nationally appropriate mitigation actions"*, that according to the Bali Action Plan, the developing countries are expected to adopt.

Additionally, it will focus, on the "*Cooperative Sectoral Approaches"*, that the Bali roadmap contemplates as another mitigation way. In regard to Sectoral Approaches it will describe, as example, the progress that the Steel Industry is doing in this direction. Likewise, it will analyze and propose a possible legal structure for such agreements, as well as, its kink and compatibility to the international climate agreements, and national commitments.

2. Mitigation Action of Climate Change under the Bali Action Plan.

Through the BALI Action Plan, adopted on December 2007, the Conference of the Parties decided to lunch a "*comprehensive process to enable the full, effective and sustained implementation of the Convention through long term cooperative action, now, up to and beyond 2012…",* with the objective to reach an agreed outcome in its fifteenth session.

As it is known, both the UNFCC and the Kyoto Protocol provide for their periodic review. In fact, art.7 of the Convention establishes that the Conference of the Parties as the supreme body of the Convention, shall "keep under review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt", and shall made the decisions necessary "to promote the effective implementation of the Convention".

On its side, the Kyoto Protocol (1998)[1] in its article 9, also sets that the Conference of the Parties serving as the meeting of the Parties to the Protocol shall periodically review the Protocol in the light of the best available scientific information, ….. (COMPLETAR) ; and that such reviews "shall be coordinated with the pertinent reviews under the Convention".

As it is known, the Protocol imposed to Developed Countries (included in its Annex A) quantified emission limitation and reduction commitments (detailed in its Annex B) with the aim of reducing their overall emission of GHGs by at least 5% below 1990 levels in the commitment period 2008 to 2012.[2]

In the context of these revisions, in Bali, the Conference of the Parties convinced of the need of enhancing the implementation of the Convention in order to achieve its ultimate objective, decided to lunch its Action Plan aiming to reach an agreed outcome in its fifteenth session. Procedurally, this "agreed outcome" could take the form of a new Protocol to the UNFCCC or amendments to the Kyoto Protocol.

The Action Plan delineates the main elements and issues that the future agreement should include. In this sense it refers to the need for enhanced action on *mitigation, and adaptation;* and on *technology development and transfer, and provision of financial resources and investment, for* supporting action on mitigation and adaptation.

Additionally, it refers to the need of a long-term global goal for emissions reductions, in accordance with the provisions and principles of the Convention, "*in particular the principle of common but differentiated responsibilities and respective capabilities, and taking into account social and economic conditions and other relevant factors". (Decision 1/CP.13 art.1 a).*

Regarding action on **mitigation** of climate change, the Action Plan, following the principle set forth above, differentiates between developed and developing countries and establishes the basic criteria that the future agreement should contemplate. While it maintains for developed countries the reference to the need on enhance mitigation action, including quantified emissions limitation and reduction, for developing countries sets that they should adopt "*Nationally appropriate mitigation actions by developing countries in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner*"

In the chapters below we will analyze this statement in detail, with the focus in the following aspects.

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[1] Only Parties to the Convention may be Parties to a protocol (According art 17).

[2] Article 3.9 of the Protocol sets that Commitment for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B of the Protocol, which may only be adopted with the written consent of the Party concerned (Art, 21 paragraph 7).

a. Differentiation between developed and developing countries

b. The commitments of developing countries should be *in the context of sustainable development.*

c- The "*Nationally appropriate mitigation actions"* of developing countries might adopt the form of a Policy Based Approach.

d. The commitments of developing countries should be *supported and enabled by technology, financing and capacity-building*

e. Both the Appropriate mitigation actions and the technology, financing and capacity-building support should be *measurable, reportable and verifiable.*

Notwithstanding what was mentioned above, the Bali Action Plan also includes among the actions for enhancing national and international action on mitigation of climate change, the "*Cooperative Sectoral approaches"*

In fact, the Bali roadmap refers to Cooperative sectoral approaches and sector-specific actions, in order to enhance implementation of Article 4, paragraph 1 c), of the Convention". Such article 4 deals with the commitments of the Parties, to "Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions …*in all relevant sectors*, including the energy, transport, industry, agriculture, forestry and waste management sectors".

The possibility of Sectoral Agreements to address climate change has recently gained a great deal of attention. However, and considering that these agreements may adopt a wide variety of formats and contents, this paper focuses in Global industry sectoral agreements; These agreements are those under which a given industry sector under the auspices of a international association or chamber take the lead in agreeing to adopt climate change mitigation action. We will analyze these agreements from the developing countries perspective, in particular the possible legal structure for such agreements, as well as, its kink and compatibility to the international climate agreements, and national commitments.

2.1. Differentiation between developed and developing countries.

2.1.1. Differentiation in the UNFCCC and Kyoto

It is clear that the Bali Action Plan, does not contemplate emissions limitation or reduction for developing countries, but the adoption of "*Nationally appropriate mitigation actions*".

In this sense the Bali Roadmap has maintained the basic criteria set forth in the Convention and in the Kyoto protocol. In fact, the differentiation among countries, and as a consequence, the recognition of differentiated former responsibilities and future commitments with respect to Climate Change, come out from the text of the

Convention. Thus from the "whereas" of the Convention it is possible to identify the basic criteria for differentiating among countries:

- Per capita emissions
- Share of global emissions
- Social and economic development needs
- Per capita energy consumption

In Kyoto, this differentiation based in former responsibilities, lead to establish quantitative emissions limitation and reduction targets. However, even within developed countries Kyoto, in its Annex B set different levels of commitments.

In this sense, the Argentine Ambassador Raúl Estrada Oyuela, very active in the negotiation of the Kyoto Protocol, said, referring to such agreement, that "differentiation" was one of the clues that helped to reach an agreement". He also points that even within developed and developing countries respectively, there are differences that should be contemplated. (Paper by R.Estrada Oyuela "The Kyoto Protocol", March 1988, unpublished)". And referring to developing countries he adds..."All developing countries have the need to increase significatively their energy generation to reduce poverty levels; however they are very different among themselves. They are not the same, and they are not in the same situation, Burkina Fasio and Haití on one side, North Korea and Singapur, on other side, or China, Brazil, India and Indonesia in a third group, only to mention some."

2.1.1. Differentiation and flexibility in a post 2012 Agreement.

In order to achieve a long-term agreement, which allows for an effective and sustained implementation of the Convention, based on the principle of "common but differentiated responsibilities", the new agreement should be flexible enough to contemplate the existing differences among countries.

On the other side, it is also true that for a future agreement to be successful it is needed to engage in it, all major economies. In this direction the report of the "Climate Dialogue at Pocantico"[3] points … "twenty five countries account for 83 percent of global emissions, and for the vast majority of the projected future emissions. These same countries also account for 71 percent of the global population and 86 percent of global GDP. From a strictly environmental perspective, participation of this core group is clearly critical to the success of any long-term strategy to substantially reduce global emissions… It is imperative, however, to recognize the tremendous diversity within this group, which includes developed and developing countries and economies in transition. Per capita emissions range by a factor of 14, and per capita incomes by a factor of 18. These differences have significant implications in assessing responsibility for climate change and capacity to address it".

Since the UNFCCC (1992) countries have experienced modifications in its development, energy consumption, emissions, etc, that might justify re-assess their

[3] Report of the "Climate Dialogue at Pocantico", November 2005

climate change contribution. In this direction many suggest that a post 2012 legal framework could establish different types of commitments for different types of non Annex I countries. For example, Ellis et al (2007)[4] suggest that the participation of non-Annex I countries post -2012 could be differentiated in some manner and that sustainable development policies and measures (SD-PAMs) "could form a stepping stone between the current non-Annex I status and some form of quantified, binding commitments".

We believe that the future post 2012 agreement should consider the following criteria:

- The lead of developed countries is expected to continue.
- Engage all mayor economies in a manner consistent with the principle of common but differentiated responsibilities". This would require taking into account: 1. Former responsibilities in climate change. 2. Current and projected emission contribution, and 3. The degree of economic and social development, and capability to address climate change commitments.
- Differentiation among countries using the criteria set forth in the Convention should be maintained (Per capita emissions, share of global emissions, social and economic development needs, per capita energy consumption, among others). As Bali does, these criteria should be used to maintain different commitments among developed and developing countries. (Emissions limitation or reduction vs. "Nationally appropriate mitigation actions").
- Among developing countries actual and projected emissions and degree of development might be considered, and used to distinguish those countries that have become "major economies", from those that have not. Taking into account these differences, the "nationally appropriate mitigation actions" might allow that energy efficiency objectives or other kinds of objectives obtained though sustainable development policies and measures might have different time frames (Always linking those climate change objectives to the achievement of a social and economic development objectives)

In sum we believe that flexibility to contemplate differences, and consequently allow variation in the nature, content and time frame of commitments, together with respecting national development priorities will be essential to reach a global agreement.

2.2. The commitments of developing countries should be "*in the context of sustainable development*".

This is an essential aspect of any future international legal framework. The Convention (UNFCCC) is very clear in this issue:

"Nothing … that per capita emissions in developing countries are still relatively low and that **the share of global emissions originating in developing countries will grow to meet their social and development needs**," (Whereas of the Convention)

[4] Ellis, Baron and Buchner "SD-PAMs: What, Where, When and How ? OECD and IEA, 2007

"Affirming that responses to climate change should be coordinated with development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the **legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty**" (Whereas of the Convention)

"4. The parties have a right to, and should, promote sustainable development. **Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes**, taking into account that economic development is essential for adopting measures to address climate change." (Art.3 paragraph 4 – Principles").

"5. The parties should cooperate to promote a supportive and open international economic system that would lead to **sustainable economic growth and development in all Parties, particularly developing country Parties**, thus enabling them better to address the problems off climate change …" (Art.3 paragraph 5 – Principles").

The Bali action plan ratifies this, when it says "*Reaffirming that economic and social development and poverty eradication are global priorities*". Consequently, the "nationally appropriate mitigation measures" that developing countries are expected to adopt, shall be interpreted and applied in the context of the principles of the Convention.

It is apparent that the developing countries' priorities are economic and social development and poverty eradication; and therefore they cannot assign resources for the only purpose of reducing greenhouse gases. Contrarily, what they can and should do is committing to develop in a sustainable way, provided they have the means to do it.

A long-term international climate policy framework under the UNFCCC should pay due regard to national priorities and circumstances, such as economic development, access to reliable, affordable and secure energy supply, environmental impacts of energy use, and the challenges of adapting to the impacts of climate change.

Macroeconomic and other non-climate policies can significantly affect emissions, adaptive capacity and vulnerability. There is a clear need of integrating mitigation and adaptation policies in the context of the general development polices of each developing country. At the same time, adaptive capacity is intimately connected to social and economic development.

Appropriate development policies simultaneously may contribute to reduce or moderate GHG emissions, enhance adaptive capacities, and reduce vulnerability

That is why the UNDP Human Development Report 2008 states that he fight against poverty and the fight against the effects of climate change must be seen as interrelated efforts. They must reinforce each other and success must be achieved on both fronts jointly.

In this sense a post 2012 legal framework might obtain a broad participation of developing countries, as far as it integrates climate commitments with national development policies, and is perceived as help, rather than an obstacle to economic band social development.

2.3. The "*Nationally appropriate mitigation actions"* of Developing countries might adopt the form of a Policy based approach.

The commitments of Developing Countries in the post 2012 legal framework might consist on a policy-based approach under which they commit to undertake national policies that in the context of their development strategy mitigate climate change. In fact, we believe that a "policy based approach" is the best way to foster clean development

In similar direction the Pocantico Dialogue comments …"The types of policies that can effectively address greenhouse emissions in a manner consistent with national interest will by necessity vary from country to country. To achieve brad participation a framework for multilateral climate action must therefore be flexible enough to accommodate different types of national strategies by allowing for different types of commitments. It must enable each country to choose a pathway that best aligns the global interest in climate change with its own evolving national interests".[5]

Additionally, a possible participation of developing countries in GHG reduction via policy implementation would broaden the scope of today's main mean of engaging developing countries in emission reductions via the project-based, GHG-focused approach of the CDM.

2.3.1. What are sustainable development policies and measures (SD-PAMs) ?

The Policy Commitments through which developing countries might adopt nationally appropriate mitigation actions may be implemented through specific sustainable development policies and measures (SD-PAMs).

One proposed definition (Winkler et al 2002) suggests that SD-PAMs should be domestically driven, cover diverse approaches in many different sectors and have a development focus[6], thus promoting GHG mitigation action by developing countries in the context of sustainable development. SD-PAMs could fit into a climate framework in different ways. SD-PAMs could be an instrument to register and recognize a country's efforts to limit the growth in GHG emissions while promoting sustainable development, providing a framework for official recognition of domestic action in countries without GHG emission targets.

In order to be recognized as a contribution to global mitigation of GHG emissions according to the Bali Action Plan, there should be a process to develop, present and

[5] "Climate Dialogue at Pocantico", Report page 9. November 2005.
[6] Ellis, Baron and Buchner "SD-PAMs What, Where, When and How ?" OECD/IEA, December 2007.

implement these policies and measures; as well as, a way to measure, report and verify them.

2.3.2. How SD-PAMs should be established framed as commitments in the post 2012 legal framework and implemented?

The post 2012 legal framework should establish:

- That the commitments of developing countries to adopt nationally appropriate mitigation actions shall be designed interpreted and implemented in the context of and subject to their national economic and social development and poverty eradication priorities.
- That the nationally appropriate mitigation actions may adopt the form of a Policy Based approach, under which developing countries commit to adopt sustainable development policies and measures (SD-PAMs).
- A specific time period for developing countries to structuring prospective SD-PAMs into a programme, which shall be submitted to the COP or other technical body for revision and registration.
- That the SD-PAMs national programme shall indicate and specify for each policy or measure what is the expected reduction or moderation of GHG to be obtained and what are the country's needs in order to be able to implement each of these policies and measures, in terms of funding, financing, capacity-building, technology and others.
- A simple process within the legal framework shall be established for processing and granting (totally or partially) the needs specified in each SD-PAMs programme.
- The commitment of developing countries to implement SD-PAMs shall be subject to the condition that the needed support is granted. If support is not provided, the SD-PAMs that totally or partially are effectively implemented should be recognized as a voluntary emissions reduction, which should be rewarded or generate same kind of CER.
- The monitoring and verifying process of the SD-PAMs could be similar to the in-depth review of currently Annex I countries' inventories and/or national communications, where those countries outline GHG-mitigation measures.

2.3.3. The SD-PAMs should integrate adaptation.

The IPCC Fourth Assessment Report mentions that even if we do succeed in reducing emissions, some climate change impacts are now unavoidable because of the current GHG concentration in the atmosphere, and solutions will be needed to adapt to them.

A combined strategy for mitigation and adaptation is needed to reduce the risk of and magnitude of climate change in the future, coordinating both strategies for avoiding interferences within each other.

Although the policy based approach is basically conceived as a way to achieve GHG emissions reduction thought sustainable development policies and measures, those policies and measures should integrate adaptation and risk management.

In the cases that are needed developing countries should integrate the adaptation component within their SD-PAMs. Although the adaptation component of these policies and measures is not aimed at reducing emissions, should also be supported by capacity-building and financing in the context of the required cooperation among nations.

2.3.3. Possible content of the policy and regulatory measures that developing countries might adopt.

Developing countries should seek for a Climate Change National Strategy or Program that considers the following aspects:

- Be framed in the context of the sustainable development strategy for the country,
- Supported by a long-term institutional and legal framework that provides predictability in making long-term decisions
- Build on sectoral and regional vulnerabilities and opportunities,
- Developed on views and participation of all stakeholders,
- Combine and coordinate both mitigation and adaptation policies in the most effective and comprehensive portfolio of measures,
- Provides some market and price signals for public and private policy makers.
- Foster and create the framework conditions to orientate the private investment in the desired direction.

Governments have a critical role to play in setting regulatory standards and in supporting low-carbon research, development and deployment. However, progress in these areas will depend on public-private partnerships.

In this context, the effectiveness of the climate change policies and measures will depend on the underlying regulatory and institutional framework of each country. If to promote development and climate change policies, such a national framework should:

- Enhance public-private partnerships and advisory mechanisms to analyze feasibilities,
- Promote and reward the early and voluntary actions carried out by different sectors to avoid or reduce emissions,
- Promote the international sectoral approaches,
- Provide incentives for efficient energy use, sustainable energy generation and emissions reduction,
- Eliminate subsidies that encourage excessive consumption and unsustainable production of energy;

- Stimulate Research & Development to more rapidly create innovative, affordable and reliable, low greenhouse gas emitting technologies, according to the needs and opportunities of each country and sector,
- Continue to refine scientific assessment of the risks and impacts of climate change and uses these evolving assessments to inform policy responses to climate change;

Particularly in developing countries, which are defining their development paths, frameworks should address opportunities both for mitigation and for adaptation in the coming decades' investments, especially at new capital stock and infrastructure investments or at the time of being renewed or replaced at the end of their economic lifetime.

Not being exhaustive, the following policies/ measures can have a positive impact both in GHG emissions reductions and sustainable development goals:

- Energy security plans, for expand and diversify the energy sources of a country;
- Promoting renewable energy development and use, both for connected grid and for self-consumption;
- Incentives for energy efficiency, in all final users sectors and in power generation;
- Re/afforestation programs and forested areas protection against deforestation;
- Sustainable agriculture, increased productivity rates;
- Diversification and upgrade of public transport, shifting to most efficient transport modes.

Regarding Adaptation policies, at a national level, it is recognized that different countries will require different adaptation measures tailored to their individual circumstances (climatic, geographical, social, cultural, economic and political situations) and specific impacts.

However, emerging elements of an adaptation policy, particularly in developing countries, should include:

- Integrate risk management and adaptation into development policy
- Upgrade emergency response planning to extreme weather events
- Develop national health programs for public awareness and prepare for spread of new diseases.
- Strengthening of overhead transmission and distribution infrastructure;
- Reduce dependence on single sources of energy

The Underlying policy framework needed for these mitigation options include National energy policies, regulations, and fiscal and financial incentives to encourage use of alternative sources; incorporating climate change in design standards, standards and regulations that integrate climate change considerations into design; land-use policies; building codes; insurance policies; Public health policies that recognize climate risk; strengthened health services; Transport/urban planning; Integrating climate change considerations into national transport policy; among others.

2.3.4. Both the "appropriate mitigation actions" and the technology, financing and capacity-building support should be *measurable, reportable and verifiable"*

Goodwill it is not enough. Effective and verifiable actions are needed. This is consistent with the decision of the COP (13) of launching a process to enable "*full, effective and sustained implementation of the Convention.*

"Although countries would not be committing to quantified emission limits, reliable quantification of their policies´ emission results would be essential to the credibility and success of a policy-based approach. Governments putting forward policies as commitments, for instance, might be expected to project their likely emission impacts so that other parties can assess relative levels of effort. Governments also might be required to report periodically on the implementation of their policies, subject to some form of review or enforcement"[7]

At present, there is no international registry of domestic policies and measures, but the monitoring and verifying process could be similar to that used in the in-depth review of Annex I countries' inventories and/or national communications, where countries (also Non Anex I) can and do outline GHG-mitigation measures.

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3. Other ways of enhancing action on Mitigation: Sectoral Approach Agreements.

3.1. Legal aspects related to the development of Global Sectoral Approach Agreements ("GSAA") in the context of the Climate Change regime.

3.1.1. **Sectoral Approach Agreements: Legal basis under the Climate Agreements and the Bali Action Plan**.

[7] "Policy-Based Commitments in a Post 2012 Climate", Pew Center.

Although only in recent years the interest of Sectoral Approaches to address climate change has increased[8], the issue was opportunely incorporated in the UNFCCC (1992) as part of the commitments of the Parties.

In fact article 4, paragraph 1 c), of the Convention establishes among the commitments of the Parties …"Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions …**in all relevant sectors**, including the energy, transport, industry, agriculture, forestry and waste management sectors".

While it could be understand that this paragraph refers to each party individually considered, receipting the growing interest in global sectoral approaches, the Bali action Plan makes clear that "Cooperative sectoral approaches" should be addressed as one of the ways to enhance action on mitigation of climate change.

The basic idea behind these sectoral approach agreements is that, through them in certain sectors, it would be possible to achieve "sectoral efficiencies" (basically improving technology and operational efficiency), in a more effective way than through country economy-wide targets or policies.

3.1.2. **Types of Sectoral Approach Agreements: Global Industry Sectoral Agreements.**

Sectoral agreements may adopt a variety of formats, contents and options. Regarding the format and the Parties involved it is necessary to distinguish: a) Inter governmental sectoral agreements: In these cases the governments are the ones who take the lead, negotiate and settle an agreement; from b). Global industry sectoral agreements: In these cases, the industry unilaterally takes the lead, under the auspices of a global sectoral association or chamber and reach an agreement.

Although this paper focuses in the later, we believe that global industry sectoral agreements may evolve into governmental agreements, if governments adhere to them. Actually, in the context of Climate Change we envisage global industry sectoral initiatives as a means to simplifying negotiations in certain sectors, that once achieved they may fit into the Post 2012 legal regime.

As it is developed in point …. of this paper, we believe that **the Post- 2012 Climate Agreement** should contemplate the Sectoral Approach Agreements as a valid and complementary way under which the Parties can comply their commitments, as well as establish the procedural and substantive requirements for their approval and functioning.

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[8] The CEPS (Centre por European Policy Studies) in its "Global Sectoral Industry Approaches to Climate Change: The Way Forward", mentions that since 2005 there has been increasing interest in global sectoral approaches to address climate change. Key developments have been the 2005 OEDC high-level round table on transnational sectoral agreements for climate policy, the July 2005 G8 Gleneagles Plan of Action, and the sectoral task forces under the Asia-Pacific Partnership on Clean Development and Climate (APP 2006; Fujiwara, 2007).

This paper focuses on multilateral international agreements in which a given private industry sector agree to adopt climate change mitigation action.

STILL PENDING TO COMPLETION

In 1969 the International Tanker Owners Pollution Federation Limited developed TOVALOP; that is " Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution. It was a voluntary agreement developed by tanker owners to address gaps in the existing framework of maritime pollution law. The ultimate effect of TOVALOP was to provide mitigation and compensation for damage by oil pollution from tankers.

The interesting fact for the purposes of this paper is that the TOVALOP was a private initiative. In fact its original sponsors were seven tanker owners who signed the Standing Agreement into existence in 1969; and as of 1987,over ninety-eight percent of the free world´s tanker owners including many government-owned fleets, has become signatories of TOVALOP. [9]

3.1.3. **The attractiveness and potential effectiveness of an International Sectoral approach agreement depends on the characteristics of a given sector.**

STILL PENDING TO COMPLETION

3.2. The Steel Industry Sectoral Approach

In October 2007 the Steel Industry has formally started to work towards a sectoral approach agreement, with the objective of presenting it in Copenhagen 2009. Although, many aspects of its content it is still pending to agree, represents and interesting effort of a private industry sector which involves industries both in developed and developing countries. These are the kind of agreements that we understand that the post 2012 Legal Framework should contemplate form one way or another.

<u>Characteristics of the Steel Sector.</u>

The global steel production has been growing for the last 50 years. As informed by the International Iron and Steel Institute ("IISI")[10], while in the 1950s, the world steel

[9] For a complete description of the historic and current status of TOVALOP see "Death on the High Seas: The Demise of TOVALOP and CRISTAL, by Susan Bloodworth, Florida State University, Journal of Land Use & Environmental Law.

[10] The International Iron and Steel Institute (IISI) is one of the largest and most dynamic industry associations in the world. IISI represents approximately 180 steel producers (including 19 of the world's 20 largest steel companies), national and regional steel industry associations, and steel research institutes.

production was about 200 mmt, in the last five years, the pace of growth has accelerated and in 2006, the figure stood at 1,239.5 million metric tons (mmt). Additionally, the future growth in demand for steel will be driven mainly by the needs of the developing world. In that sense, the steel industry should continue to grow by 3-5% worldwide and by 8-10% in China, India and Russia to satisfy these needs.

Regarding the Steel Industry share of global GHG emissions, the Intergovernmental Panel on Climate Change (IPCC), reported that the steel industry accounts for between 3-4% of total world greenhouse gas emissions. On average, 1.7 tonnes of carbon dioxide are emitted for every tonne of steel produced (including direct and indirect emissions, such as energy purchased).

At the same time, the great majority of the GHG emissions come from nine countries or regions. In its Position Paper, "*A global Sector Approach to CO2 emissions reduction for the steel industry*" (December 2007), which is summarized below, the IISI explains that over 90% of steel industry emissions come from iron production in Brazil, China, EU-27, India, Japan, Korea, Russia, Ukraine and the USA.

Considering its international exposure, the steel industry it is an energy intensive one, which produce globally traded goods. In fact 40% of its world production is subject to international trade.

In the mentioned position Paper the IISI performs a critic review of the current situation and of the effectiveness of the EU Cap and Trade System, and at the same time describes the IISI proposal for the Post 2012, which is described below.

Current situation – Critics of the IISI

Currently there are different national approaches to emissions reduction related to the steel industry. The IISI specially refers to the Japanese steel industry Voluntary Action Programme (comprising a range of efforts from international technical cooperation to research and development into further byproducts uses), and the United States steel industry voluntary Climate Vision programme. Regarding regional approaches, it mentions that Asia-Pacific Partnership on Clean Development and Climate (which involves nearly 60 percent of the world's steel production), and the EU's emission trading scheme, which is the world's largest international trading scheme for greenhouse gas emissions (Mandatory scheme for all 27 EU member countries).

For the post-Kyoto period the IISI proposes to review the EU Cap and Trade System. The steel industry considers that, in its current form, the scheme will not lead to the

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IISI members produce around 75% of the world's steel (excluding China) and the growing membership in China now accounts for over 20% of Chinese production.
IISI's mission is to provide a forum for the world steel industry to address the major strategic issues and challenges it faces on a global basis. IISI also facilitates the benchmarking of best-practice amongst its members in all aspects of the steel business. The Institute promotes steel and the steel industry to customers, the industry and general media, and the general public. It assists its members to develop the market for steel.

desired goal of reducing the effect upon climate change. Contrarily, it affirms that it distorts competition in the EU, fails to effectively reduce emissions and reward improvements, and leads to unjustified inflation of electricity costs.[11]

In similar direction Mathiesen & Maestad (2002)[12] says that … "there seems to be substantial scope for environmental leakage following the implementation of unilateral climate policies in the steel industry. Paltsev (2000) reports that the steel industry may account for nearly 20% of all carbon leakage in the wake of the Kyoto Protocol. The steel industry is a truly global industry with extensive international trade in finished and semi-finished steel products. Almost 50% of world steel production takes place in countries that do not have obligations to curb their emissions under the Kyoto Protocol. Implementation of carbon taxes or tradable emission permits in the Annex B countries of the Protocol will improve the competitiveness of non-Annex B steel producers and thus increase their levels of production and emissions".

We understand that the last part of this statement might be true if effective sustainable development measures (which as a consequence reduce or moderate GHG emission levels) are not adopted in non Annex B countries. Precisely, there is a major challenge involved in harmonizing the right of developing countries to meet their development needs, and their simultaneous commitment to develop in a sustainable way (even increasing its energy consumption and goods production).

IISI' policy for the Post - 2012.

As a consequence IISI's climate change policy proposes the adoption of a global perspective. It is aimed at reducing CO2 emissions worldwide, through a global steel sector approach.

The main objective of the steel industry sectoral approach is to reach a global solution that encompasses all steel producing countries. This solution will consist on global improvements in CO2 emissions per tone of steel produced, through technology. IISI sustains that the global problem of climate change requires a global solution. Policies to encourage improved energy efficiency and reduced CO2 emissions are important in all regions. The steel industry is asking for a new emissions regulatory regime with the following characteristics: A global steel sectoral approach, intensity based, verifiable and technology driven.

To kick-start this process the world steel industry announced its new global steel sector approach at the annual IISI conference in Berlin in October 2007, and the creation of the Climate Change Policy Group.

At the core of the new steel sector approach is the reporting and collection of carbon dioxide emissions data by steel plants in all the major steel producing countries. For that

[11] For a full detail of the IISI critics to the EU Cap and Trade System, see The IISI, in its Position Paper "*A global Sector Approach to CO2 emissions reduction for the steel industry*" (December 2007).

[12] "Working Paper Nº 63/02 "Climate Policy and the steel industry: achieving global emission reductions by an incomplete climate agreement", Institute for Research in Economics and Business Administration, Bergen, November 2002.

purposes a Data Collection Task Force was established (DCTF). This group, which was launched in January 2008, developed a common reporting and calculation methodology, a detailed manual and a web site.

The information is confidential, and it is sent to an ISO certified independent party, who consolidates the information per route of production and delivers it in an anonymous way. Additionally, the data collection and reporting system is verify by the World Business Council for Sustainable Development, which counts for that purpose with the technical assistance of the World Resources Institute.

The reporting, information collection and third party verification will lead to benchmarking based on actual performance data. The setting of commitments on a national or regional basis for implementation during the post-Kyoto period is still under discussion.

IISI uses an intensity-based approach to calculate carbon dioxide emissions, taking into account the CO2 produced per tonne of steel rather than the total carbon dioxide emissions within a country or region. This globally consistent calculation methodology will allow production normalized CO2 emission comparisons between regions that are not possible today.

At the same time, IISI is working on the transfer of the best available steelmaking technologies to developing countries. One opportunity for this is through wide distribution of the Asia Pacific Partnership State of the Art Technology Handbook. The steel industry is an interesting case in point because there are several ways of producing steel. Iron making may either take place in the blast furnace process or through direct reduction, and the transformation of iron into steel may occur either in oxygen blown converter or in an electric arc furnace. Since the various technological options have quite different emission profiles, emissions may be reduced through many ways, including improvements in each production routes, more eco-efficient way management of co-products and by-products and substitution across technologies, among others.

Finally, the industry is asking Governments to support and foster the expansion of efficient steel companies and the decline of the least efficient sites, and invest in the next generation of breakthrough technology CO2 programmes, to bring about the next major advancement in steelmaking.

Summary of Content.

Objective: Reduce CO2 emissions worldwide, through a global steel sector approach. Obtain a global improvement in CO2 emissions for every unit of steel produced.

Means:

- Improvements in energy efficiency
- Through technology that reduces CO2 emissions per unit of steel produced.
- Increase utilization of byproducts.
- Keeping genuine competition among countries.
- Cooperation /association between IISI and governments.

Steps already implemented

- Development of a common reporting and calculation methodology.
- Ad hoc web site, managed by an ISO certified third party (Consolidates the information per route of production and delivers it in an anonymous way).
- Information submitted per industrial site. (74 sites have already sent the information).
- Detailed manual (Use of data base) regarding criteria and scope for reporting.
- Collection and data analysis

Following steps.

- Visit to Plants (through external consultants)
- Evaluation
- Technology transfer & development of breakthrough technology.
- Development of the agreement and commitments?
- Governance structure
- International presentation in the context of UNFCCC Copenhagen COP.

Alike the aluminum and cement cases, the steel industry produces highly tradeable goods, it has diverse production technologies and is more atomized. As explained the aim of the steel industry's new approach to Climate change is a global improvement in carbon dioxide emissions for every unit of steel produced. The key advantage of the IISI approach is that it involves the participation of its members in both the developed and developing countries, including China that accounts for approximately 50% of total steelmaking CO2 emissions.

Although the steel industry has done important progress in a short period of time, there are relevant issues that are still pending to solve, such as:

1. Type and scope of commitments, if any, on a national or regional basis for the post-Kyoto period; incentives?
2. Defining a governance structure, keeping in mind that although today this initiative is a voluntary, industry driven one; if it is presented internationally, and adhered by governments might become in a legally binding agreement.
3. Define incentives for facilities not members of IISI, to decide joining the agreement.

Additionally, there are two important issues that not only the steel industry but all sectors interested in cooperative sectoral approaches need to address: a) The compatibility of Sectoral Approach Agreements with the principles of the UNFCCC, and b). How Sector Approach Agreements could harmonize with the Developing Countries "Nationally Appropriate Mitigation Actions" in a post 2012 Legal Framework? We deliver a proposed answer to these two questions in the following chapters.

3.2.1. Compatibly of Global Sectoral Approach Agreements with the principles of the UNFCCC and COPs decisions

GSAA should be a complementary to the international climate change agreements and compatible and consistent with the principles of the UNFCCC; particularly the principle of common but differentiated responsibilities.

STILL PENDING TO COMPLETION

5. How Sector Approach Agreements could fit into the Developing Countries "Nationally Appropriate Mitigation Actions" in a post 2012 Legal Framework?

STILL PENDING

6. Possible legal structure of the International Sectoral Approach Agreements within a Post- 2012 Climate Agreement.

6.1. Proceeding for submission and approval of GSAA (Approval by the Conference of the Parties. Adhesion by National Governments).

The Post 2012 Climate Legal Framework should define the Sectoral Approach Agreements and establish the procedural and substantive requirements for their approval and functioning. Consequently it should:

1. Definition and procedural requirements.

- Formally establish and define what a SAA is, and its general objective.
- Establish that the SAA need to be approved by the COP, prior formal request of each given sector.
- Provide that the SAA will be analyzed and approved, in a case-by-case basis, and once approved, incorporated as annexes of the Post 2012 agreement.
- Provide that, once approved by the COP, the ISAA is as a valid and complementary way under which the Parties can comply their commitments.
- The COP prior to approve the SAA should request the technical opinion of a technical body.
- Define the minimum requirements that any proposed Industry Sectoral Approach Agreement should meet in order to be submitted to the COP´ s approval.

STILL PENDING TO COMPLETION

6.2. Minimum Substantive requirements that a Sectoral Agreement should met.

ISAA should be expressly permitted and defined in the post 2012 Climate Agreement. The “sector” aiming to present its agreement for a COP approval should contain, as a minimum:

- Definition of the sector: Its governance structure and functioning. Industry companies that form part of it.
- Data collection.
- Performance of indicators or benchmarks
- Objectives
- The Sectoral Approach Agreement shall be consistent with the principles of the UNFCCC.
- Etc.

STILL PENDING TO COMPLETION