

Carbon Sequestration leadership forum

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POLICY GROUP

Status of CSLF Communications with UNFCCC and Discussion of CDM in CCS

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STATUS OF CSLF COMMUNICATIONS WITH THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC) AND DISCUSSION OF CDM IN CCS

Note by the Secretariat

Background

At its April 2008 meeting in Cape Town, South Africa, there was consensus that the CSLF should send a letter to the UNFCCC's Clean Development Mechanism (CDM) Board supporting the inclusion of carbon capture and storage (CCS) in CDM. This letter would be in response to a request made at the November 2007 meeting of the Executive Board of the Clean Development Mechanism in Bali for submissions on the issue.

On 13 June 2008 a letter from then-CSLF Policy Group Chairman James Slutz was sent to UNFCCC Executive Secretary Yvo de Boer. This letter stated that the CSLF, as an interested Intergovernmental Organization (IGO), strongly supported CCS as an eligible CDM activity under the UNFCCC.

The Secretariat received an email from the UNFCCC that denied Observer Status to the CSLF as an IGO on the grounds that the CSLF Charter "does not have a clause that establishes the juridical personality of the Secretariat or the CSLF itself as an independent legal entity". The Secretariat sent a reply which appealed that finding, stating that the CSLF is different in structure than most other IGOs and that the CSLF could greatly contribute to the UNFCCC process if it were allowed to participate as an IGO. A response from the UNFCCC affirmed that an exception could not be made, but that the 13 June 2008 letter from the CSLF was being posted on the UNFCCC's website (<http://cdm.unfccc.int/about/ccs/>) even though CSLF is not an admitted organization.

All of the aforementioned correspondence is attached below.

Action Requested

The Policy Group is requested to consider how it would like to advance the cause of inclusion of CCS in CDM or its post-Kyoto successors in light of the response from the UNFCCC. The Secretariat suggests that CSLF Members that are Parties to the UNFCCC develop and implement a plan for a coordinated effort to advocate inclusion of CCS.

CSLF Letter to UNFCCC



June 13, 2008

Yvo de Boer
Executive Secretary
UNFCCC Secretariat
P.O. Box 260124
D-53153 Bonn
Germany

Dear Mr. de Boer,

This letter is being sent to you on behalf of the following Carbon Sequestration Leadership Forum (CSLF) Members that are Parties of the Kyoto Protocol (Australia, Canada, China, Colombia, Denmark, France, Germany, Greece, Italy, Japan, Korea, Mexico, Netherlands, Norway, Russia, Saudi Arabia, South Africa, and the United Kingdom) and the European Commission concerning proposed inclusion of carbon dioxide (CO₂) capture and storage in geological formations (CCS) in the Clean Development Mechanism (CDM).

The Subsidiary Body for Scientific and Technological Advice (SBSTA), at its 27th session in Bali, invited Parties, IGOs and NGOs to submit to the UNFCCC Secretariat, before 16 June 2008, their views on carbon dioxide capture and storage in geological formations as clean development mechanism project activities (FCCC/SBSTA/2007/16, paragraph 97). The CSLF, as an interested intergovernmental organization, is pleased to respond to this invitation on behalf of its Members listed above.

The CSLF is an international climate change initiative focused on the development of improved cost-effective technologies for the separation and capture of CO₂ for its transport and long-term safe storage. The purpose of the CSLF is to make these technologies broadly available internationally, and to identify and address wider issues relating to carbon capture and storage.

As an international organization, the CSLF represents 22 Governmental entities, comprising 21 countries (both developed and developing) and the European Commission. Members of the CSLF are significant producers or users of fossil fuels and have made a commitment to invest resources in research, development and demonstration of CCS technologies. The CSLF also actively interacts with stakeholders and believes that views, perspectives and interactions with stakeholders are essential for the success of CCS. There are currently more than 120 registered stakeholders representing the views of Government, non-Government and multilateral endeavours.

The aforementioned CSLF Members are writing to strongly endorse the inclusion of CCS as an eligible CDM activity.

World energy demands are rising steadily and are forecast to continue to rise while being driven by developing countries. International Energy Agency (IEA) modelling predicts that the world's energy needs could be well over 50% higher in 2030 than today. China and India, which are both Non-Annex I countries, account for over 45% of demand in this scenario. Globally there is expected to be a continued strong reliance on fossil fuels in the fuel mix. CCS has the potential to provide a possible solution to the competing demands of reducing greenhouse gas emissions while many countries remain strongly reliant on fossil fuels.

CCS has a large potential to mitigate millions of tonnes of CO₂. Suitable storage sites are numerous and widely distributed around the world. The Intergovernmental Panel on Climate Change (IPCC) Special Report on Carbon Dioxide Capture and Storage¹ states that the potential share of CCS technologies in stabilising greenhouse gas emissions ranges from 15% (at 750ppmv) to 54% (at 450ppmv). These scenarios state that anywhere from 380 GTCO₂ to 2160 GTCO₂ could be stored by utilizing CCS. In the absence of the incentives provided by the CDM, realization of this potential may be reduced, as may be the capacity of some Parties to meet their emission reduction commitments.

The CSLF Members listed above also note that CCS has the strong potential to assist in meeting the objectives of the CDM as detailed in the Kyoto Protocol. Annex I Parties benefit by meeting their agreed Protocol emission reduction targets and Parties not included in Annex I will benefit from CCS projects that attract investment opportunities and contribute to sustainable development.

Emission reductions from CDM projects must be based on voluntary participation approved by each Party involved; the Marrakesh Accords noted, "It is the host Party's prerogative to confirm whether a clean development mechanism project activity assists it in achieving sustainable development." Participation by host Parties is voluntary and only those that determine that the development of CCS projects are in line with their sustainable economic development goals would participate. The inclusion of CCS in the CDM allows Parties to the Kyoto Protocol to make appropriate clean energy investment decisions, consistent with the principle of common but differentiated responsibilities.

CCS projects can result in the measurable, long-term reduction of anthropogenic greenhouse gas emissions. Observations of natural, engineered and modelled cases of CO₂ storage suggest that the amount of CO₂ that is likely to remain confined in suitably chosen and managed geological structures is likely to exceed 99% over hundreds and thousands of years. The aforementioned CSLF Members recognize the CDM as an important pathway for increasing incentives for potential investments in projects, and for achieving additional reductions in greenhouse gas emissions.

It is vital that CCS and related activities be practiced safely and securely, and with long-term environmental integrity. Continued developments in long-term monitoring, liability and regulatory approaches have developed a greater worldwide assurance that CCS activities can meet these requirements. With appropriate site selection, monitoring systems, regulation and

¹ http://www.mnp.nl/ipcc/pages_media/SRCCS-final/IPCCSpecialReportonCarbondioxideCaptureandStorage.htm

remediation methods, the risks of CCS projects are comparable to existing activities such as natural gas storage, enhanced oil recovery and deep underground disposal of acid gas.

The CSLF Members above strongly support the inclusion of CCS as an eligible CDM activity and to this end, these Members of the CSLF stand ready to provide support to the SBSTA and the Executive Board of the CDM in the development of the necessary definitions, modalities and procedures for CCS to enable its inclusion in the CDM. The above referenced CSLF Members welcome the Synthesis Report (FCCC/SBSTA/2008/INF.1) as a good reflection of the considerable work undertaken to address and provide solutions to the outstanding issues.

The CSLF looks forward to a progressive decision from the COP14/CMP4 to be held in Poland in December 2008.

Sincerely,



James Slutz
Chairman,
CSLF Policy Group

Correspondence between the UNFCCC and the CSLF Secretariat

CSLF Secretariat

From: Megumi Endo [MEndo@unfccc.int]
Sent: Saturday, April 11, 2009 7:16 AM
To: CSLF Secretariat
Cc: Susan Brandmeir; Horacio Peluffo
Subject: Fw: Application for admission as IGO - Carbon Sequestration Leadership Forum

Dear Ms. McKee,

Further to our message below, we have reviewed your application materials sent in support of CSLF's application for observer status. We have a few questions about the status as an intergovernmental organization (IGO) - from the documents sent in and your website, it seems that CSLF is a "framework of international cooperation" and "voluntary climate initiative of developed and developing countries" undersigned by the national Governments committed in research and development for the cost-effective technologies for the separation and capture of carbon dioxide for its transport and long-term safe storage, and to make these technologies broadly available internationally.

We have a question about the legal status of the framework, which is the base requirement for admission. Is the Secretariat an independent juridical body? If so, is it registered in the USA? In the case of an IGO, the charter between the governments establishes inter alia, a secretariat, which is legally recognized by the host country with whom it has a memorandum of understanding (MoU). The MoU confers privileges and immunities on the organization. These two points are crucial for the application for observer status as an IGO.

The Charter is indeed signed by national Governments. However, it does not have a clause that establishes the juridical personality of the Secretariat or the CSLF itself as an independent legal entity. In fact, it appears that one of the Members is acting as a secretariat as stipulated in Art. 3.7 that cites "the U.S. Department of Energy will act as the CSLF Secretariat unless otherwise decided by consensus of the Member."

There are two more clauses that describe the functions and staff of the Secretariat, but they do not establish the juridical personality but rather seem to indicate that the CSLF or its Secretariat is not an independent legal body:

Article 3.5 which sets out the functions of the secretariat does not refer to its legal status.

Art. 3.6 stipulates that staff working in the CSLF Secretariat employed by the Members actually remain subject to their employers' conditions of employment. This seems to imply that an MoU (if it exists) that could possibly confer privileges and immunities on the organization will not be able to bind the employees with the privileges and immunities. (Art. 3.6 "The Secretariat may, as required, use the services of personnel employed by the Members and made available to the Secretariat. Unless otherwise agreed, such personnel will be remunerated by their respective employers and will remain subject to their employers' conditions of employment.")

In addition, the following clauses on inter-governmental obligations, a funding structure, ownership of the IP, and duration of the CSLF framework, all seem to point to the absence of juridical personality.

Art.4.1 "This Charter, which is administrative in nature, does not create any legally binding obligations between or among its Members."

Art. 5 "Unless otherwise determined by the Members, any costs arising from the activities contemplated by this Charter will be borne by the Member that incurs them."

Art. 6.2 "The protection and allocation of intellectual property...will be defined by implementing arrangements."

Art. 7.1.1 "This Charter will commence on June 25, 2003 and will continue for 10 years unless extended or terminated."

If CSLF is a group of national Governments agreeing to work together without creating a legal entity registered in one of the United Nations member States, we are

afraid that CSLF will not meet the eligibility criterion set by the Conference of the Parties.

If there are other documents such as MoU that establishes the juridical personality of CSLF and confers privileges and immunities on the organization, please send for us to proceed further with this application.

We look forward to receiving further information.

Thank you,
Megumi Endo

Observer Organizations Liaison Officer
Conference Affairs Services

United Nations Framework Convention on Climate Change Martin-Luther-King-Str. 8 , 53175
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CSLF Secretariat

From: McKee, Barbara
Sent: Thursday, April 16, 2009 11:42 AM
To: Megumi Endo
Cc: Susan Brandmeir; Horacio Peluffo; Der, Victor; CSLF Secretariat
Subject: RE: Application for admission as IGO - Carbon Sequestration Leadership Forum (CSLF)

Dear Mr. Endo:

Thank you for your e-mail. Regarding your inquiry, "Is the Secretariat an independent juridical body?", we can inform you that it does not technically meet the definition of an "independent juridical body". However, the CSLF itself is different in structure than most other Intergovernmental Organizations and does effectively function as an Intergovernmental party "...which is qualified in matters covered by the Convention...", as stated in Article 7, Paragraph 6 of the United Nations Framework Convention on Climate Change.

The CSLF has been formally recognized and agreed to at the Ministerial level, and its Charter, which has been signed at the Ministerial level by all 22 CSLF Members, serves as a Memorandum of Understanding between the 22 Members. The Charter sets the framework for international cooperation in research and development for the 22 CSLF Members and recognizes the CSLF Secretariat as the principal coordinator of the CSLF's communications and activities.

We feel that the CSLF can greatly contribute to the UNFCCC process if it is allowed to participate as an IGO. Thank you for the opportunity to clarify our position, and we look forward to working with you to bring UNFCCC recognition to the CSLF.

Very truly yours,

Barbara McKee
Director,
CSLF Secretariat

CSLF Secretariat

From: Megumi Endo [MEndo@unfccc.int]
Sent: Tuesday, April 28, 2009 7:46 AM
To: McKee, Barbara
Cc: CSLF Secretariat; Horacio Peluffo; Susan Brandmeir; Der, Victor
Subject: RE: Application for admission as IGO - Carbon Sequestration Leadership Forum (CSLF)

Dear Ms. McKee,

Thank you for your email, and sorry for the late response.

We would like to ensure that there is no misunderstanding - we are not questioning CSLF's competence in the matters relating to the UNFCCC - it is obvious that the CSLF is highly engaged in climate change matters at the Ministerial level and is providing exemplary leadership in the field. I also realize that to profile CSLF as itself would be your ideal, but unless it is registered with a juridical personality, I am afraid it is not possible.

As in any other intergovernmental processes, UNFCCC practices are built on the Convention and Protocol as well as subsequent decisions and conclusions by the Parties. The overarching legal source for this admission procedure is the Article 7, paragraph 6 of the Convention as you cited. We would like to further draw your attention to a decision by the SBI in 2004 relating to the admission procedure (FCCC/SBI/2004/10, paragraph 100). It endorses the current admission criteria whereby applicant organizations have to possess a juridical personality (FCCC/SBI/2004/5, paragraph 8 (b)).

Please do not feel discouraged by this admission procedure. There are many ways in which you can work with other partners and Parties to support the process. Your submission on CCS being posted on the web even though CSLF is not an admitted organization is one of such examples.

Thank you again for your understanding and we look forward to your continued inputs to the process.

Kind regards,
Megumi

Observer Organizations Liaison Officer
Conference Affairs Services

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