

## **VIEWS OF BRAZIL ON THE ELEMENTS OF THE NEW AGREEMENT UNDER THE CONVENTION APPLICABLE TO ALL PARTIES**

November 6

The Government of Brazil welcomes the opportunity to submit views regarding the elements for a draft negotiation text of the new agreement under the Convention applicable to all Parties<sup>1</sup>, in the context of the work of the Ad Hoc Working Group on the Durban Platform for Enhanced Action. Brazil underlines that the 2015 agreement must be fully consistent with the principles and provisions of the UNFCCC, including differentiation between developed and developing countries. Under this setting, all countries are expected to demonstrate enhanced engagement consistent with the goal of holding the increase in global average temperature below 2°C above preindustrial levels. In order to achieve the necessary level of ambition and engagement from all Parties, it is of utmost importance to reflect into all ADP outcomes the principle of common but differentiated responsibilities and respective capabilities.

Brazil believes the principle of CBDR-RC can be operationalized into the 2015 agreement primarily through differentiation in the types of NDC and the level of effort expected, with a view to demonstrate that developed country parties are effectively taking the lead in addressing various issues pertaining to climate change. Moreover, differentiation is key to ensure that there is no backtracking from previously assumed commitments.

Differentiation through the NDC may be achieved using a “concentric differentiation” approach, while respecting the principles and provisions of the Convention and the call for global action. Brazil feels encouraged by the interest demonstrated in this concept during the ADP October session. This submission further elaborates on this approach and includes a graphic representation (Figure 1).

Brazil is of the view that the 2015 agreement should allow for increasing ambition in the global effort against climate change in a continuous and sustained way over decades, through strengthening and scaling up the implementation of all pillars of the Convention – adaptation, mitigation, finance, technology development and transfer. The elements as well as the implementation of the 2015 agreement should be comprehensive and balanced – a mitigation-centered agreement would not offer the level of ambition and engagement required from all Parties. Additionally, the new agreement should anchor the institutional and procedural

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<sup>1</sup> “a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties”, Decision 1/CP.17, paragraph 2.

developments under the Convention, including agreed decisions since the Bali Action Plan. Brazil is of the view that the 2015 agreement should move the multilateral climate change regime under the Convention to a full implementation phase, rather than maintaining a permanent negotiation mode. Brazil does not favor any approach that would lead to a revision of commitments under article 4 of the Convention. The new agreement is expected to promote and enhance implementation of existing commitments under the Convention, in a quantified and predictable manner.

Brazil is of the view that the agreement may achieve this objective through a continuous process of presentation and update of NDC over time, with a view to enhance ambition in a sustained and balanced manner, in all pillars of the Convention. Consistently, this also requires deciding on a broad scope of the NDC, as well as on differentiation, to be reflected in the Lima decision with regards to the NDC upfront information.

The current submission builds upon this approach, presenting a set of elements that, articulated, can promote a continuous and sustained global effort towards increasing ambition, while anchoring under the 2015 agreement the institutional developments since the Bali Action Plan. It is important to note that the elements and processes presented below do not exclude or prejudice the consideration of other elements presented by Parties.

## **ELEMENTS:<sup>2</sup>**

### **Preamble:**

A short preamble, making reference to the principles and provisions of the Convention, the agreed outcome of the Bali Action Plan, the mandate under the Durban Platform and the Future We Want outcome document from Rio+20.

### **Objective:**

Pursuant to the ultimate objective of the Convention, the objective of the 2015 agreement should be to hold the increase in global average temperature below 2° C in relation to pre-industrial levels, through enhanced action under the Convention, consistent with science and on the basis of equity.

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<sup>2</sup> The elements are organized as follows: each element (titles in bold for ease of reference) relates to a section/article of the agreement, followed by an explanatory text. Text attempts to describe the main messages of each section/article, though not necessarily as negotiation language. Cross references between sections are indicated in {curly brackets}. Additional comments are provided in boxes, using italics.

### **Universal legal obligation:**

- All Parties shall, in accordance with their common but differentiated responsibilities and respective capabilities, and the principles and provisions of the UNFCCC, present and implement a nationally determined contribution (NDC), pursuant to the provisions in sections {Mitigation}, {Adaptation}, {Means of Implementation}, {Dynamic Contribution Cycle} and {Aggregate Consideration Process} below. Parties that are Least Developed Countries may present their NDC at their discretion.
- All Parties shall communicate their NDC in a manner that facilitates clarity, transparency and understanding of contributions, in accordance with the {Dynamic Contribution Cycle}, as well as the relevant decisions by the COP.

*Assuming some technical aspects of the NDC may evolve over time, it would be preferable to allow them to be subject to further guidance by the COP. The Lima decision on the information to be provided with the NDC would be the first guidance to be provided by the COP in this regard.*

- Contributions shall demonstrate that developed countries are taking the lead in the efforts towards the objective of the agreement and take fully into account the economic and social development and poverty eradication priorities of developing countries.
- Parties shall adjust their NDC periodically in response to the {Aggregate Consideration Process} referred below or to any other relevant decision by the COP. Parties may adjust their NDC with a view to enhance ambition at any time.
- Adjustments to reduce ambition, either in the type of the contributions or the level of effort, shall not be permitted, unless the Party concerned can, to the satisfaction of the COP, demonstrate that such adjustments are in response to extraordinary and specific circumstances.

*By extraordinary and specific circumstances we understand an extreme natural event that could justifiably hinder the capacity of a specific country to implement their NDC. Neither political changes nor global or systemic phenomena such as an economic crisis should justify an adjustment towards lower ambition.*

### **Mitigation**

- All Parties shall include in their NDC quantified mitigation targets and actions, as specified below.
- All Parties shall include in their NDC one of the following options, in accordance with their common but differentiated responsibilities, national circumstances, development levels and capabilities, while recognizing that developing countries' emissions will grow to meet their social and development

needs:

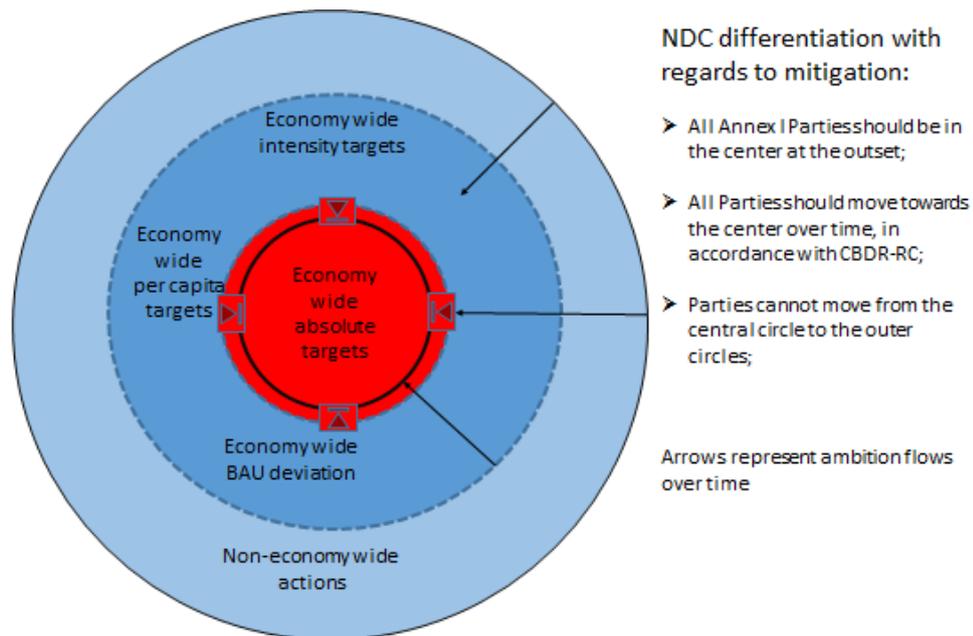
- a) a quantified, economy-wide, absolute emission limitation or reduction target in relation to a baseline year;
  - b) a quantified, economy-wide, emission limitation or reduction target relative to a projection of its emissions
  - c) a quantified, economy-wide, emission limitation or reduction target relative to unit of GDP in relation to a previous year
  - d) a quantified, economy-wide, emission limitation and reduction target per capita
  - e) non-economy wide actions
- Developed country Parties and other Parties included in Annex I of the Convention shall include option "a" (quantified, economy-wide, absolute emission limitation or reduction targets in relation to a baseline year) in their respective NDC.
  - Least Developed Country Parties are encouraged to include option "e" in their NDC.
  - In response to the {Aggregate Consideration Process}, developing country parties are expected to include in their respective NDC a type of economy-wide mitigation targets (options a, b, c or d), leading to absolute targets over time, in accordance with their national circumstances, development levels and capabilities.

*Brazil considers this approach to ensure universal participation, while respecting the principles, provisions and structure of the Convention. Given the characteristics of climate change as a collective action problem at the global scale, the 2015 agreement must ensure that all Parties move towards the same direction over time, with developed countries taking the lead. A "self-differentiation" approach does not provide any assurances in this regard.*

- Parties are encouraged to further detail their targets and actions, including, inter alia, by indicating sub-targets and/or specific policies and measures relevant to the implementation of their mitigation targets and actions.
- The UNFCCC Secretariat shall keep and update accordingly an online registry of national mitigation targets, actions and/or schedules. The online registry shall form an integral part of the agreement.

*For practical reasons, Brazil does not support the insertion of NDC as annexes to the agreement, taking into account the likely need to update them regularly. An online tool, based on formal communication from Parties, would better serve this purpose. The legal nature of this online tool may be clarified in the agreement itself.*

- Parties shall cooperate through the Forum on the impact of the implementation of Response Measures with a view to avoid or minimize negative impacts of response measures.



**Figure 1: NDC differentiation with regards to mitigation**

### **Adaptation**

- Parties are encouraged to include in their NDC policies, actions and plans, including National Adaptation Plans, aimed at reducing vulnerability to climate change, as well as promoting resilience of ecosystems and sustainable development, with a view to adapt to negative impacts of climate change.
- The communication of NDC on adaptation may follow the processes and timelines for the development of national adaptation plans, as appropriate. This component of the NDC, therefore, does not follow the same timelines required for mitigation.
- The Secretariat shall keep and update an online registry/clearing house of adaptation policies and actions communicated through the NDC, with a view to enhance cooperation on this matter through the relevant mechanisms and channels of the Convention. The online registry shall form an integral part of the agreement.
- Parties shall enhance cooperation through the Cancun Adaptation Framework to strengthen action on adaptation and the coherent consideration of matters relating to adaptation under the Convention with a view to strengthen the implementation of adaptation actions, policies and National Action Plans.

### **Means of Implementation to developing countries (finance, technology development and transfer, capacity-building)**

- All Parties committed under Article 4.3 of the Convention shall include, and update regularly, in their NDC quantified financial pledges, targets and actions to

mobilize climate finance, to assist the implementation of the NDC of developing countries, primarily through the financial mechanism of the Convention.

- All Parties committed under Article 4.5 of the Convention shall include, and update regularly, in their NDC policies and measures for technology development and transfer to developing countries, as well as to promote capacity building, with a view to assist the implementation of the NDC of developing countries.
- On the basis of solidarity and common sustainable development priorities, and in accordance with their national circumstances and capabilities, developing country parties are encouraged to include, and update regularly, in their NDC south-south cooperation initiatives encompassing finance, technology development and transfer, and capacity building, with a view to assist the implementation of the NDC of other developing countries.
- Developing country parties shall clarify the extent to which the implementation of their NDC is dependent upon the provision of financial resources, technology transfer and capacity building. They may further indicate particular gaps and needs to this regard.
- The communication of NDC on means of implementation should take into account the timelines required for national budgets, as well as the relevant processes under the Convention, such as BR/BUR and any other relevant decision, as appropriate. This component of the NDC, therefore, does not follow the same timelines required for mitigation.
- The Secretariat shall keep and update accordingly an online registry of nationally determined contributions related to finance, technology and capacity building, with a view to enhance transparency of support. The online registry shall form an integral part of the agreement.

*The inclusion of means of implementation in the NDC cycle is paramount for the success of the agreement, not only to assist developing countries in achieving the full potential of their NDC, but also to fulfill the mandate under the Durban Platform related to transparency of support. Excluding means of implementation from the NDC would lead to an unbalanced implementation of the agreement after 2020.*

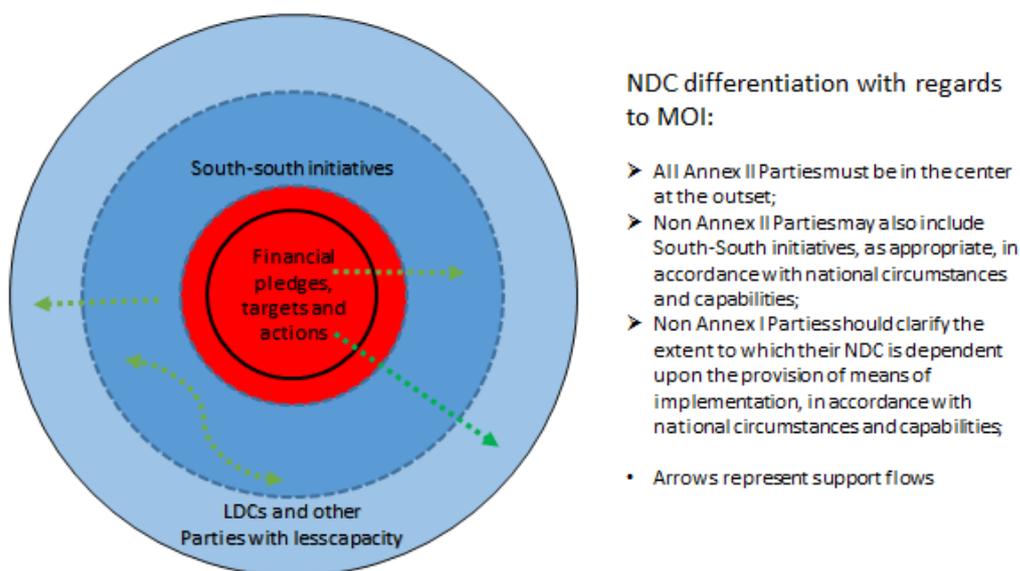
*The clarification of the extent to which the implementation of the NDC is dependent upon international support indicates that at least part of the contribution will be implemented with national resources.*

*Furthermore, it is worth noting that the possibility of including south-south cooperation activities in developing countries' NDC would "broaden the base of contributors", in a way that is consistent with the principles and provisions of the Convention.*

- The Financial Mechanism of the Convention shall support developing country parties in the implementation of all aspects of the 2015 agreement, with the GCF in a key role.
- The Standing Committee on Finance shall continue to assist the COP in

exercising its functions in relation to the financial mechanism in terms of improving coherence and coordination in the delivery of climate change financing, the rationalization of the financial mechanism, mobilization of financial resources, and the measurement, reporting and verification of the support provided to the implementation of the NDC by developing country Parties.

- Parties shall enhance cooperation through the Technology Mechanism of the Convention to strengthen action on the development and transfer of technology to support developing countries.
- Parties shall enhance cooperation through the Durban Forum on capacity-building to further enhance the effectiveness of capacity-building activities.
- The agreement shall recognize the social value of activities aimed at reducing emissions and fostering adaptation and shall mandate the development of ways and means to provide financial incentives for that purpose, in the context of sustainable development, with a view to promote approaches that go beyond traditional project-based modalities of support.
- **REDD+:** developing countries implementing REDD+ activities may utilize the positive incentives and results-based finance provided in accordance with the Warsaw Framework for REDD+, and any other related decisions, to support the implementation of their nationally determined contributions.



**Figure 2: NDC differentiation with regard to MOI**

**Loss and damage**

- Parties shall enhance cooperation through the Warsaw international mechanism to address loss and damage associated with impacts of climate change,

including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change.

### **Dynamic Contribution Cycle**

*iNDC to be presented prior to Paris are "intended" in the sense that they are subject to changes to conform to the rules of the agreement and that they will only become "final" upon ratification of the agreement and their formal communication. Brazil favors an approach where the NDC would be subject a multilateral review after its formal communication. This approach would dispel perverse incentives to put forward low ambition contributions in an untimely manner.*

*Furthermore, the preparation of nationally determined contributions is a complex process which will require decisions at the highest political level. It is doubtful that Parties would be able to change significantly their contributions immediately after presenting them at the multilateral level. Furthermore, given the time available for negotiations in 2015, it is unrealistic to assume that a process before Paris would be scientifically and technically adequate to answer the call for effectively enhancing ambition.*

*The agreement itself must provide for the procedures to enhance ambition over time, through the {Aggregate Consideration Process}. It may do so because it has a higher legal status and Parties would be bound to adjust their NDC in light of such process, as specified in the {Universal Legal Obligation}. Considering that a "mid-term review" or a "light consultation process" would possibly not provide incentives to adjust the contributions towards higher ambition levels either, Brazil recognizes it is important to avoid "locking in" contributions in the long term. It is also important to avoid that successive cycles of contributions become subject to renegotiations and political bargain.*

*With a view to addressing these issues, Brazil proposes a "dynamic contribution cycle", based on ten-year periods, with two five-year contribution terms. The purpose of this approach is to allow the adjustment of contributions with a view to enhance ambition, while providing long term perspectives for Parties and stakeholders. A diagram of the cycle is included as figure 3.*

- Each 10 year cycle includes a 5 year contribution term, followed by a 5 year indicative<sup>3</sup> term. Before the end of the each contribution term, the indicative term would be either confirmed or adjusted upwards, and an additional indicative term would be communicated for the following period.
- After confirmation, during the first half of each contribution term, the

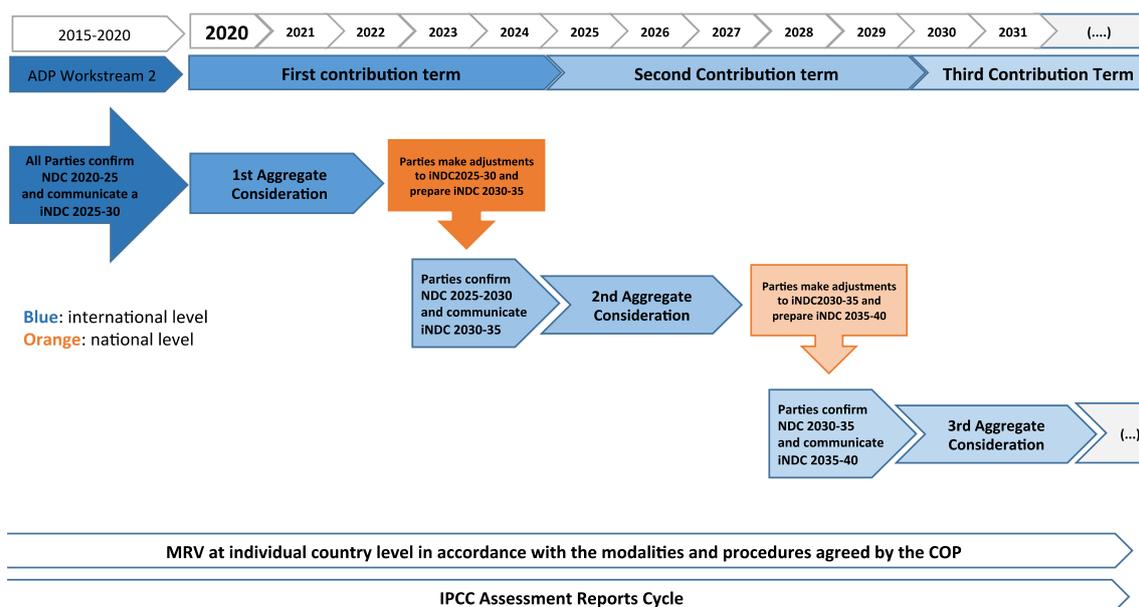
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<sup>3</sup> Because the expression "intended NDC" has been associated with the proposal of a ex-ante review prior to Paris, we have preferred to use the expression "indicative contribution" to highlight this is a different approach. Nevertheless, both expressions refer to a similar concept, ie a NDC that is yet subject to changes.

{Aggregate Consideration Process} referred below would be conducted taking into account both 5 year terms, with a view to inform Parties when adjusting and confirming their subsequent term. The second half of each contribution term would be dedicated to allow countries to conduct their national processes to adjust their NDC for the subsequent contribution term, as well as to communicate the next indicative term. Under this approach, the cycle would be as follows:

- In 2015, Parties communicate an intended contribution, pursuant to decision 1/CP.19.
- Before 2020, all Parties confirm or adjust upward their NDC for the period 2020-2025 and communicate an indicative contribution for the period 2025-2030.
- Between 2020 and 2023, the COP conducts the first {Aggregate Consideration Process} as described below. The outcome of the Process is a set of decisions or recommendations to be taken into account by Parties when adjusting their NDC for the next 5-year term (2025-2030) and communicating the indicative NDC for the subsequent 5-year term (2030-2035).
- Between 2023 and 2025, Parties make adjustments to their NDC at the national level, as appropriate, register their confirmed NDC for the term 2025-2030 and communicate a new indicative contribution for the term 2030-2035.
- Between 2025 and 2028, the COP conducts the second {Aggregate Consideration Process}, restarting the cycle.

*By presenting two terms simultaneously, the {Aggregate Consideration Process} serves the functions of both the “ex ante” and “ex post” review. Because the agreement itself would bind Parties to make adjustments in their indicative terms, this approach would allow for increasing ambition in a continuous manner, while respecting sovereignty.*



**Figure 3: Dynamic Contribution Cycle**

### **Aggregate Consideration Process**

- During the implementation phase of the new agreement under the Convention, the COP shall regularly assess the aggregate effect of the NDC towards achieving the objective of the agreement, with a view to inform Parties in adjusting their NDC towards enhancing ambition in all pillars of the Convention.
- The Aggregate Consideration Process will assess the progress towards the goal of holding the increase in global average temperature below 2°C, as well as the adequacy, scale and predictability of the delivery of means of implementation to developing countries for the implementation of their NDC. The assessment of the adequacy, scale and predictability of the delivery of means of implementation to developing countries would consider the aggregate level of pledges and actions, including south-south initiatives, to support the implementation of the NDC of developing country Parties, in relation to the aggregate level of support required, as informed through the NDC and included in the registry referred to in {Means of Implementation}.
- The first session of the Aggregate Consideration Process shall start in 2020 and finish no later than 2023. The outcome of the Process would be a set of decisions or recommendations to be taken into account by Parties when adjusting their NDC, in accordance to the cycle outlined above in section {Dynamic Contribution Cycle}.
- The Aggregate Consideration Process shall be conducted consistent with science and on the basis of equity and be guided by:
  - A Technical Paper from the Secretariat based on the latest inventories, the information provided in the registries/schedules referred to in sections

{Mitigation}, {Adaptation} and {Means of Implementation}, as well as in national communications and other communication channels agreed by the Convention;

- The most recent IPCC assessment report;
  - Each country's share in the global average temperature increase, and
  - The contribution of each country to limit the increase in global average temperature below 2°C.
- Beyond the general topics above, it may not be necessary to detail all aspects of the Aggregate Consideration Process in the agreement itself. The agreement may mandate the COP to agree, before 2018, on the modalities and procedures of the aggregate consideration process, including, as appropriate, the adoption of a simplified methodology for each country to calculate its share in the global average temperature increase.

### **Economic Mechanism**

- An economic mechanism should be included in the elements of the 2015 agreement, in order to create incentives for further action in developing countries; mobilize financial support to developing countries; and assist with the implementation of nationally determined contributions.

- It would constitute a mechanism to enhance action under the agreement and to provide incentives for developing country Parties to consider moving towards economy-wide absolute contributions. It should be understood as a complementary tool to achieve a level of implementation above and beyond the NDC. In this sense, accounting under the Economic Mechanism should remain separate from the national GHG inventories of the Parties, with a view to avoid double counting. Brazil does not agree with the inclusion of bilateral or voluntary emission trading schemes as part of a Party's NDC.

- The Economic Mechanism shall be comprised of general guidelines related to an emission trading system and an enhanced Clean Development Mechanism (CDM+). Methodologies, modalities and procedures of such mechanism should be developed by the COP after adoption and before entry into force of the agreement. Brazil will further elaborate on this matter in a separate submission.

- Emission Trading System

- Countries that put forward in their NDC quantified, economy-wide absolute emission limitation or reduction targets may benefit from the emission trading system for the purpose of achieving their targets, subject to specific conditions to be determined by the agreement and subsequent decisions, to be adopted by the COP before 2020.

- Based on lessons learned from the Kyoto Protocol, one of such conditions

would be to limit the issuance of *tradable allowances* in a contribution term to five times the average level of emissions from the 3 previous latest available inventories or the NDC, whichever is lower. *Domestic allowances*, non-tradable, would be issued to a national reserve if the NDC is higher than the average level of emissions from the 3 previous latest available inventories. Trade would imply transfer of *tradable allowances* from the seller country to the buyer country.

- In addition to buying CER, developed country Parties and other Parties putting forward a quantified, economy-wide absolute emission limitation or reduction target would be entitled to benefit from the emission trading system, acquiring *tradable allowances* from other Parties with economy-wide absolute targets.

- Enhanced Clean Development Mechanism (CDM+)

- The new market mechanism defined in decision 2/CP.17, paragraph 83, should be established under the agreement, incorporating the modalities, procedures and methodologies of the Clean Development Mechanism, to allow trading of CER among all Parties.

- In order to create incentives for developing countries and economies in transition to further implement actions to combat climate change, a project based mechanism, applying *mutatis mutandis* the modalities, procedures and methodologies of the CDM, would be established to assist countries with economy-wide absolute targets to compensate their emissions levels, as well as to assist developing countries to implement project activities aiming at reducing greenhouse gas emissions or enhancing removals by sinks.

- **Voluntary cancellation:** all Parties should actively promote the voluntary cancellation of CERs by subnational entities and the private sector, with a view to foster their engagement with mitigation actions and further enhance the environmental integrity of the mechanism. Parties that put forward a financial pledge or target in their NDC would be entitled to use the amount of CERs cancelled on their behalf to comply with their financial targets and pledges, but not their mitigation obligations.

### **Accounting & Compliance**

- **Accounting:** accounting rules under the 2015 agreement must ensure the highest standards for environmental integrity, in particular with regard to the use of offset mechanisms. Accounting is to be considered a “top down” element of the agreement and, as such, Brazil does not favor its inclusion in the scope of the NDC.

- The new agreement under the Convention shall establish an **Implementation Committee** or group of experts, to facilitate and promote the preparation and implementation of NDC.

- Upon request of a Party, the committee would assist in the preparation and

implementation of the NDC, by suggesting policy options and best practices for consideration of the Party concerned, as well as sources of means of implementation available for developing countries. The work of the committee would be conducted in a facilitative, non-intrusive manner, taking into account Parties' national circumstances and capabilities.

- **Compliance** should be promoted on the basis of positive incentives, rather than a punitive approach, for instance using the economic mechanism mentioned above.

### **Transparency of action and support**

- Besides the already agreed channels of communication under the Convention, the schedule and registries referred to in sections {Mitigation}, {Adaptation} and {Means of Implementation} are key elements to provide transparency of action and support. As noted before, the inclusion of means of implementation in the NDC is paramount to ensure transparency of support.
- Besides the {Aggregate Consideration Process} described above, nationally determined contributions with regards to mitigation and means of implementation shall be measured reported and verified at the individual country level according with the modalities and procedures already adopted by the COP.

### **Administrative and procedural elements:**

- Being under the Convention, the same administrative and procedural elements of the Convention should apply to the 2015 agreement.