



CARBON MARKET WATCH¹ RECOMMENDATIONS TO THE SBI-37 ON APPEALS AGAINST THE DECISIONS OF THE CDM EXECUTIVE BOARD

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The SBI has been considering an appeals procedure for decisions of the CDM Executive Board since its 34th session. At its 36th session, the SBI made further progress in setting out some features of a possible appeals body and agreed to continue its consideration at its 37th session on the basis of the draft text contained in document FCCC/SBI/2012/15/Add.2.

Currently the CDM suffers from a lack of clear remedies for project participants and affected stakeholders, and the accountability of the CDM institutions is weak. The adoption of a robust appeals procedure in the CDM is a critical opportunity to improve the good governance of the CDM. In the interests of equity and of the integrity of the CDM, the appeals procedure must allow appeals of project approvals. Indeed, the appeals procedure must serve the interests of project developers as well as those of affected stakeholders, so as not to prioritize corporate profit over the public interest and address the wider impacts that flawed CDM projects have on global climate change and sustainable development.

Furthermore, whereas the appeals procedure, as proposed, would address procedural and substantive concerns, it is essential that this process be complemented by a grievance mechanism to address the **social and environmental** impacts of CDM projects to ensure access to justice for all and to build the public's confidence in the integrity of CDM project activities. The CDM has an interest in addressing community-based grievances before disputes escalate or create conflict between stakeholders and project participants.

The SBI will consider the following issues in Doha at its 37th session:

- 1) The scope of appeal, *i.e.*, whether it can consider appeals of approvals as well as rejections and alterations;
- 2) The definition of stakeholders, *i.e.*, who has standing to appeal ;
- 3) The grounds for appeal;
- 4) The types of decisions that may be taken by the appellate body.

¹ Formerly CDM Watch

Carbon Market Watch recalls that the appeals procedure and its appellate body must be based on the principles of effectiveness, legitimacy, accessibility, predictability, equitability, transparency, rights compatibility, and participation. To that end, Carbon Market Watch makes the following recommendations to the SBI:

- 1) To decide to allow appeals against **both positive rulings (i.e. approvals) and negative rulings (i.e. rejections)**. Excluding approvals from the scope of review would not be acceptable, in particular given that the CDM appeals procedure serves not only to protect individual rights but also to ensure environmental integrity and sustainable development. To limit the appeals procedure to rejections and alterations would address interests of project developers only. Such a narrow interpretation of the right of stakeholders to appeal questionable CDM projects is likely to further undermine the integrity of the mechanism. A broader, more inclusive definition of concerned stakeholders is likely to enable a more robust public check on the CDM project approval process, and promote transparency, accountability and integrity in the decision-making process. **The scope of the review should therefore include both rejections and approvals of CDM projects.**
- 2) To define **standing to appeal** so as to **include non-governmental organizations (NGOs)** and other civil society groups, that have the capacity to monitor and review proposed CDM project activities,² and that can provide a voice for affected peoples and communities. DOEs must not be allowed standing, as it would be incompatible with their role as independent auditors. At the same time a grievance mechanism to protect the rights of peoples and communities directly affected by CDM projects must be set up as a matter of urgency.

=> Carbon Market Watch calls upon Parties to

(a) decide that both positive rulings (i.e. approvals) and negative rulings (i.e. rejections) should be appealable;

(b) agree that the commencement of an appeal may be filed by stakeholders or organizations which have submitted comments with regard to a CDM project activity and not by project participants only;

(c) decide that in the light of their role as independent auditors, DOEs should not have the right to appeal;

(d) agree to establish a grievance mechanism for environmental and social concerns related to CDM projects as a matter of urgency.

² For example, UNFCCC accredited NGOs.