CAR Consultation Document:
U.S. Ozone Depleting Substances Project Protocol
Destruction of Domestic Ozone Depleting Substances
Destruction of Ozone Depleting Substances from Article 5 Countries

Energy Changes Projektentwicklung GmbH appreciates the initiative of CAR to develop a market for CFC and other ODS reductions.) Up to now there has been no incentive to dispose CFCs in an environmentally friendly way and to destroy these strong GHG. The voluntary carbon market could provide such needed financial mechanism supporting innovative technologies for safe disposal/destruction of CFCs to become economically viable.

Ad 2.2 Project Definition/ 3.3 Project Crediting Period/ 3.4.1 The Legal Requirement Test (both protocols)

The current version of the protocol defines a **project** as follows:

a project is defined as any set of activities undertaken by a single project developer leading to the destruction of eligible imported ODS at a single qualifying destruction facility over a 12-month period

The **project crediting period** is defined as follows:

Under this protocol, the project crediting period is the period of time over which avoided emissions are quantified for the purpose of determining creditable GHG reductions. Specifically, ODS projects may be issued CRTs for the quantity of ODS that would have been released over a ten-year period following a destruction event

The **legal requirement test** is described as follows:

….A project passes the Legal Requirement Test when there are no laws, statutes, regulations, court orders, environmental mitigation agreements, permitting conditions or other legally binding mandates requiring the destruction of ODS….

…In addition, the project's Monitoring Plan (Section 6) must include procedures that the project developer will follow to ascertain and demonstrate that the project at all times passes the Legal Requirement Test…

We believe that this structure of the protocol is problematic.

Currently in the US and Article 5 countries investments in ODS recovery and destruction projects are heavily relying on additional income from carbon market(s) (otherwise projects would already happen now and they would not be additional anymore). Required investments go up into several million of USD and only pay back over several years. For making a decision to do such an investment project developers need some certainty about a longer period of time they will receive carbon credits.

We therefore recommend

- that the **project** is defined as any "INVESTMENT" in a set of activities for recovery and subsequent destruction of ODS (such as but not limited to recycling facilities for cooling/freezing appliances…).

- that the **project crediting period** is 10 years (but it refers to 10 years from the date of INVESTMENT e.g. 10 years from construction of recycling facility etc..).

  ODS projects should be issued CRTs for the quantity of ODS that would have been released over a ten-year period following a destruction event. CRTs are issued for all ODS emissions avoided by a project over 10 years at the time the project is verified.

- that the **legal requirement test** should be handled similarly as under the Clean Development Mechanism:

(source: http://cdmrulebook.org/85)

Treatment of national and/or sectoral policies
The Executive Board has clarified that in general:

A baseline scenario shall be established taking into account relevant national and/or sectoral policies and circumstances, such as sectoral reform initiatives, local fuel availability, power sector expansion plans, and the economic situation in the project sector (EB 22, Annex 3, paragraph 4).

However, only mandatory laws and regulations need to be taken into account, so national and local policies that do not have legally-binding status can be ignored:

The alternative(s) shall be in compliance with all mandatory applicable legal and regulatory requirements, even if these laws and regulations have objectives other than GHG reductions, e.g. to mitigate local air pollution (EB 29, Annex 5).

In addition, the Executive Board has created exceptions for the following types of mandatory national and/or sectoral policies:

a. *National and/or sectoral policies or regulations that give comparative advantages to more emissions-intensive technologies or fuels over less emissions-intensive technologies or fuels [so-called Type E+ policies].*
b. *National and/or sectoral policies or regulations that give comparative advantages to less emissions-intensive technologies over more emissions-intensive technologies (e.g. public subsidies to promote the diffusion of renewable energy or to finance energy efficiency programs) [so-called Type E- policies] (EB 22, Annex 3, paragraph 6).*

At EB 16, the Executive Board had originally identified two other types of national and/or sectoral policies:

a. *Sectoral mandatory regulations adopted by a local or national public authority motivated by the reduction of negative local environmental externalities and/or energy conservation and which would incidentally also reduce GHG emissions [so-called Type L- policies].*
b. *Sectoral mandatory regulations adopted by a local or national public authority motivated by the reduction of negative local environmental externalities and which incidentally prevent the*

adoption/diffusion of less GHG emitting technology [so-called Type L+ policies] (EB 16, Annex 3, paragraph 1).

This guidance was revised at EB 22 and replaced with guidance that distinguished only between Type E+ and Type E- policies (EB 22, Annex 3, paragraph 3). No further mention has been made by the Executive Board of Type L+ and Type L- policies.

For Type E+ policies, the Executive Board has confirmed that only those policies implemented before 11 December 1997 can be taken into account when developing the baseline scenario:

Only national and/or sectoral policies or regulations under paragraph 6 (a) that have been implemented before adoption of the Kyoto Protocol by the COP (decision 1/CP.3, 11 December 1997) shall be taken into account when developing a baseline scenario. If such national and/or sectoral policies were implemented since the adoption of the Kyoto Protocol, the baseline scenario should refer to a hypothetical situation without the national and/or sectoral policies or regulations being in place. (EB 22, Annex 3, paragraph 7(a)).

For Type E- policies, the Executive Board has confirmed that only those policies implemented before 11 November 2001 need to be taken into account when developing the baseline scenario:
National and/or sectoral policies or regulations under paragraph 6 (b) that have been implemented since the adoption by the COP of the CDM M&P (decision 17/CP.7, 11 November 2001) need not be taken into account in developing a baseline scenario (i.e. the baseline scenario could refer to a hypothetical situation without the national and/or sectoral policies or regulations being in place) (EB 22, Annex 3, paragraph 7(b)).

The objective of these policies was described as follows:

As a general principle, national and/or sectoral policies and circumstances are to be taken into account on the establishment of a baseline scenario, ***without creating perverse incentives*** *that may impact host Parties' contributions to the ultimate objective of the Convention (EB 22, Annex 3, paragraph 5).*

Finally, where analysis shows that there is widespread non-compliance in a country or region with mandatory laws and policies, then a scenario involving non-compliance may be a valid baseline:

If an alternative does not comply with all mandatory applicable legislation and regulations, then show that, based on an examination of current practice in the country or region in which the law or regulation applies, those applicable legal or regulatory requirements are systematically not enforced and that non-compliance with those requirements is widespread in the country. If this cannot be shown, then eliminate the alternative from further consideration (EB 29, Annex 5).

In the case of one approved baseline methodology, AM0012, the Executive Board found that while monitored compliance with a particular national policy was less than 50%, it could not be said that the policy was enforced. Once monitored compliance exceeded 50%, however, the assumption that the policy is not enforced would no longer be tenable. The baseline scenario in that case was identified as a gradual improvement of compliance with the policy.

Furthermore it should be clarified by CAR that projects which are implemented under CAR or any other carbon standard should not be taken into account when determining the compliance rate.

Ad 5.1.2 Baseline Emissions from Shredding and/or Landfilling Foam Blowing Agents (Domestic Protocol) and 6.5.3

The protocol currently provides no guidance how

$Q_{foam,I}$ = Total quantity of foam blowing ODS *i* destroyed

shall be calculated when ODS is entrained in foam

There should be a clear procedure to ensure that there are no biased/flawed samples (so the samples are really representing the underlying population) and the confidence level and interval also have to be determined (e.g. such as confidence level 95% interval +/- 0.1 gODS/kg foam etc…);

Best regards

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