



Global Environment Facility

GEF/R.4/Inf.4
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Meeting on the Fourth Replenishment of the GEF Trust Fund
June 9-10, 2005
Washington, D.C.

TRUSTEE INTERPRETATION

DEFERMENT RIGHT OF THE CONTRIBUTING PARTICIPANTS WITH RESPECT TO CONDITIONAL GEF-3 CONTRIBUTION

(Prepared by Trustee)

I. Background

1. As part of the GEF Third Replenishment, the United States pledged to provide an additional amount of USD 70 million in the final year of the replenishment cycle (the “Additional Contribution”) if an operational performance-based allocation system was in place by Fall 2004. The condition was not fulfilled. The Trustee has been asked whether the non-fulfillment of the condition would entitle a Contributing Participant to defer commitment by the Trustee of the final installment of such Participant’s contribution to the Third Replenishment.
2. For the reasons described below, the Trustee is of the opinion that Contributing Participants are not entitled to instruct the Trustee to defer commitment of the portion of the final installment of such Participants’ contributions to the Third Replenishment, which relates to the Additional Contribution.

II. Legal Basis

3. The United States deposited a Qualified Instrument of Commitment for an Additional Contribution subject to the achievement of specific performance measures, as described in footnote f of Attachment 1 to the GEF Third Replenishment Resolution¹:

“In addition to four annual installments of USD 107.5 million, the United States will provide USD 70 million in the final year of the replenishment upon achievement of the performance measures outlined in Schedule 1 to this Table.”

4. Because the United States contribution (including the Additional Contribution) represented more than twenty percent of the total resources to be contributed under the Third Replenishment, this deposit of the Qualified Instrument of Commitment created the condition for potential notifications by the Trustee to the Contributing Participants under sub-paragraph 8(b) of the Resolution:

The Trustee shall promptly inform all Contributing Participants if a Contributing Participant that has deposited a Qualified Instrument of Commitment and whose contribution represents more than twenty (20) percent of the total amount of resources to be contributed pursuant to the Third Replenishment has not unqualified ... at least sixty-four and a half (64.5) percent of the total amount of its contribution by November 30, 2004 ... and the total amount thereof by November 30, 2005.... Further, the Trustee shall promptly inform all Contributing Participants if the conditions indicated in footnote f to Attachment 1 have not been met by November 30, 2005....”

¹ Executive Directors’ Resolution No. 2002-0005 on the Third Replenishment of Resources of the Global Environment Facility Trust Fund, dated December 19, 2002.

5. Upon receiving such notice, each Contributing Participant would in turn be able to notify the Trustee that any commitment with respect to its contribution should be deferred while, and to the extent that, the United States contribution remained qualified, as set forth in sub-paragraph 8(c) of the Resolution:

[E]ach Contributing Participant receiving such notice may notify the Trustee in writing that the commitment by the Trustee ... of such Contributing Participant's contribution shall be deferred while, and to the extent that, any part of the contribution referred to in sub-paragraph 8(b) remains qualified or subject to the conditions indicated in footnote f to Attachment 1."

6. Included among the performance measures that conditioned the Additional Contribution was the establishment of a performance-based allocation system by Fall 2004, as specified in Schedule 1 to Attachment 1 to the Resolution:²

"Performance measures to be achieved by Fall 2004 (as determined by the Council ...), including, inter alia: Performance-Based Allocation System: The GEF will have in place an operational performance-based allocation system, as agreed in the GEF-3 replenishment report"

7. The GEF Council confirmed that this condition had not been met on time, as recorded in the Joint Summary of the Chairs GEF Council Meeting November 17-19, 2004, under "Decision on Agenda Item 7 - Verification of Replenishment Targets":

"21. The Council ... determines that the GEF has achieved six of the seven performance measures noted in footnote f to Attachment 1 of the Agreement to the third replenishment of the GEF Trust Fund."¹

[Footnote 1:] *"The performance measure calling for the GEF to "have in place an operational performance-based allocation system, as agreed in the GEF-3 replenishment report" was not achieved by Fall 2004."*

III. Trustee Interpretation

8. First, because the performance-based allocation system was not in place by Fall 2004, not all of the performance measures under Schedule 1 to Attachment 1 were achieved. Second, because the Additional Contribution was expressly conditioned upon the achievement of the performance measures, the United States is no longer committed to provide the Additional Contribution, and the amount of the Additional Contribution (USD 70 million) cannot now be considered by the Trustee to form part of the United States contribution to the Third Replenishment. Consequently, the Trustee cannot now consider any portion of the United States

² Although sub-paragraph 8(b) of the Resolution provides that the Trustee is promptly to inform Contributing Participants if the conditions in footnote f to Attachment 1 have not been met by November 30, 2005, the deadline for the achievement of the Schedule 1 conditions was Fall 2004.

contribution to be subject to the conditions indicated in footnote f to Attachment 1 to the Resolution.

9. Under sub-paragraph 8(c) of the Resolution, a Contributing Participant is entitled to defer such Participant's contribution to the Third Replenishment only while, and to the extent that, any part of the contribution from the United States "remains qualified or subject to the conditions indicated in footnote f to Attachment 1." For the reasons set forth above, no portion of the Additional Contribution remains qualified or subject to the indicated conditions. Thus, there is no basis for a deferment right of the Contributing Participants with respect to the Additional Contribution.