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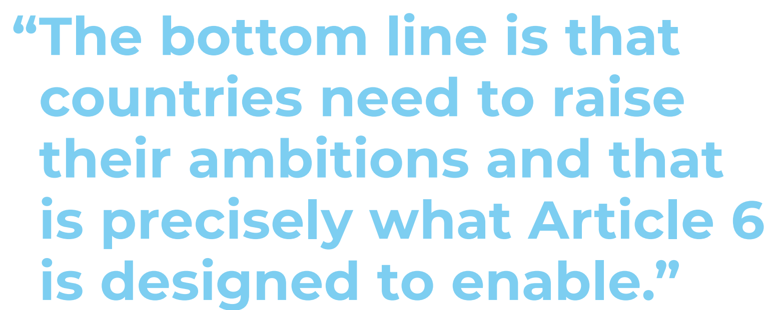
COP 26 – ARTICLE 6, NATIONALISATION RISK AND WHAT IT MEANS FOR VOLUNTARY MARKETS

Will COP26 finally deliver Article 6[1]? Without it, the Paris Agreement is not fully operational. Article 6 is an important tool to enable countries to raise their Paris Agreement ambitions through market mechanisms and engage the private sector. If the next COP in Glasgow in November 2021 (COP26), fails to deliver on these long awaited Article 6 Guidelines, this meeting will be likely be considered a resounding failure. Why is this?

1 ADOPTION OF THE PARIS AGREEMENT - Paris Agreement text English (unfccc.int)



> **“The bottom line is that countries need to raise their ambitions and that is precisely what Article 6 is designed to enable.”**

At a glance

With public sector funding stretched to its limits, delivering on climate ambitions necessitates that the private sector is engaged and mobilised under Article 6. However, the cooperative approaches mechanism under Article 6.2 cannot provide certainty for private sector participation without a legally enforceable robust authorisation framework. As such, for both the sustainable development mechanism under Article 6.4 and for cooperative approaches mechanism under Article 6.2, a letter of authorisation or approval is going to be necessary. A similar authorisation will be required for carbon offsets that are used in the aviation sector compliance market under the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) for vintages after 1 January 2021. As the CORSIA offsetting obligations can be met by the use of both Article 6.2 and 6.4 units as well as certain voluntary offset units, this letter of authorisation framework will probably extend to voluntary markets.

We anticipate that countries under the Paris Agreement which are looking to raise revenue to fund their carbon abatement opportunity will wish to choose whether that activity leads to a unit that is capable of being used for Paris Agreement purposes, CORSIA purposes or purely voluntary purposes. To achieve such control, likely countries will mandate that all activity occurring in their jurisdiction is to be subject to government approval, essentially nationalising their abatement opportunity. This will be driven by the country looking to comply with its Paris Agreement commitments and is likely to extend to the voluntary sector.

Introduction

There is one key article missing from a fully operationalised Paris Agreement. This is Article 6 dealing with market mechanisms. Despite earlier attempts at the Conference of Parties to the Paris Agreement (COP), at COP24 in Katowice and COP25 in Madrid, the guidelines necessary to operationalise the two market mechanisms (i) cooperative approaches under Articles 6.2-6.3 (Cooperative Approaches) and (ii) the sustainable development mechanism under Articles 6.4-6.7 (the SDM) remain elusive. Absent these guidelines (the Article 6 Guidelines), the Paris Agreement lacks a mechanism to facilitate an increase in the ambition levels of one Paris Agreement country through the acquisition and transfer of internationally transferred mitigation outcomes generated from activities in another Paris Agreement country. As such, if the next COP in Glasgow in November 2021 (COP26), fails to deliver on the Article 6 Guidelines, this meeting will be likely be considered a resounding failure.

So what’s so special about Article 6?

Article 2 of the Paris Agreement contemplates limiting the global average temperature increase to 2°C and expresses a willingness to pursue efforts to curb the increase to 1.5°C (the Below 2° Target). In order to deliver on the Below 2° Target, Paris Agreement countries are required to reach peak greenhouse gas emissions as soon as possible; although it is recognised that Paris Agreement countries that are developing countries will reach peak emissions later than Paris Agreement countries that are developed countries under a principle known as ‘common but differentiated responsibilities’ (CBDR). However, once that peak occurs, emissions must fall rapidly. The speed of that decline will be based on the best available science but the end result, to be achieved in the second half of this century, is a *“balance between anthropogenic emissions by sources and removals by sinks*[2]*”*. In other words, we are not aiming for no emissions, only to balance emissions equal to that which we are capable of absorbing via natural sinks, such as forests or technological sinks such as direct air capture and storage. This is the meaning of net zero under the Paris Agreement.

The IPCC[3]’s Special Report on Global Warming of 1.5°C in 2018 (IPCC SR15) suggested a number of pathways towards the attainment of a lower 1.5°C objective. The IPCC SR15 made it clear that, virtually *“all 1.5°C-consistent pathways decline net annual CO2 emissions between 2020 and 2030, reaching carbon neutrality around mid-century”* (i.e. by 2050). This is the foundation for the net zero target adopted by corporates within their ESG or sustainability plans. How the Paris Agreement countries achieve that 1.5°C goal depends on their ambition levels, as set out in their nationally determined contributions (NDCs), which provide their greenhouse gas reduction, removal and adaptation objectives over a NDC cycle, which is typically five years. The first NDC period starts from 1 January 2021 and is also the start of the Paris Agreement accounting period.

2 Article 4(1) of the Paris Agreement.

3 IPCC — Intergovernmental Panel on Climate Change - the United Nations body for assessing the science related to climate change

According to the 2021 synthesis report on NDCs submitted by Paris Agreement countries[4] (the NDC Synthesis Report) the ambitions reflected in the current NDCs are insufficient, implying a 2.7°C degree increase that therefore requires *"an urgent need for either a significant increase in the level of ambition of NDCs between now and 2030 or a significant overachievement of the latest NDCs, or a combination of both, in order to attain cost-optimal emission levels suggested in many of the scenarios considered by the IPCC."*

As stated in the recent IPCC AR6 report, *"Global surface temperature will continue to increase until at least the mid-century under all emissions scenarios considered. Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in carbon dioxide (CO2) and other greenhouse gas emissions occur in the coming decades."*[5]

The bottom line is that countries need to raise their ambitions and that is precisely what Article 6 is designed to enable.

Why is it so important that an agreement to operationalise Article 6 is reached?

The two Article 6 market mechanisms envisage different types of carbon units. The carbon units generated under Cooperative Approaches are called internationally transferred mitigation outcomes (ITMOs) and those generated under the SDM are known as Article 6.4 emission reductions (Art 6.4ERs). Art 6.4ERs are emission reduction units, much like certified emission reductions (CERs) were under the Clean Development Mechanism (CDM) of the Kyoto Protocol. Whereas ITMOs are not limited to just emission reductions and could include other types of units (e.g. renewable energy credits or adaptation financing units).

Article 6 is, on its face, a tool allowing two or more Paris Agreement countries to aim for higher ambitions in their mitigation and adaptation actions through voluntary cooperation towards implementing their NDCs. Implicit in this is that the cooperation is beneficial to all the countries involved. For example, through the acquisition of an ITMO, perhaps the mitigation ambitions of a buying country will be enhanced and in return, the proceeds will enable the seller country to increase their adaptation ambitions.

It is over simplistic say that Article 6 is just about one country acquiring ITMOs or Art 6.4ERs from another country to avoid taking the necessary steps to decarbonise on its own. Some developed countries, due to their specific circumstances or geographical limitations, have few choices to easily move away from their current fossil fuel dependant energy infrastructure towards low carbon alternatives such as wind or solar. Whilst alternative technologies such as green hydrogen may, in time, provide a solution, for many developed countries, increasing their NDCs in the short to medium-term, means purchasing ITMOs and Art 6.4ERs (Buying Art 6 Countries).

Developing countries, within the scope and boundaries of their CBDR, are also expected to enhance their ambitions under their NDCs progressively and over time. Unlike their developed counterparts, they are not obliged or expected, from the outset, to have NDCs covering all gases and sectors. Over time, they are expected to increase their ambitions by progressively increasing the scope and coverage of their NDCs. An example of how CBDR will work can be readily seen in the different net zero commitments of the EU (2050) and China (2060). The role of Article 6 is to increase and accelerate that NDC scope and coverage so that countries might otherwise accelerate and increase their ambition levels because the Cooperative Approaches or the SDM has helped them decarbonise earlier. Developing countries that have sectors or gasses that are, due to CBDR, not included in their NDC can use Article 6 to sell units to help fund their decarbonisation efforts and therefore, increase their ambitions (Selling Art 6 Countries).

It is notable how many Paris Agreement country's NDCs are currently conditional on requiring additional finance to support that ambition. As highlighted by the NDC Synthesis Report, the *"implementation of most conditional elements depends on access to enhanced financial resources, technology transfer and technical cooperation, and capacity-building support; availability of market-based mechanisms; and absorptive capacity of forests and other ecosystems."* Also highlighted by the NDC Synthesis Report is that almost all Paris Agreement countries have indicated plans to utilise as least one of the two Article 6 market mechanisms. So at the very least, implementation of Article 6 should enable greater ambitions under such NDCs by enabling some NDCs to become less conditional.

For a Selling Art 6 Country, a key factor will be the opportunity cost of generating ITMOs and Art 6.4ERs. Some costs of abatement within a Selling Art 6 Country will be higher and some will be lower. There are clearly good reasons for a Selling Art 6 Country to take on NDC commitments in respect of the lower abatement opportunities in their earlier NDCs whilst leaving the higher abatement cost items for future NDCs. Article 6.2 therefore also has a role to play in supporting those Selling Art 6 Countries to tackle higher abatement cost items by inviting Selling Art 6 Countries to bring them into their NDC in return for external financing support or by leaving them outside their NDC and inviting financing via other means e.g. Art 6.4ERs or the voluntary carbon markets.

So how does a Selling Art 6 Country manage its own cost of abatement?

The answer is, by making its own determination as to which aspect of its abatement opportunity it wishes to fund itself and for which abatement opportunity it wishes to invite financing support. Such financing support under Article 6.4 therefore comes from the sale of Art 6.4ERs and there is express recognition in Article 6.4 that the private sector may participate in SDM activities. We anticipate that this will be similar to the way in which the private sector participated in CDM activities under the Kyoto Protocol. Under the CDM, CDM projects were subject to a letter of approval

4 https://unfccc.int/sites/default/files/resource/cma2021_08_adv_1.pdf

5 IPCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [MassonDelmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press. In Press

and participants in such projects (including private sector participants) were subject to a letter of authorisation (CDM LoAA). We would therefore expect similar requirements to be introduced to authorise private sector participation under the SDM (i.e. through an SDM LoAA).

However, unlike the express reference to private sector participation in the SDM, Article 6.2 is silent on that. Does that prevent private sector participation in Cooperative Approaches? A Cooperative Approach requires the establishment of binding legal obligations between the Selling Art 6 Country(ies) and the Buying Art 6 Country(ies) to a Cooperative Approach. The form of agreement necessary to establish such binding obligations between two countries will be determined by the public international laws of the respective countries. However, if private sector participation in a Cooperative Approach is to be created, a robust legal foundation will be required to give a private sector entity (e.g. from a Buying Art 6 Country) the necessary certainty around its own rights and obligations as an indirect participant to that Cooperative Approach between two (e.g. as between the Selling Art 6 Country and the Buying Art 6 Country) or more countries, including the ability to enforce cross-border contractual arrangements, where so required.

Therefore, an approval framework for how such private sector participation would work would need to be agreed as part of the Cooperative Approach agreed between the participating countries. Under such a framework, a country participating in that Cooperative Approach would authorise private sector participants to participate and deal in ITMO carbon units. The aim is to create a legal relationship between the authorising country and such private sector participant, where such authorisation regime is accepted and recognised by another country in that Cooperative Approach. This authorisation may or may not take a form similar to that of the SDM LoAA or there may be some form of blanket authorisation so agreed. We anticipate that such a letter of authorisation of private sector participation may be combined with the approval process for mitigation outcome activities agreed by the countries participating in the Cooperative Approach (Cooperative Approach LOAAs) .

As such, some form of authorisation letter will be required for both Article 6.2 activities and Article 6.4 activities, and through that, the Selling Art 6 Countries will have a degree of control over whether the ITMOs or Art 6.4ERs can be used for NDC purposes or 'other International Mitigation Purposes'. It is generally understood that references to 'other International Mitigation Purposes' (as that term was used in a draft text of the Article 6.2 Guidelines produced at the Madrid COP) is a reference to international uses such as under the International Civil Aviation Organisation (ICAO) or International Maritime Organisation.

CORSIA recognised offset credits under Paris Agreement accounting

The Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) was established under ICAO in 2016 with the aim to operationalise an aspirational goal of achieving "carbon neutral growth" in international aviation emissions from 2020 onwards. CORSIA obliges airline operators, under the regulation of the supervising country (which is usually also a Paris Agreement country) to acquire and retire carbon offset units equal to their emissions over a 2019 baseline. To facilitate that, the technical advisory body of ICAO (TAB), has approved a number of voluntary and compliance market carbon offset units as eligible towards discharging the retirement obligation during the pilot phase between 2021-2023. However, the TAB is yet to determine the criteria for eligible offsets that are from a vintage of later than 1 January 2021 (i.e. from the start of the Paris Agreement accounting period). TAB has however approved the use of eligible offsets

that qualify as Article 6 ITMOs or Art 6.4.ERs as well as those of a number of voluntary standard such as the Verified Carbon Standard (VCS), Gold Standard and others. By so allowing Paris Agreement compliance units and purely voluntary market units to both be eligible for CORSIA purposes (Eligible CORSIA Units), the TAB has, in the context of the Paris Agreement accounting vintages staring in 2021, introduced a legitimate concern around double counting.

After all, the international aviation emissions are not part of the Paris Agreement country's Article 4 obligations under the Paris Agreement but they are part of the overall carbon budget that needs to be managed in the context of the Below 2° Target. Yet, the Eligible CORSIA Units are to be sourced from the same emission abatement sources that are used by the Selling Art 6 Countries for Paris Agreement purposes. This is why one of the TAB's emission unit eligibility criteria includes a requirement that Eligible CORSIA Units should ensure that *"that double claiming does not occur between the airline and the host country of the emissions reduction activity"*[6]. The TAB then issued guidelines on how such double counting should be avoided. These state that the sponsor programme of the Eligible CORSIA Units *"should obtain, or require activity proponents to obtain and provide to the program, written attestation from the host country's national focal point or focal point's designee."*[7]

So it seems that for carbon offset units to be considered Eligible CORSIA Units, vintages that are after 1 January 2021 will require some form of 'written attestation' from the host country that is very similar to SDM LoAA and Cooperative Approaches LoAA referred to above. Therefore, it seems that CORSIA Eligible Units will also require a CORSIA LoAA.

However, since CORSIA accepts carbon offset units from the voluntary sector, the requirement for project authorisation extends beyond compliance units (e.g. ITMOs and Art 6.4ERs) to voluntary credits such as VCS verified carbon units (VCUs) and Gold Standard verified emission reductions (GS VERs). But not all types of VCUs and GS VERs are necessarily CORSIA Eligible Units. So what is the situation in relation to those project activities, taking place in Selling Art 6 Countries that are not demarcated as activities for the purposes of Cooperative Approaches, SDM or CORSIA? How are they to be dealt with from the perspective of the Paris Agreement country that hosts such project?

The impact of Art 6 on the voluntary markets

All Paris Agreement countries have to account for their emissions and emission reductions, whether as part of their NDCs or otherwise. As Paris Agreement countries implement the policy objectives and targets outlined in their NDCs through national legislation and regulations, this is likely to impact on any, hitherto, unregulated activities for existing projects operating within the voluntary markets. What the impact of such new laws or regulations will be on existing activity, will turn on the scope of the laws of each jurisdiction, as well as the approach adopted by their governments. As NDC ambitions get translated into local laws and regulations for the different sectors, carbon reduction projects within such sectors will need to have their baselines reassessed, and may no longer qualify as additional. For example, where renewable energy becomes mandatory by law, renewable energy projects that were previously credited with emission reductions are likely to be adversely impacted. The expansion of emissions trading schemes or carbon taxes to cover more sectors and gases would have a similar effect.

Therefore, as the impact of emission reductions, in the context of a country's NDC and its role in the overall global carbon budget become increasingly recognised as more economically valuable, Paris Agreement counties are likely to want greater control over their carbon emission reduction opportunities. The historic ability of projects and private sector participants in the voluntary carbon markets to therefore, deal independently in emission reduction opportunities will likely be increasingly restricted, and stakeholders will need to engage with governments to resolve such issues.

Some early examples of a country seeking to take greater control over their inventory and the management of their carbon rights, can be seen from the recent steps taken by Indonesia. Indonesian has proposed draft legislation titled 'Presidential Regulation on Carbon Economic Value Instrument for the achievement of Nationally Determined Contributions and control of carbon emissions in development' (the "Indonesian Nationalisation Bill"). Although not finalised as at the date of this paper, one key effect of the Indonesian Nationalisation Bill will be to define carbon rights and control of carbon assets, which can be assigned to businesses and/or activities through licenses and/or to other countries through authorisation. Essentially, the Indonesia nationalisation Bill functions as a control mechanism that will allow Indonesia to make its own choices on which types of activities will be approved for NDC purposes, other International Mitigation purposes or for other purposes, such as results based financing (where there is no transfer of ITMOs). Indonesia may be the first country to pass such legislation but it will not be the last. Anecdotally, we are aware of other countries considering similar approaches.

What is the risk for voluntary market participants?

The risk for voluntary market participants in the Paris Agreement accounting period is one that is primarily of increased host country regulation. Selling Art 6 Countries, in order to establish control over their emission abatement opportunities and to comply with the Art 6 requirements of avoidance of double counting, will start to introduce legislation in their respective jurisdictions. Such legislation will establish the apex level laws for the host country to authorise a particular organ of the state to deal with and issue SDM LoAAs, Cooperative Approach LoAAs, CORSIA LoAAs, and, under the same logic, voluntary market LoAAs. After all, if authorisations are required for all the other activity types, including

6 Emission Criterion 7, International Civil Aviation Organization, ICAO document, CORSIA Emissions Unit Eligibility Criteria, March 2019.

7 Programme Application Form, Appendix A, 'Supplementary Information for Assessment of Emissions Unit Programmes'. https://www.icao.int/environmental-protection/CORSIA/Documents/TAB/TAB%202020/Programme_Application_Form_Appendix_A_Supplementary_Information_2020.docx

voluntary market activities qualifying as CORSIA Eligible Units, why would a host country then not apply a similar requirement on voluntary market activities (Nationalisation Risk)?

The commonly touted answer to this last question, is often that corresponding adjustments are not required for voluntary market units as those units are not used in compliance markets and therefore, from an accounting perspective are not double counted, only double claimed (i.e. once by the host country and once by the corporate using it towards its net-zero target). A corresponding adjustment is the accounting mechanism proposed by the Paris Agreement to account for transfers of 'mitigation outcomes' when transferred across borders in order to avoid double counting. However, neither the meaning of a mitigation outcome nor the meaning of double counting, is defined in the Paris Agreement or its implementing decisions.

The Nationalisation Risk, that we refer to above doesn't relate to corresponding adjustment or double counting, it relates to the establishment of a national control or authorisation framework that any Selling Art 6 Country will need to put in place to (i) achieve its NDC, (ii) increase its NDC ambitions over time, and (iii) ensure that it can comply with its Paris Agreement reporting obligations under Articles, 4, 6 and 13.

Depending on how the authorisation framework is designed by the Selling Art 6 Country, it could also act as a means of providing legislative certainty that the Selling Art 6 Country will make any necessary adjustments to its inventory or to its NDC, as required by the Article 6 Guidelines or by CORSIA, when it sells ITMOs or Art 6.4ERs. See, for example the World Bank's 'Country Policy Framework for Cooperative Approaches under Article 6.2'[8] which offers a template authorisation framework to enable the approval of private sector participation in Article 6.2 activities. The template includes a commitment for a country to make any necessary corresponding adjustment required by the Article 6 Guidelines. Yet, whether the Selling Art 6 Country's approval framework is obliged to extend the framework to deal with corresponding adjustments for purely voluntary market activity, will only be resolved once the Article 6 Guidelines are determined.

However, in our view, whether pure voluntary market credits (i.e. not used for NDC or CORSIA purposes) require a Voluntary Market LoAA, is not about whether they require a corresponding adjustment but whether the Selling Art 6 Country wishes to reinforce its right to determine whether the emission abatement opportunity should be destined for the compliance markets (e.g. CORSIA) or pure voluntary markets. Selling Art 6 Countries will have to report the emission reduction achieved by a purely voluntary market activity under its annual inventory reports. Further, as those countries pass necessary laws to implement and achieve their NDC commitment, the additionality of that voluntary market activity will have to be reassessed. According to the VCM Working Group[9], *"It has been assessed that the proportion of current VCM activities that fall outside or beyond the scope of the NDC is likely to be low, Anecdotal estimates have ranged between 10-20% of current VCM activity."*[10]

The relationship between voluntary markets and Article 6 markets

Although a lot has been written about the need for corresponding adjustments in the context of purely voluntary market activity, there has been a tendency to focus on this purely as a double counting versus double claiming issue. This is has become a highly emotive issue for some in the market with there being largely two camps. One camp supports the application of corresponding adjustment for all activities, including purely voluntary market activities because, they argue, double claiming is double counting and therefore, invites a corresponding adjustment. The other camp argues that double claiming is not double counting and therefore, only activities that relates to CORSIA Eligible Units, ITMOs or Art 6.4ERs require a corresponding adjustment.

However, both camps acknowledge that a voluntary market private sector participant is relatively powerless to achieve a corresponding adjustment because, that is not within the gift of that person. Whether a host country (including a Selling Art 6 Country) decides to apply a corresponding adjustment for purely voluntary market units will turn on (a) what the Article 6 Guidelines require of it, and (b) the establishment of a national framework that provides the necessary assurance that the host country will abide by its Paris Agreement obligations (including the Article 6 Guidelines).

Conclusion

Irrespective of which of the two camps above are correct, the establishment of a legal framework to achieve that assurance will be required. In our view, that legal framework, and the framework by which the Selling Art 6 Country issues its SDM LoAA, Cooperative Approach LoAA and CORSIA LoAA should be the one and the same. However, it is also clear that not many Selling Art 6 Countries have yet adopted such a framework.

This is perhaps because, passing the necessary domestic legislation to establish such a legal framework is primarily necessary in the context of Article 6 where the concept of corresponding adjustment applies. Until Article 6 is operational, how can a country ensure that it was introducing legislation that would be consistent with the Article 6 Guidelines? If Article 6 Guidelines are issued at COP26, we anticipate new legislation being passed by Paris Agreement Countries to essentially nationalise that country's greenhouse gas abatement opportunities.

If, as a result of the Article 6 Guidelines, it is determined that purely voluntary market activity requires a corresponding adjustment, the impact on a Selling Art 6 Country will be significant. From a Paris Agreement accounting perspective, that country will have to make an NDC adjustment. This means there will be one less emission reduction unit that can be used by another country to enhance its ambitions under its NDC. The voluntary market will drain units

8 https://openknowledge.worldbank.org/handle/10986/36303

9 A working group of lead voluntary market participants including the VCS, Gold Standard, ICROA, WWF, CDP, WRI etc.

10 'Envisioning the voluntary carbon market post-2020 – A Working Group Statement for consultation on the future role and design of the voluntary carbon market to support the goals of the Paris Agreement', July 2018

that could otherwise be Article 6 units and raise the cost of Article 6 Units, making it more expensive for Buying Art 6 Countries to meet their NDC compliance obligations.

In short, the compliance markets will have to compete with the voluntary markets to acquire units but it will be the Selling Art 6 Countries that, via their authorisation framework, will have the ability to choose whether such units go to the compliance or purely voluntary markets. Since the compliance markets will need the Article 6 Guidelines before they can become fully operational, the absence of these guidelines gives the voluntary markets a limited time advantage because, for now, they remain the only game in town. However, voluntary market units, without a SDM LoAA or a Cooperative Approach LoAA, cannot be used by a Paris Agreement Country towards its NDC. The Paris Agreement Countries would therefore do well to agree the Article 6 Guidelines at COP26 to ensure that they can raise their ambitions and compete for the acquisition of ITMOs and Art 6.4ERs which could otherwise be used in CORSIA or the purely voluntary markets.

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