

### **III. PROCEDURES AND MECHANISMS ON COMPLIANCE UNDER THE KYOTO PROTOCOL**

#### **Draft decision -/CP.7<sup>44</sup>**

##### **Procedures and mechanisms on compliance under the Kyoto Protocol**

*The Conference of the Parties,*

*Recalling* its decisions 8/CP.4 and 15/CP.5,

*Noting with appreciation* the work done by the Joint Working Group on Compliance on the development of procedures and mechanisms on compliance under the Kyoto Protocol,

*Recognizing* the need to prepare for the early entry into force of the Kyoto Protocol,

*Also recognizing* the need to prepare for the timely operation of the procedures and mechanisms on compliance under the Kyoto Protocol;

1. *Decides* to adopt the procedures and mechanisms on compliance under the Kyoto Protocol annexed hereto;
2. *Recommends* that the Conference of the Parties serving as meeting of the Parties to the Kyoto Protocol, at its first session, adopt procedures and mechanisms relating to compliance in terms of Article 18 of the Kyoto Protocol;
3. *Also recommends* that the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, at its first session, adopt the following decision.

#### **Draft decision -/CMP.1**

##### **Procedures and mechanisms on compliance under the Kyoto Protocol**

*The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,*

*Recalling* decision -/CP.7 (*Procedures and mechanisms on compliance under the Kyoto Protocol*),

*Decides* to confirm decision -/CP.7 (*Procedures and mechanisms on compliance under the Kyoto Protocol*) and to bring the procedures and mechanisms on compliance under the Kyoto Protocol into operation.

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<sup>44</sup> This text was given restricted distribution at the second part of the sixth session under the symbol FCCC/CP/2001/CRP.12/Rev.1.

## ANNEX

### **Procedures and mechanisms on compliance under the Kyoto Protocol**

*In pursuit* of the ultimate objective of the Convention as stated in its Article 2,

*Recalling* the provisions of the Convention and the Kyoto Protocol,

*Being guided* by Article 3 of the Convention,

*Pursuant* to the mandate adopted by decision 8/CP.4 of the Conference of the Parties to the Convention at its fourth session,

The following procedures and mechanisms have been adopted:

#### I. OBJECTIVE

The objective of these procedures and mechanisms is to facilitate, promote and enforce compliance with the commitments under the Kyoto Protocol, hereinafter referred to as “the Protocol”.

#### II. COMPLIANCE COMMITTEE

1. A compliance committee, hereinafter referred to as “the Committee”, is hereby established.
2. The Committee shall function through a plenary, a bureau and two branches, namely, the facilitative branch and the enforcement branch.
3. The Committee shall consist of twenty members elected by the Conference of the Parties serving as the meeting of the Parties to the Protocol, ten of whom are to be elected to serve in the facilitative branch and ten to be elected to serve in the enforcement branch.
4. Each branch shall elect, from among its members and for a term of two years, a chairperson and a vice-chairperson. These persons shall constitute the bureau of the Committee. The chairmanship of each branch shall rotate between Parties included in Annex I and Parties not included in Annex I.
5. For each member of the Committee, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect an alternate member.
6. Members of the Committee and their alternates shall serve in their individual capacities. They shall have recognized competence relating to climate change and in relevant fields such as the scientific, technical, socio-economic or legal fields.
7. The facilitative branch and the enforcement branch shall interact and cooperate in their functioning and, as necessary, on a case-by-case basis, the bureau of the Committee may

designate one or more members of one branch to contribute to the work of the other branch on a non-voting basis.

8. The adoption of decisions by the Committee shall require a quorum of at least three-fourths of the members to be present.

9. The Committee shall make every effort to reach agreement on any decisions by consensus. If all efforts at reaching consensus have been exhausted, the decisions shall as a last resort be adopted by a three-fourths majority vote of the members present and voting. In addition, the adoption of decisions by the enforcement branch shall require a majority of members from Parties included in Annex I present and voting, as well as a majority of members from Parties not included in Annex I present and voting. "Members present and voting" means members present and casting an affirmative or a negative vote.

10. The Committee shall, unless it decides otherwise, meet at least twice each year, taking notice of the desirability of holding such meetings in conjunction with the meetings of the subsidiary bodies under the Convention.

11. The Committee shall take into account any degree of flexibility provided by the Conference of the Parties serving as the meeting of the Parties to the Protocol, pursuant to Article 3, paragraph 6, of the Protocol and taking into account Article 4, paragraph 6, of the Convention, to the Parties included in Annex I undergoing the process of transition to a market economy.

### III. PLENARY OF THE COMMITTEE

1. The plenary shall consist of the members of the facilitative branch and the enforcement branch. The chairperson of each branch shall be co-chairpersons of the plenary.

2. The functions of the plenary shall be:

(a) To report on all its activities, including a list of decisions taken by the branches, to each ordinary session of the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(b) To apply the guidance received from the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(c) To submit proposals on administrative and budgetary matters to the Conference of the Parties serving as the meeting of the Parties to the Protocol for the effective functioning of the Committee;

(d) To develop further rules of procedure, including rules on confidentiality, conflict of interest, submission of information by intergovernmental and non-governmental organizations, and translation, for adoption by the Conference of the Parties serving as the meeting of the Parties to the Protocol by consensus;

(e) To perform such other functions as may be requested by the Conference of the Parties serving as the meeting of the Parties to the Protocol for the effective functioning of the Committee.

#### IV. FACILITATIVE BRANCH

1. The facilitative branch shall be composed of:

(a) One member from each of the five regional groups of the United Nations and one member from the small island developing States, taking into account the interest groups as reflected by the current practice in the Bureau of the Conference of the Parties;

(b) Two members from Parties included in Annex I; and

(c) Two members from Parties not included in Annex I.

2. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect five members for a term of two years and five members for a term of four years. Each time thereafter, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect five new members for a term of four years. Members shall not serve for more than two consecutive terms.

3. The membership of the facilitative branch shall reflect in a balanced manner competence in the fields referred to in section II, paragraph 6, above.

4. The facilitative branch shall be responsible for providing advice and facilitation to Parties in implementing the Protocol, and for promoting compliance of Parties with their commitments under the Protocol, depending on circumstances pertaining to the question before it and taking into account Parties' common but differentiated responsibilities and respective capabilities.

5. The facilitative branch shall be responsible for addressing questions of implementation relating to:

(a) Commitments under Article 3, paragraph 2, of the Protocol;

(b) Commitments under Article 3, paragraph 14, of the Protocol; and

(c) The use of Articles 6, 12 and 17 of the Protocol as supplemental to domestic action.

6. With the aim of promoting compliance and providing for early warning of potential non-compliance, the facilitative branch shall be responsible for providing advice and facilitation for compliance with:

(a) Commitments under Article 3, paragraph 1, of the Protocol, prior to the beginning of the relevant commitment period and during that commitment period;

(b) Commitments under Articles 5, paragraphs 1 and 2, of the Protocol, prior to the beginning of the first commitment period; and

(c) Commitments under Article 7, paragraphs 1 and 4, of the Protocol prior to the beginning of the first commitment period.

7. The facilitative branch shall be responsible for applying the consequences set out in Section XIV below.

## V. ENFORCEMENT BRANCH

1. The enforcement branch shall be composed of:

(a) One member from each of the five regional groups of the United Nations and one member from the small island developing States, taking into account the interest groups as reflected by the current practice in the Bureau of the Conference of the Parties;

(b) Two members from Parties included in Annex I; and

(c) Two members from Parties not included in Annex I.

2. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect five members for a term of two years and five members for a term of four years. Each time thereafter, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect five new members for a term of four years. Members shall not serve for more than two consecutive terms.

3. The members of the enforcement branch shall have legal experience.

4. The enforcement branch shall be responsible for determining whether a Party included in Annex I is:

(a) Not in compliance with commitments under Article 3, paragraph 1, of the Protocol;

(b) Not in compliance with commitments under Article 5, paragraphs 1 and 2, of the Protocol;

(c) Not in compliance with commitments under Article 7, paragraphs 1 and 4, of the Protocol except commitments relating to information for the purposes of ensuring compliance with Article 3, paragraph 14, of the Protocol; and

(d) Not meeting eligibility requirements under Articles 6, 12 and 17 of the Protocol.

5. The enforcement branch shall:

(a) Determine whether to apply adjustments to inventories under Article 5, paragraph 2, of the Protocol, in the event of a disagreement between an expert review team under Article 8 of the Protocol and the Party involved; and

(b) Resolve questions of implementation relating to Article 7, paragraph 4, of the Protocol.

6. The enforcement branch shall be responsible for applying the consequences set out in Section XV below. The application of consequences of non-compliance with Article 3, paragraph 1, of the Protocol shall be aimed at the restoration of non-compliance to ensure environmental integrity, and shall provide for an incentive to comply.

## VI. SUBMISSIONS

1. The Committee shall receive, through the secretariat, questions of implementation indicated in reports of expert review teams under Article 8 of the Protocol, or submitted by:

- (a) Any Party with respect to itself; or
- (b) Any Party with respect to another Party, supported by corroborating information.

2. The secretariat shall forthwith make available to the Party in respect of which the question of implementation is raised, hereinafter referred to as “the Party concerned”, any question of implementation submitted under paragraph 1 above.

3. In addition to the reports referred to in paragraph 1 above, the Committee shall also receive, through the secretariat, other final reports of expert review teams.

## VII. ALLOCATION AND PRELIMINARY EXAMINATION

1. The bureau of the Committee shall allocate questions of implementation to the appropriate branch in accordance with the mandates of each branch set out in section IV, paragraphs 4 and 5, and section V, paragraphs 4, 5 and 6.

2. The relevant branch shall undertake preliminary examination of questions of implementation to ensure that, except in the case of a question raised by a Party with respect to itself, the question before it:

- (a) Is supported by sufficient information;
- (b) Is not *de minimis* or ill-founded; and
- (c) Is based on the requirements of the Protocol.

3. The preliminary examination of questions of implementation shall be completed within three weeks from the date of receipt of these questions by the relevant branch.

4. After the preliminary examination of questions of implementation, the Party concerned shall, through the secretariat, be notified in writing of the decision and, in the event of a decision to proceed, be provided with a statement identifying the question of implementation, the information on which the question is based and the branch that will consider the question.

5. In the event of the review of eligibility requirements for a Party under Articles 6, 12 and 17 of the Protocol, the enforcement branch shall also, through the secretariat, notify the Party concerned in writing of the decision not to proceed with questions of implementation relating to eligibility requirements under those articles.

6. Any decision not to proceed shall be made available by the secretariat to other Parties and to the public.

7. The Party concerned shall be given an opportunity to comment in writing on all information relevant to the question of implementation and the decision to proceed.

### VIII. GENERAL PROCEDURES

1. Following the preliminary examination of questions of implementation, the procedures set out in this section shall apply to the Committee, except where otherwise provided in these procedures and mechanisms.

2. The Party concerned shall be entitled to designate one or more persons to represent it during the consideration of the question of implementation by the relevant branch. This Party shall not participate in the elaboration and adoption of a decision of the branch.

3. Each branch shall base its deliberations on any relevant information provided by:

(a) Reports of the expert review teams under Article 8 of the Protocol;

(b) The Party concerned;

(c) The Party that has submitted a question of implementation with respect to another Party;

(d) Reports of the Conference of the Parties, the Conference of the Parties serving as the meeting of the Parties to the Protocol, and the subsidiary bodies under the Convention and the Protocol; and

(e) The other branch.

4. Competent intergovernmental and non-governmental organizations may submit relevant factual and technical information to the relevant branch.

5. Each branch may seek expert advice.

6. Any information considered by the relevant branch shall be made available to the Party concerned and, subject to any rules relating to confidentiality, to the public. The branch shall indicate to the Party concerned which of this information it has considered. The Party concerned shall be given an opportunity to comment in writing on such information.

7. The relevant branch shall forthwith, through the secretariat, notify the Party concerned in writing of its decision, including conclusions and reasons therefor. The secretariat shall make the decisions available to other Parties and to the public.

8. The Party concerned shall be given an opportunity to comment in writing on any decision of the relevant branch.

9. Any question of implementation submitted under section VI, paragraph 1; any notification under section VII, paragraph 4; any information under paragraph 3 above; and any

decision of the relevant branch, including conclusions and reasons therefor, shall be translated into one of the six official languages of the United Nations, if the Party concerned so requests.

#### IX. PROCEDURES FOR THE ENFORCEMENT BRANCH

1. Within ten weeks from the date of receipt of the notification under section VII, paragraph 4, the Party concerned may make a written submission to the enforcement branch, including rebuttal of information submitted to the branch.
2. If so requested in writing by the Party concerned within ten weeks from the date of receipt of the notification under section VII, paragraph 4, the enforcement branch shall hold a hearing at which the Party concerned shall have the opportunity to present its views. The hearing shall take place within four weeks from the date of receipt of the request or of the written submission under paragraph 1 above, whichever is the later. The Party concerned may present expert testimony or opinion at the hearing. Such a hearing shall be held in public, unless the enforcement branch decides that part or all of the hearing shall take place in private.
3. The enforcement branch may put questions to and seek clarification from the Party concerned, either in the course of such a hearing or at any time in writing, and the Party concerned shall provide a response within six weeks thereafter.
4. Within four weeks from the date of receipt of the written submission of the Party concerned under paragraph 1 above, or within four weeks from the date of any hearing pursuant to paragraph 2 above, or within fourteen weeks from the notification under section VII, paragraph 4, if the Party has not provided a written submission, whichever is the latest, the enforcement branch shall:
  - (a) Adopt a preliminary finding that the Party concerned is not in compliance with commitments under one or more of the articles of the Protocol referred to in section V, paragraph 4; or
  - (b) Otherwise determine not to proceed further with the question.
5. The preliminary finding, or the decision not to proceed, shall include conclusions and reasons therefor.
6. The enforcement branch shall forthwith, through the secretariat, notify the Party concerned in writing of its preliminary finding or decision not to proceed. The secretariat shall make the decision not to proceed available to the other Parties and to the public.
7. Within ten weeks from the date of receipt of the notification of the preliminary finding, the Party concerned may provide a further written submission to the enforcement branch. If the Party concerned does not do so within that period of time, the enforcement branch shall adopt a final decision confirming its preliminary finding.
8. If the Party concerned provides a further written submission, the enforcement branch shall, within four weeks from the date it received the further submission, consider it and adopt a final decision, indicating whether the preliminary finding, as a whole or any part of it to be specified, is confirmed.



9. The final decision shall include conclusions and reasons therefor.
10. The enforcement branch shall forthwith, through the secretariat, notify the Party concerned in writing, of its final decision. The secretariat shall make the final decision available to the other Parties and to the public.
11. The enforcement branch, when the circumstances of an individual case so warrant, may extend any time-frames provided for in this section.
12. Where appropriate, the enforcement branch may, at any time, refer a question of implementation to the facilitative branch for consideration.

#### X. EXPEDITED PROCEDURES FOR THE ENFORCEMENT BRANCH

1. Where a question of implementation relates to eligibility requirements under Articles 6, 12 and 17 of the Protocol, sections VII to IX shall apply, except that:
  - (a) The preliminary examination referred to in section VII, paragraph 2, shall be completed within two weeks from the date of receipt of the question of implementation by the enforcement branch;
  - (b) The Party concerned may make a written submission within four weeks from the date of receipt of the notification under section VII, paragraph 4;
  - (c) If so requested in writing by the Party concerned within two weeks from the date of receipt of the notification under section VII, paragraph 4, the enforcement branch shall hold a hearing as referred to in section IX, paragraph 2, that shall take place within two weeks from the date of receipt of the request or of the written submission under subparagraph (b) above, whichever is the later;
  - (d) The enforcement branch shall adopt its preliminary finding or a decision not to proceed within six weeks of the notification under section VII, paragraph 4, or within two weeks of a hearing under section IX, paragraph 2, whichever is the shorter;
  - (e) The Party concerned may make a written submission within four weeks from the date of receipt of the notification referred to in section IX, paragraph 6;
  - (f) The enforcement branch shall adopt its final decision within two weeks from the date of receipt of any submission referred to in section IX, paragraph 7; and
  - (g) The periods of time stipulated in section IX shall apply only if, in the opinion of the enforcement branch, they do not interfere with the adoption of decisions in accordance with paragraphs 1 (d) and (f) above.
2. Where the eligibility of a Party under Articles 6, 12 and 17 of the Protocol has been suspended and if the Party concerned requests the enforcement branch to reinstate its eligibility, the enforcement branch shall decide on such a request as soon as possible.
3. In the event of a disagreement whether to apply an adjustment to inventories under Article 5, paragraph 2, of the Protocol or questions of implementation relating to Article 7,

paragraph 4, of the Protocol, the enforcement branch shall decide on the matter within twelve weeks of being informed in writing of such disagreement or question of implementation. In doing so, the enforcement branch may seek expert advice.

## XI. APPEALS

1. The Party in respect of which a final decision has been taken may appeal to the Conference of the Parties serving as the meeting of the Parties to the Protocol against a decision of the enforcement branch related to Article 3, paragraph 1, of the Protocol if that Party believes it has been denied due process through a violation of the rules and procedures of the Committee.
2. The appeal shall be lodged with the secretariat of the Conference of the Parties serving as the meeting of the Parties to the Protocol within 45 days after the Party has been informed of the decision of the enforcement branch. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall consider the appeal at its first session after the lodging of the appeal.
3. The Conference of the Parties serving as the meeting of the Parties to the Protocol may agree by a three fourths majority vote of the Parties present and voting at the meeting to override the decision of the enforcement branch, in which event the Conference of the Parties serving as the meeting of the Parties to the Protocol shall refer the matter of the appeal back to the enforcement branch.
4. The decision of the enforcement branch shall be definitive if after 45 days no appeal has been made against it.

## XII. RELATIONSHIP BETWEEN THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE PROTOCOL AND THE COMPLIANCE COMMITTEE

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall:

- (a) Consider the reports of the plenary on the progress of its work;
- (b) Provide general policy guidance, including on any issues regarding implementation that may have implications for the work of the subsidiary bodies under the Protocol; and
- (c) Adopt decisions on proposals on administrative and budgetary matters.

## XIII. ADDITIONAL PERIOD FOR FULFILLING COMMITMENTS

For the purpose of fulfilling commitments under Article 3, paragraph 1, of the Protocol, a Party may, within one month from the date set by the Conference of the Parties serving as the meeting of the Parties to the Protocol for the completion of the expert review process for the last year of the commitment period, continue to acquire, and other Parties may transfer to such Party, emission reduction units, certified emission reductions and assigned amount units under Articles 6, 12 and 17 of the Protocol, respectively, from the preceding commitment period,

provided the eligibility of any such Party has not been suspended in accordance with section XV, paragraph 4.

#### XIV. CONSEQUENCES APPLIED BY THE FACILITATIVE BRANCH

The facilitative branch shall decide on the application of one or more of the following consequences:

- (a) Provision of advice and facilitation of assistance to individual Parties regarding the implementation of the Protocol;
- (b) Facilitation of financial and technical assistance, including technology transfer and capacity-building, taking into account Article 4, paragraphs 3, 4 and 5, of the Convention;
- (c) Formulation of recommendations to the Party concerned, taking into account Article 4, paragraph 7, of the Convention.

#### XV. CONSEQUENCES APPLIED BY THE ENFORCEMENT BRANCH

1. Where the enforcement branch has determined that a Party is not in compliance with Article 5, paragraph 1 or 2, or Article 7, paragraph 1 or 4, of the Protocol, it shall apply the following consequences, taking into account the cause, type, degree and frequency of the non-compliance of that Party:

- (a) Declaration of non-compliance; and
- (b) Development of a plan in accordance with paragraphs 2 and 3 below.

2. The Party not in compliance under paragraph 1 above, shall, within three months after the determination of non-compliance or such other period that the enforcement branch considers appropriate, submit to the enforcement branch for review and assessment a plan that includes:

- (a) An analysis of the causes of non-compliance of the Party;
- (b) Measures that the Party intends to implement in order to remedy the non-compliance; and
- (c) A timetable for implementing such measures within a time-frame not exceeding twelve months which enables the assessment of progress in the implementation.

3. The Party not in compliance under paragraph 1 above, shall submit to the enforcement branch progress reports on the implementation of the plan on a quarterly basis. On the basis of such progress reports, the enforcement branch may decide on the application of further consequences, as appropriate.

4. Where the enforcement branch has determined that a Party does not meet one or more of the eligibility requirements under Articles 6, 12 and 17 of the Protocol, it shall suspend the eligibility of that Party in accordance with relevant provisions under those articles, until the enforcement branch decides to reinstate the eligibility of such a Party.

5. Where the enforcement branch has determined that the emissions of a Party, following the period referred to in section XIII, have exceeded its assigned amount, calculated pursuant to its quantified emission limitation or reduction commitment inscribed in Annex B to the Protocol and in accordance with the provisions of Article 3 of the Protocol as well as the modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Protocol, it shall declare that that Party is not in compliance with commitments under Article 3, paragraph 1, of the Protocol, and apply the following consequences:

(a) Deduction from the Party's assigned amount of the second commitment period of a number of tonnes equal to 1.3 times the amount in tonnes of excess emissions;

(b) Development of a compliance action plan in accordance with paragraphs 6 and 7 below; and

(c) Suspension of the eligibility to make transfers under Article 17 of the Protocol until the Party has demonstrated to the satisfaction of the enforcement branch that it will meet its quantified emission limitation or reduction commitment in the subsequent commitment period.

6. The Party not in compliance under paragraph 5 above, shall, within three months after the determination of non-compliance or such other period that the enforcement branch considers appropriate, submit to the enforcement branch for review and assessment a compliance action plan that includes:

(a) An analysis of the causes of the non-compliance of the Party;

(b) Action that the Party intends to implement in order to meet its quantified emission limitation or reduction commitment in the subsequent commitment period giving priority to domestic policies and measures; and

(c) A timetable for implementing such action within a time-frame that does not exceed three years, or such other shorter period that the enforcement branch considers appropriate, which enables the assessment of annual progress in the implementation.

7. The Party not in compliance under paragraph 5 above, shall submit to the enforcement branch a progress report on the implementation of the compliance action plan on an annual basis.

8. For subsequent commitment periods, the rate referred to in paragraph 5 (a) above shall be determined by an amendment.

#### XVI. RELATIONSHIP WITH ARTICLES 16 AND 19 OF THE PROTOCOL

The procedures and mechanisms on compliance shall operate without prejudice to Articles 16 and 19 of the Protocol.

#### XVII. SECRETARIAT

The secretariat referred to in Article 14 of the Protocol shall serve as the secretariat of the Committee.