

Informal information note by the secretariat:

The compliance procedure with respect to Canada

- 1) On 15 June 2008, after a hearing, the enforcement branch decided not to proceed further with the question of implementation with respect to Canada, which related to the national registry requirements under the Kyoto Protocol. At the hearing, Canada had the opportunity to present its views, and the branch sought advice from independent experts. On 16 June 2008, Canada was given official notification of the decision.
- 2) Canada submitted its initial report to the secretariat on 15 March 2007. The Initial Review Report for Canada was published 11 April 2008. It contained a question of implementation in relation to the registry requirements of the Kyoto Protocol. Canada was given an official notification of the question of implementation on 14 April 2008.
 - a. The question was sent to the Committee by an international team of experts.
 - b. The question relates to Canada's national registry (not to accounting). A national registry is a computerized system used to track holdings of greenhouse gas credits, similar to the computerized accounting system of a bank. Countries with 2012 emissions targets are required to have a registry that meets certain technical standards.
- 3) On 2 May 2008, the enforcement branch decided, after a preliminary examination, to proceed with the question of implementation with respect to Canada, and on 5 May 2008 Canada was given an official notification of the decision.
- 4) At the preliminary examination stage the branch considers only whether the question meets the minimum criteria to proceed to deliberation on the substance of the question.
- 5) The question of implementation with respect to Canada does not relate directly to whether Canada is in compliance with its 2012 emissions target. The consequences below would apply to a Party for non-compliance with registry requirements:
 - a. Declared to be in non-compliance;
 - b. Required to submit a plan to address its non-compliance in 3 months (see para. 5);
 - c. Not eligible to participate in the market mechanisms (Article 17, Emissions Trading; Article 12, Clean Development Mechanism; and Article 6, Joint Implementation).

This means that such a Party cannot sell and transfer credits, and cannot acquire any credits.

What the Compliance Committee does and the rules it follows

- 6) The Compliance Committee is an independent body set up to facilitate, promote and where necessary, enforce compliance with the rules of the Kyoto Protocol. The enforcement branch of the Committee is made up of legal experts from developed and developing countries.
- 7) The members and alternate members of the Compliance Committee take an oath, including a commitment to be impartial and conscientious as well as an undertaking on confidentiality, which would mean that they cannot comment on closed discussions of the branch. The branch is like a court in that it speaks through written decisions.
- 8) The rules relevant to recent and current cases include, for example, that a national system is required to produce a reliable accounting of greenhouse gas (GHG) activity so that a country can demonstrate compliance with its 2012 emissions target and that a country must have a national registry to account for its emissions credits.

- 9) Cases come to the Committee in the form of ‘questions of implementation’ from a Kyoto country or an expert review team (of independent experts from different countries). The branch may and has sought expert advice. In its cases so far, it asked members of the expert review team to present its report and advice, and also asked other independent experts for their advice. The country concerned may also make written submissions, comments and present its views during a hearing.
- 10) In all cases of non-compliance, the enforcement branch of the Compliance Committee makes a public declaration of non-compliance and of the consequences applied.
- 11) Any country in non-compliance must submit a ‘compliance action plan’ within 3 months, which is subject to review and assessment by the enforcement branch (the timing of the review and assessment is case specific, with no specific time frame).
- 12) Countries that are found not to meet the core eligibility criteria for the Kyoto mechanisms (Emissions Trading, Clean Development Mechanism and Joint Implementation) are suspended from trading in the official Kyoto carbon market set up by these mechanisms.
- 13) Non-compliance with emissions targets is not an issue that can come before the enforcement branch until after the end of the commitment period in 2012.
 - a. A country in non-compliance with its 2012 target has 100 days after the expert review of its final emissions inventory to make up any shortfall (i.e., to buy credits).
 - b. If such a country still misses its target, it must make up the difference, plus 30%, in the second commitment period after 2012. It is also suspended from selling emissions credits in the emissions trading mechanism and within 3 months, it must submit a plan on the action it will take to meet second commitment period target.
- 14) There are no financial penalties under the Kyoto Protocol, nor is there any consequence which involves loss of credits (although there is a loss of access to the carbon market).
- 15) Any country found in non-compliance can appeal to the Parties (CMP) against a decision of the enforcement branch, but only for issues relating to its 2012 target. (So an appeal related to a national registry or national system issue may not be accepted.)

Further information

All decisions of the Compliance Committee, and other key documents including a table on eligibility of countries, are available here: http://unfccc.int/kyoto_protocol/compliance/items/2875.php.

Enforcement branch documents are here (recent cases are near the bottom):

http://unfccc.int/kyoto_protocol/compliance/enforcement_branch/items/3785.php.

Disclaimer

This note should not be relied upon for any legal interpretation. It has been prepared with limited use of technical terms and references. This note was updated on 16 June 2008.
