



Canada's withdrawal from the Kyoto Protocol and its effects on Canada's reporting obligations under the Protocol

Note by the secretariat

I. Introduction

1. At its twenty-fourth meeting, the enforcement branch requested the secretariat to prepare a background paper on Canada's withdrawal from the Kyoto Protocol and its effects on Canada's reporting obligations under the Protocol for consideration at its twenty-fifth meeting, with a view to determining whether it would bring the matter to the attention of the plenary.¹
2. This note provides information on the withdrawal by Canada from the Kyoto Protocol as well as on the periodic reports submitted by Canada after its withdrawal from the Protocol took effect. It also discusses some of the issues that the branch may wish to take into account in considering the effect of Canada's withdrawal from the Kyoto Protocol on its reporting obligations under the Protocol.
3. Canada's withdrawal from the Kyoto Protocol had been raised by both the enforcement and facilitative branches at previous meetings. The Annex to this note provides a summary of those discussions.

II. Canada's withdrawal from the Kyoto Protocol

4. Article 27 of the Kyoto Protocol on withdrawal from the Protocol provides as follows:

Article 27

1. At any time after three years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the Depositary.
 2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
 3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol.
5. On 15 December 2011, Canada informed the Depositary that it had decided to withdraw from the Kyoto Protocol. In accordance with Article 27, paragraph 2, of the Protocol, Canada's withdrawal took effect on 15 December 2012.²

¹ CC/EB/24/2014/2, paragraph 10.

² See Depositary Notification C.N.796.2011.TREATIES-1 dated 16 December 2011 available in English (<https://treaties.un.org/doc/Publication/CN/2011/CN.796.2011-Eng.pdf>) and in French (<https://treaties.un.org/doc/Publication/CN/2011/CN.796.2011-Frn.pdf>).



III. Reporting obligations of Parties included in Annex I and the reports submitted by Canada since its withdrawal from the Kyoto Protocol

A. A sixth national communication

6. Article 7, paragraph 2, of the Kyoto Protocol provides that each Party included in Annex I is to incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate its compliance with its commitments under the Kyoto Protocol. Guidelines for reporting of supplementary information under Article 7, paragraph 2, of the Protocol are contained in section II of the annex to decision 15/CMP.1.

7. Paragraph 5 of decision 9/CP.16 requests Parties included in Annex I to the Convention to submit to the secretariat, by 1 January 2014, a sixth national communication (NC6), in accordance with Article 12, paragraphs 1 and 2, of the Convention.

8. Canada submitted its NC6 on 20 December 2012. It further submitted a revised version of its NC6 on 2 April 2014.³ Canada's NC6, including the revised version thereof, does not have any references to elements of the supplementary information described in section II of the annex to decision 15/CMP.1. The Introduction to its NC6, Canada provides that:

Canada is pleased to present its 6th National Communication and 1st Biennial Report on Climate Change for 2014 to meet its reporting requirements under the United Nations Framework Convention on Climate Change (UNFCCC).⁴

9. Greenhouse gas emissions are reported in Canada's NC6 for the period until 2011. Financial information covers the financial periods 2010–2011 and 2012–2013.

B. National inventory reports submitted in 2013 and 2014

10. Article 7, paragraph 1, of the Kyoto Protocol provides that each Party included in Annex I is to incorporate in its national inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3 of the Kyoto Protocol. Guidelines for reporting of supplementary information under Article 7, paragraph 1, of the Protocol can be found in section I of the annex to decision 15/CMP.1.

11. In accordance with paragraph 2 (b) of decision 11/CP.4, national inventory data on emissions of greenhouse gases by sources and removals by sinks shall be submitted on an annual basis by 15 April for the period up to the last but one year prior to the year of

³ The revised version of Canada's NC6 is available from the UNFCCC website in English (http://unfccc.int/files/national_reports/annex_i_natcom/submitted_natcom/application/pdf/can_nc6_br1_eng_rev.pdf) and in French (http://unfccc.int/files/national_reports/annex_i_natcom/submitted_natcom/application/pdf/can_nc6_br1_fre_rev.pdf).

⁴ See the first paragraph of the introduction to Canada's Sixth National Report on Climate Change.



submission. Thus, national inventory data for 2011 was due on 15 April 2013 (the 2013 NIR), and national inventory data for 2012 was due on 15 April 2014 (the 2014 NIR).⁵

12. Canada submitted an English version of its 2013 NIR on 15 April 2013, together with its common reporting format (CRF) tables, and a French version of that report on 15 July 2013.⁶ No supplementary information under Article 7, paragraph 1, of the Kyoto Protocol was incorporated by Canada in its 2013 NIR. Canada submitted an English version of its 2014 NIR on 11 April 2014, together with its CRF tables, and a French version of that report on 16 July 2014. As at 18 August 2014, no supplementary information under the Kyoto Protocol had been provided by Canada.⁷ The forewords to Canada's NIRs submitted in 2013 and 2014 stated that these reports were submitted by Canada under the Convention.

13. Canada's 2013 submission under paragraph 2 (b) of decision 11/CP.4 covered greenhouse gas emissions and sources from 1990 to 2011. It was reviewed in accordance with decision 19/CP.8.⁸ Its 2014 submission covered greenhouse gas emissions and sources from 1990 to 2012. It is planned to be reviewed in accordance with the same decision.

14. Since Canada ceased to be a Party to the Kyoto Protocol on 15 December 2012, the question has been raised regarding the obligation, if any, of Canada to include supplementary information required under Article 7, paragraphs 1 and 2, of the Kyoto Protocol for the period before 15 December 2012 in reports that were due when it was no longer a Party to the Protocol.

IV. Legal framework

15. Since Canada ceased to be a Party to the Kyoto Protocol on 15 December 2012, it will not be under any obligation to further implement the Kyoto Protocol in relation to the second commitment period of the Kyoto Protocol, for example, Annex B commitments and associated reporting requirements. Nor will it be able to exercise the rights of a Party, for example, membership in the bureau of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) and the constituted bodies established under the Kyoto Protocol, subject to the precise membership requirements of those bodies. Notwithstanding its withdrawal from the Kyoto Protocol, Canada remains bound by the mitigation and reporting requirements under the United Nations Framework Convention on Climate Change. As can be seen in the subsequent paragraphs, the effects of Canada's withdrawal from the Protocol on its obligations in relation to the first commitment period are less clear.

⁵ This reporting requirement is based on Article 4, paragraph 1 (a) and Article 12, paragraph 1 (a) of the Convention. See also paragraph 2 (b) of decision 3/CP.1, paragraph 4 (b) of decision 9/CP.2, and paragraph 2 of decision 3/CP.5.

⁶ Information on inventory submissions by Parties included in Annex I to the Convention for 2013 is available on the following page of the UNFCCC website:
http://unfccc.int/national_reports/annex_i_ghg_inventories/national_inventories_submissions/items/7383.php

⁷ Information on inventory submissions by Parties included in Annex I to the Convention for 2014 is available on the following page of the UNFCCC website:
http://unfccc.int/national_reports/annex_i_ghg_inventories/national_inventories_submissions/items/8108.php

⁸ Report of the individual review of the inventory submission of Canada submitted in 2013, document FCCC/ARR/2013/CAN published on 8 April 2014 (<http://unfccc.int/resource/docs/2014/arr/can.pdf>).



16. Article 70 of the Vienna Convention on the Law of Treaties (1969; hereinafter referred to as the VCLT)⁹ sets out the consequences of withdrawal from a treaty:

**Article 70. CONSEQUENCES OF THE TERMINATION
OF A TREATY**

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

- (a) Releases the parties from any obligation further to perform the treaty;
- (b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

17. As the chapeau of Article 70, paragraph 1, of the VCLT provides, the first recourse in determining the consequences of withdrawal from a treaty is to resort to the text of the treaty itself.

18. An example of a treaty that defines the effects of a Party's withdrawal on specific treaty obligations is the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention, 1991).¹⁰ Article 19 of the Espoo Convention provides that:

[a]ny such withdrawal shall not affect the application of Articles 3 to 6 of this Convention to a proposed activity in respect of which a notification has been made pursuant to Article 3, paragraph 1, or a request has been made pursuant to Article 3, paragraph 7, before such withdrawal took effect.

19. Another example can be found in the United Nations Convention on the Law of the Sea (1982),¹¹ which provides, in Article 317, paragraph 2 thereof, that:

[a] State shall not be discharged by reason of the denunciation from the financial and contractual obligations which accrued while it was a Party to this Convention, nor shall the denunciation affect any right, obligation or legal situation of that State created through the execution of this Convention prior to its termination for that State.

20. Article 27 of the Kyoto Protocol does not provide any further guidance on the consequences of withdrawal from the Protocol. In particular, the Article does not indicate whether and which of the provisions of the Protocol would apply to a State that withdraws from the Protocol after it ceases to be a Party. In the absence of such guidance, recourse may be had to the general law on treaties to determine the legal consequences of a State's withdrawal from the Protocol, in particular, Article 70 of the VCLT quoted above.

⁹ United Nations Treaty Series, vol. 1155, p. 331.

¹⁰ United Nations Treaty Series, vol. 1989, p. 309.

¹¹ United Nations Treaty Series, vol. 1833, p. 3.



V. Discussion

A. Reporting obligations relating to the first commitment period of the Kyoto Protocol

21. It appears, in accordance with Article 70, paragraphs 1 (a) and 2, of the VCLT, that from 15 December 2012, Canada no longer had any reporting obligations under the Kyoto Protocol. The question, however, is whether, in accordance with Article 70, paragraph 1 (b), of the VCLT, any obligation or legal situation was created, prior to the date on which the withdrawal by Canada took effect, which was not affected by Canada's subsequent withdrawal from the Kyoto Protocol.

22. In speaking of "any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination," it is not clear whether Article 70, paragraph 1 (b), of the VCLT is referring to a right, obligation or legal situation created by the provisions of the treaty itself, or whether the use of the phrase "through the execution of the treaty" is intended to mean that the source of the right, obligation or legal situation is something that arises during the performance of the treaty.

23. In its commentary on the draft Article 66 of the VCLT (which eventually became Article 70 of the VCLT as adopted),¹² the ILC provided the following explanation:

Subject to any conditions contained in the treaty or agreed between the parties, paragraph 1 provides, first, that the termination of a treaty releases the parties from any obligation further to perform it. Secondly, it provides that the treaty's termination does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination. The Commission appreciated that different opinions are expressed concerning the exact legal basis, after a treaty has been terminated, of rights, obligations or situations resulting from executed provisions of the treaty, but did not find it necessary to take a position on this theoretical point for the purpose of formulating the rule in paragraph 1(a). On the other hand, by the words "any right, obligation or legal situation of the parties created through the execution of the treaty", the Commission wished to make it clear that paragraph 1(b) relates only to the right, obligation or legal situation of the States parties to the treaties created through the execution, and is not in any way concerned with the question of the "vested interests" of individuals.¹³

¹² Article 66 reads as follows:

Article 66. Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present articles:
 - (a) Releases the parties from any obligation further to perform the treaty;
 - (b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

¹³ Paragraph 3 of its commentary on Article 66 of the Draft Article on the Law of Treaties, Yearbook of the International Law Commission, 1966, vol. II,



24. If paragraph 70 (1)(b) is intended to refer to a right, obligation or legal situation arising from the performance of a treaty, then the enforcement branch may wish to ascertain what aspect of performance of the Kyoto Protocol could potentially give rise to an obligation on the part of Canada to report supplementary information in its 2013 and 2014 NIRs and its NC6 in accordance with Article 7, paragraphs 1 and 2, of the Protocol.

25. In the context of the Kyoto Protocol, if one were to assume that paragraph 70 (1)(b) is referring to a right, obligation or legal situation arising from the provisions of the treaty itself, the provisions of the Protocol that could arguably give rise to a right, obligation or legal situation that remains extant after 14 December 2012 are those that relate to substantive obligations that must be reported on by Parties included in Annex I. For instance, under Article 5, paragraph 1, of the Kyoto Protocol, each Party included in Annex I is required to maintain and establish a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Each Party included in Annex I was required to report on its establishment of such a system in its initial report¹⁴ and to describe it as part of the supplementary information incorporated in its NC.¹⁵ Information on changes to such national system was thereafter to be reported on through the supplementary information incorporated in such Party's NIRs.¹⁶

26. To determine whether Canada was required to incorporate supplementary information such as that relating to its national system in its NC6 and its 2013 and 2014 NIRs, the branch may wish to examine the nature of the link between the substantive obligations that existed for Canada prior to 15 December 2012 and the reporting obligations under Article 7, paragraph 1 and 2, of the Kyoto Protocol. There appear to be at least two dimensions to this question, namely:

- (a) Whether the reporting obligations under Article 7, paragraphs 1 and 2, of the Kyoto Protocol were triggered at the same time as the substantive obligations that must be reported on under these Articles; and
- (b) The purpose of the reporting obligations under these Articles.

27. If the reporting obligations were triggered at the same time that the substantive obligations arose, then it could be argued that Canada's reporting obligations, being extensions of the substantive obligations to which the relevant reports related, continued to exist beyond 14 December 2012. If, on the contrary, the reporting obligations are considered as being independent of the substantive obligations, then Canada would appear not to have any reporting obligations under Article 7, paragraph 1 and 2, of the Kyoto Protocol from 15 December 2012.

28. Another aspect that the enforcement branch may wish to consider is the purpose of the reporting obligations under Article 7 of the Kyoto Protocol. Article 7, paragraph 1, of the Kyoto Protocol provides that the necessary supplementary information is to be incorporated in the annual inventory of each Party included in Annex I "for the purposes of ensuring compliance with Article 3." Article 3 of the Kyoto Protocol refers to the quantitative

http://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966[http://legal.un.org/ilc/publications/yearbooks/Ybkvolumes\(e\)/ILC_1966_v2_e.pdf](http://legal.un.org/ilc/publications/yearbooks/Ybkvolumes(e)/ILC_1966_v2_e.pdf).

¹⁴ Paragraph 2, decision 13/CMP.1 and paragraph 6 and 8 (e), annex to decision 13/CMP.1.

¹⁵ Paragraphs 30 and 31, annex to decision 15/CMP.1.

¹⁶ Paragraph 21, annex to decision 15/CMP.1.



emission limitation or reduction commitments for the first commitment period of the Kyoto Protocol. Article 7, paragraph 2, of the Kyoto Protocol requires each Party included in Annex I to incorporate “the supplementary information necessary to demonstrate compliance with its commitments under this Protocol.” Apart from the commitments in Article 3 and the reporting obligations set out in Article 7 of the Kyoto Protocol, Parties to the Protocol also have commitments to undertake programmes and activities in the areas outlined in Article 10 of the Protocol.

29. If Canada did not have any substantive commitments under the Kyoto Protocol from 15 December 2012, the branch may wish to consider whether reporting under Article 7 of the Kyoto Protocol from that date onwards would serve its intended purposes.

30. At least one author is of the view that withdrawal marked the end of all of Canada’s obligations under the Kyoto Protocol. In her article entitled «Le retrait du Canada du Protocole de Kyoto et le droit international public – droit de dénonciation, abus de droit et responsabilité internationale», Geneviève Dufour, stated:

Indépendamment de ces constatations, le retrait du Canada s’est fait en conformité avec les principes de droit international public. *Depuis le 15 décembre 2012, le Canada n’est donc plus lié par ses obligations.*¹⁷

31. In its briefing paper entitled “Implications of Canada’s potential withdrawal from the Kyoto Protocol before the end of the First Commitment Period,” the Legal Response Initiative expressed the following view with regard to the obligation to submit a final inventory report for the first commitment period:

“... a practical consequence of Canada’s withdrawal from the KP prior to the end of the first commitment period is that Canada would avoid having to submit its final national inventory report, due by 15 April 2014, for annual GHG emissions data for the period ending on 31 December 2012.”¹⁸

32. The branch may also wish to note the practical implications of a response to the question set out in paragraph 14 above, in particular, on the review process and on the Compliance Committee.

B. Implications on the review process

33. The response to the question would have implications on the choice of review guidelines (decision 19/CP.8 or decision 22/CMP.1) under which the expert review (ERT) team should review Canada’s NC6 and its 2013 and 2014 NIRs.

¹⁷ Revue québécoise de droit international, vol. 25, pp. 29 to 55, at 53 (emphasis supplied).

¹⁸ See paragraph 6 of the briefing paper (hereinafter referred to as the “LRI Canada briefing paper”), which is available on this page: <http://legalresponseinitiative.org/legaladvice/implications-of-canadas-potential-withdrawal-from-the-kyoto-protocol-before-the-end-of-the-first-commitment-period/>. The authors appear to have intended to refer to the Kyoto Protocol components of Canada’s 2014 inventory report rather than its 2014 NIR per se. As indicated in paragraph 11 above, Canada’s had an obligation to submit its 2014 NIR. The question, with regard to its 2013 and 2014 NIRs, is whether it needed to incorporate supplementary information in them, in accordance with Article 7, paragraph 1, of the Kyoto Protocol.



34. Assuming, for the sake of argument, that the reporting obligations described in paragraphs 6 and 10 above continued to exist for Canada after 14 December 2012, it would be expected that Canada's NC6 and its 2013 and 2014 NIRs would be reviewed in accordance with the guidelines for review under Article 8 of the Kyoto Protocol, which are contained in the annex to decision 22/CMP.1. Since reporting the supplementary information referred to in Article 7, paragraphs 1, and 2 of the Protocol and described in the annex to decision 15/CMP.1 is a mandatory requirement, failure to report such information would be considered by the respective ERTs as a question of implementation¹⁹

35. If, on the other hand, ceasing to be a Party to the Kyoto Protocol implies cessation of any reporting obligations under the Kyoto Protocol, then Canada's reports submitted after 14 December 2012 should be reviewed under Convention guidelines, which are contained in decision 19/CP.8. Under those review guidelines, the concept of a question of implementation does not apply.

C. Implications for the Compliance Committee

Jurisdiction to consider a 'question of implementation' relating to a non-Party

36. If it is assumed that the ERTs reviewing Canada's NC6 and its 2013 and 2014 NIRs are required to review them under decision 22/CMP.1, and that questions of implementation are raised by these ERTs, a further question would be whether the Compliance Committee would have the jurisdiction to consider such 'question of implementation', which would relate to a State that is no longer a Party to the Kyoto Protocol. The response to this question would turn on the question of whether the application of Article 70, paragraph 1 (b), of the VCLT would extend to conferring the Compliance Committee with jurisdiction to consider a 'question of implementation' relating to a non-Party to the Kyoto Protocol.

37. Questions of implementation relating to reporting requirements under Article 7, paragraph 1, of the Kyoto Protocol would fall under the mandate of the enforcement branch,²⁰ while the failure to report information on how a Party is striving to implement Article 3, paragraph 14, of the Protocol as well as information on the use by a Party included in Annex I of Articles 6, 12 and 17 of the Protocol as supplemental to domestic action would fall under the mandate of the facilitative branch.²¹

Authority to apply consequences set out in the annex to decision 27/CMP.1

38. The enforcement branch may also wish to consider whether any such jurisdiction to consider a 'question of implementation' with respect to a non-Party to the Kyoto Protocol also implies the authority to apply consequences arising from a finding of non-compliance,²² and whether any such consequences beyond a declaration of non-compliance could actually be applied and enforced.

¹⁹ Paragraph 8, annex to decision 22/CMP.1.

²⁰ See section V, paragraphs 4 (b) and (c), of the annex to decision 27/CMP.1

²¹ See section IV, paragraphs 5 (a) and (b), of the annex to decision 27/CMP.1. The information referred to in these paragraphs is included in the supplementary information required under Article 7, paragraph 2, of the Kyoto Protocol (see paragraphs 33 and 36 of the annex to decision 15/CMP.1).

²² These consequences are set out in section XIV with regard to the facilitative branch and in section XV, paragraphs 1 to 4, of the annex to decision 27/CMP.1.



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39. On the issues of jurisdiction of the enforcement branch and its the authority to apply consequences arising from a finding of non-compliance, the Legal Response Initiative had this to say:

The first legal implication of Canada's potential withdrawal from the KP prior to the end of the first commitment period is that it would render any enforcement or penalty provisions under the KP inapplicable to Canada. During the one year Cooling Period [i.e., the period between Canada's deposit of its notification of withdrawal from the Kyoto Protocol and the effective date of its withdrawal] Canada would still be bound to strive towards its emissions reduction target for the first commitment period. However, notifying the UN Depository prior to 31 December 2011 of its intention to withdraw from the KP would mean that the enforcement branch of the KP's [Compliance Committee] would have no power under decision 27/CMP.1 to assess Canada's compliance with its annual assigned amount of greenhouse gas ("GHG") emissions. This stems from the fact that the enforcement branch can only assess the compliance of a party to the KP at the end of the first commitment period. If Canada is not a party to the KP at the end of the first commitment period, the enforcement branch would have no jurisdiction to assess Canada's compliance, save perhaps a declaration of non-compliance.²³

40. It will be noted that the quotation in the previous paragraph addresses the question of non-compliance with Article 3, paragraph 1, of the Kyoto Protocol, and not of non-compliance with reporting obligations under the Protocol. However, the language in the first sentence of the same paragraph appears to imply that even consequences relating to non-compliance with these reporting obligations could not be applied, much less enforced, after Canada ceases to be a Party to the Protocol.

41. Taking two examples, on the assumption that the enforcement branch would have jurisdiction both to consider any questions of implementation with respect to Canada and apply the legal consequences arising from a finding of non-compliance:

- (a) If Canada were found by the enforcement branch to be in non-compliance with the reporting requirements under Article 7, paragraph 1, of the Kyoto Protocol in relation to its 2014 NIR, under section XV, paragraph 1 (b), of the annex to decision 27/CMP.1, the enforcement branch could require Canada to submit a plan in accordance with paragraphs 2 and 3 of the same Section. However, as indicated in paragraph 2 of that Section, the focus of such a plan would be on remedies for the non-compliance. Thus, it is not clear, given the purpose of such a plan, whether Canada, which no longer has substantive commitments under the Kyoto Protocol, could be required to submit it, or how submitting such a plan would be useful to Canada. Moreover, the enforcement branch would have no legal recourse in the event that Canada refuses to submit such a plan, or submits a plan that does not meet relevant specifications.
- (b) If Canada were found to be in non-compliance with the one or more of the eligibility requirements under Article 6, 12 and 17 of the Kyoto Protocol, under section XV, paragraph 4, of the annex to decision 27/CMP.1, the enforcement branch could suspend Canada from participation in the mechanisms. However,

²³ LRI Canada briefing paper, paragraph 4.



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Canada is already disconnected from the International Transaction Log and has not been participating in the Kyoto market-based mechanisms since it ceased to be a Party to the Kyoto Protocol.



Annex

Earlier discussion by the branches of the Committee of the matter of Canada's withdrawal from the Kyoto Protocol

I. Discussions in the facilitative branch

1. At the eleventh meeting of the facilitative branch (6 to 8 February 2012), in considering the potential non-compliance by Canada with its quantified emission limitation and reduction commitment for the first commitment period of the Kyoto Protocol, the branch concluded that it was seized of an early warning issue relating to Canada and mandated its chairperson to send a letter to Canada. While it "agreed that the consequences of withdrawal after 15 December 2012 would have to be assessed at a later stage," the facilitative branch noted that "Canada, for the time being, remained a Party to the Kyoto Protocol."¹

2. In response to a letter from the chairperson of the facilitative branch dated 9 February 2012, on 5 April 2012, Canada's Chief Negotiator and Ambassador for Climate Change, referring to the fact that Canada's withdrawal from the Kyoto Protocol would take effect on 15 December 2012, indicated that:

"[a]s a consequence, Canada will no longer be a Party to the Kyoto Protocol when compliance is assessed. On this basis, we are of the view that there is, therefore, little value in further engagement with the facilitative branch at this time."²

3. After considering the correspondence between the chairperson of the facilitative branch and Canada, the branch agreed, upon completion of electronic voting, to conclude its consideration of the matter.³

II. Consideration by the enforcement branch

4. At the twenty-third meeting of the enforcement branch (3 to 4 July 2013), the chairperson drew the attention of the branch to the suggestion by one of the members that the branch may wish to consider the situation potentially arising from the withdrawal by Canada from the Kyoto Protocol, in particular, in light of Article 70 of the Vienna Convention on the Law of Treaties. As indicated in the report on its twenty-third meeting:

"[t]he enforcement branch discussed whether or not to consider the matter and several members expressed the view that it was not within the mandate of the branch. The chairperson concluded that there was no consensus for the matter to be considered by the enforcement branch and indicated that this conclusion was without prejudice to the question of whether the matter was within the respective mandates of the facilitative branch."⁴

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¹ Report on the eleventh meeting of the facilitative branch, CC/FB/11/2012/2, paragraph 14.

² The full text of the correspondence between the chairperson of the facilitative branch and Canada can be found in annex II to the seventh annual report of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (FCCC/KP/CMP/2012/6) and the annex to the report on the twelfth meeting of the facilitative branch, CC/FB/12/2012/3.

³ Report on the twelfth meeting of the facilitative branch, CC/FB/12/2012/3, paragraph 6.

⁴ Report on the twenty-third meeting of the enforcement branch, CC/EB/23/2013/3, paragraph 15.