



**Draft working arrangements relating to the consideration by the enforcement branch of disagreements whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol**

**Note by the chairperson and vice-chairperson**

**I. Introduction**

1. At its twenty-first meeting, the enforcement branch requested the chairperson and vice-chairperson, with the assistance of the secretariat, to develop draft working arrangements relating to the consideration by the branch of disagreements whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol (hereinafter referred to as ‘disagreements whether to apply adjustments’).
2. Section II of this note sets out the proposed text for the working arrangements. Each textual proposal is preceded by an explanation that seeks to contextualize the proposal through recalling any guidance provided by the “Procedures and mechanisms relating to compliance under the Kyoto Protocol;”<sup>1</sup> and the approach taken by the branch on the only disagreement whether to apply adjustments that it has considered to-date; as well as through pointing out gaps in the available guidance and practice. The text of the proposed working arrangements without the accompanying explanations is presented in the Annex to this note.
3. The branch may wish to consider the draft working arrangements set out in the Annex with a view to forwarding draft working arrangements relating to disagreements whether to apply adjustments to the plenary for the latter’s consideration.

**II. Draft working arrangements relating to the consideration by the enforcement branch of disagreements whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol**

**A. Definitions**

4. Rule 2, paragraph (i), of the “Rules of procedure of the Compliance Committee of the Kyoto Protocol (annex to decision 4/CMP.2, as amended by decision 4/CMP.4), defines the term “Party concerned” as “a Party in respect of which a question of implementation is raised.” The term “Party concerned” is also used in the “Good practice guidance and adjustments under Article 5, paragraph 2, of the Kyoto Protocol” (decision 20/CMP.1) to refer to a Party included in Annex I with respect to which an adjustment procedure has been initiated by an expert review team (see paragraph 5). As will be seen below, a disagreement whether to apply adjustments may not always relate to a question of implementation. In that instance, it would be useful to determine how the Party that disagrees with the adjustments calculated and recommended by an expert review team (ERT) should be referred to in order to avoid any confusion.

---

<sup>1</sup> Subsequent references to the procedures and mechanisms, as well as to sections, refer the annex to decision 27/CMP.1.



## COMPLIANCE COMMITTEE

CC/EB/22/2013/2  
19 March 2013

5. Section V, paragraph 5 (a), provides that the enforcement branch shall determine whether to apply “[a]djustments 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.”

6. On the basis of this provision, the branch may wish to consider whether a Party that disagrees with the adjustments calculated and recommended by an ERT should be referred to as a “Party involved” and to decide whether the following definition should be included in the working arrangements:

*1. “Party involved” means a Party that disagrees with adjustments relating to an inventory under Article 5, paragraph 2, of the Kyoto Protocol as calculated and recommended by an expert review team in accordance with the procedures set out in paragraphs 79 to 80 of the “Guidelines for review under Article 8 of the Kyoto Protocol” as contained in the annex to decision 22/CMP.1.*

### **B. Identification of the disagreement**

7. Section VII, paragraph 1, provides that:

[t]he 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 4–7, and section V, paragraphs 4–6.

8. Documentation relating to the disagreement whether to apply adjustments in the case of Slovakia (in particular, the cover note to the report of the review of the annual submission of Slovakia submitted in 2011 (CC-2012-1-1/Slovakia/EB; Slovakia’s 2011 ARR) and the decision on preliminary examination (CC-2012-1-2/Slovakia/EB)) appear to reflect an understanding that disagreements whether to apply adjustments do not require allocation by the bureau, since these are not questions of implementation. In allocating questions of implementation that are indicated in a particular ERT report, the bureau is likely to also identify any disagreement whether to apply adjustments. In the event that no questions of implementation are identified in an ERT report that includes a disagreement whether to apply adjustments, the branch may wish to consider whether the bureau should nevertheless identify such a disagreement.

*2. The bureau shall, within seven days from being notified by the secretariat of a report of an expert review team under Article 8 of the Kyoto Protocol in accordance with section VI, paragraph 1 or 3, identify whether the report includes a disagreement whether to apply adjustments to an inventory under Article 5, paragraph 2, of the Kyoto Protocol.*

### **C. Information in writing of the disagreement**

9. Section X, paragraph 5, of the procedures and mechanisms provides that:

[i]n the event of a disagreement whether to apply adjustments to inventories under Article 5, paragraph 2, of the Protocol, or whether to apply a correction to the compilation and accounting database for the accounting of assigned amounts under Article 7, paragraph 4, of the Protocol, the enforcement branch shall decide on the



## COMPLIANCE COMMITTEE

CC/EB/22/2013/2  
19 March 2013

matter within twelve weeks of being informed in writing of such disagreement. In doing so, the enforcement branch may seek expert advice.

10. Several questions arise in relation to the information in writing of the disagreement, namely:

- (a) Who should inform the branch in writing?
- (b) How should that information be provided?
- (c) When must the branch be informed?

11. The last sentence of the first paragraph of the cover note to Slovakia's 2011 ARR provides as follows:

The secretariat notes that a disagreement over the application of adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol has arisen in light of Slovakia's rejection of the adjustments described in section IV of the report.

12. The decision on a disagreement whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol with respect to Slovakia (CC-2012-1-6/Slovakia/EB) indicates that the enforcement branch considered itself to have been informed in writing of the disagreement upon receipt of Slovakia's 2011 ARR with the cover note (and sentence) referred to in paragraph 11 above. On this occasion, the information in writing was provided after the questions of implementation had been allocated to the enforcement branch. The branch could, in the future, be faced with a situation where a disagreement whether to apply adjustments does not relate to a question of implementation. It would therefore be useful to clarify the time frame within which the information in writing must be sent to the enforcement branch in both situations. In addition, the branch may wish to confirm its understanding of how it expects to be informed in writing of such disagreement.

*3. The secretariat shall forthwith notify members and alternate members of the branch of the disagreement and send them all available materials.*

*4. The secretariat shall also notify members and alternate members of the other branch of the disagreement.*

### **D. Applicable time frames and procedural steps**

#### **1. Disagreements whether to apply adjustments that appear to be related to questions of implementation**

13. In the case of Slovakia, the decision on preliminary examination (CC-2012-1-2/Slovakia/EB) notes that the expedited procedures as contained in section X, paragraphs 1 and 5, differ with respect to time frames and procedural specification. Since the disagreement whether to apply adjustments appeared to be related to one or more of the questions of implementation, the branch considered that "procedural efficiency and clarity, including full procedural safeguards of the Party concerned, are to be ensured by the application of the expedited procedures as contained in paragraph 1 of section X" (paragraph 8). Subsequently, the decision on the matter of the disagreement was adopted on the same date that the



preliminary finding was adopted, thus allowing the branch to take a decision less than nine weeks after being informed in writing of the disagreement.<sup>2</sup>

14. The branch may wish to confirm the general approach that it took with respect to Slovakia, while at the same time maintaining flexibility with regard to the time frame for adoption of the decision on the disagreement, in the event that additional information, or expert advice, is needed. This approach implies that no preliminary finding is envisaged with respect to the disagreement.

*5. If the expert review team report that includes the disagreement also indicates one or more questions of implementation, the enforcement branch shall determine whether the disagreement appears to be related to one or more of these questions.*

*6. If, during its preliminary examination of the questions of implementation referred to in paragraph 5 above, the enforcement branch determines that the disagreement appears to be related to one or more of these questions, the expedited procedures set out in section X, paragraphs 1 (a) to (c), shall apply.*

*7. The decision on the disagreement shall be adopted on or before the adoption of the final decision on the questions of implementation referred to in paragraph 5 above.*

*8. The provisions of section VIII shall apply mutatis mutandis.*

## **2. Standalone disagreements whether to apply adjustments**

15. If the enforcement branch determines, during the preliminary examination, that a disagreement whether to apply adjustments does not relate to any question of implementation that is identified in the ERT report that includes the disagreement, or if such report does not indicate any questions of implementation, the time frames set out in section X, paragraph 5, will apply. However, there is no guidance on steps that the branch should take prior to deciding on the matter of the disagreement.

16. In the case of Slovakia, the branch pointed to the principles of “procedural efficiency and clarity, including full procedural safeguards of the Party concerned” as the rationale for applying the expedited procedure contained in section X, paragraph 1. The opportunities for the Party involved to make a written submission and to request a hearing to present its views guarantee procedural safeguards to that Party. Procedural efficiency and consistency would support using an identical or, at least, similar approach to the one utilized by the branch in the case of Slovakia.

17. With regard to the preliminary examination, the branch may wish to note that section VII, paragraph 2, and section X, paragraph 1 (a), which are referenced in paragraph 10 of its decision on preliminary examination with respect to Slovakia (CC-2012-1-2/Slovakia/EB), refer to the preliminary examination of questions of implementation. The branch may wish to clarify whether it is permitted under the procedures and mechanisms to carry out a

---

<sup>2</sup> The secretariat notified the members and alternate members of the disagreement whether to apply adjustments on 17 May 2012 while the “Decision whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol” (CC-2012-1-6/Slovakia/EB) was taken on 14 July 2012.



## COMPLIANCE COMMITTEE

CC/EB/22/2013/2  
19 March 2013

preliminary examination and whether it considers a preliminary examination necessary or useful in the case of a standalone disagreement.

18. If the branch is inclined to include a preliminary examination of the disagreement whether to apply adjustments in the steps and time frame for considering a disagreement, it may also wish to indicate what the legal consequence of a decision not to proceed would be, i.e., how the disagreement would be resolved in such instance, given that this responsibility has been given to enforcement branch (see paragraph 10 of decision 20/CMP.1 and section X, paragraph 5). Taking into account the twelve-week period set out in section X, paragraph 5, the following steps and time frames could apply:

9. *The procedures set out below shall apply if:*
- (a) *The expert review team report that includes the disagreement does not indicate a question of implementation; or*
  - (b) *During its preliminary examination of the questions of implementation referred to in paragraph 5 above, the enforcement branch determines that the disagreement does not appear to be related to one or more of these questions.*

### Option 1 (twelve weeks including a preliminary examination)

10. *The enforcement branch shall undertake a preliminary examination of the disagreement to ensure that 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.*

11. *The preliminary examination of the disagreement shall be completed within two weeks from the enforcement branch being informed of the disagreement in writing.*

12. *After the preliminary examination of the disagreement, the Party involved 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 disagreement and the information on which the disagreement is based. Any decision not to proceed shall be made available by the secretariat to other Parties and to the public.*

13. *The Party involved may make a written submission within four weeks from the date of receipt of the notification referred to in paragraph 12 above.*

14. *If so requested in writing by the Party within two weeks from the date of receipt of the notification referred to in paragraph 12 above, the enforcement branch shall hold a hearing that shall take place within two weeks from the date of receipt of the request or the written submission under paragraph 13 above, whichever is the later. The Party involved may present expert testimony or opinion at the hearing. Such a hearing shall be held in public, unless the enforcement branch decides, of its own accord or at the*



## COMPLIANCE COMMITTEE

CC/EB/22/2013/2  
19 March 2013

*request of the Party concerned, that part or all of the hearing shall take place in private. The provisions of rule 25 shall also apply with respect to such a hearing.*

15. *The enforcement branch shall adopt its decision within four weeks from the hearing referred to in paragraph 14 above.*

16. *A Party may, at any time before the adoption of the decision referred to in paragraph 15 above, accept in writing the adjustments as calculated and recommended by the expert review team. Such acceptance shall result in the resolution of the disagreement and shall be noted by the enforcement branch in its decision.*

17. *The provisions of section VIII shall apply mutatis mutandis.*

### Option 2 (twelve weeks without a preliminary examination)

10. *After the identification by the bureau of the disagreement, the Party involved shall, through the secretariat, be notified in writing of the disagreement and the information on which the disagreement is based.*

11. *The Party involved may make a written submission within four weeks from the date of receipt of the notification referred to in paragraph 10 above.*

12. *If so requested in writing by the Party within four weeks from the date of receipt of the notification referred to in paragraph 10 above, the enforcement branch shall hold a hearing that shall take place within four weeks from the date of receipt of the request or the written submission under paragraph 11 above, whichever is the later. The Party involved may present expert testimony or opinion at the hearing. Such a hearing shall be held in public, unless the enforcement branch decides, of its own accord or at the request of the Party concerned, that part or all of the hearing shall take place in private. The provisions of rule 25 shall also apply with respect to such a hearing.*

13. *The enforcement branch shall adopt its decision within four weeks from the hearing referred to in paragraph 12 above.*

14. *A Party may, at any time before the adoption of the decision referred to in paragraph 13 above, accept in writing of the adjustments as calculated and recommended by the expert review team. Such acceptance shall result in the resolution of the disagreement and shall be noted by the enforcement branch in its decision.*

15. *The provisions of section VIII, paragraphs 2 to 9, shall apply mutatis mutandis.*

### **E. Expert advice and the role of the expert review team in the branch's consideration of the disagreement**

19. At its eighteenth meeting, the branch adopted conclusions relating to the types of experts that would normally be invited for particular purposes.<sup>3</sup> The branch may wish to agree, in the context of its next stocktaking exercise, on the types of experts that would be

<sup>3</sup> See the I.3 (a), annotated list of stocktaking issues for the enforcement branch, Annex to the provisional agenda and annotations for the twenty-second meeting of the enforcement branch, CC/EB/22/2013/1.



**COMPLIANCE COMMITTEE**

**CC/EB/22/2013/2  
19 March 2013**

invited in relation to its consideration of any disagreement on adjustments. These experts could include:

- (a) One of the lead reviewers of the ERT that calculated and recommended the adjustments;
- (b) The specialist of the ERT in the sector to which all or most of the proposed adjustments on which there are disagreements with the Party were calculated; and
- (c) One expert who was not part of the ERT who is a specialist in the sector to which all or most of the proposed adjustments on which there are disagreements with the Party were calculated.

20. In its consideration of the disagreement whether to apply adjustments in relation to Slovakia's 2011 annual submission, one of the experts invited by the branch was one of the lead reviewers of the ERT that calculated and recommended adjustments that Slovakia rejected. When additional information was presented by Slovakia in relation to the estimation of emissions from road transportation referred to in paragraph 2 (a) of the decision on the disagreement (CC-2012-1-6/Slovakia/EB), the experts indicated that, in view of the updated information provided by Slovakia at the hearing, the adjustments recommended by the ERT with respect to emissions from road transport were no longer necessary (see paragraph 13 of the decision).

21. In arriving at such a conclusion, the branch discussed whether the ERT that calculated and recommended the adjustments that had been rejected by the Party could be invited to express its views on the disagreement, in particular, if any new information presented by a Party involved could potentially resolve the disagreement. The branch may wish to note, in this regard, that an ERT is responsible for performing the review of a submission under Article 7 of the Kyoto Protocol in accordance with the procedures and time frames established in the annex to decision 22/CMP.1. Paragraph 20 of the annex to decision 22/CMP.1 provides that "[e]ach submission under Article 7 shall be assigned to a single expert review team that shall be responsible for performing the review in accordance with the procedures and time frames established in these guidelines. A submission by a Party included in Annex I shall not be reviewed in two successive review years by expert review teams with identical composition." Thus, upon completion of the individual review of a Party's annual submission and the publication of the relevant review report, a particular ERT is considered to have discharged its responsibilities and is deemed to have been dissolved.



Annex

**Draft working arrangements relating to the consideration by  
the enforcement branch of disagreements whether to apply  
adjustments to inventories under Article 5, paragraph 2,  
of the Kyoto Protocol**

**I. Definitions**

1. “Party involved” means a Party that disagrees with adjustments relating to an inventory under Article 5, paragraph 2, of the Kyoto Protocol as calculated and recommended by an expert review team in accordance with the procedures set out in paragraphs 79 to 80 of the “Guidelines for review under Article 8 of the Kyoto Protocol” as contained in the annex to decision 22/CMP.1.

**II. Identification of a disagreement and information in writing**

2. The bureau shall, within seven days from being notified by the secretariat of a report of an expert review team under Article 8 of the Kyoto Protocol in accordance with section VI, paragraph 1 or 3, identify whether the report includes a disagreement whether to apply adjustments to an inventory under Article 5, paragraph 2, of the Kyoto Protocol.

3. The secretariat shall forthwith notify members and alternate members of the branch of the disagreement and send them all available materials.

4. The secretariat shall also notify members and alternate members of the other branch of the disagreement.

**III. Applicable time frames and procedural steps**

**A. Disagreements whether to apply adjustments that appear to be related  
to the questions of implementation**

5. If the expert review team report that includes the disagreement also indicates one or more questions of implementation, the enforcement branch shall determine whether the disagreement appears to be related to one or more of these questions.

6. If, during its preliminary examination of the questions of implementation referred to in paragraph 5 above, the enforcement branch determines that the disagreement appears to be related to one or more of these questions, the expedited procedures set out in section X, paragraphs 1 (a) to (c), shall apply.

7. The decision on the disagreement shall be adopted on or before the adoption of the final decision on the questions of implementation referred to in paragraph 5 above.

8. The provisions of section VIII shall apply mutatis mutandis.





**B. Standalone disagreements whether to apply adjustments**

9. The procedures set out below shall apply if:
- (a) The expert review team report that includes the disagreement does not indicate a question of implementation; or
  - (b) During its preliminary examination of the questions of implementation referred to in paragraph 5 above, the enforcement branch determines that the disagreement does not appear to be related to one or more of these questions.

Option 1 (twelve weeks including a preliminary examination)

10. The enforcement branch shall undertake a preliminary examination of the disagreement to ensure that 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.
11. The preliminary examination of the disagreement shall be completed within two weeks from the enforcement branch being informed of the disagreement in writing.
12. After the preliminary examination of the disagreement, the Party involved 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 disagreement and the information on which the disagreement is based. Any decision not to proceed shall be made available by the secretariat to other Parties and to the public.
13. The Party involved may make a written submission within four weeks from the date of receipt of the notification referred to in paragraph 12 above.
14. If so requested in writing by the Party within two weeks from the date of receipt of the notification referred to in paragraph 12 above, the enforcement branch shall hold a hearing that shall take place within two weeks from the date of receipt of the request or the written submission under paragraph 13 above, whichever is the later. The Party involved may present expert testimony or opinion at the hearing. Such a hearing shall be held in public, unless the enforcement branch decides, of its own accord or at the request of the Party concerned, that part or all of the hearing shall take place in private. The provisions of rule 25 shall also apply with respect to such a hearing.
15. The enforcement branch shall adopt its decision within four weeks from the hearing referred to in paragraph 14 above.
16. A Party may, at any time before the adoption of the decision referred to in paragraph 15 above, accept in writing the adjustments as calculated and recommended by



**COMPLIANCE COMMITTEE**

**CC/EB/22/2013/2  
19 March 2013**

the expert review team. Such acceptance shall result in the resolution of the disagreement and shall be noted by the enforcement branch in its decision.

17. The provisions of section VIII shall apply *mutatis mutandis*.

Option 2 (twelve weeks without a preliminary examination)

10. After the identification by the bureau of the disagreement, the Party involved shall, through the secretariat, be notified in writing of the disagreement and the information on which the disagreement is based.

11. The Party involved may make a written submission within four weeks from the date of receipt of the notification referred to in paragraph 10 above.

12. If so requested in writing by the Party within four weeks from the date of receipt of the notification referred to in paragraph 10 above, the enforcement branch shall hold a hearing that shall take place within four weeks from the date of receipt of the request or the written submission under paragraph 11 above, whichever is the later. The Party involved may present expert testimony or opinion at the hearing. Such a hearing shall be held in public, unless the enforcement branch decides, of its own accord or at the request of the Party concerned, that part or all of the hearing shall take place in private. The provisions of rule 25 shall also apply with respect to such a hearing.

13. The enforcement branch shall adopt its decision within four weeks from the hearing referred to in paragraph 12 above.

14. A Party may, at any time before the adoption of the decision referred to in paragraph 13 above, accept in writing of the adjustments as calculated and recommended by the expert review team. Such acceptance shall result in the resolution of the disagreement and shall be noted by the enforcement branch in its decision.

15. The provisions of section VIII, paragraphs 2 to 9, shall apply *mutatis mutandis*.

- - - - -