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**METHODOLOGICAL ISSUES**

**ISSUES RELATING TO ARTICLES 5, 7 AND 8 OF THE KYOTO PROTOCOL**

**Treatment of confidential data in the technical review of greenhouse gas inventories**

**Note by the secretariat**

**Summary**

In response to a request by the Subsidiary Body for Scientific and Technological Advice, this paper reviews experience with confidential information in the greenhouse gas inventory review process, and proposes elements of a code of practice on the treatment of confidential information to be applied in the inventory review process for Annex I Parties under the Convention and under Article 8 of the Kyoto Protocol.

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## I. INTRODUCTION

### A. Mandate

1. The Subsidiary Body for Scientific and Technological Advice (SBSTA), at its seventeenth session, took note of the information contained in the submissions of Parties on the treatment of confidential information provided during the review of greenhouse gas inventories under Article 8 of the Kyoto Protocol (FCCC/SBSTA/2002/MISC.16), and decided to defer consideration of this matter to its eighteenth session. It requested the secretariat to prepare a paper on experience with current review activities and containing a draft code of practice on the treatment of confidential information, for consideration at its eighteenth session.

2. At the same session, the SBSTA decided to consider this matter, as it relates to the review of greenhouse gas inventories under the Convention, in conjunction with its consideration under Article 8 of the Kyoto Protocol, at its eighteenth session.

### B. Scope of the note

3. This paper is intended to facilitate consideration of the treatment of confidential information in the greenhouse gas (GHG) inventory review of Annex I Parties under the Convention and Article 8 of the Kyoto Protocol. It provides an overview of experience with confidential information in the technical review of inventories, and proposes elements of a code of practice to be applied in the inventory review process for Annex I Parties. It was developed taking into account the experience with the trial period of inventory review, the practices of other international agreements in handling confidential information<sup>1</sup> and the views of Parties on this matter. It does not propose any definition or criteria for what information a Party may designate as confidential.

### C. Possible action by the SBSTA

4. Parties are invited to consider the issues raised in this paper and to endorse or modify the proposed code of practice, with a view to the SBSTA completing work on this matter at its eighteenth session and forwarding a decision for adoption by the Conference of the Parties (COP) at its ninth session.

## II. EXPERIENCE WITH CONFIDENTIAL INFORMATION IN INVENTORY REVIEWS

5. The inventory reporting and review procedures under the Convention and the Kyoto Protocol are founded, inter alia, on the principle of transparency. Provision of complete and transparent inventory information is necessary for accurate assessment of emissions levels, and for evaluating Parties' progress in implementing the Convention. In addition, under the Kyoto Protocol, reporting of emission inventories is the basis for assessing compliance and a requirement for participation in the Kyoto mechanisms.

6. However, for some sources, inventory information may be considered sensitive or confidential by the Party concerned. Both the Convention<sup>2</sup> and the Kyoto Protocol recognize this possibility. Rather than exclude this information from reporting and review, Parties have decided, in the guidelines for

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<sup>1</sup> See document FCCC/SBSTA/TP/2002/2.

<sup>2</sup> Article 12, paragraph 9, of the UNFCCC provides: "Information received by the secretariat that is designated by a Party as confidential, in accordance with criteria to be established by the Conference of Parties, shall be aggregated by the secretariat to protect its confidentiality before being made available to any of the bodies involved in the communication and review of information."

review under Article 8 of the Protocol, to establish rules and procedures to protect confidential information in the review process and prevent its unauthorized disclosure.<sup>3</sup>

7. Experience with GHG inventory information to date suggests that the amount of inventory information considered confidential by Annex I Parties is small. In the years 2000–2002, only 13 Parties cited confidentiality claims regarding information included in their inventory submissions or aggregated data to prevent disclosure of individual data points. Confidential information is primarily an issue for the industrial processes sector, although a few countries have cited confidentiality issues regarding emissions in the energy sector. In addition, experience with the review process shows that some countries have been willing to give expert review teams access to confidential information during an in-country review. Table 1 provides an overview of the inventory sectors and sources where information was designated as confidential in the 2000–2002 common reporting format (CRF) submissions.

8. Although the amount of confidential information provided by Annex I Parties is small compared to the amount of non-confidential information, it may increase with the establishment of procedures to protect confidential information under the Convention and the Kyoto Protocol. Nonetheless, the overall scale of confidential information in GHG inventories is expected to remain small relative to the amount of non-confidential information submitted and reviewed.

**Table 1. Summary of confidential inventory information in the common reporting format**

Sector	Sub-sector	Source	Number of Parties
Energy	Stationary combustion	Reference approach	1
	Stationary combustion	Feedstocks and non-energy use of fuels	1
	Fugitive emissions	Solid fuels	2
Industrial processes	Mineral products	Cement production, lime production, limestone and dolomite use, asphalt roofing, road paving with asphalt, glass production	2
	Chemical industry	Ammonia production, nitric acid production, adipic acid production, carbide production, carbon black, styrene	6
	Metal production	Iron and steel, aluminium production, aluminium foundries, magnesium foundries	6
	Production of halocarbons and SF <sub>6</sub>	Production of HCFC-22	1
	Consumption of halocarbons and SF <sub>6</sub>	Ozone depleting substances (ODS) substitutes, semiconductor manufacture, total potential emissions	5

<sup>3</sup> Paragraph 9 of the guidelines for review under Article 8, annexed to decision 23/CP.7, provides: “Pursuant to a request from the expert review team for additional data or information or access to data used in the preparation of the inventory, a Party included in Annex I may indicate whether such information and data are confidential. In such a case, the Party should provide the basis for protecting such information, including any domestic law, and upon receipt of assurance that the data will be maintained as confidential by the expert review team, shall submit the confidential data in accordance with domestic law and in a manner that allows the expert review team access to sufficient information and data for the assessment of conformity with the IPCC Guidelines as elaborated by the IPCC good practice guidance and any good practice guidance adopted by the COP/MOP. Any confidential information and data submitted by a Party in accordance with this paragraph shall be maintained as confidential by the expert review team, in accordance with any decisions on this matter adopted by the COP/MOP.” (FCCC/CP/2001/13/Add.3).

### **III. PROPOSED CODE OF PRACTICE**

9. The remainder of this document lays out a proposal for a draft code of practice for the treatment of confidential information in the inventory review process for Annex I Parties. The proposal covers submission of confidential information, secretariat procedures for handling such information and authorization of review team members to access this information during an inventory review. The proposed text of the draft code of practice is contained in the annex to this document.

10. If approved, the code of practice would be the basis for further development by the secretariat of procedures for submission, processing and handling of information designated as confidential by an Annex I Party, and for access to this information by expert reviewers under the Convention and the Kyoto Protocol. Pending the availability of resources, provisions in the code of practice would be fully implemented for the inventory review process starting in 2005. General information on the secretariat's procedures to protect confidential information, including the code of practice, would be made publicly available on the secretariat web site.

#### **A. Provision of confidential information**

11. There are two ways in which confidential information could be provided for consideration in the inventory review process. Confidential information might be voluntarily submitted by an Annex I Party as part of a normal inventory submission. Alternatively, the Party may provide confidential information, or access to confidential information, to an expert review team during the course of an inventory review. In either case, designation of the information as confidential should be considered valid. For purposes of this paper and the proposed code of practice, 'provision of confidential information' covers both the above-mentioned cases.

12. To facilitate data processing by the secretariat, and the transparent publication of inventory data, inventory information designated as confidential by a Party should be submitted separately from non-confidential information. This would greatly minimize the risk of accidental exposure of confidential information during normal inventory processing and publication, and would minimize the amount of data subject to confidentiality procedures because the whole inventory would not need to be treated as confidential.

13. Confidential inventory information should be submitted in hard copy only. Although it would be feasible to develop procedures and encryption for protection of electronically submitted confidential information, this may not be the best use of resources at this time, given the small amount of data that may be designated as confidential. Electronic procedures for handling confidential information could be developed in the future, if the need arises and Parties want such procedures.

14. Submission of information considered confidential by a Party should be preceded by an official notification by the Party that such information is considered confidential. The notification should be accompanied by documentation of the Party's basis for protecting the information (e.g. relevant national law), together with a note on the time frame for which the Party wishes the information to be treated as confidential. This notification would not be required again for subsequent submissions of the same information.

15. The secretariat would officially acknowledge receipt of such a notification and provide a written assurance that the information will be protected in accordance with established procedures.

#### **B. Handling of confidential information by the secretariat**

16. All secretariat staff are subject to United Nations regulations and standards of conduct, even after termination of the employment contract. These cover integrity, independence, impartiality and the exercise of discretion in the performance of official duties, and contain specific provisions that prohibit

staff from disclosing information made known to them in their official role. In addition, information designated as confidential would be subject to strict procedures for storage and handling.

17. The secretariat would establish a written plan for handling confidential information, based on the code of practice adopted by Parties. The plan would clearly set out responsibilities and procedures, and cover the following elements:

- (a) Designation of an officer with responsibility for managing the storage, access to and distribution of confidential information;
- (b) Development of procedures for logging and control of confidential information;
- (c) Details of storage requirements (e.g. hard copies of information would kept in a secure, locked location);
- (d) Rules and procedures for access to and use of confidential information (e.g. authorization and supervision of staff, restrictions on copying documents);
- (e) Training of individual designated staff on their specific responsibilities and on procedures for handling confidential information.

#### **C. Access to confidential information by members of an expert review team**

18. In general, protection of confidential information can best be ensured when access by authorized experts is granted only under the direct supervision of the secretariat or of the submitting Party. For this reason, information designated as confidential should not be distributed to reviewers in advance of a review, but should only be made available to review teams during a centralized review or during an in-country review of the Party concerned.

19. During a centralized review, access to and handling of confidential information would be in accordance with secretariat procedures. During an in-country review, access to this information by authorized experts would be governed by the secretariat's procedures (if the information was submitted by the Party in advance of the review) or by the procedures of the Party (if the data had not been previously submitted). Confidential information would not actually be distributed to the experts in either case, but could only be viewed and handled in the presence of the Party and/or secretariat.

20. During a desk review inventory materials are distributed to reviewers off-site and so the secretariat has no ability to ensure that any confidential information is adequately protected. Therefore, confidential information would not be provided to review teams during a desk review. This restriction would not limit the overall effectiveness of the inventory review process because, under the review guidelines, desk reviews occur only during the two years immediately following an in-country review.

#### **D. Authorization of expert review team members**

21. In order to minimize the risk of unauthorized disclosure, access to confidential information should be limited to the minimum necessary number of experts. Because of their special role in guiding the work of review teams, lead reviewers are likely to require access to confidential information. Additionally, certain sector experts may need access. Experience suggest that confidentiality issues arise mainly in the industrial processes sector, but occasionally in energy and other sectors. Therefore, the secretariat proposes that only lead reviewers, industrial processes experts, and other experts as needed, should be authorized to handle confidential information.

22. The secretariat would develop training and testing procedures, which reviewers must successfully complete before they would be authorized to review confidential information.<sup>4</sup> Additionally, it is recommended that all reviewers should be required to sign an agreement governing their participation in a review, and specifying general terms of service, responsibilities and conduct for expert review team members (see paragraphs 24–26 below). This agreement would include an obligation for experts not to disclose any confidential information during or after the period of service.

#### **E. Review reports**

23. If a review team considers confidential inventory information in the course of a review, this fact should be noted in the report together with any relevant conclusions regarding the review. However, the review team (and secretariat) must ensure that the confidentiality of the underlying information is not compromised by the report. All documentation or analyses of the review team pertaining to the confidential information must also be considered confidential, and must be stored by the secretariat according to the procedures outlined in this paper.

### **IV. RELATIONSHIP TO OTHER GHG INVENTORY REVIEW ISSUES**

24. Development of procedures to protect confidential inventory information should be considered in the context of the overall inventory review process. Because of the importance of this process to the Convention and the Protocol, secretariat officials and review team members should be held to a high standard of ethical conduct and professionalism. As the review process improves and intensifies, reviewers will be expected to demonstrate a high degree of technical proficiency, to meet strict deadlines and to follow standardized procedures in the performance of their duties.

25. For this reason, procedures to protect confidential information should be developed as part of a broader set of procedures or standards to promote the professional conduct of expert review teams. Review team members serve in their personal capacity but are nominated by their governments. Therefore, any violation of appropriate standards of conduct should be reported to the nominating Party.

26. In particular, additional standards may be needed with respect to the appropriate use and disclosure of information received during a review. In many cases, reviewers will have access to information that, although perhaps not confidential, is not accessible to the general public, and may be considered sensitive by the Annex I Party concerned, particularly if a review process is ongoing.

27. These issues go beyond the protection of confidential information, and therefore are not discussed further in this paper. However, as the SBSTA, at its seventeenth session, also decided to consider ways to ensure and improve the competence, professionalism and performance of experts and lead reviewers participating in expert review teams, Parties may wish to consider these issues further in that context. To facilitate such consideration by the SBSTA, the secretariat intends to provide possible elements for an Agreement for Expert Review Services, including provisions for protection of confidential information, for the eighteenth session.

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<sup>4</sup> To minimize costs, this training would be made available only to those experts with a need to access confidential information, as indicated in paragraph 21. See also the proposal for a training programme contained in document FCCC/SBSTA/2003/3.

Annex

**PROPOSED CODE OF PRACTICE FOR THE TREATMENT OF CONFIDENTIAL INFORMATION IN THE ANNEX I GREENHOUSE GAS INVENTORY REVIEW PROCESS**

1. Prior to the provision of specific national greenhouse gas inventory information that a Party included in Annex I wishes to be considered as confidential, that Party may assert a confidentiality claim by submitting a notification, signed by the appropriate focal point (national or inventory), indicating that the information is considered confidential and requesting that it be protected subject to the procedures in this code of practice. The assertion of confidentiality shall be accompanied by documentation of the Party's basis for such protection, including applicable laws and regulations.
2. The secretariat shall confirm receipt of an assertion of confidentiality and provide a written assurance to the Party that the information will be protected in accordance with these procedures.
3. Any confidential information shall be submitted separately from other inventory information in hard copy only, and shall be clearly designated as confidential by the Party.
4. The secretariat shall ensure that any inventory information that it receives in the course of the inventory reporting and review process, which has been designated as confidential by the Party in accordance with paragraphs 1–3 above, is protected in accordance with these procedures.
5. Information designated as confidential shall be stored in a secure, locked location. Only authorized staff and review personnel shall be given access to this information, in accordance with procedures to be established.
6. Information designated as confidential shall not be distributed or disclosed to non-authorized individuals and shall not be distributed beyond the secretariat's control.
7. Secretariat staff with a need to handle information designated as confidential shall be trained in responsibilities and procedures to protect the confidentiality of such information.
8. Expert review team members with a need to handle information designated as confidential shall be trained and tested on responsibilities and procedures to protect the confidentiality of such information.
9. All review team members shall be required to sign an Agreement for Expert Review Services, which shall include provisions for protection of confidential information. The obligation of a review team member to protect confidential information shall continue after completion of his/her services.
10. If an Annex I Party chooses to give an expert review team access to information it considers confidential during an in-country review visit, access to the information would be under the supervision of the Party and in accordance with the Party's own procedures. In such a case, the expert review team members shall still be obliged to protect confidential information, in accordance with the Agreement for Expert Review Services.
11. Any documentation developed by the secretariat or by the review team which contains information designated as confidential shall also be considered confidential and shall be handled in accordance with the above procedures.
12. The secretariat shall make publicly available information on its policies and procedures to protect confidential information, including this code of practice.

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