

FCCC/SB/2000/CRP.7

10 September 2000

ENGLISH ONLY

SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE

Thirteenth session

Lyon, 11-15 September 2000

Agenda item 5

SUBSIDIARY BODY FOR IMPLEMENTATION

Thirteenth session

Lyon, 11-15 September 2000

Agenda item 5

**PROCEDURES AND MECHANISMS RELATING TO COMPLIANCE
UNDER THE KYOTO PROTOCOL**

Text by the Co-Chairmen of the Joint Working Group on Compliance

**[PROCEDURES AND MECHANISMS RELATED
TO COMPLIANCE UNDER THE KYOTO PROTOCOL]**

[A COMPLIANCE SYSTEM FOR THE KYOTO PROTOCOL]

Section II. Establishment and structure

Compliance Committee

1. A Compliance Committee (hereinafter referred to as the "Committee") is hereby established.
2. The Committee shall consist of two branches, namely, the facilitative branch and the enforcement branch.
3. The Committee shall consist of [15] members, elected by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP) based on nomination by Parties, to act in their personal capacity. Members shall have recognized competence in relevant fields, such as the scientific, technical, socio-economic and legal fields.

LYS.00-00101

4. The Committee shall constitute a Bureau consisting of [...] members, [...] to be chosen from the facilitative branch and [...] from the enforcement branch.

5. 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 may designate one or more members of one branch to participate in the work of the other branch.

Facilitative branch

6. The facilitative branch shall consist of [10] members of the Committee elected by the COP/MOP on the basis of [equitable geographical representation ...*], [five] of whom shall be elected at the first session of the COP/MOP, for a term of two years, and [five] members for a term of four years. At each biennium thereafter, the COP/MOP shall elect [five] new members for a term of four years. Outgoing members may be re-elected for one consecutive term.

7. The membership of the facilitative branch shall reflect competence in the fields referred to in paragraph 3 of this section.

8. The facilitative branch shall be responsible for promoting compliance and providing advice and facilitation concerning individual Parties' implementation of commitments under the Protocol.

9. The facilitative branch shall follow the procedure set out in section III, paragraphs 7 to 15.

10. [The multilateral consultative process referred to in Article 16 of the Kyoto Protocol may be designated to perform the responsibility of the facilitative branch.]

Enforcement branch

11. The enforcement branch shall consist of [five] members of the Committee elected by the COP/MOP on the basis of [equitable geographical representation ...*] [one half from among Annex I Parties and one half from among non-Annex I Parties] [a larger representation from Annex I Parties]. The COP/MOP shall, at its first session, elect [two] members for a term of two years and [three] members for a term of four years. At each biennium thereafter, the COP/MOP shall alternately elect [two] or [three] new members, as appropriate, for a term of four years. Outgoing members may be re-elected for one consecutive term.

12. The majority of the members of the enforcement branch shall have legal experience.

13. The enforcement branch shall be responsible for:

* Equitable geographical representation is to be clarified.

- (a) Determining whether a[n Annex I] Party is in non-compliance with Articles 3.1 [2 and 3] [3.14] ;
- [(b) Determining whether a[n Annex I] Party is in non-compliance with Articles 5 and 7];
- (c) Resolving any disagreement that may arise concerning the application of adjustments to inventories under Article 5.2 and adjustments to baselines under Article 7.4;
- (d) Determining whether a [n Annex I] Party [is] [is not] meeting the eligibility requirements of Articles 6, 12 and 17 of the Protocol;
- (e) [Determining whether to apply] [Applying] the consequences set out in section IV, paragraph..., with respect to Annex I Parties.

14. The enforcement branch shall follow the procedures set out in section III, paragraphs 7 to 31.

[15. The proceedings of the enforcement branch shall apply to Annex I Parties only.]

Section III. Procedures

Submission of questions of implementation

1. The Committee may receive questions of implementation indicated in a report of the expert review teams under Article 8, or submitted by:

- (a) Any Party with respect to itself;
- (b) Any Party to [the facilitative branch] with respect to another Party, supported by corroborating information;
- [(c) The COP/MOP, except that a Party may not participate in the decision with respect to a question directly concerning itself];
- [(d) The executive board or other bodies established under Articles 6, 12 or 17;].

2. Submissions under subparagraphs (b)-(d) shall be made available by the secretariat to the Party concerned, translated into one of the United Nations official languages if requested by the Party, within [...] weeks.

Allocation of questions

3. The [Committee] [Bureau] shall allocate questions of implementation to the appropriate branch in accordance with the responsibilities set out in section II, paragraphs 8 and 13.

Preliminary examination of questions

4. The [Committee] [relevant branch] shall make a preliminary examination of questions to ensure that, except in the case of a question raised by a Party concerning itself, the question:

- (a) Is supported by sufficient information;
- (b) Is not *de minimis* or ill-founded.

[in accordance with agreed criteria adopted by the COP/MOP.]

5. The preliminary examination of a question shall be completed with [...] weeks.

6. After the preliminary examination of a question, the Party concerned shall be notified and, in the event of a decision to proceed, shall be provided with a statement identifying the question of implementation that will be considered by the relevant branch.

Procedures for further handling of questions

7. The following procedure shall apply to the facilitative branch and the enforcement branch, except where otherwise provided in respect of the enforcement branch.

Participation of Parties

8. The Party concerned shall be entitled to designate one or more persons to represent it during the consideration of the question.

9. The Party concerned shall be given an opportunity to comment on any information before the relevant branch. The Party shall not participate in the elaboration and adoption of a recommendation or decision of the branch.

Avoidance of conflict of interest

10. No member of a branch who is a national of a Party that is involved in a question before the branch shall participate in the proceedings relating to that question.

Sources of information

11. The branch shall base its deliberations on information provided by:
 - (a) Reports of expert review teams under Article 8 of the Protocol;
 - (b) The Party or Parties concerned;
 - (c) The other branch.
12. The branch may also seek and receive relevant information from other experts and organizations qualified in matters covered by the Protocol.
13. Any information received by the branch shall be made available to the Party concerned and, subject to any rules relating to confidentiality, to the public.

Decisions and recommendations

14. The branch shall make every effort to reach agreement on its recommendations or decisions by consensus. If all efforts at reaching consensus have been exhausted, decisions shall as a last resort be adopted by a majority of at least three quarters of the members of the branch present and voting.
15. The branch shall forthwith notify the Party concerned of its decision or recommendation, and make it available to all other Parties and to the public.

Detailed rules of procedure

16. The COP/MOP may develop detailed rules for the operation of the branches.

Proceedings of the enforcement branch

Written submission

17. Within [...] weeks after the notification under paragraph 6 of this section, the Party concerned may make a written submission to the enforcement branch, including rebuttal of information submitted to the branch.

Hearing

18. If so requested in writing by the Party concerned within [...] weeks of the notification, the branch shall hold a hearing at which the Party concerned shall have the opportunity to present its views. The Party concerned may present expert testimony at the hearing. [Such a hearing shall be held in public unless the branch decides that part or all of the hearing shall take place in private.]

19. The branch may put questions to the Party concerned either in the course of such a hearing, or at any time in writing.

Reference to the facilitative branch

20. The enforcement branch may, at any time, where appropriate, refer a question to the facilitative branch for consideration.

[No question shall be considered by the enforcement branch until a decision regarding it has been made by the facilitative branch].

Preliminary finding

21. Within [...] weeks from receipt of the Party's written submission, or within [...] weeks from the date of any hearing, or within [...] weeks from the notification under paragraph 6 of this section if the Party has not provided a written submission, whichever is the latest, the branch shall:

(a) Make and issue a preliminary finding that the Party concerned is in breach of a commitment referred to in section II, paragraph 13, or does not meet an eligibility requirement under Articles 6, 12 or 17; or

(b) Otherwise determine not to proceed further with the question.

22. The preliminary finding or the decision not to proceed shall be reasoned.

23. The branch shall forthwith notify the Party concerned in writing of its preliminary finding or decision not to proceed. The decision not to proceed shall be made available to other Parties and to the public.

Expedited procedure

24. Where a question relates to eligibility requirements under Articles 6, 12 or 17 [, including adjustments related to the observance of eligibility requirements], paragraphs 17 to 23 of this section shall apply, except that:

(a) The branch shall issue its preliminary finding or decision not to proceed within [six] weeks of being informed in writing of a question identified by an expert review team under Article 8;

(b) The Party concerned may make a written submission within [four] weeks after the notification.

Final decision

25. Within [...] weeks from issue of the preliminary finding, the Party concerned may provide a further written submission. If that Party does not do so within that period of time, the branch shall issue a final decision confirming its preliminary finding.
26. If the Party concerned submits comments, the branch shall, within [...] weeks from the date it received the comments, consider them and make a final decision, indicating whether the preliminary finding is confirmed, and if so which part.
27. The final decision shall be reasoned.
28. The branch shall forthwith notify in writing the Party concerned of its final decision and make it available to other Parties and to the public.
29. Where the expedited procedure under paragraph 24 of this section applies, the period during which the Party may reply to a preliminary finding shall be [four] weeks, and the branch shall issue its final decision within [two] weeks of receiving any such reply.

Adoption of findings and decisions

30. The adoption of a preliminary finding, a decision not to proceed or a final decision of the enforcement branch shall require a quorum of [...].
31. The members of the branch shall make every effort to reach agreement on its preliminary findings, or decisions not to proceed or final decisions, by consensus. If all efforts at reaching consensus have been exhausted, the preliminary finding, decision not to proceed or final decision shall as a last resort be adopted by a majority of at least three quarters of the members of the branch present and voting.

Appeal

32. Any Party may appeal against a decision of the Committee [involving consequences relating to its non-compliance with Article 3.1] [and Article 4.1] [or against a decision of the Committee that a Party does not meet the eligibility requirements for one or more of the mechanisms set forth in or under Articles 6, 12 and 17]].

Option 1

33. [A standing appellate body is hereby established. It shall consist of seven members, three of whom shall serve on any one appeal. Members of the appellate body shall be elected by the Committee for terms of not more than four years. Members of the appellate body shall be recognized authorities in relevant fields, and have the requisite scientific, technical, socio-economic, or legal qualifications and experience to carry out their functions. They shall not be affiliated to any government and shall serve in their personal capacities.]

Option 2

34. [An appeal may be made to the COP/MOP for final determination. The Party whose compliance or non-compliance is under consideration may not participate in any decision on appeal directly concerning that Party.]

[35. A working procedure for appeals may be developed by the COP/MOP.]

Option 3

There should be no procedure for appeal.

COP/MOP

36. The Committee shall report on all its activities to each ordinary session of the COP/MOP;

37. The COP/MOP shall [take note of] [consider] the reports of the Committee, including any issues regarding implementation that may have implications for the work of the subsidiary bodies;

[38. The COP/MOP shall accept the reports of the Committee, unless the COP/MOP decides by consensus not to do so.]

[39. The COP/MOP may provide general policy guidance to the Committee.]

True-up period

40. A true-up period is defined as a period of [[36] months following the end of the commitment period] [[one] month after the publication of the final report of the expert review of the inventory of the last Party to be reviewed for the last year of the commitment period] [other].

41. During the true-up period, in order to fulfil its commitments under Article 3.1, any Party may:

[(a) Continue to acquire [and transfer] ERUs, CERs and AAUs under Articles 6, [12] and 17 from the preceding commitment period (provided it has not been found ineligible to participate in any mechanism under those Articles)];

[(b) Make a voluntary payment into a climate change fund or funds].