
**DOCUMENT ENTITLED
“FURTHER WRITTEN SUBMISSION OF CANADA”**



Foreign Affairs and
International Trade Canada

Assistant
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Sous-ministre
adjoint

July 11, 2008

Mr. Feng Gao
Secretary to the Compliance Committee
UNFCCC Secretariat
Martin-Luther-King-Strasse 8
53175, Bonn, Germany

Dear Mr. Gao,

Please find attached a further written submission to the Enforcement Branch of the Compliance Committee made pursuant to section X, subparagraph 1(e) of the Procedures and mechanisms relating to compliance under the Kyoto Protocol.

Yours sincerely,

Agent for Canada

Keith H. Christie
Assistant Deputy Minister
Global Issues Branch

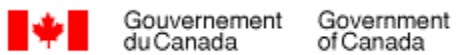
Enclosure

Canada

FURTHER WRITTEN SUBMISSION OF CANADA
Under Section X, paragraph 1(e) of the Annex to Decision 27/CMP.1

In Response to the “Decision Not to Proceed Further” of the Enforcement Branch of
the Compliance Committee under the Kyoto Protocol
(CC-2007-1-6/Canada/EB)

Ottawa, 11 July 2008



Canada

FURTHER WRITTEN SUBMISSION of CANADA

Under Section X, paragraph 1(e) of the Annex to Decision 27/CMP.1

In Response to the “Decision Not to Proceed Further” of the Enforcement Branch of
the Compliance Committee under the Kyoto Protocol
(CC-2007-1-6/Canada/EB)
11 July 2008

SUMMARY

1. Canada welcomes the Enforcement Branch of the Compliance Committee decision on 15 June 2008 not to proceed further with the question of implementation with respect to Canada’s National Registry. In this submission, Canada addresses one aspect of the reasoning contained in that decision and proposes textual changes to ensure that all of the decision is within the mandate of the Enforcement Branch as set out in the Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol in decision 27/CMP.1.

I. BACKGROUND

2. The Enforcement Branch of the Compliance Committee established under the Kyoto Protocol held its fifth meeting in Bonn, Germany on 14-15 June 2008 to consider, *inter alia*, a question of implementation with respect to Canada’s National Registry. On 14 June 2008, Canada made oral representations, in support of its written submission communicated on 5 June 2008, to confirm the establishment of its national registry and full compliance with Article 7 of the Kyoto Protocol (decision 15/CMP.1) and the modalities for accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol (decision 13/CMP.1).

3. On 15 June 2008, the Enforcement Branch made a determination not to proceed further as follows:

“The enforcement branch determines, in accordance with paragraph 4 of section IX, paragraph 1(d) of section X and rule 22 of the Rules of procedure, not to proceed further with the question of implementation relating to compliance with the guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol and the modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol.” (paragraph 18, CC-2007-1-6/Canada/EB)

4. In the course of its decision, the Enforcement Branch made the following conclusions at paragraph 17:

“Based on the information submitted and presented, the enforcement branch concludes that:

- (a) the status of Canada’s national registry resulted in non-compliance with the guidelines and the modalities on the publication date of the review report; and
- (b) there is a sufficient factual basis to avert a finding of non-compliance at the date of this decision.”

5. While Canada welcomes the decision of the Enforcement Branch not to proceed further in this matter, Canada notes that paragraph 17 lies outside of the Enforcement Body's mandate and should, therefore, be removed from the text.

II. ANALYSIS

6. The mandate of the Enforcement Body is set out in the Annex to decision 27/CMP.1. Section V(4) of the Annex states that:

"The enforcement branch shall be responsible for determining whether a Party included in Annex I is not in compliance with:

(a) Its quantified emission limitation or reduction commitment under Article 3, paragraph 1, of the Protocol;

(b) The methodological and reporting requirements under Article 5, paragraphs 1 and 2, and Article 7, paragraphs 1 and 4, of the Protocol; and

(c) The eligibility requirements under Articles 6, 12 and 17 of the Protocol."

7. Section XV, paragraph 1, then stipulates the two possible consequences that shall be applied by the Enforcement Branch when it has determined first that a Party is not in compliance with Article 5, paragraph 1 or paragraph 2, or Article 7, paragraph 1 or paragraph 4 of the Kyoto Protocol:

"(a) Declaration of non-compliance; and

(b) Development of a plan [...]."

8. Pursuant to these provisions, the Enforcement Branch is mandated to apply consequences to present, not past situations where compliance might be at issue. Section V, paragraph 4 states that "The Enforcement branch shall be responsible for determining whether a Party included in Annex I *is* not in compliance [...] [our emphasis]". Moreover, section XV, paragraph 1 states that the Enforcement Branch shall apply consequences when it "has determined that a Party *is* not in compliance [...] [our emphasis]". Neither provision uses the word "was".

9. Consistent with its mandate, the Enforcement Branch determined not to proceed further. Therefore, the Enforcement Branch was not mandated to make a declaration of non-compliance, nor to develop a plan.

10. The Enforcement Branch opined, however, in paragraph 17(a) that "the status of Canada's national registry resulted in non-compliance with the guidelines and the modalities on the publication date of the review report." In Canada's respectful view, this conclusion fell outside the mandate given by the Parties to the Kyoto Protocol in decision 27/CMP.1. The sole issue before the Enforcement Branch was the current status of Canada's registry, and the Enforcement Branch decided not to proceed further with the question of implementation in relation thereof. The status of Canada's registry at some earlier point in time was not among the issues that the Enforcement Branch was mandated to consider, nor was it necessary to engage in such a line of inquiry in order to determine whether Canada's current situation required further action. Entirely in keeping with its important role, the

Enforcement Branch analysed the material concerning the current status of Canada's registry and reached the conclusion that no further action on its part was necessary. In Canada's submission, however, the Enforcement Branch need not, and should not, have stepped outside of its mandate to make its observations concerning the past status of Canada's registry.

11. In addition, the conclusion in paragraph 17(b) of the decision states that "there is a sufficient factual basis to avert a finding of **non-compliance** at the date of this decision [our emphasis]", rather than simply concluding that the question of implementation has been resolved after consideration of the evidence before it (including the Independent Assessment Report, Canada's written and oral submissions, and the advice and testimony of the UNFCCC experts). Given that the entire compliance process established under decision 27/CMP.1, including the written submission and oral hearing, is aimed at determining compliance in the first place, the use of the word "non-compliance" in 17(b) is inconsistent with a "Decision Not To Proceed Further."

III. PROPOSED RELIEF

12. In view of the above analysis, Canada invites the Enforcement Branch simply to delete paragraph 17(a) from its "Decision Not To Proceed Further" to ensure that the Enforcement Branch is entirely consistent with the authority conferred upon it by the COP/MOP in decision 27/CMP.1. As stated in paragraph 16 of the "Decision Not To Proceed Further", the Enforcement Branch received expert advice that "information provided by Canada in its written submission, together with the independent assessment report" confirms that "Canada had established a national registry that can perform the functions defined in the annex to decision 13/CMP.1 and the annex to decision 5/CMP.1 and complies with the requirements of the data exchange standards." Therefore, the question of implementation has been resolved.

13. In addition, Canada invites the Enforcement Branch to alter the text of paragraph 17 (b) from its "Decision Not To Proceed Further" as follows:

"Based on the information submitted and presented, the enforcement branch concludes that, although the status of Canada's national registry raised a question of implementation with the guidelines and the modalities on the publication date of the expert review team report, this question of implementation has now been resolved."

IV. CONCLUSION

14. In Canada's view, the Enforcement Branch stepped beyond the limits of its mandate in offering its opinion on the past status of Canada's registry. Canada welcomes the Enforcement Branch's decision that no further action on its part was necessary, but respectfully requests that the Enforcement Branch delete paragraph 17 (a) of its decision as this passage relates to a matter outside of the Enforcement Branch's mandate, and substitute paragraph 17 (b) of its decision with the text suggested in paragraph 13 above as this is more consistent with a "Decision Not To Proceed Further."

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