



CONVENTION ON BIOLOGICAL DIVERSITY

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INTERGOVERNMENTAL COMMITTEE FOR THE CARTAGENA PROTOCOL ON BIOSAFETY

Second meeting

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Item 4.8.1 of the provisional agenda *

DECISION-MAKING (ARTICLE 10, PARAGRAPH 7)

Procedures and mechanisms to facilitate decision-making under paragraph 7 of Article 10 of the Cartagena Protocol on Biosafety

Note by the Executive Secretary

I. INTRODUCTION

1. Paragraph 7 of Article 10 of the Cartagena Protocol on Biosafety requires the Conference of the Parties serving as the meeting of the Parties to the Protocol to decide upon, at its first meeting, appropriate procedures and mechanisms to facilitate decision-making by Parties of import. In fulfilment of this requirement, the first meeting of the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP) considered the issue, on the basis of a note by the Executive Secretary (UNEP/CBD/ICCP/1/5).

2. As a follow-up, ICCP invited Parties to the Convention and Governments to communicate their views to the Executive Secretary by 30 April 2001 on appropriate procedures and mechanisms to facilitate decision-making by Parties of import, in accordance with paragraph 7 of Article 10 of the Protocol. The ICCP also requested the Executive Secretary to compile the views and to submit a synthesis report thereon for its consideration at its second meeting with a view to developing a recommendation for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

3. The present note by the Executive Secretary has been prepared in response to that request of the ICCP. It synthesizes the views communicated by the Parties to the Convention and Governments that did so and proposes, on the basis of these views, draft procedures and mechanisms for the consideration of the ICCP and its possible recommendations for consideration at the first meeting of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol.

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II. SYNTHESIS OF VIEWS REGARDING APPROPRIATE PROCEDURES AND MECHANISMS TO FACILITATE DECISION-MAKING BY PARTIES OF IMPORT, IN ACCORDANCE WITH PARAGRAPH 7 OF ARTICLE 10 OF THE PROTOCOL

4. As of 30 June 2001, Ecuador, the European Union, the Republic of Korea and United States of America communicated their views on appropriate procedures and mechanisms to facilitate decision-making by Parties of import, in accordance with paragraph 7 of Article 10 of the Protocol, as requested by the ICCP and the subsequent notifications issued by the Executive Secretary. Belarus and New Zealand advised the Executive Secretary that they have no any specific views to communicate at this stage. The views of India and Norway might be deemed received from their written notes that they handed over to the Secretariat at the first meeting of the ICCP in connection with agenda item 4.3 ("Decision-making procedures") for that meeting.

5. All the views communicated to the Executive Secretary placed, directly or indirectly, the question of capacity-building as central to any efforts to identify and implement procedures and mechanisms that facilitate decision-making by a Party of import under paragraph 7 of Article 10 of the Cartagena Protocol on Biosafety. It was pointed out that the aim should be to assist Parties of import that face difficulties due to lack of necessary resources and expertise to be able to acknowledge receipt of notification and to make informed decisions within the timeframes specified in the Protocol.

6. Some of the views emphasized that the operation of the procedures and the mechanisms to facilitate decision-making should be demand-driven by Parties of import and hence consistent with the ability of each Party to make its own decisions in accordance with its own internal procedures that conform to the requirements of the Protocol.

7. In general, the views submitted to the Executive Secretary focused on three major areas, including capacity-building, as elements required to facilitating decision-making. The two major elements, other than capacity-building, proposed for consideration, are the roster of experts and the Biosafety Clearing-House. It was noted that the Biosafety Clearing-House, as the major information-exchange mechanism in the process of implementing the Biosafety Protocol, has a large capacity-building role or element. The roster of experts, which will be made available through the Biosafety Clearing-House, was also identified as mainly designed to fill gaps where lack of human capacity exists.

8. With respect to capacity-building as a priority in facilitating decision-making by a Party of import, the proposals include organizing workshops on capacity building, the provision of the necessary infrastructure and training in fields that are instrumental to decision-making, strengthening of the on-going biosafety related programmes and projects such as the United Nations Environment Programme (UNEP)/Global Environment Facility (GEF) biosafety enabling project, and further assistance in other capacity-building projects, as appropriate.

9. Most of the submissions emphasized the key role that the roster of experts could play in building decision-making capacity. The roster of experts was established pursuant to decision EM-1/3, paragraph 14, of the Conference of the Parties to the Convention with a view to providing advice and other support, as appropriate and upon request, to developing country Parties and Parties with economies in transition, to conduct risk assessment, make informed decisions, develop national human resources and promote institutional strengthening, associated with the transboundary movement of living modified organisms. Some of the submissions suggested that the Secretariat should organize the roster of experts in a way that would be suitable for Parties of import seeking expertise to make decisions on notifications, to select the

right experts and draw upon their expertise effectively. According to one of the submissions, the experts from the roster, which the Secretariat maintains and makes available to the Parties of import, can also provide advice on the establishment of the administrative infrastructure and substantive knowledge required to implement Article 10.

10. According to one of the submissions, experts should, as far as possible, be selected from the region where the requesting Party of import comes from, and, in case several experts are needed, a panel of not more than five experts could be constituted. There was also a suggestion that developed countries should, through the Secretariat, provide financial support to cover the costs to Parties of import that are in need of outside expert input to make decisions.

11. On the other hand, it was suggested that the modalities for obtaining expert assistance from the roster of experts should be consistent with the procedures that have to be elaborated for the purpose of making the roster operational. In other words, the proposal seems to favour that issues relating to selection of experts, covering the costs of the expert time and services and identification of responsibilities of experts that will be engaged in providing advice and other support to Parties of import, for the purpose of facilitating decision-making, be addressed by the process that develops rules of procedure or guidelines on how the roster of experts will be used by Parties following the request made to the Executive Secretary by ICCP at its first meeting. In fact, it was further suggested that the interaction between the roster of experts and Parties of import should purely be demand-driven by the Parties of import themselves and should occur on a country-by-country basis. The role of the Secretariat, according to this view, will be to maintain the roster and to facilitate its availability to the Parties of import.

12. It was suggested that developed countries should provide the necessary support, including financial support, to developing country Parties that import LMOs to enable them make decision in accordance with Article 10 of the Protocol.

13. The following specific procedures were proposed:

(a) A Party of import may, at any time, after having received the notification, contact the Secretariat to seek any relevant assistance from the roster of experts to deal with the notification under Articles 9 and 10. In such cases, the Party of import should inform the notifier on the request for assistance from the roster of experts;

(b) If there is no acknowledgement of receipt within 90 days, the Party of export or the notifier may seek clarification on the reason for lack of acknowledgement or renotify the Party of import;

(c) If no decision is communicated within 270 days or within the extended period of time provided for in paragraph 3 (c) of Article 10, the Party of export or the notifier may seek clarification on the reason for lack of response;

(d) If the Party of import does not respond in time despite contacts made by the Party of export or the notifier along the lines of subparagraphs (b) and (c) above, the Party of export may itself or upon request by the notifier, advise or assist the Party of import to seek the relevant assistance from the Roster of experts; and

(e) The above steps should be taken before a Party of export or the Secretariat triggers any compliance mechanism established under Article 34.

14. One of the submissions pointed out that the procedures and mechanisms established to facilitate decision-making should be complementary to the cooperative procedures likely to be established for the purpose of facilitating compliance. It is further pointed out that the procedures and mechanisms regarding decision-making should not preclude a Party from invoking the compliance procedures and mechanisms to be established under Article 34 or, in appropriate cases, the dispute-settlement procedures under Article 27 of the Convention.

15. It should be noted that, with the exception of the written views submitted by a some countries during the first meeting of ICCP, none of the views received inter-sessionally directly addressed the elements for appropriate procedures and mechanisms proposed by the Secretariat and listed from (a) to (k) in paragraph 28 of the note by the Executive Secretary on facilitating decision-making by Parties of import (UNEP/CBD/ICCP/1/5), prepared for the first meeting of ICCP.

III. RECOMMENDATIONS

16. The ICCP may wish to further consider the issues raised and the proposals made in the views communicated by Parties to the Convention and Governments, based on the present synthesis report, and make recommendations to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, to decide upon appropriate procedures and mechanisms to facilitate decision-making by Parties of import under paragraph 7 of Article 10 of the Protocol, as proposed in the annex to the present note.

Annex

**PROCEDURES AND MECHANISMS TO FACILITATE DECISION-MAKING
BY PARTIES OF IMPORT UNDER PARAGRAPH 7 OF ARTICLE 10 OF THE
CARTAGENA PROTOCOL ON BIOSAFETY**

A. *Underlying rules*

1. The procedures and mechanisms to facilitate decision-making shall come into operation at any given time at the request of a Party of import encountering difficulties to make decision on notification regarding intentional transboundary movement of living modified organism in accordance with the relevant provisions of the Protocol.
2. Parties shall give due priority to capacity building activities within the framework of Article 22 of the Protocol aiming at Parties of import that lack the necessary resources and expertise to make appropriate decisions in accordance with Article 10 of the Protocol.
3. Parties shall make every effort to ensure that Parties of import have access to the Biosafety Clearing House or to the information it houses for the purpose of facilitating decision-making. The decision on the modalities of the operation of the Biosafety Clearing House pursuant to paragraph 4 of Article 20 should take into account the needs of Parties of import in decision-making as a matter of priority.
4. These procedures and mechanisms to facilitate decision-making by Parties of import are made separate from, and without prejudice to the procedures and mechanisms established under Article 34 of the Protocol on compliance, and the dispute-settlement procedures under Article 27 of the Convention.

B. *Procedures*

5. A Party of import may, at any time after having received notification, seek, through the Secretariat, any relevant assistance from the roster of experts to deal with the notification it received and to be able to make decision. In such a case, the Party of import should inform the Party of export or the notifier on its request for assistance from the roster of experts, including whether it requires the exporter to carry out risk assessment or the cost of risk assessment to be borne by the notifier in accordance with paragraphs 2 and 3 of Article 15 of the Protocol respectively.
6. In cases where the Party of import fails to acknowledge receipt of notification in accordance with Article 9 of the Protocol, the Party of export or the notifier may seek clarification from the Party of import on the reason for lack of acknowledgement of receipt of the notification, or renotify the Party of import.
7. In the event where no decision is communicated by the Party of import to the Party of export or the notifier in accordance with paragraph 3 of Article 10 of the Protocol, the Party of export or the notifier may seek clarification from the Party of import on the reason for lack of decision or response.
8. Where no decision is communicated by the Party of import despite initiatives by the Party of export or the notifier according to paragraphs 6 and 7 above, the Party of export may itself or upon request by the notifier, advise or assist the Party of import to seek the relevant assistance from the Roster of experts.

9. The procedures described in paragraphs 6, 7 and 8 above should be exhausted before a Party of export [or the Secretariat] triggers the procedures and mechanisms of compliance to be established under Article 34.

C. Mechanisms

10. The roster of experts shall be the main mechanism that provides, upon request, the necessary support to Parties of import to facilitate decision-making by them under Article 10 of the Protocol.

11. The modalities for the use the roster of experts for the purpose of facilitating decision-making by Parties of import shall follow the rules of procedure or guidelines that the Conference of the Parties will adopt, pursuant to section III of its decision EM-1/3, with regard to how the roster of experts should be used by Parties, including issues relating to selection of experts, covering the costs of the expert time and services and the establishment of duties to be undertaken by the experts.

12. The Conference of the Parties serving as the meeting of the Parties to the Protocol may consider and adopt other complementary mechanisms, as appropriate, based on case-studies to be conducted by the Executive Secretary and through the identification and elaboration of further elements that may be more appropriate to the nature of decision-making by Parties of import under the Protocol, including explanatory notes on decision-making procedures, model administrative manuals, voluntary guidelines, and decision guidance documents that may facilitate decision-making by Parties of import.
