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CONFERENCE OF THE PARTIES TO THE CONVENTION
ON BIOLOGICAL DIVERSITY SERVING AS THE
MEETING OF THE PARTIES TO THE CARTAGENA
PROTOCOL ON BIOSAFETY

First meeting

Kuala Lumpur, 23-27 February 2004

Item 6.7 of the provisional agenda*

MONITORING AND REPORTING (ARTICLE 33)

Compilation of views on the draft format for reporting under Article 33 of the Protocol

INTRODUCTION

1. This document compiles the submissions received regarding the draft format for monitoring and reporting. The format was prepared by the Executive Secretary prior to the second meeting of the Intergovernmental Committee for the Cartagena Protocol (ICCP). At its second meeting, ICCP invited Governments to submit comments in advance of the third meeting of ICCP. At that meeting, ICCP noted the comments received and encouraged Governments that had not submitted comments to submit any comments prior to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol on Biosafety.

2. Accordingly, the present document contains two sets of comments: section A contains the most recent comments received prior to the first meeting of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, pursuant to the recommendation of that third meeting of ICCP; and section B contains the earlier comments received prior to the third meeting of ICCP, pursuant to the recommendation adopted by ICCP at its second meeting.

* UNEP/CBD/BS/COP-MOP/1/1.

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A. SUBMISSIONS RECEIVED PRIOR TO THE FIRST MEETING OF THE CONFERENCE OF THE PARTIES TO THE CONVENTION SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY PURSUANT TO THE RECOMMENDATION OF THE THIRD MEETING OF THE INTERGOVERNMENTAL COMMITTEE FOR THE CARTAGENA PROTOCOL

AUSTRALIA

[22 SEPTEMBER 2003]
[SUBMISSION: ENGLISH]

Australia first submitted views on the draft format of monitoring and reporting in 2001. The following comments are resubmitted as they contain amendment based on further consideration of issues.

Australia supports the structure of the draft format (the helpful 'yes/no' question form and optional 'comment' fields), noting that it is similar to that developed for reporting on the Convention on Biological Diversity.

Of concern, however, is the inclusion of questions that are formulated in a way which prejudice the manner in which countries will choose to implement their obligations under the Protocol. Questions 14 to 16 for example, assume a centralized monitoring role for Government that is beyond the requirements of the Protocol. Australia requests that these questions be deleted.

Also of concern to Australia is the level of detail included in the draft format that may make it unduly burdensome for countries to complete, and which goes well beyond the requirements of Article 33. Article 33 stipulates that measures taken to implement the Protocol must be reported by Parties to the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety. ^{1/} The key objective of the article is to gain this factual information. However, the draft format seeks performance information on the effectiveness of the measures, compliance information and a variety of statistical information, in addition to information on measures taken.

Australia therefore requests deletion of elements of the questionnaire that go beyond eliciting identification of measures undertaken to implement the Protocol. In this way a core set of questions pertinent for meeting the actual reporting obligation under Article 33 would be retained. This streamlined questionnaire would be considerably less burdensome to complete and hence more likely to be used. Non-core questions include, for example: 2, 8, 13, 15, 16, 18, 19, 20, 24, 25, 31, 44, 57, 58, 59, 60, 61, 62, 63, and 64.

Australia also considers it important to explicitly indicate that the questionnaire is a guide to assist countries to meet their obligation under Article 33. It will be for Parties to determine whether and to what degree they utilize it. We note that this is implicit in the title of the annex; "Guidelines...", but consider that a clearer statement would be desirable to avoid any possible confusion.

^{1/} Article 33 states that Parties shall "report to the Conference of the Parties serving as the meeting of Parties to this Protocol on measures that it has taken to implement the Protocol" while article 26 of the CBD requires; "reports on measures ...taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of the Convention". (That is, the Protocol does not require Parties to *report* to the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety on the effectiveness of the measures they have taken to implement the Protocol.)

Australia recommends keeping the format under review by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety so that those using the format will have the opportunity to indicate any shortcomings and make suggestions in the light of experience.

PARAGUAY

[23 SEPTEMBER 2003]
[SUBMISSION: SPANISH]

Se considera apropiado el formato de presentación de informes documento UNEP/CBD/ICCP/2/4 del 31 de julio de 2001.

SWITZERLAND

[26 SEPTEMBER 2003]
[SUBMISSION: ENGLISH]

The draft format for monitoring and reporting contained in annex to document UNEP/CBD/ICCP/2/4 is a good basis for discussion by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.

UNITED STATES OF AMERICA

[21 OCTOBER 2003]
[SUBMISSION: ENGLISH]

The United States supports the need for Parties to monitor and report on the implementation of the Cartagena Protocol on Biosafety. In order to avoid imposing an undue burden on the Parties, we believe that monitoring and reporting activities should be both simple and practical, and that this principle should be reflected in the Executive Secretariat's guidelines for the preparation of reports. Reports should provide useful information on the status of implementation, including progress made, lessons learned and obstacles encountered. The United States looks forward to having the opportunity to review the most recent version of the guidelines prior to the Meeting of the Parties in February 2004.

WWF INTERNATIONAL

[30 SEPTEMBER 2003]
[SUBMISSION: ENGLISH]

It is important that countries monitor and report on their implementation of the Protocol's provisions, both for demonstrating compliance and for indicating areas where further capacity building is required. WWF supports the recommendation of the Intergovernmental Committee for the Cartagena Protocol (decision 2/2) that reports should be submitted by countries every four years, using the format set out in UNEP/CBD/ICCP/2/4 and its further development (decision 3/7), and that Parties prepare their reports through a consultative process involving all relevant stakeholders.

WWF urges that NGOs and civil society stakeholders be involved by Parties in the preparation of these reports.

WWF suggests that such reports also be made available through both the Biosafety Clearing-House and the Secretariat.

WWF urges countries to monitor the types of LMOs and the types of modifications being notified and dealt with through the AIA procedure, and procedures for LMO-FFPs (in relation to paragraph 1 (d) of decision 2/2, which encourages Parties to provide detailed information at national as well as at regional levels, where such information can be useful to other Parties).

B. SUBMISSIONS RECEIVED PRIOR TO THE THIRD MEETING OF THE INTERGOVERNMENTAL COMMITTEE FOR THE CARTAGENA PROTOCOL PURSUANT TO THE RECOMMENDATIONS OF THE SECOND MEETING OF THE INTERGOVERNMENTAL COMMITTEE FOR THE CARTAGENA PROTOCOL

AUSTRALIA

[15 JANUARY 2002]
[SUBMISSION: ENGLISH]

Australia supports the structure of the draft format (the helpful ‘yes/no’ question form and optional ‘comment’ fields), noting that it is similar to that developed for reporting on the Convention on Biological Diversity.

Of concern, however, is the inclusion of questions which are formulated in a way which prejudices the manner in which countries will choose to implement their obligations under the Protocol. Questions 14 to 16 for example, assume a centralised monitoring role for Government that is beyond the requirements of the Protocol. These questions need to be deleted.

Also of concern to Australia (and commented upon by a number of developing countries at ICCP2) is the level of detail included in the draft format that may make it unduly burdensome for countries to complete, and which goes well beyond the requirements of Article 33. Article 33 stipulates that measures taken to implement the Protocol must be reported by Parties to the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Cartagena Protocol on Biosafety. ^{1/} The key objective of the article is to gain this factual information. However, the draft format seeks performance information on the effectiveness of the measures, compliance information and a variety of statistical information in addition to information on measures taken.

Australia therefore recommends deletion of elements of the questionnaire that go beyond eliciting identification of measures undertaken to implement the Protocol. In this way a core set of questions pertinent for meeting the actual reporting obligation under Article 33 would be retained. This streamlined questionnaire would be considerably less burdensome to complete and hence more likely to be used. (Non-core questions include, for example: 2, 8, 13, 15, 16, 18, 19, 20, 24, 25, 31, 44, 57, 58, 59, 60, 61, 62, 63, 64.)

^{1/} Article 33 states that Parties shall “report to the Conference of the Parties serving as the meeting of Parties to this Protocol on measures that it has taken to implement the Protocol” while article 26 of the CBD requires: “reports on measures ... taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of the Convention”. (That is, the Protocol does not require Parties to *report* to the COP/MOP on the effectiveness of the measures they have taken to implement the Protocol.)

At the very least, the non-core questions should be separated out (e.g. appended) to encourage countries to focus on questions relevant for meeting the actual reporting requirement of Article 33.

Australia also considers it important to explicitly indicate that the questionnaire is a guide to assist countries to meet their obligation under Article 33. It will be for Parties to determine whether and to what degree they utilise it. We note that this is implicit in the title of the annex; "Guidelines....", but consider that a clearer statement would be desirable to avoid any possible confusion.

In view of the short timeframe for submitting comments on the draft format, detailed comments on specific questions have not been provided. These may be submitted separately at a later date.

Australia recommends keeping the format under review by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety so that those using the format will have the opportunity to indicate any shortcomings and make suggestions in the light of experience.

CANADA

[11 JANUARY 2002]
[SUBMISSION: ENGLISH]

General comments:

Document ICCP/2/4 from the Executive Secretary provides an initial framework for monitoring and reporting under the Protocol. This includes a proposed format predicated on the obligations incumbent on a Party to the Protocol and based on a scheme for reporting on the Convention as designed and approved by the SBSTTA

The draft format presented in document UNEP/CBD/ICCP/2/4 offers a good reporting concept. The questionnaire approach provides an efficient way to focus the answers as well as standardized data that can be used for an objective analysis of the Protocol implementation process. However, there are some significant issues associated with the proposed format.

The format is designed to elicit a full range of responses and to allow comparability across responses. It is a predetermined reporting framework with little flexibility in interpretation of the reporting guidelines, but does allow for identification in gaps in capacity, financial and technical needs and lessons learned. In general the report format is interpretive but on occasion tends to be conclusionary in nature. In many instances the questions provide an option (e.g. Not applicable), where this is not a permissible option for a Party.

In attempting to simplify the process by grouping issues together, the format separates elements of the same provision which results in a need to refer back constantly to earlier questions and responses. There are also several instances where the questionnaire is duplicative.

1. Length

Recognizing that Section I, Part A will be of use for the first report only, Canada is of the view that the proposed questionnaire is rather lengthy. It is recommended that all questions be re-evaluated to ensure that there are no unnecessary questions, responses or duplication.

2. Recognizing Opt-outs

Although the draft format for reporting includes questions on Articles of the Protocol, known as the opt-out clauses, it does not clearly request information consequential to the implementation ramifications that ensue from a national decision to pursue one of these opt-outs. This may make it

difficult for Parties, or the Secretariat, to trace the use of opt-outs by Parties and forces Parties to duplicate their answers for several of the questions asked.

Therefore, Canada recommends that a section be placed prior to Section I, Part B asking Parties to identify if they have used an opt-out, and which one. Such an approach would facilitate the reporting process for the Party and information compiling and processing for the Secretariat.

3. *Inherent interpretation*

In some instances the question formulation carries an inherent interpretation of how Governments will implement the Protocol. This could result in an unintended skew to the responses from the different Parties hence providing an inaccurate portrait of the implementation process of the Protocol. One example of such an interpretive formulation is question 15 which assumes that Parties will have a monitoring scheme whereby every notification is brought to the attention of and scrutinized by Government (question 16). The Protocol text itself does not indicate an implementation scheme for the different areas it touches upon but rather states obligations that Parties are free to implement as per their own judgement as long as the implementation does not undermine the purpose of the Protocol. Canada is of the view that questions with a more broad and objective formulation be developed to ensure that the Secretariat obtains pertinent information on Protocol implementation that will help in understanding the different implementation models.

4. *"Not applicable" response*

With reference to the length of the questionnaire, many of the proposed questions in the draft format for reporting, contain a "not applicable" response. In many cases this would not be an appropriate response from a Party to the Protocol, which will be the respondent.

5. *Non implementation issues*

Canada is of the view that although the information requested in some of the sections of the questionnaire is of importance, it is not germane to a Party identifying how it is implementing the Protocol. In particular, the information requested in section X (Capacity-Building); section XIV (Socio-economic considerations) and section XVI Financial resources and mechanism. The Secretariat may wish to consider which is the appropriate umbrella under which to collect information on what are essentially collective obligations on Parties rather than measures to implement the treaty.

6. *Question by question analysis of the draft format*

Question	Comments
Question 6	Duplicates question 53
Question 7	Replace "laws regulations and guidelines" with "legal, administrative and other measures".
Question 8	(c) -Delete
Question 9	(c) - Delete.
Question 10	(c) - Delete
Question 11	(c) - Delete.
Question 12	(c) - Delete.
Question13	(c) - Delete.
Question 14	Replace the question with "During the reporting period have LMO(s) subject to AIA been exported from your country.

Question	Comments
Question 15	Question implies that Governments will be informed of the notifications. (c) - Rephrase: "number of unique living modified organisms"? (d) - Delete, since answer to 14 must be yes.
Question 16	Question implies Government notification of the notifications. (c) - Delete since question requires respondent to be a Party of export.
Question 17	Rephrase "...has your country imported LMOs subject to AIA"
Question 18	(b) Replace with "the number of Parties of export from whom a notification was received either from the Party or a notifier under its jurisdiction." (c) - Rephrase "...number of unique living modified organisms"? (g) - Delete since answer to (a) must be yes. Add questions: 18 bis: Number of acknowledgements issued in accordance with 9.2(c) 18bis 2: Number of unique LMOs notifications acknowledged under 9.2(c) 18bis 3: Number of Parties receiving acknowledgements under 9.2(c)
Question 19	(f) - Delete
Question 20	(f) - Delete
Question 21	Question should include "on the basis of a change in circumstances [...] that may influence that may influence the outcome of the risk assessment upon which the decision was based". (c) - Delete.
Question 22	Rephrase question "did you or a notifier under your jurisdiction.."
Question 23	(c) - Delete. Given the level of detail of the questionnaire, there should be questions regarding the numbers associated with each of the simplified procedures outlined in Article 13.
Question 24	(c) - Delete.
Question 26	(c) - Delete.
Question 28	Rephrase: "Has your country entered into bilateral, regional or multilateral agreements or arrangements after entry into force of the Protocol..."
Question 29bis	Have you notified the BCH of the applicability of domestic regulations?
Question 30	(c) - Delete
Question 31	(d) - Delete
Question 32	Should refer to Question 31.
Question 33	(d) - Delete In the question use the language of the Protocol "Does your country endeavor to ensure..."
Question 34	(c) Delete
Question 35	(c) Delete
Question 36	Restate: "Were all affected or potentially affected States and relevant international organizations informed and the information placed on the BCH."
Question 37	Should reference question 35
Question 38	Should reference question 35
Question 39	Question, delete "already", this is a requirement for a Party (c) - Delete
Question 40	(c) - Delete
Question 41	(c) - Delete
Question 42	(c) - Delete
Question 44	(c) Rephrase: No decisions taken.

Question	Comments
Question 46	(c) - Rephrase “No laws in existence”.
Question 47	(c) - Delete
Question 48	(c) - Delete
Question 49 -	(c) - Delete
Question 50	(c) - Delete
Question 51	(c) - Delete
Question 52	(c) - Delete
Question 53	Duplicates question 6.
Question 54	(c) - Delete
Question 55	(c) Rephrase: No assessments carried out”
Question 56	(c) Rephrase: No cases identified during reporting period”
Question 57	Rephrase question: “Do you have in place laws or procedures which permit any notifier to identify....” (c) - Delete
Question 58	(c) - Rephrase: No notifier requests”
Question 59	(c) - Delete
Question 61	Question implies a level of Government administration that may not be applicable. In many cases the Government will not have this information. (c) - Delete.
Question 62	Question implies a level of Government administration that may not be applicable. In many cases the Government will not have this information. (c) - Not applicable, no information available to Government.
Question 63	(c) - Not applicable, no information available to Government.
Question 64	(c) - Not applicable, no information available to Government
Question 65	(c) - Delete.
Question 66	The question should be more general “If yes how has such cooperation taken place? The list is not inclusive. (d) - Delete.
Question 67	Rephrase question: “.. for technical and scientific training in the proper and safe management of biotechnology to the extent that it is required for biosafety” (Article 22). (e) - Delete.
Question 68	(e) - Delete.
Question 69	(e) - Delete.
Question 72	Rephrase in language of the Article 23.1(b) “Does your country endeavor to ensure.....”
Question 73	Rephrase in language of the Article 23.2 “Does your country, in accordance with its respective laws and regulations....”
Question 79	(d) - Delete
Question 81	(d) - Delete
Question 82	(d) - Delete
Section XV	Relevance of this section will depend on questions asked.
Section XVII	Relevance of this section will depend on questions asked.

EUROPEAN UNION

[21 JANUARY 2002]
[SUBMISSION: ENGLISH]

Broadly speaking, the EU considers that the draft format contained in the annex to the note by the Executive Secretary (UNEP/CBD/ICCP/2/4) is a clear, comprehensive and useful tool to support full and effective implementation of the Cartagena Protocol on Biosafety. The many "tick boxes" will give a possibility for comparative analysis that should be used in a constructive and informative manner giving inspiration to further efforts in the implementation process.

More specifically, the EU would like to submit the following comments as regards the draft format for monitoring and reporting:

General remarks

- For clarity's sake, it could be useful to better follow the succession of articles of the Protocol. Accordingly, questions from chapter I of the draft format (questions 1 to 13) should be redistributed in the corresponding chapters.
- Article 6 should also be subject to reporting. A new chapter should be set up for that purpose.

Chapter II (AIA procedure)

- It would be particularly relevant to the implementation of the Protocol to know whether a Party of import makes use of its domestic regulatory framework or of the procedure specified in Article 10 of the Protocol. We suggest therefore to add a question related to article 9, para 2 (c).
- A new question should be added about the use of the procedures and mechanisms established under Article 10.7 to facilitate decision-making by Parties of import.
- Question 23 should be part of a specific chapter on the implementation of Article 13. This chapter should also allow for reporting about the number of notifications, LMOs, etc subject to this Article.

Chapter III (Procedure for LMO-FFPs)

- Question 25 b) should read: "How many of these decisions were transmitted through the Biosafety Clearing House to other Parties for information in accordance with Article 11.1?"

Chapter V (Risk assessment and risk management)

- Question 32 should read: "If you answered yes to question 30, etc."
- We propose to add a new question related to the implementation of Article 16.1. This question would read as follow:

"Has your country established and maintained appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of the Protocol associated with the use, handling and transboundary movement of living modified organisms?"

- a) yes (please give further details below)
- b) no (please give further details below)"

Chapter VI (Unintentional transboundary movements and emergency measures)

- Questions 37 and 38 should read: "If you answered yes to question 35 and 36, ..."

Chapter VIII (Information sharing and the Biosafety Clearing-House)

- In addition to questions referring to the obligations of Parties as regards information that has to be made available to the Biosafety Clearing-House, we believe that it would be also relevant to provide information on the way Parties use the Biosafety Clearing-House (central portal, regional nodes, national databases, use of non web-based information-sharing systems, etc). This would give useful indications about the effectiveness of the Biosafety Clearing-House, which is a key element in the implementation of the Protocol.

Chapter X (Capacity-building)

In the interim guidelines for the roster of experts on Biosafety (annex of recommendation 2/9, B), Parties are encouraged to provide the Secretariat with an evaluation of the advice or other support provided by experts and the results achieved. It should be considered whether reporting under Article 33 of the Protocol could be used for that purpose.

Finally, we would like to stress once again the importance of keeping the reporting guidelines and format under review and to improve them when necessary, building on the experience of Parties in preparing their reports. Indeed, it is likely that when Parties will start to use the format in order to fulfil their reporting obligations, some suggestions for improvement/streamlining will come up. The first report will therefore be the appropriate opportunity for identifying ways of improving the format.

We would also like to point out that Parties can use the format already at this stage when developing their legislation implementing the Protocol. It can in fact help identifying which obligations deriving from the Protocol should be transposed in the national legal order. Similarly, the format will be a useful instrument for the Compliance Committee to check general issues of compliance and specific cases of non-compliance.

SLOVENIA

[18 JANUARY 2002]
[SUBMISSION: ENGLISH]

Art. 33 of the Protocol imposes two obligations on Parties; firstly to monitor the implementation of their obligations, and secondly to report on measures taken to implement the Protocol. While both obligations, in practice, they are reinforcing on another, as monitoring will provide information needed for the reporting, and the requirement to provide reports may provide useful feedback on the way monitoring has operated. The intervals at which reports are to be submitted is determined by the Conference of the Parties serving as the meeting of the Parties to the Cartagena protocol on Biodiversity. In addition, the format of such report is a matter of some importance, which has been addressed by the Conference of the Parties, with a view to facilitating the preparation of the reports, as well as their consideration by providing documents which are comparable, and to avoid duplication of other requirements pursuant to the Convention.

Consequently, the draft Format has been expanded to take into account three important issues; handling, transport, packaging and identification, liability and redress, and compliance. Obviously, the draft Format is a good base for Parties to review the extent to which they are successfully implementing the provisions of the Protocol, and the same time will assist the meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena protocol on Biodiversity to assess the overall status of the implementation of the Convention

SWITZERLAND

[31 JANUARY 2002]
[SUBMISSION: ENGLISH]

The draft format for monitoring and reporting contained in annex to document UNEP/CBD/ICCP/2/4 is a good basis for discussion by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena protocol on Biodiversity. We do not see the need for the third meeting of the Intergovernmental Committee for the Cartagena Protocol to address this issue again. We suggest however to maintain this draft as a living document to allow countries to provide comments until 3 months prior to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena protocol on Biodiversity.

VIET NAM

[16 JANUARY 2002]
[SUBMISSION: ENGLISH]

The draft- format is well designed and it will be a valuable instrument for the Convention on Biological Diversity in reporting and monitoring. We now have comments on this document.
