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

Fifth meeting

Nagoya, Japan, 11-15 October 2010

Item 4 of the provisional agenda*

COMPILATION OF VIEWS ON HOW THE SUPPORTIVE ROLE OF THE COMPLIANCE COMMITTEE COULD BE IMPROVED

Note by the Executive Secretary

I. INTRODUCTION

1. The compliance procedures under the Protocol can be invoked only by a Party to the Protocol with respect to itself or against another Party. If a Party makes a submission relating to compliance, the Compliance Committee may take one or more of the measures specified in paragraph 1, section VI of the Procedures and Mechanisms on Compliance annexed to decision BS-I/7. Consistent with their nature, which is facilitative, non-adversarial and cooperative (section I, annex, BS-I/7), the focus of the Procedures and Mechanisms of Compliance, both in specifying the functions of the Committee (section III, annex, BS-I/7) and determining the non-compliance measures (section VI, annex, BS-I/7) is the provision of advice and/or assistance to the concerned Party with a view to assisting such Party to comply with its obligations under the Protocol.

2. Taking into account the report and recommendations of the Compliance Committee, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety adopted, at its fourth meeting, decision BS-IV/1, which, among other things, recognized the absence of any submissions relating to compliance to the Compliance Committee up to that time, and invited Parties to submit views on how the supportive role of the Committee could be improved. The Executive Secretary has been requested to compile the views and make them available to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety for its consideration.

3. Accordingly, this document presents a compilation of the views submitted by Parties (section II), and suggested elements of a draft decision (section III) for the consideration and possible adoption by the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP).

* UNEP/CBD/BS/COP-MOP/5/1.

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II. VIEWS ON HOW THE SUPPORTIVE ROLE OF THE COMPLIANCE COMMITTEE COULD BE IMPROVED

4. As of 4 August 2010, the Secretariat had received submissions from three Parties, namely Brazil, the European Union and Mexico. The submissions agree that the supportive role of the Compliance Committee can indeed be improved. The views expressed in each of the submissions are reproduced¹ below.²

Brazil

(i) The procedures and mechanisms on compliance under the Protocol established by decision BS-I/7, and in accordance with Article 34 of the Protocol, are a tool that can provide an important contribution towards advancing the implementation of this international agreement.

(ii) The objective of these procedures and mechanisms is to promote compliance, address cases of non-compliance and provide advice and assistance, where appropriate. This is to be done in accordance with the simple, facilitative, non-adversarial and cooperative nature of the compliance procedures and mechanisms, the central element of which is the Compliance Committee. Improving the supportive role of the Committee is essential to the achievement of the objective of the procedures and mechanisms. This supportive role should focus on catalysing international cooperation, in order to help countries overcome obstacles in implementing the Protocol.

(iii) It is useful to recall that, in order to promote compliance, the Committee can provide advice or assistance to the Party concerned, as appropriate, or make recommendations to the COP-MOP regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures (decision BS-I/7, section VI, paragraphs 1 (a) and (b)).

(iv) These two provisions should be further fleshed out by COP-MOP, so as to provide the Committee with effective supportive tools, such as ways to mobilize financial resources, technology or capacity-building projects. The availability of these tools would provide concrete evidence of the ability of the Committee to support countries. Improving the supportive role of the Committee would, then, contribute to building the confidence of Parties with regards to the Committee.

(v) This confidence-building process, however, depends on a clearer understanding of what would be the consequences of non-compliance. It is important to bear in mind that the Protocol has impacts over areas related to international trade in commodities and biotechnological development. Improving the supportive role of the Committee requires, then, the assurance that no punitive measures will be adopted, in complement to the supportive tools.

(vi) Until both of these dimensions are tackled – effective supportive tools and clarity on the implications of non-compliance – it is likely that countries will remain reluctant to reach out to the Committee for support, particularly through the self-trigger mechanism.

European Union

General observations

(i) As a starting point, the European Union would like to stress that the main objective of any compliance mechanism is to support the implementation of the instrument it serves. The compliance

¹ The text from Mexico herewith is a translation from the original submission made in Spanish.

² Paragraphs in each of the submissions have been numbered for ease of reference/citation.

mechanism of the Cartagena Protocol is no exception in this regard. Indeed, the supportive and facilitative function of the Committee is stressed in the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety. The European Union believes that there is considerable potential for the Committee to play an important role in building capacity by helping Parties to fulfill their obligations under the Protocol through the provision of advice and assistance, and thus improving the effectiveness of the Protocol as a whole. The best way of achieving that is to create a clear climate of confidence between the Parties and the Committee. It has also become clear that, although there are documented instances of Parties not fulfilling their obligations under the Protocol, these instances of potential non-compliance either have not been made available to the Committee, or the Committee has not been able to consider the issues as they have not been sent by a Party to the Committee. For example, a number of Parties have not submitted national reports, which are an essential “health-check” for the Protocol, but no Parties have contacted the Committee to indicate that they have not reported and to request the assistance that may be available to them.

Current compliance mechanism

(ii) Under the current compliance procedures and mechanisms, the Committee is able to receive information from a Party with respect to itself (Party self-trigger) or by a Party that is affected or likely to be affected by the non-compliance of another Party (Party-to-Party trigger). Subsequently, the Committee can take a range of measures, as set out in part VI of the procedures and mechanisms, which provide an opportunity for those Parties who may struggle to fully meet all of its obligations under the Protocol to have access to financial and technical assistance, technology transfer and other capacity building measures. To date, the Conference of the Parties serving as the Meeting of the Parties has not decided to make such measures available to any Party, as there has been no such recommendation from the Committee.

Views on improving the facilitative role of the Compliance Committee

(iii) The European Union considers that the fact that the Committee has not, to date, received any submissions, despite clear indications that many Parties have difficulties in implementing their obligations under the Protocol, suggests that procedures regarding submissions to the Committee are too limited or in any event not appropriate. Therefore, the European Union would like to strengthen the ‘facilitative and supportive’ role of the Committee by introducing a specific and distinct provision on supportive measures. Under such a proposal, the measures set out in paragraphs 1 (a) and (b) of part VI of the CPM (i.e., the provision of advice and assistance and a recommendation to the meeting of the Parties regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures) would be deemed to be “facilitative”, and would be the only measures the Committee would be entitled to apply when a Party makes a submission concerning its compliance with its own obligations. In addition, of the measures that the Meeting of the Parties might subsequently adopt on the basis of the Committee's recommendations, only the provision of financial and technical assistance, technology transfer, training and other capacity-building measures (paragraph 2(a) of part VI) would be available. The European Union proposes that these facilitative measures could be taken by the Compliance Committee when the Committee becomes aware of potential instances of non-compliance by itself or, alternatively, via the Secretariat. This could potentially be further limited to instances of non-compliance that become clear from information in national reports and the Biosafety Clearing-House. This procedure would enable the Committee to address in particular potential instances of non compliance when there is also a clear indication that the situation is based on lack of capacity of the Party concerned.

Mexico

(i) Reports on successful cases of compliance with the Cartagena Protocol on Biosafety that can be replicated by other Parties or non-Parties to the Protocol should be presented and recommendations made to the COP-MOP so as to capitalize on positive experiences.

(ii) Document the reasons for which the Protocol has not been implemented in practical instances, such as Article 18.

(iii) Carry out an analysis to show the correlation that exists between national reports, with regards to the level of implementation of the Protocol, so as to identify where the majority of cases of non-compliance are and thus develop mechanisms and procedures to support these cases.

III. SUGGESTED ELEMENTS FOR A DRAFT DECISION

5. The Conference of the Parties serving as the meeting of the Parties to the Protocol may wish to consider the following elements of a draft decision:

(a) Take into account the views submitted by the Parties as compiled in the preceding section of the present document on how the supportive role of the Compliance Committee could be improved;

(b) Recall the objective, nature and underlying principles of the Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety as provided for in section I of the annex to decision BS-I/7, which underline the promotion of compliance and addressing cases of non-compliance through the provision of advice and assistance; in a simple, facilitative, non-adversarial and cooperative manner; and by paying particular attention to the special needs of developing countries, taking into full consideration the difficulties they face in the implementation of the Protocol;

(c) Recognize the need for building further the confidence of Parties in the role of the Compliance Committee and the application of the compliance procedures and mechanisms of the Protocol by, among other things, emphasizing and strengthening the facilitative and supportive role of the Committee;

(d) Decide that, in the event of a submission relating to compliance by any Party with respect to itself in the context of paragraph 1 (a), section IV of the annex to decision BS-I/7, the Compliance Committee shall, in response, consider taking only those measures specified in paragraph 1, subparagraphs (a) and (b), section VI of the annex to decision BS-I/7, namely the provision of advice or assistance to the Party concerned and/or making recommendations to the Conference of the Parties serving as the meeting of the Parties to the Protocol regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures;

(e) Decide further that the Compliance Committee may also consider taking the measures referred to in subparagraph (d) above in a situation where a Party fails to submit its national report or information has been received through a national report that shows that the Party concerned is faced with difficulties complying with its obligations under the Protocol;

(f) Encourage Parties that are facing difficulties complying with one or more of their obligations under the Protocol due to lack of capacity to make a submission to the Compliance Committee relating to their compliance with a view to obtain, as appropriate, the necessary advice or assistance from the Committee itself or from the Conference of the Parties serving as the meeting of the Parties to the Protocol, on the basis of recommendations of the Committee.