

Submission of the Government of Australia

Views or understandings on the contents in brackets in the compliance text (para 2, recommendation 2/11)

Noting paragraph 175 of the report of ICCP2, Australia reserves the right to discuss the whole of the draft compliance text at the next intergovernmental meeting. The comments offered below do not imply acceptance of the unbracketed text.

Australia's view remains that the Protocol's compliance procedures and mechanisms should be essentially facilitative, rather than judicial or adversarial in nature, designed to assist those Parties which, in spite of best endeavours, are experiencing difficulty in meeting their obligations under the Protocol and to work constructively with these individual Parties to assist them in achieving compliance.

Australia would offer the following comments relevant to the draft compliance text in brackets:

Differentiated responsibilities

- Australia does not consider it acceptable, or consistent with the text of the Biosafety Protocol, that any group of countries receive differentiated treatment under compliance procedures and mechanisms. The special needs of developing countries are recognised and addressed in the Protocol through the provisions on capacity building and information exchange. The Protocol's compliance procedures and mechanisms should apply and be available in equal measure to all Parties.

Compliance committee

- Australia's view, should a compliance committee be formed, is that it should be a small committee appointed by the Meeting of Parties and drawn from a list of experts nominated by member governments.
- The Committee's role should be twofold: to assist a Party (or a group of Parties) concerned about their compliance to develop a voluntary compliance program to ensure compliance is maintained or restore compliance as soon as possible; and to consider general (non-Party specific) issues of compliance under the Protocol and provide recommendations to the COP/MOP on those matters.
- The Compliance Committee's program of work must be reviewed regularly by the COP/MOP to ensure that it can be evaluated in the context of the Protocol's overall resources and priorities.

Compliance trigger

- Australia's view is that the Party which is having difficulty in complying with Protocol procedures should be responsible for raising its problem, that is, self-

trigger. The provision of assistance and advice by the Compliance Committee, if coupled with a genuinely non-adversarial no-blame compliance building procedure, should be sufficient to induce Party/Parties on their own volition to seek the assistance of the Compliance Committee when experiencing potential compliance difficulties.

- Australia does not consider it appropriate for compliance procedures and mechanisms to be invoked by non-State Parties, such as Non-Government Organisations or the Secretariat.
 - The Secretariat's work collating and overseeing information flow between parties and assisting Parties in implementation of the Protocol will be invaluable in helping a Compliance Committee in its work. However, the Secretariat should not be empowered to initiate any aspect of the compliance procedures and mechanisms or initiate work on general issues of non-compliance. Work by the Secretariat should be undertaken at the request of the Compliance Committee or the COP/MOP.
 - Non-State trigger options would be unnecessarily complicated and costly and could be potentially highly politicised, confrontational or adversarial, creating disincentives for Parties experiencing compliance difficulties to be open about their difficulties and seek advice.
- Australia does not consider it appropriate at this stage to provide for one Party to invoke compliance procedures and mechanisms for another Party. It could be suggested that egregious and deliberate non-compliance would warrant an injured party being able to complain. However, Australia considers that any such complaint could be taken up through the dispute settlement mechanism. It must be remembered that the compliance procedures and mechanisms are "separate from, and without prejudice to, dispute settlement procedures and mechanisms".

Non-Compliance

- Australia does not support sanctions as part of the Protocol's compliance mechanism. As stated above, Australia supports facilitative, non-confrontational procedures and mechanisms which would promote participation and transparency. Non-compliance sanctions are not consistent with this.
 - Furthermore, the nature of any sanctions envisaged is unclear. Denial of access to technical assistance/GEF support would be counterproductive to the compliance mechanism's objective of assisting countries to meet their obligations. There are no other "rights" conferred by the Protocol that could be suspended.
 - Australia would appreciate clarification of what is envisaged by sanction supporters.

