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Stockholm Convention on Persistent Organic Pollutants
Open-ended Ad Hoc Working Group on Non-Compliance
Geneva, 28–29 April 2006
Item 3 of the provisional agenda*

**Consideration of procedures and institutional mechanisms for
determining non-compliance with the provisions of the Convention
and for the treatment of Parties found to be in non-compliance**

**Views and proposals on procedures and institutional mechanisms
on non-compliance submitted by Governments and relevant
organizations**

Note by the secretariat

1. At its first meeting, the Conference of the Parties, in its decision SC-1/14, invited all Governments, both Parties and non-Parties, and relevant organizations to submit to the Secretariat their views and proposals on procedures and institutional mechanisms on non-compliance. It also requested the Secretariat to prepare for submission to the open-ended ad hoc working group on non-compliance a compilation of the views and proposals submitted to it.
2. As of 20 December 2005, the Secretariat had received submissions from the following Parties to the Convention: Canada, European Community, India, Japan, Mexico, New Zealand, Norway, Republic of Moldova and Switzerland. Submissions were also received from one observer, the Center for International Environmental Law. In accordance with decision SC-1/14, the Secretariat has compiled the submissions it has received in the annex to the present note. The submissions are presented as received by the Secretariat, without editing.

* UNEP/POPS/OEWG-NC.1/1.

Annex

I. Submissions received from Parties

Canada

Canada's views and proposals on procedures and institutional mechanisms on non-compliance under Article 17 of the Convention

Introduction

Canada fully supports efforts to develop as early as possible procedures and mechanisms to effectively promote compliance and assist Parties in meeting their obligations under the Stockholm Convention.

Canada is pleased to follow-up on decision SC-1/14 which invites Governments to submit to the secretariat their views and proposals on procedures and institutional mechanisms as early as possible, but no later than 15 November 2005.

General comments

Canada fully supports the collective obligations set out under Article 17 of the Stockholm Convention which provides that:

The Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with provisions of this Convention and for the treatment of Parties found to be in non-compliance.

Canada believes that the convening of an open-ended ad hoc working group to consider procedures and institutional mechanisms on non-compliance under Article 17 is very timely.

Canada has had the opportunity to offer initial views in the past which may be found in the Secretariat's compilation in document UNEP/POPS/INC.7/INF/8 of 25 February 2003. Without repeating all the details that were then mentioned, suffice it to reproduce some of the highlights of Canada's views on this important matter:

- The Stockholm Convention is an extremely important treaty for Canada, given the impact of long-range transport of air pollutants, particularly in Canada's Arctic;
- An effective compliance mechanism is needed as soon as possible to ensure that the objectives of the Convention are pursued at all times;
- An effective compliance mechanism is also a means to avoid environmental harm and disputes, and is critical to the evaluation of the Convention's effectiveness;
- Treatment of Parties not in compliance should take into account a Party's lack of capacity or other relevant reasons for the situation of non-compliance in order to promote a quick return to full compliance;
- The Conference of the Parties should have the final authority over compliance matters;
- The Compliance Committee should have a limited number of members nominated by Parties for their qualifications in compliance matters in the POPs context;
- Meetings of the Compliance Committee should generally be closed while its recommendations should be made public – similarly, all COP decisions on compliance matters should be made public;
- Canada supports procedures being invoked by one party about its own compliance, by one party regarding the compliance of another party, and is open to consider other invocation/triggers such as the secretariat, other committees or COP referrals;

- Canada supports measures that would help promote compliance, such as advice and assistance measures, and is prepared to discuss and consider additional measures, consistent with international law, which could help achieve the further promotion of compliance with the Stockholm Convention;
- Recently elaborated compliance mechanisms, or those currently in the process of elaboration, such as under the Basel Convention and the PIC Convention may provide significant contributions to the establishment of a compliance mechanism under the Stockholm Convention, as well as other precedents in the field.

Proposed text by Canada

Establishment of a compliance committee

1. A compliance committee (hereinafter referred to as the "Committee") is hereby established.

Members

2. The Committee shall consist of 10 members. Members shall be nominated by Parties and elected by the Conference of the Parties. In electing members, due consideration shall be given to the principle of equitable geographical representation of the regional groups of the United Nations.

3. Members shall have expertise and specific qualifications in the subject matter covered by the Convention. They shall serve objectively and in the best interests of the Convention.

Election of members

4. At the meeting at which the present decision is adopted, the Conference of the Parties shall elect half the members for one term and half the members for two terms. The Conference of the Parties shall, at each ordinary meeting thereafter, elect for two full terms new members to replace those members whose period of office has expired or is about to expire. Members shall not serve for more than two consecutive terms. For the purpose of the present decision, "term" shall mean the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the end of the next ordinary meeting of the Conference of the Parties.

5. If a member of the Committee resigns or is otherwise unable to complete his or her term of office or to perform his or her functions, the Party who nominated that member shall nominate an alternate to serve for the remainder of the term.

Officers

6. The Committee shall elect its own Chair and a rapporteur, on a rotating basis between developed and developing countries, in accordance with rule 30 of the rules of procedure of the Conference of the Parties.

Meetings

7. The Committee shall hold meetings as necessary and wherever possible in conjunction with meetings of the Conference of the Parties or other Convention bodies.

8. Subject to paragraph 9 below, the meetings of the Committee shall be closed to the public unless the Committee and the Party whose compliance is in question agree otherwise.

9. Where a submission is made with respect to the possible non-compliance of a Party, that Party shall be invited to participate in the consideration of the submission by the Committee. Such a Party, however, may not take part in the elaboration and adoption of a recommendation or conclusion of the Committee.

10. The Committee shall make every effort to reach agreement on all matters of substance by consensus. Where this is not possible the report shall reflect the views of all the Committee members. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort be taken by a two-thirds majority of the members present and voting or by six members, whichever is greater.

11. Submissions may be made in writing, through the secretariat where subparagraphs (a) and (b) applies, by:

(a) A Party which believes that, despite its best endeavours, it is, or will be, unable to comply with its obligations under the Convention. Such a submission should include details as to which specific obligations are concerned and an assessment of the reason why the Party may be unable to meet those obligations. Where possible, substantiating information, or advice as to where such substantiating information may be found, may be

provided. The submission may include suggestions for solutions which the Party considers may be most appropriate to its particular needs;

(b) A Party that has concerns about an alleged failure to comply with the Convention's obligations by another Party. A Party intending to make a submission under this subparagraph should before so doing undertake consultations with the Party whose compliance is in question. The submission should include details as to which specific obligations are concerned, and information substantiating the submission.

12. The secretariat shall forward submissions made under subparagraph 11 (a) above, within two weeks of receiving such submissions, to the members of the Committee for consideration at the Committee's next meeting.

13. The secretariat shall, within two weeks of its receiving any submission made under subparagraph 11 (b) above, send a copy to the Party whose compliance with the Convention is in question and to the members of the Committee for consideration at the Committee's next meeting.

14. The Secretariat, if, while acting pursuant to its functions under the Convention, becomes aware of possible difficulties by a Party in complying with its obligations to submit national implementation plans and reports under Articles 7 and 15, respectively, of the Convention, it may request the Party concerned to furnish necessary information about the matter. If there is no response from the Party concerned within three months or such longer period as the circumstances of the matter may require or the matter is not resolved through administrative action or through diplomatic contacts, the Secretariat shall report to the Parties pursuant to article 20 of the Convention, and shall inform the members of the Committee which shall consider the matter at the Committee's next meeting.

15. Parties whose compliance is in question may present responses or comments at every step of the proceedings described in the present decision.

16. Without prejudice to paragraph 15 above, additional information, provided by a Party whose compliance is in question in response to a submission, should be forwarded to the secretariat within three months of the date of receipt of the submission by that Party, unless the Party requests an extension of no more than three months with a reasonable justification. Such information shall be immediately transmitted to the members of the Committee for consideration at the Committee's next meeting. Where a submission has been made pursuant to subparagraph 11 (b) above, the information shall be forwarded by the secretariat to the Party that made the submission.

17. The Committee may decide not to proceed with submissions which it considers to be:

- (a) De minimis;
- (b) Manifestly ill-founded.

Facilitation

18. The Committee shall consider any submission made to it in accordance with paragraph 11 or any matter referred to it in accordance with paragraph 14 above with a view to establishing the facts and the root causes of the matter of concern, and to assisting in its resolution. To that end, the Committee may provide a Party with:

- (a) Advice;
- (b) Non-binding recommendations;
- (c) Any further information required to assist the Party in developing a compliance plan, including timelines and targets.

Additional measures

19. If, after undertaking the facilitation procedure set forth in paragraph 18 above and taking into account the cause, type, degree and frequency of compliance difficulties, including financial and technical capacities of the Parties whose compliance is in question, the Committee considers it necessary to pursue further measures to address a Party's compliance problems, it may recommend to the Conference of the Parties that it consider appropriate measures, to be taken in accordance with international law, to attain compliance, including:

- (a) Further support under the Convention for the Party concerned, including facilitation, as appropriate, of access to financial resources, technical assistance and capacity-building;
- (b) Providing advice regarding future compliance in order to help Parties to implement the provisions of the Convention and to promote cooperation between all Parties;
- (c) Issuing a statement of concern regarding possible future non-compliance;
- (d) Issuing a caution;

Handling of information

21. As regards paragraph 11 submissions or paragraph 14 matters, the Committee may only receive information:

- (a) Submitted by the secretariat from Parties pursuant to paragraphs 11, 15, and 16;
- (b) Obtained by the secretariat from Parties while acting pursuant to its functions under the Convention; and
- (c) With the consent of the Party concerned, as requested by the Committee from any other source.

22. In carrying out its functions, the Committee may:

- (a) Request further information from all Parties, through the secretariat, on issues of general compliance under its consideration;
- (b) Consult with other bodies of the Convention;
- (c) Request further information from any sources and draw upon outside expertise, as it considers necessary and appropriate, either with the consent of the Party concerned or as directed by the Conference of the Parties;
- (d) Undertake, with the agreement of any Party, information gathering in its territory for the purpose of fulfilling the functions of the Convention;
- (e) Consult with the secretariat and draw upon its expertise and knowledge base, and request through the secretariat information, where appropriate in the form of a report, on matters under the Committee's consideration; and
- (f) Review any national reports of Parties required or encouraged by a decision by the Conference of the Parties.

23. Subject to article 9 of the Convention, the Committee, any Party and any person involved in the deliberations of the Committee shall protect the confidentiality of information received in confidence.

Monitoring

24. The Compliance Committee should monitor the consequences of action taken in pursuance of paragraphs 18 or 19 above.

General compliance issues

25. The Compliance Committee may examine systemic issues of general compliance of interest to all Parties where:

- (a) The Conference of the Parties so requests;
- (b) The Committee, on the basis of information obtained by the secretariat, while acting pursuant to its functions under the convention, from Parties and submitted to the Committee by the secretariat, decides that there is a need for an issue of general non-compliance to be examined and for a report on it to be made to the Conference of the Parties.

Reports to the Conference of the Parties

26. The Committee shall submit a report to each ordinary meeting of the Conference of the Parties reflecting:

- (a) The work that the Committee has undertaken;
- (b) The conclusions or recommendations of the Committee;
- (c) The future programme of work of the Committee, including the schedule of expected meetings which it considers necessary for the fulfilment of its programme of work, for the consideration and approval of the Conference of the Parties.

Other subsidiary bodies

27. Where the activities of the Committee with respect to particular issues overlap with the responsibilities of another Stockholm Convention body, the Conference of the Parties may direct the Committee to consult with that body.

Other multilateral environmental agreements

28. Where there is an overlap with obligations and responsibilities under other multilateral environmental agreements, the Conference of the Parties may request the Committee to communicate and exchange experience with similar types of committees of those other agreements and to report to the Conference of the Parties.

Review of the compliance mechanism

29. The Conference of the Parties shall regularly review the implementation of the procedures and mechanisms set forth in the present decision.

Relationship with settlement of disputes

30. These procedures and mechanisms shall be without prejudice to article 18 of the Convention.

Rules of Procedures

31. The Committee shall develop and submit its rules of procedures to the Conference of the Parties serving as the meeting of the Parties for its consideration and approval.

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Date: 15 November 2005

Via email:
ssc@pops.int

Stockholm Convention on Persistent Organic Pollutants: Non-compliance

Dear John

With regards to your letter dated 16 September in which you invited Parties to submit views and proposals on procedures and institutional mechanisms on non-compliance. I have the pleasure of submitting comments on behalf of the European Community and its 25 Member States as an attachment to this letter.

Yours faithfully
Colin Church

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European Union's Submission on a Compliance Mechanism under the Stockholm Convention

Introduction

1. The European Union welcomes the invitation in Decision SC-1/14 of the first meeting of the Conference of the Parties to submit views and proposals on non-compliance under Article 17 of the Stockholm Convention.
2. This note builds upon previous EU views submitted in 2002 and found in the compilation of submissions prepared for INC 7 (see document UNEP/POPS/INC.7/INF/8 – http://www.pops.int/documents/meetings/inc7/inf/en/7_inf_8.pdf).
3. We have drawn upon the draft text provided in the EU's previous submission and developed it further so that it provides a complete text for a compliance mechanism. Again, we have assumed that the compliance mechanism under the Stockholm Convention would be established by a decision of the Conference of the Parties, as is the case with most compliance mechanisms.
4. In developing a draft text, we have drawn on precedents and discussions in other Multilateral Environmental Agreements and proposed a text that is tailored to the specific obligations and nature of the Stockholm Convention. The rationale for the draft text is found in the EU's previous submission.
5. The EU would like to reiterate the importance of adopting a compliance mechanism as soon as possible under the Stockholm Convention. The issue of compliance is critically important. Only full implementation will ensure that the objectives of the Convention, to protect human health and the environment from certain persistent organic pollutants, can be delivered on the ground.
6. An effective compliance procedure is the key tool in ensuring that all Parties implement their obligations under the Convention and so deliver the objectives of the Convention on the ground. The primary goal of the compliance mechanism is to facilitate, promote and secure compliance with the Convention's obligations. The procedure should be non-adversarial and forward-looking; allow for the early identification of challenges encountered by Parties and provide a framework to resolve difficulties by formulating the most appropriate response. In particular, a compliance mechanism will be able to provide advice and facilitate different types of assistance to Parties, especially Developing Country Parties. The compliance mechanism would complement and be complemented by other provisions in the Convention, e.g. technical assistance (Article 12), financial mechanisms (Article 13), and implementation plans (Article 7). The provision of advice and facilitation of assistance is critical in the early days of the Convention.
7. The sooner the compliance mechanism is operational the sooner it will be in a position to assist Parties. Given that we are quickly approaching the 2nd Conference of the Parties, the EU sees no reason to delay the adoption of a compliance mechanism further. The EU believes that the ad hoc working group on compliance will allow an excellent opportunity to focus on compliance and enable the Conference of the Parties to adopt a compliance mechanism at its 2nd meeting of the Conference of the Parties.

Compliance Mechanism under the Stockholm Convention

The Compliance Committee and its composition and tenure

1. A Compliance Committee, hereinafter referred to as the "Committee", is hereby established.
2. The Committee shall consist of ten members. Members of the Committee shall be legal and technical experts, drawn from a list of individuals nominated by Parties and elected by the Conference of the Parties, who have expertise and specific qualification in the subject matter under the Convention. Members shall serve in their personal capacity.
3. In appointing members due consideration shall be given to an equitable geographical distribution.
4. At the meeting at which this decision is adopted, the Conference of the Parties shall appoint five of the members for one term, and five members for two terms. The Conference of the Parties shall, at each ordinary meeting thereafter, appoint for two full terms five new members to replace those members whose period of office has expired, or is about to expire. Members shall not serve for more than two consecutive terms. For the purpose of this decision, "term" means the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the next ordinary meeting of the Conference of the Parties.
5. The Committee shall elect its own Chairperson and any other officers it deems appropriate.

Meetings of the Compliance Committee

6. The Committee shall hold meetings as necessary, at least once a year. In determining the dates of the meetings, due consideration should be given to the meeting schedules of the Conference of the Parties and other relevant bodies under the Convention.
7. The members of the Committee shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a two-thirds majority vote of the members present and voting. Decisions on matters of procedure shall be taken by a majority vote of the members present and voting. If the question arises whether a matter is one of procedural or substantive nature, the Chairperson shall rule on the question. An appeal against this ruling shall be put to the vote immediately and the Chairperson's ruling shall stand unless overruled by a majority of the members present and voting. If on matters other than elections a vote is equally divided, a second vote shall be taken. If this vote is also equally divided, the proposal shall be regarded as rejected.
8. Eight of the members of the Committee shall constitute a quorum.

Initiation of the procedures and procedural safeguards

9. Submissions to the Committee may be made by:
 - a) A Party with respect to itself,
 - b) A Party with respect to another Party's compliance,

- c) The Secretariat, if, while acting pursuant to its functions under the Convention, it becomes aware of possible difficulties for any Party in complying with its obligations under the Convention, provided that the matter has not been resolved within 3 months by consultation with the Party concerned. In such cases, the secretariat may also consider information received from bodies or agencies, which have observer status in accordance with Article 19(8).
10. In addition, the Committee may initiate a procedure, if during the course of its functions, it becomes aware of possible difficulties for any Party in complying with its obligations under the Convention.
11. Subject to paragraph 13 below, any submission shall be addressed in writing to the secretariat and shall set out:
 - (a) The matter of concern;
 - (b) The relevant provisions of the Convention; and
 - (c) Information substantiating the matter of concern.
12. The secretariat shall forward all submissions within two weeks upon their receipt to the Committee. In cases of submissions other than by a Party with respect to its own compliance, the secretariat shall send within two weeks upon their receipt a copy to the Party whose compliance is in question.
13. A submission made by the secretariat, in accordance with paragraph 9(c) above, shall set out the information required in paragraph 11 above and shall be sent directly to the Committee and the Party whose compliance is in question in accordance with paragraph 12 above.
14. The Party whose compliance is in question may comment on the submission within three months upon its receipt, unless the circumstances of a particular case require an extended period of time, but in any event not later than six months. The Party shall send such comments to the secretariat, which shall immediately forward it to the Committee for its consideration.
15. A Party whose compliance is in question shall be entitled to participate in the discussions of the Committee with respect to the issues raised. For this purpose the Committee shall invite such a Party to participate in the discussions no later than eight weeks beforehand. Only the members of the Committee may participate in the elaboration and adoption of a recommendation or decision of the Committee.
16. The Committee shall consider any submission made to it, as well as any other relevant information, with a view to determining the facts and possible causes of the matter of concern and the resolution of it. The Committee may request further information from the party concerned and draw on relevant expertise.
17. The Committee shall reject submissions which it considers are:
 - (a) De minimis; or
 - (b) Manifestly ill-founded.

18. The Committee shall share its draft conclusions and recommendations with the Party concerned for consideration and an opportunity to comment within three months upon receipt of the draft by the Party concerned. Any such comments may be included in the report of the Committee.

Measures regarding non-compliance

19. The Committee may take one or more of the following measures, taking into account the cause, type, degree and frequency of compliance difficulties, in order to bring the Party concerned back into compliance as quickly as possible, including:
 - a) Provision of advice,
 - b) Facilitation of technical and financial assistance,
 - c) Requesting the Party concerned to develop a compliance action plan, including targets and timelines and submission of progress reports within a time frame to be agreed upon by the Committee and the Party concerned,
 - d) Pursuant to paragraph 19(c) above, reporting to the Conference of the Parties on efforts made by the Party concerned to return to compliance and maintain this as an agenda item of the Committee until adequately resolved,
 - e) Recommending a non-compliant Party to take steps to remedy the non-compliant situation, such as safe disposal at the expense of the non-compliant Party or re-import/re-export of the chemical, and
 - f) Formal statement of concern regarding possible future non-compliance.
20. The Committee may also recommend to the Conference of the Parties one or more of the following measures, taking into account the cause, type, degree and frequency of compliance difficulties, in order to bring the Party concerned back into compliance as quickly as possible, and which shall be in accordance with international law, including:
 - a) Provision of further advice and facilitation of technical and financial assistance, where appropriate,
 - b) Declaration of non-compliance,
 - c) Issuing a caution,
 - d) Requesting the Executive Secretary to publish cases of non-compliance on the Stockholm Convention website, and
 - e) In cases of willful or persistent non-compliance, suspending rights and privileges under the Convention.
21. The Compliance Committee should monitor the consequences of action taken in pursuance of paragraphs 19 and 20 above.

General issues of compliance

22. The Committee may furthermore examine general issues of compliance where:
 - a) The Conference of the Parties so requests,
 - b) The Committee decides there is a need for an examination and report to the Conference of the Parties, or
 - c) The Secretariat on the basis of Parties reports or other information received so suggests.

Secretariat

23. The secretariat referred to in Article 20 of the Convention shall be the secretariat of the Committee.

Report on the Activities of the Committee

24. The Committee shall report to each ordinary meeting of the Conference of the Parties, reflecting:
- a) The work that the Committee has undertaken,
 - b) The conclusions or recommendations of the Committee,
 - c) The future programme of work of the Committee, including the schedule of expected meetings which it considers necessary for the fulfilment of its programme of work.

Relationship with other provisions of the Convention and other bodies

25. Where the activities of the Committee with respect to particular issues overlap with the responsibilities of another Stockholm Convention body, the Committee may directly or at the request of the Conference of the Parties consult with that body.
26. Where there is a clear and direct relationship with other multilateral environmental agreements, the Committee may communicate and exchange experience with similar types of committees of those other agreements and report to the Conference of the Parties.

Relationship with Settlement of Disputes

27. This mechanism shall be without prejudice to the provisions of Article 18 of the Convention on settlement of disputes.

Monitoring and review

28. The Conference of the Parties shall regularly review the implementation and effectiveness of the procedures and mechanisms set forth in the present decision.



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 MINISTRY OF ENVIRONMENT & FORESTS

D.O.No. 4-4/2004-HSMD
 Dated : 28th November, 2005

Dear Mr. Buccini

Kindly refer to your communication dated 16th September, 2005 regarding the Views on Procedures and Institutional Mechanism on Non-compliance. Enclosed please find India's proposal and comments on this issue. Kindly ignore the attachment to my letter of 22nd November, 2005. It appears that inadvertently the draft under discussion was mailed to you as attachment. I regret any inconvenience caused.

With kind regards.

Yours sincerely,

Indrani
 (Indrani Chandrasekharan)

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UNEP Chemicals	
Date Received:	8/12/05
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जहाँ है हरियाली! पर्यावरण अवन, सी.जी.ओ. कॉम्प्लेक्स, लोदी रोड, नई दिल्ली-1100 03 सूचना सुविधा केंद्र फोन : 24361669
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Views on Procedures and Institutional Mechanism on Non-compliance

A broad outline for an Implementation and Compliance Committee, (ICGROPS) is as under :-

1. Objectives:- The objective of the mechanism should be to assist Parties to comply with their obligations under the Stockholm Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention.
2. Nature of the mechanism:-The mechanism should be non-confrontational, transparent, cost-effective and preventive in nature. Should be simple, flexible, non-binding and oriented towards helping parties to implement the provisions of the pops Convention. It should particularly address the needs of developing countries and should be intended to promote cooperation between all Parties.
3. Composition and tenure :-An Implementation and Compliance Committee {ICCPOPS} for administrating this mechanism could be established and could consist of 19 Members (as suggested by India in PIC Negotiations) nominated by the Parties, and based on equitable geographical representation of the five regional groups of the United Nations, elected by the Conference of the Parties.
4. Procedures for submissions:- Submissions may be made to the implementation and Compliance Committee {ICCPOPS} by:
 - (a) A Party that **decides that**, despite its best efforts, it is or will be unable to fully implement or comply with its obligations under the Convention;



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- (b) Submissions made to the secretariat shall be forwarded within two weeks of its receipt, to the Committee for consideration.
- (c) The Party whose compliance is in question may present responses and/or comments at every step of the proceedings.
- (d) Where a Party makes a submission, it shall be invited to participate in the consideration of the submission by the Committee. Such a Party, however, shall not take part in the elaboration and adoption of the conclusions or recommendations by the Committee. Conclusions and recommendations shall be shared with the Party concerned for consideration and an opportunity to comment. Any such comments shall be forwarded with the report of the Committee to the Conference of the Parties.

5. Deliberations of the Meetings:- The proceedings and information submitted and considered during meetings dealing with specific submissions relating to the compliance of an individual Party shall not be open to other Parties or the public, unless the Committee and the Party whose compliance is in question agree to its dissemination.

6. Facilitation procedure :-The Committee shall consider any submission made to it with a view to determining the facts and root causes of the matter of concern and, assist in its resolution. As part of this process, the Committee may provide a Party, after consultation with that Party, with advice, non-binding recommendations and information relating to, inter alia;

- (a) Establishing and/or strengthening its domestic regulatory regimes;
- (b) Possible assistance to the countries, including access to financial and technical support, including technology transfer and capacity-building;
- (c) Elaborating, in consultation with the Party or Parties faced with the compliance problems, voluntary compliance action plans, and help review their implementation.



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वहाँ है स्वशहली।।

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7. Recommendation to the Conference of the Parties :- All facilitation and advice on compliance difficulties, as well as the need for strengthening capacity of the Party would be decided by the Conference of the Parties.

8. General review:-The Committee shall, as directed by the Conference of Parties, review general issues of compliance and implementation under the Convention.

9. Consultation and information :- In carrying out its functions, the Committee may, inter alia:

- Request further information from all Parties, through the secretariat, on general issues of compliance and implementation under its consideration;
- Consult with other bodies of the Convention;
- Consult with the secretariat and draw upon its experience and knowledge
- Review the national reports of Parties

10 Reporting:-The Committee shall report to the meeting of the Conference of the Parties of its activities or any matters connected.

11. Decision-making :-The Committee shall make every effort to reach agreement on all matters of substance by consensus.

12. Confidentiality:-The Committee, and Party or others involved in its deliberations shall protect the confidentiality of information received.

It needs to be mentioned that implementation of the Convention and compliance by developing countries is contingent on the provision of adequate financial resources under a credible financial mechanism. India is also of the view that new and additional financial resources should be made available for developing countries under the Convention.

(Dr.Indrani Chandrasekharan)



जहाँ है हरियाली।
तहाँ है स्वस्थाली।।

पर्यावरण भवन, सी.जी.ओ. कॉम्प्लेक्स, लोदी रोड, नई दिल्ली-1100 03 सूचना सुविधा केन्द्र फोन : 24361669
PARYAVARAN BHAWAN, C.G.O. COMPLEX, LODHI ROAD, NEW DELHI-110003 website : <http://envfor.nic.in>

From: unknown Page: 1/4 Date: 15/11/2005 18:15:19

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Permanent Mission
 of Japan in Geneva

FAX

To : the Secretariat of
 the POPs Convention Fax: 022 797 34 60

From : Masaya OKUYAMA Tel: +41 (0)22 717 3351
 First Secretary Fax: +41 (0)22 717 3720
 E-mail:masaya.okuyama@ge-japan.ch

Date : 15 November 2005 **Pages:** 4 Including this

Subject : JAPAN: comments on the compliance mechanism

Dear Sir/Madame,

I have the pleasure to submit you, upon instructions from my authorities, Japanese comments on the compliance mechanism of the POPs Convention, according to paragraph 2 of the decision SC-1/14 on Non-compliance.

If you have any question, please feel free to contact me.

Sincerely yours,

奥山 祐天

Masaya OKUYAMA

First Secretary,

The Permanent mission of Japan in Geneva

Japanese comments on the Compliance Mechanism of the POPs Convention

1. Objectives and nature of the mechanism

- (1) The objective of the mechanism should be to assist Parties to comply with their obligations under the Convention.
- (2) The mechanism should be non-confrontational, effective and preventive in nature and be intended to promote cooperation among all Parties.

2. Members of the Compliance Committee

The number of experts

=> around 10 to 15

(Reason) In order to effectively tackle issues, it would be better to have a small number of experts in the Committee.

3. Procedures

(1) Trigger

(i) Only the Party that concludes that it is or will be unable to fully implement or comply with its obligation under the Convention should have the right to make submissions to the Committee.

(ii) Party to Party trigger

=>oppose

(Reason) Basically, "Party to Party trigger" is not appropriate in the light of the nature of the compliance mechanism. However, in case "Party to Party trigger" becomes acceptable, only a Party that is directly affected by a failure to comply with the Convention's obligations by another Party with which it is directly involved under the Convention should be allowed to make submissions to the Committee. Before such a Party makes a submission of the case of non-compliance to the Committee, it should inform the Party whose compliance is in question, and undertake consultation with the Party whose compliance in question to resolve the matter through consultation.

(iii) Secretariat Trigger

=>oppose

(reason)The function of the Secretariat is expected to be neutral and its mandate should be restricted to those mandated by the Convention.

(2) Open/closeness to other Parties/to the public

=> Meetings dealing with specific submissions relating to the compliance of an individual Party should be closed both to other Parties and to the public unless the Committee and the Party whose compliance is in question agree otherwise.

(Reason) The case of non-compliance might not be appropriate to be openly discussed at the presence of other Parties nor at the presence of the public, since cases are usually delicate in their nature, linked with domestic matters. Furthermore, the presence of the public such as NGOs could prevent the Party whose compliance is in question from confessing the real background and reasons of the non-compliance.

(3)Decision making

=>Consensus is required.

(Reason) The aim of compliance mechanism is expected to be non-punitive but to encourage a Party to comply with its obligations under the Convention. To maintain this nature, the Committee should make every effort to reach agreement on all matters by consensus.

4. The measures to be taken in order to make the Party whose compliance is in question comply with the Convention

=>The Committee is expected to advice or recommend a Party which does not comply with the Convention. The Committee should provide the Party after coordination with that Party, with advice, information and support to facilitate the implementation of and compliance with the obligations under the Convention. Further measures such as issuing statement on the determination of non-compliance or suspending rights and privileges under the Convention are not acceptable.

(Reasons) The aim of compliance mechanism is expected to be non-punitive nor to be

judicial but to encourage the Party to comply with its obligations under the Convention. To maintain this nature, the measures which the Party should take are to be decided by the COP. The compliance mechanism should not give any additional obligations to the Parties.

5. Confidentiality

The Committee, any Party or others involved in its deliberations have to protect the confidentiality of information received in confidence.

(end)

MISIÓN PERMANENTE DE MÉXICO

OGE05469

La Misión Permanente de México ante la Oficina de las Naciones Unidas y otras Organizaciones Internacionales con sede en Ginebra saluda muy atentamente a la Secretaría del Convenio de Estocolmo sobre Contaminantes Orgánicos Persistentes (POPs) y tiene el honor de enviarle en anexo los comentarios elaborados por la Secretaría de Medio Ambiente y Recursos Naturales, sobre procedimientos y mecanismos institucionales sobre no cumplimiento en apego a la Decisión SC-1/14 de la Primera Conferencia de las Partes del Convenio de Estocolmo, que se celebró en Punta del Este, Uruguay, del 2 al 6 de mayo de 2005.

La Misión Permanente de México ante la Oficina de las Naciones Unidas y otras Organizaciones Internacionales con sede en Ginebra aprovecha la oportunidad para reiterar a la Secretaría del Convenio de Estocolmo sobre Contaminantes Orgánicos Persistentes las seguridades de su más alta y distinguida consideración.

Ginebra, a 16 de noviembre de 2005



DELEGACION
PERMANENTE DE MÉXICO
ANTE LOS ORGANISMOS
INTERNACIONALES
SEDE EN GINEBRA
GINEBRA, SUÍZA

A la Secretaría del Convenio de Estocolmo
sobre Contaminantes Orgánicos Persistentes,
Ginebra.

UNEP Chemicals	
Date Received:	18.11.05
File No / Name:	SSC
For action:	HCCP ES
Co:	

México**Comentarios de la Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT) sobre procedimientos y mecanismos institucionales sobre no cumplimiento en apego a la decisión SC-1/14 de la Primera Conferencia de las Partes del Convenio de Estocolmo sobre Contaminantes Orgánicos Persistentes.**

- Considerando que el Artículo 17 del Convenio establece que la Conferencia de las Partes, elaborará y aprobará, procedimientos y mecanismos institucionales para determinar el incumplimiento de las disposiciones de dicho instrumento y el tratamiento que haya de darse a las Partes que no hayan cumplido dichas disposiciones, se estima que pueden tomarse como referencia el mecanismo para promover la implementación y el cumplimiento del Convenio de Basilea sobre el control de los movimientos transfronterizos de los desechos peligrosos y su eliminación, así como los relativos a la Convención de 1980 sobre ciertas armas convencionales, así como los relativos al Comité de Cumplimiento bajo el Protocolo de Cartagena y el Comité de Implementación del Protocolo de Montreal.
- Se considera que el objeto del régimen, en concordancia con el Artículo 17, debe ser promover la implementación y el cumplimiento de las disposiciones del Convenio de Estocolmo, por lo tanto, también será el determinar el nivel de cumplimiento e incumplimiento de las disposiciones de dicho instrumento y el tratamiento que haya de darse a las Partes que no hayan cumplido dichas disposiciones.
- De manera complementaria se deberá considerar la cooperación entre las Partes y establecer un mecanismo de facilitación de aquellos que se enfrentan a dificultades en lograr el pleno cumplimiento, particularmente en los países en desarrollo y con economías en transición.
- La naturaleza del mecanismo deberá contribuir al cumplimiento y operar los procedimientos y mecanismos de cumplimiento sin perjuicio de aquellos relativos a la de solución de controversias.
- Se deberá pugnar por un mecanismo rápido, equitativo y transparente, que analice caso por caso, y en su caso, aplicar el principio de derecho internacional de "responsabilidad común pero diferenciada".
- Se recomienda proponer el establecimiento de un Comité Permanente de Cumplimiento, constituido por un número limitado de expertos jurídicos y técnicos. Sería recomendable que el Comité tuviera un equilibrio regional en la designación de los expertos, quienes deberían de actuar en nombre propio, de forma que el Comité sea un órgano de expertos independientes, designados por las Partes conforme a la representación regional.

- El Comité debería asumir la responsabilidad de examinar y promover el cumplimiento de las disposiciones del Convenio y atender a casos concretos de incumplimiento con miras a proporcionar asesoramiento a la Parte en cuestión o de presentar recomendaciones sometidas a la consideración de la Conferencia de las Partes.
- Dentro de sus funciones debería ser el asesorar y presentar recomendaciones a la Conferencia de las Partes y a la Parte cuyo incumplimiento está en revisión, sobre la interpretación y aplicación del Convenio y sobre medidas que hayan de adoptarse.
- Deberían ser las Partes quienes activen el mecanismo de cumplimiento, dada la responsabilidad al respecto.
- Por último, se recomienda proponer medidas de colaboración y apoyo para las Partes, y en caso de reincidencia aplicar de manera progresiva otro tipo de medidas, dependiendo del caso particular.

New Zealand

COMPLIANCE and NON COMPLIANCE

New Zealand's general approach on Compliance under multilateral Environment Agreements (MEAs) can best be summed as follows:

- The need for a compliance mechanism is not automatically assumed in a Multilateral Environment Agreement unless and until compliance issues have been identified. The priority is to get the Convention operational and the architecture set in place.
- Any compliance mechanism should not necessarily need to be legally binding.
- New Zealand's view is that non-compliance relates to lack of capacity rather than an unwillingness to comply with any obligations. Any compliance regime should place priority on facilitation (advice and assistance) rather than punitive measures.
- Any compliance process agreed to should be open, transparent and inclusive.
- New Zealand would consider supporting the imposition of punitive action (sanctions) as a last resort in cases of repeated non-compliance.
- A compliance mechanism should be flexible, and any reporting requirements should not place an unnecessary burden, particularly on developing country parties.
- A compliance mechanism should not prejudice dispute resolution provisions of the Convention or provisions which specifically provide sanctions in the event that a Party fails to comply with its obligations.

If a Compliance Regime is put in place New Zealand's position is as follows:

- It should be a subsidiary body established under the Convention, and not a separate decision making body.
- Rules of Procedure of a Compliance Mechanism should be those for the Convention's primary body. If separate rules are necessary, they should be consistent with the Rules of Procedure of the Convention.
- Decision making should be by consensus on the basis that the compliance body is facilitative. If necessary we could support majority decision-making provided it is consistent with the overall Convention's decision-making provisions.
- New Zealand supports only party, or party to party, triggering of the Compliance mechanism – we do not support Secretariat, NGO or individual triggering of the compliance mechanism.
- Referral of a Party to any Compliance mechanism should be on the basis of an "assumed" and not "actual" breach of compliance. It is up to the Compliance Committee itself to determine non compliance, not another party

- New Zealand supports a level of consistency between MEA compliance mechanisms. However, non-compliance under one MEA should not unfairly prejudice activities under another MEA. Within this context, compliance mechanisms should be looked at on a case-by-case basis to best meet the needs of each MEA.
- If sanctions are necessary in some situations, any restriction of rights consistent with the Convention pursuant to a finding of non-compliance should be a last resort (consistent with New Zealand's approach above).



**DET KONGELIGE
MILJØVERNDEPARTEMENT**

Royal Ministry of the Environment

Secretariat of the Stockholm Convention
on Persistent Organic Pollutants
International Environment House
11-13, chemin des Anémones
CH - 1219 Châtelaine
Geneva
Switzerland

Your ref

Our ref
200500709-MAA

Date

30 NOV 2005

**Procedures and institutional mechanisms on non-compliance under the
Stockholm Convention - Norwegian comments**

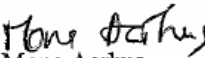
Dear Sir,

We refer to your letter dated 16. September 2005 where Governments and organisations were invited to submit views and proposals on procedures and institutional mechanisms on non-compliance. We apologise our late response.

Please find enclosed the Norwegian comments.

Yours sincerely,


Atle Fretheim
Deputy Director General


Mona Aarhus
Adviser

UNEP Chemicals	
Date Received:	6.12.05
File no / name:	SSC
For action:	JAW
CO:	X-25

Enclosure: 1

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Comments by Norway on a Compliance Mechanism under the Stockholm Convention

Norway attaches great importance to the task of developing, and make operational an effective compliance mechanisms for international environmental conventions. Therefore we welcome the invitation in Decision SC-1/14 of the first meeting of the Conference of the Parties to submit views and proposals on non-compliance under Article 17 of the Stockholm Convention. Norway considers developing of a compliance mechanism as a priority issue under the Convention.

The purpose of this paper is to highlight some of our main positions.

Objectives of the compliance procedure and measures regarding non-compliance

It is our opinion that the compliance mechanism should primarily be oriented in the direction of helping Parties, in particular Developing Country Parties, to implement the provisions of the Stockholm Convention. Thus, primary focus should be on facilitative incentives to promote compliance in a non-confrontational manner. However, what could be called additional and more stringent measures should also be included. Such other measures should however be clearly defined and only applied after exhaustion of the facilitation incentives in cases of repeated or continued non-compliance.

Establishment of a Compliance Committee and its composition and tenure

A standing compliance committee should be established. To safeguard technical and objective analysis it is important to emphasise the independence of the compliance committee. Consequently, the committee members should act in their individual capacity and not represent their respective countries (or Parties).

In order to work efficiently we are of the opinion that the committee should consist of a limited number of members (10 –15). The committee should consist of members from various regional groups.

There should be a system of staggered terms of office to guarantee a good mixture of fresh thinking as well as the necessary continuity in the process.

The Committee should have the function to examine specific and general compliance issues, advise Parties and facilitate assistance to Parties experiencing difficulties in meeting their obligations under the agreement, and decide on the actions to be taken of Parties found to be in non-compliance.

To ensure transparency in their work the meetings of the Committee should be open. The Committee should try to reach decisions by consensus, but may resort to a specific majority vote if no agreement can be reached otherwise.

Procedures for specific submissions on non-compliance and procedural safeguards

Specific submissions on non-compliance should be accepted from all parties, whether they are directly involved in the specific issue raised or not. The secretariat should also be able to trigger the process. That would help in ensuring the independence of the compliance regime, as well as making effective use of the considerable knowledge and insight of the secretariat in compliance matters. We should also find ways of drawing upon the knowledge and

experience of the NGOs in compliance matters, and encourage NGOs to take part in the process. This would be in line with the objective to increase public participation in multilateral agreements.

It is necessary that procedural safeguards are incorporated to prevent possible abuses of the compliance mechanism. This could include provisions on the need for submissions to be supported by corroborating information, the opportunity for Parties to make representations, the possibility to exclude ill-founded submissions etc.

Consultation and information

The Secretariat as well as the Compliance Committee should have the possibility to draw on information from all the sources they find relevant, whilst ensuring maximum openness and transparency in their work. The handling of information should therefore be based on the principle of openness.

Measures regarding non-compliance

The mechanism should provide for a wide range of possible measures that give the flexibility to react as appropriate, taking into account such factors as the cause, degree, duration and frequency of non-compliance. The measures should range from provision of advice to stronger measures. Primary focus should be on facilitative incentives to promote compliance, in particular for Developing Country Parties.

Republic of Moldova



MINISTRY OF ECOLOGY AND NATURAL RESOURCES OF THE REPUBLIC OF MOLDOVA

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MD 2005 Chisinau,
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To: Mr. John BUCCINI,
Acting Executive Director, UNEP Chemicals

Cc: Ms. Elena Sobakina,
Secretariat for the Stockholm
Convention

Subject: Views and proposals on procedures and institutional
mechanisms on non-compliance under Article 17 of the Stockholm
Convention

Date: 14 November 2005

Fax: + (41 22) 797 34 60

Pages: 1, including this cover
sheet

From: Mr. Constantin MIHAILESCU,
Minister

Dear Mr. John Buccini,

By hereby I am pleased to send you the views and proposals of the Republic of Moldova on procedures and institutional mechanisms on non-compliance under Article 17 of the Stockholm Convention in conformity with Decision SC-1/14 of the first meeting of the Conference of the Parties of the Stockholm Convention and your letter dated from 16 September 2005 with subject "Non-compliance".

Annex: views and proposals of the Republic of Moldova on procedures and institutional mechanisms on non-compliance.

Sincerely Yours,

[Original Signed]

Constantin MIHAILESCU
Minister of Ecology and Natural Resources

Annex

To: Mr. John Buccini
 Director
 UNEP Chemicals
 August 30, 2005

Subject: Re: Decision SC-1/14 of the first Conference of the Parties – procedures and institutional mechanisms on non-compliance under Article 17 of the Stockholm Convention.

Dear Mr. John Buccini,

We are writing you with regard to the Decision SC-1/14 of the first meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants and letter of UNEP Chemicals dated from 16 September 2005 with subject "Non-compliance".

In this context we would like to inform you that the preliminary comments of the Republic of Moldova on compliance mechanisms related to provisions of the Article 17 of the Stockholm Convention have been submitted to the UNEP Chemicals by fax dated from 29 November 2002, which afterwards have been included in the document UNEP/POPS/INC.7/INF/8. The above-mentioned comments contain the procedural aspects as well as the proposals related to institutional mechanisms.

At the same time we present some proposals concerning institutional mechanisms and procedures:

Objective of the compliance regime :

Moldova considers that the role of a compliance regime should be a non-confrontational, facilitative and flexible.

The objective of the compliance mechanism is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention.

Institutional mechanisms :

a) *Conference of the Parties:*

The role of the Conference of the Parties as the supreme body of the Stockholm Convention is key and should be addressed, recognizing that it has the final authority in ensuring the efficient and effective functioning of a compliance system.

b) *A Compliance Committee [Implementation Committee]:* The Conference of Parties under the Stockholm Convention shall establish pursuant to paragraph 5 (a) of Article 19 of the Convention and in conformity with paragraph 1 of Rule 27 of Rules of procedure for the Conference of the Parties a subsidiary body to be called the Compliance Committee [Implementation Committee] for the purposes of performing the functions assigned to that Committee by the Conference of Parties.

c) *Secretariat:*

As in other compliance mechanisms, one of the key roles of the Secretariat should be to receive information.

Members of a Committee

Moldova considers that the model may include provisions concerning expert's staff, qualification, and other provisions, e.g.:

- a Committee shall consist of [*should be determinated*] members
- the members of the Committee shall be nominated by Parties and elected by the Conference of the Parties
- in electing members, due consideration shall be given to the principle of equitable geographical representation [of the regional groups of the United Nations] [and a balance between developed and developing Parties and Parties with economies in transition]

- members shall have expertise and specific qualifications in the subject matter covered by the Convention in areas including scientific, technical, socio-economic and/or legal fields.

Election of Committee members

Moldova considers that there is necessity to elaborate concrete provisions concerning members' activity terms. In this context we propose the following principles:

- the Conference of the Parties can elect half the members for one term and half the members for two terms and, in the future, at each ordinary meeting thereafter, elect for two full terms new members to replace those members whose period of office has expired or is about to expire
 - members shall not serve for more than two consecutive terms
 - in case if a member of the Committee resigns or is otherwise unable to complete his or her term of office or to perform his or her functions, the Party who nominated that member shall nominate an alternate to serve for the remainder of the term...

Officers of a Committee

- a Committee shall elect its officers – a Chair, vice-chairs, a Reporter – based on equitable geographical representation of the regional groups of the United Nations [and a balance between developed and developing Parties and Parties with economies in transition]

For example, in conformity with established mechanism for promoting implementation and compliance under Basel Convention, the Committee elects a Chair, three vice-chairs and a Reporter. Analogical provisions were included in draft Decision on establishment of a Compliance Committee under Rotterdam Convention.

Meetings of a Committee

Moldova considers that it is possible to use as basis the experience could be drawn from the above-mentioned established mechanism for promoting implementation and compliance under Basel Convention. In conformity with this mechanism

- a Committee shall meet at least once between each regular meeting of the Conference of the Parties, and in conjunction with meetings of other Convention bodies
 - Secretariat role is to arrange for and service the meetings of the Committee
- At the same time we consider that may be used also experience from other MEAs.

Procedures:

Moldova considers that this chapter should include the procedural principles such as: procedures invocation; consultation and information; facilitation procedure; monitoring; reporting; decision-making; review of compliance mechanism; relationship with other provisions of the Convention, including relationship to dispute settlement and others. In this context we propose some aspects:

- *procedures invocation*: this procedure may be invoked by a Party or a group of Parties, the Party whose compliance is in question or the Secretariat (on the basis of the reports it gets pursuant to Art. 15 of the Convention)
- *facilitation procedure*: we propose we propose to formulate procedure of facilitation with use of experience of other MEAs, including ToR to established mechanism for promoting implementation and compliance under Basel Convention
- *reporting*: a Committee shall:
 - report to each ordinary meeting of the Conference of the Parties on the work it has carried out to fulfill its functions under paragraphs [*should be determinated*] for the information and/or the consideration of the Conference of the Parties and;
 - report to each ordinary meeting of the Conference of the Parties on any conclusions and/or recommendations it has developed and on its suggestions for any future work that may be required on general issues of compliance and implementation, for the consideration and approval of the Conference of the Parties.
- *decision-making*: we propose to formulate procedure related to decision-making in conformity with other MEAs, including ToR to established mechanism for promoting implementation and compliance under Basel Convention

- *review of compliance mechanism*: the Conference of the Parties shall regularly review the implementation of the procedures and mechanisms
- *relationship with other provisions of the Convention, including relationship to dispute settlement*: Moldova considers that the procedure should make it clear that its operations are without prejudice to dispute settlement, as is done in other agreements etc.

Yours sincerely,

[Original Signed]

Liudmila Marduhaeva
Consultant
Division on Environment Pollution Prevention
Ministry of Ecology and Natural Resources

Switzerland**Swiss comments****pursuant to Decision SC-1/14 on Non-compliance**

In paragraph 2 of Decision SC-1/14, taken at the first meeting of the Conference of the Parties, Governments were invited to submit to the Secretariat their views and proposals on procedures and institutional mechanisms on non-compliance under Article 17. We are pleased to submit the following preliminary views of Switzerland on some of the main aspects of such procedures and mechanisms under the Stockholm Convention.

Switzerland thinks that the early establishment of procedures and institutional mechanisms on non-compliance is important, will contribute to the effective implementation of the Convention and can assist Parties in complying with their obligations. Therefore, Switzerland welcomes and supports every effort that can lead to the adoption of effective procedures and mechanisms on non-compliance as soon as possible. The work done by Governments and the Secretariat under Decision SC-1/14 will be a good basis for these discussions.

On the main elements of procedures and institutional mechanisms on non-compliance, Switzerland has the following views:

- **Principles**

The regime to be established should at the same time respect widely accepted principles of international law, but also take into account the specific characteristics of the POPS-Convention.

- **Objective**

Apart from incentives to facilitate compliance and disincentives to prevent cases of non-compliance, the mechanism should also provide for procedures to deal with cases where non-compliance has already occurred.

- **Institutional mechanism**

The role of the CoP as the supreme body of the Convention will be to supervise the mechanism and adopt the reports on the functioning of the compliance regime. Individual cases should be dealt with by a standing body (Compliance Committee), which has the necessary technical, legal and scientific knowledge.

- **Invocation of procedures**

The procedure may be invoked by a Party or a group of Parties with respect to another Party's compliance or the Party whose compliance is in question. Furthermore, the Secretariat should have the possibility to submit information (mainly on the basis of the reports it gets pursuant to Art. 15 of the Convention) about possible compliance problems. However, in such a case it would be up to the Committee to determine whether the information submitted by the Secretariat gives sufficient ground to invoke the procedure.

- **Objectives**

The objective of the regime is to prevent cases of non-compliance and to restore compliance in cases of non compliance. Therefore, the regime should put in place a range of measures allowing to assist Parties or, where non-compliance has already occurred, to bring Parties back into compliance, taking into account the cause, type, degree and frequency of non-compliance. All obligations under the Convention should be subject to the compliance mechanism.

- **Collection of information**

One of the main sources of information to the compliance regime will be the reports submitted by the Parties pursuant to the provisions of the Convention. The assessment of Parties' compliance with the Convention will mainly be made based on these reports. However, other sources of information are important and can be used by the Committee

It will be crucial to assure full participation of the Party or Parties concerned in the compliance procedure, including the possibility to comment on any information considered by the Compliance Committee.

- **Relationship with other provisions of the Convention**

There will be a close relationship between the compliance regime and reporting (Art. 15), reporting being the main basis of the assessment of compliance by individual Parties.

The compliance regime being a multilateral mechanism, it should be (as this is the case in most other MEA's) without prejudice to the dispute settlement procedures under the Convention.

II. Submissions received from observers.



CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

15 November 2005

Secretariat of the Stockholm Convention
on Persistent Organic Pollutants
International Environment House
11-13, Chemin des Anémones
CH - 1219 Châtelaine
Geneva, Switzerland

Re: Procedures and mechanisms on non-compliance

To the Secretariat:

The Center for International Environmental Law (CIEL) appreciates and values the opportunity to respond to Decision SC-1/14 and the invitation dated 16 September 2005 from the Acting Executive Secretary by submitting our views about procedures and mechanisms on non-compliance under the Stockholm Convention. CIEL is a nonprofit, non-governmental organization with offices in the United States and Switzerland. We work to use international law and institutions to protect the environment, promote human health, and ensure a just and sustainable society. CIEL is accredited to the Stockholm Convention on Persistent Organic Pollutants (POPs), the Intergovernmental Forum on Chemical Safety (IFCS), the Strategic Approach to International Chemicals Management (SAICM), the United Nations Environment Programme (UNEP), and numerous other intergovernmental organizations and processes. CIEL is a participating organization in the International POPs Elimination Network (IPEN). CIEL and IPEN look forward to the opportunity to participate actively as NGO observers in future discussions related to non-compliance under the Stockholm Convention, including those convened in the open-ended *ad hoc* working group.

CIEL believes that predictable, fair, and effective procedures and mechanisms for determining and treating cases of non-compliance are essential to the long-term success of the Stockholm Convention. Our comments below are generally grouped according to the headings in the Secretariat's paper, "Synthesis of Views on Non-Compliance," UNEP/POPS/INC.7/21.

1. Timing, process and further work on non-compliance issues: Article 17 of the Convention states that the "Conference of Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms" relating to non-compliance. Thus, the COP is *required* to undertake and conclude this obligation; development and approval of these procedures and mechanisms is not optional. Now that the initial requirements for operationalizing the Convention have been undertaken, it is *practicable* to turn to non-compliance, and the COP should expeditiously develop and approve procedures and mechanisms on non-compliance.
2. Obligations: The procedures and mechanisms on non-compliance should apply to all obligations under the Stockholm Convention. The scope of the non-compliance system should thus include

obligations related to the provision of technical assistance and financial resources (e.g., art. 13.2). Additionally, the extent to which Parties are complying with their Articles 12 and 13 commitments may be relevant in determining appropriate measures to apply in the event of non-compliance by developing country Parties and Parties with economies in transition.

3. Institutional arrangements:

A. A standing Compliance Committee should be established under the authority of the Conference of the Parties pursuant to Art. 19.5(a).

B. The Compliance Committee should function as a body of technical and legal experts, not as a political body. Therefore, the Committee should be comprised of experts who are elected by the COP in their personal capacity, and not as representatives of Parties.

C. The number of Committee members should be limited to the smallest practicable size that can ensure equitable geographic representation. Every effort should be made to promote equitable gender representation on the Committee.

4. Procedural arrangements:

A. Generally: Compliance procedures should be designed to move the process forward to completion in an expedited manner to ensure as soon as possible that (1) the threat to human health and the environment caused by a Party's inability or failure to comply is minimized, and (2) Parties in need of special technical, financial, and other assistance receive it.

B. Invocation of compliance procedure (trigger): The following entities should have the right to make referrals to the Compliance Committee:

- (1) Any Party with respect to itself;
- (2) Any Party with respect to another Party, provided that the referral is supported with corroborating information;
- (3) The Secretariat with respect to a Party that has failed to comply with a reporting or other technical requirement; and
- (4) The Compliance Committee with respect to any Party, based on information available to the Committee.

C. Information considered: Throughout its deliberations, the Compliance Committee should be able to consider any information that it deems relevant to its mandate. Competent intergovernmental and non-governmental organizations should have the right to submit relevant information and other materials to the Committee for its consideration. This latter rule is similar to those adopted for disputes under the World Trade Organization agreements, the Kyoto Protocol compliance procedure, and others. The Stockholm Convention should adopt a rule that is no less participatory than the practices under these institutions.

D. Decision-making: The Compliance Committee should strive for consensus in its decision-making and reports. However, in the event that consensus is not possible, then the Committee should be able to adopt decisions by a three-fourths majority vote, taking note of any dissenting votes. If a member of the Committee is a citizen of a Party that is the subject of a non-compliance proceeding, that member should recuse herself or himself from the proceedings.

E. Review of Compliance Committee decisions: We believe that the quickest and most effective way to resolve compliance problems will be to treat decisions of the Compliance

Committee as final. Compliance Committee decisions should not be viewed as mere recommendations to the COP, because those decisions would never become operative unless and until the COP took action on them. Such a role for the COP would politicize the non-compliance procedure, make the procedure less objective and reliable, and dramatically prolong resolution of compliance-related problems, even when there is no disagreement between the Compliance Committee and a Party with compliance problems with respect to the Committee's decision.

Nevertheless, we recognize that some Parties may wish that the COP play an affirming or safeguarding role in the conclusion of the non-compliance procedure. An approach that could accomplish the twin objectives of retaining an oversight role for the COP and achieving expedited, dependable resolution of non-compliance questions would be:

- (1) A decision of the Compliance Committee with respect to a Party is considered final unless that Party, within a specified short time (e.g., one month), presents arguments or additional information to the Committee demonstrating that the Committee's decision is incorrect.
- (2) The Committee may, within a limited time and at its sole discretion, decide to reconsider its decision based upon the Party's arguments or additional information.
- (3) If the Party is still dissatisfied with the Committee's decision, the Committee's decision is placed on the agenda of the next COP, upon request by the Party.
- (4) The Committee's decision will be considered affirmed by the COP unless at least 2/3 of the Parties present vote to reject or stay the decision and send it back to the Committee for additional consideration.

F. Transparency: The effectiveness of procedures and mechanisms on non-compliance will primarily depend on the degree to which they are perceived as legitimate. Transparency will be key to achieving the perception of legitimacy. Moreover, transparency can provide a strong incentive for Parties to comply with their treaty commitments, so that the non-compliance procedures may not have to be invoked in the first place.

Interested Parties and observers should have the right to attend Committee proceedings. They also should have ready access to (1) all information under consideration by the Committee (with the exception of information that falls within a narrow exclusion for confidential business information as defined in Art. 9.5), (2) transcripts of compliance proceedings, and (3) the Committee's written decisions.

5. Measures in the event of non-compliance: In all situations, the primary purpose of determining and applying measures should be to ensure as quickly as possible that (1) the threat to human health and the environment caused by a Party's failure or inability to comply is minimized, and (2) the Party in question returns to compliance with its Stockholm Convention commitments. Thus, a range of measures should be available that may be applied based upon the cause, type, degree, duration, and frequency of non-compliance. The extent to which Parties are complying with their commitments under Articles 12 and 13 (especially Art. 13.2) may also be relevant in determining appropriate measures to apply in the event of non-compliance by developing country Parties and Parties with economies in transition.

The range of measures should include facilitative and stronger measures. The choices for facilitative measures should include:

- A. Provision of advice
- B. Facilitation in providing or obtaining financial and technical assistance, including technology transfer and capacity building

C. Formulation of recommendations

The choices for stronger measures should include:

D. Issuance of cautions

E. Declaration of non-compliance

F. Requirement to develop a compliance action plan, which should include targets and timetables

G. Suspension of specific treaty rights related to the Party's non-compliance, in particular, those contained in Articles 3 and 4 on the import, export, production and use of listed chemicals.

6. Relationship with other multilateral environmental agreements: In developing procedures and mechanisms on non-compliance, Stockholm Convention Parties should be aware, and should consider the relevance, of developments related to non-compliance in other MEAs. Nonetheless, the Stockholm Convention is an independent treaty, and Article 17 makes no provision for delaying development or approval of a compliance system based on the progress (or lack thereof) of other MEAs that may be considering their own non-compliance approaches. Therefore, Stockholm Parties should move forward on the implementation of Article 17 "as soon as practicable," and should not make their progress contingent on that achieved in other MEAs.

Respectfully submitted by:

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