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**Contact Group to Negotiate the Terms of Reference of
the Basel Compliance Mechanism**
Kobe, Japan, 21 January – 2 February 2013

**PROPOSED AMEDMENTS TO THE TERMS OF REFERECE OF
THE BASEL COMPLIANCE MECHANISM
SUBMITTED BY JAMAICA
(ON BEHALF OF THE IMPLEMENTATION AND COMPLIANCE COMMITTEE)**

1. The members of the Contact Group are requested to refer to UNEP/CHW.10/9/Rev.1 for the reasons and circumstances behind the present proposal.
2. Jamaica, on behalf of the Implementation and Compliance Committee and with the agreement of that Committee, proposes the following amendments to the Terms of Reference of the Basel Compliance Mechanism. The members of the Contact Group are requested to consider the following amendments as an integral package, which is the result of an extensive discussion among the Committee members and is based on a careful balancing of interests.
 - a) To replace the current paragraph 9 (c) with “The Secretariat, if, while acting pursuant to its functions under articles 13 and 16, it becomes aware of possible difficulties of any party in complying with its obligations under the Convention, provided that the matter has not been resolved within three months by consultation with the Party concerned.”
 - b) To insert a new paragraph 9 bis in the terms of reference: “Where the Committee becomes aware of possible non-compliance by a Party with its obligations under the Convention, the Committee may request the party concerned to furnish the necessary information about the matter. Any reply and information in support shall be provided to the Committee within three months or such longer period as the circumstances of a particular case may require. The Committee shall consider the matter as soon as possible after the expiry of the three months or any longer period as determined by the Committee, taking into consideration, if available, any reply that the Party may provide, and in accordance with the provisions relating to the consideration of submissions in paragraphs 12–21, as applicable.” Related amendments are made in paragraphs 10 and 17.
 - c) To delete from paragraph 9 (b) the phrase “with whom it is directly involved under the Convention. A Party.... (all the rest of the sentence)”.
 - d) To delete from the first sentence of paragraph 19 (c) the phrase “and with the cooperation of the Party or Parties faced with the compliance problem, voluntary”, and the word “voluntary” from the second sentence.

- e) To delete (b) totally from paragraph 20, and make necessary changes in the same paragraph accordingly.
 - f) To delete from paragraph 25 the second, third and fourth sentences altogether.
 - g) To replace the first sentence of the current paragraph 5 with “Members of the Committee shall be representatives of the Parties.” The second sentence of the same paragraph remains.
3. The proposed amendments are reflected in the Annex.

Annex

MECHANISM FOR PROMOTING IMPLEMENTATION AND COMPLIANCE (AMENDED)

Terms of reference

Objectives

1. The objective of the 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.

Nature of the mechanism

2. The mechanism shall be non-confrontational, transparent, cost-effective and preventive in nature, simple, flexible, non-binding and oriented in the direction of helping parties to implement the provisions of the Basel Convention. It will pay particular attention to the special needs of developing countries and countries with economies in transition, and is intended to promote cooperation between all Parties. The mechanism should complement work performed by other Convention bodies and by the Basel Convention Regional Centres.

Composition and tenure

3. A Committee for administrating this mechanism (“the Committee”) is hereby established. It shall consist of 15 Members nominated by the Parties, serving in accordance with paragraph 5, and based on equitable geographical representation of the five regional groups of the United Nations, elected by the Conference of the Parties.

4. 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 mandate.

5. Members of the Committee ~~shall be representatives of the Parties. will serve objectively and in the best interest of the Convention.~~ They shall have expertise relating to the subject matter of the Convention in areas including scientific, technical, socio-economic and/or legal fields.

6. At the meeting at which the decision establishing the mechanism is adopted, the Conference of the Parties shall elect five members, one from each region, for one term, and ten members, two from each region, 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 purposes of the present terms of reference “term” means 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 Parties.

7. The Committee shall elect its officers – a Chair, three Vice-chairs and a Rapporteur – based on equitable geographical representation of the five regional groups of the United Nations.

8. The 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. The secretariat shall arrange for and service the meetings of the Committee.

Procedures for specific submissions

9. Submissions may be made to the Committee by:

(a) A Party that concludes that, despite its best efforts, it is or will be unable to fully implement or comply with its obligations under the Convention;

(b) A Party that has concerns or is affected by a failure to comply with and/or implement the Convention's obligations by another Party ~~with whom it is directly involved under the Convention. A Party intending to make a submission under this subparagraph shall inform the Party whose compliance is in question, and both Parties should then try to resolve the matter through consultations;~~

(c) The Secretariat, if, while acting pursuant to its functions under articles 13 and 16, it becomes aware of possible difficulties of any party in complying with its obligations under ~~paragraph 1 of Article 3, paragraph 1 of Article 4, Article 5 and paragraphs 2 and 3 of Article 13 of the Convention,~~ provided that the matter has not been resolved within three months by consultation with the Party concerned.

~~9bis. Where the Committee becomes aware of possible non-compliance by a Party with its obligations under the Convention, the Committee may request the party concerned to furnish the necessary information about the matter. Any reply and information in support shall be provided to the Committee within three months or such longer period as the circumstances of a particular case may require. The Committee shall consider the matter as soon as possible after the expiry of the three months or any longer period as determined by the Committee, taking into consideration, if available, any reply that the Party may provide, and in accordance with the provisions relating to the consideration of submissions in paragraphs 12–21, as applicable.~~

10. Any submission, except one made under paragraph 9 (c) ~~and 9bis~~, 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) Where paragraph 9 (b) applies, information substantiating the submission.

11. Where a submission is made under paragraph 9 (a), the secretariat shall forward the submission, within two weeks of its receiving the submission, to the Committee for consideration at its next meeting.

12. The Party whose compliance is in question may present responses and/or comments at every step of the proceedings described in this decision.

13. In cases of a submission other than by a Party with respect to its own compliance, the secretariat shall send, within two weeks of its receiving the submission, a copy to the Party whose compliance with the Convention is in question and to the Committee for consideration at its next meeting.

14. Without prejudice to paragraph 12, additional information provided in response by the Party whose compliance is in question should be forwarded to the secretariat within three months of the

date of the receipt of the submission by the Party in question, unless the circumstances of a particular case require an extended period of time. Such information will be immediately transmitted to the members of the Committee for consideration at its next meeting. Where a submission has been made pursuant to paragraph 9 (b), the information shall also be forwarded by the secretariat to the Party that made the submission.

15. Where a Party is identified in a submission or itself 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.

16. 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 otherwise.

17. Under the compliance mechanism, a Party **and the Committee within its mandate provided in paragraph 9bis above** may also consider and use relevant and appropriate information provided by civil society on compliance difficulties.

18. The Committee may decide not to proceed with a submission which it considers is:

- (a) *de minimis*; or
- (b) manifestly ill-founded.

Facilitation procedure

19. The Committee shall consider any submission made to it in accordance with paragraph 9 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 coordination with that Party, with advice, non-binding recommendations and information relating to, inter alia;

- (a) Establishing and/or strengthening its domestic/regional regulatory regimes;
- (b) Facilitation of assistance in particular to developing countries and countries with economies in transition, including on how to access financial and technical support, including technology transfer and capacity-building;
- (c) Elaborating, as appropriate, ~~and with the cooperation of the Party or Parties faced with the compliance problems, voluntary~~ compliance action plans, and review their implementation. A ~~voluntary~~ compliance action plan may include benchmarks, objectives and indicators of the plan, as well as an indicative timeline for its implementation;
- (d) Any follow-up arrangements for progress reporting to the Committee, including through the national reporting procedure under article 13.

Advice, non-binding recommendations and information other than those listed in subparagraphs (a) to (d) above should be provided in agreement with that Party.

Recommendation to the Conference of the Parties on additional measures

20. If, after undertaking the facilitation procedure in paragraph 19 above and taking into account the cause, type, degree and frequency of compliance difficulties, as well as the capacity of the Party whose compliance is in question, the Committee considers it necessary in the light of paragraphs 1 and 2 to pursue further measures to address a Party's compliance difficulties, it may recommend to the Conference of the Parties that it consider:

~~(a)~~ ~~F~~ further support under the Convention for the Party concerned, including prioritization of technical assistance and capacity-building and access to financial resources. ~~or~~

~~(b) — Issuing a cautionary statement and providing advice regarding future compliance in order to help Parties to implement the provisions of the Basel Convention and to promote cooperation between all Parties.~~

Any such action shall be consistent with article 15 of the Convention.

General review

21. The Committee shall, as directed by the Conference of Parties, review general issues of compliance and implementation under the Convention relating to, inter alia:

(a) Ensuring the environmentally sound management and disposal of hazardous and other wastes;

(b) Training customs and other personnel;

(c) Accessing technical and financial support, particularly for developing countries, including technology transfer and capacity-building;

(d) Establishing and developing means of detecting and eradicating illegal traffic, including investigating, sampling and testing;

(e) Monitoring, assessing and facilitating reporting under article 13 of the Convention; and

(f) The implementation of, and compliance with, specified obligations under the Convention.

Consultation and information

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

(a) Request further information from all Parties, through the secretariat, on general issues of compliance and implementation 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 a Party(ies), information gathering in its or their territory for the purpose of fulfilling the functions of the Committee;
- (e) Consult with the secretariat and draw upon its experience and knowledge base compiled under article 16 of the Convention and request through the secretariat information, where appropriate in the form of a report, on matters under the Committee's consideration; and
- (f) Review the national reports of Parties provided under article 13 of the Convention.

Reporting

- 23. The Committee shall report to each ordinary meeting of the Conference of the Parties on the work it has carried out to fulfil its functions under paragraphs 19 and 20 for the information and/or the consideration of the Conference of the Parties.
- 24. The Committee shall also report to each ordinary meeting of the Conference of the Parties on any conclusions and/or recommendations it has developed under paragraph 21 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

- 25. The Committee shall make every effort to reach agreement on all matters of substance by consensus. ~~Where this is not possible, the report and recommendations 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-third majority of the members present and voting or by eight members, whichever is the greater. Ten members of the Committee shall constitute a quorum.~~

Confidentiality

- 26. The Committee, any Party or others involved in its deliberations shall protect the confidentiality of information received in confidence.

Relationship with provisions of the Convention

- 27. The present mechanism shall be without prejudice to the provisions of article 20 on settlement of disputes.
- 28. In performing its functions under paragraphs 19, 20 and 21, the Committee shall take into account any specific procedures provided for under the Convention concerning failures to meet Convention obligations.
