

The outcome of Tokyo Symposium on Domestic Measures and Next Steps



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The Symposium

- Held at United Nations University, Tokyo, 8-9 March 2012
- Organized by the Ministry of Foreign Affairs of Japan (MOFA) and the United Nations University – Institute for Sustainable and Peace (UNU-ISP)
- Invited Speakers from Australia, Brazil, Ethiopia, the EU, India, New Zealand, Norway, the Republic of Korea, and the UK
- More than 150 audiences including some invited experts

Background

- Since COP10, the most important challenge in the field of biodiversity is how to implement the COP10 results
- Regarding the Nagoya Protocol, promoting common understanding of domestic measures required by some core articles is quite important, as the Protocol allows broad discretion of Parties in establishing the measures



Objectives

The objectives of the symposium were to:

- Share and take stock experiences and ideas on the domestic measures;
- Facilitate discussions on elements necessary for the domestic measures and points to consider focusing on Article 6 and 15; and
- Promote common understanding of the domestic measures which contribute the effective implementation of the Protocol

Contents

- A keynote lecture by a SCBD representative
- Presentations on national experiences and ideas on the domestic measures by invited speakers
- A panel discussion co-chaired by Ms. Lowe, ICNP Co-chair and Dr. Suginaka, Director of Global Environment Division of MOFA
- A summary report of the symposium has been prepared for distribution during ICNP2 (please take hard copies from the desk in the corridor or retrieve a file from <http://isp.unu.edu/news/2012/symposium-on-nagoya-protocol.html#slides>)

Key Questions to the Panel

- What are the elements necessary for the domestic measures?
- What are the points to consider when preparing the domestic measures?
- What kind of criteria could be employed in choosing the type of measures (legislative, administrative and policy measures)?
- How to translate the meaning of “proportionate” measures?
- Do you think it necessary for effective implementation of the Protocol to pursue certain level of compatibility of domestic measures among the Parties?

Purpose of the Panel Discussion

- Its purpose was not to negotiate or come to agreement on the issues, rather to present ideas and items for discussion, hearing experiences and suggestions from participants.
- Its summary needs to be treated as a compilation of the main points raised by the participants. It should not be considered that all participants agreed on all the issues raised.



Main Points on Access Measures (Art. 6)

- Some points stipulated in the Protocol were emphasized - legal certainty, clarity and transparency; fairness and non-arbitrariness; cost effectiveness; decisions within a reasonable period of time; special consideration for agriculture and health arena
- Some reasons why these points are important were also mentioned – for small enterprises; to direct to right contact points for access procedure; need to make benefit for the overall objective of the Protocol
- Points other than those stipulated in the Protocol were also mentioned – importance of access maintenance; simplified and expeditious procedures for small business and academic researches; need to avoid environmental impacts derived from access activities

Main Points on Compliance Measures (Art. 15)

- The criteria to choose the type of measures (legislative, administrative or policy measures) differ among Parties depending on the legal framework or philosophy of the party concerned.
- Level of penalties need to be strong enough to encourage compliance, taking into account the other policy objectives (R&D promotion etc.).
- Proportionality is important to exclude undue burden for users. If most of access are for non-commercial purpose, focusing on compliance measures for non-commercial use when structuring domestic measures is much more appropriate.

Main Points on Compliance Measures (Cont.)

- It is inappropriate to differently treat access requests or conversely compliance measures based on the assessment of the other Parties' implementation framework.
- Compliance measures need to be properly tracked and enforced. Provider countries have the lack of capacity in common to monitor and follow up on the agreements they reach. This concern is particularly relevant in case of change of utilization.

Other Important Points

- Seeking perfect measures from the beginning would be difficult and pragmatic approach is necessary.
- If provider countries do not provide sufficient transparency and clarity then users refrain from accessing the genetic resources of those countries.
- In order for effective implementation of the Protocol, creativity is required in structuring relevant domestic measures. Most of the provisions of the Protocol are only minimum standards and meeting them would not be enough for effective implementation of the Protocol.
- Domestic measures need to make users have incentives to use and providers have incentives to provide.

Considerations

- By the course of discussion, it became obvious that seeking compatibility of domestic measures among Parties is unrealistic. Countries need to structure their own customized domestic measures, taking into account their domestic legal framework or philosophy, social and cultural background etc.
- Nevertheless, the points raised during the discussion seems to be quite beneficial for countries, as these points are not relevant to country-specific background so can be applied to all countries in common.
- In addition, as the points raised were based on experiences of many leading countries, the points seems to cover almost all of the possible elements and points to consider.
- Therefore, we as the organizers of the symposium recommend countries to refer to the points outlined above (and in the summary report), when working on structuring their own domestic measures. Information on the existing domestic measures outlined in the summary report are informative for countries as well.

Nest Steps

- We consider that one of the other challenges for effective implementation of the Protocol, which is left to countries' broad discretion, is those relevant to the model contractual clauses for mutually agreed terms.
- To date, some initiatives have been conducted regarding the model contractual clauses. However, those initiatives are mostly conducted before the adoption of the Protocol and there seems to be room for further development.
- Therefore, we think the next step of Japan's contribution to the effective implementation of the Protocol could be about the model clause.

Nest Steps (Cont.)

The spec of the initiative could be:

- To collect and analyse existing model clauses and examples of MAT established - This research includes the analysis of experiences gained through the implementation of MAT.
- To figure out recommendation on what are the necessary elements, whether the model(s) should be arranged in the form of sector specific or cross-sectoral, how to proceed with further consideration, etc.
- Organise an informal meeting to discuss the recommendation, inviting representatives from industries, academia, governments, ILCs, experts, etc.
- Submit the result of the discussion to ICNP or MOP as a reference for further discussion.

Thank you for your attention!



For questions, inputs and more information:
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