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Agenda Item 16

OUTSTANDING ISSUES RELATED TO THE NAGOYA PROTOCOL IMPLEMENTATION FUND

Recommended Council Decision

The Council, having reviewed GEF/C.40/11, *Outstanding Issues Related to the Nagoya Protocol Implementation Fund*, approves the arrangements proposed for the operation of this new multi-donor trust fund, subject to the comments made at the GEF Council meeting and taking into account the provisions of the Council decision by mail on the creation of this multi-donor trust fund, approved on February 18, 2011.

EXECUTIVE SUMMARY

1. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (the Protocol) was adopted at the Tenth meeting of the Conference of the Parties (CoP) to the Convention on Biological Diversity (CBD).
2. As the President of CoP 10, Japan proposed to establish a new multi-donor trust fund managed by the Global Environment Facility (GEF) aiming to support early entry into force and effective implementation of the Protocol. The creation of the Nagoya Protocol Implementation Fund (NPIF) was approved by the GEF Council in a decision by mail on February 18, 2011.
3. The GEF Secretariat was requested to submit to the Council at its spring 2011 meeting a document covering any outstanding issues related to the implementation of the NPIF.
4. This working document provides the information regarding key issues of the architecture and functions of this new trust fund: The main points are:
 - a. History of access and benefit-sharing through Nagoya;
 - b. The Nagoya Protocol Implementation Fund;
 - c. Objective and activities of the Nagoya Protocol Implementation Fund:
 - i) assessments of national policies on ABS,
 - ii) conservation and sustainable use of genetic resources,
 - iii) trans-boundary situations, and
 - iv) technology transfer;
 - d. Governance and project management;
 - e. Workplan;
 - f. Financial management.

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INTRODUCTION

1. At the Tenth meeting of the Conference of the Parties (CoP) to the Convention on Biological Diversity (CBD), the Parties adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (herein after referred to as “the Nagoya Protocol” or “the Protocol”).
2. As the President of CoP 10, Japan has taken a lead role in promoting adoption and implementation of the Protocol. Japan, aiming to support early entry into force and effective implementation of the Protocol, proposed to establish a new multi-donor trust fund managed by the Global Environment Facility (GEF) (referred to as “the Nagoya Protocol Implementation Fund” or “NPIF” hereinafter).
3. The creation of the NPIF was approved by the GEF Council in a decision by mail on February 18, 2011. This new trust fund will promote early entry into force of the Nagoya Protocol, and might also provide information for future discussions in the Intergovernmental Committee on the Nagoya Protocol, including possible considerations regarding Article 10 of the Protocol.

HISTORY OF ACCESS AND BENEFIT-SHARING THROUGH NAGOYA

4. The “fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies taking into account all rights over those resources and to technologies, and by appropriate funding” is one of the three fundamental objectives of the Convention of Biodiversity (CBD).
5. The Ad Hoc Open-Ended Working Group on Access and Benefit-sharing (a subsidiary body of the CoP) was established at the Fifth meeting of the Parties in 2000. The mandate of the Group is to develop guidelines and other approaches to assist Parties with the implementation of the access and benefit-sharing provisions of the Convention.
6. The “Bonn guidelines on access to genetic resources and the fair and equitable sharing of the benefits arising from their utilization” were adopted at the Sixth meeting of the CoP in 2002. The Bonn Guidelines were recognized as a useful first step of an evolutionary process in the implementation of relevant provisions of the Convention related to access to genetic resources and benefit-sharing (ABS). Although these guidelines are voluntary, many countries have made use of them for national implementation of the ABS provisions in the CBD.
7. An international regime on access to genetic resources and benefit-sharing with the aim of adopting an instrument/instruments to effectively implement the provisions in Article 15 and Article 8 (j) of the Convention and the three objectives of the Convention was mandated by the CoP at its Seventh meeting in 2004. An Ad Hoc Open-ended Working Group on ABS was requested to support the development of a Protocol on ABS. This legally binding Protocol was adopted at the Tenth meeting of the CoP in Nagoya, Japan, October 2010 (the Nagoya Protocol). The Protocol has been open for signature by the Parties to the Convention since 2 February 2011.

8. In order to promote the early entry into force and effective implementation of the Nagoya Protocol on ABS, it was deemed necessary to establish a new trust fund that could finance activities to catalyze the process of ratification and incentivize the Parties to fully engage in the implementation of the Protocol. These activities include initial assessments of national policies on ABS, conservation and sustainable use of genetic resources, assess and evaluate existing arrangements to deal with trans-boundary genetic resources and associated traditional knowledge, and technology transfer.

THE NAGOYA PROTOCOL IMPLEMENTATION FUND

9. The CoP invited the GEF, as the financial mechanism of the CBD and the Nagoya Protocol, to provide financial support to the Parties to assist with the early ratification of the Protocol. For this purpose, the GEF decided to establish, manage and coordinate the new NPIF, as stated in the GEF decision by mail approved on February 18, 2011.

10. Equally important, it is envisioned that voluntary private sector contributions also may form part of the NPIF which will consider possible alternative arrangements to accommodate enhanced private sector contributions. By facilitating technology transfer, partnerships and joint ventures on ABS, governments could, through this Fund, greatly facilitate engagement with the private sector.

11. It is expected that the NPIF, the GEF Trust Fund and other related initiatives will closely coordinate to achieve desirable complementarities.

OBJECTIVE AND ACTIVITIES OF THE NAGOYA PROTOCOL IMPLEMENTATION FUND

12. The Nagoya Protocol Implementation Fund has been established to facilitate and support effective and efficient implementation of the decisions made at the 10th CoP of the CBD related to the Protocol. The primary objective of the NPIF is to facilitate the early entry into force and implementation of the Protocol. The activities of the fund may also serve to inform future discussions in the Intergovernmental Committee on the Nagoya Protocol, but are not meant to prejudge or influence in any way the discussions and negotiations taking place at the Intergovernmental Committee for the Nagoya Protocol (ICNP).

13. The Fund will initially focus its support on assisting countries that intend to ratify the Protocol in order to accelerate the ratification and implementation of the Protocol. The proposed activities have been selected to fit in with the timeline of the process of ratification, to incentivize the participation of indigenous peoples, local communities and the private sector, as well as to provide input to the discussions of the Intergovernmental Committee. As opportunities arise, the NPIF Council may decide to expand the scope of the Fund's activities. Activities to be supported by the Nagoya Protocol Implementation Fund include:

a. Assessment of National Policies on ABS

The NPIF will support activities to assess countries' capacities and needs on ABS with a focus on the provisions of existing national policies, laws and regulations. The results of these initial assessments will be used by policy makers to take informed decisions on the ratification and future implementation of the Protocol. These assessments will allow Parties to take action at the national level on the issues and recommendations for ratification and implementation discussed during the regional workshops for awareness raising and capacity building supported by the GEF-UNEP-CBD Global Project (GEF ID 4415). These activities will be very timely since the Protocol is now open for signature. Countries are expected to sign the Protocol at the earliest opportunity and to ratify it with a view to ensuring its entry into force as soon as possible.

b. Conservation and Sustainable Use of Genetic Resources

To address the fair and equitable sharing of benefits arising from the utilization of genetic resources, the NPIF will support activities designed to explore linkages between benefit sharing and the conservation and sustainable use of genetic resources. Particular attention will be provided to maintaining and enhancing genetic resources and traditional knowledge associated with genetic resources through sustainable use and benefit sharing. This may encompass activities to: raise awareness, adequately document and conserve traditional knowledge associated with the utilization of genetic resources; and activities that use benefit sharing to incentivize conservation and sustainable use of genetic resources. Priority would be given to projects targeting investments in the conservation and sustainable use of genetic resources on the ground.

c. Trans-boundary Situations

The NPIF will support activities carried out at the regional and sub-regional levels to explore, assess, and evaluate possible arrangements to deal with trans-boundary genetic resources and associated traditional knowledge. Activities would also include establishing or strengthening cooperation among stakeholders for the conservation of genetic resources and traditional knowledge. These activities would allow Parties to better understand the scope and meaning of the trans-boundary situations, and may provide valuable input for the future discussions in the Intergovernmental Committee on the Nagoya Protocol and future CoP-MOPs, as stated in the text of the Nagoya Protocol.

d. Technology Transfer

The ABS Fund will support measures that promote and facilitate access to and the transfer of technology to developing countries and economies in transitions. Investments in this field would impact provider countries of genetic resources that

benefit from engaging the private sector, particularly industries dealing with natural products and pharmaceuticals, botanical medicine, and natural personal care and cosmetics. These investments would allow these countries to introduce appropriate technology (including bio-prospecting), foster training in state-of-the-art research and development programs, as well as other innovative approaches for the use of the biodiversity and its genetic makeup. Particular attention will be provided to maintaining and enhancing genetic resources and traditional knowledge associated with genetic resources. Private sector engagement would be incentivized if government policies are in support and promote technology transfer on ABS agreements with local partners, and in compliance with the provisions of the Nagoya Protocol.

GOVERNANCE AND PROJECT MANAGEMENT

14. The NPIF will be governed by a Nagoya Protocol Implementation Fund Council, which will utilize the operational policies and procedures and governance structure of the GEF Council. Like the Least Developed Countries Fund (LDCF) and the Special Climate Change Fund (SCCF), this NPIF Council will have the similar membership as the GEF Council and will meet in the margins or back to back with GEF Council meetings. In the future, the NPIF Council will convene to review projects and policy associated with the Fund. The GEF Council, acting as the governing body of the NPIF, may modify the operational policies and procedures of the NPIF and its Council, including possibly considering supplementing itself with representatives of non-government donors as and when the magnitude of such contributions to the fund makes this desirable.

15. The operations, functions and roles of the NPIF will be reviewed by the NPIF Council before the end of GEF-5, taking into account the outcome of the discussions in the Intergovernmental Committee on the Nagoya Protocol and other relevant meetings of the CBD/ the Nagoya Protocol. Unless otherwise decided by the GEF Council, and taking into account CoP guidance, the Nagoya Protocol Implementation Fund will terminate at the end of GEF-5. The NPIF will not fund new projects beyond GEF-5, but will remain with the monitoring roles over the ones under implementation.

16. In this initial phase of operation, the NPIF will give priority to projects directly related to the countries' ability to ratify the Protocol. Such projects may be implemented by any of the GEF Agencies, including any entities accredited under the proposed modalities of access for qualified national entities, non-governmental organizations and others, if the policy on broadening access to the GEF is approved by the GEF Council.

17. The GEF will keep separate and distinct the program of activities financed by the GEF Trust Fund from those financed by the Nagoya Protocol Implementation Fund. Costs associated with operating, as well as those associated with activities to be financed from, the NPIF will be charged to the NPIF. Separate accounts and reporting will be maintained. Once the new fund becomes operational, a report on the fund will be submitted to the Council at each of its regular meetings.

WORKPLAN

18. The NPIF will become operational at the May 2011 GEF Council Meeting. The first set of projects should be approved before the Second Meeting of the Intergovernmental Committee to be held in India, April 2012. The size of the project will be determined based on the nature of the project (including national, regional and sub-regional projects) as well as to enable appropriate portfolio and regional distribution. Medium size projects will be used to expedite the project cycle.

FINANCIAL MANAGEMENT

19. The World Bank will serve as the Trustee of the NPIF, in accordance with the Bank's policies and procedures. The NPIF is being established as a multi-donor trust fund, which can receive voluntary contributions of multiple donors and the private sector.

20. The Government of Japan has taken the lead in providing seed funding of 1 billion Yen to the NPIF as a voluntary contribution. Other governments have expressed interest in making additional resources available to the fund. In addition, it is expected that private companies and other entities that utilize genetic resources may also voluntarily contribute to the Nagoya Protocol Implementation Fund and/or to related projects.