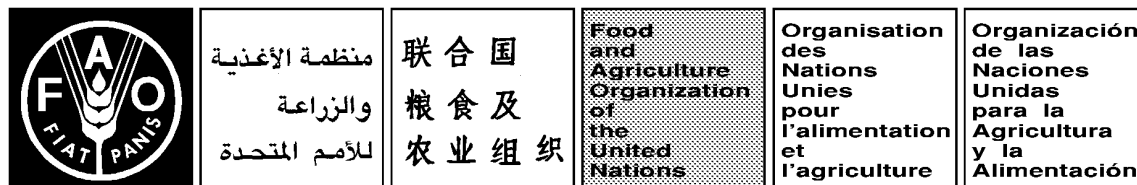


October 2005



Item 5 of the Draft Provisional Agenda

**COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE  
ACTING AS  
INTERIM COMMITTEE OF THE INTERNATIONAL TREATY  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

**Open-Ended Working Group on the Rules of Procedure and the Financial Rules of the  
Governing Body, Compliance, and the Funding Strategy**

Rome, 14 – 17 December 2005

**COMPILATION AND ANALYSIS OF GOVERNMENTS' FURTHER VIEWS ON  
COMPLIANCE WITH THE INTERNATIONAL TREATY ON PLANT GENETIC  
RESOURCES FOR FOOD AND AGRICULTURE**

By a Circular State Letter of 3 February 2005, countries were invited to submit further views on compliance with the Treaty. These are available in document CGRFA/IC/OWG-1/05/5. The current document contains the first submission of Australia, which was received after that document was finalized. It is accordingly circulated in the language in which it was received only, English. All submissions have been posted on the Commission's website at <http://www.fao.org/ag/cgrfa/compliance.htm>.

The documents for this meeting are available on Internet at <http://www.fao.org/ag/cgrfa/ico1.htm>.

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**GOVERNMENTS' FURTHER VIEWS ON COMPLIANCE WITH THE  
INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND  
AGRICULTURE**

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**AUSTRALIA**

**THE ISSUE OF COMPLIANCE FOR THE INTERNATIONAL TREATY ON PLANT  
GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

**Preamble**

Pursuant to paragraph 13 of the Report of the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture (**CGRFA-MIC-1/02/REP**) and the Director-General's 23 June 2003 notice, Australia hereby submits its comments on compliance with the International Treaty on Plant Genetic Resources for Food and Agriculture (**ITPGRFA**).

Article 21 of the ITPGRFA states:

*“The Governing Body shall, at its first meeting consider and approve cooperative and effective procedures and operational mechanisms to promote compliance with the provisions of this Treaty and to address issues of non-compliance. These procedures and mechanisms shall include monitoring, and offering advice or assistance, including legal advice or legal assistance, when needed, in particular to developing countries and countries with economies in transition.”*

In accordance with Article 21, Australia believes that the compliance regime should be facilitative, transparent, non-confrontational, non-judicial, forward orientated and non-binding. It should be proactive in order to prevent the occurrence of instances of non-compliance and matters of dispute.

Procedures designed to address the issue of non-compliance should fundamentally be removed from the dispute settlement procedures to ensure that they do not prejudice Article 22 relating to the settlement of disputes.

Fundamentally, the compliance regime should only address instances of non-compliance by the Parties to the ITPGRFA and not disputes arising between individuals over the terms of a Material Transfer Agreement (**MTA**). The available mechanisms for recourse concerning disputes over MTA's are outlined in Article 12.5.

The compliance regime should be principles based in accord with existing multilateral compliance mechanisms.

**Principles and Elements of the Compliance Regime**

The principles upon which the compliance regime should be based are:

1. Facilitation
2. Cooperation
3. Transparency
4. Flexibility

## 5. Prevention

The elements of the compliance regime mechanism should be:

1. Non-judicial
2. Non-discriminatory
3. Non-binding
4. Non-confrontational
5. Non-punitive
6. Cost effective
7. Proactive
8. Advisory
9. Procedurally fair

The principles and elements reflect the underlying tenet of Article 21 which is to promote compliance with the provisions of the ITPGRFA in a cooperative framework.

### **Compliance Regime Structural Mechanism**

The operative mechanism of the compliance regime could be a variety of structures in accord with existing multilateral agreements. The composition of the selected structure should originate from Parties elected by the Governing Body, not from independent experts. This would ensure the cooperative and facilitative tenet is paramount as each elected Party would adhere to their obligation to promote the ITPGRFA and the compliance thereof by all other Parties.

### **Compliance Regime Monitoring**

The selected method of monitoring should be one that is not burdensome on the Parties in relation to resource commitments. Monitoring should take a format that enables the identification of opportunities for assistance with compliance, rather than identifying instances of non-compliance to be brought before the compliance regime structural mechanism to be dealt with as an instance of breach of obligations.

Canberra, September 2005