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منظمة الأغذية
والزراعة
للأمم المتحدة

联合国
粮食及
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Food
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des
Nations
Unies
pour
l'alimentation
et
l'agriculture

Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

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Item 9 of the Draft Provisional Agenda

**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

FIRST SESSION OF THE GOVERNING BODY

Madrid, Spain, 12-16 June 2006

**COMPILATION OF SUBMISSIONS AND COMMENTS ON THE
DRAFT PROCEDURES AND MECHANISMS TO PROMOTE
COMPLIANCE AND TO ADDRESS ISSUES OF NON-
COMPLIANCE
- ADDITIONAL SUBMISSION -**

The present document contains the submission of Japan, which was received after document IT/GB-1/06/Inf.7 was finalized. It is accordingly circulated in the language in which it was received only, English. All submissions have been posted on the internet at <http://www.fao.org/ag/cgrfa/compfs.htm>.

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**GOVERNMENTS' SUBMISSIONS AND COMMENTS ON THE DRAFT
PROCEDURES AND MECHANISMS TO PROMOTE COMPLIANCE AND TO
ADDRESS ISSUES OF NON-COMPLIANCE**

JAPAN

1. The Article 21 of the Treaty states that “[t]he 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.” The first session of the Governing Body therefore needs to adopt procedures and mechanisms in this regards in accordance with this Article. In practical sense, however, robust institution such as “standing infraction committee” may be premature, because the Treaty had just entered into force and actual problems in respect of compliance were not yet specifically identified among us. While certain suggestions on compliance were already made in the preparatory meeting of the Treaty, the scope of the compliance in the context of the Treaty was not fully discussed; in fact, a range of specific questions such as what level and range of actors targeted, what requirements under the provisions of the Treaty to be dealt with, were not finely addressed and consequently settled so far.

2. Since these outstanding points constitute practical and critical backbone of possible compliance mechanism of the Treaty, the Governing Body need to further the discussion on these aspects for effective, efficient, and workable mechanism on compliance. In this sense, Japan regards it appropriate for the Governing Body to introduce provisional measures which was proposed by the United States at the open-ended working group in the December 2005. Japan supports this gradual and practical approach so that, while creating certain provisional functioning at the outset, the governing body will continue to consider this issue and establish rather rigid institutional arrangement if it so decides in near future.

3. When considering this issue of complex nature, Japan is of the view that, as a matter of procedure, the items I (Objectives), II (Principles), III (Institutional Mechanisms), IV (Functions of the Committee), and VIII (Review of the procedure and Mechanisms) need to be considered as the priorities and consensus need to be explored on these issues before we go on to other items.

4. As for the substantive point of the compliance, Japan holds the following observations:

- a) Taking into consideration the legislative foundation of the Treaty that the Treaty was established under the Article XIV of the Constitution of the FAO, and that FAO is an integral part of the United Nations System, the procedure and mechanism for compliance as its entirety needs to be fully consistent with very basic notion of the law of the nations, i.e., sovereign equality of nations. In addition, under the texts and spirits of the Treaty, Member nations did not explicitly delegate their sovereignties in relation to the compliance with various provisions of the Treaty to outside national authorities of the respective Member nations. Since status and functions of the possible subsidiary body under the Treaty should be fully in line with the existing mandate of the Treaty, compliance mechanism needs to be crafted strictly within these purviews of this positive international agreement, with due regards to general international legal norms still prevailing. In short, the sovereignty of Member nations should not be excessively undermined under such internal mechanism; however, this does not in any way mean that certain Members will be exempted from fulfilling their duties under the Treaty.
- b) Upon this understanding as stated above, the mechanism of compliance should not be unnecessary coercive, but be a collective encouraging approach for a series of

autonomous actions by Member nations, in particular, those by developing nations which need assistance and guidance. It also facilitates the uniformed and organized approach among the Members towards our common objectives under the Treaty.

- c) At the same time, it should make it clear that the mechanism in this regard is completely separated from the procedure for dispute settlement under the Article 22 of the Treaty. This understanding is necessary in order to not to cause any unnecessary misunderstanding and confusion as to the dispute settlement among the parties to the dispute.
- d) In addition, if standing subsidiary body of the Governing Body in this regard such as “compliance committee” is to be established, such institution should be composed of national representative of Member nations, not of individual specialists of their personal capacity or other non-governmental entities. This is because compliance issues are closely related to the sovereignty of Member nations and their views and opinions need to be respected and heard as a matter of priority. It is needless to state that principal actor of the Treaty as a matter of public international law is the contracting party, i.e., sovereign state. Therefore, the membership of the “compliance committee” should be given exclusively to the Members that wish to be part of the committee. Technical contribution by individual specialists or organizations will be welcomed when and where appropriate but it is supplementary and could be done through the Secretariat as a resource person/entity.