



BSWG-6 HIGHLIGHTS TUESDAY, 16 FEBRUARY 1999

On the third day of the Sixth Session of the Open-ended *Ad Hoc* Working Group on Biosafety, delegates met throughout the day until late in the evening in both Sub-Working Groups and several contact groups to debate outstanding issues. The Friends of the Chair (FOC) met in the evening and many informal groups were asked to report to the BSWG Chair.

SWG-I

SWG-I heard a report of the contact group on Article 15 (Risk Management). Subject to a definitive answer on treatment of the precautionary principle in the protocol, a number of delegates opposed deleting the paragraph on taking measures without full scientific certainty. Many delegates supported retaining the paragraph on taking appropriate measures to prevent unintentional transboundary movements under this Article and forwarding a recommendation to SWG-II to delete a similar reference under Article 17 (Unintentional Transboundary Movements and Emergency Measures). Many delegates supported a reference to antibiotic-resistance marker genes in this Article, while others argued this category of LMOs might be better handled elsewhere. The Co-Chairs produced a revised text for further consideration, but SWG-I did not reach consensus.

On the issue of "contained use," some delegations stated that LMOs destined for contained use should be subject to the same provisions as other LMOs. Others said that different provisions should apply to these LMOs, specifically, that their transboundary movements should not be covered by AIA procedures. One delegation stated that LMOs for contained use should be excluded from the protocol. Co-Chair Wint (Jamaica) convened an informal group, co-chaired by Australia and Peru, to continue discussions. The Co-Chairs of the informal group circulated a note to SWG-I summarizing the outcome of discussions. SWG-I agreed to forward the note, amended to reflect the three positions outlined above, to the BSWG Chair. Delegations concurred that further progress would need to await an agreed definition of "contained use," under discussion in Contact Group-I (CG-I).

On the issue of human health, many delegations favored including human health in the protocol while others did not. Co-Chair Schoonejans (France) convened an informal group, co-chaired by Austria and Botswana, to consider the issue. Austria reported back to SWG-I, stating that three aspects to human health had been identified: direct effects of LMOs on human health; indirect effects through impacts on biodiversity; and effects on biodiversity that would require additional information on human health. Co-Chair Schoonejans requested the

informal group to continue its discussions on the basis that a reference to human health would be included in the protocol. After deliberations, the informal group presented five options for the treatment of human health. Co-Chair Schoonejans invited the informal group to develop three options for consideration Wednesday morning.

Co-Chair Schoonejans drew attention to proposed timeframes contained in the draft protocol, including for the acknowledgement of receipt of notification under AIA procedures (Article 7.1) and for the communication of a decision under those procedures (Article 8.3(c)). He charged an informal group, co-chaired by Cuba and Hungary, to address the issue. Hungary reported back to SWG-I, identifying two options for the total time required for a decision from the date of notification - 180 or 270 days. Co-Chair Schoonejans invited the informal group to continue its work.

On Article 6 (Notification), Co-Chair Schoonejans launched discussions on legal responsibility for the accuracy of information. Several delegations proposed alternative language for the Article, and Co-Chair Schoonejans invited these to produce a common text for SWG-I on Wednesday. On Article 14 (Risk Assessment), many delegations made proposals to amend the text. Co-Chair Wint convened a drafting group to incorporate these proposals into a revised version of Article 14.

SWG-II

Co-Chair Herity (Canada) noted the 8:00 p.m. Tuesday deadline set by the BSWG Chair on trade issues, capacity building and labeling.

On Article 18 (Handling, Transport, Packaging [and Labelling]) discussions revolved around a Co-Chairs text. Some delegations said they were satisfied, while others offered suggestions for improvement. Most developing countries supported, *inter alia*: language on risks to human health and products thereof; labeling in addition to identification; and the development of new standards under the protocol. Some developed countries said new standards and requirements for documentation to accompany LMOs would duplicate other international rules and create unnecessary bureaucracy. Another said risks to human health could be dealt with elsewhere. Delegates differed on whether the Article applies to all LMOs within the scope of the protocol or only to LMOs subject to the AIA procedure. Some delegations cited the ongoing discussions elsewhere on AIA, commodities and "products thereof" as a reason for their lack of a clear position on the Article. In the informal group convened by Co-Chair Herity, some delegations noted the linkage between Article 18 and Articles on objectives and scope of AIA. Many considered labeling for consumers to be an internal policy issue; others disagreed, citing the objective of the protocol and CBD Article 19.3.

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The Co-Chairs of the informal groups on trade issues (Articles 24, 25 and 34) and capacity-building (Article 22) reported to SWG-II at 12:00 pm. A Co-Chair (Switzerland) of the informal group on capacity building reported a lack of progress on the issue. He outlined the contentious issues as *inter alia*, cooperation to develop capacity in biotechnology, involvement of the private sector and the needs of economies in transition.

A Co-Chair (Canada) of the informal group on trade reported that, on Article 25 (Non-discrimination), many delegates supported deleting the provision. Some wanted to avoid involving trade concepts, and others noted the difficulty of synthesizing appropriate WTO regulations within the Article. One regional group favored retaining the Article stressing the need for non-discrimination concepts which would help those not party to the WTO. On Article 34 (Relationship with Other International Agreements), delegates debated three options: no provision; a short statement that the protocol shall not affect rights and obligations from other existing international agreements; and a longer statement qualifying the previous option with an exception where exercising those rights and obligations would threaten biodiversity. On Article 24 (Non-Parties), the informal group discussed bracketed language on an LMO trade ban with non-parties, inquiring about its practicability and possible legal challenges under the WTO. Delegates also raised questions in a paragraph on the standards with which non-parties would have to comply (e.g., the protocol's objectives or substantive provisions).

SWG-II addressed Article 24 (Non-Parties) later in the day. A regional group supporting the ban on trade in LMOs with non-parties withdrew support for that option, instead supporting text that trade with non-parties be carried out on the basis of the protocol's substantive provisions. Another delegate proposed that such trade occur in a manner consistent with the sustainable use and conservation of biodiversity.

SWG-II reconvened in the afternoon to discuss Articles 21 (Confidential Information) and 23 (Public Awareness and Participation). On Article 21, delegates differed on the need for its inclusion in the protocol. Most developing countries favored its exclusion, citing coverage of confidential information under domestic and other international legislation. One said that as the protocol was on biosafety not biotrade, confidential information was irrelevant. Most developed countries supported its inclusion, as protection of confidential information would encourage provision of full information. Developed countries differed on whether the general description of the LMOs and the risk assessment of their effects on biodiversity should "in no case" or "not generally," be considered confidential. Co-Chair Khwaja (India) suggested the possible creation of a small group to deal with the issue. In the evening, Co-Chair Herity initiated discussion on Article 21, but no consensus emerged.

On Article 23, several developing countries suggested retaining the terms "products thereof" and "taking into account human health" and deleting language referring to confidential information. Several developed countries proposed deleting language on "products thereof," with one suggesting deletion of the reference to human health. Some delegates differed on whether parties "shall" or "are encouraged to" provide the public with information and opportunities for participation. A Co-Chairs' draft circulated in the evening engendered further debate. Some developed countries objected to the deletion of language on respecting confidential information. Several developing countries, stating that the draft excluded participation, suggested that the public be part of the decision making process, not merely the recipient of information. One proposed that the public be provided information on risks to human health. Some delegates suggested parties provide information in accordance with all laws, not just national ones. Co-Chair Khwaja (India) offered to circulate a new draft Wednesday.

On Article 17 (Unintentional Transboundary Movements and Emergency Measures), delegates attempted to reduce brackets, but reached no consensus. Some delegates said it was unrealistic to prevent unintentional transboundary movements of LMOs. Others

noted the linkage between this Article and those on risk assessment, LMOs and confidential information. One delegate emphasized the need to identify who should take responsibility for triggering responsive actions to minimize negative impacts.

SUB-GROUP ON LIABILITY: Delegates discussed a non-paper from Chair Kate Cook (UK) that outlined possible future action by parties to the protocol, such as deciding how and whether to establish rules by their first meeting and taking a decision by their third meeting. Some delegates said the non-paper postpones action on the issue indefinitely and called for enabling language that ensures concrete action and next steps. Another delegate cautioned that civil liability regimes already exist, whether or not the issue is included in the protocol. The Chair reported to the BSWG Chair and the issue was addressed by the Friends of the Chair in the evening.

CONTACT GROUPS

CG-I, co-chaired by Piet van der Meer (Netherlands) and Osama El-Tayeb (Egypt) met throughout the day and night, and completed discussions on Annex I (Information Required in Notification for AIA) leaving the provision on risk assessment pending resolution of discussion on Annex II (Risk Assessment). On Annex II, delegates debated language on general principles referring to the precautionary approach and lack of scientific knowledge. Delegates inserted language on requesting additional information or implementing appropriate risk management techniques to address uncertainties or increased levels of risk. Delegates also discussed specific technical and scientific details to be taken into account during risk assessment, including characteristics of recipient/parental organisms, vector, inserts/modification and donor organisms. CG-I then began discussing the definition of "contained use" and continued late into the night.

CG-II, co-chaired by John Ashe (Antigua and Barbuda), met in the afternoon to discuss the Preamble. Delegates agreed to insert new language on the importance of centers of origin and of genetic diversity, as well as a footnote noting that additional language can be added only if agreed upon by other negotiating groups (e.g., on the precautionary principle, socio-economic considerations and liability and redress).

IN THE CORRIDORS

Despite another day of discussion that lacked conspicuous movement, some delegates voiced an optimistic outlook for a protocol, noting that informal group discussions have clarified awareness of positions and subtle shifts may be afoot. Some questioned the efficacy of splitting up the various issues among so many contact or informal groups, given the linkages among the issues and cautioned against viewing the Friends of the Chair as a panacea for all outstanding disagreements. Others noted that discussion on how or whether to include the precautionary principle, implicating as it does the trade interest, has the potential to create serious rifts within and between the regional groups. Few expect it to feature in the operative portion of the protocol.

THINGS TO LOOK FOR

SWG-I: SWG-I will meet at 10:00 am to hear reports from informal groups.

SWG-II: SWG-II will meet at 10:00 am to discuss Article 26 (Illegal Traffic).

CG-I: CG-I is expected to meet at 10:00 am to continue discussions on Annexes; check schedule for details.

CG-II: CG-II may discuss Article 29 (Financial Mechanism and Resources) pending resolution of discussions on Article 22 (Capacity-Building); check schedule for details.