



HIGHLIGHTS OF BSWG-5 TUESDAY, 25 AUGUST 1998

BSWG-5 delegates continued negotiating text for the biosafety protocol in a variety of groups throughout the day and into the evening.

SUB-WORKING GROUP I

CG-II outlined for SWG-I the options and possible legal implications regarding notification (**Article 4**), acknowledgment of receipt (**Article 5**) and communication of the decision (**Article 6**). CG-II also highlighted how these issues were addressed in the Basel Convention. SWG-I then discussed Articles 4, 5 and 6 together, noting their inter-linkage. Many delegates said responsibility under Article 4 should fall on the exporter or the Party of export should ensure that the exporter notifies the Party of import, while responsibility under Articles 5 and 6 should fall on the importer or Party of import. Many also said the exporter should initiate the procedure. Delegates differed on the issue of transit and whether to provide a specific procedure for notifying the Party of transit in an article, such as Article 4, or whether to address it under Article 1 *bis* (General Obligations). Several noted the difficulty of negotiating these articles until Annex I (Information for AIA) had been submitted by CG-I. A drafting group began negotiating Articles 4, 5 and 6, specifically the timeline for responsibility for notification, failure to acknowledge receipt and transit issues.

On **Article 36** (Assessment and Review of Procedures/Annexes) most delegates supported the article, particularly option 2 (MOP shall evaluate protocol's effectiveness). Some supported option 1 (Parties shall assess protocol's procedures and annexes based on available scientific, environmental and technical information and panel of experts' conclusions) provided the panel of experts was not completely responsible for the assessment; another country supported the option only if the reference remained. A few countries supported either option. Under option 2 a few countries favored the MOP's evaluation three years after the protocol's entry into force and at least every six years thereafter, but more favored five years for both. Several dele-

gates noted the article complements Article 29 (COP) as it establishes precise time limits for review. A drafting group merged the two options.

Delegates examined **Articles 12** (Risk Assessment), **13** (Risk Management) and **14** (Minimum National Standards) as a group. On Article 12, some speakers suggested postponing discussion on the paragraph noting who should carry out risk assessment until CG-I completed the risk assessment annex; another speaker said Article 6 (Decision Procedure) now contains related text. One said Article 7 (Review of Decision) covers issues related to the paragraph on subsequent imports into the same Party of import. Others supported deleting the subsequent import paragraph. On Article 13 several delegates said Article 21 (Capacity-building) covered the paragraph regarding collaboration between Parties of import and export if capacity is lacking; some developing countries said they addressed different issues. A delegate added "global" to the paragraph regarding phase out of LMOs that have "global" adverse effects. One speaker said that, while all the elements in Article 14 could be moved to Article 1 *bis*, another solution would be to place them in a new article titled "national measures." Some developing countries stressed that the elements be moved verbatim to footnotes for consideration in Article 1 *bis*. Evening drafting groups continued discussing Articles 13 and 14.

SUB-WORKING GROUP II

Regarding **Article 22** (Public Awareness and Participation) CRP.4 was introduced for discussion. On the first paragraph, delegates agreed to replace "risks and necessary safeguards" with "safety," but differed on retaining reference to human health. On paragraph 2, one developed country said confidential information could be addressed by referring to Article 20 (Confidential Information); another preferred retaining both options. Developing countries disagreed. Some delegates suggested using release of LMOs to simplify language related to LMOs and others suggested deleting "intentional." Regarding the public and the decision-making process, some delegates supported providing the public with results of the decision-making process over opportunities for involvement. One delegate expressed concern about implementing this at the national level and



requested adding "where appropriate." Delegations differed on whether to delete "national laws, regulations and administrative measures." Delegations also differed as to whether brackets on "products thereof" could be removed. The entire paragraph was bracketed at the request of one delegate who said the first paragraph was sufficient. A drafting group consolidated a revised paragraph 2, which accommodated most views expressed.

On **Article 25** (Illegal Traffic) several countries, mostly developed, sought to bracket the entire text or amend it to reflect that illegal traffic is a domestic concern. Several developed countries opposed the right of the State of import to require the State of export/origin to remove, destroy or dispose LMOs. One said that a State could not be made responsible for illegal activities, and another that normal quarantine procedures sufficed. A few delegates said the provision was drawn out of context from the Basel Convention. One developing country suggested that the Party of export or State of origin should assume responsibility for the return, proper handling/disposal and expenses thereof for LMOs illegally trafficked. Another requested detail on possible international support for victim States. Several delegates preferred placing the provision on information in Article 19 (Information Sharing/Biosafety Clearing-house).

Reviewing CRP.3 on **Article 19** (Information Sharing/Biosafety Clearing-house), Co-Chair Herity noted the interpretation of a decentralized CH that would not collect information, but point to it. Delegates removed brackets from language on providing information without prejudice to the protection of confidential information in exchange for deleting a reference to publicly available information. Delegates deleted reference to information on unintentional transboundary movements, noting coverage by Article 15 (Unintentional Transboundary Movements). Most speakers favored deleting reference to reports on implementation noting the relevance of Article 35 (Monitoring and Compliance). One delegation supported the reference. Delegates merged paragraphs regarding decisions on CH modalities and reports on its operation, and debated exact terminology regarding decision at the first MOP and possible consideration thereafter. Delegates agreed to include reference to existing international biosafety information exchange mechanisms.

Some delegates requested bracketing or removing text on risk assessments/environment reviews, unilateral declarations on exemptions, field-testing, commercial use and reports on implementation of AIA procedures. One developing country supported establishing a biosafety CH separate from the CBD's CH mechanism. Another proposed language from CG-I on including risk assessment information regarding "products thereof." One delegate requested deletion of language regarding reporting on time taken for decisions on LMO imports. Another said the reference was necessary to ensure transparency for all countries. One developing country noted his overall impression that most information is related to trade or transfer of LMOs and does not pay sufficient attention to assisting Parties in implementing the protocol.

The drafting group on **Articles 23** (Non-Parties), **24** (Non-discrimination) and **34** (Relationship with Other International Conventions)

reported that most participants maintained their positions. On Article 23 options remain over whether to include references to trade. A reference to Article 11 (Bilateral and Regional Agreements) also remains unresolved. On Article 24 participants discussed language on national treatment, most favored nation states and the GATT regarding unnecessary restrictions to trade. On Article 34, participants differed on whether there should be an article, whether the Protocol should affect obligations elsewhere, or whether text should mirror CBD Article 22.1. The articles will be produced as CRPs.

CONTACT GROUP I

CG-I's discussion of Annex I (Information Required in Notifications for AIA) included consideration of whether to add requests for information on the intended date of the transboundary movement and the regulatory status of the LMO in the exporting and importing State.

CONTACT GROUP II

CG-II met briefly to discuss the progress made by the small group on **Article 27** (Liability and Redress). The Chair of the small group reported a range of positions, with support among delegates for three options: the zero option; the enabling clause, which would postpone the discussion to the first MOP or "as soon as practicable;" and the substantive provision of liability. No consensus existed on how to proceed in the face of the impasse. One developing country suggested that the substantive provision and the enabling clause be discussed, in that order, in an informal group as soon as possible. One interest group met immediately thereafter to discuss its position.

IN THE CORRIDORS

Developing country reactions ranged from frustration to outright disgust at the refusal of other delegates to exchange views on streamlining a substantive option on Liability and Redress in CG-II. Many delegates believe this negotiating tactic will postpone discussion of the provision, which has been an issue since BSWG-I, to the final meeting at which point time might be too limited to finalize text. Following Tuesday's events some developing countries said they were prepared to block the entire negotiation process. Several delegates said a protocol without liability and redress would merely provide for an exchange of information. Another delegate stressed that international law must evolve, and the BSWG must look to examples of multilateral environmental agreements that provide for liability provisions, rather than those that do not. In other matters some complained of attempts by others to "sew loopholes" into the protocol, causing one delegate to exclaim: "We smell a rat!"

THINGS TO LOOK FOR

SUB-WORKING GROUPS: SWG-I is expected to hear reports from drafting groups when it convenes at 10:00 am. SWG-II is expected to meet at 10:00 am to discuss Article 17.

CONTACT GROUPS: Check the schedule for when CG-I will meet. CG-II will meet at 1:00 pm to discuss Article 28. The informal group discussing liability and redress is expected to meet at 10:00 am.