EXCOP HIGHLIGHTS
WEDNESDAY, 26 JANUARY 2000

Delegates to the resumed session of the first Extraordinary Meeting of the Conference of the Parties (EXCOP) for the Adoption of the Protocol on Biosafety to the CBD, met during the morning in the “Vienna setting” to hear contact groups’ reports on commodities and trade-related issues. The contact group on commodities met in a morning session and then merged with the contact group on scope and met in afternoon and evening sessions. The contact group on Articles 31 (Relationship with Other International Agreements) and 22 (Non-discrimination) met throughout the day. The “Vienna setting” convened at 11:20 pm to hear reports of the contact groups and a round of views on the precautionary principle.

VIENNA SETTING

Upon reconvening the “Vienna setting,” in the morning, Mayr requested progress reports from the contact groups. François Pythoud (Switzerland), Chair of the commodities contact group, presented text on the decision procedure for LMO-FFPs, claiming that groups were close to agreement. The text covers: information provision regarding decisions for LMO-FFPs; legal requirements for the accuracy of information provided; requests for additional information; financial and technical support for decision-making; and decision procedures subject to domestic regulatory frameworks. He noted bracketed language on decision procedures for countries without national regulatory frameworks, and stated that there is still disagreement over a reference to their “consistency” with the protocol. Attention was also drawn to a paragraph relating to the precautionary principle, which pending discussion on Article 8 (Decision Procedure). The group also briefly discussed Annex 1B (Information Required in Notification).

Chair of the contact group on Articles 31 and 22, Ambassador Phîlémon Yang (Cameroon), noted, that on Article 31, some groups supported the preambular proposal in Chair Mayr’s non-paper, although there was a suggestion to delete language on the equal status of the protocol with other international agreements. One group supported retaining the existing Article 31.

Chair John Herity (Canada) of the contact group on scope reported that informal consultations had not yet been resumed and proposed that they continue.

Mayr then requested that the contact groups on commodities and trade-related issues reconvene. He added that after further informal consultations, the groups on scope and commodities would be merged. He requested final text for presentation at a late evening meeting.

“Vienna setting.” The Miami Group inquired as to when and how other issues would be addressed, such as Article 8.7 on the precautionary principle. The Like-Minded Group requested that the contact groups concentrate solely on their original mandates. The Compromise Group and the EU supported Mayr’s proposal to continue discussions. Mayr stated that related issues can be examined by the contact group Chairs after the core issues are resolved.

CONTACT GROUP ON COMMODITIES: Chair Pythoud presented his Chair’s text on Article 15 (Handling, Transport, Packaging and Identification). He said his text reflects all the principles in the Cartagena text, but allows for flexibility when dealing with different categories of LMOs. Delegates addressed a provision on the safety conditions of LMOs when handled, packaged and transported. Certain groups expressed concern that the application of safety measures required qualification on a case-by-case basis and that they should be applied “as appropriate.” Others disagreed with this concern. Given unresolved discussions on scope, the group encountered difficulties on a provision presenting a differentiated approach to providing accompanying documentation for: LMO’s intended for introduction into the environment; for contained use; or for food, feed or processing.

On accompanying documentation in the transport of LMOs, some groups stressed that documentation was a minimum requirement. There was discussion on ensuring that the provision covered not only the first, but also subsequent movements of LMOs. Negotiating groups confirmed the need for documentation identifying LMO-FFPs, but disagreed on how LMO-FFPs should be identified. One group proposed that “any unique identification” in addition to “identity” of LMO-FFPs should be identified. Another supported identification of LMO-FFPs “as not intended for intentional introduction into the environment.” One group noted difficulties with the documentation requirements for LMO-FFPs, and requested the proposals be bracketed.

One group questioned the appropriateness and clarity of a provision requiring a declaration that the movement of LMO-FFPs conform with the protocol’s requirements. To clarify who should make the declaration, one group suggested the provision apply to exporters. The provision was bracketed. One group stated that a provision requiring the meeting of the Parties to consider the need for and modalities of developing standards with regard to identification, handling, packaging and transport was unnecessary. A representative stated that a reference to collaboration with other international bodies undermines the CBD and the protocol and suggested language refer-
ring to consultations with other international bodies used in the Carte-
genra draft text. As suggested by the Chair, the group agreed to bracket
the whole provision with this amendment.

CONTACT GROUP ON COMMODITIES AND SCOPE:
Co-Chair Pythoud opened the first session of the merged contact
group on scope and commodities. In presenting the Chairman’s
Summary for the Contact Group on Scope, Co-Chair Herity noted
that the summary text deals with various categories of LMOs in the
context of the Protocol’s scope: LMOs that may have adverse effect
on biodiversity; LMOs that are pharmaceuticals for humans; LMOs
in transit; and LMOs for contained use. On a provision dealing with
which articles apply to LMOs in transit, Co-Chair Pythoud invited
comments on the two options in the summary text. Option one, the
“positive list,” states that only articles 2, 14 and 15 shall apply; while
option two, the “negative list,” states that Articles 5, 6, 7, 8, 9, 10, 11,
12, 13, 16, 18, 20, 22, 23, 24, 27, 28, 29, 30, 31 and 34 shall not apply.
Discussion resulted in a consensus decision to support the positive
list. Participants started reviewing the articles for the positive list, but
no agreement was reached.

After a lengthy break, the contact group was presented with a text
based on informal consultations. On a provision exempting the trans-
boundary movement of pharmaceuticals for humans, groups
suggested qualifying the exemption by adding references stating that
such LMOs are covered by other international agreements and organ-
izations or that they would not be intentionally introduced into the
environment. These provisions remained in brackets. Groups also
responded to informal text on inclusion of transit and contained use in
the scope of the protocol, which suggested that AIA procedures
would not apply to these two categories of LMOs. They noted that
this was a vast improvement over positive and negative lists of applic-
able articles debated earlier, yet reserved the right to discuss the
extent of the exemptions further.

CONTACT GROUP ON ARTICLES 31 AND 22: Chair Yang
invited negotiating groups to present their views on Article 22. Some
considered a reference to non-discrimination redundant but noted
flexibility to discuss the proposal in Chair Mayr’s non-paper. One
group stated that Article 22 runs contrary to the terms of reference
agreed at COP-2 and exceeds the CBD’s scope. Another group ques-
tioned the location and scope of a provision in the non-paper ensuring
that Parties denying access to imports extend that ban to all sources,
both domestic and international. Some stressed the importance of
principles of non-discrimination to prevent conflicts between the
protocol and other international instruments. Another group
disagreed, stating that the protocol does not include many other
equally fundamental trade rules and that non-discrimination is diffi-
cult to use when resolving conflicts between international instru-
ments. Noting ambiguities in the difference between LMOs and non-
modified products, another group stated that it is hard to apply rules
on products to LMOs.

In the afternoon, Chair Yang asked for comments on preambular
language replacing Article 31 on the protocol’s relationship to other
international agreements proposed in Chair Mayr’s non-paper. One
group noted inconsistency between terminology on “international
agreements related to sustainable development” and “trade and envi-
ronment agreements.” Some groups objected to a provision noting the
equal status of the protocol with other international agreements.
Another group asked for consideration of relevant issues in Articles
21, 24 and 8.7 before drafting text. The delegate also focused on
Article 31 and suggested removing a clause excepting Parties’ obliga-
tions to existing international agreements where there might be
serious threat to biodiversity. Some delegates argued that Article 31
was unacceptable, since it would subordinate the protocol to interna-
tional trade agreements.

After a break, Chair Yang distributed a draft proposal, deleting
Articles 31 and 22 and adding three preambular provisions with
language from the Convention for the Prior Informed Consent (PIC)
Procedure. One group noted that use of language from the PIC
Convention was inappropriate given that trade in international
hazardous substances is an entirely different context from biosafety.
Two groups stated that language emphasizing that nothing in the
protocol shall imply a change in obligations under any existing inter-
national agreement was too strong. One group stated that the pream-
bular format was acceptable, while many stressed the need to reflect
further on both the format and substance.

VIENNA SETTING

Mayr welcomed the ministers and asked the contact groups for
reports.

Co-Chair Pythoud reported on the commodities and scope group’s
progress on Article 15, noting that the new text contained some
brackets, which should be easily removed. Co-Chair Herity said that
the discussion gave him confidence and that brackets in Article 4 and
in the article on pharmaceuticals for humans should not constitute
major problems. Regarding a new article on LMOs in transit and for
contained use, Chair Pythoud noted the broad range of options
discussed and that remaining problems could be readily resolved.

Chair Yang presented results of the day’s discussions on Articles
31 and 22. He reviewed a chairman’s draft text, which deleted the two
articles and suggested preambular text, which still requires further
discussion. He noted requests to address trade-related issues, which
he was unable to grant given the group’s mandate.

In a round of comments, the negotiating groups indicated their
general satisfaction with the contact group on commodities. With
regards to Articles 31 and 22, the CEE and Compromise Group
approved of their proposed deletion and support for preambular
language. The Miami Group suggested deletion of Article 22 and
indicated they would consider the Chair’s proposed text, while the
EU suggested deleting Article 31 and retaining Article 22.

Chair Mayr then requested a round of views on the precautionary
principle. Several groups underlined that the protocol by nature
embodies the precautionary principle. The Miami Group indicated
that references in the preamble and Article 1 (Objective) were suffi-
cient and that operationalization in Article 8 was not necessary. The
EU stressed the need for an operable precautionary principle, such as
that embodied in Article 8. The Compromise Group noted the need
for precision and the inter-relation of Article 8 with 31 and 22. The
Like-Minded Group supported the existing provision in Article 8.
The CEE stressed the need to consider the minimum level of precau-
tion for effective implementation.

Chair Mayr stated that the contact groups on Articles 31 and 22,
and commodities and scope should meet to deliver text to the “Vienna
setting” on Thursday morning.

IN THE CORRIDORS

As progress emerged in the areas of scope and commodities, dele-
legates struggled with the Gordian Knot of negotiating on the trade
cluster, which is intertwined with related issues, yet constrained by
a limited mandate. With debate focusing on the protocol’s relationship
to the WTO, the corridors were a buzz with musings of what a deal on
the savings clause, precautionary principle and scope might entail.
The question remains: who will be able to sever the knot?

THINGS TO LOOK FOR TODAY

CONTACT GROUP ON ARTICLES 31 AND 22: The group
will meet at 9:00 am in room 5 of the ICAO building.

VIENNA SETTING: The Vienna setting will reconvene at 10:00
am in the Delta Hotel to hear reports from the contact groups on scope
and commodities and Articles 31 and 22. Further discussion on the
precautionary principle is expected.