

COP/MOP 4 HIGHLIGHTS: THURSDAY, 15 MAY 2008

COP/MOP 4 delegates convened in plenary in the morning to review progress. Subsequently, WG I considered draft decisions on socioeconomic impacts and handling, transport, packaging and identification (HTPI) of living modified organisms (LMOs); and adopted draft decisions on a number of other items. WG II considered a draft decision on risk assessment and risk management during morning and evening sessions, with discussions on other items continuing into the night. The contact groups on liability and redress and the budget met throughout the day and in the evening.

PLENARY

The WG group Chairs reported on progress in their respective working groups. Budget Committee Chair Sem Shikongo introduced the revised preliminary cost implications of draft decisions being considered by the WGs (UNEP/CBD/BS/COP-MOP/4/INF/27/Rev.1). Liability and redress contact group Co-Chair René Lefeber reported that the group was considering a “compromise in the making” but was still debating whether a legally binding instrument and a provision on civil liability could be introduced. He said only one party objected to the compromise proposal, but that bilateral consultations with that party were ongoing. JAPAN reaffirmed its commitment to the Protocol and expressed optimism about finding common ground in the bilateral negotiations.

GREENPEACE INTERNATIONAL said that the financial mechanism proposed in a compact of six major agricultural biotechnology companies is not a viable alternative to a strong, legally binding regime with a supplementary compensation mechanism. The WASHINGTON BIOTECHNOLOGY ACTION COUNCIL, speaking for an NGO coalition, called on delegates to not allow the biotechnology industry to privatize public international law. The PUBLIC RESEARCH AND REGULATION INITIATIVE (PRRI) called on delegates to support public research in biotechnology as one means to address the current food and development crises.

WORKING GROUP I

Delegates adopted, without amendment, draft decisions on: notification requirements, compliance, and the draft report of WG I.

SOCIOECONOMIC CONSIDERATIONS: Delegates considered a draft decision on socioeconomic considerations. On recognizing divergent views and information regarding

socioeconomic impacts, CHINA requested text specifying that information is insufficient and not credible, but withdrew the request upon clarification by the Secretariat on the procedure for information submission. BRAZIL preferred a reference to the “complexity of the issue” rather than “divergent views.” Delegates agreed to include both terms. CHINA, opposed by many, requested deletion of a reference to CBD work on genetically modified trees, and it was bracketed.

On capacity-building needs for research on socioeconomic impacts, MEXICO proposed that these should be addressed by an AHTEG rather than the Coordination Meeting of Governments and Organizations Implementing and/or Funding Capacity-Building Activities. BOLIVIA suggested adding a reference to capacity building for taking decisions on LMO imports in accordance with the Protocol or national legislation implementing the Protocol. Both proposals were rejected.

BRAZIL, opposed by ETHIOPIA, UGANDA, NORWAY and the EU, requested deleting reference to methods for research results in decision making. The reference remains bracketed. Delegates then approved the draft decision as amended with remaining brackets.

HTPI: Sampling and detection: Delegates considered a revised draft decision on sampling and detection. On a preambular paragraph noting the importance of reference materials, EGYPT called for reference to LMOs intended for future placement on the market, and delegates agreed to compromise text referencing “LMOs that are placed on the market.” The EU suggested text encouraging parties to exchange information on national approaches concerning low level presence of LMOs in imports through the BCH, but ETHIOPIA requested the that text remain bracketed. Delegates agreed on a compromise to reference capacity building and setting up of laboratories in one paragraph and accreditation of laboratories in another. The draft decision was adopted as amended, with brackets remaining.

Standards: On referring identified gaps in standards for HTPI to other relevant organizations, ETHIOPIA proposed specifying “including” the organizations that are already addressing those matters, while BRAZIL preferred “in particular.” The draft decision was adopted with these references in brackets.

WORKING GROUP II

RISK ASSESSMENT AND RISK MANAGEMENT:

Regarding a draft decision on risk assessment and management, debate centered on a proposal by NEW ZEALAND and

BRAZIL, opposed by many, to delete language on: submitting information on the identification of LMOs or specific traits that may have adverse effects on sustainable use of biodiversity; and on requesting the Executive Secretary to prepare a synthesis report. BRAZIL and NEW ZEALAND agreed to retain the language after proposing that information be submitted to an *ad hoc* technical expert group (AHTEG) on risk assessment and risk management rather than COP/MOP 5. A proposal by the EU inviting parties, other governments and relevant organizations to submit to the Executive Secretary relevant information for consideration by the AHTEG resulted in a lengthy discussion of whether an AHTEG or an open ended working group should be established. BOLIVIA, BELIZE, MALAYSIA, UGANDA, ECUADOR and others favored the latter, with MEXICO, the EU, the PHILIPPINES, NORWAY, JAPAN, NEW ZEALAND and INDIA expressing preference for the former. After informal consultations, delegates agreed to a compromise text, including references to the establishment of an AHTEG.

Discussion moved to a section on capacity-building relevant to risk assessment, EGYPT, QATAR, the EU, NEW ZEALAND, BELIZE and ARGENTINA proposed a number of changes to text on tasking the Executive Secretary to establish a training system of modules.

In the evening, Chair Morales introduced a revised draft decision. The EU proposed language inviting submission, prior to the first meeting of the AHTEG, of information on existing guidance documents on risk assessment. Delegates then addressed the annexed terms of reference for the AHTEG and NEW ZEALAND proposed several additions. The EU, opposed by UGANDA and others, suggested deleting reference to risk management from the terms of reference, the rationale being that the AHTEG would be overburdened. NEW ZEALAND maintained that the two were separate processes. Discussions continued late into the night.

CONTACT GROUPS

BUDGET: The budget group continued negotiating the draft budget for the Protocol's administration in the biennium 2009-2010. The main issues included language on the use of the Protocol's cumulative reserves and references to capacity building activities. Delegates spent much time further developing the cost implications of the decisions being discussed in the two working groups in order to estimate the need for an increase in the Protocol's core budget, and deciding which activities will have to be funded under the Protocol's voluntary trust fund.

LIABILITY AND REDRESS: In an open session of the contact group, Co-Chair Lefeber reported on bilateral consultations between members of the like-minded friends and one delegation opposed to a provision on civil liability in a legally binding instrument. They had agreed to introduce a reference into the compromise proposal of the like-minded friends, stating that parties may or may not develop a civil liability system or may apply their existing one in accordance with their needs to deal with LMOs. The proposal was to integrate this provision and the compromise proposal into the newly structured, previously discussed, operational texts on liability and redress. The Co-Chairs then asked if delegates agreed to work on the basis of this integrated document and were ready to conduct a second reading of the operational texts at COP/MOP 4.

Noting the "sense of common direction", many delegates expressed their commitment to work on the basis of the integrated text and specifically the common understanding

enshrined in the subsection on legally binding provisions on civil liability. Noting that the latter provisions had not been negotiated, one delegation cautioned that it was difficult to commit to working towards a legally binding approach given that the operative texts still contained many contentious elements. They were reassured that "nothing was decided until all was decided," but warned that if they did not want to commit to working towards a legally binding approach, they should voice their objection now. Two delegations requested time to consider the integrated text and were given until Friday.

Acknowledging that the process of completing rules and procedures on liability and redress would not be completed at COP/MOP 4, the Co-Chairs asked delegates to consider a procedure for completing this process. Many delegates made the continuation of the process and funding for it subject to the commitment of all parties to work towards a legally binding approach, including a provision on civil liability, and to work on the basis of the integrated text. Most delegates agreed that the *modus operandi* as a Friends of the Chair group with the current composition had a proven track record for resolving important issues and preferred to continue this way. Some delegates suggested convening one meeting, while many preferred to schedule two meetings, with the proposed duration of each ranging from three to seven days. Co-Chair Lefeber suggested convening one meeting subject to budgetary considerations and, if deemed necessary by the Co-Chairs, a second, to be funded from the voluntary trust fund. He suggested that the first meeting be held early in 2009 and the second one at least six months before the COP/MOP to comply with the circulation requirement for legally binding instruments. A draft recommendation on these procedures will be prepared for consideration by the contact group on Friday morning.

IN THE CORRIDORS

While the two working groups continued with the second reading of the draft decisions, albeit laboriously in WG II, the liability and redress negotiations proceeded on what one delegate termed its "rollercoaster ride." The progress reported from the early morning bilaterals and a strong statement in favor of compromise in Plenary led some delegates to predict meaningful engagement in the afternoon contact group. But what one delegate described as "backtracking" by one party in that meeting cast a dark cloud over the process, mirroring the day's unfolding weather.

Many delegates maintained that until all parties could commit politically to working towards a legally binding instrument on an administrative approach, which would include a provision on civil liability, there was no point in continuing. A number called for the crucial question to be put, once again, to the members of the contact group. With this in mind, one delegate said the last few days had resembled a poker game, with parties gambling on other players declaring their hands before them. But as we enter the last day of the COP/MOP, many are wondering who holds the cards, and whether any single party is willing to go for broke.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of COP/MOP 4 will be available on Monday, 19 May 2008, online at: <http://www.iisd.ca/biodiv/bs-copmop4/>