



HIGHLIGHTS OF BSWG-5

21-22 AUGUST 1998

On Friday, 21 August, delegates negotiated the biosafety protocol in Sub-Working and Contact Groups and several drafting groups. Both Contact Groups, several drafting groups and various regional and interest groups met over the weekend.

SUB-WORKING GROUP I

On **Article 4** (Notification), one delegate reintroduced the requirement to notify the clearing-house. Regarding notification content, one delegate said the Party of import's information requirements should be "consistent with the objectives of the protocol." Another proposed stating only that notification include "at a minimum" information that Annex I specifies. Delegates noted that Article 1 *bis* (General Obligations) addresses national information requirements and added a footnote indicating the text's relationship with that article. Several delegates said the paragraph noting that the Party of export shall make its exporter legally responsible for accuracy of the information could be covered by Article 12 (Risk Assessment), but others preferred retaining it in Article 4. Regarding who triggers notification, one delegate suggested that the Party of [Import][Export] require the "notifier" to notify. Delegates asked CG-II to examine how these issues are addressed in other international agreements.

On **Article 5** (Acknowledgment of Receipt of Notification) SWG-I agreed to delete option zero (no acknowledgment required) and place "shall" and "may" in brackets in paragraphs 1 (acknowledging receipt) and 2 (what acknowledgment may state). Delegates differed on whether acknowledgment should be within 30 or 90 days, or a reasonable period, and all remained in brackets. There was mixed support for retaining paragraphs 2(a) (acknowledgment of date of notification's receipt) and 2(b) (whether notification contains information specified in Article 4), as well as for moving paragraphs 2(c) (whether to proceed according to importing Party's domestic regulatory framework) and 2(d) (whether intentional transboundary movement may proceed with or without written consent after specified period) to Article 6. Paragraphs 2(a), (b) and (c) were retained and 2(d) was moved. Paragraph 3 (failure to acknowledge will not imply consent) and replacement text for paragraph 4 (Failure by the Party of Import to acknowledge notification would constitute noncompliance

with the Protocol) were referred to CG-II for legal clarification. Delegates were mixed as to whether the Article's title should remain intact, and they placed "for AIA" in brackets after the current title.

On **Article 6** (Decision Procedure for AIA) delegates attempted to consolidate text on risk assessment based on scientific evidence and principles. Some said the text was unnecessary and reference could be made to Article 12 (Risk Assessment), but others disagreed. Several delegates agreed to reference the precautionary principle, which was bracketed. Some delegates said the Party of import should communicate its decision within 90 days of acknowledgement of receipt of notification. Others supported "a reasonable time period," in which case some said they could delete the clause regarding possible extension of this period. Some added text from Article 5 stating that the Party of import shall indicate whether movement may proceed without written consent or wait for such consent. One delegate objected to the paragraph calling for decisions to include justification, but others said such information would increase the knowledge-base of LMOs. The Co-Chair noted that CG-I's consideration of scope would help deliberations regarding cases where movement cannot proceed without explicit consent. Delegates spoke for and against the option indicating that, if a Party of import fails to communicate its decision within [x] days, the Party of export has no obligations under the Protocol. Others suggested the MOP decide at its first meeting. Some asked if all articles would have non-compliance provisions. Delegates referred it to CG-II.

SWG-I created a drafting group on **Article 8** (Notification of Transit). SWG-I agreed to delete **Article 10** (Subsequent Imports), the contents of which are covered in Article 6, paragraph 2(a), and created a footnote to this effect in Article 6.

On **Article 11** (Multilateral, Bilateral and Regional Agreements) several delegates said the article was unnecessary. In paragraph one, which establishes such agreements, SWG-I agreed to replace "arrangements" with "agreements" and to consolidate three alternatives stipulating that decisions by such an entity would be the same as under an AIA. A drafting group reconvened.

SUB-WORKING GROUP II

In discussing **Article 19** (Information Sharing/Biosafety Clearing-house/Database), many delegations supported establishing a Biosafety Clearing-house/Database. One delegate requested defining it as part of



the existing CBD Mechanism. Many delegations did not see the need to leave modalities of the CH to the first MOP, stating it is an ongoing process. Some developed countries requested clear identification of the information required for the CH. One outlined the three main components as implementation, risk assessment and decision-making. Another asked for more detail. Some supported “publicly available” information and opposed additional information requirements. Many countries supported adding small island States when addressing special needs, and some suggested moving a paragraph on public accessibility to the CH to Article 22 (Public Awareness/Participation). Some delegates preferred reports on the CH’s operation through the MOP instead of the Executive Secretary. Proposals on identification of information required for the CH were assigned to a small reflection group. The Group approved Co-Chair Herity’s proposal to refer to a CH rather than database throughout the text.

On **Article 21** (Capacity-Building) several delegations supported using language from the Prior Informed Consent (PIC) negotiations to simplify existing text. Some countries differed over whether the article’s scope should cover biotechnology as well as biosafety. Most delegations requested deleting text on Secretariat obligations. Many delegations supported moving language on provision of information to Article 19. Several delegations noted inconsistencies regarding formulations on technology transfer, training of experts, private sector assistance and technology transfer on concessional and preferential terms with CBD Articles 16 (Access to and Transfer of Technology), 18 (Technical and Scientific Cooperation) and 20 (Financial Resources). Some countries suggested moving text on technology transfer and new/additional financial resources to Article 28 (Financial Mechanism and Resources). Some delegations noted the GEF’s relevance, while one country said such guidance is beyond the protocol’s authority. Several countries supported language on capacity building in small island States.

Co-Chair Ahuja stated that CG-II would discuss **Article 27** (Liability and Compensation). Several developed countries noted that the Co-Chairs’ redraft omitted the zero option and asked that it be added.

On **Article 22** (Public Awareness [Public Participation]) most developing countries suggested taking human health into account when developing and implementing public awareness programs on the safe transfer, handling and use of LMOs. A few disagreed. Most developing countries called for inclusion of “products thereof.” Some suggested deleting the reference to respecting confidential information. One developed country suggested restricting Parties’ obligation to facilitate public participation to “intentional” transboundary movements of LMOs. The Co-Chair promised to produce a revised text.

Regarding **Article 23** (Non-Parties) some developed countries preferred no provision as the article would interfere with trade. One delegation said it could be dealt with in Article 1 *bis* (General Obligations). Some delegates preferred option 2 allowing trade in LMOs with non-Parties, provided it is in accordance with the protocol’s provisions, and amended Parties’ measures to ensure safe transboundary movements of LMOs. One said such measures should be clearly identified. Some developing countries supported option 1 banning trade with non-Parties; one supported a five-year timeframe after the protocol’s entry into force to determine measures regarding non-Parties.

Delegates discussed **Article 24** (Non-discrimination/National Treatment) in relation to **Articles 23** (Non-Parties) and **34** (Relationship with Other International Agreements). Several delegates stressed that Article 23 should be discussed in view of environmental, not trade, concerns. Others stressed that trade issues are intrinsic to the protocol given its coverage of import, export and transport of commercial LMOs. One delegation preferred deleting Article 23. Several developing countries supported deleting Articles 24 and 34 as they are already addressed by international law. Some supported including Article 24 in order to clarify relations among Parties to the protocol that are not WTO members. One delegate noted that PIC directly relates to trade, but does not have provisions similar to Articles 24 and 34. To ensure compatibility with the WTO, several developed countries supported retaining Article 34 with language that would not override or duplicate other agreements. One delegate said the article’s inclusion would vary Parties’ obligations with regard to CBD Article 22 (Relationship with Other International Conventions). A drafting group will discuss Articles 23 and 24. Article 34 was referred to the Bureau to determine whether SWG-II or CG-II should address it.

A small group on Article 15/16 (Unintentional Transboundary Movements and Emergency Measures) met Saturday.

CONTACT GROUP I

On Friday, delegates in CG-I focused on the protocol’s scope and identified four types of transboundary movement: intentional LMO movement; unintentional LMO movement; movement of processed products containing dead LMOs and/or non-living LMO components; and movement of purified products from LMOs. Delegates agreed the protocol covered the first two. The third type generated significant discussion; in the end delegates decided it does not fall under the protocol’s scope. Many said the protocol probably did not cover the fourth. Delegates revisited this discussion Saturday afternoon as well as the definitions of modern biotechnology and “products thereof.”

CONTACT GROUP II

CG-II met on Friday to discuss the scope and nature of compliance under Article 35 *bis* (Compliance). It met on Saturday and formulated a definition on Illegal Traffic (Article 25).

IN THE CORRIDORS

After a week of negotiations, a few issues are emerging as potential deal-breakers. The trade-environment issue in particular has generated differences within and between the regional groups. A few delegates have expressed concern that one possible reason some countries have attempted to incorporate the trade-environment link in the biosafety protocol is to bring non-Parties to the WTO within the multilateral trade regime.

THINGS TO LOOK FOR

SUB-WORKING GROUPS: SWG-I is expected to convene at 10:00 am to discuss Articles 3, 7, 9, 12, 13 and 14 and will meet with CG-I in the afternoon. SWG-II is expected to meet at 10:00 am to discuss drafting group texts on Articles 15/16, 19 and 21.

CONTACT GROUPS: CG-I is expected to meet with SWG-I in the afternoon. Check the schedule for when CG-II will meet.