

THIRD MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY: 13-17 MARCH 2006

The third meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD) serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-3) opens today in Curitiba, Brazil, and will continue until 17 March 2006. It will be immediately followed by the eighth meeting of the Conference of the Parties (COP-8) to the CBD.

COP/MOP-3 will consider several reports on ongoing activities within the Protocol's mandate, as well as: requirements for the handling, transport, packaging and identification of living modified organisms (LMOs); documentation requirements for LMOs for food, feed and processing (LMO-FFPs); risk assessment and risk management criteria; liability and redress; the need to establish subsidiary bodies; monitoring, reporting; and assessment and review of implementation.

A BRIEF HISTORY OF THE CARTAGENA PROTOCOL ON BIOSAFETY

The Cartagena Protocol on Biosafety addresses the safe transfer, handling and use of LMOs that may have an adverse effect on biodiversity, taking into account human health, with a specific focus on transboundary movements. It includes an advance informed agreement procedure for imports of LMOs for intentional introduction into the environment, and also incorporates the precautionary approach and mechanisms for risk assessment and risk management.

The Protocol establishes a Biosafety Clearing-House (BCH) to facilitate information exchange, and contains provisions on capacity building and financial resources, with special attention to developing countries and those without domestic regulatory systems. The Protocol entered into force on 11 September 2003 and currently has 132 parties.

NEGOTIATION PROCESS: In 1995, CBD COP-2 held in Jakarta, Indonesia, established a Biosafety Working Group (BSWG) to comply with Article 19.3 of the CBD, which requested parties to consider the need for, and modalities of, a

protocol setting out procedures in the field of the safe transfer, handling and use of LMOs resulting from biotechnology that may have an adverse effect on biodiversity and its components.

The BSWG held six meetings between 1996 and 1999. The first two meetings identified elements for the future protocol and helped to articulate positions. BSWG-3 (October 1997, Montreal, Canada) developed a consolidated draft text to serve as the basis for negotiation. The fourth and fifth meetings focused on reducing and refining options for each article of the draft protocol. At the final meeting of the BSWG (February 1999, Cartagena, Colombia), delegates intended to complete negotiations and submit the draft protocol to the first Extraordinary Meeting of the COP (ExCOP), convened immediately following BSWG-6. Despite intense negotiations, delegates could not agree on a compromise package that would finalize the protocol, and the meeting was suspended. Outstanding issues included: the scope of the protocol; its relationship with other agreements, especially those related to trade; its reference to precaution; the treatment of LMO-FFPs; and documentation requirements.

Following suspension of the ExCOP, three sets of informal consultations were held, involving the five negotiating groups that had emerged during the negotiations: the Central and Eastern European Group; the Compromise Group (Japan, Mexico, Norway, the Republic of Korea and Switzerland, joined later by New Zealand and Singapore); the European Union; the Like-minded Group (the majority of developing countries); and the Miami Group (Argentina, Australia, Canada, Chile, the US and Uruguay). Compromise was reached on the outstanding issues, and the resumed ExCOP adopted the Cartagena Protocol on Biosafety on 29 January 2000 in Montreal, Canada. The meeting also established the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP) to undertake preparations for COP/MOP-1, and requested the CBD Executive Secretary to prepare work for development of a BCH. During a special ceremony held at CBD COP-5 (May 2000, Nairobi, Kenya), 67 countries and the European Community signed the Protocol.

ICCP PROCESS: The ICCP held three meetings between December 2000 and April 2002, focusing on: information sharing and the BCH; capacity building and the roster of experts;

decision-making procedures; compliance; handling, transport, packaging and identification; monitoring and reporting; and liability and redress.

COP/MOP-1: COP/MOP-1 (February 2004, Kuala Lumpur, Malaysia) adopted decisions on: decision-making procedures; information sharing and the BCH; capacity building; handling, transport, packaging and identification; compliance; liability and redress; monitoring and reporting; the Secretariat; guidance to the financial mechanism; and the medium-term work programme.

The meeting agreed that documentation of LMO-FFPs (Article 18.2(a)), pending a decision on detailed requirements, would: use a commercial invoice or other document to accompany the LMO-FFPs; provide details of a contact point; and include the common, scientific and commercial names, the transformation event code of the LMO or, where available, its unique identifier. An expert group was established to further elaborate specific identification requirements.

Agreement was also reached on more detailed documentation requirements for LMOs destined for direct introduction into the environment and contained use (Article 18.2(b) and (c)). The meeting also established a 15-member Compliance Committee, requested COP/MOP-3 to consider measures for cases of repeated non-compliance, and launched the Working Group on Liability and Redress under Article 27 of the Protocol.

LIABILITY AND REDRESS WG-1: At its first meeting (May 2005, Montreal, Canada) the Open-Ended *Ad Hoc* Working Group of Legal and Technical Experts on Liability and Redress heard presentations on scientific analysis and risk assessment, and State responsibility and international liability. They also discussed options, approaches and issues for further consideration in elaborating international rules and procedures on liability and redress.

COP/MOP-2: COP/MOP-2 (May-June 2005, Montreal, Canada) achieved a number of steps towards the Protocol's implementation, adopting decisions on capacity building, and public awareness and participation. Delegates engaged in discussions on risk assessment and risk management, and agreed to establish an intersessional *Ad Hoc* Technical Expert Group. They adopted the rules of procedure of the Compliance Committee, but a provision for two-third majority voting remained bracketed.

Delegates did not reach agreement on the detailed documentation requirements for shipments of LMO-FFPs, even though the Protocol had established a deadline for their approval at COP/MOP-2. Main areas of disagreement included requirements to identify which LMOs a shipment may contain, and thresholds for adventitious or technically unavoidable presence of LMOs, including whether or not they trigger the documentation requirements.

INTERSESSIONAL HIGHLIGHTS

RISK ASSESSMENT AHTEG: The Ad Hoc Technical Expert Group on Risk Assessment (15-18 November 2005, Rome, Italy) considered existing approaches to risk assessment and identified follow up measures and activities to improve risk

assessment capacities. The AHTEG noted that the capacity to conduct a risk assessment is linked to the level of development of the country in question, and concluded that international guidelines and academic research is lacking regarding specific LMOs and types of risk.

LIAISON GROUP ON CAPACITY BUILDING: The third meeting of the Liaison Group on Capacity Building for Biosafety (20-21 January 2006, Tromsø, Norway) proposed to update the current Action Plan on capacity building to incorporate experiences and lessons learned during its implementation. The Liaison Group recommended financial support for country-appointed experts, even if they are not listed on the biosafety Roster of Experts.

COMPLIANCE COMMITTEE: The second meeting of the Protocol's Compliance Committee (6-8 February 2006, Montreal, Canada) considered the implementation of its rules of procedure approved by the COP/MOP-2 and reviewed general issues of compliance, including interim national reports and information in the BCH.

LIABILITY AND REDRESS WG-2: At its second meeting (20-24 February 2006, Montreal, Canada), the Liability and Redress Working Group considered issues and options for elements of rules and procedures on liability and redress, including: effectiveness criteria; scope, definition and valuation of damage; causation; channelling of liability; standard of liability; limitation of liability; and mechanisms of financial security. Following informal consultations held throughout the week, a non-negotiated and non-exhaustive indicative list of criteria for the assessment of the effectiveness of any rules and procedures referred to under Article 27 of the Protocol was annexed to the meeting's report. The report also contains proposals for operational texts on causation, and the scope, definition and valuation of damage.

THINGS TO LOOK FOR

MEETINGS IN CURITIBA PRIOR TO CBD COP-8:

- Expert Workshop on Protected Areas, 17-18 March 2006.
- Africa, Asia and the Pacific, and Latin America and the Caribbean Regional Preparatory Meetings for CBD COP-8, 18-19 March 2006.
- Meeting of the Informal Advisory Committee of the Clearing-House Mechanism, 19 March 2006.
- Brainstorming meeting on Avian Flu, 19 March 2006.
- Multi-stakeholder dialogue on access and benefit-sharing organized by UNITAR, 18 March 2006.

REPORTS FROM IISD REPORTING SERVICES: In addition to daily *Earth Negotiations Bulletin* reports from the official meetings, IISD Reporting Services will distribute three other publications in Curitiba: a special report from the Expert Workshop on Protected Areas to be tabled the first day of COP-8; daily issues of *ENB on the Side* reporting from selected side events during the COP; and our newest fortnightly publication, *MEA Bulletin*, with information and articles on activities of multilateral environmental agreements.