

## SUMMARY OF THE 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) was held from 13-17 March 2006, in Curitiba, Brazil. Approximately 1000 participants representing parties to the Protocol and other governments, UN agencies, intergovernmental and nongovernmental organizations, academia and industry were present at the meeting.

COP/MOP-3 considered several reports on ongoing activities within the Protocol's mandate and adopted 18 decisions on: requirements for the handling, transport, packaging and identification (HTPI) of living modified organisms (LMOs) destined for contained use or for intentional introduction into the environment; documentation requirements of LMO shipments for food, feed and processing (LMO-FFPs); risk assessment and risk management; liability and redress; compliance; the need to establish subsidiary bodies; monitoring and reporting; and assessment and review of implementation.

The main areas of disagreement included detailed requirements for documentation and identification of LMO-FFPs (Article 18.2(a)), which parties discussed at length, and agreed to at 9:30 pm on Friday night. The discussions addressed criteria to determine whether commodity shipments "contain" or "may contain" LMO-FFPs, including the level of detail and detection, adventitious presence and thresholds, intent of the exporter and preserved identity systems. Other rather less controversial, yet significant issues discussed were the voting procedures of the Compliance Committee, which was not resolved, and the provision of adequate funding to implement national biosafety frameworks. Parties also swiftly reached agreement on other key issues, often agreeing to revisit them at future COP/MOPs, including on risk assessment, the rights and responsibilities of transit parties, the financial mechanism and capacity building. As the meeting came to a close, the adoption of the compromise package on LMO-FFP documentation requirements was heralded as a key step forward in the Protocol's 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, the second meeting of the Conference of the Parties to the CBD (COP-2), held in Jakarta, Indonesia, established a Biosafety Working Group

### IN THIS ISSUE

A Brief History of the Cartagena Protocol on Biosafety . . .	1
COP/MOP-3 Report . . . . .	2
Report of the Compliance Committee . . . . .	3
Biosafety Clearing-house . . . . .	3
Capacity-building Activities . . . . .	4
Financial Mechanism . . . . .	4
Cooperation with other Organizations, Conventions and Initiatives . . . . .	5
Administration and Budget . . . . .	5
Handling, Transport, Packaging and Identification . . .	6
Risk Assessment and Risk Management. . . . .	8
Liability and Redress (Article 27). . . . .	9
Subsidiary Bodies . . . . .	9
Monitoring and Reporting (Article 33). . . . .	9
Assessment and Review (Article 35) . . . . .	9
Transit . . . . .	10
Closing Plenary . . . . .	10
A Brief Analysis of COP/MOP-3 . . . . .	10
Upcoming Meetings . . . . .	12
Glossary . . . . .	12

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(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 (CEE); the Compromise Group (Japan, Mexico, Norway, the Republic of Korea and Switzerland, joined later by New Zealand and Singapore); the European Union (EU); 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; HTPI; 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; HTPI; 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.

**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 (AHTEG). They adopted the rules of procedure of the Compliance Committee, but a provision for two-third majority voting as a last resort 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.

### COP/MOP-3 REPORT

On Monday, Jânio Pohren, President of the Brazilian Postal Service, and Ahmed Djoghlafl, CBD Executive Secretary, launched COP/MOP-3 with a ceremony issuing a commemorative stamp. Carlos Alberto Richa, Mayor of Curitiba, emphasized the importance of LMO identification methodologies and public participation in the Protocol's implementation.

Roberto Requião, Governor of the State of Paraná (Brazil), highlighted Paraná's strict policy against genetically modified (GM) organisms, especially GM soybeans, noting: biosafety concerns; the market advantages of conventional seeds; and the need to avoid "production slavery" of transnational corporations that hold patents on GM seeds.

Fatimah Raya Nason (Malaysia), COP/MOP-3 President, declared the meeting officially open, and welcomed the opportunity to resolve outstanding issues, by adopting detailed documentation requirements for LMO-FFPs. She also noted that additional capacity building is needed for developing countries to complete their national biosafety frameworks.

Djoghlafl recalled the history of the Protocol, and invited delegates to promote a new strategic partnership among all sectors of society to ensure the Protocol's continuity and effectiveness.

Elizabeth Mrema, on behalf of UNEP Executive Director Klaus Töpfer, noted that country-driven capacity building is a crucial requirement to ensure the Protocol's implementation.

Cláudio Langone, on behalf of Brazil's Minister of the Environment Marina da Silva, said governments are responsible for biotechnology regulation, but also need the cooperation of other actors, including scientists, citizens, non-governmental organizations (NGOs) and the media.

Statements by regional groups focused on the need to adopt a decision on Article 18.2(a), and highlighted the importance of the BCH, capacity building, and risk assessment and management as key issues for the Protocol's effective implementation. Ethiopia, for Africa, stressed that another failure to reach a decision on Article 18.2(a) would "condemn the Protocol to death" and expressed trust on the willingness of the host country and others to prevent such failure.

Delegates adopted the agenda of the meeting and organization of work without amendments (UNEP/CBD/BS/COP-MOP/3/1 and Add.1/Rev.1). They elected Birthe Ivars (Norway) and Orlando Rey Santos (Cuba) as Chairs of Working Group I (WG-I) and Working Group II (WG-II), respectively, and Sem Shikongo (Namibia) as Rapporteur.

Plenary met on Monday, Tuesday and Friday, and delegates addressed agenda items in the two working groups throughout the week. On the issue of LMO-FFPs, a contact group met from Monday to Thursday, and a Friends of the Chair on Thursday and Friday. A budget contact group was also convened from Wednesday to Friday. The following summary is organized according to the order of the items on the agenda.

#### **REPORT OF THE COMPLIANCE COMMITTEE**

Compliance Committee Chair Veit Koester (Denmark) presented the Committee's report and recommendations (UNEP/CBD/BS/COP-MOP/3/2) in plenary on Monday. Compliance was then addressed in WG-II on Wednesday and Thursday, and during informal consultations. Plenary adopted a decision on compliance on Friday.

Discussions focused on the Compliance Committee's voting procedures, namely the removal of brackets around Rule 18 allowing the Committee to take decisions, as a last resort, by qualified majority voting instead of consensus. The EU and Africa advocated qualified majority voting as a last resort, stressing the need for an effective compliance mechanism. Brazil and New Zealand insisted that the consensus rule should be retained, with Brazil stressing that the compliance mechanism should be cooperative and facilitative. Canada noted that rules on conflicts of interest should prevent Committee members from voting in matters concerning their own country.

Delegates agreed to the EU's proposal to consider the voting procedures in the context of Article 35 (Assessment and review). Delegates failed, however, to reach an agreement on "removing" or "retaining" the brackets around Rule 18 in WG-II and held informal consultations. In the closing plenary, delegates agreed to Cameroon's proposal to indicate in the meeting's report that the issue will be considered at COP/MOP-4.

Delegates also addressed cases of repeated non-compliance, with New Zealand emphasizing that there are no practical examples of such cases and Canada proposing to consider this issue also in the context of Article 35. Japan and Zambia proposed further examining practices under other agreements and China suggested that consequences for non-compliance should be differentiated given that in developing countries non-compliance may result from lack of capacity.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/3/L.14), the COP/MOP recognizes that capacity building is essential for supporting developing countries' compliance with their obligations. It calls upon parties to take the necessary legal

and administrative measures at the national level, urges them to complete their national biosafety frameworks, and invites parties with well-developed and functional frameworks to share their experiences.

The COP/MOP recognizes that it is too early to review the effectiveness of the compliance procedures and mechanisms in accordance with Decision BS-I/7 (Compliance), and decides that these issues, including cases of repeated non-compliance and the rule on voting in the Committee's Rules of Procedure, will be reviewed in the context of Article 35. The COP/MOP also requests the Compliance Committee to compile, for consideration by COP/MOP-4, further information on cases of repeated non-compliance under other agreements.

#### **ELECTION OF COMPLIANCE COMMITTEE**

**MEMBERS:** The COP/MOP addressed this issue on Friday when regional groups were asked to nominate candidates to replace Compliance Committee members who have resigned or whose terms will end in 2006.

**COP/MOP Decision:** The COP/MOP elected the following members to the Compliance Committee: Lionel Michael (Antigua and Barbuda), José Alvaro Rodríguez (Colombia) and Victor Villalobos (Mexico) from Latin America and the Caribbean; Paul Roughan (Solomon Islands) from the Asia and Pacific Group; Jane Bulmer (United Kingdom) from the Western Europe and Others Group; Liina Eek-Piirsoo (Estonia) and Sergey Gubar (Ukraine) from CEE; and Bather Kone (Mali) from the African Group.

#### **BIOSAFETY CLEARING-HOUSE**

On Monday, WG-I discussed the operation and activities of the BCH (UNEP/CBD/BS/COP-MOP/3/3). On Wednesday, WG-I Chair Ivars presented a draft decision, which was approved with some amendments. The decision was adopted in plenary on Friday.

Many parties supported a BCH review at COP/MOP-4. Brazil requested identifying constraints facing developing countries. Africa highlighted infrastructure, data collection and human resource constraints and, with China and India, called for the Global Environment Facility's (GEF) assistance in capacity building. Norway, with Switzerland, stressed the need for strengthening capacity building in information sharing and, with the EU, for information on risk assessment.

Delegates debated the need for translation of BCH information into UN languages, and proposed different types of information to be included in the BCH. Mexico, Peru and Argentina called on parties and non-parties to submit all relevant information. The EU proposed requesting that decisions and other information on LMO-FFPs, risk assessments, and decisions taken under the Advance Informed Agreement procedure be made easily available.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/3/L.4), the COP/MOP requests the CBD Executive Secretary to, *inter alia*:

- undertake translation of the Central Portal interface into all six UN languages;
- continue to conduct, in partnership with organizations such as UNEP-GEF, capacity-building activities like the BCH training workshops;

- undertake, with a view to ensuring value for money, an external security audit of the Central Portal and its infrastructure to ensure full security and minimized loss of information;
- continue to develop non-internet based mechanisms for countries to access information in the BCH, such as circulating CD-ROMs on a quarterly basis to those governments that request such facilities; and
- undertake another survey of BCH users to compare improvements against existing baseline data, and to submit this information for consideration by COP/MOP-4 as part of the review of implementation of the medium-term programme of work.

The COP/MOP calls upon Parties and donors to provide the required financial resources for translating the Central Portal and undertaking its external security audit. In the decision, COP/MOP also, *inter alia*:

- urges countries to include information on relevant decisions and risk assessments taken prior to the Protocol's entry into force;
- invites countries and donor organizations, when formulating biosafety capacity-building projects and programmes, to take into account the need for parties to be able to provide in an official UN language summary information in the common formats for reporting information, and particularly keywords for categorizing record; and
- invites those governments that have identified constraints on making information available in a timely manner and/or implemented strategies to overcome these difficulties to share these experiences with the Secretariat for circulation at COP/MOP-4.

### CAPACITY-BUILDING ACTIVITIES

From Monday to Wednesday, WG-II considered a progress report on the implementation of the Capacity Building Action Plan, and a draft updated action plan (UNEP/CBD/BS/COP-MOP/3/4 and Add.1). On Wednesday, WG-II agreed on a draft decision including an updated action plan, which was adopted by plenary on Friday.

The EU, opposed by Africa, proposed including biosafety in approaches and programmes, such as poverty reduction strategy papers (PRSPs). Cameroon said including biosafety in PRSPs would increase the burden on developing countries, while Norway said it would facilitate donors' allocation of resources for projects. Delegates then agreed to include mention of programmes such as PRSPs.

On adopting a long-term perspective on biosafety capacity-building initiatives, the EU suggested a focus on research capacity to assess needs and possible adverse effects of LMOs. Canada suggested referring to ecosystem effects. Africa suggested including human health risks. Delegates agreed to text mentioning adverse effects of LMOs on the conservation and sustainable use of biodiversity, and human health.

Mexico and Argentina, opposed by the EU, suggested coordination and harmonization of "assessment criteria" rather than of "regulatory procedures and mechanisms." After informal consultation, delegates agreed to coordinate and harmonize biosafety frameworks at the regional and subregional levels.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/3/L.8), the COP/MOP, *inter alia*:

- adopts an updated version of the Action Plan for Building Capacities for the Effective Implementation of the Protocol contained in its annex;
- urges countries to integrate biosafety in sustainable development strategies, approaches and programmes such as PRSPs where available and when scheduled for revision;
- invites developing country parties and parties with economies in transition (EITs) to coordinate and harmonize biosafety frameworks at the regional and subregional levels; and
- requests the Executive Secretary to prepare a synthesis report for COP/MOP-4 to undertake a comprehensive review of the Action Plan.

**ROSTER OF EXPERTS:** This issue was first considered by WG-II on Tuesday with the Secretariat introducing a report on the biosafety roster of experts (UNEP/CBD/COP-MOP/3/4/Add.2). WG-II also considered the roster of experts on Wednesday and Thursday, and the decision was adopted by plenary on Friday.

Discussions addressed the use and strengthening of the roster and quality control. Africa supported strengthening the roster. Norway and New Zealand lamented its modest utilization; and the EU called for quality control of experts on the roster. Industry representatives proposed independent screening of experts proposed for the roster, while Cameroon, supported by Mexico, highlighted countries' right to select the experts. Brazil, with Africa, proposed including experts with either relevant practical experience or academic qualifications. Delegates agreed to request comments from countries and relevant organizations on criteria and requirements for experts as well as on a quality control mechanism.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/3/L.9), the COP/MOP:

- requests the Liaison Group on Capacity Building for Biosafety to develop draft criteria and minimum requirements for experts to be included in the roster, and to also consider the possibility of a quality control mechanism;
- invites countries and relevant organizations to submit their views on these issues prior to COP/MOP-4;
- encourages parties and other governments to be rigorous in selecting experts and to oblige the experts to provide sufficient details on their expertise; and
- invites parties to, *inter alia*: use the roster, promote capacity-building initiatives, such as GEF projects, to promote awareness of the roster, and make voluntary contributions to enable developing countries to pay for the use of experts in the roster.

### FINANCIAL MECHANISM

The Secretariat introduced an update on the implementation of guidance to the financial mechanism in plenary on Tuesday (UNEP/CBD/BS/COP-MOP/3/5). WG-II addressed the issue on Wednesday on the basis of an African proposal, and agreed on a draft decision on Thursday, which was adopted by plenary on Friday with a minor amendment.

One of the key issues discussed was the impact of the new GEF Resource Allocation Framework (RAF) on financing for biosafety. Many developing countries expressed concern that

GEF's new system for allocation of resources may affect the Protocol's implementation, and that funding for biosafety will have to compete with that for biodiversity. Dominica and Kiribati also stressed that the RAF has several negative implications for small island developing States (SIDS). The GEF explained that all countries, even those without individual allocations, would receive funds for biodiversity, which they could use for biosafety, ranging from US\$1 million to US\$3.4 million (contingent on the next replenishment sustaining prior levels of funding). Countries with individual allocations could potentially get more funds for biosafety, depending on their priorities. Zambia requested clarifications on the RAF's origin, and the GEF explained that it originated as a condition set out by donors as part of the 2002 third GEF replenishment, and agreed upon by the GEF Council in 2005, adding that all CBD parties are represented on the GEF Council.

Peru, opposed by the EU, proposed establishing a special fund similar to the Special Climate Change Fund so that biosafety resources would not be affected by the RAF, but after informal consultations the relevant paragraph was deleted. The EU, supported by Switzerland, also suggested recognizing that the provision of funds for all countries to acquire basic capacities to implement the Protocol should be outside the RAF's criteria on biodiversity, and that sufficient resources should be allocated for countries to develop their basic capacity to operationalize their national biosafety frameworks. South Africa proposed, and delegates agreed, to replace language regarding the need to establish "basic capacity" to implement the Protocol with "at least base-level of" capacity.

Proposals by other parties included a proposal by Colombia for the GEF to assist in building infrastructure capacity for biosafety. This was opposed by the EU and delegates agreed to replace the reference to funding for "infrastructure," with references to post-graduate education, biosafety-related laboratories and relevant equipment. Norway suggested adding training on the use of detection techniques for identifying LMOs, and Mexico proposed a new paragraph on support for the BCH. China proposed including technology transfer on risk assessment, risk management, and LMO monitoring and segregation.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/3/L.17), COP/MOP-3 notes that the CBD COP did not provide guidance on the development of the GEF's RAF, and expresses concern about the impact of the RAF on developing countries' capacity to develop and implement national biosafety frameworks. It requests the CBD COP to seek an assurance from the GEF that the RAF will not jeopardize access to funding for biosafety-related activities.

The decision requests the GEF to base its resource allocation for biosafety on country needs and priorities, and to support as a priority the establishment of a base level of capacity in all eligible developing country parties, in particular the least developed countries (LDCs) and SIDS, and EITs. It also requests the GEF, *inter alia*, to support: capacity building in risk assessment and management, as well as on detection techniques for identifying LMOs; the BCH; development and implementation of national biosafety frameworks; technology transfer in risk assessment and management; and LMO monitoring and detection.

## COOPERATION WITH OTHER ORGANIZATIONS, CONVENTIONS AND INITIATIVES

On Tuesday, the Secretariat presented to plenary a document on cooperation with other organizations, conventions and initiatives (UNEP/CBD/BS/COP-MOP/3/6 and Corr.1). On Friday, plenary adopted a decision, as amended.

In the ensuing discussions, many delegates highlighted the importance of strengthening cooperation to promote common objectives. On the CBD Executive Secretary not having been granted observer status in relevant World Trade Organization (WTO) committees, Africa said continuing to request observer status amounts to subordinating the Protocol to the WTO, while the EU, Norway, Switzerland, Mexico and Belize suggested reinforcing efforts to achieve such status. CBD Executive Secretary Djoghlafl outlined recent developments, highlighting an upcoming meeting with the WTO Director-General.

On the draft decision, the EU suggested adding a request to the Executive Secretary to intensify efforts to gain observer status in the WTO Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) Committees, and delegates adopted the decision, as amended.

**COP/MOP Decision:** The decision (UNEP/CBD/BS/COP-MOP/3/L.3) requests the Executive Secretary, *inter alia*, to:

- continue to pursue, reinforce and intensify cooperation with all organizations;
- explore the potential of other processes to contribute to the Protocol's implementation, especially regarding capacity building initiatives; and
- intensify efforts to gain WTO observer status in the SPS and TBT committees.

## ADMINISTRATION AND BUDGET

On Tuesday, the Secretariat presented to plenary a report on administration and budgetary matters (UNEP/CBD/BS/COP-MOP/3/7/Rev.1). Delegates established a contact group on budget, chaired by Ositadinma Anaedu (Nigeria), which met from Wednesday to Friday to discuss the Protocol's budget for 2007-2008. On Friday, the contact group forwarded a draft decision to plenary, which adopted the decision with some amendments.

In the contact group's discussions, the Secretariat presented three options for the Protocol's 2007-2008 core budget: 0% real growth; 5% nominal growth; and a budget required for implementing the planned activities on biosafety, which delegates agreed to use as basis for discussion. Participants also addressed the appropriate percentage for the capital reserve taking into account the Secretariat's needs, and agreed to a reserve of 5% of the 2007-2008 budget. Many participants sought clarifications from the Secretariat on budget lines regarding travel costs, consultants and subcontracts, translations of the Biosafety Clearing-House website, general expenses and UNEP's programme support charge. A few participants opposed the establishment of a new post of Outreach Officer.

In plenary, Chair Anaedu presented some amendments to the draft decision, including a larger annual contribution from Canada and the Province of Québec. He noted that Japan was still opposing the establishment of the new post. Noting that there is still room for improving transparency of budget information, Japan expressed concerns about the need for a new

post, but agreed to it. She also asked the Secretariat to assess the efficiency of the post in the next budget. Delegates adopted the draft decision, as amended. CBD Executive Secretary Djoghlah thanked Japan and Germany for showing flexibility on the need for a new post. He said auditors will assess the efficiency of the new post for the biennium and report back to parties at COP/MOP-4.

**COP/MOP Decision:** In the decision on administration and budget matters (UNEP/CBD/BS/COP-MOP/3/L.18), the COP/MOP, *inter alia*:

- approves the 2006-2007 core programme budget;
- adopts the scale of assessments for the apportionment of the 2007-2008 Protocol's costs;
- decides on a working capital reserve of 5% of the core programme budget, including programme support costs;
- approves a drawing of US\$400,000 from the unspent balance from the previous financial period to cover part of the 2007-2008 budget;
- invites all parties and organizations to contribute to the Protocol's trust funds to implement approved activities in a timely manner; and
- agrees to share the common costs for Secretariat services between the Convention and the Protocol on a ratio of 85:15 for 2007-2008.

#### **HANDLING, TRANSPORT, PACKAGING AND IDENTIFICATION**

**ARTICLE 18.2(A):** Deliberations on detailed identification and documentation requirements accompanying LMO-FFPs (UNEP/CBD/BS/COP-MOP/3/8) were held from Monday to Friday in WG-I, a contact group and a Friends of the Chair group. The decision was adopted by plenary on Friday.

As recalled by WG-I Chair Ivars, COP/MOP-2 had failed to reach agreement on the issue within the two-year deadline established in the Protocol. The 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. The same issues remained controversial at COP/MOP-3, with the addition of: the specific information to be included in the documentation, the cases where documentation should state that the shipment "contains" LMOs and those where it should state that it "may contain" LMOs; and the process and timeline for reaching a decision on documentation clearly stating that the shipment "contains" LMO-FFPs.

During their general statements, many called for a balance between importer and exporter country responsibilities, some cautioned against complex documentation rules without parallel capacity building, while Africa said information should enable risk evaluation. Many addressed adventitious presence, with Africa noting that importing countries should establish thresholds, and Australia and the International Grain Trade Coalition raising concerns over including adventitious presence in the documentation requirements.

Following initial discussions on the objective of documentation for LMO-FFPs, the rationale behind the "may contain" language in the Protocol, adventitious presence and thresholds triggering documentation requirements, and capacity

building for exporting developing countries, the contact group, co-chaired by François Pythoud (Switzerland) and Luiz Alberto Figueiredo Machado (Brazil), decided to negotiate on the basis of a proposal submitted by Brazil.

The Brazilian text suggested that documentation for shipments of LMO-FFPs should state: in cases where the LMOs are subject to identity preservation in production systems, that the shipment "contains" LMO-FFPs; and in cases where the LMOs are not subject to identity preservation, that the shipment "may contain" LMO-FFPs. The text also provided for parties to take measures to ensure that, by 2010, documentation for LMO-FFP shipments clearly states that they "contain" LMO-FFPs.

In subsequent discussions, a number of issues were clarified, including: the link between commercial production in the country of origin and authorization in the country of import, as conditions for the documentation to state that a shipment "contains" LMOs; identity preservation in production systems, which covers a procedure for management of production, transport, processing and distribution, with a view to ensuring a product's integrity and purity with respect to specific characteristics; and LMO-FFPs "of the same species," which refers to different varieties or transformation events.

Diverse suggestions were then made in the contact group, to include in the decision, *inter alia*:

- stating in documentation that a shipment contains no adventitious LMOs unauthorized in the importing country;
- an operational paragraph noting that the requirements of Article 18.2(a) do not apply to the adventitious presence of LMOs;
- provisions for continued "may contain" documentation;
- an invitation to exporting parties to submit to the BCH the transformation event code of LMOs that are commercially produced for each planting cycle;
- a provision to review, by 2010, experiences gained with the implementation of the documentation requirements;
- language on the use of stand-alone documents; and
- a preambular reference to taking into account risks to human health.

The deletion of paragraphs related to capacity building was also suggested.

Pursuant to discussions that went on from Thursday evening into Friday morning, the Friends of the Chair group achieved significant progress on specific documentation requirements and on a transitional period for application of the documentation requirements, on the basis of a compromise proposal submitted by the Co-Chairs.

On Friday, WG-I deliberations began at noon based on a draft decision produced by the Friends of the Chair group. The text included: agreed language on specific documentation accompanying LMO-FFPs; a bracketed invitation to parties and other governments to make available to the BCH information on the transformation events and the geographical areas where they are commercially produced for each planting cycle, and the common, scientific and commercial names of the LMOs in question; and bracketed options regarding a timeline and adoption of a decision on a clear statement that the shipment "contains" LMO-FFPs.

WG-I Chair Ivars introduced additional changes to the proposed text to: delete the paragraph on submitting information to the BCH; and decide to review and assess at COP/MOP-5 experience gained with the implementation of measures ensuring that documentation for LMO-FFPs complies with the requirements of the country of import, with a view to considering a decision at COP/MOP-6 on documentation clearly stating that the shipment “contains” LMO-FFPs. She also noted the understanding that one delegation was going to make an interpretative statement to be included in the report.

However, Mexico said it was informed that an interpretative statement would lack legal standing and therefore, supported by Paraguay, was not able to accept the compromise. He requested bracketing the provisions on specific documentation accompanying LMO-FFPs, including their common, scientific and commercial names, and the transformation event codes, preferring to retain the paragraph inviting parties and other governments to make available such information to the BCH. WG-I Chair Ivars stressed that these provisions come from Decision BS-I/6 (HTPI). Brazil, Peru, Japan, the EU and Ethiopia for Africa supported the compromise text presented by Ivars and urged its adoption. The EU said the Mexican proposal clearly contradicts the Protocol.

Reminding delegates that the text represents a compromise drafted following lengthy negotiations, WG-I Chair Ivars said she will present the clean text in plenary as a Chair’s text. She warned delegates that they have been dealing with this issue for a long time, and that lack of time cannot be used as an excuse for not reaching agreement.

During the closing plenary, New Zealand supported the decision submitted by WG-I Chair Ivars, noting that it seeks to ensure the highest possible environmental standards while avoiding documentation requirements that would affect non-LMO shipments. Mexico suggested a number of changes, including: urging, rather than requesting, parties to take measures on documentation; retaining the provision on submission of information to the BCH; acknowledging that the expression “may contain” does not require a listing of LMOs; and a preambular reference recalling Article 24 (Non-parties). Noting the time is not appropriate for a drafting exercise, the EU said the changes introduced by Mexico would result in lowering the standards established by Decision BS-I/6. Brazil also expressed procedural concerns. Plenary was suspended at 5:30 pm to allow for informal consultations.

Plenary resumed at 8:50 pm, with Chair Ivars announcing a package agreement. She said that, following Paraguay’s request, reference to “other measures” with regard to identity preservation systems and related documentation requirements has been deleted. Other amendments, as presented by Mexico, included:

- recalling Article 24 (Non-parties) of the Protocol in the preamble;
- noting that, in accordance with the Protocol, transboundary movements of LMOs between parties and non-parties shall be consistent with the objective of the Protocol and that the specific documentation requirements set out in the decision do not apply to such movements; and
- retaining the provision on submission of information to the BCH.

Brazil said the Mexican amendments were acceptable, although unnecessary. Malaysia, on behalf of Asia and the Pacific, Paraguay, Japan, China and Bolivia, welcomed the agreement and expressed appreciation to the Brazilian delegation for its efforts. Venezuela emphasized the need for establishment of identity preservation systems. Plenary accepted the package agreement as presented.

**COP/MOP Decision:** In the decision on Article 18.2(a) (UNEP/CBD/BS/COP-MOP/3/L.19), the COP/MOP recalls Decision BS-I/6, Article 2.4 (parties’ right to take more protective action), Article 14 (Bilateral, regional and multilateral agreements and arrangements), Article 24 (Non-parties) and Article 11 (LMO-FFPs). It requests parties and urges other governments to take measures to ensure the use of a commercial invoice or other document to accompany LMO-FFPs, and to submit information on experience six months prior to COP/MOP-5, with a view to further harmonization of a documentation format and consideration of the need for a stand-alone document. It further requests parties and urges other governments to take measures ensuring that the documentation accompanying LMO-FFPs provides the details of a contact point for further information.

The COP/MOP requests parties and urges other governments to take measures ensuring that documentation accompanying LMO-FFPs, in commercial production and authorized in accordance with domestic regulatory frameworks, is in compliance with the requirements of the country of import and clearly states:

- in cases where the identity of the LMO is known through identity preservation systems, that the shipment “contains” LMO-FFPs;
- in cases where the identity of the LMOs is not known through identity preservation systems, that the shipment may contain one or more LMO-FFPs;
- that the LMOs are not intended for intentional introduction into the environment;
- the common, scientific and, where available, commercial names of the LMOs;
- the transformation event code or, where available, its unique identifier code; and
- the internet address of the BCH.

The COP/MOP invites parties and other governments to make available information on the BCH, including: transformation events commercially produced for each planting cycle and their geographical areas within the exporting country; the names of the LMOs; and their transformation event codes and unique identifiers, where available. It further notes that the specific documentation requirements set out in the decision do not apply to transboundary movements of LMOs between parties and non-parties. It also acknowledges that the expression “may contain” does not require a listing of LMOs of species other than those that constitute the shipment.

The COP/MOP decides to review and assess experience gained with documentation at COP/MOP-5, with a view to considering a decision at COP/MOP-6 ensuring that documentation accompanying LMO-FFPs clearly states that the shipment “contains” LMO-FFPs. This review shall include an examination of capacity-building efforts in developing countries.

The COP/MOP also requests the CBD Executive Secretary to mobilize funds to support implementation of Article 18.2(a), and requests parties to strengthen capacity-building efforts to assist developing countries in the implementation of documentation requirements. It encourages parties and other governments to cooperate in the use and development of sampling and detection techniques, and submit related information to the CBD Executive Secretary for consideration at COP/MOP-4.

**ARTICLE 18.2(B) AND (C):** Discussions on documentation for LMOs destined for contained use and for intentional introduction into the environment (UNEP/CBD/BS/COP-MOP/3/8/Add.1) were held in WG-I on Tuesday and Wednesday. A decision was approved by WG-I on Wednesday, and adopted by plenary on Friday.

Delegates debated the need for a stand-alone document or a commercial invoice, with Norway, Malaysia, Africa, Ecuador, India, Thailand, Belize and Antigua and Barbuda favoring the use of a stand-alone document; the EU and Mexico stressing the need for further experience with existing documentation; and Switzerland, Japan, New Zealand and Brazil calling for more information on both systems.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/3/L.5), the COP/MOP notes the limited number of submissions received on experience in the use of existing documentation systems and the appropriateness of a stand-alone document and recognizes the need for more practical experience. It recognizes the right of parties to take domestic measures requiring exporters of LMOs destined for contained use and those intended for intentional introduction into the environment to use standard formats, stand-alone documents or other documentation systems. It also requests parties to submit further information on experience gained no later than six months prior to COP/MOP-4 with a view to future consideration of a stand-alone document, in the context of the process of review of the Protocol's implementation.

**ARTICLE 18.3:** Discussions on the need for, and modalities of, developing standards for HTPI (UNEP/CBD/BS/COP-MOP/3/8/Add.2 and INF/3) took place in WG-I on Tuesday and Wednesday. A decision was approved by WG-I on Wednesday, and adopted by plenary on Friday.

Many supported inviting submissions on gaps in existing standards, requesting the Secretariat to continue collaborating with relevant organizations, and further considering the issue at COP/MOP-4. Some African countries called for rapidly developing standards to address gaps, while Venezuela and Argentina advocated a gradual, case-by-case approach.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/3/L.6), the COP/MOP recognizes the need for further consultations on the need for, and modalities of, developing standards with regard to HTPI practices, with a view to creating synergies and avoiding duplication of efforts. It invites governments and organizations to submit, for consideration at COP/MOP-4, views and information on the adequacy of existing rules and standards, and on gaps that may justify a need to develop new rules and standards or to call upon relevant international bodies to modify or expand their existing rules and

standards. It also requests the CBD Executive Secretary to gather information on existing rules and standards and make it available at COP/MOP-4 and 5.

### **RISK ASSESSMENT AND RISK MANAGEMENT**

Discussions on risk assessment and risk management (UNEP/CBD/BS/COP-MOP/3/9 and INF.1) took place in WG-I on Tuesday and Wednesday, on the basis of the conclusions of the AHTEG on risk assessment and management. A decision was approved by WG-I on Wednesday, and adopted in plenary on Friday.

Delegates emphasized the need for capacity building for both risk assessment and management. While most agreed on expanding the compilation of available guidance documents, they debated whether there is a need for additional guidance on specific aspects of risk assessment and management, with the EU, Japan and Brazil saying it is not a priority. Delegates finally decided to consider the issue of additional guidance at COP/MOP-4.

Discussions on a draft decision submitted by WG-I Chair Ivars included proposals for a preambular reference to the role of Article 26 (Socioeconomic considerations) in the decision-making process, as suggested by Colombia, and a reference to the potential need for additional guidance on long-term monitoring of LMOs, as suggested by South Africa. During the closing plenary, Norway announced that it is considering co-hosting a workshop, with Canada, focusing on challenges in risk assessment and management with a view to facilitate COP/MOP-4 discussions.

**COP/MOP Decision:** In the decision on risk assessment and risk management (UNEP/CBD/BS/COP-MOP/3/L.7), the COP/MOP welcomes the AHTEG report and: requests the CBD Executive Secretary to expand the compilation of available guidance documents on risk assessment and risk management contained in the Biosafety Information Resource Center of the BCH; and invites governments and organizations to provide the BCH with additional links to relevant databases and information sources.

On the potential need for additional guidance, the COP/MOP notes that it may be required on specific aspects of risk assessment and risk management, such as on particular LMO types and intended uses, particular types of risks and receiving environments, as well as long-term monitoring of LMOs. The COP/MOP decides to consider the need for further guidance and the appropriate modalities for development of any such guidance at COP/MOP-4.

On capacity building, the COP/MOP notes the need for adequate financial resources to build long-term human and infrastructure capacity, and urges Parties and others to promote South-South and North-South partnerships and to promote cooperation and synergies at the national and regional levels. It encourages donors to support training activities, testing and detection facilities, and research on risk assessment and management.



**LIABILITY AND REDRESS (ARTICLE 27)**

René Lefeber (the Netherlands), Co-Chair of the Open-ended *Ad Hoc* Working Group on Liability and Redress, introduced the report from the Group's second meeting (UNEP/CBD/BS/COP-MOP/3/10) to plenary on Tuesday. Plenary adopted the decision on liability and redress on Friday.

During the discussions, the EU highlighted a two-stage approach to the liability and redress regime, first negotiating a non-binding instrument and then considering a binding one. Malaysia underscored that many developing countries aim for a legally binding instrument.

The EU, with Cameroon and Malaysia, said a sufficient number of meetings should be held for the Working Group to complete its work by 2008. Many delegates drew attention to the lack of participation by developing country experts in the second Working Group meeting and urged funding to enable their participation in future negotiations.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/3/L.2), the COP/MOP welcomes the progress made by the Liability and Redress Working Group and agrees that the group should hold three meetings during the next biennium to complete its work on schedule. The COP/MOP emphasizes the need for adequate financial resources to ensure participation in the process and urges voluntary financial contributions from developed country parties, other governments and donors to this effect.

**SUBSIDIARY BODIES**

In WG-I, the Secretariat introduced documents on subsidiary bodies (UNEP/CBD/BS/COP-MOP/3/11 and INF/7) on Wednesday. On Thursday, WG-I Chair Ivars introduced a draft decision on the issue, which delegates approved without amendment. The decision was adopted in plenary on Friday.

Zimbabwe and Zambia favored establishing a scientific subsidiary body, while most delegates cautioned against this and preferred deferring deliberations. Many suggested alternative options: Mexico noted the possibility of benefiting from the CBD Subsidiary Body on Scientific, Technical and Technological Advice; while the EU and many others favored creating AHTEGs as needed; and Norway, with Burkina Faso, proposed establishing a time-limited scientific committee to address specific scientific issues. Indonesia and others urged concentrating efforts on capacity building.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/3/L.16), the COP/MOP notes that there are various mechanisms by which scientific and technical advice may be provided to the COP/MOP. It decides to further consider at COP/MOP-4 potential mechanisms for providing scientific and technical advice, including, *inter alia*, the potential establishment of a permanent subsidiary body or the use of *ad hoc* subsidiary bodies or mechanisms. The COP/MOP also requests the CBD Executive Secretary to prepare, for COP/MOP-4: a review of the findings of the *Ad Hoc* Open-ended Working Group on Review of Implementation of the Convention, and any associated decisions by COP-8 concerning the review of existing processes under the CBD; and cost estimates for various potential mechanisms for the provision of scientific and technical advice.

**MONITORING AND REPORTING (ARTICLE 33)**

On Monday, in WG-II, the Secretariat presented the analysis of information contained in the interim national reports (UNEP/CBD/BS/COP-MOP/3/12). On Wednesday, WG-II agreed on the draft decision, which was adopted by plenary on Friday.

During discussions, Norway supported requesting parties to submit their first national report no less than 12 months prior to COP/MOP-4. Africa, Brazil and Uruguay highlighted the need for financial resources to prepare such reports. Delegates adopted a revised draft decision with minor amendments, noting that the section on national reporting is linked to the pending decision on COP/MOP frequency.

**COP/MOP Decision:** In the final decision on monitoring and reporting (UNEP/CBD/BS/COP-MOP/3/L.10), COP/MOP-3, *inter alia*:

- invites developed country parties, other governments and relevant organizations to provide financial and technical support for capacity building to enable developing countries to meet their reporting obligations, especially LDCs and SIDS, and EITs, which lack sufficient capacity in this regard;
- invites the GEF to make available financial resources to facilitate consultative information-gathering processes leading to the preparation of national reports for developing countries and EITs; and
- requests the Executive Secretary to prepare for COP/MOP-4 an analysis based on the information available in national reports.

The decision also contains an annex outlining the format for the first national reports on the implementation of the Protocol.

**ASSESSMENT AND REVIEW (ARTICLE 35)**

On Monday, the Secretariat introduced to WG-II a document and draft decision on initiating a process for evaluating the Protocol's effectiveness (UNEP/CBD/BS/COP-MOP/3/13). On Tuesday and Wednesday, WG-II considered and approved a draft decision, which was adopted by plenary on Friday.

On the establishment of a process to assess and review the Protocol's implementation, the EU, with Brazil and Canada, proposed a "light review" process, and with Japan and Egypt, suggested the Secretariat compile party submissions on effectiveness evaluation for COP/MOP-4. Japan said the process should be as simple as possible at this stage, with the EU adding that it should also be comprehensive and involve other stakeholders. New Zealand and Colombia said the review should be postponed pending the availability of more information on the Protocol's implementation. New Zealand proposed asking for submissions on the modalities and extent of the evaluation.

Some parties favored that submissions be reviewed by the Compliance Committee, while others proposed establishing an AHTEG. Africa proposed having a regionally-balanced expert group assisting the Executive Secretary in synthesizing views on the Protocol's effectiveness, but the EU, Mexico and Switzerland opposed. After consultations, delegates agreed to request the Bureau to assist the CBD Executive Secretary in this endeavor.

**COP/MOP Decision:** The decision (UNEP/CBD/BS/COP-MOP/3/L.11) recognizes that a considerable number of parties are in the early stages of developing and implementing their national biosafety legislative and regulatory regimes; and that lack of implementation of the protocol by developing country

parties may not be due to inherent problems with the Protocol, but rather due to lack of capacity to implement its provisions. The COP/MOP invites countries and other organizations and stakeholders to submit their views on the Protocol's effectiveness and on its procedures and annexes, with a view to identifying difficulties arising from implementation; and requests the Executive Secretary, under the Bureau's guidance, to prepare a synthesis of the submissions and make it available at COP/MOP-4. It also requests the Compliance Committee to prepare a report on general issues of compliance by parties.

### **TRANSIT**

On Wednesday, WG-I discussed the rights and obligations of transit States (UNEP/CBD/BS/COP-MOP/3/14 and INF/9). On Thursday, WG-I considered a draft decision, which was approved after informal negotiations. The draft decision was adopted in plenary on Friday.

India, New Zealand, Japan and Argentina said LMO transit should not trigger additional documentation requirements for transit States. Delegates disagreed on the need to clarify provisions on shipments of LMOs in transit under the Protocol, in particular by agreeing on a definition of transit under the Protocol. Canada, Colombia and Brazil, opposed by the EU, called for such clarification, while Norway and Thailand said a discussion on this issue was premature. Delegates supported using existing definitions of transit, with Canada favoring that of the World Customs Organization (WCO), and New Zealand that of the WTO's General Agreement on Tariffs and Trade.

**COP/MOP Decision:** The decision (UNEP/CBD/BS/COP-MOP/3/L.15) recalls that a transit party has the right to regulate the transport of LMOs through its territory and that parties may enter into bilateral, regional and multilateral agreements and arrangements with other parties or non-parties regarding the transboundary movement of LMOs. In the preamble, the COP/MOP also notes that definitions of transit exist in various multilateral agreements at the international level and recognizes that trade and environmental agreements should be mutually supportive. In the decision, the COP/MOP invites countries and relevant organizations to provide, no later than six months prior to COP/MOP-5, further views and experience on the rights and/or obligations of transit parties, including on whether or not a party acting only as a transit party takes on the obligations of an exporting party under the Protocol.

### **CLOSING PLENARY**

COP/MOP President Raya Nasron convened the closing plenary on Friday afternoon. On the date and venue of COP/MOP-4, delegates adopted a decision to hold COP/MOP meetings every two years from now on, and to hold the next COP/MOP in conjunction with COP-9, at a venue to be determined during COP-8 (UNEP/CBD/BS/COP-MOP/3/L.12). WG-I Chair Ivars and WG-II Chair Rey Santos then presented their respective working group's reports, and delegates adopted the decisions forwarded by the working groups. The sole issue where consensus was not reached and informal consultations continued was on Article 18.2(a).

Delegates adopted the report of the Working Groups (UNEP/CBD/BS/COP-MOP/3/L.1/Add.1 and Add.2), and decisions prepared by plenary, including one thanking the people of Brazil

for hosting COP/MOP-3 (UNEP/CBD/BS/COP-MOP/3/L.20), and one on the 2007-2008 budget, which was presented by Budget Contact Group Chair Anaedu. Rapporteur Shikongo then presented the report of the meeting, which was adopted (UNEP/CBD/BS/COP-MOP/3/L.1).

The meeting was then suspended to continue informal discussions and resumed at 8:50 pm, when WG-I Chair Ivars and Mexico presented the compromise package on Article 18.2(a). Marina da Silva, Brazil's Minister of Environment, said the outcome on Article 18.2(a) was the result of a difficult compromise and thanked participants for their efforts.

Bulgaria, for CEE, highlighted the importance of securing funds for participation by all regions including countries with economies in transition. Africa thanked all participants and volunteers. The EU, the Asia-Pacific Group and Executive Secretary Djoghlaflaf thanked Brazil for their hospitality and COP/MOP President Raya Nasron gave the meeting to a close at 9:45 pm.

### **A BRIEF ANALYSIS OF COP/MOP-3**

Reaching agreement on detailed documentation requirements for living modified organisms for food, feed, or processing (LMO-FFPs), as specified in Article 18.2(a), was undoubtedly the core focus of the third Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-3). Prior to convening in Curitiba some had even implied that failing to do so would sound the death knell of the Protocol. Indeed, just ten months earlier, COP/MOP-2 was unable to reach consensus on this same issue, thus missing the deadline for resolution laid out in the text of the Protocol. After a week of protracted negotiations, parties agreed on a compromise package that, as many delegates noted, balanced the interests of importing and exporting, and developed and developing parties.

With everyone's attention focused on reaching an agreement on Article 18.2(a), substantive discussions on other agenda items, including the rights and obligations of transit parties, risk assessment and management, and voting procedures in the Compliance Committee and consequences of repeated non-compliance, were postponed pending further review. Even the uncertainty surrounding the extent of the GEF's third replenishment, and the impact of its new resource allocation framework on biosafety projects, did not take center stage, as guidance to the GEF is only given by the CBD COP. Therefore, this brief analysis will discuss the issues at the heart of Article 18.2(a) and the substance of the compromise achieved.

Article 18.2(a) of the Protocol, which was agreed in the final minutes of negotiations on the Protocol in January 2000, provides for documentation accompanying LMO-FFPs to state that the shipment "may contain" LMOs and that these are not intended for intentional introduction into the environment. It also calls on parties to agree on more detailed documentation requirements within two years of the Protocol's entry into force (in other words, by September 2005). At its first meeting, the COP/MOP further agreed, in Decision BS-I/6, that documentation should include the LMOs' common, scientific and, where available, commercial names, and its transformation

event code, or where available, its unique identifier code. COP/MOP-1 also established a technical expert group to develop more detailed documentation requirements.

The authorization to document an LMO shipment stating that it “may contain” a range of possible LMOs was the central locus of disagreement from the get-go. In the decade since the opening of the negotiations for a biosafety protocol, the phrase “contains” has taken on a life of its own, becoming the rallying cry for a wide range of stakeholders pressing for more detailed documentation requirements. Importing countries see “contain” as a means of ensuring that they are provided accurate and actionable information regarding the content of LMO-FFP shipments, while exporting countries are concerned about the feasibility of identifying every LMO-FFP that is contained in a shipment, apprehensive that the presence of unintended LMOs in a shipment might trigger non-compliance procedures against them.

These competing concerns are inextricably tied to the trade dimensions of the documentation requirements. Countries that are significant exporters of agricultural commodities warned that onerous and detailed documentation requirements were certain to impact the global commodities trade, even that of non-LMOs. They were especially wary of needing to implement traceability systems, for example involving segregation throughout the production and transport processes, in order to be able to certify whether a shipment does or does not contain LMOs. Some also feared that in the absence of such infrastructure, all commodity shipments would have to be identified as potentially containing LMO-FFPs.

Meanwhile, importing countries were eager to set up documentation requirements whereby documentation would state which LMOs were included in a shipment, rather than a longer list of LMOs that might be included in a shipment. Developing country importers, particularly African parties, stressed that shipments listing all LMO-FFPs grown in the exporting countries, without guidance as to which LMOs were most likely to be contained, pose decision-making challenges, such as the need for additional risk assessments, and capacity challenges to adequately detect and monitor the content of incoming shipments.

The Protocol does provide for parties to enact their own national biosafety legislation, which can include more stringent documentation requirements and thresholds above which documentation would have to state that the shipments contain the LMO in question. This question is closely linked to the push by some importing countries to set international guidelines or standards for establishing thresholds. Opponents raised the technical and financial feasibility of testing all shipments for trace amounts of LMOs. The international setting of thresholds was in fact at the core of failing to reach agreement on Article 18.2(a) at COP/MOP-2, where New Zealand and Brazil had serious objections to establishing any rule that would affect commodity trade in general and broke consensus at the end of a week of negotiations.

As COP/MOP-3 convened, many had focused their attention on means of bringing those two parties into the fold, and most were therefore surprised that in Curitiba it was other parties who took on firm positions on the retention of “may

contain” documentation requirements, notably Paraguay, Peru and Mexico. This was seen by some as evidence of the rapid evolution of biosafety regimes, with an increasing number of countries approving LMOs for production and acknowledging the trade implications of any constraints on LMO-FFP exports.

This shift was further evidenced by the increased participation in many delegations of representatives of trade and finance ministries, sometimes replacing more familiar faces from environment and agriculture ministries. This emphasis on the trade implications of the Protocol, and more specifically the relationship between the Protocol and the World Trade Organization (WTO), was echoed across other agenda items considered by COP/MOP-3, including the definition of transit in determining the rights and obligations of transit parties and the ongoing efforts by the CBD Executive Secretary to gain observer status on relevant WTO committees. Similarly, exporting parties’ pre-existing bilateral trade agreements with large non-parties, such as the US, were widely acknowledged as one of the reasons why some Latin American parties emerged as the ones most likely to resist consensus.

In the end, agreement was reached late Friday evening, after over two days of intense Friends of the Chair consultations. Throughout this process, negotiations were based on a proposal by Brazil announced by President Lula da Silva on Tuesday, and many attributed the successful outcome to the host country’s high-level of commitment (further evidenced by the presence at the closing plenary of Marina da Silva, Brazil’s Minister of the Environment) to reach an agreement at COP/MOP-3.

This compromise package, known as the “Curitiba Rules,” requests parties to take measures to ensure that documentation accompanying LMO-FFPs in commercial production clearly states that the shipment contains LMO-FFPs in cases where the identity of the LMO is known through means such as identity preservation systems. The Curitiba Rules still allow that, in cases where the identity of the LMO is not known through such measures, documentation states the shipment may contain one or more LMO-FFPs, and acknowledges that the expression “may contain” does not require a listing of LMOs of species other than those that constitute the shipment. The Rules also provide for reviewing experience gained with these documentation requirements at COP/MOP-5, with a view to considering a decision at COP/MOP-6 to phase out “may contain” documentation. Since parties decided that future COP/MOPs will now be held every two years, this implies that “may contain” language will be allowed until 2012.

Finally, the Rules also include special provisions for capacity building, especially relating to using and developing simple, rapid, reliable and cost-effective sampling and detection techniques for LMOs. This emphasis on capacity was ever present across the COP/MOP-3 agenda, as the challenges faced even by developed countries in elaborating and implementing national biosafety frameworks came to light.

In the end, as COP/MOP-3 participants left the conference center to rest in preparation for CBD COP-8, many expressed satisfaction at having arrived at a successful outcome to what some had termed an “impossible task.” Many had come focused on making sure that any decision taken at COP/MOP-3 would not lose any ground from the agreement outlined in Decision

BS-I/6, with some noting that any step forward would help solidify the future of the Protocol. Others had to ensure that any requirements could be met without jeopardizing pre-existing trade agreements or triggering the Protocol's non-compliance procedures.

The significance of the compromise reached at COP/MOP-3 is undeniable – parties took a deliberate step towards reaching a consensus ten-years in the making. In the two-year intersessional period prior to COP/MOP-4, and in order to validate the success achieved at Curitiba, parties now face the imposing task of laying the necessary groundwork for taking decisions on the many issues postponed pending further review, and put in place the necessary components of an international biosafety framework.

### UPCOMING MEETINGS

**CBD COP-8:** The eighth meeting of the Conference of the Parties to the Convention on Biological Diversity begins Monday, 20 March, and will continue until 31 March 2006, in Curitiba, Brazil. COP-8 will consider a range of issues, including: island biodiversity; biodiversity of dry and sub-humid lands; the Global Taxonomy Initiative; access and benefit-sharing; Article 8(j) and related provisions (traditional knowledge); and communication, education and public awareness. Participants will also address findings of the Millennium Ecosystem Assessment; scientific and technical cooperation and the clearing-house mechanism; cooperation with other conventions and engagement of stakeholders; guidance to the financial mechanism; and a range of other substantive issues, including: forest, inland water, marine and coastal, and agriculture biodiversity; protected areas; incentive measures; and biodiversity and climate change. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@biodiv.org](mailto:secretariat@biodiv.org); internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=COP-08>

The *Earth Negotiations Bulletin* daily reports from COP-8 are available at: <http://www.iisd.ca/biodiv/cop8/>

### GLOSSARY

AHTEG	<i>Ad Hoc</i> Technical Expert Group
Article 18.2(a)	detailed requirements for documentation and identification of living modified organisms for food, feed and processing
BCH	Biosafety Clearing-House
CBD	Convention on Biological Diversity
GEF	Global Environment Facility
GM	Genetically modified
HTPI	Handling, transport, packaging and identification
LMOs	Living modified organisms
LMO-FFPs	Living modified organisms for food, feed and processing
PRSPs	Poverty reduction strategy papers
RAF	Resource Allocation Framework
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
WCO	World Customs Organization
WTO	World Trade Organization

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