



HIGHLIGHTS FROM THE SIXTH SESSION OF THE AD HOC WORKING GROUP ON BIOSAFETY (BSWG-6) THURSDAY, 18 FEBRUARY 1999

Delegates to the sixth session of the Open-ended *Ad Hoc* Working Group on Biosafety (BSWG-6) were presented with the Chair's text in the early afternoon. They reviewed the text in regional and informal groups. The Friends of the Chair met at 4:00 pm, where delegates pointed to mistakes in the text and noted that it did not accurately reflect their views. Delegates were told that the text would be corrected. At 9:30 pm, delegates received a seven-page corrigendum to the Chair's draft text. The Friends of the Chair met at 10:00 pm.

CHAIR'S TEXT FOR A PROTOCOL ON BIOSAFETY

The corrected version of the Chair's text contains 39 Articles and three annexes. Three articles on notification of transit, subsequent imports and minimum national standards were deleted. All brackets were dropped. The Chair's text, which reflects the positions taken by delegates during the week, differs from the draft negotiating text in a number of key aspects, including the following:

"Products Thereof:" "Products thereof" are not covered by the AIA procedure. However, they are referenced under "Information Sharing/Biosafety Clearing-House" and Annexes I (Information Required in Notification for AIA) and II (Risk Assessment).

Human health: The term is included in the Article on objective, and referenced throughout the text. Parties are encouraged to work with international fora having expertise in human health.

Precautionary Principle: In the Preamble and the Article on objective, the text references the precautionary approach as contained in Principle 15 of the Rio Declaration, not the precautionary principle.

General Obligations: The text excludes an obligation on parties of export to receive, before export, an AIA in writing from the party of import.

Scope: The protocol will not apply to LMOs specified in Annex III (LMOs not likely to have adverse effects on biodiversity, taking into account risks to human health) and pharmaceuticals for humans. Transit and LMOs destined for contained use are covered only in certain articles.

AIA: The AIA procedure covers the first transboundary movement of an LMO and LMOs destined for growth, reproduction and propagation in the environment. It does not cover: transit; LMOs destined for contained use; and LMOs not likely to have adverse effects on biodiversity, also taking into account risks to human health. A provision under AIA permits parties to prohibit imports of LMOs even where there is "lack of full scientific certainty or scientific consensus."

Risk Assessment: The text states that the party of import can require the exporter to carry out a risk assessment, and that the financial responsibility for risk assessment shall rest with the notifier.

Risk Management: Specific reference to antibiotic-resistance marker genes and their phasing out and banning was removed, as was a paragraph on financial and technical assistance for parties of import.

Handling, Transport, Packaging and Labeling: The Article on handling, transport, packaging and labeling changed into an article on handling, transport, packaging and identification. It contains a reference to human health and puts the onus on the COP to determine if standards need to be developed.

Confidential Information: The text contains references to information that "may not" be considered confidential, thus circumventing the debate on the earlier options "should not generally" and "in no case may be," supported respectively, in general, by developed and developing countries.

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Public Awareness and Participation: The text encourages parties to consult with the public in the decision-making process. It retains a disputed reference to the protection of confidential information.

Non-Parties: The text states that transboundary movements of LMOs with non-parties shall be consistent with the objectives and carried out on the basis of the principles of the protocol.

Non-Discrimination: The Article remains in the text stating that parties shall ensure that their implementation of the protocol does not discriminate “unjustifiably” between or among imported and domestic LMOs and does not create unnecessary obstacles to international trade.

Illegal Traffic: The article on “illegal traffic,” despite its change into an article on “illegal transboundary movement” in the text, retains the provision permitting the party affected by illegal transboundary movement to request the party of origin to dispose of the LMOs at its own cost.

Socio-economic Considerations: The Article remains, stating that parties may take into account socio-economic implications of adverse impacts on biodiversity, including risks to human health and regard for indigenous and local communities, when deciding on imports. Additional language encourages research on socio-economic impacts caused by LMOs, including the need for early warning systems to alert indigenous and local communities that may be affected economically. The Article on objective excludes reference to “socio-economic imperatives.”

Liability and Redress: The Article remains in the text and states that parties shall “examine the modalities of establishing and developing rules and procedures” on liability and redress, based on studies to be carried out. The first Meeting of the Parties will start a process to elaborate rules and procedures with a view towards completion within six years.

Relationship with Other International Agreements: The Article states that this protocol shall not affect the rights and obligations of parties under existing agreements except where there would be serious damage or threats to biodiversity.

Annexes: In Annex II (Risk Assessment) technical and scientific information to be taken into account no longer includes safety considerations for human health and socio-economic considerations. “Products thereof” are referenced in Annexes I and II. A new Annex III has been added on LMOs not likely to have adverse affects on biodiversity, taking into account risks to human health.

Interim Arrangements: A draft decision under discussion on arrangements to prepare for the entry into force of the protocol provides for the establishment of an “open-ended ad hoc Intergovernmental Committee for the Cartagena Protocol on Biosafety” (ICCPB). The Chair of the ICCPB remains to be decided and a meeting will be held during the Extraordinary COP to elect its Bureau. The ICCPB

would first meet in early 2000. The draft decision also sets out a proposed supplementary budget for additional activities under the protocol.

FRIENDS OF THE CHAIR

In the Friends of the Chair meeting, which started at 10:20 pm, discussion reportedly focused on procedural matters. Many developing countries requested time to consider the Chair’s text and corrigendum. The Chair reportedly urged delegates not to introduce new brackets and emphasized that changes would only be made to the text if they were agreed to by consensus. One delegate reported that the Chair had reiterated his demand to limit participation in the group and stressed the midnight Friday deadline for concluding the protocol.

IN THE CORRIDORS

Confusion erupted when, 15 minutes after convening, the Friends of the Chair poured out of the meeting room, some announcing they were retiring to their hotels to await the release of an updated version of the Chair’s text. Complaints that the Chair’s text did not reflect what had been agreed on, were countered by news that the wrong version had been circulated and studied by delegates throughout the afternoon. People pointed to missing sections, unexpected language, editorial errors and differences in articles provisionally adopted the night before.

As delegates awaited the arrival of a corrigendum to the Chair’s text, rumors multiplied as to what had really happened. Some suggested that outdated texts had mistakenly been used to prepare the Chair’s text, and wondered how such errors had slipped by. Some shrugged this off as not surprising considering the sleep deprivation of all involved and the multitude of contact groups dealing with inter-linked articles. Others were not so generous in their judgements, alluding to possible delay tactics or “back door” attempts to push through controversial elements. Many participants complained that a whole day of negotiations had been lost, while others wandered around the conference center looking for official word from the Chair or products thereof.

Reflecting on the text, some said that while it was not ideal, they would not reject it and expressed confidence that agreement could be reached. Others thought the text failed to strike the necessary balance and did not accurately reflect an acceptable compromise, giving “crumbs to some and the rest of the cake to a few.” Several participants commented that the Chair had taken a gamble with his text and it was not yet clear whether he had hit the jackpot.

THINGS TO LOOK FOR

FRIENDS OF THE CHAIR: The Friends of the Chair are scheduled to meet at 10:00 am. Contact Group I and the Legal Drafting Group may also meet during the day. Check the board for updates.