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FIRST EXTRAORDINARY MEETING OF THE CONFERENCE OF THE PARTIES FOR THE ADOPTION OF THE PROTOCOL ON BIOSAFETY TO THE CBD (RESUMED SESSION) 24-28 JANUARY 2000

The Extraordinary Meeting of the Conference of the Parties (ExCOP) to the Convention on Biological Diversity (CBD) resumes its first session today in Montreal, Canada. The session was suspended when the ExCOP's initial discussions in Cartagena de Indias, Colombia, in February 1999, failed to adopt a protocol. The ExCOP resumes following three sets of informal consultations (Montreal, July 1999; Vienna, September 1999; and Montreal, January 2000). Working from a text of the protocol contained in the draft report of the ExCOP in Cartagena and a non-paper developed by ExCOP President and Minister of Environment of Colombia Juan Mayr, delegates have met informally over the past four days to start resolving outstanding issues and finalize a protocol for adoption.

A BRIEF HISTORY OF THE BIOSAFETY PROTOCOL

COP-2: At COP-2 (Jakarta, 1995), delegates considered the need for and modalities of a protocol on biosafety as stated in CBD Article 19.3. The COP adopted Decision II/5 calling for "a negotiation process to develop in the field of the safe transfer, handling and use of living modified organisms, a protocol on biosafety, specifically focusing on transboundary movement of any LMO that may have an adverse effect on biological diversity." COP-2 established an Open-ended *Ad Hoc* Working Group on Biosafety, which met six times from 1996 to 1999.

ExCOP: The First ExCOP met 22-23 February 1999 in Cartagena, immediately following the final working group meeting. Despite intense negotiations, delegates were unable to agree on a protocol. The ExCOP suspended its meeting and also decided that the protocol would be called the Cartagena Protocol on Biosafety. The text of the draft protocol, set out in the ExCOP's draft report (UNEP/CBD/ExCOP/1/L.2/Rev.1), was transmitted to the resumed ExCOP for further negotiation.

INFORMAL CONSULTATIONS: Three sets of informal consultations have been held since the suspension of the ExCOP.

Montreal (1 July 1999): ExCOP President Mayr met with spokespersons from the major negotiating groups that emerged in Cartagena: the Central and Eastern European countries (CEE), the Compromise Group (Japan, Mexico, Norway, South Korea and Switzerland), the Like-Minded Group (the majority of developing countries) and the Miami Group (Argentina, Australia, Canada, Chile, the United States and Uruguay). At the meeting the groups expressed their political will to finalize negotiations and agreed to hold further consultations prior to resuming the ExCOP.

Vienna (15-19 September 1999): After three days of informal meetings within and between negotiating groups, Mayr chaired two days of roundtable discussions, addressing the protocol's scope, application of the Advanced Informed Agreement (AIA) procedure, commodities and relationships with other international agreements. Negotiating groups agreed on a basic set of concepts for commodities and relations with other international agreements, while acknowledging that differences still remain. The results have been forwarded as a Chairman's Summary (UNEP/CBD/ExCOP/1/INF/3) to the resumed ExCOP.

Montreal (20-23 January 2000): The first two days of the informal consultation were devoted to discussions within negotiating groups. On 22 January, Chair Mayr opened informal discussions among the major negotiating groups using the roundtable setting established in Vienna (the "Vienna setting"). Mayr highlighted his non-paper, which provides suggested text incorporating the Vienna discussions on Articles 4 (Scope), 5 (Application of the AIA) as it relates to commodities, and 31 (Relationship with Other International Agreements).

After opening remarks in which the groups reiterated their political will to conclude the protocol, Chair Mayr invited delegates to comment on the non-paper. On scope, the EU and the Compromise Group supported the existing language of Article 4. The Like-Minded Group called for a comprehensive scope, adding that Articles 4 and 5 need to be flexible enough to incorporate future developments. The EU indicated that proposed language on the development of an alternative AIA procedure for LMOs for food, feed and processing (LMO-FFPs) provided a good basis for further discussion. The Miami Group stressed the need to further clarify such a system, and the Like-Minded Group stated that it should be as robust as the existing one. The CEE noted that the Vienna consultations provided some advances for incorporating LMO-FFPs.

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On relations with other agreements and non-discrimination among domestic and international LMO producers, the EU supported the concepts of “mutual supportiveness” and “non-subordination” and called for preambular language over inclusion of Article 31. He also indicated the utility of detailing non-discrimination. The Miami Group stated that detailed discussion of non-discrimination as a trade concept could more appropriately be dealt with in other fora. The Compromise Group supported using preambular language including “equal status” and “mutual supportiveness,” while noting the need to accommodate Article 22 (Non-discrimination). The Like-Minded Group also stressed mutual supportiveness, but underscored the need to accommodate sustainable development goals.

After discussion among negotiating groups, Mayr proposed that consultations proceed by clustering related issues into three groups: commodities, including Articles 5, 9 *bis* (new article in non-paper on an alternative AIA for LMO-FFPs), 15 (Handling, Transport, Packaging and Identification), 17 (Information Sharing and the Biosafety Clearing-house) and Annex 1B (new section in non-paper on information requirements); scope, covering Article 4; and the protocol’s relationship with other international agreements, including Articles 2.4 (on Parties’ rights to take more protective measures than those in the protocol), 8.7 (on the precautionary principle), 22, 24 (Socio-economic Considerations) and 31. On the third cluster, the EU supported the formulation, but indicated that discussion of other issues should not be reopened. The Like-Minded Group requested removal of Articles 2.4, 8.7 and 24, while the Miami Group argued to retain them. The issue remains to be decided.

The negotiating groups provided initial comments on the commodities and scope clusters, which were then discussed by contact groups on Sunday, 23 January. The Vienna roundtable setting convened briefly on Sunday afternoon and evening to hear the contact groups’ reports.

Commodities: The groups started discussions on commodities based on the draft protocol text and the non-paper. The Like-Minded Group highlighted the importance of applying the AIA procedure to all LMOs, including LMO-FFPs, with limited exemptions, such as pharmaceuticals for humans. Regarding Article 9 *bis* and Annex 1B, he said more information requirements are needed to fully inform importing countries. He also called for inclusion of transit in the AIA procedure and expressed concern over the possibility of implicit consent in Article 9 *bis*. He noted that the Like-Minded Group is currently drafting text for commodities. The Miami Group expressed general satisfaction with the non-paper’s proposal on this matter. He recognized the importance of information sharing and documentation regarding transboundary movement of LMOs, but emphasized that the AIA procedure must be workable and that decision-making procedures should consider domestic legislation more fully. The CEE stressed the need to apply the AIA to all LMOs, and preferred a separate paragraph dealing with LMO-FFPs. The EU stated that the non-paper’s proposal for an alternative system was useful, and, supported by other groups, suggested moving the alternative AIA procedure to after Article 8 (Decision Procedure). The Compromise Group noted that failure to respond should not imply consent. He also highlighted that application of AIA be based on risk assessment and capacity-building. A contact group was established to draft informal language on a differentiated AIA procedure for commodities.

On Sunday, the contact group chair, Francois Pythoud (Switzerland) reported on the group’s progress. New text for Article 9 *bis* covers information requirements regarding transboundary movements of LMO-FFPs and the timeframe and manner to provide such information in advance. Based on Annex 1B of the non-paper, several new elements were added to the list, including, *inter alia*, unique

identification of LMOs and suggested methods for safe handling, storage and transport. Two separate paragraphs were developed to address additional information requirements, financial and technical assistance and capacity building in this area. In summarizing the decision procedures for LMO-FFPs, Pythoud noted the group’s understanding that a main basis for decisions would be domestic regulation, although groups differed on the procedure to be followed in the absence of domestic regulations. During the evening roundtable session, the Like-Minded Group affirmed that language on domestic regulations and decisions on imports of LMO-FFPs still remains to be discussed. The contact group has not yet considered Articles 15 and 17 as requested.

Scope: On scope, the EU, Miami Group and Compromise Group supported the formulation of Article 4 from the existing draft text. The Like-Minded Group questioned including exceptions (e.g., LMOs for transit, contained use and pharmaceuticals for humans) in Article 4, arguing that the scope should include all LMOs. She noted that exemptions could be listed under other articles, such as Article 5. The CEE stressed that the scope deals with safe handling, use and transfer, and re-affirmed language limiting the scope to LMOs that may have an adverse effect on biodiversity. The Miami Group called for distinguishing between substantive disagreements and matters of legal drafting. The Miami Group stated that pharmaceuticals may not generally constitute LMOs with adverse impacts on biodiversity, while the EU noted that international bodies governing pharmaceutical issues could adequately address future developments. A small contact group was convened to address the nature of the exceptions and develop draft language on the scope.

On Sunday, the chair of the contact group on scope, John Herity (Canada), updated delegates on the group’s progress. The group simplified Article 4 to address all LMOs, although the scope might be subject to other articles. Also, inclusion of transit is bracketed. Another article was created to exempt pharmaceuticals for humans, without prejudicing the rights of Parties to subject all LMOs to a risk assessment prior to a decision. The group considered a provision to exclude transboundary movements not likely to have adverse impacts on biodiversity, which could be listed in an annex. Finally, the group discussed a new article on how the scope applies to transit and contained use. Herity noted two contentious issues on including advanced notification and necessary documentation for transit, as well as a request to adjust the definition of contained use.

After closing comments by the groups, Chair Mayr closed the informal session

IN THE CORRIDORS

In the wake of recent turmoil at the WTO Ministerial in Seattle, delegates were cautioned about Saturday’s demonstrations outside the conference center. While the Montreal winter seemed to immobilize the demonstrators, delegates sequestered in the warm confines of the Delta Hotel differed on whether the unsuccessful WTO proposal to form a biotechnology working group strengthened the protocol’s cause or further entrenched existing trade interests.

THINGS TO LOOK FOR TODAY

EXCOP PLENARY: Opening plenary is scheduled for 10:00 am in the ICAO building, and will address the agenda and organization of work.

VIENNA SETTING: Delegates are expected to reconvene after the plenary in the Delta hotel to continue discussions using the Vienna setting of a roundtable with group spokespersons.