



## EXCOP HIGHLIGHTS 25 JANUARY 2000

Delegates to the resumed session of the first Extraordinary Meeting of the Conference of the Parties (ExCOP) for the Adoption of the Protocol on Biosafety to the CBD, met during the morning in the "Vienna setting" to hear contact groups' reports on commodities and scope, as well as to begin a general discussion on trade-related issues and the protocol's relationship with other international agreements. The contact groups continued their work in the afternoon, and the "Vienna setting" convened again in the evening to hear their reports. Contact groups on commodities and trade-related issues met in evening sessions.

### VIENNA SETTING

Chair Mayr requested reports from the contact groups on commodities and scope. Chair François Pythoud (Switzerland) reported that the contact group on commodities is still making progress. Regarding Article 17 (Information-Sharing and the Biosafety Clearing-House), he said the group resolved to return to the Cartagena draft text as its basis for discussion. On Article 15 (Handling, Transport, Packaging and Identification), extensive discussion centered on the Package Proposal contained in Annex II of the ExCOP's report (UNEP/CBD/ExCOP/1/L.2/Rev.1). Pythoud said he would collaborate with groups to present a chair's draft text. Regarding Article 9 *bis* (on the decision procedure for the review of LMO-FFPs) in Chair Mayr's non-paper, the group discussed the situation of importing countries lacking domestic regulation systems. Three initial options to cope with this situation had been merged into two: the first merging language on possible decision-making procedures, and the second emphasizing capacity-building, bilateral agreements and cooperation between Parties. Pythoud stressed that the climate of discussion is positive and that there is a strong engagement from all Parties to arrive at a decision.

Chair John Herity (Canada) reported on progress in the contact group on scope during discussions held in yesterday's afternoon and evening sessions. He said that negotiating groups provided complete explanations on the background of their positions on pharmaceuticals

for humans, transit and contained use. Herity stated that the Like-Minded Group presented a proposal listing protocol articles that should not apply in these cases, and that while it was helpful for focusing the issues, no resolution was reached. He proposed to have informal discussions with individuals from each negotiating group before reconvening the contact group.

Chair Mayr invited negotiating groups to comment on the progress reports of the two contact groups. The Miami Group indicated that negotiating groups need to hone their thinking on the new formulations presented in the contact groups. The Central and Eastern European countries (CEE) stressed the need for draft text on the two issues, as time for negotiations is running out. The Compromise Group noted progress in the commodities contact group in developing a draft text. The Like-Minded Group stated that it wanted to avoid the impression that its proposals were delaying discussions on scope. On commodities, he noted the controversy over language on decision-making procedures for LMO-FFPs, and stressed that the AIA procedure has always been the protocol's departing point. The EU noted that negotiating groups were becoming more and more "like-minded," and that both contact groups have taken innovative approaches, which need further clarification. Chair Mayr stressed that discussions proceed from the achievements made in Cartagena and that discussion should focus only on the list of outstanding items in the draft report of the ExCOP (UNEP/CBD/ExCOP/1/L.2/Rev.1). He added that other issues can be addressed if there is sufficient time. The Miami Group stressed that groups need to be able to raise outstanding issues mentioned in their official statements at the close of the ExCOP in Cartagena. Mayr suggested that the Legal Drafting Group could address some of these issues.

Chair Mayr then asked groups for preliminary statements on the cluster of trade-related issues. Discussion focused on the articles to include in the cluster, which had not been resolved during the informal consultations. The Miami Group expressed concern over several articles and suggested initiating discussion of Articles 31 (Relationship with Other International Agreements), 22 (Non-discrimination), 24 (Socio-economic Considerations), 2.4 regarding Parties' obligations under international law, 8.7 regarding the precau-



tionary approach, and 11 (Multilateral, Bilateral and Regional Agreements). He also emphasized the relationship with WTO rules. The EU expressed concern over reopening too many articles for discussion and advised discussing only those articles with serious disagreement. The Compromise Group and CEE called for consensus on the composition of the trade-related cluster and supported Chair Mayr's non-paper proposal as a basis for discussion. The Like-Minded Group noted the need to concentrate on Articles 22 and 31 and stated that articles not closely related to the core issue should not be reopened for discussion, particularly Article 24. Mayr closed the session to permit informal discussions on scope and commodities.

**CONTACT GROUP ON COMMODITIES:** Chair Pythoud requested that negotiating groups continue discussions on the text he presented on Article 9 *bis* (decision procedure for LMO-FFPs). Negotiating groups commended the Chair's efforts in putting forward the text and expressed the desire to start discussion paragraph by paragraph.

Delegates first addressed a provision stating that a Party may take a decision on the import of LMO-FFPs under its domestic legal, administrative or other measures and procedures consistent with the protocol. One group suggested using the language of "domestic regulatory framework" from Article 7 (Acknowledgment of Receipt of Notification) to replace the terminology in the Chair's text, which other groups agreed with. One group suggested deleting a reference to consistency with this protocol, because his group believed there is no need to have a standard for domestic regulatory frameworks. Other groups disagreed. In the effort to solve this problem, the following suggestions were made: referring to consistency with the objective of the protocol; referring specifically to Articles 12 (Risk Assessment) and 13 (Risk Management); and using domestic frameworks "compatible" with the protocol. Due to lack of agreement, groups decided to bracket the reference to consistency with the protocol.

A proposal was tabled to merge provisions addressing capacity-building in accordance to Articles 19 (Capacity-building) and 26 (Financial Mechanism and Resources). While there was general agreement on this merger, some expressed that the need to develop institutional capacity for decision-making must be retained. New text merging the Chair's text on provisions referring to Parties with regulatory frameworks and Parties lacking regulatory frameworks, was presented to the contact group. A group described the rationale behind the merger as capturing all the concepts in the original paragraphs, while not creating a duality between Parties that do, and Parties that do not, have regulatory frameworks. Certain participants expressed their disappointment at the merged text as they said it: complicated the decision-making process; created redundancy with other paragraphs; introduced too many new ideas; and moved the discussion "back to square one." On language in the Chair's text, stating that an importing Party's failure to communicate its decision does not imply consent, some expressed concern that it was too prescriptive since it did not recognize that some countries' domestic regulations could allow for implicit consent. The contact group drafted new text to accommodate this concern.

**CONTACT GROUP ON SCOPE:** Chair Herity briefly reviewed the results of informal discussions with representatives of the negotiating groups, which generally focused on transit. He noted

the tension between the right of a Party to decide whether LMOs should transit through its territories and the practical and logistical burdens of adhering to notification and other procedures for countries of transit for every shipment, whether by land, air or sea. Delegates noted the complexity of the issue, including: the situation in small island states; transit through territorial waters; trans-shipment through ports; transit of LMOs for contained use; and whether LMOs banned for import are also banned for trans-shipment. There was discussion about whether to address all the nuances for how transit, as well as contained use and pharmaceuticals, relate to the articles of the protocol, although there was mention of including an annex, which could be developed in the future.

Chair Herity convened a small group to develop a summary incorporating language from the Cartagena draft text, Chair Mayr's non-paper and a previous proposal, which was then submitted to the contact group.

### VIENNA SETTING

Delegates reconvened in the Vienna setting at 7:00 pm and heard reports of the contact groups. Chair Pythoud reported that the contact group on commodities made progress and was close to a final decision in terms of concepts, but more time was required to find balanced wording. Chair Herity reported on the progress achieved on scope, which had convened after informal discussions with negotiating group representatives. He said that the contact group focused on transit, leaving no opportunity to continue discussion on pharmaceuticals for humans and contained use. He noted that there was general agreement on Article 4 (Scope) and its coverage of all LMOs that may have adverse effects on biodiversity. He said that new articles covering pharmaceuticals, transit and notification were being developed. He proposed to continue informal discussions during the night.

Chair Mayr noted that a new contact group would be convened under the chairmanship of Ambassador Philémon Yang (Cameroon) to address the cluster of trade-related issues and the protocol's relationship with other international agreements. He stated that the contact group on commodities would continue to meet and that discussions on scope would proceed informally under the guidance of Chair Herity.

The contact group on commodities reconvened in the evening to continue discussing Articles 9 *bis* and 15. The contact group on trade-related issues convened in the evening to address Articles 31 and 22 and their reformulation in Chair Mayr's non-paper. Both groups met into the night.

### IN THE CORRIDORS

As the negotiations approach mid-week, momentum on the issues of scope and commodities seemed to have slowed and debates continued over the contents of the trade-related issues cluster. Delegates appeared to be re-assessing where they could best push their interests. As the ministers enjoy LMO-FFPs at the banquet tonight, dinner conversation will certainly be lively.

### THINGS TO LOOK FOR TODAY

**VIENNA SETTING:** The negotiating groups will reconvene in the Vienna Setting at 10:00 am in the Delta Hotel to hear reports from the contact groups on commodities and trade-related issues.