



Earth Negotiations Bulletin

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A Reporting Service for Environment and Development Negotiations

Vol. 9 No. 79

Published by the International Institute for Sustainable Development

Saturday, 7 February 1998

HIGHLIGHTS FROM THE FOURTH SESSION OF THE AD HOC WORKING GROUP ON BIOSAFETY 6 FEBRUARY 1998

Delegates to the Fourth Meeting of the Open-Ended *Ad-Hoc* Working Group on Biosafety (BSWG-4) continued to meet in two Sub-working Groups (SWGs) and two Contact Groups (CGs) throughout the day. SWG-1 began negotiations on Notification Procedures and Response to Notification for Advanced Informed Agreement (AIA). SWG-2 continued negotiations on Competent Authority/ Focal Point, and began work on Non-Parties, Non-discrimination, Illegal Traffic, Socio-Economic Considerations, and Liability and Compensation.

SUB-WORKING GROUP I

NOTIFICATION PROCEDURE FOR AIA (Article 4):

SWG-1 began deliberation of Article 4 in the morning. Delegates decided to use the Chair's note (UNEP/CBD/BSWG/4/Inf.1) as the basis for their discussions. One delegate noted that the main difference in the options listed in this text was whether the notification process is driven by the exporter or the importer. Other points of difference included the mechanism by which information would be made available, by whom, and to whom.

Delegates also debated a provision on accuracy of information provided in the notification. Some delegates felt that there was no need for a provision dealing with accuracy, while others differed on whether the importer or the exporter should be responsible for providing information on accuracy. Other issues included: whether "products thereof" should be mentioned along with a reference to LMOs; whether to prohibit exports from commencing before an AIA had been received; and whether the information requirements for AIA should be specified in Annex I or in a list to be established by the meeting of the Parties to the Protocol. Consolidated text on this Article reflected these areas of persisting differences.

RESPONSE TO AIA NOTIFICATION (Article 5): In discussing what the content of Article 5 should be, delegates considered, *inter alia*: acknowledgement of receipt; basis for approval by the Party of import; time frame for response; assessment of the content of notification; how notification should be delivered; implications of no response; and role of risk assessment. Some delegates said the article should avoid too much detail, and several delegations opposed inclusion of a precise time period for notification of receipt. One delegate requested that discussion be limited to the article at hand without debate on the repercussions of failing to acknowledge AIA notification. At the request of Co-Chair Sandra Wint, a group of delegations met briefly to consolidate text proposed by one delega-

tion. The resulting text consisted of six completely bracketed options ranging from no required acknowledgement of receipt to text calling for determination of a specific time period and a written response. Some developing countries supported text eliminating acknowledgement of receipt, while others proposed adding language stating that failure to acknowledge receipt would not result in any consequences, nor would it imply consent for transboundary movement of LMOs.

INFORMATION REQUIRED FOR AIA (Annex I): SWG-1 then moved to discuss the draft Annex I (Information required for Advance Informed Assessment) provided by CG-1. A number of delegates noted that their submissions for this Annex were more detailed, especially with regard to risk assessment (RA). They preferred further discussion on this Annex after it was clearer what Annex II (Risk Assessment Parameters) would contain. One delegate inquired whether the information list for AIA was a list of minimum or maximum requirements. Delegates also provided proposals for changes to the draft Annex, which were sent back to CG-1 for continued consideration.

CONTACT GROUP I:

INFORMATION REQUIRED FOR AIA (Annex I): CG-I reviewed SWG-I's proposed changes to the draft Annex I. A question that persisted was the relationship of Annex I to Annex II (Risk Assessment Parameters). Delegates debated whether repetition of information in the two annexes was appropriate—an issue linked to whether or not an AIA notification would, in every case, include an RA within it. CG-I noted that clarity on this issue from SWG-I was necessary before much further progress could be made.

USE OF TERMS (Article 2): CG-I also began its work on definitions. Discussion on "transboundary movement" focused on the distinction between transfer and movement, and national boundaries versus national jurisdiction, and whether to specify intentional or non-intentional movements. In defining "Party of export" and "Party of import," delegates considered whether it was necessary to include an explicit reference to the territory of the Party. Definitions were also compiled for "exporter" and "importer" and "export and import." While defining Focal Point and Competent Authority, delegates noted their understanding that a "focal point" primarily facilitates information sharing between countries and the Protocol while a "competent authority" refers to the regulatory authority implementing the Protocol. Throughout discussions, participants stressed avoiding overlapping and circular definitions or use of words that would later need to be defined. They also reflected on the awkward position of having to define language in articles dependent on the outcome of the work of the SWGs.

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**SUB-WORKING GROUP II****COMPETENT AUTHORITY/FOCAL POINT (Article 18):**

SWG-II continued Thursday's deliberations on Article 18. Some delegates supported simpler language detailing key obligations for national focal points, to allow flexibility for countries to define national procedures on competent authorities and focal points. A developing country stressed the need for detailed provisions, suggesting that roles and responsibilities be specified in an Annex. Co-Chair John Herity requested interested delegates to meet to consolidate views into draft text.

NON-PARTIES (Article 23): One delegation preferred deletion of this article, citing concerns about discrimination in trade relations between Parties and non-Parties. Several delegations stressed the need for its inclusion, with reference to principles of non-discrimination. Particular concern was voiced over non-Parties gaining favorable trade advantages and the need for incentives to ratify the Protocol. Some governments supported no import or export of LMOs to or from non-Parties, although one such delegation indicated flexibility on this point. One developed country tabled text highlighting implications for movement of LMOs from Parties to non-Parties, versus non-Parties to Parties. The concern was that movement from non-Parties to Parties could adhere to the Protocol's obligations, whereas movement from Parties to non-Parties would rely on (potentially weaker) national legislative frameworks. Some delegates requested defining "non-Party" in Article 2 (Use of Terms). The Co-Chair stated that he would consolidate proposed text for future deliberations.

NON-DISCRIMINATION (Article 24): Delegates retained the two options on non-discrimination, including the "no article" option, although several speakers expressed unwillingness to take a firm position on the issue, pending the outcome of deliberations on other articles, such as AIA. Delegates opposing any provisions on non-discrimination cited the following reasons: countries should have the authority to make LMO import decisions; the Protocol should focus on science and the environment, not trade; existing frameworks, such as the World Trade Organization (WTO), which covers trade in products and has a dispute resolution mechanism, sufficiently address this issue; and the inevitability of some discrimination in the interest of environmental protection. SWG-II will return to the issue with revised text from the Secretariat.

ILLEGAL TRAFFIC (Article 25): Delegates expressed divergent views over inclusion of Article 25. One delegation highlighted the importance of the right to destroy products or organisms transferred illegally. Delegates opposed to such an article cited the following reasons: the Protocol's focus should be on the legal transfer, handling and use of LMOs; the article raises definitional problems; and further work is premature until text on AIA is finalized. One delegation suggested that illegal traffic might be better handled under Article 2 (Use of Terms), although the Co-Chair cautioned against charging CG-I with such a task without further treatment of the issue by SWG-II.

SOCIO-ECONOMIC CONSIDERATIONS (Article 26): Prior to deliberation by governments, the Co-Chair invited NGOs to present their views on this issue. One environmental NGO stressed the interrelated nature of biosafety and human and environmental health. Another NGO stated that people could not be removed from consideration of biotechnology's application and that "a protocol without this article is a protocol for genocide." A number of developed countries noted the complexity and breadth of socio-economic issues along with the Protocol's inability to deal with them. Several developing countries noted that complexity is not an acceptable reason to avoid the issue, and that failure to address socio-economic issues here would only raise more problems later. A few countries suggested compro-

mise text on appropriate consideration of socio-economic factors and the need for further research. The Co-Chair announced that he would draft an *aide-memoire* reflecting views to assist future discussions.

LIABILITY AND COMPENSATION (Article 27): An NGO stated that without liability, insufficient incentive exists to achieve the objectives of the Biosafety Protocol. One delegate argued for a strict liability regime for transboundary harm from LMOs, stressing the ultrahazardous nature of LMOs and citing relevant provisions of other international agreements. In contrast, several delegations stated their opposition to the article, noting that international law, in general, or, specifically, Article 14(2) of the CBD on liability and redress for harm to biological diversity, adequately covers the issue. One government favored consideration of this issue within the COP, noting the complexities associated with harmonization of civil liability, while others suggested delaying further work until the first Meeting of the Parties to the Protocol.

CONTACT GROUP II

CG-II met to discuss Articles 29 (Conference of the Parties), 30 (Subsidiary Bodies and Mechanisms) and 31 (Secretariat). Significant discussion centered on using language in the Kyoto Protocol to facilitate progress. In an evening session, delegates planned to continue deliberations on Articles 32 (Jurisdictional Scope), 33 (Relationship with the Convention), 38 (Ratification, Acceptance or Approval), 39 (Accession), 40 (Entry into Force), 41 (Reservations) and 34 (Relations with Other Conventions).

IN THE CORRIDORS:

Some participants discussed the contradictory nature and long term implications of Thursday's decisions restricting NGO participation on efforts to increase involvement of the private sector and civil society in CBD implementation. Delegates also expressed concern over a possible lack of resources to adequately discuss particularly contentious issues, such as socio-economic considerations and liability, in light of a document prepared by the Secretariat on the financial status of BSWG meetings.

THINGS TO LOOK FOR TODAY:

PLENARY SESSION: Plenary will convene at 10 am to discuss BSWG-4's recommendations to COP-4.

SUB-WORKING GROUP I: SWG-I will convene after Plenary and in the afternoon, to consider draft text for Articles 4 and 5 and begin work to consolidate text on Articles 6, 7 and 8.

CONTACT GROUP I: Meeting times for CG-I will be announced during the Plenary.

SUB-WORKING GROUP II: SWG-II will convene after Plenary and in the afternoon to address Articles 19, 20, 21 and 22.

CONTACT GROUP II: CG-II will meet from 11 to 1 and 3 to 6 to consider Articles 29, 30, 31 and 35.

PRESENTATIONS: In room 1.15

1 pm: Quelques Faits sur les Biotechnologies

2 pm: Potential Impact of Biotechnology on Sustainable Agricultural Development in Africa: Sweet Potato Case Study.