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HIGHLIGHTS FROM THE FOURTH SESSION OF THE AD HOC WORKING GROUP ON BIOSAFETY SATURDAY, 7 FEBRUARY 1998

Delegates to the Fourth Meeting of the Open-Ended *Ad Hoc* Working Group on Biosafety (BSWG-4) met in Plenary to review progress on text consolidation and to discuss BSWG-4 recommendations to COP-4. Plenary was followed by meetings of the two Sub-working Groups (SWGs) which continued their work to consolidate draft text for a Biosafety Protocol. Contact Groups (CGs) I and II also met during the course of the day.

PLENARY

Chair Koester noted progress being made by the SWGs and CGs and invited the Co-Chairs of each group to report on work accomplished. Co-Chair Sandra Wint reported that SWG-I had agreed on its procedure of work, completed review of Articles 4 and 5 and begun work on Article 6. Co-Chair Herity reported that SWG-II had postponed work on Article 1, and *1 bis*, completed draft text for Articles 15 to 18, and completed an initial review of draft text for Articles 23 to 27. He announced that Amarjeet Ahuja (India) will join him as a Co-Chair for SWG-II. Co-Chair Willemse for CG-I and Co-Chair Kummer for CG-II reported on progress in their respective groups.

Chair Koester then opened discussion on BSWG-4's recommendations to COP-4, recalling key points raised in his *aide memoire*, including: dates and lengths of the next two BSWG meetings; deadline for government submissions of text; and character of the COP to adopt the Protocol. Regarding length, Koester recalled BSWG-3's decision that the next BSWG meeting would be 12 working days and its final meeting would be 7-8 working days. After reviewing the calendar of international environmental meetings, the Chair suggested BSWG-5 be held the end of June to mid-July, which the EU endorsed. ANTIGUA and BARBUDA, supported by G77/CHINA and the EU, proposed late 1998 for the meeting of the COP to adopt the Protocol.

Regarding the nature of the COP that would adopt the Protocol, G77/CHINA supported by the EU, favored an extraordinary session, with an agenda limited to discussion of the Biosafety Protocol. ARGENTINA questioned whether such a decision was premature without financial support. Koester stated that such concerns were beyond the scope of BSWG-4. Delegates recommended that the extraordinary COP allocate responsibility for work required prior to the first meeting of the Parties to the Protocol. Delegates refrained from making recommendations regarding the structure of the Secretariat to the Protocol.

SUB-WORKING GROUP-I

Delegates considered consolidated text compiled by the Secretariat based upon the previous day's discussions of Articles 4 and 5.

NOTIFICATION PROCEDURE FOR ADVANCE

INFORMED AGREEMENT (AIA) (Article 4): Two regional groups suggested moving text, requiring an exporter to wait until receipt of the AIA from the Party of import to begin a proposed transfer, to an article such as Article 6 (Decision Procedure for AIA), Article 25 (Illegal Traffic) or Article 1 *bis* (General Obligations). Some delegates stressed the need for consistency of terms such as "Party of import/export" throughout the article. One delegate proposed inserting "applicant" before language referring to exporter/importer to connote initiator. One delegation requested that "National Focal Point" be added to the list of possible notification recipients. SWG-1 adopted consolidated text on Article 4 with modifications proposed in the discussion to be forwarded to the Plenary.

RESPONSE TO AIA NOTIFICATION (Article 5): Some delegates supported moving a reference to "subsequent imports," initially inserted to establish procedure for AIA on consecutive transactions, to a different article. One delegation proposed adding designated "National Competent Authority of the Party of export" as a recipient for acknowledgement of receipt. Some delegates proposed text requiring an importer to inform the notifier whether notification was received in the correct form, however, two regional groups opposed such an addition. Two additional paragraphs, one on whether written consent would be necessary for a transboundary movement, and the other on the need to indicate whether notification was complete, more information would be necessary, or additional time would be required, were also added to the article.

DECISION BY THE PARTY OF IMPORT (Article 6): Two delegations proposed consolidated text drawn from the Chairman's Note (UNEP/CBD/BSWG/4/Inf.2). Upon the Co-Chair's request, these delegations met in a drafting group to merge their texts. One regional group, supported by other delegations, expressed concern over this process and requested that the Chairman's text serve as the basis for negotiation, especially since the merged text was only available in English.

CONTACT GROUP-I

CG-I met briefly in the morning and reviewed definitions discussed yesterday. In the afternoon, the group began consideration of Annex II (Risk Assessment Parameters) in UNEP/CBD/BSWG/3/6. The Co-Chair invited statements from NGOs on the issue. An environmental group urged delegates to ensure that the scope of the

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Protocol and Annex II minimized the release/escape of transgenic recombinant/novel DNA. An industry representative emphasized the need for Annex II to be practicable, based on science, and adaptable to advances in science. In discussing the title, CG-I decided on "Risk Assessment Factors" as an acceptable starting point. Delegates considered whether the requirements for an RA in the Annex had the status of guidelines or obligatory requirements, and noted the need for guidance from SWG-I. Delegates then discussed the chapeau, which included the nature of the risks to be taken into account in an RA. Some delegates opposed a reference to "human and animal health" and "the socio-economic welfare of societies" in the chapeau, which were bracketed. Following an observation that the chapeau's contents might be better placed in an Article, the entire chapeau was bracketed, pending further guidance from SWG-I.

CG-I then moved to the "general principles" section of the Annex. Delegates began by considering the section on "objective of an RA" in the UNEP International Technical Guidelines for Safety in Biotechnology (Guidelines). CG-I decided to work from the Guidelines, which most delegates felt were more concise, and to include elements from the draft Annex II as necessary. Following preliminary discussions, however, delegates decided to retain only a small section of the text on objectives. Delegates then discussed the broad categories of information to be included in an RA. All agreed on the need for information relating to: the organism, its intended use, and characteristics of the receiving environment. Inclusion of two additional areas of information, socio-economic considerations and the originating environment, were bracketed.

SUB-WORKING GROUP-II

SWG-II began meeting after the Plenary, using UNEP/CBD/BSWG/4/Inf.2 (Chairman's Note on Articles 1, 1 *bis* and 15-27) as the basis for its work.

INFORMATION-SHARING/BIOSAFETY CLEARING-HOUSE (Article 19): Many delegates warned against excessive proliferation of informational mechanisms. One developing country noted technological difficulties in accessing the CBD's Clearing-House Mechanism (CHM) under the CBD, stressing that another mechanism would further complicate the situation. Many governments supported use of the CBD's CHM, while others called for a distinct database. Regarding specific information for exchange, a number of delegations stressed the need for a short list of types of information. Another delegate advised caution in coming to closure on this issue as other articles still under discussion contained references to the biosafety clearing-house. The Co-Chair stated that the Secretariat would consolidate text based on the views expressed.

CONFIDENTIAL INFORMATION (Article 20): Several developing countries preferred no article on confidential information, since it is already covered by existing national and international regulatory regimes. Several countries stressed the need for retaining the article. Specific concerns raised included, *inter alia*: the balance between protecting confidential information and the need to provide adequate information for handling emergencies; the balance between rights and obligations of both receiving and providing parties; and wording that might obstruct technological development. Delegates supported formation of a small drafting group to consolidate options in current documents, as well as text tabled by one delegation.

CAPACITY BUILDING (Article 21): The need for capacity building in biosafety and/or biotechnology was recognized by all speakers, but delegates disagreed on whether the Protocol should address this in a separate article, in the preamble, or have no provision at all. Much, but not all, of the support for a separate provision came from developing countries, who emphasized that capacity building in

risk assessment and risk management is crucial for an effective Protocol. Delegates supporting a provision on this issue differed regarding the degree of specificity of such a provision. Some governments preferred reliance on existing multilateral, regional and bilateral mechanisms, such as the UNEP Guidelines, GEF and CBD Decisions III/5 and III/20 regarding biosafety. One delegation cautioned against such reliance and stated that the COP intentionally avoided addressing this issue in detail, given the forthcoming Biosafety Protocol.

PUBLIC AWARENESS/PUBLIC PARTICIPATION (Article 22): Regarding the need for and scope of provisions on this issue, views ranged from no article to encouraging public participation in RA decisions. Several delegates acknowledged the value of provisions on public participation within the Protocol, but preferred a focus on "appropriate measures," or preambular treatment. One delegate highlighted developing countries' needs for communication tools to achieve this article's goals. SWG-II concluded its meeting and two informal drafting groups met to further consolidate text on Articles 20 and 21.

CONTACT GROUP-II

CG-II met in the afternoon to review deletion of Articles 32 (Jurisdictional Scope), 38 (Ratification, Acceptance or Approval), and 39 (Accession), which are covered under the CBD. Delegates also agreed on text for Articles 33 (Relationship with the Convention), 37 (Signature), Article 40 (Entry into Force), 42 (Withdrawal) and 43 (Authentic Text). The group continued deliberations on Articles 29 (Conference of the Parties) and 30 (Subsidiary Bodies and Mechanisms).

IN THE CORRIDORS

Some delegates expressed satisfaction with progress being made, while others noted that the first few days were merely setting the stage for more protracted debates in the final week. At an NGO-Government meeting, designed to examine the potential application of the Biosafety Protocol to specific case studies, participants were entertained by role reversal presentations by representatives from industry, environmental NGOs, academia and governments. Sparring between environmental groups and industry over procedural issues and the "facts" in their respective case studies seemed to constrain the level of government interaction with the groups.

THINGS TO LOOK FOR TODAY

SUB-WORKING GROUP-I: SWG-I will meet at 10:00 am to continue work on Articles 6-8 and to consider definitions referred to it by CG-I.

SUB-WORKING GROUP-II: SWG-II will meet at 10:00 am to start discussion on Articles 1 and 1 *bis*.

CONTACT GROUP-I: CG-I will meet on Monday at 10:00 am to continue discussion of Annex II.

CONTACT GROUP-II: CG-II will meet at 1:30 – 3:00 pm in Room 5 to begin discussion on Article 35, legal definitions of non-discrimination, illegal traffic and non-parties, and the Preamble.

SECRETARIAT BRIEFING: There will be a Secretariat briefing on preparations for COP-4 at 2 pm, Assembly Hall 2.

PRESENTATIONS: In Room 1.15

1 pm: Biotechnology: Experiences from the Czech Republic

2 pm: Biotechnology and Bioprospecting

SECRETARIAT RECEPTION: 6:30 pm, 4th Floor Foyer