



**CONVENTION ON
BIOLOGICAL
DIVERSITY**

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CONFERENCE OF THE PARTIES TO THE CONVENTION
ON BIOLOGICAL DIVERSITY SERVING AS THE
MEETING OF THE PARTIES TO THE CARTAGENA
PROTOCOL ON BIOSAFETY

Third meeting

Curitiba, Brazil, 13 to 17 March 2006

Item 16 of the provisional agenda*

**OTHER SCIENTIFIC AND TECHNICAL ISSUES THAT MAY BE NECESSARY FOR THE
EFFECTIVE IMPLEMENTATION OF THE PROTOCOL**

Note by the Executive Secretary

I. INTRODUCTION

1. The Conference of the Parties serving as the meeting of the Parties to the Protocol, at its second meeting, adopted decision BS-II/14 regarding other scientific and technical issues that may be necessary for the effective implementation of the Protocol.
2. In that decision, the Conference of the Parties serving as the meeting of the Parties to the Protocol took note of submissions received in advance of the second meeting, which addressed *inter alia* the issue of obligations and rights of transit States, and invited Parties, other Governments and relevant international organizations to submit views, not later than six months prior to the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, regarding clarification of the rights and/or obligations of transit States, particularly related to documentation, for inclusion in a synthesis report to be considered by the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.
3. In response to this invitation, submissions were received from the following Parties, other Governments, and organizations: the European Community and its member states, New Zealand, Norway; Argentina, Canada, the United States of America; the Global Industry Coalition, and the International Grain Trade Coalition. The full texts of the submissions are compiled in an information document (UNEP/CBD/BS/COP-MOP/3/INF/9).

* UNEP/CBD/BS/COP-MOP/3/1.

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4. Section II of the present note synthesizes the issues raised in submissions, and section III contains a recommendation for consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

II. SYNTHESIS OF VIEWS

Rights and obligations of transit States

5. Most submissions noted the reference to transit in Article 6.1 of the Protocol. Six submissions noted that a Party of transit has the right to regulate the transport of living modified organisms through its territory, and seven submissions noted that Article 6 paragraph 1 exempts living modified organisms in transit from the Advance Informed Agreement procedure. One of these submissions stated that it is unclear to what extent other articles apply to living modified organisms in transit, while two other submissions referenced Article 4 and expressed the view that the Protocol applies to living modified organisms in transit with the exception of the Advance Informed Agreement procedure as stated in Article 6 paragraph 1.

6. Two submissions expressed the view that the Conference of the Parties serving as the meeting of the Parties to the Protocol does not need to consider any additional measures or requirements regarding transit at this time.

7. One submission expressed the view that the Conference of the Parties serving as the meeting of the Parties to the Protocol should confirm that documentation requirements of Article 18 paragraph 2 (a), do not apply to shipments in transit.

8. The following specific views and observations were expressed regarding the rights and obligations of transit States (see full texts of submissions for details):

(a) The Protocol does not oblige Parties of transit to take additional measures to ensure that documentation accompanying living modified organisms complies with documentation requirements (one submission);

(b) Any measures taken by governments in relation to transit should be consistent with their obligations under existing international agreements (three submissions), should be focused on what is necessary to meet the objectives of the Protocol (one submission), and should avoid undue costs and obligations (two submissions);

(c) Governments can enter into bilateral, regional and multilateral agreements and arrangements regarding transit, in accordance with Article 24 paragraph 1, (one submission);

(d) A Party of transit should not be considered a Party of export unless the living modified organisms in question are imported and materially transformed prior to their subsequent export (one submission);

(e) The responsibility for documentation accompanying a shipment should lie with the Party of export only, not with a Party of transit (five submissions), and should not result in any additional documentation requirements under Article 18 paragraph 2, (one submission);

(f) Documentation produced pursuant to the requirements of Articles 18 paragraph 2 (b) and (c), of the Protocol as well as subsequent decisions of the Conference of the Parties serving as the meeting of the Parties to the Protocol, contain a great deal of information that could be useful for transit States, and that documentation is adequate and appropriate for exporting, importing and transit countries (one submission);

(g) Any clarification on the rights and obligations concerning transit should bear in mind the objective of the Protocol as set out in Article 1 and take due account of the interests of the Parties concerning the need for information and documentation on living modified organisms transported through and imported into their territories (one submission);

(h) It should be expected that exporters, in contemplating export of living modified organisms for direct use as food or feed, or for processing, will decide to use transit States with the least burdensome regulations (one submission).

Definitions

9. Regarding definitions of transit, one submission noted that a definition of transit exists in the international trade context and is consistent with the objective of the Protocol, and that there is no need to develop a definition of “transit” in the context of the Biosafety Protocol. That submission referred specifically to the definition of “transit” that appears in the context of the World Trade Organization (WTO), as follows:

Article V:1 of the General Agreement on Tariffs in Trade 1994 (GATT) deems goods to be “in transit” across the territory of a Contracting Party when the passage of those goods, *“is only a portion of a complete journey beginning and terminating beyond the frontier of the Contracting Party across whose territory the traffic passes”*.

10. Two submissions noted the need to have a clear understanding of the term “transit”. One of these expressed the view that it would be useful for Parties to agree on a definition of transit. The following existing definitions were suggested for consideration:

(a) Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes (source: World Customs Association);

(b) Consignment that is not imported into a country but passes through it to another country, subject to official procedures which ensure that it remains enclosed, and not split up, not combined with other consignment nor has its packaging changed (source: Canadian Food Inspection Agency, Plant Health Division, Policy directive D-99-01);

(c) "In-Transit Cargo" means general cargo or container cargo that has origin and destination outside the Kingdom of Thailand and has been discharged onto the terminal for delivery to foreign country which has a treaty or special agreement with Thailand or stored in the transit warehouse for delivery to such country (source: Bangkok Port Authority).

11. One submission expressed the view that the term “transit States” used in decision BS-II/14 is unclear, requires clarification, and is inconsistent with the term “Party of transit” used in Article 6 of the Protocol. The submission noted in particular that non-Party transit States have no rights or obligations under the Protocol.

III. RECOMMENDATION

12. Taking into account the submissions reviewed above, the Conference of the Parties serving as the meeting of the Parties to the Protocol may wish to take a decision regarding clarification of the rights and/or obligations of transit States.
