



CONVENTION ON BIOLOGICAL DIVERSITY

Distr.
GENERAL

UNEP/CBD/BS/COP-MOP/2/10
30 March 2005

ORIGINAL: ENGLISH

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

Second meeting

Montreal, 30 May-3 June 2005

Item 12 of the provisional agenda*

REPORT OF THE OPEN-ENDED TECHNICAL EXPERT GROUP ON IDENTIFICATION REQUIREMENTS OF LIVING MODIFIED ORGANISMS INTENDED FOR FOOD OR FEED, OR FOR PROCESSING

INTRODUCTION

A. Background

1. At the first meeting of the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, the Parties to the Protocol considered, among other things, issues related to the identification and documentation of living modified organisms intended for direct use as food or feed, or for processing (LMOs-FFP). According to paragraph 2 (a) of Article 18 of the Biosafety Protocol, the Conference of the Parties serving as the meeting of the Parties to the Protocol must decide on the detailed requirements of identification measures no later than two years after the date of the entry into force of the Protocol. In order to facilitate the appropriate and timely adoption of the decision envisaged in paragraph 2 (a) of Article 18, the Conference of the Parties serving as the meeting for the Parties to the Protocol established, in its decision BS-1/6 A, an Open-ended Technical Expert Working Group on Identification Requirements of Living Modified Organisms Intended for Food or Feed, or for Processing.

2. In the same decision, the Conference of the Parties requested the Executive Secretary to convene the meeting of the Open-ended Technical Expert Group and to submit the report and draft decision of the Group to the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Accordingly, the Open-ended Technical Expert Group met at the headquarters of the International Civil Aviation Organization, in Montreal, from 16 to 18 March 2005.

3. The meeting of the Open-ended Technical Expert Group was preceded by a Workshop on Capacity-building and Exchange of Experiences Regarding the Implementation of Paragraph 2 of Article 18 of the Protocol. The Workshop had been convened in accordance with decision BS-1/6 D of

* UNEP/CBD/BS/COP-MOP/2/1.

the Conference of the Parties serving as the meeting of the Parties to the Protocol and took place in Bonn, from 1 to 3 November 2004.

B. Attendance

4. The meeting was attended by experts and observers from the following Parties to the Protocol and other Governments: Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belarus, Belgium, Belize, Benin, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Colombia, Denmark, Djibouti, Dominica, Ecuador, Egypt, Ethiopia, European Community, Finland, France, Germany, Ghana, Grenada, Guatemala, India, Iran (Islamic Republic of), Italy, Japan, Kiribati, Lao People's Democratic Republic, Liberia, Madagascar, Malaysia, Mali, Mexico, Mongolia, Morocco, Mozambique, Netherlands, New Zealand, Nicaragua, Niger, Norway, Palau, Panama, Paraguay, Peru, Republic of Korea, Republic of Moldova, Romania, Saudi Arabia, Senegal, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Venezuela, Zambia.

5. Observers from the following intergovernmental and non-governmental organizations: Canadian Environmental Law Association, CropLife International, ECOROPA, Global Industry Coalition, Greenpeace International, International Grain Trade Coalition, Norwegian Institute of Gene Ecology, Organisation for Economic Co-operation and Development, Third World Network, U.S. Grains Council, Washington Biotechnology Action Council/49th Parallel Biotechnology Consortium.

ITEM 1. OPENING OF THE MEETING

6. The meeting was opened by the President of the Conference of the Parties serving as the meeting of the Parties to the Biosafety Protocol, Dato' Saboh B. Mohd Yassin at 10 a.m. on Wednesday, 16 March 2005.

7. In his opening statement, the President of the Conference of the Parties serving as the meeting of the Parties to the Protocol welcomed the technical experts and observers to Montreal and expressed his gratitude to the Executive Secretary for organizing the meeting. He said that the current lack of clarity and detail regarding the requirements of paragraph 2 (a) of Article 18 created a situation that no Party or stakeholder wanted to continue, and that the elaboration of these requirements would both promote the objective of the Biosafety Protocol, and create transparency and predictability in the international trade in living modified organisms intended for direct use as food or feed, or for processing. He reminded the participants that the Conference of the Parties serving as the meeting of the Parties to the Protocol was required to take a decision on this matter within two years after the entry into force of the Protocol and that the outcome from the work of the Open-ended Technical Expert Group would greatly facilitate such decision taking.

8. An opening statement was also made by Mr. Hamdallah Zedan, Executive Secretary of the Convention on Biological Diversity.

9. In his statement, Mr. Zedan welcomed the participants and expressed his gratitude to the Governments of Austria, Canada, Denmark, the European Community, Finland, France, Ireland, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom for the financial contributions made to support the participation of experts from developing countries and countries with economies in transition. The Executive Secretary recalled the terms of reference given to the Technical Expert Group by the Conference of the Parties serving as the meeting of the Parties to the Protocol. He drew the attention of participants to the background document that the Secretariat has prepared for the meeting in accordance with the request of the first meeting of the Conference of the parties serving as the meeting of the Parties to the Protocol. The Executive Secretary reminded the participants that the first meeting of

the Conference of the Parties serving as the meeting of the Parties to the Protocol had also requested, in decision BS-I/6 D, that the Secretariat convene a workshop on capacity-building and exchange of experiences on the safe handling, transport, packaging and identification of living modified organisms, as related to the implementation of paragraph 2 of Article 18 of the Protocol. That workshop had been convened in Bonn from 1 to 3 November 2004 and had contributed to enhancing the mutual understanding and appreciation of the issues and requirements involved in the identification of living modified organisms, as well as the associated capacity needs for the implementation of those requirements. The Executive Secretary thanked those who had participated in the workshop as well as the Government of Germany for hosting the workshop, and Canada and the European Community for their generous financial contributions.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Officers

10. At the opening session of the meeting, on 16 March 2005, the President of the Conference of the Parties serving as the meeting of the Parties to the Protocol proposed that Mr. François Pythoud (Switzerland) should chair the meeting on his behalf and that Mr. Antonio Matamoros (Ecuador) should serve as its Rapporteur. Stressing the technical nature of the meeting, he recalled Mr. Pythoud's varied experience as the Chair of different working groups and contact groups dealing with Article 18 of the Protocol, and said that Mr. Pythoud was well qualified to assure the successful outcome of the meeting.

11. The Open-ended Technical Expert Group agreed to the proposal of the President of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

12. Mr. Pythoud expressed his appreciation for the trust being shown in him and reminded the participants that the issue of documentation accompanying transboundary movements of LMOs-FFP had been the final stumbling block of the negotiation of the Cartagena Protocol and that the final compromise had been reached through paragraph 2 (a) of Article 18 of the Protocol. He reminded the experts of the need to deal with the details of these requirements and that they were meeting as technical experts and not as negotiators.

2.2. Adoption of the agenda

13. The Open-ended Technical Expert Group adopted the following agenda on the basis of the provisional agenda circulated as document UNEP/CBD/BS/OETEG-HTPI/1/1.

1. Opening of the meeting.
2. Organizational matters:
 - 2.1 Officers;
 - 2.2 Adoption of the agenda;
 - 2.3 Organization of work.
3. Examining issues related to the elaboration of the detailed requirements of identification of living modified organisms intended for direct use as food or feed, or for processing:

Part I:

- (a) The documentation accompanying the living modified organisms;

- (b) Information to be provided in the accompanying documentation;
- (c) The extent and modality of using unique identifiers;

Part II:

- (d) Thresholds for adventitious or unintentional presence of LMOs that may be needed to trigger identification requirements;
 - (e) Review of available LMO sampling and detection techniques, with a view to harmonization.
4. Preparation of a draft decision for the consideration of the Conference of the Parties serving as the meeting of the Parties to the Biosafety Protocol
 5. Other matters.
 6. Adoption of the report.
 7. Closure of the meeting.

2.3. Organization of work

14. At the opening session of the meeting, participants agreed on the organization of work for the meeting on the basis of the proposal contained in the provisional organization of work in annex I to the annotations to the provisional agenda (UNEP/CBD/OETEG-HTPI/1/1/Add.1).

ITEM 3. EXAMINATION OF ISSUES RELEVANT TO THE ELABORATION OF THE DETAILED REQUIREMENTS OF IDENTIFICATION OF LIVING MODIFIED ORGANISMS INTENDED FOR DIRECT USE AS FOOD OR FEED, OR FOR PROCESSING

15. Agenda item 3 was taken up by the Open-ended Technical Expert Group at the 1st session of the meeting, on Wednesday, 16 March 2005.

16. A representative of the Secretariat introduced the note of the Executive Secretary (UNEP/CBD/BS/OETEG-HTPI/1/2) containing a synthesis of information and views regarding identification requirements for living modified organisms intended for direct use for food or feed, or for processing (Article 18, paragraph 2 (a)). He explained that section II of the note contained a synthesis of views and information on the experience in the implementation of the requirements of the first sentence of paragraph 2 (a) of Article 18 as well as views regarding the detailed requirements referred to in the second sentence of paragraph 2 (a) of Article 18. He also explained that section III of the note contained suggested option elements for a draft decision, which had been synthesized from section II and decision BS-1/6 A of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The representative of the Secretariat ended by explaining that full text of the submissions received from the Parties, Governments and organizations had been circulated as an information document (UNEP/CBD/BS/OETEG-HTPI/1/INF/1).

17. The Chair invited participants to make general comments before the meeting proceeded to a detailed examination of the issues relevant to the elaboration of the requirements of identification of LMOs-FFP.

18. Statements were made by the experts from Argentina, Brazil, Cameroon, Canada, Malaysia, the Netherlands (on behalf of the European Union), New Zealand, Norway, and Switzerland.

19. The Chair thanked the experts for their comments. He said that the meeting would proceed with the consideration of agenda item 3 and that to assist in this, he suggested that the meeting follow the suggestion of the Secretariat and consider the options of elements for a draft decision, highlighted in section III of the note by the Executive Secretary.

A. Documentation accompanying living modified organisms for food or feed, or for processing

20. The Chair noted that the Protocol did not specify whether the documentation mentioned in paragraph 2 of Article 18 referred to existing documentation or documentation tailored for the purpose of the Protocol. He recalled that the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol had urged Parties and other Governments to take measures to require the use of commercial invoices or existing documentation systems pending a decision on the detailed requirements of paragraph 2 (a) of Article 18.

21. Statements were made by the experts from: Argentina, Australia, Brazil, Cameroon, Ecuador, Egypt, Ethiopia, Grenada, India, Malaysia, Mali, the Netherlands (on behalf of the European Union), New Zealand, Niger, Norway, Panama, Paraguay, the United Republic of Tanzania, and the United States of America.

22. The options of elements discussed included: a commercial invoice; a stand-alone document agreed under the Protocol; a stand-alone document provided as a template by national authorities; other documents required or utilized by existing documentations systems; and various combinations of these elements.

B. Information to be provided in the accompanying documentation

23. The Chair recalled that the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol had, among other things, also urged Parties and other Governments to require that documentation accompanying LMOs-FFP include the names of the organism, the transformation event code, and if available its unique identifier code. It had also requested Parties and urged other Governments to take measures to ensure that the documentation contained the details of a contact point for further information and had encouraged both Parties and other Governments to require exporters of the LMOs-FFP under their jurisdiction to declare shipments known to intentionally contain LMOs-FFP and include the identity of the living modified organisms, as well as any unique identification, where possible, in the documentation.

Information on the living modified organisms

24. Statements were made by experts from Argentina, Australia, Belarus, Cameroon, Canada, Ecuador, Ethiopia, the European Community, Ghana, Grenada, India, Malaysia, Mali, the Netherlands (on behalf of the European Union), New Zealand, Nicaragua, Norway, Panama, Paraguay, Republic of Korea, Senegal, Togo, Ukraine, the United Republic of Tanzania, and the United States of America.

25. Statements were also made by observers from ECOROPA and the Washington Biotechnology Action Council/49th Parallel Biotechnology Consortium.

26. The options of elements discussed included: information about the living modified organisms was not required to be provided on the documentation as long as such information was available on the Biosafety Clearing-House; providing common, scientific and where available, commercial names of the

living modified organisms; the transformation event codes of the living modified organisms; the taxonomic name, the gene modifications inserted, traits or genes changed, information on the host as well as the donor organisms; and various combinations of these elements. Some experts also expressed the view that there was a need to include as much information as possible, while others stressed the need to include a unique identifier, and information on the safe handling, storage, transport and use of the LMOs. However, other experts said that there was a need to avoid excessive and unnecessary information requirements being placed on shipment documents of LMOs-FFP.

27. The Open-ended Technical Expert Group continued its discussion of agenda item 3 (b) at the 2nd session of the meeting, on 16 March 2005.

Statement or elements of a statement

28. The Chair asked the experts for their views on the wording of the statement to be incorporated into the documentation to accompany LMOs-FFP.

29. Statements were made by experts from Argentina, Australia, Belarus, Cameroon, Canada Egypt, Ethiopia, the European Community, Ghana, Grenada, India, Japan, Malaysia, Mali, Mexico, the Netherlands (on behalf of the European Union), New Zealand, Nicaragua, Niger, Norway, Panama, Paraguay, Romania, Senegal, Ukraine, the United Republic of Tanzania, the United States of America, and Zambia.

30. The options of elements discussed included: retaining the “may contain” language of paragraph 2 (a) of Article 18 of the Protocol; changing the “may contain” wording to “contains”; or to a clear identification that the shipment contains “living modified organisms”. Some experts noted a difference between those situations where the presence of living modified organisms represented contamination of a shipment; or where information on the presence of living modified organisms in a shipment becomes difficult to be specific; and where the contents of a shipment are specifically known to be living modified organisms. It was suggested that it might be necessary to add elements, such as the list of the unique identifiers of living modified organisms to clarify the “may contain” language in those situations where shipments contained living modified organisms.

Contact information

31. The Chair then asked the experts to consider the contact information to be incorporated into the documentation to accompany the LMOs-FFP.

32. Statements were made by experts from: Argentina, Australia, Brazil, Ecuador, Ethiopia, Grenada, Japan, Liberia, Mali, the Netherlands (on behalf of the European Union), New Zealand, Nicaragua, Norway, Panama, Paraguay, Togo, and the United Republic of Tanzania.

33. The options of elements discussed included: the details of the last exporter and the first importer as a contact point; those authorities designated by a Government as a contact point; other contact points for further information, including the name and address of the consignee; and various combinations of these elements.

C. *The extent and modality of using unique identifiers of living modified organisms*

34. The Chair noted that that in addition to urging and encouraging the Parties and other Governments to provide unique identifier codes in the documentation accompanying LMOs-FFP, the Conference of the Parties serving as the meeting of the Parties to the Protocol had also adopted decision BS-1/6 C on unique identification systems. These systems had also been referred to in paragraph 5 of the

decision BS-1/6, and the Conference of the Parties serving as the meeting of the Parties had invited Parties and other Governments to take measures to apply the OECD Unique Identifiers for Transgenic Plants to LMO plants under the Protocol.

35. Statements were made by experts from Argentina, Australia, Brazil, Cambodia, Cameroon, Canada, Ecuador, Ethiopia, the European Community, Ghana, India, Japan, Malaysia, Mongolia, the Netherlands (on behalf of the European Union), New Zealand, Norway, Panama, Paraguay, Republic of Korea, Romania, Switzerland, Ukraine, the United Republic of Tanzania, the United States of America, and Zambia.

36. The options of elements discussed included: the OECD Unique Identifier for Transgenic Plants and other unique identifiers, where available; and the Internet address of the Biosafety Clearing-House; waiting until the need for a unique identifiers was established through further experience in the implementation of the other identification and documentation requirements; the lack of any need for such identifiers on accompanying documentation; and various combinations of these elements. While some experts expressed doubt at the utility of unique identifiers as a tool to protect biodiversity, others insisted that such a system aided in simplifying the information requirements, as it could be linked to the Biosafety Clearing-House. It was also suggested that the unique identifier could be combined with distinct customs codes for conventional and genetically modified plants, although other experts doubted whether customs officials would be adequately trained to take advantage of such a unique identifier.

D. Thresholds for adventitious or unintentional presence of living modified organisms to trigger identification requirements

37. The Chair then asked the experts to consider the issue of thresholds for adventitious or unintentional presence of living modified organisms, which would trigger the identification requirements. He said that although the relevance of the issue of thresholds to the documentation requirements under paragraph 2 of Article 18 was not straightforward, the issue had become important and relevant in the context of implementing the documentation requirements involving bulk commodity shipments. He suggested that the experts consider this issue in two parts: thresholds for approved living modified organisms and thresholds for unapproved living modified organisms by Parties of import.

Thresholds for approved living modified organisms

38. Statements were made by experts from Argentina, Australia, Brazil, Cameroon, Ecuador, Egypt, Ethiopia, Ghana, India, Malaysia, Mali, Mongolia, the Netherlands (on behalf of the European Union), New Zealand, Nicaragua, Norway, Panama, Republic of Korea, Senegal, Switzerland, Togo, the United Republic of Tanzania, the United States of America, and Zambia.

39. The options of elements discussed included: a temporary 5 per cent threshold of all commodity shipments where the LMO varieties are widely grown; no thresholds; national thresholds adopted on a case-by-case basis; and thresholds for particular living modified organisms based on scientific risk analysis, including thresholds developed by other relevant international organizations such as the Codex Alimentarius and the International Plant Protection Convention. It was also pointed out that there was a need to distinguish between the need of a threshold and the level at which the threshold ought to be set; and that lower thresholds were associated with higher costs.

40. One expert also said that if an exporting country had approved and grown and exported an LMO variety, the “may contain” language should apply; and that if an exporting country had not grown and exported living modified organisms, the “may contain” language should not apply, even in the case of the low level, and unintentional, adventitious presence of living modified organisms in a non-LMO shipment.

Thresholds for unapproved living modified organisms

41. Statements were made by experts from Argentina, Belarus, Cambodia, Cameroon, Ethiopia, India, Japan, Malaysia, Mali, Mexico, Mongolia, Republic of Korea, the United Republic of Tanzania, and the United States of America.

42. The options of elements discussed included: thresholds adopted for unapproved living modified organisms at the national level as long as they do not affect the conservation and sustainable use of biological diversity in the Party of import, and whether any thresholds were acceptable for unapproved living modified organisms.

43. The Chair noted that there was still some slight divergence on this question and that there was still also an issue of whether living modified organisms unapproved by Parties import was relevant to Article 18 of the Protocol.

E. Harmonization of sampling and detection techniques

44. The Chair then asked the experts to consider the last sub-item of agenda item 3.

45. Statements were made by experts from: Australia, Argentina, Brazil, Canada, Egypt, Ethiopia, the European Community, Japan, the Netherlands (on behalf of the European Union), New Zealand, Nicaragua, Norway, Panama, and the United States of America.

46. The options of elements discussed included: that the selection of the techniques and the establishment of criteria could be undertaken by other competent international organizations; that the criteria for acceptability of sampling and testing techniques for any particular LMO be determined and that any technique meeting the criteria could be used; and that one or more techniques be determined for any particular living modified organisms and adopted as the standard technique for that LMO. A number of experts also expressed the view that as this was a particularly technical issue it was important to give due attention to the ongoing work taking place in other competent international organizations.

Chair's summary

47. The Chair thanked the experts for their interventions under agenda item 3. He said that he would produce a Chair's text, based on their statements, for consideration by the Open-ended Technical Expert Group at its next session. He explained that the text that he was going to prepare would take the form of a draft decision and would be used as a basis for the Group's discussion on agenda item 4.

ITEM 4. PREPARATION OF A DRAFT DECISION FOR THE CONSIDERATION OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE BIOSAFETY PROTOCOL

48. The Open-ended Technical Expert Group took up agenda item 4 at the 3rd session of the meeting, on 17 March 2005.

49. The Chair introduced a Chair's text of a draft decision for the consideration of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

50. Statements were made by experts from: Ecuador, Egypt, Ethiopia, the European Community, Grenada, the Netherlands, Norway, Romania, the Syrian Arab Republic, the Ukraine, and Venezuela.

51. A statement was also made by the observer from ECOROPA.

52. The Open-ended Technical Expert Group continued its discussion of the Chair's text at the 4th session of the meeting, on 17 March 2005.
53. At the suggestion of the Chair, the Open-ended Technical Expert Group considered the preambular section of the Chair's text.
54. Statements were made on the preambular section by experts from Brazil, Egypt, Ethiopia, the European Community, the Netherlands (on behalf of the European Union), New Zealand, Norway, and Venezuela.
55. The Chair also asked the Open-ended Technical Expert Group to consider the operative paragraphs in the Chair's text.
56. Statements were made on those paragraphs relating to the type of documentation by experts from Argentina, Australia, Brazil, Ecuador, Ethiopia (on behalf of the African Group), India, Malaysia, Netherlands (on behalf of the European Union), New Zealand, Norway, Panama, Paraguay, and Venezuela.
57. Statements were made on the paragraph relating to the information on a contact point for further information by experts from Brazil, Ecuador, Egypt, Ethiopia (on behalf of the African Group), the European Community, Japan, the Netherlands (on behalf of the European Union), New Zealand, Norway and Panama.
58. A statement was also made by the observer from ECOROPA.
59. Statements were made on those paragraphs of the Chair's text that referred to a possible statement that was proposed to be incorporated into the documentation and the information that may be needed to be provided as regards the living modified organism by the experts from Argentina, Australia, Barbados, Belarus, Canada, Ecuador, Egypt, Ethiopia (on behalf of the African Group), Liberia, Malaysia, Mexico, the Netherlands (on behalf of the European Union), New Zealand, Norway, Panama, Paraguay, Romania, Senegal, Ukraine, and Venezuela.
60. A statement was also made by the observer from the Washington Biotechnology Alliance Council/49th Parallel Biotechnology Consortium.
61. Statements were made on the paragraph referring to thresholds by experts from Belarus, Ethiopia, the Netherlands, New Zealand, Norway, and Panama.
62. Statements were also made on the paragraphs referring to LMO sampling and detection techniques by experts from Argentina, Brazil, Ethiopia (on behalf of the African Group), the Netherlands (on behalf of the European Union), New Zealand, Norway.
63. A statement was also made by the observer from ECOROPA.
64. The Chair thanked the participants for their interventions and said that he would present a revised Chair's text at the next session of the meeting. He also indicated that he would conduct informal discussions with a number of delegations before presenting his revised text at the next session of the meeting.
65. The Open-ended Technical Expert Group took up a revised draft Chair's text at the 5th session of the meeting, on Friday, 18 March 2005.
66. The Chair informed the meeting that despite his informal consultations with a number of experts on his revised text there seemed to be a lack of consensus. In that regard, he proposed: (i) the inclusion

of a preambular paragraph in the text that reflected the lack of consensus on the text; and (ii) the replacement of the operative paragraph which sought to forward the text as a draft decision to the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol with a paragraph that specifies that the text was submitted for use as a basis for further consideration.

67. Statements were made by experts from Argentina, Australia, Belarus, Brazil, Cameroon, Canada, Ecuador, Egypt, Ethiopia, the European Community, Ghana, Grenada, India, Liberia, Mali, the Netherlands (on behalf of the European Union), New Zealand, Nicaragua, Norway, Panama, Paraguay, Romania, Senegal, Togo, Ukraine, the United States of America, and Venezuela.

68. Statements were also made by the observer from the Washington Biotechnology Alliance Council/49th Parallel Biotechnology Consortium and by an observer from ECOROPA.

69. Some experts pointed out that since the text did not reflect a consensus, it should remain the text of the Chair and be forwarded to the Conference of the Parties serving as the meeting of the Parties to the Protocol not as draft decision proposed by the Group but as a text from the Chair to provide elements for further consideration of the issues. Other experts stated that since the mandate given to the Open-ended Technical Expert Group by the Conference of the Parties serving as the meeting of the Parties to the Protocol specified the preparation of a draft decision, the text should be forwarded as a draft decision as long as it was clearly indicated in the preambular section that it did not represent a consensus document.

70. The Chair thanked the participants for their comments and he confirmed that the text on the draft decision would be considered as his (i.e., the Chair's) revised text and submitted to the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol along with the report of the meeting. He then asked the experts if they wished to make any comments for inclusion in the report of the meeting.

71. The expert from the Netherlands, speaking on behalf of the European Union, said that the European Union had serious difficulties with several parts of the revised Chair's text as it had pushed the debate backwards. In particular the paragraph referring to the "may contain" language was unacceptable as it did not reflect deliberations of the experts. The European Union considered that the text of decision BS-1/6 A continued to serve as the basis for further discussion at the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol on the requirements of paragraph 2 (a) of Article 18.

72. The expert from Cameroon said that the revised Chair's text reflected only the views of a minority of the experts and therefore Cameroon could not support it.

73. The expert from Norway said that Norway disagreed with the wording of paragraphs 1, 2 and 5 of the draft decision in the revised Chair's text and had some further difficulties with sixth and eighth numbered paragraphs. Norway also reserved the right to revisit the other paragraphs after further consideration. Norway said that it was of crucial importance that information on the LMOs-FFP be conveyed in a manner that was easy to find and be understood, both in relation to the content of the information and the way that it was presented. For that reason Norway had proposed a stand-alone document, which could be found on page 34 of the compilation of views and relevant information related to paragraph 2 (a) of Article 18 (UNEP/CBD/BS/OETEG-HTPI/1/INF/1). Norway asked that the document be conveyed to the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Norway also stressed that paragraph 5 of the draft decision in the revised Chair's text, concerning the "may contain" label, neither represented the majority view of the experts nor was it in line with decision BS-1/6 A of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The information requirements for shipments known to intentionally contain LMOs-FFP needed to be applied to shipments that might contain LMOs-FFP. In addition, a shipment might not only contain living modified organisms of the same commodity, but also other living modified organisms.

Therefore, the information requirements should not be restricted to the other living modified organisms of the same commodity. With regard to paragraph 8, concerning sampling and detection techniques, Norway was of the opinion that it was important for the Conference of the Parties serving as the meeting of the Parties to the Protocol to consider the need for, and modalities of, developing criteria for acceptability of harmonizing sampling and detection techniques at its third meeting.

74. The expert from Egypt asked that paragraph 1 of the draft decision in the Chair's text be modified to reflect the fact that the measures in question were only interim measures. He also asked that the last sentence of the same paragraph include a reference to the documentation mentioned in fourth and fifth numbered paragraphs of the Chair's text. There was also a need for clarification of the issue of when a shipment was known, or not known, to contain living modified organisms. He said that he did not see how the identity of unknown living modified organisms could be specified when they were in fact not known.

75. The expert from Brazil said that Brazil was engaged in an internal discussion of the issues related to the identification requirements for LMOs-FFP and that the meeting of the experts had confirmed for Brazil the challenge of stating a proper balance between the environmental, health and economic considerations involving those issues. He said that until Brazil had been able to complete that internal process of deliberation, Brazil reserved its position regarding the Chair's text.

76. The expert from Ghana said that the African experts requested the deletion of paragraph 5 of the draft decision, which referred to documentation with a "may contain" identification.

77. The expert from Ethiopia, speaking on behalf of the African Group, stated that paragraph 5 of the draft decision ("may contain" documentation) should be deleted and said that paragraph 4 (on "does contain" documentation) and paragraph 8 (on sampling and detection techniques) also needed to be modified. He said that paragraph 4 ought not to place the burden of verifying whether a shipment contained unapproved living modified organisms on the importing country and that paragraph 8 needed to be definite about the role of the Protocol as regards sampling and detection techniques. He also stated that the Chair's text pushed the debate backwards to the period of the negotiation of the Protocol.

78. The expert from Barbados said that he had difficulty with the concept of countries not knowing the contents of shipments and considered that the "may contain" language was inconsistent with the work being done by the Codex Alimentarius and the IPPC, where the ability to trace shipments was stressed. He asked whether the debate on the issue would even have taken place if the products in question had originated in developing countries.

79. The expert from Ukraine said that while the meeting had encouraged a useful exchange of opinions related to the information requirements for LMOs-FFP, more consensus on the issue was required and that problems remained to be resolved; especially with regard to the "may contain" language and the issue of a stand-alone document.

80. The expert from Ecuador supported the view that the revised Chair's text did not represent the view of the majority of the experts and that the wording of paragraph 5 of the draft decision showed that there had been no progress on the issue of information requirements.

81. The expert from New Zealand said that the deliberations had underscored the complexity of the issues and was concerned that the experts had lost sight of the key purpose of documentation, which was one of a number of options. She said that there was a need to be realistic about the progress to be made and that it was necessary to consider a step-by-step approach to improving the existing documentation and identification systems. While there were elements of that in the revised Chair's text, she agreed that it was important for the experts further discuss the technical details in their own countries. The results needed to be based on science and technically feasible as well as meaningful, and practical. There was

also a need to reflect the reality of trade in living modified organisms, not to place undue costs on producers and exports, and to be consistent with other international obligations. New Zealand firmly believed in the Protocol and looked forward to working with other Parties to implement it and over time to continue to enhance its provisions.

82. The expert from Belarus said that paragraph 5 of the draft decision in the revised Chair's text remained problematic and that even in the best circumstances could only refer to the unintentional and technically unavoidable presence of living modified organisms.

83. The expert from India said that India had serious problems with paragraph 5 of the draft decision in the revised Chair's text and suggested that it be deleted. She said that India also had difficulties with paragraphs 1, 2 and 4.

84. The expert from Liberia expressed concern at the failure of the Open-ended Technical Expert Group to agree on a draft decision for consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol. He urged the participants to reassess their positions in order to move the Protocol forward.

85. The expert from Mexico made comments regarding the need to use precise terminology in translations in order to avoid misinterpretation.

86. The expert from Venezuela said that paragraph 5 of the draft decision in the revised Chair's text had not reached expectations, particularly with regard to the information requirements and the "may contain" language.

87. The expert from the Republic of Korea expressed his satisfaction with the revised Chair's text.

88. It was finally agreed that the above statements should be reflected in the report of the meeting and that the revised Chair's text, as amended by the Open-ended Technical Expert Group at the 5th session of the meeting, could be transmitted to the Conference of the Parties serving as the meeting of the Parties to the Protocol at its second meeting. The text, as amended, is annexed to the present report.

89. In conclusion, the Chair noted that, despite the differences, the meeting had proved useful in providing an opportunity to participants to exchange views and information relevant to paragraph 2 (a) of Article 18 of the Protocol and to allow Parties and other stakeholders to have a better understanding of the main issues involved and appreciate the views and positions of others on the issues.

ITEM 5. OTHER MATTERS

90. No other matters were raised for discussion..

ITEM 6. ADOPTION OF THE REPORT

91. The present report was adopted at the 5th session of the meeting, on 18 March 2005, on the basis of the draft report (UNEP/CBD/BS/OETEG-HTPI/1/L.1) that had been prepared by the Rapporteur, as orally amended. The meeting authorized the Rapporteur, with assistance of the Secretariat and in consultation with the Chair, to finalize the report to reflect the proceedings of the final day of the meeting.

ITEM 7. CLOSURE OF THE MEETING

92. After the customary exchange of courtesies, the Chair declared the meeting of the Open-ended Technical Expert Group closed, at 1.45 p.m. on Friday, 18 March 2005.

Annex

**PREPARATION OF A DRAFT DECISION FOR THE CONSIDERATION OF THE
CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE
PARTIES TO THE BIOSAFETY PROTOCOL**

Revised Chair's text

The Open-ended Technical Expert Group on Identification Requirements of Living Modified Organisms Intended for Direct Use as Food or Feed, or for Processing,

Recalling the decision of the first meeting of Conference of the Parties serving as the meeting of the Parties to the Protocol regarding the identification/documentation requirements of living modified organisms intended for direct use as food or feed, or for processing, as contained in decision BS-I/6 A,

Examining the issues specified in its terms of reference, contained in the annex to decision BS-I/6 A, that were relevant to the subject of identification of living modified organisms that are intended for direct use as food or feed, or for processing on the basis of, among other things, submissions received from Parties, other Governments and relevant international organizations,

Recognizing that there are different views which remain difficult to resolve at this stage, and that this text does not represent consensus,

Submits the following draft decision on the detailed requirements of identification of living modified organisms intended for direct use as food or feed, or for processing, to the Conference of the Parties serving as the meeting of the Parties to the Protocol to provide elements for further consideration of the issues at its second meeting:

“The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety,

Recalling the second sentence of paragraph 2 (a) of Article 18, which requires the Conference of the Parties serving as the meeting of the Parties to the Protocol to take a decision on the detailed requirements of those elements specified in the first sentence of the same paragraph, including specification of the identity of the living modified organisms in question and any unique identification, no later than two years after the date of entry into force of the Protocol,

Recalling further decision BS-I/6 A of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol,

Noting the recommendation of the Open-ended Technical Expert Group on Identification Requirements of Living Modified Organisms Intended for Direct Use as Food or Feed, or for Processing,

Recognizing the potential role of thresholds for adventitious or unintentional presence of authorized living modified organisms as a practical tool for implementing documentation requirements,

Acknowledging the role of sampling and detection techniques in implementing identification requirements, and the technical nature of the issues involved, and *noting* the

relevant work of competent regional and international organizations in developing such techniques,

Recognizing that, pursuant to Article 2 paragraph 4 of the Protocol, nothing in the present decision shall affect any right of a Party to regulate documentation requirements for living modified organisms intended for direct use as food or feed, or for processing, under its domestic regulatory framework,

1. *Requests* Parties to the Protocol and *urges* other Governments to take measures to ensure the use of a commercial invoice or other document required or utilized by existing documentation systems, or documentation as required by domestic regulatory framework, as documentation that should accompany living modified organisms that are intended for direct use as food or feed, or for processing. Such documentation should allow for easy recognition, transmission, and effective integration of the information requirements;

2. *Requests* Parties to the Protocol and *invites* other Governments to submit to the Executive Secretary, 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, information on experience gained with the use of documentation referred to in paragraph 1 above, including information on cost-benefit analyses, with a view to the future consideration of a stand-alone document to fulfil the identification requirements, and *requests* the Executive Secretary to compile the information and to prepare a synthesis report for consideration by the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol;

3. *Further requests* Parties to the Protocol and *urges* other Governments to take measures ensuring that the documentation accompanying living modified organisms that are intended for direct use as food or feed, or for processing, provides the details of a contact point for further information: the last exporter, the first importer, or any appropriate authority, when designated by a Government as the contact point;

4. *Requests* Parties to the Protocol and *urges* other Governments to take measures to require that documentation accompanying transboundary movements known to intentionally contain living modified organisms that are intended for direct use as food or feed, or for processing:

(a) Specifies that the shipment contains living modified organisms that are intended for direct use as food or feed, or for processing;

(b) States that they are not intended for intentional introduction into the environment;

(c) Includes the common, scientific and, where available, commercial names of the living modified organisms,

(d) Includes the transformation event code of the living modified organisms and/or, where available, as a key to accessing information in the Biosafety Clearing-House, the OECD Unique Identifiers for Transgenic Plants or any other unique identifier codes registered in the Biosafety Clearing-House; and

(e) Provides the Internet address of the Biosafety Clearing-House;

5. In cases where it is not known whether or not the shipment contains LMOs, or it is not known which particular LMOs are contained in the shipment, *requests* Parties to the Protocol and *urges* other Governments to take measures to require that documentation accompanying transboundary movements of living modified organisms that are intended for direct use as food or feed, or for processing:

(a) Clearly identifies that the shipment may contain living modified organisms of this commodity that have been approved in the country of origin, and specifies the country of origin;

(b) Provides the Internet address of the Biosafety Clearing-House for further information; and

(c) States that the organisms are intended for direct use as food or feed, or for processing, and are not intended for intentional introduction into the environment.

6. *Notes* that thresholds may be adopted or applied on a case-by-case basis by a national authority, under its domestic regulatory framework consistent with the objective of the Protocol, for the adventitious or technically unavoidable presence of particular living modified organisms or groups of living modified organisms that have been authorized for the placing on the market as living modified organisms for food, feed, or for processing in that country, taking into account the characteristics of the receiving environment;

7. *Encourages* Parties and other Governments to cooperate in exchanging experiences and building capacities in the use and development of easy to use, rapid, reliable and cost-effective sampling and detection techniques for living modified organisms;

8. *Decides* to consider the need for and modalities of developing criteria for acceptability of, and harmonizing, sampling and detection techniques at its fourth meeting, taking into account the work of other competent regional and international organizations with a view to avoid duplication of efforts.”
