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INTERGOVERNMENTAL COMMITTEE FOR THE CARTAGENA PROTOCOL ON BIOSAFETY

Third meeting
The Hague, 22-26 April 2002
Item 4.1.5 of the provisional agenda*

HANDLING, TRANSPORT, PACKAGING AND IDENTIFICATION OF LIVING MODIFIED ORGANISMS (ARTICLE 18)

Addendum

REPORT OF THE MEETING OF TECHNICAL EXPERTS ON THE REQUIREMENTS OF PARAGRAPH 2 (a) OF ARTICLE 18 OF THE CARTAGENA PROTOCOL ON BIOSAFETY

INTRODUCTION

A. Background

1. At its second meeting in Nairobi, Kenya, from 1 to 5 October 2001, the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP) recommended a number of actions relating to paragraph 2 of Article 18 with a view to facilitating the implementation of requirements contained in the paragraph once the Protocol enters into force. It invited, among other things, Parties to the Convention, Governments and relevant international organizations to provide the Executive Secretary with views and relevant information regarding:

(a) The appropriate implementation of the requirement contained in the first sentence of paragraph 2 (a) of Article 18, by the time of entry into force of the Protocol; and

(b) The requirements of each element of paragraph 2 (a) of Article 18 of the Protocol.

2. The ICCP also requested the Executive Secretary to prepare a synthesis report of the views and information and to convene a meeting of technical experts with broad expertise covering all relevant aspects and disciplines for the implementation of paragraph 2 (a) of Article 18, taking into account the need for balanced regional representation, transparency and a stepwise approach.

3. Accordingly, and with generous financial contributions by the Governments of Canada, Spain, Switzerland and the United States of America, a meeting of the technical experts was held at the premises of the International Civil Aviation Organization (ICAO) in Montreal, from 18 to 20 March 2002.

* UNEP/CBD/ICCP/3/1.

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B. Attendance

4. Participants in the Meeting were selected from among Government-nominated experts from each geographic region with a view to achieving a balanced regional distribution. In addition, representatives of relevant intergovernmental and non-governmental organizations, as well as other stakeholders were invited to participate.

5. The Meeting was attended by experts nominated by the following Governments: Antigua and Barbuda, Argentina, Armenia, Australia, Belarus, Brazil, Cameroon, Canada, Croatia, Cuba, Democratic Republic of Congo, Denmark, Ecuador, Egypt, France, Germany, Ghana, Honduras, India, Iran (Islamic Republic of), Italy, Jamaica, Japan, Kenya, Lao People's Democratic Republic, Mexico, Mozambique, Namibia, Nepal, Niger, Nigeria, Norway, Pakistan, Palau, Poland, Republic of Korea, Spain, Sweden, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Venezuela, and Viet Nam.

6. A representative of the European Community also attended.

7. Representatives of the following intergovernmental and non-governmental organizations and other stakeholders also participated in the Meeting:

(c) *Intergovernmental organizations*: United Nations Environment Programme (UNEP)

(d) *Non-governmental organizations and other stakeholders*: International Grain Trade Coalition, Global Industry Coalition; International Seed Trade Federation (FIS/ASSINSEL); SOLAGRAL; Third World Network, Greenpeace International.

ITEM 1. OPENING OF THE MEETING

8. The meeting was opened by Mr. Hamdallah Zedan, Executive Secretary of the Convention on Biological Diversity, at 10 a.m. on Monday, 18 March 2002.

9. In his opening statement, Mr. Zedan welcomed the participants to the meeting and expressed gratitude to the Governments of Canada, Spain, Switzerland and the United States of America for their support of participants from developing countries, and to the Government of Canada for hosting the Meeting. He noted that this meeting had been convened at the request of the ICPC, to consider the appropriate implementation of the requirements contained in the first sentence of paragraph 2(a) of Article 18, as well as the requirements of each element in that paragraph. He stressed that the recommendations from this meeting would contribute significantly to the preparations necessary for the implementation of the requirements of Article 18 upon entry into force of the Protocol.

10. An opening statement was also made by Mr. Barry Stemshorn, Deputy Assistant Minister of the Environment, Canada.

11. In his statement, Mr. Stemshorn welcomed the participants to Montreal and thanked the Secretariat for its work in preparing for the Meeting. He recalled the text of the Preamble to the Cartagena Protocol on Biosafety, and he stressed that trade and environmental agreements should be mutually supportive with a view to sustainable development. Mr. Stemshorn considered that this was probably the best general statement of the mission of this meeting of experts, which together with the themes of capacity development and system development, laid the groundwork for the strong challenge ahead of the meeting.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Election of officers

12. At the opening session of the Meeting, on 18 March 2002, the participants endorsed the nomination of the following officers for the Meeting:

Chair: Mr. Desmond Mahon (Canada)

Co-Chair: Ms. Audia Barnett (Jamaica)

Rapporteur: Ms. Nevenka Preradovic (Croatia)

2.2. Adoption of the agenda

13. The Meeting adopted the following agenda on the basis of the provisional agenda circulated as document UNEP/CBD/BS/TE-18.2a/1/1.

1. Opening of the meeting.
2. Organizational matters:
 - 2.1 Election of officers;
 - 2.2 Adoption of the agenda;
 - 2.3 Organization of work
3. Consideration of views and relevant information on requirements of paragraph 2 (a) of Article 18 of the Protocol:
 - 3.1. Consideration of the modalities of implementation of the requirements contained in the first sentence of paragraph 2 (a) of Article 18 at the time of entry into force of the Protocol;
 - 3.2. Consideration of the identification of issues to be addressed beyond entry into force of the Protocol, in preparation for the decision referred to in paragraph 2 (a) of Article 18.
4. Recommendations.
5. Other matters.
6. Adoption of the report.
7. Closure of the meeting.

2.3. Organization of work

14. Following a discussion, the Meeting agreed to consider the items of the agenda in their customary order, and hold an initial general debate on item 3, in plenary. It was decided not to break into two groups to consider issues under agenda item 3.1 and agenda item 3.2 unless such an arrangement proved necessary.

ITEM 3. CONSIDERATION OF VIEWS AND RELEVANT INFORMATION ON THE REQUIREMENTS OF PARAGRAPH 2 (a) OF ARTICLE 18 OF THE PROTOCOL

15. Agenda item 3 was taken up in plenary at 1st session, on Monday, 18 March 2002

16. A representative of the Secretariat introduced the note of the Executive Secretary (UNEP/CBD/BS/TE-18.2a/1/2). He explained that section II of the note contained a synthesis of views and information on how to deal with the requirements of paragraph 2 (a) of Article 18. He observed that it also included information on existing practices, rules and standards relevant to paragraph 2 (a) of Article 18. With the exception of those limited cases where updated or new information had been added, all of the information on existing practices, rules and standards contained in section III of the note had been submitted by Parties, Governments and relevant international organizations and synthesized earlier for the purpose of the second meeting of the ICPC. Section IV of the note contained a list of some of the important issues that had been derived from the submissions, with a view to assisting the participants in focusing their deliberations. Finally, he explained that recommendations of a more general nature were suggested in section V, for the consideration by the participants. The representative of the Secretariat ended by explaining that full text of the submissions of the Parties, Governments and relevant

international organizations had been circulated as an information document (UNEP/CBD/BS/TE-18.2a/INF/1).

17. The Chair thanked the Secretariat and asked the participants for general observations as to the elements involved in the consideration of the two sentences of paragraph 2 (a) of Article 18.

18. Opening statements were made by the experts from Argentina, Australia, Brazil, Canada, Egypt, India, Jamaica, Namibia, Nigeria, Norway, the Republic of Korea, Tunisia, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, as well as a representative from International Grain Trade Coalition.

19. The following main points were raised:

(a) That if a shipment is known to contain living modified organisms (LMOs) then the nature of these LMOs should be described;

(b) That a distinction should be made between shipments with LMOs and those without LMOs;

(c) That LMOs for food, feed or processing (FFP) are best considered as commodities;

(d) That there is a clear linkage between paragraph 2 (a) and paragraph 2 (c) or Article 18;

(e) That there is a linkage between paragraph 2 (a) and Article 11 of the Protocol;

(f) That LMOs-FFP have already been approved for intentional introduction into the environment;

(g) That there was a need to respect the wording of paragraph 2 (a);

(h) That if a shipment is known to contain LMOs, then there is no reason not to state this on any accompanying documents;

(i) That there was a need to identify the LMOs so that the Party of import could identify them and undertake testing to verify the contents of a shipment;

(j) That there was no need to undertake such testing, as a risk assessment would have already been done;

(k) That there was a need for a unique identifier linked to the Biosafety Clearing-House (BCH) to accomplish this;

(l) That the phrase "may contain" might be too vague;

(m) That the use of the phrase "may contain" might misrepresent the nature of a shipment of LMOs;

(n) That to avoid such misrepresentation there should be a threshold level established so that a developing country could perform the risk assessment under paragraph 6 of Article 11;

(o) That bulk commodities were at issue in consideration of paragraph 2 (a) of Article 18 and such was not the case with Article 11;

(p) That there was a need to protect biodiversity in a way that allows the movement of commodities in the least costly ways;

(q) That the transboundary movement of grain occurs on a large scale, and such trade is important in providing for the world's food requirements.

20. The Chair thanked the participants for their general interventions. He noted that there was a need to proceed in a stepwise manner in consideration of some of these issues.

21. Statements were then made by the experts from Argentina, Australia, the Islamic Republic of Iran, Jamaica, Norway, the United Republic of Tanzania, as well as a representative from the International Grain Trade Coalition.

22. The following main points were raised:

- (a) That there was a need to establish a relatively low threshold level for LMOs to protect biodiversity;
- (b) That bulk commodities moved to certain grade specifications;
- (c) That there can be no zero-tolerance with bulk shipping;
- (d) That even a threshold of 5% adventitious material would involve increased costs;
- (e) That there was a need to establish what threshold levels would be appropriate;
- (f) That commodities shipped for one purpose, such as food or feed or for processing, are often used for another, such as planting;
- (g) That the identification “may contain” living modified organisms could appear on a commercial invoice;
- (h) That a decision to use a commercial invoice ought to depend on whether it were linked to a unique identifier and the Biosafety Clearing-House;
- (i) That documents should be clear, simple and not misleading;
- (j) That there was a need to state the contents of the LMOs to ensure that exporters were in compliance with the domestic law of the importer;
- (k) That any documents should be easy to handle by those who would have to use them;
- (l) That if commercial documents are used then they should state which LMOs are in the shipment and that this should be connected to a harmonized code with a linkage to the Biosafety Clearing-House.

23. The Chair noted that this discussion had raised several issues. He observed that the information to be included in shipping documents had been directly provided by the Protocol, although this information could be further refined by the ICCP or the Conference of the Parties.

24. Further statements were then made by the following experts from Brazil, Cuba, Egypt, the European Commission, France, Ghana, India, the Islamic Republic of Iran, Mexico, Namibia, Norway, Palau, Switzerland, Tunisia, the United Republic of Tanzania, and the United States of America, as well as representatives from the International Grain Trade Coalition and Third World Network.

25. The following additional points were made:

- (a) That transshipment of bulk cargo meant that it was impossible to ensure cargo purity;
- (b) That in the case of transshipment of bulk cargo, if all LMOs, including those that are unintentionally present, were required to be named then every subsequent country would also have the responsibility for accuracy of the description of the cargos leaving their borders;
- (c) That the description of the contents of a cargo was not simply of use to port authorities but was also of use to the competent national authorities;
- (d) That the environment should not have to support trade but that each should support the other;
- (e) That the costs of trade should not be externalized on to the environment;
- (f) That the costs should not be externalized on to the small producers and place them at a trade disadvantage;

- (g) That those who cannot afford certified seed could use LMOs intended for FFP instead;
- (h) That LMOs-FFP had already been in circulation for the past eight years;
- (i) That if more detailed information was required in the shipping documents for all LMOs, including those that were unintentionally present, then all countries would have to adopt that requirement and shoulder the associated costs;
- (j) That any further requirement for a description of the LMOs would be burdensome and stretch the capacity of the bulk trade system;
- (k) That it was possible to assure a reasonable level of purity in shipments of grains;
- (l) That documents should be clear and simple but also include the notification that the FFP was not intended for release into the environment;
- (m) That additional information was not needed as such information was already with the Biosafety Clearing-House;
- (n) That information was required for those LMOs-FFP that could spread and establish themselves in the environment;
- (o) That LMOs were a fact of life for major exporters;
- (p) That there was a need to discuss operational realities as the Protocol could be in force within six months;
- (q) That, given the variety of documents in use, the commercial invoice that always accompanies a shipment should be used;
- (r) That it was not clear that the commercial invoice was the best choice of documentation;
- (s) That the generalized use of the term “may contain” LMOs would be too vague;
- (t) That the burden should be on the exporter and grower to identify the LMOs, if Article 11 was to be implemented;
- (u) That the term “may contain” was useful if one focused on the intent of the shipment;
- (v) That recommendations had to be made to the ICCP and that the recommendations of the previous week could be a starting point.

26. The Chair observed that many ideas had been laid out which related to: the first sentence of paragraph 2 (a), the second sentence of paragraph 2 (a), Article 11 of the Protocol and the discussions of the previous week. He thanked the participants for their contributions and suggested that the Meeting could continue by discussing those elements essential to the first sentence and suggested that the participants wait to, to discuss in greater detail those elements appropriate to the second sentence, until after a consensus had been reached on the first sentence.

27. At the start of the second plenary session, the Chair summarized the work of the first session. He noted that the issue of the documentation had been discussed and that there seemed to be general agreement on the use of existing forms of documentation accompanying shipments, such as commercial invoices, with the caveat that we might revisit this in light of further comments, which may be made. He observed that that the issue of the Contact Point had not been raised and he noted that the requirement that a reference in a document that the shipment “may contain LMOs” needed to be discussed as statement of some form would have to appear in documents. He suggested that the participants address the first two points and then deal with the central issue of what “may contain” might mean later.

Documents to accompany LMO for food, feed and processing

28. Statements were made by the experts from Australia, the European Community, Namibia, and Norway, and by representatives from the International Grain Trade Coalition and Third World Network.

29. The following main points were raised:

- (a) That commercial invoices could be used pending consideration of the need to develop stand alone documentation;
- (b) That the use of a commercial document will depend upon the creation of a unique identifier;
- (c) That commercial documentation was not controlled by national authorities or was not under the supervision of the Cartagena Protocol;
- (d) That no unique identifier was as yet in operational existence;
- (e) That the use of existing documentation was the only course currently open;
- (f) That if the Conference of the Parties later revisited the issue, it would run up against a system of documentation already in place;
- (g) That there were a number of certificates in international trade, but that the only document always accompanying a shipment was the commercial invoice;
- (h) That the Secretariat was in contact with relevant international organizations about their systems of documentation;
- (i) That while the Protocol created obligations between the Parties, a commercial invoice only bound the exporter and importer.

Contact point

30. The Chair then asked the participants to address the issue of the second element in the first sentence of paragraph 2 (a) of Article 18, the contact point. On the suggestion of one participant that the Meeting could adopt language along the lines of the recommendation on the issue approved by the Second Meeting of Experts on Paragraphs 2 (b) and 2 (c) of Article 18, the Chair asked the Secretariat to read to the participants the relevant recommendation.

31. Statements were made by the experts from Australia, Brazil, Canada, Ecuador, France, Germany, Ghana, India, Iran (Islamic Republic of), Jamaica, Namibia, Norway, Palau, Pakistan, Switzerland, Tunisia, and the United States of America, and by representatives from Third World Network and Greenpeace International.

32. The following main points were raised:

- (a) That the contact point should be the exporter;
- (b) That the contact point could be the exporter, the importer or any other person sufficiently knowledgeable about the shipment;
- (c) That the most important issue was not which person but which person had the most knowledge;
- (d) That the person or the institution with the most knowledge should be the contact point;
- (e) That the Biosafety Clearing-House could be a contact point;
- (f) That there could be more than one contact point;
- (g) That the exporter and a competent authority should be contact points;
- (h) That as the invoice always had both the exporter and importer listed, the best contact point was those directly involved in the shipment;
- (i) That the contact point should be related to the elements in the documentation otherwise the Contact Point would be vague;
- (j) That the contact point should lead to information at the Biosafety Clearing-House;

(k) That paragraph 2 (a) referred to commodities and trade and thus commercial invoices were the best documents and pointed to the importer and exporter;

(l) That the primary contact point should be the exporter with a competent authority as a secondary contact point;

(m) That a reference to national authorities as a contact point would rectify a weakness in using commercial invoices;

(n) That the language of paragraph 2 (a) did not refer to certification or competent authorities;

(o) That developing countries were not always easily able to access information at the Biosafety Clearing-House;

(p) That the contact point should be easily accessible in an emergency;

(q) That the contact point should be someone intimately involved in the shipment, such as the exporter or importer otherwise the discussion becomes one of import permit;

(r) That a contact point meant a national authority;

(s) That countries needed as much information as possible to make informed decisions about the import of LMOs-FFP;

(t) That the reference to a contact point should be read in light of Article 11 and Annex II of the Protocol;

(u) That there was a need for reliable information and that the exporter and the importer were those best placed to give such information.

33. The Chair noted that while the text of the provision required that there be a Contact Point, another consideration was whether it would be possible to have a primary Contact Point and secondary Contact Points. The Chair then asked the participants to begin to consider the issue of the statement that a shipment “may contain” living modified organisms. To this end he asked the participants to consider the case where an entire shipment would be comprised of living modified organisms.

Identification of living modified organisms intended for direct use as food or feed, or for processing

34. Statements were made by the experts from Argentina, Australia, Brazil, Cameroon, Canada, Croatia, Denmark, Egypt, the European Community, France, Ghana; Germany, India, Iran (Islamic Republic), Italy, Jamaica, Kenya; Mexico, Namibia, Nigeria, Norway, Pakistan, Palau, Poland, the Republic of Korea; Sweden; Switzerland, Tunisia, the United States of America, and Viet Nam; and by representatives from the International Grain Trade Coalition, Global Industry Coalition, Third World Network, and Greenpeace International.

35. The following main points were raised:

(a) That there was a need to take into consideration levels of literacy and establish an easily identifiable sign or logo; that there was a need to look for a standard threshold level;

(b) That the simple reiteration of the language of the Protocol would misrepresent the shipment in this case;

(c) That there was a need to be able to trace the shipment and know what it contained;

(d) That if the shipment were only of LMOs then the shipping document would say this anyway;

(e) That Article 18 of the Protocol had to be read in light of Article 11 and Annexes II and III to the Protocol in order to provide a link to the Biosafety Clearing-House;

- (f) That the phrase “may contain” is a recognition in the Protocol that LMOs for FFP should be treated differently from those in paragraphs 2 (b) and 2 (c);
- (g) That in the case of a known shipment of LMOs , then the nature of the LMOs should be stated;
- (h) That there was a need to follow the language of the Protocol;
- (i) That while the shipment may be known to contain LMOs the nature of the specific transformations would probably not be know;
- (j) That consumers would have more confidence if tests were done on imported shipments and the results were known;
- (k) That with bulk handling it was impossible to rule out the importation of any particular LMO;
- (l) That where this information is available it should be given;
- (m) That the LMOs had to be identified to ensure that they complied with those approved by the importing country;
- (n) That where the shipment is known to contain LMOs countries should make a voluntary declaration to this effect;
- (o) That there would never be a pure shipment of an LMO and that all bulk shipments of LMOs are, for all practical purposes, always commingled with other LMOs and non-LMOs;
- (p) That because of the above-mentioned problem some countries refused to import certain produces;
- (q) That the phrase “may contain” is an interim measure pending decision by the COP/MOP as provided for by the second sentence of paragraph 2 (a) of Article 18;
- (r) That where material is transhipped that everyone must understand that LMOs might be involved;
- (s) That where LMOs were known to be in a shipment the words “may contain” should be followed by a description of the LMOs involved;
- (t) That there was a need to seek legal advice for clarification of the apparent contradictions in the first sentence of paragraph 2 (a) of Article 18;
- (u) That there was a need for a precautionary approach;
- (v) That there was a need to identify the LMOs including a reference to the transformational event and a unique identifier if available;
- (w) That there was a need to protect biological diversity in a way which did not interrupt trade;
- (x) That the listing of specific LMOs was needed to be able to reference these at the Biosafety Clearing-House;
- (y) That the effect of some of the proposals was to shift the burden of verification on the developing countries which had no easy access to the Biosafety Clearing-House;
- (z) That brokers and exporters would not, for all practical purposes, ship to those countries that would refuse a shipment of LMOs and that such information was at the Biosafety Clearing-House;
- (aa) That there is a problem of the costs associated with having to withdraw products for circulation after they have entered a country;

(bb) That the problem of the centre of origin had to be considered and that consideration should be given to the problem of what threshold to establish, bearing in mind the increasing costs involved with lower thresholds.

36. The Chair noted that this was clearly a complex issue, but that there was general agreement that with bulk grain shipments there will be a mixture of varieties, and that it might be impossible to guarantee the absence of LMOs. He summarized the discussion and noted that the language “may contain” might be a useful starting point, which could cover a number of events, and that such information is useful to the recipient. However there was also a need to connect the “may contain” of paragraph 2 (a) to the Biosafety Clearing-House, and that while the “may contain” language might not work, it would be for the Conference of the Parties serving as the meeting of the Parties to the Protocol to correct this.

37. At the beginning of the 3rd session, the Chair circulated a status report of the discussion by the participants at the 1st and 2nd sessions. He stressed that the text was not intended to be a draft recommendation and that it was simply a summary of his understanding of the issues, as they had been expressed by the participants, and on which there seemed to be a high degree of clarity. He asked the participants for their comments, of a general nature, on the status report.

38. Statements were made by the experts from Argentina, Australia, Brazil, Cameroon, Canada, Denmark, Ecuador; Egypt, the European Community, France, Ghana, India, Italy, Jamaica, Japan, Kenya, Mexico, Namibia, Norway, Pakistan, Palau, the Republic of Korea, Spain, Sweden, the United States of America and Viet Nam, and by representatives from the International Grain Trade Coalition, Greenpeace International, Third World Network.

39. The following main points were raised:

- (a) That references for LMOs-FFP should also include a reference to the transformation event;
- (b) That documentation should be clear, informative, simple, precise and easy to use, and not misleading;
- (c) That documentation should also be adequate and affordable;
- (d) That any “may contain” language should be more precisely specified;
- (e) That the “may contain” language is not strong enough;
- (f) That “may contain” language was an interim measure and there was a need to stick to the language of the Protocol;
- (g) That there was a need for a harmonized international approach;
- (h) That such a harmonized approach did not yet exist;
- (i) That there is at present no good way to detect the presence of adventitious/unintentional LMOs in a bulk shipment;
- (j) That a simple approach is therefore needed for the first sentence of paragraph 2 (a) of Article 18 and that a reference to “may contain” is the best way to do this;
- (k) That there was a need that information be informative to those who will use it;
- (l) That it was not certain that the importer would be able to provide adequate information on LMOs-FFP and so the exporter or the exporter’s agent ought to be the Contact Point;
- (m) That there was a need for recommendations which either suggested that the “may contain” language be addressed and/or clarified;
- (n) That it should be noted that LMOs-FFP were for food, feed and processing only;
- (o) That there was a need to capture the language of Article 11 with reference to LMOs-FFP;

- (p) That there needed to be a linkage to the Biosafety Clearing-House;
- (q) That a linkage to the BCH would not be useful;
- (r) That there should be a transfer of technology to those who would need it, but did not yet have it;
- (s) That existing commercial documents already indicated the country of origin together with a description of the material being shipped;
- (t) That the description ought to include a description of the transformation event;
- (u) That it was possible to include a reference to the transformation event at this time;
- (v) That there was a need to boost consumer confidence and that the disclosure of such information would help;
- (w) That it was the importers who needed such information;
- (x) That there was a need for the name of the variety of the LMO to be specified in the documentation;
- (y) That there was need for information on the host organism and the donor as well;
- (z) That there was a need for thresholds;
- (aa) That there was a need for the Conference of the Parties serving as the meeting of the Parties to establish threshold values to set baselines;
- (bb) That it was not useful to go down this route;
- (cc) That in the case of the specificity of the LMOs-FFP in a shipment, the lack of a threshold could be a problem;
- (dd) That there should not be an unnecessary increase in the costs of commodities in bulk trade;
- (ee) That no transboundary shipment could take place without a contract between the importer and exporter in which each of them would verify that the contract could be completed by the importer taking delivery of the shipment;
- (ff) That there was a link between the elements to be flagged in a document and the need for development of internationally accepted standards;
- (gg) That importers were better contact points as they would be certain to speak local languages and also be aware of the contents of the shipments;
- (hh) That bulk commodities can contain LMOs with a number of different transformation events.

40. The Chair synthesized the discussion to this point. He thanked the participants for their observations on his status report and recalled that the participants could only make recommendations to the ICCP. He then asked the participants for their views on the linkage between the “may contain” language and the elaboration of the additional information that this might contain. He noted that a connection to the Biosafety Clearing-House could occur at this point, which could in turn lead to the competent national authorities. There was, however, also a need to examine the concept of thresholds; and while thresholds, were problematic, there was a need to explore this issue in order to make recommendations to the ICCP so that preparations could go ahead for the first meeting of the Conference of the Parties serving as the meeting of the Parties. The Chair then asked the participants for their views.

The issue of thresholds relating to the adventitious/unintentional presence of LMOs

41. Statements were made by the experts from Australia, Cameroon, Canada, the European Community, Norway, the United States of America, Venezuela, and Viet Nam, and by representatives from the International Grain Trade Coalition and Greenpeace International.

42. The following main points were raised:

- (a) That the quality of commodities was controlled all along the line;
- (b) That with bulk shipments there was generally an allowance for tolerances for adventitious/unintentional materials;
- (c) That a lower level of tolerance would lead to a more expensive product;
- (d) That the European Commission was investigating standards of tolerance for LMOs;
- (e) That a five per cent threshold as suggested by the grain industry representative would be too high;
- (f) That some domestic laws currently specified a 2 per cent or 3 per cent threshold;
- (g) That there was a need to wait and see what experience had been gained before recommending a threshold to the ICCP;
- (h) That the ICCP should request a synthesis of the international practices on thresholds;
- (i) That there was a need for the Meeting to stick to its mandate and that the discussion of thresholds was not within that mandate.

43. At the 4th session of the meeting, the Chair asked the participants to address two further issues: the adventitious/unintentional introduction of LMOs into a shipment that should not contain them, and the consideration that the “may contain” language of Article 18 paragraph 2 (a) might affect technical ability of the Parties to implement the Protocol.

Adventitious/unintentional presence of LMOs in non-LMO shipments

44. Statements were made by the experts from Argentina, Brazil, Cameroon, Egypt, the European Community, Germany, India, the Islamic Republic of Iran, Jamaica, Namibia, Norway, Pakistan, Palau, Sweden, Switzerland, Tunisia, the United Republic of Tanzania, and the United States of America and representatives from the International Grain Trade Coalition and Third World Network.

45. The following main issues were raised:

- (a) That the Protocol did not apply to cases of non-LMO shipments;
- (b) That the above-mentioned issue was one that needed to be addressed under domestic legislation;
- (c) That thresholds should be linked to the “may contain” language, and this should be linked to the Biosafety Clearing-House so as to not overload documents;
- (d) That too much responsibility was being put on exporters when they could not assure that there would be a non-LMO shipment would be free of LMOs;
- (e) That exporters had no control over the actual shipment once it had left their hands and could face liability for small amounts of unintentional presence of LMOs in shipments;
- (f) That commingling could occur in the preparations for shipment;
- (g) That there might be a disclaimer on documents that the exporter was not responsible for the consequences of contamination during shipment;
- (h) That exporters should be expected not to violate the objectives of the Protocol;

- (i) That if the exporter is not to be liable for the presence of the LMOs in a shipment, then the Party to the Protocol ought to be instead;
- (j) That it might not be possible to assure that a shipment of non-LMO-FFP, such as wheat, was free of other LMOs from other species;
- (k) That the purpose of the “may contain” language was to highlight that the LMOs are likely to be part of any bulk shipment;
- (l) That as an interim measure a 5 per cent threshold ought to be considered, and that such a level would not be too costly;
- (m) That the term “GMO-free” is a misnomer;
- (n) That there was a premium to be paid for lower tolerances;
- (o) That it was a practical impossibility to avoid contamination in a non-LMO shipment by LMOs;
- (p) That there were no adequate tests to establish the extent of all the different kinds of contamination which might occur in a single shipment;
- (q) That where mixing was unintentional, it would be uncontrollable, while if it were intentional then it would be controllable;
- (r) That the documentation should state the level of uncertainty as to whether the shipment contained LMOs;
- (s) That the problem was really a question of what balance should be struck between the exporter and importer, especially when the importer is in the developing world;
- (t) That although there were different levels of risk, a baseline had to be established;
- (u) That there should be zero tolerance of contamination by LMOs;
- (v) That it was possible to indicate the transformation event;
- (w) That the purpose of a threshold was to help encourage trade;
- (x) That a blanket 5 per cent threshold could not be accepted;
- (y) That thresholds should be decided between the buyer and the seller;
- (z) That the exporter should not be blind to the likely presence of LMOs in a shipment;
- (aa) That there should be sampling to verify compliance with national laws and an indication of the transformation events would help in this;
- (bb) That there should be precautionary measures to isolate LMOs from non-LMOs;
- (cc) That there was a need to use the “may contain” wording in combination with a list of transformation events;
- (dd) That thresholds should only apply when there had been an intentional inclusion of LMOs in a shipment;
- (ee) That the purpose of the Protocol was to protect biodiversity;
- (ff) That industry should be encouraged to improve its practices;
- (gg) That industry should not be intentionally blind to the effect of its practices;
- (hh) That it was important to protect biodiversity, and exporters should give standardized data on any detected LMOs in a shipment;
- (ii) That a study should be done of the threshold issue.

46. The Chair noted that a number of important elements had been aired. These included the implementation of the first sentence of paragraph 2 (a) of Article 18, and issues to be considered by the Conference of the Parties serving as the meeting of the Parties to the Protocol, including ongoing work in preparation for the Conference of the Parties, such as studies.

47. Statements were then made by the experts from Australia; Brazil, Denmark; Egypt, the European Community, France, Ghana; India, the Islamic Republic of Iran; Jamaica, Japan; Mexico, Namibia Spain, and a representative from the International Grain Trade Coalition.

48. The following additional points were raised:

(a) That a shipment might contain LMOs that were not authorized for import, or authorized ones but over a certain threshold and that they could be refused entry;

(b) That there may be LMOs authorized for one purpose, such as feed, which were not authorized for another, such as food;

(c) That the Secretariat ought to research the issue of thresholds;

(d) That a threshold of 5% seemed too high;

(e) That there was a need for industry to re-evaluate its practices;

(f) That a recommendation should be made to Industry to review its practices;

(g) That there should flexible thresholds;

(h) That most developed countries have a zero tolerance to unapproved LMOs;

(i) That zero tolerance was the only tolerance acceptable for the environment;

(j) That there should be a recommendation to the ICCP that it request more information on thresholds;

(k) That the exact transformation event in a shipment can often be stated;

(l) That not all shipments were bulk cargo such as grain;

(m) That the Meeting did not have a mandate to consider the unintentional transboundary movement of LMO-FFP;

(n) That LMOs-FFP would be useful to the economies of the developing world;

(o) That LMOs-FFP present different levels of risk, and that the risks increased when cross pollination was involved;

(p) That pending the development of standards for scientific sampling and detection techniques, there was a need for agreed tolerance levels;

(q) That adequate testing technologies were being developed.

Issues that may affect the technical ability of Parties to implement paragraph 2 (a) of Article 18

49. The Chair then asked the participants to consider what policy issues affecting the technical ability of the Parties to implement paragraph 2 (a) of Article 18 ought to be drawn to the attention of the ICCP.

50. Statements were made by the experts from Australia, Germany, India and Norway,

51. The following issues were raised:

(a) That any recommendations made on this issue be for consideration by the ICCP in preparation for consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(b) That there was a need to develop a unique identifier connected to the Biosafety Clearing-House;

- (c) That there was a need to get the advice of industry on the sampling of adventitious LMOs;
- (d) That there was a need to get the advice of Governments and industry;
- (e) That the “may contain” phrase involved thresholds;
- (f) That the “may contain” phrase presented difficulties in identifying shipments known to contain LMOs-FFP; and
- (g) That, while industry ought to develop methods of scientific methods of sampling and identification, transformational traits associated with LMOs that are subject to transboundary movement had to be disclosed as well, bearing in mind the need for the Conference of the Parties serving as the meeting of the Parties to the Protocol to develop scientific standards.

ITEM 4. RECOMMENDATIONS

52. At the 5th session of the meeting, on Wednesday, 20 March 2002, the experts considered the draft recommendations, prepared by the Chair on the basis of the discussions.
53. Following a discussion, in which a number of experts participated, the Chair informed the experts that he would redraft a part of the preamble to the recommendations.
54. At the 6th session of the meeting, the experts continued their discussion of the revised text of the recommendations, as amended to include a proposal of the expert from Egypt.
55. The experts approved the draft recommendations, as amended in the course of discussion, for transmission to the ICCP at its third meeting. The text of the recommendations is annexed to the present report.
56. The expert from Namibia expressed his view that there should be a reference to the final destination of shipments in paragraph 1 (f) of the recommendations.
57. The expert from India expressed his view, in connection with paragraph 3 (a) of the recommendations, that future consideration of the identification requirement contained in the first sentence of paragraph 2 (a) of Article 18 should be put in context in that the phrase “clearly identifies them as they ‘may contain’ ” needed to be looked at, not merely the “may contain” portion of it.
58. The expert from Australia expressed his view that the introductory sentence, or chapeau, of recommendation 3 should read “With regard to implementation of paragraph 2 (a) of Article 18, the Meeting of Technical Experts identified the following issues that may warrant future consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol”.

ITEM 5. OTHER MATTERS

59. No other matters were raised for discussion.

ITEM 6. ADOPTION OF THE REPORT

60. The present report was adopted on 20 March 2002, on the basis the draft report presented by the Rapporteur.

ITEM 7. CLOSURE OF THE MEETING

61. Following the customary exchange of courtesies, the meeting was closed at 8:30 p.m. on Wednesday, 20 March 2002.

*Annex***RECOMMENDATIONS OF THE OF THE MEETING OF TECHNICAL EXPERTS ON THE REQUIREMENTS OF PARAGRAPH 2 (a) OF ARTICLE 18 OF THE CARTAGENA PROTOCOL ON BIOSAFETY**

The Meeting of Technical Experts on the Requirements of Paragraph 2 (a) of Article 18 of the Cartagena Protocol on Biosafety,

Noting the urgent need to provide guidance to Parties and States on the modalities for the implementation of the first sentence of paragraph 2(a) of Article 18 of the Cartagena Protocol on Biosafety, as a requirement for Parties upon entry into force of the Protocol,

Noting also the linkage between the implementation of Article 11 and implementation of paragraph 2(a) of Article 18, and, further, that the operation of the Biosafety Clearing-House and the capacity to utilize it is essential for the effective implementation of paragraph 2(a) of Article 18, especially for developing countries, in particular the least developed and small island States among them, and countries with economies in transition,

Noting further:

(a) The complexity of the issues involved in the implementation of paragraph 2 (a) of Article 18 of the Protocol;

(b) The information provided by industry on the transboundary movement of agricultural commodities including bulk grains, whilst recognizing that this is only one example of transboundary movements that may contain living modified organisms intended for direct use as food or food, or for processing;

(c) The current state of methodology for identification of LMO content in shipments; and,

(d) The challenges in implementing the “may contain” provision and the second sentence of paragraph 2 (a) of Article 18 of the Protocol,

Acknowledging that the recommendation on implementation of the first sentence of paragraph 2 (a) of Article 18 in no way affects the right of Parties:

(a) To reach a decision, under their domestic legislation and consistent with their other obligations under international law, regarding the import of living modified organisms intended for direct use as food or feed, or for processing;

(b) To take further measures consistent with Article 2, paragraph 4, and Article 11, paragraph 4, of the Protocol, including on identification,

Recognizing that implementation of the requirements contained in the first sentence of paragraph 2 (a) of Article 18 is on an interim basis, pending the decision referred to in the second sentence of paragraph 2 (a) of Article 18,

Further recognizing that, as reflected in the report of the meeting, different views were expressed by a number of experts with regard to the extent of necessary information according to the first sentence of paragraph 2 (a) of Article 18 or the potential need for additional information (in sections highlighted by an * in the text) that would assist further in the implementation of the first sentence of paragraph 2 (a) of Article 18,

Aware that the Conference of the Parties serving as the meeting of the Parties to the Protocol shall take a decision on the detailed requirements of documentation accompanying living modified organisms intended for direct use as food or feed, or for processing, including specification of their identity and any unique identification no later than two years after the date of entry into force of the Protocol,

Submits the following for consideration by the Intergovernmental Committee for the Cartagena Protocol on Biosafety:

1. Regarding modalities for the implementation of the requirements for the documentation accompanying transboundary movements of living modified organisms intended for direct use as food or feed, or for processing, contained in the first sentence of paragraph 2 (a) of Article 18, required upon the entry into force of the Protocol, the Meeting of Technical Experts recommends that:

(a) Pending consideration of the need to develop stand-alone documentation accompanying living modified organisms intended for direct use as food or feed, or for processing, measures should be taken by Parties and Governments to require integration of the information requirements of the first sentence of paragraph 2 (a) of Article 18 into existing documentation supplied by the originator of the shipment;

(b) The documentation should accompany all shipments for food or feed, or for processing, that intentionally contain LMOs;

(c) The documentation should be informative, clear, precise and easy to use;

(d) The documentation should state that the shipment “may contain LMOs intended for direct use as food or feed, or for processing, that are not intended for intentional introduction into the environment, * and that additional information on the living modified organisms intended for direct use as food or feed, or for processing, is available through the Biosafety Clearing-House”;

(e) *In order to facilitate access to the information in the Biosafety Clearing-House, exporters be encouraged to provide additional information on the specific living modified organisms in the shipment if known and not already provided elsewhere on the accompanying documentation, to facilitate implementation of paragraph 2 (a) of Article 18;

(f) The documentation should include information on a contact point for further information, who should be an individual or organization in possession of relevant information. The information should include contact details necessary to reach them as fast as possible especially in case of emergency. The contact point may be the exporter, importer, or any other appropriate individual, authority, or organization.

2. Regarding the issues to be addressed in preparation for the decision by the Conference of the Parties serving as the meeting of the Parties to the Protocol referred to in the second sentence of paragraph 2 (a) of Article 18, the Meeting of Technical Experts identified that the following issues need to be considered, and recommends that Parties, Governments, and other relevant stakeholders including industries and non-governmental organizations should be requested to submit information, views and advice on:

(a) Operational experience, including the relevance and usefulness of other international systems, standards and provisions, on the effectiveness and efficiency of the implementation of the first sentence of paragraph 2 (a) of Article 18 with regard to achieving the objective of the Protocol;

(b) The need for and the development of a harmonized/unique identification system applicable to LMOs under paragraph 2(a) of Article 18 as a means to provide direct access to pertinent information;

(c) The need for and the development of affordable, accessible, internationally accepted standard methodology for the sampling, detection and identification of LMOs intended for direct use as food or feed, or for processing;

(d) Any linkages between paragraph 2 (a) and paragraph 3 of Article 18.

3. With regard to the implementation of paragraph 2(a) of Article 18, the Meeting of Technical Experts identified the following issues that may warrant future consideration:

(a) Clarification/elaboration on the application of the language in paragraph 2(a) of Article 18, specifically the “may contain” phrase, where the identity of the specific LMO(s) in a transboundary movement is known and verified;

(b) The issue of unintentional/adventitious presence of LMO(s) in the context of paragraph 2 (a) of Article 18;

(c) The lack of and possible need for an independent report on current practices in the handling and trans-boundary movements of products for food or feed, or for processing, as they impact on implementation of paragraph 2 (a) of Article 18, including an assessment of the possible costs of implementation including Identity Preservation systems for living modified organisms intended for direct use as food or feed, or for processing.
