

**Committee on Trade and Environment**

CONVENTION ON BIOLOGICAL DIVERSITY: RECENT DEVELOPMENTS

Note by the Secretariat

1. The Second Conference of the Parties to the Convention on Biological Diversity was held in Jakarta from 6 to 17 November 1995. The Conference adopted twenty-three Decisions (see UNEP/CBD/COP/2/19), of which the WTO was mentioned in one, i.e. Decision II/12 on "Intellectual Property Rights" (see Annex). The Annex to this Note provides the texts of certain Decisions which are likely to be of particular interest to the Members of the Committee on Trade and Environment, in view of their statements at the meeting of the Committee on 21 June 1995 when the issue of environment and TRIPs was discussed.<sup>1</sup>
2. The Conference of the Parties also decided the main issues to be considered in its work programme for 1996 and 1997. For 1996, the work programme of the Conference of the Parties includes a consideration of, *inter alia*, access to genetic resources and issues related to technology ("to consider the compilation of views of Parties on possible options for developing national legislative, administrative or policy measures, as appropriate, to implement Article 15, [and] to consider ways to promote and facilitate access to and transfer and development of technology, as envisaged in Articles 16 and 18 of the Convention"). For 1997, the work programme of the Conference of the Parties includes a consideration of, *inter alia*, technical and scientific cooperation, and consideration of matters related to benefit-sharing ("to consider measures to promote and advance the distribution of benefits from biotechnology in accordance with Article 19").
3. The third meeting of the Conference of the Parties to the Convention on Biological Diversity will take place in Buenos Aires from 4 to 15 November 1996.

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<sup>1</sup>Other Decisions of the Conference of the Parties include: Report of the First Meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (Decision II/1); Financial Resources and Mechanism (Decision II/6); Preliminary Consideration of Components of Biological Diversity Particularly Under Threat and Action Which Could Be Taken Under the Convention (Decision II/8); Forests and Biological Diversity (Decision II/9); Conservation and Sustainable Use of Marine and Coastal Biological Diversity (Decision II/10); Cooperation With Other Biodiversity-Related Conventions (Decision II/13); Convening of an Open-Ended Intergovernmental Workshop on Cooperation Between the Convention on Biological Diversity and Other International Conventions on Related Issues (Decision II/14); FAO Global System For Plant Genetic Resources For Food And Agriculture (Decision II/15); Statement to the International Technical Conference On the Conservation and Utilization of Plant Genetic Resources For Food and Agriculture (Decision II/16); Medium-Term Programme of Work of the Conference of the Parties for 1996-97 (Decision II/18); Convening of Regional and Sub-Regional Meetings for Parties to the Convention (Decision II/22).

ANNEX

**Texts of certain Decisions taken by the Conference of the Parties to  
the Convention on Biological Diversity**

Decision II/2: Publication and Distribution of Scientific and Technical Information

The Conference of the Parties,

*Noting* the importance of scientific and technical work being undertaken by other international and intergovernmental organizations to the medium-term programme of work;

*Aware* that such inputs have already contributed to advancing the work of the Subsidiary Body on Scientific, Technical and Technological Advice;

*Requests* the Executive Secretary, in consultation with the Bureau of the Subsidiary Body, to identify and mobilize, for publication and distribution, scientific and technical information of relevance to the medium-term programme of work recognizing the limitations of the budget.

Decision II/3: Clearing-House Mechanism

The Conference of the Parties,

1. *Takes note* of the document prepared by the Secretariat on the establishment of the clearing-house mechanism to promote and facilitate technical and scientific cooperation (document UNEP/CBD/COP/2/6);
2. *Notes* that many information systems and activities relevant to the objectives of the Convention have been and are being established at international, subregional, regional and national levels;
3. *Notes* that the enhanced cooperation between these information systems and activities will contribute to capacity-building, and notes that, in this context, the role of the Secretariat is to promote and facilitate access to this clearing-house mechanism;
4. *Decides*, as a contribution to the implementation of the objectives of the Convention, that the clearing-house mechanism, established by decision I/3 adopted at its first meeting in accordance with article 18, paragraph 3 of the Convention, should be developed:
  - (a) Starting with a pilot phase for 1996-1997;
  - (b) Through specific and focused areas of activities related to the promotion of international technical and scientific cooperation;
  - (c) By gradually building up its functions in response to clear and identified demand based on experience gained and resources available;
  - (d) In a neutral, transparent cost-effective, efficient and accessible manner;
  - (e) As a decentralized mechanism using such resources as print and electronic media, including the Internet;

- (f) By making full use of existing facilities, which will avoid any duplication or overlap activities and allow for the early implementation of the mechanism;
  - (g) In close cooperation with relevant international organizations and entities as active partners in the clearing-house mechanism to maximize the existing experience and expertise;
  - (h) By enhancing networking between existing national, regional, subregional and international centres of relevant expertise, as well as governmental and non-governmental institutions and the private sector;
5. *Decides also* that, during the pilot phase for 1996-1997, the Secretariat should act as a focal point and should:
- (a) Encourage the development of a network of active partners, such as those specified in 4(h). These partners should focus initially on:
    - (i) developing national capabilities through exchanging and disseminating information on the experiences and lessons learned by Parties on the implementation of the Convention. This can be done through guidelines, training programmes, seminars, workshops, where appropriate, and upon request, and by using the clearing-house mechanism;
    - (ii) facilitating access to and dissemination of research relevant to the objectives of the Convention;
    - (iii) facilitating the transfer of technology through exchanging and disseminating information on experiences and technologies relevant to the conservation and sustainable use of biological diversity;
  - (b) Provide information on and facilitate access to these operating active partners;
  - (c) Support the active partners to develop specific training for the effective participation of users in the clearing-house network;
6. (a) *Decides also* to provide funding for the pilot phase through the budget of the Convention;
- (b) *Calls also* upon the international community to make additional voluntary contributions for the implementation of the pilot phase;
7. *Takes note* of the designation by Parties of their national focal point for the clearing-house mechanism (document UNEP/CBD/COP/2/Inf.5) and calls upon those who have not designated their focal point to do so, where appropriate, as soon as possible, and no later than February 1996;
8. *Invites* all relevant international, regional, subregional and national organizations and entities willing to offer their cooperation as active partners in the operation of the clearing-house mechanism to communicate the details of their offer and requests the Executive Secretary of the Secretariat to enter into collaborative arrangements and to report to its third meeting on the results of such arrangements;

9. *Requests* the Global Environment Facility to explore the modalities of providing support through the financial mechanism to developing country Parties for capacity-building in relation to the operation of the clearing-house mechanism and report to the Conference of the Parties at its third meeting;
10. *Decides* to review the implementation of the pilot phase of the clearing-house mechanism at its third meeting and requests the Executive Secretary to submit a progress report;
11. *Decides* also to review the implementation of the pilot phase at its fourth meeting and requests the Subsidiary Body on Scientific, Technical and Technological Advice to provide scientific and technical advice.

Decision II/4: Ways and Means to Promote and Facilitate Access to,  
and Transfer and Development of Technology

The Conference of the Parties,

1. *Takes note* of recommendation I/4 on ways and means to promote and facilitate access to, and transfer and development of technology as envisaged in Articles 16 and 18 of the Convention, adopted by the first meeting of the Subsidiary Body on Scientific, Technical and Technological Advice, held in Paris, at the headquarters of the United Nations Educational, Scientific and Cultural Organization, from 4 to 8 September 1995;
2. *Endorses* paragraph 1(d) of recommendation I/4, requesting the Executive Secretary to prepare, for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice at its second meeting, a substantive and well-focused background document, taking into account the views expressed by States Parties and observers during the first meeting of the Subsidiary Body on Scientific, Technical and Technological Advice, the first and second meetings of the Conference of the Parties, including those decisions related to the clearing-house mechanism, and the deliberations of the first and second sessions of the Intergovernmental Committee on the Convention on Biological Diversity, and of the open-ended Intergovernmental Meeting of Scientific Experts on Biological Diversity, held in Mexico in April 1994, including its annexed UNEP Expert Panel Reports I to IV. Such a background document should consider the importance of biotechnology to the conservation and sustainable use of biological diversity, especially to developing countries, as well as the enabling roles of capacity-building and the provision of adequate financial resources;
3. *Endorses also* paragraph 1(e) of recommendation I/4, requesting the Executive Secretary to invite relevant submissions by States Parties, observers and relevant international and non-governmental organizations, including, in particular, the Commission on Sustainable Development and the private sector and to take these into account in the preparation of the background document. The document should also take due cognisance of regional and subregional inputs and comments. The background document should identify key priority issues relating to opportunities for and obstacles to the transfer of technology for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice;
4. *Requests* the second meeting of the Subsidiary Body on Scientific, Technical and Technological Advice to submit a detailed report to the third meeting of the Conference of the Parties.

Decision II/5: Consideration of the Need for and Modalities of a Protocol for the Safe Transfer,  
Handling and Use of Living Modified Organisms

The Conference of the Parties,

1. *Recalling* Article 19, paragraph 3, of the Convention on Biological Diversity,
2. *Recognizing* the link between paragraphs 3 and 4 of Article 19,
3. *Recognizing also* the link between Articles 8 (g) and 19, paragraph 3,
4. *Recalling* its decision I/9 made at its first meeting, held in Nassau, Bahamas, from 28 November to 9 December 1994,
5. *Having considered* the report and recommendations prepared for its second meeting by the Open-ended Ad Hoc Group of Experts on Biosafety, which met in Madrid from 24-28 July 1995,
6. *Recognizing* that modern biotechnology has great potential for human well-being if developed and used with adequate safety measures for the environment and human health,
7. *Recognizing also* that, although considerable knowledge has accumulated, significant gaps in knowledge have been identified, specifically in the field of interaction between living modified organisms (LMOs) resulting from modern biotechnology and the environment, taking into account the relatively short period of experience with releases of such organisms, the relatively small number of species and traits used, and the lack of experience in the range of environments, specifically those in centres of origin and genetic diversity,
8. *Noting* that there is a need for further analysis of existing national, regional and international regulations and legally binding instruments of relevance to the impact of LMOs on the conservation and sustainable use of biological diversity,
9. *Affirming* that international action on biosafety should offer an efficient and effective framework for the development of international cooperation aimed at ensuring safety in biotechnology through effective risk assessment and risk management for the transfer, handling and use of any LMO resulting from modern biotechnology that may have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking into account the risks to human health, and taking also into account Articles 8(g) and 19, paragraph 4 of the Convention,
10. *Considering* that, although there are existing international agreements of relevance to the impact of LMOs resulting from modern biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity, none of these specifically address the transboundary movements of such LMOs, and therefore there is an urgent need to give attention to this issue,
11. *Taking into account* that the large majority of delegations present at the meeting of the Open-ended Ad Hoc Group of Experts on Biosafety favoured the development within the context of an international framework for safety in biotechnology of a protocol on biosafety under the Convention on Biological Diversity,

12. *Stressing* the importance of the urgent finalization of the United Nations Environment Programme International Technical Guidelines on Safety in Biotechnology and that this could contribute to the development and implementation of a protocol on biosafety, but noting that this does not prejudice the development and conclusion of such a protocol,
13. *Noting* that guidelines on biosafety, including the proposed United Nations Environment Programme International Technical Guidelines on Safety in Biotechnology, may be used as an interim mechanism during the development of the protocol and to complement it after its completion, for the purposes of facilitating the development of national capacities to assess and manage risks, establish adequate information systems and develop expert human resources in biotechnology,
  1. *Decides* to seek solution to the above-mentioned concerns through a negotiation process to develop in the field of the safe transfer, handling and use of living modified organisms, a protocol on biosafety, specifically focusing on transboundary movement, of any living modified organism resulting from modern biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity, setting out for consideration, in particular, appropriate procedure for advance informed agreement;
  2. *Decides* to establish an Open-ended Ad Hoc Working Group under the Conference of the Parties which shall operate in accordance with the terms of reference in the annex to this decision;
  3. *Requests* the Executive Secretary of the Convention to make the necessary arrangements for the Open-ended Ad Hoc Working Group to meet as soon as possible, at least once before the next meeting of the Conference of the Parties.

Annex to decision II/5

Terms of Reference for the Open-Ended Ad Hoc Working Group

1. The Open-ended Ad Hoc Working Group should be composed of representatives, including experts, nominated by Governments and regional economic integration organizations.
2. The Open-ended Ad hoc Working Group shall, in accordance with operative paragraph 1 of the present decision:
  - (a) elaborate, as a priority, the modalities and elements of a protocol based on appropriate elements from Sections I, II and III paragraph 18 (a) of Annex I of the report of the Open-ended Ad Hoc Group of Experts on Biosafety;
  - (b) consider the inclusion of the elements from Section III, paragraph 18 (b) and other elements, as appropriate;
3. The development of the draft protocol shall, as a priority:
  - (a) elaborate the key concepts and terms that are to be addressed in the process;

- (b) include consideration of the form and scope of advance informed agreement procedures;
  - (c) identify relevant categories of LMOs resulting from modern biotechnology.
4. The protocol will have to reflect that its effective functioning requires that Parties establish or maintain national measures, but the absence of such national measures should not prejudice the development, implementation and scope of the protocol.
  5. The protocol will take into account the principles enshrined in the Rio Declaration on Environment and Development and, in particular, the precautionary approach contained in Principle 15 and will:
    - (a) not exceed the scope of the Convention;
    - (b) not override or duplicate any other international legal instrument in this area;
    - (c) provide for a review mechanism;
    - (d) be efficient and effective and seek to minimise unnecessary negative impacts on biotechnology research and development and not to hinder unduly access to and transfer of technology.
  6. The provisions of the Convention will apply to the protocol.
  7. The process will take into full account the gaps in the existing legal framework identified through analysis of existing national and international legislation.
  8. The process shall be guided by the need for all Parties to cooperate in good faith and to participate fully, with a view to the largest possible number of Parties to the Convention ratifying the protocol.
  9. The process will be carried out on the basis of the best available scientific knowledge and experience, as well as other relevant information.
  10. The process of developing a protocol should be conducted as a matter of urgency by an open-ended ad hoc group, which will report on progress to each subsequent meeting of the Conference of the Parties. The Open-ended Ad Hoc Working Group should endeavour to complete its work in 1998.

#### Decision II/7: Consideration of Articles 6 and 8 of the Convention

##### The Conference of the Parties,

*Mindful of the crucial importance of the provisions of Articles 6 and 8 in the fulfilment of the objectives of the Convention;*

1. *Urges* all Parties and Governments and other interested stakeholders to exchange relevant information and share experience on measures taken for the implementation of Articles 6 and 8;

2. *Stresses* the importance of regional and international cooperation for the implementation of Articles 6 and 8 of the Convention;
3. *Requests* the Executive Secretary to make available through the clearing-house mechanism such information and lessons drawn from national experience and also to make available relevant information on the implementation of Articles 6 and 8 contained in national reports submitted by Parties in accordance with Article 26 of the Convention as well as decision II/17 adopted at its second meeting;
4. *Further requests* the Executive Secretary:
  - (a) To compile and disseminate that information as widely as possible including experience of relevant conventions, United Nations bodies and intergovernmental and nongovernmental organizations in dealing with the provisions of Articles 6 and 8;
  - (b) To prepare, on the basis of available information, suggestions on how the collection and sharing of relevant information and experience might be enhanced;
5. *Encourages* Parties, in preparing and implementing their national strategies and action plans, to collaborate with relevant organizations and, if so desired, to take into consideration existing guidelines such as "National Biodiversity Planning" published by the United Nations Environment Programme, the World Resources Institute and the World Conservation Union (IUCN);
6. *Emphasizes* the importance of capacity-building as well as the availability of adequate financial resources to assist Parties in the implementation of Articles 6 and 8 of the Convention, and in this context requests the interim financial mechanism under the Convention to facilitate urgent implementation of Articles 6 and 8 of the Convention by availing to developing country Parties financial resources for projects in a flexible and expeditious manner;
7. *Also requests* the Executive Secretary to present to it a report on the implementation of this decision for consideration at its third meeting.

#### Decision II/11: Access to Genetic Resources

##### The Conference of the Parties,

*Recalling* that the charge from its second meeting is to prepare for agenda item 6.6.1 of the programme of work for its third meeting where the Secretariat is asked to compile the views of Parties on possible options for developing national legislative, administrative or policy measures, as appropriate to implement Article 15;

*Noting* that regional efforts, based in part on the similarity of the genetic resources found in the region, are important to common strategies and therefore should be encouraged;

1. *Requests* the Executive Secretary to:
  - (a) Further elaborate the survey of measures taken by Governments to implement Article 15, including any national interpretations of key terms used in that article,



with a view to completing the survey in time for circulation at the third meeting of the Conference of the Parties;

- (b) Compile an annotated list of studies and other relevant information on the social and economic valuation of genetic resources, including the demand by industry for genetic resources;
- 2. *Reaffirms* that human genetic resources are not included within the framework of the Convention;
- 3. *Urges* Governments to send information on national measures to the Secretariat at their earliest convenience;
- 4. *Recommends* that the Secretariat not duplicate work underway in other forums.

#### Decision II/12: Intellectual Property Rights

##### The Conference of the Parties.

*Requests* the Executive Secretary to:

- (a) Liaise with the Secretariat of the World Trade Organization to inform it of the goals and the ongoing work of the Convention on Biological Diversity and to invite the Secretariat of the World Trade Organization to assist in the preparation of a paper for the Conference of the Parties that identifies the synergies and relationship between the objectives of the Convention on Biological Diversity and the TRIPs Agreement. This paper could be the basis for consideration by the third meeting of the Conference of the Parties in preparing a possible input for negotiations that are taking place in the Committee on Trade and Environment of the World Trade Organization;
- (b) Consult with all stakeholders, in particular the private sector and indigenous and local communities, in order to gain understanding of the needs and concerns of those groups whose participation will be required for cooperative arrangements to be meaningful and effective in achieving the Convention's objectives. These consultations may take place in the form of roundtable discussions;
- (c) Undertake a preliminary study which analyses the impact of intellectual property rights systems on the conservation and sustainable use of biological diversity and the equitable sharing of benefits derived from its use in order to gain a better understanding of the implications of Article 16(5). The study may focus on:
  - (i) exploring the relationship between intellectual property rights and the preservation and maintenance of traditional knowledge and practices of indigenous and local communities and the possible role of intellectual property rights in encouraging the equitable sharing of benefits arising from the use of such knowledge and practices; and
  - (ii) inviting Governments and other relevant stakeholders to submit case studies that address the role of intellectual property rights in the technology transfer process, in particular the role of intellectual property rights in the transfer of biotechnology.