



Bridges Trade BioRes

News, events and resources at the intersection of trade and biodiversity

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Biotechnology

CONSTRUCTIVE AMBIGUITY SAVES LMO LABELLING DISCUSSIONS AT MOP-3

While countries at the third Meeting of the Parties (MOP-3) to the Cartagena Protocol on Biosafety -- convening from 13-17 March in Curitiba, Brazil -- managed to resolve most agenda items relatively quickly, negotiations on documentations requirements for shipments of living modified organisms (LMOs) proved highly contentious, requiring many hours of negotiations in contact and 'friends of the Chair' groups. The discussions saw

deep divisions between a number of Latin American countries, while New Zealand -- which had been one of the strongest opponents of stringent documentation requirements at MOP-2 -- appeared to play a much less prominent role. The final decision clearly constituted a compromise, with some parts left vague enough to accommodate the differing interests.

Parties widely welcomed the agreement on documentation requirements reached in Curitiba and expressed relief that this thorny issue, which had repeatedly bogged down the negotiations of the Protocol itself, had been resolved. While many civil society groups also cautiously welcomed the agreement, they attacked the biotech industry and the trade interests of some Parties for blocking progress towards more stringent requirements. The key question for the future implementation and effectiveness of the Protocol will now be whether the labelling decision is sufficiently broad to persuade biotech exporting non-Parties to join the pact.

"may contain" versus "contain" -- leaving the options open

In a second attempt after their failure to agree at MOP-2 (see http://www.trade-environment.org/page/infoxch/CPB_MOP2.htm), Parties managed to finalise a decision to elaborate further on

15 March, 13h15 to 14h45

DISCLOSURE REQUIREMENTS IN PATENT APPLICATIONS: A TOOL AGAINST MISAPPROPRIATION OR AN OBSTACLE TO INNOVATION?

**ICTSD side-event at COP-8 to the
Convention on Biological Diversity**

documentation requirements for LMOs for use in food and feed and for processing (LMO-FFP). These negotiations had been mandated under Article 18.2(a) which only required LMO-FFPs to be labelled as "may contain" LMOs and as not intended for release into the environment. Much of the debate again focused on the use of "contain" versus "may contain", with biotech importers, in particular the African countries, advocating the former while biotech exporters pushed for the latter. In the end, the decision provides for two options, as proposed by Brazil early on the negotiations. Thus, in cases where the identity of the LMO is known "through means such as identity preservation systems", the shipment should be labelled as containing LMO-FFPs. In cases where the identity is not known, the "may contain" label would continue to apply. In both cases, exporters would be required to provide the common scientific or where available commercial names of the LMOs as well as the transformation event or unique identified code.

These provisions apply to LMO-FFPs that are "in commercial production and authorised in accordance with domestic regulatory frameworks". The decision leaves open whether these frameworks refer to those of the exporting or importing countries, and how they would cover countries that do not have a regulatory framework in place. Also, given that the trigger for the "contain" label was not further elaborated, the choice of which of the two labelling options to apply is likely to largely rest with the exporter.

An initial proposal by Brazil to require "contain" labelling of all shipments by 2010 was watered down by deciding to review experiences gained with the documentation requirements at MOP-5 "with a view to considering a decision" at MOP-6 to require the "contain" label.

Indirect references to accidental presence of LMOs

The provisions on documentation requirements are further qualified by "acknowledging" that the expression "may contain" does not require listing of LMOs of species "other than those that constitute the shipment". This article marked a compromise on the question to what extent the rules should also cover the 'adventitious' (i.e. accidental, non-intentional) presence of LMOs in shipments. In particular the African countries have been

advocating strongly in favour of the broader scope, which would effectively shift the burden of testing for accidental presence to the exporting countries. The EU would have liked to see at least a reference to thresholds that may be adopted on a national basis for adventitious presence to provide multilateral backing for its existing domestic legislation. These proposals were met with opposition by New Zealand and Brazil -- both major players in the push for further agricultural trade liberalisation.

The final wording seemed vague enough to allow for different interpretations that suited the different interests. Some felt that adventitious presence was not covered by the rules while others interpreted the provision as applying to the accidental presence of all LMOs. Most non-governmental observers took the view that adventitious presence would be covered for LMOs of the same species (such as different types of genetically modified soy), but not for other species (such as GM corn in GM soy shipments).

Mexico concerned over trade with NAFTA parties

A last-minute intervention by Mexico in the closing plenary had threatened to derail the talks and the plenary had to be suspended several times to allow for further informal consultations. Mexico, along with Paraguay, had been pushing for less stringent documentation requirements and for shifting much of the information sharing to the Biosafety Clearing House. Many observers attributed this position to Mexico's concerns over how the provisions would impact its trade with the US and the trilateral agreement on documentation requirements reached with the US and Canada -- all partners in the North American Free Trade Agreement (NAFTA) -- prior to MOP-1 (see http://www.trade-environment.org/page/infoxch/CPB_MOP1.htm).

To accommodate Mexico's concerns, a new paragraph was inserted in the decision to address trade with non-Parties. The text notes that "transboundary movement of LMOs between Parties and non-Parties shall be consistent with the objective of the Protocol", adding that the "specific requirements set out in [paragraph 4 outlining the documentation requirements] do not apply to such movement". The new provision also calls on Parties to "encourage non-Parties to adhere to the Protocol". While the immediate implication of this

provision appears somewhat unclear, many delegates felt that the paragraph simply reiterates what is already known, namely that the Protocol's provisions are not obligatory for non-Parties, and was in fact superfluous.

Emphasis on capacity building

At the insistence in particular of some Latin American countries, the final decision places strong emphasis on the need for capacity building to help developing countries to implement and benefit from the documentation requirements. This emphasis reflects the interests of biotech exporting developing countries, such as Brazil and Paraguay, which have pointed to their limited capacities to implement the labelling rules. Trade considerations are also likely to underlie these concerns, with some countries fearing that the cost of putting systems in place to comply with the Protocol's provisions could place them at a competitive disadvantage vis-à-vis countries that are not Parties to the Protocol, notably the US, Canada and Argentina.

Changing of the guard?

Discussions at MOP-3 witnessed a marked shift in negotiating dynamics compared to previous meetings. While Brazil and New Zealand had largely led the charge against stringent documentation requirements at MOP-2, this role now fell to Paraguay, Peru and Mexico. Brazil, which had drawn up the initial draft text on which the final decision was based, was widely lauded for its spirit of compromise, while New Zealand appeared to be taking an increasingly constructive backseat in the talks. Speculations were rife over Brazil's change of position. Some attributed their stance to the lengthy internal consultation process that had preceded the talks, a stronger stance of the environment ministry and the political stake in concluding the negotiations in Curitiba. Other more cynical voices saw trade motivations as the driving force behind this shift, speculating that Brazil might be counting on gaining a competitive advantage, in particular vis-a-vis other Latin American countries, by being able to put in place systems that will allow Brazilian exporters to segregate biotech from conventional products.

Other issues at MOP-3

In relation to documentation requirements for LMOs for contained use and introduction into the environment (Article 18.2 b and c), Parties took up

the question of whether to use a stand-alone document to provide the required information, as advocated in particular by Norway. While the Parties in the end agreed to postpone a decision on this question until the next MOP, they explicitly recognised Parties' right to require such documents, thereby providing some breathing space for countries that have implemented or are planning to implement such a system. Given that similar discussions have also taken place under Article 18.2(a), progress on this issue under any of the subparagraphs is likely to be linked.

Regarding the need for standards on the identification, handling, packaging and transport practices in LMO trade (Article 18.3), Parties simply agree to gather further information from Parties and relevant international bodies on existing rules and standards for discussion at MOP-4 and MOP-5.

Parties furthermore agreed to change the MOP meeting schedule from annual meetings to meetings every two years. MOP-4 will be held in conjunction with the ninth Conference of the Parties (COP) to the Convention on Biological Diversity, the date and venue of which will be discussed at COP-8, convening from 20-31 March also in Curitiba.

Additional Resources

Documents of MOP-3 are available at <http://www.biodiv.org/doc/meeting.aspx?mtg=MOP-03>.

Daily reporting was provided by IISD Linkages, <http://www.iisd.ca/biodiv/bs-copmop3>.

ICTSD reporting.

Biodiversity

TRADE @ COP-8: ACCESS AND BENEFITS-SHARING, INCENTIVE MEASURES

Among the issues on the table at the Eighth Conference of the Parties (COP-8) to the Convention on Biological Diversity (CBD), to be held from 20-31 March in Curitiba, Brazil, countries will be discussing how to proceed in the discussions on a possible international regime to govern access to genetic resources and the sharing of benefits derived from their use (ABS). While several developing countries are likely to try to use COP-8 as an opportunity to build political momentum for

the negotiations on the international ABS regime, most developed countries have been less enthusiastic about the regime. Parties to the CBD will also try to unblock stalled discussions on positive and perverse incentives in preparation for the mandated review at COP-9.

ABS talks need renewed mandate

While the creation of a draft text for the proposed international regime at the last meeting of the Ad Hoc Open Ended Working Group on Access to Genetic Resources and Benefit-Sharing in February 2006 (see Bridges Trade BioRes, 3 February 2006, <http://www.ictsd.org/biores/06-02-03/story2.htm>) appeared to suggest some progress in the negotiations, more sceptical observers have predicted that several more years of negotiations might be necessary. They point to the numerous brackets still contained in the text, and the fact that the draft text does not reflect many of the options presented at previous Working Group meetings.

At COP-8, Parties will be asked to reconvene the Working Group and determine the Group's work schedule "so as to expedite and facilitate the early elaboration, negotiation and conclusion of the international regime on access and benefit sharing". Parties will also consider proposals on different areas that the Working Group would be requested to focus on, among them measures to ensure compliance with prior informed consent (PIC) and mutually agreed terms (MAT) provisions, including the issue of disclosure of origin/source/legal provenance. In addition, they will decide on the creation of an ad-hoc technical expert group to elaborate options for form, intent, practicality, feasibility and costs of an international certificate of origin/source/legal provenance.

Opinions have been divided on the extent to which the COP will actually enter into substantive debates on ABS or will rather stick to procedural discussions. Among the key questions for the negotiating process will be whether the COP will appoint a permanent Chair for the negotiations or continue to operate through the Working Group. Some have raised concerns that the chair of the Working Group is usually not appointed until the first day of the meeting and therefore is not able to carry out preparatory activities before or after the meeting. However, given that some countries continue to question whether there is actually a need for a negotiated international regime, they may

resist the establishment of a process that could be seen as recognising the need for negotiations.

At the same time, the high political weight given to the issue by several developing countries, including Brazil as Chair of the COP, could facilitate informal talks at the meeting. COP-8 Chair, Brazilian Environment Minister Marina Silva, highlighted the political capital invested in the issue when she noted that "we are going to work hard in order for the international regime to be binding, and so that it is not understood as a tool to facilitate access, but to ensure protection and sustainable use and the distribution of benefits". However, developed countries are likely to try to throw sand in the gears of this process by pushing for a stronger focus on a gap analysis and the divergences in opinions on the current draft text in the Working Group.

New approach to incentives needed

Parties will also examine progress on the work plan on incentive measures, adopted at COP-5 in 2000, most notably texts on perverse and positive incentives forwarded by the tenth and eleventh meetings of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) respectively. Concerns have been raised by several Parties that debate about the WTO-compatibility of measures adopted under Article 11 of the CBD have crowded out other issues that rightfully belong in CBD discussions on incentives. Article 11 of the Convention says that Parties shall "adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity". Incentives can be direct or indirect; positive, negative or perverse; focus on the community or national level; and may involve cash or in kind inducements to conserve biological diversity, use biological resources sustainably and equitably share the benefits arising from the use of genetic resources.

While CBD discussions on incentives are intended to encourage Parties to identify policies that have, or could have, the effect of inducing actors to achieve or not compromise the objectives of the CBD, in practice discussions have to a large extent focused on concerns over agricultural subsidies. The potential for such subsidies to be included in the definition of either 'positive' or 'perverse' incentives was the subject of intense discussions at SBSTTA-10, which in turn led SBSTTA-11 to

suggest changes in the CBD process on incentives in order to more carefully deal with the politically controversial elements, including those relating to trade. These elements will be examined in the in-depth review of the Convention's work on incentive measures, which is to begin shortly after COP-8 for COP-9, on which COP-8 has been requested to elaborate terms of reference, and to identify the best mechanisms to drive preparatory work for the major review and elements of a revised work programme.

Some Parties have suggested that encouraging trade in biodiversity-related goods and services, such as by drawing connections to WTO negotiations on environmental goods and services (EGS, see Bridges Trade BioRes, 3 March 2006, <http://www.ictsd.org/biores/06-03-03/story3.htm>), could act as a positive incentive for the sustainable use of biodiversity. Others, however, such as China, Argentina, New Zealand and Brazil, have suggested that the CBD should avoid stepping on the toes of the WTO, which is in addition to the work on EGS also engages in talks on regulating agricultural and fisheries subsidies. Some civil society groups have voiced scepticism that trade can act as a positive incentive for biodiversity, arguing instead that most incentives for increased trade -- for example, cuts to tariffs or reductions in non-tariff barriers -- have perverse, adverse effects on biodiversity.

Additional Resources

The CBD Web Portal for COP-8 is available at <http://www.biodiv.org/meetings/cop8mop3/cop-08.shtml>

IUCN Position papers on COP-8 topics are available at <http://www.iucn.org/cbd/papers.htm>

"A new approach to Incentives under the Convention on Biological Diversity," by IUCN, is available at <http://www.iucn.org/themes/pbia/documents/files/Incentives-English-FORMATTED.pdf>

ICTSD Reporting; "Shark Parks? Oceans said in need of protection," REUTERS, 15 March 2006; "Brazil to Press for Global Biodiversity Regime," IPS, 14 March 2006.

Fisheries

WTO FISH SUBSIDIES NEGOTIATIONS CONSIDER DRAFT TEXT

On 15 March, WTO Members in the Negotiating Group on Rules continued discussions on possible

text for new rules on fisheries-specific subsidies. While new proposals from New Zealand, Japan, Chinese Taipei and India were examined, most time was spent on new draft legal text put forward by New Zealand. Several delegates criticised the text for being too broad in its scope and coverage and inadequate in its coverage of special and differential treatment (S&DT) for developing countries.

First 'Friends of Fish' legal draft raises many questions

New Zealand, a leading Member of the "Friends of Fish" group of countries that advocate a broad ban on fisheries subsidies with certain exceptions, put forward draft legal text for a new fisheries-specific amendment to the Agreement on Subsidies and Countervailing Measures (ASCM) (TN/RL/GEN/100). It seeks to prohibit all subsidies that "confer a benefit directly or indirectly on any natural or legal person engaged in the harvesting, processing, transport, marketing or sale of fish and fisheries products" within the scope of six HS categories, while listing particular fisheries subsidies that would be exempted from the broad ban. While Members generally welcomed the fact that New Zealand was finally coming up with legal text that provided a relatively simple architecture which could be turned into a workable framework, delegates were also somewhat disappointed that the proposal did not elaborate on many of its components, including some on which there had been ample discussion in previous sessions.

Some Members, including the EC, Canada, Norway, Japan, Korea and Chinese Taipei and a number of developing countries, were critical of the large scope of the proposed "top-down" ban. Japan, Korea and Chinese Taipei called the proposed rules too broad, both in terms of their scope and their suggested product coverage, and claimed that parts of it were out of the Negotiating Group's mandate to address overcapacity and overfishing.

Many developing countries, including several small and vulnerable coastal states, were particularly concerned about the proposal's extension of disciplines to canned and processed fish. The Solomon Islands argued that the new agreement should not apply to subsidies given to upstream and value-added activities in the interest of developing the fishing industries of small and vulnerable economies. They also reminded Members that the intention of the disciplines is to prevent overfishing and argued that they should therefore only

cover capture fisheries. Manufactured fish products of mixed origin would, they said, be as a result better dealt with within the context of the existing ASCM.

Approximately 25 developing countries, including Brazil, India and several Latin American and African, Caribbean and Pacific countries, expressed their disappointment with the proposed S&DT to be provided for developing countries. New Zealand's proposal only offers to exempt a certain de minimis amount of developing countries' subsidies from the general prohibition, but does not elaborate on the types of subsidies and how much would be exempted. Both the EC and several developing countries claimed that de minimis was not likely to be enough to allow these countries to pursue legitimate developmental and social objectives, and also asked for more detail on how such a provision could be applied in practice.

Several developing countries were also concerned that subsidies to artisanal fisheries do not feature among the proposal's list of permissible subsidies, which includes subsidies to access payments, aquaculture, research related to fisheries management, vessel decommissioning, certain infrastructure, certain social insurance programmes and natural disaster relief. The New Zealand proposal does not elaborate in detail on each of these exemptions and conditions to be met for them to be triggered, but it notes that such specification should follow. Several Members expressed concern that these details had not been elaborated on, given the extensive discussion that had been held on these issues in previous talks.

Japan and Chinese Taipei reiterate position; India enters discussions

Neither Japan nor Chinese Taipei, who together with Korea are the traditional opponents of the Friends of Fish 'top-down' approach to new disciplines, have so far come forward with proposed legal draft to provide an alternative the textual proposals by New Zealand and Brazil, the only ones that exist at this point (see also Bridges Trade BioRes, 9 December 2005, <http://www.ictsd.org/biores/05-12-09/story1.htm> for further details on the Brazilian proposal). Accordingly, discussions were short on their new papers in which they reiterate their preference for a

'bottom-up' approach that would generally permit fisheries subsidies with specific prohibitions.

Japan's paper (TN/RL/W/201) described two kinds of subsidies that it thought merited prohibition, namely "subsidies for the construction of new fishing vessels resulting in capacity enhancement" and for "fishing vessel modification for capacity enhancement". While most Members agreed that those kinds of subsidies ought to be addressed, they also pointed to technical difficulties in assessing the actual capacity of fishing vessels. New Zealand also challenged Japan's proposal to only prohibit subsidies to new vessel construction if the old vessel is not withdrawn as a result, arguing that overall capacity in this case would still be enhanced due to the longer time that new vessels could be used.

Chinese Taipei (TN/RL/W/202) suggested that grants to promote fish stock recovery, social security, welfare, and research and development, should be allowed under the disciplines, notwithstanding that 'bottom-up' approach they have usually argued for identifying specific types of subsidies that should be prohibited by, not exempted from, the disciplines. There was a general recognition among Members that governments must retain the possibility to address such social issues.

India, in its first written contribution to the negotiations, identified a number of "general characteristics" of small-scale, artisanal fisheries which it felt could be more useful than trying to develop a common definition (TN/RL/W/203). The submission also stressed the need for S&DT in any new disciplines. It contended that disciplines on fisheries subsidies shifted the ambit of the ASCM from trade distortions to problems related to over-fishing and overcapacity, as a result of which developing countries would require policy space additional to that already provided for in the agreement. Developing countries supported India's proposal and asked it to come back with draft text in order to give substance to its propositions.

Fisheries subsidies will be further discussed at the next negotiating session of the Rules Group from 24 April to 5 May.

ICTSD reporting.

Intellectual Property

WTO DISCLOSURE TALKS TRY TO CLARIFY CBD-TRIPS RELATIONSHIP

At the meeting of the Council for Trade-related Aspects of Intellectual Property Rights (TRIPS) on

14-15 March, WTO Members continued to struggle with their differences on the need to clarify the relationship between the Convention on Biological Diversity (CBD) and the TRIPS Agreement. In a new submission, the US reiterated its opposition to the proposed multilateral requirement for the disclosure of the source of biological materials and related traditional knowledge in patent applications -- together with evidence of prior informed consent and equitable benefit sharing -- and highlighted alternative means to address the issuance of 'bad patents'. In their submission, proponents of this requirement -- the so-called "Disclosure Group" -- provided definitions of the technical elements that they feel are necessary to fulfil the Doha Declaration paragraph 19 mandate to examine the CBD-TRIPS relationship. In the afternoon of 15 March, in separate informal consultations mandated by paragraph 12 of the Doha Declaration on implementation issues, Members examined a list of eleven questions offered by the Chair to overcome political divergences on the TRIPS-CBD relationship.

While Members for the most part reiterated previously-stated positions, examination of technical issues -- such as how disclosure provisions could prevent biopiracy, how they could be implemented in practice and why the proponents feel that the US contract-based approach is insufficient -- facilitated the elimination of some misconceptions on the connection between access and benefit-sharing (ABS) and disclosure as well as convergence on what, realistically, disclosure requirements could be expected to accomplish. While the paragraph 19-mandated TRIPS Council session looked at the TRIPS-CBD relationship overall and related technical issues, the informal paragraph 12-mandated negotiations were more political in nature, focusing on the different arguments for and against disclosure requirements.

US questions purpose of disclosure

The US submission (IP/C/W/469) built on its two previous submissions and responded to papers

presented by Bolivia, Brazil, Colombia, Cuba, India and Pakistan (IP/C/W/459) and Peru (IP/C/W/441), which were themselves issued in reaction to US papers. In the document, the US continued to argue that national ABS laws outside the patent system that directly and effectively regulate conduct of businesses were critical. In response to claims that disclosure requirements would help prevent the issuance of "bad patents", i.e. where the invention does not fulfil basic patent requirements, the US argued that disclosure of source would not accomplish this, as it would not provide details on prior art -- that is, the existence of public information that demonstrates that the invention is not new or the result of a step beyond the existing state of the art -- beyond what is already required by most patent laws.

The US also noted that national regimes outside the patent system could better guarantee prior informed consent and equitable benefit sharing for all commercially traded genetic resources, whether patented or not. The problem of mistakenly issued patents, they argued, could be dealt with through searchable, organised databases, normal national requirements to disclose information directly relevant for patentability, and the use of post-grant opposition and/or re-examination procedures. While welcoming concrete cases, such as the tumeric example or Peru's camu illustration, the US contended that these did not prove the need for a disclosure requirement, and instead called for the TRIPS Council to engage in a fact-based discussion on national experiences to elucidate the connection between genetic resources, national ABS regimes and related gaps.

Members of the 'Disclosure Group' -- which includes India, Brazil, Peru, Ecuador, Colombia, Sri Lanka, Cuba and Thailand, frequently along with Kenya and Zimbabwe -- reacted by acknowledging that disclosure requirements in themselves were unlikely to stop biopiracy. Instead, they pointed out that there were two problems at hand: firstly, the quality of patents and the problem of the issuance of bad patents for which prior art already exists; and secondly, the lack of knowledge in diversity-rich countries regarding patent applications involving their genetic resources that have been submitted in other countries. They argued that the US had only looked at the first problem, while it was the second that disclosure requirements could address. According to these WTO Members, since 1992 they have been obliged under the CBD to protect their genetic resources and ensure that any access to

these resources is subject to the Convention's rules on access and benefit sharing. They argued that lack of transparency in foreign patent application and granting procedures had caused source countries to lose control over their resources, thereby compromising their ability to enforce the Convention within their sovereignty. A disclosure requirement, they argued, would make it easier for them to monitor which components of their genetic resources were being claimed in different countries, thereby enabling them to identify where they need to ensure that transfer of resources has been conducted legally and in compliance with ABS requirements.

A second paper submitted by Cuba, Ecuador, India, Sri Lanka and Thailand sought to respond to questions from Switzerland regarding technical definitions of biopiracy and misappropriation, biological and genetic resources, country of origin and source of biological/genetic resources. In addition, the countries attempted to elaborate what evidence of prior informed consent and benefit-sharing could look like, thereby trying to sooth fears from some countries that requirements could be burdensome or provide disincentives to bioprospecting.

Implementation: questions used to focus talks

In the second track of talks on the relationship between the CBD and TRIPS rules, mandated by paragraph 12 of the Doha Declaration on implementation issues, WTO Deputy Director General Rufus Yerxa held an informal consultation on the afternoon of 15 March that was framed by a document outlining eleven questions related to disclosure that delegates felt would be able to focus the debate.

The document posed the questions whether the patent system, as presently constituted and applied, provides effective safeguards against the grant and maintenance of erroneous patents; if disclosure requirements of the sort proposed necessary or helpful for reducing the existence of erroneous patents; whether the effective functioning and the enforcement of national access and benefit-sharing regimes can be secured on the basis of national legislation, including contracts, without a disclosure requirements in the patent system; and how the national-based approach and the various disclosure proposals would contribute towards achieving these aims.

In taking up these questions, the Disclosure Group reiterated its call for a specific mandate for text-based negotiations on a multilateral disclosure requirement (see Bridges Trade BioRes, 28 October 2005, <http://www.ictsd.org/biores/05-10-28/story3.htm>), and used the questions along with a number of examples to try to dispel misunderstandings and demonstrate that disclosure requirements would not be burdensome. The US reiterated its support for national ABS schemes and a contract-based approach. Japan noted that it did not support disclosure requirements. Canada, Australia and New Zealand suggested they were undecided and asked for more information. Argentina, on the other hand, noted that it had never been part of the Disclosure Group and took a stand against a multilateral disclosure requirement. Norway said that while they did not believe that there was per se a contradiction between the CBD and the TRIPS Agreement, they were in support of amending the TRIPS Agreement to include an international mandatory disclosure requirement in patent applications. The EU continued to support disclosure, though not a binding requirement, while Switzerland persisted in trying to move discussions to the World Intellectual Property Organization (WIPO).

WTO Members suggested that the structure of the informal consultations led to "very positive" discussions that will continue on 23 March. However, it was clear that the differing levels of political ambition have yet to be resolved, with one official saying that "some of us want to play soccer while others want to play rugby".

ICTSD Reporting; "WTO Discussions On Biodiversity Intensify As Differences Remain," IP WATCH, 15 March 2006; "New Submissions Feed CBD Debate At TRIPS Council Meeting," IP WATCH, 14 March 2006.

In Brief

EU RECONSIDERS BIOTECH POSITION, PROCESS

As the new President of the European Union, Austria on 9 March reopened the debate on the EU risk management and authorisation procedures for biotech products. Ministers meeting for the Environment Council were unable to reach agreement on the suggestions that Austria made at

the gathering to change the approval system,

although the need for greater transparency and better information to the consumers garnered general support. Austria, Greece, Italy and Luxembourg would like to change the voting rule for commercial and environmental release approvals of biotech products to simple majority, arguing this would break the deadlock that has prevented decisions in previous Council sessions. Under current EU procedures, if the Council is not able to make a decision (either in favour or against an application) with a qualified majority, the application is forwarded to the European Commission, which so far has adopted the view of the European Food Safety Authority (EFSA) and approved the crops. However, EFSA came under strong criticism at the Environment Council, with several countries arguing that it has approved biotech products without proper research and should take account of more sceptical opinions from national food safety authorities. Britain, Finland and the Netherlands generally vote in favour of biotech product applications, while Austria, Greece and Luxembourg are consistently opposed. At the Council meeting, Spain and Italy argued for stricter rules and Denmark and Ireland said that pre-existing rules were sufficient. "We are in the beginning of an interesting debate," said Austrian Agriculture Minister Josef Proll, who was chairing. "We will continue with discussions at other meetings".

In related news, on 10 March the European Commission published a report on the co-existence of GM crops and conventional and organic farming. The report concludes that there is no justification at this time for EU-wide legislation on the issue given the diversity of farming practices across the EU, the limited area planted with GM crops and the fact that four countries have already adopted national coexistence rules and several others are in the process of developing them. The document builds upon a report from the EU's Joint Research Centre on the feasibility of co-existence in European fields which concluded that it is possible and realistic to have both GM and non-GM crops grown in the region without adverse economic effects for non-GM farmers because the amount of unintended GM material in most crops can be kept below the EU 0.9 percent threshold with little or no changes to existing farming practices. A meeting in Vienna on 5-6 April will feature dialogue between EU member states and the European Commission on the matter.

ICTSD Reporting; "Austria criticises EFSA on GMO bias," EURACTIV, 10 March 2006; "EU to re-open GMO approval

debate," EURACTIV, 6 March 2006; "EU Commission reports on national measures to ensure co-existence of GM crops with conventional and organic farming," EU PRESS RELEASE, 10 March 2006; "European Commission Report on Coexistence Lays Groundwork for Rules on Biotech Crops," WTO REPORTER, 7 March 2006; "EU Shows Split Over Biotech Foods as Worries Persist," BLOOMBERG, 9 March 2006; "EU Ministers take Aim at Biotech Approvals Policy," REUTERS, 10 March 2006.

WTO APPOINTS PANEL MEMBERS IN RETREADED TYRE DISPUTE

WTO Director-General Pascal Lamy on 16 March appointed the members of the panel that will rule on the EU complaint against Brazilian import restrictions on retreaded tyres (see Bridges Trade BioRes, 3 February 2006, <http://www.ictsd.org/biores/06-02-03/story1.htm>). The panel will be chaired by Matsuo Matsushita of Japan, a former member of the Appellate Body. He will be assisted by Donald M. McRae of Canada, a professor of law at the University of Ottawa. The third panel member will be Chang-Fa Lo of Chinese Taipei, a professor of law at the National University of Taiwan and the director of its Asian Center for WTO and International Health Law and Policy. As the next step, the panellists will meet with the parties in the dispute to agree on working procedures and a timetable for submissions.

For further information on the dispute, see <http://www.trade-environment.org/page/theme/tewto/tyrescase.htm>

ICTSD Reporting.

WTO: SUPPORT SOUGHT FOR FISH AND FOREST TARIFF CUTS

A meeting open to all WTO Members to provide information on initiatives for accelerated reduction or elimination of tariffs for forest and fish products was held on 28 February as part of a week of WTO non-agricultural market access (NAMA) negotiations. The proponents of so-called "sectoral initiatives" in fish and forests -- Canada, Hong Kong, New Zealand, Thailand and the US in the case of forest products, and Canada, Iceland, New Zealand, Norway, Singapore and Thailand on fish products -- provided other Members with information on the informal talks they have been holding in the hopes of garnering opinions on the scope, participation and special and differential treatment (S&DT) for the initiatives, which to date have only included a select group of WTO Members (see Bridges Trade BioRes, 28 October

2005, <http://www.ictsd.org/biores/05-10-28/inbrief.htm#2>). They sought such input by asking interested Members to fill out matrixes with their views on which specific forest or fish products should be covered by an agreement, on the critical mass of participation needed for it to be adopted and on how to provide for special and differential treatment for developing countries. So far, only a handful of Members, mainly the proposals' co-sponsors have filled out such a matrix. The minimum number of Members needed to conclude sector-specific agreements for forest and fish products -- the "critical mass" -- is currently fixed by the co-sponsors to jointly represent around 90 percent of trade in the products concerned. At the meeting, the co-sponsors reiterated that developing countries could benefit from enhanced market access in both sectors, and pointed to problems such as tariff escalation -- which involves higher tariffs on imports of processed products than raw products -- arguing that if only a small proportion of products were covered by the future deal, then it would be harder to prevent tariff escalation on the many processed products that would likely be excluded. Members that have criticised trade liberalisation of fish products on the grounds that it could encourage depletion of fish stocks through the over-exploitation of fishery resources in their own proposals, such as Japan and Chinese Taipei, were also present at the meeting, but did not speak (see Bridges Weekly, 17 July 2003, <http://www.ictsd.org/weekly/03-07-17/story3.htm>).

Informal consultations on scope, participation and S&DT will continue in coming weeks, with a focus on trying to reach a critical mass of participation.

ICTSD reporting.

ARGENTINA ASKS EU TO INTERVENE ON MONSANTO SOY DISPUTE

Argentinean agriculture officials on 7 March sent a report to the European Commission regarding Monsanto's filing of three European lawsuits and six stoppages of Argentinean soy shipments to Europe, asking the Commission to conduct an investigation into the actions (see Bridges Trade BioRes, 14 October 2005, <http://www.ictsd.org/biores/05-10-14/story2.htm>). Although Monsanto holds patent rights over RoundUp Ready soy in most other countries, the absence of patent coverage in

Argentina has meant that farmers in world's third-largest producer of soybeans do not have to pay royalties to the company (see Bridges Trade BioRes, 22 July 2005, <http://www.ictsd.org/biores/05-07-22/story3.htm>). Monsanto has been filing lawsuits in European courts since June 2005, alleging that they deserve to collect royalties on Argentinean exports of soybean to EU countries in which the company has patent protection for its Roundup Ready soybean. Argentinean officials have suggested that delaying of shipments to test for Roundup Ready technology costs importers about EUR 850,000 (about US\$1 million) per shipment. "Monsanto's action is an unjustified obstacle to the legitimate trade of soy meal and an abuse of the company's dominant market position," the report says, adding that the company aims to "set a price that is different from market prices for biotech soy meal in Europe". The Argentinean Agricultural Secretariat has said that with the report, "we hope the EU opens an investigation into Monsanto's practices to see if they are abusive and monopoly-related. And if that is the case, we hope they will take punitive measures against the company." Monsanto has offered European importers licenses in return for royalty payments. Argentina exports almost US\$2 billion worth of soy meal to Europe every year.

"Argentina asks EU to intervene in dispute with Monsanto," REUTERS, 8 March 2006; "Argentina seeks EU intervention in soy row with Monsanto," REUTERS, 24 February 2006.

Events & Resources

EVENTS

For a more comprehensive list of events in trade and sustainable development, please refer to ICTSD's web calendar. Please bear in mind that dates and times of WTO meetings are often changed, and that the WTO does not always announce the important informal meetings of the different bodies.

COP-8 to the Convention on Biological Diversity

20 - 31 March, Curitiba, Brazil: EIGHTH ORDINARY MEETING OF THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY (COP 8). Organised by the Convention on Biological Diversity (CBD). For further information contact the CBD Secretariat, tel: (+1-514) 288-2220; fax: 288-6588; email: secretariat@biodiv.org; Internet: <http://www.biodiv.org/meetings/cop8mop3/cop-08.shtml>

Global Biodiversity Forum at COP-8

24-25 March, Curitiba, Brazil: GLOBAL BIODIVERSITY FORUM. The Forum will be held just prior to the high-level segment of the eighth meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD CoP8) with a focus on the 2010 biodiversity target. Organised by IUCN's Countdown2010 initiative, the proposed workshop streams are financing biodiversity action for achieving the 2010 targets; measuring progress toward the 2010 targets; thinking global and acting local - taking 2010 forward; and 2010 for 2015 - Reaffirming the role of biodiversity in achieving MDGs. For further information contact Laurence Christen, tel: +41 22 999-0223; fax: 999-0025; email: gbf@iucn.org; Internet: <http://www.gbf.ch/>

ICTSD side-event

Tuesday 28 March, 13h15-15h00: DISCLOSURE REQUIREMENTS IN PATENT APPLICATIONS: A TOOL AGAINST MISAPPROPRIATION OR AN OBSTACLE TO INNOVATION? Organised by ICTSD.

IUCN side-events

Monday, 20 March, 13h15-15h00: THE ABS PROJECT -- PROMOTING EQUITABLE, EFFICIENT AND ENFORCEABLE IMPLEMENTATION OF THE ABS REGIME. Organised by the IUCN Environmental Law Centre.

Monday, 20 March, 18h30-20h15: UPDATE ON HIGH SEAS AND DEEP SEABED ISSUES. Organised by IUCN.

Monday, 20 March, 18h30-20h: TRANSBOUNDARY PROTECTED AREAS & THE CBD PROGRAMME OF WORK ON PROTECTED AREAS. LAUNCH OF 2006 WORLD DATABASE ON PROTECTED AREAS. Organised by IUCN.

Tuesday, 21 March, 13h15-15h00: UPDATE ON HIGH SEAS AND DEEP SEABED ISSUES. Organised by IUCN.

Wednesday, 22 March, 18h30-20h15: PRESENTATION OF AN UPCOMING 2006 EUROPEAN CONFERENCE ON INTEGRATING BIODIVERSITY INTO DEVELOPMENT COOPERATION. Organised by the IUCN Regional Office For Europe.

Monday, 27 March, 13h15-15h00: MEASURING PROGRESS TOWARDS THE 2010 TARGET. Organised by IUCN

Wednesday, 29 March, 13h15-15h00: CUSTOMARY LAW, TRADITIONAL KNOWLEDGE AND THE INTERNATIONAL REGIME ON ABS. Organised by IUCN.

Wednesday, 29 March, 13h15-15h00: GUIDELINES FOR IUCN ENGAGEMENT WITH THE PRIVATE SECTOR. Organised by IUCN.

Other trade-related side-events

For a complete list of COP-8 side-events, visit <http://www.biodiv.org/register/side-events/list.aspx?mtg=COP-08>

Monday, 20 March, 18h30-20h15: EARLY LESSONS LEARNT FROM THE ACCESS AND BENEFIT SHARING MANAGEMENT TOOL, DEVELOPED BY IISD AND SECRÉTARIAT D'ÉTAT À L'ÉCONOMIE, SUISSE (SECO). Organised by the International Institute for Sustainable Development.

Monday, 20 March, 18h30-20h15: ABS AND TK: USING CUSTOMARY LAW TO DEVELOP PRACTICAL MECHANISMS FOR EQUITABLE BENEFIT-SHARING. Organised by the International Institute For Environment And Development, Asociacion Andes and the Foundation For International Environmental Law And Development.

Tuesday, 21 March, 13h15-15h00: TERMINATOR TECHNOLOGY - POTENTIAL IMPACTS OF GENETIC USE RESTRICTION TECHNOLOGIES (GURTS). Organised by the Ban Terminator Campaign.

Tuesday, 21 March, 13h15-15h00: THE ROLE OF BIODIVERSITY OFFSETS IN CONSERVATION: AN OPEN ROUNDTABLE DISCUSSION. Organised by Forest Trends.

Tuesday, 21 March, 18h30-20h15: REPORT BY WIPO ON RECENT PROGRESS OF ONGOING WORK ON IP, GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE. Organised by the World Intellectual Property Organization.

Tuesday, 21 March, 18h30-20h15: ACCESS AND BENEFIT SHARING AND FREE PRIOR INFORMED CONSENT. Organised by the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests.

Wednesday, 22 March, 13h15-15h00: BIOTRADE: INCENTIVES FOR BIODIVERSITY BUSINESS. Organised by the UNCTAD Biotrade Initiative.

Thursday, 23 March, 13h15-15h00: RIGHTS TO TRADITIONAL KNOWLEDGE AND PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE IN THE FRAMEWORK OF THE WORLD TRADE ORDER. A LEGAL, ECONOMIC AND SCIENTIFIC ANALYSIS. Organised by the Swiss Agency For Development And Cooperation/ University Of Berne, World Trade Institute.

Thursday, 30 March, 13h15-15h00: WORK IN THE WTO ON THE RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CBD. Organised by the World Trade Organization.

Coming Up In the Next Two Weeks

16-22 March, Mexico City, Mexico: 4TH WORLD WATER FORUM - LOCAL ACTION FOR A GLOBAL CHALLENGE. The main theme of the 4th World Water Forum is Local Actions for a Global Challenge. For further information, contact Jose Ma. De la Torre, tel: + 52 (55) 54 - 88 - 04 - 84; e-mail: invitation@worldwaterforum4.org.mx; Internet: <http://www.worldwaterforum.org>.

20-21 March, Geneva, Switzerland: THE WTO AND FISHERIES: A WORKSHOP ON THE IMPACT OF WTO AGREEMENTS AND THE CURRENT WTO NEGOTIATIONS ON THE FISHERIES SECTOR. This meeting is organised by the UN Food and Agriculture Organization (FAO) and Conference on Trade and Development (UNCTAD) and includes sessions on international fish trade and NAMA, fisheries subsidies, quality and safety aspects for fish trade, financing infrastructure and fishing activities, disputes and fishery products and fisheries management, access and labelling. For further information, contact Audun Lem, tel: (+39 06) 5705 2692; fax: 5705 6500; email: audun.lem@fao.org; Internet: <http://www.fao.org/fi/default.asp>

28-29 March, Wellington, New Zealand: CLIMATE CHANGE AND GOVERNANCE CONFERENCE: CRITICAL ISSUES FOR NEW ZEALAND AND THE PACIFIC. This conference will assess the state of scientific knowledge on climate change and consider the scope for global, regional, national and local initiatives to reduce and manage the risks from climate change. For further information contact Jonathan Boston, Organising Committee Chair, tel: (+64) 4-463-5456; e-mail: Jonathan.Boston@vuw.ac.nz; internet: http://www.vuw.ac.nz/home/about_victoria/news_article.asp?ArticleID=1042149685.

28-30 March, Edinburgh, Scotland: AQUACULTURE TODAY 2006. Aquaculture Today 2006 will explore the key issues affecting the aquaculture industry in a national, European and international context. Leading figures from the industry will participate in formal presentations, discussion sessions, exhibitions and networking. For further information contact Claire Anderson, tel.: +44 (0) 131-312- 4550, email: canderson@specialpublications.co.uk; Internet: <http://www.aquaculturetoday.co.uk/>

Other upcoming events

4-8 April, Adana, Turkey: INTERNATIONAL SYMPOSIUM ON WATER AND LAND MANAGEMENT FOR SUSTAINABLE IRRIGATED

AGRICULTURE. The symposium will seek to identify best management practices to harmonise the sustainable use of water for agricultural production and livelihoods with well-functioning ecosystems. Topics on the agenda will include: water management in the irrigation sector; water scarcity and water harvesting; virtual water and food security; impacts of climate change on hydrological regimes and water resources; and gender issues in water and land management. For further information contact Attila Yazar, Cukurova University, tel: (+90) 322-3386516; fax: 322-3386386; e-mail: symp2006@cu.edu.tr; Internet: <http://symp2006.cu.edu.tr/>.

9-12 April, Chicago, USA: BIOTECHNOLOGY INDUSTRY ORGANISATION ANNUAL INTERNATIONAL CONVENTION. This industry convention includes an international programme with a ministerial seminar and a global biotechnology forum, as well as a business forum and breakout sessions. On 8 April, which has been labeled the "International Day of Opposition to GMOs," a BioEthics counter-convention will also convene, organized by organizations opposing to GMOs. internet: <http://www.bio.org/events/2006/> and <http://www.reclaimthecommons.net/article.php?list=typ e&type=49>.

24 April, New York, USA: ECOSOC HIGH-LEVEL MEETING WITH BRETTON WOODS INSTITUTIONS, WTO AND UNCTAD. This meeting, organised by the Economic and Social Council (ECOSOC), the Bretton Woods institutions, the WTO and UNCTAD, will consider implementation of and support for national development strategies; Fulfilling the development dimension of the Doha work programme: next steps, including in the area of "aid for trade"; external debt – building on current initiatives to enhance debt sustainability; and supporting the development efforts of middle-income developing countries. For further information contact Sarbuland Khan, tel: (+1 212) 963-4628; fax: 963-1712; e-mail: ecosocinfo@un.org; Internet: <http://www.un.org/docs/ecosoc/>.

RESOURCES

If you have a relevant resource (books, papers, bulletins, etc.) you would like to see announced in this section, please forward a copy or review by the BRIDGES staff to smohan@ictsd.ch.

ICTSD Resource

OVERVIEW OF THE WTO BIOTECH DISPUTE AND THE INTERIM RULING. By Heike Baumüller, Knirre Sogaard and Yvonne Apea (International Centre for Trade and Sustainable Development, March 2006). This report gives an overview of the legal basis of the WTO biotech case in addition to a detailed analysis of the findings in the recent interim ruling. To access this report, visit <http://www.trade-environment.org/>

output/theme/tewto/biotechcasebackground.pdf

IUCN Resource

IUCN POSITION PAPERS FOR CBD COP-8. By IUCN - The World Conservation Union, February 2006. These short IUCN position papers explore topics including biological diversity of dry and sub-humid lands; access and benefit-sharing; Article 8(j); the Global Initiative on communication, education and public awareness; the Millennium Ecosystem Assessment; Indicators; forest biological diversity; marine biodiversity conservation; and protected areas. To access these papers, visit <http://www.iucn.org/cbd/papers.htm>

Other Resources

THE "EC BIOTECH PRODUCTS" RULING AT THE WORLD TRADE ORGANIZATION AND THE CARTAGENA PROTOCOL ON BIOSAFETY. By Steve Suppan (Institute for Agriculture and Trade Policy, March 2006). This analysis looks at the recent preliminary ruling of the WTO panel investigating the European Commission's implementation of its regulations on genetically modified organisms, focusing on the implications for coherence between the WTO and the UN. To access this report, visit <http://www.tradeobservatory.org/library.cfm?refid=78778>

THIRD WORLD NETWORK BIOSAFETY BRIEFINGS. By Third World Network, February 2006. This set of briefings, prepared in part for TWN's event at MOP-3, include a report from MOP2; report on the Article 18.2(a) experts' meeting; analysis of GMO contamination, identification and Article 18.2(a); South Africa's traceability and segregation systems; and a summary of the WTO Dispute Panel interim report on GMOs. To access these briefings, visit <http://biosafety-info.net/meetart.php?mid=18>

SUSTAINABLE USE AND MANAGEMENT OF NATURAL RESOURCES. By Stephan Moll, Mette Skovgaard and Philipp Schepelmann (European Environment Agency, January 2006). This report focuses on humanity's ability to continue to provide for its needs by drawing on the resources of the natural world. The analysis focuses on a selection of natural resources, namely fisheries, forestry, water, fossil fuels, metals and construction minerals, and land use. It considers patterns of resource use, the growing pressure on resources, and some possible policy options and strategic responses. To access this report, visit http://reports.eea.eu.int/eea_report_2005_9/en.

SEATINI BULLETIN: EPAS AND FISHERIES NEGOTIATIONS. By the Southern and Eastern African Trade, Information and Negotiations Institute, March 2006. Delegates at the recent meeting of the East & Southern Africa (ESA) countries technical group on fisheries expressed a number of important concerns. The ESA group indicated its

desire to conclude a fisheries agreement with the European Union (EU) and this agreement, which will be based on the draft proposal produced by ESA countries, would include modalities for both inland and marine fisheries. However the ESA group faced a setback after the European Commission (EC) failed to make a meaningful response to the ESA group's proposals. Is movement possible? To access this magazine, visit <http://www.seatini.org/bulletins/latest.php>

FTAS: TRADING AWAY TRADITIONAL KNOWLEDGE by GRAIN in collaboration with Dr Silvia Rodríguez Cervantes. In the last couple of years, bilateral and regional free trade agreements (FTAs) have become immensely popular with governments disillusioned by the slow pace of trade liberalisation talks at the World Trade Organisation (WTO). At present there are over 200 FTA negotiating processes under way across the globe. While ostensibly aimed at breaking down trade barriers, these agreements are increasingly targeting indigenous peoples' and local communities' traditional knowledge in very real ways. To access this briefing, visit <http://www.grain.org/briefings/?id=196>

BRAZIL 2006: GLOBAL STANDARD ON IDENTIFICATION OF GMOS TO BE DECIDED BY INTERNATIONAL TREATY. By Friends of the Earth International, March 2006. To access this report, visit <http://biosafety-info.net/meetart.php?mid=18>

GM IMPORT LAWS AND DUMPING GROUNDS. By Greenpeace, March 2006. This report examines the identification and documentation aspects of the Biosafety Protocol negotiations in Brazil. To access this report, visit <http://www.greenpeace.org>

ON THE MOVE

ACHIM STEINER, the current Director General of IUCN - The World Conservation Union, was appointed on 16 March to the position of Executive Director of the United Nations Environment Programme (UNEP). His appointment was confirmed by the UN General Assembly. He will succeed Klaus Töpfer, who finishes his second term on 31 March 2006. For further information, visit http://www.iucn.org/en/news/archive/2006/03/15_achim_steiner.htm

CORRIGENDUM

Contrary to what was stated in "US-Colombia FTA Signed, Says Environmental Laws To Be Upheld" (Bridges Trade BioRes, Vol. 6 No. 4, 3 March 2006), the US-Colombia and US-Peru trade promotion agreements have not yet been signed. Rather, negotiations have been completed in both cases. The Bridges Trade BioRes editorial team regrets the error.

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