

## Dispatch from Curitiba

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The Third Meeting of the Parties (MOP3) to the Cartagena Protocol on Biosafety was held in March 2006 in Curitiba, Brazil. The most significant decision the Meeting aimed to resolve was on Article 18 of the Protocol, which concerns the handling, transport, packaging and identification of living modified organisms (LMOs). The contentious section of Article 18 is paragraph 2(a), which provides that for the first two years under the Protocol, LMOs for "direct use as food or feed, or for processing" (FFPs) could be shipped under a meaningless label stating that the shipment "may contain" LMOs. This language was the result of the compromise that finally ended the negotiations at the Protocol meeting in 2002.

Since the overwhelming majority of actual international LMO shipments are of FFPs, this language offers no safety information to an importing country. Reaching a consensus on new language for this section, which would be strong enough to allow strict border regulations, was the goal of many of the nations at MOP3. The negotiations over this section have a long history of contention, and this round was to be no different.

At MOP2 in June 2005, as the Article 18 deadline of that September neared, Brazil and New Zealand blocked consensus on any of a number of formulations for more precise identification and documentation. These tactics allowed the two-year marker to pass — a serious blow to the morale of the nations and NGOs that have been involved in promoting biosafety.

Most of the developed world, however, already imposes fairly elaborate rules on the documentation of imported foods. The U.S.'s new regulations under the food bioterrorism act are very stringent (see "U.S. Bioterror Act of 2002" on the following page). New Zealand's regulations are perhaps the strictest in the world, imposing a zero threshold on contamination or "adventitious presence" of LMOs. The fact that these two nations (and others such as Canada and Australia) were among those opposing a strong agreement on labeling exemplifies abuse of power.

This is because the Protocol is a necessity for the world's poorest nations, who often lack dedicated biosafety legislation, fiscal resources and the complex biosecurity infrastructure that developed countries possess. For these nations, the Protocol is a collective way to achieve regulations, which each alone might be too weak to enact or enforce. These nations are also the ones whose food security and biodiversity are most at risk from unidentified, and potentially illegal, imports of LMOs for food, feed and processing.

### **COMING TO A CONSENSUS**

NGOs had grave concerns that New Zealand was serving as a stalking horse for the major GMO exporters (U.S., Canada, Australia and Argentina) in playing this blocking role. Brazil's motivations might partially have been a result of wanting the decision to take place in Curitiba, but also reflected commercial considerations since Brazil

exports increasingly large amounts of both conventional and LMO varieties of soy. After months of conflict between the environmental and trade ministries (involving Brazilian NGOs), and an international online protest consisting of a deluge of e-mails to President Lula, Brazil moved to a position of negotiating. While Brazil's compromise proposal for a labeling regulation was not strong enough to truly satisfy proponents of clear documentation, it signified a willingness to engage in a serious discussion. In the end, President Lula probably did not want to be blamed for the failure of the MOP3 on his turf.

At MOP3, Paraguay (backed by Argentina), Mexico, Nicaragua and Peru unexpectedly supported very weak labeling regulations. In an attempt to stave off New Zealand from continuing its previous opposition, NGOs began an intense campaign, including a similar organizing of a very large international online protest to N.Z.'s Prime Minister Helen Clark. NGOs also coordinated interviews by African Group spokesperson Dr. Tewolde Egziabher and an European Commission official with New Zealand-based media, resulting in a great deal of critical coverage. These efforts had the desired effect: New Zealand's voice among opposing countries quickly disappeared.

NGOs strategized that if the negotiations failed, or resulted in weak, ineffective language, individual countries might be urged to join in a "coalition of the willing," standing together to pledge domestic implementation of a common minimum identification and documentation standard. This would be an effort to prevent another Article 18 failure, a situation that would have not only deflated the delegates and activists who support biosafety, but would have tarnished the other important activities ongoing under the Protocol as well as the Secretariat's enthusiasm for them.

A final drafting group worked through the night and into the morning of the final day, producing a document that contained several alternative text sections. When this document was presented to the delegates, the Chair suggested that she would use her power to decide among the alternatives. Mexico and Paraguay raised new objections. Brazil, Europe, Ethiopia, and even Peru expressed "dismay" at these last minute maneuvers, using language unusually harsh for diplomatic gatherings. Suddenly, small groups of negotiators were forming, huddled in corners of the plenary room; they finally retreated to a private chamber.

After much discussion, it was Mexico that exacted the stiffest price, distorting the final language in order to protect the LMO "Trilateral Agreement" (with the United States and Canada, under NAFTA) by which it imports large quantities of U.S. corn without rigorous documentation and containing — sometimes intentionally and sometimes adventitiously — LMOs. This corn sells at prices below those of Mexican corn, due to vast U.S. subsidies, which are of questionable legality under the WTO. Some of this grain is actively planted, since peasant societies do not make the distinction we do between grains and seeds, and some accidentally germinates. One result has been the contamination of ancient Mexican maize varieties by genetically engineered components, as evidenced by the work of Ignacio Chapela and David Quist.

## **RESULTS**

The decision at Curitiba has led to stronger documentation language in the Protocol, though compromises resulted in several aspects that must be further strengthened.

Now, in situations where the identity of an LMO is known through "means such as identity preservation systems" (i.e., when the LMO has been physically segregated from its non-LMO counterparts), a shipment is required to be explicitly identified as one that contains FFP LMOs. It is believed that this new language will cover the development of testing procedures to verify whether there is any contamination of a shipment and, if so, the identity of the LMO. Infrastructure is already in place to

support this kind of labeling; depending on the food, 30% to 70% of shipments already carry such detailed requirements, and the industry is learning how to apply segregation measures, since "identity preserved" shipments may command a premium price.

In cases where the identity of the LMO is not known through such means, a two-stage approach was the weak compromise adopted. The shipment can still be identified merely as one that "may contain" one or more LMOs for FFP. However, this requirement is subject to review and assessment at MOP5 (to take place in 2010), "with a view to considering a decision" at MOP 6 (in 2012) to ensure identification that the shipment contains FFP LMOs. In other words, contamination of shipments may continue for six more years.

In the end, the new text of section 18-2(a) immediately enacts additional labeling requirements for some shipments and ensures that all will eventually be identified and documented. However, there is still fear that contamination — by cross-pollination, or the simple mixing of seed varieties during shipping or storage — will become so extensive that all such labeling attempts will be rendered meaningless and ineffective. There is reason to believe that industry and exporting countries actually favor such a scenario, although there may be negative impacts on biodiversity and human health.

On this crucial issue, the outcome of MOP3 means that politically and economically weak nations will have to wait years in order to be able to get adequate information to protect their borders, if they choose, from LMOs. As a result, biodiversity resources like the ancient Mexican maize landraces will be increasingly contaminated, despite the solemn promise of the Parties to give heightened protection to centers of origin. NGO opponents of LMO proliferation may not have lost the argument over labeling, but the price of the actual negotiation may be very high.

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