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Bridges Trade BioRes

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

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Excerpts

Biodiversity

COP-8 FOCUSES ON PROCESS, CHARTS NEXT STEPS ON ABS AND INCENTIVES; Related Development at TRIPS Council

The Eighth Conference of the Parties (COP-8) to the Convention on Biological Diversity (CBD) closed its two-week meeting in Curitiba, Brazil, on 31 March with a participants and side-events. Much of the discussions on the more contentious issues, however, including those most immediately related to trade, focused more on process than substance. On access and benefit-sharing (ABS), Parties agreed on how to structure upcoming talks on an international ABS regime, setting 2010 as the deadline for the negotiations. On incentive measures, Parties effectively put related discussions on the backburner until the next COP when the incentives work programme is up for an in-depth review.

Parties agree on 2010 deadline for ABS negotiations

Most developing countries came to Curitiba with the aim of securing greater commitment and impetus for negotiations on an international ABS regime. Several developed countries, such as Canada and Australia, however, remained reluctant to commit to specific outcomes or deadlines, preferring to focus on gathering more national experiences. Norway, diverging from its earlier ambiguity regarding an international regime, provided strong backing to developing countries, proposing to establish an intergovernmental negotiating body with its own Chair and Bureau. These divisions were clearly reflected in the proposals put on the table and the subsequent late-night negotiations.

The deadline for finalising talks on the international regime emerged as one of the most controversial issues. While developing countries -- for the first

time in the ABS process speaking as the G-77/China -- would have liked to see COP-9 in 2008 to be included as the deadline, Canada and Australia would have preferred to delay the process further. The final decision calls on the Ad Hoc Open-Ended Working Group (AHWG) on ABS "to complete its work at the earliest possible time before COP-10". While later than hoped for by developing countries, the fact that a timetable has now been set for the open-ended negotiating mandate adopted at the World Summit on Sustainable Development (WSSD) was welcomed by some observers as an important step forward in the talks.

Many also have high hopes for the expert group established by the COP to explore and elaborate possible options for the form, intent and functioning of an "internationally recognised certificate of origin/source/legal provenance", and analyse its practicality, feasibility, costs and benefits (see Bridges Trade BioRes, 3 February 2006, <http://www.ictsd.org/biores/06-02-03/story2.htm>). The group, which will comprise 25 experts nominated by Parties and seven observers, can be expected to touch on many of the most contentious issues in the ABS negotiations, including how such a certificate could be used in patent applications. The meeting -- to be held at least six months before AHWG-5, thereby allowing the outcomes to contribute early on into the post-COP-8 talks -- will be co-organised by Peru and Spain in Lima, Peru.

The COP also agreed to appoint two Co-Chairs to head the ABS talks which is likely to help ensure greater continuity in the negotiations, including in the intersessional periods. Fernando Casas of Colombia and Timothy Hodges of Canada were elected as Co-Chairs. The AHWG is scheduled to meet twice before COP-9.

Incentives discussions on hold until COP-9

Much of the discussion on incentive measures revolved around establishing a "structured, transparent and inclusive preparatory process" for the schedule review of the work programme at COP-9. To date, the CBD's work on incentives has focused on developing proposals on removing or mitigating perverse incentives -- i.e. incentives that can induce unsustainable behaviour that destroys biodiversity, often as unanticipated side-effects of other policies -- and applying positive incentives, such as economic, legal or institutional measures designed to encourage beneficial activities. The Chair of the COP discussions, Matthew Jebb of Ireland, was keen to keep the debate to procedural issues, and was supported by Australia, Argentina, Brazil and New Zealand. These countries have repeatedly said that the CBD's work on incentives overlaps with and duplicates negotiations at the WTO, raising concerns that explicitly allowing measures to mitigate perverse incentives in the CBD context could provide an opening for countries, such as the EU, to provide agricultural subsidies "under the disguise" of biodiversity conservation (see Bridges Trade BioRes, 28 March 2006, http://www.ictsd.org/biores/cbd_cop8_updates/update2.htm).

The EU made nominal efforts to push for finalising the proposals on perverse

and positive incentives -- forwarded by the 10th and 11th meetings of the CBD's Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) -- at COP-8, but in the end seemed ready to put substantive discussions on hold until COP-9. One observer speculated that Parties would generally prefer to avoid discussing subsidies-related issues in the CBD while trade negotiations are still underway. By 2008 -- the date of the next COP -- WTO negotiations are scheduled to have been finalised.

The final decision -- a compilation of proposals by Australia and the EU that were further refined in contact and 'Friends of the Chairs' groups - establishes a preparatory process to identify further outcomes that would be required from a revised work programme on incentives (for adoption at COP-9) and possible elements of a future work programme. Inputs into the discussions will include input from Parties, other governments, international organisations and stakeholders on their experiences in the implementation of the incentives work programme.

GURTS moratorium maintained

At the COP, many developing countries and civil society groups geared up to fight language in the draft decision on genetic restriction use technologies (GURTS, i.e. technologies that can be used to genetically alter seeds to be sterile and thus prevent reuse) that they feared could undermine the current moratorium on GURTS adopted at COP-5. The controversy centred on text forwarded by the CBD Working Group on Article 8(j) which would allow for case-by-case risk assessments of GURTS (see Bridges Trade BioRes, 3 February 2006, <http://www.ictsd.org/biores/06-02-03/inbrief.htm>). While the text was supported by New Zealand, Australia, Switzerland and industry groups, the G-77/China strongly opposed the language which they warned could open the door to field trials, pointing to the threats GURTS pose for farmers, biodiversity, indigenous peoples and food security. After relatively short discussions in a 'Friends of the Chair' group, the reference to case-by-case risk assessments was dropped from the final decision.

Biotechnology-related issues also crept up in discussions on forest biodiversity where language related to genetically modified (GM) trees proved particularly controversial. Some countries, such as the EU, Ghana and Kenya advocated a precautionary approach to the use of GM trees. Liberia requested guidance from SBSTTA before allowing the use of GM trees while Iran and several civil society groups called for an outright moratorium. The final decision recommends Parties take a precautionary approach and requests the CBD Executive Secretary to gather existing information for consideration at the next SBSTTA meeting.

COP-9 will be held in Germany in 2008.

Additional Resources

COP-8 documents are available at

<http://www.biodiv.org/doc/meeting.aspx?mtg=COP-08>.

Daily coverage was provided by IISD Linkages,
<http://www.iisd.ca/biodiv/cop8/>.

ICTSD COP-8 Biodiversity and Trade Briefings on ABS, incentives measures and food and nutrition are available at <http://www.trade-environment.org/page/ictsd/resource.htm#COP8>.

ICTSD reporting.

[Related development at TRIPS Council]

WTO: SUPPORT FOR DISCLOSURE BUILDING IN TRIPS TALKS

China and Norway joined Brazil, Peru, India and other developing countries in calls for text-based negotiations on disclosure of the origin of biological materials in patent applications during an informal consultation on the relationship between the Convention on Biological Diversity (CBD) and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) held on 23 March and led by WTO Deputy Director-General Rufus Yerxa (see Bridges Trade BioRes, 17 March 2006, <http://www.ictsd.org/biores/06-03-17/story4.htm>). China for the first time spoke out in favour of moving to text-based negotiations on a disclosure requirement. For its part, Norway said that although a national-based approach could be useful, it had no objections to inserting a mandatory requirement for origin disclosure and evidence of prior informed consent into the TRIPS Agreement. This position was reinforced by its statements at the CBD Conference of the Parties in Brazil (see Bridges Trade BioRes, 22 March 2006, http://www.ictsd.org/biores/cbd_cop8_updates/update1.htm), where Norway also expressed its support for a mandatory disclosure requirement. However, and in line with its national legislation on disclosure in patent applications that has been adopted and legislation on access to genetic resources that is currently under consultation, Norway did not support a requirement for evidence of benefit-sharing.

The US was put on the defensive, reiterating its belief that a national-level contract-based approach outside the patent system was adequate to ensure equitable access and benefit-sharing. The US went on to suggest that disclosure requirements would in fact have an adverse impact on benefit sharing because it would act as a disincentive to innovation by posing additional burden on the patent system and patent holders. The EU suggested that a national based approach could be useful, along with a contract based mechanism, and that for an international disclosure requirement to be enforced terms like "country of origin", "source of biological/genetic material" would have to be adequately defined. Yerxa said while he expects consultations to continue before the May General Council meeting, he would send a "factual" report to WTO Director-General Pascal Lamy.

ICTSD Reporting; "WTO Geographical Indications, Biodiversity Talks Intensify, But No News For TNC," IP-WATCH, 24 March 2006.

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