

# WORLD TRADE ORGANIZATION

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## Committee on Trade and Environment

### RECENT DEVELOPMENTS IN MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAS)

Note by the Secretariat

#### I. INTRODUCTION

This Note provides Members of the Committee on Trade and Environment with an update of the recent developments in three multilateral environmental agreements:

- Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes, Fourth Meeting of the Conference of Parties (COP) held from 23-27 February 1998 in Kutching, Malaysia. (See page 1).
- Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Fifth Session of the Intergovernmental Negotiating Committee held from 9-14 March 1998 in Brussels, Belgium. (See page 7).
- Convention on Biological Diversity (CBD), Fourth Meeting of the Conference of the Parties, held in Bratislava (Slovakia), from 4 to 15 May 1998. (See page 12).

#### II. BASEL CONVENTION

At the fourth meeting of the COP to the Basel Convention, a total of 25 decisions were adopted.<sup>1</sup> Six of them which may be of interest to Members are reproduced below. The fifth meeting of the COP to the Convention will take in December 1999 in Basel, Switzerland.

DECISION IV/6                      OUTCOME OF THE WORK OF THE TECHNICAL WORKING GROUP ON LISTS OF  
WASTES AND THE APPLICATION PROCEDURE FOR THEIR REVIEW OR  
ADJUSTMENT<sup>2</sup>

##### The Conference

1. Notes with appreciation the efforts of the Technical Working Group in preparing the List A and List B of wastes;
2. Considers the draft Position Paper together with the consolidated Lists A and B of wastes, and the applicable procedure for reviewing or adjusting List A and List B;

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<sup>1</sup> See document UNEP/CHW.4/35 (18 March 1998), which is available at the WTO Secretariat for consultation.

<sup>2</sup> The Technical Working Group has classified wastes into three 3 lists. Briefly, List A contains wastes that are characterized as hazardous under Article 1 of the Convention. List B contains wastes that will not be covered by Article 1 of the Convention. List C contains wastes that remain to be classified.

3. Agrees to approve the draft Position Paper on Hazard Characterization and Classification of Wastes within the Framework of the Basel Convention as contained in document UNEP/CHW.4/2;
4. Approves the List A and List B of wastes as submitted by the Technical Working Group;
5. Approves the Application Form for the Placement or Removal of Wastes on List A or List B developed by the Technical Working Group;
6. Extends the mandate of the Technical Working Group and instructs the Technical Working Group to keep the List A and List B of wastes under review using the Application Form for placement or removal of wastes on these Lists for this purpose;
7. Requests the Technical Working Group to provide the Conference of the Parties with recommendations on the revision or adjustment of List A and List B of wastes;
8. Notes the wastes placed on List C;
9. Instructs the Technical Working Group to review wastes on List C with a view to their placement on List A or List B;
10. Also instructs the Technical Working Group to initiate work on wastes about which particular concerns are or have been expressed;
11. Instructs the Technical Working Group to develop the procedure for reviewing or adjusting the lists of wastes and to submit a proposal for approval at the fifth meeting of the Conference of the Parties;
12. Requests the Technical Working Group to continue its work on the hazard characterization of wastes, in particular, for the hazard characteristics H6.2, H10, H11, H12 and H13 of Annex III to the Convention;
13. Requests the Secretariat to publish the draft position paper, in the official languages of the United Nations, and to disseminate it to Parties, signatories of the Convention, other States, intergovernmental organizations, industry and business, as well as to environmental non-governmental organizations;
14. Requests the Secretariat of the Basel Convention to ensure that the outcome of the work of the Technical Working Group be made available to Parties on a regular basis.

DECISION IV/7                      IMPLEMENTATION OF DECISION III/1<sup>3</sup>

The Conference

1. Takes note of the progress made by Parties in effectively implementing decision III/1;

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<sup>3</sup> Decision III/1 on the Amendment of the Basel Convention was adopted at the Third Meeting of the Conference of Parties to the Basel Convention in September 1995. The decision amends "the Convention with respect to a prohibition by each Party member of OECD, EC, Liechtenstein, of all transboundary movements of hazardous wastes which are destined for final disposal to other States. It also phases out by 31 December 1997 and prohibits as of that date all transboundary movements of hazardous wastes for recovery, recycling, reclamation, direct re-use or alternative uses from Party members of OECD, EC, Liechtenstein to other States" (Newsletter of the Basel Convention, No.7, January 1996).

2. Welcomes the ratification by several countries of the Amendment adopted by decision III/I;
3. Strongly appeals to Parties to ratify the Amendment adopted by decision III/1 as soon as possible to enable the early entry into force of the Amendment.

DECISION IV/8                      DECISION REGARDING ANNEX VII<sup>4</sup>

The Conference

Affirming the objectives set out in decision III/1,

Noting that the amendment contained in decision III/1 has not yet come into force, and therefore also noting decision IV/7 of this Conference, which urges Parties to ratify this Amendment as a matter of priority,

Further noting the deep concern of Arab and other countries of making any changes to Annex VII,

Reaffirming the importance of the broad ramification and entry into force of the amendment contained in decision III/I and recognizing the difficulties of modifying Annex VII prior to the entry into force of that amendment,

Further noting the proposals formulated by Parties for inclusion into Annex VII,

1. Decides to leave Annex VII unchanged until the amendment contained in decision III/1 enters into force;
2. Further decides to explore issues related to Annex VII and requests the Technical Working Group in cooperation with the Sub-group of Legal and Technical Experts to provide Parties with a detailed and documented analysis that would highlight issues related to Annex VII;
3. Requests those two Groups to report to the fifth meeting of the Conference of the Parties;
4. Confirms that the work to be undertaken is without prejudice to any future decisions concerning Annex VII.

DECISION IV/9                      AMENDMENT AND ADOPTION OF ANNEXES TO THE CONVENTION

The Conference

Recalling decision III/1 of the Conference of the Parties, which instructed the Technical Working Group, among other things, to give full priority to completing the work on hazard characterization and the development of lists, in order to submit them for approval to the fourth meeting of the Conference of the Parties,

Recalling decision III/12 of the Conference of the Parties, which instructed the Technical Working Group, among other things, to consider ways of taking forward the development of lists of hazardous wastes and the applicable procedure for their review based on the outcome of the work of the Technical Working Group, as well as further developing lists of wastes not covered by this Convention,

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<sup>4</sup> Decision III/1 of the Basel Convention (see previous footnote) defined Annex VII countries to include "Parties and other States which are members of OECD, EC, Liechtenstein."

Taking note of the work carried out by the Technical Working Group and in particular the development of a list of wastes that are characterized as hazardous pursuant to Article 1, paragraph 1 (a), (list A contained in the note on consolidated lists of wastes and the applicable procedures for their review and adjustment (UNEP/CHW.4/3)) and a list of wastes that are not covered by article 1, paragraph 1 (a), of this Convention (list B contained in the note on consolidated lists of wastes and the applicable procedures for their review and adjustment), as well as the progress made in the development of a procedure for reviewing or adjusting these lists and of an application form required for the placement or removal of wastes on these lists,

Considering that Annex I and Annex III shall remain the factors to characterize wastes as hazardous for the purpose of this Convention, that lists A and B developed by the Technical Working Group provide an expeditious way to facilitate the implementation of this Convention, including Article 4A, by establishing wastes that are and wastes that are not covered by Article 1, paragraph 1 (a), of this Convention, and that these lists should have equal status,

Noting that wastes listed in lists A and B are an elaboration and clarification of the provisions of Article 1, paragraph 1 (a), of this Convention by reference to Annexes I and III,

Recognizing that List a and List b are not intended to be exhaustive,

Taking note that the Open-ended Ad Hoc Committee decided at its third meeting to propose that the Conference of the Parties extend the mandate of the Technical Working Group to take charge of the procedure for reviewing or adjusting the lists of wastes and that the Conference of the Parties adopt the application form for this purpose, as set out in the note on consolidated lists of wastes and the applicable procedures for their review and adjustment,

Taking note that, pursuant to decision IV/6, the Technical Working Group is instructed to keep the lists of wastes under review and to make recommendations to the Conference of the Parties for revisions or adjustments,

Further taking note that, pursuant to decision IV/6, the Technical Working Group is instructed to review the procedure for reviewing or adjusting the lists of wastes, including the Application Form as set out in the note on consolidated lists of wastes and the applicable procedures for their review and adjustment and to submit a proposal for approval at the fifth meeting of the Conference of the Parties,

Decides to adopt the following amendment and adoption of annexes to this Convention:

1. Add the following paragraphs at the end of Annex I:

- (a) To facilitate the application of this Convention, and subject to paragraphs (b), (c) and (d), wastes listed in Annex VIII are characterized as hazardous pursuant to Article 1, paragraph 1 (a), of this Convention, and wastes listed in Annex IX are not covered by Article 1, paragraph 1 (a), of this Convention.
- (b) Designation of a waste on Annex VIII does not preclude, in a particular case, the use of Annex III to demonstrate that a waste is not hazardous pursuant to Article 1, paragraph 1 (a), of this Convention.
- (c) Designation of a waste on Annex IX does not preclude, in a particular case, characterization of such a waste as hazardous pursuant to Article 1, paragraph 1 (a), of this Convention if it contains Annex I material to an extent causing it to exhibit an Annex III characteristic.

- (d) Annexes VIII and IX do not affect the application of Article 1, paragraph 1 (a), of this Convention for the purpose of characterization of wastes.
2. Add the following two new annexes to the Convention as its Annexes VIII and IX.<sup>5</sup>

DECISION IV/11      CURRENT AND PLANNED TECHNICAL ASSISTANCE ACTIVITIES INCLUDING  
FOR THE IMPLEMENTATION OF AGENDA 21

The Conference

1. Takes note of the report prepared by the Secretariat of the Basel Convention;
2. Requests the Secretariat to continue to provide assistance within the limits of its existing financial resources;
3. Urges Parties and other countries to provide assistance on a bilateral or regional basis or through the Secretariat;
4. Urges Parties to cooperate actively on a regional basis, in particular for those Parties that have the capacity to provide technical support to other countries of the region in need of such assistance;
5. Requests the Secretariat to make available to Parties the updated list of technical assistance needed on a regular basis.

DECISION IV/12      ILLEGAL TRAFFIC IN HAZARDOUS WASTES AND OTHER WASTES

The Conference

1. Welcomes the work of the Technical Working Group on confirmed cases of illegal traffic and recognizes that the issue of illegal traffic remains a high priority with particular emphasis on cases involving alleged illegal traffic,
  - (a) Appeals to Parties to bring any case or, if appropriate, alleged case of illegal traffic to the attention of the Secretariat and to provide the Secretariat with all necessary information to enable it to take any appropriate action, including preventive measures through initial dissemination of information to Parties concerned,
  - (b) Welcomes steps taken by Parties to submit information on how Parties may have dealt with illegal traffic, including alleged cases of illegal traffic, with regard to difficulties they could be facing when seeking compliance with the provisions of the Basel Convention,
  - (c) Recognizes that illegal traffic can take many different forms and be of different magnitudes ranging from, for example, falsification of documents to large-scale organized activities,
  - (d) Requests Parties to cooperate with each other and the Secretariat on alleged cases of illegal traffic;

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<sup>5</sup> The Annexes referred to in Decision IV/9 have not been reproduced in this Note, but may be consulted in document UNEP/CHW.4/35 (18 March 1998).

- (e) Assigns the Consultative Sub-group of Legal and Technical Experts the task of developing procedures to address alleged cases of illegal traffic;
  - (f) Adopts the draft Form for Confirmed Cases of Illegal Traffic for use by Parties in confirmed cases of illegal traffic;
  - (g) Invites Parties to use this form in their reports related to confirmed cases of illegal traffic to the Secretariat;
  - (h) Requests the Secretariat to report to the fifth meeting of the Conference of the Parties, through the Open-ended Ad Hoc Committee for the Implementation of the Basel Convention, as appropriate, on information received by Parties on cases of illegal traffic;
2. Welcomes the convening of meetings and conferences on the prevention of illegal traffic approved by decision III/28 and urges Parties to promote the effective participation of developing countries in these meetings;
3. Urges Parties to fulfil their obligations under Article 9, paragraph 5 of the Basel Convention, in particular:
- (a) To promulgate, update and/or develop stringent legislation on the control of transboundary movements of hazardous wastes; and
  - (b) To incorporate in their national legislation appropriate sanctions or penalties for illegal traffic in hazardous wastes and other wastes covered by the Basel Convention;
4. (a) Notes that the classification and characterization of wastes represent essential tools to assist in the identification and prevention of illegal traffic;
- (b) Requests the Secretariat of the Basel Convention, bearing in mind decisions I/18 and II/23, to work closely with the United Nations Committee of Experts on the Transport of Dangerous Goods towards the development of an appropriate classification and labelling system;
  - (c) Requests the Secretariat to continue its cooperation with various regional commissions and secretariats of regional conventions and protocols, non-governmental organizations, industry and the private sector, as well as the World Customs Organization and Interpol, in order to achieve better control and monitoring of cases or alleged cases of illegal traffic in hazardous wastes and other wastes;
  - (d) Requests the Secretariat to organize training courses for customs officers and police forces in cooperation with the World Customs Organization, Interpol and other appropriate bodies, including United Nations regional commissions and secretariats of regional agreements dealing with similar aspects;
  - (e) Requests the Secretariat to assist Parties in capacity building, including the development of an appropriate infrastructure, with a view to preventing and penalizing cases of illegal traffic in hazardous wastes and other wastes and to ensuring the involvement of national authorities and focal points for the Basel Convention in the prevention and monitoring of illegal traffic in hazardous wastes and other wastes;

- (f) Encourages Parties to build up their enforcement capacities, *inter alia*, through cooperation with international bodies such as Interpol and the International Network for Environmental Complaints, in the development of training and networking for enforcement personnel involved in the prevention of illegal traffic;
- (g) Invites Parties to promote consistency when addressing the issue of illegal traffic in the relevant United Nations bodies, while avoiding duplication;

5. Requests the Technical Working Group and the Consultative Sub-group of Legal and Technical Experts, at their joint meeting, keeping in mind the discussions within the Ad Hoc Working Group of Legal and Technical Experts to Consider and Develop a Draft Protocol on Liability and Compensation, to develop recommended procedures to assist Parties in preventing, identifying and managing illegal traffic.

### III. PRIOR INFORMED CONSENT CONVENTION<sup>6</sup>

The Prior Informed Consent Convention is a new multilateral environmental agreement negotiated under the auspices of both the United Nations Environment Programme and the Food and Agricultural Organization of the United Nations. The text of the PIC Convention was finalized at the Fifth Session<sup>7</sup>, and it will be adopted by Ministers at a Diplomatic Conference to be held in September 1998 in Rotterdam, the Netherlands. Certain provisions of the Convention, which may be of interest to Members, are reproduced below.

#### PREAMBLE

##### The Parties to this Convention

Aware of the harmful impact on human health and the environment from certain hazardous chemicals and pesticides in international trade,

Recalling the pertinent provisions of the Rio Declaration on Environment and Development and Chapter 19 of Agenda 21 on "Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products",

Mindful of the work undertaken by the United Nations Environment Programme and the Food and Agriculture Organization of the United Nations in the operation of the voluntary Prior Informed Consent procedure, as set out in the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade (hereinafter referred to as "Amended London Guidelines") and the FAO International Code of Conduct on the Distribution and Use of Pesticides (hereinafter referred to as the "International Code of Conduct"),

Taking into account the circumstances and particular requirements of developing countries and countries in transition, in particular the need to strengthen national capabilities and capacities for the management of chemicals, including transfer of technology, providing financial and technical assistance and promoting cooperation among the Parties,

Noting the specific needs of some countries for information on transit movements,

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<sup>6</sup> For an overview of the voluntary and the legally-binding PIC procedures, document WT/CTE/W/73 (14 January 1998) may be consulted.

<sup>7</sup> See document UNEO/FAO/PIC/INC.5/3 (17 March 1998), which is also available at the WTO Secretariat for consultation.

Recognizing that good management practices for chemicals should be promoted in all countries, taking into account, *inter alia*, the voluntary standards laid down in the International Code of Conduct on the Distribution and Use of Pesticides and the UNEP Code of Ethics on the International Trade in Chemicals,

Desiring to ensure that hazardous chemicals that are exported from their territory are packaged and labelled in a manner that is adequately protective of human health and the environment, consistent with the principles of the Amended London Guidelines and the International Code of Conduct,

Recognizing that trade and environmental policies should be mutually supportive with a view to achieving sustainable development,

Emphasizing that nothing in this Convention shall be interpreted as implying in any way a change in the rights and obligations of a Party under any existing international agreement applying to chemicals in international trade or to environmental protection,

Understanding that the above recital is not intended to create a hierarchy between this Convention and other international agreements,

Determined to protect human health, including the health of consumers and workers, and the environment against potentially harmful impacts from certain hazardous chemicals and pesticides in international trade,

#### ARTICLE 1 OBJECTIVE

The objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.

#### ARTICLE 10 OBLIGATIONS IN RELATION TO IMPORTS OF CHEMICALS LISTED IN ANNEX III<sup>8</sup>

1. Each Party shall implement appropriate legislative or administrative measures to ensure timely decisions with respect to the import of chemicals listed in Annex III.
2. Each Party shall transmit to the Secretariat, as soon as possible but no later than nine months after the date of dispatch of the decision guidance document referred to in paragraph 3 of Article 7, a response concerning the future importation of the chemical concerned. If a Party modifies this response, it shall forthwith submit the revised response to the Secretariat.
3. The Secretariat shall, at the expiration of the time-period in paragraph 2, forthwith address to a Party that has not provided such a response, a written request to do so. Should the Party be unable to provide a response, the Secretariat shall, where appropriate, help it to provide a response within the time-period specified in the last sentence of paragraph 2 of Article 11.
4. A response under paragraph 2 shall consist of either:

- (a) A final decision, pursuant to legislative or administrative measures:

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<sup>8</sup> Annex III contains Chemicals Subject to the Prior Informed Consent Procedure.



- (i) To consent to importation;
    - (ii) Not to consent to importation; or
    - (iii) To consent to importation only subject to specified conditions; or
  - (b) An interim response, which may include:
    - (i) An interim decision consenting to importation with or without specified conditions, or not consenting to importation during the interim period;
    - (ii) A statement that a final decision is under active consideration;
    - (iii) A request to the Secretariat or to the Party that notified the final regulatory action, for further information;
    - (iv) A request to the Secretariat for assistance in evaluating the chemical.
5. A response under (a) or (b) of paragraph 4 shall relate to the category or categories specified for the chemical in Annex III.
6. A final decision should be accompanied by a description of any legislative or administrative measures upon which it is based.
7. Each Party shall, no later than the date of entry into force of this Convention for it, transmit to the Secretariat responses with respect to each chemical listed in Annex III. A party that has provided such responses under the Amended London Guidelines or the International Code of Conduct need not resubmit those responses.
8. Each Party shall make its responses under this Article available to those concerned within its jurisdiction, in accordance with its legislative or administrative measures.
9. A Party that, pursuant to paragraphs 2 and 4 above, and paragraph 2 of Article 11, takes a decision not to consent to importation of a chemical or to consent to its importation only under specified conditions shall, if it has not already done so, simultaneously prohibit or make subject to the same conditions:
- (a) Importation of the chemical from any source; and
  - (b) Domestic production of the chemical for domestic use.
10. Every six months the Secretariat shall inform all Parties of the responses it has received. Such information shall include a description of the legislative or administrative measures on which the decisions have been based, where available. The Secretariat shall, in addition, inform the Parties of any cases of failure to transmit a response.

ARTICLE 11                      OBLIGATIONS IN RELATION TO EXPORTS OF CHEMICALS LISTED IN ANNEX III

1. Each exporting Party shall:

- (a) Implement appropriate legislative or administrative measures to communicate the responses forwarded by the Secretariat in accordance with paragraph 10 of Article 10 to those concerned within its jurisdiction;
  - (b) Take appropriate legislative or administrative measures to ensure that exporters within its jurisdiction comply with decision in each response no later than six months after the date on which the Secretariat first informs the Parties of such response in accordance with paragraph 10 of Article 10;
  - (b) Take appropriate legislative or administrative measures to ensure that exporters within its jurisdiction comply with decisions in each response no later than six months after the date on which the Secretariat first informs the Parties of such response in accordance with paragraph 10 of Article 10;
  - (c) Advise and assist importing Parties, upon request and as appropriate:
    - (i) To obtain further information to help them to take action in accordance with paragraph 4 of Article 10 and paragraph 2 (c) below; and
    - (ii) To strengthen their capacities and capabilities to manage chemicals safely during their life-cycle.
2. Each Party shall ensure that a chemical listed in Annex III is not exported from its territory to any importing Party that in exceptional circumstances has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, unless:
- (a) It is a chemical that, at the time of importation, is registered as a chemical in the importing Party; or
  - (b) It is a chemical for which evidence exists that it has previously been used in, or imported into, the importing Party and in relation to which no regulatory action to prohibit its use has been taken; or
  - (c) Explicit consent to the importation has been sought and received by the exporter through a designated national authority of the importing Party. The importing Party shall respond to such a request within sixty days and shall promptly notify the Secretariat of its decision.

The obligations of exporting Parties under this paragraph shall apply with effect from the expiration of a period of six months from the date on which the Secretariat first informs the Parties, in accordance with paragraph 10 of Article 10, that a Party has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, and shall apply for one year.

#### ARTICLE 14                      INFORMATION EXCHANGE

1. Each Party shall, as appropriate and in accordance with the objective of this Convention, facilitate:
- (a) The exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of this Convention, including toxicological, ecotoxicological and safety information;

- (b) The provision of publicly available information on domestic regulatory actions relevant to the objectives of this Convention; and
  - (c) The provisions of information to other Parties directly or through the Secretariat on such actions which substantially restrict one or more uses of the chemical, as appropriate.
2. Parties that exchange information pursuant to this Convention, shall protect any confidential information as mutually agreed.
3. The following information shall not be regarded as confidential for the purposes of this Convention:
- (a) The information referred to in Annexes I and IV, submitted pursuant to Articles 5 and 6, respectively;
  - (b) The information contained in safety data sheets referred to in paragraph 4 of Article 13;
  - (c) The expiry date of the chemical;
  - (d) Information on precautionary measures, including hazard classification, the nature of the risk and the relevant safety advice; and
  - (e) The summary results of the toxicological and ecotoxicological tests.
4. The production date shall generally not be considered confidential for the purposes of this Convention.
5. Any Party requiring information on transit movements through its territory of chemicals listed in Annex III may report its need to the Secretariat which shall inform all Parties accordingly.

#### ARTICLE 16 TECHNICAL ASSISTANCE

The Parties shall, taking into account in particular the needs of developing countries and countries with economies in transition, cooperate in promoting technical assistance for the development of the infrastructure and the capacity necessary to manage chemicals to enable implementation of this Convention. Parties with more advanced programmes for regulating chemicals should provide technical assistance, including training to other Parties in developing their infrastructure and capacity to manage chemicals throughout their life-cycle.

#### ARTICLE 20 SETTLEMENT OF DISPUTES

1. Parties shall settle any dispute between them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.
2. When ratifying, accepting, approving or acceding to this Convention, or any time thereafter, a Party that is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, with respect to any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

- (a) Arbitration in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable; and
  - (b) Submission of the dispute to the International Court of Justice.
3. A Party that is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedure referred to in paragraph 2 (a).
4. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.
5. The expiry of a declaration, a notice of revocation or a new declaration shall not in any way affect proceeding pending before an arbitral tribunal or the International Court of Justice unless the parties to the dispute otherwise agree.
6. If the parties to a dispute have not accepted the same or any procedure pursuant to paragraph 2, and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute. The conciliation commission shall render a report with recommendations. Additional procedures relating to the conciliation commission shall be included in an annex adopted by the Conference of the Parties no later than the second meeting of the Conference of the Parties.

#### **IV. CONVENTION ON BIOLOGICAL DIVERSITY**

At their fourth meeting, Parties to the CBD adopted 19 decisions. Extracts of 5 of those decisions are reproduced below. The full text of the decisions can be found on the internet at the following address: [www.biodiv.org](http://www.biodiv.org).

The fifth meeting of the Conference of the Parties will be held in Nairobi, Kenya, at a date to be specified.

##### **DECISION IV/3                      ISSUES RELATED TO BIOSAFETY**

*In 1995, the second Conference of the Parties to the Convention on Biological Diversity, in its decision II/5<sup>9</sup>, established an Open-ended Ad Hoc Working Group mandated to develop a draft Protocol for the Safe Transfer, Handling and Use of Living Modified Organisms ("Biosafety Protocol"). The Working Group has met four times and is expected to complete its work by February 1999 at the latest. It has been decided that the last meeting of the Ad Hoc Working Group will be immediately followed by an extraordinary meeting of the Conference of the Parties to adopt the Protocol.<sup>10</sup>*

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<sup>9</sup> See document WT/CTE/W/18.

<sup>10</sup> The revised consolidated text of the draft articles is contained in doc. UNEP/CBD/BSWG/5/Inf.1, 23 February 1998.

DECISION IV/6                      AGRICULTURAL BIOLOGICAL DIVERSITY

The Conference of the Parties,

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9.        Requests the Executive Secretary, as a complement to decision III/17, paragraph 6, to apply for observer status in the Committee on Agriculture of the World Trade Organization for the purpose of representing the Convention in meetings whose agendas may influence implementation of decision III/11 and related decisions of the Conference of the Parties;<sup>11</sup>

10.      Requests the Executive Secretary to report to the Conference of the Parties on the impact of trade liberalization on the conservation and sustainable use of agricultural biological diversity in consultation with relevant bodies, such as the World Trade Organization;

...

DECISION IV/8                      ACCESS AND BENEFIT SHARING

The Conference of the Parties,

...

3.        Decides to establish a regionally balanced panel of experts appointed by Governments, composed of representatives from the private and the public sectors as well as representatives of indigenous and local communities, operating in accordance with decisions II/15, III/11 and III/15, under the Conference of the Parties and reporting to its next meeting. The mandate of this panel would be to draw upon all relevant sources, including legislative, policy and administrative measures, best practices and case-studies on access to genetic resources, including the whole range of biotechnology, in the development of a common understanding of basic concepts and to explore all options for access and benefit sharing on mutually agreed terms including guiding principles, guidelines, and codes of best practice for access and benefit-sharing arrangements. These options might address, *inter alia*, the elements set out in the annex to the present decision;

...

DECISION IV/9                      IMPLEMENTATION OF ARTICLE 8(J) AND RELATED PROVISIONS

The Conference of the Parties,

...

1.        Decides that an ad hoc open-ended inter-sessional working group be established to address the implementation of Article 8(j) and related provisions of the Convention. The mandate of this working group shall be:

- (a)      To provide advice as a priority on the application and development of legal and other appropriate forms of protection for the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;

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<sup>11</sup> NB: see document WT/CTE/W/44.

- (b) To provide the Conference of the Parties with advice relating to the implementation of Article 8(j) and related provisions, in particular on the development and implementation of a programme of work at national and international levels;
- (c) To develop a programme of work, based on the structure of the elements in the Madrid report (UNEP/CBD/COP/4/10/Add.1) as set out in the annex to the present decision;
- (d) To identify those objectives and activities falling within the scope of the Convention to recommend priorities taking into account the programme of work of the Conference of the Parties, such as the equitable sharing of benefits; to identify for which work-plan objectives and activities advice should be directed to the Conference of the Parties and which should be directed to the Subsidiary Body on Scientific, Technical and Technological Advice; to recommend which of the work-plan objectives and activities should be referred to other international bodies or processes with the aim of fostering synergy and avoiding duplication of work;
- (e) To provide advice to the Conference of the Parties on measures to strengthen cooperation at the international level among indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and make proposals for the strengthening of mechanisms that support such cooperation;

...

DECISION IV/15

THE RELATIONSHIP OF THE CONVENTION WITH THE COMMISSION ON SUSTAINABLE DEVELOPMENT AND BIODIVERSITY-RELATED CONVENTIONS, OTHER INTERNATIONAL AGREEMENTS, INSTITUTIONS AND PROCESSES OF RELEVANCE

The Conference of the Parties,

...

7. Takes note of the Executive Secretary's observer status in the Committee on Trade and Environment of the World Trade Organization for the purpose of representing the Convention on Biological Diversity in meetings whose agendas have relevance to the Convention;

8. Also notes that some Parties to the Convention on Biological Diversity, particularly many developing countries, are not members of the World Trade Organization, and are therefore limited in their abilities to present their concerns regarding biological diversity at the World Trade Organization;

9. Stresses the need to ensure consistency in implementing the Convention on Biological Diversity and the World Trade Organization agreements, including the Agreement on Trade-Related Intellectual Property Rights, with a view to promoting increased mutual supportiveness and integration of biological diversity concerns and the protection of intellectual property rights, and invites the World Trade Organization to consider how to achieve these objectives in the light of Article 16, paragraph 5, of the Convention, taking into account the planned review of Article 25, paragraph 3(b), of the Agreement on Trade-related Aspects of Intellectual Property Rights in 1999.

10. Emphasizes that further work is required to help develop a common appreciation of the relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights and the Convention on Biological Diversity, in

particular on issues relating to technology transfer and conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits arising out of the use of genetic resources, including the protection of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

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