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On the road to safer crops

By TAN CHENG LI

New rules adopted at the recently concluded global meeting on biosafety will chart the path towards safer handling and transportation of genetically modified crops, writes TAN CHENG LI.

THE showdown never came. Talks at the United Nations conference on biosafety in Kuala Lumpur last week went surprisingly smoother than many had expected. Sure, there were the usual tedious sessions which lasted into the night which have come to characterise meetings of multilateral environmental agreements but disputes were speedily sorted out.

Delegates to the First Meeting of the Parties to the Cartagena Protocol on Biosafety (MOP1) had braced themselves for lengthy and painful negotiations as the meeting was to determine three contentious issues: how to identify shipments of living or genetically modified organisms (LMOs or GMOs), liability and compensation in cases of damage caused by transboundary movements of LMOs, and how to deal with non-compliance of the Protocol.

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Union (EU), supported by environment groups, want detailed identification of LMO cargoes as well as clear rules on liability and compliance.

On the other side of the fence are the major exporters of GM commodities – a group nicknamed the Miami Plus, made up of the United States, Argentina, Canada and Mexico – which argue that detailed documentation are tedious, unnecessary and will impede trade.

The battle was to be drawn along these lines – except that it never really took off. Instead, countries ignored the lobby of the Miami Group and stood united with a single objective – to put in place better controls of LMO transboundary shipments so as not to put human and environmental health at risk.

The result was decisions which pleased even the most critical of environment groups. The meeting decided on stricter identification and documentation for LMOs shipments and initiated moves towards an international regime on liability and redress for damage caused by transboundary movements of LMOs. A new 15-man committee will promote compliance with provisions of the Protocol and to address incidences of non-compliance.

“It is clear that we made steps forward,” says Dr Doreen Stabinsky, science adviser of Greenpeace International.

At the end of the day, it made a difference whether a country is a party or non-party to the Protocol. Observers say talks proceeded smoothly because the opposers had little say. Except for Mexico, the rest of the Miami Group are not parties to the Protocol. Although their “observer” status allowed them to air their views during negotiations, they were excluded when discussions moved into smaller groups.

“It was simply that like-minded people negotiated the documents. This is an impetus for countries to join the Protocol,” says Lim Li Lin, a researcher at Third World Network (TWN), a group working on development issues.”

US officials are not pleased with the meeting and its outcome. “We have serious concerns about the transparency and procedural process of this meeting,” says Deborah Malac of the US Department of State.

For many delegates, however, the results of MOP1 are the first steps to set the Protocol in motion. “It means that the Protocol is finally on track and this is the way forward to manage a technology which has received extremely divided views,” says negotiator Gurdial Nijar, a Universiti Malaya law professor.

Protocol executive secretary Hamdallah Zedan says many countries had watched the meeting closely to see if its decisions would give the Protocol bite. “I think it has.” He says an action plan to promote capacity in dealing with LMOs which the meeting adopted, would help parties implement the Protocol and make informed decisions.

TWN’s Lim agrees. She says the critical next step is the kind of capacity-building projects available for developing countries to implement the Protocol. “It is what laws countries will have at the end of day that determines the outcome of the Protocol.”

Despite the optimism on the outcome of MOP1, some say these are early days yet for the Protocol. Expert groups are only starting to delve into the details of identifying LMO cargoes and determining liability issues. There will be plenty of opportunities for the Miami Group to

influence negotiations and change the rules of the game. There are already talks that Argentina will soon sign the Protocol, which will give it a bigger voice in future talks.

So the battle is only beginning.

These are the three major outcomes of the meeting:

Shouldering responsibility

At MOP1, parties took the first step towards making biotech giants responsible for damages resulting from cross-border movements of LMOs. An expert group will elaborate on international rules on liability and redress by 2008.

These are needed as biotech companies have proven reckless in their handling of GMOs in some instances. GM crops not approved for consumption have tainted food products and conventional crops while farmers have suffered losses and received no compensation when their GM cotton failed to live up to promises of higher yields and lower production costs (*see next page*).

“The threat of damage from GMOs is real and is already occurring. Farmers’ livelihoods are already suffering due to contamination by GM crops,” says Juan Lopez of Friends of the Earth International.

During negotiations, the Miami Group argued that national product liability laws were sufficient for dealing with the hazards of GMOs but other countries said GMOs could be effectively regulated only through an international regime which placed the responsibility squarely on the shoulders of those who produced, released and exported the GMOs.

“Not establishing a regime would lead to a situation where victims are not compensated or damage to the environment is not restored. This situation is unfair,” says Beat Nobs of the Swiss environment authority.

The expert group will look into these concerns: What kinds of damage deserve compensation? Who should pay? Who can file claims? What are the roles of exporters and importers? What are the remedies for damage?

Geneticist Dr Doreen Stabinsky says many parties seek a broad definition of “damage” as little is known about the potential problems from escaped GMOs. She says liability should cover cost of restoring damaged environments, loss of or damage to property and loss of profit, and indigenous and farming communities should be compensated if they fall victim to failed GM crops.

Liability should not be confined to environmental damage but should extend to socio-economic elements, says Dr Philippe Cullet of the International Environmental Law Research Centre in Switzerland. For instance, organic farmers may lose their crops and certification if their fields were contaminated by GM crops.

The issue of “reverse liability” needs attention too as most GMOs are patented. He says farmers in Canada and the United States are being sued for unlicensed use of patented GM seeds although many say their fields were contaminated with transgenes.

Ensuring safe cargoes

The Protocol requires labelling of LMOs to

ensure safe handling. Failure to segregate LMO grains had led to transgenes contaminating traditional corn varieties in Mexico as farmers had unknowingly sowed GM seeds.

LMO shipments to be introduced to the environment (such as GM seeds for planting) must now be marked “destined for contained use” and carry the common, scientific and commercial names of the modified organism, the identity of the modified gene, special handling and storage needs and their usage.

Shipments intended for food, feed and processing (mainly commodities such as soyabean and corn) must be marked “may contain LMOs” and carry documents detailing the importer, exporter or other appropriate authorities. However, precise listing of the varieties of LMOs in shipments is voluntary, due to objection by Mexico. Many parties want the listing as it will verify that shipments contain only approved GM varieties.

More labelling rules are in the pipeline as an export group will be finalising detailed requirements over the next year. It will consider the percentage of LMOs shipments may contain to be considered LMO-free (the United States suggested 5%, while the EU uses 0.9%), accompanying documents and precise listing of LMOs in shipments.

The new rules were not well received by LMO exporters who had pushed for minimal documentation so as not to obstruct trade. GM commodities for food, feed and processing form 90% of GM products traded today.

US trade official Richard White warns of the difficulties to come in meeting the new requirements in the absence of experience and know-how. “The parties are moving so quickly

that the consequences of their actions raise a lot of concerns.”

US Department of State official Deborah Malac regrets that the recommendations of exporting countries (such as the United States), which have the experience and knowledge on what was feasible, were ignored. “The decisions taken were by importing countries which have no idea of the complications involved.”

At MOP1, the United States was touting its version of documentation rules, spelt out in a trilateral agreement signed in October with Canada and Mexico. Under the deal, shipments are labelled “may contain LMOs” only if they contain over 5% of LMOs. As long as the presence of LMOs is unintentional, labelling is unnecessary. Information will only be in a commercial invoice and not in a separate, more detailed document.

The deal drew strong protests. Green groups say it promotes weak labelling standards and sets unacceptable precedents for future talks on identification. “If governments accept the 5% contamination level, there will be no need for the Protocol on Biosafety. Contamination will be everywhere in a matter of years,” says Hope Shand of the US-based ETC Group which works on cultural and ecological issues.

A joint statement by 28 NGOs urges governments to reject the agreement. “It only serves to facilitate exports of transgenics. Exporters are essentially free from assuming liability for damages as the weak contamination standards allow them to declare ignorance about the presence of transgenics.”

Defending the trilateral deal, Malac says it was to maintain trade flows and clarify documentation requirements since there was

none from the Protocol. “The agreement has been very demonised. We thought we were being proactive in implementing the Protocol.”

Dr Klaus Schumacher, an official of the International Grain Trade Coalition (made up of 17 trade organisations in nine countries), says the 5% threshold is an interim proposal pending the decision of the expert group and can be lowered to meet specific needs of importers.

He says unintentional presence of LMOs occur because huge quantities of grain pass through a long chain of production, storage, distribution and shipment. “Commingling can occur in any part of the chain. Zero threshold is impossible as the bulk handling system is not constructed for segregation of grains. This might have to be developed over time but now, grains are shipped in bulk to reduce cost.” He says complete purity is impossible except in special contracts requiring GM-free grains.

Adhering to rules

The formation of a compliance committee was applauded. It will promote compliance and weigh cases of non-compliance. A crucial point, says EU official Christoph Bail, is that committee members serve as individuals and not as country representatives, thus helping to de-politicise proceedings.

Any party affected or likely to be affected can file a complaint. Offenders will be cautioned and published in the Biosafety Clearing House, a mechanism for sharing of information on GMOs. Most delegations call for incentives to promote compliance. Hence, countries that fail to comply because of inadequate capacity, will receive assistance.

The meeting, however, could not agree on how

to punish repeat offenders and deferred the decision until its meeting in 2006.

“We would have liked to explore options such as withdrawing privileges like voting rights,” says a disappointed Manfred Schneider, a director at Austria’s environment authority.

Various quarters say Mexico might well be the first party to face the compliance committee as its trilateral agreement appears to contravene the Protocol. “This was why Mexico watered down the wordings of the decision by disagreeing with compulsory disclosure of GMOs contained in a shipment,” says Greenpeace’s Stabinsky.

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