

**REQUEST FOR OBSERVER STATUS BY THE CONVENTION ON  
BIOLOGICAL DIVERSITY**

The following communication has been received from the Convention on Biological Diversity requesting observer status in the WTO Committee on Technical Barriers to Trade.

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In decision VI/20 on cooperation with other organizations, initiatives and conventions, the Conference of the Parties recognized the importance of cooperation with the WTO with regard to matters that are relevant to the Cartagena Protocol on Biosafety and in preparing for the implementation of the Protocol; it emphasized the need to ensure mutual supportiveness with the relevant agreements under the WTO, in particular with the relevant Agreement on Sanitary and Phytosanitary Measures and the Agreements on Technical Barriers to Trade, with a view to achieving sustainable development. Consequently, in paragraph 29 of decision VI/20, the Conference of the Parties requested the Executive Secretary “*to apply to the World Trade Organization for an observer status and to represent the Convention on Biological Diversity in the meetings of the Committee on Sanitary and Phytosanitary Measures and the Committee on Technical Barriers to Trade*”.

Pursuant to this decision, I therefore wish to request observer status for the Secretariat of the Convention on Biological Diversity in the above-mentioned WTO Committees. I am confident that such a development will contribute to enhancing the mutually supportive role between trade and environment agreements, and look forward to consideration of this request by the WTO.

For your reference and to support this request, I am pleased to attach a copy of the relevant part of decision VI/20 and relevant information on the Cartagena Protocol (See Annex).

## ANNEX

### **ADDITIONAL INFORMATION SUPPORTING THE REQUEST OF THE EXECUTIVE SECRETARY OF THE CONVENTION ON BIOLOGICAL DIVERSITY FOR OBSERVER STATUS IN THE WTO COMMITTEES ON SANITARY AND PHYTOSANITARY MEASURES (SPS COMMITTEE) AND ON TECHNICAL BARRIERS TO TRADE (TBT COMMITTEE)**

#### **I. Decision VI/20: Cooperation with other organizations, initiatives and conventions**

Under the heading “*Cooperation with the World Trade Organization*”, the Conference of the Parties, in paragraphs 25 to 29 of decision VI/20,

25. *Reaffirms* the need to promoting increased mutual supportiveness of trade and environment agreements in achieving sustainable development, as stressed in decision IV/15 of the fourth meeting of the Conference of the Parties, and reiterated in the Cartagena Protocol on Biosafety and the Doha Ministerial Declaration of the World Trade Organization adopted on 14 November 2001;

26. *Notes* the Doha Ministerial Declaration, which welcomes a continued cooperation by the World Trade Organization with United Nations Environment Programme and other intergovernmental environmental organizations, and encourages efforts to promote cooperation between the World Trade Organization and relevant international environmental and developmental organizations;

27. *Recognizes* the importance of cooperation with the World Trade Organization with regard to matters that are relevant to the Cartagena Protocol on Biosafety and in preparing for the implementation of the Protocol, *emphasizes* the need to ensure mutual supportiveness with the relevant agreements under the World Trade Organization, in particular with the Agreement on Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade, with a view to achieving sustainable development;

28. *Welcomes* the practice established between the Executive Secretary and the World Trade Organization to exchange information regarding developments under the Intergovernmental Committee for the Cartagena Protocol on Biosafety;

29. *Requests* the Executive Secretary to apply to the World Trade Organization for an observer status and to represent the Convention on Biological Diversity in the meetings of the Committee on Sanitary and Phytosanitary Measures and the Committee on Technical Barriers to Trade;

#### **II. Relevant information on the Cartagena Protocol on Biosafety**

The Convention on Biological Diversity (CBD) has already observer status in the WTO Committee on Trade and Environment. The adoption of the Cartagena Protocol on Biosafety in January 2000 and its follow-up activities in developing the operational rules for the Protocol raise the need to establish a close collaboration with the SPS Committee and the TBT Committee, as the implementation of the Protocol may have potential implications for the work of these two Committees and vice versa.

The Cartagena Protocol, deriving from CBD, applies to the transboundary movements, transit, handling and use of living modified organisms (LMOs) that may have adverse effects on the conservation and sustainable use of biological diversity. The Protocol sets out procedures for notification and decision-making on import and export of LMOs, which include, among other provisions, an advance informed procedure, risk assessment and management, and social-economic considerations. The Protocol generally endorses the precautionary approach, with the aim to ensuring

an adequate level of protection in regard to the conservation and sustainable use of biological diversity, taking into account risks to human health. The Protocol also contains requirements on safe handling, transport, packaging and identification of LMOs which are of relevance for the work of the SPS and TBT Committees.

To ensure its effective implementation, the Cartagena Protocol includes provisions for capacity-building for developing country Parties to strengthen their biosafety -related human resources and institutional capacities. A Biosafety Clearing-House is established to facilitate exchange of information. A compliance mechanism is being developed to promote compliance and address cases of non-compliance.

To date, the CBD has 183 Parties. The Cartagena Protocol has received signatures from 103 States and regional economic integration organizations and 19 instruments of ratification or accession as at the date of this letter. It will enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, accession, approval or acceptance.

An Intergovernmental Committee for the Cartagena Protocol (ICCP) was established to undertake preparations for the first meeting of the Parties to the Protocol during the interim period, including the elaboration of operational rules for the implementation of the Protocol. The ICCP recognizes the importance of cooperation with other international organizations. For instance, close cooperation with the International Plant Protection Convention is well underway. The primary objective of this cooperation is to ensure that the objective and all relevant requirements of the Protocol are in harmony with the international standards on phytosanitary measures regarding plant pests that are LMOs.

#### *Summary of selected provisions of the Cartagena Protocol on Biosafety relevant to the SPS and TBT Agreements*

##### *Relevant preambular paragraphs*

*Recognizing* that trade and environment agreements should be mutually supportive with a view to achieving sustainable development,

*Emphasizing* that this Protocol shall not be interpreted as implying a change in the rights and obligations of a Party under any existing international agreements,

*Understanding* that the above recital is not intended to subordinate this Protocol to other international agreements,

##### *Objective (Article 1)*

The objective of the Cartagena Protocol on Biosafety (the Protocol) is, in accordance with the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development, to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.

##### *Scope (Articles 4-5)*

The Protocol applies to the transboundary movement, transit, handling and use of all living modified organisms (LMOs) that may have adverse effects on the conservation and sustainable use of biological diversity. However, it does not apply to the transboundary movement of LMOs which are pharmaceuticals for humans that are addressed by other relevant international agreements or organisations.

*Advance Informed Agreement Procedure (Articles 7 to 10, and 12)*

The Protocol sets out an advance informed agreement procedure (AIA) to deal with notification and decision making relating to export and import of LMOs for the purpose of intentional introduction into the environment. In this procedure, the Party of export, or the exporter, prior to the first intentional transboundary movements of LMOs shall notify the competent national authority the proposed transboundary movement, and provide the information required by the Protocol.

Upon the notification, the Party of import shall, within the time frame provided in the Protocol, make a decision as to whether or not the import shall be allowed and upon what conditions. This decision must be based on a risk assessment specified in Article 15 and Annex III of the Protocol. However, lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of an LMO on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of the LMO in question, in order to avoid or minimize such potential adverse effects.

A failure by the Party of import to communicate its decision within two hundred and seventy days of the date of receipt of the notification shall not imply its consent to an intentional transboundary movement.

*Procedure for LMOs intended for direct use as food or feed, or for processing (Article 11)*

The LMOs intended for direct use as food or feed, or for processing (LMOs-FFP) is not subject to the AIA procedure. Instead, an information exchange mechanism for the LMOs-FFP through the Biosafety Clearing House is established. A Party that makes a final decision regarding domestic use, including placing on the market, of an LMO that may be subject to transboundary movement for direct use as food or feed, or for processing shall, within fifteen days of making that decision, inform the Parties through the Biosafety Clearing-House.

A Party may take a decision on the import of LMOs intended for direct use as food or feed, or for processing, under its domestic regulatory framework that is consistent with the objective of this Protocol. However, lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of an LMO on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of that LMOs-FFP, in order to avoid or minimize such potential adverse effects.

*Risk Assessment (Article 15)*

Risk assessments undertaken pursuant to the Protocol shall be carried out in a scientifically sound manner, in accordance with Annex III to the Protocol and taking into account recognized risk assessment techniques. Such risk assessments shall be based, at a minimum, on information provided in accordance with Article 8 and other available scientific evidence in order to identify and evaluate the possible adverse effects of living modified organisms on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

The Party of import may require the exporter to carry out the risk assessment. The cost of risk assessment shall be borne by the notifier if the Party of import so requires.

*Handling, Transport, Packaging and Identification (Article 18)*

Parties to the Protocol shall take necessary measures to require that living modified organisms that are subject to intentional transboundary movement within the scope of this Protocol are handled, packaged and transported under conditions of safety, taking into consideration relevant international rules and standards.

The Conference of the Parties serving as the meeting of the Parties to the Protocol, which is the supreme body of the Protocol, shall consider the need for and modalities of developing standards with regard to identification, handling, packaging and transport practices, in consultation with other relevant international bodies.

*Competent national authorities and national focal points (Article 19)*

Each Party shall designate one national focal point to be responsible on its behalf for liaison with the Secretariat. Each Party shall also designate one or more competent national authorities, which shall be responsible for performing the administrative functions required by the Protocol and which shall be authorized to act on its behalf with respect to those functions. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

*Information sharing and the biosafety clearing-house (Article 20)*

A Biosafety Clearing-House (BCH) is established under the Protocol to facilitate the exchange of scientific, technical, environmental and legal information on LMOs. Parties to the Protocol shall make available to the BCH the following information: (a) any existing laws, regulations and guidelines for implementation of the Protocol as well as information required by the Parties for the AIA procedure; (b) any bilateral, regional and multilateral agreements and arrangements; (c) summary of the risk assessment or environmental reviews of LMOs generated by the regulatory process; (d) final decisions regarding the importation or release of LMOs; (e) reports of implementation.

*Non-Parties (Article 24)*

Transboundary movements of LMOs between Parties and non-Parties shall be consistent with the objective of the Protocol. The Parties may enter into bilateral, regional and multilateral agreements and arrangements with non-Parties regarding such transboundary movements.

The Parties shall encourage non-Parties to adhere to the Protocol and to contribute appropriate information to the Biosafety Clearing-House on LMOs released in, or moved into or out of, areas within their national jurisdictions.

*Socio-Economic Considerations (Article 26)*

The Parties, in reaching a decision on import under the Protocol or under its domestic measures implementing the Protocol, may take into account, consistent with their international obligations, socio-economic considerations arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities.

The Parties are encouraged to cooperate on research and information exchange on any socio-economic impacts of living modified organisms, especially on indigenous and local communities.

*Compliance (Article 34)*

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by the Convention.

For the full text of the Protocol, see <http://www.biodiv.org/biosafety/protocol.asp>.

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