



**Friends of
the Earth
International**

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Briefing paper

First Meeting of the Parties to the Cartagena Protocol on Biosafety (MOP 1)
23rd-27th February, Kuala Lumpur, Malaysia

THE BATTLE FOR GLOBAL BIOSAFETY

Don't let the U.S. Coalition water down the Biosafety Protocol!

1. Introduction: Commercialization of genetically modified crops catalyzes the creation of global rules for GMOs

In 1994 the first genetically modified (GM) crop was commercialized in the United States of America (U.S.). Since 1996 significant areas in a small number of countries have been planted with GM crops, mainly soybeans, maize, canola and cotton. Over 90% of the global area of GM crops are planted in only three countries - the US is so far the lead country with over 60%, followed by Argentina with over 20%, and Canada 6%.

As concerns grew over the safety of GM organisms (GMOs) and its potential negative impacts on the environment, health and at the socioeconomic level, an international agreement to regulate GMOs started to be negotiated. In 2000, after several years of negotiations a UN agreement on Biosafety called the Cartagena Biosafety Protocol (CPB) was adopted.

2. The Cartagena Protocol on Biosafety: a crucial forum to regulate GMOs

The CPB became the first environmental agreement of this millennium, entering into force on the 11th September 2003. In 2004, ten years after the first commercialization of a GM crop in the U.S., the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP) will meet for the first time in Malaysia between the 23rd and 27th of February. Over 80 countries have ratified the Protocol today, mostly developing countries. Friends of the Earth salutes the decision of these countries, which gives a clear commitment to protecting the environment and human health from the potential risks derived from GMOs. On the negative side, none of the main GM producing countries have yet ratified it.

The UN Cartagena Protocol on Biosafety (CPB) seeks to protect the environment and human health from the potential risks of GMOs. The CPB do not use the terminology GMO, but Living Modified Organisms (LMOs), because of the position of the U.S. and other probiotech countries, which opposed the wording GMO in order to exclude non-living modified organisms. For example an LMO will not include products derived from GMOs like processed food derived from a GM plant such as maize flour that might be used in a tortilla. In this report we will use the terminology GMOs.

The Protocol is the first international agreement, which clearly shows that GMOs are different from conventional organisms, and therefore requires different treatment. The Protocol stands in contradiction to policies held by some countries, such as the U.S., which maintain that GMOs are not different from the conventional plants and animals from which they are derived.

All the parties of the Biosafety Protocol, and the key stakeholders dealing with biosafety from all over the world will gather in Malaysia to decide on key issues and processes related to international policy on GMOs and the implementation of the CPB. The first meeting of the Parties will be a key venue for advancing an international agenda which fosters comprehensive biosafety standards. The US leads a coalition of GM producing countries, and is already trying to undermine such an agenda, and is promoting weaker international biosafety standards.

3. SOME CRUCIAL ISSUES OF THE FIRST MEETING OF THE PARTIES

Between the adoption of the Protocol in 2000 and the entry into force in 2004, three meetings of the Intergovernmental Committee of the Cartagena Protocol on Biosafety (ICCP) were held in order to further develop and interpret the CPB. In Kuala Lumpur, the MOP 1 will decide on key issues already developed during the ICCP meetings, and other additional technical and experts meetings held between 2000 and 2003 in order to develop and clarify some of the key provisions of the Cartagena Protocol. Two of the more important issues that will be debated are liability and the systems for identification GMOs.

a) Liability

Damage derived from the cultivation of GM crops is already occurring today. Farmers livelihoods across the EU, US, Canada are already suffering damage due to contamination of GM crops. Mexico, a center of origin of corn has been found to be contaminated by GM maize, even though GM maize was illegal for cultivation. Moreover the introduction into the environment of new GM crops, like biopharmaceuticals crops in the US raises huge concerns. GM crops for non food uses containing drugs and industrial chemicals have been released into the environment, and already a couple of incidents in the US of contamination have been identified.

Existing legal systems on liability are in general inadequate to tackle the challenges that the introduction of GM crops have triggered. There is an urgent need for establishing international rules that make the party responsible for the damage and the contamination they have produced. Biotech corporations have always claimed GMOs are safe, but they are adamantly against the creation of an international liability regime for GMO damage. Despite their constant claims over its safety, most of GM producing countries and biotech corporations are completely opposed to any liability and redress regime for possible GMO damage, and insist that national product liability legislation is enough.

The development of a system for liability and redress is already foreseen in the Protocol and has to be established within four years after the first MOP. There is an urgent need for the establishment of a fast-track process within the CPB which creates an effective liability mechanism to ensure that the responsible for harming the environment are strictly liable for the damage they create.

The CPB requires that MOP 1 adopts a process to develop a liability and redress regime. The ICCP has recommended the creation of an open-ended ad hoc group of legal and technical experts to develop a liability and redress regime, and the terms of

reference for this group should be agreed by MOP1. The mandate and the scope of work of the group will be key to determine the shape of a future liability regime. Parties at the MOP1 should pave the way for a fast-track process, which produces a clear outcome, i.e. a legally binding international regime on liability and redress, which makes biotech corporations strictly liable for the damage they have created. This legally binding regime should start to be negotiated immediately and completed as soon as possible.

b) Systems of identification GMOs

LMOs which are intended for intentional introduction into the environment have to be clearly identified as living modified organisms, for example seeds. On the other hand GM commodities or Living Modified Organisms for food, feed and processing (LMOs-FFP) in the terminology of the CPB, will only have to be identified as "may contain" living modified organisms.

GM commodities constitute more than 90% of Genetically Modified products traded today. It is therefore not surprising that GM producing countries oppose strict systems of identification and labelling, and why the discussion on identification will probably become one of the most contentious issues at MOP 1. In previous ICCP meetings and other technical meetings on these issues, no agreement was reached on the detailed requirements of the documentation accompanying LMOs-FFP. The MOP1 must decide on the detailed requirements of the documentation accompanying living modified organisms intended for direct use as food or feed, or food processing, including specification of their identity and any unique identification, no later than two years after the date of entry into force of this Protocol.

In 2003 US, Argentina, and Canada organized two meetings with exporting countries in order to arrange a deal on the issue of documentation requirements for GM commodities. The objective of those meetings was to design a common approach on bilateral agreements with importing countries. Basically the common approach will mean to agree on weaker standards on identification of GMOs. Countries such as New Zealand, Brazil, Chile, Australia and Uruguay are supporting US coalition, and main importing countries like Japan, China, South Korea, Mexico and Egypt were approached. Only Mexico so far has signed an agreement with the US, and Canada, as we will see later in this section.

An important issue in this debate will be the thresholds for unintentional presence of GMOs. At present the International Grain Trade Council (IGTC) is proposing a tolerance level of 5% for the unintentional presence of GMOs in a non-GMO shipment. The IGTC is of the view that a 95 % non-GMO purity level should be adopted by the COP-MOP as a temporary measure, allowing shipments containing up to 5 % GMOs on unintentional shipments be exempted from identification requirements under the Protocol.

The US and other probiotech Government like Argentina and Canada are even going further and are calling for a 5% threshold for intentional contamination. If it achieves the minimum of 95% of GMO content it can be defined as non GMO shipment. This has been established in a recent trilateral agreement between Mexico, Canada and the US. Moreover under this agreement contamination by LMOs that are unintentional in a non-LMO shipment should not be considered as a trigger for the "may contain" required documentation. So only intentional shipments will trigger contamination requirements. Such proposals are unacceptable for Friends of the Earth, since it would legalise genetic

contamination, and would not guarantee consumers freedom of choice. GMOs could spread in the environment and the foodchain, without being traceable.

The US strategy of settling bilateral agreements sets serious concerns on the future shape of the international policy on biosafety. The US is not a party to the Protocol, but exercises a great influence in this process. The arrangement of bilateral agreements seriously hampers the multilateral efforts made so far in forums such as the CPB. This constitutes a clear attempt to water down the Protocol and impose weaker standards on biosafety.

4. Conclusions

Friends of the Earth International believes that it would be crucial that Parties at this meeting agree on:

- Liability. To establish a fast-track process which provides a clear outcome- the creation of a legally binding international regime for liability and redress. Taking into account the urgent need a liability regime for GMO damage should be negotiated immediately after the MOP, based on strict liability, and should be finalized as soon as possible..
- Identification. To establish a comprehensive identification and labelling system that clearly identifies all GMOs intended for export/import. The MOP1 should also require GMO exporters to implement an identity preservation system for GMOs intended to be released into the environment.
- Non Parties. Non parties to the Protocol, such as the U.S. should not be granted any privileged status during the COP-MOP negotiations. The recent example of the US agreement with Mexico and Canada aims to preempt the result of the negotiations in Kuala Lumpur, and constitutes a threat to an adequate implementation of the CPB. Friends of the Earth condemns this attitude from GM producing countries, and calls on all Parties of the Protocol and countries which wish to adequately protect their environment and human health from the potential risks of GMOs, not to accept that type of agreements. The establishment of international standards on biosafety should be done in the multilateral arena of the CPB, not in close door meetings arranged between GM producing countries and other countries on a bilateral basis.

Background information:

Friends of the Earth International report: GM crops: a decade of failure, 23rd February 2004, <http://www.foei.org>

Friends of the Earth International briefing: Biosafety Protocol ratification provides new measures to guard against genetically modified organisms, 11th September 2003
http://www.foeeurope.org/biteback/download/factsheet_biosafety_protocol.pdf