



**CONVENTION ON  
BIOLOGICAL DIVERSITY**

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COMPILATION OF GOVERNMENT SUBMISSIONS OF DRAFT TEXT ON SELECTED ITEMS:  
ARTICLES 1, 1 BIS AND 23-27

Article 1

PRINCIPLES/OBJECTIVES

AFRICAN REGION

[ORIGINAL: ENGLISH]

The objective of this Protocol, to be pursued together with the relevant objectives and provisions of the Convention, is to safeguard human and animal health, the environment, biological diversity and the socio-economic welfare of societies from the potential risks of biotechnology, particularly modern biotechnology involving the development, handling, transfer, use and release of living modified organisms and products thereof.

ARGENTINA

[ORIGINAL: ENGLISH]

This Protocol shall apply to the safe transfer, handling, use of living modified organisms resulting from biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity.

BOLIVIA

[ORIGINAL: SPANISH]

The objective of the present Protocol, to be pursued together with the relevant objectives and provisions of the Convention on Biological Diversity, is to ensure the safe transfer, handling and use of living modified organisms resulting from modern biotechnology, focusing specifically on safe transboundary movements of such organisms that can have adverse effects on the environment, particularly the conservation and sustainable use of biological diversity, taking into account the risks to human health.

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CHILE

[ORIGINAL: SPANISH]

The objective of this Protocol is to ensure that the transboundary movement, handling and use of living modified organisms and products thereof resulting from biotechnology take place in a safe way so as no adverse effects are produced on the conservation and sustainable use of biological diversity, human and animal health, the environment and socio-economic well-being.

COLOMBIA

[ORIGINAL: SPANISH]

The objective of this Protocol is to ensure that transboundary movements of living modified organisms take place in conditions that are safe for the conservation and sustainable use of biological diversity and human health; to mitigate the harmful effects of non-intentional transboundary movement; as well as to strengthen the capacities of developing countries and countries with economies in transition, inter alia, through adequate financing, to control transboundary movement and for the environmentally sound management of the organisms subject to this Protocol.

GUINEA

[ORIGINAL: FRENCH]

The objective of the present Protocol is to ensure 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, the environment and human health, as well as on the socio-economic well-being of populations.

JAPAN

[ORIGINAL: ENGLISH]

The objective of this Protocol, to be pursued in accordance with its provisions and those of the Convention on Biological Diversity, is, with a view to attaining the objectives of the Convention, to set out appropriate procedures, including, in particular, advance informed agreement (hereinafter referred to as "AIA"), in the field of the safe transfer, handling and use of any living modified organisms (hereinafter referred to as "LMOs") resulting from modern biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.

MALAYSIA

[ORIGINAL: ENGLISH]

The objective of this Protocol is to ensure the safe transfer, handling and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effect on the environment, in particular, the conservation and sustainable use of biological diversity, socio-economic imperatives, and the risks to agriculture and human health.

SOUTH AFRICA

[ORIGINAL: ENGLISH]

The objective of the Protocol is to ensure the safe transfer, handling and use, in a social and economically justifiable manner, of living modified organisms (LMOs) which result from modern biotechnology and which may have adverse effects on the conservation and sustainable use of biological diversity. Risks to human and animal health should be duly taken into account, and it should further be ensured that these activities take place in accordance with the principle of sustainable development, and in a social and economically justifiable way.

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SWITZERLAND

[ORIGINAL: ENGLISH]

The objective of this Protocol is to promote shared responsibility and cooperative efforts among Contracting Parties to [contribute to ensuring an adequate level of protection in the field of biosafety, specifically focusing on] [achieve an appropriate level of safety for the] transboundary movement 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 by promoting and facilitating information exchange and providing for appropriate procedures.

UNITED STATES OF AMERICA

[ORIGINAL: ENGLISH]

The objective of this Protocol is to promote the safe transboundary movement of living modified organisms resulting from modern biotechnology that may have an adverse effect on the conservation and sustainable use of biological diversity.

Article 1 bis

GENERAL OBLIGATIONS

AFRICAN REGION

1. The Parties to the present Protocol undertake to implement the provisions of the Protocol and the Annexes hereto, which shall constitute an integral part of the present Protocol.
2. Parties shall ensure that the development, handling, transport, use, transfer and release of any living modified organisms or products thereof are undertaken in a manner that prevents or reduces to acceptable levels of risks to human and animal health, biological diversity, the environment and socio-economic welfare of societies.
3. Parties shall prohibit the export of living modified organisms or products thereof unless they obtain an advance informed agreement in writing from the State of import for the specific import.
4. Parties shall prohibit the export of any living modified organisms or products thereof to the Parties which have prohibited the import of such organisms or products. Parties exercising their right to prohibit the import of living modified organisms or products thereof shall inform the Secretariat and the Biosafety Clearing-house of their decision.
5. Parties shall cooperate among themselves in order to achieve an environmentally sound system of management of the potential risks of living modified organisms and products thereof.
6. Each Party shall take the appropriate measures to:
  - (a) Ensure safety in biotechnology, especially in the transboundary transfer and release of living modified organisms resulting from modern biotechnology;
  - (b) Ensure that persons involved in the development, handling, transfer, use or release of living modified organisms and products thereof take such steps as are necessary to avoid unacceptable risks to human and animal health, biological diversity, the environment and the socio-economic welfare of societies;
  - (c) Require that information about a proposed transboundary transfer of any living modified organisms or products thereof be provided to the

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States concerned according to the appropriate procedures of notification set out in Article 7 of this Protocol;

(d) Prohibit the export of any living modified organisms or products thereof to a State or group of States belonging to a regional economic integration organization that includes Parties which have prohibited imports by their legislation, or if it has reason to believe that the organisms or products in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;

(e) Cooperate with other Parties and may involve interested organizations as appropriate, directly and through the Secretariat and the Biosafety Clearing-house, with respect to the necessary measures for safety in biotechnology, including the dissemination of information on living modified organisms or products thereof, in order to ensure the environmentally sound management of such organisms and products and to achieve the prevention of illegal traffic and unintended releases.

7. Furthermore, each Party shall:

(a) Prohibit all persons under its national jurisdiction from developing, transferring, using or releasing living modified organisms or products thereof unless such persons are authorized to perform such types of activities or deal with such types of products;

(b) Require that living modified organisms or products thereof that are to be the subject of transfer or a transboundary transfer be packaged, labelled, and transported in conformity with the rules and requirements to be set out by the Secretariat and the competent authorities of the States concerned;

(c) Require that living modified organisms and products thereof be accompanied by a transfer document from the point at which a transfer and transboundary transfer commences to the point of use or release.

8. The Parties agree that failure to provide all the necessary information available about the living modified organisms or products thereof and any illegal traffic are criminal.

9. Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Protocol, including measures to prevent and punish conduct in contravention of the Protocol.

10. The obligation under this Protocol of States in which the living modified organisms or products thereof have been developed and in which they have originated is to require that those organisms or products are managed in an environmentally sound manner and may not under any circumstances be transferred to the States of import.

11. Nothing in this Protocol shall prevent a Party or group of Parties from imposing additional requirements that are consistent with the objective and provisions of this Protocol and are in accordance with the rules of international law, in order to better protect human and animal health, biological diversity, the environment and the socio-economic welfare of societies.

CHILE

[ORIGINAL: ENGLISH/SPANISH]

The Article may take into account the following elements, as appropriate:

(a) OK;

/...

(b) Delete the phrase within brackets ("exchange of information and non-discrimination");

(c) OK;

(d) OK;

(e) OK;

(f) OK;

(g) OK.

GOVERNMENT SUBMISSIONS

Option 1

1. OK.

2. It is said: "... that prevents or reduces to acceptable levels of risks to human and animal health ..."

It should say: "... that prevents or reduces to the minimum possible risk, within an acceptable range, ..."

3. OK.

4. OK.

5. Delete the text.

6. OK.

7. OK.

8. OK.

9. Place in brackets.

10. OK.

11. The phrase "and may not under any circumstances be transferred to the State of import" should be placed in brackets.

COLOMBIA

[ORIGINAL: SPANISH]

1. Each Party shall apply the Advance Informed Agreement procedure provided for in Article (AIA) with respect to the transboundary movement of living modified organisms.

2. Each Party shall ensure that any living modified organism leaving its territory shall have the proper authorization from the Designated National Authority of the the Receiving Party.

3. Parties that receive information and notifications on transboundary movements under the present Protocol shall ensure the confidentiality of data received of that character.

ETHIOPIA

[ORIGINAL: ENGLISH]

1. Each Party shall, in carrying out its obligations under this Protocol, develop or maintain an action plan that incorporates strategies to bring about an appropriate mix of public and private sector initiatives for the

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even development of biotechnology, in order to optimize benefits to society and to ensure safety in the development, transfer and use of living modified organisms.

2. To avoid the undue build up of specific chemicals in the environment and possible perturbations to ecosystems, Parties shall ensure that the design of transgenic organisms aimed at producing chemicals novel to the main parent organisms are incapable of independent existence outside of husbandry by humans.

GUINEA

[ORIGINAL: FRENCH]

The Parties to the present Protocol:

(a) Undertake, individually and collectively to implement the provisions of the Protocol and the annexes thereto;

(b) Shall ensure that the development, handling, transport and use of living modified organisms do not have adverse effects on the conservation of biological diversity, the environment, as well as human health and the socio-economic welfare of populations;

(c) Shall ensure that Advance Informed Agreement is obtained before any transfer of a living modified organism;

(d) Agree that all the information concerning living modified organisms shall be communicated to all the States concerned by the movement;

(e) Agree that any illegal traffic in living modified organisms is a crime that engages the responsibility of the perpetrator or perpetrators and imposes on them the obligation to compensate the victim or victims;

(f) Shall consider and put in place adequate emergency plans to control and manage the risks associated with accidental or involuntary transboundary movements.

INDIA

[ORIGINAL: ENGLISH]

1. Parties exercising their right to prohibit the import of living modified organisms shall inform the clearing-house mechanism of their decision.

2. Parties shall prohibit or shall not permit export of living modified organisms or their products to the Parties which have prohibited the imports of such living modified organisms and products.

3. Each Party shall take appropriate measures to:

(a) Ensure that risk assessment and risk management procedures are strictly followed in handling, transport, use transfer and release of LMOs taking into account social, technological and economic aspects;

(b) Ensure that persons involved in the handling of living modified organisms take steps to ensure safety to environment, biological diversity and human health;

(c) Ensure that the transboundary movement of living modified organisms is conducted in a manner which will protect the environment, biological diversity and human health;

(d) Ensure that the information about the proposed transboundary movement of living modified organisms as per AIA is provided to the State of import by the State of export;

/...

(e) Prevent the import of living modified organisms and their products if it has reason to believe that the living modified organisms in question will not be managed in an environmentally sound manner;

(f) Cooperate in activities with other Parties and interested organisations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of living modified organisms, in order to improve the environmentally sound management of such living modified organisms to achieve the prevention of illegal traffic.

4. Nothing in this Protocol shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Protocol, and are in accordance with the rules of international law, in order to better protect biological diversity, human health and the environment.

5. Nothing in this Protocol shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights, and freedoms as provided for in international law and as reflected in relevant international instruments.

6. Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of the Protocol, including measures to prevent and punish conduct in contravention of the Protocol.

JAPAN

[ORIGINAL: ENGLISH]

Each Contracting Party to the Protocol (hereinafter referred to as "Contracting Party") shall owe the following general obligations:

(a) To take measures to implement the provision of the Protocol at its national level;

(b) To take, in particular, measures to prevent transboundary transfer of living modified organisms not pursuant to the provisions of the Protocol;

(c) To cooperate with other Contracting Parties for the internationally harmonized implementation of the provisions of the Protocol.

SOUTH AFRICA

[ORIGINAL: ENGLISH]

1. The Parties to the Protocol undertake to implement the provisions of the Protocol and the Annexes hereto, which shall constitute an integral part of the Protocol.

2. Parties shall ensure that the development, handling, transport, use, transfer and release of any living modified organisms are undertaken in a manner that prevents, or reduces to acceptable levels, risks to biological diversity, the environment, human and animal health.

3. Parties shall prohibit the export of living modified organisms until such time as an advance informed agreement with explicit consent has been obtained in writing from the State of import for that specific import.

4. Parties shall prohibit the export of any living modified organisms to those Parties which have prohibited the import of such organisms. Parties exercising their right to prohibit the import of living modified organisms shall inform the Secretariat and the Biosafety Clearing-house of their decision.

/...

5. No Party shall allow the export or import living modified organisms to or from non-Parties.

6. Parties shall cooperate among themselves in order to develop an environmentally sound risk management system for LMOs.

7. Parties shall take appropriate legal, administrative and other measures to:

(a) Ensure safety in biotechnology, especially in the handling, use, release and transboundary transfer of living modified organisms resulting from modern biotechnology;

(b) Ensure that persons involved in the development, handling, transfer, use or release of living modified organisms take the necessary steps to avoid unacceptable risks to biological diversity, the environment and human and animal health;

(c) Require that information on intended transboundary transfers of any living modified organism be provided to the States concerned in accordance with the procedures set out in Articles 6 and 7 of this Protocol;

(d) Prohibit the export of any living modified organisms to a State, or group of States belonging to a regional economic integration organization that includes Parties, which have prohibited the import of such living modified organisms through legislation;

(e) Cooperate with other Parties and involve appropriate organizations, directly or through the Secretariat and the Clearing-house, in taking measures aimed at ensuring safety in biotechnology, including the dissemination of information on living, modified organisms.

(f) Ensure that appropriate national authorization is required for all activities, including experimental, involving development, handling, use, transfer and release of living modified organisms;

(g) Require that living modified organisms which are to be transferred, either internally or across boundaries, be packaged, labelled, and transported in conformity with the rules and requirements laid down by the Parties and the competent authorities of the States concerned; and

(h) Require that living modified organisms be accompanied by a transfer document from the point at which a transfer and transboundary transfer commences to the point of use or release.

8. Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Protocol.

9. Nothing in this Protocol shall prevent a Party or group of Parties from imposing additional requirements that are consistent with the objective and provisions of this Protocol and are in accordance with the rules of international law, in order to better protect human and animal health, biological diversity, the environment and the socio-economic welfare of societies.

SWITZERLAND

[ORIGINAL: ENGLISH]

1. Each Contracting Party shall take appropriate legislative and/or administrative measures in order to achieve the objectives of this Protocol.

2. The Contracting Parties shall, in accordance with this Protocol, exchange information on living modified organisms in order to contribute to the environmentally sound management of biotechnology.

/...



3. The Contracting Parties shall ensure that measures taken for the oversight of transboundary movement of living modified organisms do not create unnecessary obstacles to, and/or constitute a means of arbitrary or unjustifiable discrimination or disguised restrictions on international trade.

UNITED STATES OF AMERICA

[ORIGINAL: ENGLISH]

No provision on general obligations is necessary.

Article 23

NON-PARTIES

AFRICAN REGION

[ORIGINAL: ENGLISH]

No Party shall export or import living modified organisms or products thereof to or from non-Parties.

ARGENTINA

[ORIGINAL: ENGLISH]

Non-Parties that are in compliance with the substantive provisions of this Protocol and with those of the Convention on Biological Diversity shall, as far as the application of trade measures concerned, be treated on an equal basis with Parties that are in compliance.

BOLIVIA

[ORIGINAL: SPANISH]

1. A State shall not be able to be a Party to the present Protocol as long as it is not a Contracting Party to the Convention on Biological Diversity.

2. Decisions relating to the present Protocol may be adopted only by the Parties to the Protocol. Any Contracting Party that has not ratified, accepted or approved the present Protocol shall be able to participate as an observer at any meeting of the Parties to this Protocol.

CHILE

[ORIGINAL: ENGLISH]

GOVERNMENT SUBMISSIONS

Option 2

ETHIOPIA

[ORIGINAL: ENGLISH]

Parties shall be bound by the provisions of this Protocol in their relations with non-Parties.

INDIA

[ORIGINAL: ENGLISH]

Non-Parties which are in compliance with the substantive provisions of this Protocol should be treated on par with the Parties that are in compliance.

/...

JAPAN

[ORIGINAL: ENGLISH]

1. The Contracting Parties shall apply the Advance Informed Agreement procedures to all intended transboundary transfer of living modified organisms whether the living modified organisms in question are imported from a Contracting Party or from a non-Party. The recipient Contracting Party shall not prohibit any transboundary transfer of living modified organisms from a non-Party merely on the grounds of the fact that the living modified organisms are from a non-Party.

2. The Contracting Parties may enter into a bilateral, multilateral or regional agreement or arrangement compatible with this Protocol with a non-party regarding transboundary movement of living modified organisms.

MALAYSIA

[ORIGINAL: ENGLISH]

Each Party shall reserve the right to ensure that a non-Party shall not undertake any transfer, handling or use of living modified organisms to or within a receiving country party. Each Party shall reserve the right to ensure that any person or entity under the jurisdiction of a non-Party shall not undertake any transfer, handling or use of living modified organisms to or within a receiving country.

NIGER

[ORIGINAL: FRENCH]

1. The transfer of living modified organisms with non-party countries shall be subject to the prior signature of a bilateral agreement between the country party to the Convention and the non-party country.

2. Under such agreement, the non-party country shall be bound to the strict observance of the provisions of the Protocol on the transfer of living modified organisms.

3. The country party that signs the bilateral agreement shall transmit a copy to the Secretariat of the Convention on Biological Diversity and to the Clearing-house under the Convention.

SOUTH AFRICA

[ORIGINAL: ENGLISH]

1. Within five years of the date of entry into force of this Protocol, the Parties shall determine the feasibility of banning or restricting, from States not party to the Protocol the import and export of living modified organisms covered by this Protocol. If determine feasible, the Parties shall elaborate in an annex the measures and conditions that will be applicable in such circumstances.

2. Notwithstanding the provisions in paragraph 1 above, imports and exports of living modified organisms may be permitted from and to any State not party to this Protocol, if that State has submitted data and is determined on the basis thereof by the Meeting of the Parties to be in full compliance with the provisions of this Protocol.

SWITZERLAND

[ORIGINAL: ENGLISH]

Non Parties in compliance with the substantive provisions of the Protocol shall be treated on an equal basis with Contracting Parties.

/...

UNITED STATES OF AMERICA

[ORIGINAL: ENGLISH]

No provision on trade with non-Parties is necessary.

Article 24

NON-DISCRIMINATION

ARGENTINA

[ORIGINAL: ENGLISH]

1. Parties shall ensure that measures taken to regulate the safe transfer, handling and use of living modified organisms resulting from biotechnology under this Protocol do not create unnecessary obstacles to, and or constitute means of arbitrary or unjustified discrimination or disguised restrictions on international trade.

2. Parties shall not discriminate between imported living modified organisms and those produced locally and/or those that have previously authorized to be imported from a third party.

AUSTRALIA

[ORIGINAL: ENGLISH]

Parties shall ensure that measures taken in relation to living modified organisms under the Protocol do not create unnecessary obstacles to trade and do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

BOLIVIA

[ORIGINAL: SPANISH]

1. Any natural or legal, public or private person seeking to introduce a living modified organism into a country party to the present Protocol for the purposes of conducting activities relating to research, handling, production, commercialization, use and release of the organism shall be obliged to comply with the AIA procedure established in Articles 4, 5, 6, and 7 of the present Protocol so that the importing State may proceed to identify the risks to the environment, biological diversity and human health in order to determine whether:

(a) The introduction of the living modified organism into the its territory should be refused in the first instance;

(b) Permission should be given for a risk assessment to be carried out on the living modified organism in question for the authorization or refusal of introduction into the territory of the importing State.

2. All the activities intended to be undertaken with a living modified organism, whether of domestic or foreign origin, shall be carried out after the risk assessment, in accordance with the provisions of Article 12 of the present Protocol.

CHILE

[ORIGINAL: ENGLISH/SPANISH]

Option 2

/...

1. Delete the text.
2. OK.
3. OK.
4. OK.
5. OK.
6. Parties may restrict trade of certain living modified organisms while permitting others.
7. Living modified organisms should be equally evaluated.
8. OK.
9. OK.
10. OK.
11. OK.
12. OK.
13. OK.

JAPAN

[ORIGINAL: ENGLISH]

1. During the course of the AIA procedures, in particular the risk assessment procedures, the recipient Contracting Parties shall not handle living modified organisms of foreign origin that are imported from other Contracting Parties or non-Parties with which an agreement or arrangement mentioned in Article 23, paragraph 2, has been concluded, more restrictively than those of domestic origin merely on the grounds of the fact that the living modified organisms in question are of foreign origin.

2. The recipient Contracting Parties may impose specific conditions when living modified organisms of foreign origin are imported from non-Parties with which no agreement or arrangement mentioned in Article 23, paragraph 2, has been concluded, as far as such conditions are not contrary to the provisions of this Protocol as well as of the non-discriminatory provisions of the WTO Agreement.

MALAYSIA

[ORIGINAL: ENGLISH]

1. The receiving country Party has the sovereign right and prerogative to make its own decisions on any transfer, handling or use of living modified organisms to or within the receiving country Party by the intending country Party or any person or entity under its jurisdiction who intends to undertake any transfer, handling or use of living modified organisms to or within the receiving country party. In making its decisions, the receiving country Party reserves the right to take into consideration any matter of national interest such as social and ethical matters and sensitivities of the culture and religion prevailing in the receiving country.

2. Previous decisions by the receiving country Party on any transfer, handling or use of any LMO to or within the receiving country Party by another intending country Party or person or entity under that intending country Party's jurisdiction shall not affect the right of the receiving country Party to make its decisions on any transfer, handling or use of the same LMO to or within the receiving country Party by the intending country Party.

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3. National treatment shall not apply to the intending country Party in respect the transfer, handling or use of any LMO to or within the receiving country by the intending country Party where the same living modified organisms are being developed, produced and released by the receiving country Party.

SWITZERLAND

[ORIGINAL: ENGLISH]

No need for a specific provision on non-discrimination. This item is covered under paragraph 3 of our proposition for the article on general obligations.

UNITED STATES OF AMERICA

[ORIGINAL: ENGLISH]

The importing Party shall ensure that its decisions and actions with respect to the import of a living modified organism are not more restrictive than with regard to the same living modified organism produced domestically or imported from any other country.

Article 25

ILLEGAL TRAFFIC

AFRICAN REGION

[ORIGINAL: ENGLISH]

1. Any transboundary transfer of living modified organisms or products thereof without notification to, or advance informed agreement of, all States concerned, pursuant to the provisions of this Protocol; or with advance informed agreement obtained from States concerned through falsification, misrepresentation or fraud; or with advance informed agreement which does not conform in a material way with the documents submitted or which results in the deliberate release of living modified organisms in contravention of this Protocol and of general principles of international law, shall be deemed to be illegal traffic.

2. In case of a transboundary transfer of living modified organisms or products thereof deemed to be illegal traffic, the State of import shall have the right to destroy or dispose of the organisms or products in question.

3. Each Party shall adopt appropriate domestic legislation that prevents and punishes illegal traffic. The Parties shall cooperate in this respect with a view to achieving the objective of this Protocol.

BOLIVIA

[ORIGINAL: SPANISH]

1. With a view to achieving the objective of the present Protocol, each Party shall adopt appropriate legislation to prevent and punish illegal traffic.

2. In case of a transboundary movement of living modified organisms deemed to be illegal traffic, the State of import/receiving State shall exercise the right of sovereignty to destroy or dispose of the organisms or products thereof.

3. Exporting Parties shall be liable for any unauthorized, uninformed or otherwise illegal transboundary movement of living modified organisms or products thereof, including unsafe packaging, fraud or falsification of approval, or export of material that does not conform with the information provided by the exporting Party.

/...

4. Parties should transmit to all affected and non-affected Parties to the present Protocol, as quickly and effectively as possible, all available information concerning the illegal movement and any related risks, through the information-exchange mechanism.

CHILE

[ORIGINAL: ENGLISH/SPANISH]

Option 4

1. For the purposes of the present Protocol, "illegal traffic" shall be understood to mean any transboundary movement, management or use of living modified organisms or products thereof:

- (a) OK;
  - (b) OK;
  - (c) OK.
2. OK.
3. OK.

Add paragraph 1 (e) of option 5:

That results in deliberate transfer, release, handling or use of living modified organisms in contravention of this Protocol and of the general principles of international law shall be deemed to be illegal traffic/unauthorized transfers.

COLOMBIA

[ORIGINAL: SPANISH]

1. In a case of illegal traffic, the receiving Party shall have the right to:

- (a) Destroy the living modified organism in question;
  - (b) Require the person or Party of origin responsible for the illegal traffic to remove the living modified organism in question from the environment of the receiving Party. In such an event, the Party of origin shall bear the partial or full costs connected with such removal.
2. Each Party shall develop appropriate national legislation to prevent or punish illegal traffic.

EUROPEAN COMMUNITY

[ORIGINAL: ENGLISH]

1. Any transboundary transfer of living modified organisms without appropriate notification to, or Advance Informed Agreement of, all States concerned, pursuant to and in accordance with the provisions of this Protocol, shall be deemed to be illegal traffic.

2. [In the case of a transboundary transfer of living modified organisms or products thereof deemed to be illegal traffic, the State of import shall have the right to destroy or dispose of the organisms or products in question.]

/...

3. Each Party shall adopt appropriate legislative measures to prevent illegal traffic. Parties shall cooperate in this respect, with a view to achieving the objective of this Protocol.

4. Data concerning known cases of illegal traffic should be included in the information-exchange mechanism established under Article 19.

GUINEA

[ORIGINAL: FRENCH]

1. For the purposes of the present Protocol, any transfer of living modified organisms that occurs without the Advance Informed Agreement of the importing and transit States, or in violation of such Agreement, shall be deemed to be illegal traffic.

2. Any transfer of living modified organisms that occurs after Advance Informed Agreement obtained through falsification or fraud shall be deemed to be illegal traffic.

JAPAN

[ORIGINAL: ENGLISH]

No provision.

MALAYSIA

[ORIGINAL: ENGLISH]

1. For the purposes of this Protocol, any transfer, handling or use of any living modified organism to or within the receiving country Party by the intending Party or person or entity under the jurisdiction of the intending Party:

(a) Without notification pursuant to the provisions of this Protocol to Parties under this Protocol; or

(b) Without the Advance Informed Agreement pursuant to the provisions of this Protocol of any Party concerned; or

(c) With Advance Informed Agreement obtained from Parties concerned through falsification, misrepresentation or fraud; or

(d) That does not conform in any material way with the information given under the AIA procedure; or

(e) That results in deliberate transfer, release, handling or use of living modified organisms in contravention of this protocol and of general principles of international law;

shall be deemed to be illegal traffic/unauthorized transfers.

2. In the case of a transfer, handling or use of living modified organisms deemed to be illegal traffic/unauthorized transfers, the consequences under ... (Article on liability and redress, including compensation) shall apply.

NIGER

[ORIGINAL: FRENCH]

1. Illegal traffic shall be understood to mean any movement of a living modified organism not in accordance with national legislation on the transfer of living modified organisms and the Protocol.

/...

2. The measures for prevention and punishment with regard to illegal traffic shall concern those undertaking the traffic, including: party and non-party countries, importing countries and exporting countries.

3. The illegal traffic shall be recorded, on the basis of reliable documentation by the importing country, the exporting country, the Secretariat of the Convention or a third country.

4. The country undertaking the illegal traffic shall be liable for the adverse effects caused by the transfer of the living modified organism into the territories of the affected countries.

5. The preventative measures to be adopted and the punitive measures to be imposed on illegal traffickers shall be determined by national law.

6. In the case of a repetition of the offence by illegal traffickers, no country party to the Convention shall engage in trade in living modified organisms with such person for a period of three years.

SOUTH AFRICA

[ORIGINAL: ENGLISH]

1. For the purposes of this Protocol, any transfer, handling or use of any living modified organism shall be deemed to be illegal traffic if it occurs:

(a) Without compliance with the provisions regarding Advance Informed Agreement and/or notification contained in the Protocol;

(b) With approval which was obtained through falsification, misrepresentation or fraud or does not conform in a material way with documentation provided pursuant to the provisions of the Protocol; and

(c) In contravention of any provision of the national legislation applicable in the States concerned.

2. In the case of illegal traffic in living modified organisms, the State of import shall have the right to destroy and dispose of the organisms or products in question.

3. Each Party shall adopt appropriate legislative measures to prevent illegal traffic. Parties shall cooperate in this respect with a view to achieving the objective of this proposal.

SWITZERLAND

[ORIGINAL: ENGLISH]

No provision on illegal traffic.

Article 26

SOCIO-ECONOMIC CONSIDERATIONS

AFRICAN REGION

[ORIGINAL: ENGLISH]

1. Parties shall ensure that the socio-economic impacts of the introduction of living modified organisms and products thereof are appropriately considered during the assessment and management of risks. In particular, the user shall take due account of the long observation period that these socio-economic impacts may require to manifest such adverse consequences as genetic erosion and associated loss of income and dislocation of traditional farmers and farm products.

2. A Party that intends to produce, using a living modified organism, a

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hitherto imported commodity, shall notify the other Party or Parties whose export is to be affected long enough, and in no case less than seven years in advance, so as to enable them to diversify their production and to implement measures concerning the biodiversity that would be reduced following the disruption of production of the commodity in question. The Party substituting its import in such unnatural way shall, when the affected Party is a developing country, provide financial and technical assistance to the affected Party.

BOLIVIA

[ORIGINAL: SPANISH]

1. Parties shall ensure that the specific and exclusive socio-economic impacts of the introduction and use of living modified organisms and products thereof are appropriately considered during the assessment and management of risks. In particular, the importing country shall take into account such adverse consequences as genetic erosion and associated loss of income and dislocation of traditional farmers and farm products.

2. Parties shall promote research on socio-economic considerations relating to the use, handling and transfer of living modified organisms and the exchange of the results of such research.

CHILE

[ORIGINAL: SPANISH]

The Parties shall ensure that the socio-economic impacts of the introduction, management and use of living modified organisms and products thereof are appropriately considered during risk assessment and management, by applying strategies and measures that minimize, prevent and counteract the potential socio-economic impacts and having users take into account that such impacts may require a long observation period to manifest themselves.

It is recommended that options 1, 2 and 4 should not be taken into account.

COLOMBIA

[ORIGINAL: SPANISH]

1. Each country shall define internally its institutional mechanism to undertake risk assessments and to issue technical opinions on requests for transboundary movement in accordance with its relevant domestic law.

2. For the purposes of conducting the risk assessment, the receiving country shall, *inter alia*:

(a) Take into account the information provided by the country of origin;

(b) Consider the actual and/or potential effects on human health, the environment and agricultural production, including the population balance of the related species;

(c) Ensure that the risk-assessment and management processes of micro-organisms of all kinds are conducted in contained conditions.

ETHIOPIA

[ORIGINAL: ENGLISH]

1. Each Party shall develop or maintain legislation or other regulatory provisions that protect the general public from a monopolistic manipulation of the biotechnological, seed, chemical and related industries by individual private-sector entities.

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2. Each Party shall ensure that activities involving living modified organisms by both public and private entities are adequately regulated in order to ensure a fair and effective implementation of the provisions of this protocol and to protect the fundamental moral and socio-economic interests of the general public and the international community.

GUINEA

[ORIGINAL: FRENCH]

Each Party shall ensure that the socio-economic impacts that result or that might result from the transfer, handling and use of living modified organisms are taken into consideration both at the time of risk assessment and throughout the risk-management process.

JAPAN

[ORIGINAL: ENGLISH]

No provision.

MALAYSIA

[ORIGINAL: ENGLISH]

1. The Parties hereby agree that socio-economic imperatives must be taken into account at all levels, during the transfer, handling or use of living modified organisms. To this end, the intending country Party shall ensure that the risk assessment prepared by it or person or entity under its jurisdiction under Article ... (Article on risk assessment) shall incorporate specific assessments on the socio-economic effects and impacts of the transfer, handling or use of the living modified organism to or within the receiving country and its environment, in particular to the conservation and sustainable use of biological diversity, taking into account its human health, agriculture and welfare.

2. The risk assessment shall in particular include an assessment of whether introduction of living modified organisms in the environment of the receiving country may bring about a displacement of a particular agricultural and resource use system or the culture and livelihood of the local people.

3. The intending country Party shall ensure that the risk-management strategies and measures proposed to be implemented by the receiving country Party under Article ... (Article on risk management) shall incorporate strategies and measures that will prevent, if not minimize or mitigate the potential socio-economic effects and impacts within the receiving country Party, in particular where the introduction of living modified organisms in the environment of the receiving country Party may bring about a displacement of a particular agricultural or resource use system or the culture and livelihood of the local people.

NIGER

[ORIGINAL: FRENCH]

1. Decision-making on the transfer of living modified organisms from an exporting country to an importing country shall, as appropriate, include the socio-economic considerations.

2. The final decision on taking socio-economic considerations into account in the transfer shall rest with the competent body of the importing country.

3. The modalities for taking account of socio-economic considerations in the transfer of a living modified organism shall be governed by the national legislation of each country party.

SOUTH AFRICA

[ORIGINAL: ENGLISH]

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1. The Parties shall ensure that the socio-economic impacts specific and unique to the use of living modified organisms that may manifest adverse consequences are appropriately considered during the assessment and management of risks taking into account the fact that socio-economic considerations will vary considerable from Party to Party.

2. Parties shall encourage research on socio-economic considerations relating to the use, handling and transfer of living modified organisms and the exchange of the results of such research.

SWITZERLAND

[ORIGINAL: ENGLISH]

No specific provision on socio-economic considerations in the Protocol.

Article 27

LIABILITY AND COMPENSATION

AFRICAN REGION

[ORIGINAL: ENGLISH]

1. If harm, including transboundary harm, arises as a consequence of living modified organisms or activities or products involving such organisms, the State or States of origin shall be bound to negotiate with the affected State or States to determine the legal consequences of the harm, and the State or States of origin shall be strictly liable and the harm must be fully compensated.

2. If the harm, including the transboundary harm, proves detrimental to human or animal health, biological diversity, the environment or the socio-economic welfare of the affected State:

(a) The State of origin shall bear the costs of any operation to restore, as far as possible, the conditions that existed prior to the occurrence of the harm. If it is impossible to restore these conditions fully, agreement may be reached on compensation, monetary or otherwise, between the State of origin and the affected State for the deterioration suffered;

(b) If, as a consequence of the harm referred to in the preceding subparagraph, there is also harm to persons or damage to property in the affected States, payments by the State of origin shall also include compensation for such harm.

3. In the cases referred to in paragraph 2, if there is more than one State of origin, they shall be jointly and severally liable for the resulting harm, without prejudice to any claims which they may bring among themselves for their proportionate share of liability.

4. There shall be no liability on the part of the State of origin if the harm was directly due to a natural catastrophe of an exceptional, inevitable and irresistible character.

5. Proceedings in respect of liability under this Article shall lapse after a period of five years from the date on which the affected Party learned, or could reasonably be expected to have learned, of the harm and of the identity of the State of origin or the user, as the case may be. In no event shall proceedings be instituted once 150 years have elapsed in the case of trees, and 30 years in all other cases since the date of the occurrence of events or the accident that caused the harm. If the cause of the harm consisted of a series of occurrences, the 150 or the 30 years duration shall start from the date of the last occurrence.

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6. The preceding paragraphs shall not prevent:

(a) The Parties from adopting and elaborating further the rules of liability and enforcement of judgements;

(b) Any Party from submitting its claim to the World Biosafety Court, or to arbitration, or to the international Court of Justice, or to conciliation.

(c) A Party, or any individual or legal entity represented by a Party, that considers it has been injured as a consequence of an activity or product involving living modified organisms, from submitting a claim to the courts of the State of origin or, where access to courts is permitted by domestic law, to the courts of the affected State. In that case, however, the affected State may not use the diplomatic channel to claim for the same harm for which such claim has been made.

BOLIVIA

[ORIGINAL: SPANISH]

1. Where activities related to research, handling, production, commercialization, use and release or introduction of living modified organisms result in damage to biological diversity, the environment or public health, the importing Party or any natural or legal person represented by the importing Party shall have grounds to initiate an investigation to determine the gravity of the damage caused, the degree of responsibility of the exporting Party or the natural or legal person represented by the Party causing the damage, as well as the compensation to the State affected by the damage caused.

2. All cases of proven liability shall result in the payment of fair and adequate compensation by the exporting Parties to the importing Parties affected.

3. The importing Parties may, at the expense of the exporting Party, impound, destroy or re-export unauthorized living modified organisms or products thereof.

CHILE

[ORIGINAL: ENGLISH/SPANISH]

Option 3

1. OK.
2. OK.
3. OK.
4. Delete the text.
5. OK.
6. OK.

Add paragraph 6 of option 4:

If necessary, the importing Parties may impound, destroy or re-export unauthorized living modified organisms, or products thereof, at the cost of the exporting Party.

COLOMBIA

[ORIGINAL: ENGLISH]

1. Liability

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Signatory Parties to this Protocol, recognizing the risk involved in the transboundary movement of living modified organisms as well as the procedures of Advanced Informed Agreement and risk assessment, adopt within this Protocol liability of States for damage arising from the transboundary movement of living modified organisms, when they occur as:

(a) The consequence of an action or omission attributable to the State under the provisions established by this Protocol;

(b) Conduct that constitutes a breach of an international obligation of the State under the terms of this Protocol.

2. Civil liability

States, through national legislation and procedures are sovereign to determine whether liability is deemed as an act of a public, civil or individual party under national jurisdiction.

3. Compensation

Given a contingency in the transboundary movement of living modified organisms compatible with paragraph (liability), the State of origin shall ensure that compensation is made for harm caused to receiving Parties. The State of origin shall bear the costs of the contingency plan to restore, as far as possible, the conditions that existed prior to the occurrence of the harm. If it is impossible to restore these conditions in full, agreement may be reached on compensation, monetary or otherwise, by the State of origin for the deterioration suffered.

4. Measures of reinstatement

Any reasonable measures aiming to reinstate or restore damage or destroyed components of the environment, or to introduce, where reasonable, the equivalent of this components into the environment. National Competent Authorities are entitled to take such measures.

5. Prescription of liability

Proceedings in respect of liability under this Article shall lapse after a period of NNN years from the date on which the affected Party learned, or could reasonably be expected to have learned, of the harm and of the identity of the State of origin of the transboundary movement of the living modified organism causing damage.

6. Emergency Fund

Signatory Parties decide to establish an Emergency Fund to fulfil requirements arising from contingencies in the transboundary movement of living modified organisms. This Fund will be constituted by contributions from all signatory Parties.

7. Exceptions

There shall be no liability on the part of the State of origin if the harm was directly due to an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character.

INDIA

[ORIGINAL: ENGLISH]

1. If harm, including transboundary harm, arises as a consequence of living modified organisms or activities or products involving such organisms, the operator in respect of production, handling, export and supply of those

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living modified organisms shall be liable for the harm, and the harm must be compensated.

2. When the operators are unable to discharge their liability the State or States of origin shall be liable to the extent of the breach of due diligence obligation of the State of origin.

3. If the harm, including the transboundary harm, proves detrimental to human or animal health, biological diversity and the environment:

(a) The operator responsible for causing such a harm shall restore as far as possible, the conditions that existed prior to the occurrence of the harm. The nature and magnitude of harm is such that it is impossible to restore those conditions full by operator alone the state of origin shall endeavour to restore;

(b) If, as a consequence of the harm referred to in the preceding subparagraph, there is also harm to persons or damage to property in the affected States, payments by the operators/State of origin shall also include compensation for such harm.

4. In the cases referred to in paragraph 3, if there is more than one operator/State of origin, they shall be jointly and severally liable for the resulting harm, without prejudice to any claims which they may bring among themselves for their proportionate share of liability.

5. There shall be no liability on the part of the State of origin if the harm was directly due to a natural catastrophe of an exceptional, inevitable and irresistible character.

JAPAN

[ORIGINAL: ENGLISH]

No provision.

MALAYSIA

[ORIGINAL: ENGLISH]

1. Any transfer, handling or use of living modified organisms deemed to be illegal traffic/unauthorized transfers under Article ... (Article on illegal traffic/unauthorized transfers), or, if the intending country party or any person or entity under its jurisdiction:

(a) Fails to comply with the Advance Informed Agreement procedure under Article(s) ... (on Advance Informed Agreement) of this Protocol; and/or

(b) Fails to provide adequate risk assessment in accordance with Article ... (on risk assessment and Annex on risk-assessment parameters); and/or

(c) Fails to provide adequate risk management strategies and measures in accordance with Article ... (on risk management); and/or

(d) Breaches any of its obligations under this Protocol, which causes any negative or adverse effects on the environment of the receiving country party, in particular, the conservation and sustainable use of biological diversity, socio-economic imperatives, and the risks to agriculture and human health, the consequences under paragraph 2 below shall apply.

2. In the case of a breach by the intending country party or any person or entity under its jurisdiction under paragraph 1 above, the intending country party shall:

/...

(a) Reimburse the receiving country party for any costs incurred by the receiving country party to mitigate and/or eliminate any harm and/or adverse effect that have occurred to the environment of the receiving country party, including the conservation and sustainable use of biological diversity, socio-economic imperatives and the risks to agriculture and human health; and

(b) Where the receiving country party considers appropriate, destroy, remove or dispose the living modified organism in question at the intending country party's expense, or, reimburse the receiving country party for any costs incurred by the receiving country party in destroying, removing or disposing the LMO; and

(c) Pay such fair and adequate compensation, in monetary form or otherwise, to the receiving country party. Fair and adequate compensation means the provision of sufficient reparation to enable the receiving country party to establish and implement measures to rehabilitate and overcome the adverse or negative effects that had occurred.

NORWAY

[ORIGINAL: ENGLISH]

The Parties to this Protocol shall, at their first meeting, examine how to establish procedures in accordance with Article 14, paragraph 2, of the Convention, for developing appropriate rules and procedures in the field of liability and redress, including restoration and compensation for damage resulting from living modified organisms to biological diversity.

SOUTH AFRICA

[ORIGINAL: ENGLISH]

1. Parties are responsible for the fulfilment of their international obligations concerning the conservation and sustainable use of biological diversity and preservation of the environment. They shall be liable in accordance with international law.

2. Parties shall ensure that resources are available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by the use, handling and transfer of living modified organisms by natural or juridical persons under their jurisdiction.

3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by the use, handling and transfer of living modified organisms, Parties shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment and compensation of damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance and compensation funds.

SWITZERLAND

[ORIGINAL: ENGLISH]

No specific provision on liability and compensation in the Protocol.

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