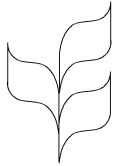




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Proposition by the Government of Chile

SETTLEMENT OF DISPUTES

## **BIOSAFETY PROTOCOL**

### **ARTICLE XX - SETTLEMENT OF DISPUTES**

The Parties agree to refer the disputes that may arise in connection with the obligations included in this Protocol, to settlement in accordance with the regime established in Annex \_\_\_\_\_.

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#### **ANNEX \_\_\_\_\_**

##### **Article 1. Cooperation**

The Parties shall, at all times, endeavor to agree on the interpretation and application of the Protocol and, through cooperation and consultations, shall make every effort to always arrive at a mutually satisfactory settlement of any matter that might affect its operation.

##### **Article 2. Recourse to Dispute Settlement Proceedings**

The provisions for the settlement of disputes under this Annex shall apply to the prevention or settlement of all disputes between the Parties concerning the application or interpretation of the Protocol, or in all circumstances in which a Party considers that an existing or future action of the other Party is or could be incompatible with the obligations under the Protocol.

##### **Article 3. Settlement of Disputes in Accordance with the WTO Agreement**

1. Except as provided for in paragraph 2, the disputes that may arise from the provisions of the Protocol and of the WTO Agreement or negotiated conventions in conformity with the same, may be settled in either forum, at the election of the claiming Party. The provisions of this paragraph are subject to both Parties in dispute being member countries of the WTO Agreement.

2. In any dispute referred to in paragraph 1, where the responding Party requests in writing, within 15 days from the initiation of proceedings, that the matter be examined under the terms of the WTO Agreement, the claiming Party may have recourse only to the Dispute Settlement Proceeding under the said Agreement, with respect to this matter.
3. Once a dispute settlement proceeding has been initiated in accordance with this Annex or in conformity with the WTO Agreement, the selected forum shall be exclusive of the other unless either Party files a request in accordance with paragraph 2.
4. For the purposes of this Article, dispute settlement proceedings shall be deemed to be initiated upon a Party's request in writing for the establishment of an arbitration panel under Article 5 of this Annex or the creation of an ad-hoc panel under Article 6 of the Disputes Settlement Understanding (DSU), which is an integral part of the WTO Agreement.

#### **Article 4. Consultations**

1. Either Party may request in writing consultations with the other regarding any actions adopted or contemplated, or regarding any other matter that in its opinion could affect the operation of the Protocol.
2. Any Party considering to have a material interest in the matter shall be entitled to request in writing to be included in the consultation process.
3. By means of consultations as prescribed in this Article, the consulting Parties shall make every effort to arrive at a mutually satisfactory settlement of any matter. For this purpose, the consulting Parties shall:

- (a) provide sufficient information to permit a complete revision of the manner in which the adopted or contemplated action, or any other matter, might affect the operation of this Protocol;
- (b) give to the confidential or reserved/classified information exchanged through consultations, the same treatment as that given by the Party which has provided such information; and
- (c) seek to avoid any settlement that might adversely affect the interests of any other Party pursuant to this Protocol.

**Article 5. Request for the establishment of an Arbitration Panel**

1. Either consulting Party may request in writing the establishment of an arbitration panel if they fail to settle a matter in conformity with Article 4 within:
  - (a) 30 days after delivery of the request for consultation; or
  - (b) 45 days after delivery of that request, if either Party has requested subsequent consultations or participated in those relating to the same matter.
2. The requesting Party shall state in the request the action or other matter being the subject matter of the claim, indicating the provisions of the Protocol that it deems applicable and shall deliver the request to the other Parties.

3. Where a third Party deems that it has a material interest in the matter, it shall have be entitled to participate as a claiming Party through the delivery to the Parties in dispute of a notice of its intention to become a Party. The service of notice shall be made as soon as possible, but in no event after seven days from the date on which either Party has filed its request for the establishment of an arbitration panel.

#### **Article 6. List of Arbitrators**

1. The Parties shall designate, no later than January 1, 1999, and keep a list of 30 prospective arbitrators who are qualified and willing to be appointed as such. The list members shall be appointed by consensus for three years, and may be re-elected.
2. The list members shall:
  - (a) have specialized knowledge of or experience in law and environment, and be elected only for the sake of objectiveness, reliability and judgment; and
  - (b) be independent, not be related with any of the Parties and not receive instructions therefrom.

#### **Article 7. Selection of the Panel**

1. Where two Parties are in dispute, the following procedure shall apply:
  - (a) The arbitration panel shall be composed of three members;
  - (b) The Parties in dispute shall endeavor to agree on the appointment of the chairman of the panel within 15 days after delivery of the request for establishing the panel. Should the Parties in dispute fail to reach an agreement within this period, one of them, selected by lot, shall, within 5 days, appoint an individual who is not a national of the appointing Party, to be the chairman;

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- (c) within 15 days following the election of the chairman, each Party in dispute shall select its arbitrator who is a national of the other Party in dispute; and
  - (d) Should either Party in dispute fail to select its arbitrator within such time limit, this arbitrator shall be elected by lot from the list of members who are nationals of the other Party in dispute.
2. Where two or more parties are in dispute, the following procedure shall apply:
- (a) the group shall be composed of five members;
  - (b) the Parties in dispute shall endeavor to agree on the appointment of the chairman of the panel within 15 days after delivery of the request for establishment of the panel. Should the Parties in dispute fail to reach an agreement within this period, the Party or Parties in dispute elected by lot, shall, within 10 days, appoint a chairman who is not a national of such Party or Parties;
  - (c) within 15 days after selection of the Chairman, the responding Party shall select two arbitrators, who shall be nationals of any of the Parties in dispute. The Parties in dispute shall select two arbitrators who shall be nationals of the responding Party; and
  - (d) If any of the Parties in dispute fails to select an arbitrator within that time limit, the arbitrator shall be chosen by lot in accordance with the nationality criteria under subparagraph (c).
3. In general, the arbitrators shall be chosen from the list. Any Party in dispute may, without cause, file a recusation against any individual that is not on the list and who is proposed as an arbitrator by a Party in dispute, within 15 days after the date on which the proposal is made.

### **Article 8: Rules of Procedure**

Unless otherwise agreed by the Parties in dispute, the arbitration panel shall, in its first meeting, set its own rules of procedure, in accordance with the following principles:

- (a) the procedures shall at least guarantee the right to a hearing before the panel as well as the opportunity to present pleadings and replies in writing; and
- (b) the hearings before the panel, the deliberations and the award, as well as all written submissions and communications therewith, shall be confidential.

### **Article 9: Participation of third Parties**

A Party that is not a Party in dispute shall, upon delivery of a written notice to the Parties in dispute, have the right to attend all hearings, submit written and verbal communications to the panel and receive written communications from the Parties in dispute.

### **Article 10. Role of Experts**

Upon request of a Party in dispute, or on its own initiative, the panel may seek information and technical advice from such individuals or groups that it considers appropriate, provided that it is so agreed by the Parties in dispute and under the terms and conditions agreed upon by those Parties.

### **Article 11. Award**

1. The arbitration panel shall consider the dispute taking into account the provisions of the Protocol, the additional instruments signed thereunder, and the information provided by the Parties in dispute.

2. Unless otherwise agreed by the Parties in dispute, the arbitration panel shall have 60 days from the selection of the last arbitrator to render its award.
3. The award of the arbitration panel shall be adopted by majority, well grounded and signed by the panel members. They shall not give reasons for dissenting votes and must keep the vote confidential.
4. The decision of the arbitration panel shall be final; however, any of the Parties may, within 10 working days from the date of the award, file a motion for clarification or request information on the manner in which the award is to be enforced. The arbitration panel shall make such clarifications or answer such consultations within ten working days from the date of filing of the motion for clarification or request for information.
5. Awards shall be binding upon the Parties from the date of service or from the date on which the motion for clarification, if any, is settled. The awards shall have the status of res judicata in respect of the dispute so settled.

#### **Article 12. General Provisions**

1. The remuneration of the arbitrators, their transportation and accommodation expenses and all general expenses shall be borne in equal shares by the Parties in dispute,
2. The time limits referred to in this Annex shall be understood to be counted in consecutive or calendar days, unless otherwise prescribed.



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