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## Article 26. Socio-economic considerations

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1. **The Parties, in reaching a decision on import under this 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.**
2. **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.**

625. *In reaching decisions on imports under Article 10, Parties are required by the Protocol to take into account potential effects of the LMO concerned on the conservation and sustainable use of biological diversity, taking into account risks to human health. Where there is a lack of scientific certainty about the extent of such potential adverse effects, Article 10(6) allows Parties to take a precautionary approach. Article 26 addresses the extent to which Parties are entitled to take socio-economic considerations into account in reaching decisions on imports of LMOs.*

626. *Article 26 identifies the types of socio-economic considerations that Parties may take into account in reaching decisions on imports. It requires that such considerations be taken into account consistent with a Party's other international obligations (for example, under international agreements other than the Protocol). Finally, it encourages Parties to cooperate on research and information exchange on the potential socio-economic impacts of LMOs.*

627. *During the Protocol negotiations, the question of including references to socio-economic*

*considerations in the text of the Protocol was one of the issues that divided along mostly developing and developed country lines. Most developing countries emphasized the importance of ensuring that socio-economic considerations arising from biotechnology and LMOs should be made part of the Protocol as one of the bases for the conduct of risk assessment, risk management, and making decisions on imports of LMOs under the Protocol. Most developed countries, on the other hand, argued that socio-economic considerations are issues of national domestic concern, are difficult to quantify for purposes of making decisions on imports of LMOs, and that such considerations should therefore not be within the scope of the Protocol. In the end, the concept of socio-economic considerations was accepted provided that its application was consistent with existing international obligations, in particular the trade obligations of the Parties. But because there was no extensive engagement between developing and developed countries on how to approach socio-economic considerations in practice, further work may well need to be undertaken on this issue by the COP/ MOP in the future.*

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628. *The range of socio-economic considerations contemplated in Article 26(1) of the Protocol covers only those "considerations arising from the impact of LMOs on the conservation and sustainable use of biological diversity, especially with regard to the value of*

*biological diversity to indigenous and local communities". This wording clearly indicates that not all socio-economic considerations may be taken into account, but rather only those that arise from the impact of LMOs on biological diversity.*

629. Article 26(1) can thus be interpreted so that there must, first, be an “impact ... on the conservation and sustainable use of biological diversity” as a result of or “arising from” the transboundary movement, handling, and use of the LMO concerned. The “impact” referred to may include the potential effects of the LMO on biological diversity. Hence, where the introduction of LMOs under the Protocol affects biological diversity in such a way that social or economic conditions are or may be affected, a Party can use Article 26 to justify taking such impacts on its social or economic conditions into account for purposes of making decisions on imports of LMOs or in implementing domestic measures under the Protocol. Such social or economic impacts are generally referred to as secondary or higher order effects in technology assessment literature.
630. Article 26(1) of the Protocol identifies one particular socio-economic consideration that Parties may be expected to take into account. This consideration is the “value of biological diversity to indigenous and local communities”. In the negotiating history of Article 26(1), this phrase replaced a reference to Article 8(j) of the CBD, which provides as follows:
- Each Contracting Party shall, as far as possible and as appropriate:
- (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;
631. Article 8(j) imposes on Parties to the CBD three basic obligations with respect to the “knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles”:
- (1) respect, preserve and maintain such knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity;
  - (2) promote the wider application of such knowledge, innovations and practices with the approval and involvement of their holders; and
  - (3) encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.
632. Socio-economic considerations with respect to the value of biological diversity to indigenous and local communities, may also refer to the impact of introduction of LMOs on the ability of indigenous and local communities to make use of the biological diversity upon which their community’s survival and traditional livelihood depends. These socio-economic considerations may include, *inter alia*, the impact that decisions on imports or other domestic LMO regulatory measures may have on:
- the continued existence and range of diversity of the biological resources in the areas inhabited or used by indigenous or local communities;
  - the loss of access to genetic and other natural resources, previously available to indigenous or local communities in their territories; or
  - the loss of cultural traditions, knowledge, and practices in a particular indigenous or local community as a result of the loss of biological diversity in their territory.
633. The phrase “consistent with their international obligations” was inserted into the text at the insistence of countries concerned that the use of socio-economic considerations for purposes of making decisions on import of LMOs may create trade barriers. This indicates that where a Party is a Member of the World Trade Organization, that Party is also expected to ensure that its obligations under the WTO Agreements are not violated as a result of any application of socio-economic considerations in making import decisions on LMOs. This issue is considered further in the Appendix.
634. Parties may take socio-economic considerations into account in two instances:
- when “reaching a decision on import” of LMOs; and
  - under its domestic measures implementing the Protocol.
635. The broad language of Article 26(1) of the Protocol implies that, in making decisions on imports of LMOs, or under its domestic measures implementing the Protocol, Parties may take socio-economic considerations into

account when implementing a number of provisions of the Protocol. For example,

- Article 10 – Procedures for decisions on import;
- Article 11 – Procedure for LMOs intended for use as food or feed, or for processing (LMO-FFPs);
- Article 12 – Review of decisions on import;
- Article 13 – Simplified procedure for decisions on imports;
- Article 15 and Annex III – Risk assessment;
- Article 16 – Risk management;
- Article 17 – Unintentional transboundary movements and emergency measures;
- Article 18 – Measures relating to handling, transport, packaging and identification;
- Article 19 – The establishment of national focal points and designation of competent national authorities;
- Article 21 – Protection and disclosure of confidential information;
- Article 22 – Capacity-building;
- Article 23 – Public awareness and participation;
- Article 24 – Measures with respect to transboundary movements of LMOs with non-Parties;

## **2. 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.**

638. Article 26(2) of the Protocol recalls Article 17(2) of the CBD, which provides that Parties are to exchange information that includes the “results of ... socio-economic research, as well as information on ... indigenous and traditional knowledge as such and in combination with” biotechnology. The focus of the obligation in Article 26(2) of the Protocol is on cooperation in research and information

- Article 25 – Illegal transboundary movements.

636. Article 26, however, does not give any guidance on exactly how socio-economic considerations can be “taken into account” with respect to the Protocol provisions above. At the very least, Parties that decide to use socio-economic considerations as the basis for their LMO import decisions or the domestic measures on LMOs can point to Article 26 as the treaty basis for such decision or measure.

637. Possible ways of taking socio-economic considerations “into account”, especially with respect to indigenous and local communities, may include, for example:

- procedures for assessing and addressing socio-economic impacts in risk assessment and management; and/or
- subjecting decisions on import of LMOs to prior public consultation processes, especially with respect to communities that will be directly affected by the import decision – for example the local community in which the LMO is destined for field trial or use, or which may be affected by any potential adverse impacts of the LMO on biodiversity.

exchange with respect to the socio-economic impacts of LMOs. Both developed and developing country Parties to the Protocol are expected to work with each other in developing and sharing information and research relating to the impacts that LMOs may have on the social and economic conditions of countries and communities, especially indigenous and local communities.