

## Article 26: Socio-economic considerations

**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.**

Socio-economic considerations were one of the issues on which there was no consensus at the Madrid Experts Meeting in July 1995.<sup>510</sup>

At BSWG-1, most developed countries considered the subject of little relevance and believed that further studies on the matter were not necessary. Some developing countries expressed the opposite view and noted that, "in addition to economic impacts such as income distribution, the negative socio-economic impacts of LMOs could include erosion of agricultural and other biological diversity; risks to sustainable use of existing biodiversity; and the threats of transgenic animals and plants to the cultural and religious order of some countries."<sup>511</sup> It was proposed that the Secretariat prepare a study on the socio-economic impacts of biotechnology, but after extensive discussion no agreement was reached. Instead, the BSWG requested the Secretariat to compile a bibliogra-

phy of relevant literature regarding both positive and negative potential socio-economic effects of biotechnology.<sup>512</sup>

The bibliography on potential socio-economic impacts of biotechnology prepared by the Secretariat<sup>513</sup> was considered at BSWG-2, together with written submissions from governments.<sup>514</sup> The African Group presented the most comprehensive submission on socio-economic factors, incorporated into a number of draft provisions throughout the Protocol: objectives, general obligations, notification procedure, risk assessment and management, liability and compensation. The draft article on socio-economic considerations proposed by the African group included taking into account the length of time before such impacts may be manifested and proposed a seven year notification period prior to export. The African group proposal contained an extensive list of socio-economic considerations to be included in a risk assessment: anticipated changes in the existing social and economic patterns; possible threats to biological diversity, traditional crops or other products and, in particular, farmers' varieties and sustainable agriculture; impacts likely to be posed by the possibility of substituting traditional crops, products and indigenous technologies through modern biotechnology outside of their agro-climatic zones; anticipated social and economic costs due to loss of genetic diversity, employment, market opportunities and, in general, means of livelihood of the communities; disruptions to social and economic welfare; and possible effects contrary to the social, cultural, ethical and religious values of communities.<sup>515</sup> It constituted the most detailed list of socio-economic considerations to be taken into account by the Protocol.<sup>516</sup>

Bolivia's submission noted that the introduction of LMOs in countries rich in biodiversity or that are centres of genetic diversity could result in

<sup>510</sup> UNEP/CBD/COP/2/7, Annex I, para. 18(b).

<sup>511</sup> UNEP/CBD/BSWG/1/4, para 88.

<sup>512</sup> *Ibid.*, para 111.

<sup>513</sup> UNEP/CBD/BSWG/2/4.

<sup>514</sup> UNEP/CBD/BSWG/2/2, contains the submissions of the African Group, Bolivia, Canada, the EU and Japan.

<sup>515</sup> *Ibid.* p. 84.

<sup>516</sup> It was retained in the draft text until BSWG-4, where it was section 12 of Annex II. See UNEP/CBD/BSWG/4/4, p. 73

the depletion of that diversity. A breakdown of agricultural systems and genetic erosion would threaten livelihoods.<sup>517</sup>

A request by the G-77 and China to the Secretariat to prepare a study on the socio-economic implications of biotechnology was later withdrawn, but that Group asked the Secretariat instead to facilitate a round-table discussion on socio-economic considerations at BSWG-3.<sup>518</sup>

At this stage, socio-economic considerations, as well as ethical considerations, were discussed in the context of risk assessment. Here the debate focused on whether such assessments should be based solely on scientific data.

Governments submitted draft text prior to BSWG-3.<sup>519</sup> In addition to earlier suggestions, Mexico stressed the importance of addressing impacts on the recipient environment and, in particular, on centres of origin. Concern over impacts on social and economic welfare was expressed by Madagascar and Sri Lanka, amongst others.

It was agreed at BSWG-3 that socio-economic considerations would not be the subject of a further element paper, but would be included in the consolidated text of draft articles, with the texts already submitted by governments being set out as various options.<sup>520</sup>

Four substantive options were drafted (in addition to the zero (no provision) option). One option basically reflected the previous submission by the African group, in which socio-economic factors featured as an element of risk assessment and management and which included a period of observation of the potential impacts and the requirement for seven years' advance notifica-

tion of export of an LMO. Another option called for socio-economic imperatives to be taken into consideration at all levels in the Protocol, including risk assessment and management and for particular attention to be paid to the displacement of particular agricultural resources, cultures or livelihood and to the prevention and mitigation of possible adverse effects. A further option simply acknowledged that socio-economic considerations varied considerably from Party to Party and therefore encouraged research on the issue.<sup>521</sup>

At this stage, the debate revolved around the need to include these considerations in the text of the Protocol at all. Generally speaking, developing countries felt the issue was at the heart of the Protocol itself, whereas developed countries considered the concept too vague and specific to each country's circumstances to be enshrined in a separate provision.<sup>522</sup>

At BSWG-4 there was little change to the text, with the exception of some bracketing and reordering.<sup>523</sup> The Chair called for a reduction of options in the draft text.<sup>524</sup> The resulting draft contained two substantive options (as well as a zero option): one simply calling for appropriate consideration of socio-economic consequences of adverse consequences of using LMOs, while the second specified a series of measures to be taken that reflected the concerns of developing countries.<sup>525</sup>

Negotiations were again difficult at BSWG-5, with few concessions made from either standpoint. Preferences varied from a mention of the subject in the preamble, references in the articles dealing with risk assessment and risk management, or as an independent article.

<sup>517</sup> *Id.*

<sup>518</sup> UNEP/CBD/BSWG/2/6, paras. 183 and 190.

<sup>519</sup> UNEP/CBD/BSWG/3/3, contains, *inter alia*, the submissions on risk assessment and on risk assessment parameters of the African group, Belarus, India, Madagascar, Malaysia, Mexico and Sri Lanka.

<sup>520</sup> UNEP/CBD/BSWG/3/6, para 27.

<sup>521</sup> *Ibid.*, pp.87-88.

<sup>522</sup> *Ibid.*, paras. 29-38.

<sup>523</sup> UNEP/CBD/BSWG/4/4.

<sup>524</sup> ENB. Summary. Vol. 9 No. 85, p. 9

<sup>525</sup> UNEP/CBD/BSWG/4/4, p. 48

The draft was reduced to one option with many brackets by merging a number of the previous paragraphs, which included many of the submissions of developing countries, to produce a compromise provision. This draft referred to prevention and mitigation of socio-economic impacts, an assessment and management of risks with a long observation period, while also encouraging research on the topic. It also called for Parties exporting commodities-LMOs to notify affected Parties sufficiently in advance to allow appropriate measures to be taken, providing special assistance when the affected Party was a developing country. Annex II was reduced to a call for "information on the potential impacts on the socio-economic patterns of the importing country".<sup>526</sup>

The meeting noted that there "appeared to be a shared sympathy for the subject, but not about the need, place and the manner of handling the issue under the Protocol".<sup>527</sup> The issue had a bearing on the scope and other provisions for the Protocol and needed to be considered carefully by delegations before the sixth meeting of the Working Group.<sup>528</sup>

The Chair's proposed text at BSWG-6 contained significant changes. It provided that Parties should take into account socio-economic implications of adverse impacts, also taking into account human health, "especially in regard to the indigenous and local communities as referred to in Article 8(j) of the Convention". It further encouraged Parties to cooperate on research and information exchange, "including the need for the early warning to such local and indigenous communities that may be affected economically".<sup>529</sup>

The text was revised and amended to form the draft transmitted by BSWG-6 to the ExCOP.<sup>530</sup> Although many delegations, especially developing countries, were initially unhappy with the Chair's proposed text, the wording on socio-economic considerations was ultimately accepted with little discussion.

A requirement for Parties' decisions on import to be "consistent with their international obligations" was added. Socio-economic considerations arising from the "impact" of LMOs could now be taken into account (instead of "adverse impact"). The reference to "risks to human health" was deleted. The phrase "the value of biological diversity to indigenous and local communities" was added and, similarly, regarding research and information exchange, a general reference to "any socio-economic impacts of LMOs, especially on indigenous and local communities" was included in place of earlier language on early warning and economic effects on local and indigenous communities. Any reference to socio-economic considerations in Annex II was deleted.

At the resumed ExCOP, a final addition made during the last informal consultations conducted by Ambassador Nobs added a reference to Parties' domestic measures to implement the Protocol with regard to socio-economic considerations.<sup>531</sup>

<sup>526</sup> *Id.*; Text submitted to plenary by the co-chairs of SWG II (UNEP/CBD/BSWG/5/CRP.32).

<sup>527</sup> UNEP/CBD/BSWG/5/3, para. 46.

<sup>528</sup> *Id.*

<sup>529</sup> UNEP/CBD/BSWG/6/L.2, see Article 24.

<sup>530</sup> UNEP/CBD/ExCOP/1/2, Appendix 1

<sup>531</sup> ENB Vol. 9 No. 137, p. 9.