TWN
Third World Network
Email: twnet@po.jaring.my
Websites: www.twnside.org.sg, www.biosafety-info.net
Address: 131 Jalan Macalister, 10400 Penang, MALAYSIA
Tel: 60-4-2266728/2266159 **Fax:** 60-4-2264505

Briefings for MOP 4 2

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Some issues for the implementation of Article 26 on socio-economic considerations

By Chee Yoke Ling, Third World Network

Eight years after the conclusion of the Cartagena Protocol on Biosafety, it has become even clearer that the socio-economic dimension needs to be an integral part of a sound and comprehensive assessment of new biotechnologies and genetically modified organisms.

A number of countries have incorporated socio-economic, and even cultural and ethical, considerations into their national laws that regulate biotechnology. The Fourth Coordination Meeting of Governments and Organizations Implementing and/or Funding Capacity-Building Activities (New Delhi, 11-13 February 2008) observed that Parties have identified socio-economic considerations as one of the key elements in the capacity-building Action Plan requiring urgent action.

Major developed countries had rejected the inclusion of socio-economic issues in the Protocol negotiations, while almost all developing countries had insisted that this dimension could not be left out. Although the contentious issue resulted in a compromise text in Article 26, the knowledge and experience gained since then are valuable in the interpretation and implementation of Article 26 and related provisions. It should also be borne in mind that the Protocol sets minimum standards and Parties have the right to take action that is more protective of the conservation and sustainable use of biological diversity that that called for under the Protocol.

Article 26(1) covers a decision on import under the Protocol or under a Party's domestic measures implementing the Protocol. Such national measures are, *inter alia*, those dealing with import; risk assessment and risk management; unintentional transboundary movements of LMOs and emergency measures; handling, transport, packaging and identification; capacity building; and transboundary movements of LMOs between Parties and non-Parties.[1] Underlying these measures is the implementation of the precautionary principle.

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(1) 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).

At the same time, public consultations and participation in decision-making are very important for Parties to properly assess the socio-economic impacts of LMOs. Thus in implementing Article 23 on public awareness and participation, Parties can also put in place the necessary mechanisms to implement Article 26(1).

Yet, resistance by some Parties and non-Parties has kept this important issue to a level of encouragement to conduct research and information exchange under Article 26(2). The synthesis of the views submitted in UNEP/CBD/BS/COP-MOP/4/15 shows that there has

[1] See TWN Briefing #3 for MOP 4: ***Assessing the socio-economic, cultural and ethical impacts of GMOs*** that highlights the tool of socio-economic impact assessment for biosafety policy and practice.

been little research conducted. There may be more studies that have not been submitted, but the reality is that socio-economic impacts are unfolding that have yet to be captured in studies. However, the submissions do provide some valuable data, analysis, experiences and options for implementing Article 26. Contradictions in a number of submissions emphasise the urgency for concerted work at the national, regional and international levels.

The same countries that rejected socio-economic considerations 10 years ago continue to press for a narrow interpretation and this is evident from the submission of the United States that also predictably asserts the supremacy of WTO obligations. However it is encouraging that Norway, as a Party implementing the Protocol, has chosen the opposite approach. The Norwegian Gene Technology Act of 1993 seeks to ensure that the production and use of LMOs in Norway takes place in an ethically and socially justifiable way, in accordance with the principle of sustainable development and without detrimental effects on health and the environment. Under the Act, Norway has introduced regulations relating to impact assessment that also include positive or negative effects in relation to sustainable development; ethical considerations that may arise in connection with the use of the LMO; and any favourable or unfavourable social consequences that may arise from the use of the LMO.

During the negotiations on Article 26 almost 10 years ago, the Africa Group had warned about "the monopolistic manipulation of the biotechnological, seed, chemical and related industries by individual private sector entities". They proposed that Parties develop or maintain appropriate policy and legislation to protect the general public from this eventuality.

Today, there are more than 100 lawsuits filed by Monsanto against farmers in North America for alleged infringement of the company's patents over genetically modified (GM) canola and soya. In the process of enforcing its patent monopoly, according to an Associated Press report, Monsanto "has turned farmer on farmer and sent private investigators into small towns to ask prying questions of friends and business acquaintances". Those who had signed licensing agreements with the company gave up the time honoured right of farmers to save and re-use seeds, subjecting themselves to "seed policing". Those who choose not to plant GM crops are nevertheless not protected from contamination, and thus open to lawsuits.

In Argentina, the rapid expansion of commercial planting of GM soya since 1996 has led to adverse impacts on the environment and local communities as reported in the submissions to the CBD Secretariat. In addition, Monsanto, as it does not enjoy patent privileges in the country and failed to get the government to collect payments on its behalf, took its battle for more profits to the courts in Europe. In the absence of patents, the company was nevertheless still selling its seeds and vast quantities of its herbicide that is tied to the GM soya.

Thus the issue of intellectual property and concentration of corporate control in the commercialization of LMOs need to be addressed.

On the issue of consistency with "international obligations" in Article 26(1), the wider discussion on the relationship between multilateral environmental agreements and the WTO agreements continues to take place at the WTO. Parties to the Protocol and the CBD (genetically modified trees will be discussed in COP 9 and socio-economic considerations also feature there) need to first determine the necessary approaches and measures to meet the objectives and spirit of the two treaties. The spectre of "trade obligations violations" cannot and should not prevent Parties from dealing with urgent issues that impact on the conservation and use of biodiversity, and the human societies that are affected as a result. It is this work that will contribute to the efforts to make the various regimes – environment, health, trade and human rights – truly compatible.

In light of experiences since the Protocol entered into force, it is crucial that Parties at the COP-MOP 4 and COP 9 take decisions that will support the integration of the socio-economic dimension into decision-making on LMOs. Let us not wait another two years. Based on the various documents before the Parties in Bonn, the following elements should be included in the decisions to be adopted at COP-MOP 4:

- National biosafety laws should clearly include the socio-economic dimension in impact assessment and in decision-making related to LMOs
- Parties and other Governments should incorporate socio-economic impact assessment as a tool for national biosafety laws and practice
- Capacity building to deepen knowledge, identify needs and integrate socio-economic considerations into national decision-making related to LMOs[2]
- Cultural and ethical considerations are not precluded in the Protocol and governments should include these in decision-making related to LMOs.

[2] See the report of the Fourth Coordination Meeting of Governments and Organizations Implementing and/or Funding Capacity-Building Activities (New Delhi, 11-13 February 2008).