

Conceptual Clarity of the terms “unintentional” and “illegal” transboundary movements

The COP-MOP invited Parties and other Governments to submit:

- Views on what constitutes unintentional transboundary movements in contrast with illegal transboundary movements; and
- What type of information should be exchanged through the Biosafety Clearing-House;

The Compliance Committee will consider the compilation and synthesis of information received with a view to clarifying the two types of movements.



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Article 17 – Unintentional Transboundary Movements and Emergency Measures

Parties shall notify affected or potentially affected countries, BCH, relevant organizations of the release of an LMO that may lead to an unintentional transboundary movement of the LMO;



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Article 25 – Illegal Transboundary Movements

Parties shall adopt measures to prevent/penalize illegal transboundary movements of LMOs, and make available the information available to the BCH.



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Unintentional Transboundary Movements: Not defined in the Protocol

Illegal Transboundary Movements: “Transboundary movements of LMOs carried out in contravention of domestic measures of a Party”



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Related terminology:

- Low level presence
- Adventitious presence

Source: Working definitions from the FAO’s “Low levels of GM crops in international food and feed trade: FAO international survey and economic analysis”



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Emerging views:

Illegal transboundary movement” refers to the import of an LMO that was not approved by the regulatory system of the country

The term “illegal” may also be used to refer to a unauthorized use



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Emerging views:

Does intention determine whether a transboundary movement is “illegal” or “unintentional”?

The term “unintentional transboundary movement” includes cases of impurity or contamination



The term Illegal Transboundary Movement relates to:

- (a) LMO whose notification for import and specific use was not approved;
- (b) LMO for which a notification was not submitted, a notification is under evaluation, or was withdrawn without a decision being taken; or
- (c) Import done in contravention to specific requirements (e.g. labelling, packaging, and documentation).



The term “unintentional transboundary movement”:

Intent: difficult to prove

Quantity:

- small quantity of LMOs (“impurity”) caused by, for example, mixing of the commodity during handling; or
- large amounts or entirely LMO

As such, quantity should not be a determining factor in defining the term “unintentional transboundary movement”.



Unintentional?

Illegal?



Unintentional = Illegal?

Unintentional \neq Illegal?

Unintentional $>$ Illegal?

Unintentional $<$ Illegal?



Conceptual Clarity: Emerging Concepts from the Online Discussions

Article 17 – Unintentional Transboundary Movements and Emergency Measures

“Unintentional transboundary movements” are cross-border movements resulting from a deliberate or accidental release, including dispersal or mixing, of an LMO in the country of origin that are not properly notified or documented to the receiving country. In the event the LMO in question, or a particular intended use of that LMO, is not authorized in the receiving country, the transboundary movement may also be considered illegal.

Article 25 – Illegal Transboundary Movements

“Illegal transboundary movements” include the cross-border movements of LMOs that have not been approved for particular use in the importing Party or that are carried out in contravention of any of the requirements specified in the relevant national legislations.



Conceptual Clarity: Emerging Concepts from the Workshop Participants

Article 17 – Unintentional Transboundary Movements and Emergency Measures

“Unintentional transboundary movements” are cross-border movements resulting from a deliberate or accidental release of an LMO in the country of origin that is not intended to be received by the receiving country.

Article 25 – Illegal Transboundary Movements

“Illegal transboundary movements” include the cross-border movements of LMOs that have not been approved for particular use in the importing Party or that are carried out in contravention of any of the requirements specified in the relevant national legislations.

Note: In the event the LMO in question, or a particular intended use of that LMO, is not authorized in the receiving country, the transboundary movement may be considered illegal.