



INTERNATIONAL GRAIN TRADE COALITION

January 22 2010

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(Mexico)

APPAMEX
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Associação
Brasileira das
Indústrias de
Óleos Vegetais

Associação
Nacional dos
Exportadores de
Cereais (Brazil)

Canada Grains
Council

Centro de
Exportadores
de Cereais
(Argentina)

China Chamber of
Commerce of
Import and Export
of Foodstuffs,
Native Produce &
Animal By-
Products

China National
Association of
Grain Sector

COCERAL
(Europe)

Corn Refiners
Association Inc.
(United States)

Grain and Feed
Trade Association
(Worldwide)

IGTC update on developments under Article 27 of the Biosafety Protocol

The International Grain Trade Coalition (IGTC) continues to be very concerned about the potential impact on food security, economies and the nutritional well being of Parties to the Cartagena Protocol on Biosafety related to the proposed resolution of the liability and redress issue (Article 27). This is to update interested parties in advance of the Second meeting of the Group of the Friends of the Co-Chairs on Liability and Redress in the context of the Cartagena Protocol on Biosafety to be held February 8 - 12 2010 in Kuala Lumpur, Malaysia.

The IGTC now includes 22 organizations representing more than 8000 members operating in over 80 countries that are involved in the production, handling, marketing, transportation and processing of grains, oilseeds, pulses and their derived products for food, feed or for processing. As such, our membership has an acute and first person understanding of the microeconomics of trans-boundary movements of agricultural commodities for food, feed or for processing. IGTC members are very aware of the enormous contribution to physical well being, social stability and economic growth that results from efficient international trade in agricultural products that are increasingly called upon to provide for the world's food, feed, fiber and fuel needs. IGTC members take very seriously their responsibility for the safe handling of the goods as indeed is already required by relevant domestic legislation in importing countries, but they should not be liable for any damages that occur as a result of LMO products when they have merely acted as approved transporters and processors of the products in accordance with the approvals granted by governments and based on risk assessments completed by others.

With respect to the ongoing discussions regarding Article 27 as the parties continue negotiations on international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms in the context of the Cartagena Protocol on Biosafety and with a focus on development of a Supplementary Protocol we find:

First, we caution that it is critically important to recognize in any decision made by the MOP with respect to Liability and Redress that farmers and other entities involved in the production and marketing of agricultural products intended for food, feed and further processing (as defined under article 18.2(a) that act absent of intentional misconducts and according to laws, regulations

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Association (USA)

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Association

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Chamber of
Cereals &
Oilseeds
Exporters
(CAPECO)

Russian Grain
Union

Solvent
Extractors'
Association
of India

Soybean
Processors
Association
of India

US Grains Council

US Wheat
Associates

and granted permits and approvals should not be held to be responsible for any damage that occurs as the result of the inherent nature of the LMO product itself. A decision that places these entities at risk for damage that has not been anticipated by the risk assessment process will result in unwanted costs to users of imported agricultural products, distortions to trade and disincentives to utilization of LMOs in agriculture.

Second, we continue to recognize the importance of work by Crop Life International (CLI) members to identify and accept their potential liability. These are entities that have developed, are producing, or hold the intellectual property rights to the products of modern biotechnology. The IGTC is strongly supportive of efforts by the technology providers to identify and propose the development of predictable and transparent mechanisms to address liability and redress associated with the transboundary movements of the LMOs commercialized by these companies and likely to enter into global food and feed supply chains. Much of this work is addressed in the “COMPACT”. The COMPACT is designed to be a binding contract among members that provides for standards and a process for evaluating and addressing claims alleging damage to biological diversity.

However the IGTC cannot support the current text of the “COMPACT”. After several months of effort in cooperation with CLI we find the COMPACT continues to place members of the supply chain for agricultural commodities - importers, silo operators or handlers of the LMO for food, feed or for processing - who have met legal obligations and followed normal procedures in trade including fulfilling their obligations of professional conduct in an inappropriate position regarding potential liability and recourse for damage to biological diversity. The IGTC’s specific concerns related to the current text of the Compact are contained in an Appendix below. The IGTC is hopeful that these outstanding concerns related to the Compact can be addressed.

The definition of “Operator” in the Supplementary Protocol should reflect the link in the chain that causes the damage

Members of the grain industry are concerned that the development of a new liability and redress system that targets liability towards normal commercial activities could create a regime that inhibits trade and utilization of crop biotechnology. This would be dramatically negative to the sustainable provision of food, energy and economic activity at a time when economies are already challenged by increasingly scarce resources of land and water and a rapidly expanding global population.

Members of the IGTC support a definition of operator that reflects “Option 1” with the following modification:*

(g) “Operator” means

Option 1

~~any person in [operational control] [[direct or indirect] command or control]:
(i) of the activity at the time of the incident [causing damage resulting from the transboundary movement of living modified organisms];
(ii) _____ of the living modified organism [at the time that the condition that gave rise to the damage] [or imminent threat of damage] arose [including, where appropriate, the permit holder or the person who placed the living modified organism on the market]; [and/or]
(iii) _____ as provided by domestic law.~~

Under Article 18.2(a) of the Protocol living modified grains are being transported for food, feed or for processing and are not to be intentionally introduced into the environment. Members of the grain trade are transporting LMO products that have been authorized by exporting countries for the production of grain for food, feed or for processing and by the importing countries for import for food, feed or for processing.

In summary the IGTC stresses:

- Members of the grain trade from producers through handlers / transporters/ exporters/ importers/ processors are simply performing functions intrinsic to trade and have neither performed risk assessments nor have any knowledge of the inherent qualities of the traits introduced into the plant materials;
- Members of the grain trade rely on the risk assessments performed by governments and the appropriate authorizations granted by governments;
- If damage to biodiversity occurs because members of the grain industry intentionally exported/imported unauthorized material or intentionally sold material authorized only for food, feed or for processing as seed, or intentionally seeded unauthorized material then they should be liable;
- But if damage to biodiversity is caused by the inherent nature of the trait introduced into the seed, then the liability should be directed to the technology developers who developed the trait.

The IGTC would be pleased to discuss this issue further and may be contacted at: secretariat@igtglobal.com.

Appendix

IGTC DETAILED CONCERNS ON THE COMPACT

The IGTC finds 3 elements of the COMPACT [*Execution draft text (reorganised) 9 November 2009*] to be objectionable:

1. **Article 2.1 of the COMPACT which states:** “This Article contains definitions and determinations for terms used in the COMPACT. Terms defined in the CONVENTION and the PROTOCOL that are used in the COMPACT but are not defined herein shall be defined as they are in the CONVENTION and the PROTOCOL.”

IGTC Concern: For this to be an alternative to the Supplementary Protocol all key terms need to be defined within the Compact to ensure that all parties know who is liable for what.

2. **Article 2.4(iv) – Adventitious Presence as stated in the COMPACT:** “ADVENTITIOUS PRESENCE: The incidental presence of foreign material in an agricultural product at levels that could reasonably be expected to be present when using generally accepted or legally required agricultural, manufacturing, handling, distribution and use practices. For the purposes of this COMPACT, ADVENTITIOUS PRESENCE includes the presence of an AUTHORIZED or of an UNAUTHORIZED LMO. Any validly detected LMO which is present as the result of MISUSE is not ADVENTITIOUS PRESENCE. For purposes of the COMPACT only, a MEMBER is responsible for the ADVENTITIOUS PRESENCE of its LMO.”

IGTC Concern: There can be no such thing as misuse with regards to an LMO included as adventitious presence (AP) in a cargo – if AP causes damage, then the entity responsible for risk assessment and management (i.e. the technology provider) must be responsible. Producers, transporters and users of commodities can take all reasonable steps that they are aware of to safely utilize these agricultural products in commerce. However these commercial parties in the agricultural product production and market chain cannot be held responsible for damage from the AP of an LMO whose risk has been assessed by others .

3. **Article 9.3 Misuse:** The COMPACT states: “MISUSE only occurs when the conditions of subparagraphs (a), (b), (c), (d), or (e) below are satisfied; as a result, an LMO was RELEASED and that LMO CAUSED DAMAGE to BIOLOGICAL DIVERSITY; and compliance with the applicable law or regulation, condition, safety measure, or standard would have prevented the RELEASE of the LMO and the resulting DAMAGE:

- (a) a violation of law or regulation that either (i) specifically addresses inter alia preventing the RELEASE of the LMO, or (ii) specifically regulates the activity resulting in the alleged MISUSE of the LMO; or
- (b) a violation of the conditions of use, conditions of the AUTHORISATION or other applicable safety measures required by the STATE and applicable to the LMO; or
- (c) a failure to follow reasonable conditions of use or other safety measures applicable to the LMO required by an AUTHORISATION HOLDER for that LMO or by a MEMBER who PLACED the LMO ON THE MARKET, provided that such conditions of use or other safety measures have been communicated in a writing by that AUTHORISATION HOLDER or MEMBER (e.g., through labeling, guidance for use or contractual terms) (i) to the person alleged to have engaged in MISUSE, or (ii) such that the person alleged to have engaged in MISUSE would reasonably be expected to be aware of the conditions of use or other safety measures; or
- (d) a failure to comply with required or generally accepted best practices or objective industry stewardship obligations established by recognized standard setting organizations, or the industry or a trade association of the industry engaged in the activity resulting in the alleged MISUSE of the LMO, and which are applicable to that activity; or
- (e) an unauthorised alteration of an LMO or labeling or packaging of an LMO.

IGTC Concern: This too is an inappropriate placement of responsibility on the farmer, producers, transporters and processors to take actions that they may not be aware of or are not in a position to execute. For example: the “conditions of use” are an obligation the technology provider places on users of seeds (farmers). These conditions do not and should never get passed on through the use of the agricultural product or commodity produced from those seeds. Entities that are not first party to the seed conditions of use and who are involved in the production, harvest, transport or consumption of the agricultural product would be placed in an unacceptable and unmanageable position if this current language prevails. Inappropriately defining Misuse as this article of the COMPACT does, will lead to a greatly restricted agricultural production marketing system burdened with increased costs or limited capacity resulting in more expensive end products and reduced global food, feed and fuel security.