

**CARTAGENA PROTOCOL ON BIOSAFETY:
Article 27 Negotiations**

The Global Industry Coalition (GIC)¹ supports the adoption of an administrative system in a Supplementary Protocol to the Biosafety Protocol that guides governments in ensuring that prompt, adequate and effective response measures are taken in the event of damage to the conservation and sustainable use of biological diversity resulting from transboundary movements of LMOs. The Supplementary Protocol should not impose any financial security requirements beyond what is required under national corporate law for any company or research organization in that country, whether domestic or foreign. In fact, the financial security provision (Article 10) of the Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety that is currently under negotiation almost certainly violates the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures. Additionally, the Supplementary Protocol should not include “products thereof” in its scope which would be an inappropriate expansion of scope beyond that of the parent Biosafety Protocol.

The GIC welcomes the opportunity to continue to participate in the negotiations on liability and redress under the Biosafety Protocol and encourages governments to proactively work to resolve the outstanding issues so that a final Supplementary Protocol can be finalized at the fifth meeting of the Parties to the Biosafety Protocol (MOP-5). Regarding the text that remains in square brackets, the GIC offers the following input:

1. **Article 3: “Products thereof” should not be included** — The inclusion of “and products thereof” would broaden the scope of the Supplementary Protocol beyond potential damage to biological diversity, because processed and manufactured products that do not contain viable organisms are not LMOs and cannot affect biological diversity. To the extent any processed product does contain viable organisms that have been genetically modified, the product would be considered an LMO and already would be within the clearly defined scope of the Biosafety Protocol.
2. **Article 10: Financial security should remain a matter of national law** — All countries have and should equitably apply their existing national corporate and other applicable laws concerning financial security to both domestic and foreign entities who conduct research and development and commercial business activities in their countries, including those engaged with LMOs. Under the Supplementary Protocol under development, the Parties must take care to ensure that the requirements of the administrative approach are not uninsurable and do not impose onerous financial obligations which prevent or inhibit the Parties’ ability to access and develop the technology. In addition, the financial security provision (Article 10) currently under negotiation almost certainly violates the World Trade Organization *Agreement on the Application of Sanitary and Phytosanitary Measures* by applying a blanket requirement for financial security for all LMOs and failing to assess the actual risk posed by any particular LMO, by discriminating between LMOs that have been determined to be substantially

¹ The Global Industry Coalition (GIC) for the Cartagena Protocol on Biosafety receives input and direction from trade associations representing thousands of companies from all over the world. Participants include associations representing and companies engaged in a variety of industrial sectors such as plant science, seeds, agricultural biotechnology, food production, animal agriculture, human and animal health care, and the environment.

equivalent and their conventional counterparts, and by creating the potential for discriminations between imports and domestically developed or produced LMOs.

3. **Elements of a Draft Decision: The Draft Decision should properly welcome the private sector initiative to provide for a contractual compensation mechanism, which establishes an operational and model financial security mechanism** — The current draft text of a decision for consideration by the Parties at MOP-5 includes a bracketed reference to the private sector’s initiative to provide for a contractual compensation mechanism concerning recourse in the event of damage to biological diversity caused by LMOs (otherwise known as “The Compact”). The GIC requests Parties remove the square brackets and welcome this initiative. Recognizing the goal of broad membership for those working with LMOs, which is a task of the Compact Advisory Committee (to include Parties and NGOs), the Compact contributes to fulfilling any financial security concerns the Parties may have regarding this type of damage.

4. **Civil Liability Guidelines: Guidance on civil liability must in fact be “guidance” that provides Parties the options and enables the flexibility to adopt civil liability provisions consistent with their domestic civil liability law** — In providing “guidance” to Parties on civil liability for damage to biological diversity, the full range of options to address each element of liability must be included so that each Party can adopt provisions to supplement existing domestic civil liability law that are consistent with that existing law and legal system. For example, the choice between establishing fault-based or strict liability should not be imposed on Parties, but should be decided by each Party in light of its national policies and goals, and its unique laws and legal system. By including a complete array of choices for each element of liability, the guidance on civil liability would actually assist countries to better assess and analyze the implications of each option within its legal system, including potential impacts on trade, legal and judicial resources, domestic research and development, sustainable agriculture, and food security. Existing civil liability systems in most of the countries of the world already would cover traditional damages, such as personal injury or economic harm, if they were to occur, resulting from damage caused by the transboundary movement of LMOs. In addition, the GIC firmly believes that traditional damage is outside of the scope of the Biosafety Protocol and, therefore, of any Supplementary Protocol.