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GAIN Report

Global Agricultural Information Network

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Biotech Workshop Report

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Report Highlights:

During a recent Nairobi workshop organized by the International Service for the Acquisition of Agri-biotech Applications (ISAAA) to prepare for the upcoming Conference of the Parties to the Convention on Biological Diversity (COP-MOP5) in Nagoya, Japan, African delegates could not unite on a single position regarding liability and redress. Delegates did take note of a private-sector initiative to address liability and redress called “the Compact in the context of the Biosafety Protocol.”

General Information:

ISAAA Afri-Center, with support from USDA, New Partnership for Agriculture Development in Africa (NEPAD) and Common Market for Eastern and Southern Africa (COMESA), facilitated a discussion of the Biosafety Protocol on civil liability and redress, and risk assessment. Discussions focused on a supplementary protocol for products of living modified organisms (LMOs), types of liability regimes, including the private-sector initiative and corresponding capacity-building options.

Participants learned that there were three options to address additional and supplementary compensation. The options: **1)** enables the adoption of additional and supplementary measures, and provides a process to adopt terms of reference; **2)** does not refer to additional and supplementary compensation measures in the decision of liability and redress; and, **3)** enables the adoption of additional and supplementary compensation measures through rules and procedures to be implemented by Members States (Parties).

The delegates were divided on the options. South Africa supported Option 3 and the rest of the Parties preferred Option 1.

Regarding complementary capacity building measures, the delegates discussed three options and concurred that Option 3) here to follow is the way forward. The options were: **1)** COP-MOP will assist Parties to develop domestic legislation for liability and redress; **2)** COP Parties will assist other Parties in developing domestic legislation for liability and redress; and, **3)** establishment of a committee of Biosafety-Protocol experts to advise Parties upon request.

In addition, a consortium of six private-sector agriculture-biotechnology companies introduced a voluntary but legally-binding contractual method of dealing with liability and redress (the Compact). Delegates took note of the Compact but didn't express opinions regarding their support (of lack of support) for the approach.

European (Belgium and the Netherlands), North American (Canadian and U.S.) and African Government and Non Governmental Organizations (NGO) delegates participated. The African Governments represented were Kenya, Uganda, Tanzania, Sudan, South Africa, Liberia, Burkina Faso, Egypt, Cameroon, Senegal, Nigeria, Zambia, Burundi, Ethiopia, Rwanda and Zimbabwe. The African NGO, the African Agricultural Technology Foundation (AATF) presented a status report on the development of water efficient maize.

Tanzania, Zambia and Ethiopia currently prohibit the use of commercial agriculture biotechnology. The AATF cited Tanzanian regulations that prohibit any activity regarding agriculture biotechnology. AATF suggests that prohibitive legislation of this type must be amended for research and development to move forward.

The verbatim text of the Final Communiqué follows:

Introduction

The Government of Kenya through the Ministry of Higher Education, Science and Technology and National Biosafety Authority in collaboration with AU-NEPAD Agency, African Biosafety Network of Expertise (ABNE), COMESA/ACTESA and ISAAA *AfriCenter* held a forum for the African delegates that will participate at the upcoming COP-MOP5 meeting in Japan. The forum aimed to familiarize African delegates on Liability and Redress, and, risk assessment issues that will be decided upon at the MOP-5 meeting in October 2010, and build capacity for productive participation at the international event. Eighteen African Countries were represented as provided in Annex 1.

Preamble

Recalling Article 27, of the Protocol

Recognizing decision BS-IV/12 of the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol for the formation of the Group of the Friends of the Co-Chairs on Liability and Redress in the Context of the Cartagena Protocol on Biosafety

Recognizing also the amount of work and negotiation by the Group of the Friends of the Co-Chairs on Liability and Redress in the Context of the Cartagena Protocol on Biosafety and the Supplementary Protocol as the outcome of these negotiations

Taking into account the outstanding issues under the negotiations by the Group of the Friends of the Co-Chairs on Liability and Redress in the Context of the Cartagena Protocol on Biosafety

Hereby agreed as follows:

1. To support the existence of the African Group and the coordinating role of the AUC, AU-NEPAD and other stakeholders while taking cognizance of national priorities and sovereignty;
2. To encourage Members to hold preparatory meetings by delegates and to further encourage Members to share the outcome of the preparatory meetings;
3. That the outcome of this preparatory meeting be shared to all African parties, national Governments, focal points and the negotiators and other stakeholders;
4. To encourage Parties to reserve a budget for supporting a large delegation as it is a country's obligation to have quality representation;
5. To source funds so as to enable more African technical and legal advisors to attend the Fourth meeting of the Group of the Friends of the Co-Chairs on Liability and Redress in the Context of the Cartagena Protocol on Biosafety (scheduled for 6-8 October, Nagoya, Japan) thus boosting contributions from the African group. Efforts should also be made to facilitate the same group attend the COP-MOP5 meeting from 11-15 October 2010;
6. To develop a mechanism for continuous dialogue on on-going preparatory activities for COP-MOP5 (e.g. online);
7. To request the AU to liaise with the CBD Secretariat to explore available funds for participation of

advisors from African countries and to consult with African countries on an equally balanced representation of African countries in the 4th meeting of the Group of the Friends of the Co-chairs. on Liability and Redress from October 6-8th 2010 in Nagoya, Japan;

8. To encourage parties to take the necessary steps to implement the Cartagena Protocol on Biosafety at the national level;

Further Agreed as follows on the outstanding issues on Liability and Redress:

9. To support the inclusion of Article 10 Paragraph 1 of the proposed Financial Security provision and to note the reservations by South Africa, Annex 2;
10. To encourage Parties to further consider the inclusion/exclusion of “Products thereof” in the *Supplementary Protocol and to consider accepting the co-Chairs’ compromise proposal in para 16 of the COP-MOP4 report “including products containing LMOs” to replace “products thereof”, as provided in Annex 3;*
11. To encourage Parties to prepare a clear position after national internal discussions on the inclusion of civil liability guidelines in the decision document;
12. To take note of the Compact in the preamble of the decision document;
13. To consider the text of Option 1 with regard to supplementary compensation measures, however noting South Africa’s preference for Option 3, as provided in Annex 4;
14. To consider the text of Option 3 with regard to the provisions on complementary capacity building, Annex 4; and
15. To encourage Parties to consider the exclusion of the provisions on the liability of States for damage caused by LMOs.

Dated at Nairobi this 27th Day of August 2010.