

Socio-economic considerations related to LMOs: From the Convention on Biological Diversity to the Cartagena Protocol on Biosafety

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Introduction

During the negotiation of the Cartagena Protocol on Biosafety's text, the inclusion of socio-economic considerations in relation to living modified organisms (LMOs) was one of the highly debated issues. Most developing countries were of the view that it was necessary to include them as one of the pillars to conduct risk assessment and risk management. Conversely, most developed countries were against this, arguing that socio-economic considerations are issues of national domestic concern, hence, they have limited relevance for an international biosafety treaty. In the end, socio-economic considerations were included in broad terms in Article 26 of the Cartagena Protocol.

Article 26(1) of the Protocol states that Parties, in making decisions on imports of LMOs under the Protocol or under its domestic measures implementing the Protocol, may take into account "socio-economic considerations arising from the impacts of living modified organisms on the conservation and sustainable use of biological diversity". The reference to decision-making infers that a number of provisions of the Protocol are linked to Article 26 (Catacora-Vargas 2012). However, to what extent it is mandatory to take socio-economic considerations on board is a question that is still debated, although socio-economic aspects related to biodiversity are broadly addressed in the parent treaty, the Convention on Biological Diversity (CBD).

In the following sections, we will provide insights on how socio-economic considerations related to the conservation and sustainable use of biodiversity are rooted in the CBD and, accordingly, inherited by the

Protocol. The aim of this analysis is to highlight the relationship between these two instruments and to provide a more comprehensive understanding of socio-economic aspects in light of this international biosafety instrument.

The Convention on Biological Diversity: Biosafety and Socio-Economic Provisions

The CBD was adopted in May 1992 and entered into force in December 1992. Generally speaking, the CBD has the objectives of contributing to: (i) the conservation and sustainable use of biological diversity and its components, and (ii) fair and equitable sharing of benefits from the use of genetic resources (Secretariat of the CBD 1992).

The CBD is a milestone international treaty on biological diversity conservation, encompassing also relevant development aspects such as socio-economic drivers of conservation and sustainable use, access to and transfer of technology (including biotechnology) and information, technical cooperation, distribution of benefits, and technology safety assessment, among others (Glowka et al. 1994; Secretariat of the CBD 1992).

The CBD recognizes the close interrelationship between biological diversity and indigenous and local communities, in particular their role in the conservation and sustainable use of biological diversity. This recognition is enshrined in the preamble of the Convention and in its provisions.

Aiming to reach its objectives, Articles 7 to 10 of the CBD establish clear and mandatory biosafety and socio-economic provisions for Parties:

* Article 7 establishes the mandate, in particular for the purposes of Articles 8 - 10, to establish a system for identification and monitoring of components of biological diversity that are important for its conservation and sustainable use. In addition, to identify and monitor the effect of processes and categories of activities (which would include modern biotechnology), which have or are likely to have significant adverse effects on the conservation and sustainable use of biological diversity. An indicative list, clearly including socio-economic aspects, of categories of components of biological diversity to be considered is set out in Annex I of the CBD.

* Article 8(g), together with Articles 19(3) and 19(4), relate to living modified organisms (LMOs), and gave origin to the Cartagena Protocol on Biosafety. It implies that Parties should establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology that are likely to have adverse effects on the conservation and sustainable use of biological diversity, taking also into account the risks to human health.

* Article 8(j) provides that Parties need to put in place measures to: (i) respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities relevant for the conservation of biological diversity; (ii) promote their wider application under the approval and involvement of the corresponding knowledge holders; and (iii) encourage equitable sharing of benefits arising from the use of biological diversity.

* Article 10 specifically provides for the sustainable use of the components of biological diversity. Both "sustainable" and "use" are intrinsically socio-economic issues (Catacora-Vargas 2012), captured by specific elements - such as protection and encouragement of customary use, consistency with traditional cultural practices - spelt out in the CBD's Article 10.

The Cartagena Protocol on Biosafety linked to the Convention on Biological Diversity

In Article 19(3) of the CBD, the Convention's Parties are called upon to consider the need for and modalities of a protocol for the safe transfer, handling and use of LMOs resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity. In order to address this mandate, the Conference of the Parties (COP) to the CBD

decided, at its second meeting, to develop a protocol on biosafety, specifically focusing on transboundary movement of LMOs. In 1996, the CBD's COP established an Open-ended Ad Hoc Working Group on Biosafety to develop a draft protocol, which was adopted as the Cartagena Protocol on Biosafety (CPB) in January 2000 and entered into force on the 11th of September 2003 (MacKenzie et al. 2003; CBD 2012).

The CPB, as any other protocol, is related to its parent treaty, the CBD, through substantive, procedural, and institutional links; accordingly, it must comply with the Convention's provisions when implemented. Moreover, Parties to the Protocol have to also be Parties to the CBD (Article 32 of the CBD). Thus, the CPB cannot be read separately from the CBD, but in conjunction with each other since the Protocol implements the Convention.

Under the Protocol, according to its Articles 10, 11 and 15, Parties are required, in reaching decisions on LMOs, 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.

Socio-Economic Considerations in the Cartagena Protocol on Biosafety

As mentioned previously, the Protocol includes an explicit provision on socio-economic issues in its Article 26(1), which states that "the Parties, in reaching a decision on import under this Protocol or under its domestic measures implementing the Protocol, may take into account, consistent with their international obligations, socio-economic considerations arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities" (Secretariat of the CBD 2000).

Article 26(1), therefore, establishes and justifies the right of a Party to take into account impacts on its social or economic conditions for purposes of making decisions on imports of LMOs or in implementing domestic measures under the Protocol. Article 26 identifies the types of socio-economic considerations that Parties may take into account in reaching decisions on imports. It also highlights one particular socio-economic consideration, namely the "value of biological diversity to indigenous and local communities" (Catacora-Vargas 2012; MacKenzie et al 2003).

However, socio-economic considerations within the Protocol are not restricted to Article 26. One of the most important socio-economic issues addressed in the Protocol is explicitly stated in all the relevant provisions of the CPB, particularly its Article 1 (Objective) and Article 4 (Scope) which emphasize the need to take into account the risks to human health when considering the possible adverse effects of LMOs. The issue of public health in itself has a strong socio-economic dimension.

The CPB also highlights the right of a Party to take actions that are more protective than its provisions when needed in order to advance in the conservation and sustainable use of biological diversity, provided that such actions are consistent with the Protocol and is in accordance with other international obligations (Article 2(2)). Article 26(2) also points out the need for consistency with other instruments of international law, which could relate to human rights, other multilateral environmental commitments, food and agriculture, as well as trade. Several of these contain numerous socio-economic obligations, rights and other elements that are anchored in international law by legally binding agreements that should not be violated by Parties or other actors. Some examples are the Covenant on Economic, Social and Cultural Rights (ICESCR), the Indigenous and Tribal Peoples Convention (ILO Convention No. 169) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) (see Table 1).

In addition, most trade related agreements establish an ultimate and crosscutting objective that is remarkably socio-economic: Human wellbeing. Among international treaties, consistency with the World Trade Organization's (WTO) agreements has been of particular concern. Yet, the General Agreement on Tariffs and Trade (GATT), the Agreement on Technical Barriers to Trade (TBT) and the Agreement on the Application of Sanitary

and Phytosanitary Measures (SPS) under the WTO umbrella do not prevent the application of socio-economic considerations to justify a measure. On the contrary, they are valid so long as they are formulated with the appropriate justifications, defensible under available information, consistent with national regulations and do not lead to arbitrary or unjustifiable distinctions (WTOa n.d; WTOb n.d.). The fulfillment of these conditions arguably makes socio-economic considerations on biosafety WTO-consistent.

Conclusion

Socio-economic considerations in the Cartagena Protocol on Biosafety are rooted in its parent treaty, the Convention on Biological Diversity. Both the CBD and CPB, as legally binding international instruments, must be implemented in a complementary and consistent fashion. Article 26 of the CPB has broad language that justifies the right of Parties to consider socio-economic issues when taking a decision on import of LMOs or under domestic measures implementing the Protocol. Complementing this article, the text of the CPB includes other provisions with strong socio-economic bases, such as human health, from the Protocol's objective all through its operational text.

Both the CBD and the CPB mandate consistency with other international agreements when implementing them. These international agreements go beyond trade-related instruments, and all of them (including WTO agreements) include and recognize socio-economic aspects.

Hence, Article 26 of the Protocol should not be interpreted in a way that contradicts the aim and objectives of the CBD, the whole body of the CPB, or the rights and obligations under any other existing international agreements.

For Table 1 of this paper – ‘Other relevant legally binding treaties/agreements including socio-economic considerations that may be taken into account when implementing Article 26.1 of the Cartagena Protocol on Biosafety’ – please download the full paper at:

<http://www.twn.my/title2/books/Socio-economic%20Considerations%20in%20GMO%20Decision-Making.htm>

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This paper is contained in ‘Socioeconomic Considerations in GMO Decision-Making: International Agreements in Context’ published by Third World Network (2014).

The discussion papers compiled in this book look at how Parties to the Protocol can incorporate socio-economic considerations in GMO decision-making while remaining faithful to their obligations under other international agreements. These agreements can include not only trade treaties but also those that deal with human rights, indigenous peoples’ rights, food and agriculture, and the environment. Addressing these issues will be key to ensuring proper and consistent treatment of socio-economic considerations surrounding the impact of GMOs on the conservation and sustainable use of biodiversity.

Other papers published in this compilation include:

The relevance of socio-economic impact assessments in the framework of the Convention on Biological Diversity
by Juan Lopez Villar

Relevant international law obligations that include socio-economic considerations, in the context of Article 26.1 of the Cartagena Protocol on Biosafety by Juan Lopez Villar

Analysis of WTO provisions and case law relevant to the application of socio-economic considerations, in the context of Article 26.1 of the Cartagena Protocol on Biosafety by Juan Lopez Villar

Codex Alimentarius Commission, OIE and IPPC: Can the WTO “three sisters” accommodate socio-economic considerations within their standard-setting work? by Juan Lopez Villar

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