

Foreign Affairs' Stance on GM Liability Provokes Laughter at Talks

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New Zealand negotiators at a conference on liability for GMOs have effectively proposed that the four year programme to develop an international liability regime should aim at agreeing no liability rules at all.

New Zealand's stance is so out of step that it provoked open laughter from other countries when stated by Ministry of Foreign Affairs officials currently in Montreal for meetings on the Cartagena Protocol.

When New Zealand suggested that an additional option was not to have a liability "instrument", delegates at the conference were in no doubt as to what Foreign Affairs officials were advocating. "New Zealand is arguing we should spend our time developing rules and procedures for liability which would end up with no rules," Malaysian delegate Gurdial Singh Nijar told the conference. One of the five options already on the table was a non-binding agreement (or instrument) but New Zealand proposed something weaker still and successfully added a sixth option of no instrument.

Foreign Affairs officials are effectively arguing that if a GMO is imported and causes harm, there should be no liability for the party that sent it here. Yet New Zealand earns half its export income from selling food and the major buyers in Japan and northern Europe routinely reject food products with any detectable level of GM contamination.

Kiwi food producers will want a way to obtain compensation for economic damage should GMOs arrive in New Zealand and then contaminate their exports. Already there have been three incidents involving imports of GM contaminated seed and each has cost over half a million dollars. One wiped out an entire year's profit for a Gisborne company and another took the affected company out of a key market for a year.

New Zealand does not grow any GMOs, so one would expect its negotiators to promote rules protecting its food producers and environment from GM contamination costs that could be much larger than those to date. Yet this is just the latest in a series of Foreign Affairs stances on GM that are out of step. First was New Zealand's implicit support for the US in its WTO action against the EU over access for its GMO exports. Then New Zealand was among those supporting the lifting of a de facto moratorium on trialing GM plants whose seeds are sterile.

The purpose of the Cartagena Protocol is to promote biosafety in the transfer of living GMOs between countries (and not other biotech products). Government ministers made the principled decision to ratify the agreement in September, against advice from most officials, in order to enhance New Zealand's biosecurity. A key part of an effective biosecurity regime is provisions to enforce liability on parties that cause harm. New Zealand's food producers and its environment deserve that protection.

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Notes:

1. **Summaries of the full discussions** at the Montreal conference on liability provisions for the Cartagena Protocol can be viewed at: <http://www.iisd.ca/biodiv/wglr/>
The exchange referred to occurred on Thursday 26 May – see bottom of the notes for that day.

2. The reference in the statement to "instrument" is to one of the following 5 options that were already on the table for the form of agreement that would ultimately specify liability provisions under Cartagena. They are:

1. Legally binding agreement
2. Legally binding agreement plus interim measures
3. Non-binding agreement
4. Two stage - non-binding, then binding agreement
5. Combination of non-binding and binding agreement

Foreign Affairs had a sixth one added to the list – no instrument.

3. The negotiations are driven by Article 27 of the Cartagena Protocol which implicitly covers all forms of damage, including economic harm, and states:

“Liability and Redress: The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, adopt a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms, analysing and taking due account of the ongoing processes in international law on these matters, and shall endeavour to complete this process within four years.”

The **full text of the agreement** is available at <http://www.biodiv.org>