

GLOBAL INDUSTRY COALITION (GIC) VIEWS: NAGOYA-KUALA LUMPUR SUPPLEMENTARY PROTOCOL (NKL-SP) RATIFICATION & IMPLEMENTATION

The GIC supports ratification of the NKL-SP following the completion of a review of domestic law: (1) to determine pursuant to Articles 12.1 and 5.8 whether rules and procedures already exist that address potential damage to the conservation and sustainable use of biological diversity; and (2) to identify and develop for adoption as domestic law any amendments or new legislation required for the country to be in compliance with and to implement the NKL-SP upon ratification.

During the fifth meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-5) in October 2010, Parties adopted the NKL-SP that obligates Parties to have or enact domestic rules and procedures providing for liability and redress for damage to the conservation and sustainable use of biological diversity resulting from transboundary movements of living modified organisms (LMOs). The new treaty will enter into force 90 days after being ratified by at least 40 Parties to the Cartagena Protocol on Biosafety.

The **Global Industry Coalition (GIC)** actively engaged with the Parties during the negotiations of the NKL-SP to ensure that the outcome of the negotiations considered the practical realities of trade in LMOs and their history of safe use. Due to its clear definition of “damage” and the focus on enabling national authorities to identify and evaluate damage to biological diversity and order response measures, the GIC views the NKL-SP as a positive tool providing the framework of a workable system that can contribute to the conservation and sustainable use of biodiversity.

For these reasons, the GIC supports ratification of the NKL-SP following a step-wise approach that will ensure that countries can comply with their legal obligations as of the date of ratification.

- Countries should first examine their domestic laws to determine whether domestic rules and procedures already exist that address potential damage, as defined in Article 2 of the NKL-SP (hereafter “damage”).
- If applicable rules exist, they should be carefully analyzed to ensure compliance with all aspects of the NKL-SP.
- Where rules do not exist, are insufficient or contrary to the NKL-SP, a comprehensive plan for amendment and/or creation of new legal instruments should be developed. This plan should address all aspects of referenced applicable domestic law on both the mandatory and discretionary rules and procedures set forth in the NKL-SP.
- A general instrument applying to *all* to damage to biological diversity from *any cause* that provides for notification, assessment of damage and identification of those responsible for it, as well as governmental authority to order operators that cause damage to undertake appropriate response measures, would comply with the NKL-SP. In addition, such an instrument will have the added advantage of implementing the principle more broadly that those responsible provide redress for the damage, which is more consistent with the CBD, and, thus will provide better protection for the environment generally.
- The GIC is in the process of developing Implementation Guidelines to assist governments in implementing the NKL-SP, and in addressing matters left to domestic law, such as the definition of operator, defenses, exemptions, time and financial limitations, etc. The Compact¹ complements the administrative approach of the NKL-SP and provides detailed examples of language on those issues.
- The GIC recommends that governments look to existing domestic financial security requirements in corporate and business law, rather than creating new mandatory financial guarantees. In addition, countries may rely on The Compact as a mechanism for financial security, which specifically provides for responsibility and redress in the unlikely event that an LMO causes damage to conservation and sustainable use of biological diversity.
- Once a comprehensive plan is in place that will lead to the adoption of the necessary legal instruments to ensure compliance with the NKL-SP, countries also should develop a plan to establish the appropriate capacity and plan to implement such legislation.

When the necessary legislation and capacity exists, ratification or accession should be completed.

¹ The Compact, which was developed by the six major plant biotechnology providers (BASF, Bayer CropScience, Dow AgroSciences, DuPont, Monsanto, and Syngenta), is an innovative private sector-established option to domestic and international liability laws that provides redress and financial security in the event of damage to biological diversity caused by LMOs. It defines a clear, science-based process for resolving claims alleging damage to biological diversity where binding decisions are made by independent commissioners and arbitrators under the auspices of Permanent Court of Arbitration (PCA), located in The Hague. For more information on The Compact, please visit http://www.croplife.org/public/the_compact.