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IMPLEMENTING INFORMATION REQUIREMENTS FOR GENETICALLY MODIFIED COMMODITIES UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY ARTICLE 18.2(A) AT THE NATIONAL LEVEL

THE CASE OF KENYA

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This note summarizes a study on the implications of implementing strict information requirements for genetically modified (GM) commodities under Article 18.2(a) of the Cartagena Protocol on Biosafety in Kenya. The results show that enforcement of strict "*does contain*" requirements, compared with the default "*may contain*" option, would create additional costs and challenges in the difficult implementation of import regulations.

Introduction: Documentation requirements

The Cartagena Protocol on Biosafety (CPB) establishes international principles to govern the transboundary movements of living modified organisms (LMOs). Like many other African nations, Kenya, a major East African trading nation, is a ratifying member of the CPB. There are specific rules in the Protocol related to the documentation of imported LMOs intended for direct uses as feed, food, or processing (LMO-FFPs), or, essentially, unprocessed genetically modified (GM) commodities. Under Article 18.2(a), parties to the CPB "should request information" from exporters regarding the presence and the identification of LMO-FFPs in any shipment before importation. In the third meeting of parties in 2006, Protocol members agreed to have a two-option rule on information requirements. One option notes that any shipment containing LMO-FFPs must state that it "*does contain*" LMO-FFPs and provide a list of all GM events present in the shipment. The second (default) option notes that shipments containing LMO-FFPs that are not well identified must label their shipment as "*may contain*" LMO-FFPs. Information on GM events must be available to importers via the Biosafety Clearing-House (http://bch.cbd.int/) or upon request. Parties decided to reconsider the two-option rule as early as the 2010 meeting, with the possibility of expanding the "*does contain*" requirements to all shipments of LMO-FFPs. The economic implications of implementing a "*does contain*" requirement in Kenya are summarized below.

Potential LMO-FFPs imported into or transited through Kenya and ports of entry/exit

Kenya is a major port of entry for grains and agricultural commodities in East Africa and is bordered by five countries (Tanzania, Uganda, Sudan, Ethiopia, and Somalia). A rapid appraisal of trade flows, based on the origin of imports, suggests that Kenya imported a significant volume of what was probably GM maize (up to 140,000 tons) between 1999 and 2008. The maize was imported from large GM commodities producers including South Africa, the United States, and Argentina, without requests for strict non-GM certification. Kenya also imported smaller volumes of soybean from countries producing GM crops and cottonseed from countries that may be in the process of adopting GM cotton. In the absence of regulations, there was some informal testing but no systematic testing at the border. Standards governing the importation and labeling of GM maize had not been fully enforced as of 2009. Given the trade volumes and the frequency of informal trade at the multiple border sites, setting up a comprehensive system of detection and control could prove very challenging. At the minimum, it would require new detection facilities connected to all the key strategic border points listed in Table 1.

Table 1. Strategic border points for testing of LMO-FFPs

Border	Location	Commodities	Form and use
International	Port of Mombasa	Maize	Grain for internal use and on transit
		Canola	Oil for internal use and on transit
		Soybean	Meal for internal use and on transit
Uganda	Malaba	Maize	Grain for milling
		Soybean	Grain for milling, cake for animal feed
		Cottonseed	Cake for animal feed
	Busia	Maize	Grain for milling
		Soybean	Grain for milling, cake for animal feed
		Cottonseed	Cake for animal feed
Tanzania	Namanga	Maize	Grain for milling
		Cottonseed	Cake for animal feed
	Isebania	Maize	Grain for milling
		Cotton	Seed for extraction
	Kisumu Port	Cotton	Cake for animal feed
		Maize	On transit to Sudan via Lokichoggio
	Loitokitok	Unshelled green maize	Domestic consumption

Implications of import regulations and information requirements for Kenya

Kenya is about to introduce import requirements for GM commodities. Inspectors will be appointed and have authority to enter and inspect premises, facilities, vessels, or property. The system will require testing at the border, which can be done with rapid test kits at relatively low costs (around US$20 per test). While this is a minimal fee for large containers, importers of smaller quantities may consider it a substantial cost. In addition, such tests are limited to detecting the presence of GMOs without precise quantification. Further analysis of positive samples will need to be carried out in advanced laboratories based mostly in Nairobi. Such quantitative tests may cost around US$250 and require four days for results. Even if inspectors focus their efforts on key border points, it is clear that systematic inspections will be very difficult to enforce, especially at inland borders with frequent entries of small-traded volumes. Border control will require trained staff, the reinforcement of testing capacity, and the establishment of new management systems. Even with the best efforts possible, unregulated regional informal trade is likely to continue. These upcoming challenges emphasize the critical importance of adopting regional regulatory guidelines for trade in GM products.

The introduction of strict information requirements could further complicate matters. The "*may contain*" option requests the exporting party to provide, at a minimum, some information on LMO-FFPs to the Biosafety Clearing House, which can be consulted by importing parties, but does not require additional controls at the border. In contrast, under the "*does contain*" option, the importing country would need to conduct additional tests to verify the accuracy of the list of LMO-FFPs. The cost of testing, potential delays at the port, and associated use of identity preservation systems would ultimately increase the cost of the commodities to the consumer without any direct benefits to regulators. Export and import tests may also be inconsistent, thereby reducing the value of the system, as consignments from the United States, Argentina, or Canada may contain many different LMO-FFPs. South Africa has fewer GM events presently, but this situation is changing rapidly. Road consignments of maize and soybean from Uganda, Tanzania, Malawi, and possibly South Africa are likely to be smaller but more frequent, with new requirements creating barriers to entry. Possible delays in clearing of consignments at the port could have an impact on timely delivery of emergency food aid in the region. Kenya would also have to test and control its own shipments if it were to adopt future GM crops and export them in the region.

Conclusion: Strengthening regional approaches and reconsidering support

Import control at border points is bound to be challenging and costly, especially at land-based ports of entry. This situation calls for the introduction of common import regulations at the East African level, if not higher. With regard to information requirements, the default "*may contain*" approach is largely consistent with import regulations and would have limited or no effect on traders, consumers, and regulatory bodies. In contrast, implementing a stricter requirement, whereby all consignments must be labeled "*does contain LMO-FFPs,*" would lead to consumer price increases and significant additional costs for public agencies that would likely be borne by traders, without benefits for regulators. It would also create potential hurdles for future GM crops in Kenya. Kenyan authorities should carefully consider the actual implementation cost of documentation requirements at the national level when discussing this issue at the international level.

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FOR MORE INFORMATION: Kimani, V. 2009. *Import control and documentation requirements for living modified organisms for food, feed or processing: Implication of the Cartagena Protocol's Article 18.2(a) in Kenya.* Report available upon request: g.gruere@cgiar.org.

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