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**“Liability Issues in the Deployment of GMOs in Developing
Countries”**

by

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ABSTRACT

Advances in the use of genetic technologies over the last thirty years hold promise for agriculture in developing countries. However, as the economic and legal systems of developing countries become increasingly sophisticated, the challenges to the deployment of genetically modified organisms (GMOs) in those countries presented by legal liability regimes may come to dwarf the scientific and technical obstacles.

Concerns for human health, conservation and sustainable use of biological diversity and possible economic injuries have led to public opposition to, and strict regulation of, genetically modified organisms (GMOs) in many countries. Irrespective of whether GM crops could cause physical harm, the mere *perception* that GM products may be unsafe or undesirable, in itself, creates certain economic risks. Opposition to GM products has closed some national markets to products containing GM materials. This phenomenon greatly increases the financial risks of that can arise from the use of GMOs. An example is the recent U.S. litigation over Starlink maize, in which the unintentional commingling of GM maize – which was unapproved for human consumption – with conventional maize, exposed Aventis CropScience to millions of dollars in liabilities.

Cartagena Protocol article 27 calls upon the parties to that agreement to investigate the “elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements” of GMOs. The process of considering

such international rules is now under way. Among the issues being considered in this context are questions such as: Is a binding international law regime of liability and redress for GMOs the only possible outcome of the investigation called for by Cartagena Protocol article 27? If an international law regime is deemed necessary, is a generally applicable liability system sufficient or should there be a system specifically designed to deal with GMO-related injuries? What kinds of damages should be compensable under a liability and redress system? Who should bear responsibility for GMO-related losses? To what kinds of activities should a liability and redress system apply? To what kinds of GMOs should such rules apply? What should be the standard for proving that a person's actions caused damage? Should liability be imposed without regard to fault? What defenses should be available to a potentially responsible party? What kinds of financial security mechanisms can facilitate redress of GMO-related injuries?

This paper will address the development of liability regimes for GMOs from the perspective of public agricultural institutions – a view that has not received sufficient attention in the international debates to date.



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