

Against the neoliberal steamroller? The Biosafety Protocol and the social regulation of agricultural biotechnologies

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Abstract. Through a discursive and organizational analysis we seek to understand the Biosafety Protocol and the place of socioeconomic regulation of agricultural biotechnology in it. The literature on the Protocol has been fairly extensive, but little of it has explored debates over socioeconomic regulation during the negotiation process or the regulatory requirements specified in the final document. This case is especially important at a time when the spread of neoliberalism is increasingly associated with deregulation, because it sheds light on the conditions under which circumvention of the market is deemed legitimate and socio-economic regulation of agricultural technology is possible.

Key words: Biosafety Protocol, Biotechnology, Cartagena Protocol on Biosafety, Convention on Biodiversity, Genetically modified crops, Genetically modified foods, Genetically modified organisms

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Introduction

In January of 2000, the Cartagena Protocol on Biosafety of the international Convention on Biological Diversity was adopted by the negotiators for a diverse group of participating countries. The agreement concluded more than 5 years of debate. Many analysts and participants view the final Protocol, which institutionalizes the so-called precautionary principle, as a victory for countries from the global South, an important tool in the protection of biodiversity and a victory for environmental protection over trade liberalization. An important, but little noted, accomplishment of negotiations over the Protocol was the official recognition of undesirable socio-economic effects as a justification for limitations on trade in biotechnology. Although the relevant provision, as it stands in the final Protocol, is perhaps too weak to hold up in a trade dispute at the World Trade Organization, it is a significant departure from the dominant assumption (of both opponents and proponents of genetically modified

organisms (GMOs)) that “scientifically-based” risk assessment is the only justifiable method for evaluating the impacts of biotechnology.

Our aim in this paper is to contribute to an understanding of the Biosafety Protocol and the place of socio-economic regulation in it. At a time when the spread of neoliberalism is increasingly associated with deregulation, it is important to understand the conditions under which circumvention of the market is deemed legitimate and socio-economic regulation of agricultural technology is possible. The Protocol case is especially significant since efforts to regulate technologies are increasingly considered matters, not for national governments, but for international bodies.

The years of debate over the agreement have been accompanied by the emergence of a rather large literature on the Protocol. The body of work covers a vast terrain. Analysts have explored the place of the precautionary principle in drafts and the final version of the document (see for example, Dawkins, 2000). Researchers and participants have described the negotiation process and

examined the interests of the actors involved, and a number of writers have provided legal analyses of the Protocol (see for example, Depledge, 2000; Gupta, 2000; Clapp, 2003).

Most of the existing discussion is normative, practical, or descriptive. Little of the work is explanatory. That is, with a limited number of partial exceptions (see for example, Saigo, 2000; McAfee, 2003), none of the published work on the Protocol attempts, in an analytical way, to explain why the process of negotiation proceeded as it did and why the final agreement has the contours it does. Furthermore, the very few pieces that pay attention to the socio-economic regulatory provisions in the document (see for example, Crompton and Wakeford, 1998; Stabinsky, 2000) do not attempt to explain the debate over socio-economic regulation during the negotiations or to understand why the socio-economic regulatory requirements in the final Protocol took the form they did.

Our argument, in brief, is as follows: although, in virtually any international matter these days, the terrain of policy discourse is defined by neoliberal economics (Campbell and Pedersen, 2001; Held and McGrew, 2002), the discursive field for international policymaking is heterogeneous and the structure of international treaty negotiation allows for the airing of policy prescriptions that draw on less dominant discourses. In international debates about biotechnology, one often observes at least two competing ideas about how technology should be evaluated and regulated. Policymakers working within the background assumptions of neoliberalism tend to support policies that strictly limit the regulation of technology and only allow for minimal evaluation based on narrow “scientific” criteria related to human and environmental health and safety. Less commonly, other policymakers and activists propose policies that would allow countries and regions to limit trade in biotechnology based on anticipated negative socioeconomic impacts.¹ Although the roots of the latter orientation toward regulating biotechnology are diverse, it is safe to say that proponents of this position are operating within a paradigm of skepticism about the benefits of free market economics and the universal value of new technology.

Although, clearly, the discourse of neoliberalism is dominant, the structure of environmental policymaking at the international level allows for debate of policy ideas that challenge that dominant discourse. Nevertheless, that same structure also limits the likelihood of substantial victories for actors drawing on subordinate discourses. In the case at hand, the character of the discursive terrain combined with the structure of the treaty-making process simultaneously made possible substantial discussion of socioeconomic impacts during negotiations of the Biosafety Protocol and limited the inclusion of

socioeconomic regulation of agricultural biotechnology in the concluded agreement.

We develop this argument in five steps. First, we describe the positions staked out on the matter of socioeconomic regulation in Biosafety Protocol negotiations. Next, we discuss the discursive terrain and the competing paradigms of thought regarding trade in biotechnology on which the divergent positions regarding socioeconomic considerations were based. This is followed by an analysis of the structure of negotiation and how this structure affected the final outcome. Following this, we outline in more detail the history of those negotiations, using the concepts explained in the preceding sections. The paper concludes with a discussion of whether and to what extent Article 26 should be counted as a success by opponents of neoliberalism and the global biotechnology industry and considers the broader political ramifications of this provision.

From Washington and Miami to Addis Ababa and Kuala Lumpur: Actors and positions

In May of 1992 the Convention on Biological Diversity (CBD) was adopted. The treaty’s objectives are outlined in Article 1. These include: “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources” (Convention on Biological Diversity, 1992: article 1). The Protocol on Biosafety was “the first concrete international agreement to implement aspects of the CBD” (Falkner, 2002: 4). In particular, the focus of the Protocol was to minimize the risks to biodiversity posed by genetically modified organisms.

Not surprisingly, this initiative pitted countries with developed or nascent biotechnology industries against those countries with no biotechnology infrastructure and no obvious prospects for developing one. By and large, this meant that countries from the global South – rich in genetic diversity but without biotechnology industries – faced off against countries from the global north – nations with pitifully narrow genetic foundations but with substantial biotechnology infrastructures.

The bulk of southern nations originally went under the banner of the Group of 77 – those developing countries that signed a joint declaration at the United Nations Conference on Trade and Development and the additional nations that subsequently joined them. This group sought to minimize the risk that importing GMOs could pose to their environments and economies. In addition, they collectively wished to conclude an agreement that would serve as a “vehicle for capacity-building and technology transfer” (La Vina, 2002: 35). Throughout negotiations of the Protocol this group was supported by a broad collection of non-governmental

organizations (NGOs), including perhaps most prominently the Third World Network.²

While divided in a range of ways, most of the involved countries from the global South ultimately coalesced into a coalition dubbed the Like-Minded Group. According to the Ethiopian representative of the Like-Minded Group, the bloc's central concern was safety. As Tewolde B. G. Egziabher put it: "Most unsafe things tend to be tried out in developing countries" (Egziabher, 2002: 116). Members of the Like-Minded Group were concerned that if trade were given higher priority than biological diversity in the new world order, international governance organizations would not "have adequate sensitivity to safety in the marginalized South" (Egziabher, 2002: 117). In terms of socioeconomic impacts, a concern for safety translated into a fear that biotechnology could disrupt and alter trading patterns and that utilization of genetically modified organisms in southern agriculture could lead to a "shift from smallholdings to large farms that can more easily adopt, or adapt to, emerging technologies" (Zedan, 2002: 26–27).

For many countries from the north, the primary concern was to conclude an agreement that did not hinder international trade. As Rafe Pomerance, the US Deputy Assistant Secretary of State for the Environment noted in 1999, any protocol with over-burdensome requirements would inappropriately impede trade (cited in Arndt, 1999). In 1998, countries for which this was the primary consideration met in Miami and formed a negotiating coalition. Canada, Australia, and the US were the most industrially developed members of the coalition. In addition, three Latin American countries – Argentina, Chile, and Uruguay – broke with their regional neighbors and joined the so-called Miami Group. With the prospect of serious biotechnology industries in their respective futures, these countries – like their northern partners – were concerned about the possible impacts any agreed protocol would have on trade. Like the countries of the South, the Miami Group countries had consistent support from NGOs, in their case mostly trade associations and pro-industry lobbying groups.

The discursive terrain

Policy debate – including that over the Biosafety Protocol – is fought out over what might be termed a discursive terrain. When we refer to discourses or to the discursive terrain, we mean the "systems of symbolic meaning codified in language that influence how actors observe, interpret, and reason in particular social settings" (Campbell and Pedersen, 2001: 9). Policy debates often occur on a terrain of overlapping and contradictory discourses (Hall, 1982). Others have used the term "paradigm" to express a similar concept, and we use the terms

somewhat interchangeably. John Campbell describes paradigms as constituting "broad cognitive constraints on the range of solutions that actors perceive and deem useful for solving problems" (Campbell, 2001: 170). Paradigms generally remain in the background as "underlying theoretical and ontological assumptions about how the world works" (Ibid). Importantly, paradigms "define the terrain of policy discourse" (Ibid: 171) in the sense that policymakers advocate policy prescriptions that draw on the assumptions of an existing paradigm. Those policy prescriptions that fit the dominant paradigm – or, in other words, reflect the dominant discourse – "appear natural and familiar and, as a result, are more likely to appeal to policy makers than alternatives that do not" (Ibid: 170–171).

As Campbell explains, "some paradigms are more dominant than others. Important here is the degree to which they are institutionalized within leading universities, think tanks, and professional organizations that provide policy makers with a particular cognitive worldview" (2001: 171). Where one discourse or paradigm holds unambiguous dominance, its truth-value is likely to be taken for granted. It will shape actors' scripts, cues, and routines and constitute the background assumptions of actors' policy proposals. Where contradictory discourses exist in a discursive field, actors may draw on a specific discourse more strategically and self-consciously. Actors will use a given discourse to define the normative frame of their position and, when drawing on a subordinate discourse, may struggle to justify the framing of their position.

Neoliberalism

The debates over the inclusion of socioeconomic consideration in the Biosafety Protocol can be characterized as a contest between two policy prescriptions that are based on two very different paradigms, the more dominant being neoliberalism. The rise of neoliberalism can be traced to the 1980s, with the Reagan administration in the United States and the Thatcher government in Great Britain. By neoliberalism we mean a discourse that stresses the virtues of "market deregulation, state decentralization, and reduced state [or political] intervention into economic affairs" (Campbell and Pedersen, 2001: 1).³

If the dominance of a paradigm or discourse depends on its association with powerful institutions, it is fairly obvious that neoliberalism would be dominant in current international debates about trade in biotechnology. The global prominence of this discourse has grown in recent years with the establishment of "free trade" agreements and zones and the World Trade Organization. Neoliberalism is endorsed by powerful international organizations

like the World Bank, not to mention the economically and politically powerful government of the United States.

The implication of neoliberalism is that the regulation of technology will be taken care of most efficiently and effectively by the market. The “laws” of supply and demand will determine which technologies are successful and which fail. However, since markets do not distinguish between safe and unsafe technologies most adherents to neoliberalism recognize at least a minimal role for government in determining human and environmental safety standards that can serve to prevent dangerous technologies from reaching the market. This recognition, however, does not typically extend to the prevention of harmful social and economic impacts, and this position is enforced by the World Trade Organization. As Köster (2001), the Chair of the Biosafety Working Group, wrote in a 2001 article, “Socio-economic considerations are broadly speaking not legitimate under the WTO rules, the aim of which is more or less to get rid of such considerations” (p.89).

Social welfarism

Although neoliberalism is certainly dominant in international deliberations at present, it does not go unchallenged. Representatives from different regions of the world bring their discursive frames with them, often weakening the taken-for-granted status of neoliberalism and requiring all actors to take seriously the possible legitimacy of alternative discursive frames. Thus, while countries like the US and Canada often framed their discussion in the Biosafety Protocol negotiations in neoliberal terms with demands to limit any form of regulation that could restrict trade, other participants in the debate drew on a version of what we cautiously term social welfarism. We believe that the final socioeconomic regulation provision included in Article 26 and the initial socioeconomic impact assessment provisions in draft protocol documents reflect this paradigm for thinking about how to evaluate and regulate new technologies. Proponents of making social regulation of agricultural biotechnologies part of the Protocol assumed or asserted the appropriateness of restricting the commercialization of certain technologies if their widespread use could adversely affect the structure of small-scale subsistence agriculture in the countries of the global South.

The sources of this discourse are diverse, and social welfarism constitutes a less cohesive paradigm than neoliberalism. Nevertheless, in the context of the Biosafety Protocol deliberations, it seems that delegates in the Like-Minded Group, despite varied national backgrounds, shared some common assumptions about how to consider trade in new agricultural technologies. These premises are predicated on an understanding of

biotechnology that moves well beyond technologies as matters of trade and production. As Kathleen McAfee notes, for many in the global South, the international controversy over genetically modified organisms “revived longstanding controversies about North–South inequality, state sovereignty, and the meaning of ‘development’” (2003: 217). For many of these people, the GMO controversy highlights “issues of international environmental justice: questions of “biopiracy” and ownership of the world’s genetic resources, and questions of who ... will enjoy the fruits and bear the risks of potentially hazardous biotechnologies” (Ibid: 217). As McAfee observes, the matter points to questions of “the costs and benefits of globalization, the meaning of sustainable development, the right of nations and communities to determine their own food and farming policies, the understanding of environmental risk and of scientific precaution, and the powers and pitfalls of techno-science” (2003: 217). Many of these concerns might prompt support for the socioeconomic regulation of agricultural biotechnology. Although the paradigm that provided the cognitive basis for the proposals regarding socioeconomic considerations was not nearly as cohesive as neoliberalism, and did not benefit from associations with powerful institutions, it did have a certain amount of legitimacy – enough that it became an important debating point during the Biosafety Protocol negotiations.⁴

The structure of policymaking on the international stage

Although the discursive realm is important in the analysis of policymaking, discourse alone cannot explain the particular outcome of the biosafety negotiations. We must also consider the structure of negotiations and the rules for reaching agreement. In national contexts, there is a large variety of policymaking environments. Distinctive national policymaking structures define specific sets of opportunities and constraints for policymakers and those who lack formal policymaking roles but seek to influence policy. To a significant degree, these characteristics define what is possible in policy debates. They are, in no small measure, responsible for shaping policy outcomes (Katzenstein, 1978; Orloff and Skocpol, 1984; Hall, 1986; Wilensky and Turner, 1987; Orloff, 1988; Kleinman, 1995). There is a fair bit of variation in international policymaking. However, importantly, there are no political parties, as there are in some national contexts, whose majority entitles them to policy dominance. Furthermore, the need for consensus in order to conclude international treaties means that compromise between countries and regional groups is typically required. While international policymaking is centralized,

many negotiation processes are open to non-governmental actors – industry and NGO representatives – and they are often given a formal place in discussion.

This does not mean that all parties' capacities are equivalent. It is clearly the case that the withdrawal of certain countries from a given treaty negotiation is more significant than the exit of others. In this context, US world economic and political dominance means that its threats to withdraw from negotiations and not be a party to a resulting treaty will have a larger impact on the course of negotiations than a similar threat made by less-powerful countries of the developing world. In addition, wealthier countries will have a deeper negotiating infrastructure than poor countries. The former will have larger staffs at negotiating venues, even where each country is permitted only a specified number of formal negotiators. Wealthy countries will likely also have superior access to an array of helpful technologies and other tools.

Formally, there is some variation in how negotiations are conducted. As we describe below in the Protocol case, early framing took place in a panel of experts and an *ad hoc* expert group, both established by the Conference of the Parties to the Convention on Biodiversity. Subsequent discussion and negotiation took place in a string of meetings of the Biosafety Working Group (COP to the CBD). The Working Group Chair, Veit Köster from Denmark, had considerable power to shape discussion. According to one analyst, Köster was “never given an explicit mandate” (Falkner, 2002: 8). He instructed parties when to focus on discussion or on negotiation. He established sub-working groups and contact groups, each co-chaired by a representative of an industrialized and a representative of a developing country (Köster, 2002). Much of the work took place in these groups (Falkner, 2002). Köster aimed to produce consensus and urged delegates to refrain from negotiation until late in the process, after many discussions. One practice Köster followed that is commonly used in treaty negotiation is granting representatives permission to include so-called “bracketed text” in draft agreements (Szasz, 1997; Falkner, 2002). This allows negotiators to see their positions reflected in preliminary documents, but provides no guarantee to a given party that their position will find its way into the final treaty. Additionally, opponents of specific bracketed positions are under no obligation to subsequently accept bracketed text. As work on a treaty proceeds, bracketed text becomes the focus of negotiation.

Observers from international organizations, NGOs, and industry were permitted to participate in discussions early on in the process and, according to Falkner, the “extensive participation by civil society and corporate actors marked the beginning of a relatively transparent negotiation process” (2002: 7). These civil society representatives had access to sub-working groups and

contact groups. However, “[i]n the end, the BSWG Bureau decided that NGOs would be admitted to the meetings as observers but would not have the right to make interventions or to participate in the discussions,” beyond making opening statements at the beginning of formal sessions (Falkner, 2002: 13–14).

Our contention is that together the discourses available in debate over the Protocol with the structure of treaty negotiation in this case played crucial roles in shaping the outcome, specifically favoring the industrial nations of the global north and allowing a hearing for, but limiting the place of, socioeconomic concerns in the final agreement. In the following analysis, we examine how the discursive terrain and the structure of negotiation contributed to the Biosafety Protocol negotiations and the socioeconomic provisions that appeared in many draft versions.

Rocky roads: A history of the biosafety protocol negotiations

In several distinct forums, over more than 5 years, the interested parties met on some 18 occasions to define the contours and negotiate the character of the Protocol. Early drafts might be called “kitchen sink” documents. They were lengthy, filled with provisions that many parties could never agree to, but all accepted as providing the foundation for discussion. The final agreement was, by comparison, radically minimalist, including watered-down compromises and general provisions that were broadly acceptable.

The first meeting of the CoP to the CBD was held in late 1994 and established an Open-Ended Ad Hoc Group of Experts on Biosafety and a fifteen government Panel of Experts. In May of 1995, the Panel of Experts met and prepared a background document for consideration by the Open-Ended Ad Hoc Group. Unlike many opponents of GMOs, this body concluded that GMOs were no different than any other kind of technology. While the Panel recognized that newly introduced technologies can have significant socioeconomic impacts, they declined to grapple with such prospective effects on the ground that “Socio-economic aspects [of technology introduction] bring value judgments into the analysis which inevitably vary among countries and communities and from case to case depending on considerations other than the nature of the technologies themselves” (CoP to the CBD, 1995: 23). Risk assessment, the Panel concluded, should be limited to “objective parameters” (Ibid.). This position was consistent with that taken later in the process by some members of the Miami Group.

In response to the Panel's work, environmental and development organizations established an Independent Group of Experts as a parallel to the Expert Panel. The Independent Group drafted its own report, which was prepared for biosafety meetings in 1995 and 1996 and

revised and published in 1996 (Independent Group of Scientific and Legal Experts on Biosafety 1996). Among those involved in this initiative was Tewolde Egziabher from Ethiopia who subsequently became an outspoken supporter of the regulation of agricultural biotechnology on the basis of socioeconomic impacts. Other notable members of the panel included Vandana Shiva from India, Mae Wan Ho and Brian Goodwin from the United Kingdom, and Gurdial Singh Nijar from Malaysia. Socioeconomic factors were highlighted in the Independent group's report. According to the group,

conservation and sustainable use of biological diversity, especially in the case of domesticated plants and animals ...is dependent on the socio-economic conditions of the people who have been maintaining it. Any threat to their socio-economic well-being through the introduction of technologies of genetic engineering is therefore properly the concern of a biosafety protocol, especially in the context of the CBD (IGSLEB, 1996: 26).

The risks mentioned here are the replacement with GMOs of agricultural products traditionally produced in the global South for export to northern countries and the "discontinuation of [traditional] agricultural systems [in countries of the southern hemisphere] and a resulting genetic erosion" (Ibid.). The Independent Group argued that "When the use of a GMO is not clearly seen to offer an advantage, in terms of the potential dangers it poses to the environment, human health, as well as to the social and economic construct of societies and communities, it should be discontinued so that traditional technologies and systems continue" (Ibid.).

On the heels of the Panel of Experts' report, the Open-Ended Ad Hoc Group of Experts on Biosafety met for the first time in July of 1995. This group proposed elements of an international framework on biosafety to operate under the Convention on Biodiversity. Already at the initial stages in the process that would ultimately lead to a protocol, the matter of socioeconomic considerations was contentious. The group came to a consensus on the importance and appropriateness of a number of issues – for example, the transboundary movement of "living modified organisms" (LMOs), mechanisms for risk assessment and risk management, the procedure for advanced informed agreement, and capacity-building (Conference of the Parties to the Convention on Biological Diversity, 1995). But while they did not dismiss the possibility of regulating GMOs on the basis of socioeconomic considerations, there was also no consensus on this matter. Indeed, three issues stood in the way of agreement. These were socioeconomic considerations, liability and compensation, and financial issues. These matters – particularly socioeconomic considerations and questions of liability for damages caused by LMOs – would block consensus for several years.

A second meeting of the Conference of the Parties held in November of 1995 established an open-ended Biosafety Working Group (BSWG) to further explore the need and possible modalities for a biosafety protocol. Importantly, when the Secretariat of the CBD outlined the "terms of reference" for the BSWG, that body did not dismiss the possibility of addressing socioeconomic considerations in the protocol and indicated that it might "be desirable to develop a working understanding or definition of 'socio-economic considerations'" (UNEP-BSWG, 1996: 8).

The first meeting of the Biosafety Working Group was held in Aarhus, Denmark in July of 1996. More than 90 delegations were represented at the meeting, including parties as well as non-parties to the CBD. Significantly, the United States is not a party to the CBD. Nevertheless, the structure of negotiation, as we will discuss below, allowed the US to have a significant role in the process.

At this first meeting of the BSWG, considerable attention was given to the issue of socioeconomic impacts. NGOs, like Greenpeace, spoke in favor of the socioeconomic regulation of biotechnology. Several developing countries mentioned socioeconomic concerns and religious or spiritual values in their opening statements, but others, including Japan, Canada, Australia, and the European Union, stated that socioeconomic considerations did not fit within the framework of a biosafety protocol. At this early meeting, there was extensive discussion of the need for a CBD study of the socioeconomic impacts of biotechnology, but ultimately advocates of such a study settled for the compilation of a bibliography of existing studies. Working Group Chair Köster urged delegates not to negotiate at this early stage, but instead to outline the issues at stake (2002: 47).

When the Biosafety Working Group held its second meeting in May of 1997, discussion resumed on developing a protocol. Wide differences remained on the scope of the protocol, and this meeting too ended with little resolved. At the session, the most comprehensive provisions for regulation on the basis of socioeconomic considerations were introduced into the discussion. The African position included an article calling for "assessments prior to use" of the possible impacts of GMOs on "the socio-economic welfare of societies" (UNEP-BWG, 1997b: 13). The language in the African Group's proposal required parties producing, selling, and exporting GMOs to notify affected countries of prospective production, sales, and export of GMOs with at least 7 years of advance warning to allow these countries to diversify their economies in a way that would minimize the effects of GMOs. In addition, the proposal required the parties promoting GMOs to provide affected developing countries with "financial and technical assistance." Observers at this meeting noted that many developing countries and NGOs

expressed strong concerns about the social and economic ramifications of biotechnology, including “loss of employment and export markets, uncontrolled growth in the power of multinational corporations and a dangerous expansion of the concept of patentability [of living organisms]” (ENB, 1997: 12).

The African Group proposed an annex to the Protocol that outlined six dimensions of a definition of socioeconomic impacts. These included (1) “anticipated changes in the existing social and economic patterns” that could result from the introduction of GMOs; (2) possible threats to “farmers varieties and sustainable agriculture” from the introduction of GMOs; (3) impacts of the substitution of GMOs on “traditional crops, products and indigenous technologies;” (4) “anticipated social and economic costs due to loss of genetic diversity, employment, market opportunities and, in general, means of livelihood of the communities likely to be affected by the introduction of the living modified organisms;” (5) possible disruption to the “social and economic welfare” of countries and/or communities as the result of the introduction of GMOs to these areas; and (6) possible impacts of GMOs that are “contrary to the social, cultural, ethical, and religious values of communities” (UNEP-BSWG, 1997b: Annex 2 of African submission).

The third meeting of the BSWG was held in Montreal in October of 1997. This session was the first at which a draft protocol text was developed. In preparation for the meeting, several countries, including the African Group, Malaysia, Sri Lanka, Cuba, India, and Belarus, submitted language calling for the inclusion of socioeconomic considerations. In its proposed text for the protocol, the Malaysian delegation asserted that “consideration should be given to the social and ethical aspects and sensitivities of the culture and religion prevailing” in countries considering trade in LMOs (UNEP-BSWG, 1997a: Malaysia, Article 14). At the session’s end, however, most of the contentious issues, including socioeconomic considerations, remained unresolved. Yet, throughout the draft text produced at the meeting, socioeconomic issues were raised in brackets. And although there was still no consensus among countries that socioeconomic issues should be addressed in the protocol, it was decided that socioeconomic considerations, along with the other “non-consensus items,” would be discussed on equal footing with the other elements of the protocol at a future session.

At the fourth meeting of the BSWG held in Montreal from February 5–13, 1998, delegates first entered into the negotiating phase of the process. The goal was to reduce the number of options and the amount of bracketed text. However, according to Falkner, “delegates continued to ensure that their national positions were fully represented in the draft agreement” (2002: 14). From an organizational perspective, one important development at this point was the establishment, at the urging of BSWG chair

Köster, of two sub-working groups and two contact groups. Much of the preparation of draft protocol text took place in these assorted groups (Köster, 2002). Sub-working group 1 worked on the risk assessment article of the Protocol. The article on socioeconomic matters was assigned to sub-working group 2. According to Doreen Stabinsky, this separation of socioeconomic considerations from matters of risk assessment effectively precluded consideration of the environment and social impact assessment in a unified way, and it diluted the efforts that could be made by the African group and other members of what was to become the Like-Minded Group. The group was minimally represented in many meetings, as most of its allied delegations included only one person, and by separating topics, it meant there were fewer delegates in the room at a time to argue for the Like-Minded Group position (Stabinsky, 2000).

While NGOs were allowed to participate in discussion at previous meetings, at this session they were permitted to attend as observers and only permitted to make brief statements at the beginning of formal sessions (ENB, 1998a, c). This clearly restricted the impact of NGOs, as much of the important discussion and decision-making took place in working and contact groups. Another barrier to full airing of the issues at stake was noted by the Earth Negotiations Bulletin, which suggested that delegates “in the corridors” “expressed concern over a possible lack of resources to adequately discuss particularly contentious issues, such as socio-economic considerations and liability, in light of a document prepared by the Secretariat on the financial status of BSWG meetings” (ENB, 1998b: 2).

Discussion continued on socioeconomic matters at this meeting, but no consensus was reached. By producing a “Note,” the chair attempted to reduce the number of options on the matter of socioeconomic impacts to only truly distinctive formulations. That is, he eliminated options that only varied from others in terms of phrasing. This list of options came from documents produced in the third meeting of the BSWG, in addition to new government submissions made at the 4th meeting. The result was eight distinct options for a protocol article – what became Article 26 – on socioeconomic considerations. By the conclusion of the meeting, delegates had reduced the number of options to three, and all remained in brackets.

The 5th meeting of the BSWG met in Montreal and lasted for twelve days in August of 1998. Again, the sub-working groups were unable to reach agreement on socioeconomic provisions, and all language on socioeconomic impacts remained bracketed. In Cartagena, Columbia in February of 1999, the BSWG met for the sixth time. On this occasion an “extraordinary” meeting of the CoP to the CBD was also convened. These sessions were decisive. At the outset, thirty articles in the

draft negotiating text – about 80% of the text subject to negotiation – were still unresolved (Enright, 2002). Among these was the matter of socioeconomic impacts (Falkner, 2002). According to BSWG chair Köster, “almost every delegation [was reluctant] to give up anything that had the slightest potential of being used as a bargaining chip at the end” (2002: 47). Köster asked the parties to focus on several specific issues, including the place of socioeconomic considerations in the protocol.

Although this sixth session ended in deadlock, it was not socioeconomic considerations that led to the breakdown. According to the US chief negotiator,

there were scores of things wrong with the text, but of primary concern to the Miami Group was the uncertainty in the key operative provisions. The scope of the protocol’s regulatory advance informed agreement (AIA) procedure, the very crux of the agreement was unclear. Obligations under the general provisions, and the documentation, illegal traffic, and risk management articles were incapable of being implemented or would be unnecessarily cost-prohibitive. Moreover, little progress had been made on the trade-related provisions, such as the protocol’s relationship to other existing international agreements, references to precaution, and governance over trade with non-parties such as the United States. ... [T]he obligations in the agreement were simply unclear or could not be met (Enright, 2002: 100–101).

On the matter of socioeconomic considerations, the detailed and complex proposal put forward by the African Group in 1996 was gutted at this meeting. Realizing that reaching consensus seemed impossible, Chair Köster produced a version of the text that removed most of the items that had remained in brackets until that point. This meant removing all references to these considerations from the text except in the article that dealt specifically with socioeconomic issues. The draft of that article permitted the parties to “take into account, consistent with their international obligations, socioeconomic considerations arising from the impact of living modified organisms on the consideration and sustainable use of biological diversity” (UNEP-BSWG, 1999: 32). This reference to consistency with international obligations was a blow to the Like-Minded Group, whose proposals for incorporating socioeconomic considerations aimed (at least covertly) to counteract the policies put in place by existing international trade agreements. Furthermore, the article “encouraged” the parties to “cooperate on research and information exchange on socio-economic impacts” of GMOs. Gone were the provisions about “warning” and “financial and technical” assistance. Also missing was the Malaysian proposal to require the development of strategies to help “minimize, prevent,

or mitigate the potential socioeconomic effects.” And although the Miami Group was still not happy with important elements of the draft at this point, its supporters had worked their magic on the socioeconomic impacts provisions.

According to a representative of the Third World Network, “the Miami Group never wanted a Biosafety Protocol, but rather a free trade treaty” (quoted in Sanchez, 1999). According to another source, although the US did not formally participate in these talks it “drafted ‘observers’ and lobbyists from as many as 20 agro-chemical companies and biotech associations to pressure for free trade in biotech products, minimum responsibilities for exporters, and for shelving the liability issues for a further 4 years” (Lennard, 1999). According to another source, US President Bill Clinton personally intervened in the process at this point, leaning on two European countries to support weak regulatory standards (Leers, 1999).

Prior to the final meeting in Montreal, a less formal meeting held in Vienna in 1999 set the stage, substantively and procedurally, for closing the deal. The informal consultations in Vienna in September 1999 identified three key outstanding issues: general scope of the protocol, how to deal with commodities intended for food, feed, or processing, and the relationship to other international agreements (Lin, 2000). Chairman of the Extraordinary Meeting of the Conference of the Parties, Juan Mayr, produced a “non-paper” on these three areas, distributed prior to the beginning negotiations, and the Montreal talks focused on these three issues. Lin noted that “Few provisions apart from the three areas ... would be re-opened for negotiation. Thus, a large part of the protocol was never conclusively negotiated...” (Lin, 2000). This suited the Miami Group. From that group’s perspective the Like-Minded Group’s concerns about GMOs in the environment were dealt with, in the last instance, “by the Miami Group’s proposal for the establishment of a robust international database that would provide importing countries with the opportunity to make informed decisions regarding LMO food and feed commodities in trade” (Enright, 2002: 103). Thus, when the Biosafety Protocol was finally ratified after so many years of discussion, it reflected very little of the Like-Minded Group’s demands for provisions to protect against negative socioeconomic impacts.

So this is compromise

Why did the regulation of socioeconomic impacts of GMOs become a possibility in the Biosafety Protocol process, and what explains the diluted form this policy idea took in the final document? To begin with, socioeconomic issues had a legitimate place in discussion.

Their specific place was debated in gatherings that preceded the first Biosafety Working Group meeting in Aarhus. Quantitatively, these issues showed up in large portions of early draft agreements. Qualitatively, the proposals had punch. Had the original proposals for socioeconomic risk assessment found their way into the final agreement they might very well have permitted real regulation of agriculture biotechnology on socioeconomic grounds. An extensive discursive history brought the importance of socio-economic impacts to the consciousness of key players in the protocol negotiations, made considering these impacts legitimate, and defined part of the terrain on which debate occurred. The discourse of socioeconomic impacts was granted “air time” by the format of international treaty negotiation in which parties to the agreement and interested non-parties are given an opportunity to speak. The tradition of permitting parties to stake out positions in bracketed text further allowed serious socioeconomic impact regulation language to find a place in draft treaties.

What the African Group proposed in 1996 constituted a serious challenge to the idea that the rise and fall of new agricultural technologies should be determined by the market. Of course, neoliberalism played a key, if not always conscious, role in the way negotiators thought about the world and solving problems. Moreover, the need for consensus in any final agreement ultimately put the balance of power in the hands of those countries whose economies account for the vast bulk of all international economic activity. Their withdrawal from the agreement would have made the final socioeconomic regulatory provisions effectively meaningless.⁵ Thus the final agreement ultimately reflected the Miami Group’s interests over those of the Like-Minded Group. As a result, the spirit of the African Group’s policy proposal is lacking in Article 26, which has few regulatory requirements and demands that any regulation be consistent with existing international treaties (like the WTO). This means that WTO policy and practice, and with it, the law of the market, will *not* regulate socioeconomic impacts.

Analytically, we have drawn a sharp distinction between discourse and structure. Practically, these two factors overlap, interact, and are fused in ways that make policymaking processes complicated and messy. We cannot say *a priori*, in any given case, how this intertwining will play itself out. In this case, the discourses of social welfareism and neoliberalism appear to have defined the boundaries of discussion, but the structure of negotiation seems to have been decisive in determining the character of the final agreement. In other cases, discourse may become the deciding factor. Indeed, as seen in other instances of biotechnology-related policymaking, the powerful legitimacy of one discourse may create a truly uphill battle for advocates of positions framed by subordinate discourses (Kleinman and Kinchy, 2003a, b).

As we have analytically simplified the story we presented, we have also implied that a socioeconomic discourse would always lead to what we would see as progressive political outcomes, cases in which relatively less powerful actors gain at the expense of economic elites. But, of course, the world is vastly more complicated than our characterization. To begin with, who are subordinate actors and who are elites may be matters of dispute, and certainly there is disagreement about what counts as a progressive policy. Beyond these more abstract issues, while advocates of socioeconomic regulation of agricultural biotechnology have tended to favor the interests of peasants and small producers (Kleinman and Kinchy 2003a, b), the history of agricultural supports in the United States, to take but one case, provides evidence that what might broadly be characterized as socioeconomic regulation does not inevitably favor one particular strata of economic actors.

All this said, politically, we believe, there is reason for optimism in the Protocol case. Activists and representatives of the Like-Minded Group did successfully demand the inclusion of the precautionary principle in the Protocol. The precautionary principle challenges the dominant trade regime in its suggestion that countries can take steps to restrict trade in a particular product if there is suspicion, but no definitive evidence, that it may pose a risk to the environment or human health. A product must be proven to be safe, rather than assuming that it is safe until there is solid evidence of harm. This is a mixed victory, however. While the precautionary principle is important, it amounts ultimately only to favoring type one errors (false positives) over type two errors (false negatives). It offers little challenge to neoliberalism as the terrain on which international economic policy debate takes place, because the concept of precaution narrowly identifies only environmental and health concerns as reasons for restricting trade, something advocates of neoliberal economics tend to already accept.

Although the precautionary principle is the issue that has received the greatest public attention – and counts as the greatest success, from the perspective of biotechnology opponents – we believe that the various emerging struggles to legitimize opposition to biotechnology based on social and economic concerns pose a more fundamental challenge to free trade in products of genetic engineering. Regulation based on socioeconomic considerations could justify a ban on certain products of biotechnology if they are seen as threatening the social and economic well-being of subordinate social groups. For example, a country could prevent the importation of genetically modified seeds if they were likely to cause an undesirable transition in the farm economy from small scale production to mega-farms.

Opponents of socioeconomic evaluation argue that it is impossible to set objective standards for acceptable

socioeconomic effects. Of course, the same is often said about environmental regulations and could easily be said about human health effects (e.g., How does one determine what is an acceptable risk of cancer?). Proponents of free trade have resisted demands for socioeconomic regulation by linking the ideal of objective, rational science – a notion highly valued by most in the Western world – to the ideal of an unconstrained free market. While we would argue that environmental and health considerations are no less subjective and political than socioeconomic considerations, it seems that free trade proponents have found it easier to attack the latter by claiming that they lack objectivity and universality. But perhaps serious consideration of socioeconomic regulation has been made truly legitimate with the dubious success of Article 26. And although there can be no guarantee of the contours of any particular set of regulations, if socioeconomic restrictions have been made more legitimate as a result of the debates over the Biosafety Protocol, we may expect broader discussion of socioeconomic regulation of new technology in the future. From our perspective that would be all to the good.

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Notes

1. A third position often articulated is that of the precautionary approach or precautionary principle. Although this concept was also the subject of negotiations in the deliberations for a Biosafety Protocol, we are focusing more on these two positions because we see the proposals for the socioeconomic evaluation of biotechnology as a more direct challenge to the dominant discourse of neoliberalism.
2. From the TWN website (<http://www.twinside.org.sg/twnintro.htm>):
The Third World Network is an independent non-profit international network of organizations and individuals involved in matters relating to development, the Third World, and North–South issues.
Its objectives are to conduct research on economic, social and environmental issues pertaining to the South; to publish books and magazines; to organize and participate in seminars;

and to provide a platform representing broadly Southern interests and perspectives at international forums such as the UN conferences and processes.

The TWN's international secretariat is based in Penang, Malaysia and the organization has several regional offices as well. In addition, the Third World Network has affiliated organizations in several Third World countries and also cooperates with several organizations in the North.

3. The roots of neoliberalism can be found in what we have termed elsewhere **free marketism** (Kleinman and Kinchy, 2003a, b).
4. Although few, if any, delegates outside the Like-Minded Group voiced support for including an article on socioeconomic considerations in the protocol, importantly, various forms of social welfarism can be seen in many countries in the global North, particularly Western Europe (Kleinman and Kinchy, 2003a, b). A variant of social welfarism can also be found in socioeconomic impact assessment undertaken by academic researchers (Freudenburg, 1986; Stabinsky, 2000) and in the work of a small cadre of activist intellectuals who established the conceptual foundation for the anti-biotechnology movement beginning in the 1970s (Schurman and Munro, 2006).
5. Ironically, the US never signed the Convention or the Protocol. The country's influence nevertheless was felt throughout the negotiation process, and US perspectives on international treaties continue to overshadow the perspectives of other countries and regional blocs.

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