Att: Minister Tina Joemat-Pettersson
Minister of Agriculture, Fisheries and Forestry
Department of Agriculture, Fisheries and Forestry
Private Bag X250
PRETORIA
0001

Fax: (012) 321 8558
Cc: Director: Genetic Resources: Dr J. Japhta **fax**: 012 319 6385
Cc: Director: Biosafety: Ms. C. Arendse **fax**: 012 319 6329

6 July 2010

RE: Compliance with the Cartagena Protocol on Biosafety to the Convention on Biological Diversity

Dear Minister Tina Joemat- Pettersson

The African Centre of Biosafety (ACB) is an NGO deeply concerned with biosafety in South Africa and on the continent. Over the years our organisation has been actively involved in decision making on Genetically Modified Organisms (GMOs) and in developing a biosafety regime within South Africa. Unfortunately, our work has been severely hampered by the lack of transparency from government in decision making and information sharing around pre-release and commercial GMOs that are introduced and handled in the South African environment.

In terms of the Cartagena Protocol, to which South Africa became a party in 2003, the South African government is obliged to provide open access to state-held information about GMOs. The Protocol obliges its Parties to post information regarding GMOs to the international Biosafety Clearing House (BCH) to ensure transparency and information sharing with the international community and South African citizens. The minimum required information to be posted to the BCH is also incorporated in the South African Geneticallly Modified Organisms Act (1997) Regulations of 26 February 2010, which obliges the GMO registrar to communicate this information to the BCH. However, to date, this minimum required information has not been posted to the international Biosafety Clearing House in contravention with international and domestic law.

Our organisation has addressed the non-compliance to the Cartagena Protocol to your Department several times last year. We first drew attention to this issue to your predecessor, Ms. Lulama Xingwala, in a letter dated 14 January 2009. We did receive an acknowledgement of receipt, however, the Department failed to reply to our letter. On 5 June 2009, we again addressed this issue in a letter directed to you. As we did not receive a reply to this letter either, ACB had no choice but to lodge a complaint with the Compliance Committee under the Cartagena Protocol. Unfortunately, after carefully discussing our complaint internally, the Compliance Committee decided not receive and consider our submission. According to the mandate of the commission only parties to the Cartagena Protocol can submit a complaint, and to our disappointment, the Commission decided to adhere to this.

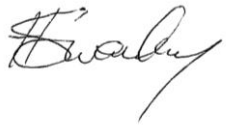
Tel: 011-486-1156 Fax: 011-486-2701
PO Box 29170, Melville 2109
No 13 The Braids, Emmarentia, 2195
www.biosafetyafrica.org.za

As we think the existence of an up-to-date repository of information on GMOs and biosafety is of utmost importance in developing a comprehensive biosafety regime in South Africa, we would like to once more raise our concerns around the lack of information sharing by the South African government through the BCH. Please find attached to this letter a list of non-compliance by South Africa of its obligations to the BCH as well as a summary of GMO permits granted since 2003.

We are aware of the initiative of your department to disclose information required in terms of the Cartagena protocol through a South African Biosafety Clearing House website. The interim national report of South Africa to the Cartagena Protocol in 2005 already refers to construction of this site, however, 5 years later this website is still not operational. (The current site can be found at http://www.agis.agric.za/gmo/index.jsp). We understand that the GMO registrar is responsible for launching this website, but to date she has not been willing to provide us with a launch date of this website. We would like to note that posting to the South African portal is optional and that doing so without posting to the international BCH does not fulfil the requirements of the Protocol.

In the interests of the biosafety of South Africa as well as our neighbouring countries, we respectfully request that the National Competent Authorities fully comply with the requirements as set out in the Cartagena Protocol. We also would like to receive an acknowledgement of receipt of this letter as well as a reply detailing within which timeframes the obligations to the BCH will be met by your Department. Also we would like to be informed about the expected launch date of the South African Biosafety Clearing House website. If your Department fails again to attend to this issue, the African Centre of Biosafety will have no choice but to again seek international media attention for the non-compliance to the Cartagena protocol by the South African Government.

Kind regards



Ms. Haidee Swanby
On behalf of

Ms. Mariam Mayet
Director

Tel: 011-486-1156 Fax: 011-486-2701
PO Box 29170, Melville 2109
No 13 The Braids, Emmarentia, 2195
www.biosafetyafrica.org.za

LIST OF NON-COMPLIANCE BY SOUTH AFRICA OF ITS OBLIGATIONS TO THE BIOSAFETY CLEARING HOUSE

Article 23. of the Cartagena Protocol deals with Public Awareness and Participation and requires that:

1. The Parties shall:

(a) Promote and facilitate public awareness, education and participation concerning the safe transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity, taking also into account risks to human health. In doing so, the Parties shall cooperate, as appropriate, with other States and international bodies;

(b) Endeavour to ensure that public awareness and education encompass access to information on living modified organisms identified in accordance with this Protocol that may be imported.

2. The Parties shall, in accordance with their respective laws and regulations, consult the public in the decision-making process regarding living modified organisms and shall make the results of such decisions available to the public, while respecting confidential information in accordance with Article 21.

3. Each Party shall endeavour to inform its public about the means of public access to the Biosafety Clearing-House.

List of Minimum Information Requirements to the BCH by the Parties

a) Existing national legislation, regulations and guidelines for implementing the Protocol, as well as information required by Parties for the advance informed agreement procedure (Article 20.3.(a));
b) National laws, regulations and guidelines applicable to the import of LMOs intended for direct use as food or feed or for processing (Article 11.5)
c) Bilateral, multilateral and regional agreements and arrangements (Articles 14.2 and 20.3(b));
d) Contact details for competent national authorities (Articles 19.2 and 19.3), national focal points (Articles 19.1 and 19.3), and emergency contacts (Article 17 .3(e));
e) Reports submitted by the Parties on the operation of the Protocol (Article 20.3(e));
f) Decisions by a Party on regulating the transit of specific LMOs (Article 6.1)
g) Occurrence of unintentional transboundary movements that are likely to have significant adverse effects on biological diversity (Article 17.1)
h) Illegal transboundary movements of LMOs (Article 25.3)
i) Final decisions regarding the importation or release of LMOs (i.e. approval or prohibition, any conditions, requests for further information, extensions granted, reasons for decision) (Article 10.3 and 20.3(d));
j) Information on the application of domestic regulations to specific import of LMOs (Article 14.4)
k) Final decisions regarding the domestic use of LMOs that may be subject to transboundary movement for direct use as food or feed, or for processing (Article 11.1)
l) Final decisions regarding the import of LMOs intended for direct use as food or feed, or for processing that are taken under domestic regulatory frameworks (Article 11.4) or in accordance with annex iii (Article 11.6) (requirement of Article 20.3(d));
m) Declarations regarding the framework to be used for LMOs intended for direct use as food or feed, or for processing (Article 11.6)
n) Review and change of decisions regarding intentional transboundary movements of LMOs (Article 12.1)
o) LMOs granted exemption status by each Party (Article 13.1)
p) Cases where intentional transboundary movement may take place at the same time as the movement is notified to the Party of Import (Article 13.1); and

Tel: 011-486-1156 Fax: 011-486-2701
PO Box 29170, Melville 2109
No 13 The Braids, Emmarentia, 2195
www.biosafetyafrica.org.za

q) Summaries of risk assessments or environmental reviews of LMOs generated by regulatory processes and relevant information regarding products thereof (Article 20.3(c)).

List of non-compliance with the minimum information requirements by the South African Government:

1. According to the list of minimum information requirements, all final decisions regarding the importation and trial release of GMOs, transit of specific GMOs, direct use of GMOs as food or feed or for processing, and the conditional general release and general release of GMOs should be posted to the BCH. Since the Cartagena Protocol on Biosafety went into force on 11 November 2003, the South African Government has issued 1848 permits for the importation and release of GMOs. Only the permits issued for conditional general release and general release of GMO varieties, a total of 13 permits, have been posted to the BCH.

2. Not a single risk assessment to date has been posted to the BCH as required, while South Africa in its first national report to the Protocol (2007) states that risk assessments are carried out for all imported GMO varieties and that appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of the Protocol are fully established. Also, the Genetically Modified Organisms Act (1997) Regulations of 26 February 2010 point out that the GMO registrar is obliged to post summaries of conducted science-based risk assessment to the BCH.

3. Existing national legislation, regulations and guidelines for implementing the Protocol, as well as information required by Parties for the advance informed agreement procedure (Article 20.3.(a)) has been posted to the BCH but is not complete. Some relevant documents that are missing are:

    - Genetically Modified Organisms Amendment Act, Act No. 23, 2006
    - Genetically Modified Organisms Act (1997) Regulations, 26 February 2010
    - Policy on GMO consignments in transit, compiled by the Executive Council of Genetically Modified Organisms
    - Standard operating procedures with regard to regulation 4 of the GMO act, 25 May 2006
    - Policy on extension of permits, 23 August 2005

4. Maize seed exported to Kenya from South Africa was found to be contaminated with MON810 in early 2008. This variety is not approved in Kenya. The contamination was not posted to the BCH as required. Furthermore, a recent report by the Kenyan Plant Health Inspectorate Service also revealed that between 2008 and 2009, 5 of 11 vessels that brought maize to Mombasa's port contained GMO contaminated maize. Most imported maize in Kenya comes from South Africa. None of these contaminations were posted to the BCH either.

5. In January 2010, South Africa exported 280,000 tons of GMO maize to Kenya, which according to the Kenyan Plant Health Inspectorate Service lacked the certificate of analysis required with any GMO import into Kenya. However, the South African Department of Agriculture, Forestry and Fisheries, has stated that the Kenyan government authorities had given authorization for this export. This consignment could potentially be an illegal transboundary movement of GMO maize, and if this is the case, this should be posted to the BCH.

Note: Parties are obliged to post information to the International Biosafety Clearing House, to be found at http://bch.cbd.int. Setting up and posting to national portals is optional and does not fulfil the Parties obligation in information sharing under the Protocol.

Tel: 011-486-1156 Fax: 011-486-2701
PO Box 29170, Melville 2109
No 13 The Braids, Emmarentia, 2195
www.biosafetyafrica.org.za

Permits granted	**2010***	**2009**	**2008**	**2007**	**2006**	**2005**	**2004**	**2003****	TOTAL
Export permits									
Export (not specified)	0	0	0	0	0	0	1	10	11
Export for contained use	53	123	73	29	36	48	34	0	396
Export for commodity	23	0	4	0	0	0	0	0	27
Export for planting	15	44	18	26	26	33	20	0	182
Export for processing	2	0	0	0	0	0	0	0	2
Export for environmental release	0	0	0	0	0	1	0	0	1
Export for FFP	0	0	0	0	0	1	0	0	1
Export (research)	0	0	0	0	0	0	6	0	6
Export (backcrossing)	0	0	0	0	0	0	3	0	3
Export (Field trials)	0	0	0	0	0	0	2	0	2
Export (trial release)	0	0	0	0	0	0	1	0	1
Total export permits	**93**	**167**	**95**	**55**	**62**	**83**	**67**	**10**	632
Import permits									
Import (not specified)	0	0	0	0	0	0	3	4	7
Import for commodity	1	0	6	67	28	2	17	3	124
Import for trial release	6	39	17	0	0	0	0	0	62
Import for planting	12	104	106	81	74	79	58	0	514
Import for contained use	3	7	1	3	5	2	10	0	31
Import for clinical trial	0	0	5	3	2	0	0	0	10
General release import	0	0	0	0	1	0	0	0	1
Import for animal feed	0	0	0	0	9	0	0	0	9
Import extention	0	0	0	0	2	0	2	0	4
Import time extension (contained use)	0	0	0	0	0	0	1	0	1
Import for seed production	0	0	0	0	2	1	3	0	6
Import (containment level1)	0	0	0	0	0	1	1	0	2
Total import permits	**22**	**150**	**135**	**154**	**123**	**85**	**95**	**7**	771
Domestic use permits									
Use as commodity	2	0	24	158	86	0	18	4	292
Contained use	3	7	2	2	3	0	1	0	18
Trial release	4	35	16	5	21	2	1	0	84
Field trials	0	0	0	0	2	11	10	5	28
Field trials (extention permit)	0	0	0	0	0	2	2	0	4
Field trials (fast track)							3		3
Clinical trial	0	0	0	3	0	1	2	0	6
General release	0	0	0	3	0	0	0	0	3
Conditional general release	0	0	0	0	0	1	0	6	7
Total domestic use permits	**9**	**42**	**42**	**171**	**112**	**17**	**37**	**15**	445
TOTAL	**124**	**359**	**272**	**380**	**297**	**185**	**199**	**32**	1848

* January to May 2010 only
** the CP came into force on 12/11/2003 - therefore only permits issued from 11/2003 to12/2003 are taken up in this overview

Tel: 011-486-1156 Fax: 011-486-2701
PO Box 29170, Melville 2109
No 13 The Braids, Emmarentia, 2195
www.biosafetyafrica.org.za

Tel: 011-486-1156 Fax: 011-486-2701
PO Box 29170, Melville 2109
No 13 The Braids, Emmarentia, 2195
www.biosafetyafrica.org.za