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Biotechnology

Brazil Approves Biotech Soybeans

2003

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Report Highlights:

This report provides a preliminary analysis of the two new federal government regulations that approved the production and marketing of the 2003/2004 soybean crop using biotech seeds.

Includes PSD changes: No
Includes Trade Matrix: No
Unscheduled Report
Brasilia [BR1], BR

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Summary

This report provides a preliminary analysis of the most recent federal government regulations regarding the approval of biotech soybeans for the 2003/2004 crop. It also provides an informal translation of the two new regulations regarding the issue: Provisional Measure 131 and Executive Order 4,846, both dated September 25, 2003. This report does not provide information on reactions by soybean producers, farm associations, and NGOs, because the debate will begin when Congress starts to review such measures. In general, soybean producers oppose the level of restrictions and responsibilities levied upon them, while major farmer associations applauded the federal government for the courage to publish a new Provisional Measure. Greenpeace and the Brazilian Consumer Defense Institute (IDEC) announced that they will challenge the terms of MP 131 in the Federal Supreme Court. The Green Party (PV) already filed an action (ADIN) in the Supreme Court, challenging MP 131 for being unconstitutional. PV alleges that MP 131 is in violation of Article 225, clause 6, of the Federal Constitution. Post can not confirm whether these regulations have been notified to the WTO.

Background

The new Brazilian government, who took over January 1, 2003, began to tackle the so-called "transgenic" crisis in Brazil (consisting of a legal moratorium since 1998, illegal plantings, lack of government control and monitoring) with the creation of a nine-member inter-ministerial working group by the Executive Order Number 4,602, of February 18, 2003. Under the coordination of the President's Chief of Staff, the working group's role is to develop official recommendations for Government policies on biotech products. The working group was created. As a result of several meetings of this working group, the federal government announced two major decisions regarding biotech soybeans:

- a) Provisional Measure 113, of March 26, 2003 (later approved by Congress and transformed into Law 10,688, of July 13, 2003), officially recognized the planting of genetic modified soybeans in Brazil and approved (legalized) the marketing of the 2002/2003 biotech soybean crop until January 31, 2004, under certain conditions and regulations.

- b) Executive Order Number 4,680, of April 24, 2003 which established a one-percent tolerance limit for genetically modified organisms in bulk products, foods, and by products for human or animal consumption. This Executive Order revoked the 2001 Executive Order Number 3,871 which had established a tolerance limit at 4 percent for biotech products derived from soybeans.

Note: a detailed analysis of this background is provided in our GAIN report (BR3607), of 5/9/2003.

New Regulations for 2003/2004 Soybean Crop

The Brazilian government was caught by nature's time frame (the 2003/2004 crop year begins officially in October 2003) and by pressures from Brazilian farmers, mostly from the state of Rio Grande do Sul, who could be legally sued as "criminals" if they planted the biotech soybean seeds set aside from the 2002/2003 soybean crop. In view of this, the federal government decided to approve, on an exceptional basis, the production and marketing of the 2003/2004 soybean crop with the use of biotech soybean seeds.

On September 26, 2003, Vice President, acting as President, published in Brazil's Federal Register (Diario Oficial), two new regulations regarding this issue: 1) Provisional Measure Number 131 and, 2) Executive Order Number 4,846, both dated from September 25, 2003.

1) Provisional Measure (MP) 131, with the force of Law, needs to be debated and approved by Congress, within 60 days (see attachment 3). If approved in Congress, MP 131 will authorize the use of biotech soybean seeds for planting the 2003/2004 crop, according to the following conditions and restrictions:

- a) biotech seeds set aside by producers can only be used in the state where the producer is located;
- b) establishes December 31, 2004 as the final date for the marketing of the 2003/2004 biotech crop, including the requirement for cleaning all warehouse space before the next crop (2004/05) is harvested;
- c) prohibits the planting of biotech soybeans in conservation areas, buffer zones, Indian lands, close to river areas that could serve as a public water supply, and in areas declared as priority for conservation of the Brazilian biodiversity. The Ministry of the Environment will issue a directive and define these areas;
- d) transfers to the soybean producers the responsibility for contamination by cross-breeding (hybridation), and holds the producer as responsible for any damage or burden caused to the environment or third parties. This responsibility also applies to the soybean buyer;
- e) creates a new Declaration for soybean producers to sign before they plant the biotech crop;
- f) creates a new Commission formed by members of different Ministries and national agencies, under the coordination of the Chief of Staff of the Presidency of the Republic, to monitor and supervise the fulfilment of the terms of the Provisional Measure.

2) Executive Order Number 4,846 regulates Article Three of MP 131, which establishes rules for the planting and marketing of the 2003/2004 soybean crop and identifies other measures:

a) creates the Declaration of Commitment, Responsibility, and Agreement of Conduct, which must be signed by each soybean producer that uses or will use, until December 31, 2003, biotech soybean seeds for the 2003/2004 crop year;

b) establishes penalties and fines (approx. US\$5,370 plus 10 percent per metric ton) to be levied on the producer in case of failure to comply with the provisions of the Declaration above cited;

c) transfers to the soybean producer, as a result of signing the Declaration, any responsibility or liability for using biotech seeds, in case of any damage or burden to the environment or third parties.

Attachments:**Attachment 1: Provisional Measure 131** (informal translation).

Establishes the rules for planting and marketing of the 2003/2004 soybean crop and provides other measures.

THE VICE PRESIDENT OF THE REPUBLIC, acting as PRESIDENT OF THE REPUBLIC, in the exercise of the authority conferred upon him by Article 62 of the Federal Constitution, adopts the following Provisional Measure (MP, in Portuguese), with the force of law:

Article One. The seeds of the 2002/2003 soybean crop, set aside by producers for their own use, in accordance to the terms of Article Two, clause XLIII, of Law Number 10,711 of August 5, 2003, which are to be planted until December 31, 2003, are not subject to the provisions of clauses one and two of Articles 8 and 10, of Law Number 6,938, of August 31, 1981, relative to the genetically modified species foreseen under code 20 of Annex VIII, of Law Number 8,974, of January 5, 1995, with the alterations of the Provisional Measure Number 2,191-9, of August 23, 2001, of Paragraph Third of Article One and of Article Fifth of Law Number 10,688, of June 13, 2003.

Sole Paragraph. The marketing of the 2002/2003 soybean crop as seed and use as seed in farms outside of the state where it was produced is prohibited.

Article Two. The provisions of Law Number 10,688, of 2003, apply to the soybean crop harvested from the seeds referred in the Article One of this MP, and the marketing of this crop is permitted until December 31, 2004.

Sole Paragraph. The remaining soybean crop beyond the date established in Article One of this MP, must be destroyed, by means of incineration, with cleaning of the warehouse spaces complete prior to the 2004/2005 soybean harvest.

Article Three. Those producers under the provisions of Article One of this MP, except for the provisions under Articles 3 and 4 of Law Number 10,688, of 2003, can only plant and market the 2003/2004 soybean crop if they sign the Declaration of Commitment, Responsibility, and Agreement of Conduct, as per this regulation, observing the legal and regulatory rules in force.

Sole Paragraph. The Declaration of Commitment, Responsibility, and Agreement of Conduct, which will serve as an extrajudicial executive document in the form of Article Five, paragraph six, of Law Number 7,347, of July 24, 1985, and Article 585, item VII, of the Code of Civil Action, will be signed, within 30 days from the publication of this Provisional Measure will be available in the agencies of the

Brazilian Post Office Service, in the Federal Savings Bank, or in the Bank of Brazil.

Article Four. The Minister of Agriculture, Livestock, and Food Supply, will issue, within 180 days from the publication of this Provisional Measure, an Act identifying the regions of the country with the presence of genetically modified organisms, for the purpose of the provisions of this Provisional Measure and of Law Number 10,688, of 2003.

Sole Paragraph. The Ministry of Agriculture, Livestock, and Food Supply can sign a protocol of cooperation with the Brazilian states for the purpose of compliance with the terms of this Article.

Article Five. The planting and marketing of seeds from the 2003/2004 soybean crop, are prohibited, except for the cases referred in Articles 3, 4, and 5 of Law Number 10,688, of 2003.

Article Six. Official financing credit institutions are prohibited from making loans for production financing and planting of soybean varieties obtained in violation of the legislation in force.

Article Seven. The soybean producer who does not sign the Declaration of Commitment, Responsibility, and Agreement of Conduct as foreseen in Article Three of this MP, and does not present the certificate which is referred to in Article Four of Law Number 10,688, of 2003, and that is not under the provisions of the Directive mentioned in Article Four of this MP, will be prohibited from obtaining loans and financing from official credit institutions, will not have access to fiscal or credit incentives, and will not be admitted to participate in programs including credit negotiations or parceling of debts regarding taxes and fees established by the federal government.

Article Eight. With consideration for the penalties foreseen in the legislation in force, the soybean producers who have genetically modified organisms and who cause damages to the environment and to third parties, including those damages caused by contamination with hybridation (cross-breeding), he or she will be held responsible for indemnity or full compensation for the damage, regardless of the nature or extent of the damage.

Sole Paragraph. The responsibility foreseen in this Article applies, jointly, to the buyer of genetically modified organisms.

Article Nine. The soybean producer is responsible for any burden derived from the planting authorized by Article One of this MP, including those from eventual third party liability.

Article Ten. The planting of soybean seeds that contain genetically modified organisms in conservation areas and buffer zones, in Indian lands, in river areas that could serve as a public water supply, and in areas declared as priority for conservation of the biodiversity is prohibited.

Sole Paragraph. The Ministry of the Environment will issue a Directive to define the priority areas for biodiversity conservation referred in this Article.

Article Eleven. The Executive Branch of the Government creates a Monitoring Commission comprised of representatives from the Ministries of the Environment, Agriculture, Livestock, and Food Supply, Science and Technology, Agrarian Development, Development, Industry, and Foreign Trade, Justice, Health, the cabinet of the Extraordinary Minister of Food Security and Combating Hunger, the National Agency for Sanitary Surveillance – ANVISA, and the Brazilian Institute of Environment and Natural Renewable Resources – IBAMA under the coordination of the Chief of Staff of the Presidency of the Republic, for the purpose of monitoring and supervision of the fulfillment of the terms of this Provisional Measure.

Article Twelve. The fine referred in Article Seven of the Law Number 10,688, of 2003. will be levied in those cases of violation as provided in this MP and in the Declaration of Commitment, Responsibility, and Agreement of Conduct, as stated in Article Three, by those producers covered under the provisions of Article One.

Article Thirteen. This Provisional Measure will enter into force on the date of its publication.

Signed

Brasilia, September 25, 2003, 182nd of Independence and 115th of the Republic.

Jose Alencar Gomes da Silva
Jose Dirceu de Oliveira e Silva

Attachment 2: Executive Order Number 4,846

Regulates Article Three of the Provisional Measure Number 131, of September 25, 2003, which establishes rules for the planting and marketing of the 2003/2004 soybean crop and identifies other measures.

THE VICE PRESIDENT OF THE REPUBLIC, acting as PRESIDENT OF THE REPUBLIC, in the exercise of the authority conferred upon him by article 84, item IV, of the Federal Constitution, and in view of the terms of the Provisional Measure Number 131, of September 25, 2003,

DECREES:

Article One. Annex to this Executive Order. The Declaration of Commitment, Responsibility, and Agreement of Conduct, must be signed by producers that use or will use, until December 31, 2003, soybean seeds set aside for their own use, in accordance with the terms of Article Two, clause XLIII, of Law 10,711, of August 5, 2003, under the support of Article One of the Provisional Measure Number 131, of September 25, 2003.

Article Two. The Declaration of Commitment, Responsibility, and Agreement of Conduct will be signed by the producers covered under Article One, within 30 days of the publication of this Executive Order. The declaration must be signed in the agencies of the Brazilian Post Office Service, agencies of the Federal Savings Bank or agencies of the Bank of Brazil, and producers will pay for the cost of this service.

Sole Paragraph. It is the responsibility of the Ministry of Agriculture, Livestock, and Food Supply to confirm compliance with the provisions of the Declaration of Commitment, Responsibility, and Agreement of Conduct, through its administrative offices.

Article Three. For the purposes of the deadline established under Article Two, the effective date for the signature of the Declaration of Commitment, Responsibility, and Agreement of Conduct, will be the date signed and stamped by the receiving officer of the regional office of the Ministry of Agriculture, Livestock, and Food Supply in each state.

Article Four. Failure to comply with the provisions of the Declaration of Commitment, Responsibility, and Agreement of Conduct, as well as the provisions of the Provisional Measure Number 131, of

September 25, 2003, and of Law Number 10,688 of June 13, 2003, will result in a fine, to be paid by the signee or violator, levied by the Ministry of Agriculture, Livestock, and Food Supply, at the minimum value of R\$16,110.00 (currently US\$5,370), plus 10 percent per metric ton or fraction of the soybeans produced, limited to double the estimated value of the crop, not including fines levied from other civil actions, administrative or penal, foreseen in Law.

Article Five. This Executive Order enters into force on the date of its publication.

Brasilia, September 25, 2003; 182nd of the Independence, and 115th of the Republic.

Signed:

Jose Alencar Gomes da Silva
Swedenberger Barbosa

ANNEX

DECLARATION OF COMMITMENT, RESPONSIBILITY, AND AGREEMENT OF CONDUCT.

Name of the producer (identification of the producer/supplier responsible for the marketing of the soybean crop), in this act denominated simply as Producer, and

Considering the prohibition of planting soybeans that contain genetically modified organisms without the fulfillment of the requirements under law 8,974, of January 5, 1995;

Considering the possibility of the occurrence of genetically modified organisms in the 2004 soybean crop, resulting from the planting of set aside seeds for the producer's own use, under the terms of Article 2, clause XLIII, of Law Number 10,711, of August 5, 2003;

Considering the soybeans covered by this Declaration must be marketed in accordance with Articles Two and Three of the Provisional Measure Number 131, of September 25, 2003;

Considering the need to inform consumers/buyers of the conditions under which the marketing of soybeans comply with this Declaration;

SIGNS before the Federal Union, hereby represented by the Ministry of Agriculture, Livestock, and Food Supply, the present Declaration of Commitment, Responsibility, and Agreement of Conduct, for the purpose of the provisions of the Provisional Measure Number 131, of 2003.

PURPOSE OF THE DECLARATION

Clause one. The present Declaration refers to the planting and marketing of (state quantity and hectares of soybeans) by the Producer in (state the location of production, identification of the rural property, country, and state).

Sole Paragraph. The planting referred to in Clause One can not be carried out in a property located in a state different from where the seed was produced as per Article One of the Provisional Measure Number 131, of 2003.

DECLARATION OF KNOWLEDGE OF ILLEGALITY

Clause Two. The Producer declares that he is aware that the planting of genetically modified soybeans without fulfillment of the requirements of Law 8,974, of January 5, 1995, constitutes an administrative violation, subject to the penalties of Law.

Sole Paragraph. The Producer subjects himself, also, under his exclusive responsibility, to be responsible for the planting authorized by Article One of the Provisional Measure Number 131, of 2003, inclusive of those related to the rights of third parties.

CONSUMER/BUYER INFORMATION

Clause Three. The Producer will inform the consumer/buyer, by means of a declaration and receipt delivered to the purchaser, (identifying the property, quantity, and variety of soybean produced), regarding the potential presence of genetically modified soybeans covered by this Declaration, relative to the 2003/2004 soybean crop.

MARKETING OF THE 2003/2004 SOYBEAN CROP

Clause Four. The soybeans covered by this Declaration will be required to be marketed as beans or under another form that destroys its reproductive property and may not be sold or marketed as seeds.

Clause Five. The 2003/2004 soybean crop, held by the producer, and not marketed before December 31, 2004, must be destroyed by means of incineration, and the producer agrees to have his/her warehouse space completely clean by January 31, 2005 in preparation for the 2004/2005 soybean crop.

OBSERVANCE OF THE LEGAL REQUIREMENTS FOR THE PLANTING OF THE GENETICALLY MODIFIED SOYBEANS

Clause Six. The producer agrees to comply with, for the planting of the 2004/2005 soybean crop and thereafter, the terms of the Law 8,974, of 1995, and other pertinent legal instruments.

Clause Seven. The Producer agrees to receive for planting, warehousing, or distribution of the 2004/2005 soybean crop, only those seeds and beans from those producers/suppliers that are certified or inspected by the Ministry of Agriculture, Livestock, and Food Supply.

Sole Paragraph. The Producer will maintain for a period of five years, for the purpose of inspection of the fulfillment of the current Declaration, the invoices or other purchasing documents for the seeds used in the planting of the 2004/2005 soybean crop.

PENALTIES FOR VIOLATIONS

Clause Eight. The Producer, if in violation of the present Declaration, will be subject to the payment of a fine levied by the Ministry of Agriculture, Livestock, and Food Supply, for the minimum value of R\$16,110.00 plus 10 percent per metric ton, or fraction of soybeans produced, limited to double the estimated value of the crop, not including fines levied from other civil actions, administrative or penal, foreseen in Law.

Clause Nine. The Producer will be held liable for losses and damages if responsible for the contamination of conventional soybeans with genetically modified organisms.

FINAL PROVISIONS

Clause Ten. The present Declaration does not preclude investigations of administrative violations not covered by this Declaration, or other civil and penal offenses that the Producer has committed in violation of the legislation in force, and not under the provisions of the Provisional Measure Number 131, of 2003.

Clause Eleven. This Declaration becomes effective at the time of the Producer's signature and will serve as an extrajudicial executive document in the form of Article Five, paragraph six, of Law Number 7,347, of July 24, 1985, Article Six of the Executive Order Number 2,181, of March 20, 1997, and Article 585, clause VI, of the Code of Civil Action.

The Producer agrees to sign two copies of this Declaration, both of which having the same force of Law.

Place/Date

Producer.

Attachment 3: Glossary of Terms and Abbreviations

ABIA - Brazilian Association of Food Industries, based in Sao Paulo.

ADIN - Direct Action of Unconstitutionality. A legal instrument used to challenge laws or regulations that are considered unconstitutional, in the Supreme Court.

ANVISA - Agency for Sanitary Surveillance, Ministry of Health.

ANBIO - Brazilian Association of Biotechnology, based in Rio de Janeiro.

CIB - Conselho de Informacoes de Biotecnologia (Biotechnology Information Council). Non-profit private organization formed by major multinational biotech companies, Brazilian Association of Seed Producers, Brazilian cooperatives, and the Rural Brazilian Society.

CTNBio - National Technical Commission on Biosafety, created by Law 8,974 of January 5, 1995 which provides the legal framework and sets the standards and means of production, importation, manipulation, transportation, marketing, and consumption of genetically modified organisms. Presidential Decree Number 1,752 of December 20, 1995 also provides the regulatory framework under which CTNBio operates. In addition, Provisional Measure 2,137 of December 28, 2000 added and altered some clauses of Law 8,974/95 to clearly define the role of CTNBIO, which is under the authority of the Ministry of Science and Technology.

DJ - Decisao Judicial. Sentence. Final Decision Rule.

Decreto - Executive Order (only issued by the President)

DO - Diario Oficial. Official Gazette (Brazil's equivalent of the United States Federal Register). Any law or regulation to become effective in Brazil must be published in the Diario Oficial.

EC - Emenda Constitucional (Constitutional Amendment).

EIA-RIMA - Environmental Impact Study and Report of the Impact on the Environment.

BIOTECH PRODUCTS - Genetically Modified Organisms

IDEC - Brazilian Consumer Protection Institute, based in Sao Paulo.

IP - Preservacao de Identidade (Identity Preservation)

Liminar - Injunction. Temporary Restraining Order. Writ.

MP - Medida Provisoria (Provisional Measure). It is an act by the President, under the powers and privileges granted to him by the Brazilian Constitution. It has the force of a law, until Congress reviews and gives final approval, and then, becomes a full law. The new Constitutional Amendment for the edition and dealing of Provisional Measures was set September 11, 2001. As the previous rule, Mps were issued and required congressional review within 30 days. If congress failed to review and approve it, the President could reissued the MPs indefinitely. With the new rules, Congress has 60 days to review the Mps. If Congress fails to review and approve, Mps can only be reissued for another 60-day period only. Also, the MP reissued for the second and last time becomes the first item in the Congress voting list, blocking any other plenary voting.

MPF - Ministerio Publico Federal - Public Prosecution Service. Independent federal body with the primary role of providing citizens with a secure means to fight in the courts when the law is violated, or there is abuse of authority.

MAPA - Ministry of Agriculture, Livestock, and Food Supply

MCT - Ministry of Science and Technology

MMA - Ministry of the Environment

MST - Movimento dos Trabalhadores Sem-Terra (Landless Workers Movement)

Parecer - Opinion. Judgment. View. Legal Opinion

PC - Parecer Conclusivo - Conclusive View.

Portaria - Directive (Administrative rule), issued by the Ministers

Procurador da Republica - Attorney General

Promotor - Prosecuting Attorney; Public Prosecutor

RET - Special Temporary Registration. RET is issued by the Ministry of Agriculture, Livestock, and Food Supply (MAPA) for agricultural chemicals (pesticides/herbicide), based on Decree Number 98,816/90. A company (Brazilian or foreign) that needs to register a pesticide or herbicide in Brazil files a request with the MAPA, which sends the request to the Ministry of Health (for their opinion on toxicity), and to the Ministry of Environment (for their opinion on environmental impact). The request, then returns to MAPA for final approval and issuance of the final registry number.

TFR - Federal Court of Appeals

TRF - Regional Federal Court

STF - Supreme Court

STJ - Supreme Court of Justice