

**European Communities – Measures Affecting the Approval and Marketing of  
Biotech Products  
(WT/DS/291, 292, and 293)**

**Motion to Submit Amicus Curiae Brief**

**June 1<sup>st</sup>, 2004**

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## Motion to Submit Amicus Curiae Brief

The Panel has authority to accept and consider *amicus* briefs under Article 13 of the WTO Dispute Settlement Understanding<sup>1</sup>, which ensures access to information and technical advice relevant to Panel deliberations. Article 13 permits the Panel to "seek information and technical advice from any individual or body which it deems appropriate," including sources other than the parties to the dispute, at its discretion.<sup>2</sup> It also empowers the Panel to "seek information from any relevant source and ... consult experts to obtain their opinion."<sup>3</sup>

The undersigned *Amici* request the Panel in *European Communities – Measures Affecting the Approval and Marketing of Biotech Products* to accept and consider the attached *amicus* brief as "information and technical advice" essential to the Panel's deliberations under Article 13 of the (DSU).<sup>4</sup>

### **1. Description of the Applicants:**

**The Center for International Environmental Law (CIEL)** is a public interest environmental law organization founded in 1989 in Washington DC, USA. Our mission is to protect the global environment and human health while promoting sustainable development. Our work is designed to promote a just and sustainable society that is based on principles of ecology and justice, that respects local communities, and that lives within the limits of the global ecosystem. CIEL seeks to bring its comprehensive knowledge of international law, institutions and processes to bear on issues important to human health and the environment. CIEL's income comes from grants from foundations.

**Friends of the Earth – United States** is the U.S. voice of an influential, international network of grassroots groups in 70 countries. Founded in San Francisco in 1969 by David Brower, Friends of the Earth has for decades been at the forefront of high-profile efforts to create a more healthy, just world. Our members were the founders of what is now the world's largest federation of democratically elected environmental groups, Friends of the Earth International.

**Defenders of Wildlife** is a non-profit charitable organization dedicated to the protection of all wild animals and plants in their natural communities. Founded in 1947, Defenders of Wildlife has worked for more than fifty years to develop innovative, practical solutions to reduce the rate of species extinctions and the associated loss of biological diversity. Our programs encourage protection of entire ecosystems and interconnected habitats while protecting keystone species that serve as indicators of ecosystem health. Defenders

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<sup>1</sup> Understanding on Rules and Procedures Governing the Settlement of Disputes, April 15, 1994, Marrakech Agreement establishing the World Trade Organization, Annex 2 (1994).

<sup>2</sup> *Id.* at art. 13(1).

<sup>3</sup> *Id.* at art. 13(2).

<sup>4</sup> *Id.* at art. 13(1).

has participated actively for more than a decade in discussions regarding the relationship between international trade and the conservation of biological diversity.

**The Institute for Agriculture and Trade Policy (IATP)** promotes resilient family farms, rural communities and ecosystems around the world through research and education, science and technology, and advocacy. IATP is working to respond to America's rural economic crisis by promoting fair trade, alternative economic models, and healthy food systems.

**The Organic Consumer Association (OCA)** was formed in 1998. OCA is a nationwide network of 500,000 organic consumers dedicated to phasing out industrial agriculture and GMO farming practices and making organic and sustainable agriculture the dominant paradigm for farming, both in the US and globally. OCA considers GMOs crops to be a major hazard for human health, the environment, and the survival of family farms and rural communities worldwide. Our website, with 10,000-20,000 visitors everyday, is one of the most popular and comprehensive websites in the world on GMOs and related industrial agriculture practices.

**2. The Applicants' individual and common interests in this case include:**

a) protecting human health, the environment and sustainable livelihoods from the risks associated with genetically modified crops and products; b) facilitating the development of laws to ensure an appropriate balance between environmental protection, human rights, social equity, and economic growth; c) contributing with the interpretation of international trade law that is consistent with international standards of sustainable development; and d) promoting transparency, ensuring public participation and the representation of public interests in policymaking on international trade and sustainable development.

**3. With this amicus brief the applicants intend to address the following specific issues:**

1) the uncertainty that GMOs and their use entails: (a) uncertainty regarding the effects of genetic modification on the host organism; and (b) uncertainty stemming from scientists' inability to predict the effects of GMOs on animal, plant and human health associated with particular GMOs; 2) the critical role of uncertainty in determining when there is insufficient scientific evidence under the Article 5.7 of the WTO Agreement on the Application on Sanitary and Phytosanitary Measures (SPS Agreement);<sup>5</sup> and 3) the importance of uncertainty in determining the application of the precautionary principle in relevant international law.

**4. The amicus brief offers expert technical information under Article 13, including significant additional technical, scientific and legal information critical to the Panel's deliberations.**

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<sup>5</sup> Agreement on the Application on Sanitary and Phytosanitary Measures, April 15, 1994, Marrakech Agreement establishing the World Trade Organization, Annex 1 A (1994).

The *amicus* brief offers significant additional technical, scientific and legal information critical to the Panel's deliberations. It describes how current scientific information still entails substantial uncertainty regarding the impacts of genetically modified organism on human, animal and plant health. The *amicus* brief also provides analysis and expertise to assist the Panel in the interpretation of the role of uncertainty in establishing the scope of precaution in the SPS Agreement. Particularly, it examines uncertainty in light of the object and purpose of the SPS Agreement, as well in the light of relevant rules of international law. Thus, the *amicus* brief considers the broader implications of the dispute for development, health, and the environment. This analysis is offered by a coalition of non-profit, public-interest organizations with expertise in international environmental and trade law.

**5. The amicus contribution will not be repetitive of party or third party submissions.**

NGO submissions generally bring forth ideas and information unavailable from normal bureaucratic channels. Our contribution, in particular, reflects views that differ from those brought by governments involved in this case and brings new legal and scientific information provided by experts in the NGO community. Moreover, the present *amicus* brief reflects the specific concerns of organizations with established experience in the field of trade and environment.

**6. The applicants are independent of parties and third parties to this dispute.**

The applicants have no relationship, direct or indirect, with any party or any third party to this dispute. The applicants have not and will not receive any assistance, financial or otherwise, from a party or a third party to this dispute in the preparation of its Application for Leave or its written brief.

The *amicus* brief is a constructive contribution to the Panel's efforts to resolve the *European Communities – Measures Affecting the Approval and Marketing of Biotech Products* dispute, and CIEL, Friends of the Earth, Defenders of Wildlife, IATP and OCA urge the Panel to accept and consider it.

Respectfully submitted,

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María Julia Oliva, Staff Attorney, CIEL, June 1<sup>st</sup>, 2004

On behalf of Friends of the Earth – United States, Defenders of Wildlife, the Institute for Agriculture and Trade Policy, and the Organic Consumers Association.