

## Briefing Note

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### WTO dispute over Genetically Modified Organisms: Canada, Argentina, US vs European Union



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Canada has ended its dispute with the EU at the WTO (July 2009). Canadian and European government officials have agreed to meet twice a year to proactively discuss issues related to genetically modified (GM) foods, and trade in agricultural products. Argentina and the US continue their dispute with the EU.

#### 1. Current Rejection of GMOs in Europe:

European Union Member States are clashing with the European Commission over the approval of GMOs. The European Commission has approved 21 new GM crops since the WTO dispute was filed by the US, Argentina and Canada in 2003, while European countries continue to ban some GM crops. According to Monsanto, as of March of 2009, the European Commission had actually approved the last of the GM seeds used in Canada. Yet six European Union member states have banned the cultivation of Monsanto's GM corn MON810:

- Austria, Hungary, France, Greece, Luxembourg and Germany have invoked the safeguard clause and have banned the cultivation of MON810 maize.
- In March 2009, 22 member states rejected the European Commission's request to abolish existing bans on MON810 in Austria and Hungary.
- In an unprecedented move in May 2009, 18 ministers from 12 EU countries sent the European Food Safety Authority (EFSA) a letter explaining scientific concerns linked to the unintended effects of MON810 on insects species.
- In December 2008, EU environment ministers unanimously called for a review of the authorisation process for GM crops and substantial improvement in the way EFSA assesses the impact of GM crops on the environment and health.
- EFSA itself acknowledges that it is currently not in a position to assess the long-term environmental effects of GM crops, as required by EU law. The Commission has given EFSA until April 2010 to improve its capacity to assess long-term impacts.

#### 2. The Complaint to the WTO - 2003:

On May 13, 2003, Canada filed a complaint, in tandem with complaints filed by Australia and the US, to the World Trade Organization (WTO) Dispute Settlement Body regarding European Commission delays in approving GMOs. (Egypt initially also joined the dispute but pulled its challenge soon after, citing "*the need to preserve adequate and effective consumer and environmental protection.*")

In their disputes, Canada, US and Argentina alleged that the EU had put in place a

*de facto* moratorium on GM approvals and that they had:

- Refused to give the approval to a number of new GM foods,
- Stopped processing applications for new GMOs,
- Not taken action to stop EU member states banning GM products.

The European Community denied the existence of a *de facto* moratorium. The EU complained that Canada, US and Australia did not like the EU authorization regime because it was too stringent (see below note).

The dispute was viewed by civil society organizations around the world as a tactic to pressure Europe as well as threaten governments in the Global South. President Bush added that the EU's moratorium was impeding efforts to feed the world, stating that "*European governments should join - not hinder -- the great cause of ending hunger in Africa.*"

### **3. The WTO ruling - 2006:**

The 1,050 page document, the largest ever to come out of a WTO dispute panel, concluded that the EU moratorium on GM products, effective between October 1999 and August 2003, was illegal.

In 2006 the WTO Dispute Settlement Body (DSB) adopted three panel reports which found that Europe had violated the WTO Sanitary and Phytosanitary (SPS) Agreement on three grounds:

- 1) The application of a general *de facto* moratorium on approval of GM products from June 1999 to August 2003.
- 2) The existence of undue delays with respect to 23 product-specific applications (out of the 27 cases considered by the Panel).
- 3) National safeguard measures introduced by 6 Member States before the establishment of the panel, which were found not to be based on an appropriate risk assessment.

In December 2006, the European Communities announced its intention to implement the recommendations and rulings. However, due to the complexity and sensitivity of the issues involved, the European Communities asked for a reasonable period of time for implementation. Canada granted a period of time for implementation that was extended 4 times, with the last time period expiring on March 1 2009.

### **4. Canada Ends Dispute - 2009:**

Canada has ended its dispute with the EU, and Canadian and European government officials have agreed to meet twice a year to proactively discuss issues related to GM and trade in agricultural products. Argentina and the US continue their dispute with the EU.

The settlement reached with Canada (announced on July 15, 2009) provides for bi-annual meetings on GM issues including:

- GM product approvals and forthcoming applications.
- The commercial and economic outlook for future approvals of GM products.

- Trade impacts related to asynchronous approvals (e.g. approvals in Canada before approval in the EU) of GM products or the accidental release of unauthorized products, and any appropriate measures in this respect.
- Any biotech-related measures that may affect trade between Canada and the EU, including measures of EU Member States.
- Any new legislation on GMOs.
- Best practices in the implementation of legislation on GMOs.

The EU is not expected to modify its current regulatory regime on biotech products, which was never subject to WTO challenge in itself.

**Canada and the EU are negotiating a free trade agreement** and needed to resolve the GMO dispute in order to meet the GATT Article XXIV requirements relating to free trade agreements.

**Note: European Union Analysis: from “Europe’s rules on GMOs and the WTO” 07/02/2006**

The US appears not to like the EU authorisation regime, which it considers to be too stringent, simply because it takes longer to approve a GMO in Europe than in the US. The US appears to believe that GMOs that are considered to be safe in the US should be de facto deemed to be safe for the rest of the world. The EU has argued that a sovereign body like the EU and its Member States, or indeed any country in the world, has the right to enact its own regulations on the food that its citizens would eat, providing that the measures are compatible with existing international rules and based on clear scientific evidence.

The US also opposes GMO traceability rules because it considers that they constitute an obstacle to US commodity exports, despite the fact that US traders can in fact meet those requirements without difficulties.

The US is also adamantly opposed to labelling rules for food products produced from GMOs, even though these rules are designed to help ensure that customers are well-informed about what they are buying.

US soybean and soy meal exports have steadily declined over the last ten years because of a decline of competitiveness of US agriculture on the global market. The trends in EU maize imports further confirm that US farmers are no longer low-cost producers and are less and less able to compete with emerging countries such as Brazil or Argentina on global commodity markets. EU trade data show clearly that EU rules on GM are not affecting the imports of more competitive GMO exporters.

**References:**

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