



WTO Ruling Disregards Political Precautionary Principle: Favors *Science-Based* ‘Approach’ to EU Biotech Rules

Princeton, NJ – December 8, 2006 – In a LEGAL BACKGROUNDER released today by the Washington Legal Foundation (WLF), entitled, ***WTO Ruling on Biotech Foods Addresses “Precautionary Principle”***, international business and trade expert Lawrence Kogan of the non-profit *Institute for Trade, Standards and Sustainable Development, Inc.* (ITSSD), argues that a recent World Trade Organization (WTO) ruling represents a blow to the proponents of the “Precautionary Principle” in Europe and a victory for ‘best available science’ in the regulatory process. The Precautionary Principle eschews science-based ‘risk’ assessments and an evaluation of the economic benefits and costs of regulation. Instead, it favors the enactment of overly strict and burdensome environmental, health, and safety rules based on unfounded activist fears of hypothetical hazards, for the purpose of eliminating every possible future risk from economic conduct.

The WTO issued its ruling on the complaint by the United States, Argentina, and Canada, on September 29, and much to the chagrin of environmental groups, EC accepted it as final, on November 22. As Mr. Kogan relates, the WTO panel found that European Union restrictions on approval of genetically-enhanced seeds and food products violated provisions of the WTO Sanitary and Phytosanitary Agreement. The EU’s anti-biotech policies, the panel found, were based more on political considerations than scientific evidence.

The ruling is significant, according to Mr. Kogan, “because it clarifies the central role of science in evaluating the presence of health and environmental risks prior to the adoption of national food safety regulations not otherwise based on relevant international standards.” The Europeans attempted to argue that WTO law and international law norms allowed them to apply a “better-safe-than-sorry” Precautionary Principle when restricting biotech food approvals. The WTO panel made very clear, the paper relates, that such a principle cannot be used, especially when scientific evidence is available on which to base a risk assessment. The panel also refused to embrace Europe’s argument that the Precautionary Principle rises to the level of customary international law.

While this ruling is a positive development for best available science in the international regulatory process, Mr. Kogan believes that the drive to codify a Precautionary Principle will continue. He cites to public statements by EU regulators and NGO efforts at the United Nations as examples of ongoing efforts to advance risk-free thought into international law. In fact, according to Mr. Kogan,



“perhaps there are now sufficient legal grounds to commence another WTO action against the EC’s unscientific and unnecessarily burdensome precautionary principle-based biotech regulatory regime.”

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