http://books.google.com/books?id=sVTcAAAAQBAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q=lawrence%20kogan&f=false

# The GMO Panel: Applications of WTO Law to Trade in Agricultural Biotech Products

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# THE COMMON AGRICULTURAL POLICY - SK

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Book Abstract

The Common Agricultural Policy (CAP) is a unique agricultural policy worldwide. For many years, its status as the only common European Community (EC) policy governed by EC institutions put it at the heart of European integration. Today the CAP is not the only common European Union (EU) policy. Even while it remains the sole instance of a regionally integrated agricultural policy, the CAP no longer embodies the same degree of cross-national harmonization of agricultural policy among EC/EU member states that it once did.

The CAP has undergone policy reforms in the past two decades and these reforms have spawned a host of questions. What has caused the CAP to reform? How path-breaking are CAP reforms? Are they consistent with founding CAP goals or do they encompass new ideas about agriculture's place in the economy and society? And what are the consequences of agricultural policy reforms: for European farmers, consumers and taxpayers; for European 'public goods' such as environmental sustainability and preservation of rural communities and landscapes; and for third parties outside the EU, including the WTO?

This book was published as a special issue of the Journal of European Integration.

Article Abstract:

One of the most important, and certainly the hardest fought, of World Trade Organization (WTO) dispute settlement cases was 'EC measures affecting the approval and marketing of biotech products'. Released in September 2006 after a legal process of more than three years,

the 'GMO Panel' arguably found against aspects of the EC's legal regime for trading and marketing of genetically modified organisms (GMO) products. This paper examines the implications of three legal questions that flow from the GMO case, and concludes by looking at the political situation the case presents for the EC and the complainants, namely, Argentina, Canada and the USA. First, the paper explains why the Panel relied on the Sanitary and Phytosanitary Agreement as opposed to other WTO agreements that might have been more favourable to the EC. Secondly, the limited role of the Precautionary Principle in the Panel's analysis is examined. Thirdly, the paper explores the Panel's view of the meaning and importance of scientific risk assessment in trade policy actions on GMOs. Finally, the paper reviews the political alternatives that face the EC, the complainants and the WTO if compliance with the Panel's recommendation is not achieved.

**Introduction**

The past two decades have witnessed a growing conflict between Europe and the Americas over the development and commercializing of agricultural products. Beginning with the controversy over North American use of growth hormones in beef, the conflict quickly spread to the rapidly growing field of agricultural biotechnology, or the production of genetically modified organisms – GMO products. In this conflict, the USA led its hemispheric partners in a liberal and welcoming approach to the use of recombinant DNA technology in agricultural production, while the reception in Europe to this technology was much more guarded and restrictive. Without trade, there would have been less conflict over these different approaches. But with trade and, more importantly, with the trade regime established by the World Trade Organization (WTO) agreements in 1995, the differences between Europe and the Americas over agricultural biotechnology created a conflict of systemic proportions in the international trade regime.

It was almost inevitable that this conflict would be played out in the dispute settlement machinery of the WTO…
(pp. 138-139)

…**Conclusion**

The legal action of the WTO GMO Panel is now completed, but the broader political conflict that has been underway since the GATT/WTO Beef Hormones case will continue. Implementation of WTO cases is often not a straightforward matter and, for the EC, a difficult two-fronted negotiation between the complainant countries on the one hand, and certain EU member states on the other.

Under formal WTO procedures, the EC is obliged to bring the trade measures identified in the GMO case into compliance with the WTO SPS agreement, and it is given a period of time to do this. If there is a dispute over the whether the actions taken to comply have actually achieved that outcome, a Panel will be struck (preferably the original Panel) to decide the dispute, following which the complainants can be authorized to undertake retaliatory measures if compliance has not been achieved. Experience has shown (e.g., the EC Bananas case) that the compliance process can become legally unclear where the issues are important and the parties' interests differ sharply.

The EC Measures that must be brought into compliance in the GMO case include the moratorium and product specific measures (which were already in compliance by the time of the Panel's Report) and the member states' safeguard measures. Regarding the safeguard measures, compliance for the EC obliges the member states either to drop their bans on the products previously approved at the EC level, or to conduct a scientific risk assessment consistent with SPS Article 5.1 on which they could base their restrictions. Of these two possible actions, the first involves a publicly visible *volte face* for the member states, while the second entails a defeat on the issue of whether a scientific assessment mandated by an international organization can trump the precautionary action of a sovereign government responding to strongly held public opinion. This question is politically problematic in the EC and could become a broader issue of member states' rights against the EC.

The EC agreed with the complainant countries – following protracted negotiations – to set a date of 21 November, 2007, for compliance with the Panel's GMO Report. Of the six EC member states that maintained safeguard measures, four had either come into compliance (such as Italy) or maintained bans on GMO products that were withdrawn by their producers and not marketed in the EU. **However Austria** and **Greece maintained a ban on a corn product that was currently traded**: MON 810 maize produced by the US company Monsanto. Austria also maintained a ban on T25 maize made by the German company Bayer. In June, 2007, the Greek government announced it was extending its ban on MON 810 maize for an additional two years. **Meanwhile, Hungary, not involved in the GMO case, also banned MON 810, and was reported to be preparing 'to adopt the strongest, most vociferous anti-GMO legislation in all of Europe'.23**
(pp. 152-153)

…**Notes**

**23. Interview with Lawrence Kogan "Precautionary principle will 'run in place' in 2007, trade expert predicts", *Pesticide.Net* 4:2, 30 January, 2007.**