

The Regulation of Genetically Modified Organisms: Comparative Approaches

Edited By

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Oxford University Press (© 2010)

PART IV INTERNATIONAL IMPLICATIONS

The EC—Biotech Decision: Another Missed Opportunity?

By Joseph McMahon

(pp. 337-354)

“...An *amicus curiae* brief submitted by five individuals challenged the Panel in *EC-Biotech* to update the existing jurisprudence on risk assessment to reflect current scholarship in both the sciences and social sciences on risk and regulation. The authors suggest that it is no longer possible to separate risk assessment from risk management, this being especially so since the new Codex principles for risk analysis envisage interaction between risk assessors and risk managers, thus anticipating a role for value judgments in risk assessment. Given that such value judgments are dependent on political and cultural contexts, for example, in relation to the role of the consumer/public, it is possible for different WTO members to come to different conclusions on risk assessment. What is now being suggested is that there be a transparent risk assessment that affords opportunities for all interested parties to participate in an ‘interactive’ and ‘responsive consultation process’ where their views are ‘sought’ by the regulators.

(p.353)

The conclusion offered by this *amicus curiae* brief is that ‘[a]n overly rigid conception of proper risk assessment and regulation in this area could...undermine the legitimacy of the SPS Agreement and the WTO more generally’. A further *amicus curiae* brief concluded:

[U]ncertainty is a given in any scientific inquiry, which can only establish the boundaries of existing knowledge, and this will not always trigger the need for precautionary action. However, when the available information cannot appropriately describe the risks to human, animal, or plant life or health because of the lack of understanding of events and processes, policy-makers cannot ignore the lack of quality of the scientific evidence.⁷²

(p.354)

72 *Amicus curiae* brief submitted by Center for International Environmental Law, Friends of the Earth (US), Defenders of Wildlife, Institute for Agriculture and Trade Policy, and Organic Consumers Association (US) (available at <<http://www.trade-environment.org/page/theme/tewto/biotechcase.htm>>, para 37, last accessed 1 May 2005). See also L Kogan, ‘The precautionary principle and WTO law: divergent views towards the role of science in assessing and managing risks’ (2004) 5 *Seton Hall Journal of Diplomacy and International Relations* 75.