



## ***WTO Biotech Ruling Validates Long-Term U.S. Strategy of Avoiding UN Treaties***

*Reaffirms Empirical Science as Definitive Benchmark for Regulation Purposes*

**Princeton, NJ** – March 21, 2007 – In a new *Global Trade and Customs Journal* article, international trade and regulatory lawyer Lawrence Kogan details how last year’s WTO *EC Biotech Products* decision reaffirmed the use of best available scientific evidence generated from an ‘adequate *risk* assessment’ as *the* definitive legal benchmark for national/regional biotech safety regulations not otherwise based on relevant international standards.

“The WTO Panel ruled against the European Community and its member states”, according to Mr. Kogan, “because they relied primarily on *political* considerations premised on the *hazard*-oriented *extra*-WTO Precautionary Principle as the basis for adopting their trade-restrictive biosafety measures. Since these governments failed to employ a scientific *risk*-based Precautionary Approach to address their health and environmental concerns, the measures were deemed inconsistent with the WTO Sanitary and Phytosanitary (SPS) Agreement.”

“Furthermore”, Kogan explained, “this decision reaffirmed that WTO rules prevail over conflicting multilateral environmental treaty rules, especially if some WTO members are not also parties to such treaties”. The Panel found that since Argentina, Canada and the U.S. were not, as were EC Member States, also parties to the UN Convention on Biological Diversity and/or the UN Cartagena Protocol on Biosafety, they could *not* be bound by Europe’s unilateral interpretation of those agreements”, i.e., as requiring application of the *extra*-WTO Precautionary Principle where the Biosafety Protocol text in dispute plainly refers to the use of a *Precautionary Approach*”.

Most significantly, the Panel refused to discuss questionable academic theories about subsequent treaty practice, customary international law, and thus, the legal status of the *extra*-WTO Precautionary Principle. Kogan emphasized that, “Its silence on these matters should send a clear message to the 110<sup>th</sup> U.S. Congress and the world: Europe will go to any length to enlist environmental treaty partners and then later, without their consent, reinterpret agreed upon treaty terms against their economic interests.”

In Mr. Kogan’s opinion, therefore, “this decision validates the prudent long-term U.S. strategy of avoiding UN environmental treaty regimes championed by European nations that aim to redefine WTO law via the Precautionary Principle”.

*The Institute for Trade, Standards and Sustainable Development (ITSSD) is a non-partisan non-profit international legal research and educational organization that examines international law relating to trade, industry and **positive** sustainable development around the world. This ITSSD study is accessible online at: ([http://www.itssd.org/Publications/GTCJ\\_04-offprints\\_Kogan\[2\].pdf](http://www.itssd.org/Publications/GTCJ_04-offprints_Kogan[2].pdf)).*