

Trade and Investment Implications of Implementing the Cartagena Protocol (Chap. 25, pp. 471-501)

By Marie-Claire Cordonier Segger and Markus Gehring

In: Legal Aspects of Implementing the Cartagena Protocol on Biosafety

EDITORS:

Marie-Claire Cordonier Segger, Centre for International Sustainable Development, McGill University; Frederic Perron-Welch; Christine Frison, Centre for International Sustainable Development, McGill University

Cambridge University Press (© 2013)

Introduction

A complex matrix of international rules has emerged to guide policies for a greener economy, including measures to encourage the sustainable development of genetic resources and biotechnologies. It is hoped that these policies support the development of more sustainable practices and technologies for global agriculture, forestry, health, and other systems. Much remains to be done, however. Both developed and developing countries are considering new regulatory measures to promote biosafety, as part of a broader commitment to adopt new laws promoting more sustainable development.

Evolving international economic regimes are an important piece of this puzzle. To date, multilateral efforts to liberalise trade and investment and to promote the sustainable use of biotechnologies have proceeded largely along separate tracks. One system is defined by the treaties establishing the World Trade Organization (WTO) and its annexes, along with over 3,000 regional and bilateral trade and investment treaties. The other is shaped by the *Convention on Biological Diversity (CBD)*, *Cartagena Protocol on Biosafety*, *Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress*, and several related international arrangements. Although both systems of international rules may share a common sustainable development objective, the relationship between the two is complex. **As many have noted, these regimes are likely to come into closer contact as trade measures to secure biosafety lead to economic effects.** International trade and investment treaty rules also could affect the viability and effectiveness of new regulations to secure sustainable development of biotechnologies. Just as trade and investment rules can and should shape biosafety policy, biosafety rules can and do shape trade and investment policy. Although biosafety laws and policies might restrict or

constrain certain kinds of economic development, they also can provide incentives for new kinds of development. Indeed, certain biotechnology measures are already being characterised as trade and investment rules themselves.

...Implications of the EC-Biotech Dispute in the WTO

The WTO's DSB faced a daunting and politically charged trade and biosafety law problem in the *EC-Biotech Case*: the fate of the EC's regulation of GMOs under WTO law. The various versions of the final judgments speak volumes to the complexity inherent in both the legal and scientific issues underlying the dispute.⁴⁶

...The *EC-Biotech Case* took place in the context of a decades-long debate over the risks associated with the commercial use of GMOs, including LMOs. North American and European perceptions have differed greatly on this matter. Although North American WTO Members have permitted, indeed perhaps encouraged, the integration of GMOs for commercial use in the mid-1990s, European WTO Members have remained, on the whole, profoundly suspicious of the potential of these products to be safely integrated into agricultural systems and consumer markets.⁴⁷ In the summer of 1998, responding to growing public concern over the safety of GMOs, the EC implemented a moratorium on all GMO products pending legislation aimed at their commercial regulation.⁴⁸ Subsequently, **the EC implemented a robust premarket approval regime.**⁴⁹ Aimed at protecting human health and the environment,⁵⁰ **in practice the approval process resulted in indefinite if not undue delay.**⁵¹

(p. 479)

51 Lawrence A Kogan, "World Trade Organization Biotech Decision Clarifies Central of Science in Evaluating Health and Environmental Risks for Regulation Purposes" Global Trade and Customs Journal, 2(3) (London: Kluwer Law International 2007) at 149, available: http://www.itssd.org/Publications/GTCJ_04-offprints_Kogan%B2%5D.pdf.

...Bibliography

Kogan, Lawrence A., "World Trade Organization Biotech Decision Clarifies Central of Science in Evaluating Health and Environmental Risks for Regulation Purposes" (2007) 2:3 Global Trade and Customs Journal 149, online:http://www.itssd.org/Publications/GTCJ_04-offprints_Kogan%B2%5D.pdf