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News

Agriculture

WTO Panel Issues Final Ruling in U.S. Case Against EU's Restrictions on GMO Approvals

GENEVA--A World Trade Organization dispute panel issued a final ruling late May 10 that largely maintains its earlier findings in a complaint filed by the United States, Argentina, and Canada against the European Union's procedures for the market approval of biotech products.

Officials following the dispute said the panel's ruling, distributed to the parties on a confidential basis, reaffirms many of the key findings of its interim report circulated on Feb. 7 (26 ITD, 02/8/06) .

In specific, the panel maintained its preliminary finding that, from June 1999 to August 2003, the EU maintained an effective de facto moratorium on approvals of GM foods, despite EU protests to the contrary. As a result, Brussels failed to ensure that GM approvals were processed without "undue delay," as required by the WTO's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement).

End of Moratorium?

But in one change from its interim report, the panel stepped back from its finding that the general moratorium in question had come to an end because the EU had granted market authorization to one of the GMO products in question. The panel also said at the time that it was not in a position to say whether an amended de facto EU moratorium existed or whether a new moratorium had been imposed.

Following a challenge in the interim review stage from the complaining parties, the panel now says that it is no longer able to determine whether the original moratorium had indeed come to an end with the GMO approval, according to officials familiar with the ruling.

As a result, whereas the panel declined in its preliminary report to make a recommendation on how the EU should bring its measures in line with the WTO ruling, the panel now says that the EU should bring its measures in line with its SPS obligations if and to the extent that moratorium has not already ceased to exist.

The change in the interim report is unusual. In the large majority of WTO disputes to date, WTO panels have maintained their preliminary findings and recommendations in the final ruling.

EU States' Import Bans Violate WTO

The panel maintained preliminary finding that marketing or import bans on GMO products in six EU member states--France, Germany, Austria, Italy, Luxembourg and Greece--are in violation of WTO rules. The products in question were banned by the six member states even though they had been previously cleared for sale by the EU's scientific panel.

Also in line with its earlier preliminary ruling, the panel rejected claims from the three complainants that the EU's assessment procedures were not appropriate in relation to the actual risk posed by GM products, that there was insufficient scientific evidence to justify its assessment procedures, and that the EU failed to apply its procedures in a consistent manner by subjecting biotech products and products produced using biotech processing aids to different approval requirements.

Unusual Letter Accompanies Ruling

In another unusual move, the ruling was accompanied by a letter from the panel to the parties in the dispute raising issues with some of the public statements made by the parties regarding the panel's findings in the interim report. The panel expressed concerns that some of the statements made by the

parties could have been misconstrued, officials said. The ruling is due to be circulated to all parties and made public by the end of September.

In Washington, D.C., U.S. Trade Representative Rob Portman told reporters May 11 that the WTO ruling was "a clear victory for science," and he said it requires the EU to immediately start approving GMO applications that have been stalled, he said, for months or even years in some cases.

"[It] has no choice but to begin approving these applications," Portman said. "They have an obligation to move these applications now. It's very, very clear."

Portman said that a few applications have been cleared. "But the point is," he said, "while there may not be an EU-wide moratorium anymore, if you can't get your application approved...as an exporter, it's an effective block or moratorium."

EU Will Not Change Policy

The implications of the panel's ruling on current EU practices, which are in flux, are unclear. The EU said the dispute concerns outdated biotech assessment procedures that have already been revised since the initiation of the panel complaint.

In Brussels, a European Commission spokesman said May 11 that the European Union will not change its policy because of the WTO ruling.

"Europe will continue to set its own rules on the import and sale of GMO foods" Commission trade spokesman Peter Power told a news conference.

"The U.S. and other complainants did not challenge the EU's regulatory framework on GMO's, which is rooted in science-based risk assessment. Nothing in this panel report will compel us to change that framework," he added.

The Commission claimed that the ruling is limited in scope and mostly concerned past practices. The existing rules came into force after the complaint was filed by the United States, Canada and Argentina in 2003.

"It is self-evidently not the case, as the United States sometimes claims, that the European Union operates a moratorium on the approval of GMO foods. It has approved nine products since last May," Power said.

"The approval process and consumer safety standards of the EU may be more stringent than in the U.S., but GMO imports are rising, especially from competitive exporters such as Brazil and Chile," he continued.

In addition to granting approval to nine GM foods in the authorization pipeline over the past year, the European Commission has initiated legal proceedings against members for their refusal to lift bans that have been condemned by the WTO panel. In January the Commission ordered Greece to lift its national ban on seeds derived from modified corn maize produced by Monsanto to resist the corn borer pest.

On the other hand, the European Commission agreed May 8 to allow Poland to restrict the use of 16 varieties of GM corn seeds, the first time it has approved a national ban (90 WTO, 05/10/06) . The Commission said the ban was justified on the grounds that the seeds in question were not suitable for growing in Poland.

The Commission has also recently proposed changes to the EU's current GMO regulatory framework which could make it more difficult to secure market authorizations. One of the changes would give the Commission the right to block a GMO if it believed that certain scientific uncertainties were not adequately addressed by the European Food Safety Agency (EFSA), the EU body responsible for overseeing the impact assessments on GMOs.

The Commission has also proposed that EFSA provide more detailed justification, in its opinions on individual applications, for not accepting scientific objections raised by the national authorities.

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