



GM Food Fight

EU Wins the latest round

On July 22, the European Council of Ministers formally approved legislation designed to end its five-year moratorium on genetically modified organisms (GMO), proposing to replace it with a comprehensive mandatory labelling and traceability regime. By doing indirectly what they had come to accept they could no longer do directly, the Europeans have won another round in the great GMO food fight.

Trade rules require a science base to support an import ban. The EU Commission had performed an exhaustive, six-year study of the safety of gene-spliced foods and its scientists concluded that they're actually safer and more environmentally friendly than traditional crops. The Europeans had come to accept that their moratorium was not legally sustainable. Three years ago, the EU Environment Commissioner admitted that the moratorium is "illegal and not justified." Legal or not, the ban is politically popular in Europe and so the EU had continued to extend it.

The struggle heated up over the winter as the Americans and Canadians continued to push for an end to the moratorium which was costing American and Canadian farmers hundreds of millions of dollars in lost corn, canola and soy exports. The food fight became a trade war when the U.S., Canada and Argentina launched an action before the World Trade Organization (WTO) on May 13. President Bush's rhetoric became strident, accusing the Europeans of perpetuating starvation in famine-ravaged Africa by threatening to reject future exports of Zambia corn to the EU if they accepted GMO food aid from the U.S.

Prime Minister Chrétien scored some points when he took a strong stand at the Canada-EU summit where he made the issue central to the talks. Both Bush and Chrétien kept hitting on the issue at the G8 summit.

What was all this punching about? Chrétien said: "Canada wants the EU to end the moratorium in the form of labels for GMO products." The U.S. Trade Representative Robert Zoellick said, "... all we ask is for the consumers to have the right to make their own decisions."

This is where the sucker punch comes in. "If labelling is what you want, we'll give you labelling", says the EU, knowing full well that the expanded labelling and traceability regime will have the same effect as the ban. They know that Canada and the U.S. cannot practically comply with the

complex traceability requirements. They also know that European consumers won't buy products labeled as containing GMOs, supermarkets won't stock them, and food manufacturers will re-formulate to avoid biotech derived ingredients altogether before they will ever label food as containing GMOs. (This is roughly what would happen in Canada and U.S., as well, if labelling is ever made mandatory).

So this latest round ends, with the EU still standing and Canada and the U.S. still frustrated, swinging in the air.

Are the U.S. and Canada going to throw in the towel? Apparently not, for at least three reasons: First, because they are worried about the contagion effect, i.e. if the EU isn't challenged, the Zambian situation could spread to the big food markets in Asia, Latin America and the Middle East and these countries could use the EU regulatory framework as the basis for their regulations. Second, the U.S. and Canada may want to continue the action as a way to keep pressure on the EU to convince member states to follow the EU directive. Third, while our case is not nearly so strong as has been assumed by many North American commentators, we could win.

Of course, winning isn't really winning. The U.S. and Canada won the beef hormone case three times before the WTO, but we are still not selling any more meat than we are selling canola—the EU chose to accept retaliatory action rather than import North American beef. We can expect a similar response in this case.

But U.S. and Canadian industry, media and the trade law community are adamant that their governments continue with the WTO challenge. My partner, trade law specialist Rick Dearden, agrees: "If the effect of the new measures is no different from the moratorium, then they must be taken before the WTO for what they are—a disguised barrier to trade. They cannot be left unchallenged."

So the fight will continue. The EU will hunker down and play out the clock for endless rounds. Like the beef hormone case, the fight will drag on for years. Politics and protectionism can out punch trade rules and science for a long time—a strategy well known to the U.S.

Ronald L. Doering, B.A., LL.B., M.A., LL.D., was the president of the Canadian Food Inspection Agency and now practices food law in the Ottawa offices of Gowling Lafleur Henderson LLP. He can be reached at: ronald.doering@gowlings.com