



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

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Reaffirms Empirical Science as Definitive Benchmark for Regulation Purposes

PRINCETON, N.J., March 21 /-USNewswire/ -- In a new Global Trade and Customs Journal article, international trade and regulatory lawyer Lawrence Kogan details how the recent 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 evaluating national/regional biotech safety regulations not otherwise based on relevant international standards.

"The WTO Panel ruled against the European Community (EC) and its Member States, because they relied primarily on hazard-based political considerations premised on the extra-WTO Precautionary Principle as justification for their trade-restrictive biosafety measures", said Kogan. "Governments that fail to employ a scientific risk-based Precautionary Approach to address their health and environmental concerns cannot expect for their measures to satisfy the requirements of the WTO Sanitary and Phytosanitary (SPS) Agreement."

"Furthermore", Kogan explained, "this decision confirmed that international trade rules will prevail over conflicting multilateral environmental treaty rules when the WTO disputants are not also parties to such treaties". The Panel found that since Argentina, Canada and the U.S. were not also parties to the UN Convention on Biological Diversity and/or the UN Cartagena Protocol on Biosafety, they could not be bound by the EC's and its Member States' interpretation of those agreements. "Apparently, Europe had unilaterally tried to read the extra-WTO Precautionary Principle into the Biosafety Protocol, although that instrument's text expressly refers to 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 110th U.S. Congress and the developing world: Europe will go to any length to enlist environmental treaty partners and then subsequently, without their consent, reinterpret agreed upon treaty terms against their economic interests."

Consequently, Kogan believes that "this decision validates the time-proven U.S. strategy of remaining outside UN environmental treaty regimes through which European nations have endeavored to employ the Precautionary Principle to redefine WTO law".

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Contact: Lawrence Kogan of the Institute for Trade, Standards and Sustainable Development, +1-609-951-2222, info@itssd.org .