RIS
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Asian Biotechnology and Development Review
Vol. 8 No.3, pp 55-68
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Printed in India

Regulation of Biotechnology Goods and Issues for Developing Countries before the Multilateral Trading System

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Abstract: Modern biotechnology has the potential to provide a major impetus to global food security and trade. Therefore, this field is of special concern and interest to developing countries. On the other hand, much of its implications remain unknown, especially the possible human and animal health impacts as well as the impacts on receiving environments. The concern is heightened in developing countries, which are custodians of rich biodiversity. Further, international rules governing States' freedom to regulate biotechnology products in their territories are fraught with uncertainty, due to the lack of clarity regarding the applicable multilateral trading system (MTS) rules, and their relationship with the multilateral environmental agreements (MEAs) dealing with biosafety. This paper sets out to provide a legal analysis of the prevailing uncertainty in the international rules, and then taking the case of Sri Lanka submits that the prevailing impasse works particularly against developing countries. It concludes by highlighting some courses of action developing countries may take, both at the national and international level, to safeguard their biodiversity heritage.

Keywords: Biodiversity, Biotechnology, Developing countries, LMOs, Sri Lanka, WTO

Introduction

The regulation of product characteristics and their related processes and production methods is an issue of critical importance for products that may be traded internationally. It is also one that is of particular concern to developing countries pursuing export-led economic growth. The demands placed by the health, safety, environmental and other

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requirements and standards in export markets with respect to products that are of export interest to the developing countries concerned, may represent a significant non-tariff barrier to the trade of those products. This is reflected in the various compromises and concessions reached between the developed and developing countries in the course of the Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT), which culminated in the coming into being of the multilateral trading system (MTS) under the WTO Agreement, ten years ago. It has also been at the forefront of subsequent negotiations within the WTO, including in relation to the Doha Development Agenda.

The importance of addressing the real concerns of the developing countries in this area is not disputed. However, developing countries' activism in relation to the requirements and standards in their *export* markets has not been matched by any degree of activism for securing special treatment under the MTS for regulations or standards that they *themselves* may seek to adopt. As a result, developing countries are at a considerable disadvantage in being subjected to the same disciplines as are applicable to the developed countries. This is illustrated particularly vividly in the case of uncertainties surrounding the regulation of internationally-traded products of modern biotechnology.

Modern biotechnology has been a rapidly developing frontier of science, holding great promise for the future of humankind.[1] In the area of agriculture, living modified organisms[2] (LMOs) have the potential to provide a major impetus to global food security and nutrition, trade in agricultural products, as well as an improved environment. As such, the utilization of this science is of especial concern and interest to the developing countries. At the same time, much of the implications of the evolving science remain unknown, including possible human and animal health impacts and, especially, the potential environmental impacts when LMOs are introduced into the environment to live or grow, such as fish or seeds.[3] The last concern, particularly acute in the nations of the South Asia region, which are custodians of rich biodiversity, forms the special focus of the present paper. However, the discussion is also applicable to the potential human and animal health impacts of LMOs in food or feed, or processed products.

States have to institute adequate regulatory systems in order to ensure that LMOs introduced into the environment do not result in harming their biodiversity. These would include border measures to

regulate the importation of LMOs, as well as measures relating to their handling and use within the territory. This has implications for the international trade in those products, and thereby for the MTS. However, States' freedom of action to regulate LMOs under the MTS is beset with uncertainty. The causes of this uncertainty are twofold. The first relates to the applicability of the multilateral trade agreements of the WTO to the regulation of LMOs. The second source of uncertainty relates to the relationship between the MTS and the applicable multilateral environmental agreements (MEAs). The following two sections discuss each of these in turn.

Applicability of Multilateral Trade Agreements to the Regulation of LMOs

Within the framework of the WTO Agreement, there are several different regimes that may potentially apply to the regulation of LMOs, with different requirements attaching to each. Two multilateral trade agreements that seem to be directly relevant are the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement). The SPS Agreement will be applicable to Members' sanitary and phytosanitary measures which may, directly or indirectly, affect international trade.[4] The Agreement defines a "sanitary or phytosanitary measure" as any measure applied,

(a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
(b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
(c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
(d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.[5]

Whether measures regulating LMOs intended for introduction into the environment would be within the purview of the SPS Agreement accordingly depends on whether those LMOs can be treated as "pests,

diseases, disease-carrying organisms or disease-causing organisms."[6] It is not clear whether either of these expressions is apt to accommodate LMOs. Furthermore, each of them carries a connotation of causing harm or damage, which in the case of LMOs has yet to be positively established. Therefore, at the threshold level there is a doubt as to whether the SPS Agreement would apply. If the SPS Agreement does not apply to LMOs, it is very likely that the TBT Agreement would then apply. This Agreement applies to all measures outside the purview of the SPS Agreement, which set out product characteristics or their related processes and production methods. In terms of this definition, measures dealing with LMOs could be regarded as measures dealing with a product characteristic or a process or production method, thus falling within the scope of the Agreement.

The question of which agreement would apply is important because each imposes distinct requirements on Members. The SPS Agreement imposes stringent requirements. As a general rule, any SPS measure must be "based on scientific principles," and more particularly, should be based on a risk assessment.[7] The WTO Appellate Body has strictly upheld these requirements in the *EC-Hormones* and *Australia-Salmon* cases (see Table 1 for a list of such cases).[8] Although the SPS Agreement does not in terms restrict the right of a Member to determine its appropriate level of sanitary or phytosanitary protection, given the scientific uncertainties surrounding the case of LMOs, and the limited capacities of developing countries to undertake a risk assessment to international criteria, in practice it

Table 1: List of Select Cases at WTO

Respondent	Subject	Case Reference
Australia	Measures Affecting Importation of Salmon	Australia – Salmon (Case No. WT/DS18)
European Communities	Measures Affecting Asbestos and Products Containing Asbestos	EC – Asbestos (Case No. WT/DS135/AB/R)
European Communities	Measures Concerning Meat and Meat Products (Hormones)	EC – Hormones (US) (Case No. WT/DS26)
European Communities	Measures Concerning Meat and Meat Products (Hormones)	EC – Hormones (Canada) (Case No. WT/DS48)
Japan	Measures Affecting Agricultural Products	Japan – Agricultural Products II (Case No. WT/DS76)
United States	Standards for Reformulated and Conventional Gasoline	US – Gasoline (Case No. WT/DS2/R)

would be very difficult for a developing country to regulate trade in LMOs under the SPS Agreement.

In an exceptional case, an SPS measure may be adopted in the face of insufficient scientific evidence.[9] While this could form the basis to regulate LMOs, the scope of this right is limited by a number of conditions. For example, the measure has to be provisional only. It should be based on "available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members," and the Member must seek to obtain the necessary information for a more objective risk assessment and review the measure "within a reasonable period of time." It is to be noted that these prescriptions are inherently vague and admit of diverging interpretations, which is a point that will be returned to in the concluding section of this paper.

The TBT Agreement permits members more latitude in the adoption of measures that are covered by it. For example, scientific evidence is only one reason that may be used to justify a technical regulation, other justifications include related processing technology or intended end-uses of products.[10] However, the TBT Agreement imposes the requirement that measures should not create "unnecessary obstacles to international trade," and that they do not discriminate between "like" products of national or international origin.[11] In the case of the former requirement, GATT and WTO jurisprudence interpreting a similar provision in the GATT 1947/1994 have applied a strict standard for any measure that sought to meet this threshold.[12] In the case of the latter, there is uncertainty whether products containing, or derived from,[13] LMOs are "like" the comparable product that does not contain, or is not derived from, such organisms. Therefore, significant scope for diverging views exists under the TBT Agreement.

In addition to the SPS and TBT Agreements, the GATT 1994 may also apply. Article XX(b) permits contracting parties to adopt measures that may be inconsistent with the other provisions of the GATT, if they are "necessary to protect human, animal or plant life or health," and Article XX(g) permits the same freedom with respect to measures "relating to the conservation of exhaustible natural resources" that are made effective in conjunction with restrictions on domestic production or consumption. However, such measures should satisfy the requirements of the opening paragraph of Article XX (the chapeau), which requires that they should not result in "arbitrary or unjustifiable discrimination

between countries where the same conditions prevail," nor in a "disguised restriction on international trade." As Articles XX(b) and (g) are exceptions, to a contracting party's obligations under the GATT, any measure that seeks to rely on them has to discharge a high burden of proof.[14] This is likely to prove a steep hurdle for developing countries trying to regulate trade in LMOs.

Relationship between the MTS and Applicable MEAs

The second source of uncertainty flows from the relationship between the Multilateral Trading System (MTS) and Multilateral Environmental Agreements (MEAs) dealing with the regulation of Living Modified Organisms (LMOs). This is an aspect of the larger issue of the relationship between the MTS on the one hand, and on the other, MEAs that provide for the taking of trade measures for environmental protection purposes. The issue arises because the MTS and MEA regimes may impose conflicting obligations on States that are party to both. A typical example is where an MEA permits trade in a certain product or products to take place between parties to the MEA, while restricting trade in the same product or products between parties and non-parties (WTO 2004:36). For example, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, an MEA, bans the export or import of hazardous or other wastes taking place with non-parties to the Convention. However, under the WTO Agreement this would be a violation of the principle of non-discrimination between like products, contained in Article I of the GATT 1994.[15]

The question arises whether in these circumstances, the MTS regime should prevail over the MEA system, or, whether, the MEA regime should prevail over the MTS or, alternatively, whether some middle ground should be charted between the two regimes. The principles of international law on treaty interpretation provide some guidance on this matter. According to the 1969 Vienna Convention on the Law of Treaties, where there is an earlier treaty and a later treaty applicable to the same matter, as between States that are parties to *both* treaties, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.[16] In other words, in the event of inconsistency between the two treaties and the absence of contrary language in the later treaty, the provisions of the later treaty will prevail. However, it is provided that as between a State that is party to both

treaties and a State that is party to only *one* of the treaties, the treaty to which *both States* are parties governs their mutual rights and obligations.

In the context of regulating LMOs, a potential conflict with the MTS is posed by the key MEA in this area, namely, the Cartagena Protocol on Biosafety of 2000 adopted under the 1992 Convention on Biological Diversity. The Protocol establishes a framework to regulate the transboundary movement, transit, handling and use of all LMOs[17] that may have adverse effects on the conservation and sustainable use of biological diversity or on human health. Like in the SPS Agreement, the Protocol includes a risk assessment requirement, which is to be undertaken in the case of the Protocol before a Party[18] decides whether, and on what conditions, it allows LMOs to be imported into its territory. However, there is a significant divergence between the Protocol and the SPS Agreement with respect to the party on whom the onus of undertaking risk assessment is placed (WTO and WHO 2002: 132). As discussed above, the SPS Agreement places this onus on the Member adopting the measure, whereas the Protocol provides that the *exporter* may be required to carry out the risk assessment, or alternatively, to bear its cost.

There is another important difference between the two regimes in the measures that may be adopted by a State where there is insufficient scientific information and knowledge regarding potential adverse impacts. This is due to the fact that the Protocol explicitly adopts the "precautionary approach" principle set out in Principle 15 of the 1992 Rio Declaration on Environment and Development.[19] Accordingly, under the Protocol, in the face of scientific uncertainty a Party may, out of precaution, ban the import of LMOs into its territory. Although the Protocol contemplates this as a last resort, nonetheless it leaves a Party with an untrammelled right to invoke it as felt necessary.[20] It has already been mentioned that in the case of the SPS Agreement, such a measure would have to meet with a number of conditions laid down in that Agreement, which have been strictly construed by the dispute settlement organs.[21]

Similar conflicts are possible between the Cartagena Protocol and the TBT Agreement and Articles XX(b) and (g) of GATT. In the case of the TBT Agreement, the special regime for LMOs provided in the Cartagena Protocol may be a violation of the principle of non-discrimination between "like" products. It may also be challenged as creating an "unnecessary obstacle to international trade." In the case

of Article XX(b) of GATT, the Protocol regime may be challenged on the basis of whether it is "necessary" for the protection of "human, animal or plant life or health."[22] While Article XX(g) of GATT allows more latitude in that a measure falling under that paragraph only needs to be "related to" the conservation objective, it is possible that there could be a divergence of opinion as to what constitutes "exhaustible natural resources" in a given case.

While the rules of the Vienna Convention on the Law of Treaties, recounted above, may provide the juridical solution to the potential conflict between the MTS and Cartagena Protocol regimes in the matter of regulating trade in LMOs, however, it is very unsatisfactory where a fundamental issue – the relationship between trade and environment - has to be resolved on the basis of a chronological accident of when the respective regimes came into being.[23] Furthermore, the juridical solution gives rise to immense practical difficulties when faced with non-contiguous memberships in the respective treaty regimes. One treaty would define the rights and obligations of a State in its dealings with some States while another or others would apply in respect of the same subject matter in dealings with other States.

Attempts to Resolve the Impasse Surrounding the Regulation of LMOs

The foregoing discussion highlights some of the significant uncertainties that prevail in the international regimes bearing on the regulation of LMOs. It also illustrates the difficulties in complying with the potentially applicable multilateral trade agreements in the face of the scientific uncertainty that surrounds the potential adverse impacts of LMOs. In the run up to the Seattle Ministerial Conference in 1999, proposals were made by Canada and Japan to have this issue addressed in the WTO. It was proposed to set up a working group to study the relationship of the multilateral trade agreements and modern biotechnology products and to evaluate the need for further action. However, this was vetoed by the majority of Members who saw it as posing a threat to the adoption of a strong biosafety protocol in the negotiations then underway under the Convention on Biological Diversity, on what was to become the Cartagena Biosafety Protocol (Khor 1999).[24]

While the timing of the proposal may have, therefore, been inappropriate, it is unfortunate that since the adoption of the

Cartagena Protocol no attempt has been made to revisit the issue within the WTO. As a result, the ambiguities in relation to the applicable MTS disciplines continue to await a satisfactory resolution.

There have been some positive steps within the WTO with respect to addressing the relationship between the MTS and MEAs in general that contain trade measures. The WTO Ministers meeting at the Fourth WTO Ministerial Conference in Doha, Qatar on 9-13 November 2001 undertook to commence negotiations on this relationship "with a view to enhancing the mutual supportiveness of trade and environment".[25] However, the negotiations have been confined in scope to the applicability of WTO rules among WTO Members who *are parties to the MEA in question*.[26] As a result, the negotiations are unlikely to resolve the potential conflict between the trade and environmental regimes' bearings on the regulation of LMOs, for the very reason that many of the world's leading exporters of LMOs – the USA, Canada, Argentina, Chile and Uruguay – are not parties to the Cartagena Biosafety Protocol.

Thus, neither of the two sources of uncertainty in relation to the regulation of LMOs, that have been referred to in this paper, are likely to be addressed at negotiations in the WTO. This situation constrains members of the MTS from adopting effective regulatory systems for LMOs based on the precautionary principle. This is illustrated in Sri Lanka's attempt in 2001 to ban the trade in foodstuffs containing LMOs, which is discussed next.

Sri Lanka's Ban on Trade in Foodstuffs Containing LMOs

On 26 June 2001 the Minister of Health proclaimed a set of regulations under the Food Act titled, the Genetically Modified Foods (Provisional) Regulations, No. 1 of 2001 (Sri Lanka 2001a). Regulation 2 of the Regulations provided that

> "with effect from the date of operation of these regulations and subject to the other provisions of the Act, no person shall import, manufacture for commercial purposes, transport, store, distribute, sell or offer for sale any food, raw or processed or any ingredient of food or food additive that has been subjected to any genetic modification using DNA recombinant technology or any food that contains one or more ingredient or additive that has been subjected to genetic modification."

Regulation 3 went on to provide that in the case of 21 food items listed in the Schedule to the Regulations, no person may import any of those food items without obtaining a certificate from a designated authority in the country of export to the effect that such item does not contain any material or ingredient that has been subjected to genetic modification.[27] The Regulations were to come into operation on 1 September 2001.

The impending operation of the Regulations was notified to the SPS Committee on 19 July 2001 in terms of the SPS Agreement's prior notification requirements.[28] However, on 29 August 2001 the Minister of Health issued a notification deferring indefinitely the coming into force of the Regulations, which was to originally take place on 1 September (Sri Lanka 2001b). Ostensibly, this was to give effect to the SPS Agreement's recommended time of at least sixty days' notice prior to the coming into force of a measure within the scope of that Agreement. However, even after the lapse of the requisite period of notice, the Regulations were never subsequently brought into operation.

The fact is that the Regulations had drawn fire from the USA and Australia, whose trade would have been directly affected by the Regulations. The USA threatened Sri Lanka with sanctions under the WTO if the measures were brought into force. The Sri Lankan government bowed to the pressure from two important trading partners and the Regulations were abandoned. Since this failed attempt, LMO-containing food and feed, and LMOs intended for processing or for introduction into the environment, have been freely entering the country and have been used without any regulatory framework to guard against potential adverse consequences.

The case of the abortive Sri Lankan regulation highlights the difficulties that a developing country faces under the MTS in attempting to take proactive measures against any potential adverse effects of LMOs. It is submitted that the Sri Lankan measure, while extreme in its outright ban of certain categories of LMOs, was nonetheless within the rights of a Party under the Cartagena Protocol on Biosafety.[29] However, the exercise of these rights is constrained by the uncertainty, discussed in this paper, surrounding the relationship between the Cartagena Protocol and MTS regimes. This is compounded by doubts regarding which of the two multilateral trade agreements would be applicable to this issue, as well as the ambiguous wording of the potentially applicable trade rules.

This uncertainty surrounding the applicable legal rules enables the economically powerful LMO exporter States to foist the agenda of their biotechnology industry lobbies over the concerns of less powerful developing countries to regulate LMOs for potential health and biodiversity impacts. As the Sri Lankan regulation shows, the mere threat of legal proceedings under the WTO can sometimes cow a State into submission as it lacks the resources to engage in expensive proceedings to vindicate its measures. When such developing countries are custodians of rich biodiversity, they have the most to lose from this prevailing state of affairs under the MTS regime. The failure to institute adequate regulatory systems for LMOs, based on precautionary norms, in such countries can have potentially far reaching consequences on their biodiversity endowment. Therefore, it is these countries that must take the initiative to have a satisfactory resolution of the prevailing uncertainties under the MTS.

Conclusion

On previous occasions, developing countries have successfully united to bring common concerns to the agenda of MTS negotiations.[30] The present issue strongly merits a similar concerted response by all interested developing countries as this alone can overcome the vested interests of the biotechnology industry in the prevailing MTS regime status quo. Apart from seeking a resolution of the present uncertainties hindering effective LMO regulation, developing countries should also canvass for special and differential treatment under applicable MTS rules in adopting their own regulatory measures for LMOs. As mentioned in other parts of this paper, this aspect has been neglected by the developing countries in the debate on product standards, and as a result developing countries adopting their own regulatory measures have to meet the high thresholds set by potentially applicable multilateral trade agreements.

Even within the context of the present MTS, there are several areas where developing countries can benefit from a collaborative approach. One such area is in the pooling of scientific research on the effects of LMOs. It has already been mentioned that many developing countries may find it difficult to conform to the SPS Agreement's requirements in respect of scientific risk assessment. Collaboration with other developing countries, in particular within the regional context, in order to carry out the necessary scientific testing, would be mutually

beneficial. Another area for collaboration lies in participating in the work of international standard-setting bodies that have a bearing on LMOs.[31] Through concerted pressure developing countries would be able to ensure that whichever international standards as are adopted make suitable provision for the special concerns and circumstances of the developing countries.

In conclusion, it must be stressed that developing country governments should take urgent measures for safeguard *now*, to avoid potentially irreversible impacts on biodiversity from the use of LMOs. The Sri Lankan case discussed in the last section underlines how a political leadership can find it much easier to simply back down and bow to interested international pressure, when there is no countervailing domestic pressure demanding regulation. Therefore, there is a need to mobilize the widest possible popular consensus in favour of instituting effective measures to regulate LMOs. Such popular support can be translated into effective pressure on governments to steadfastly pursue their regulatory measures in the future. In this respect, civil society and non-government organizations in these countries have a key role to play in both raising public awareness about LMOs, as well as directly pressurizing governments into action.

Endnotes

1 Selective breeding and cross-fertilization of plants and animals goes back millennia and are practices of traditional biotechnology. However, modern biotechnology encompasses the ability to extract and transfer strands of DNA or entire genes from one species to an entirely different species, by manipulating the genetic structure of individual living cells. For a technical definition of "modern biotechnology," see the Cartagena Protocol on Biosafety, Article 3.

2 Adopting the terminology of the Cartagena Protocol on Biosafety, "living modified organisms" are biological entities that can transfer or replicate genetic material (for example, seeds, fish, animals, as well as sterile organisms, viruses and viroids), which possess a novel combination of genetic material obtained through the use of modern biotechnology (see Article 3 of the Protocol). The Cartagena Protocol is discussed in the third section of this paper.

3 For an overview of the potential benefits and dangers of LMOs, see CBD and UNEP 2003.

4 SPS Agreement, Article 1.1. The term "Member" is used in this paper to denote a Member of the WTO.

5 Per Annex A of the SPS Agreement.

6 In the case of LMOs intended for use as food or feed, or for processing, whether they would amount to "additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs" constitute additional grounds for coming under the SPS Agreement.

7 See SPS Agreement, Articles 2.2 and 5.1.

[8] European Communities – Measures Concerning Meat and Meat Products (Hormones) Case No. WT/DS26 (EC – Hormones (US)), European Communities– Measures Concerning Meat and Meat Products (Hormones) Case No. WT/DS48 (EC – Hormones (Canada)), Australia – Measures Affecting Importation of Salmon Case No. WT/DS18 (Australia – Salmon). From http://www.wto.org.

[9] SPS Agreement, Article 5.7.

[10] See Article 2.2 of the TBT Agreement.

[11] See Articles 2.1, 2.2 and Annex 3 of the TBT Agreement.

[12] See the discussion of GATT Article XX(b), below.

[13] For example cooking oil made from genetically modified corn or soybeans.

[14] See paragraph 6.20 of the Panel Report and p. 22 of the Appellate Body Report in United States – Standards for Reformulated and Conventional Gasoline Case No. WT/DS2/R (US – Gasoline). From http://www.wto.org.

[15] See WTO 2003 for further examples of MEAs dealing with trade measures.

[16] Unless the later treaty specifies that it is subject to, or that it is not to be considered as incompatible with, the earlier treaty: Article 30 of the Vienna Convention.

[17] However, LMOs that are pharmaceuticals for humans addressed by other relevant international agreements or organizations are excluded from the scope of the Protocol (Article 5 of the Protocol).

[18] The term "Party" is used to denote a State that is a party to the Cartagena Protocol.

[19] Principle 15 provides that, "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

[20] However, a Party should be prepared to review its decision if required to do so by an affected party (Article 12).

[21] See the Appellate Body decision in Japan – Measures Affecting Agricultural Products Case No. WT/DS76 (Japan – Agricultural Products II). From http://www.wto.org.

[22] The application of the "necessary" test has given rise to a substantial jurisprudence. See paragraphs 164-175 of the Appellate Body Report in European Communities – Measures Affecting Asbestos and Products Containing Asbestos Case No. WT/DS135/AB/R (EC – Asbestos), which includes a review of the existing jurisprudence. From http://www.wto.org.

[23] In the case of the relationship between the WTO Agreement and the later Cartagena Protocol, the application of the Vienna Convention rules is further complicated by the fact that the Cartagena Protocol provides that it is not to be treated as overriding, nor as subordinate to, existing international agreements (see the Preamble).

[24] The proposal had been supported by USA, Canada, Chile, Argentina and Uruguay, the leading exporters of genetically engineered agricultural products.

[25] Ministerial Declaration adopted on 14 November 2001 (Doha Declaration), paragraph 31.

[26] Doha Declaration, paragraph 31(i).

[27] The food items listed included soya, corn, tomato and their processed variants, cheese and microbiological starter cultures used in food.

[28] Thus, implicitly accepting that the SPS Agreement applies to the measure. It has been argued in the present paper that this question is not at all free from ambiguity.

[29] Sri Lanka signed the Cartagena Protocol on 24 May 2000. The Protocol came into force for Sri Lanka on 26 July 2004, 90 days after the date of deposit of its instrument of ratification in terms of Article 37 of the Protocol.

[30] An example is the group of developing countries known as the G-20 formed in the run up to the 2003 Fifth WTO Ministerial Conference at Cancun, to canvass common interests in the agriculture negotiations.

[31] The principal bodies are, in the area of food safety and consumer health the Codex Alimentarius Commission, in the area of animal health the World Organization for Animal Health (OIE) and in the area of protection of plant health from pests the International Plant Protection Convention (IPPC).

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