

**EUROPEAN COMMUNITIES – MEASURES AFFECTING THE APPROVAL
AND MARKETING OF BIOTECH PRODUCTS**

Request for the Establishment of a Panel by Canada

The following communication, dated 7 August 2003, from the Permanent Mission of Canada to the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Since October 1998, the European Communities ("EC") has maintained a moratorium on the approval of products of agricultural biotechnology, which are food or food ingredients that contain or consist of, or are produced from, genetically modified organisms, and genetically modified organisms intended for release into the environment ("biotech products"). The EC effectively has suspended the consideration of applications for approval of biotech products, and the granting of approvals for those products, under the relevant EC approvals processes.¹ Specific examples of such applications, and a brief description of the actions taken to block their consideration or approval, are set out in Annex I.

In addition to the moratorium, France, Greece, Austria and Italy maintain national measures prohibiting the importation, marketing or sale of biotech products that had already been approved, prior to October 1998, under the relevant EC approvals processes, for importation, marketing or sale in the EC. These national measures, and the products to which they apply, are identified in Annex II.

On 13 May 2003, the Government of Canada requested consultations with the EC regarding these measures, pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* ("SPS Agreement"), Article 19 of the *Agreement on Agriculture*, and Article 14 of the *Agreement on Technical Barriers to Trade* ("TBT Agreement").

Canada and the EC held consultations in Brussels on 25 June 2003. Unfortunately, the consultations failed to settle the dispute.

The measures covered in this panel request are:

1. the general suspension by the EC of its own processes for the consideration of applications for, and the granting of, approval for biotech products;

¹ As set out in EC Directive No. 2001/18 of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EC ([2001] O.J. L 106/1) (and its predecessor, EEC Directive No. 90/220 of 23 April 1990 on the deliberate release into the environment of genetically modified organisms ([1990] O.J. L117/15), EC Regulation No. 258/97 of 27 January 1997 concerning novel foods and novel food ingredients ([1997] O.J. L 43/1), and related legislative instruments specifically referred to in them.

2. the failure by the EC to consider or approve, without undue delay, applications for approval of the products identified in Annex I; and
3. the national measures identified in Annex II prohibiting the importation, marketing or sale of the specified EC-approved biotech products.

These measures are inconsistent with the obligations of the EC under the SPS Agreement, the TBT Agreement, the Agreement on Agriculture and the GATT 1994. In particular, the measures violate the following provisions of these agreements:

- Articles 2.2, 2.3, 5.1, 5.2, 5.5, 5.6, 7, 8, and paragraphs 1, 2 and 5 of Annex B, and paragraphs 1(a), 1(b), 1(c), and 1(e) of Annex C of the SPS Agreement;
- Articles 2.1, 2.2, 2.8, 2.9, 2.11, 2.12, 5.1, 5.2.1, 5.2.2, 5.2.3, 5.6 and 5.8 of the TBT Agreement;
- Articles I:1, III:4, X:1 and XI:1 of the GATT 1994;
- Article 4.2 of the Agreement on Agriculture.

These violations nullify or impair the benefits accruing to Canada under these agreements. In addition, the measures nullify and impair the benefits accruing to Canada in the sense of Article XXIII:1(b) of the GATT 1994.

Canada respectfully requests, pursuant to Articles 4 and 6 of the DSU, Article XXIII of the GATT 1994, Article 11 of the SPS Agreement, Article 19 of the Agreement on Agriculture and Article 14 of the TBT Agreement, that a panel be established at the meeting of the Dispute Settlement Body to be held on 18 August 2003. Canada further asks that the panel have the standard terms of reference as set out in Article 7.1 of the DSU.

ANNEX I

1) Canola/rape seed MS1/RF1, notification # C/F/95/05/01/A submitted by Plant Genetic Systems to France in April 1995.

France forwarded the notification to the European Commission with a favourable assessment report by the French competent authority. The notification was approved in the European Commission decision dated June 6, 1997, based on a favourable opinion by the regulatory committee under Article 21 of Directive 90/220. Despite the direction set out in Article 13(4) of Directive 90/220 (now Article 18(2) of Directive 2001/18), France has failed to issue a consent letter to authorize the placing on the market of the product.

2) Canola/rape seed MS1/RF2, notification # C/F/95/05/01/B submitted by Plant Genetic Systems to France in April 1995.

France forwarded the notification to the European Commission with a favourable assessment report by the French competent authority. The notification was approved in the European Commission decision dated 6 June 1997, based on a favourable opinion by the regulatory committee under Article 21 of Directive 90/220. Despite the direction set out in Article 13(4) of Directive 90/220 (now Article 18(2) of Directive 2001/18), France has failed to issue a consent letter to authorize the placing on the market of the product.

3) Canola/rape seed MS8/RF3, notification # C/BE/96/01, submitted by Plant Genetic Systems to Belgium on September 30, 1996.

The notification was forwarded with a favourable opinion by Belgium to the European Commission on January 16, 1997 and received a favourable opinion from the scientific committee on May 19, 1998. The regulatory committee has failed to adopt a decision regarding the approval of the product.

4) Oilseed canola/rape GT73, notification #C/NL/98/11, submitted by Monsanto to the Netherlands on 7 July 1998.

The Netherlands forwarded the notification to the European Commission with a favourable assessment report in January 2003. The regulatory committee has failed to adopt a decision regarding the approval of the product.

ANNEX II

- 1) France: Prohibition on the importation, sale and marketing of oilseed canola/rape seed, derived from Topas 19/2 (notification #C/UK/95/M5/1, approved by the EC on 22 April 1998 (Decision 98/291/EC))²
- 2) France: Prohibition on the importation, sale and marketing of canola/rape seed, MS1/RF1 (notification #C/UK/94/M1/1, approved by the EC on 6 February 1996 (Decision 96/158/EC))³
- 3) Greece: Prohibition on the importation of oilseed canola/rape seed, derived from Topas 19/2 (notification #C/UK/95/M5/1, approved by the EC on 22 April 1998 (Decision 98/291/EC))⁴
- 4) Austria: Prohibition on the commercialization of corn/maize T25 (notification #C/F/95/12/07, approved by the EC on 22 April 1998 (Decision 98/293/EC))⁵
- 5) Italy: Prohibition on the sale and use of corn/maize T25, MON 809, MON 810, and BT 11⁶
These products were notified to the European Commission, in accordance with Articles 3(4) and 5 of Regulation 258/97, on 12 January 1998, 14 October 1998, 10 December 1997, and 30 January 1998, respectively.

² Journal Officiel No. 267 of 18 November 1998, p. 17379; Journal Officiel No. 200 of 30 August 2001 p. 13903.

³ Journal Officiel No. 267 of 18 November 1998, p. 17379; Journal Officiel No. 200 of 30 August 2001 p. 13903.

⁴ Government Gazette of the Hellenic Republic, vol. 2, Issue No. 1008, 25 September 1998, p. 11941-11942.

⁵ 120th Ordinance: Ban on commercialization of the genetically altered corn Zea Mays L. T25 in Austria, Federal Gazette for the Republic of Austria, vol. 2000, Part II, Issued on 28 April 2000.

⁶ Decree of the President of the Council of Ministers of 4 August 2000, Precautionary suspension of the sale and use of certain transgenic food products in Italian national territory, pursuant to Article 12 of Regulation (EC) no 258/97.