

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

Request for the Establishment of a Panel by Argentina

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

Pursuant to Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), Article 19 of the Agreement on Agriculture (AoA) and Article 14 of the Agreement on Technical Barriers to Trade (TBT Agreement), I hereby wish to request the establishment of a panel with regard to the *de facto* moratorium imposed by the European Communities on agricultural biotechnology products.

The European Communities has applied a *de facto* moratorium on the approval of agricultural biotechnology products since October 1998. This *de facto* moratorium¹ has led to the suspension of and failure to consider various applications for approval of agricultural biotechnology products as well as to undue delays in finalizing the processing of applications for the approval of such products under Community legislation.²

Furthermore, several EC member States have introduced bans on a number of agricultural biotechnology products which have already been approved at Community level, thereby infringing both WTO rules and Community legislation.

This action taken by the European Communities and some of its member States adversely affects agricultural biotechnology products from Argentina.

The measures at issue and in relation to which the establishment of a panel is requested are as follows:

- (1) Suspension of consideration of and failure to consider various applications for endorsement or approval of agricultural biotechnology products;

¹ See Annex I.

² EC legislation on biotech product approval includes Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001, published in Official Journal No. 106 of 17 April 2001, pages 0001-0039 (and its predecessor Council Directive 90/220/EEC of 23 April 1990, published in Official Journal No. 117 of 8 May 1990 and amended by Directive 94/15, published in Official Journal No. 103 of 22 April 1994, and by Directive 97/35, published in Official Journal No. 169 of 27 June 1997), and Regulation (EC) No. 258/1997 of the European Parliament and of the Council of 27 January 1997, published in Official Journal No. 043 of 14 February 1997.

- (2) undue delays in finalizing consideration of various applications for approval of agricultural biotechnology products;
- (3) bans on agricultural biotechnology products introduced by EC member States³ which infringe both WTO rules and Community legislation.

The measures in question taken by the European Communities and several of its member States infringe the following provisions of the WTO Agreements:

- (a) Articles 2.2, 2.3, 5.1, 5.2, 5.5, 5.6, 7, 8 and 10.1 and Annexes B(1) and (5) and C(1)(a), (b), (c), (d) and (e) of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement);
- (b) Article 4.2 of the Agreement on Agriculture (AoA);
- (c) Articles I.1, III.4, X.1, X.3(a) and XI.1 of the GATT 1994;
- (d) Articles 2.1, 2.2, 2.8, 2.9, 2.11, 5.1, 5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.6, 5.8 and 12 of the Agreement on Technical Barriers to Trade (TBT Agreement).

The measures at issue nullify or impair the benefits accruing to Argentina under these Agreements.

On 14 May 2003, Argentina requested consultations with the European Communities with regard to these measures, pursuant to Article 4 of the DSU, Article 11.1 of the SPS Agreement, Article 19 of the AoA, Article 14.1 of the TBT Agreement and Article XXII.1 of the GATT 1994.

Consultations were held on 19 June 2003 but, whilst enabling an exchange of information, they unfortunately failed to settle the dispute.

In the light of the above, Argentina requests the establishment of a panel with the standard terms of reference, pursuant to Article 7.1 of the DSU. To this end, it asks that this request be included in the agenda of the meeting of the Dispute Settlement Body scheduled for 18 August 2003.

³ See Annex II.

ANNEX I

Agricultural biotechnology product	Status of application for approval in the EC; Community legislation
Maize "GA-21"	Application filed in the United Kingdom (1997): Procedure under Directive 90/220 - abandoned; procedure under Directive 2001/18 - no data.
Maize "GA-21"	Application filed in Spain (1998): Notification No. E/ES/98/01 - submitted; Directive 2001/18 - applicable; procedure under Regulation No. 258/1997.
Maize "GA-21"	Application filed in the Netherlands (1998): Procedure under Regulation No. 258/97 - pending.
Maize "GA-21"	Application filed in the Netherlands (2000): Procedure under Regulation No. 258/97 - pending.
Maize "T-14"	(No data; Directive 2001/18 and Regulation No. 258/1997 - applicable).
Maize "NK-603"	Application filed in Spain (2000): Notification No. C/ES/00/01 - submitted; procedure under Directive 2001/18.
Maize "NK-603"	Procedure in the Netherlands under Regulation No. 258/1997 - pending.
Soya "A2704-12" and "A5547-127"	Application filed in Belgium (1998); procedure under Directive 2001/18 - abandoned.
Soya "A2704-12" and "A5547-127"	Application filed in Portugal (1999); procedure under Directive 90/220.
Soya "A2704-12" and "A5547-127"	Application filed in Belgium; procedure under Directive 2001/18 and Regulation (EC) No. 258/1997.
Cotton "Bt-531"	Application filed in Spain (1997) under Directive 90/220 and refiled under Directive 2001/18; procedure under Regulation No. 258/1997.
Cotton "RRC1445"	Application filed in Spain (1996) under Directive 90/220 and refiled under Directive 2001/18; procedure under Regulation No. 258/1997.

ANNEX II

Agricultural biotechnology product	EC countries in which product is banned; respective legislation
Maize "Bt-176"	<p>Austria: prohibited under Regulation No. 45 of 13 February 1997 of the Federal Ministry for Health and Consumer Protection ("<i>45. Verordnung der Bundesministerien für Gesundheit und Konsumentenschutz</i>").</p> <p>Germany: prohibited under amended Administrative Ruling BGBl. II, No. 45/1997 ("<i>Verbot des Inverkehrbringens von gentechnisch verändertem Mais Bt-176</i>", (Ban on the entry of genetically modified maize Bt-176) <i>BGBl. II, 45/1997</i>).</p> <p>Luxembourg: prohibited under Ministerial Order of 7 February 1997, published in the Official Journal of the Grand-Duchy of Luxembourg of 28 February 1997.</p>
Maize "MON-810"	<p>Austria: prohibited under Regulation No. 175 of 10 June 1999 of the Federal Ministry for Women's Affairs and Consumer Protection ("<i>175. Verordnung der Bundesministerien für Frauenangelegenheiten und Verbraucherschutz</i>").</p> <p>Italy: prohibited under Presidential Decree of the Council of Ministers of 4 August 2000.</p>
Maize "T-25"	<p>Austria: prohibited under Regulation No. 120 of 28 April 2000 of the Federal Ministry for Social Security and Generations ("<i>120. Verordnung der Bundesministerien für soziale Sicherheit und Generationen</i>").</p> <p>Italy: prohibited under Presidential Decree of the Council of Ministers of 4 August 2000.</p>
Maize "Bt-11"	<p>Italy: prohibited under Presidential Decree of the Council of Ministers of 4 August 2000.</p>