In May 2003, the United States, along with Canada and Argentina, filed a dispute with the World Trade Organization (WTO) alleging that the European Union’s moratorium on the approval of genetically engineered agricultural products violated WTO rules. The alleged moratorium restricted the import of agricultural and food products into member states of the EU. The United States also challenged the refusal of some EU member states to allow the importation of genetically engineered products previously approved by the EU. For example, Italy prohibited the import of some varieties of Bt-11 maize despite approval by EU regulatory bodies.

Although the Uruguay Round of the WTO prompted agricultural trade reform, nations retained sovereignty to protect their consumers, plants, animals and environment via several side-agreements, including the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). The SPS Agreement authorizes WTO members to enact trade-restrictive measures related to health so long as they are not misused for a protectionist purpose or result in an unnecessary barrier to trade. See WTO, SPS Agreement Training Module: Background, available at http://www.wto.org/english/tratop_e/spse/spse_agreement_cbt_e/intro1_e.htm.

Almost three years after the dispute’s filing, the WTO’s Dispute Settlement Panel issued its interim report on February 7, 2006. The Panel concluded that the EU’s moratorium violated the SPS Agreement because it resulted in an “undue delay” in the safety assessment of imported products. The panel further determined that the individual member state bans on previously approved genetically engineered products violated the SPS Agreement because the member states failed to justify their respective bans with scientific risk assessments. Finally, the Panel held that it was not required to consider the Cartagena Protocol on Biosafety (Biosafety Protocol) when interpreting WTO rules in this case because not all parties to this dispute were parties to the Biosafety Protocol.

The immediate impact of the Panel’s interim decision, however, is quite limited. First, the Panel did not consider the overall safety of genetic engineering. Further, the panel did not address the legitimacy of the EU’s approval process for genetically engineered products or the EU’s labeling and traceability requirements for products containing or produced with genetically modified organisms. Finally, it should be noted that the Panel’s recognition that the EU lifted its moratorium and granted approval for several genetically engineered crops while the case was pending further limits the impact of the decision.
Producers should not assume that the United States’ victory at this stage of the WTO proceedings eliminates many of the export challenges faced by growers of genetically engineered crops. Producers still must channel “unapproved for export” varieties to appropriate elevators. Moreover, individuals producing crops intended for export to the EU must remain vigilant in following best management practices to prevent commingling with unwanted genetically engineered crops.

Although limited in scope, the Panel’s decision provides important guidance for future litigation regarding restrictions on the import of genetically engineered products by highlighting the importance of the SPS Agreement and clarifying the relevance of other treaties such as the Biosafety Protocol.

For additional references regarding the WTO and its impact on agriculture, see Robert L. Thompson, Frequently Asked Questions About the WTO, available at http://www.farmdoc.uiuc.edu/policy/ag_policy_briefs/apb_06-01/apb_06-01.html. In addition, the full 1050 page interim decision of the Dispute Settlement Panel is available for download at http://www.trade-environment.org/page/theme/tewto/biotechcase.htm