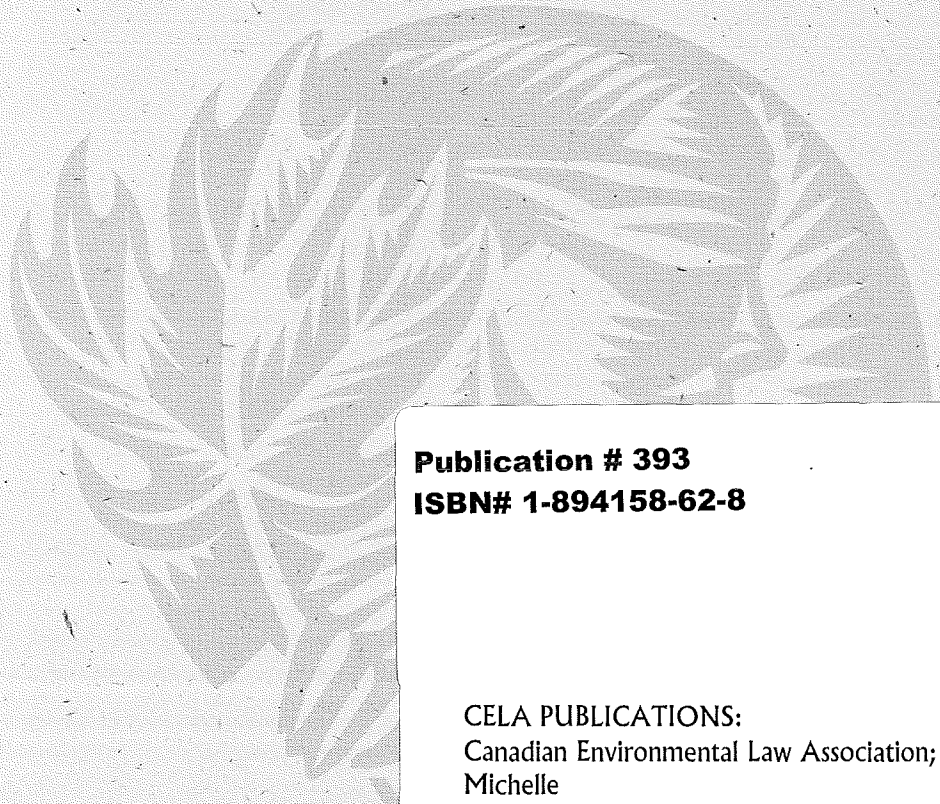


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The Cartagena Protocol on Biosafety: Canada should sign and ratify the Protocol

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The Biosafety Protocol is the result of initiatives of developing countries during the negotiations for the Convention on Biological Diversity, concluded at the Rio conference in 1992. Article 19(3) of the Convention mandated a protocol for the safe transfer, handling and use of living modified organisms. Developing countries wanted an international treaty to assist them in achieving what developed countries (US, Japan, Europe and Canada) already provide for themselves, namely, a system of regulatory controls on LMOs. Given this genesis and an elemental sense of justice regarding southern countries' needs, the proper role for Canada in its conduct of international relations, is to sign and implement the Protocol.

1. Current Market Conditions affecting GMOs

Over the four years of negotiations for the Protocol, controversies regarding possible health and environmental effects of GMOs and marketing of these products proliferated in many countries including Canada. The share value of Monsanto, the best-known producer of GMOs lost considerable value in 1999, leading to a re-structuring of the company. In May of 1999, Deutsche Bank, one of the world's largest, concluded that ...the term GMO has become a liability. We predict that GMOs, once perceived as the driver of the bull case for this sector, will now be perceived as a pariah. We are reducing our rating on Pioneer Hi-Bred to SELL from HOLD, and we would broadly recommend a sale of the seed sector.¹

The report reviewed "a major change in the market's view of GMOs," noting the increase of negative perceptions of the products, premiums being paid for conventional products including by Archer Daniels Midland ("the value chain topples"), the problem of assigning liability for any negative impacts of GMOs, and the unwillingness of food manufacturers and retailers to "take a bullet for GMOs." The writers concluded that for the coming three years, "GMOs are a policy liability."

In Canada, Greg Arason, President and CEO of the Canadian Wheat Board, speaking of "Marketing in an Era of Biotechnology," articulated the "Market Reality" affecting genetically-modified organisms, including an impending need to segregate GMOs and non-GMOs to satisfy market demands.²

He cited ConAgra's move to segregate GMO corn; Archer Daniels Midland's segregation of corn varieties not registered for sales in Europe; Honda's intention to segregate non-GM soybeans in the US; soybean segregation in Ontario to satisfy various customers; and initiatives by several prominent Japanese corporations to segregate conventional crops including maize and soybeans. He also noted that Warburton's

bakery in the UK had informed the Wheat Board that it expected only conventional wheat in shipments from Canada to them and that all Italian customers of the Wheat Board have said they will not import transgenic durum until there is consumer acceptance, possibly towards 2008.

He commented:

The CWB is a strong believer that when it comes to the marketing of food ingredients the customer is always right even when they might be scientifically wrong. Whether or not the customer has an incorrect or incomplete scientific knowledge about a product, or if they perceive it to be an (sic) unhealthy or unsafe, or like most millers, if they think there will be a negative public reaction to a certain product, they simply will not buy it. This is a bottom line that must be recognized.

The approach of the Wheat Board is specified in its Biotechnology Position Statement³ which states:

- In several important markets, there is considerable consumer rejection of transgenic plants as food ingredients. It is evident that when transgenic varieties are introduced some customers will require shipments of wheat and barley that are accompanied by guarantees of either zero, or at least a maximum percentage of transgenic varieties.
- Current grain handling technology is not capable of efficiently and effectively identifying and segregating large volumes of transgenic grain varieties. This technology will be needed to support an effective and accountable system of quality assurance (in) order for the CWB to meet its commitment to supply customers the food ingredients they are asking for.
- On a top priority basis, technologies that are able to efficiently and effectively identify the varietal composition of grain shipments must be developed.
- Until such technologies are in place, and assuming some important markets continue to require that their grain shipments not contain transgenic products, wheat and barley varieties developed by modern biotechnology should not be registered by production in Western Canada. Such varieties could be considered for registration as soon as effective segregation technologies are available.

In the past year, numerous countries have either initiated labelling requirements for transgenic products or have implemented import bans. Countries currently discussing GMO labelling requirements include China, Australia, New Zealand, South Korea and China, while Saudi Arabia has instituted a ban on imports. As Arason specified, numerous food suppliers are requiring segregation for at least a portion of their products.

We emphasize these market uncertainties because they provided a constant shifting context and preoccupation for all parties during the Protocol negotiations, and they are likely to have considerable impacts on how the Protocol develops, including whether it is ever the subject of a WTO panel decision. Whatever is the ultimate legal status of the Protocol and regulatory approvals of GM foods, market and consumer resistance may prove more important in affecting trade in LMOs.

Further, it is evident that Canadian exporters must develop systems of segregation and labelling ("documentation" in the words of the Protocol) within Canada and internationally in order to respond to these market demands. It is clear that systems of labelling ("documentation") are already being demanded by many corporate purchasers and national regulators.

Therefore the "key issue" that the Government of Canada must be aware of during discussion of documentation requirements is that Canadian exporters need a comprehensive and accurate system of segregation and labelling within Canada and internationally, and that, as Mr. Arason has stated, the development of accurate testing regimes must be a priority. Without these initiatives, Canadian exporters will lose an increasing number of international markets.

However, participation in good faith in the documentation negotiations, as a signatory to the Protocol, would lead to improved protection of receiving environments and continued access to markets for Canadian conventional products and, in those countries which approve them, for LMOs.

2. The Protocol does not conflict with trade law obligations under the SPS and TBT chapters of the WTO agreements, and can interpreted in harmony with them.

Throughout the negotiations, Canada's stance was overly influenced by views of the compatibility of the Protocol's goals with those of the WTO agreements. However, a close reading of the Protocol and the SPS agreement (which would apply to most traded LMOs) indicates broad consistency between to two. In particular:

Article 11(3) of the SPS provides that :

Nothing in this Agreement shall impair the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.

Although this article was not discussed during the negotiations, it demonstrates an intention in the WTO agreements not to over-ride or interfere with the proper negotiation of international agreements in other spheres, such as for environmental protection. Further, the SPS chapter promotes international standard-setting, and the Protocol stands at an even higher level of international decision-making than the named standard-setting bodies in the SPS. The SPS affirms the Members' rights to chose an appropriate level of protection; specifies that SPS measures should be adapted to local conditions; includes the need for consideration of economic factors; requires the use of science and risk assessment in decision-making, and includes a limited form of the precautionary principle. All of these terms are broadly compatible with those of the Protocol.

The Technical Barriers to Trade agreement may govern some elements of LMO trade, including labelling for purposes other than food safety. When compared to the Protocol, it also appears broadly consistent. It also promotes use of international standards, and

specifies legitimate objectives for measures including “protection of human health or safety, animal or plant life or health, or the environment.”

Finally, the General Exception to GATT 1994, Article XX, permits measures to protect human, plant or animal life or health, and the current Asbestos case, which Canada has lost, is the first case which it has been successfully invoked in defence of a challenged measure. The Protocol’s purpose of environmental protection is consistent with Article XX of the GATT.

3. Canada’s international reputation will suffer if the Government does not sign and ratify the Protocol

Canada’s role as speaker for the Miami Group brought considerable justified criticism for the failure of the Government of Canada to promote global environmental protection and for lack of respect for the needs of developing countries. To date, two countries which were Members of the Miami Group, Chile and Argentina, have signed the Protocol.

We urge the Canadian Government to follow their example.

¹ Timothy S. Ramy, Marla J. Wimmer, and Rachel M. Rocker, “GMOs are dead,” Deutsche Bank, May 21, 1999.

² Greg Arason, President and CEO, CanadianWheat Board, “Marketing in an Era of Biotechnology,” October 19, 1999, available at www.cwb.ca/publicat/speeches

³ CWB Biotechnology Position Statement, www.cwb.ca/publict/biostate/index.htm, updated July 26, 2000, accessed September 22, 2000.

