

**DR. CAROLINE LUCAS**

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for the South East of England**

Commissioner Peter Mandelson  
Commissioner for Trade  
European Commission  
Rue de la Loi, 200  
Bruxelles 1049

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Dear Peter,

**WTO Ruling on Biotech Products**

I understand that the WTO's Dispute Settlement Body approved the ruling in the EC Biotech Products Case brought against the European Community by the USA, Canada and Argentina - following a decision by the Commission this week *not* to appeal the case - in advance of the original two-month deadline of 27 November.

I believe this is a matter of serious concern. Given the ruling's far-reaching implications not only in the domain of trade in genetically modified (GM) crops, but also for the ability of the European Union - and indeed any country - to determine their own environmental, social and health standards in the future, the Commission should have lodged the strongest possible appeal to the Appellate Body.

With this letter I therefore wish to highlight both the flaws in this particular decision and, more generally, the questions it raises about the EU's way of operating in relation to the WTO on such matters.

In this case it was not sufficient for the Commission to conclude that the Panel's recommendations do not affect EU legislation and policy on GMOs - and therefore that there was no need to act. The case has enormous significance in terms of both the precedent it sets for other WTO members who may wish to regulate GM imports, and the precedent by analogy for regulation of other types of products that might pose risks to human health and the environment. It is therefore important to look closely at the details of the Panel's findings and how they were arrived at. Close scrutiny of this nature reveals a number of errors of law which should have been highlighted and corrected, through an appeal, to ensure that they did not become established as incorrect guidelines for future cases.

A legal analysis commissioned by a number of NGOs found that:-

1. The customary international rules of treaty interpretation, which the Panel was required to employ under the WTO's Dispute Settlement Understanding, were violated by its determination that the Convention on Biological Diversity (CBD), the Biosafety Protocol (BP) and the precautionary principle were not relevant to the dispute.

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A correct interpretation of international law would have found the CBD to be as applicable in this case as to the disputes between the EC and Canada, and the EC and Argentina. The WTO rules should then have been interpreted so as to avoid any conflict with this treaty. Similarly, the correct first step as regards the precautionary principle would have been to determine whether it was international law "applicable in the relations between the parties", in the context of which the WTO rules should then be interpreted.

2. The Panel's consideration of "less favourable treatment" *before* assessing the "likeness of products" should be challenged, along with various other points concerning the order of legal analysis.
3. It seems that the burden of proof as regards justification for applying the precautionary principle, in terms of the demonstrating the sufficiency of scientific evidence, was placed on the EC rather than the Complaining Parties.
4. The dispute has not been resolved with respect to non-Sanitary and Phytosanitary Agreement (non-SPS) objectives, following the Panel's decision not to consider the Technical Barriers to Trade Agreement (TBT) or non-SPS measures in the General Agreement on Tariffs and Trade (GATT). The reasons for this decision are far from clear.

The consequences of the Dispute Panel's recommendations having been adopted unchallenged are far-reaching. This precedent will seriously undermine the legal status of other international laws and their status in relation to WTO agreements, and the autonomy of countries and their governments to safeguard the public interest in the way they best see fit.

More generally, it was inevitable that the US would take advantage of the possibility inherent in the Dispute Settlement system to close the likelihood of an appeal as soon as possible, even before the deadline was up. Given this, the way in which the decision over whether or not to appeal was taken is a clear illustration of the ongoing concerns about the lack of transparency and accountability in trade negotiations.

It seems that matters are in fact deliberately arranged so as to have as little "interference" as possible from, for example, the Parliament, noting that the decision not to appeal the decision was presumably taken at a meeting of the 133 Committee on Friday 17 November, and the WTO ruling then adopted the following Tuesday. The lack of opportunity provided by such a timetable for input or comments on this decision is clear; and the fact that there is nothing in the rules to prohibit this serves only to demonstrate the inadequacies of those rules.

I look forward to hearing your response to these various points.

Yours sincerely,

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