

Articles

PROMOTING GLOBAL FOOD DEMOCRACY — GM FOODS, TRADE LAW, THE ENVIRONMENT & ETHICS

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ABSTRACT

The WTO Panel decision in EC – Biotech declined the invitation of the EC and numerous amici curiae to find that a cornerstone principle of international environmental law, the precautionary principle, was a principle of customary international law. The panel so declined by engaging in a pedantic exercise of “dictionary jurisprudence” in interpreting the SPS Agreement, misreading the Vienna Convention on the Law of Treaties, and undermining a principle of international environmental law that has been resoundingly re-affirmed by the majority of nations. Although the work of the WTO has generated several studies attempting linkages with titles such as “Trade and . . . ,” it is submitted that when it comes to the environment, this emphasis puts the cart before the horse and the real issue should be “The Environment and Trade” instead of the other way around. Human survival depends on a sustainable environment. The WTO Agreement itself recognizes in its preamble that trade is a means to achieve higher societal aims such as “general welfare,” “sustainable development” and “the optimal use of the world’s resources.” By green-lighting the export of GM Foods and subjecting restrictions on imports to the high level scrutiny of the SPS Agreement, the Panel ignored the legitimate

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concerns of significant stakeholder groups, delegitimized the precautionary principle, and elevated trade liberalization dogma over more general human welfare. Given the narrow focus of the Panel's remit under the SPS Agreement, it is undesirable that the final pronouncement of the status and application of the precautionary principle in international law should be left to a trade liberalization agenda-driven panel that lacks legitimacy in the eyes of many countries and stakeholders as well as democratic accountability. The global community, alarmed by credible reports of global warming, deforestation, overfishing, and other extreme forms of environmental degradation, has a right to an authoritative pronouncement on the status of the precautionary principle in international environmental law. This it could secure if the UN General Assembly, representing the nations of the world, were to ask the International Court of Justice for an advisory opinion on the status of the precautionary principle in customary international law. The pronouncement of the Court, consisting of eminent jurists representing a broad spectrum of nations, would provide the much needed guidance on a subject that relates to human survival.

KEYWORDS: *EC-Biotech, genetically modified food (GM Food), genetically modified organism (GMO), precautionary principle, food security, biodiversity*