

TPP and GMO Regulatory Systems: Any Hope for Successful Negotiations?

Presentation at GMCC-15
Amsterdam, The Netherlands

Nov. 19, 2015

Stuart Smyth
University of Saskatchewan
Canada



SAIFFood 
SUSTAINABLE AGRICULTURAL INNOVATIONS & FOOD

INDUSTRY FUNDED RESEARCH CHAIR IN AGRI-FOOD INNOVATION

Alternatives required from death of Doha



TPP
accounts
for 40% of
global
GDP

Acknowledgements

I would like to acknowledge and thank my co-authors.

Crina Viju – Institute of European, Russian and Eurasian Studies,
Carleton University

William Kerr – Department of Bioresource Policy, Business and
Economics, University of Saskatchewan

Introduction

- Article XXIV of GATT:
 - *“A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (...) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.”* (WTO, n.d.)
- Preferential trade agreements as an alternative to lack of progress in multilateral trade negotiations:
 - Dealing with contentious issues such as trade in genetically modified products (GMOs): different domestic regulatory regimes justified on sanitary and phytosanitary grounds.
 - CETA, TTIP, TPP

Research Question

What are realistic expectations regarding what can be accomplished in trade agreements such as the TPP for complex topics such as the rules for trade in the products of biotechnology?

Outline

- Multilateral rules of trade for GMOs
- Limits of trade agreements
- TPP and biotechnology

Multilateral rules: WTO

- Regulations inhibit, restrict and eliminate trade in agriculture and food products
- Do they have a legitimate purpose?
 - ❖ Protect population from food safety hazards, from fraud (falsely labelled food products)
- Uruguay Round (1994): 2 distinct WTO sub-agreements:
 - ❖ Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT)

SPS (1994)

- Science as justification for imposition of barriers to trade
- Major disagreements between different countries:
 - On science itself
 - Science should be the sole factor in the establishment of SPS import regulations
- 2 high profile SPS disputes since 1995:
 - EU import ban on GM crops
 - EU import ban on beef produced using growth hormones
- SPS (or anything else dealing with GM) NOT opened for negotiation in Doha Round: no possibility for progress multilaterally until Doha is finished

TBT (1994)

- Major contentious area: labelling requirements for imports
- Increased consumers' interest regarding credence attributes: animal welfare, child labour, use of GMOs, environmentally friendly & use of pesticides
- TBT agreement:
 - Import labels cannot be required on the basis of how a product is produced – Production and Processing Method (PPM) – (except when final product is discernibly different)
 - Biotech is a PPM
- TBT NOT opened in Doha Round

Multilateral rules: Multilateral Environmental Agreements (MEAs)

- Cartagena Protocol on Biosafety (CPB) trade in products of modern agricultural biotechnology (LMOs)
 - Protection for biological diversity + threats to human health
 - Difference from WTO SPS:
 - Science only informs decisions; other considerations allowed in the decision process including socio-economic factors
 - Specific recognition of precautionary principle
 - No binding dispute settlement mechanism
 - Major adopters and exporters of GMOs not members
 - CPB rules cannot be applied to non-members

Limits of trade agreements

- Can TBT and SPS be strengthened (or weakened) through preferential (regional) trade agreements?
 - Requests for protection from consumers, environmentalists and other groups of civil society: no economic motivation
 - Need to find common ground with policy makers in other countries regarding acceptable methods to deal with risk
 - Assumptions embedded in scientific rationale of SPS that are contentious: scientific consensus can be reached and members of civil society would agree with decisions taken based on scientific consensus

Limits of trade agreements

- Limited set of feasible outcomes:
 - Could have harmonization to an existing regulatory system of one trading partner – but only if adjustments necessary are small
 - If costs of adjustment high: new set of common standards – long process; technical experts, not trade negotiators
 - Establishment/recognition of institutional forums: for negotiating standards WTO SPS, Codex, OIE, IPPC

CETA and Biotechnology - Article X.03: Bilateral Cooperation on Biotechnology

1. The Parties agree that **cooperation and information exchange** on issues related to biotechnology products are of mutual interest. Such cooperation and exchange of information will take place in the bilateral Dialogue on Biotech Market Access Issues ... The **dialogue** covers any relevant issues of mutual interest to Canada and the EU, including, among others:
- (a) biotechnology product approvals in the territory of Canada or the EU as well as, where appropriate, forthcoming applications of commercial interest to either side;
 - (b) the commercial and economic outlook for future approvals of biotechnology products;
 - (c) any trade impact related to asynchronous approvals of biotechnology products or the accidental release of unauthorized products, and any appropriate measures in this respect;
 - (d) any biotech-related measures that may affect trade between Canada and the EU, including measures of EU Member States;
 - (e) any new legislation in the field of biotechnology; and
 - (f) best practices in the implementation of legislation on biotechnology.

AN AGREEMENT TO TALK AND TALK!

The 12 members of the TPP have lots to talk about

	TPP Countries' Regulation of GMOs						
	SPS	CPB	Cultivation Ban	Import Ban	Labelling	Coexistence	Other
Australia	Yes	No	Not nationally but depends on individual States	No	Yes	Common law – major ruling against organic claim	
Brunei	Yes	No	Yes (no regulations yet developed)	Yes (no regulations yet developed)	Not applicable	Not applicable due to cultivation ban	Regulations being developed
Canada	Yes	No	No	No	No	Common law	
Chile	Yes	No	Yes	No	No	Seed production only. Official tolerances under development. Currently industry self-regulation	Regulations being developed. GM-seed produced for export only
Japan	Yes	Yes	No	No	Yes	Tolerance set at 5% - commercially achievable	
Malaysia	Yes	Yes	No	No	Under development	Not specifically dealt with	Regulations being developed
Mexico	Yes	Yes	No	No	No	Some protected geographically defined areas. Rules under development	
New Zealand	Yes	Yes	Yes	No	Yes	Not applicable due to production ban	
Peru	Yes	Yes	Yes (until 2022)	Yes (until 2022)	n.a.	Not applicable due to production ban	
Singapore	Yes	No	Not applicable	No (no regulations yet developed)	No (no regulations yet developed)	Not applicable due to absence of agricultural production	Regulations being developed
United States	Yes	No	No	No	No	Common law	
Vietnam	Yes	Yes	No	No	Under development	Not yet officially recognized as an issue	Regulations being developed

TPP and Biotechnology

- Little commonality in terms of GM regulatory regimes across the TPP countries:
 - Some countries members of CPB
 - Difficult to imagine that the regulatory regime of any of the countries involved becomes a harmonization standard others will accept
 - A new common regulatory regime required
 - Not under TPP negotiations
 - Create new institutional forum for negotiating over biotechnology - like CETA

TPP Official Text on Biotechnology

Chapter 2.29 - Trade of the Products on Modern Biotechnology

9. The Parties hereby establish a working group on products of modern biotechnology under the Committee on Agricultural Trade (Working Group) for **information exchange and cooperation** on trade-related matters associated with products of modern biotechnology. The Working Group shall be comprised of representatives of all Parties that, in writing, inform the Committee on Agricultural Trade that they will participate in the Working Group and name one or more representatives to the Working Group.

10. The Working Group shall provide a forum to:

- (a) **exchange**, subject to a Party's laws, regulations and policies, **information on issues**, including on existing and proposed domestic laws, regulations and policies related to the trade of products of modern biotechnology; and
- (b) further enhance cooperation among two or more Parties, where there is mutual interest related to the trade of **products of modern biotechnology**.

An agreement to TALK AND TALK –
No Closure Mechanism

Other aspects of the TPP related to biotechnology

- Much of Section 2.29 on Trade of the Products on Modern Biotechnology attempts to ensure TPP member countries conform to the Science Rationality approach to new technologies that is embodied in the SPS Agreement of the WTO – and not the Social Rationality approach of the Cartagena Protocol on Biosafety
 - Done for trade barriers pertaining to GMOs
 - Done for low level presence
- But goes no further than the SPS
- **BUT** clause 20.14 –Multilateral Environmental Agreements
 - The Parties recognize that multilateral environmental agreements to which they are party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.
- Japan, Malaysia, Mexico, New Zealand, Peru and Vietnam belong to the CPB – so ???

Summary

- Agricultural biotechnology one of the topics negotiated under TPP
- Domestic regulatory regimes diverge considerably
- Members agreed to Scientific Rationality approach to establishing trade barriers for GM – but no improvement on WTO's SPS
- Need for a new, harmonized system negotiated at the technical level
 - Discussions mandated under TPP – voluntary working group
 - How negotiations will be structured – less clear

Thank You To My Sponsors



POTASHCORP - A FOUNDING PARTNER



Questions? Comments?



SUSTAINABLE AGRICULTURAL INNOVATIONS & FOOD

INDUSTRY FUNDED RESEARCH CHAIR IN AGRI-FOOD INNOVATION