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LIGHTHIZER'S OPTIONS: WHERE TO GO WHEN TRADE AND SCIENCE COLLIDE?

Agriculture (/full-blog/category/Agriculture)

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In the past few weeks, beef was imported from the United States to China for the first time in 14 years.[i] This signaled a huge change in international agricultural trade between the new nations, but President Trump's new U.S. Trade Representative is pushing for more.[ii] Robert Lighthizer has set his department's sights on attacking overseas regulations restricting the importation of American GMO crops and other agricultural products made possible by technological innovation.[iii] These restrictions have been especially criticized in China where officials are said to be "dragging their feet" on approving new genetically engineered goods.[iv] The question now turns to how the new taskforce will accomplish this objective.



<http://www.agriculture.com/news/business/lighthizer-warning-buy-gmos-or-expect-a-fight> (<http://www.agriculture.com/news/business/lighthizer-warning-buy-gmos-or-expect-a-fight>)

The best chance for the resolution of this issue lies with the World Trade Organization (WTO). The WTO operates to regulate trade internationally, resolve trade disagreements, and primarily to open trade business to all.^[v] The WTO was formed in 1994 and is based on the principles of the General Agreement on Tariffs and Trade (GATT) executed in 1947.^[vi] The GATT and WTO focus on implementing liberal trade policies, which allow goods and services to be sold at the lowest prices.^[vii] Unlike GATT, the WTO has the means to settle trade disputes and encourage agreement.^[viii] Additionally, the WTO's Sanitary and Phytosanitary (SPS) Agreement for the first time required any import restrictions based on health concerns to be backed by scientific evidence and not simply a disguised trade barrier motivations.^[ix] This Agreement is the most likely to be used in the fight around existing GMO imports restrictions.

In fact, it was used in 2006 against a then existing EU ban on genetically engineered products.^[x] In this case, the EU had a ban on the importation of GMO products based on a precautionary principle, but the WTO found they had failed to provide the required scientific evidence outlining the potential harm.^[xi] This led the court to condemn the ban and should have opened up the EU to the importation of genetically engineered products – but it did not. Instead, the EU amended its legislative framework to allow individual countries to ban GMO importation.^[xii] This led to import bans on GE products in Austria, Greece, Hungary, Luxemburg, and Bulgaria that are still effective over a decade after the EU-US dispute.^[xiii] At the time, many predicted this would happen, NGOs such as Greenpeace and Friends of the Earth Europe (FoEE) openly stated the WTO was not the organization to handle the dispute and criticized the decision for leaving doors open allowing the import ban.^[xiv] Additionally, the WTO was extensively criticized for failing to handle the complex scientific issues at play and putting trade issues above all else.^[xv]

On another note, there are many bans in effect globally that disallow the growth of GE crops in their country and thus halt any importation of GE seeds manufactured in the US.^[xvi] Currently, no WTO agreement or provision has the authority to force a country to change that stance.^[xvii] Overall, the WTO might not provide the concrete global acceptance of GMOs Lighthizer seems to be striving for but it may offer a way to close one importation loop hole at a time and begin to bridge the gap.

[i] Patton, Dominique, *Chinese Suppliers Race to Order U.S. Beef*, Drovers: Driving the Beef Market (June 19, 2017), <http://www.cattlenetwork.com/news/industry/chinese-suppliers-race-order-us-beef>.

[ii] Abbott, Chuck, *Lighthizer Warning: Buy GMOs or Expect a Fight*, Successful Farming (June 20, 2017), <http://www.agriculture.com/news/business/lighthizer-warning-buy-gmos-or-expect-a-fight>.

[iii] *Id.*

[iv] *Id.*

[v] *The WTO*, World Trade Organization, <https://www.wto.org/index.htm> (last visited June 21, 2017).

[vi] McDonald, Michelle, *International Trade Law and the US-EU GMO Debate: Can Africa Weather the Storm?*, 32 Ga. J. Int'l. & Comp. L. 501, 510 (2004).

[vii] *Id.*

[viii] *Id.* at 511.

[ix] *Id.* at 517. Josling, Timothy, *A Review of WTO Rules and GMO Trade*, Int'l Ctr. for Trade and Sustainable Dev. (Apr. 13, 2015), <http://www.ictsd.org/bridges-news/biores/news/a-review-of-wto-rules-and-gmo-trade>.

[x] *Principle EU-US Trade Disputes*, Libr. Briefing: Libr. of the Eur. Parliament, (Apr. 22, 2013), [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130518/LDM_BRI\(2013\)130518_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130518/LDM_BRI(2013)130518_REV1_EN.pdf).

[xi] *Id.*

[xii] *Id.*

[xiii] Adams, Case, *Many Countries Ban GMO Crops, Require GE Food Labels*, Heal Naturally: Science Based Nat. Health, <https://www.realnatural.org/many-countries-ban-gmo-crops-require-ge-food-labels> (last visited June 21, 2017).

[xiv] *EU GMO Ban Was Illegal, WTO Rules*, Euractiv (Nov. 5, 2012), <https://www.euractiv.com/section/trade-society/news/eu-gmo-ban-was-illegal-wto-rules>.

[xv] *Id.*

[xvi] *Id.*

[xvii] Josling, Timothy. *A Review of WTO Rules and GMO Trade*, Int'l Ctr. for Trade and Sustainable Dev. (Apr. 13, 2015), <http://www.ictsd.org/bridges-news/biores/news/a-review-of-wto-rules-and-gmo-trade>.

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