

AUGUST 2nd, 2006

South Africa's ban on GM import approvals

South Africa's pro-genetic engineering (GE) stance is well documented¹ and enshrined in national government policy.² During the period 2001-4, South Africa's Executive Council (ExCo)³ established under the Genetically Modified Organisms Act ("GMO Act") has allowed the importation into South Africa of millions of tonnes of cheap genetically modified (GM) maize⁴, much to the delight of the animal feed⁵, meat and dairy industries in South Africa.

During September/October 2005, the ExCo took a decision not to approve any more new⁶ GM applications for the purposes of importation into South Africa as food, feed and processing (also known as commodity import applications). This decision was taken by the ExCo in order to accommodate the serious concerns raised by one of the ExCo members, the national Department of Trade and Industry (DTI), regarding price distortions of GM maize and its concomitant negative impacts on the South African economy as a whole. Nevertheless, the decision affects all new GM commodity import applications.

Currently, the DTI is studying these impacts and early indications are that price distortions indeed exist. It is anticipated that it will be some time yet - perhaps up to one year, before the EC is in a position to take a final decision to either lift or confirm the temporary ban. Much work still lies ahead for the ExCo, including the conducting of open and transparent public consultations and debate.

In the meanwhile, none of the spate of applications for the import of new varieties of GM maize lodged before the ExCo's temporary ban, or those that have been lodged thereafter, including Syngenta's GM maize for ethanol,⁷ and Bayer's LL GM rice,⁸ can be approved in South Africa. Interestingly, South Africa does not allow any imports of GM maize from the United States because the US has approved many more GM maize varieties for commercial growing than has South Africa. Since the US has failed to put in place a mandatory traceability system, it is not possible for the South African authorities to enforce its zero tolerance for unapproved GMOs because the risk of contamination is just too high.

One of the major areas of concern for the South African government must be the fact that no GM variety should be approved in South Africa for importation purposes, unless the same variety has also correspondingly been subject to the rigour of a full appraisal for commercial growing in South Africa. In other words, can the South African government fail to oppose a situation where imports of GM maize into South Africa are given a competitive advantage over domestic producers in South Africa with regard to that same GM variety? Specific concern centres around the fact that the imported maize could also be used for domestic production purposes, considering that the importers cannot guarantee that imported GM maize will be immediately milled and only be used for human and animal consumption, or fed as whole grain to animals.

CONCERNS OVER FLOOD OF GM MAIZE IMPORTS

The African Centre for Biosafety ("ACB") has with the support of many groups in South Africa such as Earthlife Africa, South African Freeze Alliance on Genetic Engineering (SAFeAGE) and Biowatch South Africa, launched objections to a large number of GM maize applications.⁹ It has, when objecting to Monsanto's application for food safety clearance for the importation into South Africa of GM maize line MON 863 and MON hybrids Mon 863 X Mon 810 raised several serious concerns. Amongst these is the need for an enquiry into impacts on the domestic production of non-GM maize in South Africa, the distortions in the market place caused by the sale of GM maize, the predatory pricing policies of international grain exporters such as Cargill and Louise Dreyfus and the huge subsidy regimes available to them by their governments that assist them in obtaining market domination and displacement of local producers and placing at risk, thousands of jobs in the agricultural sector and related industries.¹⁰

Commercial maize farmers organised under the auspices of GRAIN SA have opposed import applications for GM maize expressing the Cry3Bb1 and Cry1Ab proteins respectively¹¹ and more importantly, for taking a firm position to oppose "the importation of any GM maize as a commodity for local consumption which cannot also be produced locally."¹² In other words, they oppose any GM application for the importation of GM grain, where no corresponding permit also exists for its commercial production, in line with the position expressed by the DTI.

According to GRAIN SA, enormous pressure is currently being placed on local producers who want to service the export market to develop an identity preservation system and use it to produce, store and transport GMO and non-GMO maize separately. The same requirements, to establish the GMO status and certify the identity must therefore also apply they say, to overseas producers who want to enter the South African market.¹³

Traceability and Identity Preservation

The ACB has already written about the quiet revolution taking place within the food industry in South Africa concerning segregating and preserving the identity not only of GM varieties from their conventional counter parts but also, of the individual GM events within and between different GM varieties and species.¹⁴ However, this is all done on a voluntary basis to secure overseas markets and more importantly, these measures are not legally enforceable vis-a-vis imports of GMOs into South Africa.

Civil society in South Africa are not convinced that the current de facto ban on new GM import approvals in South Africa will be lifted in the near future, and if it is lifted, it is very likely that it will be subject to the introduction of several new stringent biosafety measures. These are likely to include mandatory traceability and identity preservation systems for imported and exported GMOs, and the need for commodity clearance permits to be issued only in respect of GMOs that are also approved for commercial production in South Africa.

Mandatory traceability and identity preservation systems are topics of intense interest in the food industry in South Africa, and are issues that governments throughout the world are discussing, especially in the light of the successful resolution of the infamous Article 18(2)(a) of the Cartagena Protocol on Biosafety at the Third Meeting of the Parties (MOP3) that took place in Curitiba, Brazil during March 2006.¹⁵ It is our view that in the light of the de facto identity preservation systems operating in South Africa, the agreement reached in Curitiba already requires exports from South Africa to be accompanied by documentation that clearly and positively labels the shipment as "contains" GMOs¹⁶ and provides the additional detailed information as required by the Protocol.¹⁷ This will thus necessitate far-reaching legal and trade reforms by virtue of the fact that domestic industries will clamour for similar treatment to be applicable to imports of GMO commodities.

US INTIMIDATION, IS SA NEXT?

The United States, the world's largest producer of GMOs, has already effectively used the threat of World Trade Organisation (WTO) sanctions against developing countries, such as Sri Lanka, Bolivia, South Korea and Thailand when these countries tried to ban or restrict imports of GMOs in adopting biosafety measures.¹⁸

A well known example of such bullying is the WTO complaint lodged by the US, Canada and Argentina against the European Commission (EC) on the basis that the EC had a de facto moratorium on GMO approvals that resulted in "undue delays" and were therefore in violation of WTO rules. National bans put in place by some EU member states on specific products had also been challenged as being WTO inconsistent.

Will the US accept new stringent biosafety measures for GM imports in South Africa especially if those are tantamount to delays in approvals for imports of new GM maize varieties for up to 3 or 4 years? Certainly, the interim report of the World Trade Organisation's Dispute Settlement Panel in the US/EU dispute¹⁹ does not question the sovereign right of any country to put in place strict biosafety legislation to regulate GMOs,²⁰ including a decision to reject an application related to a GMO.

Notes

1. See, www.biosafetyafrica.net; www.biowatch.org.za. www.safeage.org.za, to name just a few websites recording the steady march of GMOs into South Africa's agriculture and more recently, also, in the realm of medical applications, concerning GE HIV vaccines.

2. A National Biotechnology Strategy for South Africa, Department of Science and Technology June 2001 www.dst.gov.za/publications/reports.php

3. The Exco is the decision-body comprising representatives from various national government departments.
4. The UN's commodity trade database shows a total of around 2.3 m tons of maize and maize seed imported over the period 2001-04, but the GMO permits show an import of 2.86 million tons in the same time. There are many different ways that maize enters the country, and it's possible that it could enter in some semi-processed form for animal feed.
5. The animal feed industry is organised and represented by the Animal Feed Manufacturers Association (AFMA)
6. Here we are referring to GM events or hybrid GMOs that had not previously been approved in South Africa.
7. Comments By The African Centre For Biosafety And The Centre For Food Safety (USA) Comments On Syngenta's Application For Commodity Clearance Of Genetically Modified Maize, Event 3272 African Centre for Biosafety & Centre for Food Safety, 29 May 2006 <http://www.biosafetyafrica.net/bioethanolmaize.htm>
8. Submission Of Objections By The African Centre For Biosafety Objections To The Application Made By Bayer Cropscience Gmbh In Respect Of A Commodity Clearance Application For Event Llrice62 To The National Department Of Agriculture, South Africa African Centre for Biosafety, supported by various organisations, groups, companies, and individuals, Jun 2006 http://www.biosafetyafrica.net/objections_rice.htm
9. These include the following: Bt-Maize 176 / Syngenta; Bt-Maize MON863 and MON863 ; MON810 / Monsanto; Bt-Maize TC1507 / Dow AgroSciences; Bt-Maize GA21 / Syngenta; Bt-Maize 59122 / Pioneer HiBred RSA & Dow Agroscience Southern Africa; Bt-Maize 1507 X 59122 (HERCULEX XTRA) / Pioneer HiBred RSA & Dow Agroscience Southern Africa; Bt-Maize MIR 604 / Syngenta; Bt-Maize 59122 X NK603 / Pioneer Hi-Bred; Bt-Maize MON89034 and MON89597 / Monsanto; Bt-Maize 1507x 59122 x NK 603 / Dow Agrosciences; Bioethanol-Maize 3272 / Syngenta, see www.biosafetyafrica.net
10. Mariam Mayet and Shenaz Moola, August 2004 Objections to the Application Made by Monsanto South Africa for a Commodity Import Permit of Grain for Feed and Food Purposes that may Contain Maize Grains Derived From Insect-Protected Maize Line Mon863 and Maize Hybrids Mon863 X Mon810 <http://www.biosafetyafrica.net/Btmaize863.htm>
11. Grain SA opposes untested GMO maize Business Day, South Africa, by Justin Brown 7 Jul 2004 <http://www.bday.co.za/bday/content/direct/1,3523,1654407-6078-0,00.html>
12. Personal Communication, GRAIN SA, 3 February and 1 December 2005

13. Personal Communication, GRAIN SA, 3 February 2005

14. Mariam, Mayet, Case Study: South Africa's traceability and segregation systems for GM grains Briefing Paper 4, Briefings for MOP3, Third World Network www.twinside.net

15. For a detailed analysis of the agreement, see Lim Li Lin and Lim Li Ching Analysis of the MOP 3 Article 18.2(a) Decision, Third World Network, South-North Development (SUNS) Number 5992, March 2006 and Cartagena Protocol on Biosafety-3rd Meeting of the Parties (MOP-3) T&E Info Exchange http://www.trade-environment.org/page/infoch/CPB_MOP3.htmj

16. In terms of the agreement reached in Curitiba, in cases where the identity of the GMO is known though means such as identity preservation systems, then the shipment must be identified as "contains" GMOs.

17. The information that must be provided include details that the GMOs are not intended for intentional introduction into the environment, the common, scientific and, where available, commercial names of the GMOs, the transformation event code of the GMOs or, where available as a key to accessing information in the biosafety clearing house (BCH), its unique identifiers code and the internet address of the BCH for further information.

18. These cases of US style aggression is discussed in a briefing document prepared by Greenpeace The US War on Biosafety Renewed Aggression by a Rogue State, June 2004.

19. "European Communities-Measures Affecting the Approval and Marketing of Biotech Products" where the US, Canada and Argentina were complaining parties and the European Communities (EC), the defendant. The 1050 page interim report is confidential and only made available to the parties to the dispute, but the conclusion and recommendations are in the public domain, see www.tradeobservatory.org/library.cfm?refid=78475

20. See, Friends of the Earth International Briefing Paper Looking behind the Spin: WTO ruling does not prevent countries from restricting or banning GMOs February 2006.