

**Considering the Applicability of the SPS Agreement to GMOs
in terms of the Panel Report in the
EC-Biotech Dispute**

*Tsai-Yu Lin**

Abstract

European communities-Measures affecting the Approval and Marketing of Biotech Products, the first WTO dispute settlement report involving GMOs disputes, has received enormous publicity since its recent issuance in September 2006. In more than two thousands of pages of the panel report, many noteworthy and innovative findings were contained and have the potential to direct future changes handling GMOs in the context of the WTO. This paper will address how the applicability of the SPS Agreement to GMOs impacts the countries which want to regulate the possible risks arising from GMOs in terms of the rulings adjudicated in the Bio-tech dispute. Section II will first provide an overall review of the operation and application by the European Communities of its regime for approval of bio-tech products. Section III will examine whether a relevant GMO measure constitutes an SPS measure, viewing from the perspective of the purpose, form and nature elements indicated by the text of SPS Agreement. On this point, particular concerns will be placed on the arguments as to GMOs as an SPS risk, a prohibition on the importation of GMOs and GMOs labeling. In the remaining parts of this paper, the issues on undue delay in the approval of bio-tech products, the undertaking of risk assessment and SPS-type precautionary measures will be analyzed. The concluding remarks of this paper will be provided in section VI. In this paper, the author will provide her questions and comments on the panel's findings as a

* Professor, Department of International Business, Soochow University.

contribution.

Keywords: EC bio-tech, GMOs, SPS Agreement, dispute settlement, risk assessment, precautionary measure