

Right to Choose GM Free Food on the Line with Free Trade Deal?

Overview

Will losing the right to choose GM free food be a price of the next and biggest free trade deal? The US has made clear that a priority for it in the proposed Trans Pacific Partnership (TPP) is the abolition of laws requiring the labelling of GM food.

Currently, any foods with more than 1% GM content must be labelled in New Zealand. Consumer concern has seen supermarkets avoiding formulas that would trigger labelling in their own brands and retailers essentially do not stock products that are labelled as containing GM ingredients. Without that law, consumers who want to avoid GMOs in their food would have to rely on the willingness of producers to declare the content - or on a patchwork of independent testing.

Loss of the automatic right to know when a product contains GM ingredients could quickly slide into effective loss of the right to choose everyday foods that have been formulated to avoid GMOs. Instead of it being the norm for food companies to strive to keep GM out of their products, this could become the preserve of niche eco brands.

The US wants to eradicate GM labelling as it is the world's biggest exporter of GMOs and labelling regulations – in place with most of the countries in the TPP talks – have long been a grievance. The US government and the biotech industry view the TPP as an opportunity to bring Pacific Rim countries into line with US trade objectives. And if the biotech sector gets its way, the demands will extend into the laws that currently allow New Zealand to reject growing GM crops that do not provide benefit to the country.

When New Zealand's chief negotiator was asked what were "the top local impediments" to concluding a TPP agreement, the first item he listed was the nation's GMO regulations – and cited Monsanto's unhappiness with these.

While US objectives are abundantly clear, New Zealand's response is not. The Environment Ministry and the Minister are unusually direct that they are not proposing significant change to the law governing environmental release of GMOs while Labour and the Greens propose additional protections. The separate labelling law also appears to be broadly supported – so it is not that the US is pressing for something that is waiting to happen on either count. The question is whether the incoming New Zealand government will stand up to pressure from the US to weaken New Zealand law as a trade off in the TPP negotiations.

New Zealand's regulatory regime for GM foods and GMOs in the environment has been hard won. The use of GM in food production has been the most controversial and widely debated new technology of the last two decades. That the country remains a GM free food producer reflects sustained concern about the long-term consequences of taking the GM path and risks to the nation's brand in key export markets. The country's GM free food producer status is increasingly becoming part of New Zealand's identity, just as its nuclear free stance defines it. Unless potential future governments give assurances that they will not allow GM law to be weakened, it must be assumed that this is a tradeable item.

1. GM Foods Central to US Agricultural Exports and Trade Policy

The US continues to be the largest GM food and feed producer in the world, with 45% of global production by area.¹ GMOs now dominate production of the country's major commodity crops: this year, 94% of US soybean production was GM, 88% of corn was GM and 90% of cotton was similarly modified.²

Unsurprisingly, GM crops or food products are described by the Office of the United States Trade Representative (USTR) as “the core of U.S. agricultural exports” and in 2009, accounted for US\$98.6 billion in exports.³ For this reason, the US-based GM industry states, “efforts to encourage foreign government support for these products are critical.” It is also why the GM regulatory regimes of countries in the TPP talks will be high on the agenda for US trade negotiators.

Revolving door reflects importance of GM trade to US

The significance of agricultural GMO exports in US trade policy is reflected in key agriculture-related appointments to the Office of the US Trade Representative. For example:

- The Chief Agriculture Negotiator, **Islam A. Siddiqui**, was previously a lobbyist for the Brussels-based GM industry association, CropLife International, where he was responsible for regulatory and international trade issues.⁴
- In May, **Sharon Bomer Lauritsen** was appointed to the USTR as Assistant U.S. Trade Representative for Agricultural Affairs and Commodity Policy. Directly prior to that post, she was Executive Vice President of the Food and Agriculture Section at the US industry's principal lobby association, the Biotechnology Industry Organization (BIO) for a five-year period.⁵ In that capacity, Bomer Lauritsen lobbied the USTR in November last year to place agricultural GMOs as a “top priority” for US negotiators of the TPP.⁶ (Other policy Bomer Lauritsen has called for is discussed below).

Similarly, the significance of trade negotiations to the US biotech industry is reflected in the prevalence of former federal administration and government officers. Seven of the eleven senior staff listed on the BIO website have had posts in the legislature or in federal administration.⁷

2. GM Food Labelling a Thorn in the Side of the US Industry

The labelling of GM foods underpins consumers' right to know the content of their food and to choose whether to consume or avoid foods containing GMOs/GM ingredients. It is also an important traceability tool in the event that product recalls are required.

The view of the US administration and the US biotech industry, however, is that mandatory labelling requirements are a "trade barrier".⁸ Consumer choice is not recognised as a valid first principle in US government thinking. Instead, mandatory measures that enable consumer choice are characterised as not being "sound science". According to the US biotech industry, labelling "creates the impression that these products are somehow different from or less safe than similar food that is not labelled"⁹.

In the 2011 Report on Technical Barriers to Trade, the US Trade Representative (USTR) identified mandatory labelling regimes for GM foods as

a significant problem for U.S. agricultural exports as a result of the widespread use of biotechnology to produce corn, cotton, and soybeans, as well as food produced or processed from these crops in the United States".¹⁰ (Emphasis added)

GM labelling exemplifies the difference between New Zealand and US regulatory cultures and ethos. The US notion of 'legitimate' biosafety science expressed in phrases such as "sound science" and "science-based" – is based on assumptions that are controversial internationally, and increasingly in the US itself. The position asserts that GM crop varieties are "substantially equivalent" to their non-GM counterparts unless GMOs have been deliberately engineered to acquire distinct nutritional profiles; that risk assessment is not necessary before GM foods go to market; and that GM foods should not be labelled as a matter of course.

According to the USTR, mandatory labelling regimes have "impeded" or even "completely blocked US exports" and have led to product reformulation that excludes GM ingredients, therefore affecting US exports. If the GM exports are to break out of the current lower value animal feed markets, then the US must achieve acceptance of GM products as mainstream foods in its principal export markets.

3. Labelling a Key Issue for New Zealand Consumers and Exporters

New Zealand law currently requires any GM content of 1% or more in food products to be labelled.¹¹ Consumer concern has seen supermarkets avoiding formulas that would trigger this in their own brands and retailers essentially do not stock any products that are tagged GM. Without the labelling law, consumers who want to avoid significant GM content in food produced by the dominant brands would have to rely wholly on the willingness of those big producers to declare the content - or on a patchwork of independent testing and questioning of producers undertaken by NGOs.

Loss of the automatic right to know when a product contains GM ingredients could quickly slide into effective loss of the right to choose everyday foods that have been formulated to avoid GMOs. All it would take is for the two major supermarket chains to decide not to compete with each other over GM content. Instead of it being the norm for food companies to strive to keep GM out of their products, this could become the preserve of niche eco brands.

Labelling has consistently rated as an important issue for New Zealanders. In 2001, the Royal Commission reported that it was one of the key concerns raised at the public forums around the country¹², and since then polling and social science research continues to report that New Zealanders want GM food ingredients labelled as a means of ensuring consumer choice.

In 2000, Hortresearch's survey work identified three broad categories that concerns about genetic engineering fall into. Two of these relate to information, right to chose and control over food:

- Unknown short and long term risks on health and the environment
- Lack of choice and control over consumption of genetically modified food, due to the lack of labelling regulations, and the resulting perception of being 'part of an experiment' without having given consent.
- The perceived monopoly big businesses have over the distribution of information, and policy/regulation formation, and hence the perceived lack of regulations and objective information available to the consumers. This adds to consumers' beliefs that they have no control over what they purchase and consume.¹³

AgResearch social scientists have also found that even for “conditional supporters” of GM products (those who might support some types of GM, dependent on the benefits), “autonomy of choice” is critical.¹⁴ More recently, research commissioned by Pastoral Genomics established that irrespective of whether they would be willing to eat products from animals reared on cisgenic feed, a majority of respondents wished to know whether GM was involved.¹⁵

Labelling is also important for food exporters as if inputs remain free of GMOs, it is easier to meet demand for GM free food in key export markets, such as the EU and many Asian countries. More critical than regulatory requirements there are the expectations of retail gatekeepers (such as supermarkets) and their private market standards.

4. New Zealand Government's Position on GM and the TPP

In diplomatic cables prepared by US officials for Washington (and released through Wikileaks), a top New Zealand TPP negotiator has acknowledged that the GM question could be a fundamental hurdle to a TPP agreement:

When asked what the top local impediments will be to concluding an agreement, Sinclair noted a number of areas sensitive to New Zealand. It is "no secret" that Monsanto does not like New Zealand's genetically modified organism (GMO) regulations, Sinclair said.¹⁶

Regulation of GMOs was first introduced in New Zealand in the 1990s and has proven controversial both with the US government and with the US seed industry ever since. When serious consideration of mandatory labelling of GM food ingredients began in 1999, Washington warned of potential trade sanctions and "difficulties" in the trading relationship.¹⁷

The US embassy in Wellington has reported to Washington that "U.S. exporters face regulatory challenges in selling GM foods in New Zealand, including product approval and compliance issues related to stringent labelling requirements."¹⁸

Although New Zealand's GM food labelling regime allows certain GM foods (including highly refined products such as oils, food additives and all GM content up to 1%)¹⁹ to go unlabelled and which requires tightening up, the labelling requirements are nevertheless described by the US government as "among the world's most stringent".²¹ The regime, which New Zealand shares with Australia under Food Standards Australia New Zealand (FSANZ), "can restrict sales of U.S. intermediate and processed products", US officials say.²² The US is particularly interested in Australia and the FSANZ labelling requirements (and thus, by association, with New Zealand) because of Australia's political influence in the region.²³

More than half of the nations negotiating the TPP, including New Zealand, are fingered as countries with labelling regimes affecting US agricultural exports.²⁴ The trade deal is seen by the US GM industry and the USTR as an opportunity to overcome regulatory regimes that "affect" US GMO exports. The US has made a general pledge to "continue to raise trade-related concerns with mandatory biotechnology labelling regimes"²⁵ and the US Trade Ambassador Ron Kirk has further signalled that he intends to use the TPP to "promote" agricultural biotechnology.²⁶

The Environment Ministry and the Minister have been unusually clear that they are not proposing significant change to the law governing environmental release of GMOs while Labour and the Greens propose additional protections.²⁷ The separate labelling law also appears to be broadly supported – so it is not that the US is pressing for something that is waiting to happen on either count. The question then is whether the incoming New Zealand government will stand up to pressure from the US to weaken New Zealand law as a trade off in the TPP negotiations.

When responding to these concerns MFAT has simply stated that the current policy framework for GM "provides the basis for the approach New Zealand will take in any TPP discussions".²⁸ In other words, it will start by defending the status quo but gives no indication it has ruled out conceding ground on any of the current legal protections.

US Government “Correctional School” for NZ

As well as using trade and legal strategies in its bid to expand market access for GM exports globally, the US government has adopted an ambitious technology promotion programme for countries not ‘in line’ with US policies.²⁹

For New Zealand, the last decade has seen an ongoing ‘educational’ programme - funded at least in part from the coffers of the US State Department - to convince the New Zealand government and New Zealanders of the *moral* imperative to adopt GM. This is because, as the US embassy staff in Wellington have informed Washington, GM continues to be “a politically sensitive subject in New Zealand”.³⁰ New Zealand consumers “still do not readily embrace the technology”, “are usually cautious when purchasing GM foods and have tended to avoid such foods”.³¹

New Zealand consumers, the US agricultural attaché has therefore recommended, “would benefit from additional science-based information on the risks and benefits of GM technology”.³² The US embassy reports to Washington have therefore identified “opportunities for [...] outreach in New Zealand, particularly in working better with the media to provide a balanced view of the risks and benefits of GM technology.” Options identified include speaker tours, media seminars and social media “to provide a clear and consistent message about the risks and benefits of GM technology.”³³

The suggestion that such US-government sponsored educational activities would present “balanced” scientific accounts of benefits and risks has not been borne out. Instead, since 2003 the envoys have been predominantly GM ‘hardliners’, who have heavily focused on promoting the technologies. At least in describing the purpose of one promotional tour, the embassy is candid, noting that its “main aim in New Zealand was to promote the uptake of biotechnology in New Zealand by outlining its benefits and pointing out the flaws in the statements of detractors”.³⁴ Experts sponsored by the US government have included:

2003. Martina McGloughlin. GM plant scientist and advocate, who was brought to New Zealand in 2000 as a witness for the pro-GM industry organization, Life Sciences Network. **Patrick Byrne,** GM plant scientist, Colorado State University.

2004. Gregory Conko, Competitive Enterprise Institute. Neo-liberal/conservative thinktank. **Richard Fawcett,** Farm Journal magazine and a former agronomy professor at Iowa State University.

2005. James Maryanski. Food and Drug Administration.

2011. Nina Federoff. Secretary of State/Clinton’s Science Advisor; GM plant scientist and proponent.³⁵

US Government sponsored “outreach activities are, in Secretary of State Hilary Clinton’s words, designed “to increase access to, and markets for, biotech”.³⁶ These are being undertaken in a number of countries and have been funded by the US State Department’s Office of Agriculture, Biotechnology, and Textile Trade Affairs since 2002.

5. The US Industry Position

The USTR and the biotech industry positions on GM regulation are broadly aligned. Thus, while US negotiators may not advance every item on the industry's wish list, it is likely that the following (set out in the Biotechnology Industry Organisation's (BIO) submission to the USTR) will be advanced to varying degrees at the TPP table:

- **Labelling:** That the labelling regimes of TPP member states only require product labelling if there are significant differences in nutritional content or other health-related properties of a GM food compared to the non-GM variety. In contrast, under the labelling regime that New Zealand and Australia share, GMOs must be labelled irrespective of these considerations.
- **Contamination of US exports with GMOs not approved for consumption on the importing country:** US supply chains are struggling to keep GMOs separate from non-GM production and the largest product recall in history resulted when a GM maize developed for animal feed was detected in food products, even though the maize had not been approved for human consumption.³⁷ The industry therefore wants the TPP to require countries to adopt standards that would allow unapproved GM contaminants up to certain levels.
- **Risk assessment of GMOs with more than one GM trait:** That there be no separate risk assessment of GMOs made up of more than one approved GM trait – for example a GM corn variety that is both herbicide-resistant and pest-resistant. Instead, TPP countries should simply accept the risk assessment of the individual traits and regulators assume there are no synergistic changes or changes in the composition of foods and their safety resulting from multiple traits.
- **Countries to consult with US government if US GM exports likely to face difficulties:** That TPP countries “consult” with the US Government in advance of any potential trade disruptions of GM imports from the US “before any actual negative impacts on trade occurs”.
- **Managing TPP country positions on GM in international forums:** BIO is also advocating that the trade talks be used as a means of controlling TPP country positioning on GMOs in other forums, such as the UN Cartagena Biosafety Protocol, which governs the transboundary movement of GMOs. TPP countries, the organization stated, should agree to “coordinate on government positions” in advance.³⁸ In this vein, BIO hopes to use the TPP to bring Malaysia ‘into line’, after the government took a position at the Biosafety Protocol negotiations that would not “foster growth in the trade of products derived from modern agricultural biotechnology as well as cultivation of genetically engineered crops”.³⁹

6. GM Protections on the Line

As a New Zealand negotiator has acknowledged, GM regulation is likely to be one of the weightiest impediments to securing a TPP deal⁴⁰ – a statement that reflects the significance of the issue not simply to the US seed and agricultural export industries, but also to New Zealanders.

New Zealand's regulatory regime for GM foods and environmental release of GMOs has been hard won. The use of genetic modification in food production has been the most controversial and widely debated new technology of the last two decades – a period in which a royal commission was held, a temporary moratorium instated and legislation hotly contested. Applications to field trial GMOs continue to be closely scrutinized by the community and New Zealand food exporters who fear reactions from customers.

That the country remains a GM free food producer and the use of labelled GM food ingredients is all but absent is at root due to New Zealanders' sustained concern about the long-term consequences of taking the GM path as well as the risks to the country's brand in key export markets. The country's GM free food producer status looks set to become part of New Zealand's essential character and the way it defines itself in the world, just as its nuclear free status has.

For its part, the TPP has acquired the status of a prized policy trophy by various stripes of New Zealand governments, primarily because of the closer trade ties it promises with the US.

New Zealand is already considered to be an ally of the US in international forums where governance of GM foods is deliberated. Indeed, although New Zealand is not a GMO exporter, at forums such as the UN Convention on Biological Diversity (CBD) and the Cartagena Biosafety Protocol which sits under the CBD, New Zealand negotiators have adopted and at times spearheaded positions of the GM exporting nations such as the US, Argentina and Canada. As the US embassy notes, the New Zealand government “tends to have a similar stance on issues in the Protocol as the United States”.⁴¹

Whether potential future governments are prepared to go further to meet US demands on GM issues – particularly with respect to domestic regulation - in the interests of a TPP is unclear. If New Zealanders are to be assured of a continued right to know of GM content in their food and the means to choose food that is GM free, then a clear commitment is required that negotiators will have no mandate to ‘trade away’ GM regulatory protections.

In the absence of categorical assurances, it must be assumed that negotiators are open to tradeoffs.

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- ¹ James C. 2010. *Global status of Commercialized biotech/GM Crops: 2010*. Executive Summary, ISAAA Brief # 42. In 2010, it is estimated that GMOs were cultivated on 66.8 million ha in the US.
- ² USDA. 2011. Adoption of Genetically Engineered Crops in the U.S.: Extent of Adoption. <http://www.ers.usda.gov/Data/BiotechCrops/adoption.htm>
- ³ Office of the United States Trade Representative. 2011. *2011 Report on Technical Barriers to Trade*.
- ⁴ <http://www.ustr.gov/about-us/biographies-key-officials/ambassador-islam-siddiqui-chief-agricultural-negotiator>. For CropLife International, see <http://www.ustr.gov/about-us/biographies-key-officials/sharon-bomer-lauritsen-austr>. Bomer Lauritsen was an Deputy Assistant U.S. Trade Representative for Agricultural Affairs prior to her appointment to the Biotechnology Industry Organisation.
- ⁵ BIO. 2010. BIO comments on the proposed accession of Malaysia to the Trans Pacific Partnership (TPP) negotiations. November 22. <http://www.bio.org/node/228>.
- ⁶ See <http://www.bio.org/content/senior-staff>
- ⁷ United States Trade Representative. 2010. *2010 Report on Sanitary and Phytosanitary Measures*. <http://www.ustr.gov/sites/default/files/SPS%20Report%20Final%282%29.pdf>, p. 20.
- ⁸ Bomer Lauritsen S. 2010. BIO comments on the proposed accession of Malaysia to the Trans Pacific Partnership (TPP) negotiations. November 22. <http://www.bio.org/node/228>
- ⁹ Office of the US Trade Representative. 2011. *2011 Report on Technical Barriers to Trade*, pp. 49-50.
- ¹⁰ Australia New Zealand Food Standards Code - Standard 1.5.2 - Food Produced Using Gene Technology. <http://www.comlaw.gov.au/Details/F2011C00838>
- ¹¹ Royal Commission on Genetic Modification. 2001. *Final Report*, p. 230.
- ¹² Gamble J, Mugglestone S, Hedderley D, Parminter T and N Richardson-Harman (2000) *Genetic Engineering: the public's point of view*, pp. 14-15.
- ¹³ Small B, Wilson J and T Parminter. 2002. "New Zealanders' Beliefs and Attitudes towards Genetic Engineering: Final Report and Interpretation." AgResearch Client Report.
- ¹⁴ "Irrespective of foods being natural or cisgenically modified, consumers would still like to know prior to consumption". Perceptive. 2009. GM/GE Perception Research. Obtained under the Official Information Act. <http://wikileaks.org/cable/2010/02/10WELLINGTON65.html>
- ¹⁵ NZPA. 1999. Beeman issues trade warning. *The Evening Post*, April 23.
- ¹⁶ US Embassy in Wellington. 2006. *New Zealand. Biotechnology Annual 2006*. Global Agriculture Information Network (GAIN) Report. USDA Foreign Agricultural Service.
- ¹⁷ Thus oils made from soy and canola – crops for which a significant proportion of production in the US is GM – do not require labelling under NZ law. Food sold at the point of sale is also exempt.
- ¹⁸ Thus oils made from soy and canola – crops for which a significant proportion of production in the US is GM – do not require labelling under NZ law. Food sold at the point of sale is also exempt.
- ¹⁹ US Embassy in Wellington. 2007. *New Zealand. Biotechnology Annual 2007*. Global Agriculture Information Network (GAIN) Report. USDA Foreign Agricultural Service, p. 12.
- ²⁰ Crothers L. 2011. Australia. Agricultural Biotechnology Annual 2011. Global Agriculture Information Network (GAIN) Report. USDA Foreign Agricultural Service.
- ²¹ Crothers L. 2011. Australia. Agricultural Biotechnology Annual 2011. Global Agriculture Information Network (GAIN) Report. USDA Foreign Agricultural Service.
- ²² The other countries are Australia, Malaysia, Peru and Vietnam.
- ²³ Office of the United States Trade Representative. 2011. *2011 Report on Technical Barriers to Trade*, pp. 49-50.
- ²⁴ US Trade Ambassador Ron Kirk. 2011. *Questions for the Record from February 9, 2011 Committee on Ways and Means Hearing*. <http://waysandmeans.house.gov/UploadedFiles/QFRsFinal.pdf>
- ²⁵ Ministry for the Environment. 2011. *HSNO Act: Issues identification and future action*. Briefing to the Minister, obtained under the Official Information Act; Minister for the Environment. 2011. Letter to Sustainability Council, September 9. Labour Party. 2011. Own Our Future: Environment. <http://www.ownourfuture.co.nz/enviornment-initiatives>. Green Party. 2011. Food Policy – Greening the Food Basket. <http://www.greens.org.nz/sites/default/files/food2011.pdf>
- ²⁶ Sinclair M. 2011. Comments on genetic modification. *TPP Talk*, August 5. <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Trans-Pacific/1-TPP-Talk/0-TPP-talk-5-August-2011.php>
- ²⁷ These are documented in a number of cables released by Wikileaks. For an indication of the spread of countries targeted by the State Department, see Secretary of State. FY 2009 Biotechnology Outreach Strategy And Department Resources. <http://www.cablegatesearch.net/cable.php?id=08STATE129940>

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- ³⁰ US Agricultural Attaché. 2011. *New Zealand Agricultural Biotechnology Annual 2011*. GAIN Report, USDA Foreign Agricultural Service.
- ³¹ US Agricultural Attaché. 2011. New Zealand. Biotechnology - GE Plants and Animals. Annual Update for Biotechnology in Agriculture. GAIN Report, USDA Foreign Agricultural Service.
- ³² Ibid
- ³³ Ibid
- ³⁴ US Agricultural Attaché. 2006. *New Zealand Agricultural Biotechnology Annual 2006*. GAIN Report, USDA Foreign Agricultural Service, p. 15.
- ³⁵ <http://www.nytimes.com/2008/08/19/science/19conv.html>
- ³⁶ US State Department. FY2010 Biotechnology Outreach Strategy and Department Resources. Wikileaks cable Ref ID 09STATE122732.
- ³⁷ BIO has advocated that the Codex Alimentarius Commission's position on "Food Safety Assessment in Situations of Low-Level Presence of Recombinant-DNA Plant Material in Food" be adopted by all TPP countries.
- ³⁸ Biotechnology Industry Organisation. 2009. Submission to the USTR on the Proposed Trans-Pacific Partnership Free Trade Agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam. March 11. Docket # USTR-2009-0002. Available at: <http://www.bilaterals.org/IMG/pdf/20090311.pdf>.
- ³⁹ Bomer Lauritsen S. 2010. BIO comments on the proposed accession of Malaysia to the Trans Pacific Partnership (TPP) negotiations. November 22. <http://www.bio.org/node/228>
- ⁴⁰ New Zealand TPP negotiator Mark Sinclair, as reported in a 2010 diplomatic cable to Washington from the US Embassy in Wellington, <http://wikileaks.org/cable/2010/02/10WELLINGTON65.html>
- ⁴¹ US Agricultural Attaché. 2011. *New Zealand Agricultural Biotechnology Annual 2011*. USDA Foreign Agricultural Service.