

# The Legal Implications and Risk Management Tools for Trading GM Grain



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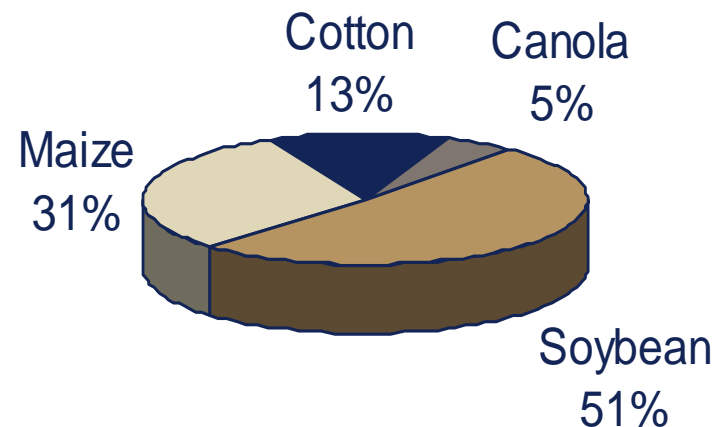
# Overview

- GM Crop Market
- Regulation
  - Australia
  - EU
  - International
- Sale Contract
- Export & Import
- Risk Management



# GM Crop Markets - Size

- 114.3 million ha across 23 countries
- Soybean
  - 98% of global trade is GM
- Maize
  - 80% of global trade is GM
- Cotton
  - 57% of global trade is GM
- Canola
  - 73% of global trade is GM



# GM Crop Market - Stakeholders

- Major Producers of GM Crops

- USA
- Argentina
- Brazil
- Canada
- India
- China



- Major Importers of GM Crops

- Japan
- Taiwan
- China
- Mexico
- South Korea
- EU

# Regulation - Australia

- Australian Government Department of Agriculture, Fisheries and Forestry (DAFF)
- Office of the Gene Technology Regulator (OGTR)
- Food Standards Australia New Zealand (FSANZ)
- National Agricultural Commodities Marketing Association (NACMA)
- Industry Bodies



# Regulation - Australia

- GM crop moratoriums legislated by States
- Approval by OGTR for commercial crops
  - GM carnations
  - GM cotton
  - GM canola
- Canola moratoriums lifted in NSW and Victoria in 2008
- Trials for GM wheat and other GM crops continuing



# Regulation – EU – "zero tolerance"

- Recent overhaul of legislative framework
- Process based regulation
- Directive 2001/18/EC on deliberate release of GMOs into the environment
  - Experimental release
  - Placing on the market for cultivation, importation, transformation etc
- Regulation (EC) 1829/2003 on genetically modified food and feed
- Regulation (EC) 1830/2003 on traceability and labelling of GMOs and GMO products
- European Food Safety Authority (EFSA)





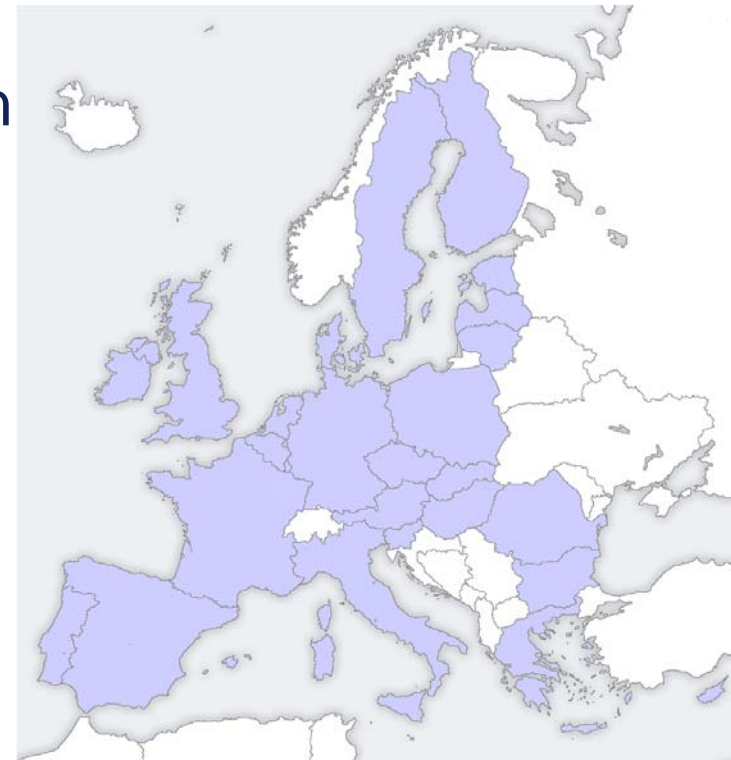
# Regulation - EU

- Authorisation required for GMOs in food and feed
- Upon authorisation GMOs are assigned ID numbers
- Labelling threshold of 0.9% provided the presence of GMOs is 'adventitious or technically unavoidable'
- Producers or traders of GM raw materials, ingredients, or foods obliged to pass information on to subsequent stakeholders in the food supply chain
- Documentation must be retained for five years
- It must always be possible to trace the route of a GMO from the farm to the final product



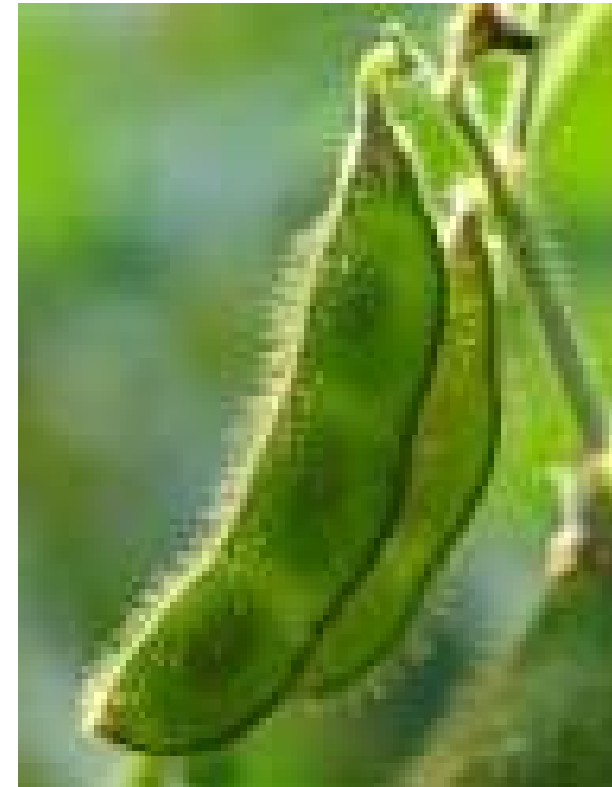
# Regulation - EU

- Many national bans still in place
- Regulatory cost of pursuing new GM products disproportionately high
- Public sentiment and participation
- Only GM maize under cultivation
  - Spain
  - France
  - Czech Republic
  - Portugal
  - Germany
  - Slovakia
  - Romania
  - Poland



# Regulation – EU – Consequences of a Breach

- EU has a "zero tolerance" approach to GM
- Consequences can be severe if fall foul of regulations
- EU will impound cargoes arriving at EU ports if sampling shows the presence of unauthorised GM material
- Recent example - rice
- Risk of potential litigation under trading terms and/or to third parties



# Regulation - International

- Cartagena Protocol on Biosafety
- WTO SPS Agreement - Members free to enact any level of environmental or health regulations provided
  - Scientific evidence
  - Risk analysis showing legitimate risk
  - Degree of regulation is proportional to that risk
- EC v Biotech – WTO 2006 Decision
  - T25 maize and other products
  - Risk assessments found no evidence of potential adverse effects
  - Some EU States' self-imposed bans in breach of international trade rules
- The 'precautionary principle'



# Sale Contract

- Description
- Quality
- Warranties
  - %GMO
  - Variety
  - Compliance with seed licensing agreement
- Allowances and Rejection
- Destination flexibility
- Sampling & Testing
- Termination rights and damages



# Sale Contract – Example Clauses

- NGFA's Seller's Variety Warranty

"The Seller agrees and acknowledges that commodities grown from certain transgenically enhanced seed shall not be deliverable under this contract. Specifically, the Seller shall not deliver, and the Buyer has the right to reject delivery of, a commodity containing transgenic genes/traits that are not approved for sale in Japan, Mexico, the European Union, or other U.S. export markets."

- GAFTA

No suggested clauses but parties do include such clauses as riders



# Import & Export

- Authorisation
- Duties
- Traceability
- Certificates
- Trade Declarations
- Storage
- Transport



# Risk Management

- Two significant issues to consider from a trading perspective
  - Regulatory action
  - Fitness for purpose/quality of the grain
- Risk is regulatory action preventing export from producing country or import into consuming country
- Further risk is that, even if regulatory approval can be obtained, the technical specifications of the grain must be expressly stated in the sale and purchase contract





# Risk Management



- Market Due Diligence
- Breeding Protocols
- Segregation/co-existence
- Declarations
- Testing
- Traceability
- QA Systems

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