

Keith Matthews and Kimberly Reynolds: Talking Ag Biotech Episode 6

Wiley Podcast

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On this episode of Talking Ag Biotech, Keith Matthews is rejoined by Kimberly Reynolds of Wiley's International Trade practice to discuss the new dispute resolution panel that has been established in the United States-Mexico genetically engineered (GE) corn dispute under the U.S.-Mexico-Canada Agreement (USMCA). Keith and Kimberly also discuss the procedures and requirements for non-governmental entities to file written submissions to the panel for consideration.

Transcript

Keith Matthews

Hello everyone, this is Keith Matthews with the latest iteration of the Wiley Talking Ag Biotech Podcast, and I am joined today by Kimberly Reynolds, our trade associate who is an expert on all matters related trade relating to USTR and USMCA. Chris isn't joining us today. Chris and I are actually going to be back relatively soon to talk about some general matters related to some developments with respect to Ag Biotech, but I specifically wanted to speak with Kimberly today because we have had some developments in the USMCA trade dispute related to genetically engineered foods and I think that there's some very useful information that our audience might find helpful. So, with that, I am just going to turn it over to you Kimberly and take it away and let us know what's going on.

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Kimberly Reynolds

All right, well thanks so much Keith for the introduction again and I'm really happy to be back here with you. So, on October 16 the USMCA Biotech Panel was composed, and they composed a panel of 3 individual panelists. The chair is a Swiss citizen which is normal to have the chair be not a party, or a member of the party.

Keith Matthews

Okay.

Kimberly Reynolds

And then they have a Mexican panelist and a US panelist, and why this is important for our purposes is it sets off kind of some procedural timelines and deadlines for written submissions, both for the parties as well as the opportunity for the public. Normally, the USTR or the USMCA Secretariat will post on their website this opportunity for non-governmental entities, so you know, anybody who's interested in this proceeding that might have something to say about it, the opportunity to file to submit a written submission to the panel for consideration.

Keith Matthews

Can I just ask you a question right there? So, what you file with them is a request to then file a substantive document?

Kimberly Reynolds

That's correct.

Keith Matthews

Okay, so you have to go through that request process first. So that's important.

Kimberly Reynolds

Yes, so you would have to go through this process where you submit, you know, and there's a number of items that you have to put into this request and then the panel evaluates it, and then the parties are actually given an opportunity to review it and make comments on it, whether they believe that this entity should be able to submit submissions. In the event that the panel approves the request to submit these written submissions, then they would then provide another deadline for the non-governmental entity to go ahead and submit the written submission.

Keith Matthews

Okay, good. Good. So, Kimberly, with respect to submitting this request to file a substantive document, I imagine that the time for that is either here or fast approaching. So, how does that go? What is the process for that?

Kimberly Reynolds

Yeah, so normally we would have seen something posted at this point. The rules of procedure in the USMCA do have timelines set out for this. We have not seen this at this time. I think that if people are interested, they can come to us, and we can certainly assist them with that process.

Keith Matthews

Right, because as you just indicated, it's not just sending in an email saying, "Hey, we'd like to be involved in this process." There are specific requirements for that request, and I guess also specific requirements for the subsequent document.

Kimberly Reynolds

That's correct.

Keith Matthews

All right, so it has to be done correctly if you want to actually participate?

Kimberly Reynolds

That's correct.

Keith Matthews

Okay, good. So, we don't know, and we haven't heard anything from either USTR or the Secretariat in terms of this process. Your recommendation is if an entity does want to participate, that they should be proactive and submit something. How does that go, does it go to the USTR? Does it go to the Secretariat? What's the procedure?

Kimberly Reynolds

Given that if it were in support of the US position, which I'm assuming most listeners probably are, it would probably be directed to USTR because they are the ones that are litigating this matter on behalf of the United States.

Keith Matthews

Okay, yes well absolutely. If we were going to help someone, we would only be helping people who are supportive of the US position, just be very blunt about that.

Kimberly Reynolds

Yeah, I assumed as much.

Keith Matthews

Right.

Kimberly Reynolds

You know and then just one other point to make on potential involvement by public participants. There also are instances and, of course, this is up to USTR as well as the panel, but for witness testimony at the hearing and that can take the form of a declaration or actual spoken testimony. So just another thing to keep in mind and, the hearing itself would also be sometimes public for people to listen in on.

Keith Matthews

Okay, all right. So, do we have a sense of the timing then for when there may be a hearing? And then one quick question for you after that, do they have a deadline in terms of how long it takes for them to render a decision or an opinion?

Kimberly Reynolds

Yes, so we can certainly talk about that more at our next session when we're kind of getting into these substantive issues and what's going to be going on in this briefing process because there are some pretty extensive rules of procedure and timelines that go into this. But as far as a hearing, I think we're still probably a few months out. I believe that they're expecting this to wrap up sometime mid next year, and so that's when I would expect a final panel report.

Keith Matthews

Okay, all right sounds good. As I said we wanted to pop in with a quick podcast on this since we have this development of now a new panel has been empaneled and hopefully there is an opportunity if entities want to actually participate substantively in this, but the opportunity may be fleeting. So, if you are interested then please contact us, and we'll do everything we can to assist in getting that process started. Maybe in our next iteration of the podcast, we can talk a little bit about the panel, discuss some of the information about the members themselves and provide some substantive information on that, as well as, perhaps, on the actual process for this moving forward.

Kimberly Reynolds

Absolutely yeah, I'd love to discuss that.

Keith Matthews

Okay, sounds good. Well again, this is fairly short but we're going to sign off here and then we'll be back at this soon.

Kimberly Reynolds

Sounds great.

Keith Matthews

Great! Thank you, Kimberly.