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Court decision concerning Monsanto in Brazil: Grower associations win legal action against biotech giant ... more

by Daniel Coelho Barbosa - 18 APR 2012

Media Info by TraceConsult™:

In this media advisory, we are offering for the first time to a small circle of journalists and media representatives free information and accompanying news analysis – today relating to current developments in the area of agricultural genetic engineering in Brazil.

See the following two items of information compiled by Daniel Coelho Barbosa, an agribusiness analyst working in Germany and Brazil, who, among other topics, has dealt for years with issues of agricultural biotechnology and its impact on agriculture and consumers in Brazil and Europe.

(1) Brazil, Monsanto and a dispute over royalties worth 6.2 billion euros

18 April 2012 - On 4 April 2012, the courts of Brazil's southern-most state of Rio Grande do Sul, in the way of a preliminary injunction, suspended the collection of royalties on GMO soy seeds by Monsanto. The ruling by Judge Giovanni Conti also provides for the reimbursement of license fees paid (so-called royalties) since the harvest campaign 2003/2004, as the business practices of seed multinationals Monsanto violate the rules of the Brazilian Cultivars Act (No. 9.456/97).

According to Neri Perin, the attorney of the farmers associations of Passo Fundo, Santiago and Sertão, who filed a class action suit in 2009, the claim lodged may lead to an advantage for up to five million farmers in Brazil and could mean for them a reimbursement of about 6.2 billion euros.

The Brazilian soybean farmers question the regulations prohibiting them from withholding seed for a renewed planting (after a first planting for which they have paid royalties) and from giving or exchanging seed under public programs.

Monsanto has been accused of unlawful and abusive collection of royalties on seed and soybeans of the Roundup Ready (RR) cultivar. Until the ruling, royalties were required not only for the entire soybean crop, but also for soybean seed, that was retained from the previous harvest.

The farmers recognize that Monsanto is entitled to royalties when they buy soybean seed, but they demand the right to plant again the GM soybean seed they purchased and to sell this production, as food or feed, without another payment of license fees.

As subsequent joint plaintiffs have arisen FETAG, the organization of farm workers from Rio Grande do Sul, and the farmers associations of the towns of Giruá and Arvorezinha.

Although Monsanto can still go to appeal, the judicial decision was received with relief by the soy producers. The President of the regional association of soy producers (APROSOJA / RS) in Rio Grande do Sul, Ireneu Orth holds a 2 percent fee, or about 9,20 euros per hectare, to be illegal.

Monsanto wants to raise license fees

The suspension of the collection of license fees has become even more important this year because Monsanto intends, with the introduction of the variety "Intacta RRpro" scheduled for planting in 2012/2013, to increase the fees to 48 euros per hectare. Greater productivity, protection against caterpillars as well as glyphosate tolerance are the alleged benefits of the new RRpro variety that, according to the company, justify the increase in license fees. But an assumed increase in productivity cannot be predicted or guaranteed.

The introduction of "Intacta RRpro" for the 2012/2013 planting season set off a tug of war between Monsanto and farmers' associations concerning the collection of royalties for the new product that are five times higher than for its predecessor ("Roundup Ready" or "RR1").

The increase in license fees refers to 33 percent of the additional income of 145 euros per hectare calculated by Monsanto. The Company expects that these additional profits are justifiable by the reduction of three pesticide applications per season and a yield increase of an average of 240 kgs per hectare.

The Vice President of Monsanto Brazil, Rodrigo Santos, claims that producers can trust this new variety with Bt technology, and is confident: "This product is revolutionary and offers many advantages. The price for the use justified," says Santos. Bt technology enables the plants to defend themselves against caterpillars.

According to Glauber Silveira, director and former president of APROSOJA Brasil, talks on license fees are currently being held, but no radical changes can be expected. He confirmed, however, that this type of licensing must be reviewed. "We should always determine the amount of the royalties based on the actual profits and not define them on the basis of earnings forecasts," he says.

Despite all the promises the new Monsanto product raises doubts in regards to its effectiveness even before it is launched: The manufacturer states that on every hectare of arable land where RRpro is to be planted, also 20% of another, non-Bt soybean variety, must be sown. The company explains that the resistance of the soybean plants can be dissipated in five or six years if the new procedure is not applied. "The measure aims at preserving the benefits of biotechnology. Otherwise, the species may weaken and lose their resistance to insects," warns Monsanto.

Intacta RRpro was approved in 2010 by the Brazilian regulatory agency CTNBio. Therefore, Monsanto is hopeful furthermore to the approval for import into China and Europe – Brazil's main customers – to bring the technology to market. The company expects to receive such import license before the next season.

The farmers believe that a higher crop yield is attributable not only to genetic engineering of the seed, but also to careful cultivation techniques and soil properties. They express concern that glyphosate has failed in some regions and that veritable pesticide bombs are needed to tame the weeds – while the insect pest control is not that hard. It must be mentioned that the introduction of RRpro would mean for Monsanto an additional sales of approximately 1.5 billion euros per year – in addition to the profits from

glyphosate – if all farmers in Brazil who have grown RR1 until now would switch to the new RRpro variety.

The proceedings have reached the highest Brazilian court

The Supreme Court of Justice (STJ) in Brazil will determine whether the decisions from Rio Grande do Sul against the Monsanto royalties are of national relevance.

In the first round of the lawsuit that has raged in the Supreme Court regarding the payment of royalties to Monsanto, the soybean producers had the lead. The court spokeswoman, Justice Nancy Andrighi, acknowledged the admissibility of an action brought by the farmers associations and said it was important that the effectiveness of the decisions reached would extend to the soybean producers across the country. This position was confirmed by the President of the Commission, Massami Uyeda.

A final decision in the proceedings is expected to be handed down in May 2012.

Monsanto defends itself

Monsanto has filed an appeal with the court in Rio Grande do Sul. At first, the group unsuccessfully contests the admissibility of the application of farmers' organizations on the grounds that Monsanto entertains business relationships with individual farmers and not with their organizations.

Elsewhere, Justice Nancy Andrighi has already explained the social relevance of the process. From the documents cited above, it is apparent that 354 agricultural associations can now participate as plaintiffs in this class action lawsuit.

On Friday, 13 April 2012 Monsanto filed a request to waive the decision to suspend the payment of license fees – so far without effect.

Today

Currently, Monsanto is prohibited in all of Brazil to demand royalties for soybeans based on re-planting or the crop yielded. In case the biotech giant should violate the injunction, it faces a penalty of more than 400,000 euros per day.

Sources:

Valor Econômico - <http://bit.ly/HuZ0gu>
<http://www2.valoronline.com.br/empresas/2601736/royalties-dividem-produtor-e-monsanto> (available only to subscribers)

Brazilian Supreme Court of Justice (STJ) - <http://bit.ly/rKnDvO>

(2) Producers of genetically-modified seed influence funding rules in Brazil. Government research agency EMBRAPA is ousted from the market, says Brazilian scientist

10 April 2012 – According to **Dr. José Sidnei Gonçalves**, researcher at the **Instituto de Economia Agricola** in Sao Paulo, the international suppliers of GM seed and typically also the providers of pesticides have influenced the financing models used in agriculture in Brazil in their favor. As a consequence, the government agency for research in agriculture (EMBRAPA) is forced from the market and the products it has developed that are based on genetic improvement, but not on genetic modification, have no chance on the market.

As so often, the difference is found in the details.

Source: <http://bit.ly/HES1G>

Background analysis

Lecture by Pierre Patriat, director of the seed producers association of Mato Grosso (APROSMAT), containing a sharp analysis of the background of the cultivation of GM soy in Brazil. This contribution was recorded on 11 May 2011 during SEMEAR 2011, the first Brazilian industry conference on Non-GMO crops: http://bit.ly/PPatriat_FoodSovGER (Portuguese with German subtitles)

Some issues raised by the topics presented:

The decisions by Justices Nancy Andrighi and Massami Uyeda have stabbed the "royalties Godzilla" Monsanto directly into its heart.

What is the prospective now for Brazil, if the farmers should also win in the last resort? Will the cultivation of GM soy be facilitated or will the seed multinationals rather lose their appetite for Brazil? If so, is there more hope for more gentle, more natural, i.e. for sustainable research methods in agriculture? And what does this mean for the farmers?

Would they possibly gain easier access to other, perhaps less one-sided financing models?

Does Monsanto want to impose Bt on us and increase its profits even more?

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