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Abstract

**The Legal and International Trade
Implications of Regulatory Lags in GM
Crop Approvals**

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The myriad of litigation and class action suits surrounding Syngenta's Viptera corn covers many issues that have been well addressed in previous litigation and literature. However, the case of *Syngenta v Bunge* raised the fascinating issue of 'regulatory lag', i.e., a situation where there are significant delays in approval of a GM product in an emerging export market, or differences in the regulatory approval timetable between significant export markets. In this case, Syngenta argued that Bunge's blanket refusal to accept Viptera corn into its facilities because China had not yet approved the variety, even though the variety was approved in the United States and in many other larger export markets, amounted to illegal activity that would cause significant harm to Syngenta. Although the litigation was ultimately settled in December 2014 by a confidential agreement between the parties, the case raises significant issues for the technology developers, producers, handlers, processors and shippers in instances where 'regulatory lag' is occurring or is possible. This article examines the legal implications of these lags for these parties, including an examination of their potential legal obligations and liabilities.

Keywords: adventitious presence, asynchronous approvals, commercialization, liability, low-level presence, regulation, trade barriers

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