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Private governance in royalty collection Effectiveness and limitations in tracing GM soybean in Brazil

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Summary

This paper focuses on the emergence of an institutional innovation along with the diffusion of Genetically Modified Soybean in Brazil. It results in private governance which is somehow effective by ensuring a kind of win-win situation for the involved players, at least in the short run, as long as co-existence still remains. This co-existence is under threat because of the lack of real market premium for conventional soybean.

1. Introduction

This paper focuses on the emergence of an institutional innovation along the diffusion of Genetically Modified soybean (GMS) in Brazil and on its potential implications in segregating Conventional Soybean (CS) from GMS. The present paper pertains to a research work initiated in 2005 and which is benefiting from some enhancement through the implementation of a new Project called GICOGM¹.

2. Institutional innovation in royalties collection in Brazil

In Brazil, the situation is particular in the sense that the diffusion of GMS has taken place prior to its official authorization. It has given rise to an institutional innovation to recover the technology fee simply called "royalties" in the country. In the opposite of the common fee recovery system², Monsanto has issued two complementary ways of royalty collection which both are related to the warehousing stage. The first way is adapted to the case where producers buy GMS seeds with registered retailers. In this case, producers are requested to pay for royalties which in return give them the right of marketing pre-established amounts of grains (*crédito de isenção*). These amounts fluctuate somehow between production regions, taking into account productivity differentials [2]. The second way is adapted to the case where farmers have not paid at the seed buying stage (for

¹ Gouvernance Internationale du Commerce des OGM, project funded by the French Agency of Research

² In many countries, the diffusion of GM seeds has taken place along with a specific three-facet institutional innovation: a surcharge to the seed price called "technology fee", a formal contractual commitment not to hold back seeds from one season to another, and to implement some recommended techniques. The recovery of the biotechnology royalties takes place at the yearly stage of seed renewal. The commercialization of the GM seeds hence is illustrative of the approach of customizing a "new" good [1]. These procedures although frequent nevertheless are not general. In China, farmers do not have to pay for any specific technology fee. In India, we find that regulation is possible with the Government forcing Monsanto and its local allies to price down seeds by 50%.

various reasons) In this case; they must pay royalties at 2% of the value of the grains they sell, or 3% if the grains are found GM in spite of the producers' declaration. In practice, farmers seem to revisit their preference for the second option of payment at warehousing stage³ because the percentage of royalties is felt high.

3. Private governance or case of monopolist abuse?

The public governance in using GMS hence is unclear if not confusing. This is particularly true with regard to the preservation of the farmers' right in using seeds from their production⁴. These rules do not refer to governance imposed by Monsanto alone but they rather illustrate an alliance between players with mutual incentives. Grain collectors indeed gain, 15% of the royalties collected on behalf of Monsanto, although they are frequently reluctant to elaborate on this point. On their side, producers themselves find normal to pay for technological progress. The first feature of the institutional innovation hence is its effectiveness through the creation of kind of win-win situation to most of the stakeholders involved. It is nevertheless mitigated by the second feature of lack of transparency and unilateral monitoring of the rules. So far, there is only one document pointing out the rules in royalty payment [2] and whose content besides is no longer so much valid⁵.

4. Induced product segregation: technical and economic constraints

The institutional innovation in the recovery of GMS royalties has implied a systematic control of the GM (if more than 5% of the grains have the GM trait) or conventional nature of the grains forwarded for warehousing purpose. Where segregation is implemented to separately sell conventional soybean, the GM nature threshold is 0.1%, stricter than the European threshold of 0.9%. This systematic control fulfils the first requirement of segregation but it is not sufficient to achieve segregation to its end. Technical constraint is of limited extent as compared to economic one since no real premium for CS (non-GM) is offered by the final buyers in spite of the actions to promote it [3, 4]. Under the current situation, the segregation is economically senseless and risky. The unique rationale for still using conventional soybean cultivars is the lack of super-early cultivars which are GM, but this lack should be compensated soon.

1. Fok, A. C. M., Romano, D., Yatopoulos, P., and Liang, W. (2006) Genetically Modified Seeds and decommmodification: An analysis based on the Chinese cotton case, *in* The Asymmetries of Globalization (Yatopoulos, P. A., and Romano, D., Eds.), pp. 147-163, Routledge, December 2006, London.
2. Monsanto (2005) Semente de soja Roundup Ready. A Opção é so sua, Monsanto. N° pp. 12.
3. Lubello, P. (2006) Le soja génétiquement modifié (soja OGM) au Brésil : l'impact du modèle Round'Up dans la région sud, Université de la Sorbonne Nouvelle (Paris 3). pp. 95.
4. Castellonet, C., Armangaud, A., Griot, J.-Y., and Apoteker, A. (2006) Des alliances internationales pour préserver la production de soja non génétiquement modifié au Brésil : enjeux et perspectives, *Revue Tiers Monde*, 188, pp. 755-772.

³ This option indeed enables them not to pay too much when the yield they eventually get is lower than anticipated.

⁴ This right is consistent with the UPOV protection Brazil has officially opted for, but not with the gene patenting.

⁵ For instance, farmers have discovered recently that the "marketing right" has limited time validity, till Decembre 31st of each year.