

The US Assault on Biosafety – The WTO dispute on GMOs

On May 13, 2003 the US government filed a complaint with the World Trade Organization (WTO) against the European Union's *de facto* moratorium on genetically modified organisms (GMOs), as well as a number of EU member states' national bans on GMOs. By doing so, it threatened consumers, farmers and the environment. The US argues that the EU moratorium is "*illegal and unjustified*" and that Europe has wrongly closed its markets to GM products. The EU moratorium was subsequently lifted; however, due to consumer rejection the EU food market remains closed to GMOs.

The US action in the WTO aims to discourage developing countries from implementing the Cartagena Protocol (Biosafety Protocol), which came into force on September 11th 2003. The Cartagena Protocol is the first legally binding global agreement that affirms the sovereign right of countries to reject or ban GMOs on the basis of the precautionary principle. The WTO has a powerful enforcement mechanism, and losing this case could cost the EU millions of dollars. In 2001, Sri Lanka did not adopt a GMO moratorium, because the US threatened to initiate a similar WTO dispute¹. By attacking the EU, the US is warning developing countries not to use their rights under the Biosafety Protocol. When the US launched its complaint, it was joined by the governments of Argentina, Canada and Egypt. A couple of weeks later, Egypt withdrew its support, recognizing "*the need to preserve adequate and effective consumer and environmental protection.*"² Egypt was reportedly punished for this brave move as the US subsequently pulled out of a bilateral trade deal. Argentina and Canada, both major growers of GMOs, remain parties of the dispute. In Canada, however, critical questions are now being asked in the Parliament as to why the government continues to support the US (for more, see http://www.parl.gc.ca/38/1/parlbus/chambus/house/debates/123_2005-06-27/ques123-E.htm#SOB-1372982).

A three-person panel in the WTO was appointed on 4 March 2004 to adjudicate the dispute. WTO panel members are drawn from a list of government-nominated trade experts. The appointment process itself is more secretive. The GMO case panel is made up of Christian Haeblerli (Chair, Switzerland), Mohan Kumar (India), and Akio Shimizo (Japan). All have previous experience with WTO disputes, but little expertise on GMOs. None, fortunately, have known links to the GM industry.

In justification for its WTO complaint, the US argues forcefully that GMOs are safe. In May 2004, Greenpeace, together with 14 other groups, submitted an "*Amicus Curiae*" brief to ensure that critical science arguments are heard in this case. The panellists recognized that they were not qualified to address disputes about GMO science and, in August 2004, a search for "*scientific experts*" to advise the panel started. The experts were appointed in November 2004 and, three months later, they met with the dispute parties to submit their views. Issues such as agreeing on the transcripts of the meeting between the parties and the scientific experts have since led to further delays. In June 2005, Mr Haeblerli announced that the panel would issue its final ruling in October 2005. The panel was supposed to share its interim report with the dispute parties on August 5th 2005. However, on July 28th 2005, they announced, that the case will be further delayed, "due to the complexities of the case"³. In

¹ Times of India, Lanka's GM food ban delayed indefinitely, 3 September, 2001; IUF, The WTO and the World Food System: A trade union approach, May 2002, www.iuf.org

² Al Amrani I: Egypt follows EU line on GM, Middle East Times, June 6, 2003

³ WTO Reporter, Flooded with data, WTO panel delays EU GMO Moratorium Ruling Until End '05, July 28th 2005

October, a further delay was announced, as the WTO Secretariat argued that it could not prepare the WTO Ministerial meeting scheduled to take place in December in Hong Kong, as well as deal with the more than 700 page report of the panel properly. The interim report is now expected in January 2006, the final ruling by April 2006. No matter what the result, there is likely to be an appeal phase, which will last at least another six months.

The EU's response: A case of inconsistency

The European Commission's response to the US complaint has been inconsistent. At the WTO, the EU has stressed scientific uncertainty and referred to the precautionary principle. It has also defended national bans by EU member states, saying that member states have the right to practice precaution and act on national scientific advice – even when it contradicts studies made by EU bodies. At the same time, the EU Commission put pressure on member states to lift their national bans and pushed forward the approval of GMOs in the European Union. It was the Commission that broke the *de facto* moratorium on the 19th of May 2004 by approving Bt 11 maize. There was no clear member state mandate for this approval.

Greenpeace has been calling on the EU Commission to be consistent and to put the rhetoric it uses in Geneva into action in Brussels. It has been asking the Commission to stop pressuring member states to lift their national bans and to stop pressing for further GMO approvals, because there is no majority support among member states. EU Ministers voted with a clear majority on June 24th 2005 to defend existing national bans, rejecting outright the EU Commission's pressure.⁴ Greenpeace urges EU member states to continue to steer an independent course, to maintain old and impose new GM bans and to stop the commercialization of all GMO crops. It also urges non-EU countries to follow the example set by European states on June 24th, and use their rights under the Cartagena Protocol.

The WTO: The wrong institution to decide about our food!

The WTO has no authority to legislate on the future of our food. Its decision will affect everybody, yet the dispute is highly secretive and undemocratic. The WTO is a trade body with no expertise on the environment. Moreover, it has a bad track record on environmental issues. In the WTO debate on the relationship between global environmental rules (so-called MEAs) and trade rules, for example, WTO diplomats cannot even agree on the nature of the negotiations. The WTO's lack of sincerity on the environment is exemplified in its refusal to accept the precautionary principle; a key principle in environmental governance, which allows countries to take action to protect the environment when there is scientific uncertainty. When governments try to apply the precautionary principle, they are told that they might get into trouble with the WTO.

The current US assault on global Biosafety could be just the first. In 2004, US biotechnology businesses asked a law firm to prepare another WTO complaint against Europe's labelling and traceability laws, which present a hurdle for those trying to push GMOs into Europe, because they enable consumers to reject GMOs. Such a case could be filed at any moment and there are rumours that the US Administration may still do so in 2005.

⁴ EU Environment Commissioner Dimas told Reuters on June 24th: "The EU is under considerable pressure at the WTO, and not only due to the lack of action (on national GMO bans) in previous years."

Greenpeace is a member of the international “Bite Back” campaign, a global coalition calling for the right of farmers and consumers, and not the WTO, to decide what they grow and eat.

Further information

Greenpeace briefing: The US War on Biosafety (2003) can be found at:
http://www.greenpeace.org/international_en/multimedia/download/1/306507/0/wto_brief_final.pdf

The Greenpeace (and others) Amicus Curiae brief explaining the relevance of critical science to the dispute:

<http://www.genewatch.org/WTO/Amicus/PublicInterestAmicus.pdf>

Public Submissions by dispute parties:

http://www.genewatch.org/WTO/WTO_Submissions.htm

WTO: http://www.wto.org/english/tratop_e/dispu_subjects_index_e.htm#gmo

EU: <http://trade-info.cec.eu.int.docli/html/117666.htm>

The “Bite Back” campaign: www.bite-back.org

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