



The US Assault on Biosafety – The WTO dispute on GMOs

On May 13, 2003 the US government threatened consumers, farmers and the environment when it 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. The moratorium was due to be, and was, lifted however, with the EU food market being closed to GMOs because of consumers rejection. So why the lawsuit? The real target of the US complaint against GMO restrictions is the Cartagena Protocol on Biosafety - the first legally binding global agreement that reaffirms the sovereign right of countries to reject or ban GMOs on the basis of the precautionary principle.

The US action in the WTO tries to prevent developing countries from implementing the Biosafety Protocol, which came into force in September 2003. 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 dispute. By attacking the EU, the US is effectively telling developing countries: "Don't you dare to use your rights under the Biosafety Protocol. If you do so, we will make you pay dearly at the WTO." When the US launched its opposition to complaint GMO restrictions 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". Egypt was reportedly punished for this brave move as the US subsequently pulled out of a bilateral trade deal.

A WTO "court", called a panel, is made up of three people, which are appointed through a secretive process. The GMO case panel was appointed on March 4th 2004. It is made up of Christian Haerberli (Chair, Switzerland), Mohan Kumar (India), and Akio Shimizo (Japan). All have previous experience with WTO disputes, but little expertise on GMOs.

In its justification for its WTO complaint, the US argues forcefully that GMOs are safe. The panellists recognized that they were not able to address disputes about GMO science. The parties to the dispute agreed, and in August 2004 a search for "scientific experts" to advise the panel started. These experts were appointed in November 2004 and have reportedly submitted their views to the parties in February 2005. The next "hearing" for the case is scheduled for February 21st-22nd in Geneva. If all goes as planned, a first ruling on the case is expected by July 2005. No matter what the result, there is likely to be an appeal phase.

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 where it contradicts studies made by EU bodies!). At the same time, the EU Commission has put pressure on member states to lift its national bans and has pushed forward the approval of GMOs in the European Union. It was the Commission that broke the de facto moratorium on the 19th May 2004 by approving Bt 11 maize. There was no clear member state mandate for this approval. Greenpeace can now also reveal, that the EU is failing to implement the safety monitoring plans that it claims to have in place for GM varieties such as MON810 (which was approved in 1998, before the moratorium.)

Greenpeace demands that the EU Commission acts in Brussels as it talks in Geneva. The Commission must stop pressuring member states to lift their national bans. It must also stop pressing for further GMO approvals, even though there is no majority among member states to do so. Greenpeace calls on member states to defend their national bans, demand consistency of the Commission, and stop the commercialisation of approved GMOs, such as MON810. This initiative by member states is particularly necessary as the European Food Safety Authority (EFSA) is not applying the necessary scrutiny in risk assessment and is unwilling to apply the precautionary principle; the issue of contamination of organic and conventional agriculture by GMOs is unresolved; no comprehensive monitoring regulation exists; and the commission still has to propose regulation to protect seeds from contamination.

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

The WTO has no authority to legislate about the future of our food. This dispute is highly secretive and undemocratic, but the decision affects everybody. The WTO is a trade body with no expertise on the environment. Worse, the WTO has a bad track record on environmental issues. In the WTO debate on the relationship between global environmental rules (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 nowhere more plain to see than in its refusal to accept the precautionary principle; a key principle in environmental governance, which allows countries to take action to protect the environment even where there is scientific uncertainty. When governments try to apply the precautionary principle and do the right thing, they are told that they might get into trouble with the WTO. The GE dispute illustrates this perfectly.

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 are the real hurdle to GMOs in Europe, as they allow consumers to reject GMOs. Such a case could be filed at any moment.

Greenpeace is a member of the "bite back" campaign, a global coalition calling for the right of farmers and consumers, and not the WTO, to decide what they farm and eat. In May 2004, Greenpeace, together with 14 other groups, also submitted an "Amicus Curiae" brief to ensure that critical science arguments are heard in this case.

Further information

Greenpeace, The US War on Biosafety, 2003,
http://www.greenpeace.org/international_en/multimedia/download/1/306507/0/wto_brief_final.pdf

The "Bite Back" campaign: www.bite-back.org

The Greenpeace (and others) Amicus Curiae brief:
<http://www.genewatch.org/WTO/Amicus/PublicInterestAmicus.pdf>

Public Submissions by 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>

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