

## World Trade Organisation dispute on genetically engineered organisms

May 2006

### US driven court case an assault on GE-free choice

On May 13, 2003 the US government filed a complaint with the World Trade Organisation (WTO) against the European Union's *de facto* moratorium on genetically engineered organisms (GE organisms, also known as genetically modified (GM) organisms), as well as a number of EU member states' national bans on GE organisms. By doing so, it threatened consumers, farmers and the environment.

The US argued that the EU moratorium was "*illegal and unjustified*" and that Europe had wrongly closed its markets to GE products. The EU moratorium was subsequently lifted. Even so, due to consumer rejection, the EU food market has remained closed to GE organisms. The five EU member states attacked at the WTO maintain their current national bans on GE organisms, while three new bans were enacted in recent months: in Hungary, Poland and Greece.

The US action at the WTO aims to discourage developing countries from implementing the Cartagena Protocol on Biosafety, which came into force on September 11 2003. The Cartagena Protocol is the first legally binding global agreement that affirms the sovereign right of countries to reject or ban GE organisms 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 GE organism moratorium, because the US threatened to initiate a similar WTO dispute (1).

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, the governments of Argentina, Canada and Egypt joined the case. A couple of weeks later, Egypt withdrew its support, recognising "*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 GE organisms, remain parties to the dispute. In Canada, however, critical questions are now being asked in the Parliament as to why the government continues to support the US (3).

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 is secretive. The GE organism 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 GE organisms. None, fortunately, have known links to the GE industry.

In justification for its WTO complaint, the US argues forcefully that GE organisms 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 recognised that they were not qualified to address disputes about GE organism 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 5 2005. However, on July 28, it announced that there would be a delay, "due to the complexities of the case" (4).

In October, a further delay was announced, as the WTO Secretariat argued that it could not prepare for the WTO Ministerial meeting in Hong Kong (13 –18 December 2005), as well as deal properly with the several hundred pages of the panel report. The interim report was then expected on January 5 2006. On January 4, Reuters reported that a further delay - until February - was necessary, according to a trade diplomat involved in the dispute.

On February 7th 2006, the preliminary report of the panel was finally issued to the parties. It was immediately leaked and published by civil society groups (6).

The US spun the preliminary report as a clear victory for GE. This is not the case. The panel clearly states that it did not rule on the safety (or otherwise) of GE products. It is also clear that current GE legislation of the European Union on the approval and labelling of GE products is unaffected. The ruling was very narrow in scope and mainly established that the EU did have a moratorium and that this led to "undue delay" in 24 out of 27 contested GE approval processes in the European Union.

As the moratorium has been lifted, this finding is merely of historical value. More worryingly, the WTO also ruled, that the national bans by EU member states contravened WTO rules. It established that they did not fulfil the requirements of the Sanitary and Phytosanitary Measures (SPS) agreement of the WTO.

Greenpeace believes the SPS agreement is not equipped to deal with the kind of risks that GE organisms pose and rejects the narrow interpretation of the

notion of „risk assessment“ in the panel report. However, the ruling leaves the possibility of either following SPS compatible ways of banning GE organisms as well as of banning GE organisms under other agreements of the WTO (such as the Technical Barriers to Trade agreement) open (however, without explaining how to deal with such an overlap if more than one WTO agreement is involved). Claims by the US, that banning GE has become impossible due to the WTO, are thus false. The panel's findings on the relationship between multilateral environmental agreements and WTO rules is worrying. The panel found neither the Convention of Biological Diversity nor the Biosafety Protocol useful for its interpretation of trade rules. However, the Biosafety Protocol is only comprehensive international agreement on GE. That the WTO did not see this Protocol relevant is a bad sign as the WTO is currently negotiating the relationship between trade rules and global environmental agreements.

WTO disputes are supposed to be decided upon with six months. This dispute has taken three years. This is further evidence that WTO is clearly not equipped to deal with complex environmental matters. Parties to the dispute have 60 days after the publication of the final report to appeal. If they do so, the appeal process 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 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 this contradicts studies made by EU bodies. At the same time, the EU Commission has put pressure on member states to lift their national bans and pushed forward the approval of GE organisms in the European Union. It was the Commission that broke the *de facto* moratorium on May 19 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 GE approvals, because there is no majority support among member states. EU Ministers voted with a clear majority on June 24 2005 to defend existing national bans, rejecting outright the EU Commission's pressure (7).

Greenpeace urges EU member states to continue to steer an independent course, to maintain old and impose new genetic engineering bans and to stop the commercialisation of GE crops. It also urges non-EU countries to follow the example set by European states on June 24 2005, and use their rights under the Cartagena Protocol.

**WTO: Wrong institution to decide about the environment and 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 promote GE organisms in Europe, because they enable consumers to reject GE organisms. Such a case could be filed at any moment.

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.

**Notes:**

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](http://www.iuf.org)

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

3 See [http://www.parl.gc.ca/38/1/parlbus/chambus/house/debates/123\\_2005-06-27/ques123-E.htm](http://www.parl.gc.ca/38/1/parlbus/chambus/house/debates/123_2005-06-27/ques123-E.htm) - SOB-1372982

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

5 See [http://www.foeeurope.org/biteback/WTO\\_report\\_descriptive.pdf](http://www.foeeurope.org/biteback/WTO_report_descriptive.pdf) and [http://www.foeeurope.org/biteback/WTO\\_report\\_findings.pdf](http://www.foeeurope.org/biteback/WTO_report_findings.pdf)

5 See [http://www.foeeurope.org/press/2005/AW\\_14\\_Dec\\_Bite\\_back.htm](http://www.foeeurope.org/press/2005/AW_14_Dec_Bite_back.htm)

6 [http://www.foeeurope.org/biteback/WTO\\_report\\_descriptive.pdf](http://www.foeeurope.org/biteback/WTO_report_descriptive.pdf) and [http://www.foeeurope.org/biteback/WTO\\_report\\_findings.pdf](http://www.foeeurope.org/biteback/WTO_report_findings.pdf)

7 EU Environment Commissioner Dimas told Reuters on June 24th 2005: "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."

### 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](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](http://www.genewatch.org/WTO/WTO_Submissions.htm)

WTO: [http://www.wto.org/english/tratop\\_e/dispu\\_subjects\\_index\\_e.htm#gmo](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](http://www.bite-back.org)