

## THE GMO DISPUTE: BUSH ADMINISTRATION ATTACK ON EUROPEAN FOOD SAFETY POLICY LATEST CHALLENGE TO WTO'S LEGITIMACY

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ON MAY 14, THE BUSH ADMINISTRATION announced that it would initiate action at the World Trade Organization (WTO) against the European Union's (EU) freeze on approvals of new genetically modified organism (GMO) seeds and foods while a policy on segregation and labeling of these items is being finalized.

This attack—which the Bush Administration is likely to win if the case proceeds to a WTO tribunal—shows once again how the secretive trade organization—the WTO—can be used by special interests to attack health, safety and environmental rules that a majority of people in a country have demanded and obtained in open democratic venues. This pattern of WTO attacks is systematically undermining the practice and principle of democracy: The people who are eating the food in question or living in the environment in question ought to decide the policies that affect their lives.

The Bush Administration has been spinning quite a line about why it is pursuing this case, announcing that the action was taken to protect the interests of Africa and those suffering from hunger there. This is remarkably cynical; in fact, the administration has been engaged in a running fight with a bloc of African countries who, on their own initiative, sought international rules to regulate GMOs through negotiation of a Biosafety Protocol. The Biosafety Treaty was completed despite U.S. administration attempts to undercut it. The treaty allows the sorts of policies Europe and many African countries and now major U.S. trade partners from China to Brazil are also enacting regarding the segregation and labeling of GMOs.

What is the real story? By launching this attack, the Bush Administration has put the interests of its agribusiness supporters over many of the values it purports to seek for the world: democracy, accountability and openness.

European reaction to this case will only increase tensions leading to the 5th WTO Ministerial, to be held September 10-14 in Cancun, Mexico. This U.S. action likely will exacerbate anti-U.S. sentiment generated among Europeans by U.S. military action in Iraq. Such an aggressive move is likely to harden the resolve of the EU member governments with the greatest concerns about GMOs.

The U.S.-led coalition supporting this case is already shaky. On May 28, Egypt withdrew its initial support of the GMO action at the WTO, stating its “desire to reduce further distortions and impediments to international trade that may result due to the further pursuit of this matter.”

### COUNTRIES BEGINNING TO QUESTION WTO

To date, there have been several challenges filed with the WTO over countries' domestic food safety and quarantine laws, and this GMO case likely will become the latest rallying point in the growing worldwide attack on the WTO's legitimacy. Together, these lawsuits have undermined the institution's standing with the public in both developed and developing countries.

The WTO enforces subjective rules that undercut countries' democracies by limiting the subject matter, level of protection and design of domestic food safety policies. Health and safety rules are deemed barriers to trade and countries are required to abandon them or face stiff fines.

One such WTO rule puts the burden of proof on countries seeking to regulate a product to show it is dangerous. This flies in the face of a long-accepted scientific principle, the Precautionary Principle, which requires a manufacturer to show a product is safe over the long term before it goes on the market. In past cases the WTO has turned the sensible Precautionary Principle on its head. Proof that a product is dangerous is almost impossible for new or emerging technologies.

That's why the WTO ruled against the EU's consumer protection ban on beef containing residues of artificial growth hormones. The WTO approved \$116.8 million in sanctions after the EU refused to accept the meat. It is the same reason the WTO ruled against Australia's rules governing the importation of uncooked salmon, designed to prevent foreign bacteria from infecting domestic salmon stocks.

Note that many U.S. laws, such as those governing our drug approval process, require a manufacturer to prove a product safe before it is allowed on the market (not that the government must prove it is dangerous before it can be banned).

As scientific innovation outpaces the ability of regulators to anticipate the adverse human health effects of new technologies, the potential threat that WTO trade rules pose to cutting-edge domestic public health and safety policies will only increase. For instance, more and more commodities for human consumption are being genetically altered to enhance resistance to agricultural chemicals. Agribusiness and biotechnology companies are pushing for the unregulated sale and trade of these genetically modified organisms, yet consumer, health and environmental experts demand regulation until a full understanding of their impacts on human and environmental health over the long term can be known. Under the WTO, policies designed to address these concerns by, for instance, curbing the distribution of these products until they are deemed safe, will be considered illegal barriers to trade.

#### **G M O S   T H R E A T E N   T H E   E N V I R O N M E N T   A N D   H U M A N   H E A L T H**

Some GMOs could cause allergic reactions in humans (for instance, experimental genetically engineered soy beans containing Brazil nut genes) and some are fatal to benign insects that feed on GMO crops. Someone allergic to fish could possibly have a reaction to strawberries with transplanted fish genes; vegetarians and persons of the Islamic and Jewish faiths may be averse to eating food containing pig genes.

In addition, the environmental dangers of open-air crop trials, cross pollination and on-the-ground and in-the-silo contamination of non-GMO crops with GMOs have been amply demonstrated. For example, in November 2002, U.S. officials announced that an experimental plant that was genetically modified to make a pharmaceutical product had nearly slipped into the nation's food supply, even though it is not intended for human consumption.

Genetically modified crops that are not approved for human consumption already have made it onto the U.S. food market. In 2000, the environmental group Friends of the Earth detected Starlink™ corn, produced by Aventis but only approved for use as animal feed, in taco shells for sale in grocery stores, prompting subsequent recalls of many grain and food items.

GMOs raise numerous environmental and health issues. First, crops engineered to resist pesticides and herbicides perpetuate reliance on those chemicals, threatening the environment. In fact, increasing demand for such products may be a goal of some corporations producing GMOs. For example, Monsanto, manufacturer of the popular Roundup line of herbicides, also genetically engineers Roundup Ready soybeans designed to resist its herbicides.

Second, scientists believe that crops engineered to resist pesticides and herbicides could pass those traits on to weeds, resulting in herbicide- and pesticide-tolerant "superweeds." Scientists in the United States and Denmark have shown that the herbicide-tolerance gene can be readily passed from cultivated canola plants to

closely related wild plants, like wild mustard, in nearby fields. The widespread use of Roundup Ready crops and the herbicide Roundup for the past 30 years has engendered at least two weeds that can survive being sprayed directly with Roundup—mare's tail and water hemp. If herbicide resistance were transmitted to pest plants, it would force farmers to use more and more herbicides to control plant pests, with unknown effects on the environment and added threats to public health.

Additionally, the emergence of resistance in pests like Bollworm and creation of “superpests” is another inevitable consequence of Bt. cotton, a cotton made with a GMO that is lethal to certain insects. Researchers at North Carolina State University have found that the corn earworm (also known as the cotton bollworm) developed resistance to Bt. corn—and that the moths that develop Bt. resistance in the Midwest cornfields fly south to U.S. cotton fields.

GMOs may upset biological diversity. According to a report written for the British government, if GMOs eradicate insects and lead to greater herbicide use which kills weeds then, species that depend on weeds and insects for food or habitat, including such birds as the corn bunting, partridge and skylark, will suffer. Further, crops engineered to resist insect pests also may be toxic to harmless or beneficial insects, such as green lacewings and springtails, thereby reducing insect diversity.

The creation of genetic uniformity leading to erosion in centers of genetic diversity and mono-culture agriculture threatens food security. Aggressive marketing of the products protected by intellectual property rights can lead to the displacement of hundreds of local varieties of crops and breeds of livestock. Mono-cropping stamps out the diverse crop and animal varieties that are useful to maintaining balanced ecosystems. The end product - the so-called “mono-culture” - is a dangerously unstable ecosystem that has lost its diversity and hence its resistance against pests, diseases and environmental stresses. In 1970, a corn blight epidemic ravaged at least 15 percent of the U.S. corn crop due to homogeneity and made the entire crop vulnerable to the same fungus.

Finally, questions exist as to whether GMOs pose human health risks. British scientist Dr. Arpad Pusztai first suggested this following a study on the effects of consumption of genetically modified potatoes on rats, in which subjects fed the altered potatoes suffered stunted internal organ growth and weakened immune systems. The Monsanto-funded Rowett Research Institute suspended Dr. Pusztai, despite his stellar reputation, claiming the researcher went public without sufficient scientific evidence to substantiate his findings.

A specially convened group of U.K. scientists later concluded that Dr. Pusztai's study, though possibly “flawed,” underlined the uncertainty as to the safety of genetically modified foods. Indeed, the British Medical Association, representing Britain's doctors, promptly called for a moratorium on the planting of genetically modified crops in the U.K.

This is why polling shows that a majority of Europeans and U.S. consumers want GMO foods to be segregated from non-GMO foods and labeled so consumers have a choice. Given the questions surrounding GMOs, this is a prudent policy.

#### THE EU LAW AND MORATORIUM

The EU's caution toward GMOs was reflected as early as 1990 when the EU regulated the release of GMOs into the environment, by limiting planting, ranching or marketing of GMOs. Another directive regulated “contained uses” of GMOs in laboratories. About a dozen GMOs were approved under the 1990 directive. However, as public opposition to GMOs in Europe intensified, in 1999, the EU began developing a new directive segregating GM foods from non-GM foods and labeling GM food. While the policy was being formulated, a de facto moratorium applied to new approvals of GMOs under the previous directive. This effectively meant that new GMO foods could be made or imported.

On Feb. 14, 2001, the European Parliament voted to approve new rules governing the testing, planting and sale of domestic and imported GM crops and food products. The directive regulates the “deliberate release”

of genetically modified organisms into the environment, such as by cultivation or ranching, as well as the “marketing” of GMOs as food or food products.

The new rule lacked some key provisions for labeling and tracing GMOs and included no framework for liability if a GMO were to injure consumers or the environment. Therefore, six EU member states indicated that they would maintain the de facto EU-wide moratorium on new GMO approvals until those issues were adequately addressed in additional legislation that is currently in the pipeline.

No new GMOs will be approved for cultivation or marketing until the moratorium imposed by EU member states is lifted. Under both the existing rules and the new regulation, an approval for the marketing of a GMO can be temporarily blocked and contested by any EU member state. Although such a temporary hold is designed to allow for resolution of the dispute, a sufficient number of countries could prevent the entire EU from ending the temporary hold, thereby resulting in a de facto moratorium.

Ironically, pro-GMO companies in Europe have criticized the Bush Administration action because final regulations were nearing completion and absent the new level of political upheaval, they expected GMO approval to resume this year.

#### MANY OTHER COUNTRIES HAVE QUESTIONED THE SAFETY OF GMOs

Significant U.S. trading partners such as China and Brazil have moved to restrict biotech imports. African and Asian countries have banned or restricted GMOs. Also in Australia and New Zealand, popular concerns about GMOs have caused new regulations to be implemented. Some 35 countries, representing 3 billion consumers, have required mandatory labeling GMOs.

While increasing food security and food availability is the main argument for promoting GMOs, recent research is showing that there is no significant yield increase in genetically engineered crops, only increased safety risks. Southern Africa was facing a significant famine by the end of 2002, with nearly 15 million people facing starvation in Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe. Yet, in October 2002, Zambia refused U.S. food aid that came in the form of 18,000 tons of GM corn.

Other countries followed suit. In November 2002, India froze U.S. GM shipments of corn and soy food aid. In January 2003, two U.S. relief agencies approached the Indian Genetic Engineering Approval Committee (GEAC) to gain permission for them to import U.S. GM corn and soy food aid that could not be certified as GM-free. As of early 2003, GEAC has approved only the importation of GM cotton, but disallowed GM food imports.

In early 2003, U.S. Trade Representative Robert Zoellick lashed out at Europe for preventing GMO crops from entering its market and thus creating a disincentive for developing countries to allow GMO food imports, calling Europe “Luddite” and “immoral.”

Yet the opposition from Africa was not based on an EU effort, as the U.S. already had witnessed at the UN World Summit on Sustainable Development (WSSD) in Johannesburg in 2002. The U.S. sought to use the Summit to further promote biotech, especially for Africa—cynically in the name of ending hunger. Many African governments expressed outrage over U.S. pressure on African countries to accept GMO imports. The Catholic Bishops of South Africa issued a statement that, “It is morally irresponsible to produce and market genetically modified food.”

At the WSSD, African Civil Society groups composed of more than 45 African countries, presented a statement:

*“We refuse to be used as the dumping ground for contaminated food, rejected by the northern countries. Our responses (sic) is to strengthen solidarity and self-reliance within Africa, in the face of this next wave of colonization, through GE technologies, which aim to control our agricultural systems, through the*

*manipulation of seed by corporations. And we are enraged by the emotional blackmail of vulnerable people in need, being used in this way. We will stand together in preventing our continent from being contaminated by genetically engineered crops, as a responsibility to our future generation."*

## U.S. CHALLENGES EU'S GMO POLICY

While the EU and many other countries have proceeded cautiously before exposing their publics to GMOs, the U.S. biotech industry and agribusiness interests have been leading advocates for GMOs, and have successfully pressed the case with U.S. government and trade officials.

These industries view requirements for process-based labeling and tracking of genetically modified foods from farm to table as being without basis in any known health risk—and thus in violation of the WTO rules. The industries also argue that the practical difficulties and huge costs involved in segregating and documenting GM foods would greatly hamper U.S. trade and could potentially encourage skeptical European consumers to avoid GM food products, effectively discriminating against U.S. exports. Therefore, the industry view is that even labeling and tracing requirements constitute unnecessary restrictions on trade under the WTO's Agreement on Technical Barriers to Trade, claiming that labeling GMO products is unnecessary "in the absence of an identified and documented risk to safety or health."

U.S. consumer and environmental groups take the position held by their counterparts worldwide and by many governments: too little is known about the long-term health and environmental risks of GMOs. Some groups oppose any use of GMO seeds or foods. At a minimum these groups call for pre-market safety testing, segregation of GMOs from non-GMO seeds and foods and labeling so that consumers can choose whether they will eat GMOs.

The WTO trade discrimination concept, sometimes called "national treatment," requires countries to treat domestic and foreign goods the same. In the U.S. challenge of EU food policy at the WTO, because the Europeans apply GMO rules domestically, in the same manner that they do to imports, there is no trade discrimination and thus there really is no trade issue.

Although there is no trade discrimination in this situation, there is a viable WTO case to be made in attacking the EU GMO moratorium. The Agreement on Sanitary and Phytosanitary Standards (SPS) is one of the Uruguay Round Agreements enforced by the WTO. It provides strict limits governing countries' permissible food safety policy goals and the means by which nations can pursue even the permitted goals. The WTO rules empower member countries to challenge each other's policies and regulations as exceeding these limits.

No country's SPS measure challenged in the WTO has ever been upheld. In past cases, WTO panels consistently have interpreted WTO member countries' food and quarantine measures to be barriers to trade that must be weakened or eliminated, rather than as public health safeguards or prudent measures aimed at avoiding the spread of pests or plant or animal disease.

## CONCLUSION

This Bush Administration WTO case is against the EU, yet its target is significantly broader. There is growing concern in U.S. industry about the number of other nations that are taking the precautionary approach to biotechnology. Because plaintiffs almost always win WTO challenges, mere threats of challenges often result in the challenged country changing its policy. In this GMO case, the United States figures that if it succeeds, mere threats against other countries might suffice to quash other similar rules. Already, threats of WTO action under the SPS Agreement have resulted in Japan and South Korea lowering food safety standards. South Korea has avoided two U.S. WTO challenges, weakening its food safety policy by extending its meat shelf life from 30 days to 90 days, and by shortening the duration of its produce inspection process (it's now sold to consumers before test results are received).

For nearly 10 years, civil society groups worldwide have called for the WTO to “shrink or sink,” meaning to limit itself to cutting tariffs and quotas and to get out of the business of imposing its food, environment and other values on countries.

Europeans who don’t want to eat GMOs or fear that GMO crops pose environmental threats have democratically enacted a policy to segregate and label food made with GMOs. They should be permitted to do so.

The Bush Administration, and before it, the Clinton administration, has promised the American public that global trade deals will not and cannot undermine domestic laws. Yet time and again this has proved false. Now Europeans are seeing GMOs being forced down their throats by the powerful WTO dispute system. It may require the enforcement of the WTO’s dispute process to fully awaken citizens around the world to the seemingly distant and faceless bureaucracy in Geneva that can have such an enormous impact on their lives. Perhaps then we will see citizens demand that their governments withdraw from this flawed institution. ▲

*Public Citizen is a national, nonprofit consumer advocacy organization based in Washington, D.C. For more information, please visit [www.citizen.org](http://www.citizen.org).*