



# *Picking the Wrong Fight*

**Transatlantic trade rows are legendary - beef and bananas are being followed by a dispute over genetically modified food. In the acrimonious climate after the Iraq invasion, Washington challenged a European ban through the World Trade Organization. Now the organisation may become the loser in a fight few believe America can really win.**

**G**ENETIC ENGINEERING IN agriculture and food production is a highly politicised and emotionally charged issue, especially in Europe. Calls for stricter regulations and labelling on genetically modified (GM) food are on the rise in the United States and Canada too. Consumer groups and environmentalists object to the use of the new technology because of fears for biological diversity and human health. Concerns have been raised about genetically modified organisms (GMOs) containing toxins; causing allergies; or contributing to antibiotic resistance.

Although many scientists have declared several GMOs fit for agricultural production and human consumption,

doubts remain over the long-term consequences. This uncertainty has led European policy-makers to adopt a precautionary approach. In October 1998, the European Union (EU) stopped authorising new GM products for the European market and has since maintained this moratorium, much to the annoyance of Washington. The European Parliament has recently voted to introduce comprehensive labelling of GM products, but this is unlikely to end the row.

The commercial stakes involved are considerable, and set to rise further as more and more GMOs are introduced. American farm producers and biotechnology firms claim to have lost \$300 million in annual sales to Europe as a consequence of the ban.

Soybean exporters in the US, where over two-thirds of the harvest is GM, have recently lost global market share to Brazilian rivals, who have been able to expand sales of non-GM soybean. And with new GM crops in the pipeline - international food biotechnology company Monsanto intends to introduce wheat next year - American commodity exporters and policy-makers are concerned that farm exports will face ever-increasing trade barriers.

## **Foul play**

But more is involved in the transatlantic trade row than agricultural biotechnology. For American trade officials, the EU's GMO moratorium is but the tip of the iceberg of a sprawling system of non-tariff trade barriers. A recently published report by the US National Foreign Trade Council documented a long list of complaints by US farm exporters ranging from beef to poultry and wine.

**Robert Falkner**

is an Associate Fellow of the Sustainable Development Programme at Chatham House and a lecturer in international relations at the London School of Economics.

Fears that the EU is abusing its regulatory powers to disrupt international trade have recently focused on its Chemicals White Paper, which proposes a registration and testing system for approximately thirty thousand chemicals. Washington blames the tide of new non-tariff trade measures on the EU's use of the precautionary principle, which in its view leads to politicisation of the regulatory process and allows scientifically unfounded concerns to trump international trade obligations.

Up to a point, President George Bush's administration has good reason to challenge the EU's GMO moratorium at the World Trade Organization (WTO). The de facto ban on new GM products was never a deliberate legislative act. It is rather the result of a collapse in European decision-making in the face of growing public opposition to such food.

The European Commission has repeatedly tried to restart the authorisation of GMOs, but has so far failed to overcome the resistance of countries such as France and Italy, which demand new rules on GM labelling and traceability before giving the green light to new crops. With nearly five years of political wrangling and regulatory obstruction in Brussels, the EU will find it difficult to justify its moratorium as a 'provisional' measure based on risk assessment in accordance with the WTO's rules on precaution.

Whether the US stands a good chance of winning its case against the EU in the WTO dispute settlement procedure remains an open question. Trade experts point out that this is the first case of its kind, and that WTO food safety rules, which leave considerable room for interpretation, have not been comprehensively tested.

For the American public and especially Congress, a victory would go a long way towards restoring confidence in the WTO, which has recently been increasingly criticised by both free-traders and anti-globalisation campaigners. The organisation's supporters in Congress will want to see it hand down a clear message to those whom they suspect of foul play in international trade.

### **Risky business**

But the legal challenge misses an important point about the nature of the GMO conflict. What is at stake is not simply free trade versus protectionism, as is so often the case in disputes involving agriculture. At the root of this battle are differing societal values and attitudes towards risk.

Just as the American population was

more risk-averse about the problem of ozone layer depletion in the 1970s, boycotting spray cans containing chlorofluorocarbons (CFCs) long before the Europeans woke up to the problem, so today are Europeans more concerned than Americans about potential environmental and health threats from GM foods.

It is useful to compare the politics of ozone layer protection and genetically modified food. In both cases, regulations were passed before it could be scientifically proved that the activity in question was responsible for the environmental problem.

An important difference exists, of course, between the two: whereas the environmental impact of CFC usage was observable and measurable from the early 1970s, the environmental consequences of genetic engineering are still the subject of scientific hypothesis and conjecture. But the critical point in the ozone controversy of the 1970s and 1980s was not so much demonstrating that the ozone layer was thinning, but proving that CFC emissions were to blame. And the absence of such scientific proof did not deter the Americans from taking precautionary action.

In one respect, then, the parallels between the politics of ozone and of biotechnology are revealing. The US passed one of the first bans on products containing CFCs in 1979, long before scientific evidence unequivocally linked them to ozone depletion. At that time, it was Europeans who opposed the US ban on CFC spray cans as an unnecessarily precautionary, even alarmist, act that hurt the economy. Washington went on to press for international regulations on CFCs in the 1980s, and the Europeans reluctantly agreed to the Montreal Protocol in 1987. This is now widely hailed as the most successful environmental treaty that helped slow ozone depletion.

### **Wait and see won't do**

The lessons are twofold. First, successful international environmental action invariably involves some form of precaution. When it comes to the threat of irreversible damage to the earth's ecosystems, a wait and see approach just won't do. In the case of GMOs, critics argue that we don't know enough about the long-term effects of releasing genetically altered plants. Gene transfers to other plants might have serious, irreversible consequences for biological diversity.

Second, perceptions of environmental risk often vary across societies. When it comes to worldwide environmental problems such as global warming, people in developed countries are more likely to demand action than those living in poorer

societies. But equally, differences in environmental awareness and risk aversion exist between societies in the developed world. This calls for tolerance, but above all a multilateral international dialogue.

This is the crux of the WTO case against the EU's GM rules. The WTO is one of the most integrated systems of multilateral rules seeking to liberalise and harmonise world trade practices. Using principles of non-discrimination, reciprocity and transparency, it has an unrivalled record of sustained international cooperation in eliminating tariffs and lowering non-tariff trade barriers. Yet, increasingly, its drive to harmonise national policies is clashing with the ecological imperative of precautionary action and the divergent societal values that underpin environmental policies.

It is highly unrealistic to expect the WTO's dispute settlement body to reach a satisfactory solution to this conflict. There is also the danger that the organisation's legitimacy will be further undermined. Although recent rulings have tended to acknowledge the right to use trade measures towards environmental objectives, the dispute settlement body is unable to produce what the GMO conflict calls for: a multilateral agreement establishing the right balance between trade rules and precautionary environmental policies.

European policy-makers point out that such a multilateral framework already exists in the Cartagena Protocol on Biosafety to the Convention on Biological Diversity. It was negotiated over four years of increasingly polarised talks between GMO-exporting and importing nations. The agreement strengthens the right to impose trade restrictions on GM products that are found to cause adverse effects on biological diversity and human health, even in the absence of scientific certainty.

The Protocol comes into force in September but it will not end the transatlantic GMO conflict. The US Congress has not ratified the agreement and is unlikely to do so soon. As a non-party to the protocol, Washington will insist on a settlement of the dispute in the WTO context. Should the US win, it may well turn out to be a costly victory.

European consumers will not start eating GM food because of a WTO ruling. And the trade body would find itself caught in a growing web of accusations that it tramples on the regulatory powers of nations and ignores the need for environmental precaution. With the Doha trade round entering a critical phase, even supporters of the organisation are arguing that the US has picked the wrong fight.