



Throwing Precaution to The Wind

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Since its founding, critics have complained that the World Trade Organization (WTO) is designed to strip sovereignty from nations, removing critical public policy decisions from democratic control. The world may now be entering an era when those abstract concerns become concrete in ways that will outrage millions of people -- as well as imperil efforts to protect human health and the environment. Last month, the United States announced its intention to file a WTO case against the European Union over its de facto moratorium on approval of genetically engineered agricultural crops. Since late 1998, the EU has not given regulatory approval to any new biotech product. The EU de facto moratorium is keeping out transgenic seeds sold by Monsanto and other purveyors of Frankenfoods, whether from the United States, Europe or elsewhere.

In announcing their intention to file a case, U.S. Trade Representative Robert Zoellick and Secretary of Agriculture Ann Veneman rhapsodized about the wonders of biotechnology. But if the United States proceeds with the case, it won't turn on the merits of biotech. (That's convenient for the proponents of biotech, because they don't have good evidence to back up most of their claims. For extensive deconstruction of the claims of biotech flacks, check out the January/February 2000 Multinational Monitor and the books and groups listed in its resources section.) The U.S. legal argument in the WTO case, if it proceeds, will go something like this: WTO rules require countries to accept food products unless they can prove them unsafe with a high level of scientific certainty -- even if their regulatory rules apply equally to foreign and domestic products. And there isn't scientifically conclusive evidence that biotech foods are unsafe. Remarkably, WTO rules place the burden on the regulators to show something is unsafe. These rules flip on its head the Precautionary Principle, which places the burden on the entity introducing a new product into the environment or food supply to show it is safe. The Precautionary Principle suggests erring on the side of safety, not recklessness. It is arguably the single most important concept to guide the world to a sustainable future.

There's a whole lot of subtext to the U.S. challenge to the European Union moratorium: There's a fight within the EU about whether the moratorium should be lifted. There are EU rules on labeling of biotech foods -- requiring foods to be labeled as containing genetically

engineered content unless all ingredients can be traced to show they are biotech-free -- that the United States on behalf of the biotech industry opposes. There is a tit-for-tat over an EU WTO case against certain U.S. tax rules. There's the ongoing tension from the splits over the Iraq war. There's the increasing problem faced by U.S. farmers, who are finding countries unwilling to import their genetically engineered crops. And much more.

But a crucial piece is an effort to crush the Precautionary Principle. This was articulated in a May report by the **National Foreign Trade Council (NFTC), a business grouping that has been extremely effective in setting the corporate agenda on trade-related issues -- and then turning the agenda into law and policy.** "Some societies, such as those within the European Union, embrace the mindset of precaution," complains the NFTC, "and presume that a product is severely hazardous until proven 'safe,' thereby effectively requiring proof of 'zero-risk.' By contrast, other societies, such as the United States ... do not rely on such a broad presumption." In the United States, "unless a given product is proven 'hazardous,' it is deemed safe, thereby acknowledging that a certain amount of risk is unavoidable in every day life."

That characterization overstates the safety bias of the Precautionary Principle -- it does not require certainty or zero risk or deny that a certain amount of risk is unavoidable in life -- but it does portray the basic dichotomy relatively accurately. The EU rules on biotech are only the most prominent of **precautionary rules that the NFTC argues conflict with WTO rules. Others that the NFTC say violate WTO provisions** include EU rules requiring electronics manufacturers to take legal responsibility for products at the end of their consumer life, an EU chemicals strategy (known as "REACH") which will require chemical manufacturers to safety test their products before putting them on the market, and a directive prohibiting use in cosmetics of carcinogenic or mutagenic substances.

The U.S. challenge to the EU's biotech moratorium is designed to invoke WTO rules to tell the EU that it has ceded its right to pursue such precautionary initiatives. The same applies to the rest of the world, and even the United States itself, despite the fact that these precautionary measures begin to chart the way forward for a sustainable world.

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