

## BACKGROUND TO THE WTO GM DISPUTE

In a complaint to the World Trade Organisation (WTO) in 2003, the US, Canada and Argentina are challenging the European Union over its *de facto* moratorium on the approval of genetically modified (GM) foods and crops (*European Communities – Measures Affecting the Approval and Marketing of Biotech Products* WT/DS 291, 292 and 293 -see: [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm#2003](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm#2003)). The complaining countries are the largest producers of GM crops and argue that the European Union has violated WTO Agreements.

Australia, Brazil, Chile, China, Chinese Taipei, Colombia, El Salvador, Honduras, Mexico, New Zealand, Norway, Paraguay, Peru, Thailand and Uruguay have registered their interest in the disputes as third parties affected by the outcome.

A three person Panel of trade experts has been appointed to adjudicate the three disputes as a single panel (the 'WTO GM dispute'). The parties will have filed their submissions by the end of May 2004, and the first oral hearing is expected in early June. A decision is expected in the latter part of 2004, which may be followed by an appeal on points of law to the Appellate Body of the WTO.

At least two independent groups acting in the public interest are intervening in the dispute settlement process by making submissions to the WTO Panel in the form of *amicus curiae* (or 'friend of the court') briefs. One is a trans-Atlantic group of expert academics and the other an international coalition of 15 public interest groups spanning Europe, the US, Canada, Argentina, Chile and India. In different but complementary ways, these groups are arguing that international trade and risk assessment rules should not be interpreted by the WTO so as to thwart the capacity of countries to establish the environmental, social and health standards, and risk assessment processes for GM crops and food, that they judge to be necessary in their particular national circumstances. Details about the challenges are contained in the accompanying notes.

### The WTO

Headquartered in Geneva, the WTO was established in 1995 to oversee the regulation of international trade under the WTO Agreements – a package of international treaties aimed at promoting global trade liberalisation (see [www.wto.org](http://www.wto.org)). The WTO has over 140 Member countries, including the union of 25 countries that now make up the European Communities (as it is known for WTO purposes).

WTO Members who feel that their trade benefits under the WTO Agreements have been undermined by another Member may complain to the WTO's Dispute Settlement Body. The Dispute Settlement Body – comprising all WTO Members – resolves disputes with the assistance of *ad hoc* panels of experts and, on appeal, Members of a permanent group of seven international trade lawyers known as the Appellate Body.

### The case against Europe

In the WTO GM dispute, the complaining countries argue that:

- The 'suspension' and 'failure' by the EU to consider applications for approval of GM products (the '*de facto* moratorium') and the national bans in Austria, France, Germany, Greece, Italy and Luxembourg on some GM products which had already been approved in European Union before October 1998, have adversely affected imports of agricultural and food products from the US, Argentina and Canada.
- The *de facto* moratorium and national bans violate the WTO rules because they have not been scientifically justified, they were not published and there has been 'undue delay' in assessing applications for release and marketing.

- The European Union delays have hindered development of GM technology, which is of proven safety and brings great benefits, including in reducing hunger and improving health and crop productivity worldwide.

### **What has been happening in Europe?**

By 1998, there was growing public opposition to GM crops and food across Europe and increasing debate about the risks of genetic modification. In their discussions of applications to import or grow GM crops, several Member States were expressing concern at the levels of uncertainty and the potential for harmful effects. As a result, no new approvals of GM products were agreed after 1998 and new environmental and food safety rules for GM food and crops were negotiated:

- Revised rules on environmental impacts which came into force in October 2002. These now require an assessment of the indirect effects of GM crops on the environment, post-market monitoring, and a time-bound approval (for 10 years).
- Two new Regulations concerning the traceability and labelling of GMOs and GMO derived products entered into force in April 2004. As well as comprehensive traceability requirements, labelling will now include all GM derived products even if these do not have foreign DNA or protein in the final product.

Since 1998, research has been conducted into a range of GMO risk issues. If such research had not been done, these GM crops may have been allowed to be grown and the environment damaged as a result. The EU has also ratified the Biosafety Protocol, which governs international trade in GM and which requires a precautionary approach to GMOs.

### **The significance of the case**

At a time when GM food continues to cause controversy worldwide, and the legitimacy of the WTO itself has come under question, the WTO GM dispute looks set to be one of the most challenging in the WTO's history. The outcome of the WTO GM dispute will have major ramifications for the development of on the environmental, social and health aspects of trade policy and is likely to have both substantive and symbolic importance worldwide.

The consequences of the European Union losing these cases include:

- Payment of compensation or trade sanctions could be imposed against the European Union.
- The European Union and other countries will feel unable to implement appropriate measures to protect the health of people and the environment from GM products.
- The WTO will be seen as the enforcer of the interests of global corporations at the expense of people and the environment.

Other challenges in the WTO may follow, including an attack on the European Union's underlying regulatory framework requiring monitoring and labelling of GM products.

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**EXPERT ACADEMIC GROUP** Professors Brian Wynne and Robin Grove-White of Lancaster University; Professor Sheila Jasanoff and Mr David Winickoff of Harvard University; and Professor Lawrence Busch of Michigan State University. All are internationally respected social scientists in the science-in-society and GMO risk evaluation fields; two of them are lawyers. See: <http://www.lancs.ac.uk/fss/ieppp/WTOamicus>.

**PUBLIC INTEREST COALITION** :GeneWatch UK ; Foundation for International Environmental Law and Development (FIELD); Five Year Freeze (UK); Royal Society for the Protection of Birds (RSPB, UK); The Center for Food Safety (USA); Council of Canadians; Polaris Institute (Canada); Grupo de Reflexión Rural Argentina; Center for Human Rights and the Environment (CEDHA - Argentina); Gene Campaign (India); Forum for Biotechnology and Food Security (India); Fundación Sociedades Sustentables (Chile), Greenpeace International; Californians for GE-Free Agriculture; International Forum on Globalisation. See [www.genewatch.org/WTO/WTO\\_default.htm](http://www.genewatch.org/WTO/WTO_default.htm).

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