



By Carolyn Raffensperger

U.S. Vs. 'Old Europe' On Biotechnology

It is not a secret that the United States casts a jaundiced eye on the United Nations, although the world body's stance on the war in Iraq is not the only reason. Washington finds the U.N. too restrictive on trade, since it favors allowing nation states sovereignty in matters of health and safety and advocates the precautionary principle in making those decisions. In contrast, the World Trade Organization is more suited to a U.S. style of decisions based on "sound science" and its economic view of open access to trade.

This tension came to a head in Washington's challenge before the WTO in May of the European Union's moratorium on imports of genetically modified foods — consummately bad timing, given the diplomatic troubles between "Old Europe" and the United States. But Washington was actually short-circuiting larger legal problems by initiating the challenge days before the Cartagena Biosafety Protocol was ratified by the 50th nation, Palau. If the United States had waited much longer the Biosafety Protocol would govern the trade dispute over genetically modified foods.

Kristin Dawkins, vice president for Global Programs at the Institute for Agriculture and Trade Policy, a Minneapolis-based think tank, describes the dispute this way: "Fundamentally, this battle is also about the rights of nations to set up their own regulatory systems to protect human health and the environment. Instead of working through the U.N. to set an international floor of minimum standards that must be met around the world, the U.S. is pushing

for a ceiling at the WTO which would restrict nations from setting more rigorous safety standards."

As it stands, the United States will need to make a prima facie case before a WTO-convened panel that GM foods are "like goods"; an adequate risk assessment was undertaken for biotechnology; there are international standards; the measures do not constitute the "least trade distorting" way of meeting legitimate objectives; and the EU regulations discriminate among suppliers or in favor of domestic producers. After the United States makes its case the burden will switch to the EU.

In contrast to the U.S./WTO "nothing shall get in the way of trade" approach, the Biosafety Protocol, agreed to by 131 countries in Montreal in 2000, and as of June now in force, establishes an international regulatory regime based on the precautionary principle, which asserts the value of protecting human health and the environment over protecting trade. As Dawkins says, "The rights of national governments to regulate all GMOs are affirmed, while developing countries may use the protocol to regulate commodities even before national policies are in place. Environmental, human health and socio-economic factors are recognized as valid considerations in determining whether to accept or reject GMO imports. Throughout eight years of these negotiations, the U.S. attempted to block each of these aspects of the final treaty."

A large part of the tension between the United States and Europe stems from different cultural values. Too often the differences have been portrayed as the result of mad cow disease and the more conservative view of risk taking on the part of the Europeans. However, the cultural differences are more interesting and subtle than that simplistic view. For instance, ethics and values are important in European decisions. Philosophers often participate in regulatory discussions. In contrast, the United States prefers to leave values at the door and make decisions solely on the basis of so-called sound science.

In a related difference between the two groups, minority scientific views

and cutting-edge research are given a place at the European table. The United States requires a higher level of certainty before entertaining a conclusion or even allowing scientists a voice in the decision. And the United States has a bias against pre-market testing, beginning with a chemical regulation history that gives the benefit of the doubt to the chemical. Europe has chosen a different approach, with a more stringent pre-market testing philosophy.

These differences are reflected in the Maastricht Treaty forming the European Community, which adopted the precautionary principle. Maastricht specifies that "Community policy on the environment shall aim at a high level of protection." It also says, "Harmonization measures shall include where appropriate a safeguard clause allowing member states to take provisional measures for non-economic environmental reasons."

The rhetoric over these differences is heating up. The U.S. trade representative, Robert Zoellick, has called the EU policies on transgenic foods "Luddite," "immoral," and an unfair trade practice harmful to America. The Bush administration believes the precautionary principle is an unjustified constraint on business and does not even recognize the existence of the doctrine. "We consider it to be a mythical concept, perhaps like a unicorn," said John D. Graham, the White House official in charge of vetting new regulations, in a recent speech to EU regulators.

However, the unicorn has been sighted even in the United States — not just on old European tapestries. On June 17, the San Francisco Board of Supervisors adopted the precautionary principle as city and county policy. In their ordinance, the supervisors said that "every San Franciscan has an equal right to a healthy and safe environment. This requires that our air, water, earth, and food be of a sufficiently high standard that individuals and communities can live healthy, fulfilling, and dignified lives."

I wonder if San Francisco is part of Old Europe?

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