



SEEDLING

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BATTLE ROYALE OF THE 21ST CENTURY

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Two key intergovernmental meetings at the turn of the millennium have raised hopes that the seemingly unstoppable train of globalization may actually be forced to slow down after all. The US and its globalization disciples were thwarted in their efforts to get the World Trade Organization to take on biotechnology issues in Seattle and in their attempts to handcuff developing countries into adopting the unrestricted trafficking of genetically modified products at the biosafety negotiations in Montreal. As a result, governments, industry, NGOs, farmers and civil society groups are now positioning themselves for a major showdown over the role of biotechnology in agriculture.

Back in 1997, US Secretary of Agriculture Dan Glickman described biotechnology and the patenting of life as "*the Battle Royale of 21st century agriculture.*" In Seattle during the closing month of the 20th century, the United States and its cohort of fellow exporters of genetically modified organisms (GMOs) fired their first shots in this battle and found that they fizzled. Not only did the World Trade Organization (WTO) fail to launch a new round of trade talks, but proposals for the WTO to consider biotechnology issues also flopped.

In the first month of the new century, the US and other GMO exporters lost another round – their eight-year campaign to avoid a new international treaty to help safeguard the environment and public health related to the GMO trade. The "*Cartagena Protocol on Biosafety,*" agreed in Montreal in January, establishes an international regulatory regime based on the precautionary principle to manage the unique risks of GMOs. These two events have put the brakes on the globalization bandwagon, at least for a while, and offer hope to governments and civil society organizations pushing for a saner approach to the management of biotechnology and a more sustainable approach to agriculture.

Seattle's spectacular failure

In Seattle, the biotech lobby was seriously let down. The US joined Canada and Japan in proposing a WTO *"Working Party on Biotechnology"* whose mandate was unclear. The US wanted it *"to examine approval processes"* for GMOs – taking dead aim at the European Union's (EU) array of national and regional restrictions on the import, planting and consumption of genetically engineered seeds and foods. A large number of developing countries objected, however, largely on grounds that the proper place to debate the matter was at the biosafety negotiations a month later, not at the WTO – and they never gave in.

As the obvious target of the WTO proposal, the EU was initially in agreement that biotechnology should be dealt with through the biosafety negotiations. EU delegates therefore reacted with outrage when the lead negotiator for the EU, Commissioner Pascal Lamy voiced EU support for a Working Party. Lamy defended his position by saying, *"My job as a negotiator is how to get the maximum... I have to spend money to get money. I don't find it a problem if I can get what I need... At the end of the day, the Council [of Ministers] will make their decision."*

With the collapse of the Seattle meeting, the biotech issue is probably moot at the WTO, at least for the time being. But in Brussels there is surely a fierce debate raging over the democratic rights and responsibilities of the European Commission. For Europeans, the issues of democracy and food safety mingle in a profound way. Last year, the WTO overturned their ban on imports of beef laced with growth hormones, agreeing with the US that the ban is not *"scientifically justifiable"* and acts as a *"barrier to trade."* EU attempts to include the precautionary principle as a justifiable consideration in WTO policies were rebuffed by the US and its friends.

Patents on Life

Several key proposals from developing countries were severely watered down during the Seattle negotiations. One of the most important of these was text developing countries, led by the African Group, had drafted amending the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property (TRIPs). The text proposed modifications so that *"All living organisms and their parts cannot be patented; and those natural processes that produce living organisms should not be patentable."* The list of exceptions to patentability would include the list of essential drugs identified by the World Health Organization. In addition, they called for revisions to *"ensure the protection of innovations of indigenous and local farming communities; the continuation of traditional farming processes including the right to use, exchange and save seeds, and promote food security."*

In the last draft to emerge in Seattle, however, WTO members merely pledged to *"examine, in cooperation with other relevant intergovernmental organizations, the scope for protection...relating to traditional knowledge and folklore...and other legal means and practices, both national and international."* While this draft is now scrapped, along with the rest of the Seattle compromises, on-going reviews of the TRIPs Agreement are part of the WTO's *"built-in"* agenda, so developing countries will at least have a chance to pursue their proposals for reforms in the future.

Taking on the bullies

The lack of democracy in Seattle was one of the main reasons for the failure to launch a new round of WTO trade talks. Developing countries complained of a systematic failure to implement those elements of the Uruguay Round agreements that benefited them, while those benefiting the industrialized sector have been rigorously enforced. In the months preceding Seattle, the Like-Minded Group staked out negotiating positions to remedy these matters. At the meeting, however, the US and EU gave short shrift to these proposals, committing themselves merely to *"examine with particular care"* or *"take note of concerns"* in response, or to make *"more operational"* or *"more transparent"* those matters already agreed.

Fingers were also pointed at US Trade Representative Charlene Barshefsky and WTO Director-General Michael Moore for Seattle's failure, who resorted to the infamous *"Green Room"* technique, inviting selected governments into a closed-door session designed to brow-beat them into a series of trade-offs on the most contentious issues. While a common technique in past trade negotiations, it backfired in Seattle. As a group of Caribbean countries put it, *"as long as due respect to the procedures and conditions of transparency, openness and participation that allow for adequately balanced results in respect of the interests of all members do not exist, we will not join the consensus to meet the objectives of this Ministerial Conference."* This sentiment was echoed by African and Latin American countries as well, foreshadowing by one full day the eventual announcement of December 3rd that the Seattle talks were ended.

There is no doubt that the fifty thousand or more citizens who dominated the streetscape of Seattle and the news reports worldwide also had an impact on the results. Trade unionists, religious and peace activists, consumer and environmental advocates, and thousands of young people fed up with corporate globalization and the dictatorial behavior of the WTO made it clear that *"business as usual"* was unacceptable. Some of them were back a month later, this time to lobby their governments at the biosafety protocol meeting in Montreal. Hundreds of citizens also poured into the streets in frigid windy weather to march and hold overnight vigils and otherwise demonstrate their objections to Canadian complicity in the US-led attempts to sabotage the meeting. Again, these groups can take some of the credit for the qualified success of the Montreal meeting.

A biosafety protocol at last

The Cartagena Protocol on Biosafety establishes an international regulatory regime based on the precautionary principle to manage the unique risks of GMOs. All national governments' rights to regulate all GMOs are affirmed, while developing countries and countries in transition (the former Soviet states) may use the Protocol to regulate commodities even before national policies are in place. The protocol will become enforceable once 50 nations ratify it through their domestic legislative processes. Legally, the United States cannot become a party to the new Protocol until it ratifies the parent treaty, the Convention on Biological Diversity (CBD). But the rest of the world made sure that it will have to follow the rules: the new law says that GMO trade between parties and non-parties *"shall be consistent"* with the Protocol's objectives and that parties *"shall encourage"* non-parties to comply.

In addition to environmental impacts, human health and socio-economic factors are recognized as valid considerations in determining whether to accept or reject GMO imports. A permanent centralized information centre called *"the biosafety clearinghouse"* will be set up on the

Internet, and work will continue to further develop the terms of the Protocol. Within two years, details on the documentation required to accompany shipments of GMO commodities must be worked out: at present, they need only warn that they "*may contain*" genetically engineered grains.

At the same time many at Montreal felt that too much was given up to appease the US and the Miami Group. For example, one big loophole in the new treaty, affects commodities – that is, GMOs "*intended for direct use as food or feed, or for processing.*" Commodities are not subject to the full "*Advanced Informed Agreement*" procedure, whereby an importing country's government is notified of each impending shipment and then has the option to accept it or not. Instead, notification of a new approved GMO in one country is posted at the biosafety clearinghouse. Each potential importing government has the burden of monitoring the site for all new GMOs all the time, whether or not they are on their way to that country, or whether or not the importing country has the resources to set up complex electronic Internet monitoring systems. They can, however, still inform the exporting country that they will not accept any shipments of that GMO, based on the precautionary principle, as long as risk assessment procedures have been followed.

While this is a significant loophole, it is important to remember that the US and its five allies – Canada, Australia, Argentina, Uruguay and Chile – deadlocked what was supposed to be the final negotiation in Colombia in February 1999 over the issue of commodities. Calling themselves the "*Miami Group*," these six grain exporters demanded that commodities be altogether outside of the Protocol's scope on grounds that their regulation would be a barrier to trade. The rest of the world argued that genetically-engineered commodities carry the same biological risk as GMOs intended for direct release into the environment, like seed, and therefore must be just as carefully managed. As the Ethiopian spokesperson Tewolde Egziabher explained for what became known as the "*Like-Minded Group*" of some 100 or more countries, a bag of feed corn is just as likely to spill off a truck during transit as a bag of seed corn, and farmers with a field to sow are unlikely to notice whether a bag of corn is labeled "*seed*" or "*feed.*"

So polarized was the debate that Chairman Juan Mayr, Colombia's Minister of the Environment, called a special "*informal*" meeting in Vienna some months later to try to work through the most intransigent issues. Perhaps this process helped: virtually all observers agree that Chairman Mayr's diplomatic skill and commitment to achieving a protocol were instrumental in breaking through the deadlock. Another factor could be an increase in consumer and environmental concern in the Miami Group countries, including a series of high-profile lawsuits filed against the US Food and Drug Administration, the US Environmental Protection Agency, and the Monsanto Company and the other so-called life-science conglomerates. It is also likely that the WTO's debacle in Seattle had its effect. Whatever the factors, the Cartagena Protocol on Biosafety finally establishes – although still quite short of many peoples' hopes and expectations - a global framework for GMO regulation.

Caution prevails

In the lead-up to Montreal, the EU insisted that the precautionary principle was a non-negotiable demand. Its steadfastness paid off. The Cartagena Protocol articulates what may be the most advanced expression of the precautionary principle in any international agreement. It states that, "*lack of scientific certainty due to insufficient relevant scientific information and*

knowledge regarding the extent of the potential adverse effects...shall not prevent [a] party from taking a decision, as appropriate, with regard to the import" of a GMO.

Genetic engineering is still a young science, and it is widely agreed that proof of harm and proof of safety are as yet lacking. Given the risk of a potentially catastrophic scenario such as the annihilation of honey bees due to the spread of Bt toxins, the precautionary principle could be seen as necessary protection for governments to enable them to restrict GMO imports should they be challenged at the WTO by zealous exporters. However, the compromise struck in Montreal is so delicate, lawyers may never be able to sort out which treaty should prevail. In exchange for the precautionary principle, the EU conceded a weird recitation of clauses in the preamble of the Protocol regarding its relationship to the WTO. These read:

- *"Recognising that trade and environment agreements should be mutually supportive with a view to achieving sustainable development,*

- *"Emphasizing that this Protocol shall not be interpreted as implying a change in the rights and obligations of a Party under any existing international agreements,*

- *"Understanding that the above recital is not intended to subordinate this Protocol to other international agreements..."*

While these phrases may seem internally contradictory, they could also give lawyers at the WTO an excuse to ignore the Protocol altogether. However, a further subtlety that was key to the compromise was the EU's insistence that the placement of the precautionary principle and the so-called *"relationship issue"* be switched: in earlier drafts, references to a *"precautionary approach"* appeared in the preamble, which is not considered legally-binding, while the relationship clauses used to be in the legally-binding operational text.

The trade-environment conundrum

At the heart of these legalistic shenanigans is a longstanding ambiguity in international law: the relationship between a multilateral environmental agreement (MEA) and a trade agreement with inherently contradictory purposes and terms. The WTO's Committee on Trade and Environment has grappled with the problem unsuccessfully since 1994. The Cartagena Protocol carves out new legal and institutional ground in the international policy framework, though only time will tell to what extent it will help in establishing MEA predominance on environmental matters. As yet, no dispute has as yet been filed at the WTO staking terms of an MEA against terms of the WTO. But many suspect that the US has had plans to challenge the EU's array of GMO regulations as soon as the Biosafety Protocol was agreed (assuming the Miami Group were successful in lobbying for it to be subordinate to or, at a minimum, equal to the WTO). Whether the ambiguous language in the Protocol will enable the WTO to ignore the Protocol's terms may soon be known. In the glare of recent publicity, private interests may decide that the WTO is no longer the right place to seek to expand corporate rights over human rights.

Indeed, less familiar settings for international deal-making have already put the issue of GMOs on their agendas. For example, the Codex Alimentarius Commission – a body of the UN's Food and Agriculture Organization and the World Health Organization that once set guidelines for food safety regulations but was annointed by the WTO as the presumptive standard-setting body – has set up a *"Committee on Bio-engineered Food."* And the Trans-Atlantic Economic

Partnership is set up to devise executive level "*Mutual Recognition Agreements*" to harmonize US and EU regulations, bypassing the normal regulatory processes of each country. How these international agreements would relate to the Protocol, the WTO and each other adds greater dimensions of complexity to the contemporary challenge of multilateral governance and achieving global democracy.

Great minds think – and act – alike

In Montreal, the Like-Minded Group – representing well over 80% of the planet's population and at least 80% of its biological diversity – was steadfast in its commitment to biosafety. They insisted that all GMOs can have potentially harmful interactions within a given specific ecosystem, and that there is no substitute for case-by-case risk assessment and no substitute for nationally-determined risk management. They also insisted that the scope of the Protocol be comprehensive, and it is – despite a number of loopholes. They were especially adamant about commodities, and despite the Miami Group's most vigorous objections, commodities are included. Thanks to their unwavering unity as a negotiating bloc, the mostly developing country members of the Like-Minded Group were largely successful in achieving their aims.

In the last hour of the Montreal meeting, the government of France offered to host the first intergovernmental meeting to prepare for the entry into force of the *Protocol "before the end of 2000."* France having some of the strongest regulations against GMOs, and French farmers being among the most militant in the world, it should be an interesting meeting! Already, citizens are mobilizing to go to Paris and support the call for ever more effective regulations of GMOs at all levels of government.

Next stop Paris?

There is considerable uncertainty about what happens next – but also a renewed spirit of public optimism. As history unfolds, the spectacular failure in Seattle may have a galvanizing effect on the developing world's leadership as well as on civil society worldwide. There is a growing sense that not only the WTO, but all of the entrenched bureaucracy of corporate globalization is vulnerable to citizen action. And it seems altogether probable that the Seattle and Montreal events will have a dampening effect on US enthusiasm for a WTO dispute over GMOs. If the dispute settlement body were to agree with the US that European regulations on GMOs are illegal, the public's reaction could be fierce enough to seriously damage the WTO's credibility.

In Geneva, negotiators are back at the drawing table working on agriculture issues. One of the objectives of the Uruguay Round was "*fundamental reform*" of agricultural issues, taking into account experience to date and "*non-trade concerns*" such as the environment and food security. There is no mandate for the WTO to consider biotechnology, although there may be more momentum than before to settle the perennial question of the WTO:MEA relationship. The required review of the TRIPs Agreement should also go forward. Support for the African and Like-Minded Groups' proposals could help ensure economic and political justice as well as recognition of the social and cultural rights of rural communities over genetic resources.

In follow-up to the Cartagena Protocol, it is already time to plan for the meeting in France that will take place this year. Farm organizations, environmentalists, consumer groups, and others should begin preparations for this event. Research into the liability and labeling issues must go

forward, in the international as well as national contexts, to ensure that each country's delegations have a clear mandate in advance.

The Conference of the Parties to the Convention on Biological Diversity will meet in Nairobi in May 2000, to review progress towards not only the Cartagena Protocol (which will open for signature there) but also towards implementation of the obligation to "*respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities*" and more generally promote the sustainable conservation and use of biological resources and the equitable sharing of their benefits. Similarly, the UN's Food and Agriculture Organization will continue its efforts to reach agreement on an international treaty regarding the management of genetic resources for food and agriculture later this year, a treaty that could become yet another protocol to implement the 1992 Convention on Biological Diversity.

Citizens in many countries are becoming more aware, more alarmed and more organized in their objections to GMOs. Supermarkets and other buyers in the commercial chain from producer to consumer are declaring themselves GMO-free or offering premiums for GMO-free products. More and more farmers are opting to plant non-GMO seeds in the North, while in the South farmer organizations openly reject transgenic crops as an option for increased food security and sustainable development. Many national regulatory agencies in the South and North are preparing more rigorous procedures for evaluating GMO safety.

In the United States, which as usual has acted as an outlaw in the world community of nations, there is dramatic and rapidly growing support for positive action regarding genetic engineering and the protection of genetic resources (see [Sprouting Up](#)), which may lead to changes in US policy in the near term. Meanwhile Europe is becoming more frigid to biotech's touch. Last July a highly-respected Deutsche Banc's report entitled "*Ag Biotech: Thanks But No Thanks!*" warned investors that "*European concerns are very real and not merely a trade barrier.*" In October, the European Commission proposed making permanent a moratorium in effect since 1990 against the use of genetically altered bovine growth hormone. Meanwhile, Japan, Korea, Australia, and New Zealand have joined the EU in demanding labels on GMOs. It may be that having failed to deflect the labelling issue, the biotech industry itself may opt for a coordinated international system rather than trying to find its way through a maze of varied national regulations.

All told, biotech is "*the biggest issue in agriculture today*" – as a spokesperson for the US delegation said in a briefing with non-governmental organizations in Seattle – and agriculture has certainly been the most troublesome issue facing the WTO negotiators since the beginning of the Uruguay Round in 1986. The Cartagena Protocol on Biosafety will help resolve this thorniest of agricultural problems.

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