Lecture by Les Levidov, 15 Janurary 2007: WTO agbiotech dispute: Transnational regulation as a legitimacy problem

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Abstract

When the US government led a multi-country complaint to the WTO against EU blockages of agbiotech products in 2003, this dispute became a difficult test case for the legitimacy of WTO and EU procedures. The US government had made long-standing threats to bring such a case, and some European politicians had advocated approval of biotech products to avoid a WTO dispute. Although the complainants formally targeted the EU, the case served as a proxy for deterring precautionary approaches in the global South, especially in African countries which had blocked US exports of GM maize. On all those grounds, NGOs linked agbiotech with the WTO as dual threats to

democratic sovereignty from globalisation. These legitimacy problems raised the political stakes for how the WTO dispute adjudication procedure would link law, science and expertise.

In the formal WTO procedure, the complainants disagreed with the EU about the nature of the dispute. The US government presented a narrowly legalistic argument: that EU regulatory delays and national bans generated trade barriers, which per se violated WTO rules. According to the European Commission, by contrast, the procedural delays and bans could be justified by uncertainty about environmental and health risks; to judge these issues, the WTO Dispute Settlement Panel therefore needed its own expert advice. In response, the Panel created an Expert Group, whose members then disagreed about scientific evidence and uncertainties. But these issues were ignored by the Panel in its ultimate judgement supporting the complainants.

Contending stances in the WTO dispute intersected with internal EU conflicts. There the Commission had cited safety claims of EU scientific committees to oppose delays and bans on agbiotech products. Yet the Commission case at the WTO promoted a different risk-assessment model, similar to some national precautionary approaches which criticised safety claims. Not simply an inconsistency of the Commission, these dual stances are a dynamic contradiction which can generate precautionary change within the EU system.