ON THE AGENDA?:
FOOD SAFETY AND THE
WORLD TRADE ORGANIZATION

by
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INTRODUCTION

This November, the World Trade Organization (WTO) will convene in Doha, Qatar, to discuss launching a new, formal Round of international trade negotiations. At present, one major stumbling block to launching a New Round at the November Ministerial is the European Union’s demand to place environmental and food safety issues on the WTO agenda.

The EU has been the main proponent of including environmental issues on the WTO agenda, and has had substantial difficulty obtaining support from other WTO Members. This WORKING PAPER will summarize the European objectives and the objections of the United States and other Governments, and suggest how U.S. business should react. It looks in particular at the three key issues that the EU has emphasized in the WTO negotiations to date, namely: (1) the relationship between WTO rules and multilateral environmental agreements; (2) eco-labeling; and (3) the
“precautionary principle.” It also considers the current dispute surrounding the strict European standards for aflatoxins as an example of the issues causing trade concerns.

I. EXISTING WTO PROVISIONS ON THE ENVIRONMENT AND FOOD SAFETY

Neither environmental nor food safety issues are new to the WTO. The original GATT Agreement of 1947 (Article XX) allowed trade restrictions when they were “necessary to protect human, animal or plant life or health.” The 1994 Agreements that set up the WTO included a detailed “Agreement on the Application of Sanitary and Phytosanitary Measures” (the SPS Agreement), which applies to all measures intended to protect human, animal or plant life or health which may affect international trade. At the same time, a Committee on Trade and Environment was created in the WTO. Over the past several years, this Committee has done some useful work in defining issues, but has made little progress toward resolving them.

The core competency of the WTO is trade and WTO members have little interest in seeing it evolve into some kind of global environmental or food safety agency. Its task is to study environmental and food safety issues when, but only when, they impact on trade, and to rule, under its dispute settlement procedures, when measures taken for environmental or food safety reasons come into conflict with the WTO Agreements.
II. EUROPEAN ACTIVISM ON THE ENVIRONMENT AND FOOD SAFETY

The EU’s position on environmental issues in the WTO reflects not only a strong concern for the environment, but also its reaction to a number of food scares over the last several years, for example over BSE (mad cow disease). Some European public interest groups and members of the media also exaggerate the environmental threats and risks associated with biotechnology products and a host of synthetic and natural toxins, making Europeans especially wary of these products. Partly as a result, the EU has implemented a number of environmental and food safety regulations that are far more stringent than those in the United States and many other WTO members, and that can operate to restrict trade in affected products. One example is the EU’s very restrictive policies regarding genetically modified organisms (GMOs). These measures have been criticized by the United States and others on the grounds that their scientific justification is at best unclear, and that they represent a form of hidden protectionism. New proposed regulations for the traceability and labeling of GMO-derived products are particularly problematic. A number of WTO members are deeply suspicious that the EU’s effort to place environmental and food safety issues on the WTO agenda is in reality an effort to weaken the trade rules that apply to government action in these areas — and thereby protect its own regulations from challenge.

The EU’s specific environmental objectives for the WTO New Round are
three-fold. First, the EU wants to discuss the relationship between WTO rules and multilateral environmental agreements, such as the UN Convention on Biological Diversity. Second, the EU advocates including eco-labeling on the agenda. Third, the EU is seeking to have the WTO formally address the “precautionary principle” — the principle that Governments should be allowed to adopt health and environmental standards that restrict trade even if the scientific basis for adopting the standards is inconclusive.

A. The Relationship Between WTO Rules and Multilateral Environmental Agreements

The EU's interest in clarifying the relationship between the WTO Agreements and multilateral environmental agreements (MEAs) will not be an easy issue to resolve, but ultimately may be relatively less controversial than its other goals. To countries such as the United States, the EU position on this issue is somewhat perplexing as they do not perceive any existing lack of clarity in the WTO-MEA relationship or any necessary conflict between agreements. There is substantial suspicion that the EU's intention may be to create a loophole in the WTO Agreements by creating an exception for trade measures allegedly undertaken pursuant to an MEA. The fear among Washington trade policymakers is that a country might then be free to violate its WTO obligations if it can argue that its actions are consistent with the objectives of any MEA. Likely as a result of these
concerns, the initial draft of the Doha Ministerial Declaration takes a cautious approach to this issue, and provides only that the WTO Committee on Trade and the Environment should give it further study.

B. Eco-labeling

Eco-labeling refers to the labeling of consumer products to indicate that the products are environmentally-friendly. An eco-labeling scheme can be voluntary or compulsory; it can relate to the product itself or to the production process. The stated purpose of an eco-labeling scheme is to give consumers relevant environmental information about a product so they can decide for themselves whether or not they want to buy it.

The EU wants to put eco-labeling on the agenda for the new Round, but has not set out with any precision the purposes for which they want eco-labeling to be applied or how it should be administered. Any eco-labeling proposal is likely to meet resistance, both from the United States and developing countries. The United States has complained that the EU’s proposals in this area are particularly vague and subject to continuing modification.

Under the EU’s current voluntary labeling scheme for consumer products (other than foods, pharmaceuticals, and medical devices), manufacturers are encouraged, but not obliged, to provide environmental information with their products. A genuinely voluntary scheme designed only to provide information may
not violate WTO rules. Indeed, in many countries manufacturers voluntarily place environmental information on their products for good marketing reasons. Nevertheless, the EU’s voluntary labeling schemes have been the subject of U.S.-EU trade tensions in the past since they may *de facto* deny access to the European market for certain products. Certainly, compulsory labeling schemes would be considered even more problematic, as would any requirement that labeling cover a product’s entire life cycle. A number of WTO members have already argued in the WTO Committee on Trade and the Environment that the latter type of eco-labeling scheme is incompatible with WTO rules because it would result in the EU imposing its environmental concerns on the production methods of its trading partners.

In the United States, a significant number of interagency meetings were held during the latter part of the Clinton Administration on the EU’s eco-labeling proposals, more than on almost any other trade issue. Agencies within the U.S. Government were extremely concerned at that time, and remain concerned today, that these schemes could operate to disadvantage one of the United States’ largest export sectors, agriculture.

In the preparations for the WTO Ministerial meeting at Doha, the EU can be expected to press its interests in eco-labelling, although its officials will be held back by more cautious member states reluctant to go beyond a voluntary system. The subject will probably not feature in the actual text of any agreement which emerges.
from Doha; however, it will certainly be an active ingredient in WTO debate thereafter.

**C. The Precautionary Principle**

The precautionary principle is broadly understood to mean that Governments should be allowed to restrict trade to protect the environment and public health in cases where the scientific arguments for doing so are inconclusive. The principle first emerged in an environmental context in the 1982 United Nations World Charter for Nature. It reappeared, this time in a food safety context, in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. Under the SPS Agreement, Governments may adopt food safety and other health measures “on the basis of available pertinent information” when “relevant scientific evidence is insufficient.” In such circumstances, Governments are required to obtain additional information so that they can conduct a more objective risk assessment at a later date. In the meantime, international standards are relevant benchmarks for regulation.

This provision is cast in general terms that provide limited guidance on how the principle should be applied. In both of the two WTO dispute settlement cases to date in which the principle has been at issue, the US-EU beef hormone dispute and a case on Japanese testing requirements for imported fruit, a defense based on the application of the principle was rejected. In the beef hormones case, the EU was
found not to have conducted a proper risk assessment that took account of available scientific evidence. In the Japanese fruit case, Japan was found to have violated the obligation to obtain the additional information necessary for a more objective risk analysis and to review the measure within a reasonable period of time.

In the last few years, European interest in the precautionary principle has increased, partly in response to aggressive campaigns by non-govermental organizations against food produced with biotechnology. In December 2000, the European Council, the twice-yearly meeting of EU Heads of Government, passed a resolution endorsing the principle, and claiming that it “is generally asserting itself as a principle of international law in the fields of environmental and health protection.” This resolution urged the Commission and member states to “ensure that the precautionary principle is fully recognised in the relevant health, environment and world trade fora, in particular on the basis of the principles put forward in this resolution; to pursue that aim and to ensure that it is taken into account as fully as possible, particularly at the WTO, and at the same time help to explain it.”

With this instruction coming from the highest political level in the EU, it is not surprising that the Commission is active in pressing for greater recognition and adoption of the principle. In July 2001, the EU circulated a paper to other Governments in the WTO. While some of the proposals in the paper were uncontroversial, others were not. For example, one proposal would establish that
“The use of precaution should be based on available pertinent information, having due regard to scientific evidence coming from qualified and respected sources but not necessarily that of the majority of the scientific community.”

The EU paper received a generally critical response from other WTO members. Given that the SPS Agreement already incorporates the precautionary principle, WTO members such as the United States see little reason to include it in the agenda of the New Round, and have criticized the EU for failing to identify the specific deficiencies that it seeks to address. The EU's hidden agenda regarding the precautionary principle is to protect their regulations on GMOs from attack through WTO dispute settlement. In reality, however, this agenda is readily apparent and the source of a great deal of suspicion.

The Commission certainly will not give up, given the European Council resolution and pressures from public opinion. At the same time, some senior European politicians are concerned about the risks of departing from judgements based on the best available science. As with eco-labelling, the Commission can be expected to raise the precautionary principle at Doha, but it is unlikely to form part of the conclusions of that meeting. However, WTO discussions on agriculture are scheduled to continue irrespective of the Doha outcome, and the principle will be debated there and in other areas of ongoing WTO business.
III. AFLATOXINS

Apart from the broader issues discussed, a specific EU food safety regulation that has drawn the concern of WTO members relates to aflatoxins. Aflatoxins are compounds found in cereals, dried fruit, and nuts which may contribute to liver cancer in humans. The EU’s standards for aflatoxins are much more restrictive than the international standards approved by the Codex Alimentarius Commission. For example, in the case of groundnuts, an important export from Africa, most EU member states require a reduction in the level of aflatoxins by more than 50%.

The World Bank’s Development Research Group found that the impact of the new European aflatoxin standards on the food exports of a number of African countries is striking. An analysis of likely trade flows between nine leading African exporters and fifteen European countries suggested a reduction in African export revenue of 59% for cereals and 47% for dried and preserved fruit and edible nuts. The total annual loss was estimated at nearly $400 million. At the same time, the study forecast an annual reduction in European deaths from liver cancer at around 1.4 deaths per billion people (the EU population is around 500 million). Based on these estimates, the welfare gain in Europe is far exceeded by the economic losses in Africa. If the European aflatoxin standards remain in place, they could well be vulnerable to challenge in the WTO as restricting trade more than is necessary to protect the public’s health.
The EU has also tried to influence the Codex Alimentarius Commission standards for aflatoxins. Many see this as a backdoor attempt to influence the WTO process. The WTO Agreements specifically recognize the importance of international standards, especially when other scientific data is unavailable. The EU hopes that by setting tough international standards that mirror EU standards, it may be able to stave off a WTO challenge to its regulations. So far, however, the EU has been unsuccessful in modifying the Codex standards.

IV. HOW SHOULD U.S. BUSINESS RESPOND?

U.S. industry is directly affected by the EU’s environmental agenda, and should seek to counter this agenda in several significant ways.

U.S. business should oppose the EU’s proposals to broaden the scope of the precautionary principle and add eco-labeling to the agenda of the WTO New Round. The Europeans are certain to push for these proposals in the run-up to the November Ministerial. Whether or not a new Round is launched in November, environmental and food safety issues will continue to form part of the WTO agenda. U.S. business should not only pressure the U.S. Trade Representative to take action on these issues, but should lobby the Administration to place this issue at the top of the U.S.-EU transatlantic agenda. Trade officials should also monitor international negotiations that indirectly affect trade, such as the negotiations over international food safety standards in the Codex.
At the same time, working with like-minded industry leaders in Europe, U.S. businesses should intensify its public relations and advocacy efforts, both with individual member states and the public at large. Although European politicians are nervous about saying so in public, there is considerable concern in the EU about some of the more far-reaching ideas for regulating trade on environmental and food safety grounds. U.S. industries — particularly the biotechnology sector — also should consider additional ways to educate the European public about the benefits and safety of U.S. products. EU legislation is responsive to consumer fears, and those fears should be assuaged as part of a broad strategy to limit the negative ramifications of EU environmental and food safety regulations and increase European confidence in biotechnology products. The Central and East European countries, who will join the EU by the end of the decade, should be a key part of a world-wide public affairs strategy on these issues.

Finally, when the EU issues specific proposals, as it did last July on traceability and labeling for GMO products, U.S. industry needs to lobby the European Commission and explain the U.S. position. In appropriate cases, the apparent conflict between EU regulations and the EU’s WTO obligations should be emphasized. The European Parliament may also be a helpful pressure point. The EU member states should be lobbied as well, especially where a U.S. parent has a local European subsidiary. Some senior European politicians, especially in the
United Kingdom and Germany, are seriously concerned about the impact of EU food safety legislation on their own fledgling biotechnology industries, and may well — at least privately — be sympathetic.

With respect to such measures, action under the WTO dispute settlement procedures is also an important option to be considered. Winning such a case could obligate the EU to amend its laws, although, as is apparent from the beef hormones case, EU compliance cannot be assumed. Another factor to be considered is that even a successful case could involve considerable negative publicity in the EU.

**CONCLUSION**

Over the coming months, the EU’s efforts to place environmental and food safety issues on the international trade agenda are certain to continue to generate transatlantic friction. The intersection between these areas and the multilateral trade requirements has been controversial in WTO for years, and is one of the most difficult obstacles to the launch of a WTO New Round at Doha. Solutions must be found, however, given the depth of public concern, particularly in the EU, regarding environmental protection and the importance of maintaining a strong multilateral trade regime that is not riddled with loopholes.