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WTO agricultural trade battles and food aid

JENNIFER CLAPP

ABSTRACT *Recent agricultural trade battles at the WTO between the US and the EU have important implications for the Global South, in particular with respect to food aid. The current Doha round of trade talks hinges closely on agreement in the area of agriculture, and a key issue of disagreement between the US and the EU is the question of whether the WTO should impose disciplines on food aid and agricultural export credits. The US has also challenged the EU at the WTO over trade in genetically modified organisms (GMOs). The outcome of this dispute will affect food aid, as many countries have in recent years rejected GM food aid from the US on the grounds that it would harm their export markets in Europe. Decisions on both of these battles should be forthcoming within the next year or two, and the outcomes will affect food aid policies.*

The agricultural trade battles between the United States and the European Union have gained a great deal of attention in recent years. The two have been at odds in the current round of trade negotiations at the WTO over the revisions to the Agreement on Agriculture. The main issue has been over the reduction of agricultural subsidies. The EU charges that the US is unfairly using export credits and food aid to circumvent requirements to reduce export subsidies. The US claims that it is not misusing these mechanisms, and charges that the EU's export subsidies, which it sees as much more trade distorting, require substantial further reduction. In a separate battle, in May 2003, the US filed a complaint at the WTO, along with Canada and Argentina, against the EU for its 1998–2004 *de facto* moratorium on the approval of new GM seeds and food products. The complaint has gone to a dispute settlement panel and the results are pending. These battles, while ostensibly between the EU and the US and only part of the agricultural trade issues being discussed currently at the WTO, have wider ramifications for the Global South that must be considered.

In this article, I argue that developing countries are profoundly affected by these trade battles at the WTO because of their impact on food aid policies. We must therefore look at these disputes in their global context to get the full picture of their implications for global agricultural trade and aid. Developing countries have become aware of this reality, calling for grant food aid, an end to export credits and the right to reject GMO food aid, while still preserving access to food aid for those countries most in need of it.

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But in the WTO's deliberations over agriculture, these countries in practice have little voice, and by and large are at the mercy of the deals brokered between the big agricultural players, particularly the US and the EU.

The agreement on agriculture, export credits and food aid

The successful completion of the current Doha Round of trade talks depends on the outcome of the agricultural trade deliberations that are part of the overall negotiations. These talks began in Doha, Qatar in 2001, and were due to be completed by 1 January 2005, though this timeline has now been extended with no firm deadline set. Dubbed the 'development round', these talks encompass a revision of the 1994 Agreement on Agriculture (AoA). The AoA called for reductions in agricultural subsidies (Article 9) which are over US\$300 billion per year in industrialised countries, and which are seen to be distorting agricultural trade by artificially lowering world prices for agricultural commodities to the extent that they depress incentives for production, particularly in developing countries.¹ The agreement set out a schedule for subsidy reductions, including for both domestic support subsidies and export subsidies. In the 10 years since the original AoA was signed, there has been little progress in practice in the reduction of subsidies, as countries that made extensive use of them, primarily the US and the EU, have found creative ways to continue to use them.² This is one of the reasons behind the urgency to revise the AoA in the view of most developing countries.

Food aid is often seen to be separate from commercial trade, but interestingly it has become a point of dispute in the WTO in the negotiations over the revisions to the AoA in conjunction with discussions about further reductions in agricultural export subsidies. This is not so surprising when one starts to unpack the various kinds of food aid, which in fact has a lot of grey area.³ Some is given in fully grant form, and as such is essentially a gift to the recipient. Some food aid is sold to recipients on 'concessional' terms, i.e., on easier terms than commercial sales. This could mean that the food aid is sold at lower prices than those that prevail on international markets or on credit at below market interest rates with long periods for repayment. Some agricultural products are sold with export credits which give long periods for repayment or with credit guarantees, meaning that if the borrower defaults, the export credit agency (usually a government agency) will ensure repayment. These export credit sales are not technically 'food aid', but are perceived by the selling countries to be a form of assistance to food deficit countries.

There are no strict disciplines on export credits or food aid in the AoA. Article 10 of the AoA, however, aims to prevent countries from circumventing their commitments for export subsidy reductions by spelling out that members should not to use food aid or export credits to get around these commitments.⁴ It also stipulates that food aid donors shall ensure that food aid is not directly or indirectly tied to commercial exports of agricultural products to recipient countries; that donations of food aid shall be in accordance with the FAO 'Principles of Surplus Disposal and Consultative Obligations' including, where appropriate, the system of Usual Marketing Requirements (UMRs) to ensure that

food aid results in additional consumption of food in the recipient country and that it does not disrupt commercial trade⁵; and that food aid, to the extent possible, be given in fully grant form or on terms that are no less concessional than those outlined in Article VI of the 1986 Food Aid Convention, an agreement of donor countries on the amounts, terms and conditions of food aid. It also spelled out that WTO members were to undertake work to develop internationally agreed disciplines on export credits.⁶ Such talks were started within the OECD, but an agreement has not yet been reached.

Export credits

In the past decade, OECD countries' export credits have risen, both in absolute terms and in relation to overall trade, raising some concern that export credits have been one avenue that some countries have taken in an attempt to shift export subsidies from one form to another. In 1998, some 5.2 per cent of world agricultural exports, and 6.8 per cent of US agricultural exports, were supported by export credits.⁷

There are around 15 OECD countries that regularly grant agricultural export credits, including the US, Canada, Australia and a number of EU member countries. The US, however, is the principal country that gives export credits for agricultural products. There are various channels through which agricultural export credits make their way to recipient countries. The US agricultural export credit guarantee programs are overseen by the United States Department of Agriculture (USDA). These programs guarantee repayment of the loans granted by commercial banks to countries buying US agricultural commodities, usually countries that would find it difficult to obtain commercial credit without such a guarantee. The various programs offer credit for different periods of time, from 180 days to up to 10 years.⁸ In these programs, the US government steps in to guarantee repayment to the seller in the case that the buyer defaults on the loan.

The amounts allocated to US export credits are outlined in the US farm bills. The 2002 US Farm Bill provided authorisation for up to US\$5.5 billion annually for agricultural export credits through to the end of 2007. It also included authorisation for an additional US\$1 billion in credits to countries that are likely to become new markets for US commercial agricultural exports, and another US\$1.1 billion for the credit guarantee programs.⁹ While these amounts were approved in advance, the actual amounts granted depend on the applications received for these programs in any given year, averaging around US\$3.5 billion per year over the past decade.¹⁰ Due to the sheer size of the US export credits, their impact on international agricultural trade is enormous.

An OECD study on the trade effects of agricultural export credits indicated that the average subsidy element of export credits was around 4 per cent. But it also showed that the US export credits in particular are more trade distorting than similar export credits offered by other countries. The subsidy rate on US agricultural export credits was on average 6.6 per cent in 1998. While these subsidy rates may not seem terribly high, the report concluded that they are enough to influence sales in favour of exporter. Because the total value of US export credits is so large, the US accounts for most of the export credit related

distortions in world markets. The OECD report also revealed that that relatively few export credits actually go to the least developed countries (LDCs) and net food importing developing countries (NFIDCs), each receiving 0.2 and 9 per cent of all agricultural export credits, respectively. The US, for example, gives no export credits to LDCs, and only 17 per cent of its export credits go to NFIDCs.¹¹

Food aid and agricultural trade

There are concerns that some forms of food aid, especially in-kind aid sales of food aid, which is a practice unique to the US, distort international trade by displacing commercial trade. Most US food aid is given under its 1954 Trade and Development Assistance Act, otherwise known as Public Law 480 (PL 480). PL 480 is broken down into different titles, with Title I being concessionally sold food aid, and administered by the US Department of Agriculture. Titles II and III are food aid donations for emergency assistance and are administered by the US Agency for International Development (USAID). It is the explicit intention of PL 480 Title I food aid to improve US commercial markets abroad.¹² The terms on which the food aid is sold under Title I generally have grace periods of up to five years, repayment periods of up to 30 years, and below market interest rates. This type of arrangement closely resembles the export credits discussed above, prompting Oxfam's Kevin Watkins to say of the PL 480 Title I, 'In all but name, it is a subsidised export credit program'.¹³ Total credit based food aid from the US amounts to around \$100 million annually in recent years.¹⁴

The literature on the trade impacts of food aid generally agrees that there is some trade impact associated with food aid. Christopher Barrett argues that 'food aid clearly displaces commercial sales of food' in recipient countries.¹⁵ The key concerns over food aid with respect to trade impacts is the extent to which it displaces local food from markets, and also the extent to which it reduces commercial imports of food. Food aid is seen to substitute for commercial imports of food, and thus represents a net transfer of foreign exchange, but usually only 40–70 per cent of the value of the food.¹⁶ This displacement of local foods and imported foods from the market is greatest if the food aid is not targeted to those individuals with the most need. In these cases, there is leakage onto the local market, causing distortions. This type of leakage is most likely to occur with food aid that is sold concessionally—namely PL 480 Title I sales, rather than food aid that is given in grant form to provide food in the case of emergencies. Though grant food aid for emergencies has become the main type of food aid in recent years, US PL 480 Title I sales of food aid still amount to around 20 per cent of all food aid.¹⁷

There are also concerns about the pro-cyclical nature of food aid. What this means in practice is that as food prices rise (when availability falls), the total amount of food aid given tends to fall. And when prices fall (due to oversupply) the amount of food aid given rises. The impact on the recipient country is that just when food aid is most needed, the amount of food given falls.¹⁸ Moreover, the amounts allocated to different countries do not seem to correlate all that

closely with need. Some countries which are not in food deficit receive large amounts of food aid, while others which are in food deficit receive much less. The Food Aid Convention tries to get around this problem of pro-cyclical flows of food aid by setting minimum amounts to be given by each donor. But these levels have been set so low that they make little difference in practice and large swings in amounts given still occur.¹⁹

Negotiations at the WTO

In the early negotiations in the Committee on Agriculture at the WTO, starting in 2000, the US stated that negotiations should continue in the OECD for an agreement on export credits in accordance with Article 10 of the AoA. The US did not see any need to add any further disciplines to food aid than were contained already in Article 10 of the AoA, which the US saw as 'appropriate'.²⁰ The US justification for agricultural export credits and sales of concessional food aid is that these programs help developing countries that find it difficult to obtain commercial credit for food imports. At the same time, the US maintains that these programs are not trade distorting.

The EU has argued that the use of export credits and sales of food aid is trade distorting, and began in the late 1990s to call for an end to US concessional sales of food aid and for the elimination of all export credits for agriculture. Only if these programs were ended would the EU consider further reductions of its own export subsidies.²¹ The EU sees these practices as parallel to export subsidies, if not worse in their effects (especially in that they raise the level of debt of borrowing countries). The EU has also argued that food aid should be given only in fully grant form, only in response to internationally declared emergencies, and preferably in the form of cash assistance.²² Food aid in-kind, it argued, should only be given in response to requests from recipient countries, and carefully targeted to the needs of the recipients, rather than the needs of the donor.²³ The EU sees the US use of food aid in particular, with its explicit aim of increasing markets for commercial exports, as 'abuse of food aid comparable to an export subsidy of 100% of the price of the product'.²⁴

Since the launch of the Doha Round of trade talks at the WTO, there have been continued calls for reductions of all forms of agricultural export subsidies and for disciplines on food aid. The US, however, continued to be reluctant to move on these issues.²⁵ In early 2003 attempts to reach a deal on the revisions to the AoA were unsuccessful. The draft at that time, the Harbinson Draft, calls for food aid to be given only in fully grant form. It also states that non-emergency food aid should be in the form of untied financial grants (rather than in-kind grants) unless channelled through the UN. It also calls for more detailed reporting by donors, and calls for the elimination of export credits unless they are granted on fully market terms.²⁶ The document was not agreed upon by WTO members, however.

Talks resumed prior to the WTO Ministerial at Cancún in September 2003, but again no deal was reached. The draft text for that meeting, the Derbez Draft, calls for the elimination of agricultural export subsidies and the subsidy element of agricultural export credits on a schedule that is parallel in equivalence, as well

as disciplines on food aid programs to prevent commercial displacement. But these proposals were put on hold with the collapse of talks at Cancún.

In early 2004, the EU and US both indicated that they were finally ready to work on a deal that would see the elimination of all forms of export subsidies, including the 'classic' export subsidies employed by the EU, as well as the subsidy element of export credits and food aid.²⁷ Negotiations, at times heated, continued in the WTO Committee on Agriculture through July 2004. A key question in the negotiations was whether the US and other countries currently using agricultural export credits would in practice be willing to eliminate their subsidy element (effectively rendering them the same as commercially available credit) or whether they would eliminate them altogether. The EU made clear that it would like to see them eliminated outright, as it sees all export credits as trade distorting. A spokesperson for the EU stated that 'It is like being pregnant or not—there is not very much in between'.²⁸

A framework document for relaunching the Doha Round was finally agreed on 31 July 2004, the deadline that had been set. The adoption of the framework followed heavy pressure to reach a deal, despite the fact that countries had very little time to consider the document before the deadline because of delays in releasing the document due to last minute wrangling by the key players, including the US and the EU along with Australia, Brazil and India. The framework document for the agriculture talks calls for the elimination of export subsidies, with parallel elimination of export credit and export guarantee and insurance programs, as well as disciplines on food aid with the aim of preventing commercial displacement. The role of international organisations in the provision of food aid, the issue of food aid in fully grant form, as well as appropriate provisions for the least developed and NFIDCs, are to be discussed, but no details beyond this were provided in the framework.²⁹ The specifics of these commitments are to be hammered out in the negotiations.

The key question now is whether the US will entertain any sort of reform of the PL 480 Title I food aid as part of its commitment to eliminate the subsidy element of export credits. The US administration did propose a review of PL 480 Title I in 2002, in light of the ongoing talks at the OECD on export credits, but it is as yet unclear what actions will be proposed.³⁰ And it is uncertain whether the US would or could accept the suggestion that food aid be given mainly in cash form. Given the strong grain lobby in the US, it is highly unlikely that the US would agree to this. The National Wheat Growers Association said in a letter to the US trade representative about the EU's push in the WTO to have cash only food aid: 'We wish to assure you that producers across the nation are strong supporters of humanitarian programs, but will not be willing to support cash-only programs'.³¹

Throughout the negotiations over export subsidies and export credits at the WTO, developing countries have expressed their view that all forms of agricultural export subsidies should be ended, including the subsidy element of agricultural export credit programs. Such practices are largely seen to be dumping of cheap food by the industrialised countries, which hurts the economies of developing countries. They have added, though, that they wish to see the special conditions and needs of the net food importing and least developed

countries into account when disciplining export credits.³² With respect to food aid, most developing countries do not want to see food aid ended. However, they have expressed concern that they would like to see food aid in fully grant form and a mechanism put in place at the WTO to ensure that food aid does not disrupt domestic production of recipient countries.³³ They also want to ensure that the net food importing developing countries are not negatively affected by any disciplines on food aid.³⁴

Though the developing countries have made these concerns clear, the WTO does not have a good record of taking these voices into account. In WTO talks, including those in the Committee on Agriculture, developing countries have largely been sidelined.³⁵ Decisions tend to be made based on deals brokered at the last minute between the EU and the US, with little input from the developing countries. It was this type of deal-making just prior to the collapse of the talks at Cancún that led the developing countries to refuse to agree to the deal presented to them.³⁶ The newly revived attempts to complete the Doha Round may meet the same response from the developing countries in the future if such practices continue. This would leave an inadequate AoA from the viewpoint of the Global South, one which would allow industrial countries continue to circumvent their export subsidy reduction requirements through food aid and export credit programs.

The GMO trade dispute and food aid

In May of 2003, the US, along with Canada and Argentina, launched a formal complaint at the WTO about the European Union's *de facto* moratorium on new approvals of genetically modified (GM) crops and foods, including imports of GM products. This moratorium had been in effect since 1998, and by 2003 the US had lost sales to Europe to the tune of some US\$ 300 million per year for corn, and some US\$ 800 million per year for soybeans.³⁷ This agricultural trade dispute appears on the surface to be about trade in GMOs between Europe and other agricultural exporting countries. But it has important implications for developing countries, especially with respect to movements of food aid. Whether a developing country accepts food aid that is genetically modified appears to be closely linked to whether it has export markets in the EU, which may be affected by EU policies on GMOs.

Food aid is technically trade in food and thus is governed by global rules dealing with trade in agricultural products. Movements of GM food, whether for trade or for aid, are governed by the Cartagena Protocol on Biosafety, which was agreed in 2000 and came into legal force in September 2003. The protocol calls for notification to the importer if a food shipment may contain GMOs, and allows the importer to decide whether to accept or reject the imports on the basis of precaution in cases where full scientific certainty is lacking. Food aid is considered a traded food commodity and as such recipients should be notified if shipments contain GMOs now that the Protocol is in force. But any food aid donations prior to its coming into force were not covered by these rules. The rules for notification, however, only apply to countries that are party to the

agreement, which includes the EU but not the US or Canada, two of the largest growers and exporters of GM crops.³⁸

The guidelines published by the Codex Alimentarius Commission also have implications for international food trade, including food aid. Codex Alimentarius sets voluntary international guidelines on food standards. In the late 1990s, Codex began work through a special task force on guidelines for food safety with respect to biotechnology. This work was not completed until July 2003.³⁹ The standards are important in that they are seen to be 'internationally recognised standards' by the WTO for trade purposes, which the WTO encourages states to adopt.⁴⁰

In the absence of any set international rules regarding the trade in GMOs or safety guidelines regarding GM foods before 2003, the US has attempted to convince other countries of its perspective on GMOs. The US has argued that GMO-derived foods are substantially equivalent to their conventional counterparts and thus do not pose any health or environmental risks. It claims that there is no scientific proof that shows GMOs to be harmful and that scientific evidence is necessary to warrant any kind of precautionary treatment. The EU, on the other hand, has taken a precautionary approach.⁴¹ It assesses GMO risks differently from the US, using what Isaac and Kerr call a 'social rationality' approach to regulation, which rejects substantial equivalence, and is much more likely to adopt precaution as a risk management tool.⁴² The US has since the late 1990s expressed its dissatisfaction with EU approach to regulating GMOs, as well as the Biosafety Protocol, threatening a trade dispute at the WTO.⁴³

GMOs in food aid

The US is the largest donor of food aid, and also the largest grower of GM crops, mainly corn and soy, which have been approved for commercial planting since 1996. Because corn and soy are (in addition to wheat) key grains given by the US as food aid, and also because the US does not have a separate system for sorting out GM from non-GM crops, it is not surprising that food aid shipments from the US have contained GMOs since the mid-1990s.

There are a number of documented incidents of the US sending GM food aid to developing countries.⁴⁴ Some countries protested the shipment of GM food aid, though it was not until the summer and fall of 2002 that the issue made international headlines. Southern Africa was at the time in danger of a serious famine. The US sent some 500,000 tons of whole kernel corn as food aid to the region, and it was estimated by the World Food Program that around 75 per cent of that aid contained GMOs.⁴⁵ At the time of this crisis, there was little guidance for developing countries in terms of international rules on the trade in GMOs. The Biosafety Protocol was not yet in force, the Codex Alimentarius did not yet have any guidelines on food safety with respect to GMOs, and the World Food Program (WFP) did not have a policy on GMOs in food aid. Moreover, many developing countries did not have any policies on how to handle imports of GMOs.⁴⁶

In this uncertain context, a number of African countries rejected the food aid, concerned about cross contamination with local varieties, health concerns and

potential harm to their export markets once their agricultural sectors recovered from the crisis. Zambia, Zimbabwe, Malawi, Swaziland, Mozambique and Lesotho all received the initial shipments of food aid, which was channelled through the WFP as well as NGOs. When it was apparent that the food aid contained GMOs, Zimbabwe and Zambia refused to accept the food aid and Mozambique, Swaziland and Lesotho indicated that they would only accept it if it was milled first, so as to avoid any chance of it being planted locally. Malawi accepted the food on the condition that it was strictly monitored to ensure that none could be planted. Zimbabwe backed down and accepted milled food aid.⁴⁷

Zambia stood its ground in refusing the food aid. Zambian president Levy Mwanawasa called the GM food aid 'poison' and said: 'If it is safe, then we will give it to our people. But if it is not, then we would rather starve than get something toxic'.⁴⁸ Sponsored by the US government, Zambia did set up a scientific delegation to study GM foods. The resulting report, however, recommended that Zambia not accept GM food aid.⁴⁹ In addition to health concerns, Zambia also had trade concerns, as it has some exports of maize to Europe, and contamination of its crop could affect its exports if the EU moratorium continued. In this context, the WFP had to find non-GM sources of food aid for Zambia and the total amount sourced fell short of needs.⁵⁰

This linkage was not lost on the US, which was quick to blame the EU for hunger in Africa due to the rejection of US food aid. It was clear that the US felt that the EU position on GMOs was influencing developing countries.⁵¹ The US accused European countries of threatening to deny foreign aid to countries which accepted the GM food assistance from the US, a claim the EU flatly denied.⁵² The US applied heavy pressure to the EU in the fall of 2002 and winter of 2003 in an attempt to get it to lift its moratorium.⁵³ In March 2003, US Senator Chuck Grassley, at a speech to the Congressional Leadership Institute, asserted that 'The European Union is partly to blame for the situation in Africa' by feeding the 'myth that biotech crops are somehow dangerous'.⁵⁴

The EU on the other hand viewed the US practice of giving in-kind food aid, particularly that which contained GMOs, as immoral on the part of the US. The EU has in recent years given food aid in the form of cash, channelled through the WFP. It also tries to ensure that food aid is sourced through local purchase in the recipient region, as a way to minimise the potential disruptive impacts of food aid on local economies. In the case of the Southern African food shortage in 2002, the European Commission specifically requested that the WFP purchase only GM-free maize as food aid with the money the EU donates for such assistance.⁵⁵

In response to the southern African crisis in 2002, the Southern African Development Community (SADC) set up an advisory committee to establish guidelines for GMO policy in the region. The guidelines state that 'food aid that contains or may contain GMOs has to be delivered with the prior informed consent of the recipient country and that shipments must be labelled'.⁵⁶ The Common Market for Eastern and Southern Africa (COMESA) also developed a regional policy on GMOs, including food aid. And the New Partnership for Africa's Development (NEPAD) decided in mid-2003 to establish an African

advisory panel on biosafety and biotechnology to try to harmonise policy across Africa.⁵⁷

GMO dispute at the WTO

Shortly after this mudslinging over the crisis in Africa, the US launched its dispute against the EU at the WTO in May of 2003, by formally requesting consultations over the issue.⁵⁸ Though most studies thus far on the dispute focus on the US–EU dimension exclusively, the issue has much wider ramifications. Trade officials see the food aid question as an integral part of the reason why the US felt compelled to fight the EU over GMOs at the WTO. Robert Zoellick made a clear link to the African refusals of food aid as part of his rationale for the launching of the dispute, in a May 2003 article in the *Wall Street Journal*:

As we have waited patiently for European leaders to step forward and deploy reason and science, the EU moratorium has sent a devastating signal to developing countries that stand to benefit most from innovative agricultural technologies. This dangerous effect of the EU's moratorium became evident last fall, when some famine-stricken African countries refused US food aid because of fabricated fears—stoked by irresponsible rhetoric—about food safety.⁵⁹

The challengers claimed that the EU was violating several of the WTO agreements, including the Agreement on Agriculture, the Technical Barriers to Trade Agreement, and the Sanitary and Phytosanitary (SPS) Agreement.⁶⁰ Most of the focus has been on the alleged violation of the SPS agreement. This agreement states that governments can place regulations on food products and crops in order to protect the environment and public health, provided there is sufficient scientific evidence or on precautionary grounds as a temporary measure while scientific evidence is being sought. The agreement also encourages countries to adhere to international standards for food safety, which would minimise differences in standards between countries that might spark a trade dispute. In this case, Codex Alimentarius standards are relevant. As mentioned above, the Codex did not release any guidelines on the GMOs until after the trade challenge was launched. Without international standards to fall back on, the challengers to the EU law argued that five years was long enough for the EU to present scientific evidence to back its *de facto* moratorium.⁶¹

The EU claimed that it needed the time in order to put in place new legislation on traceability labelling of biotech products. When the US first requested the formal consultations, the EU issued a press release expressing its regret over the US action. It openly criticised the US for blaming the African refusals of GM food aid on the EU, stressing that food aid 'should be about meeting the urgent humanitarian needs of those who are in need. It should not be about trying to advance the case for GM food abroad'.⁶²

In July 2003, several months after the formal consultations process had begun at the WTO, the EU finally adopted two pieces of legislation on biotech labelling, which technically would allow it to lift its moratorium. These laws call for a system to establish traceability of GMOs, as well as labelling of GM products which contain more than 0.9 per cent GM material. The Codex

Alimentarius guidelines on food safety were agreed just before the EU passed these laws. They recommend safety evaluations prior to marketing of GM products, and measures to ensure traceability in case a GM product needs to be recalled. Some say that the Codex guidelines give the EU the upper hand with respect to its labelling laws on GMOs.

The adoption of this package of legislation and the Codex guidelines on GMOs, the EU argued, should have encouraged the challengers to drop their complaint with the WTO. The US, however, requested a dispute panel on GMOs in August 2003, arguing that the new labelling regime was as strict if not more so than the *de facto* moratorium on GM approvals in the EU.⁶³ In May 2004 the EU effectively lifted the moratorium by approving a GM variety of sweet corn. A final ruling on this dispute is due in the first part of 2005.

In the meantime, Sudan has been pressured by the US to accept GM food aid, even though it had passed legislation requiring food aid to be certified GM-free. In mid-2003 Sudan issued a temporary waiver to the ban on GM imports to give the US more time to source GM-free food aid, but the US in March 2004 threatened to cut the Sudan off from food aid completely, and forced a further extension to the waiver.⁶⁴

It remains to be seen what impact the ruling will have on food aid and GM regulations in developing countries. The WTO's track record with respect to environment-related disputes is seen by most environmentalists to be rather poor. If the WTO settles the dispute in favour of the US, the EU may just decide to keep its traceability and labelling laws and accept the trade sanctions, as it did in the beef-hormone case. But such an outcome will likely mean increased pressure on developing countries by the US to accept GM food aid. If the WTO settles in favour of the EU, this will support idea of separate systems for GM and non-GM foods, which will profoundly impact food aid delivery by donors and will also affect whether recipients will accept it.

Conclusion

The agricultural trade battles raging between the US and the EU in recent years have profound impacts beyond Europe and North America. They have global ramifications that affect policy in the developing world, especially with respect to food aid. The countries of the Global South are acutely aware of the implications of these battles for their own economies and societies. As a result, they have attempted to make their concerns heard via various forums. They have registered their concerns at the Committee on Agriculture at the WTO, calling for all food aid to be given in the form of full grants as well as an end to subsidised agricultural export credits. They have also made their desires clear individually as well as through regional groups regarding the need to be notified about whether food aid sent to them contains GMOs. They have also clearly stated that they wish to have the right to reject GM food aid and be supplied non-GM food aid.

Whether these concerns of the developing countries are taken into account at the WTO remains to be seen. At present the outlook does not look promising. The conclusion of the revived Doha Round talks will likely depend yet again on last minute deals struck between the two big players, the EU and the US. In this

context, if developing country concerns are not reflected in the final documents, it would not be surprising if a repeat of the Cancún walk-out occurs in the near future, putting the Doha 'development' Round at serious risk of abandonment.

The outcome of the GMO trade dispute is uncertain. A settlement in favour of the EU will give developing countries more weight in their demands to be notified of whether food aid contains GMOs, and the right to reject it. A settlement in favour of the US will likely mean increased pressure on developing countries by the US to accept GM food aid, though this depends on whether there is a deal at the WTO on whether in-kind food aid is allowed, which would weaken the US case in pressuring developing countries to accept its GM food as aid.

Notes

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