WTO & Trade Policies for GMOs

An Interview with Kristin Dawkins

Casey Walker: Will you begin by describing the international trade agreements set by the Uruguay Round of GATT and the World Trade Organization, and how those have affected industries tied to biogenetic engineering?

Kristin Dawkins: The Uruguay Round was an eight-year negotiation from 1986 to 1994 between over 100 governments of the world to set new rules for trade. One of the issues that was not a high priority at that time, but is very much so now, is the trade of genetically engineered or modified organisms. Most often we think of Genetically Modified Organisms (GMOs) as food, but the term also includes seeds that go into the production of food crops. The industries tied to GMOs are affected by three significant agreements set in those negotiations, under the auspices of the World Trade Organization (WTO): the agreement on agriculture, the agreement on food safety (officially called the agreement on sanitary and phytosanitary standards or SDS), and the agreement on intellectual property rights, known as the TRIPs agreement.

Each has a different impact on trade and GMOs today. The agriculture agreement encourages trade of foodstocks, and will be renegotiated next year. The United States government has made it clear that high on its agenda for these renegotiations is to win agreement with the rest of the world that GMO foods will not be considered different from non-GMO foods. Indeed, our Secretary of Agriculture, Dan Glickman, has called it "The Battle Royale" of the twenty-first century. This is extremely controversial, and there are fast-breaking developments in Europe that may mean the U.S. government will lose this battle.

Has the WTO's ruling in favor of the U.S. on Europe's ban on the hormone-treated beef set precedent for arguing the lack of difference between genetically engineered and non-engineered organisms?

It's a significant case and pertains to the Food Saftey agreement, which pertains to the health of the animals and plants that we eat. In that agreement, countries must justify their standards, if they restrict trade or if they have higher standards than those internationally established by an agency called Codex Alimentarius, which is the United Nation's agency designated by the Uruguay Round as the official, international, standard-setting body for food safety.

Now, the European Union's ban on beef imports and, indeed, on their own beef production with growth inducing hormones, is considered trade restrictive. So, the European Union must prove its standards are "scientifically justifiable." This is where the dispute between the U.S. and Europe comes down–a dispute the WTO has been managing. The United States has charged that Europe's ban on beef products with hormones is not scientifically justifiable.

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What would constitute "scientifically justifiable"?

It is a very subjective judgment. Both countries line up their scientists and have a debate judged by a WTO panel. In this case, the United States' scientists won. The WTO's appellate body said that Europe's risk assessment process for this beef wasn't adequate or sufficiently grounded in sound science, and Europe was ordered to either lift their ban or conduct a new risk assessment. The European Union is preparing a new, science-based risk assessment for the WTO's consideration, but refuses to lift the ban. The U.S. argues that regardless of another risk assessment, Europe should lift their ban. The E.U. offered to import organic beef instead, but the U.S. said no. It's been a long, tit-for-tat set of interpretations of the WTO's original decision. Now the U.S. has announced a restriction of European imports in the U.S. so that producers of other products in Europe besides beef will lose sales–producers

of Danish pork, French cheese, and other chiefly luxury goods–in order to pressure Europe to lift their ban.

From your point of view, is a "scientific risk assessment" legitimately possible in the public interest, or is it tied primarily to the interests of agricultural markets?

I would have to say that it is extremely political. I don't know the names of the scientists who have done the risk assessments, so I can't comment on them, but I can comment on the fact that the financial stakes are high and that representation of the biotech industry on the U.S. side–in our policy decisions, in our Department of Agriculture, in the White House, and in the Al Gore campaign–is all-pervasive. There was just an effort on the part of citizens across the United States to influence the National Academy of Sciences' panel on ethics to look at the ethics of biotech. They didn't have a single representative from what we'd call the side that "worries" about biotech. We objected to the panel's composition with a signatured petition and got them to appoint one "critic" from the Environmental Defense Fund, Rebecca Goldburg. She has quite a job there, one against many dozen, and we'll probably, at best, achieve a one-person minority opinion report.

The biotech industry has been in and out of the White House, the FDA, and today there's a leading person in Gore's office from Genentech. I think it does get back to campaign finance reform and time-out required between private and public- sector employment, if we are to change the big picture for the long range.

How is it that the Food & Drug Administration has ruled that bioengineered pesticides in crops such as potatoes don't require labeling because they're not considered food additives?

For one thing, the EPA regulates pesticides while the FDA regulates food additives, so there's a lot of passing the buck. Also, there's a huge revolving door between our government officials and the industry. This has been going on for a long time, but is especially easy to see now, with biotech, in this particular sector. The biotech industry has been in and out of the White House, the FDA, and today there's a leading person in Gore's office from Genentech. I think it does get back to campaign finance reform and time-out required between private and public-sector employment, if we are to change the big picture for the long range.

In a larger context, there's corporate pressure at the international level. For example, due to campaigning on the part of the anti-globalization movement and a lot of effective citizen action in dozens of countries, it has been impossible to pass the MAI (Multilateral Agreement on Investment). But the worst part of the MAI shows what the real stakes are, because it gives rights to corporations to sue governments when governments issue regulations that interfere with a private company's right to make money in the future. Unfortunately, this set of rights already exists to some extent in NAFTA, and there are a couple of cases seeking to prove them. The Ethyl Company, based in Virginia, makes an additive for gasoline (methylcyclopentadienyl manganese tricarbonyl, or "MMT") that has been banned in the United States because of its carcinogenic properties, but was still being sold in Canada. Last year, the Canadian parliament banned the additive. Under NAFTA's investment chapter, the Virginia company sued the Canadian government for what they'd lose–something like $250 million per year–in sales in Canada, saying that if the Canadians thought it was worth keeping the ban, then the Canadian treasury, the citizens and taxpayers, would have to pay the Ethyl corporation for its losses. That was one of the most onerous parts of the MAI–these investment rights. When people find out about them, it's hard to explain to a thinking person why they shouldn't object. In France, campaigns have been especially strong and the French government has ended up having quite an influence on the entire European Union.

However, there's another case, and we're back to the revolving door with another bovine growth hormone–in this case used on dairy cows to increase their milk production. A gentleman, Michael Taylor, has gone back and forth between jobs at a private law firm that counted the Monsanto company among its clients and various FDA regulatory offices. While at the FDA, he was involved in a decision that approved Monsanto's use of rBGH for higher milk production in cows. Now, there's some evidence that this growth hormone causes health problems for consumers and plenty of evidence that it's a health problem for cows. Cows get infections and are fed antibiotics, and the antibiotics go into the milk, cheeses, and so on, and into our children. The public reacted, with a lot of campaigning going on in particular states because a number of farmers in those states were already suffering from low milk prices due to overproduction. Why would they want to produce even more? In the face of these objections, the FDA ruled that it wasn't appropriate for states to ban this product because at the federal level they had decided it was safe. A couple of state- and even city-level campaigns in New York and Chicago were deemed illegal by the FDA and upheld by the courts. This is the status quo in the United States.

Meanwhile, the Canadian government was trying to decide if it should ban rBGH and came to a quick decision when a health study conducted by Monsanto was leaked up in Canada. It showed that there are indeed human health

impacts, yet it had never been released in the United States. The FDA's policy requires safety testing only when recommended by the company, so Monsanto acted within the law. Meanwhile, American kids have been drinking milk for a good decade containing all of this stuff.

Will you speak to the argument that biogenetically engineered crops and foods will solve world hunger?

World hunger, according to most analysts, including Nobel prize-winner Amartya Sen, is not for lack of food. We have definitely been able to produce sufficient quantities of food, for decades, to feed the whole world. Productivity increases in food have been greater than increases in our population. How long that can go on into the next century is perhaps debatable, but at least for the past and for the next couple of decades, according to many, it is the case.

Today, the U.S. government is leading the charge for biotechnology by saying there is a huge fear that the world won't be able to feed itself in the future, and we'll have to use biotech methods to increase yields to keep people from starving. It is important to note that the yields they speak of are primarily from our already highly polluted grain production regions in the U.S. and Europe, though they also speak of biotech in Africa and Asia, where it will supposedly increase their capacity to feed themselves. We often note that even if food supplies were production-related, there are many means other than biotech to increase production. But all along the issue hasn't been production capacity. It's much more clearly a problem of distribution, and here a whole lot of politics come into play over who will control the global market.

The debate today over food production is analogous to the old debate over energy production, about whether to take the "hard path" or the "soft path"–whether to build highly centralized nuclear power plants or to invest in decentralized, small-tech methods as better and cheaper in the long run. Biotechnology is the "hard path" with a very high-tech route versus a lot of investment in small farms throughout the world to enable countries, regions, even valleys, to be more self-sufficient. The latter, the "soft path" on food production, is one that my organization and a lot of our colleagues advocate.

Now, there is also an interesting polarization on this issue. At the World Food Summit, which the United Nations sponsored in 1996, there were hundreds and hundreds of non-governmental organizations, ranging from think tanks to farm organizations to technical assistance kinds of groups and so on. It is important to know that almost all of them were unanimously in support of the soft path of small farms and appropriate technology–as were most governments, except the United States and a few others. The United States spent all its time arguing that the hard path was the only way to feed the world. The American delegation is very hardheaded, and they have the power to say, No, because they are the hegemonic institution in the world today. Of course, it's very ideological. It's almost religious in its fervor.

Will you describe that ideology?

It believes the market is the salvation of humanity. If we subsume all other social and environmental and cultural interests to the market then in the long run, we'll all be better off. On the other hand, there are those of us who say the market is a very a fine and effective instrument, but, in fact, there is more than one market, and those markets include local valley markets in Peruvian highlands where peasants trade potatoes from one valley to another. The conviction that there is one holy market that will solve the world's problems is really not based on anything but an ideology. If you look behind that ideology you can see the clear, economic interests of the Fortune 500, the biggest companies in the world. These companies see the planet as their market, and if they can convert all of the planet's citizens to being their consumers, of course their profits will rise. You can find some people in government who see through this, but most are acting in the interests of these corporations, and there are still others who simply believe in the theory.

HANK MEALS

Will you speak to the idea that many of the policies protecting and promoting this ideology are in violation of the Universal Declaration of Human Rights?

Yes. The Universal Declaration of Human Rights, developed by the United Nations in 1948, defines and defends human rights as including the right to food, shelter, education, and quite a number of things basic for life. Then, we also have defined "industrial rights," with the

theory that if industrial rights are well-defended, such as with the MAI, then the welfare will trickle down to the rest of us. What we find in practice is that welfare doesn't necessarily trickle down. It has everything to do with government policies and nothing to do with the market itself. In the meantime, human rights are being abused right and left by this market theory.

This brings us to the third WTO agreement, which is on intellectual property. It says that governments must allow for patenting of intellectual knowledge. Back in the beginning of intellectual property rights, in the Jeffersonian period, there was the belief that those of us who use our intellect to invent things, to write or make beautiful music, or create other works that enhance society, need to be given some kind of share in the commercial reward thereafter. Copyrights on books and music and so forth are all fine and good, but the intellectual property rights agreement of the WTO, which is the TRIPs agreement (Trade Related Intellectual Property Rights), actually requires governments to award patents on living things.

This is where, in many cases, the knowledge of farmers and indigenous people that has gone into improving plants for foods or medicines or whatever for hundreds of years is suddenly being privatized by whoever files for and gets the patent. That patent holder has the right to exclude everyone else from its use for about 20 years. Patents have now been applied to quite a variety of seeds and plants. The exclusivity of it is very much in violation of the human rights of the rest of the world. There is an international campaign to try to overcome this 1994 TRIPs agreement and to inject the idea that patents on life may be prohibited. We'd actually like to see such patents prohibited universally as an international human right, but the politics have not been encouraging for that at this stage.

On the other hand, we need to insist on the provision that countries have legal discretion over how they create protection for the farmers and other breeders who have used their intellects to improve plants. There is some indication that the United States and a few big patent-holding countries would like to eliminate the provision called the *sui generis* provision, a Latin term meaning "of its own kind," and make the patent system the universal and obligatory TRIPs requirement for how those innovations are legally protected. We're saying that at the very, very least, leave that *sui generis* clause in place because that's the only way that governments can use their discretion to develop alternative approaches. In effect, it's the only provision that would allow governments to really implement a whole other international treaty on biodiversity. We have two international laws before us all: the TRIPs agreement and the international treaty on biodiversity, called the Convention on Biological Diversity, which came out of the 1992 conference in Rio de Janeiro, called the Earth Summit.

Does patenting create an incentive to genetically engineer in order to "own" any given seed, plant, animal, and so forth?

I think you could argue that it does, though certainly it's not the only driving force. There's another part of the TRIPs agreement, unlike the patenting or *sui generis* protection of plants, that says governments must create a *patent system* for genetically engineered organisms. There's no way around it, which creates, as you suggest, an incentive for companies to take what is the raw material from some other country and, by moving just one gene around through genetic engineering techniques, makes it automatically eligible for a patent. If they hadn't moved the gene around, then the originating country could implement its *sui generis* option to protect the material for their national interests. I do think this incentive exists.

Just last week there was an article saying that in West Africa they had found a fungus that has properties much like insulin and could replace the insulin shot that diabetics need. For diabetics that's an attractive alternative. Now, if I were that Congolese government, I would want to implement the *sui generis* option that meets the TRIPs requirement, saying that the fungus is found to be socially useful and we want to retain our rights to not allow an exclusive patent for one company to do research with it, but rather to encourage its broad public availability. I'd argue that with more companies doing research, we might be able to come up with something that might work sooner; that it would be cheaper as a generic drug for consumers, so that diabetics all over the world would have better access to this new drug; that the commercial royalties should be shared with the government, which would in turn share it with the people who live in that region; and finally, I would argue for control over whether it becomes a genetically engineered laboratory product or whether it is developed through a harvesting method that keeps economic benefits in the Congo. These are choices that the people of the Congo should be allowed to make, not Monsanto or whoever else applies for the patent on the fungus.

What's the real-world process for these small countries up against powerful corporations?

Very often, these small countries are not fully aware of these laws and considerations. If the company simply sends a negotiator over there and says, this is great stuff, we'll pay you .01 percent of the royalties and we'll build you an airstrip in the community where the fungus was found, and we'll take you to dinner, and so forth . . . .They have indeed, in past deals, bought the proverbial Manhattan for beads. It's only when these countries are fully aware of their options under the law, and hopefully they include those people affected by these decisions so it's not only the higher levels of government making these choices, that we see a close to ideal process. But the legal options in place thus far for developing countries and the general public are better available under the biodiversity treaty, and the U.N. system generally, than under the trade rules, which are strictly commercial and corporate-oriented. The "Battle of the 21st Century" is going on between trade as an ideology and as a body in international law with clout versus the United Nations, which, despite its problems with clout, has a far more democratic base of laws in place.

HANK MEALS

We should achieve labeling of our foods at the least. We should insist on pre-release assessment and liability provisions. We should argue anti-trust against corporate control of the food system.

Where does morality along the lines of "ordre publique" come into legal maneuvering against biotech?

Ordre publique is a literal French phrase meaning "public order" that has snuck its way into a number of international laws. In particular, it was written into the WTO's TRIPs agreement as a loophole. It says that when there is some kind of an issue of morality or public order, a government can opt not to follow the TRIPs rules. Again, it's obviously subjective what these panels and the appellate body of the WTO would eventually have to rule on, but let's say the Congo wants to make an issue of this fungus and its development into an insulin substitute. If a drug company in the U.S. went ahead and took out a patent on it, the Congo could file a complaint under the biodiversity treaty procedure, which simply says that the two parties in a dispute should sit down and talk about it, with an arbitrator if necessary, and settle it. This is how U.N. treaties handle dispute settlement. Under the WTO, the Congolese people and government could say, we think that under the *sui generis* option and under ordre publique, we are not compelled to honor a patent. There would be many years of debate to follow through the dispute process. Who knows how it would effect the country in question? In Europe there are practically riots over the biotech stuff, according to the press. I'm not advocating riots, but sometimes they happen. It's the closest I can get to imagining when a defense on ordre publique would actually be defensible. On the other hand, the defense of morality has any number of churches and religious bodies coming out against the patenting of life. There have been quite a few declarations by religious institutions saying it offends their systems of belief, and, although it is civil, I think it is an example of public order being questioned.

The human rights question related to the patenting of life is actually the basis of a lawsuit in Europe whereby both the Dutch and Italian governments have taken the European Union to the European Court of Justice, arguing that the new European patent law, which does allow for the patenting of life, is illegal and in violation of human rights. The European Court of Justice will now be looking at this question. What its impacts are on other legal bodies and public interpretation of law will be very interesting.

If U.S. industry and government represents the most aggressive player for GMOs, patents, and so forth on the international level, how do you see American citizens changing that course?

Campaign finance is very important. Public awareness is key, but we have the problem that the media is largely captured by just a handful of corporate interests. Education is key, too, but with the withdrawal of support for public education from the federal and often from our state and local sources, there's been a trend toward corporate funding of education which in turn leads to a certain amount of bias and influence.

Regarding the WTO, there's very active work going on that will culminate in late November in Seattle, WA, at the next meeting of the ministers of the WTO. We expect to see tens of thousands of people from all over the world participating in a protest of WTO policies and its impact on society. Their official agenda is to set the agenda for the next several years of the WTO, which means that whether or not our government is able to get their way on biotech won't be decided for the next three or four years, and quite possibly many more if it takes as long as it did last time to reach a final agreement. So, we get quite a few years of campaign time. However, what we all do between now and November in terms of letting our government know we don't like its approach will also be very important.

How would you encourage people to act?

It's difficult because democracy doesn't extend to the international level, so there aren't any tried and true mechanisms. If people can come to Seattle to join a gigantic protest–after all, that's what finally led to the end of the Vietnam war–it would be a very significant act of citizenship. Then again, using every avenue possible is important. For example, every time people go grocery shopping, they should ask whether the products they are about to buy are genetically engineered or not. At the moment, store managers won't know, but it will register as a concern. If a lot of people did this, or got up a petition of signatures for the supermarket manager's office, it would make a difference. We are just starting to see here what is happening in

Europe, where stores want to meet consumer demand for non-genetically engineered products. We should achieve labeling of our foods at the least. We should insist on pre-release assessment and liability provisions. We should argue anti-trust against corporate control of the food system. For example, the U.S. Department of Agriculture tried to pass new regulations last year that would have made the definition of organic foods include genetically engineered foods. Amazingly enough, this proposal generated more letters from the public objecting than any other regulation in the history of the United States. So much decision-making power is at the international level now that the question of global democracy is really at the heart of this whole conversation.

Originally published in *Wild Duck Review* Vol. V No.2 on "Biotechnology."

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