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**Of Executive Preferences and Societal Constraints:  
The domestic politics of the transatlantic GMO dispute<sup>1</sup>**

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When the transatlantic trade dispute over genetically modified organisms came to a boil in the late 1990s and early 2000s it was widely expected to be highly conflictual. The United States was, almost universally, expected to challenge fundamentally the European Union's regulatory system for GMOs before the World Trade Organisation and was equally universally expected to win the case. The EU was widely, albeit not universally, expected to refuse to comply with the ruling. In keeping with most of the international political economy literature on trade disputes, both of these expectations were rooted in assessments of societal demands for action and resistance. Both expectations, however, were confounded; the US (and its co-complainants) filed a narrow challenge focusing on the EU's failure to apply its own procedures; and the EU, somewhat falteringly, has resumed approvals of GMOs. Applying a two-level-game framework, this article argues that this relatively cooperative outcome is explained by the executives of both polities exercising their autonomy to pursue policies closer to the preferences of the other polity than their median domestic constituents would have preferred. This article, therefore, makes the case for taking government preferences and autonomy seriously when analysing the outcomes of trade disputes. Moreover, it emphasises that compliance with international rules engages with on-going internal policy processes and debates.

In November 2006 the World Trade Organization's (WTO) Dispute Settlement Body ruled largely in favour of the United States, along with Argentina and Canada, in its complaint against the European Union's non-approval of genetically modified (GM) crops and the bans that some of its member states maintained on EU-approved GM crops. When the dispute ignited in the late 1990s, there were wide-spread expectations that the US would pursue the EU's rules on agricultural biotechnology aggressively; that the WTO would rule in favour of the US; and that the EU would refuse to change its behaviour, provoking a nasty trade dispute and prompting questions about the efficacy of WTO rules. Contrary to these expectations, the US

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<sup>1</sup> This article draws on research conducted when I was a Transatlantic Jean Monnet Fellow at the European University Institute (2000-2001); as part of a 'Review of the Framework for Relations between the European Union and the United States' conducted for the European Commission's DG RELEX (Contract SI2.391098) in 2005; and as part of an Economic and Social Research Council funded project on the EU's compliance with WTO rules (RES-062-23-1369) (2008-11). I am grateful to Suzanne Lütz and three anonymous reviewers for their very constructive comments.

engaged in extensive negotiations to resolve the dispute before initiating a narrow challenge to the EU's procedures. In the wake of the ruling, which neither side appealed, the EU resumed approvals of GM crops and pressed the member states to lift their bans. These policy changes were sufficient to placate the Canadian and Argentine governments, which settled their disputes with the EU in July 2009 and March 2010 respectively.

The anticipated tumultuous trajectory of the dispute reflected common understandings about the politics of trade disputes, which focus on societal pressures for action. The expectation that the US would challenge the EU's regulations aggressively reflected the preferences of politically influential groups in the US – the biotechnology industry and farmers – and their considerable support in Congress. The expectation that EU policy would not change, even if sanctions were imposed, reflected both the extent of popular hostility to GM crops and the EU's 'hyperconsensual' decision-rules. The relatively cooperative outcome, therefore, confounds contemporaneous expectations reflecting common understandings of the politics of trade disputes and thus poses a puzzle.

This article advances an explanation rooted in Robert Putnam's (1988) two-level game metaphor. It argues that the two executives – the US administration and the European Commission – had substantive preferences closer to those of the other polities than were the median preferences within their own polity; that each executive was a 'dove.' Moreover, under existing domestic institutions each executive had considerable, but not unlimited, scope to pursue its preferences. The contours of the dispute, therefore, reflect the interaction of the two executives' pursuits of their preferences within existing constraints. This argument is based on more than twenty not-for-attribution interviews with US government and European Commission

officials and representatives of business associations and consumer and environmental groups on both sides of the Atlantic at intervals between 2001 and 2010 and extensive primary documents. This article, therefore, underlines the importance of taking the executive preferences seriously and contributes to debates in international political economy about decisions to initiate trade disputes and the domestic politics of compliance.

The article begins by describing the substance of the dispute, identifying the expectations common at the outset of the dispute about how it would develop, and contrasting these with what happened. Drawing on this, it highlights the shortcomings of the prevailing accounts of trade disputes and advances a two-level game framework for analysis. It then applies this framework to explain the details of how the dispute developed. The article concludes by exploring the implications for our understanding of the political dynamics of trade disputes and for the analysis of compliance.

### **Regulatory differences and the origins of the GMO dispute**

The regulatory differences that underpin the transatlantic dispute over GMOs have received considerable attention elsewhere (see, for example, Bernauer 2003; Pollack and Shaffer 2009), and I will rehearse them only briefly here. The EU's approach to approving GM crops differs in three fundamental ways from the US system. First, GM crops are treated as inherently different from those produced via other means. Second, the European approval process provides much greater scope for the consideration of non-scientific factors. Third, there are many more veto points in the approval process. In particular, the risk management decision is explicitly separate

from risk assessment and is subject to a vote by the member states. Moreover, GM crops in the EU must be traceable and labelled as GM.

The approval of GM crops in the EU is governed by two rules: Directive 2001/18 (which replaced Directive 90/220 in 2001), regulating cultivation; and Regulation 1829/2003 (which replaced Regulation 258/97 in 2003), governing GM food and feed. Although there are differences in how the approval process begins under these rules, thereafter it proceeds in broadly the same way. On the basis of a scientific assessment both of safety and likely environmental impact by the European Food Safety Agency (EFSA), the Commission decides whether to propose approval of the product. If it does, the proposal is discussed by member state officials in the Standing Committee on the Food Chain and Animal Health (SCoFCAH), which can approve or reject the product by a qualified majority vote (a supermajority). If SCoFCAH does not approve the product, the proposal goes to the Council of Ministers, again representing the member states, but at ministerial level, which also requires a qualified majority to approve the product. Crucially for this analysis, if the Council does not approve the crop or reject it (also by a qualified majority vote), the proposal authorising the GMO 'shall be adopted by the Commission' (Decision 1999/468/EC, Article 5).

There are, however, important differences, as will become apparent, between the two types of approvals in terms of which part of the Commission takes the lead and which national ministers take decisions. The European Commission is (since 2007) made up of 27 commissioners (ministers), who take decisions collectively in the 'college,' by a simple majority vote if necessary. Decisions may also be delegated to sub-groups of commissioners. The president of the Commission is chosen by the leaders of the EU's member states meeting as the European Council. Each member

state nominates a commissioner and they are endorsed by the European Council and approved by the European Parliament. The Commission has a five-year term. The core of the story here takes place during the first 'Barroso' (after the president) Commission (2004-09), which ended up serving a care-taker role until February 2010. The commissioners are supported by a permanent civil service divided into directorates general, the equivalent of ministries. Approvals of GM food and feed, submitted under Regulation 1829/2003, are dealt with by the Directorate General for Health and Consumers (DG SANCO) and the Commissioner for health. Approvals for cultivation were until February 2010 dealt with by the Environment Directorate General and the Commissioner for the environment. The DG is responsible for advancing a proposal for adoption and chairs the meeting of the SCoFCAH. Should SCoFCAH not approve the product, the college of Commissioners formally adopts a proposal for the Council to consider. Approvals for food and feed are normally considered by the Council of Ministers in the 'configuration' of ministers of agriculture, those for cultivation are normally considered by environment ministers. As will be discussed below, these differences contributed to the different degrees of change in the EU's approvals for marketing and cultivation.

As only approved varieties of GM crops can be grown or sold in a polity, differences in the EU and US approval processes, with the EU taking longer to reach decisions, posed problems from the outset. The potential adverse trade effects of the different approval processes were greatly exacerbated by the EU's suspension of approvals from October 1998 in part in response to a number of high-profile food safety scandals that had decimated public trust in European regulatory processes (Pollack and Shaffer 2009; Vogel 2003: 572-3). In June 1999 the governments of five member states -- Denmark, Greece, France, Italy and Luxembourg -- announced a *de*

*facto* moratorium on approvals pending the adoption of an enhanced regulatory framework (Council 1999), which was adopted as Directive 2001/18 and Regulation 1829/2003 (mentioned above). The adverse trade effects of the EU's approval process were compounded during 1997-2001 by six EU member states – Austria, France, Germany, Greece, Italy and Luxembourg – adopting, under safeguard clauses in the EU's rules, national bans on varieties of GM corn and oilseed rape that had been approved by the EU.

During 1995 US biotechnology companies began to complain to the US government about the EU's 'unpredictable, cumbersome and non-transparent' approval process (USTR 1996: 98). Business complaints to the US government about the 'politicisation' of the approval process intensified during 1996 and 1997 (USTR 1997: 99; 1998: 103). These concerns came to a boil with the announcement of the *de facto* moratorium in 1999. Initially, however, there was only muted business pressure for a WTO complaint. Although biotechnology companies were feeling the pinch, the impact on others in the US was limited to corn farmers, and their exports to the EU were relatively small (Young 2001). As the EU's moratorium dragged on, however, the continued commercialization of new genetically modified varieties in the US meant that more and more crops could not be exported to the EU. Difficulties in keeping non-EU-approved GM varieties separate from the rest of a crop decreased demand for new varieties in the US (Pollack and Shaffer 2009; Young 2003). In addition, other countries were reluctant to grow or even import GM varieties that had not been approved in the EU for fear that their exports to the EU would be blocked, which magnified the commercial consequences of the EU's practices (Bernauer 2003; Devereaux et al 2006; Pollack and Shaffer 2009).

### **Confounded expectation I: Aggressive US**

Political pressure for action was, therefore, mounting as the Bush administration came into office in 2001. The biotechnology industry (Bio 2003) and major agricultural lobbies – including the American Farm Bureau Federation (Stallman 2003); the American Soybean Association (Joachim 2003); and the National Corn Growers Association and the US Grains Council (Yoder and Jacoby 2003) – in testimony before Congress and in letters to the president expressed their objections to the role of politics in the EU's approval process, which they thought violated WTO law (IATP 2002).<sup>2</sup> These objections and the assessment of WTO incompatibility were echoed in Congress (see, for example, Baucus 2003; Grassley 2003; Hastert 2003), and groups of leading Congressmen wrote to the President demanding that a WTO complaint be brought (see, for example, Harkin, Grassley and Baucus 2002; Hastert, Blunt, Goodlatte, Pombo, Gutknecht, Hayes, Jenkins, Lucas, Moran and Wolf 2003). Thus there was significant and increasing pressure from powerful domestic interest groups (Bernauer 2003: 165) and Congress for the administration to challenge the EU's regulatory framework for GMOs.

As the US government is generally considered to be highly responsive to business concerns about foreign trade barriers and aggressive in pursuing them (see Bhagwati 1990; Ostry quoted in *The Economist*, 8 May 1999: 17; Porter 2005: 205; Shaffer 2003; Zeng 2002), there was a widespread expectation among activists and academics that mounting producer and Congressional pressure would lead to a broad and fundamental challenge the EU's regulatory framework for GMOs (Amicus Coalition 2004; Bernauer 2003: 167; Greenpeace 2003; Guzman 2004-5: 32; Wilkinson 2002: 136).

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<sup>2</sup> Interviews with representatives of the Corn Refiners Association (Washington, DC, 8 Jan. 2001) and the European-American Business Council (Washington, DC, 8 Jan. 2001)



The expectation that the US would aggressively challenge the EU regulatory approach, however, proved false. When filing the complaint in May 2003 the US (and its co-complainants) did not challenge the EU's rules for approving GM crops, rather it challenged the EU's general moratorium; the absence of product-specific approvals; and the member states' bans. Specifically, the US complaint argued:

While [WTO] Members are allowed to maintain approval systems – and the United States is not objecting to the EC maintaining such a system for biotech products – the procedures under that system must be undertaken and completed “without undue delay.” It is hard to think of a situation that involves “undue delay” more than a complete moratorium on approvals. In this case, the EC can present no scientific basis for a moratorium on biotech approvals. In fact, many of the products caught up in the EC moratorium have been positively assessed by the EC's own scientific committees. In short, having established a biotech approval regime, the EC is obligated to apply those procedures fairly and transparently, and without undue delay.

In addition to the moratorium on the approval of new biotech products, six EC member States have adopted marketing or import bans on biotech products that previously have been approved by the EC. These product-specific bans, like the moratorium, are not based on science and are thus inconsistent with the EC's obligations under the WTO Agreement. (USTR 2004: 1)

The US summarised its complaint thus ‘In challenging the EC's moratorium ... the United States is simply calling on the EC to allow its own approval procedures to run their course.’ (USTR 2004: 1) Further, through March 2010 the US has not initiated a complaint against the EU's traceability and labelling requirements. Thus the complaint filed was far narrower than that demanded by societal actors and anticipated by commentators.

The WTO panel ruled on the dispute in September 2006, and its decision was formally adopted by the Dispute Settlement Body in November 2006 (WTO 2006; for a discussion see Pollack and Shaffer 2009: 187-99). The panel found that the EU's moratorium on approvals was incompatible with the EU's WTO obligations, but only because it constituted an ‘undue delay.’ The panel also found that the member state's

bans violated the agreement because they were not 'based on' a risk assessment. Notably, neither the Commission nor the Bush administration appealed the panel's ruling.

### **Confounded expectation II: Resistant EU**

When the dispute was fermenting the general expectation was that the EU would be unlikely to change its policies in response to the anticipated adverse WTO ruling (Bernauer 2003: 165; Busch and Howse 2003: 7-8; Devereaux et al 2006; Moore and Winham 2002: 13; Pollack 2003: 77; Taylor 2007: 433; Winham 2009: 412). This expectation at least implicitly reflected the expectation that the US would challenge fundamentally the EU's approval procedures, which would mean that compliance would entail legislative change, requiring the support of a qualified majority of the Council of Ministers and an absolute majority of the members of the European Parliament. Given the wide-spread hostility to GMOs among European publics and the political sensitivity of the regulation of food-safety in the EU at the time there was no expectation that there would be sufficient support to reform the EU's rules. The expectation, therefore, was that the GMO dispute would be a re-run of the dispute over the EU's ban on hormone treated beef in which the EU did not lift its ban (although it did modify its status) despite the imposition of sanctions by the US and Canada (Ames 2001: 214; Davis 2003: 317; Taylor 2007: 432; Winham 2009: 409-10).

Crucially, however, reflecting the narrow challenge, the ruling did not require legislative change. Rather operating under its existing rules, the EU resumed approvals of GM varieties for food and feed; approving two varieties in 2004, one each in 2005 and 2006; six in 2007; four in 2008; five in 2009; and four through the

end of March 2010. It also approved its first crop for cultivation since 1998 in March 2010. Efforts to remove member state bans, however, have been less successful. Most of the bans have lapsed because the varieties have been withdrawn by their producers and, under pressure from the Commission, Austria lifted its ban on the importation of GM maize varieties MON810 and T25. Member state opposition, however, has blocked efforts to lift national bans on the cultivation of MON810, which have proliferated since 2004: Hungary (2005); France (2008); Germany (2009) and Luxembourg (2009). In 2008 Austria also banned the sale of GM maize MON863 and four varieties of oilseed rape (Ms8, Rf3, Ms8xRf3, GT73). Thus, while there has been policy change in the EU, the degree of change varies considerably across the different aspects of the policy.

### **Bringing the COG back in**

As I shall develop below, the confounded expectations about how the transatlantic GMO dispute would develop reflected common pluralist, constituency-focused accounts of trade policy making and of compliance with international rules. This article argues that the development of the dispute can be understood only if one pays due attention to the preferences and autonomy of the two executives; the ‘chiefs of government’ (COGs) in two-level game parlance. This section describes the literatures in which expectations about the dispute were rooted and introduces the two-level game framework and how it applies to this dispute.

#### *The initiation of trade disputes as distributive politics*

The expectation that the US would prosecute the GMO dispute aggressively reflects common assumptions about the initiation of trade disputes. Because the costs of

adjustment are expected to fall outside the polity, there are rarely domestic actors mobilised against initiating a trade dispute, although that may change when the imposition of sanctions is considered. The initiation of trade dispute is characterised by ‘distributive politics’ (Bayard and Elliott 1994: 79; Grossman and Helpman 1995: 705; Odell 1993: 233). Therefore, while governments formally decide whether to pursue WTO complaints, they are generally considered unlikely to resist domestic demands for action (Alter 2003: 800; Baumgartner and Leech 1998: 10; Keohane, Moravcsik and Slaughter 2000: 486).

According to this account of the initiation of trade disputes, the only reason for a cautious prosecution would be if there was a strong countervailing pressure, which was not evident in this case. While there were US consumer and environmental groups that supported the EU’s GMO regime (see, for example, McGarity and Hansen, 2001; Hansen, 2000; *Consumer Reports*, September 1999),<sup>3</sup> they were not considered to be very influential at the time (Lazarus, cited in Hammitt et al. 2005; Vig and Faure 2004, 7; Vogel 2003, 578). In the absence of powerful societal pressure against initiating a complaint, the constituency approach to trade disputes cannot explain the narrowness of the US’s challenge to the EU’s GMO approval process.

There is, however, an emerging literature that emphasizes that governments do not perceive initiating WTO complaints as costless (see Allee 2003; Bown 2005; Shaffer 2003; Sherman 2002). In particular, initiating WTO disputes may harm important political relationships and winning them can create awkward precedents that constrain one’s own policy autonomy. This article contributes to this literature by

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<sup>3</sup> Interview, representative of the Center for Food Safety (Washington, DC, 10 Jan. 2001).

illustrating the impact of such considerations and highlighting that such considerations may affect the substance of a complaint, not just whether there is one.

*Making concessions in response to mobilized interests*

The expectation that the EU would not change its GMO approval procedures in response to an adverse WTO ruling echoed the common assumptions in the literatures on trade disputes and compliance with international rules that concessions will be made only if a mobilized coalition of societal actors favouring change is more powerful than the coalition favouring the status quo (Bayard and Elliott 1994; Conybeare 1987; Dai 2005; 2006; Grossman and Helpman 1995; Gawande and Hansen 1999; Kahler 2000: 675; Schoppa 1993). External pressure/international obligations is thought to change the preferences or level of engagement of actors already affected by the policy in question (Putnam 1988: 454) and/or causes actors not previously engaged with the specific policy to engage (Schoppa 1993: 372).

Industries adversely affected by sanctions are typically depicted as the key actors advocating policy change (see, for example, Bayard and Elliott 1994; Conybeare 1987; Odell 1993). The central question is whether the political balance shifts sufficiently for policy change to occur, which has prompted some analyses to consider explicitly the impact of domestic decision rules (Dai 2006; Moravcsik 1993; Odell 1993; Zeng 2002).

According to this approach, the EU's resumption of approvals in the wake of the adverse WTO ruling should have reflected the mobilization of a compliance coalition. There was, however, only a limited mobilization by industry associations in

favour of the resumption of approvals for importation.<sup>4</sup> Moreover, these actors – food and feed processors and livestock farmers -- were motivated not by concerns about sanctions but by the problems they were having sourcing sufficient non-GM or EU-approved-GM animal feed (COCERAL, EuropaBio, FEFAC, FEDIOL 2007),<sup>5</sup> and did not engage actively in the policy process until that problem became acute in 2007. Further, the EU's member state governments, which in this regard act as a legislature, albeit one fully integrated into the regulatory decision making process, did not substantially change their positions on GM crops in the wake of the WTO ruling.<sup>6</sup> Consequently, during 2004-09 there was never a qualified majority of member states in favour of approving any GM variety and there were overwhelming majorities against requiring the lifting of member state bans on the cultivation of EU-approved GM crops. Thus the EU's compliance with the WTO ruling, such as there has been, cannot be attributed to a shift in societal politics.

This article argues that the crucial change was the willingness of the EU's executive, the European Commission, which is more favourably disposed towards agricultural biotechnology than most member states, to exercise its authority to approve GM varieties. Some of the two-level game literature on trade disputes acknowledges that executives may have preferences distinct from the sum of the specific pressures to which they are subjected (Conybeare 1987; Dai 2005; Grossman and Helpman 1995; Odell 1993: 258), but tends not to specify what the government's substantive preferences are (Martin 2008). This article underlines the importance of

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<sup>4</sup> Interviews, BusinessEurope representative (Brussels, 23 Feb. 2010); and a biotechnology industry representative (Brussels, 25 Feb. 2010).

<sup>5</sup> Interviews, COPA-COGECA representative (Brussels, 25 Feb. 2010); and a biotechnology industry representative (Brussels, 25 Feb. 2010).

<sup>6</sup> Interviews, Commission officials (Brussels, 22, 23 and 24 Feb. 2010) and a biotechnology industry representative (Brussels, 25 Feb. 2010).

paying attention to the substantive preferences of the executive and to the scope of its policy autonomy.

*A two-level game framework*

Robert Putnam's (1988) metaphor of the two-level game, capturing the interaction between international and domestic politics, is most commonly applied to international negotiations. It has, however, been fruitfully applied to trade-disputes, in which one party is trying to change the behaviour of the other (Odell 1993; Schoppa 1993). As Andrew Moravcsik (1993: 15) has pointed out, the two-level game approach emphasizes the 'real initiative and discretion' of the executive. As the preceding discussion indicates, while some attention in the broader literature has been paid to the preferences of executives, the dominant approach is highly pluralist, and this pluralist emphasis contributed to the misguided expectations about the development of the transatlantic GMO dispute.

The two-level game metaphor draws attention to three key factors (Moravcsik 1993: 23; Putnam 1988): the domestic 'win set,' the international environment; and the preferences of the executive. The domestic 'win set' reflects the distribution of coalitions of preferences among societal actors and the decision rules that affect the adoption of policy. This is very similar to the accounts of the domestic politics of trade disputes discussed above, although the two-level game metaphor draws particular attention to the scope for an executives to try to influence its domestic win set (e.g., through side-payments) or that of other party (e.g., through the threat or imposition of sanctions) (Putnam 1988: 450). The legalistic nature of a WTO dispute reduces the analytical leverage of the international negotiating environment beyond the threat and imposition of sanctions, and the US had not pursued this strategy by the

time of writing (March 2010). The most distinctive aspect of the two-level game approach for this article is its attention to the executives' preferences and scope for autonomous action.

The argument developed in the next section is that both the Bush Administration and the European Commission were 'doves;' the preferences of each were at least partially outside its own domestic win-set 'in the direction of' the other's win-set, even though there is significant 'distance' between them (Moravcsik 1993: 31). As will be explained below, however, while the Commission overall was a 'dove,' key actors within it were not. This explains why approvals of GM varieties for food and feed resumed in 2004, but approvals for cultivation did not until 2010 following a reform of responsibilities within the Commission. Crucially, both executives had considerable scope to pursue their preferences within their respective 'win-sets;' which Moravcsik (1993: 24) characterises as the 'most fundamental way' in which the executive can exercise influence (see also Odell 1993: 258). The EU's much smaller 'win-set' with respect to national bans compared to approvals explains much of the variance in the levels of compliance across the different aspects of the dispute.

### **Executive autonomy the US's narrow complaint**

The Bush administration pursued a much narrower challenge to the EU's regulations than typically influential domestic political actors wanted, because its preferences were more moderate than those of the mobilised domestic actors'.<sup>7</sup> A particularly important consideration was a desire to preserve its own policy autonomy. Because WTO rulings have the effect of establishing precedents, governments take care to

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<sup>7</sup> Interviews, US government officials (Washington, DC, 8 and 11 Jan. 2001); European Commission officials (Washington, DC, 10 Jan. 2001; Brussels, 16 Sept. 2003).



avoid bringing complaints or deploying arguments that might apply to their own policies or practices (Bown 2005; Busch and Reinhardt 2002; Shaffer 2003).

Avoiding inadvertently constraining US regulators was thus a consideration when deciding whether and how to bring the GM complaint (Pollack and Shaffer 2009: 184).<sup>8</sup> A second consideration would seem to have been preserving the transatlantic relationship. Trade disputes, particularly those pursued through litigation rather than negotiation, are bad for amicable relations (Bown 2005). The decision to postpone filing the complaint until after the completion of conventional military operations in Iraq (Baucus 2003: 4; Pollack and Shaffer 2009: 179), suggests concern for the foreign policy ramifications of filing a complaint. The narrowness of the complaint, requiring only that the EU enforce its own rules, meant that it was less politically explosive than would have been one that threatened to require the EU to change popular policies for ensuring environmental protection and public health.

The WTO's rules facilitated the Bush administration's exercise of autonomy by foreclosing unilateral action and delegating adjudication to a third party. The establishment of the WTO and the introduction of binding dispute settlement curbed the unilateral imposition of trade sanctions to punish other countries' policies, which had been a common US practice prior to the creation of the WTO (Bhagwati 1990). Combined with third-party adjudication, this meant that rather than the Bush administration being the judge, deciding whether to punish the EU, it was the prosecutor, having to make the case to the WTO panel that the EU's policy violated WTO law. This made it easier for the administration to resist pressure to be more aggressive because the decision would reside with the panel. Moreover, the initiation of a trade dispute does not require formal ratification, although domestic support

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<sup>8</sup> Interviews, US government officials (Washington, DC, 11 Jan. 2001 and 14 Jan. 2005).

would be needed for the imposition of credible sanctions (Odell 1993: 237). Thus, while the Bush administration might pay a political price for not acting, it did not need explicit approval for the action it took. It therefore had considerable autonomy in deciding how to prosecute the WTO complaint.

The necessity of persuading the WTO panel of the validity of the US's complaint was also crucial to how it was pursued. In particular, the complaint's narrow focus reflected concerns about the likelihood of winning the case. Although the WTO's rules impose disciplines on regulatory decision-making, the case law of the WTO had significantly clarified the implications of these rules and had emphasised the discretion of national regulators (Pollack and Shaffer 2009: 184-7; Young and Holmes 2006: 293, 296-8). Consequently, in the view of US trade officials the EU's approval procedures, should they be applied, were compatible with WTO rules (USTR 2004: 1).<sup>9</sup> Because the US government wanted to be confident of winning the complaint it concentrated on only those aspects of the EU's approval process that it considered to be most clearly in violation of WTO rules.<sup>10</sup> The WTO's rules, therefore, delimited the grounds on which the US (and its co-complainants) could challenge the EUs' measures.

Despite dissatisfaction with slowness of the EU's approval process (US 2010) and with the proliferation of member state bans (FAS 2009), the US has not moved to impose sanctions. Following the expiration of an extended deadline for compliance (11 January 2008), the US submitted a request to the WTO for authorisation to impose sanctions. It almost immediately suspended that request, however, while it and the EU sought to resolve the dispute. Nonetheless, the US Trade Representative initiated a consultation process to identify what products might be included on a sanctions list

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<sup>9</sup> Interview, US government official (Washington, DC, 14 Jan. 2005).

<sup>10</sup> Interviews, US government officials (Washington, DC, 11 and 14 Jan. 2005).

should sanctions be authorised (USTR 2008: 4289). Although the US has been closely monitoring the EU's approval process during 2009 and into 2010 it has not been actively threatened sanctions or published a list of targeted products, in part because the Obama administration has been considering how to proceed.<sup>11</sup> In addition, as the EU has resumed approvals, it would be harder to make the case to the WTO that the EU is not complying.<sup>12</sup> The pressure from US farm interests for action has also eased, particularly because increased demand for soybeans in China has reduced the importance of the EU as an export market.<sup>13</sup> Thus for a combination of reasons, neither the Bush nor the Obama administrations has actively sought to expand the EU's 'win-set' by threatening credible sanctions.

The US government did not pursue the EU's regulatory framework nearly as aggressively as influential domestic actors wanted or as most activists and analysts had anticipated. Both domestic and foreign policy considerations influenced its approach, as did the desire to construct a winning case. The WTO framework, therefore, enhanced the administration's autonomy, facilitating its adoption of a less aggressive approach than demanded by influential domestic actors.

### **Varying executive preferences and autonomy and faltering EU policy changes**

As with the US administration, the European Commission's position has been more conciliatory than that of most of the actors within the EU. Crucially, the Commission has long been more favourably disposed towards agricultural biotechnology than most of the EU's member states (Bernauer and Aerni 2008: 6; Commission 1998; 2002;

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<sup>11</sup> Interview, US government official (Brussels, 24 Feb. 2010).

<sup>12</sup> Interview, US government official (Brussels, 24 Feb. 2010).

<sup>13</sup> Interviews, COPA-COGECA representative (Brussels, 25 Feb. 2010); US government official (Brussels, 24 Feb. 2010).

FoEE 2007; Green 10 2009: 7; Pollack and Shaffer 2009; Tierberghien 2009: 395).<sup>14</sup> Commission President Manuel José Barroso, Trade Commissioner Peter Mandleson, Agriculture Commissioner Mariann Fischer Boel and Enterprise and Industry Commissioner Günter Verheugen, in particular, were favourably disposed towards agricultural biotechnology.<sup>15</sup> Moreover, one of the Commission's formal roles within the EU is the 'guardian' of the EU's rules and there was a strong desire within the Commission to see the EU's GMO procedures followed.<sup>16</sup>

Although collectively the Commission was relatively favourably disposed towards agricultural biotechnology, not all members of the Commission were. DG SANCO and the Commissioner for Health Markos Kyprianou (2004-8) / Androulla Vassiliou (2008 – 10) were cautious about GM foods, but DG ENV and the Commissioner for the Environment (2004-09) Stavros Dimas had stronger misgivings about agricultural biotechnology (FAS 2007: 10; FoEE 2007: 2; Green 10 2009: 7).<sup>17</sup> This matters because, as discussed earlier, the DG and, particularly, the Commissioner responsible is the agenda setter, and Dimas used this role to impede approvals for cultivation. Given the presence of multiple agenda setters within the Commission, the Commission might be usefully thought of as a composite COG.

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<sup>14</sup> Interviews, Commission officials (San Domenico di Fiesole, 4 Dec. 2000; Washington, DC, 10 Jan. 2001); US government officials (Washington, DC, 8 and 11 Jan. 2001, 11 Jan. 2005); representatives of the Biotechnology Industry Organization (Washington, DC, 9 Jan. 2001); European-American Business Council (Washington, DC, 8 Jan. 2001). See also Assistant USTR (Agriculture) Jim Murphy's testimony to the House of Representatives Committee on Agriculture's Subcommittee on Risk Management, Research and Specialty Crops hearing on Agricultural Biotechnology, 3 March 1999, p. 15.

<sup>15</sup> Interview, Greenpeace representative (telephone, 2 Mar. 2010).

<sup>16</sup> Interviews, Commission officials (Brussels, 23 Feb. 2010)

<sup>17</sup> Interviews with European Commission officials (Brussels, 22, 23 and 24 Feb. 2010); representatives of COPA-COGECA (Brussels, 25 Feb. 2010), European biotechnology industry (25 Feb. 2010), and Greenpeace (telephone, 2 Mar. 2010)

*The resumption of approvals of GM varieties for food and feed*

The most marked change in the EU's practices regarding GMOs has been the resumption of approval of GM crops for food and feed. The Commission had undertaken to the US that it would resume approvals once the EU's new regulatory framework was in place,<sup>18</sup> and it did so in May 2004 just after the new framework was implemented and prior to the panel's ruling. As discussed earlier, however, the pace of approvals for food and feed, increased markedly after the WTO ruling.

In the wake of the WTO ruling the Directorate General for Trade (DG Trade) and Trade Commissioner Mandelson (22 November 2004 – 3 October 2008) urged more rapid approvals of GM crops (Mandelson 2007: 2).<sup>19</sup> While some efforts were made to persuade the member state governments to consider the implications of not complying with the WTO's rulings, these seem to have had little effect as each of the 23 votes on approvals for food and feed in SCoFCAH between 2004 and 2009 fell well short of a qualified majority.<sup>20</sup> DG Trade's main focus, therefore, was on expediting the Commission's handling of approvals.<sup>21</sup> This involved stressing the need for speed and lobbying for additional resources. These efforts concentrated on the time that elapsed between the Commission receiving a positive opinion from EFSA and putting a draft decision to the SCoFCAH and following the (inevitable)

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<sup>18</sup> Interviews, US government official (Washington, DC, 8 Jan. 2001) and Commission official (Washington, DC, 10 Jan. 2001).

<sup>19</sup> Interviews, Commission officials (Brussels, 22 and 24 Feb. 2010) and representative of Greenpeace (telephone, 2 March 2010).

<sup>20</sup> Details for the three votes prior to 2005 are not publically available. For the three votes in 2005 (when the EU had 25 member states) the voting intentions in the Council are reported, and between eight and eleven member states representing between 102 and 179 votes (out of 321) voted in favour (a qualified majority was 232) (Council Documents 13183/05; 14565/05; 12628/06). In the 17 votes in the regulatory committee during 2007-09 (when the EU had 27 member states) between 10 and 16 member states representing between 141 and 214 votes (out of 345) voted in favour (a qualified majority was 255) (Commission documents COM(2007) 346; COM(2007) 403; COM(2007) 402; COM(2007) 397; COM(2007) 813; COM(2007) 814; COM(2007) 815; COM(2007) 816; COM(2008) 47; COM(2008) 218; COM(2008) 226; COM(2008) 678; COM(2008) 669; COM(2009) 444; COM(2009) 457; COM(2009) 443; COM(2009) 613).

<sup>21</sup> Interviews, Commission officials (Brussels, 22, 23 and 24 Feb. 2010).

non-decision in the standing committee advancing a proposal to the Council and in the wake of the (inevitable) non-decision in the Council approving the crop. These efforts focused on the GM varieties of particular concern to the complainants<sup>22</sup> and those for which the lack of approvals were presenting problems for EU livestock farmers.<sup>23</sup> DG Trade's efforts, however, were more successful with DG SANCO than with DG ENV.<sup>24</sup>

### *The faltering approval of GM varieties for cultivation*

A significant part of the explanation for the lower number of approvals for cultivation than for food and feed is that many fewer varieties have been submitted for approval (18 versus 67 by the end of 2009). As of March 2010 EFSA had issued opinions on the cultivation of five GM varieties – maize 1507 (January 2005); Bt11 maize (April 2005); amflora potato (February 2006); maize NK603 (June 2009); and the renewal of maize MON810 (June 2009) – many fewer than the 34 varieties on which EFSA had given its opinion with regard to safety. The interaction of the more sceptical view of the Environment Commissioner/DG ENV to biotechnology and greater member state government concern about environmental risk assessment, however, also impeded the approval of GMOs for cultivation.

One concern for Commissioner Dimas/DG ENV and for the environment ministers of a number of member states was the thoroughness of EFSA's environmental risk assessments (EFSA 2008; 2009; Council 2008: 22). The two varieties of Bt maize (1507 and Bt11) and the Amflora potato were referred back to

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<sup>22</sup> Interviews, Commission officials (Brussels, 22 Feb. 2010); European biotechnology industry representative (Brussels, 25 Feb. 2010).

<sup>23</sup> Interviews, US government official (Brussels, 24 Feb. 2010); European Commission official (Brussels, 23 Feb. 2010); European biotechnology industry representative (Brussels, 25 Feb. 2010).

<sup>24</sup> Interviews, Commission officials (Brussels, 22, 23 and 24 Feb. 2010); European biotechnology industry representative (Brussels, 25 Feb. 2010).

EFSA to address specific concerns. Such requests for further risk assessments were seen by many as DG ENV using its agenda-setting powers to impede approvals.<sup>25</sup>

More strikingly, in October 2007 citing evidence about the potential adverse impact of Bt maize varieties on non-target species that had come to light subsequent to EFSA's second positive opinion, DG ENV drafted proposals rejecting the maize varieties 1507 and Bt11 (ESA 2008; EuropaBio 2007; Riss 2007).<sup>26</sup> When these proposals were debated by the Commission in May 2008, as part of a wider discussion on GMO policy, they were not adopted (ESA 2008; Riss 2007). Rather, the Commission confirmed its confidence in EFSA and indicated its intention to take decisions where the EU's approval procedures require the Commission to act, but it agreed to refer the two Bt maize varieties back to EFSA for further consideration (Commission 2008). Thus the Environment Commissioner and DG ENV had tried to block approval of two GM varieties, but they were not supported by the Commission as a whole. The outcome, however, was to delay further the adoption of the maize varieties for cultivation.

Moreover, when the member states have considered approvals for cultivation, there has been even less support than for approvals for food and feed. When SCoFCAH considered maize varieties 1507 and Bt11 on 25 February 2009, for instance, only six member states (91 votes) voted in favour of authorisation; 12 (127 votes) voted against; seven (95 votes) abstained; and two (32 votes) were absent (euobersver.com 26 Feb. 2009; *International Herald Tribune*, 25 Feb. 2009).<sup>27</sup> Despite the absence of a qualified majority against, however, the Commission has not

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<sup>25</sup> Interviews, Commission officials (Brussels 22 and 24 Feb. 2010); COPA-COGECA representative (Brussels, 25 Feb. 2010); European biotechnology industry representative (Brussels, 25 Feb. 2010).

<sup>26</sup> The draft proposals are available at: [http://www.gmo-safety.eu/pdf/dokumente/draft\\_1507.pdf](http://www.gmo-safety.eu/pdf/dokumente/draft_1507.pdf); [http://www.gmo-safety.eu/pdf/dokumente/draft\\_bt11.pdf](http://www.gmo-safety.eu/pdf/dokumente/draft_bt11.pdf) (last accessed 11 March 2010).

<sup>27</sup> See also <http://www.gmo-free-regions.org/stop-the-crop-action/background-information/approval-of-new-gmos.html>. Last accessed 12 March 2010.

submitted a proposal for approval to the Council as of March 2010. The Amflora potato was considered by the Council in July 2007, but there was no qualified majority for or against approval (Commission 2010a). The Commission, however, did not subsequently approve the GM potato for cultivation. Rather, it too was referred back to EFSA in May 2008. In June 2009 EFSA confirmed its positive opinion, and in March 2010, the Commission approved the Amflora potato. The Commission, therefore, has been less activist with respect to approvals for cultivation.

Beyond the reticence of DG ENV and Commission Dimas, wider political considerations may have contributed to the Commission's more cautious approach with respect to approvals for cultivation. The term of the Commission was due to come to an end on 31 October 2009, and with Commission President Barroso seeking a second term, there were strong incentives not to pursue policy initiatives that were unpopular with the member states, such as approving the cultivation of GM crops supported by only a minority (The *Economist*, 12 Mar. 2009).<sup>28</sup> Strikingly, the Commission's approval of the Amflora potato came after the new Commission took office in February 2010 and the reassignment of responsibility for approvals for cultivation from DG ENV to DG SANCO (Commission 2009b). A number of observers inside and outside the Commission interpret this reform as intended to deny a sceptical DG ENV its agenda-setting power.<sup>29</sup>

#### *Problematic member state bans*

By contrast to approvals, the Commission has next to no scope to pursue its preferences with respect to the member states' bans because of the strength of member state opposition to efforts to lift them. The Commission has repeatedly

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<sup>28</sup> Interviews, Commission officials (Brussels, 22, 24 Feb. 2010).

<sup>29</sup> Interviews, Commission official (Brussels, 24 Feb. 2010); European biotechnology industry representative (Brussels, 25 Feb. 2010); Greenpeace representative (telephone, 2 Mar. 2010).



proposed lifting the member states' bans, but on all but one occasion it was overwhelmingly rebuffed. In June 2005, prior to the WTO panel's ruling, the Commission's proposals to require the lifting of the eight member state bans – Austria (maize T25; maize Bt176; maize MON 810); France (oilseed rape MS1Bn x RF1Bn; oilseed rape Topas 19/2); Germany (maize Bt 176); Greece (oilseed rape Topas 19/2); Luxembourg (maize Bt 176) – were overwhelmingly rejected by the member states (Council 2005).<sup>30</sup> Almost all of these products were subsequently withdrawn from the market by their producers rendering the bans moot.<sup>31</sup> In 2006 the Commission targeted only Austria's bans on GM maize T25 and MON 810, the only varieties affected by member state bans that were still being sold.<sup>32</sup> Twenty-one member states voted against the proposal (Council 2006) and against a subsequent proposal against Hungary's ban on GM maize MON810 (adopted in 2005) (Council 2007). In rejecting these proposals the Council specified particular concerns about the environmental risk assessments of the two products (Council 2006; 2007).

In response, the Commission proposed requiring that Austria lift its ban on only the use and sale of the GM varieties. At the October 2007 Environment Council 15 member states voted against the proposal and only four in favour, but the large number of abstentions (eight), meant that the proposal was not rejected (Pollack and Shaffer 2009: 259). After considerable internal debate given the strength of member state opposition, the Commission in May 2008 informed Austria that it was required to lift its bans with respect to sale of the two varieties, which it did. The Commission's subsequent efforts in early 2009 to lift the cultivation bans of Austria, France, Greece and Hungary were all overwhelmingly rejected (Commission 2009a:

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<sup>30</sup> The closest of the votes on the eight bans (Austria's ban on maize MON 810) was 234 votes against, 54 in favour.

<sup>31</sup> See [http://ec.europa.eu/food/dyna/gm\\_register/index\\_en.cfm](http://ec.europa.eu/food/dyna/gm_register/index_en.cfm). Last accessed 7 August 2010.

<sup>32</sup> See [http://ec.europa.eu/food/dyna/gm\\_register/index\\_en.cfm](http://ec.europa.eu/food/dyna/gm_register/index_en.cfm). Last accessed 7 August 2010.

4; Council 2009a: 8). Thus the EU's win-set with respect to national bans on the cultivation of GM crops is very small, and explicit rejection of the Commission's proposals means that it is not able to pursue its policy preferences.

In the face of such sustained opposition and the proliferation of national bans on the cultivation of MON810, in March 2010 the Commission (2010b) indicated its intention to advance a proposal to allow the member states more choice in deciding whether to allow the cultivation of GM crops. This idea was first floated by the Dutch government in February 2009 (Commission 2009a) and endorsed at the June 2009 Environment Council by Austria supported by 12 other member states (Council 2009b). It was trailed by Commission President Barroso (2009: 39) in his 'political guidelines' for the Commission taking office in 2010. In the face of overwhelming member state opposition to lifting national bans on cultivation, the Commission seems to be beating a tactical retreat.

## **Conclusions**

The development of the transatlantic dispute over GMOs, while quite fraught, has been much less conflictual than was widely anticipated at its outset. The expectations of fierce conflict reflected assessments of the strength of societal preferences in the two polities. These expectations thus reflected prevailing international political economy accounts of trade disputes and the emerging literature on the domestic politics of compliance. Both of these accounts could explain the less fraught development of the dispute if there had been powerful societal mobilization in favour of restraint (in the US) and compliance (in the EU), but there is no evidence that this occurred significantly in either polity.

This article, however, contends that the less fraught development of the dispute and the contours of the EU's compliance can best be explained by the substantive preferences of the two executives and the scope they had to pursue them. The Bush administration, for a variety of reasons, was not inclined to challenge the EU's entire regulatory framework for GMOs, as many influential interest groups and Congressional leaders wanted. As it did not need formal ratification of its decision, it had considerable autonomy, enhanced by the inter-governmental nature of WTO dispute settlement, to pursue its preferred course of action. This illustrates that government preferences can shape the form and substance of a WTO dispute, not just whether there is one.

Given the common perception of the US as highly responsive to business interests and the strength of the political pressure for an aggressive challenge to the EU's regulations, the US case is a hard case for the influence of government preferences on the conduct of trade disputes. That the US government did pursue its preferences, therefore, suggests that it is crucial to consider government preferences when analysing the initiation of trade disputes more generally.

The European Commission, at least as a collective, was more favourably disposed towards GMOs than were the member states. The WTO ruling against the EU's failure to implement its own policies gave those in the Commission most favourably disposed towards biotechnology an extra lever to accelerate approvals for marketing. This was less successful with respect to approvals for cultivation, where a sceptical key agenda setter within the Commission was able to impede approvals until reforms introduced with the new Commission at the beginning of 2010 negated its agenda setting power. The hostility of an overwhelming majority the member state governments to forcing member states to lift their bans, however, means that the EU's

win-set is very constricted and the Commission has next to no scope to pursue its preferences.

The EU's response to the adverse WTO ruling on GMOs is hardly a typical case of compliance, but it is, nonetheless, instructive. In some respects it is a permissive case in that due to domestic decision rules the Commission has considerable policy autonomy, particularly with respect to approvals of GM varieties of food and feed. Nonetheless, the decisiveness of the Commission's preferences in this respect highlights that in at least some cases government preferences might be crucial to explaining outcomes. Moreover, the variance in changes to the EU's policy across the different aspects of the dispute underlines the importance of paying attention to the opportunities and constraints on executive action created by domestic institutions.

This article, therefore, contributes to the literatures on dispute settlement and the domestic politics of compliance by highlighting that the substantive preferences of an executive can be important in explaining outcomes. How important will depend on how much autonomy the executive has given domestic decision rules. Further, and more implicitly, the article underlines that the decision whether to comply with an adverse international ruling takes place within an on-going political process in which some actors favour policy change for reasons independent of external pressure.

## References

- Allee, T. (2003), 'Legal Incentives and Domestic Rewards: The Selection of Trade Disputes for GATT/WTO Dispute Resolution' unpublished paper, University of Illinois, 9 Oct..
- Alter, K. J. (2003), 'Resolving or Exacerbating Disputes? The WTO's New Dispute Resolution System,' *International Affairs*, 79/4, 783-800.
- Ames, G. C. W. (2001), 'Bananas, Beef and Biotechnology: Three Contentious U.S.-EU Trade Disputes,' *Review of Agricultural Economics*, 23/1, 214-222.
- Amicus Coalition (2004), 'Information Submitted to the Panel by Non-Parties' European Communities – Measures Affecting the Approval and Marketing of Biotech Products (DS291, DS292, DS293), 27 May. Available at: [http://www.genewatch.org/uploads/f03c6d66a9b354535738483c1c3d49e4/PublicInterestAmicus\\_2.pdf](http://www.genewatch.org/uploads/f03c6d66a9b354535738483c1c3d49e4/PublicInterestAmicus_2.pdf). Accessed 7 July 2008.
- Barroso, J. M. (2009), 'Political Guidelines for the Next Commission,' (Brussels: European Commission), 3 September.
- Baucus, M. (2003), 'Opening Statement,' Senate Finance Committee Hearing on the Administration's Trade Agenda, S. Hrg. 108-39, 5 March.
- Baumgartner, F. R. and Leech, B. L. (1998), *Basic Interests: The Importance of Groups in Politics and Political Science*, Princeton University Press.
- Bayard, T. O. and Elliott, K. A. (1994), *Reciprocity and Retaliation in US Trade Policy*, Institute for International Economics, September.
- Bernauer, T. (2003), *Genes, Trade and Regulation: The Seeds of Conflict in Food Biotechnology*, Princeton University Press.
- Bernauer, T. and Aerni, P. (2008), 'Trade Conflict Over Genetically Modified Organisms,' in K. Gallagher (ed.), *Handbook on Trade and the Environment*, Cheltenham: Edward Elgar, Ch. 14.
- Bhagwati, J. (1990), 'Departures from Multilateralism: Regionalism and Aggressive Unilateralism,' *The Economic Journal*, 100 (December), 1304-17.
- Bio (2003), 'BIO Statement on European Vote on Biotech Foods,' 7 Feb. (Washington, DC: Biotechnology Industry Organization). Available at: [http://www.bio.org/news/pressreleases/newsitem.asp?id=2003\\_0702\\_01](http://www.bio.org/news/pressreleases/newsitem.asp?id=2003_0702_01). Accessed 28 January 2009.
- Bown, C. P. (2005), 'Trade Remedies and World Trade Organization Dispute Settlement: Why Are So Few Challenged,' *Journal of Legal Studies*, 34, June, 515-55.

Busch, M. L. and Howse, R. (2003), 'A (Genetically Modified) Food Fight: Canada's WTO Challenge to Europe's Ban on GM Products,' Commentary 186 (Toronto: C. D. Howe Institute).

Busch, M. L. and Reinhardt, E. (2002), 'Testing International Trade Law: Empirical Studies of GATT/WTO Dispute Settlement,' in D. L. M. Kennedy and J. D. Southwick (eds), *The Political Economy of International Trade Law*, Cambridge University Press, 457-81.

COCERAL, EuropaBio, FEFAC, FEDIOL (2007), 'Reference and Key Message Document: Commission Report "Economic Impact of Unapproved GMOs on EU Feed Imports and Livestock Production,"' 17 July.

Commission (1998), 'Proposal for a European Parliament and Council Directive Amending Directive 90/220/EEC on the Deliberate Release into the Environment of Genetically Modified Organisms,' COM (1998) 85 final, 23 February.

Commission (2002), 'Life sciences and biotechnology — A strategy for Europe' COM(2002) 27.

Commission (2008), 'European Commission Discusses How Best to Move Forward on the Authorization of Pending GMO Applications,' No. 44/08 (Washington, DC: Delegation of the European Commission to the USA), 7 May.

Commission (2009a), 'Summary Record of the Standing Committee on the Food Chain and Animal Health Held in Brussels on 16<sup>th</sup> February 2009.' (DG SANCO).

Commission (2009b), 'President Barroso Unveils His New Team,' IP/09/1837, 27 November.

Commission (2010a), 'Commission Decision of 2 March 2010 Concerning the Placing on the Market ... of a Potato Product (*Solanum tuberosum* L. line EH920527-1) Genetically Modified for Enhanced Content of the Amylopectin Component of Starch,' 2010/135/EU, *Official Journal*, L53, 4 March, 11-14.

Commission (2010b), 'Commission Announces Upcoming Proposal on Choice of Member States to Cultivate or Not GMO's and Approves 5 Decisions on GMO's,' IP/10/222, 2 March.

Conybeare, J. A. C. (1987), *Trade Wars: The Theory and Practice of International Commercial Rivalry*, Columbia University Press, 1987.

Council (1999), '2194<sup>th</sup> Council Meeting – Environment – Luxembourg, 24/25 June 1999,' 9406/99.

Council (2005), '2670<sup>th</sup> Council Meeting – Environment – Luxembourg, 24 June 2005,' 10074/05.

Council (2006), '2773<sup>rd</sup> Council Meeting – Environment – Brussels, 18 December 2006,' 15151/06.

Council (2007), '2785<sup>th</sup> Council Meeting – Environment – Brussels, 20 February 2007,' 6272/07.

Council (2008), '2912<sup>nd</sup> Council Meeting – Environment – Brussels, 4 December 2008,' 16585/08. Provisional version.

Council (2009a), '2928<sup>th</sup> Council Meeting – Environment – Brussels, 2 March 2009,' 7042/09 REV 1.

Council (2009b), '2953<sup>rd</sup> Council Meeting – Environment – Brussels, 25 June 2009,' 11259/09.

Dai, X. (2005), 'Why Comply? The Domestic Constituency Mechanism,' *International Organization*, 59, 363-98.

Dai, X. (2006), 'The Conditional Nature of Democratic Compliance,' *Journal of Conflict Resolution*, 50/5, 690-713.

Davis, C. L. (2003), *Food Fights Over Free Trade: How International Institutions Promote Agricultural Trade Liberalization*, Princeton, NJ: Princeton University Press.

Devereaux, C., Lawrence, R. Z. and Watkins, M. D. (2006), *Case Studies in US Trade Negotiation: Vol. 2: Resolving Disputes* (Washington, DC: Institute for International Economics).

EFSA (2008), 'Request from the European Commission to Review Scientific Studies Related to the Impact on the Environment of the Cultivation of Maize Bt11 and 1507: Scientific Opinion of the Panel on Genetically Modified Organisms,' Question No. EFSA-Q-2008-679 (adopted 29 October), *EFSA Journal* 851, 1-27.

EFSA (2009), '[Draft] Guidance on the Environmental Risk Assessment of Genetically Modified Plants,' Available at: <http://www.efsa.europa.eu/en/consultations/call/gmo100305a-ax1.pdf>. Last accessed 12 March 2010.

ESA (2008), 'European Commission's Orientation on GMOs Confirms Existing Rules and Procedures – But Fails to Show Leadership on the Future of Policy,' 7 May (Brussels: European Seed Association)

EuropaBio (2007), 'Commissioner Dimas' Rejection of Two GM Maize Products Would Undermine the EU's Safety Assessment Process,' 27 November (Brussels: EuropaBio).

FAS (2007), 'EU-27 Biotechnology Annual Agricultural Biotechnology Report' GAIN Report E47044 (US Department of Agriculture Foreign Agricultural Service) 6 May.

FAS (2009), 'EU-27 Agricultural Biotechnology Annual 2009' GAIN Report E49052 (US Department of Agriculture Foreign Agricultural Service) 24 July.

FoEE (2007), 'Too Close for Comfort: The Relationship between the Biotech Industry and the European Commission' (Brussels: Friends of the Earth Europe), October.

Gawande, K. and Hansen, W. L. (1999), 'Retaliation, Bargaining and the Pursuit of "Free and Fair" Trade,' *International Organization*, 53/1, 117-59.

Grassley, C. E. (2003), 'Opening Statement,' Senate Finance Committee Hearing on the Administration's Trade Agenda, S. Hrg. 108-39, 5 March.

Green 10 (2009), 'Off Target: European Commission 2004-2009 Environmental Progress Report and Lessons for the Next Commission,' (Brussels: Green 10).

Greenpeace (2003), 'The US assault on biosafety – Renewed Aggression by a Rogue State,' Available at:  
<http://www.greenpeace.org/raw/content/international/press/reports/the-us-war-on-biosafety-rene.pdf>. Accessed 8 July 2008.

Grossman, G. M. and Helpman, E. (1995), 'Trade Wars and Trade Talks,' *Journal of Political Economy*, 103/4, 1995, 675-708.

Guzman, A. T. (2004-05), 'Food Fears: Health and Safety at the WTO,' *Virginia Journal of International Law*, 45, 1-39.

Hammit, J. K., Wiener, J. B., Swedlow, B., Kall, D. and Zhou, Z. (2005) 'Precautionary Regulation in Europe and the United States: A quantitative comparison', *Risk Analysis*, 25:5, 1215–28.

Hansen, M. K. (2000), 'Testimony before the Senate Committee on Health, Education, Labor and Pensions on "The Future of Food: Biotechnology and Consumer Confidence"' 26 September (Research Associate, Consumer Policy Institute, Consumers Union).

Harkin, T., Grassley, C. and Baucus, M. (2002), 'Letter to President Bush,' 20 December. Available at:  
<http://www.italy.usembassy.gov/policy/topics/biotech/Archive2002.asp>. Accessed 29 January 2009.

Hastert, J. D. (2003), 'Statement,' Review of Artificial Barriers to U.S. Agricultural Trade and Foreign Food Assistance, Hearing of the House of Representatives Committee on Agriculture, Serial No. 108-1, 26 March.

Hastert, J. D., Blunt, R., Goodlatte, B., Pombo, R., Gutknecht, G., Hayes, R., Jenkins, B., Lucas, F., Moran, J. and Wolf, F. (2003), 'Letter to President Bush,' 29 January. Available in Review of Artificial Barriers to U.S. Agricultural Trade and Foreign Food Assistance, Hearing of the House of Representatives Committee on Agriculture, Serial No. 108-1, 26 March, 84-6.



- IATP (2002), 'US Groups Feel it is Time to Challenge EU GM Food Ban,' 13 November, [www.tradeobservatory.org/headlines.cfm?refID=17829](http://www.tradeobservatory.org/headlines.cfm?refID=17829)). Accessed 8 December 2008.
- Joachim, G. (2003), 'Statement,' Review of Artificial Barriers to U.S. Agricultural Trade and Foreign Food Assistance, Hearing of the House of Representatives Committee on Agriculture, Serial No. 108-1, 26 March.
- Kahler, M. (2000), 'Conclusion: The Causes and Consequences of Legalization' *International Organization*, 54/3, 661-83.
- Keohane, R. O., Moravcsik, A. and Slaughter, A.-M. (2000), 'Legalized Dispute Resolution: Interstate and Transnational,' *International Organization*, 54/3, 457-88.
- Mandelson, P. (2007), 'Biotechnology and the EU,' speech to the European Biotechnology Day, Brussels, 14 June. Speech/07/397.
- Martin, L. L. (2008), 'Book Review: Xinyuan Dai, *International Institutions and National Policies*,' *Review of International Organizations*, 3, 201-6.
- McGartiy, T. O. and Hansen, P. I. (2001), 'Breeding Distrust: An Assessment and Recommendations for Improving the Regulation of Plant Derived Genetically Modified Foods,' A Report prepared for the Food Policy Institute of the Consumer Federation of America, 11 January.
- Moore, K. A. and Winham, G. (2002), 'Let's Not Escalate the "Frankenfood" War,' *Christian Science Monitor*, 20 December, p. 13.
- Moravcsik, A. (1993), 'Introduction: Integrating International and Domestic Theories of International Bargaining,' in P. B. Evans, H. K. Jacobson and R. D. Putnam (eds), *Double-Edged Diplomacy: International Bargaining and Domestic Politics*, Berkeley, CA: University of California Press, 3-42.
- Odell, J. S. (1993), 'International Threats and Internal Politics: Brazil, the European Community and the United States, 1985-1987,' in P. B. Evans, H. K. Jacobson and R. D. Putnam (eds), *Double-Edged Diplomacy: International Bargaining and Domestic Politics*, Berkeley, CA: University of California Press, 233-64.
- Pollack, M. A. (2003), 'The Political Economy of Transatlantic Trade Disputes,' in E.-U. Petersmann and M. A. Pollack (eds), *Transatlantic Economic Disputes: The EU, the US and the WTO*, Oxford: Oxford University Press, 65-118.
- Pollack, M. A. and Shaffer, G. (2009), *When Cooperation Fails: The International Law and Politics of Genetically Modified Foods*, Oxford: Oxford University Press.
- Porter, T. (2005), 'The United State in International Trade Politics: Liberal Leader or Heavy-Handed Hegemon?' in D. Kelly and W. Grant (eds), *The Politics of International Trade in the Twenty-First Century: Actors, Issues and Regional Dynamics*, London: Plagrave, 204-33.

- Putnam, R. D. (1988), 'Diplomacy and domestic politics: The logic of two-level games,' *International Organization*, 42/3, 427-60.
- Riss, J. (2007), 'Letter to European Commissioners from Environmental NGOs, Farmers' Organisations and Consumer Co-operatives Concerning the Commission's Decision on the Cultivation of Two New GM Maize Varieties in the EU, 22 November (Brussels: on behalf of Coordination Paysanne Europeene, European Environmental Bureau, Euro Coop, Friends of the Earth Europe, GM Freeze, Greenpeace, IFOAM, Save our Seeds).
- Schoppa, L. J. (1993), 'Two-Level Games and Bargaining Outcomes: Why *gaiatsu* Succeeds in Japan in Some Cases But Not Others,' *International Organization*, 47/3, 353-86.
- Shaffer, G. (2003), *Defending Interests: Public-Private Partnerships in WTO Litigation*, Washington, DC: Brookings Institution Press.
- Sherman, R. (2002), 'Targeting Democracies: Regime Type and America's "Aggressively Unilateral" Trade Policy,' *Social Science Quarterly*, 83/4, 1063-78.
- Stallman, B. (2003), 'Statement,' Review of Artificial Barriers to U.S. Agricultural Trade and Foreign Food Assistance, Hearing of the House of Representatives Committee on Agriculture, Serial No. 108-1, 26 March.
- Taylor, C. O'N. (2007), 'Impossible Cases: Lessons from the First Decade of WTO Dispute Settlement,' *University of Pennsylvania Journal of International Economic Law*, 28/2, 309-447.
- Tierberghien, Y. (2009), 'Competitive Governance and the Quest for Legitimacy in the EU: The Battle Over the Regulation of GMOs Since the mid-1990s,' *Journal of European Integration*, 31/3, 389-407.
- US (2010), 'Statements by the United States at the March 19, 2010 DSB Meeting,' Available at: <http://geneva.usmission.gov/2010/03/22/march-19-dsb-meeting/>. Accessed 31 March 2010.
- USTR (1996), *1996 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: United States Trade Representative).
- USTR (1997), *1997 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: United States Trade Representative).
- USTR (1998), *1998 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: United States Trade Representative).
- USTR (2004), 'European Communities – Measures Affecting the Approval and Marketing of Biotech Products (WT/DS291, 292, and 293): Executive Summary of the First Submission of the United States,' 30 April.

USTR (2008), 'WTO Dispute Settlement Proceedings Regarding Measures of the European Communities Affecting the Approval and Marketing of Biotech Products,' *Federal Register*, 73/16, 24 January: 4288-90.

Vig, N. J. and Faure, M. G. (2004) 'Introduction', in N. J. Vig and M. G. Faure (eds), *Green Giants: Environmental Policies of the United States and the European Union* (Cambridge, MA: The MIT Press), 1-14.

Vogel, D. (2003), 'The Hare and the Tortoise Revisited: The New Politics of Consumer and Environmental Regulation in Europe,' *British Journal of Political Science*, 33, 557-80.

Wilkinson, R. (2002), 'Global Monitor: The World Trade Organization,' *New Political Economy*, 7/1, 129-41.

Winham, G. R. (2009), 'The GMO Panel: Applications of WTO Law to Trade in Agricultural Biotech Products,' *Journal of European Integration*, 31/3, 409-49.

WTO (2006), 'European Communities – Measures Affecting the Approval and Marketing of Biotech Products: Reports of the Panel,' WT/DS291/R, WT/DS292/R, WT/DS293/R, 29 September.

Yoder, F. and Jacoby, D. (2003), 'Letter to President Bush on Behalf of the National Corn Growers Association and the U.S. Grains Council,' 29 January. Available in Review of Artificial Barriers to U.S. Agricultural Trade and Foreign Food Assistance, Hearing of the House of Representatives Committee on Agriculture, Serial No. 108-1, 26 March, p. 92

Young, A. R. (2001), 'Trading Up or Trading Blows? US Politics and Transatlantic Trade in Genetically Modified Food' RSC Working Paper 2001/30 (Florence: European University Institute).

Young, A. R. (2003), 'Political Transfer and "Trading Up": Transatlantic Trade in Genetically Modified Food and US Politics,' *World Politics*, 55/4, 457-84.

Young, A. R. and Holmes, P. (2006), 'Protection or Protectionism? EU Food Safety Rules and the WTO,' in C. Ansell and D. Vogel (eds), *What's the Beef? The Contested Governance of European Food Safety*, Cambridge, MA: MIT Press, 281-305.

Zeng, K. (2002), 'Trade Structure and the Effectiveness of America's "Aggressively Unilateral" Trade Policy,' *International Studies Quarterly*, 46, 93-115.