

Other view : U.S. pitches EU a hard ball

**By Thomas O. McGarity -- Special to The Sacramento Bee -
(Published June 24, 2003)**

AUSTIN, Texas -- Over the last two decades, biotech scientists have found ways to modify the genetic structure of corn, soybeans and other common crops to produce proteins that kill insect pests or that render plants immune to commonly used herbicides. The resulting genetically modified plants have been in use in the United States for a number of years, and have been a huge economic boon to the handful of large companies that have patented the seeds.

The FDA long ago implemented a regulatory policy for genetically modified organisms called "substantial equivalence." Under this doctrine, companies need not subject the new proteins produced by their plants to the full-scale safety testing regime that routinely applies to other food additives if the company determines that the plant is "substantially equivalent" to a naturally occurring plant. This critical judgment can be made by experts drawn from the biotechnology industry itself on the basis of their knowledge of foods and food safety, and not on the strength of toxicological testing.

The U.S. regulatory approach works well for industry, and it satisfies those who are generally convinced that modern biotechnology is basically benign and that the industry can be trusted to keep food safe without governmental oversight. But because a misjudgment could have serious implications, many believe that thorough mandatory testing, or at least labeling, is in order. The European Union has adopted that precautionary view.

In effect, the Bush administration wants to force Europe to abandon that approach and trust U.S. biotechnology companies.

The U.S. stance cannot be justified on traditional free trade grounds because the Europeans treat all such organisms alike, wherever they are grown. Thus, the European moratorium on U.S. bioengineered crops does not conflict with the World Trade Organization's traditional concern with discrimination against imports. Instead, the administration is invoking a controversial new trade requirement that arguably prohibits the imposition of import restrictions that are not "science-based."

The irony is that the U.S. regulatory system is, in reality, more "faith-based" than "science-based." That may be good news for U.S. biotechnology companies, but it is bad news for this country's image in the eyes of the rest of the world.

As the ministers from around the world gather in Sacramento to witness the dazzling carrot of U.S. biotechnology, they should also be aware of the stick that the Bush administration is prepared to wield if they take a skeptical view of the U.S. regulatory system.

Thomas O. McGarity is president of the Center for Progressive Regulation and a professor of food safety law at the University of Texas School of Law. He can be reached at tmcgarity@mail.law.utexas.edu.