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The so-called 'moratorium' on the licensing of new genetically modified (GM) products by the European Union 1998-2004: a study in ambiguity

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Abstract

It is commonly held that a moratorium on the approval of new genetically modified (GM) products was in place in the European Union (EU) between 1998 and 2004. The substantive issues raised by this so-called moratorium have stirred up considerable political interest, both inside and outside the EU, culminating in a challenge issued to the EU through the World Trade Organisation (WTO) by the USA, Canada and Argentina. However, the status and timeframe of the moratorium have not been much discussed, and in this article, we seek to fill this gap, by analysing the status and timeframe of the moratorium through the lens of two competing theoretical frameworks – intergovernmentalism and supranationalism. We find that the moratorium is a highly ambiguous phenomenon, with three alternative interpretations. The first interpretation is that while the origin of the moratorium is explained by intergovernmentalism, its end is explained by supranationalism. The second interpretation, which is based wholly on intergovernmentalism, is that the moratorium is effectively still in place today. The third interpretation, which is based wholly on supranationalism, is that the moratorium never really existed at all. The result of the WTO challenge may well hinge on how the panel views these alternative interpretations of the moratorium.

Introduction

Since 1998, there have been no new authorisations of GM crops or plants for commercial planting at the EU level, and although the self-imposed embargo on imported GM foods was lifted in 2004, the rate of approval of GM products and derived ingredients for import has greatly slowed down. This has been dubbed a 'moratorium', although there has been no legal enactment that either began or ended this approval drought. In other words, the moratorium existed *de facto*, not *de jure*. As Caroline Jackson, a UK Conservative MEP and ex-Chair of the Environment Committee of the European Parliament, states, 'It was an informal moratorium, they just decided not to authorise anything' (Jackson 2004). Despite its *de facto* nature, however, between 25 June 1999 and 19 May 2004 the moratorium was conventionally understood as EU policy; part of the myriad of informal norms accompanying official EU legislation. It was seen as an extension of the application of an approval procedure based on the precautionary principle, employed to achieve regulatory lock down and prevent new authorisations of GMOs (Grant 2005). In objection to the lack of new approvals, on 13 May 2003, the USA, with Canada and Argentina, launched a WTO case, arguing that their products were being unfairly discriminated against (GeneWatch 2003).

Despite its international importance, its praise from environmental NGOs, consumer groups and some politicians, and its condemnation from the agri-biotech industry, the USA and other politicians, there has been very little analysis of the status or timeframe of the moratorium. The *de facto* nature of the ban means that no official documents exist to explain it; accordingly, much confusion exists regarding its origin, its operation, and its demise. In what follows, we devise a theoretical framework for understanding the status and timeframe of the moratorium, constructed around the opposed poles of EU political relations (intergovernmentalism versus supranationalism); we rehearse the moratorium's beginning, working, and end; we contextualise it within the highly complicated EU authorisation procedure for GM products; and we discuss three interpretations of its status and timeframe: 1) that it

began in 1999 and ended in 2004; 2) that it began in 1998 and still exists today; and 3) that it never really existed at all.

I think here that you need briefly to address the 'so what' question. You need to persuade the reader from the start that this interesting story has wider lessons for the study of environmental politics/EU etc. One way of doing this might be to flag up your argument that the interpretation of events, especially in the EU, can be shaped to suit different political constituencies? But there might be other things to say too? [OK – see the brief statement below]

The wider implication of this analysis for the study of EU environmental politics is that ambiguity serves a useful political purpose, in that different interpretations of the same events can be constructed to appeal to and appease different constituencies, political and economic. However, such ambiguity also presents a difficult dilemma for the WTO to deal with.

Theoretical Framework

To **make sense of** the moratorium, we must analyse the forces at play. In particular, we must look at the two driving forces of EU integration, the opposing principles of intergovernmentalism and supranationalism. But, first, we must explain the little understood 'comitology' decision making procedure, which is of primary importance to **a grasp** of the moratorium. As Pollack (2003:127) notes, 'Policy making in the EU has been widely characterized as 'governance by committee', and the term 'comitology'...has been broadly used to convey the centrality of committees in EU governance'. The comitology system was created by the Council in the 1960s as a means of both circumscribing the power of the Commission, and providing it with expertise in its policy implementation, by requiring that its decisions should be submitted to special committees consisting of expert representatives from Member States (Dogan 1997:31). Comitology committees, unlike the **many** consultative and scientific committees which proliferate in the EU, therefore, perform a formal role in overseeing the way that the Commission implements EU rules. There are three kinds of comitology committees: 1) regulatory committees, where there has to be a vote (a qualified majority vote - QMV) in favour, for the Commission's decision to stand, in the absence of which, the decision is sent to the Council of Ministers; 2) management committees, where, provided the QMV is not negative, the Commission's decision stands; and 3) advisory committees, from which the Commission is obliged to obtain, but not necessarily to follow, advice (Pollack 2003:127). In 2003, there were 244 comitology committees, covering all policy sectors. Of these, 109 were regulatory committees (Dehousse 2003:800), including those which dealt with GM product authorisation applications. There are two alternative theoretical frameworks for understanding the comitology system: intergovernmentalism and supranationalism.

Intergovernmentalism

According to Dehousse (2003:798-9), intergovernmentalism was the original conception at the root of the comitology system: 'Initially conceived of as a control device – the eye and mouth of national governments, the primary task of which was to supervise the "executive" activities of the European Commission – committees have long been regarded as a reflection of the intergovernmental character of the European Community/EU'. Pollack (2003:135;125) characterises the intergovernmental conception in terms of rational choice theory: on this view, comitology committees serve as 'control mechanisms that allow member government principals to monitor and sanction the behaviour of their agent, the Commission'. Comitology committees are sites where 'strategic bargaining' takes place between Member States 'to maximise particular utilities at the expense of others' (Pollack 2003:136-7). Steunenberg *et al* (1996:329) point out that 'regulatory committees can block a measure proposed by the Commission. While not having decision making power of their own, the latter committees act as *gatekeepers*'.

Supranationalism

The second theoretical framework – supranationalism – interprets the comitology system as a consensual process of finding common solutions to EU problems, by pooling Member States' collective expertise. This interpretation, which was originally put forward by Joerges and Neyer (Dehousse 2003:802-3), is derived from sociological institutionalism and constructivism, and is

characterised in terms of ‘deliberative democracy’. Pollack terms it ‘deliberative supranationalism’, and describes how it views comitology committees as forums ‘in which national and supranational experts meet and deliberate in a search for the most efficient solutions to common policy problems...In this view, comitology is not an arena for hardball intergovernmental bargaining but rather for a technocratic version of deliberative democracy in which informal norms, deliberation, good arguments, and consensus matter more than formal voting rules, which are rarely invoked’ (Pollack 2003:125; 126). Supranationalism is, therefore, a ‘depoliticised’ (Pollack 2003:134), collective endeavour to promote the public good, not a political scramble for national interests by Member States. Dehousse (2003:802), who argues that the working practice of comitology committees has shifted from intergovernmentalism to supranationalism, points out that in the consensual culture of supranationalism, the Commission plays a leading role. He notes that ‘voting tends to be a rare event, and...the Commission – which chairs Committee meetings – exerts considerable influence over their work’, recording that ‘Out of a total of 2838 instruments submitted to the Committees in 2000, the Commission failed to obtain the necessary majority in only six cases, i.e. approximately 0.2 per cent of the total’.

In relation to the GM moratorium, there are features of both intergovernmentalism and supranationalism in the comitology system. **Three possible interpretations suggest themselves. The first interpretation reflects the perspective of Dehousse, who argues that there has been a shift from intergovernmentalism to supranationalism. On this view, in the wake of the BSE crisis and other European food scares, in 1998 the EC felt it prudent to permit intergovernmentalism to prevail – allowing Member States to block the authorisation of new GMOs. However, in 2004, in the face of a WTO challenge, the Commission felt constrained by the international pressure to wield supranational power to protect the interests of the EU as a whole, over the wishes of its Member States (Cantley 2005). The second interpretation reflects the perspective of Pollack, who argues that intergovernmentalism has prevailed throughout. On this view, the moratorium was instituted in 1998, and continues today. The third interpretation reflects the perspective of the Commission, and argues that supranationalism has prevailed throughout, maintaining that there has not been a moratorium at all, but only a change of pace in the GM authorisation process..**

Unclear, whose interpretations do you refer to in the above sentence? Where do they come from? Are they your interpretation of events via the different conceptual lenses? [YES] Or can they be referenced as coming from someone specific? [NO] It is a bit vague – needs to be made clear? or your take on [OK – see the amendments above]

A further complicating factor is that the European Commission is not a single monolithic entity, but a collection of individual Directorates-General (DGs), which are themselves sometimes in competition in pursuit of their own institutional or ideological interests, interests that have greatly influenced policy making. [It is not a view but a ‘fact’ – there WAS a power struggle. I’d start the sentence with ‘There was a power....’ And then put the refs to Patterson and Cantley in at the end of the sentence or paragraph [OK, see the amended text]] There was a power struggle over GMOs between DG XI (Environment) on the one hand, and DG XII, (Science, Research and Development), DG III (Industrial Affairs), and DG VI (Agriculture) on the other hand (Patterson 2000:328; Cantley 1995:638). DG XI enunciated a precautionary approach to GMOs, which, because it resonated with public opinion in many Member States, carried the day on the moratorium issue in 1999 (intergovernmentalism). By contrast, DG XII, DG III and DG VI enunciated a developmental approach, which resonated with the agri-biotech industry and the USA, and although they lost the argument in 1999, they lived to fight another day when, in 2004, a compromise was reached whereby the moratorium was at least partially lifted in return for strict labelling, liability, and traceability regulation (supranationalism).

In what follows, we examine the moratorium in the light of **these three possible interpretations.**

What do you mean by ‘this theoretical framework’ above – you have just outlined 3 interpretations? [OK, see the amended sentence]

Origin of the Moratorium

The moratorium is known for its repercussions; the economic effects it has had on US exports, the ensuing WTO challenge, and the accusation that it is responsible for the refusal of GM food aid by

some famine struck African countries. Grant (2005) sees the GM dispute between the USA and the EU as a clash between the opposing principles of 'substantial equivalence', used to regulate GMOs in the US, and 'precaution', now adhered to in the EU. Although not diametrically opposed in theory, in the case of GM regulation, substantial equivalence and the precautionary principle have come to be seen as practical and philosophical opponents. The principle of 'substantial equivalence' first emerged in the early 1990s in response to the need for regulatory oversight of biotechnology, and it is used by the OECD/FAO as a benchmark for the assessment of GM food safety; the 1996 FAO/WHO joint report states that 'The OECD has... advocated that the concept of substantial equivalence is the most practical approach to address the safety evaluation of food or food components derived by modern biotechnology. Substantial equivalence embodies the concept that if a new food, or food component is found to be substantially equivalent to an existing food or food component, it can be treated in the same manner with respect to safety' (FAO 1996:5). However, it is a difficult criterion to calibrate; as Millstone *et al* (1999:1) notes, 'The concept of substantial equivalence has never been properly defined; the degree of difference between a natural food and its GM alternative before its 'substance' ceases to be acceptably 'equivalent' is not defined anywhere, nor has an exact definition been agreed by legislators.'

Running counter to the principle of substantial equivalence is the precautionary principle, which has been defined as follows: 'According to the Commission, the precautionary principle may be invoked when the potentially dangerous effects of a phenomenon, product or process have been identified by a scientific and objective evaluation, and this evaluation does not allow the risk to be determined with sufficient certainty... the precautionary principle may only be invoked when the three preliminary conditions are met – identification of potentially adverse effects, evaluation of the scientific data available and the extent of scientific uncertainty' (Europa 2000). At the risk of over-simplification, we might say that the principle of substantial equivalence assumes that a GM product is 'innocent until proven guilty'; whereas the precautionary principle assumes that a GM product is 'guilty until proven innocent'.

At first, the EU was happy to adhere to the US principle of substantial equivalence, but a trade issue between the two blocks emerged when the EU abandoned the use of substantial equivalence, replacing it with the precautionary approach (Cantley 2005; Grant 2005). Originally, Directive 90/220 EEC regulated the 'Deliberate Release into the Environment' of GMOs, while the Regulation EC 258/97 Concerning Novel Foods and Novel Food Ingredients was used to authorise foods derived from biotechnology. Both 90/220 EEC and EC 258/97 contained provisions for the authorisation of GM products through a 'simplified procedure', using the principle of substantial equivalence (EU 1990; EC 1997). But these regulations were repealed - Directive 90/220 by 2001/18; and Regulation 258/97 by the Food and Feed Regulation (1829/2003) - and a step was taken away from the use of substantial equivalence, towards the precautionary principle. The idea of the moratorium first appeared when the decision to revise Directive 90/220 was made, and the Council of Environment Ministers felt that in the meantime, no new GMOs should be authorised, though the decision to enact a *de facto* moratorium was not taken until June 1999.

However, such a move had been threatened for some time. By the mid-1990s, many people in Europe had begun to doubt the safety of genetically modified foods and crops, and in February 1997, Austria became the first Member State to invoke the so-called 'safeguard measure' which is incorporated in article 16 of Directive 90/220 EEC, allowing Member States to impose bans on GM products that had been approved by the EU: 'Where a Member State has justifiable reasons to consider that a product which has been properly notified and has received written consent under this Directive constitutes a risk to human health or the environment, it may provisionally restrict or prohibit the use and/or sale of that product on its territory. It shall immediately inform the Commission and the other Member States of such action and give reasons for its decision' (EU 1990). Austria banned the GM maize variety, Novartis Bt 176, which had been approved under Directive 90/220 in January 1997. This led to a spate of GM bans throughout Europe: in 1997, Luxembourg banned the same Bt maize; in 1998, Greece and France banned GM oilseed rape varieties; in 1999, Austria banned two more varieties of maize; and in 2000, Germany banned one, and Italy four, varieties of maize. Although the US Food and Drugs Administration state in a 'chronology' that 'the Commission refuse[d] to challenge this action' (quoted in USDA 2003), this is not the case. In April 1998, Member State officials were asked to vote on a European Commission Proposal 'that Austria and Luxembourg should be asked to repeal their bans' (ENDS 1998). The vote was split, which signified an important negative shift in Member States' opinion of the technology.

However, tracing the precise origin of the moratorium is fraught with difficulties. As public and governmental hostility to GM technology grew, Directive 90/220 was criticised for lack of stringency, and on 26 November 1997, following 'a December 1996 report on the review of the 1990 directive' (EU 1997), the Commission adopted a proposal to amend Directive 90/220, to reflect the concerns of Member States (Europa 2004:5). This Commission proposal travelled through the EU's co-decision procedure, reaching the Council of Environment Ministers in June 1999 in Luxembourg, where, after a 'marathon 20-hour negotiating session between EU environment ministers' (*Guardian* 25 June 1999), a common position was agreed: 'The Council agreed to tighten up several aspects of the original proposal: the ethical dimension and precautionary principle were taken into account, products containing GMOs [would] have to be clearly labelled and the possibility of exempting products with a GMO content below a certain threshold from the labelling obligation was added. A maximum validity of 10 years was set for the initial consent to place a product on the market, accompanied by provisions on monitoring, labelling and mandatory consultation of the public on the release and placing on the market of GMOs and products containing GMOs' (EU 1999). It was also agreed at this Council meeting that no new authorisations should be passed until the new legislation necessary to enact these proposals was put in place. Jürgen Trittin, German Environment Minister¹, told a press conference immediately after the meeting that 'All member states and the European Commission hold the view that, during the time the directive is being amended there should not be any more authorisations under the old directive' (*ENDS* 1999). It was also pointed out, however, that 'Mr Trittin...[was] at pains to stress this afternoon that the agreement would not mean a formal 'moratorium' as there was no possible legal basis for such a thing' (*ENDS* 1999). Nevertheless, despite Mr Trittin's insistence that no formal moratorium would result from the Council meeting, this meeting is commonly seen as the birthplace of the moratorium².

Lying behind this Council decision were two 'declarations' by Member States. The first declaration, dubbed the 'French position', signed by the Danish, Greek, French, Italian and Luxembourg delegations³, underlined 'the importance of the Commission submitting without delay full draft rules ensuring labelling and traceability of GMOs and GMO-derived products and state that, pending the adoption of such rules, in accordance with preventive and precautionary principles, they will take steps to have any new authorisations for growing and placing on the market suspended' (Marris 2000:15). Although the 'French position' was fully supported by only five countries, this was sufficient to achieve a blocking minority and therefore a *de facto* moratorium. The more moderate second declaration, signed by the Austrian, Belgian, Finnish, German, Netherlands, Spanish and Swedish delegations⁴, stated their intention 'To take a thoroughly precautionary approach in dealing with notifications and authorisations for the placing on the market of GMOs; not to authorise the placing on the market of any GMOs until it is demonstrated that there is no adverse effect on the environment and human health; and to the extent legally possible to apply immediately the principles, especially regarding traceability and labelling laid down in the political agreement for a revision of Directive 90/220/EEC reached by the Council on 24/25 June 1999' (Marris 2000:15).

The End of the Moratorium

¹ Jürgen Trittin was President of the Environment Council because Germany held the Council Presidency for the first half of 1999.

² In October 1998, two biotech carnation varieties were the last GM plants to be approved under directive 90/220, although it would be another eight months before the Council of Environment Ministers meeting that 'established' the moratorium. From this point onwards (October 1998), the Commission and Member States stopped all approvals of GM crops and plants and ceased all issuance of licences. Strictly speaking, therefore, we might say that this is the beginning of the *de facto* moratorium, for if it is indeed *de facto*, it exists from the moment no more crops are authorised. Both Rosendal (2005:86) and Bernauer (2003:45) claim that the moratorium began in 1998: Bernauer dating it from April 1998 (when the last agricultural food authorisations took place – a swede variety and three varieties of maize).

³ Rosendal (2005:86) puts Austria in the first group, and claims that Belgium and Germany later joined it. Bernauer (2003:45-6) also puts Austria in the first group.

⁴ Bernauer (2003:46) omits the Netherlands from the second group.

One reason why the moratorium originated and persisted was because the comitology system was heavily politicised. Cantley (2005) draws attention to this politicisation (which reflects intergovernmentalism) of the Regulatory Committee, in that that these committees consist of 'people nominated by the Ministry *chef de file*, which for most countries will be civil servants in the Environment Ministry. It is a Regulatory Committee with representatives from the Member States, very much briefed according to their home policy. It is not a technical committee with people coming to offer their technical expertise'. In the Regulatory Committee, opinions must be taken according to qualified majority voting (QMV), which gives the Member States a second opportunity to voice an objection to a proposed dossier. As the Regulatory Committee is not an expert Committee but a politically nominated Committee, their 'opinion' generally reflects that of the Council of Environment Ministers. As Cantley (2005) explains, the Commission hoped that the Regulatory Committee would decide each case on its technical merits, but during the moratorium, intergovernmental voting in both the Regulatory Committee and Council of Ministers consistently failed to achieve a majority for or against GMO authorisations, thus passing the buck to the supranational 'next step' - the Commission.

This raises two important, interrelated questions. First, why has the Council of Ministers ceded autonomy to the EU's supranational decision-making body in a realm in which they could exert intergovernmental power? Cantley's answer to this question is that 'they are frightened of public opinion and it suits them much better for the Commission to be taking the decisions and taking the political flak, than the Member States (Cantley 2005). Second, why did the Commission allow intergovernmental indecision to frustrate its supranational power, when it could legally have ended the moratorium whenever it wanted to in the absence of Council decisions? One answer to this question is that the Commission was itself divided on the issue, with DG XI in favour of continuing the moratorium, while DG XII, DG III, and DG VI were in favour of lifting it; but that DG XI's political clout, though on the wane, was still strong enough for its viewpoint to prevail. Jackson (2004) provides another answer to this question: that 'the Commission probably hoped the Member States would get on with it themselves, and they probably wanted to be absolutely sure of their ground regarding individual crops'. In the unabridged version of a *Commission Communication* of 22 March 2005, the Commission asserted that the Member States should have faced up to their responsibilities in the Regulatory Committee and Council, and made decisions themselves (Cantley 2005).

Cantley (2005) claims that the voices in the Commission who opposed the moratorium did not feel strong enough to end it until a threat appeared from the World Trade Organisation (WTO): 'We had to make a political judgement, is the polite way of putting it. We were running scared, we did not reckon we could take the political heat, but then of course the USA came along and took us to the WTO'. The basis of the WTO challenge was the two part moratorium as seen from the US perspective; first a policy moratorium preventing new GM authorisations in the EU; second, Member State level moratoria preventing the use of authorised GMOs within their own borders – legal for only 3 months under the terms of the Directive, yet expanded to indefinite timeframes: 'On 13 May 2003, the United States and Canada requested consultations with the EC concerning certain measures taken by the EC and its member States affecting imports of agricultural and food imports from the United States and Canada. Regarding EC-level measures, the US and Canada asserted that the moratorium applied by the EC since October 1998 on the approval of biotech products has restricted imports of agricultural and food products from the US and Canada. Regarding Member State-level measures, the US and Canada asserted that a number of EC Member States maintain national marketing and import bans on biotech products even though those products have already been approved by the EC for import and marketing in the EC. On 14 May 2003, Argentina requested consultations with the EC on the same matter. According to the US, the measures at issue appear to be inconsistent with the EC's obligations' (WTO 2005). The Commission could no longer afford to let the moratorium continue in the face of WTO pressure. This illustrates the fine balancing act played by the Commission, juggling tensions both within its own ranks and within the Council of Ministers, against external pressure. Eventually, external pressure led the Commission to consolidate its powers, reel in DG XI and most Member States, and end (to some extent) the moratorium. Thus, intergovernmentalism at least partially gave way to supranationalism.

The licensing process came back to life in January 2003, three months after the revised directive on deliberate release took effect on 17 October 2002, and over four years after the last licences were granted in 1998. However, contrary to press and media interpretation and spin, just as the GM moratorium did not appear out of nowhere, neither did it come to a sudden and unexpected end at the will of the Commission; again it was a final stage in a gradual process of change. In January 2003,

following the entry into force of the revised deliberate release directive in October 2002, the Joint Research Centre announced that Member States had recommenced the authorisation procedure. On 27 January 2003, it was disclosed that Spain and the Netherlands had forwarded 'favourable opinions on applications for commercial approval of GM crops' (ENDS 2003a), maize NK 603 and oilseed rape GT 73, respectively, while the UK had listed a hybrid maize whose notification was at an earlier stage - the assessment had not yet been submitted. Although these applications were submitted for 'import and use in feed and industrial processing, *not for cultivation*' (EU 2004), their submission meant that 'EU governments [were] forced to take a stand on specific marketing proposals for the first time since 1998' (ENDS 2003a), returning the issue to the forefront of European politics and back to the attention of politicians and publics. In February 2003, further applications were submitted by Sweden, Belgium, Germany, the Netherlands, Spain and the UK, illustrating the will of many Member States to restart the authorisation process.

This looked like the end of the moratorium, and if the applications had gone straight through without opposition, GM foods could have been on the EU market within 60 days (ENDS 2003a). But it was not and they did not. Denmark, Greece, France, Italy and Luxembourg – the signatories to the first anti-GMO authorisation declaration in 1999, continued to oppose new licences, and still held a blocking minority (ENDS 2003b), leaving the choice with the Commission 'whether to approve the three applications, taking into account the opinions of EU scientists and member states' (ENDS 2003a). The moratorium was not regarded as being lifted until 19 May 2004, when, under the Novel Food Regulation, Bt 11 maize, Syngenta's GM pest-resistant sweet corn, was authorised by the Commission for food use in the EU (Rosendal 2005:86; *Scientist* 2004). Supranationalism had apparently prevailed.

However, as of December 2005 [could you update this?] [OK, done], no cultivation approvals had been granted. Moreover, of the many applications for Part C GM plant releases submitted since 19 May 2004, only four have been granted authorisation by the Commission under Directive 2001/18, and only two under Regulation 1829/2003 on Genetically Modified Food and Feed. Speculation on why only a few applications have, since 19 May 2004, been approved by the Commission has raised the suspicion that the Commission felt that if it let a few authorisations through, and granted a few commercial licences, then the WTO challenge would not stand. However, Jean Lambert (Green MEP) rejects this suggestion: 'I think that is a bit too politically sophisticated, I think they just wanted it to go through' (Lambert 2004). Another explanation is that several applications for authorisation are only now reaching the end of the procedure and the Commission will soon start approving them at a quicker rate. As of November 2005, [and update this?] [OK, done] nine GMO products had notifications pending under Directive 2001/18, including five notifications for modified maize, one for oilseed rape and one for GM varieties of potato, cotton and carnation (EU 2005a).

Nevertheless, even though few GM authorisations have been made by the Commission, Michel Somville, Green Parliamentary advisor points out, 'the Council had never obtained a QMV to accept a GMO authorisation' (Somville 2004). Unsurprisingly, therefore, 'the decision [to end the moratorium] triggered a backlash from the environmentalist community. Green MEPs said the Commission had committed a 'grave political error' and had 'sold out democracy' by saying yes to the approval where governments had not' (ENDS 2004). However, the Commission rejected this supranational charge: 'Mr Byrne mounted a vigorous defence of the move: 'the fact that ministers were unable to make a logical response is a matter for them. The decision is fully in conformity with democratic systems we've put in place in the EU... I don't believe there is any democratic deficit here'' (ENDS 2004).

Three Interpretations of the Status and Timeframe of the Moratorium

We now turn to a discussion of the status and timeframe of the moratorium, based on three interpretations: first, that a ban on new GM products was instigated in 1999 by the Council of Ministers' declarations in 1999 and ended, as is generally believed with the authorisation of Bt11 sweetcorn in 2004; second, that a ban on GM crops began in 1998 after the last GM authorisation, and remains in place today, as is asserted by the USA; and third, that no moratorium on GM products has ever existed in the EU, as the Commission officially contends. There are two inter-related issues here: the first issue is about the status of the moratorium – if the ban existed, did it apply to both crops and foods, or to crops only? [or presumably to nothing (if the Commission is correct?)]; the second issue is about the timeframe of the moratorium – (if there was a ban) if there was a ban, when did it start and

end? I think the above sentence needs some explanation and clarification [OK, see the amended sentence]

The *first interpretation* reflects the perspectives of both intergovernmentalism and supranationalism. Based on the dates and details of the Member States' declarations, this interpretation is that the moratorium was imposed on both crops and food, and existed between 1999 and 2004 as an informal blocking or paralysis of the legislative procedure founded on QMV within the Council of Ministers and the Regulatory Committees. This is the version of the moratorium which is presented to the public by the media, by NGOs and by European politicians [but you say in previous para that the US supports interpretation 2] [OK, I have deleted the word 'American'], and it is the simplest explanation. Certain Member States did not want GM crops and foods authorised, and through deployment of the weighted votes in the Council of Ministers, these states were able to 'paralyse the process' (Cantley 2005). Two groups of Member States, each group constituting a blocking minority, signed agreements not to approve and therefore not to authorise products (Schweiger 1999). As Karin Scheele (MEP and Parliamentary Rapporteur for Labelling and Traceability Regulations) explains, 'you need a majority in the Council to give the OK for new authorisations and they did not have it' (Scheele 2004).

There is little doubt that the majority of the Member States wanted a ban on new authorisations of GM products. Proof of this intention can be found in the fact that five states (Denmark, France, Greece, Italy and Luxemburg) signed the first anti-GM declaration, while seven states (Austria, Belgium, Finland, Germany, Netherlands, Spain and Sweden) signed the second anti-GM declaration. On this interpretation, the intergovernmental element lies in the fact that Member States were responsible for initiating the moratorium in June 1999, aided and abetted by DG XI (Environment); while the supranational element lies in the fact that the Commission, in the shape of DGs XII, III, and VI (Research, Enterprise and Agriculture), was responsible for (partially) ending it in May 2004.

The *second interpretation*, reflecting a wholly intergovernmental perspective, holds that that the moratorium started either with the last crop authorisations in April 1998, or with the final plant authorisations in October 1998, and is still in place today. This is the view held by the US administration, and by some Member States. (does anyone actually support this interpretation or is just your interpretation of the intergovernmentalist approach?) [OK, both, see extra sentence] Focussed on the intergovernmental ability to prevent crop and plant authorisation, the second interpretation rejects the view that the moratorium ended in 2004, as no new GM *crops or plants* have been authorised for *cultivation* since 1998, though several have been approved for import and food use. Although seventeen MON 810 maize crop varieties were added to the Common Catalogue in 2004, their authorisation was, in fact, granted before the moratorium came into effect in 1998. Since, on this interpretation, the moratorium only applied to crops⁵, it continues today, because only food products have been granted approval since 1998. Moreover, even in relation to GM foods, it could be argued that the moratorium is not really over, because the replacement in 2004 of the Novel Foods and Novel Foods Ingredients Regulation, which contained 'substantial equivalence' clauses for simplified approvals, by the more stringent Food and Feed Regulation, has made restrictions on GM food *more*, rather than *less*, stringent since the 'end' of the so-called moratorium

Another reason for holding that the moratorium is not yet over, is the decision of the Environmental Council in June 2005 to reject the Commission's proposal that Austria, Germany, Luxemburg, France and Greece be forced to repeal their bans on authorised GM crops⁶. Barbara Helfferich (2005) environment spokesperson for the Commission, said that 'this is the first time that Member States have politically given the signal that they are against the lifting of these safeguard clauses'. National bans on GM crops authorised by the Commission are considered to be part of the EU moratorium from the perspective of the USA and its WTO challenge. Therefore, their public defence by the Council indicates a continuing commitment by Member States to an anti-GM stance, and a continuing battle between the intergovernmentalist preferences of Member States, and the supranationalist preferences of the Commission.

⁵ Attwooll (2004) appears to affirm that the moratorium only applied to crops: 'there was an informal acceptance between Member States that until much more research had been done on GMs, there would not be any commercial planting'.

⁶ Austria has banned three varieties of maize (Bt 176, MON 810 and T25); Germany and Luxemburg have banned Bt176 maize; and France has banned Swede rape MS1/RF1 and Topas 19/2.

In the European Parliament, the view that the moratorium is not really over is implied by one Green MEP who commented that 'it is pretty creaky, you could not now say we have a total moratorium. Whether you say that it is just an occasional crack or whether that is the door gradually opening...choose your metaphor!' (Lambert 2004). A pro-GM MEP, John Purvis, said that although 'I was glad to see the end of the Moratorium', it had not changed much: 'barely two or three things have been authorised and still the process of approving them is so convoluted that it makes it almost impossible to get them broadly accepted. The approval system that was 'moratoriumed' was already pretty complicated and convoluted. Now a lot of it ultimately depends on each Member State and whether they want to take the technology forward or not. It is not as if it is a common market approach and even without the moratorium it is still difficult' (Purvis 2004). Purvis' view reinforces the intergovernmental interpretation, confirming that Member State power still prevails over the will of the Commission.

The *third interpretation*, which reflects the supranational perspective, is that the moratorium on GM products never really existed at all. This interpretation is the line officially taken by the Commission itself, not least because otherwise, it would find itself admitting that the EU was in breach of WTO rules. In a March 2005 *Commission Communication*, we are informed that 'in its statements and submissions [to the WTO] the Commission has rejected the misguided notion that there was a 'moratorium' on GMOs in Europe' (EU 2005). The Commission's 'official answer' is 'What moratorium?' We did not introduce a moratorium. Eight or nine of the Member States decided that they would not authorise positive votes on any of the dossiers until they got the traceability and labelling regulations. And since those eight or nine together constituted a blocking minority they could in effect paralyse the process' (Cantley 2005). Bernauer (2003:155) gives some support to this interpretation when he states that 'there is no formal moratorium in the EU but only a slowdown in approvals that is temporary...based on the precautionary principle'. In other words, the moratorium was just part of the normal give-and-take of EU policy-making, led by the Commission.

Another way of expressing this third interpretation is to point out that the moratorium was so narrow in scope, that it scarcely deserves the appellation of 'moratorium'. First, as Scheele (2004) notes, it only applied to new products: 'the moratorium was often viewed wrongly. The moratorium did not stop GMOs, but stopped the authorisation of new products'. This meant that previous authorisations of GM products continued during the period covered by the *de facto* ban, such as four GM maize strains which were authorised between June and October 1998 for consumption as 'maize derivatives', 'including maize oil, maize flour, sugar and syrup' (Europa 2005). Second, seven new GM food products were granted licences before the 'end' of the moratorium was signalled by the authorisation of Bt 11 Maize, also a GM food. For example, on 8 November 1999, less than five months after the official 'start' of the moratorium in June 1999, licences were granted for GM rapeseed oil; while in December 2002, under the Novel Foods and Novel Food Ingredients Regulation, two types of cottonseed oil made from GM cotton were authorised for use in products including 'fried foods, baked foods and snack foods' and were granted licences for sale (Europa 2005). This illustrates the use of the Novel Foods and Novel Food Ingredients Regulation's simplified 'substantial equivalence' procedure, dubbed a loophole by some critics. Third, even in relation to GM crops, the moratorium did not ban 'experimental releases', which continued throughout the moratorium period and beyond, under Part B of Directive 2001/18. So what appeared to be a comprehensive moratorium banning GMOs was, in fact, not: previously licensed GM crops and foods remained on the market, while new GM food products were granted licences, despite the opposition of Member States to such authorisations, as expressed in both the first and the second declarations, which refer by inference to both crops and foods⁷. All that remained, therefore, was a ban on new GM crop authorisations for commercial cultivation.

Which of these three interpretations of the moratorium we adopt, depends on our view of its status. If we view the moratorium as applying to *all crops and foods*, then we adopt the third interpretation, that, effectively, it never really existed; if we view it as applying only to *new crops and foods*, then we adopt the first interpretation, that it began in 1999 (or 1998), and ended in 2004; if we view it as applying

⁷ The first declaration (signed by five Member States) seeks 'to have any new authorisations for growing and placing on the market suspended'; while the second declaration (signed by seven other Member States) affirms that the signatories will 'not authorise the placing on the market of any GMOs until it is demonstrated that there is no adverse effect on the environment and human health'. Both these formulations imply that the Member States include food in their conceptions of GMOs

only to *new crops*, then we adopt the second interpretation, that it began in 1999, continues today, and will remain in place until the first licence for new GM crop cultivation is granted.

Conclusion

In this article, we have examined the circumstances surrounding the so-called ‘moratorium’ on the authorisation of new GM products imposed by the EU during 1999-2004. We have found that the moratorium was not an official policy adopted by the EU, but a default outcome of deadlock in the Regulatory Committee and the Council of Environmental Ministers, which the Commission chose not to resolve. Moreover, the moratorium did not revoke pre-1999 authorisations of GM crops or foods; nor did it prevent new authorisations of GM food products during 1999-2004; nor did it ban experimental releases. At most, therefore, the moratorium was very limited in its extent. Since 2004, largely as a result of the action taken by the USA, Canada and Argentina in referring the moratorium to the WTO, the European Commission has begun to clarify the conditions under which it would be prepared to authorise new GM products crops (including labelling, traceability and liability). But no new GM crops have been authorised since the ‘end’ of the moratorium occurred in May 2004 with the licensing of Syngenta’s Bt 11 Maize, as a sweet corn food product. We have rehearsed three interpretations which seek to explain the status and timeframe of the moratorium: first, that it had a defined beginning and end (which reflects both intergovernmentalism and supranationalism); second, that it had a beginning but not an end (which reflects intergovernmentalism); and third, that it never really existed at all (which reflects supranationalism). Few EU policy positions can have exhibited such persistent ambiguity.

What does this analysis tell us about EU environmental politics? First, it illustrates the continuously shifting tension within the Commission between environmental and **economic** pressures. [what do you mean here by ‘developmental pressures’?] [OK, **economic pressures, as amended**] During the late 1990s, anti-GM pressure from environmental NGOs and the media helped to stoke up public opinion against multi-national agri-biotech corporations (especially American), and several Member States responded by changing their generally tolerant stance to one of precaution if not outright opposition to the licensing of GM products, thereby creating a policy climate in which the moratorium became possible. However, during the early 2000s, as the GM issue was displaced in the public mind by other concerns, and the duration of time since the last ‘food crisis’ increased, the tide began to turn, and **economic** pressures re-asserted themselves, thereby creating a policy climate in which the moratorium became problematic. Second, the analysis shows how an external threat – in this case the referral of the moratorium to the WTO – can concentrate the mind of EU decision-makers, serving as a trigger for a change in policy stance. Faced by the possibility of a damaging trade row with the USA, the Commission acted to downgrade the significance of the moratorium. Third, the analysis demonstrates the value of ambiguity in EU politics. Because of the different interpretations of the moratorium, most parties can claim that their positions have been vindicated. The Commission can maintain to the USA and the WTO that there never was an official moratorium, and that even if there was an unofficial moratorium, it has ended. The anti-GM Member States can maintain to their electorates and the environmental movement that the moratorium on approvals of new GM crops for cultivation is still effectively in place. The pro-GM Member States can maintain to the agri-biotech MNCs that there is no ban on either previously-licensed GM crops and foods, or newly-licensed GM foods. In short, the ambiguous status of the moratorium provides something for everyone - an ideal policy outcome **for the leading players, though one that leaves a difficult problem for the WTO to resolve. (I deleted the ?)** [OK]

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