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ANALYSIS

Illegal GMO releases and corporate responsibility: Questioning the effectiveness of voluntary measures

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ABSTRACT

Recent years have seen a number of cases of ‘accidental’ or ‘unintentional’ releases of genetically modified organisms (GMOs) that were not approved for human consumption or in some cases even for commercial planting. The environmental, economic, and social implications of the release of unapproved varieties of GMOs are potentially significant. The agricultural input industry has recently embraced Corporate Social Responsibility (CSR) reporting and some of its major players are participants in the UN’s Global Compact. While CSR and the Global Compact encourage internalization of environmental costs and application of the precautionary principle amongst firms, in the case of illegal GMO releases these measures have proven extremely weak. In the case of illegal GMO releases, external, state-based regulation which places liability squarely on firms is likely to be much more successful as a means to prevent future occurrences of this problem.

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1. Introduction

The promotion of environmental responsibility amongst transnational corporations (TNCs) has become an important topic of debate in recent years. There has been a push for the mainstreaming of environmental considerations in business operations, including the internalization of environmental costs and application of the precautionary principle as measures that firms can and should take to make themselves more responsible for the environmental impacts of their activities. In other words, firms should ensure that the environmental costs associated with their activities are incorporated into the cost of their products, rather than be externalized and borne by society as a whole. And firms should exercise precaution in terms of the introduction and handling of products that have uncertain impacts and that may carry risks. But while these basic

environmental goals might be agreed upon — indeed they are highlighted as key principles in the Rio Declaration (Principles 15 and 16) — the choice of governance mechanism to best achieve them is less clear. Should environmental responsibility measures be imposed in the form of strictly monitored government regulations? Or should environmental responsibility be left to firms to work out on their own, through voluntary measures? While government regulation and oversight might achieve these environmental goals in a blunt manner, the business community argues that systems that incorporate voluntary measures can also achieve them, but in a more efficient way.

This basic policy debate has been a central feature of global discussions on environmental protection since the Stockholm Conference in 1972 (see Utting, 2000). While the 1970s saw many governments pursue a regulatory command-and-control approach, the emphasis shifted in the 1980s and 90s to an

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approach to regulation where voluntary corporate mechanisms play a key role. This voluntary approach was endorsed by the Rio Earth Summit in 1992, and recently was boosted by the World Summit on Sustainable Development in 2002. We have now had at least 15 years of corporate voluntary measures as a prominent mechanism by which to achieve environmental responsibility amongst firms. But have these measures lived up to their promises?

This article explores corporate responsibility with respect to illegal releases of genetically modified organisms (GMOs). Recent years have seen a number of cases of ‘accidental’ or ‘unintentional’ releases of genetically modified organisms that were not approved for human consumption or in some cases even for commercial planting in the country in which they were released. In three high-profile cases of illegal releases, all of which initially occurred in the US, crops produced with the unapproved seeds entered into the global food system via international shipments. The agricultural biotechnology industry has embraced voluntary corporate responsibility measures, and in the US regulators rely on firms to voluntarily report on their compliance with the law. But, as I argue in this article, the behavior of the firms responsible for the illegal releases in these three cases raises important questions about the effectiveness of voluntary corporate responsibility measures. In particular, application of the precautionary principle and internalization of environmental costs appear not to be high on these firms’ agendas. One potential explanation for this weakness is that access to scientific information on the environmental impact and safety of these varieties of GMOs has been highly asymmetrical. The firms that developed those varieties have privileged access to information on the varieties in question, making it difficult for other actors, including environmental groups, members of the public, and even government regulators, to verify the firms’ claims. Incentives for corporate responsibility appear to be weak in such a context. In these cases, government regulators and legal courts are likely to be the strongest motivators to get firms to pay for the damages incurred due to the illegal releases and to change their safety practices to prevent illegal releases.

The article first provides a brief review of voluntary corporate environmental responsibility measures in general and on the part of the agricultural biotechnology industry in particular. It then examines three major incidents of illegal releases of GMOs and discusses the limitations of the voluntary corporate responsibility measures on the part of the corporations involved in these cases. The paper concludes with a discussion of the need for stronger measures to impose accountability in agricultural biotechnology industry as a necessary complement to corporate voluntary measures.

2. Corporate responsibility measures and the agricultural biotechnology industry

Holding TNCs responsible and accountable for the environmental and social impacts of their global operations is an idea that has been around for some time. The UN Centre for Transnational Corporations sought to impose an international code of conduct for TNCs back in the 1970s (FOE, 1998; Clapp, 2005). But the initiative was stopped short in the run-up to the Rio Earth

Summit, where industry was incorporated into the global dialogue on ‘sustainable development’. At this time voluntary industry measures were promoted as being the appropriate governance mechanism by which to improve the environmental impact of global firms. This shift to a voluntary approach also refocused governments’ approach to ensuring regulatory compliance. Increasingly, governments are relying on self-auditing and environmental reporting by firms as a means by which to provide oversight and ensure regulatory compliance, as opposed to relying only on government inspectors do the job.

Fifteen years later, there is a mind-boggling suite of voluntary measures that has emerged (see KPMG and UNEP, 2006 for a survey). There is a wide range of these types of activities, from those which are largely controlled from within industry, such as CSR Reporting, to those which involve signing onto a set of externally set principles, such participation in the UN Global Compact (GC), to those which are controlled by independent non-state actors or international organizations, such as ISO 14001 environmental management standards or certifications for ‘green products’ (Cashore, 2002). It should be stressed, however, that these various measures are still voluntary in nature. Firms can sign on to these initiatives, but there is no legal requirement that they do so. Since the early 1990s, most large transnational firms have signed onto one or more of these voluntary initiatives, with CSR reporting and the Global Compact being perhaps the most commonly adopted, as they are the easiest to engage with and they have no strict enforcement mechanism.

Key themes that run through these voluntary measures revolve around environmental responsibility — encompassing a mainstreaming of environmental considerations in business decisions and application of the precautionary principle. Although the notions of sustainability and precaution are themselves widely contested in terms of their precise meanings (Stirling, 1999, 2003; O’Riordan and Jordan, 1995), important elements of these concepts have been defined in the context of corporate voluntary measures. The Global Compact, for example, is a UN initiative that requests firms to voluntarily adopt 10 principles of good corporate citizenship (see Therien and Pouliot, 2006). With respect to the environment, the GC asks participating firms to take a precautionary approach to their business operations, including building in safety margins when setting standards in cases of uncertainty, and to ban or restrict activities whose impact on the environment is uncertain (Principle 7). It also calls on firms to undertake initiatives to promote environmental responsibility, (Principle 8), and to develop and diffuse environmentally friendly technologies (Principle 9).¹ CSR reporting, though individual to each firm that engages in it, also promotes these same broad environmental themes. The Global Reporting Initiative, for example, attempts to provide a benchmark for CSR reports, by providing guidelines on what these reports should include and how indicators should be measured. A growing number of firms use these guidelines when drafting their reports (see Lamberton, 2005, pp.10–13). Though initially an industry-controlled initiative, the GRI is now a collaborating centre with the UN Environment Program (UNEP) and also cooperates

¹ <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>.

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