

# CRS Report for Congress

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## U.S. European Agricultural Trade: Food Safety and Biotechnology Issues

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### Summary

Differences over food safety measures and biotechnology have affected U.S.-European Union (EU) agricultural trade. Particularly contentious in both bilateral trade relations and in World Trade Organization (WTO) dispute settlement has been the EU's ban on meat produced using growth-promoting hormones. EU policy on bio-engineered products has also been a contentious issue although no formal disputes have been raised in the WTO. Developments in regulation and labeling of bio-engineered products could potentially affect future U.S.-EU agricultural trade. This report will be updated as events warrant.

### Introduction

Exports of \$6.4 billion of agricultural products make the EU the United States' third largest market for U.S. farm products. Soybeans, which benefit from a zero-tariff binding and from an EU-wide ban on the use of meat-and-bone meal in livestock feeding, are the leading export. However, U.S. soybeans exports to the EU have declined—from \$2.1 billion in 1996 to \$1.1 billion in 2000-- as consumer concerns about bio-engineered crops have grown and the EU has sought to import non-biotech varieties from other sources. The EU also is the leading U.S. export market for corn by-products (corn gluten feed), almonds, dried fruit, wine and tobacco. The EU had an agricultural trade surplus of around \$1.7 billion with the United States in 2000. Although it remains a key market for U.S. farm products, the EU's share of total U.S. farm exports has declined from just over 30% in 1982 to around 15% currently.

The application of import restrictions in agricultural trade based on food safety considerations, such as the EU's meat hormone ban, is governed by the WTO Agreement on Sanitary and Phytosanitary (SPS) measures. That Agreement requires that SPS measures be applied only to the extent necessary to protect health and that they be based on scientific principles and on assessment of risk. The Agreement encourages countries to base their SPS measures on international standards and to recognize each others' standards (equivalency) as long as they achieve the same degree of protection. Disputes

between WTO members over the requirements of the SPS agreement fall under WTO dispute settlement procedures, which were strengthened as part of the 1994 Uruguay Round multilateral trade agreements to make procedures more expeditious and decisions more binding. The ban effectively has eliminated U.S. beef exports to the EU, except for around 6,500 metric tons of non-hormone treated beef imported by the EU as part of an 11,500 ton import quota.

Differences over measures affecting trade in bio-engineered crops and foods also are an issue in U.S.-EU agricultural trade. Issues have been dealt with in bilateral U.S-EU discussions and, with the exception of the Biosafety Protocol Negotiations, in non-negotiating fora such as the Organization for Economic Cooperation and Development (OECD) or the Codex Alimentarius Commission.<sup>1</sup> Bringing disputes over bio-engineered foods into the WTO appears problematic because there are no specific WTO rules and disciplines for bio-engineered products in international trade.<sup>2</sup> Establishing such rules and disciplines may be on the agenda of the on-going WTO multilateral agricultural trade negotiations.<sup>3</sup>

### **The Meat Hormone Dispute<sup>4</sup>**

Since 1989, the EU has banned imports of meats produced with growth-promoting hormones. The international counterpart of internal EU regulations that prohibit use of hormones in domestic meat production, the ban has been justified as needed to ensure food safety and consumer health. Although entirely unrelated to hormone use, concern about "mad cow disease" or BSE (bovine spongiform encephalopathy), a disease of cattle shown to be transmissible to humans as Creutzfeldt-Jakob Disease (CJD), has created a climate in Europe that is unfavorable to resolving the meat hormone issue.

In 1996-97, the United States successfully challenged the ban as a violation of the SPS Agreement in WTO dispute settlement. WTO dispute and appellate panels ruled

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<sup>1</sup> *Biosafety Protocol for Genetically Modified Organisms: Overview* by Alejandro E. Segarra and Susan R. Fletcher, CRS Report RL30594, July 5, 2000. The OECD is an organization that provides for intergovernmental discussions among 29 industrial countries in the fields of economic and social policy. The Codex Alimentarius Commission is a joint activity of the U.N. Food and Agricultural Organization and the World Health Organization. The Commission drafts nonbinding standards for food additives, veterinary drugs, pesticide residues and other substances that affect consumer safety.

<sup>2</sup> Trade lawyers differ over the need for *sui generis* rules and disciplines for bioengineered products in international trade versus other approaches such as interpreting or clarifying existing agreements to take them into account. With respect to the latter approach, if restrictions on bio-engineered products were justified on the basis of food safety concerns, then the provisions of the WTO's SPS Agreement could apply. Labeling could fall under the terms of the Technical Barriers to Trade (TBT) Agreement.

<sup>3</sup> The U.S. proposal in the current round of WTO agricultural trade negotiations calls for procedures for approval and regulation of the products of agricultural biotechnology that are transparent, predictable, and timely.

<sup>4</sup> For detail, including historical background, on this dispute see *the European Union's Ban on Hormone-Treated Meat*, by Charles E. Hanrahan, CRS Report RS20142.

(August 1997) that the ban was not based on scientific evidence nor on an assessment of the risk to health from meat treated with hormones. The appellate panel left open the option to the EU to conduct a risk assessment of hormone-treated meat and a WTO arbitration panel subsequently ruled that the EU had 15 months from the date of the appellate decision to bring its ban into compliance with SPS rules.

Although the United States called for the immediate lifting of the ban, the EU kept it in place while it conducted its risk assessment. On May 13, 1999, the deadline for EU compliance with the WTO dispute ruling, the EU indicated that the ban would continue in force. As justification for continuing the ban, the EU Commission offered what it said was evidence that one of the U.S.-approved hormones is carcinogenic. U.S. trade and veterinary officials rejected the EU evidence which, they said, ignored and contradicted numerous scientific studies, including some by European scientists, that show "absolutely no human risks associated with consumption of beef from animals treated with growth-promoting hormones." With WTO approval, the United States retaliated against the EU by imposing prohibitive tariffs on \$116.8 million of EU agricultural imports.

The EU has offered to negotiate compensation in lieu of retaliation, but the United States has held to its position that compensation would be acceptable only as an interim solution until the EU lifted the ban. The EU's approach to compensation focuses on increasing the quota for non-hormone treated beef and reducing the 20% in-quota tariff. Under a compensation scheme, U.S. retaliation would be reduced by the amount of the increased value of exports of non-hormone treated meat. The EU seeks sanctions relief especially for French exports, particularly hard hit by U.S. retaliation.

U.S. beef producers, initially receptive to an enlarged quota, became disenchanted with the compensation negotiations when (May 24, 2000) the EU Commission announced that it was banning outright one of the hormones and that the ban on the others would be maintained provisionally. U.S. meat industry representatives expressed concerns that such an approach meant that the EU would in the future ask for WTO approval to remove the U.S. retaliation (and thereby end the compensation) because the ban would then accord with WTO rules.<sup>5</sup> The prospect of ending compensation without lifting the ban, according to the meat industry representatives, constitutes a disincentive for the industry to invest in the additional production of non-hormone treated beef needed to fill an expanded quota.

Resolution of the hormone dispute could remove a critical irritant to the overall U.S.-EU trade relationship.<sup>6</sup> Trade experts indicate that the meat hormone dispute has spilled over into other trade disputes such as the EU's successful challenge to U.S. tax breaks for off-shore export companies.<sup>7</sup> How the hormone issue is resolved could have important implications for future disputes over SPS measures. The WTO meat hormone decision is a strong affirmation of the Uruguay Round SPS Agreement and its requirements that countries base their SPS measures on scientific justification and risk assessment. At the

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<sup>5</sup> "Industry Letter on U.S.-EU Beef Talks", *Inside U.S. Trade*, November 10, 2000.

<sup>6</sup> *Trade Conflict and the U.S.-European Union Economic Relationship* by Raymond J. Ahearn, CRS Report RL30732, November 8, 2000.

<sup>7</sup> See *The Foreign Sales Corporation (FSC) Tax Benefit for Exporting and the WTO* by David Lee Brumbaugh, CRS Report RS205171.

same time, the dispute illustrates the difficulty of enforcing multilateral rules and procedures that are in conflict with popular concerns and national political decisions.<sup>8</sup>

## **Bio-engineered Products**

Bio-engineered crops and food products that contain them are leading to conflicts that have already disrupted U.S.-European trade in soybeans and corn. At issue are both approval procedures and labeling requirements for genetically modified (GM) products (crops and processed foods). Underlying the disputes are pronounced U.S.-EU differences over environmental effects of GMOs and the safety of GM foods.

U.S. farmers have rapidly adopted GM crops. More than 20 bio-engineered crops are now sold commercially and others are being developed. Among those adopted are herbicide-, insect-, and disease-resistant hybrids and varieties, mainly of soybeans, corn and cotton. In 2000, an estimated 54% of soybean acreage and 25% of corn acreage (down from 33% in 1999) in the United States are planted with GM varieties.<sup>9</sup> Reduced input costs and enhanced production flexibility (e.g., reduced tillage) are among reasons cited by farmers for adoption of GM varieties. Europe has been slower to accept and introduce GM crops, although the European Union has approved some GM varieties of soybeans and corn--Monsanto's Roundup Ready soybeans and Novartis's BT corn. (Monsanto's soybean variety is resistant to the herbicide Roundup. BT corn contains a gene that gives the plant resistance to the corn borer.)

Although some consumer, environmental, and scientific groups in the United States are calling for more regulation and monitoring of GM crops and food products, polls and surveys indicate that consumers in the United States have been largely accepting of bio-engineered products and their safety for human consumption. In the EU, however, there has been widespread concern among consumers about the quality and safety of the foods they consume, including GM foods. Official handling of the BSE ("mad cow disease") crisis is often cited as having undermined consumers' confidence in food regulatory agencies and scientific assurances about food safety. The discovery of dioxin in poultry feed in Belgium and recent outbreaks of "mad cow disease" in EU countries thought to be BSE-free have exacerbated food safety worries. Environmental groups, such as Greenpeace, have been particularly active in opposing the introduction of GM crops and consumption of GM foods.<sup>10</sup> Views espoused by Greenpeace are widely shared by organized consumer groups throughout the EU. These groups and some scientists in the EU maintain that the long-term effects of GM products on health and the environment are unknown and that GM products should bear cautionary labels to inform consumers about their contents.

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<sup>8</sup> Marsha A. Echols, "Food Safety Regulation in the European Union and the United States: Different Cultures, Different Laws," *Columbia Journal of European Law*, Columbia University, Summer 1998, pp. 525-543.

<sup>9</sup> U.S. Department of Agriculture, National Agricultural Statistics Service, *Acreage*, June 2000.

<sup>10</sup> Position taken by Greenpeace can be found at [<http://www.greenpeace.org/~geneng/>]

The U.S. approval process for GM crops has facilitated their introduction into U.S. agriculture and their use in food processing.<sup>11</sup> The U.S. position has been that GM foods are no different from non-GM foods. Thus existing regulations for approving them are appropriate and adequate. Labels are not required, with some exceptions, although voluntary labeling as to GM content is permitted. The EU, however, maintains a separate regulatory system for GM products; requires mandatory labeling; and currently has in place a de facto moratorium on the approval of new GM crops while the European Commission develops new EU-wide legislation for approving and regulating bio-engineered products.

The EU Commission has been working on a new regulatory framework for GM products for some time. The Commission's role is not only to decide on the introduction of GM crops into EU agriculture, but also to regulate their use. Even after Commission approvals there can be delays in actually introducing the crops into EU agriculture. For example, France, which had initially requested the approval for BT corn, subsequently prohibited its sale. Austria and Luxembourg continue to prohibit the use of GM crops. Approval by the EU Council of Ministers of three varieties of GM corn after months of delay has been blocked by France, causing the loss, according to the U.S. Department of Agriculture (USDA), of an estimated \$220 million annually of corn exports to Spain and Portugal.

As to labels, the EU argues that they should be mandatory so as to respond to consumer desires for information about the food products they consume. Food processors in the EU are required to perform mandatory DNA or other laboratory tests to determine the GM content of products and label them accordingly. The United States, on the other hand, has opposed mandatory labeling, with some exception on the basis that available scientific evidence shows that food products made from GM crops approved for human consumption pose no threat to human, animal or plant health, and therefore should not need special labels.

Some U.S. companies, like their EU counterparts, have been taking steps to respond to perceived consumer demand, both at home and abroad, for GM-free foods or approved GM products. A number of U.S. food companies, including Heinz, Gerber, Frito-Lay and McDonalds have announced that they will not use GM ingredients in their products. The recent discovery of the presence of a GM corn, the StarLink variety, approved for animal feeding, but not human consumption, in tacos and some other products also evoked a response from the grain processing sector.<sup>12</sup> A.E. Staley, the U.S. corn-processing unit of a British commodity firm, Tate and Lyle PLC, has suggested that farmers consider raising only non-GM crops. Archer, Daniels, Midland (ADM), a processor of corn and soybeans, has urged its suppliers to produce only crops that have “full feed and food approval world-wide.”<sup>13</sup>

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<sup>11</sup> *Food Biotechnology in the United States: Science, Regulation, and Issues* by Donna U. Vogt and Mickey Parrish, CRS Report RL30198, June 2, 1999.

<sup>12</sup> *StarLink Corn Controversy: Background*, by Alejandro E. Segarra and Jean M. Rawson, CRS Report RS20732, November 17, 2000.

<sup>13</sup> “Companies: Grain Processors Apply New Pressures to Biotech Industry—U.S. Farmers Get Warnings Against Modification of Crops,” *Wall Street Journal*, European Edition, November 20, 2000, p. 6.

**Recent Regulatory Developments.** Recent developments in both the United States and the EU indicate that their respective regulatory frameworks for GM foods are evolving. The EU appears ready to eliminate its de facto moratorium on approvals of GM crops under an agreement reached in early December 2000.<sup>14</sup> According to reports, the moratorium could be lifted as early as February 2001. Under a revised approval system, the European Commission will submit applications to plant GM crops individually to a committee of experts. The Commission would then seek member governments collective approval for products endorsed as safe by the experts provided the companies requesting approval agree to be bound by the legal framework to be established under the December 12 agreement. The legal framework would require that licenses for GM products be renewed periodically, that the public be consulted more widely, and that companies provide clear labeling.

The EU is also moving toward the establishment of an EU-wide food safety agency with advisory responsibilities, whose charge would be to assure EU consumers of the safety of foods they consume, including foods with GM ingredients. According to the EU's Commissioner for Health, David Byrne, such an authority would, among other things, restore citizens' confidence in biotechnology for agriculture and food through better information and communication. The new food authority would also, he said, bring a coherent and predictable regulatory framework to GM foods, feeds, and seeds.<sup>15</sup>

In the United States, the Clinton Administration (in May 2000) announced plans to require biotech companies to notify the Food and Drug Administration (FDA) four months before marketing a GM food. FDA would also create a regulatory mechanism by which foods could be labeled, voluntarily, as free of GM ingredients. USDA would also become directly involved in validating new scientific tests to detect the presence of GM ingredients in foods. More recently, in response to the StarLink controversy, USDA has begun the process of developing standards for separating biotech crops from conventional ones in calling for public comment on the issue by February 28, 2000.<sup>16</sup>

The U.S.-EU Biotechnology Consultative Forum, a panel of experts, selected to advise the United States and the EU on the pros and cons of biotechnology, including GM crops and GM foods in June 2000 made its report to the U.S.-EU summit on December 18, 2000 in Washington. Among its recommendations, was a proposal that the United States and the EU establish "content-based mandatory labeling requirements for finished products containing genetic material."<sup>17</sup> What impact this recommendation would have as the new Administration takes its place in the Trans-Atlantic dialogue on biotechnology and other issues remains to be seen.

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<sup>14</sup> Deborah Hargreaves, "Deal to Revise Laws on GMOs", *Financial Times*, London: December 13, 2000, P. 2; and "New GMO Laws Imminent Say EU Officials", *AgraEurope*, AE1931, December 15, 2000.

<sup>15</sup> "EU to Continue Efforts for Consumer Acceptance of G MO Products," *SCI Policy Report*, June 26, 2000, p. 4.

<sup>16</sup> For details, see [<http://www.usda.gov/gipsa/rulemaking/current/fed.reg.htm>]

<sup>17</sup> *The EU-U.S. Biotechnology Consultative Forum: Final Report*, December 2000, p. 16.