



TRANSATLANTIC POLICY FORUM

Transatlantic market and WTO-related issues (with particular focus on agriculture)

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Introduction

An ambiguous record. The trade relations between the EU and the US have no equivalent in the world, with integrated economies and huge cross-direct investments, in particular. The trade relationship between the entities has nevertheless been spotty during the last decade. Discussions regarding an EU-US free trade area initiated by Commissioner Brittan in the 1990s and briefly revived by Chancellor Merkel in 2007 have only led to somewhat symbolic decisions.¹ Even modest trade facilitation agreements, such as the 1998 Agreement on mutual recognition of standards, have not been fully implemented. Since 2001, the two entities have often appeared more as enemies than partners in the Doha negotiations. Since the creation of the World Trade Organization (WTO) they have had numerous disputes over agriculture, steel, aircraft, services, taxation systems and various regulations. Other disagreements, not brought to the WTO, have also been numerous. Several of them have led to a bilateral compromise that is still considered as unpalatable by one of the parties (e.g. the "open skies" agreement, public procurement in the military sector, etc.).

In the agricultural and food area, many problems persist, even though many issues look relatively minor and technical when put in perspective with broader transatlantic geopolitical interests. The EU clings to high tariffs and regulatory restrictions in sectors of importance for US exporters such as meat and maize. Both the EU and US agencies impose *de facto* bans on imports of some of the other party's agricultural products because of SPS (sanitary and phytosanitary) regulations. Many issues regarding intellectual property and mutual recognition of processing techniques remain unsolved.

Reasons for pessimism. It is still too early to assess how the recent US presidential elections and the new conditions for cooperation created by the financial crisis will provide a boost to transatlantic relations. However, there have been many reasons for pessimism during recent years.

The global environment hardly provides the conditions for smoother trade relations in the coming years. Protectionist forces have seemed to be making a comeback on both sides of the Atlantic during the last five years. The attitude of public opinion towards trade has also become increasingly negative in the EU as well as the US. Threats to pull out of major international trade agreement by candidate Obama during the primaries seemed to meet strong support. The US Congress has shown that it was increasingly reluctant to sign trade deals and keen to pass protectionist legislation. In some EU countries, words such as "free trade" or "globalization" are seen as intrinsically negative in recent polls. In the food and agricultural sector, the recent farm bill passed by the US Congress is seen as a provocation in the EU. The WTO-incompatibility of this bill was considered as another symbol of the contempt shown by the US for international rules and global governance. Europeans have taken note that Senator Obama supported this bill and that it was not a product of the Bush administration they usually accuse of unilateral policy. In Europe, this US farm bill is also used by pro-farmers lobbies as an excuse for clinging to protectionist and interventionist farm policies.

¹ It is a bit unclear how Chancellor Merkel's call for a EU-US free trade agreement was taken by the US. The proposal was seen as Plan B for a failure of multilateral negotiations given that, at the same time, Chancellor Merkel indicated that giving the Doha talks a final chance to come up with an agreement was a priority.

Many EU-US trade disputes refer to standards and are quite technical. They could be solved if regulators showed a bit more flexibility. However, some of them refer to fundamental differences in the social model. This is particularly the case in some recent disputes such as those on genetic engineering, hormone treated meat, geographical indications, competition policies or environmental issues. They all go well beyond simple trade barriers, and result from different choices regarding public regulations by democratically elected bodies. Worryingly, the convergence in social as well as economic values between the EU and US, which characterized the post World War II period, seems to have stalled.² The situation in Europe was recently qualified as "*global backlash against the spread of American ideas and customs*".³ Among America's people, the distrust for Europeans seems to have increased dramatically, to such an extent that a trip to Europe of a US presidential candidate led to a decline in his popularity. The election of Barack Obama, who seems to be hugely popular in European countries, might change things a lot in the future, but for the last few years, the image of the US in most of "old Europe" was that of a semi-theocracy destroying the planet by refusing to curb greenhouse gases emissions and trashing international agreements on a weekly basis. At the same time, Americans saw Europe as a breeding ground for terrorism, Europeans as free riding their global security at the US taxpayer's expense, while the predictable decline of Europe's economy and its political inaction made it safer to expand US law territoriality (hence the Helms-Burton and Patriot Act, CIA latitude with EU sovereignty, etc.).⁴ None of this was exactly a good background for a trade agreement.

Finally, the economic and political outlook is gloomy on both sides. The EU could be heading for a major constitutional crisis. After the blows of successive referenda, governments which distance themselves from the idea of a more integrated Europe have been elected in several of the new member states. Europe could face major destabilization if the British voters elected a conservative government, which might be the most Eurosceptical administration since 1973. This would make it more difficult to isolate such countries as Ireland and Poland within the Council. In practice, it could lead to "cherry picking" bits of the different treaties, even perhaps a dismantling of the Union's core policies with members opting out from major institutions. None of this would help international negotiations in trade, just as in any other area. In the US, the incredible capacity for resilience of the American economy should not be underestimated. However, given the fundamental economic imbalances that have been piling up for decades, the housing and financial crises might this time have long-term consequences on growth and employment at a time where inequalities have risen considerably, threatening the social consensus. The prospect for recession and a long period of economic stagnation threatens both the EU and the US. These are conditions for populist policies and trade liberalization is often one of the first scapegoats.

² See Williams (2007)

³ This is a conclusion of the German Marshall Fund study (Glenn 2008). The Pew Centre found in 2008 that only 30 percent of German citizens have a positive view of the US, down from 78 percent in 2001. The perception that the United States acts unilaterally in international policy decisions is now shared by 90 percent in Sweden and France, and 70 percent or more in Britain, Bulgaria, Czech Republic, Germany, Slovakia and Spain.

⁴ Interestingly, Chamorel (2007) points out the responsibility of think-tanks in the rising of anti-European attitude in the US, referring for example to the December 2002 issue of the American Enterprise Institute Review whose articles read as follows: "*The European Disease*" ; "*German-American Requiem*", "*Continental Drift*", "*Old and the in the Way*", "*American won't listen to Europe's Appeasers*", "*The Real Problem is European Elites*", "*Goodbye Europe*", "*Irritating and Irrelevant*", "*Europe Loses its Mind*"

Some hope. Beyond rhetoric and political defiance, one must acknowledge that transatlantic relations have been flourishing as far as trade is concerned. Officials participating at meetings under the Transatlantic Business Dialogue like to point out that trade between the two entities has kept increasing and that "*Ninety nine per cent of trade relations between the USA and the European Union are totally unproblematic*". The Robert Schuman Centre for Advanced Studies points out many indicators of trade relations that are particularly green.⁵ Trade barriers are already low in industrial products and even for major agricultural exports such as US soybean and EU wine and spirits. The EU is the most important commercial market in the world for corporate America. The service economies of the EU and US are increasingly intertwined.⁶ Transatlantic investment accounts for the largest share of Foreign Direct Investment in each entity. Foreign affiliate sales have been increasing considerably. Europe is also a key source of capital for the US economy. Transatlantic regulatory cooperation has made some progress. So has transatlantic research. Overall, transatlantic economic integration has significantly increased over the last decade and the EU and the US have made far more effective concessions to each other in disputes under the WTO than they did under the GATT. Most of the controversial issues are related to technical regulations and standards, and many could be solved with a more cooperative spirit and flexibility from regulators.

Recent events might even improve the overall atmosphere for calm EU-US dialogue. The 2008 presidential election was seen as a disavowal of the Bush-Cheney administration in Europe, and it has greatly improved the image of the US in the European population. The President-Elect Obama was less negative on trade agreements during the final months of the campaign. The concerted attempts to deal with the financial crises have renewed both the idea of a European economic policy, and the cause of transatlantic cooperation. In the EU, Eurosceptics have lost battles, Prime Minister Gordon Brown has shown leadership and the victory of the Tories in the next election no longer seems that certain. This meets a growing sense of common interests between transatlantic powers in a world where emerging countries are demanding their share of influence. The fact that NATO is receiving less criticism, and that even a historically sceptical country like France seems willing to join is no coincidence. In brief, both the idea of European integration and transatlantic cooperation seem to be experiencing a revival. However, one can only show limited optimism about transatlantic relations, unless there is major political will.

1. Background: EU and US trade policies

Part of the divergence between the EU and US trade and agricultural policies relates to institutional differences. The US trade and agricultural policy is shaped by the Congress, and is heavily influenced by sectoral as well as local interests. The 2008 US Food, Conservation and Energy Act shows the power of considerable vested interests and the difficulty of reconciling the objective of integrating the US into a rule-based international trade system

⁵ See the Chapter by Hamilton and Quinlan in Andrews et al (2006).

⁶ See Hamilton and Quinlan (2007).

with local-interests driven policy making.⁷ In the EU, Council decisions on trade and agriculture are often characterized by horse-trading between member states and maximization of individual returns from the EU budget. The collective compromise that emerges is often characterized by a "prisoners' dilemma" outcome, i.e. hardly an optimum from a collective point of view. The European Parliament has recently acted in a way that suggests the influence of powerful pressure groups, in particular in recent votes on agricultural policies where it has appeared very conservative (e.g. on support to cotton and tobacco). When the Parliament has co-decisions on agricultural matters, one cannot rule out that some of the US type of vested-interest pressures might also affect EU agricultural and trade policies.⁸ However, the Commission has so far managed to drive a consistent long-term policy, and has largely acted as a vector of the common interest. A technically competent Commission and some skillful Commissioners in agriculture and trade have managed to use at best their limited institutional power to counterbalance the self-interested behavior of Member States in the Council as well as the somewhat erratic policy of the Parliament. In the agricultural sector, the difference between the consistent and focused flow of reforms that has characterized the Common Agricultural Policy (CAP) policy since 1992 and the changing objectives and instruments of the recent US farm bills is particularly striking.

The EU trade policy. EU trade policy has been characterized by two main features. The first one is multilateralism. The EU has forcefully played the card of multilateral negotiations. In spite of a rather conservative position in agricultural negotiations, the WTO has been a cornerstone of EU trade policy: for a decade the Commission had implemented a *de facto* moratorium on bilateral agreements. The other major feature of EU trade policy has been the ambitious set of preferences granted to developing countries. In this area, the EU has long played the card of non-reciprocal preferences, with a strong bias towards member states' former colonies and Least Developed Countries (LDCs). This has resulted in special tariffs for overseas territories and for African, Caribbean and Pacific countries. The EU Generalized System of Preferences (GSP) covers most products and basically all developing and transition countries are eligible for tariff cuts. However, the depth of these cuts is often very limited, except for LDCs. The "GSP+" which expands the former "GSP Drug" regime provides significant concessions to countries that fight drug trafficking or implement ambitious policies in the environmental field or human rights. In practice, it mostly benefits Central American and Andean states. The EU uses tariff concessions to support troubled states in an attempt to help stabilization efforts (Balkans and Palestinian states). The recent Economic Partnership Agreements replaced the Cotonou agreement with African, Caribbean and Pacific countries with a reciprocity-based regime, even though liberalization is undertaken asymmetrically with the EC liberalizing at a faster speed. Many different tariff regimes coexist, but few tariffs are actually specific to a single country and the EU policy has never been genuinely "bilateral". With the exception of a few micro states (Andorra, Faroe Islands, the Vatican, San Marino), only Turkey is part of a custom union with the EU (since 1996).

⁷ The difficulty of passing legislation that would enforce the WTO authority on cotton, a sector where powerful vested interests are well represented in the Congress, is an example. So is the apparent gap between the trade policy of the administration (which, for example, defended the existence of a "blue box" for US subsidies in agricultural negotiations) and the decisions of Congress (which passed a farm bill in which no subsidy would fit in such a "blue box" that the administration defended in the international arena).

⁸ The European Parliament is careful to keep itself independent from the Commission. However, it suffers from a lack of technical expertise - the Parliament does not have the equivalent of the US Congressional Research Service - and sometimes appear influenced by lobbies (to say nothing about the nationalist bias of some MEPs who seem to have difficulties picturing themselves as representing Europe rather than their member state).

Nevertheless, the EU policy has recently undergone a change of course. The multiplication of bilateral agreements by the US led the EU to fear that it was losing ground in its trade relations with dynamic economies in Asia and South America. This, along with the frustration that some of the issues important for the EU (e.g. geographical indications, environment-linked issues) are impossible to discuss satisfactorily in the multilateral arena, has led the EU to consider alternatives to multilateralism. Several bilateral trade agreements have been signed in the 2000s. Several bilateral and regional negotiations, as well as discussions launched by the Commission (i.e. without a formal negotiating mandate from the Council) are also ongoing. The EU sees bilateral agreements as broad relationships with a cultural and cooperation dimension: a model of “deep integration”, compared to the US’s “shallow integration”.

The bilateral agreements of the EU include a series of association agreements with South Mediterranean countries, which were signed at the end of the 1990s or in the 2000s. Most of them followed pre-existing trade concessions, most of the time non-reciprocal that dated back from the independence of these countries from colonial powers in the 1950s and the 1960s. The situation is different for a new generation of bilateral agreements including South Africa, Chile and Mexico. In particular, the association agreement with Chile is presented as a reference for future agreements. Not only does it include tariff concessions, investments, public procurement, intellectual property, competition policy provisions, but also a large dimension of trade facilitation, with custom procedures and Sanitary and Phytosanitary (SPS) provisions.

US trade policy. The United States has constantly pursued the multilateral definition of trade rules. However, recent US administrations have been less shy than the EU in the parallel development of regional and bilateral agreements. The former US Trade Representative Zoellick has been clear on this topic since 2001, arguing that bilateral agreements were not simply an alternative to the limited progress in the multilateral area, but also good way to bring more actors to accept multilateral trade liberalization. Recent US administrations have promoted the "multiple fronts" and "competition in liberalization" approach during a period when the EU was self-imposing a moratorium on bilateral trade deals. As a result, the recent WTO review stresses the fact that the US has mostly liberalized its trade regime on a preferential basis since the previous review (WTO, 2008). The US was involved in a free trade agreement with 14 countries in early 2008, up from three at the start of the current administration in early 2001. Recently, however, the US Congress has slowed down or even opposed attempts from the Bush administration to sign new bilateral deals.

If the US has been more active in bilateral agreements, it has also followed a rather similar approach to the EU’s in relation to developing countries. The policy towards least developed countries also led to the imposition of zero duties on a large number of goods under specific GSP provisions (although not as broad-scoped as the EU “everything but arms” initiative). The regular GSP grants tariff concessions on a list of products that is more limited than the EU one, but the depth of the tariff concessions is greater, with all eligible products entering duty free. Unilateral concessions also reach particular regions, i.e. the Caribbean Basin, Andean countries, sub-Saharan Africa. In such cases, the tariffs are zero but the list of products covered is much larger than under the GSP. As a general rule, US tariffs are in general lower than the EU ones, at least in the agricultural sector. However, the US relies more than the EU on anti-dumping measures as a trade instrument.

Annex 1 provides a list of the major free trade agreements and tariff concessions by the EU and the US.

2. Trade

European Union. The EU is the world's leading exporter and the second-largest importer of goods. This is largely due to Germany, which is now the largest exporter in the world, ahead of China. The EU is also the largest importing entity, and the EU27 has a large trade deficit in 2007 (the overall trade deficit of EU27 with the rest of the world was 186 billion euros, which also happens to be roughly the trade deficit with China). The considerable trade surplus of Germany is matched by growing trade deficits in the UK, Spain, France and Greece.

Imports from China have recently exceeded those from the US, traditionally the first source of EU imports. The US now accounts for 12% of EU imports (China for 16% and Russia 11%) and for 21% of EU exports (Switzerland and Russia for 7% and China for 5%). The trade balance with the US remains positive (80 bn euros) while it has become strongly negative with Russia and China.

The EU also remains the world's leading exporter and importer of commercial services. The UK accounts for the largest share of EU service exports, followed by Germany and France.

United States. North American Free Trade Agreement (NAFTA) countries are the largest outlets for US exports (22% of which go to Canada and 13% to Mexico). The EU is the second largest export market for US products. Canada, traditionally the largest US supplier (16% of US imports) was overtaken by China in 2007. The trade deficit of the US exceeds 800 billion USD over the past 12 months.

The EU (in particular the UK and Germany), is the largest outlet for US exports of services, amounting to more than half of US exports, while Asia only represents one fourth and Latin America less than 12 percent. In terms of foreign direct investments, the EU is, for the US, both a source and a destination that far exceeds the rest of the world (in particular the UK and the Netherlands).

Trade flows between the EU and the US are presented in Figure 1. Clearly, agricultural trade should be put in perspective with the large bilateral trade in industrial sectors: the sum of all US exports in the 24 statistical chapters corresponding to agricultural, food and fisheries products amounts to only 27 percent of the US exports in one industrial sector (sector 83 in the Harmonized system, i.e. "*nuclear reactors, boilers, machinery and mechanical appliances; parts thereof*"). The figure is only 21 percent for the EU.

In the agricultural sector only (Figure 2), the main EU exports to the US are wine and spirits, by far. US agricultural exports to the EU are mainly fruits, including citrus and fruit juice, oilseeds products (cakes and feedstuffs) and cereals. It is noteworthy that the EU has lost ground in the international market for commodities but has emerged as a significant exporter of processed products, in particular of wine and spirits. This reflects largely the progressive dismantling of its "refunds" that artificially boosted the EU exports of grains, milk powder, butter, sugar, beef and poultry. As a result, the EU is now a net importer of agricultural and food products. In some areas such as sugar or beef, it shifted from the position of one of the top exporters to one of the top importers within five years. At the same time, the US still maintains a strong position of exporter of bulk commodities in agricultural markets.

3. Transatlantic agreements

Over recent years, the transatlantic dialogue has brought little except some symbolic agreements and rearguard efforts in conflict resolution. Enhanced cooperation among regulators has not prevented bitter disputes from arising, and the transatlantic political conflicts have burdened the trade relationship (see Andrews et al, 2006 for details). Nevertheless, the official motto of the EU Commission is that "*Transatlantic trade is at the heart of the EU's bilateral relations, in particular with the aim of meeting global challenges*". The EU stated goal is to "*encourage the elimination of non-tariff barriers*" with the US. The same kind of wording is used by the US Trade Representative. In practice, some progress has been made on regulatory issues. Recent bilateral agreements between the EU and the US in the trade/market openness area include:

- Air transport agreement (2007), i.e. the one mentioned above which is seen as particularly frustrating by many Europeans because of its asymmetry.
- Agreement on concessions in the schedules of central and eastern European countries that joined the European Union (2006), i.e. a rather technical revision of the concessions in order to cope with enlargement and the WTO framework.
- Agreement on trade in wine (2006). It includes some trade facilitation provisions, including a mutual recognition of wine-making practices and the limitation of the use of certain "semi-generic" terms for wines originating in the EU for the US market.⁹
- Agreement on the method for calculating the duty on rice imports (2005).
- Agreement on custom cooperation, focusing on the security of sea-container and other shipments (2004)
- Agreement on regulatory compliance of marine equipment, which provides the right to sell in the EU equipment filling US requirements and vice versa (2004).
- Agreement on sanitary measures to protect public and animal health in trade in live animals and animal products, including the progressive recognition of the equivalence of sanitary measures, the recognition of animal health status, the application of regionalization and the improvement of communication and cooperation (2003).

At the June 2005 US-EU Summit, the US administration and the EU Commission issued the *Roadmap for US-EU Regulatory Cooperation* to provide a framework for cooperation on a range of horizontal and sectoral areas.

At the EU-US Summit on 30 April 2007, the EU and US signed the "*Framework for Advancing Transatlantic Economic Integration between the USA and the EU*". The goal is to foster cooperation and reduce trade and investment barriers through a multi-year work program in such areas as regulatory cooperation, intellectual property rights, investment, secure trade, financial markets, and innovation. This framework included the establishment of the *Transatlantic Economic Council* (TEC). The TEC brings together those Members of the European Commission and US Cabinet Members who carry the political responsibility for closer economic ties. It relies on input from *Transatlantic Business Dialogue*, the *Transatlantic Consumers Dialogue*, and the *Transatlantic Legislators Dialogue* that existed previously. The three dialogues include summit meetings on a regular basis. In particular the

⁹ There are some limitations to the use of names such as Burgundy, Chablis, Champagne, Chianti, Claret, Haut, Sauterne, Hock, Madeira, Malaga, Marsala, Moselle, Port, Retsina, Rhine, Sauterne, Sherry, and Tokay in the US but with exceptions for those that were using this term before 2005. Because the agreement does not fully ban the use of EU appellations of origin in the US while allowing terms that were previously prohibited by the EU, the agreement is not particularly well perceived by EU producers.

Transatlantic Legislators Dialogue is the formal response of the European Parliament and the US Congress to the commitment in the New Transatlantic Agenda of 1995 to enhanced parliamentary ties between the European Union and the United States.

The trade component of the Framework agreement is limited. It mainly refers to trade facilitation (standards, exchanges of information, control duplication avoidance) with a strong emphasis on security and safety issues (customs partnership against terrorism, electronic security, etc.) and on common intellectual property rights enforcement. The TEC was established to “*help meet economic partnership objectives and harmonize regulations*”, in addition to important issues such as finding a common answer to road safety and developing alternatives for animal testing of cosmetics.

These limited initiatives fall short of an ambitious free trade agreement as envisaged by former Commissioner Brittan years earlier. However, the fact that regulatory aspects are emphasized should not be seen as negative. In many cases, transatlantic disputes are related to non-tariff issues. In addition, there are signs that an ambitious effort on technical issues aiming at facilitating trade can significantly boost trade flows, compared to other agreements where this aspect has not been emphasized.¹⁰ In particular, given the obstacles to trade that are being created by safety/ counterterrorism-oriented regulations that are creating significant barriers to transatlantic trade, the more integrated inspection/customs procedures are more than useful. One should also keep in mind that the first meeting of the TEC took place in November 2007, and even if the record does not look particularly impressive, it is a sign of an attempt by US and European authorities to minimize unnecessary regulatory divergences and to facilitate transatlantic trade and investment.

4. The EU and US position regarding WTO issues

The lack of a common strategy. The US and the EU have considerable common interests regarding the WTO. Cooperation would have helped them push forward several strategic common issues. There are areas where cooperation is actually pursued (e.g. the "behind the scenes" negotiations on non-agricultural markets). However, it has not materialized on some important occasions where a joint opportunity was lost (e.g. defending the negotiation on "Singapore issues" during the 2003 Cancun meeting).

There is still a lack of a common approach in the Doha negotiation, whereas cooperation might help push forward some issues of joint interest. These include for example a common strategy on food-security issues (cooperation on international stocks, on agricultural development strategies for developing countries, etc.) which would help stabilize the food market as well as smooth tensions and conflict in agricultural negotiations. As it stands now, there is no coordination on the important issue of energy either, including bio-energy, while interactions with the agricultural markets would require a global approach.

This global approach is made difficult by the fundamentally different mode of regulation of the sector. The US has less market management and border protection than the EU, but relies more on direct subsidies (marketing loans, countercyclical payments) and demand-oriented programs (food stamps, subsidized bio-ethanol) as well as agricultural insurance. The EU has

¹⁰ This is a preliminary conclusion of the work by Bureau and Jean who compared EU bilateral agreements, in particular the EU-Chile one with ambitious trade facilitation provisions compared to the others. See Bureau and Jean (2008).

relied on guaranteed prices, high tariffs and export refunds. Over the last few years, the EU has moved towards a policy that is close to the US one, with a shift from price support towards decoupled payments that somewhat imitated the provisions of the 1997 Federal Agriculture Improvement and Reform (FAIR) Act, as well as agri-environmental payments whose conditions were in line with the modalities of the Conservation Reserve Programs. Ironically, at the same time, US agricultural policy has made a complete turn-around and moved away from the 1997 orientation, with extra payments introduced in the early 2000s and two successive farm bills (in 2002 and 2008) that re-introduced a lot of "amber box" policies.

Petty disputes with far-reaching consequences. The EU has launched almost as many cases against the US under the WTO (i.e. 23 cases that led to arbitration) as it has launched against all other countries. The US has launched roughly the same number of cases against the EU if one includes cases against individual member states (see Box 1). One must however acknowledge that the number of cases is a function of the volume of trade. The number of issues that were solved under the WTO framework without leading to a formal panel, or even at the preliminary consultation phase, shows that the multilateral system has provided a satisfactory way to solve disagreements. The threat of a WTO challenge also acted as a major driving force for cooperation over standards and regulatory issues.¹¹ These disputes have also played a considerable "pedagogical" role in the sense that they have helped the US administration and the EU Commission to persuade the Congress and the Council, respectively, to amend policies following a "negative" ruling of the Appellate Body (with the noteworthy exception of the "hormones" case for the EU).

However, some of the EU-US disputes under the WTO have had important symbolic value. The US challenge to the EU ban on hormone-treated beef (DS26) has helped turn European public opinion against the WTO and multilateral rules. The psychological effect has perhaps been as negative as the one of the former GATT ruling on tuna, which led many environmental organizations, including major US ones such as the Sierra Club, to join the anti-globalization movement in their protests against the dispute settlement body (interestingly, the EU was among the parties opposing the US in the tuna dispute). On the other hand, the huge financial amount of retaliation allowed by the WTO against the US in the Foreign Sales Corporation case (DS108) has strengthened the feeling that WTO rules could infringe national sovereignty in the US Congress. The fact that the EU has refused to comply with the ruling of the Appellate Body in the hormones cases, has not helped the credibility of the WTO in the US, while the sanctions imposed have been widely used in anti-globalization propaganda in the EU.

Agricultural disagreements. In the Doha Round of negotiations, the positions of the EU and the US have been relatively consistent on non-agricultural goods. In the agricultural negotiations, the game played by both negotiators has been complex. Both the EU and the US proposed concessions that made them seem righteous and the other party like the "bad guy" to developing countries. The US stressed the need for further cuts in tariffs and to prohibit export subsidies as a way to single out the EU. The EU stressed the need to cut domestic support, in particular in areas such as cotton, to restrict in-kind food aid and export credits. Even in the composition of domestic support, each party tried to push the proposals that were less restrictive for its own farm policy and which were often the ones that were more restrictive for the other one (de *minimis* support vs blue box, overall trade distorting support vs product-specific support ceilings, etc.). However, beyond this somewhat petty game, the

¹¹ See Bush and Reinhardt (2003).

global positions of the EU and US in the agricultural negotiations are much closer than they were a few years ago.

At the most recent meetings in August 2008, both the US and the EU had agreed that there would be significant cuts in tariffs, subject to partial exclusions for sensitive products, and major reductions in the allowable level of trade-distorting domestic support. The Doha Round agricultural difficulties now have more to do with the US and the EU on the one hand and transition countries on the other hand. However, the willingness of the US to conclude a final agreement in August is questionable. Had unrealistic demands from India not killed the negotiation, it is unclear whether the US would have accepted an agreement, in particular because of the sensitive issue of cotton. In addition the EU and US are divided on a number of serious issues. They include different ideas regarding genetically modified organisms (GMOs), as well as standards in general. Some of them correspond to genuine differences in citizens' concerns: GMOs are seen as a major potential hazard in Europe, while bacterial contamination is the number-one focus of US consumers' organizations working on food safety. The issue of the protection of geographical indications is also a serious source of divergence. The US is not ready to accept an extension of the protected denominations beyond wine and spirits. They said any attempt to negotiate the issues would be a recipe for disaster. The EU makes a point of advocating more protection for its indications. While the EU certainly overestimates the economic impacts of protected geographical denominations (in many cases the shift towards private brands would not be a considerable difficulty), the issue has now become a symbol of the one positive thing that could be retrieved from a WTO agreement.

Box 1: WTO disputes (arbitrated)

DS108 - Tax treatment for "Foreign Sales Corporations"

DS136 - Anti-dumping Act of 1916

DS138 - Imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel products

DS152 - Sections 301-310 of the Trade Act of 1974

DS160 - Section 110(5) of US Copyright Act

DS165 - Import measures on certain products from the EC

DS166 - Definitive safeguard measures on imports of wheat gluten from EC

DS176 - Section 211 Omnibus Appropriations Act

DS186 - Section 337 of the Tariff Act of 1930 and amendments thereto

DS200 - Section 306 of the Trade Act of 1974 and amendments thereto ("carousel")

DS212 - Countervailing measures concerning certain products from the EC

DS213 - Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany

DS214 - Definitive safeguard measures on imports of steel wire rod and circular welded quality line pipe (panel not yet composed)

DS217 - Continued dumping and subsidy offset Act of 2000

DS225 - Anti-Dumping Duties on Seamless Pipe from Italy (panel not yet composed)

DS248 - Definitive safeguard measures on imports of certain steel products

DS262 - Anti-dumping and countervailing measures on certain steel products

DS294 - Laws, regulations and methodology for calculating dumping margins ('zeroing')

DS317 - Measures affecting trade in large civil aircraft

DS319 - Section 776 of the Tariff Act of 1930
DS320 - Continued suspension of obligations in the EC-Hormones Dispute
DS350 - Continued existence and application of zeroing methodology
DS353 - Measures affecting trade in large civil aircraft (second complaint)

The EU brought seven other cases brought to the WTO have not led to the constitution of a panel, or the panel was suspended, or the parties agreed mutually on a solution. These are cases DS38 (Cuban Liberty and Democratic Solidarity Act), DS39 (Tariff increases on products from the European Communities), DS63 (anti-dumping measures on imports of solid urea from the former German Democratic Republic), DS85 (measures affecting textiles and apparel products), DS88 (measure affecting government procurement), DS100 (measures affecting imports of poultry products), DS118 (harbour maintenance tax), DS151 (measures affecting textiles and apparel products (II)).

Cases launched by the US against the EU

DS26 - Measures affecting meat and meat products (Hormones)
DS27 - Import regime for bananas
DS 62. Customs classification of certain computer equipments
DS174 - Protection of trademarks and geographical indications for agricultural products and foodstuffs
DS223 - Tariff-rate quota on corn gluten feed
DS260 - Provisional safeguards measures on imports of certain steel products
DS291 - Measures affecting the approval and marketing of biotech products (GMOs)
DS315 - European Communities - Selected Customs Matters
DS316 - Measures affecting Trade in large civil aircraft
DS375 - Tariff Treatment of Certain Information Technology Products

The US also launched eight cases that were withdrawn after mutual agreement (DS13 - duties on imports of grain; DS115 - measures affecting the grant of copyright and neighboring rights; DS124 - enforcement of intellectual property rights for motion pictures and television programs), and cases where no panel was launched or lapsed (DS16 - regime for the importation sale and distribution of bananas; DS104 - measures affecting the exportation of processed cheese; DS158 - regime for the importation, sale and distribution of bananas II ; DS172 - measures Relating to the Development of a Flight Management System ; DS347 - measures affecting trade in large civil aircraft II)

The US also launched cases against individual member state, including Belgium (DS 80, DS127, DS210), Denmark (DS83), France (DS131, DS132), Greece (DS125, DS129), Hungary (DS35), Ireland (DS68, DS82, DS130), Portugal (DS37), the UK (DS67), see www.wto.org for a description.

5. EU-US bilateral disagreements

Looking at the annual reports and websites in which the EU and the US gather information on their conception of "foreign trade barriers", a number of problems persist. Some of them are quite technical, and a bit out of proportion with the common geostrategic interests. Some others reflect more fundamental differences in the governance or legal system, or different visions of what consumers' protection should be.

Appendix 2 summarizes the different issues that are pointed out by the two sides. The EU complains mainly about regulatory issues, as well as unilateralism of US policies (and non-compliance with multilateral rules). It is noteworthy that the EU directly targets many laws passed by the US Congress that indirectly restrict trade but focus primarily on other issues, from cargo security to hurting the Cuban economy. SPS issues are high on the list of EU complaints. So is intellectual property. These are areas where, beyond technicalities, the regulatory system differs.

EU standards are also widely criticized by the US. Again, they often refer to legislation that has an indirect effect on trade. For example, the trade-distorting effects of various EU member state policies governing pharmaceuticals and healthcare products irritates the US because of the limitations for US companies (and the fact that by selling products at a lower price in EU regulated markets, they make the US consumer pay for some of their fixed costs). Intellectual property rules are different and this triggers some criticisms on both sides of the Atlantic.¹² The accusation of subsidies in the aircraft sector is matched by a similar accusation by the other party. The US trade representative complains that US exports of commodities such as corn, beef, poultry, soybeans, pork, and rice are significantly restricted or excluded altogether due to restrictive EU non-tariff barriers or regulatory approaches that often do not reflect science-based decision making.

It is noteworthy that the annual US report on foreign barriers to trade identifies very few barriers to US exports at the EU level, but many more obstacles to US exports at the member state level. In some cases, the issues raised by the US trade representatives are also raised by EU institutions and relate more to the lack of European integration and the pursuit of national protectionist policies (also detrimental to other EU members) than to a coordinated EU trade policy.

¹² Josling (2006), however, sees positive developments in the agricultural area, including that of geographical indications.

Appendix 1
EU bilateral and regional agreements with a tariff reduction component

Table A1 : The EU agreements including tariff concessions

Type of preferences	Country
EU Custom Unions	<ul style="list-style-type: none"> • San Marino; Vatican ; Andorra ; Feroe Islands, • Turkey*
EU Free Trade Agreements	<ul style="list-style-type: none"> • Norway, Iceland and Lichtenstein under the Espace Economique Européen • Trade agreement with Switzerland and Lichtenstein • Ceuta and Mellila • Interim trade agreement with Croatia • Association agreement with Former Yougoslavian Republic of Macedonia (2004) • Albania • Montenegro • Bosnia Herzegova • Agreements under the Barcelona process <ul style="list-style-type: none"> • Algeria • Egypt • Lebanon • Jordan • Tunisia • Morocco • Israël • Palestinian authority • Syria • Mexico • South Africa • Chile
Other concessions	<ul style="list-style-type: none"> • GSP, including the Everything But Arms component for LDCs and GSP+ (mainly Central America and Andean countries). • Cotonou agreement with ACP countries • Overseas territories

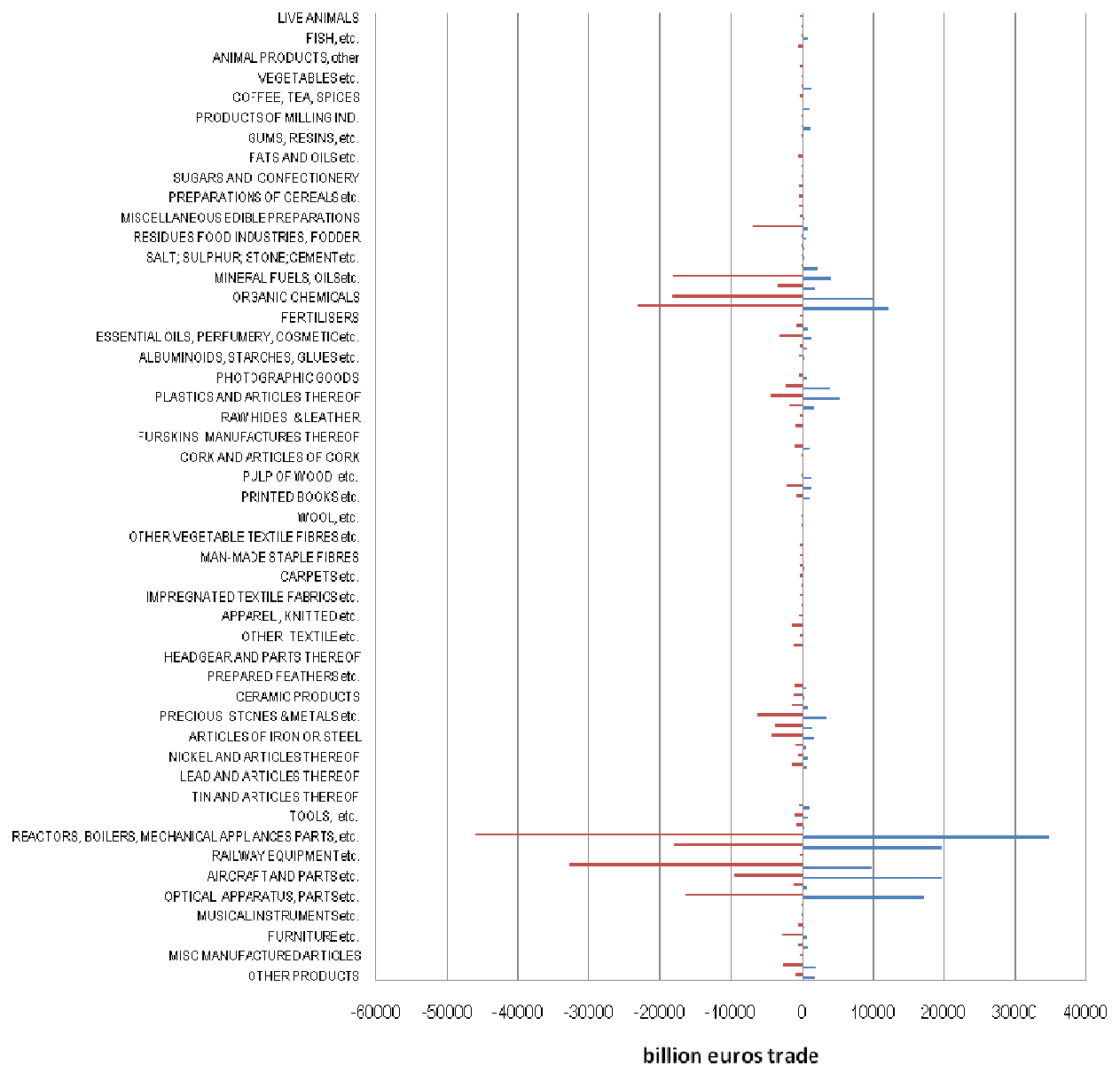
Table A2. US bilateral and regional agreements with a tariff reduction component

Type of preferences	Country
US Free Trade Agreements	<ul style="list-style-type: none"> • Australia • Bahrain • Dominican Republic-Central America-United States FTA (CAFTA-DR) (Includes: Costa Rica*, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua) • Chile • Israel • Jordan • Morocco • North American Free Trade Agreement (NAFTA) • Oman • Peru • Singapore
Other concessions (non reciprocal)	<ul style="list-style-type: none"> • GSP, including special provisions for LDCs • ATPDEA with Andean countries • CBERA with Caribbean countries • AGOA with subSaharan African countries • Palestinain authority • Overseas territories

Transatlantic Trade by HS2 sector, 2007, Mio Euros

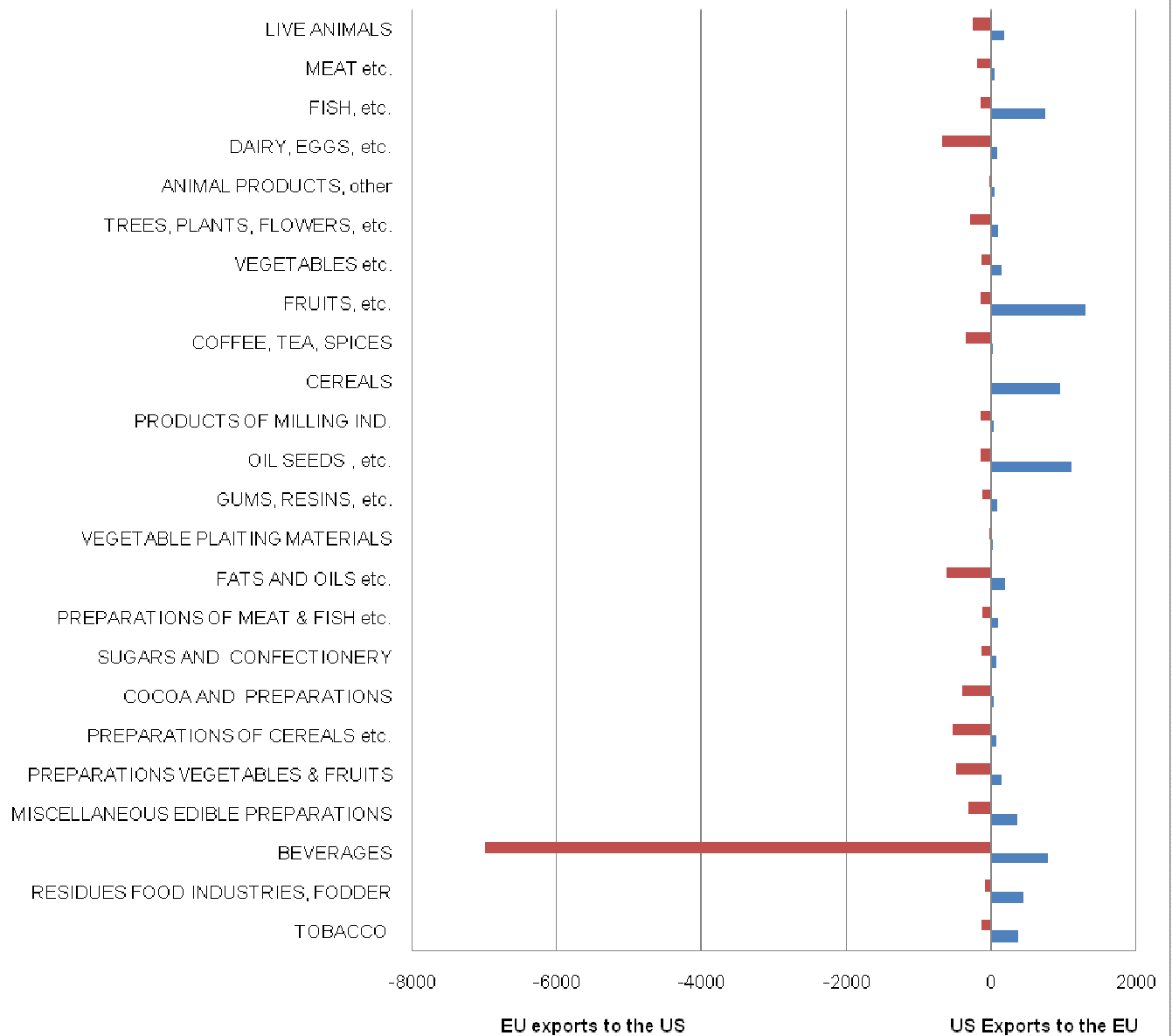
EU Exports to the US

US Exports to the EU



Source: Comext, Eurostat data

**Transatlantic Agricultural Trade by HS2 sector,
2007, Mio Euros**



Source: Comext, Eurostat data

Appendix 2

A2.1. EU complaints about US trade barriers

Extraterritoriality and unilateralism. The EU sees several US laws which do not conform to international trade law as causing problems for EU companies. This is the case with the 1996 Helms Burton Act, the Iran-Libya Sanctions Act (ILSA), as well as the 1996 "Blocking Statute" or the 2000 Iran Non-Proliferation Act, and to some extent the Patriot Act, that allows the US administration to apply its own sanctions to exports which are subject to EU member state and EU export control regimes, beyond those agreed multilaterally. The 1974 Trade Act authorizes the US government to enforce US rights under any trade agreement in a way that is seen by the EU as based on exclusive US assessments and violating multilaterally agreed rules.

Several pieces of US legislation also provide scope for the business sector to call for unilateral protectionism. US industry can petition for the restriction of imports from third countries on grounds of national security even in the absence of compelling evidence (section 232 of the Trade Expansion Act of 1962), in which case the law is used for purely protectionist purposes. The chemicals sector is affected by import restrictions for certain drug precursor chemicals. Similarly, the Jones Act uses national security reasons to prohibit the use of foreign vessels.

According to the EU, public procurement restrictions under the Buy America Act cover a significant proportion of public purchasing in the US, in particular in sectors such as those covered by the Department of Transportation. The Small Business Act also discriminates against foreign suppliers. The Berry amendment enlarges mandatory US sourcing under the Defense Appropriations Act to components and materials that are not particularly strategic. This is seen as a particularly uncooperative approach from NATO member countries, in particularly the United Kingdom whose domestic defense market is particularly open to US suppliers.

Foreign investment limitations. The EU Commission complains that several US laws restrain foreign investment or ownership of business. This is the case of the Foreign Investment and National Security Act and subsequent legislation which refers to national security issues without clear definition of terms, which is used quite extensively to limit investment and trade in the shipping, energy and communications sectors. In the communications sector U.S. law enforcement agencies have imposed strict corporate governance requirements on companies seeking Federal Communications Commission that favor US companies. The EU also sees restrictions on the ownership of companies in the coastal and domestic shipping sector, in the offshore drilling sector and in the fishing sector (fishing vessel-owning entities must be at least 75% owned and controlled by U.S. citizens in order to receive a fishing permit), and in the attribution of licenses from the Federal Energy Regulatory Commission.

US standards and certification. The EU sees the US unilateral measures regarding cargo safety¹³ as a source of requirements, such as standards for container security devices and/or smart box technology, that can potentially hamper the capacity of EU businesses to compete fairly with U.S. competitors and excessively burden the EU export supply chain.

¹³ e.g. the 2002 Container Security Initiative, capped by the 2006 Safety and Accountability for Every Port Act; the 2007 "9/11 Commission Recommendations" and its objective to scan 100% of cargo by 2012.

The EU sees as a significant problem the low level of implementation and use of standards set by international standardization bodies in the US. This combines with a number of complex US regulatory systems that represent a significant burden for EU companies.¹⁴ EU companies also complain about regional standards within the US, including those of regional and local authorities and those implemented by the private sector (for instance, standards for product safety imposed by insurance companies). In the food area a number of states have banned the commercialization and production of *foie gras*, in spite of the absence of legal status for such bans under international trade rules. There are also differences in standards and food safety requirements that are seen as trade obstacles, such as the standards for Grade-A milk products as well as provisions for organic products under the National Organic Program of 2001.¹⁵

The EU complains about the lack of recognition of EU origin by US customs that do not accept European certificates of origin. The EU also complains about various pieces of border control, including import inspection fees, country of origin labeling, and mandatory certification of 'high risk foods'. The US Merchandise Processing Fee is seen as an extra duty by EU exporters. The fact that imported wine is subject to the "gallone tax" while most US producers are eligible for a tax credit that offsets the consequences of such a tax, is also seen as a distortion of competition. The 2008 Farm Bill provisions regarding a levy on dairy imports to finance dairy promotion and research activities is also seen as a distortion of competition with potentially significant consequences for EU exporters.

The EU also claims that various pieces of US legislation restrict trade in seafood since foreign-built vessels are not eligible to receive a fishing license.¹⁶ Other complaints deal with the US rules of origin for textiles which affect European exports of textiles containing cotton and wool, and the fact that agricultural commodities regulated under the Federal Marketing Orders are prohibited unless they are in compliance with particular characteristics set in the marketing order.

SPS. The US is also accused of unilateralism in the veterinary area. Its own procedures regarding import control do not match those commonly agreed in the multilateral arena, i.e. the standards of the *Office International des Epizooties* (spongiform encephalopathy). In addition, when the US follows international standards, the EU complains that the US uses complex and lengthy rulemaking procedures, taking for example several years longer than the regaining of an official disease-free status under the global rules of the OIE. In the phytosanitary area, things are quite similar, given that the US requirements of pest risk analysis (on a genus by genus approach) can lead to several years, or even decades, of administrative approval even when other products with the same risks coming from the same production area are permitted. Horticulture products also face burdensome specific approval procedures.

The Veterinary Equivalence Agreement, signed on 20 July 1999, provides a framework but the EU Commission complains that in practice this has led to little progress from the US

¹⁴ e.g. the burdensome US pharmaceutical approval system, the US Automobile labelling Act, the documentary and labelling requirement for textiles and restrictions regarding the distribution of wines and spirits.

¹⁵ The EU and the US have entered into bilateral negotiations with a view to mutually recognising the equivalency of the organic production systems applied by each party. However, the talks seem to be at a standstill since May 2004.

¹⁶ In the fisheries sector, the EU still claims that the US Marine Mammal Protection Act *de facto* bans exports of Spanish tuna but the EU has only recently ratified the Antigua Inter-American Tropical Tuna Commission, which is part of the conditions for trading tropical tuna in the US.

administration. The Commission quotes the case of imports of mollusks as an example of the slow progress in regulatory cooperation, given that in spite of scientific evidence the lack of recognition of EU testing methods by the US *de facto* prevents European producers from exporting oysters and mussels to the US. Imports into the US of uncooked meat products (sausage, ham and bacon) have been subject to a long-standing prohibition. US import regulations were modified to permit the import of Parma ham, Serrano hams, Iberian hams, Iberian pork shoulders and Iberian pork loins. However, the US still prohibits other types of uncooked meat products (e.g. San Daniele ham, German sausage, Ardennes ham).

US subsidies. The various US agricultural subsidies have been criticized by the EU, which argues that its own effort for fully decoupling farm support from production has not been matched by a similar effort in the US since the 2002 farm bill that reverted some of the decoupling orientation of the 1997 FAIR act. The EU has launched consultations under the WTO against US subsidies for biodiesel through tax credits, which are seen to have contributed significantly to the huge growth of EU imports of biodiesel (a tenfold increase between 2006 and 2007, US imports now accounting for 20% of the EU market share).

In the area of aircrafts, the Boeing/Airbus battle has led the EU to take the case to the WTO, arguing that combined subsidies and tax breaks from the State of Washington, the State of Kansas, NASA and DoD amount to more than 20 billion dollars.

Intellectual property issues. The EU claims that the unilateral use of its own patent system by the US (while the rest of the world now follows a "first to file" rule) creates problems for EU companies, especially considering the high U.S. litigation costs in patent matters. The US law is also particularly broad regarding the patentability of software and business methods, and the EU claims that US provisions concerning plant variety such as the Plant Patent Act seriously impede trade in breeding material for ornamental plants.

The EU Commission claims that despite losing a WTO case, the US has not yet brought its Copyright Act into compliance with the WTO agreement. In spite of the bilateral wine agreement, US producers continue to use ("misuse" according to the Commission) EU geographical indications on food and drink, and to consider a number of European wine names as 'semi-generics' (on the other hand, the US complains that the 2006 Agreement did not provide for the automatic acceptance of new wine making practices and did not include a permanent solution for the use of traditional terms).

The Omnibus Appropriations Act of 1998 prohibits the registration of a trademark that is identical to a trademark previously owned by a confiscated Cuban entity – illegal under the WTO rules, as confirmed by the Appellate Body.

Services. In its 2007 report on US trade barriers, the EC Commission stresses many issues relative to services. In the telecommunications sector, EU firms face restrictions on investment, lengthy proceedings, conditionality of market access and reciprocity-based procedures due to the Communication Act and subsequent legislation. The FCC policy led to the exclusion of an entire European digital television technology (DVB-T) from accessing the US market because of exclusivity given to a US standard. Further difficulties accessing the U.S. market are encountered by EU-based satellite communications operators. While discriminatory issues surrounding the Sarbanes Oxley Act are in the process of being solved, the EU financial sector points to US laws which obstruct its development in the US market – in particular, several regulations of the US Securities and Exchange Commission for foreign securities firms that result in barriers to the establishment of branches or subsidiaries, as well

as legislation regarding the treatment of EU global custodians. The EU Commission also complains about several laws in the transportation sector. These include the "national flag" provisions in the airline industry, and subsidies to US airlines; the prohibition of foreign-built marine vessels from engaging in coastal trade; and the requirements that US government-owned or financed cargo be shipped on US flagged ships.

A2.2. EU complaints about US trade barriers

Customs administration. The US trade representative complains that the EU does not administer its laws through a single customs administration, and that dealing with a separate agency responsible for the administration of EU customs law in each of the EU's 27 member states is costly for exporters. There is no EU rule requiring the customs agency in one member state to follow the decisions of the customs agency in another member state with respect to materially identical issues, and the arbitration bodies (from Customs Code Committee to the Court of Justice of the European Communities) are either ineffective or can take years before taking action.

Bananas. In June 2007, the United States filed another request for the establishment of a panel challenging the current EC banana regime.

Pharmaceuticals. The main issue for the US is that national social-security systems control the price of medicines, which limits the innovation rent to pharmaceutical companies, in particular US ones. In practice, these companies sell their products in EU markets at lower prices than in the US, so that the system works as if US consumers funded some of the fixed costs. In addition the US trade representative mentions some burdensome approval procedures for new drugs in some member states.

Standards. US exporters of manufactured and agricultural products complain about EU regulatory measures that act as impediments to market access, citing inadequate transparency in the development and implementation of EU regulations, insufficient economic and scientific analysis to support good regulatory decisions, and a lack of meaningful opportunity for non-EU stakeholders to provide input on draft EU regulations and standards as well as duplicative testing and product redesign. Examples that are pointed out include the "*unnecessary, redundant health and safety assessments*" that prevent US exports to the EU of poultry washed with anti-microbial treatments. Another sensitive issue is the *de facto* EU moratorium on approving genetically modified new products. The zero-tolerance policy maintained by the EU makes it difficult for most US rice exporters to ship rice to the EU. The EU regulations on mandatory traceability and labeling for all biotechnology and downstream products are seen as a trade barrier by US exporters since the requirements are costly and require a specific supply chain, with a standardized system to maintain information about biotechnology products and to identify the operator by whom and to whom the products were transferred for a period of 5 years from each transaction.

The US is particularly vociferous regarding member-state prohibitions on products already approved by the EU for marketing within the EU. Austrian law bans most cultivation of genetically modified crops, closing the market for US biotech companies. France has invoked a safeguard clause for a particular type of genetically modified maize, which leads to serious disruption of imports from the US. Cyprus, Germany and Greece, also have national restrictions on genetically modified agricultural products, and the fact that new member states

such as the Czech Republic and Romania have adopted the *acquis communautaire* in this area has reduced the sales of US bioengineered materials in these countries.

US chemical companies are also worried (as much as the EU ones) about the new EU regulatory regime known as Registration, Evaluation, and Authorization of Chemicals (REACH).

The EU ban on beef produced with hormonal substances, which has effectively prohibited the export to the EU of beef from cattle raised in the United States, is seen particularly negatively by the US administration because it is the only formal case where a country WTO ruling, confirmed by the appellate body and subsequent arbitration has not amended its legislation and preferred to face sanctions authorized by the WTO. These sanctions (the US applies 100 percent duties on imports from the EU valued at \$116.8 million) are themselves a bone of contention because the EU finds that the way the US implements them (the carousel method) is itself in violation of WTO rules. The USTR reports that US exports of pet food are affected by the 2004 EU regulation on animal by-products not fit for human consumption.

The EU regulations set maximum limits on mycotoxins for a variety of foodstuffs, including cereals, fruit and nuts, that are lower than those set by the US authorities in some cases, especially for almonds, peanuts and wheat. As a result, US almond shipments are sometimes rejected at EU ports because import controls have found excessive levels of aflatoxin.

Government procurement. The USTR report on foreign trade barriers does not find considerable obstacles to the access of US suppliers to EU public markets, but raises a number of issues at the member-state level. These issues mainly deal with the defense/military sector. In a number of countries, transparency of public contracts and statistics is also questioned.

Public subsidies. The US administration highlights the support provided to Airbus in the construction of aircraft, as well as member states' support to Airbus suppliers (Belgium, France, Spain, UK) and public support to aircraft engine makers (UK).

Subsidies for canned fruits, in particular in the peach industry, are also a concern for the USTR.

Intellectual property. The US administration criticizes the EU patent system, and the fees associated with the filing, issuance, and maintenance of a patent, which exceed those in the United States. However, as far as intellectual property is concerned, the US administration mostly criticizes EU member states' legislation that is seen as lenient regarding the protection of intellectual property in the music and entertainment industry. Relatively minor intellectual property issues are also raised in the pharmaceutical sector in some member states.

The EU geographical indications are still a concern for the US administration in spite of the WTO dispute settlement and the bilateral agreement on wine. Such indications are seen by the USTR as a way to discriminate against imports and inconsistent with multilateral rules.

National laws in the broadcasting sector, such as the French and Italian ones that impose a quota of EU-origin programs, are widely criticized by the US entertainment industry.

In spite of progressive liberalization, the postal and telecommunications market is still not fully open to competition in several EU member states. National regulations in the banking

and financial services sector are also criticized by the USTR as discriminating against foreign investors.

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