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I'm going to address a trade policy area where the current SPS Agreement in WTO may not be of much help, in the end, to U.S. farmers and commodity exporters. I'm referring to international trade in genetically modified (GM) foods, feeds, and other crops. The chief function of the WTO (including the SPS agreement) has always been to stop protectionist producer groups from using import restrictions to keep more efficiently produced foreign goods out of a local market. In the case of GM crops, foreign governments in Europe and East Asia have been moving toward import restrictions of various kinds to keep more efficiently produced GM goods out of their local markets, but they are not doing so in response to pressures from protectionist producer groups, such as local crop producers. Instead they are acting primarily in response to the concerns of their own food consumers, most of whom have come to see GM products as presenting no clear advantage over conventional foods from a consumer standpoint, and as so novel that they might carry with them some not yet discovered health or environmental risk.

Suspicious farm and agribusiness groups in the United States might fear that this is just old-fashioned European and Japanese agricultural protectionism masquerading as a consumer health or environmental safety concern. After all, we in the United States have been growing and consuming GM products such as herbicide tolerant soybeans and Bt corn widely for five years now, with plenty of benefit to farmers in the form of fewer and less toxic chemical sprays and less soil-damaging tillage, and with no evidence yet of any environmental or human health harm. If these foreign restrictions were in fact disguised producer protection, the SPS agreement might offer U.S. industry some remedy. But the import restrictions that have been going up against U.S. products in this case in Europe and Japan have been based on sincerely felt consumer food safety and environmental protection concerns. WTO agreements may be useful for countering the rent-seeking actions of narrowly based producer associations, but they cannot and probably should not ever be used to frustrate the sincerely felt preferences of consumers. In a free market, remember, it is the consumer who is always right.

Until now, fortunately, a number of prominent government officials in Europe and Japan have actually been working - together with their own import-dependent local livestock industries - to keep trade channels for GM feed products, at least, as open as possible. Yet even trade in GM feed products may now be coming under threat, as consumer anxieties in Europe and Japan have extended into anxieties about eating meats from animals raised with GM feed. When poorly informed but sincerely felt consumer phobias of this kind emerge abroad, there won't be much the WTO or the SPS agreement can do. And even if we could use the WTO to force

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governments in Europe or East Asia to lift all official restrictions on imports of GM foods or feeds, the resistance of consumers would remain in place and these by themselves could work their way backward through private commercial channels to produce the same results: sharply falling U.S. sales of GM foods and GM feeds to Europe and Japan.

Let me describe, briefly, the various efforts that officials in Europe and Japan have made until now to keep their import markets open to at least some GM foods and especially animal feeds from the United States, despite the clear preference of most of their own citizens not to consume GM foods. They are doing this not out of any love for GM commodities, or out of love for the farmers in the United States, Canada, and Argentina that grow these commodities, or out of any special deference to the WTO SPS agreement. They are trying to keep some import channels open mostly for two reasons:

- 1) Because their own regulatory agencies five years ago approved the planting, consumption, and import of at least some early varieties of GM soybeans and corn. To reverse these earlier approvals now without any scientific evidence of heightened risk - and they still don't have any such evidence - would be an embarrassing admission that their regulatory systems are no longer based on science.
- 2) They are also trying to keep some GM animal feeds coming into their local markets out of a more practical deference to their domestic livestock and livestock feed industries. This includes the highly stressed European beef industry, which - despite the extreme culling of herds now going on in response to the BSE scare - could be in need of more rather than fewer imported soybeans (including GM soybeans) now that the EU has finally, as of January 1, 2001, banned the use of animal remains as a protein source in livestock feed.

One part of the official EU strategy to keep GM animal feeds coming in has been to try to reassure consumers that the GM products they earlier approved (including herbicide tolerant soybeans) are perfectly safe. For example last year David Byrne, the European Commissioner for Health and Consumer Protection, asserted that "Right around the world the scientific evidence is that there is no problem with GMOs over and above any other food." The other part of the official EU strategy, until now, has been to try to satisfy those consumers still anxious about GM foods by requiring labels on some foods with GM ingredients. The goal of this labeling requirement was not to keep GM foods out of Europe, but to use labels to reassure consumers in the supermarket by giving them an "informed choice." Thus the original EU labeling requirement was designed to produce minimal trade disruption, since it applied only to foods containing detectable rDNA-derived materials above a level of 1 percent per ingredient, and since it did not apply to animal feeds, or to meat from animals fed with GM feed, or even to processed GM foods, where processing had made the transformed DNA and the associated proteins no longer detectable.

This official EU strategy to keep import markets open for some GM crops nonetheless ran into two significant barriers. First, private supermarket chains and fast food outlets in Europe discovered that consumer anxieties about GM foods were so pervasive that it made commercial sense to do more than just segregate GM from non-GM on the retail shelf or on the menu with labels; it made sense to eliminate the GM products altogether, and then compete for customers on a claim of being entirely GM free. So chains and outlets began stocking GM-free products only. Second, the open markets strategy faltered when EU officials were pressured by green parties and environmental activists into announcing in 1998 they were not going to approve any additional GM crops for planting in Europe, beyond those it had already approved,

at least not until European biosafety approval procedures had been tightened. This meant no approvals would be given in Europe for the new GM commodities that were still getting approvals in the United States, and this implied, in turn, that all bulk commodity shipments from the United States - of corn, for example - that *might* contain a new GM variety not yet approved in Europe would henceforth not be allowed into the EU, on biosafety grounds.

The resulting post-1998 loss of the EU corn market has cost U.S. industry roughly \$200 million a year, a significant blow. Yet note that this has not meant a complete shutdown in GM food and feed product sales to Europe. Corn based feed products from the United States could still be imported under the new EU ban, since corn in the form of processed feed could not reproduce in the environment to pose a possible biosafety risk. And the U.S. has also been able to continue bulk soybean sales to Europe, since the GM soybean variety found in our bulk shipments was earlier approved in Europe. This means Europe as a whole still represents a lucrative \$1.1 billion market for U.S. soybean growers annually.

In Japan as well, officials have until now worked surprisingly hard to keep trade channels open. Japanese consumers are almost as anxious to avoid GM products as European consumers, and a number of Japanese food industries have decided on their own to use only GM-free ingredients in hopes of attracting more health-conscious customers. In fact, even breweries and cigarette makers in Japan are now voluntarily using only GM free ingredients, hoping that will appeal to the nation's more health conscious drinkers and smokers. But the government of Japan has so far not adopted anything more than a minimalist set of labeling requirements on GM foods and feeds.

In August 1999 Japan's Ministry of Agriculture outlined a set of labeling regulations on GM foods designed to give consumers a greater sense of informed choice while minimizing disruptions to international trade. Japan's new labeling regulations covered only corn and soy for food use, not for animal feed (significant omission since roughly 85 percent of Japan's corn and soy imports are for animal feed). These new labeling regulations also omitted any GM foods where processing had rendered undetectable the transformed DNA or the associated proteins. This meant no labels would be required on GM soy sauce in Japan, or corn oil, or corn syrup, or corn flakes.

Unfortunately, these import-friendly GM labeling regulations have recently come under challenge in Japan. One reason was the discovery last fall that small traces of a GM corn variety - named StarLink - that was not yet approved for human food use in the United States (or anywhere else) had leaked into corn shipments destined for food industry use in the United States, and also into shipments destined for Japan, where no use of the variety had been authorized. After the widespread publicity of this regulatory malfunction last fall, Japan's corn purchases from the U.S. dropped significantly and Japanese importers began sourcing more of their corn imports from Brazil, which seemed safe because no GM corn varieties were yet legal to plant in Brazil. U.S. authorities responded to this crisis by recalling StarLink corn from the market, along with 300 U.S. food products that might contain StarLink. Then in hopes of reassuring Japanese importers specifically, late last year the U.S. negotiated a tightened testing and sampling procedures agreement with the Japanese, but on several occasions this past winter traces of StarLink were nonetheless found by the Japanese in shipments that had earlier tested negative here in the United States, so as a further possible reassurance the USDA just last week, hosted several officials from Japan's Health, Labor and Welfare Ministry, who monitored the new U.S. StarLink testing procedures here first hand. Now with any luck, regular Japanese purchases of U.S. corn for both feed and food use can resume.

The StarLink crisis also disrupted U.S. corn sales to South Korea over this past winter. On three occasions since last November the Koreans have detected traces of StarLink in corn shipments coming from the United States, and in response Korean authorities suspended these shipments and cleared them through customs only after the importers agreed to use the corn just for animal feed. Most U.S. corn going to Korea is for feed use anyway, so the final impact of this sort of restriction on trade volume need not be very large, of course. The food/feed distinction also has protected U.S. GM product sales to China so far. The U.S. is still able to sell its GM soybeans to China because almost all the imported beans go for animal feed; only China's own non-GM domestic soybeans are used for tofu.

If we want to see the glass as half full rather than half empty, we can point to the trade in GM commodities that is continuing under these current policies and we could hope that this current pattern of official policies toward GM crops in the EU, Japan, Korea, and China will be frozen in place. But the current policies are unfortunately not frozen in place; are all evolving rapidly, and uniformly in an anti-GM direction.

In Japan, for example, consumers are now worried that it might not be safe to consume meat from animals fed with GM corn or GM soy. Japanese authorities are trying, with little success, to assuage these fears. In response to the StarLink crisis Japan's Scientific Feed Association recently conducted tests on 256 chickens to prove that even if they were fed StarLink corn there would be no traces of any GM DNA or protein in the muscles, blood, or livers of the mature chickens. But consumers remained skeptical.

Such anxieties about meat produced with GM feed are even more widespread in Europe, where a number of supermarket chains have begun to advertise chicken and pork raised on GMO-free feeds, and where Greenpeace has long been advocating mandatory labeling of meat based on whether or not it comes from GMO-fed livestock. These demands for a mandatory labeling of meats derived from GM feed are now being taken up by a number of European governments, including France and Belgium

EU officials have not yet yielded to this pressure to impose GM labeling requirements on meat from GM-fed animals, but they are now on the verge of requiring labels on processed GM foods even when the GM DNA or proteins are no longer detectable because of the processing. This would be a significant move in Europe away from a product-based labeling requirement and toward a process-based requirement instead.

More important, the EU now also seems on the threshold of imposing new restrictions including a "traceability" requirement on GM feeds and feed products. The EU Commission has for months now been drafting new rules on animal feeds which would require separate approvals for processed GM feeds, like GM corn gluten. Currently there are no separate rules. Most worrisome, this directive may require that each separate GM crop variety be traced throughout the feed production process, implying that feed exporters will have to impose their own costly tracking requirements back onto the farm sector in order to avoid liability if unapproved varieties are included in shipments. This new rule is still being drafted, and it probably will not come into full effect throughout the EU for another two years, but it could impose a major disruption on U.S. corn product and soybean sales to the EU. It could also provoke a significant new trade confrontation. An earlier draft of this new feed rule leaked last fall and prompted not only objections from European feed industries but also from U.S. representatives in Brussels who saw it as a potential source of trans-Atlantic farm trade disruption.

Why are EU Commission officials abandoning in this fashion their earlier effort to keep markets open to at least some GM feed imports? One reason is heightened public concern in

Europe about animal feed safety since both the StarLink fiasco and the revived Mad Cow Disease scare. Another reason has been legal pressures on the EU Commission to find some way to lift the informal 1998 ban on new GM crop approvals. European biotechnology industries had raised a strong challenge against this ban in the European Court of Justice. But the ban was popular in Europe, so in order to get away with lifting it the EU Commission had to tighten its regulations on legal GM commodities across the board, including GM feed commodities. A vote in the EU Parliament just last week moved forward the deal the EU Commission recently struck with skeptical member governments for lifting the ban. This vote set in place strict new rules for approving new GM crops for planting in Europe, so strict that few new applications are likely to be approved any time soon. In fact, half a dozen EU member governments could resist implementing the deal over the next 18 months due to strong internal anti-GM sentiments. And the new approval procedures, while nominally based on scientific testing, also require a qualified majority vote of member governments, so public opinion can continue to trump good science in the end. Expect a second shoe to drop soon as well: a second bill containing the tough new labeling and tracing requirements for GM foods and feeds will be ready for the EU Parliament in April.

In this setting we should ask, does the U.S. government have any influence over this regulatory drift in Europe toward measures that could further compromise U.S. feed exports? I would notice that whatever official influence we do have has not been used, recently, to make an especially strong case for GM food and feed sales. I know the USDA is strongly committed to keeping international markets open for GM crops, but in the last year several other U.S. government agencies have conspicuously blinked on the issue. For example last February the U.S. State Department - so as to avoid a bitter fight with some African countries as well as the European Union - approved a new Cartagena Biosafety Protocol, within the Convention on Biological Diversity, even though this new protocol undercut the SPS agreement in the WTO by endorsing the right of importing states to block shipments of GM products on "precautionary" grounds, without having to produce any scientific evidence of risk.

Some other US officials then blinked again last spring, by acquiescing in the formation of a new working group within the Codex Alimentarius Commission in Rome to write new rules governing GM foods - possibly incorporating once more the precautionary approach of requiring labels or tightened regulation even in the absence of demonstrated risk. The latest evidence is that the EU now plans to seek a "traceability" requirement for GM foods inside Codex. All this is potentially important for trade because Codex standards are those that set the technical foundation for dispute settlement decisions in the WTO.

A final blink came just last December, at a summit meeting in Washington between President Clinton and EU Commission President Romano Prodi, where a new US-EU committee report on biotechnology regulations was unveiled and tacitly endorsed by our President. This report called for, among other things, the EU's favored precautionary approach on biosafety and food safety, plus mandatory labeling of all products with detectable GM ingredients, plus procedures to ensure the "traceability" of GM crop materials through the food supply, and even the participation of "non-experts" in the formulation of GM crop regulations. Now that a new U.S. administration has taken over management of the GM commodity trade issue, this unofficial committee report unveiled last December is likely to be quickly forgotten, at least on our side of the Atlantic. In Europe, however, it is being waved about as evidence that the Americans will tolerate further restrictions on GM commodity trade.