Bananas, Beef, and Biotechnology: Three Contentious U.S.–EU Trade Disputes

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Trade disputes between the European Union and the United States over bananas, beef, and biotechnology stem from rent-seeking by special interests, consumers’ fears about food safety, and mistrust of government regulation and enforcement. The unwillingness of the European Union to abide by the decisions of the dispute settlement panels threatens the integrity of the World Trade Organization, whose fundamental weakness is its inability to resolve conflicts when the contracting parties disagree with the findings of the dispute settlement body due to overriding domestic political concerns.

In 1817, the British economist David Ricardo expounded his Law of Comparative Advantage to explain why trade between England and Portugal in cloth and wine would be beneficial to both countries. Consumers in both countries would gain from access to lower cost goods, wine, and cloth through trade rather than from pursuing a costly policy of self-sufficiency.

Ricardo represented a new class of merchants and industrialists who realized the benefits of trade—export markets for their goods and cheaper food for their workers. Today, Ricardo could easily recognize the trade disputes between the United States and the European Union (EU) in bananas as a continuation of the classic debate over 18th-century Corn Laws. The Corn Laws restricted the supply of grain, increasing the price of food to consumers while raising the rent on English land that produced grain. Modern Corn Laws take many different forms, but the end result is the same—higher prices for consumers and “rents” to those who control access to the European market.

The beef and biotechnology disputes have their origins in consumers’ fears about food safety and their mistrust of the regulatory system in Europe. The
genetically modified organisms (GMO) controversy adds environmental and ethical concerns to the policy debate. Ultimately, these trade disputes highlight the fundamental weaknesses of the World Trade Organization’s (WTO) dispute settlement process and the stark choice between retreating towards unilateral retaliation or advancing toward a stronger multilateral resolution system.

**Bananas**

The banana dispute involves EU policies favoring banana imports from Africa, the Caribbean, and the Pacific, generally referred to as ACP bananas, over lower cost dollar bananas produced in Latin America. Dollar bananas from Central America have a larger import quota in Europe, 2.553 million tons, than ACP bananas at 857,000 tons, but dollar bananas face restrictions in the form of import licenses and other trade regulations. Since European firms are allocated licenses on a preferential basis, they can limit imports of lower cost dollar bananas from Latin America distributed by U.S.-based firms like Chiquita Brands International and Dole Food Company.

Quota rents arise from two primary sources in the EU banana trade. The rents accrue largely to European importers because the EU allocates its current market access tariff-rate-quotas (TRQs) under import licenses and only companies established in the Union may apply for a license to import bananas. Secondly, in the case of bananas as well as other commodities such as dairy products and rice, a special export certificate from the source country is required to import the product into the EU. The exporting country may capture part of the quota rent when it issues the special, country-of-origin certificate (O’Connor and Co.). “European intermediaries (licensees), Chiquita being one of them, would typically pay the Latin American producer about $4 for a box of bananas, and would sell it for $16 or more. As the intermediary held the import licenses, he could easily control the price” (Mazuera, p. A19). These EU regulations also create a lucrative parallel market for import licenses.

In the 1990s, Latin American banana exporting countries filed petitions with The General Agreement on Tariffs and Trade (GATT) and its successor, the WTO, protesting EU policies. Despite two GATT victories but no material relief in the form of wider market access and less restrictive EU import policies, Colombia negotiated the Banana Framework Agreement (BFA) with the EU in order to increase the EU quota for Latin American dollar bananas. The Agreement increased the import quota by 10% and reduced tariffs by 25%. Colombia, Costa Rica, Venezuela, and Nicaragua also obtained country-specific allocations of the EU import quota, thus improving their market access. The Agreement weakened the value of Chiquita Brands’ banana import licenses and its control of the dollar banana trade because the four countries now had specific import quotas in the EU which strengthened their bargaining position. Chiquita Brands stood to lose market share in the EU banana trade.

On September 2, 1994, Chiquita Brands and the Hawaii Banana Industry Association filed a petition with the United States Trade Representative (USTR) alleging that the participation of two Latin American countries, Costa Rica and Colombia, in the BFA “… provided for the implementation of discriminatory and harmful export quotas and export licenses that severely aggravate the
discrimination and harm caused by the illegal EU banana import regime” (Caribbean Update, p. 1).

The subsequent Section 301 investigation under the Trade Act of 1974 against Costa Rica and Colombia determined that their banana policies (i.e., participation in the BFA) were unfair to U.S. banana marketing companies. Faced with the threat of the loss of U.S. trade benefits, Costa Rica and Colombia negotiated Memoranda of Understanding (MOU) with the USTR on January 6 and 9, 1996, respectively, in which they agreed to “... press the European Union ... to move to a market-oriented regime ... and ... to eliminate the discrimination in the export certificate system” (U.S. Office of the Trade Representative, 1996). The MOUs provided linkage between the market-oriented trade policies of the United States and subsequent petitions filed with the WTO.

Faced with a continued loss of its rents, Chiquita Brands filed an amended Section 301 petition under the U.S. Trade Act of 1974 on February 7, 1996. Subsequently, the U.S. Trade Representative’s Office filed a petition with the WTO on April 12, 1996, objecting to the discriminatory quotas and licensing regulations under the BFA. Specifically, measures deemed inconsistent with WTO rules included EU assignment of import licenses for dollar bananas to French and British companies who previously distributed African, Caribbean and Pacific bananas, assignment of import licenses for banana ripening to EU firms to the exclusion of U.S. firms, more burdensome licensing requirements on dollar banana imports, and EU discriminatory, trade-distorting, market access policies which depart from WTO “fair-share standards.” On May 22, 1997, the WTO found the EU banana policy inconsistent with the rules governing world trade.

The WTO concluded that the EU banana import regime violated world trade rules with regard to the system of import licenses, the administration of the banana TRQ, the inclusion of Venezuela and Nicaragua in the Framework Agreement, and the issuing of export certificates for countries who signed the Agreement. On June 26, 1998, the EU Agricultural Council adopted minor modifications to the banana import regime and unilaterally declared its new rules WTO consistent.

Since there was no acceptable resolution to the dispute in terms of changes in import licenses and banana quotas, Section 306(b) of the Trade Act of 1974 requires the U.S. Office of the Trade Representative to determine appropriate action if a foreign country fails to implement a recommendation pursuant to dispute settlement proceedings. Subsequently, the WTO Dispute Settlement Body granted the United States authorization to “suspend concessions” and impose 100% ad valorem duties on EU products, equivalent to the estimated losses of U.S. firms ($191.4 million) due to the EU’s restrictive import policies.

The history of the banana dispute indicates the rigidity of the EU import regime and its ability to protect the rents inherent in their restrictive trade policies. Clearly, there are substantial rents to be garnered by EU importers. As Daniel Mazuerá, Colombia’s Foreign Trade Minister, alleged, a 300% price differential between the Latin American producer and EU retail outlets for a box of bananas produces rents high enough to support a parallel market in import licenses. The EU requirement of a special export certificate of origin issued by the Latin American countries under the BFA strengthened the producers’ bargaining position vis-à-vis the importers such as Chiquita Brands (Morath). Since the
European importer needs the certificate, the exporting country could extract a share of the rent for its producers and/or for government revenue as an export tax. Thus, Chiquita Brands Inc. chose to use U.S. trade laws to protect its vested interest in the EU market where millions of dollars in quota rent were at risk. If the BFA had succeeded, then Latin American countries could obtain EU market share at the expense of Chiquita Brands.

**Beef**

The beef dispute between the United States and the EU has a different origin, but the results are the same: restrictions on imports and a difficult trade dispute between the trading parties.

In November, 1977, an Italian physician in Milan reported unilateral breast enlargement in 42.9% of 350 children at a local school. A brief report of the situation appeared in the widely read journal, *The Lancet*, with physicians commenting that “This is the most striking and persistent instance of unexplained breast enlargement ever reported. . . .” (Scaglioni et al., pp. 551–2). The Town Council requested an investigation into the source of the problem. Investigators ruled out drugs and swimming pool water, leading to a suspicion of food as the estrogen source (Scaglioni et al.).

Samples of baby food from five major manufacturers were analyzed because of public awareness of the possible side effects in children of the use of anabolic agents in meat production. Analysis subsequently revealed diethylstilbestrol (DES) in Italian baby food. Investigators hypothesized that DES may not have been removed from all slaughter animals—whether Italian, other European, South American, or other—with residues from the implants (which remain in the meat for several months) becoming incorporated into products such as baby food, meatballs, and hamburgers (Loizzo et al.). As a result of the Italian crisis, food safety, especially with regard to meat, became a serious issue in Europe.

In 1981, the European Council adopted Directive 81/602, which prohibited the use of hormones in meat production. After some delays in implementation, the European Community banned all U.S. meat imports containing hormones, including beef, pork, and horsemeat, beginning January 1, 1989. Due to this directive, EU imports of American beef are limited to only about 7,000 tons of hormone-free meat a year, worth $20 million.

On three separate occasions—once in 1997 and twice in 1998—the WTO ruled that the EU’s ban on the use of certain hormones to promote the growth of cattle violated the WTO Sanitary and Phytosanitary (SPS) Agreement and that the EU had 15 months to come into compliance in each of its decisions. The WTO found that the EU beef hormone ban “does not conform to any of the scientific conclusions reached in the evidence referred to by the European Communities” (U.S. Department of Agriculture, Foreign Agricultural Service, p. 3) and that the ban is without credible evidence to indicate that there are health risks associated with hormone-treated beef.

In a broader context, the beef hormone dispute is a test of the new WTO Agreement on the Application of Sanitary and Phytosanitary Measures and the potent Dispute Settlement procedures that were adopted as part of the Uruguay Round Accords. The WTO has concluded that the EU has not complied with
the decision of the Dispute Settlement Body. Thus, the United States notified the WTO of its intention to suspend trade concessions to the EU equivalent to the estimated harm, $202 million, due to the loss of U.S. beef exports from the hormone ban.

The U.S. position is clear. The failure of the EU to meet its WTO obligations, including those resulting from adverse rulings against the Union, jeopardizes the credibility and integrity of the WTO. “The biggest test of the SPS Agreement is yet to come: can sovereign states defend to their home electorates the adverse decisions of an unelected WTO dispute settlements procedure when their domestic democratic institutions have adopted SPS measures (be it with regard to beef hormones, GMOs, or whatever) which are deemed incompatible with a country’s WTO commitments?” (Swinbank, pp. 331–2). Apparently, the EU deems protecting its “sovereignty” in SPS matters of higher priority than complying with external trade agreements.

Sovereignty is not an idle issue with regard to the EU. Despite Article 30 of the EU Treaty giving mutual recognition to products lawfully marketed by one member country the right to be marketed in another Member State, France continues to ban imports of British beef. In an international context, “mutual recognition implies a formal agreement to recognize, on a case by case basis, the SPS measures or testing and conformity procedures of a trading partner as equivalent to one’s own” (Swinbank, p. 331). If France is unwilling to lift its import ban on internal EU meat trade, a resolution of the EU–U.S. beef hormone dispute may prove even more difficult.

An EU proposal for “temporary compensation” for the hormone-free beef ban failed due to a lack of U.S. interest and carelessness in certification of U.S. exports as hormone-free. The Union proposed a temporary increase in the market access for hormone-free beef in exchange for a lifting of the U.S.’s duties. The United States has shown little interest in the EU proposal because the “largest American cattle farmers were not involved in the niche market” (Taylor, p. 8). In May 1999, the EU closed the door on its proposal when spot checks found residues in 12% of the beef imports from the United States designated as hormone-free beef (Smith and Dunne). In April 1999, the European Union’s scientific committee on veterinary measures stated that one of the six growth hormones fed to cattle in the United States, 17 beta-oestradiol, is a “complete carcinogen” (Wall Street Journal, 1999, p. A14).

Coincidentally, two other food safety crises occurred in Europe further acerbating consumer confidence in the governments’ ability to eliminate harmful contamination. In 1999, a Belgian firm recycling animal fat and cooking oils accidentally contaminated rendered fats with dioxin. The contaminated fats were then sold to an animal feed compounder which sold its feeds to local farmers. Thus, contaminates entered the food chain necessitating the destruction of birds and animals and product recalls from supermarkets across Europe. Charges of fraud, negligence, and incompetence further complicated the situation. Contaminated oils were exported through intermediaries to Spain and other countries. Ultimately, the Belgian government, in power for 40 years, was replaced in general elections due to voters’ lack of confidence (Iglesias).

The Coca-Cola crisis also added to a lack of confidence in Europe’s food safety regulatory system. The Coca-Cola product recall also compounded consumers’
fears of government failure to protect food safety. In June 1999, Coca-Cola recalled millions of bottles and cans of Coke across Europe after Belgian students complained of headaches, nausea, and shivering after drinking Coke. Dr. Isy Plec, head of psychiatry and psychological medicine at Brugmann Hospital in Belgium, said “that a climate of fear over food safety because of the country’s dioxin-in-food crisis, as well as student nervousness during their exam period were the main factors in the Coke crisis” (Wall Street Journal, 2000, p. A21). The company’s handling of the crisis did little to reassure the European public.

**Biotechnology**

Even more serious is the U.S.–EU dispute over biotechnology and genetically modified seeds, such as Bt corn varieties and herbicide-resistant soybeans. Biotechnology allows plant breeders to improve traits in corn and soybeans, such as their nutritional value, stress tolerance, and resistance to pests and herbicides. The benefits to producers and consumers are clear. Corn borers cause an estimated $1 billion of damage annually in the United States, but Bt corn contains a protein from naturally occurring soil bacterium, *Bacillus thuringiensis*, which is toxic to corn borers, thus protecting a valuable crop and reducing the need for pesticides.

The EU registration and approval process for genetically modified seeds is lengthy, and the scientific process appears to be subverted by politics and socioeconomic concerns. After their successful anti-GMO campaign in Europe, activists are planning an “all-out assault on the U.S. biotechnology industry” (Lagnado, p. B2). European consumers reject biotechnology, preferring “natural” foods, while the EU claims that it needs more time for scientific analysis. Opponents of biotechnology such as Greenpeace and Friends of the Earth argue that biotech firms treat consumers as “guinea pigs” by failing to conduct long-term studies first. They have raised the specter of GMOs triggering deadly, if rare, allergies in consumers or environmental damage to traditional food crops through cross pollination. Their well-orchestrated antibiotech campaign has resulted in pledges by major food processors such as Novartis, Zeneca, Unilever NV, and Nestle SA to provide GMO-free foods. U.S. subsidiaries of these European firms may follow their parent companies’ policies.

The issue of mutual recognition of testing services and approval processes is absolutely essential to the future of biotechnology. The United States has submitted five improved varieties of corn for EU approval, but delays have slowed the process. Roger Pine, president of the National Corn Growers Association, testifying before the House Committee on Agriculture, Subcommittee on Risk Management, Research and Specialty Crops, argued that the “country-by-country approach becomes unworkable as more nations adopt new standards and approval procedures” (Pine, p. 3). The American Soybean Association (ASA) echoed the same concerns. The ASA wants the Clinton Administration to engage the EU in an effort to reach agreement to recognize each other’s procedures for approving and commercializing biotech crops and products (American Soybean Association). However, the mutual recognition process has been overtaken by the concerns of consumers and environmentalists. Trust in “the system” will be key to an acceptance of a mutual recognition policy.
Remedies

Does the United States have any recourse to these trade disputes? Section 301 of the Trade Act of 1974 allows U.S. firms to petition the U.S. Trade Representative’s Office for redress when American goods are denied access to world markets. The United States has placed the banana and beef hormone disputes before the WTO’s Dispute Settlement Body. Despite three favorable rulings by the WTO—once in 1997 and twice in 1998—the EU has not abided by the decisions, preferring to pursue legal maneuvers and delaying tactics which have resulted in the United States invoking another section of its trade law.

Section 306(b) of the Trade Act of 1974 mandates retaliation when U.S. trading partners do not abide by dispute settlement panels. Thus, in April 1999, the United States elected to place prohibitive tariffs on $202 million of EU imports, the estimated annual harm to U.S. exports resulting from the EU’s failure to lift its import ban on U.S. meat. The United States also retaliated for the EU’s failure to abide by the WTO’s rulings in the banana case by placing prohibitive tariffs on imported products from the EU totaling $192 million. The result is that European producers and American importers of goods ranging from cashmere sweaters to plastic handbags lose their U.S. markets for products totally unrelated to bananas or beef (U.S. Office of the Trade Representative, December 21, 1998, March 22, 1999).

Since there has been no resolution to the banana and disputes, the USTR has announced procedures for modifying the list of European products subject to 100% prohibitive import tariffs under Section 301 of the Trade Act of 1974. Section 407 of the Trade and Development Act of 2000, enacted on May 18, 2000, amended Section 301 by requiring the USTR to review its initial actions—prohibitive tariffs—under Section 301 and to revise them, in whole or part, three months after their initial effective date and six months thereafter. Thus, the USTR has the option of applying the tariffs to more commodities than the initial targeted ones or increasing the tariff rates beyond the 100% ad valorem level. The motivation for these actions is the United States’s growing sense of frustration with the EU’s failure to honor its WTO obligations. “The intent of Section 407 is to induce compliance with the results of WTO dispute settlement proceedings, while maintaining the level of retaliation within the level authorized by the WTO” (U.S. Office of the Trade Representative, May 26, 2000). Whether these punitive actions are successful will depend upon the willingness of both sides to compromise.

Conclusions

The credibility and integrity of the WTO is at stake in these disputes. The United States has offered to label beef exported to the EU as “Product of the USA,” thus allowing the consumers to make their own decisions, but this proposal has not been accepted. Without resolution, these trade disputes could jeopardize commerce between two of the world’s largest trading blocs. If the EU continues to reject the findings of the Dispute Settlement Panels in bananas and beef, what is going to prevent the United States from doing the same when it is on the losing side in an agricultural trade dispute? Certainly such actions could weaken the integrity of the world trading system.
Are these actions a return to the 18th-century Corn Laws? Special interests dominate the decision-making process in the European Union and ignore the wider benefits of freer trade to society. Just as Ricardo's theory of comparative advantage threatened the landed gentry in Parliament, complying with the WTO rulings on competition in banana imports may threaten a few international produce firms in Europe. However, the gains to consumers and the integrity of the world trading system should outweigh any losses by a few companies.

Trade controversies over bananas, beef, and biotechnology are part of a larger set of amorphous concerns about the forces of globalization involving consumer concerns about the environment, food safety, industrial concentration, labor standards, etc. The real problem is that neither the United States nor the EU is willing to delegate to the WTO, or other external body, sufficient power to override domestic political considerations. In the EU, the public's confidence in both governmental and scientific analyses has declined because of a perceived bias toward political and industrial interests rather than consumer welfare. In other cases, they perceive that political lobbies or special interest groups may gain at the expense of consumer safety. Ultimately these contentious trade disputes are a reflection of a settlement system adjusting to the forces of political and economic globalization yet without sufficient flexibility to adjust to local domestic concerns.

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References


Swinbank, A. “The Role of the WTO and the International Agencies in SPS Standard Setting.”


