Friends of the Earth Europe

GM food and the EU-US trade deal

September 2014

Introduction

Negotiations on a transatlantic trade deal between the European Union (EU) and the United States (US) threaten the EU's ability to regulate imports, authorisations and safety checks of genetically modified (GM) food and seeds, which could mean an increase in GM imports to the EU. US agri-business and the biotech sector have been pushing for greater access to European markets for years, and US negotiators are using the Transatlantic Trade and Investment Partnership (TTIP) talks to push their demands. The European Trade Commissioner has denied that safeguards against GMOs will change as a result of a deal,[1] but evidence from the EU's new trade deal with Canada – seen as a model for the TTIP – suggests European protections have already been undermined. This briefing looks at the evidence and argues that stronger guarantees are needed to protect European citizens and the environment from the threat of increased imports of GMOs, lowered standards for safety checks and hidden, untested GMOs in food and seeds.

What the US wants

US negotiators at the talks have been clear that one of their main aims is to increase market access for US agri-business.[2] They claim that Europe's GM labelling requirements are a barrier to trade. Industry groups representing US soy farmers, corn farmers and the biotech industry have been lobbying the US government to demand increased access to European markets.[3] European safety standards for GM food are seen as much tougher than those in the US, and the agriculture and biotech lobbies want to see these standards weakened.

The US negotiators argue that European regulations should take a similar approach to US regulations and be based purely on scientific assessments, often provided by the biotech companies themselves – rather than needing the political approval of the European Council, Commission and Parliament, which allows wider impacts such as ethics and the impacts on the environment and on society to be taken into account.

[1] http://www.reuters.com/article/2013/11/15/us-eu-usa-trade-idUSBRE9AE12I20131115

[2] http://www.fas.usda.gov/sites/default/files/2014-04/tpa-ttip.pdf

[3] http://www.regulations.gov/#!searchResults;rpp=50;so=DESC;sb=postedDate;po=200;a=USTR;cmd=01%257C01%257C13-06%257C30%257C13

The US negotiators' objectives for the talks are[4]:

- Better market access for US biotech products
- A faster EU authorisation process for GM crops
- The removal of various 'trade barriers' which limit imports of GM crops to the EU
- A streamlined process between authorities on both sides of the Atlantic

The EU Trade Commissioner, Karel de Gucht, has said that EU rules on GMOs would not change as a result of the trade deal[5], but this is the clear objective of the US biotech industry.[6]

What industry wants from the TTIP:

The North American Export Grain Association and the National Grain and Feed Association call for the "*Reduction and elimination of measures related to crop biotechnology that currently restrict or prevent trade in grains, oilseeds and their derived food and feed products*." [7]

The National Corn Growers Association says: "*unjustified regulations are costing U.S. farmers and food exporters millions in lost sales to the EU*" and argue that "*measures taken under the guise of the precautionary principal*" are not justified.[8]

The American Soybean Association says: "*ASA believes the TTIP must address the key EU biotech policies that are discriminating against U.S. exports... First and foremost, the EU's mandatory traceability and labeling policies for products containing biotech ingredients must be replaced with a non-discriminatory GMO free labeling policy. There are no health, nutritional or food safety reasons for food products containing biotech ingredients to be labeled, and any inclusion of biotech ingredients should not be stigmatized with a label*."[9]

The Biotechnology Industry Organization (BIO) urges a deal that provides "*a means to predictably achieve approvals of agricultural biotechnology products within the timeframes established by European laws and regulation*" including an extension of the 'zero tolerance' technical solution (which allows contamination of animal feed) to "*both food and seed*". [10]

The American Seed Trade Association (ASTA) wants to undermine the EU's zero tolerance policy on GM contamination urging the EU to extend the 'technical solution' that allows

[4] *US SPS 2013 p. 19, Maintaining dependable export markets for U.S. agricultural producers is critical to this nation's economic health. … The elimination of unwarranted SPS foreign trade barriers is a high priority for the U.S. Government. ,* http://www.ustr.gov/sites/default/files/2013%20SPS.pdf
USDA April 2014, WHY TRADE PROMOTION AUTHORITY IS ESSENTIAL FOR U.S. AGRICULTURE AND THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP http://www.fas.usda.gov/sites/default/files/2014-04/tpa-ttip.pdf

[5] De Gucht said the EU's tight regulation in the sensitive issue of genetically modified food would not change, even if Brussels and Washington did sign an accord http://www.voanews.com/content/reu-eu-us-trade-talks-face-growing-hostility-ministers-warn/1861540.html ; *"I will not agree to put hormone beef on the European market or change our laws on genetically modified organisms."* http://uk.reuters.com/article/2014/02/28/uk-eu-usa-trade-idUKBREA1R0NR20140228

[6] http://www.bio.org/sites/default/files/BIO%20TTIP%20submission%20May%202013%20final%205%2017%2013.pdf

[7] http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0291

[8] http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0314

[9] http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0155

[10] http://www.bio.org/sites/default/files/BIO%20TTIP%20submission%20May%202013%20final%205%2017%2013.pdf

certain amounts (up to 0.1%) of GM in animal feeds to be extended to seeds, including *"…in those cases where the seed has not yet been approved for cultivation in the EU."*[11]

The US Wheat Associates have also backed up this demand, stating: *"… the European Union needs to implement a low level presence policy (LLP) for food to avoid trade disruptions."*[12]

Barriers to trade – the US view

The United States has repeatedly raised concerns and objections with the EU regarding the EU's regulations and legislation on biotechnology and their detrimental effect on US exports.[13] Other nations that impose labelling requirements are also criticised.[14]

"European Union (EU) measures governing the importation and use of GE products have resulted in substantial barriers to trade. EU policies restrict the importation and use of U.S. agricultural commodities derived from agricultural biotechnology. The EU's restrictions on GE products can result in import prohibitions on U.S.-produced commodities and foods, as well as prohibitions on the cultivation of GE seeds."[15]

The US annual trade reports cite a long list of supposed trade barriers, including:

- EU GMO labelling rules
- EU regulations and standards for GM crop authorisation (they argue that the EU should not have its own regulations)
- EU (and Chinese) regulations that state that only authorised GMOs can be marketed in their territory and that imports contaminated with non-authorised GMOs shall be rejected at the border
- National bans outlawing the cultivation of specific GM crops.

The EU's 'zero tolerance' rule is a particular source of irritation as it means that only GMOs that are authorised for the EU can be marketed in the European Union.[16] Under this rule, the burden of proof lies with the producer. So when conventional rice seeds were contaminated in the US with a non-authorised GM variety in 2006, the European Commission was able to demand that US exporters provided guarantees that seed shipments were not contaminated with the illegal GM variety.[17]

The zero tolerance rule provides protection for EU citizens, and also limits the costs to EU taxpayers of verifying that imports meet the standard. US officials want this rule changed and

[11] http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0172
[12] http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0127
[13] US SPS 2013 p. 19 - " Maintaining dependable export markets for U.S. agricultural producers is critical to this nation's economic health. … The elimination of unwarranted SPS foreign trade barriers is a high priority for the U.S. Government. "At the same time, it is appropriate to question SPS measures that appear to be discriminatory, unscientific, or otherwise unwarranted and therefore, that do not serve to guard against legitimate health and safety risks but rather act to protect domestic or favored foreign products." http://www.ustr.gov/sites/default/files/2013%20SPS.pdf
[14] Peru, Turkey and Ecuador are also criticised.
[15] US Trade Representative, Report on Sanitary and Phytosanitary Measures, 2014 p 59, http://www.ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled.pdf
[16] http://www.foeeurope.org/preventing-contamination and in more detail: http://www.foeeurope.org/sites/default/files/foee_briefing_dropping_zero_tolerance_dec2011.pdf
[17] http://europa.eu/rapid/press-release_IP-06-1120_en.htm?locale=en

they argue that certification requirements are being used as a barrier to trade.[18] They believe low-level contamination should be allowed.

The US also argues that EU labelling requirements are "commercially infeasible" and that requirements in some EU member states related to planting GM crops alongside non-GM crops (i.e. requiring buffer zones) are "unnecessary and burdensome".[19] The US argues that labelling should only be required if there is a risk to health.[20]

The EU approval process is also criticised because of "delays in approvals of new GE traits despite positive assessments by the European Food Safety Authority (EFSA)" and the need to register GM commodities.[21]

The EU labelling requirements, which require that all food and feed produced with or containing GM ingredients must be labelled, entered into force in 2004 and aimed to ensuring a high level of protection of environment and citizens' interests.[22]

While the terms of the trade deal with the US will not change existing EU legislation, the agreement could change the way in which laws are applied – for example, changing how safety checks are conducted, or redefining thresholds for GM contamination in food, feed and seeds. The terms of the agreement would also affect any future reviews of the legislation, making it impossible to introduce stronger protections.[23] US agri-business is lobbying for the withdrawal of the EU's labelling laws (see box: What industry wants from the TTIP).

European approval processes under attack

The EU authorisation system is based on the precautionary principle and distinguishes between safety checks, which are performed by the European Food Safety Authority (EFSA), risk management,[24] and authorisation, which is the remit of the European Commission and member state representatives.

Before GM food, feed and seeds can be marketed in the EU, they must pass a three-step authorisation procedure:

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[18] US SPS report 2013 p. 58 *Under the EU's implementation of its biotechnology legislation, the presence in U.S. grain or oilseed shipments of trace amounts of GE crops that are legally grown in the United States, but not yet approved in the EU, can make U.S. crops unmarketable in the EU.* http://www.ustr.gov/sites/default/files/2013%20SPS.pdf

[19] US Trade Representative, Report on Sanitary and Phytosanitary Measures, 2014 p 60, http://www.ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled.pdf

[20] SPS 2013 US report p.35 - *Some U.S. trading partners have continued to impose restrictions on these products even though repeated dietary risk assessments have shown no food safety concerns, and these biotech products have proven safety records.* http://www.ustr.gov/sites/default/files/2013%20SPS.pdf

[21] US Trade Representative, Report on Sanitary and Phytosanitary Measures, 2014 p 60 http://www.ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled.pdf

[22] TFEU Art 169 para 1 *In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.* Article 12and 24 of regulation 1829/2003 define details for labelling rules for GMO food and feed

[23] US Trade Representative, Report on Sanitary and Phytosanitary Measures, 2013, http://www.ustr.gov/sites/default/files/2013%20SPS.pdf

[24] The basic principles for the risk assessment are defined in the main legal texts GMO legislation: directive 2001/18 and regulation 1829/2003, both are supplemented by EFSA guidance and further EU wide legally binding texts.

Step 1: the application, including data from the biotech company, is sent to EFSA.
Step 2: EFSA conducts a risk assessment report, based on the company data and peer-reviewed literature.[25]
Step 3: national representatives and the European Commission consider EFSA's opinion and can take other aspects into consideration before deciding on authorisation, including societal, ethical and environmental factors as well as citizens' expectations.[26]

US officials complain that the standards implemented in the EU can be higher than standards agreed by other international bodies, that there is a distinction made between safety checks and risk management, and that the reliance on the precautionary principle means EU politicians are able to consider other factors in their decisions and that this causes delays. They also criticise the fact that the EU insists on its own authorisation process and the EU rules on safety checks.

"Some U.S. trading partners have continued to impose restrictions on these products even though repeated dietary risk assessments have shown no food safety concerns, and these biotech products have proven safety records"[27]

They argue for "an ambitious 'SPS-plus' chapter" [sanitary and phytosanitary] in the TTIP, including requirements that:
"*The level of protection must be based on scientific principles, must not be maintained without sufficient scientific evidence, and may be applied only to the extent necessary to protect human, animal, or plant life or health.*"[28]

For the EU, adhering to international standards would weaken existing regulation and shift regulation away from a precautionary approach, providing less protection for EU citizens and the environment. It could also stop the EU introducing effective laws in the future. International standards are based on national laws, and it is important that nations retain the option of strengthening their own laws, potentially improving future international standards.

The 'precautionary principle' is an important legal cornerstone of European policy, having been explicitly enshrined in the Treaty on the Functioning of the European Union.[29] It means that anyone introducing new foods to EU markets is responsible for proving that they are safe before they enter the market. This approach is not unscientific, but recognises the uncertainty of technological developments and innovations. It allows societies to avoid the consequences of risks being underestimated, driving innovation in a more sustainable direction.[30]

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[25] The basic principles for the risk assessment are defined in the main GMO legislation: directive 2001/18 and regulation 1829/2003, both are supplemented by EFSA guidance and further EU wide legally binding texts.
[26] CODEX alimentarius with some constraints allows the consideration of other aspects http://www.fao.org/docrep/007/y5817e/y5817e0a.htm
[27] SPS 2013 US report p.35 http://www.ustr.gov/sites/default/files/2013%20SPS.pdf
[28] US Trade Representative, Report on Sanitary and Phytosanitary Measures, 2014 p.22 http://www.ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled.pdf
[29] Consolidated Version of the Treaty of the Functioning of the European Union, Article 191.2, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF
[30] For a more detailed argument on this topic please see: Why the Precautionary Principle Matters, Andy Stirling, The Guardian, 8 July 2013, http://www.theguardian.com/science/political-science/2013/jul/08/precautionary-principle-science-policy

In complete contrast, US rules on food safety allow industry to provide 'scientific' evidence voluntarily, with regulators only able to act after evidence of actual harm is confirmed.[31] At which point, the harmful material may have been in circulation long enough to cause serious damage to citizens' health or the environment.

Lessons from the Canadian trade deal

The TTIP negotiations are being carried out behind closed doors, with very limited information available on the proposals being discussed. However, the preliminary outcome of the recent EU-Canada trade negotiations (CETA) may provide an insight into the European Commission's approach to the regulatory issues regarding GMOs.

As in the negotiations with the US, the issue of GMO regulations was key for Canada and for Canadian agri-business. Canada was the first country to cultivate GM crops on a large scale, and almost all of Canada's rapeseed harvest is GM.[32] Canada also relies on agricultural exports, and so market access for GM rapeseed is considered to be in the national interest.

Canada had previously raised concerns about access to the EU market through the World Trade Organisation (WTO) and in 2003 initiated a dispute settlement (jointly with the US and Argentina) regarding national-level bans on GM crops within the EU, [33] leading to a permanent Working Group on GMOs being set up between the EU and Canada. Canadian diplomats have been pushing for a relaxation in the rules for GM contamination following an incident in 2009 when organic flax was contaminated with GM flax, and so import was refused under the 'zero tolerance' rule.[34]

Canada, like the US, has a very different approach to Europe regarding the regulation of GMOs, but according to the agreed text on CETA, the EU and Canada are now committed to a 'shared objective' to minimize the adverse trade impacts of regulatory practices, giving trade interests a higher relevance and value in national and EU regulations than the current EU precautionary approach and undermining agreed EU GMO rules. This would appear to place trade interests above social, environmental and ethical considerations, including the need to protect the environment, citizens and health.

The CETA text includes an agreement to:

- promote efficient science-based approval processes for products of biotechnology
- cooperate internationally on issues related to biotechnology such as low-level presence of genetically modified organisms
- "regulatory cooperation to minimize adverse trade impacts of regulatory practices related to biotechnology products"[35]

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[31] The US – the country that grows the most GM crops –often bases its GM laws on other agricultural laws like for pesticides or plant varieties agreed around two decades ago. http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=biotech-plants.xml in detail http://www.fda.gov/Food/FoodScienceResearch/Biotechnology/Submissions/default.htm; http://www.epa.gov/pesticides/biopesticides/pips/index.htm, http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/biotechnology?1dmy&urile=wcm%3apath%3a%2Faphis_content_library%2Fsa_our_focus%2Fsa_biotechnology%2Fsa_regulations%2Fct_regulations and an NGO assessment of the legal framework: http://www.centerforfoodsafety.org/issues/311/ge-foods/regulations

[32] http://www.isaaa.org/resources/publications/briefs/46/executivesummary/default.asp

[33] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds292_e.htm

[34] http://www.agcanada.com/daily/flax-sector-slowly-recovers-from-day-of-the-triffids

[35] Canada-EU CETA Negotiations, Bilateral Cooperation on Biotechnology, Agreed Text, April 19, 2012 – see http://eu-secretdeals.info/ceta/

The Canadian farming sector and trade negotiators have celebrated the shared objective, seeing it as providing the opportunity to improve export opportunities to EU markets for their GM rapeseed. Canadian officials welcomed the outcome saying:
"Canada leveraged the CETA negotiations to get agreement with the ... EU's commitment to ensuring the efficient processing of canola applications and the expeditious movement of these proposals through the EU approval process." [36]

> *"We look forward to the EU adopting more timely and science-based policies related to the approval of biotech traits as well as addressing issues related to establishing low-level presence policies."* Canadian Canola Growers Association[37]

This shared objective clearly contradicts EU policies on the environment, food and GMOs, in substance and principle, as defined in the Treaty on the Functioning of the European Union. These are clear that trade policy should not be prioritised and that science-based decisions must consider social and environmental aspects.

There have been no formal announcements from the European Commission regarding plans to change the implementation of GMO rules and it is unclear on what basis the Commission has agreed to such a change.

What's at risk

While any deal done as part of TTIP will not re-write the EU's rules, it would impact any future regulation, and any existing regulation that comes under review. It could also affect threshold levels, with the EU placed under increasing pressure to relax the existing requirements.

Key threats:

- Efforts to introduce new regulations and standards for GMOs would be blocked
- Efforts to tighten existing regulations and standards would be blocked
- Thresholds that protect consumers against GM contamination could be raised
- Existing labelling requirements would come under threat
- The EU's zero tolerance rule would be effectively undermined.

For example, any initiative to introduce a more consistent approach to GM labelling, such as including meat, eggs and dairy products from animals fed on GM feed, would be blocked. Similarly any new framework for voluntary labelling rules for animal products could be challenged.

A deal could also have consequences for labelling thresholds. Under the current rules, any food or feed product containing more than 0.9% of an authorised GM product must be labelled. The current threshold for GM seeds is zero, with minimal exemptions,[38] but the biotech industry wants to see a higher threshold introduced and are pushing for a change in the rules. A deal could open the door to allow a threshold for non-authorised GM contamination of food or seeds.

[36] http://www.actionplan.gc.ca/en/page/ceta-aecg/technical-summary#p6
[37] http://www.ccga.ca/News/Pages/Canada%E2%80%99s-Canola-Farmers-Support-Conclusion-to-CETA.aspx
[38] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R0619&from=EN

This would mean that food and seeds contaminated with unlabelled and unauthorised GMOs would be for sale in Europe. European citizens could be eating genetically modified food without knowing it was on their plates. And farmers could unwittingly be planting GM crops in their fields. The rights of European citizens to choose would be undermined.

A deal could also threaten the right of member states to limit the cultivation of GM crops, with the US objecting to national bans. A new law is scheduled for debate in the European Parliament in autumn 2014 which would allow member states to declare parts or all of their territory as GM-free because of concerns about the risk of contamination or socio-economic impacts. US officials have raised concerns about these bans which are seen as "unscientific".[39]

Our demands for TTIP

As a result of public opposition, there is currently very little cultivation of GM crops in the EU and virtually no GM food sold by supermarkets. The public have made it very clear in a number of member states that they do not want their food or their environment contaminated by GM products. Friends of the Earth Europe believes that the TTIP negotiations pose a threat to the democratic choices of people in Europe by threatening the principles underlying environment and consumer protection in Europe.

Despite the legal commitments contained in the Lisbon Treaty, EU trade negotiators already appear to have undermined these principles in the trade agreement reached with Canada. US negotiators are clearly seeking to increase access to EU markets for their GM producers and can be expected to demand similar provisions in their trade deal with the European Union.

For these reasons, Friends of the Earth Europe demands:

- A commitment from the European Commission that food safety will not be included in the TTIP negotiations.
- That the European Union must not engage in a race to the bottom for regulations that provide environmental and consumer protection,
- That the EU must provide full transparency so that European citizens can be reassured that their rights are not at risk.

Prepared by Mute Schimpf, edited by Helen Burley | September 2014

Friends of the Earth Europe gratefully acknowledges financial assistance from European Commission's DG Environment. The contents of this document are the sole responsibility of Friends of the Earth Europe and cannot be regarded as reflecting the position of the funder(s) mentioned above. The funder(s) cannot be held responsible for any use which may be made of the information this document contains.

[39] SPS US report 2014 p. 62 http://www.ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled.pdf
The proposal does not require Member States to base any such restrictions on safety concerns, but allows them to take into account specific national or local issues, such as agronomic concerns related to segregating biotech and conventional crops, or political or economic motivations such as meeting market demand for non-biotech products.
SPS US report 2014 p 67
Not only does Austria maintain cultivation bans at the federal level, but Austrian states also maintain bans. Moreover, Austria consistently votes against EU regulatory approval for new biotech crop varieties, regardless of the scientific evidence presented in the application dossier. http://www.ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled.pdf

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