

**AgBiotech Planning Committee**  
**225 Reinekers Lane**  
**Suite 650**  
**Alexandria, VA 22314**

November 4, 2009

Docket: SPS Measures: USTR 2009-0031; Standards-Related Measures: USTR-2009-0032

The AgBiotech Planning Committee (ABPC)<sup>1</sup> appreciates the opportunity to submit comments in response to the “Request for Public Comments to Compile the National Trade Estimate Report on Foreign Trade Barriers and Reports on Sanitary and Phytosanitary (SPS) and Standards-Related Foreign Trade Barriers” Federal Register notice.

The European Union (EU) is failing to comply with its World Trade Organization (WTO) obligations to provide for a science-based, timely and predictable process for regulatory review of agriculture and food biotechnology products. In September 2006, the WTO Panel reviewing “European Communities-Measures Affecting The Approval & Marketing of Biotech Products” found that: *the European Communities applied a general de facto moratorium on the approval of biotech products between June 1999 and August 2003, which is when this Panel was established. Before the Panel, the European Communities had categorically denied the existence of such a moratorium. The Panel further found that, by applying this moratorium, the European Communities has acted inconsistently with its obligations under Annex C(1)(a), first clause, and Article 8 of the SPS Agreement because the de facto moratorium led to **undue delays** in the completion of EC approval procedures.*<sup>2</sup>

It is our view that the EU is not in compliance with its SPS and Technical Barriers to Trade (TBT) obligations related to the approval and trade of food and feed products produced through biotechnology. U.S. industries supported the decision of the U.S. government to suspend further action to retaliate for a limited time period to provide the EU an opportunity to demonstrate meaningful progress in implementing a functioning regulatory process to help normalize trade in biotech products. After two years, this has failed to happen. As you consider trade priorities and barriers of greatest significance for

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<sup>1</sup>The ABPC is a coalition representing farmers, merchandisers, food manufacturers and processors and biotechnology providers that support the continued availability and marketability of agriculture and food biotechnology.

<sup>2</sup> World Trade Organization- WT/DS291/R WT/DS292/R WT/DS293/R  
29 September 2006

“EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS”- Reports of the Panel.

U.S. agricultural exports, ABPC members urge you to include the failure of the EU to comply with the decision of the WTO panel ruling.

U.S. agriculture has suffered substantial damage from the EU's failure to abide by its WTO obligations that will continue as long as the EU does not comply with the WTO ruling. The EU regulatory moratorium effectively ended U.S. corn exports in 1998 and has substantially reduced corn byproduct exports since 2007. Due to the SPS barriers and potential TBT barriers with the traceability and labeling regulations, U.S. soybean exports have suffered and continue to be at increasing risk. Member states continue to maintain unjustified bans on cultivation of agricultural biotechnology products.

U.S. agriculture, food and biotechnology industries support the U.S. government's efforts to resolve this dispute and normalize trade with the EU in agricultural biotechnology products. Though approvals have been made by the EU since the dispute panel ruling, the products approved highlight the overtly political nature of the process. Since 2006, three additional member states have instituted outright bans on biotech-derived crops without any scientific evidence to substantiate the restrictions.

Given that these barriers to trade of biotechnology-derived products still exist, the United States should continue to reserve its full right to retaliate or use other options if the EU, and its member states, do not comply with the dispute resolution panel's findings. USTR should carefully consider all EU and EU member state products, agriculture and non-agriculture, for suspension of concessions and related sanctions.

Again, thank you for the opportunity to provide these comments.

Sincerely,

American Farm Bureau Federation  
American Seed Trade Association  
American Soybean Association  
Biotechnology Industry Association  
National Cotton Council  
National Oilseed Processors Association  
National Grain and Feed Association  
National Wheat Growers Association  
North American Millers Association  
USA Rice Federation  
US Grains Council