



## Principal EU-US trade disputes

The prospect of transatlantic free trade talks has brought the EU-US trade relationship, the largest bilateral trading relationship in the world, into the spotlight. Trade disputes account for a small fraction of the total volume of this trade, around [2%](#) according to the Commission, despite often receiving prominent media coverage. But a number of long-running disputes between the EU and the US are indicative of the challenges negotiators of a bilateral trade agreement face.

### Background

The size and importance of the EU-US [bilateral trade relationship](#), with trade in goods alone amounting to roughly €450 billion in 2011, makes the two transatlantic partners the key trade players worldwide.

[Discussions](#) on a possible free trade agreement between the EU and the US have recently taken off, aimed at eliminating or reducing tariffs and [non-tariff barriers](#) to trade in goods, services and foreign direct investment (FDI). There is a desire to conclude an agreement [by the end of 2014](#). On [23 October 2012](#) the European Parliament also called for the launch of negotiations for a comprehensive EU-US trade agreement.

The [items](#) with greatest trade are machinery and highly specialised technologies, pharmaceutical products and vehicles, as well as optical, photographic, technical, medical, etc. appliances. Therefore EU-US trade concerns focus on labour and capital-intensive sectors, characterised by economies of scale and intra-industry trade. In the past, agricultural products have been the subject of several [disputes](#). And with different public preferences, the greatest divergences are still found in areas of consumer and food safety, environmental protection and subsidies.

### Dispute-settlement framework

As both the EU and US are [WTO](#) members, all disputes have to be resolved in accordance with the WTO [Understanding on Rules and Procedures Governing the Settlement of Disputes](#). Throughout all [stages of dispute](#)

[resolution](#) the parties are encouraged to consult each other with the aim of settling.

Although dispute-settlement jurisprudence is binding only regarding the subject of and parties to the case, recent disputes between the EU and US provide an insight into the contentious issues in the trade relationship.

### Ongoing disputes

#### Aeroplanes (since 2004)

The [Airbus and Boeing disputes](#) concern subsidies to the respective companies. In 1992 the EU and the US concluded a bilateral EU-US Agreement on Trade in Large Civil Aircraft, which regulated the granting of subsidies in this area.

In October 2004, the US announced its withdrawal from the 1992 Agreement and challenged public subsidies granted to Airbus. In response, the EU challenged public support granted to Boeing. The [WTO ruled](#) that both sides had infringed the rules on subsidies, and so both parties then asked the WTO to allow counter-measures, with the [EU doing so on 27 September 2012](#). While imposition of such measures could lead to a trade war involving other sectors, [it is expected](#) that the dispute will eventually be settled. Hearings on the counter-measures started on 16 April 2013.

As the resolution of this dispute will have implications on how new producers of large civil aircraft from other countries can proceed, the comprehensiveness of the rules on government subsidies are important.

#### Poultry dispute (since 1997)

Under the [WTO Agreement on the Application of Sanitary and Phytosanitary \(SPS\) Measures](#) all measures aimed at protecting human, animal and plant health must be based on scientific principles, and not discriminate arbitrarily or unjustifiably. The ongoing poultry dispute, as well as the earlier beef and GMO disputes, highlight the significant divergence in understandings of [scientific evidence](#), scientifically proven risk and the [precautionary principle](#) between the US and EU.

The [poultry dispute](#) concerns an EU prohibition on the use of anything other than water to remove surface contamination on meat, thus preventing imports of poultry treated with antimicrobial rinses from the US. The prohibition was established in 1997, and in 2009 the US [requested](#) the WTO to establish a dispute settlement panel, claiming that the EU measures were not based on scientific principles. The panel has been formally established, but has not yet started work.

## Settled disputes

### **Beef hormone (1989-2009)**

The [beef hormone dispute](#) concerned EU restrictions limiting the use of natural hormones, banning synthetic hormones, and prohibiting imports of animals and meat from animals that have been given hormones. In 1996, the [US commenced a WTO case](#).

In 1997, the dispute settlement panel found against the EU, ruling that the ban had not been based on science, i.e. on adequate risk assessment or according to relevant international standards. On appeal, the appellate body upheld this, deciding that the EU had not scientifically proven that the hormones posed a cancer risk to consumers, but nonetheless acknowledging that countries may adopt stricter standards where supported by an adequate risk assessment. As the EU rules had been introduced in response to consumer concerns about hormones, the EU decided not to comply with the WTO ruling and, instead, accepted retaliatory measures.

In 2009, a [Memorandum on Beef Hormones](#) was signed. But it was only in 2012, when the [Council modified the applicable rules](#), that the dispute finally ended.

It has been argued that the WTO system was not designed to deal with disputes where the desire for protection [stems from consumers rather than producers](#), and that the basis of the dispute demonstrated a need to renegotiate the SPS measures.

### **Genetically modified organisms (GMOs) (2004-2006)**

In 2006, the WTO ruled on an EU-US [trade dispute](#) regarding delays in authorisation of GMO food. The US claimed that the EU had failed to process applications for food to enter

the EU market. The EU argued that it had acted in accordance with the precautionary principle. In this case, the [WTO found against the EU](#) stating that it is necessary to provide scientific evidence on potential harm.

The Commission has recently [reviewed](#) the EU legislative framework, [proposing amendments](#) that would allow Member States to ban or restrict GM crops on their territory. However, the [Council has concluded](#) that no political agreement on GMO cultivation can be reached at this stage. Some Member States believe the proposed ban might not be in line with WTO rules. In this case, it is argued that the [complex nature of the EU's decision-making process](#) may be the cause of the trade barrier and the resulting dispute.

### **Bananas (1999 to 2009)**

[The bananas dispute](#) concerned the two-tier tariff rate quota systems based on the country of origin of bananas in line with the Lomé Convention. The US contested this regime as it affected US producers with operations in Latin America. The dispute, caused by specific EU commitments, was [resolved](#) by the 2009 [Geneva Agreement on trade in Bananas](#).

### **Byrd amendment (2000–2007)**

The [Dumping and Subsidy Offset Act](#) provided for the proceeds of anti-dumping cases to be paid to the US companies that had brought the case. The EU and other WTO members argued that such reimbursement would entail an additional remedy and double protection.

### **Steel safeguard measures (2002-2003)**

In some cases, the [reason](#) for introducing measures can be the desire and need to protect a specific industry. While GATT and WTO allow some such measures, it is nevertheless necessary to show that imports are the primary cause of injury to such an industry. The WTO dispute panel concluded that was not the case regarding US measures in the [steel](#) industry.

### **Other disputes**

Further disputes between the EU and US have included the [Zeroing dispute](#), [Foreign Sales Corporation dispute](#), [wheat gluten](#) dispute, as well as cases on [trade mark](#) and [copyright protection](#).