

***The European Strategy  
to Become the New Global Standards-Setter***©

(Abridged Outline)

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## **I. Introduction / General Observations**

- A. *Europe Employs 'Economic and Legal Soft Power' to Project its Regional 'Higher Level of Consumer Protection' Regulation and Standardization Model Globally*
- B. *Europe Has Quickly Converted EU Cultural Preferences into Global Industry Standards by Coordinating its Regional & International Regulation and Standardization Efforts*
- C. *Europe's International Regulatory/Standardization Strategy Looks Beyond Ensuring Product Safety as a Matter of 'Risk Prevention'; Emphasizes Need to View the Market in Terms of Hazard/ 'Precaution'*
- D. *Europe's International Regulatory/Standardization Strategy Aims, in Part, to 'Protect' European Industries' Economic Interests and Prevent a 'Prisoners' Dilemma'*
- E. *Europe Encourages 'Naming and Shaming' Public Pressure Campaigns By Civil Society to Influence Private Sector Supply-Chain Standards-Based Compliance With EU Sustainable Development Policies*

## **II. Examples of Successful European Regulatory and Standards-Based Market Access Barriers Imposed on U.S. Food Exports**

- A. *The European Ban of Growth Hormone-Treated U.S. Beef*
- B. *The European Ban of U.S. Genetically Modified Food, Feed and Seed*
- C. *The European Ban of Growth Promoting Antibiotics Used in U.S. Cattle and Poultry Feed*
- D. *The European Ban of U.S. Poultry Treated with Low-Concentration Chlorine as an Antimicrobial Treatment*
- E. *The European Ban of U.S. Wines Produced With non-EU Oenological Practices and Using EU Semi-Generic Names of Geographic Origin*
- F. *The European Ban of U.S. Produce Containing Pesticides Exceeding 'Approved' Maximum Residue Levels (MRLs)*
- G. *The European Ban of U.S. Seafood*

## **III. Potential New European Sustainable Agriculture and Organic Farming Trade Barriers in the Making**

- A. *European Cap Reform Inspires Sustainable Agriculture and Trade Regulation and Standardization Policy Initiatives*

**IV. Examples of Third Countries Adopting EU-Type Bans of U.S. Farm Exports**

- A. *China*
- B. *Russia*
- C. *Turkey*

**V. Private Agricultural Standards as Potential Trade Barriers**

- A. *EU Governance Mechanisms May Facilitate Development of Private Standards that Promote European Community Environmental, Health and 'Food Safety+' Policies*
- B. *Organization for Economic Cooperation and Development (OECD) Review of Private Food Sector Standards*
- C. *Food and Agriculture Organization (FAO) Review of Private Food Safety Standards in Livestock Sector*
- D. *Codex Alimentarius Commission Review of Private 'Food Safety+' Standards*
- E. *Private Industry Standards Are Being Developed for Maximum Pesticide Residue (MRL) Levels*

**VI. Hypotheses About Why Europe Has Succeeded in Becoming the Global Standard-Setter**

- A. *An Effective Three-Prong Trade Strategy to Export EU Regional Sustainable Development Regulations and Standards Globally*
- B. *Effective Liberal Interpretation of GATT/WTO Treaty Rules to Alter the Relationship Between Trade and Non-Trade Law*

1. The EU has endeavored to glean from GATT/WTO case law justification to liberally interpret the 'like or similar' products standard of GATT Article III.4 and TBT Article 2.1, such that food, feed, and seed products produced, processed, or otherwise formulated consistent with or pursuant to preferred EU sustainable development-based standardized methods, procedures and/or criteria would NOT be deemed by EU consumers as 'like or similar' to U.S.

products not otherwise subject to such EU regulatory or standards benchmarks, especially where human, animal and plant health risks such products might be engendered and/or where EU consumer tastes/preferences and perceptions regarding the different food, feed and seed processing and production, cultivation and stewardship methods are shaped by point-of-sale labeling detailing the distinct process and production methods (PPMs)) employed by non-EU producers (e.g., U.S. exporters) for livestock, seeds and the crop or grazing land (i.e., whether or not they are subject to EU ‘sustainability’, ‘green’ or ‘CSR’ verification and certification standards) such that those differences render the U.S. exported end-products distinct from other products in the EU marketplace.

a. GATT/WTO Case Law on ‘Like or Similar’ Products:

2. The EU has endeavored to glean from WTO case law justification to liberally interpret the scientific risk assessment requirements of the Sanitary and Phytosanitary (SPS) Agreement, so that greater weight is placed on the “relevant processes and production methods” and “relevant ecological and environmental conditions” factors articulated by WTO case law, when assessing potential human, animal or plant Safety Risks or potential related Ecological and/or Environmental Risks that might be engendered by food, feed and seed products that fail to adhere to European process and production, cultivation and product/land stewardship methods (PPMs) as required by EU ‘sustainability’, ‘green’ or ‘CSR’ regulations or verification and certification standards.

a. WTO SPS Agreement Case Law:

3. The EU has endeavored to glean from WTO case law justification to liberally interpret the ‘purpose’ of particular Food ‘Safety’ Traceability and/or Packaging and Labeling’ and/or Certification measures so that they qualify as non-Food Safety (Environmental) or non-Safety Food ‘Consumer Information or Preference/Taste’ measures and/or Food ‘Quality’ measures (which can be either or both), subject to the less rigorous (Non-scientific) risk assessment requirements of the Technical Barriers to Trade (TBT) Agreement or of the GATT, rather than as Food ‘Safety’-focused ‘Sanitary or Phytosanitary Measures’ within the meaning of Annex (A)(1) of the SPS Agreement, which are subject to strict Scientific Risk Assessment requirements and economic cost-benefit analysis. Alternatively, the EU has endeavored to craft regulations or delegate authority to craft standards in such a manner as to include both SPS and a non-SPS ‘requirements’, to avail the EU and its Member States of the less rigorous scientific and economic justification provisions of the TBT Agreement.

a. SPS vs. TBT Agreement – It’s All About the ‘Purpose(s)’ of the Measure:

b. Conflating Food ‘Safety’ With Food ‘Quality’ for Product Certification, Packaging and/or Labeling Purposes:

C. *Since the EU Has Not Often Been Able to Fully Exploit its ‘27:1’ Voting Advantage vis-à-vis the United States for Purposes of Shaping International Food Safety Standards because of the Requirement of ‘Consensus-based Decision-making’ (Which Favors the U.S. at the WTO and the Codex), the EU May be Seeking to Alter Voting Rules at the WTO via Promotion of New*

*'Critical Mass Decision-making' Procedures, and at the Codex via Introduction of New Stakeholders into the Consensus Decision-making Process*

1. World Trade Organization (WTO):
2. Codex Alimentarius Commission (CAC):
3. United Nations Economic Commission for Europe (UNECE):
4. Organization for Economic Cooperation and Development (OECD):

D. *Various Intergovernmental and Nongovernmental Organizations Continue to Compete at the Codex to Influence the Development or Introduction of 'Food Safety+' Standards Which Reflect EU Regional 'Green' and 'Consumer Information'-based Sustainable Development/Agriculture Process and Production Methods*

1. UNECE. *[Effort to push through EU-centric regional fruits & vegetables 'food safety +' standards as international Codex standards]*
2. International Organization for Standardization (ISO). *[Effort to push through Codex private EU-centric 'food safety+' and import-export certification conformity assessment standards implementing existing Codex standards developed in technical committees and subcommittees in which the EU participates as a 'liaison']*
3. Organization for Economic Cooperation and Development (OECD). *[Effort to push through EU-centric 'food safety +' pesticide MRLs via 'OECD MRL calculator' to replace currently used 'NAFTA MRL calculator']*

E. *Europe Encourages and Promotes Public and Private 'Food Safety +' Standards that Elevate Regional 'Green' and Consumer Information-based Regional Organic and/or Sustainable Agriculture Process and Production Methods Internationally Without Granting Mutual Recognition to Comparable U.S. Standards*

**VII. Conclusion: This Complex Non-Linear Challenge Transcends Traditional Analysis**