
Food Fight: The United States, Europe, and Trade in Hormone-Treated Beef

In the summer of 1999, several McDonald's restaurants in southern France opened their doors to be greeted by steaming piles of fresh manure. French farmers had targeted McDonald's to protest recent actions by the United States in an ongoing trade dispute over beef treated with growth-promoting hormones. French displeasure echoed through the town of Auch, where 150 farmers occupied a McDonald's holding signs that declared "No hormones in foie gras country."¹ In nearby Millau, an attack on a McDonald's site under construction resulted in \$65,000 worth of damage. Charged with willful destruction, five farmers were imprisoned. "You are right to be angry," French agricultural minister Jean Glavany told a crowd at a farming fair. "This attempt to impose hormone-treated beef on us is unbearable."²

French hostility toward the American hamburger had its roots in a long-standing US-EU dispute over trade in beef. Ten years earlier, in a much-

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1. Craig R. Whitney, "Food Fight: French Impose Own Tariffs; Some Restaurants Retaliate Against US Goods over Beef Dispute," *The International Herald Tribune*, July 31, 1999, 9.
2. Glavany, quoted in Samer Iskandar, "Farm Protester Refuses to Leave French Jail Cell," *The Financial Times*, September 3, 1999, 3.

publicized effort to satisfy a health-conscious public, Europe had banned the use of growth-promoting hormones in raising beef cattle. The 1989 ban covered all beef—including meat imported from the United States, where growth-enhancing hormones were widely used. In retaliation, the United States imposed punitive tariffs on approximately \$100 million worth of European food imports, including pork products, canned tomatoes, and some fermented beverages. With rhetoric running high on both sides, a standoff began. Europe and the United States were at an impasse.

In the years that followed, the rules changed. New multilateral institutions and agreements were put in place to govern disputes like the beef quarrel. The World Trade Organization (WTO), with its new dispute settlement mechanism, was born in 1995. Rules for managing the health and safety issues surrounding trade in food were promulgated by the 1994 Sanitary and Phytosanitary (SPS) agreement. And the role of an existing international scientific organization that evaluated food safety, the Codex Alimentarius Commission, was strengthened.

Despite these changes, the story was very much the same a decade later. Though the new WTO ruled against the European ban, the European Union continued to reject beef raised with growth-promoting hormones. Nor had the new SPS agreement resolved the dispute. In 1999, once again, the United States imposed punitive tariffs of approximately \$117 million on foods imported from Europe, again focusing on pork but also national specialties such as Roquefort cheese, mustard, truffles, and foie gras. The rules had changed, but the endgame remained much the same: Europe and the United States were at an impasse (see timeline in appendix 1A).

At the core of the dispute lay fundamental disagreements about trade in food. The United States claimed that the European regulatory process had been captured by politics. US officials were frustrated by what they saw as a political move to protect the EU beef market by invoking scientifically unsupported claims about the harm caused by eating hormone-treated meat. Food regulation should be based on science, the United States argued, not on politics or protectionism. Europe defended its ban, asserting that health issues should be decided democratically—by politicians who answer to voters. European consumers had different standards than American consumers when it came to food. To justify their position, European officials invoked the “precautionary principle,” which they claimed entitled the European Union to prohibit or restrict products that were suspected, but not proven, to be hazardous.

The real issue, Europe insisted, was that the US trade system was overly influenced by industry. The United States had soured the transatlantic trade relationship by responding to the demands of the beef lobby, European officials said. The “client relationship” between Congress, the US Department of Agriculture (USDA), the Office of the United States Trade Representative (USTR), and the beef industry made it difficult to settle the

dispute in any politically palatable way, Europeans argued. US officials noted that little pressure was needed to motivate the government to initiate and pursue the case—the central issue was that Europe would not lift the ban. The standoff persisted: No hamburger would cross the Atlantic.

Background

The Context: Trade and Agriculture

Before the ban, Europe imported a modest amount of US beef—about \$100 million annually (out of more than \$1 billion worth that US beef producers shipped abroad each year)—a drop in the \$166 billion bucket of two-way transatlantic trade. Most of the US shipments were pet foods and other low-grade meat products. But the beef dispute captured the attention of US congressional leaders, federal agency heads, powerful industry lobbies, top European officials, diplomats, consumer groups, and international organizations. By early 2000, the European Union had spent some 600 million euros on the hormone spat.³ What was the big deal with beef?

Trade in food and agricultural products had often been a sticking point between the United States and Europe. As a result, agriculture remained essentially off the table in the first seven rounds of trade talks under the General Agreement on Tariffs and Trade (GATT) and was largely exempted from the disciplines that applied to manufactured goods (USDA 1998, 5). Though the subject of agriculture incited heated debates, little action was taken.

The differences between the United States and Europe grew out of their respective agricultural policies. From the early 1950s through the 1970s, agricultural trade was an exception to the trend of strong worldwide economic growth, falling from 34 percent of total world trade in 1950 to only 14 percent in 1976. Over the same period, higher productivity in agriculture led to lower crop prices and a need for fewer agricultural workers.

The response of US and European governments was to support agricultural prices and incomes. In Europe, the mechanism for doing so was the Common Agricultural Policy (CAP), initiated in 1962. Though the CAP controlled prices, it did not control production; as a result, there were large surpluses of some commodities. To reduce these surpluses, the European Community provided subsidies to farmers so they could sell their products on international markets without a loss. The United States

3. Geoff Winestock, "Column One: EU Beef Battle with US Began in a Rare Event—Italian Boys Grew Breasts; Ministers Banned Hormones—But Scientific Evidence Was Always Lacking," *The Wall Street Journal Europe*, March 2, 2000, 1.

also utilized price supports and subsidies in the agricultural sector, but it was moving to dismantle some of those price controls by the early 1970s. Its notable competitive advantage in many agricultural products, often attributable to industrial farming methods, put the United States in a strong export position. As a result, the United States gained enthusiasm for a liberal trade regime for farm products, focusing on its export commodities.

The beef dispute erupted at a time when the United States was pushing to lower agricultural subsidies and supports abroad—a move that would benefit the US agricultural industry. The year 1986 marked the beginning of the Uruguay Round of GATT trade talks, negotiations that the United States hoped would later be known as “the agriculture round” in recognition of progress in reducing agricultural trade barriers. For the first time, agriculture was prominent on the trade agenda.

It is important to note that both the United States and Europe actively protected their beef markets. Before the ban, most of the 50,000 metric tons of US beef shipped annually to Europe consisted of offal (tongue, liver, etc.), but significantly, the EC quota allowed in 10,000 tons of premium high-quality beef. In 1987, the United States exported about \$145 million worth of beef to Europe and the EC exported about \$449 million of beef (mostly canned) to the United States. Eighty percent of US meat exports to Europe consisted of sales to France and Britain.

The History: Beef and Hormones in the United States

In 1989, when the EC banned beef produced from cattle treated with growth-promoting hormones, more than half of the 35 million US cattle sent to market each year received such hormones. They included the natural substances oestradiol-17 β , testosterone, and progesterone, as well as the synthetic hormones trenbolone and zeranol. By reducing the time required for a steer (a castrated young bull) to reach target weight (about 1,100 lbs.), hormone treatments saved cattle ranchers about 15 percent in feed costs. Producers maintained that hormones not only kept beef prices down but also turned out leaner meat. “Hormones increase lean production and reduce fat production, which is what consumers have told us that they want,” says Chuck Lambert, chief economist at the National Cattlemen’s Beef Association. “We are also able to do that at about a 15 percent increase in efficiency.”⁴

The hormones in question had been approved for controlled usage by the US Food and Drug Administration (FDA) in the 1950s, 1960s, and

4. Unless otherwise noted, all quotes from Chuck Lambert are from a December 1999 interview with the author. According to Lambert, the feedlot process lasted 120 to 180 days on average for untreated cattle. The use of hormones enabled the time to drop to between 102 and 153 days.

1980s.⁵ Administered subcutaneously, the hormones trickled into cattle from an implant under the skin of the ear. “Hormones are not implanted into edible tissue,” Lambert notes. “In function, they are similar to Norplant or a slow-release cold capsule. One implant lasts about 100 days, as the hormones are slowly released into the system of the animal.” A number of studies had concluded that these compounds were safe when administered properly. “Use of these hormones provides the best of all worlds,” says Dr. Robert Livingston, formerly of the FDA’s Center for Veterinary Medicine (FDA-CVM). “You get a better product quicker and cheaper. There are additional benefits, as well. For example, because less feed is being used more efficiently, you have less waste.”⁶ By 1999, 90 to 95 percent of grain-fed US beef cattle were being treated with growth-promoting hormones.⁷

Regulating Hormones: The DES Debate

Hormone use in the United States was not free of controversy. The first artificial animal-growth stimulant was a hormone called diethylstilbestrol, or DES. Discovered by an Iowa State College nutritionist and approved by the FDA in 1954, DES increased weight gain in cattle by 10 to 15 percent. As a result, DES-treated cattle consumed about 500 pounds less feed and went to market about five weeks sooner than untreated animals. Cattlemen flocked to DES feeds; by the early 1960s, as many as 95 percent of US cattle feeders used the hormone (Marcus 1994, 1).⁸

But use of DES was complicated by its status as a potent carcinogen.⁹ In 1958, Congress passed the Food Additives Amendment, known as the Delaney Clause, which barred any substance known to cause cancer in humans or animals from being used in the food supply, either directly or in-

5. The pharmaceutical firms manufacturing the hormones included Eli Lilly, American Cyanamid, Roussel-Uclaf, Vineland Laboratories, Schering-Plough, Upjohn, and International Minerals and Chemicals.

6. Unless otherwise noted, all quotes from Robert Livingston are from a 2000 interview with the author.

7. The figure comes from Chuck Lambert, who notes that 15 percent of total US beef production comes from cows and bulls at the end of their productivity in the breeding herd or the dairy herd. These cattle typically do not receive growth hormones and are generally used in ground beef or processed products.

8. The four main manufacturers of agricultural DES were American Home Products Corporation, Dawes Laboratories, the Hess and Clark Division of Rhodia Inc., and Vineland Laboratories (Victor Cohn, “FDA Bans Most Uses of Controversial Drug,” *The Washington Post*, June 28, 1979, A3).

9. From 1947 to 1971, between 500,000 and 3,000,000 women took DES to prevent miscarriage. In the 1970s, evidence first appeared linking DES to a rare form of vaginal cancer in the daughters of women who had taken the drug (Kuchler, McClelland, and Offutt 1989, 25).

directly.¹⁰ “What that meant,” explains former FDA-CVM director Lester Crawford, “was that use of DES had to stop.”¹¹

In 1961, however, Congress modified the Delaney Clause by passing what became known as the DES Proviso. It stipulated that if no DES residues remained in food-producing animals after the hormone was metabolized, DES did not have to be taken off the market. But the proviso was not a clear solution because available technology could not always detect hormone residues. Therefore, debate continued, as did the use of DES.

By the 1970s, the controversy became more publicly charged. The Senate, in an effort led by Edward M. Kennedy (D-MA) and William Proxmire (D-WI), twice passed bills prohibiting DES, both of which failed in the House (Marcus 1994, 2).¹² The USDA and the beef industry opposed a ban. The FDA issued bans in 1972 and 1973, but both were overturned on procedural grounds by the US Court of Appeals for the District of Columbia.¹³

Finally, in 1979, on FDA Commissioner Donald Kennedy’s last day on the job, the FDA banned DES once and for all. Despite opposition from DES manufacturers, the beef industry, the USDA, and many in Congress, the hormone was removed from the market in an effort supervised by the FDA-CVM’s Lester Crawford. “Every other country in the world had banned DES,” says Crawford. “We were the only country still using it.”

The next year, Allied Mills, a unit of Continental Grain, asked the FDA what to do about the illegal DES-implanted cattle brought to its feedlots. The FDA investigated and initially found 20,000 head of cattle that had been injected. A week later, it raised the number to nearly a half million. The FDA investigation concluded that hundreds of beef cattle businesses had ignored its DES ban.¹⁴ The FDA went public, warning consumers not

10. Section 409 of the Food Additives Amendment of 1958 (21 U.S.C. 348(c)(3)(a): “No additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.”

11. Lester Crawford was interviewed by the author in 1999 and in 2000. After serving as director of the Center for Veterinary Medicine at the FDA (1978–80, 1982–85), he became the head of the USDA Meat Inspection Program. During that same year, in 1985, he also became the chairman of the UN Committee of Veterinary Medicine through the Codex Alimentarius; he became vice chairman of the Codex (1991–93) after four years as the US delegate (1987–91). In 1997 he became the director of the Center for Food and Nutrition Policy at Georgetown University. He returned to the FDA as acting commissioner in March 2004.

12. S. 963, which barred the administration of DES to any animal intended for use as food, was passed by voice vote in the Senate (61–29) in September 1975. The Senate also passed a measure banning DES in cattle feed in September 1972.

13. Victor Cohn, “FDA Bans Most Uses of Controversial Drug,” *The Washington Post*, June 28, 1979, A3. See also Marcus (1994, 132).

14. “FDA Says About 10% of Cattlemen Used Growth Drug After Its Ban,” *The Wall Street Journal*, July 15, 1980.

to eat beef. Former FDA-CVM Director Crawford explains, “We got DES off the market in 1979, but then what happened was the cattlemen were in revolt. They decided they would stockpile DES and use it anyway, even though it was banned. DES was the most effective treatment of its kind—it was terribly effective. The cattlemen also didn’t want the government telling them what to do. Finally, in the 1970s and early 1980s, the US consumer movement was not very well developed.” Observers suggest that violations of the ban were linked to the 25-year habit of using DES, as well as continuing doubt that it was dangerous.

In the end, one historian notes, the FDA probably spent more money regulating DES use in beef cattle than it did on any other drug (Marcus 1994, 2). The DES story is significant for a number of reasons. For one thing, DES shaped how beef was produced in the United States. Traditionally, cattle had been raised mainly by using open-field grazing. However, DES tipped the balance toward confined feeding, encouraging the creation of large commercial feedlots in the midwestern, western, and southern states (Marcus 1994, 1). Opinions differ about the pertinence of the DES story to the European hormone ban. According to some observers, it demonstrates that European fears about hormones are justified—after all, the United States had its own hormone scare. Others argue that the DES story proves that the FDA would ban growth-promoting hormones if necessary—even in a politically charged environment or in the face of industry opposition.

Though DES was ultimately banned in the United States, other growth-promoting hormones remained available to the US beef industry. FDA officials continued to stand behind their safety, and eventually the industry adopted these hormones in place of DES.

The Ban

The Birth of the Ban: Consumers, Politics, and Hormones

Prior to 1981, the EC had no universal policy on the use of growth-promoting hormones in meat animals. The use of hormones had been banned in Italy since 1961, in Denmark since 1963, and in Germany since 1977. Belgium and Greece had never permitted the use of hormones for fattening purposes. However, Spain, the United Kingdom, France, and the Netherlands permitted the use of most hormones for speeding growth in beef cattle.¹⁵

The move to impose a Europe-wide ban was spurred by the disturbing discovery in 1977 that 83 boys (ages 3 to 13) at the Sisters of the Sacred

15. Ireland banned the use of growth-promoting hormones in July 1985.

Heart of Jesus School in Milan, Italy, had sprouted breasts. Seventy-five girls (ages 3 to 8) also showed breast enlargement (Scaglioni et al. 1978). In addition, some of the nuns who taught at the school were admitted to the hospital with acute menstrual pain.¹⁶ The medical researchers who investigated the incident found symptoms consistent with high doses of estrogen, but no evidence of exposure. The school cafeteria seemed the most likely source; in an August 1979 article in the respected medical journal *The Lancet*, researchers hypothesized that “although estrogen contamination was not detected when samples of school meats were tested, an uncontrolled supply of poultry or beef was suspected as being the cause of this outbreak” (Fara et al. 1979, 295). Observers suggested that students might have consumed unmetabolized estrogen as a result of an improperly inserted hormone implant. For example, if a farmer had inserted an implant into the neck of a steer, instead of the ear, and had done so too late, the neck meat would have carried high levels of the hormone. (Neck meat, an inexpensive cut, was often used in schools.)¹⁷

In 1980, soon after the *Lancet* article appeared, an Italian consumer group reported the discovery of 30,000 jars of baby food containing DES-contaminated French veal. One British tabloid ran the headline “Eat Steak, Change Your Sex.”¹⁸ Widespread publicity ensued about illegal use of DES injections in European veal production, especially in France. The cover of the German magazine *Der Spiegel* featured the face of a little girl superimposed on the body of a fully developed woman.¹⁹

After French television broadcast film of calves receiving hormone injections, the Union of French Consumers called for a boycott of veal. Pierre Mehaignerie, the French agriculture minister, denounced the demands of the consumer organizations as excessive, but veal sales in France subsequently dropped by 50 percent and in Italy by 60 percent.²⁰ The boycott later spread to Britain and Belgium. The Bureau of European Consumer’s Unions (BEUC), a consumer’s group financed by the European Commission and affiliated consumer groups, urged a broader veal

16. Geoff Winestock, “Column One: EU Beef Battle with US Began in a Rare Event—Italian Boys Grew Breasts; Ministers Banned Hormones—But Scientific Evidence Was Always Lacking,” *The Wall Street Journal Europe*, March 2, 2000, 1.

17. Winestock, “Column One: EU Beef Battle with US,” 1.

18. Winestock, “Column One: EU Beef Battle with US,” 1.

19. As described in Kevin O’Sullivan, “Fundamental US-EU Divide on Hormone-Treated Beef,” *The Irish Times*, May 8, 1999, 10.

20. Mehaignerie, cited in Ronald Koven, “Common Market Bans Hormones in Cattle Feed,” *The Washington Post*, October 3, 1980, A25; for veal sales in France, see Roger Cohen, “Boycott Shows EEC’s Consumer Power,” *Reuter News*, October 16, 1980, and “Hormones; Campaign for Real Veal,” *The Economist*, October 18, 1980, 51; in Italy, see Andrew Gowers and Ivo Dawnay, “Another Shot of Politics for the Beef Farmer; EEC Hormones Ban,” *The Financial Times*, January 24, 1986, 15.

boycott throughout the European Community and lobbied European farm ministers to ban all hormones.²¹

On September 20, 1980, just weeks after the BEUC's call for a complete ban, the EC Council of Agriculture Ministers adopted a declaration that one of the hormones used for raising livestock should be banned and that there should be greater harmonization of legislation on veterinary medicines. The press cast the declaration as the result of a successful consumer rebellion throughout Western Europe. The BEUC was proud of the victory, especially in light of the fact that only 20 of the European Commission's 8,000 employees worked on consumer affairs (as opposed to the more than 600 who worked on Community agriculture). "It's an unprecedented victory—the greatest success we've ever had," exulted BEUC spokesman Yves Domzalski. "The veal issue is the only affair on which we have ever had a prompt response from the ministers."²²

On October 31, 1980, the European Commission proposed even more stringent legislation that would ban the use of all hormone products in meat production, and later expanded the proposal.²³ Discussions in the European Parliament revealed that while a majority supported a ban, Belgium, Ireland, and the United Kingdom favored the use of some hormones to promote growth in meat animals. The United States, Argentina, Australia, Canada, New Zealand, and South Africa raised concerns about the potential impact of a ban on their exports to Europe.²⁴

After much debate, the European Council adopted its first directive on the hormones issue in July 1981 (Directive 81/602/EEC). The Council banned only stilbenes—the type of hormone found in the baby food incident—and allowed the use of testosterone, progesterone, oestradiol-17 β , trenbolone acetate (TBA), and zeranol to promote growth, pending further study of their effects on consumer health. The Council directed the Commission to provide this study on hormone safety by July 1, 1984. In

21. Founded in 1962, the Brussels-based BEUC represented 13 European Economic Community (EEC) consumer groups, including the Union of French Consumers. At the time of the veal boycott, the BEUC was also attacking the community's CAP for consistently forcing unjustifiably high food prices and consuming 70 percent of the EEC's \$30 billion budget, with half that money spent on the storage or subsidized export of food. In 1980, the BEUC had a staff of 10 (Roger Cohen, "Boycott Shows EEC's Consumer Power," *Reuter News Agency*, October 16, 1980). It later became European Commission Directorate General 24 for Health and Consumer Protection.

22. Employment figures and Domzalski quoted in Cohen, "Boycott Shows EEC's Consumer Power."

23. The proposal banned all use of hormones except for zootechnical and therapeutic purposes, such as managing pregnancy in animals.

24. For more information on these events, see "EC Measures Concerning Meat and Meat Products (Hormones), Complaint by the United States," Report of the WTO Panel, WT/DS26/R/USA, August 18, 1997, 2:26–28.

the meantime, the regulations of individual member states would continue to govern the use of the five hormones.

The Lamming Group: A Scientific Review

As directed, the European Commission appointed a Scientific Group on Anabolic Agents in Animal Production, made up of 22 scientists and chaired by Professor G. E. Lamming of Britain's Nottingham University. The committee, which became known as the Lamming Group, began to explore the following question: Does the use for fattening purposes in animals of the substances oestradiol-17 β , testosterone, progesterone, trenbolone, and zeranol present any harmful effect to health?

The Lamming Group's interim report, issued in September 1982, found that the three natural hormones (oestradiol-17 β , testosterone, and progesterone) "would not present any harmful effects to the health of the consumer when used under the appropriate conditions as growth promoters in farm animals."²⁵ As Professor Lamming explained, "We found that the residues were not genotoxic—not cancerous—at high levels in susceptible test animals. The residue levels were low and insignificant and presented no danger to the consuming public."²⁶ As for the synthetic hormones trenbolone and zeranol, the group determined that additional information was needed before a final conclusion could be reached.²⁷

The US Response

In response to the European debate, the FDA's Center on Veterinary Medicine set up a team in 1982 to meet with EC officials about hormones. "I was the head of that team," Lester Crawford recalls, "so I spent a lot of time with the EC people to try to work through their concerns about the US hormones." According to Crawford, the team did not have much experience dealing with their foreign peers, primarily because no world body oversaw the issue. FDA-CVM officials met regularly with their Canadian and British counterparts to share information, but, Crawford admits, "We were deathly naïve in the international arena. People concerned with hormones had not really been involved in international affairs. It was a huge tragedy because FDA wasn't really ready, but until the Reagan administration, FDA-CVM had to carry the whole burden."

25. Lamming et al. (1989, 389).

26. Lamming, quoted in Robin Herman, "Steroids in Your Hamburger; Growth-Promoting Chemicals, Banned in Europe, Are Considered Safe by Experts," *The Washington Post*, January 10, 1989, Z11.

27. See Lamming et al. (1989, 389); see also "EC Measures Concerning Meat and Meat Products (Hormones), Complaint by the United States," Report of the WTO Panel, WT/DS26/R/USA, August 18, 1997, 2:28.

Europe Bans Hormones

Several years later, hormone use in livestock was still a compelling public issue in Europe. Men were quoted as fearing for their masculinity and fertility, and even worried that eating hormone-treated beef could alter their sex.²⁸ European consumer groups, led by the BEUC and “green” groups, worked energetically in support of an outright ban. Observers remember the hormone debate getting tremendous coverage in the press. As one points out, “Americans don’t really have much appreciation for food safety and they consider it almost kind of humorous. But in Europe it continues to be a leading political issue, and it was in 1984 and 1985.” (Some argue less attention has been paid to food safety in the United States because the American regulatory system is more reliable.)

Despite the public outcry, the European Commission moved to de-escalate the hormone issue. In June 1984 it proposed a new council directive amending the 1981 Hormone Directive. The Commission envisaged controlled use of the three natural hormones and a reexamination of the two synthetic hormones after scientific evaluation had been completed. But the European Parliament and the Council of Ministers rejected the proposal.²⁹ Instead, several member states—notably West Germany—pushed vigorously for a total ban of all the hormones in question. Ultimately, in an overwhelming vote, the European Parliament passed a resolution supporting a ban on all growth-promoting hormones, asserting that “scientific information about these substances is far from complete and that considerable doubt therefore exists about the desirability of their use and of their effect on human health.”³⁰ The Parliament also noted, “There is overproduction of meat and meat products in the European Community, which adds considerably to the cost of the CAP.”³¹ One official at the European Directorate General for External Economic Relations reflects on the importance of the hormones ban to the Parliament: “This is the first time when the European Parliament flexed its muscles and opposed the Commission saying that this was a consumer concern and making the Commission tow the line they wanted. It is a warhorse for them” (quoted in Davis 2003, 336).

28. John Cherrington, “Hormone Fears Will Not Go Away,” *The Financial Times*, November 26, 1985, 34.

29. “EC Measures Concerning Meat and Meat Products (Hormones), Complaint by the United States,” Report of the WTO Panel, WT/DS26/R/USA, August 18, 1997, 2:29, 30.

30. Point E of Parliament’s Resolution, *EC Official Journal*, no. 288, November 11, 1985, 158; quoted in “EC Measures Concerning Meat and Meat Products (Hormones), Complaint by Canada,” Report of the WTO Panel, WT/DS48/R/CAN, August 18, 1997, 4:14.

31. *EC Official Journal*, no. 288, November 11, 1985, 158; quoted in “EC Measures Concerning Meat and Meat Products (Hormones), Complaint by Canada,” 4:63.

In October 1985, following the Parliament vote, the Lamming Group was disbanded by Frans Andriessen, the EEC agriculture commissioner. Professor Lamming's subsequent warning—"If you legislate in haste, you repent at leisure"—was widely quoted in the press. At a November press conference, Andriessen countered, "Do you really believe that public opinion is concerned by scientific judgment or by a political decision? In public opinion, this is a very delicate issue that has to be dealt with in political terms. Scientific advice is important, but it is not decisive."³² The overwhelming factor, Andriessen held, was the democratic nature of the European Parliament's vote. The Lamming Group took its own action by rebelling against its dissolution. Though the Commission told Lamming he could not legally release any of the committee's findings, 16 of the 22 scientists would later publish their final report in 1987. It concluded that the two synthetic hormones, trenbolone and zeranol, were safe with "accepted husbandry practices."³³

Despite Lamming's warnings, the Commission amended its proposal to reflect the European Parliament's support of the ban and submitted it to the Council of Ministers. On December 31, 1985, the Council of Agriculture Ministers voted to adopt a ban on the use of hormones for growth promotion (Directive 85/649/EEC). (Britain and Denmark voted against it.) The directive's preamble began by emphasizing that differing rules on hormone use in different member countries had distorted trade in the European market and that "these distortions of competition and barriers to trade must therefore be removed."³⁴

In addition to the desire to create a common regulatory standard across the European market, there were also concerns about the beef supply in Europe. BEUC director Tony Venables held that legislators were persuaded to support a complete ban by the existing beef surplus. "If we have a beef mountain of 700,000-odd tons, it only makes matters worse to use out-of-

32. Lamming and Andriessen, quoted in Andrew Gowers and Ivo Dawnay, "Another Shot of Politics for the Beef Farmer; EEC Hormones Ban," *The Financial Times*, January 24, 1986, 15.

33. "The levels of trenbolone and zeranol and their major metabolites found in edible tissue, following accepted husbandry practices, are substantially below the hormonally effective doses in animal test systems and therefore do not present a harmful effect to health" (Lamming et al. 1987, 391).

34. "Whereas the administration to farm animals of certain substances having a hormonal action is at present regulated in different ways in the Member States; . . . whereas this divergence distorts the conditions of competition in products that are the subject of common market organizations and is a serious barrier to intra-Community trade; Whereas these distortions of competition and barriers to trade must therefore be removed by ensuring that all consumer are able to buy the products in question under largely identical conditions of supply and that these products correspond to their anxieties and expectations in the best possible manner. . . ." Council Directive of 31 December 1985 prohibiting the use in livestock faring of certain substances having hormonal action (85/649/EEC), *Official Journal of the European Communities*, no. L 382/228.

date hormone growth methods," he said.³⁵ Some saw the ban as a way to curb the surplus by reducing production and increasing consumption. "The decision was done on non-scientific grounds against a background of considerable consumer pressure and emotion and a background of food surpluses at the time," recalled Professor Lamming. "It's a dangerous precedent if scientific evidence is ignored. It queries the whole theory of a scientific approach to drug evaluation."³⁶

In short, scheduled to go into effect in January 1988 (and one year later in Britain), the ban was extremely popular. According to Lester Crawford, "People who were voting for the directive were in effect saying, 'We're against hormones in meat, we're against US beef coming in, and we're for vegetarians and we're for the BEUC.' There was absolutely nothing politically savory they could be for by voting against the hormone ban. It was positioned very skillfully by the BEUC. Very few voted against it because it was so politically popular. It was unbelievable."

The directive inspired a group of hormone manufacturers to form their own lobby, the European Federation of Animal Health (FEDESA, or Fédération Européenne de la Santé Animale), and launch a campaign against the ban. Sale of the five hormones in western Europe amounted to around \$20 million before the ban—a relatively small fraction of the \$1.4 billion animal-health market—but manufacturers worried that their other products would be perceived as unsafe.³⁷ The ban, FEDESA officials warned, threatened investment in other biotechnology products. "Sure we can survive without hormones," said one pharmaceutical executive. "But we are a science-based company, and if things are going to be banned in Europe on non-factual grounds, there's no future for us here."³⁸ FEDESA challenged the ban at the European Court of Justice, arguing that it had no scientific foundation. But the court said the ban was necessary to ensure that the different rules in different member states did not create barriers to trade or distort competition.³⁹

Meanwhile, the USTR was surprised that the ban actually went through. Former USTR staffer Len Condon (later vice president of the American Meat Institute) recalls: "There was a lot of informal communication back and forth between Brussels and Washington and we were being told that

35. Venables, quoted in Andrew Gowers and Ivo Dawney, "Another Shot of Politics for the Beef Farmer; EEC Hormones Ban," *The Financial Times*, January 24, 1986, 15.

36. Lamming, quoted in Robin Herman, "Steroids in Your Hamburger; Growth-Promoting Chemicals, Banned in Europe, Are Considered Safe by Experts," *The Washington Post*, January 10, 1989, Z11.

37. Sales figures from Tim Dickson, "Ban on Hormone Meat Proves Recipe for Strife," *The Financial Times*, December 29, 1988, 3.

38. Executive quoted in Gowers and Dawney, "Another Shot of Politics for the Beef Farmer," 15.

39. The court ruled on the case on November 13, 1990. Lucy Kellaway, "Court Upholds Hormone Ban," *The Financial Times*, November 14, 1990, 32.

this directive wasn't really going anywhere. But suddenly it got adopted on the very last day of 1985. I remember we were informed by the USDA's meat inspection agency. They came over to visit us and told us it had been adopted and we had a problem."⁴⁰

Hormones and International Institutions

US officials knew that a ban on hormones in meat production would have an impact on trade. One strategy was to seek out an international body to evaluate the safety of the hormones in question. If an international body found that the hormones were safe, US officials reasoned, Europe would be pressured to remove the ban. The FDA first approached the Paris-based OIE, the Office Internationale des Epizooties, or World Organization for Animal Health, which was responsible for international regulatory communications about live animals.⁴¹ The OIE rejected the call to look at hormones. "Therefore," one US participant remembers, "We had no choice but to go to Codex."

Codex Considers Hormones

The Codex Alimentarius Commission (Latin for "food code") was established in 1962 by the UN Food and Agriculture Organization (FAO) and the World Health Organization (WHO) to consult on implementing the Joint Food Standards Program. The main goals of the program were to protect the health of consumers, ensure fair practices in food trade, and coordinate food standards.

The FDA proposed that a Codex committee on residues of veterinary drugs in foods be appointed. "Because of the hormone dispute, the US was looking for an international group to examine the issue," recalls former FDA-CVM Codex liaison Robert Livingston. "Since there was not an international expert committee within the Codex, they asked the Codex Alimentarius to evaluate the need for a Codex committee on veterinary drugs."

In 1985 an FAO/WHO committee recommended that Codex set up such a committee, concluding that "the question of the occurrence and safety of residues of veterinary drugs in foods of animal origin was of significance

40. Unless otherwise noted, all quotes from Len Condon are from a December 1999 interview with the author. Condon served at the USTR from 1981 to 1997. In 1997 he became a vice president of the American Meat Institute.

41. The OIE was established in 1924. As the world organization for animal health, the main objectives of the OIE are to (1) inform governments of the occurrence and course of animal diseases throughout the world, and of ways to control these diseases; (2) coordinate, at the international level, studies devoted to the surveillance and control of animal diseases; and (3) harmonize regulations for trade in animals and animal products among member countries (see www.oie.int, accessed June 1, 2000).

to public health and consumer concern, and posed potential problems to international trade.” The Codex Commission expressed “strong support” for the recommendations and established the Codex Committee on Residues of Veterinary Drugs in Food (CCRVDF) (Codex Alimentarius Commission 1985, paras. 88–89).

At the 1985 Codex Commission meeting in Geneva, various countries vied to make their nationals chair of the new committee. Competition for the leadership position was fierce “because the future of veterinary-drug regulation and perhaps the emerging hormone ban was to be determined by the outcome of who hosted it,” explains Lester Crawford. The contest came down to two nations—West Germany and the United States—and the matter was put to a secret ballot (Codex Alimentarius Commission 1985, para. 91). “It was a very close vote,” Crawford remembers: “Most nations abstained—they did not want to get involved. The majority of nations in Codex were very small, and smaller nations did not like to get involved in a battle of the titans. If they had to decide between Europe and the United States, they’d take a bathroom break.”

The United States emerged the victor, and the USDA’s Crawford, a self-proclaimed “hormone man,” was named chairman of the new CCRVDF.⁴² The chairmanship was especially important for procedural reasons. The CCRVDF would not actually evaluate the residues of veterinary drugs in foods. For a drug to be evaluated, CCRVDF had to refer the job to the Joint FAO/WHO Expert Committee on Food Additives (JECFA), whose members are independent scientists serving as individuals, not as representatives of their governments or other organizations.⁴³

At the first meeting of the CCRVDF in 1986, the United States formally proposed that JECFA examine the hormones used in beef production. “Had the Germans been in the chair, I don’t know if the job would have been assigned to JECFA,” says one observer. Crawford agrees: “Had [the vote] gone the other way, there could have been a lot of trouble for the US.” At the recommendation of the CCRVDF, the Codex Secretariat referred the hormone issue for independent review to JECFA. During 1987, JECFA examined the safety of five of the six hormones at issue.⁴⁴

42. Also in 1985, the United Nations passed Resolution 39/248, which advised: “Governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the . . . Codex Alimentarius.” Interestingly, the United States had adopted few Codex standards.

43. JECFA was established in 1955 as a scientific advisory committee to the FAO, WHO, member governments, and the Codex. JECFA’s mission is to assess the human health risks associated with the consumption of additives to food and to recommend acceptable daily intake (ADI) levels, tolerable limits for environmental and industrial chemical contaminants in food, and maximum residue levels (MRLs) of agricultural chemical inputs in food such as veterinary drug residues in meat and meat products (see www.fao.org).

44. Data on melengestrol acetate (MGA), which was banned throughout Europe, were not submitted.

Hormones at the GATT

Meanwhile, the United States also sought to challenge the EC ban at an international trade forum. Until the WTO came into being in 1995, the international institution that dealt with trade quarrels was the GATT.

In March 1987 the United States lodged a complaint at the GATT against the EC directive, claiming that the ban violated Article 7 of the Agreement on Technical Barriers to Trade (TBT). Article 7 stipulated that certification systems should not obstruct trade of similar products from other TBT signatories. The EC responded that the use of hormones was a process and production method (PPM) and thus not covered by the TBT code, which applied only to the characteristics of a final product. The United States countered that the EC had deliberately drafted its directive to address only PPMs in order to circumvent the code. Furthermore, the United States argued that the use of hormones in cattle was safe and submitted scientific reports as proof. The European delegation asserted that the ban was aimed at protecting health (and therefore consistent with GATT Article XX) and “doubted the usefulness of relying on current scientific findings because there had been past mistakes in judging the safety of chemical products.”⁴⁵ The United States favored the appointment of a technical expert group to determine whether the ban was really necessary to protect health, but the EC blocked the formation of the group (see GATT 1988, 80). In short, the ban on hormones went unresolved at the GATT. No action would be taken to settle the dispute.

Meanwhile, Back at Codex

As the date of the ban approached, JECFA—the committee commissioned by Codex to look at the hormone question—published its findings. The 1988 JECFA report concluded that residues of four of the growth-promoting hormones did not create a safety hazard to humans, provided that proper veterinary practice was followed; later, the same findings were released for the fifth. Acceptable daily intake levels (ADIs) and maximum residue levels (MRLs) were established for synthetic hormones. The committee found that the levels of natural hormones in treated meat were so low compared with the hormones present in the human body that there was no need to set an ADI.

JECFA sent its report to the Codex committee. The CCRVDF then recommended draft standards to the Codex Commission. Even if standards were adopted, however, there was no obligation for the European Com-

45. GATT 1988, 80. GATT Article XX stipulates that “nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health.”

mission to act on Codex findings. “At that point we were operating under the GATT, and there was no connection between GATT and Codex,” Lester Crawford explains. “Having Codex on your side was helpful, but there was no legal requirement at that point to do what Codex told you to do.” The role of Codex was not yet as significant as it would later become.

Internal Politics and a Failure to Ease Tensions

As the January 1988 implementation date for the ban approached, efforts were made to ease the dispute. EC Farm Commissioner Frans Andriessen proposed to delay the ban on trade of hormone-treated meat by 18 months. In November 1987, EC agricultural ministers adopted a 12-month delay after West Germany, France, and the Netherlands dropped their objections.⁴⁶ The ban on the use of hormones in Europe took effect as scheduled, but meat already containing hormones could be traded until January 1, 1989.⁴⁷

The vote on the delay took place within the context of intense US efforts to persuade the EC to completely overturn the hormone directive. The European press reported that the United States was threatening a transatlantic trade war over the ban. Despite the agriculture ministers’ decision to delay implementation for a year, the Reagan administration announced that it was preparing to raise tariffs on millions of dollars of EC food imports if the Community proceeded with the ban; President Reagan ordered hearings to determine which products would be subject to the punitive levies. The US action was called “regrettable and unjustified” by Andriessen and by Willy de Clercq, the foreign relations commissioner.⁴⁸ EC officials were surprised and angry that the United States was still undertaking offensive maneuvers after their delay of the ban.

46. Belgium, Spain, Greece, and Ireland voted against the 12-month transition period. The *Financial Times* reported that discussions were complicated by French concerns that the transition period would discriminate against French producers, who were still treating beef cattle with growth-promoting hormones. The French agricultural minister promised that French meat would be hormone-free by April 1, 1988, and West Germany and Italy pledged that French beef exports would have easier access to their markets (Tim Dickson, “EC to Delay Effect of Beef Hormone Ban,” *The Financial Times*, November 19, 1987, 4).

47. In February 1988, the European Court of Justice annulled the beef ban legislation in a case brought by Britain and Denmark, ruling that the EC legislation was “invalid” because the member states had not followed the correct technical procedures when adopting the law at the end of 1985. More importantly, the court rejected the complaint by the United Kingdom that the decision should have been taken unanimously instead of by a qualified majority. On March 7, therefore, the ban was simply readopted by the EC Council of Ministers under the correct procedures.

48. Andriessen and de Clercq, quoted in Bruce Barnard, “EC Threatens Sanctions if US Acts on Beef Ban,” *Journal of Commerce*, November 25, 1987, 3A.

The Reagan administration's threats to retaliate under section 301 of the 1974 Trade Act were not motivated solely by the beef dispute. Its public posturing was also intended to send a message to Congress, which was considering legislation to restrict the president's discretionary authority to decide how to respond to complaints of unfair trade practices. The sponsors of a huge omnibus trade bill contended that Reagan had not been tough enough. The White House hoped that taking strong action in the beef dispute would head off congressional efforts to force the administration's hand. "Congress may wish to review this and other effective uses of Section 301," the White House suggested, "before considering any changes in law that would attempt to force the president to retaliate at times when it would be counterproductive."⁴⁹

In the end, however, the United States agreed to defer retaliatory sanctions for a year. As one US negotiator put it, "Europe held their effective date in advance for a year, and we held our effective date in advance for a year so we could spend that time trying to work out a solution." In informal negotiations over the next few months, US sources say, Europeans suggested that the United States sign a document testifying that hormones in US beef production were being used for therapeutic reasons, not the promotion of growth. Such a move would solve the entire problem, the Europeans held, since the directive allowed for therapeutic use of hormones. The Americans did not agree to do so.⁵⁰ Len Condon explains why: "When hormones are used therapeutically, they are primarily used for reproduction purposes—synchronization of estrus, for example. We said, 'Well look, 50 percent of the animals we give hormones to and slaughter are steers, so how could we claim we're using hormones therapeutically with these animals?' "

Negotiations intensified amid reports of a growing European black market for hormones. In August 1988, West German inspectors found 15,000 illegally injected calves. An underground network of veterinarians giving hormone shots was uncovered in the Netherlands and Belgium. The drug company lobby FEDESA noted that the illegal use of uncontrolled hormone mixtures only strengthened the case for allowing use of the "five entirely safe hormones." As Michael Leathes, FEDESA's secretary general,

49. Quoted in Clyde Farnsworth, "The US Plans to Punish Europe," *The New York Times*, November 27, 1987, D2.

50. As discussions were taking place, a fungicide called procymidon was discovered in French wine being imported to the United States. "A lot of people now think if we had banned French wine in 1988, we would have solved the hormone dispute right then," Crawford says. "We stopped shipments of French wine only for what amounted to a long weekend. We could have banned it because it was going to be years before they got all the procymidon out. But a risk assessment showed that the amount of procymidon found in the wine was not injurious to human health. So we said, 'No, we won't do that.'" Crawford believes that a ban on the wine might have put enough political pressure on Europe to end the beef ban.

observed, "It is not surprising that a black market has mushroomed."⁵¹ Condon remembers the impact of the discoveries on the US-EU negotiations: "In a number of European countries, the press uncovered illegal use of hormones. That led to a recommitment on the part of the Community that they were not going to allow these hormones to be used. It created a public furor, and so the Community was no longer in the position to be able to discuss any kind of exemptions with us. They lost all their flexibility."

At the same time, a group of US senators were pressing US Agriculture Secretary Richard Lyng to recommend that President Reagan declare a complete embargo on all European beef imports. (Lyng had served as president of the American Meat Institute from 1973 until 1979.) The 14 senators who urged this action included Senate Agriculture Committee Chairman Patrick Leahy (D-VT) and Senate Finance Committee Chairman Lloyd Bentsen (D-TX).⁵² An embargo, which would affect \$450 million worth of products, was made possible by a section of the new Trade and Competitiveness Act of 1988. The act authorized reprisals against countries that restricted imports of US meat for reasons that could not be "substantiated by reliable analytical methods."⁵³

Many observers point out that the timing of the impending ban was unfortunate. For one thing, new administrations were moving into place in both Brussels and Washington. In addition, the transatlantic trade relationship had already been soured by the breakdown of the Uruguay Round of trade talks in early December 1988. They had ground to a halt when Europe and the United States failed to agree on appropriate levels for agricultural supports. Observers were concerned that the hormone spat would deepen divisions during a delicate period.

European MP Ken Collins, a member of the Labour Party, observed that the whole beef hormone episode demonstrated the need for a European equivalent of the FDA, with comparable status and independence. "At the moment we've got 12 different licensing systems, with only the doctrine of the internal market to hold them together," Collins noted. Britain and Denmark reportedly continued to lobby for restraint, though any reversal was seen as unlikely. The United Kingdom's foreign minister, among oth-

51. Leathes, quoted in Tim Dickson, "US Takes Moral High Grounds on Hormones," *The Financial Times*, November 16, 1988, 7.

52. Richard Lawrence, "US Spells Out Reprisal in Hormone Ban Dispute," *Journal of Commerce*, December 28, 1988, 1A.

53. Omnibus Trade and Competitiveness Act of 1988, §4604. According to this "Reciprocal Meat Inspection Requirement," if the secretary of agriculture determines that "a particular foreign country applies standards for the importation of meat articles from the United States that are not related to public health concerns about end-product quality that can be substantiated by reliable analytical methods," he or she, together with the USTR, may recommend that the president "prohibit imports into the United States of any meat articles produced in such foreign country unless it is determined that the meat articles produced in that country meet the standards applicable to meat articles in commerce within the United States."

ers, proposed another delay on the ban in hopes of giving the new incoming European Commission and Bush administration a chance to work through the dispute. "There's little we can do now, apart from register our lack of support for the directive," admitted a spokeswoman for the British Ministry of Agriculture, Fisheries, and Food.⁵⁴

As European and US officials traded jabs, the lead-up to the implementation of the ban was closely followed by the press. European supporters argued that the blanket ban was a legitimate, nondiscriminatory response to consumer concerns. "Any country, and this includes the European Community, is entitled to take whatever measures it judges necessary to protect the health of consumers, provided this is done in a nondiscriminatory way," declared EC External Relations Commissioner de Clercq.⁵⁵ "[The ban] isn't based on a trade barrier," added a spokeswoman for the EC Washington office. "It's based on what consumers want to eat."⁵⁶ Sir Roy Denman, head of the Washington delegation, noted that for years, Americans had banned European products made from unpasteurized milk, including many cheeses. "In the Community, we have accepted this and not threatened retaliation," he said. "So what's sauce for the goose is sauce for the gander."⁵⁷

The Europeans did make the concession of exempting meat used as pet food from the ban. The United States responded by committing to reduce trade retaliation from \$125 million to \$100 million. But US officials were frustrated by the European Union's unwillingness to lift the ban completely. "We have tried repeatedly to bring this issue to a scientific dispute-settlement panel under the GATT in order to have it resolved," USTR Clayton Yeutter was widely quoted as saying. "However, our European counterparts have consistently blocked our efforts. The EC has yet to present any evidence that proper application of the growth-promoting hormones in question poses any threat to human health."⁵⁸

The United States announced that \$100 million in sanctions would go into effect on January 1, one minute after the implementation of the beef ban. One hundred percent tariffs would be levied on a range of EC agricultural products. Pork products dominated the list, which also included

54. Collins and the spokeswoman, quoted in Hugo Davenport, "Beefing About Trade: The View from Europe," *The Daily Telegraph*, December 29, 1988, 15.

55. De Clercq, quoted in Tim Dickson, "EC Attacks US for Curb on Food Imports," *The Financial Times*, December 29, 1988, 1.

56. Ella Krucoff, quoted in Elizabeth Ross, "US Challenges EC Plan to Ban Treated Beef," *The Christian Science Monitor*, November 21, 1988, 3.

57. Denman, quoted in Charles Laurence, "US Prepares for Tariff War over EEC Beef Ban," *The Daily Telegraph*, December 28, 1988, 1.

58. Yeutter's statement was quoted in articles in the *Los Angeles Times*, *New York Times*, *Financial Times*, and *Journal of Commerce* (e.g., see Lionel Barber, "US to Impose Sanction on EC Over Meat Ban," *The Financial Times*, December 28, 1988, 2).

boneless beef, canned tomatoes, fruit juice, packaged pet food, some fermented beverages, and instant coffee. The sanctions would mainly punish Denmark, Italy, and Spain. A front-page editorial in the French daily *Le Monde* accused the United States of attempting to “divide Europe so as to better impose its views. . . . The use of force reveals one more time the importance of unity among the Twelve.”⁵⁹ European ministers drew up a list of American exports as targets for potential counterretaliation, including honey, walnuts, dried fruit, and hormones.

USTR Yeutter and Agriculture Secretary Lyng of the United States met with Farm Commissioner Andriessen and Commissioner for External Relations de Clercq of the EC in mid-November 1988 to try to work out a solution. Last-minute negotiations continued as 1989 approached, but officials were pessimistic. “We will suffer damage by this ban and we will have to retaliate,” said Yeutter. “The Community legislation cannot be modified and will not be modified,” countered de Clercq.⁶⁰

The Ban Goes into Effect and the United States Retaliates

When the January 1, 1989, ban went into effect, it blocked European imports of about \$100 million worth of American beef. As expected, the Reagan administration retaliated by imposing 100 percent tariffs on \$100 million worth of European exports under section 301 of US trade law. US officials continued to emphasize the safety of hormone use in beef production. Gerald Guest, director of the FDA-CVM and chairman of the CCRVDF, the Codex committee, declared that when the hormones were used properly, any remaining traces in meat were so slight that “a man himself would manufacture 1,500 times more estrogen a day than he would get if he consumed a pound of beef every day, and a pregnant woman would manufacture several million times more estrogen every day than if she ate a pound of beef each day.”⁶¹

Because the United States did not have GATT approval to retaliate, Europe brought a case against the United States at the GATT. But it went nowhere. “When the US had challenged the Community’s directive in the GATT standards code, the EC blocked us from doing that. When the Community brought a case against us for retaliating, we blocked their case,” recalls Len Condon. “So in terms of GATT action, we sort of reached a standoff.” However, the United States was criticized for imposing sanc-

59. Quoted in Michael Balter, “US Picks a Beef That May Unify Europe Fast,” *Los Angeles Times*, December 6, 1988, 7.

60. Yeutter and de Clercq, quoted in Paul Montgomery, “US and Europe Near Trade War over Hormone Use in Beef Cattle,” *The New York Times*, November 20, 1988, 22.

61. Guest, quoted in Gina Kolata, “Hormone-Treated Beef Termed Generally Safe,” *The New York Times*, January 1, 1989, 22.

tions without permission. GATT Director-General Arthur Dunkel, while not naming the United States explicitly, said that discriminatory import tariffs went against the General Agreement.⁶²

When the United States imposed its duties, the EC threatened to counterretaliate if the dispute was not resolved by the end of January. But when President George H. W. Bush took office, he reiterated the Reagan administration's stance on the hormone ban. Press response to the ban was generally critical of continuing escalation of the transatlantic wrangle, blaming both sides. "The US and the European Common Market are celebrating New Year's Day by marching into a trade war with each other," observed an editorial in the *Washington Post*. "It's a stupid idea, reflecting—on both sides—a failure of common sense[,] . . . [with] hysteria on one side and, on the other, a bullying insistence that American health practices have to be the world's standard."⁶³ The *Financial Times* was similarly unimpressed: "The story of the EC hormone ban combines human tragedy, rampant consumerism, murky politics, and, to put it at its most polite, a trail of stumbling diplomacy."⁶⁴

The four-person US negotiation team of scientists and regulators was dismantled when the ban was formally implemented. The hormone debate "had become a trade and diplomatic issue, and no longer a scientific issue," explains Lester Crawford: "We really didn't need any more science, because we had tried that. It was clear that even though everyone else adopted our [scientific] position, including the European Society of Toxicology, the EC wasn't looking for science. It was clear to us it was a nontariff trade barrier. Therefore, it was really not in our interest to continue playing the science card."

Some US officials believed that in addition to the technical criteria of effectiveness, safety, and reliability, Europe was developing a "fourth criterion" for deciding if it would adopt a particular technology—the technology's economic and social impact. Officials worried that this criterion would become an excuse for protecting other agricultural markets (Josling, Roberts, and Orden 2004, 119).

In mid-February 1989, the United States and the EC agreed to a 75-day cooling-off period during which neither side would impose new tariffs. Meanwhile the players were shuffled as the incoming Bush administration and a new five-year rotation of the European Commission settled in. Carla Hills became the USTR; the outgoing USTR, Clayton Yeutter, became secretary of agriculture. (When President Bush appointed Yeutter, he did so saying he was determined to "crack" European agriculture mar-

62. William Dullforce, "EC Wins Support Against US Trade Measures in GATT," *The Financial Times*, February 9, 1989, 8.

63. "Where's the Hormone-Free Beef?" editorial, *The Washington Post*, January 1, 1989, B6.

64. Tim Dickson, "US Takes Moral High Grounds on Hormones," *The Financial Times*, November 16, 1988, 7.

kets for American farmers.) On the European side, Frans Andriessen, the outgoing agricultural commissioner, became the commissioner for external affairs, a trade position. The new agricultural commissioner was Raymond MacSharry.

The key European and US officials promptly met to reassess the state of play of the hormone dispute. Len Condon recalls, “There had been three years of trade war, and so this was the biggest issue facing the new teams on both sides. So MacSharry, Andriessen, Hills, and Yeutter decided to have this meeting over at USTR one Saturday. At this point, it became clear to Carla Hills that this wasn’t a simple problem—it was a huge problem with many different principles and issues. The EC couldn’t back down and the United States couldn’t back down.”

The participants at this meeting decided to create a US-EC Hormone Task Force. The US participants would be Lester Crawford and Ann Veneman from the USDA and Len Condon and Joshua Bolten from USTR.⁶⁵ The European side included Fernando Mansito from the Commission’s Directorate General–Agriculture and Jean-Pierre Lang from Directorate General–Trade. They had little hope of achieving great breakthroughs, according to Len Condon: “I think all of the political people in the room knew that this Hormone Task Force wasn’t going to be able to come up with any solution, but it was a way of saying the problem was being addressed. I think the hope was that the Task Force would spend a few months meeting, but at the end of the day people would gradually forget about this.”

Some observers characterize the US-EC Task Force and the “truce” called over hormones as part of an effort to improve trade relations after the breakdown of the Uruguay Round over agriculture. In February 1989, the United States also presented European Uruguay Round negotiators with a position paper in which US insistence that Europe set a target date for complete elimination of farm subsidies was abandoned. In his first address to Congress, President Bush said that the major industrial democracies needed “to rise above fighting about beef hormones to building a better future, to move from protectionism to progress.”⁶⁶

The Hormone Task Force met frequently. “We spent a lot of time in meetings,” one participant recalls. “Brussels and Washington, Brussels and Washington, Brussels and Washington.” Substance was not the only challenge, as Lester Crawford explains: “Here’s a ludicrous thing. There was never anybody on the American negotiating teams who smoked. There was never anyone on the European teams who didn’t. And so the big bat-

65. Ann Veneman served as secretary of agriculture from 2001 to 2004. She became the executive director of the United Nations Children’s Fund (UNICEF) in 2005. Joshua Bolten became director of the Office of Management and Budget in June 2003 after serving as assistant to the president and deputy chief of staff for policy at the White House from January 2001 onward.

66. Stuart Auerbach, “US Seeks to End European Beef Trade War,” *The Washington Post*, February 10, 1989, F3.

tle, which sometimes took half a day, was whether or not we would allow smoking in the room. I can't tell you how important that was."

Also during this period, the conclusions of the European Committee of Enquiry into the Problem of Quality in the Meat Sector were published in a document known as the Pimenta Report, which endorsed the ban on the use of growth-promoting hormones. On March 29, 1989, the European Parliament, which had established the committee in 1988 after illegal hormone use was reported in the European press, adopted its recommendations to maintain and expand the ban.

The Hormone-Free Proposal

Europeans on the Hormone Task Force hoped to interest the US side in instituting a "hormone-free" program whereby the United States would produce beef without hormones to sell to Europe. Lester Crawford explains:

It became very clear when the Hormone Task Force sat down that the Europeans' whole plan was to get a lot of this hormone-free beef flowing in. Then, they hoped, ultimately the US would get all of our market back and the retaliation would stop. You see, the political problem was that the US had retaliated against Europe. The EC argued it was an unjustifiable retaliation, and their member states were saying, "Well then, do something about it." The Commission had to have something to tell the member states. So I think they were telling the member states that they had a plan where the US would send hormone-free beef to Europe and we would no longer have a basis for retaliation and the problem would be solved.

Initially, neither the US beef industry nor US government officials were interested in the hormone-free plan. For one, the USDA did not have an inspection program to certify beef as meeting European hormone-free standards, a prerequisite for export.⁶⁷ And even if the USDA could satisfy the certification requirement, "it will by no means resolve the principles that are involved here," said Yeutter.⁶⁸

The situation was further complicated by a maverick initiative undertaken by Texas Agriculture Commissioner Jim Hightower. Hightower, a charismatic, controversial populist Democrat and former journalist, approached the EC directly with an offer to sell its members hormone-free beef from Texas. The proposal earned him national publicity—and the resentment of some in the beef industry, who felt that Hightower's offer implied that other US beef was unsafe. At a time when Americans had already reduced their average beef consumption (by 18 percent between

67. "Consumer Groups Back Europe's Ban of Hormone-Treated Beef," *Associated Press*, January 30, 1989.

68. "Yeutter Blasts Texan in EC Beef Dispute," *Reuter News*, February 2, 1989.

1971 and 1989), beef producers did not want questions raised about the healthfulness of their product.⁶⁹ The Bush administration, for its part, objected to Hightower's offer as undercutting the administration's position. Hightower reported that Agriculture Secretary Yeutter threatened legal action if he tried to sell hormone-free beef to the Europeans. Yeutter "fumed darkly that I was consorting with the enemy and possibly violating the Logan Act of 1800," Hightower later wrote, "which can get a citizen thrown in the federal pokey for engaging in unauthorized diplomacy with a foreign government" (1999, 246).

Other states were also eager to serve Europe's niche market for hormone-free beef. Mark Ritchie, then the trade policy staff member of the Minnesota Department of Agriculture and later co-founder and executive director of a nonprofit advocacy and research organization, the Institute for Agriculture and Trade Policy,⁷⁰ says that Minnesota beef producers (as well as producers in Idaho) made plans to send hormone-free products to Europe: "The ban was good news to Minnesota because we were a beef-producing state that at the time did not use many hormones." But the federal government was less than enthusiastic. According to Ritchie, "The US Department of Agriculture threatened us and imposed an embargo against us shipping hormone-free beef. This alerted me to what was going on. I pursued this issue, and my conclusion was that this was an attempt to promote the interests of the handful of companies that produced these drugs and had nothing to do with the kind of fight that was portrayed in public. It resulted in discrimination against US beef producers that did not use hormones."⁷¹

The companies that produced the implants did not want hormone-free products sent to Europe, Ritchie explains, out of fear that consumers in the United States and elsewhere might also demand hormone-free beef. "There was already such a negative reaction to hormones in the US, with regards to DES and with regards to unrelated issues like steroid treatments for athletes, which were seen as dangerous and unethical," he says. "Drug-producing companies were worried that this issue would catch on in the US and elsewhere."

69. "At 65 pounds per capita in 1989, beef use was 14 pounds below 1971's total and 24 pounds less than the high of 89 pounds in 1976 when beef supplies reached record levels as ranchers reduced the size of the nation's beef herd. The current forecast for 1990 indicates beef consumption will be at the lowest level since 1962" (Putnam 1990, 1).

70. "The Institute for Agriculture and Trade Policy promotes resilient family farms, rural communities and ecosystems around the world through research and education, science and technology, and advocacy" (see www.iatp.org).

71. Unless otherwise noted, all quotes from Mark Ritchie are from a May 2000 interview with the author; at that time, Ritchie was executive director of the Institute for Agriculture and Trade Policy.

The IATP's Ritchie and others emphasize that the National Cattlemen's Beef Association does not necessarily represent the interests of all beef producers. "Feedlots and other industrial agricultural interests dominate the National Cattlemen's Beef Association," Ritchie notes. Producers that do not use industrial techniques are not as influential, he says. "If you were to do a case study of [the NCBA], you would find that some of the state-based cattlemen's associations have dropped out in frustration."

In the end, officials reached an agreement allowing small amounts of high-grade US hormone-free beef to be exported to Europe and certified by the EC (not the USDA).⁷² But soon after, Europe banned US beef and pork imports due to concerns about hygiene in American slaughterhouses. In a letter to USTR Carla Hills, Agriculture Commissioner Raymond MacSharry said that the state of US slaughterhouses "is potentially dangerous to the health of European consumers."⁷³ Hills called the EC's actions protectionist and Yeutter called the ban "absurd."⁷⁴ Some US observers noted that the Commission's decision was primarily aimed at helping European producers reduce their pork and beef surpluses.

In brief, the period between 1989 and 1996 was characterized by continuing debate on the hormone dispute but little activity. Europe decided not to impose sanctions on the United States. US tariffs on European goods did not appear to exert much pressure on the EC to change its position. The punitive sanctions affected only a few industries in the European countries most responsible for the ban. Len Condon recalls, "We identified Italy as the core of the problem and we retaliated mostly on Italian products. At that time, there were 12 European member states. The other 11 member states just breathed a sigh of relief and said, 'Well, hey, why should we change anything?' So nothing changed."

Affected businesses also made adjustments to compensate for the sanctions. For example, European alcoholic beverages containing less than 7 percent alcohol were subject to 100 percent tariffs. The US company Riunite imported wine coolers from Italy that fell into that category. For a time, Riunite hoped that the dispute would be resolved and the duties would be removed, but eventually the company simply adjusted the product so that it would be classified differently.

As a result, according to Condon, "The hormone dispute sort of died out toward the end of 1989, and then we remained in a standoff until 1996. The only major relevant thing that happened in between was we negotiated the SPS agreement." Negotiation of the SPS agreement took place as a part of the Uruguay Round of multilateral trade negotiations.

72. "US-EC Fight on Beef is Partly Settled," *The Washington Post*, May 4, 1989, E5.

73. "Community Frontiers Closed to US Pork and Beef," *Agence Europe*, November 1, 1990.

74. "EC Ban on US Meat Called Absurd," *Supermarket News*, November 26, 1990, 33.

Changing the Rules

The United States Moves to Strengthen International Institutions

The United States had not had much luck in relying on international rules and institutions to end the European ban. However, the playing field was changing at the international level. Many of these changes occurred during the Uruguay Round (1986–94), a 96-nation negotiation under the auspices of the GATT.

As noted earlier, US officials—especially Agriculture Secretary Richard Lyng—hoped to make the Uruguay Round the “agriculture round.” According to US negotiators, a key problem in agricultural trade was the use of what they viewed as bogus health regulations by many countries to protect their own markets; the beef dispute was a prime example. They worried that if the Uruguay Round further constrained a government’s ability to protect and subsidize its agricultural producers, the result would be even more so-called health-centered restrictions as a way to protect domestic markets. As one negotiator put it, “We had to plug that hole.”

In December 1987 Dan Amstutz, ambassador-at-large for agriculture at the State Department, paid a visit to the USDA meat inspection program headed by Lester Crawford. Crawford and his staff were asked to write a paper exploring how health-centered “nontariff trade barriers” could be avoided. Crawford recalls: “Secretary Lyng wanted to make the Uruguay Round the agriculture round, but it didn’t look like they were going to get anywhere because of all the disputes. For one, there were these nontariff trade barriers about health that were developing. I was asked to write a paper on how you might solve these problems.” Theoretically, the GATT would address such concerns, but the United States had not seen satisfactory results with the hormone issue at the GATT. “They weren’t doing anything except listening to us testify,” Crawford says. Crawford and other USDA officials assembled a report called *The Sanitary and Phytosanitary Dispute Settlement Paper*.

Negotiating the SPS Agreement

Achieving an agreement on SPS measures became a key element of the US agenda for agricultural trade negotiations. Within the United States, the hormone case was often cited to explain the need for an SPS agreement and to build support for the Uruguay Round. “The hormone case was one of the most notable ones, as far as the US was concerned,” says Len Condon. “During the Uruguay Round negotiations, as we publicly discussed our objectives, we said that we needed the SPS agreement to prevent something like the hormone dispute from happening again.”

Some say that the hormone dispute was also pivotal in selling Congress on the notion that the Uruguay Round should be the agriculture round. For Democrats, who controlled both houses of Congress, the idea of reducing agricultural subsidies was unpopular, but they largely supported ending the European ban. Because there was widespread agreement with the US position in the case and little sympathy for the European position, some say the hormone dispute became the spoonful of sugar that helped the medicine go down.

Some participants even contend that the SPS agreement was negotiated as a result of the US-EU hormone dispute. "The SPS agreement would have never happened if it hadn't been for the hormone dispute," asserts Lester Crawford. "If it hadn't been for the persistence of the hormone dispute, no one would have ever said, 'Let's figure out this sanitary and phytosanitary problem.'" Other observers agree. According to one analyst, "a serious disagreements between the United States and the European Union over hormone-treated beef, nearly a decade in duration, motivated much of [the SPS] text" (Wirth 1994, 824).

Len Condon (then at the USTR) was part of the small group that hammered out the US agricultural position. Unlike many other issues in the Uruguay Round, he says, the SPS talks were a "classical negotiation," involving many countries and a search for common ground. The negotiations proceeded smoothly, without the gridlock that occurred in other agricultural areas. "The SPS agreement was really negotiated separately from other issues," remembers Condon. "It proceeded very differently, and the dynamics were very different, from the rest of the Uruguay Round negotiation. The other three agricultural areas were much more controversial and were much less a classical negotiation. Instead, they primarily occurred between the US and the EC and were accomplished in fits and starts."

EC negotiators did not object to the SPS negotiations. In fact, some say that Europe was not a major player in the SPS talks at all. One reason was the relatively small role of the European Parliament in the Uruguay Round negotiations—in marked contrast to its prominent involvement in the beef hormones ban, which was framed as a public health issue. While the parliament had the authority to act on public health issues, it did not have the same power over trade and agriculture. One analyst notes that in the Uruguay Round, "Parliamentarians did not have the authority to influence the negotiation mandate or the conduct of negotiations, and they could not veto any individual part of the Uruguay Round Agreement. Whereas the hormone directive had occupied the full attention of the Council and Parliament as a single issue, the negotiations for the SPS agreement had little political intervention. Framed as a trade issue within the Uruguay Round, the SPS agreement fell outside of the jurisdiction of the European Parliament and was overshadowed by the Agriculture Agreement" (Davis 2003, 329).

According to some observers, the only major player in the SPS talks was the United States. “The SPS agreement was written by the United States,” remarks the Community Nutrition Institute’s Rod Leonard. Leonard organized a group of US nonprofit organizations that lobbied to influence the outcome of the SPS negotiations. This coalition of consumer and environmental groups—including the Institute for Agriculture and Trade Policy, Public Voice,⁷⁵ the World Wildlife Fund, the National Wildlife Federation, the Sierra Club, Defenders of Wildlife, the Humane Society, and the Environmental Defense Fund—met with officials at the USDA, USTR, FDA, State Department, and Commerce Department. Leonard summarizes their position: “We tried to get the US government to incorporate within the SPS agreement the understanding that if a country’s standards were set to be more protective than Codex standards, or if they were adopted for reasons that the public in those countries felt was appropriate, then the country could not be taken before the WTO and charged with a trade violation.”⁷⁶

The final SPS agreement did acknowledge the sovereign right of members to take measures to protect health and life within their territories, but it held that they could do so only if such measures were not arbitrary or unjustifiably discriminatory (thereby constituting disguised restrictions on international trade) and if they were science-based. According to annex A(3) of the SPS agreement, the international standards, guidelines, and recommendations governing food safety would be those established by the Codex Alimentarius Commission. Unlike in the earlier GATT process, in other words, Codex standards were to play an official role in solving disputes at the new WTO. While members could set standards higher than the international standard, they needed scientific justification to do so. WTO members also agreed that in disputes over whether a member’s domestic regulatory measures were inconsistent with the SPS agreement, the WTO Dispute Settlement Body would be the final arbiter.

Codex Votes

While the SPS agreement was being negotiated, the United States continued to press the hormone question at Codex. An important vote took

75. Public Voice for Food and Health Policy, a US consumer advocacy organization headquartered in Washington, DC, was active in the hormones debate. According to the *New York Times*, the group also campaigned for expanded seafood inspections, better fat labeling, reduced use of pesticides, healthier school lunches, and better nutrition for the rural poor (Judith Blake, “Pulling the Strings: Here Are Some of the Major Players Behind America’s Food Fights,” *The New York Times*, May 20, 1992, D1).

76. Unless otherwise noted, all quotes from Rod Leonard are from a May 2000 interview with the author.

place at the 1991 Codex conference in Rome. At issue was whether Codex should adopt standards for four of the hormones used in beef production, based on the JECFA evaluation. Creating such standards would essentially affirm that residues of these hormones in food posed no risk to health.

The Codex vote was the last step in the eight-step process required to create a Codex standard. To no one's surprise, the United States pushed for adoption of the standard, while EEC members expressed opposition to the proposal. The EEC position was supported by the International Organization of Consumer Unions (IOCU); the US position was supported by COMISA (Confédération Mondiale de l'Industrie de la Santé Animale, the World Federation of the Animal Health Industry), the international federation representing manufacturers of veterinary medicines, vaccines, and other products (Codex Alimentarius Commission 1991, paras. 155–59).

It was the US delegation's prerogative to call for a secret ballot. Though expected to exercise that option to lessen political pressure on Codex delegates to side with the EEC, the United States chose not to do so. In open voting, Codex representatives defeated the call to adopt a Codex standard, 27–12 (nine countries abstained). The status of the hormones was put on hold (Codex Alimentarius Commission 1991, paras. 160–61).

Some observers wonder why the United States acted as it did. Lester Crawford, later the head of the US delegation to Codex, makes clear the logic of the US decision:

The reason we didn't call for the secret ballot in 1991 was to support the Uruguay Round. The main opposition to GATT considered the GATT to be a secret cabal plotting against the civilized world. In the US, that opposition, led by groups like Public Voice, was particularly strong and pernicious. They were winning the popularity contest in the US by claiming that these international institutions were all too secretive. We could not call for a secret ballot in that atmosphere. Had the US done so, the worst news of all would be that we won the hormone vote. They would have had press conferences all over the country the next day. You can see the way they would spin it. They'd say, "The only way the US ever got this odious hormone thing passed was by secret ballot, and no one knows what pressure or bribery the US used in order to win." That is why we made that call. A lot of people have a hard time understanding it. We had to lose the vote in the open in order to support the GATT.

After the vote, Crawford was made vice chairman of Codex, which he described as "a consolation prize because the US lost the vote on hormones" (also see Codex Alimentarius Commission 1991, para. 5).

At its next meeting, in 1993, Codex considered the fifth growth-promoting hormone, trenbolone acetate, which had not been addressed in 1991. The Commission decided to put a hold on determining standards for trenbolone acetate at step 8, along with those for the other growth-promoting hormones. The draft maximum residue levels for all five hormones would not be set "until such time as guidance was obtained from

the [Codex] Committee on General Principles on the status of science in Codex policies and procedures” (Codex Alimentarius Commission 1993, para. 157). What exactly was meant by “the status of science in Codex”? What else would enter into the decision?

According to the Codex proceedings, the hormone review would have to take into account “other factors”—including legitimate consumer concerns, animal welfare, fraudulent or unfair trading practices, labeling, and other ethical and cultural considerations—while stressing the preeminence of science in Codex procedures (Codex Alimentarius Commission 1993, para. 159). Industry was unhappy about the “other factors,” and about the new delay on MRLs. The representative of the trade group for the animal medicine industry, COMISA, noted that in light of the Codex Commission’s decision, it would not recommend that its members place a high priority on participating in the Codex process for establishing residue standards for veterinary drugs (Codex Alimentarius Commission 1993, para. 161).

Questions were also arising about who should participate in the Codex process and in what capacity. In 1993, the International Organization of Consumer Unions presented a paper to Codex representatives on consumer involvement in decision making about food standards. The IOCU asserted that because industry groups had more resources, their interests were more strongly represented than those of consumer organizations. There was also a call for greater press access to Codex meetings to improve transparency, and the Codex Commission suggested that the guidelines governing public and press attendance at Codex sessions be revised (Codex Alimentarius Commission 1993, paras. 50–51; summary and conclusions, iv).

Clearly, changes were afoot at Codex. In light of its new role in the evolving international trade system, Codex was facing questions about the who, what, why, and how of decision making and standard setting. According to the Codex Commission itself, the 1993 Codex meeting “highlight[ed] changes adopted by the Commission which respond to its new role in the context of the GATT Uruguay Round of Trade Negotiations on SPS and on technical barriers to trade.” The assistant director-general of the WHO also noted that the SPS agreement would “change the status of Codex recommendations, especially related to food safety[.] . . . knowing the role of such recommendations in international trade it may become more difficult to formulate new Codex standards, and their formulation may be subject to greater political pressure.”⁷⁷

At its 1995 meeting, the Codex Commission engaged in “lengthy and exhaustive” debate on four principles drafted by the Executive Committee that “confirmed the pre-eminent role of science in Codex decision-

77. These opening remarks were delivered by Dr. Fernando S. Antezana on behalf of Dr. Hiroshi Nakajima, the WHO’s director-general (Codex Alimentarius Commission 1993, 108).

making processes while allowing for other factors to be taken into account.” The European member countries submitted a proposal to amend the statements, but after intensive discussion the Commission adopted all four as originally drafted, and the EU member countries made known their opposition to the decision (Codex Alimentarius Commission 1995, paras. 23–25).

Codex Votes Again

The 1995 Codex meeting also held another vote on the hormone issue. This time, Codex voted by secret ballot to adopt the JECFA MRLs on growth-promoting hormones. The vote was 33–29, with seven countries abstaining. (A proposal to postpone a decision pending further study had earlier been defeated by a similar margin.) The official observer of the European Community expressed regret that this far-reaching decision was made by secret ballot—a move that, he said, was at odds with the Commission’s decision to increase transparency and cast doubt on the “validity and value of Codex work and standards.” The consequences would be grave, he predicted, “including the European Community’s rethinking of participation in Codex work” (Codex Alimentarius Commission 1995, para. 46).⁷⁸

Lester Crawford, who recalls the vote as a victory for the United States, credits “brilliant work by Steve Sundlof at FDA-CVM.” The vote, Crawford says, “marginalized the Europeans for sure. They had staked a lot of political and Codex capital in their position. And once they lost that, then their side went into retreat and it was immediately referred to the WTO.”

Not everyone in the United States celebrated the Codex results. According to Global Trade Watch’s Lori Wallach, “The Codex action was extremely controversial, not only because Codex procedures allow for undue industry influence in rule-making, but because a four-year debate on the safety of these chemicals led to a highly unusual occurrence of voting in the Codex, which typically operated by consensus.”⁷⁹ The Sierra Club Legal Defense Fund’s Patti Goldman adds that “a nearly split Codex vote hardly indicates a general consensus concerning a purportedly scientific question.” Goldman also points to the political nature of making decisions, even those said to be based on science. “Turning science into action is an inherently political endeavor,” she observes. “Conflicting evidence must be weighed and risks and benefits must be balanced before action can be taken. These are political decisions that must be made by govern-

78. The delegations of the Netherlands, Sweden, Finland, Spain, and the United Kingdom dissociated themselves from part or all of the observer’s statement.

79. Lori Wallach, Global Trade Watch, prepared statement before the House Ways and Means Subcommittee on Trade, 106th Congress, 1st session, *US Negotiating Objectives for the WTO Seattle Ministerial Meeting*, August 5, 1999.

ments which are responsible to the people who are directly affected by the outcome of the decisions” (Goldman and Wagner 1996: 8–9).

The United States Tries Again

A Case at the WTO

With a new set of international rules in place, the United States considered another challenge to the EU beef ban. The new WTO, which opened its doors on January 1, 1995, also had a new system for resolving disputes. According to WTO Director-General Renato Ruggiero, the WTO’s dispute settlement system was “in many ways the central pillar of the multilateral trading system and the WTO’s most individual contribution to the stability of the global economy” (WTO 1999, 38). The system was designed to be stronger, more predictable, and more credible than its GATT predecessor. In the GATT system, there was no fixed timetable, rulings were easy to block, and many cases dragged on without ever reaching a conclusion. The WTO process was more structured, with clearly defined stages (see appendix 1B). WTO members agreed to use the dispute settlement system instead of taking action unilaterally.

In May 1995, the new European agriculture commissioner, Franz Fischler, made his first official visit to the United States, where he addressed the World Meat Congress in Denver, Colorado. Fischler also visited the USDA to meet with its new secretary, Dan Glickman, and USTR Mickey Kantor. Glickman devoted most of the meeting to the hormone issue, essentially giving Fischler until the end of the year to “fix” the situation.

Eight months later a dissatisfied Glickman reportedly called Fischler to say that time was up, and the United States was taking the dispute to the WTO. The United States, joined by Australia, New Zealand, and Canada, requested consultations with the European Union at the WTO in January 1996. That same month, the European Parliament voted unanimously “steadfastly to oppose the import of hormone-treated meat in the EU.”⁸⁰

In April 1996, the United States filed its formal complaint—the first SPS case brought to the WTO. A panel of three WTO officials was assigned to the beef dispute in July 1996. Some Commission officials and representatives of US consumer groups questioned the appropriateness of designating a lawyer and two trade diplomats to evaluate what they viewed as a public-health measure. (“Three trade officials who knew nothing about health or science,” notes Mark Ritchie of the nonprofit Institute for Agriculture and Trade Policy.) The panel met with the parties in October and November. Later in November, the panel chairman informed the Dispute

80. “EU Votes to Continue Hormone Ban on Beef,” *Journal of Commerce*, January 19, 1996, 3A.

Settlement Body that the panel would not be able to issue its report within the standard six-month time period.

In arguments before the WTO panel, the United States claimed that the EC hormone ban was inconsistent with a number of international trade agreements, including GATT Articles I and III and the SPS and the TBT agreements.⁸¹ European officials argued that the hormone ban did not violate any provision of the SPS agreement, because Europe satisfied all its conditions: The ban was based on scientific principles, as required by SPS Article 2.2, and a risk assessment had established the scientific basis for regulatory action. Moreover, the Europeans emphasized that the ban was based on the precautionary principle. Finally, they claimed that no arguments were needed pertaining to the TBT agreement, because the ban was an SPS issue.⁸² The European Union also requested a WTO panel to review the legitimacy of the \$100 million in US retaliatory tariffs. But the United States promptly rescinded its tariffs in July 1996.

Some US consumer and environmental groups shared European concerns about the health hazards of growth-promoting hormones. "There was more to this from a medical/scientific perspective than our government was telling us," says Mark Ritchie. "Our organization helped compile information about the danger posed to consumers by hormones, and we submitted a brief to the original WTO panel and to the appellate body." A group of US nonprofits, including Public Citizen, the Cancer Prevention Coalition, and the Sierra Club Legal Defense Fund, prepared a paper on hormones for the WTO. While the WTO allowed panelists to read such outside briefs, it did not mandate that they do so. However, four scientists of different nationalities had also appeared before the panel in February 1997, each answering more than 30 questions about the safety of the hormones in question.

Reflecting on the procedures for WTO dispute resolution, observers said that the process resembled that of a courtroom. Some Europeans blamed the litigious nature of the WTO proceedings on US influence. One European official remarked, "The US has brought a new style to dispute settlement that did not exist before. In the GATT, dispute settlement was not meant to bear any similarity whatsoever to a court system. It was a negotiation mechanism. At the GATT there wasn't this confrontational style. Clearly something has changed. I firmly believe this is entirely the doing of the US."

81. The United States claimed that the EC measures appeared to be inconsistent with agreements, including (1) the GATT 1994 Articles I, III, and XI; (2) the Agreement on the Application of Sanitary and Phytosanitary Measures, Articles 2.2, 2.3, 3.1, 5.1, 5.6, and 5.7; (3) the Agreement on Technical Barriers to Trade, Articles 2.1, 2.2, 5.1.1, and 5.1.2; and (4) the Agreement on Agriculture, Article 4.

82. "EC Measures Concerning Meat and Meat Products (Hormones), Complaint by the United States," Report of the WTO Panel, WT/DS26/R/USA, August 18, 1997, 3:4-6.

Business and Trade in the United States

Soon after the United States filed its formal WTO complaint about the beef ban, USTR Mickey Kantor brought another WTO case against Europe. This case, initiated in April 1996, was filed on behalf of US-based Chiquita Brands International. Chiquita complained that Europe had changed its trade rules in 1993 to favor bananas grown by Britain's former Caribbean colonies over bananas from Latin America. Because Chiquita grew most of its fruit in Latin America, this shift left the company—which previously had been Europe's largest supplier of bananas—at a disadvantage.

The banana case was quickly linked in the press to the beef case, since both pitted the United States against Europe. Perhaps the most-discussed facet of the banana case was Chiquita CEO Carl Lindner's vast political contribution. Some say that although relatively few US jobs were at stake (most of Chiquita's 45,000 employees were in Honduras and Guatemala), Lindner managed to position his banana problem at the top of the US trade agenda. After donating nothing to the Democrats in 1992—traditionally, he gave to Republicans—Lindner contributed \$250,000 in December 1993.⁸³ In September 1994, Chiquita filed a petition asking the United States to impose trade sanctions against Europe. Shortly thereafter, Lindner and his interests made \$580,000 in soft money contributions: \$275,000 to the Democrats, \$250,000 to the Republicans, and \$55,000 to GOPAC, the political action committee of Newt Gingrich (R-GA).⁸⁴

On November 17, 1994, House Speaker-designate Gingrich, new Senate Majority Leader Bob Dole (R-KS), new House Minority Leader Richard Gephardt (D-MO), and Senator John Glenn (D-OH) sent a letter to the Clinton administration in support of Lindner's position on banana trade. *Time* magazine reported that on April 12, 1996, the day after the banana case went to the WTO, Lindner and his executives began sending more than \$500,000 to two dozen less-examined Democrat state party accounts.⁸⁵ The company's officials emphasized that there was nothing wrong with lobbying the government. "Who else are we going to turn to to save our business?" asked Joseph Hagin, Chiquita's vice president for corporate affairs.⁸⁶

A number of US observers note that the case against Europe over bananas was sound regardless of any political contributions—after all, the

83. Michael Isikoff and Brook Larmer, "And Now Bananagate?" *Newsweek*, April 28, 1997, 20.

84. Common Cause press release, "Banana Republic: Carl Lindner and Affiliates Give Huge Soft Money Contributions While Seeking and Obtaining Key Congressional and Administrative Aid; Democrats Raise \$40 Million in Soft Money in '94 Election Cycle, Common Cause Study Finds," March 8, 1995.

85. Michael Weisskopf, "The Busy Back-Door Men," *Time*, March 31, 1997, 40.

86. Hagin, quoted in Isikoff and Larmer, "And Now Bananagate?" 20. Hagin became deputy chief of staff to President George W. Bush in 2001.

WTO ultimately ruled in favor of the United States. However, many Europeans point out that the beef and banana cases represented examples of big business's influence on decision making in US trade policy. "The perception is certainly that USTR is sensitive to lobbies," says one European official, "and will sometimes pursue the interests of lobbies to the detriment of more general interests of the US." In a nutshell, the beef case became so politically important in the United States "simply because of the influence lobbying groups representing specific interests can have in the American political system." He adds,

I think the European Commission is more able than USTR to say, "What is the strategic importance of a given case?" Whereas, the way USTR has come to work is more or less like a law firm acting on behalf of clients. If they have a client like the beef producers, there is no way for USTR to send these people home. They cannot say, "This case is worth \$100 million dollars and we have a trade-and-investment relationship with the EU that is in the trillions. This is just not worth ruining our good relations with the EU." They can't do that because they are in a lawyer-client relationship.

Others counter that little outside influence was needed to convince USTR of the merits of the beef case. Leonard Condon notes, "From my perspective as a mid-level bureaucrat at USTR from 1981 to 1997, I can say that not a lot of pressure was necessary from the US beef industry to motivate the government to initiate and pursue this case. It was clear to all of us from the start that the EU had no scientific basis for the ban."⁸⁷ From the beginning, the real issue was not industry influence, but the fact that Europe would not change its policy. As Condon remembers, "When Commissioner Andriessen made the decision to refuse to cooperate in the case we had taken in the GATT Standards Code, the US Government had no choice, we all believed, but to respond with retaliation, which we did."

The WTO Rules

In its interim decision on the hormone case, distributed on May 7, 1997, the WTO panel sided with the United States: It ruled that Europe had violated international obligations negotiated in the SPS agreement by establishing a ban on beef raised with growth hormones without undertaking a scientific assessment of risk. The interim report was followed by a separate ruling on the similar Canadian complaint, which also went against the European Union. The final report of the WTO dispute settlement panel on the hormone issue was released in August 1997. As expected, the report found the European Union in violation of its international obligations.

87. Comments made to author, January 2006.

The European Union could not impose rules on hormone exposure that were stricter than existing international (Codex) standards, the panel reasoned, because the necessary scientific evidence had not been provided. In the judgment of the panel, none of the scientific evidence presented by the European Union on growth-promoting hormones “indicates that an identifiable risk arises for human health from such use of those hormones if good practice is followed.”⁸⁸ In response, the European Commission charged that “the panel has failed to properly take into account the large body of scientific [evidence] brought forward by the EU in support of its legislation.” The European Union also argued that the ruling undermined a nation’s right to determine the level of protection appropriate for its own consumers.⁸⁹

European officials also noted that the ruling flew in the face of what was known as the “precautionary principle,” which they claimed entitled the European Union to prohibit or restrict products that were suspected, but not proven, to be hazardous. Commission officials later explained that the precautionary principle was not “a politicization of science or the acceptance of zero risk”; instead, it enabled countries to take action when science was unable to provide a clear answer.⁹⁰ Many US observers pointed out that the SPS agreement only allowed import bans on a “provisional” basis while scientific information was being gathered, not open-ended bans on precautionary grounds (see Article 5.7 of the SPS agreement, in appendix 1C).

Unsurprisingly, the European Union quickly appealed the WTO ruling, taking advantage of a process that had not been available under the GATT’s dispute settlement mechanism. At the WTO, three people were assigned through an internal rotation process to handle an appeal. If the European Union was unsuccessful in its appeal, there would be repercussions: Europe would have to open its market to US beef, pay compensation, or allow the United States to retaliate against its exports in an amount equivalent to the value of the banned meat. “We would prefer not to see compensation,” US Agriculture Secretary Dan Glickman testified at a June 1997 hearing of the Senate Agriculture Committee.⁹¹ The United States did not want to create the precedent that the European Union could buy its way out of WTO-determined violations of trade rules, observers said.

88. “EC Measures Concerning Meat and Meat Products (Hormones), Complaint by the United States,” Report of the WTO Panel, WT/DS26/R/USA, August 18, 1997, 8:124.

89. EU statement, quoted in “EU Announces It Will Appeal WTO Panel Ruling on Hormone Ban,” *Inside US Trade*, July 4, 1997.

90. “EU Cements Policy on Food, Health Precautionary Principle,” *Dow Jones Industrial News*, February 2, 2000.

91. Glickman, quoted in “EU Announces It Will Appeal WTO Panel Ruling on Hormone Ban,” *Inside US Trade*, July 4, 1997.

In January 1998, the appellate body released its report. Though it overruled the original panel on several points, it affirmed the key finding that Europe's beef ban was inconsistent with the SPS agreement. The WTO adopted the appellate report and the report of the original panel in February 1998.

Implementing the Ruling

The European Union requested four years to implement the WTO ruling, in part because it hoped to conduct a risk assessment of the hormones in question. However, a WTO arbiter allowed only 15 months for implementation, with a deadline of May 13, 1999. Many US participants commented on the European Union's intention to undertake a risk-assessment study. "That is the most intriguing thing that happened, because it means they had never done a risk-assessment study—never evaluated whether or not the compounds were safe," Crawford says. "So that was the most stunning indictment you could get. They admitted publicly, repeatedly, that they had never evaluated the safety of hormones." The Europeans commissioned two independent committees of scientists, including several Americans, to conduct a series of 17 risk assessments. The result, said the *Wall Street Journal*, was "a scientific process that resembles an open-ended academic project."⁹²

Meanwhile, different alternatives were considered. One possible compromise was for Europe to accept US beef as long as it was "properly labeled." But what did it mean to be properly labeled? According to a US proposal, the United States would agree to a label such as "product of the US" that would identify the source of the beef "thereby giving EU consumers the choice about whether to purchase US beef."⁹³ But the European Union insisted that any label must include the word "hormone." As EU External Relations Commissioner Leon Brittan put it, indicating that the product came from the US was not sufficient "because that doesn't meet the concern." He added, "We certainly don't want a label which casts doubt on the safety of the product. We just want to make certain that it indicates that it does or may contain hormones."⁹⁴ The United States did not agree, arguing that such a label could mislead consumers (Josling, Roberts, and Orden 2004, 121). Therefore, the labeling idea was rejected.

Congressional allies of the Cattlemen's Association and Chiquita were making known their views on the US-EU trade disputes. In October 1998,

92. Geoff Winestock, "Column One: EU Beef Battle with US Began in a Rare Event—Italian Boys Grew Breasts; Ministers Banned Hormones—But Scientific Evidence Was Always Lacking," *The Wall Street Journal Europe*, March 2, 2000, 1.

93. "Text: US Proposal on Beef Labeling," *Inside US Trade*, February 19, 1999.

94. "EU Considers New Beef Ban As US, EU Try to Resolve Hormone Dispute," *Inside US Trade*, April 23, 1999.

House Speaker Gingrich and Majority Leader Trent Lott (R-MS) wrote to President Clinton about the WTO rulings on beef and bananas, pressing the White House to “spell out a specific timetable the Administration will take to ensure compliance with the WTO’s ruling.” They warned, “If the Administration will not take action to protect trade agreements, Congress will have no choice but to take action of its own.”⁹⁵

In March 1999, the administration announced that if the European Union did not comply with the WTO ruling on the EU beef ban, it would exercise its right to impose 100 percent duties on a variety of European products. The USTR created a preliminary list of 81 products that included beef, pork, poultry, Roquefort cheese, flowers, and chocolate truffles;⁹⁶ the goods targeted would be drawn from this group. In hearings in Washington, many importers of European delicacies argued that they were unfairly trapped in the middle of a trade war.

In April, the European Union threatened to ban all American beef imports unless the United States could guarantee that beef labeled “hormone-free” was indeed free of hormones. The European Union claimed that in product tests, 12 percent of all certified “hormone-free” beef contained residues of growth promotants. Also in April, an interim scientific report commissioned by the European Union was released to the public. The report claimed that one of the hormones in question—oestradiol-17 β —could cause cancer: “Even small additional doses of residues of this hormone in meat arising from its use as a growth promoter in cattle has an inherent risk of causing cancer.”⁹⁷ “We now have a scientific basis to defend our position,” declared EU Consumer Policy Commissioner Emma Bonino (Hurd 1999).

The US government was not impressed. “The EU, having failed in every step of the WTO process, appears to be once again searching for a way to avoid its international obligations,” Agriculture Secretary Dan Glickman and USTR Charlene Barshefsky declared in a joint statement. “This latest report is not a risk assessment. It repeats the same unsubstantiated arguments that the European Union has already made before the WTO panel of experts, which were flatly rejected by the panel.”⁹⁸ In addition, the WHO/FAO Joint Expert Committee on Food Additives had reexamined and reconfirmed the safety of three of the hormones (oestradiol, progesterone, and testosterone) when properly administered to animals.

95. “October 7, 1998 Gingrich, Lott Letter to Clinton,” reprinted in *Inside US Trade*, October 9, 1998.

96. The full list of products was published in the *Federal Register*, March 25, 1999.

97. Barry James, “Hormone in US Beef Causes Cancer, EU Scientists Conclude,” *International Herald Tribune*, May 4, 1999, 5.

98. Foreign Agriculture Service, “Joint Statement by Secretary of Agriculture Dan Glickman and United States Trade Representative Charlene Barshefsky on the EU Hormone Report,” May 3, 1999 (available at www.usda.gov).

The Deadline Passes

Continuing to hold to its position, Commission officials explained that scientific study was ongoing—past May 13, 1999, the date set by the WTO for compliance. “We are ready to pay the price,” said Henrik Dam Kristensen, Denmark’s minister for foodstuffs. “We want to examine the consequences for consumers of hormone meat.”⁹⁹ The United States continued to condemn the European Union. “The EU should meet its WTO obligations, including those resulting from adverse rulings against it. To do anything less is to jeopardize the credibility and integrity of the WTO,” noted Charlene Barshefsky in a May 14 statement.¹⁰⁰ Agriculture Secretary Dan Glickman concurred, “When the EU became a WTO member, it agreed to abide by all WTO rules.”¹⁰¹

On May 17, the United States sought WTO authorization to impose tariffs on EU products at a level equivalent to lost US beef exports. “The actions that we are taking here are 100-percent consistent with our WTO rights,” said Barshefsky. “We take this course as a last resort.”¹⁰² The United States estimated its annual loss at \$202 million (industry analysts had put the figure at about \$500 million). The EU countered that the annual cost to US exports was only \$53 million and requested WTO arbitration. The total of \$202 million was “grossly excessive,” said European Trade Commissioner Sir Leon Brittan.¹⁰³

Food and Fear

As the beef dispute headed back to the WTO yet again, food-related concerns continued to hold the spotlight in Europe. Indeed, a panic had erupted over food safety. In 1996 the European Commission had banned all exports of British beef, in an effort to protect consumers from a deadly brain disease called new-variant Creutzfeldt-Jakob Disease (nvCJD) (the United States had banned British beef in 1989). Experts believed nvCJD to be contracted by eating the nervous tissue of cattle afflicted with a similar condition called bovine spongiform encephalopathy (BSE), commonly

99. Kristensen, quoted in Peter Ford, “US to Up Prices of EU Goods,” *The Christian Science Monitor*, July 26, 1999, 1.

100. Office of the USTR, “United States to Request WTO Authorization to Retaliate in the Amount of \$202 Million,” May 14, 1999.

101. Foreign Agriculture Service, “Statement by Agriculture Secretary Dan Glickman on the EU’s Failure to Comply with WTO Rulings on the Beef Hormone Ban,” May 14, 1999 (available at www.usda.gov).

102. Office of the USTR, “United States to Request WTO Authorization to Retaliate.”

103. Brittan, quoted in Elizabeth Olson, “\$253 Million Sanctions Sought in Beef Fight with Europe,” *The New York Times*, June 4, 1999, C4.

known as mad cow disease. The disease, first identified in the mid-1980s, had spread through British herds from processed cattle feed containing the ground-up remains of already-infected animals, and hundreds of thousands of cattle had to be slaughtered. The mad cow crisis magnified distrust in the government's ability to monitor food safety.

Debate and protest were also heating up over genetically modified (GM) crops, grown mostly in the United States. These new field crops, which utilized recombinant DNA technology to assist in pest and weed control, had been released for large-scale commercial use in 1996. By 1999, roughly half of the US soybean crop and one-third of the corn crop were genetically modified. Observers noted that GM crops created new possibilities for higher yields, lower pesticide use, greater food security in the developing world, more profits for farmers, and more nutritional food. European farmers, however, generally did not adopt GM crops and protesters questioned the safety of GM technology. By April 1998, Europe had stopped approving new GM crop varieties for use or import.

Other food-related issues were coming to a head in Europe. In May 1999, following a TV report on contaminated animal feed in Belgium, European retailers began yanking potentially dioxin-tainted foods from their shelves. At the order of the Commission, Belgium destroyed huge quantities of possibly contaminated chicken, dairy products, eggs, baked goods, and some beef products. The contamination likely resulted from a batch of animal feed tainted with motor oil. Belgian government officials had reportedly known about the tainted feed, and popular outrage first led to the resignations of Belgium's farm and health ministers and ultimately toppled the incumbent Belgian government. The incident ended up costing more than \$750 million, and thousands of farmers converged on Brussels to demand compensation.¹⁰⁴ In response to the crisis, the United States held up all EU poultry and pork imports, an action that some observers criticized as based more on fear than on fact. One editorial described the move as "ironic" in light of US diplomats' concurrent efforts to convince Europe that its fears about genetically modified crops and growth hormones were grounded in emotion rather than science.¹⁰⁵

The food scares did not end. In June, more than 250 people (including children) in Belgium and France reported stomachaches, dizziness, and nausea after drinking Coca-Cola products. In the company's largest-ever product recall, 17 million cases of Coke, Fanta, and Sprite were pulled from the shelves. Belgian and French authorities banned the sale of Coke products for 10 days.

104. Julie Wolf, Brandon Mitchener, and Konstantin Richter, "Cost Mounts in Belgium's Food Crisis—Poultry Sales Are Delayed in Blow to Government as Election Approaches," *The Wall Street Journal*, June 10, 1999, A21.

105. "Global Food Panic," editorial, *Journal of Commerce*, June 9, 1999, 7.

Still reeling from the effects of the mad cow outbreak, some European Commission officials attributed the spate of food-related incidents to a series of random accidents rather than to a flawed regulatory system. “We have an awful lot of legislation, from the stable to the table, but that doesn’t stop someone from breaking the rules, and it’s not going to stop an accident,” said one European Commission spokesman. Others wondered if a new, independent agency was needed to oversee food safety. “It is worth considering whether some functions of an overall food policy could be more effectively carried out by an agency,” noted EU Agriculture Commissioner Franz Fischler.

A number of groups suggested that industrial food production was partly to blame for the recent scares. Though European farms were traditionally small and family-owned, American-style agribusiness was establishing a presence. “I am very concerned that it’s the accountants now that are getting hold of the [food] business, and that there is a continuous effort to drive down prices and to maximize profit,” said one small-scale British sheep farmer, “Inevitably, in doing so, corners are going to be cut.”¹⁰⁶

Back to the Future—Retaliatory Tariffs and a Stalemate

Before the WTO arbitrators reached a decision, US and EU scientists met to discuss the hormone issue one more time. On June 21, 1999, ten US regulators—led by Stephen Sundlof, the head of FDA-CVM—sat down with a group of EU scientists and officials at the National Institutes of Health (NIH) outside Washington, DC.¹⁰⁷ The European representatives included the chair of the EU scientific committee that had issued the April interim report. The mood was chilly, and the meeting ended without agreement on how to move forward.

On July 12, WTO arbitrators assessed the annual cost of the beef ban at \$116.8 million for the United States and \$11.3 million for Canada (Canada had requested \$51 million in sanctions). This decision permitted the United States and Canada to impose 100 percent duties on a list of EU products of comparable value. Only months before, the United States had imposed \$191 million in duties on European products as the result of a ruling in the WTO banana case. “This retaliation will stay in place until the EU has lifted its ban,” announced US Special Trade Negotiator Peter Scher. “This is now the second time this year in a WTO dispute that the EU has failed to honor its WTO obligations. To put a finer point on it, the EU has

106. European Commission spokesman Gerry Kiely and sheep farmer Sandy Boyd, quoted in “Food Scares Mount Up, Perplexing Europeans,” *The New York Times*, June 20, 1999, 15; Fischler, quoted in “EU’s Fischler sees Role for New Food Safety Agency,” Reuters News, August 16, 1999.

107. Geoff Winestock, “Column One: EU Beef Battle with US Began in a Rare Event—Italian Boys Grew Breasts; Ministers Banned Hormones—But Scientific Evidence Was Always Lacking,” *The Wall Street Journal Europe*, March 2, 2000, 1.

now become the only member of the 134-nation membership of the WTO to fail to respect rulings of the dispute settlement panel."¹⁰⁸

Rita Hayes, US ambassador to the WTO, called the decision a victory: "We now have a combination of more than \$300 million in beef and bananas retaliation against the European Union," she pointed out. The French farm minister, Jean Glavany, countered that the United States had "the worst food in the world."¹⁰⁹ The American Meat Institute, the American Farm Bureau Federation, the National Cattlemen's Beef Association, and the US Meat Export Federation released a joint statement charging that "EU intransigence has forced the least desirable conclusion to this trade dispute."¹¹⁰

The final list of products targeted in the US retaliatory action was determined by an interagency process involving the Departments of State and Commerce, USDA, and USTR. Scher said that the list of EU products was crafted to exert "maximum pressure" on the Europeans while inflicting "minimum economic impact" on American business.¹¹¹ France, Germany, Italy, and Denmark were the countries most deeply affected by the tariffs because they were the largest countries within the European Union—with the exception of Denmark, chosen because it was the European Union's largest meat exporter. US officials indicated that these countries had played the most decisive role in preserving the beef ban and would also wield the most influence on future EU decisions. When the retaliation went into effect on July 29, affected products included Danish ham; German pork; French goose-liver pâté, mustard, and Roquefort cheese; and Italian truffles and canned tomatoes.¹¹² The most heavily targeted of these goods was European pork. Reportedly, the US National Pork Producers Council had urged President Clinton to put EU pork products on the list. Facing low prices, pork producers in the United States were competing with \$247 million of EU exports per year.¹¹³ In the end, pork accounted for \$30 million of US retaliation.

108. Scher, American Farm Bureau Federation Press Conference, National Press Club, July 13, 1999 (unofficial transcript available at www.useu.be).

109. Hayes, quoted in Frances Williams, "US Wins Approval for Beef Sanctions," *The Financial Times* London, July 27, 1999, 8; Glavany, quoted in Peter Ford, "US to Up Prices of EU Goods," *The Christian Science Monitor*, July 26, 1999, 1.

110. "Statement by the American Meat Institute, the American Farm Bureau Federation, the National Cattlemen's Beef Association, and the US Meat Export Federation Regarding US Retaliation List Against EU Products," July 19, 1999 (on file with author).

111. USTR Telebriefing, Special US Trade Negotiator Peter Scher on the EU Beef Hormone Dispute, July 19, 1999 (unofficial transcript available at www.usembassy.it).

112. Among the other products affected were glues and adhesives from France, Germany, and Italy, as well as chocolate and foie gras. France was hit with tariffs of 24 percent of the total value; Germany, 24 percent; Italy, 21 percent; and Denmark, 15 percent. The remainder was divided among the other 10 EU countries, excluding the United Kingdom.

113. "Extra Tariff on Pork as US Reacts," *Farmers Guardian*, July 16, 1999, 7.

Both the United States and Canada excluded UK agricultural and food exports from trade sanctions because the British government had generally opposed the ban.¹¹⁴ British Agriculture Minister Nick Brown welcomed the US decision, pointing out that “The UK government has consistently worked for a constructive solution to the trade dispute with Canada and the USA over the EU’s beef hormones ban.” Brown added, “We will continue to base our approach on the science and to work within the EU for a settlement which results in the trade sanctions being lifted.”¹¹⁵ Britain was the only EU nation to escape penalties.¹¹⁶

Targeting the US Food Industry

Some French farmers, particularly incensed by the punitive levy on Roquefort cheese, reacted angrily to the US tariffs. In retaliation, manure and rotten fruit were dumped outside of McDonald’s restaurants in the southern towns of Montauban, Arles, Martigues, and Nîmes. In Noyon, farmers lured customers away from McDonald’s with gifts of fresh baguettes and French cheese.¹¹⁷ Going a step further, in the heart of the Roquefort region in southwest France, farmers did \$65,000 worth of damage to a McDonald’s site under construction in Millau. Charged with willful destruction, Jose Bové and four other farmers were imprisoned.

When Bové refused to accept release on bond, preferring to stay in jail until trial, his name became a household word in France. The founder of the farmers’ group Confédération Paysanne, Bové declared that he would resist GM foods, hormone-raised beef, and anything else he considered *sale bouffe* (dirty grub). Some trade unions, farmers, and Green Party members rallied around Bové, dubbing him “the Robin Hood of the Larzac” (his native region); others criticized his record of violent protest, citing his recent role in the destruction of GM crops on experimental plantations. “Jose Bové uses violence as a media tool,” said Jacques Godfrain, a former Gaullist minister and mayor of Millau.¹¹⁸

In an attempt to defuse the situation, Jean Glavany expressed sympathy for the farmers’ plight. The agriculture minister also called Bové’s de-

114. Canada’s list of products included Danish pork, French and Austrian beef, and Spanish gherkins and cucumbers.

115. Brown, quoted in “Ministerial Welcome to Sanction Exceptions,” *Farmers Guardian*, August 6, 1999, 2.

116. The UK pork industry, whose exports to the United States totaled more than £8 million annually, was especially relieved. Don Curry, British Meat and Livestock Commission chairman, had urged the Clinton administration not to impose tariffs on British pork exports (“UK Escapes US Penalties,” *Farmers Guardian*, July 23, 1999, 8).

117. Patricia Ochs, “Trade Fight Has Flavor of France,” *The Boston Globe*, September 9, 1999, A2.

118. Bové and Godfrain, quoted in Julian Nundy, “The Raider of Roquefort Rallies French,” *The Scotsman*, September 4, 1999, 11.

tion “regrettable,” but warned farmers that any protests should be kept within the law. While admitting “a crisis that we have to deal with,” he cautioned against “giv[ing] the impression that there is a civil war in our countryside.”¹¹⁹ Eric Boutry, head of the Roquefort producers’ association, said that his organization would pay Bové’s bail whether he liked it or not.

McDonald’s French subsidiary launched a national media campaign to counter the negative publicity. Full-page ads in 60 regional daily newspapers positioned the company as “Born in the USA but made in France.” The campaign emphasized that the 750 French McDonald’s restaurants purchased French products.¹²⁰ “Today, 80 percent of the products we serve are made in France,” said Stephanie Biais, a spokeswoman for McDonald’s France in Paris. “As a longstanding purchaser of French agriculture, we deplore the violence used in these instances.”¹²¹

Other American icons were also targeted by protesters. In Dijon, France, where local mustard was affected by the US tariffs, some café owners increased prices on Coca-Cola to more than \$100 a bottle.¹²² The small town of St. Pierre-de-Trivisy in the Roquefort region imposed a 100 percent tax on Coca-Cola. “We feel there’s a piling-on going on with respect to the Coca-Cola Co.,” one company executive said. “This may or may not have to do with sanctions. But we definitely feel we’ve become a target.”¹²³

The United States had deliberately imposed tariffs on foods that were symbols of European culture, and the French protest was also rich in symbolism. According to protesters, McDonald’s and Coca-Cola were emblems of world commerce, the corporatization of food production. “We led this action, which we know was against the law,” Bové announced from jail. “But we are the legitimate victims of a global market economy.”¹²⁴ Other farmers expressed fear of losing the French culture and way of life.

119. Glavany, quoted in Samer Iskandar, “Farm Protester Refuses to Leave French Jail Cell,” *The Financial Times*, September 3, 1999, 3.

120. “McDonald’s Launches Ad Campaign to Counter French Farmers’ Anti-US Protests,” *Euromarketing*, September 10, 1999.

121. Biais, quoted in Patricia Ochs, “Trade Fight Has Flavor of France,” *The Boston Globe*, September 9, 1999, A2.

122. Stephen H. Dunphy, “The WTO: A Case of Washington Meat and French Mustard—How One Big Beef in World Trade Trickles Down to Folks on the Farm,” *The Seattle Times*, Sunday, September 19, 1999, A1.

123. Executive quoted in John-Thor Dahlburg, “Soft-Drink Giant Coca-Cola Is Downgrading a Case of Criticism in Europe Trade: Some Wonder Whether the Firm, Plagued by Recalls and Raids There, Is Being Singled Out as a Symbol of American Capitalism,” *Los Angeles Times*, July 31, 1999, C1.

124. Bové, quoted in Ochs, “Trade Fight Has Flavor of France,” A2.

US Industry Increases Pressure

The beef industry urged the US government to increase pressure on Europe to comply with the WTO. An industry representative conceived of a tool known as “carousel retaliation,” which would require the US government to regularly rotate the list of products subject to sanctions. Changing the list would increase the number of affected European industries, and it was believed that these industries would push to end the ban on hormone-treated beef. Chuck Lambert of the National Beef Cattlemen’s Association explains:

Once retaliation goes into effect, the affected industries adjust or governments shift their subsidies. And once those shifts are made, everyone becomes comfortable again and life goes on. For example, the US retaliated against Italian tomatoes from 1980 to 1995, and didn’t gain anything. So our viewpoint is that every six months, you review the existing commodities. If you aren’t getting any movement, any political pressure for change, you shift retaliation to other products in order to generate additional pressure. There are 15 EU countries, but initially we only retaliated on products from 4 countries. So 11 European countries were breathing easy.

The American Meat Institute contacted a Chiquita representative in the spring of 1999 to elicit support for carousel retaliation. Initially, there was little interest in the idea but later—after no movement from the EU on bananas—Chiquita and other banana interests saw value in the concept and worked with the American Meat Institute, American Farm Bureau Federation, and National Cattlemen’s Beef Association to lobby the Administration and Congress to support carousel (a former beef industry representative notes that this was the first time the beef and banana groups worked together to forward their interests related to the WTO cases).

The European Union called the carousel approach “a no-no.”¹²⁵ In a review of the WTO’s Dispute Settlement Understanding (DSU), European officials demanded language that would prohibit any rotation of retaliation lists.¹²⁶ In addition, not all US officials were completely enthusiastic about the tactic. Testifying before the House Ways and Means subcommittee on trade, USTR Barshefsky said that an interagency panel was weighing two concerns: whether changing the retaliation list could harm negotiations with the European Union, and what impact a change would have on US consumers and business.¹²⁷ Sources said that the other de-

125. “EU Floats Provisional Implementation of DSU Review,” *Inside US Trade*, December 2, 1999.

126. The United States continued to oppose the EU proposal on prohibiting changes in retaliation lists. There was hope the issue would be resolved during the December 1999 Seattle WTO ministerial, but the ministerial failed.

127. Charlene Barshefsky, testimony before the Trade Subcommittee of the House Committee on Ways and Means, Subject: World Trade Organization, 106th Congress, 2nd session, February 8, 2000.

partments were concerned about rotating the retaliation lists—the Treasury Department feared that the move would harm the overall US-EU relationship, and the Commerce Department worried that it would hear complaints from affected domestic businesses.¹²⁸ In addition, the USTR wanted to maintain the ability to revise the lists as it saw fit and was suspicious of any congressional legislation that would force its hand.

Beef and banana industry representatives were finding allies in Congress. In September 1999, US farmers and food groups backed a Senate carousel retaliation bill (S. 1619) introduced by Senator Mike DeWine (R-OH). In the House, Agriculture Committee Chairman Larry Combest (R-TX) introduced a similar bill, H.R. 2991. But some companies opposed such legislation, fearing that the European Union would use a similar approach against the United States in future trade disputes—and that US business would suffer for it.

Carousel Retaliation Is Passed

In May 2000, US cattle and banana interests won a long-sought victory when Congress passed carousel retaliation as section 407 of the Trade and Development Act of 2000 (amending the Trade Act of 1974). Section 407 called for the revision of product retaliation lists every 180 days in a manner most likely to induce the targeted country to come into compliance.¹²⁹ Exceptions would be made if a resolution to the dispute was imminent, or if the USTR and the affected US industry mutually agreed that such revisions were unnecessary. The first revision of the product list was mandated to come within 30 days of enactment. Soon after President Clinton signed the legislation, a coalition of beef interests wrote to USTR Barshefsky supporting substantial revision of the list of products subject to retaliatory duties. “This issue has always been about re-opening the EU market to US beef,” they declared. “It should not be about increasing protection for opportunistic US interests.”¹³⁰ However, the administration failed to rotate the product list as mandated.

128. “Administration Conducts Review of Beef, Banana Retaliation,” *Inside US Trade*, February 11, 2000.

129. “In revising any list or action against a country or countries under this subsection, the Trade Representative shall act in a manner that is most likely to result in the country or countries implementing the recommendations adopted in the dispute settlement proceeding or in achieving a mutually satisfactory solution to the issue that gave rise to the dispute settlement proceeding. The Trade Representative shall consult with the petitioner, if any, involved in the initial investigation under this chapter” (Trade and Development Act of 2000, §407(d)).

130. The American Farm Bureau, the American Meat Institute, the National Meat Association, the National Cattlemen’s Beef Association, and the US Meat Export Federation, letter to USTR Charlene Barshefsky, June 12, 2000 (on file with author).

The European Union charged that carousel retaliation was illegal since it would affect a larger volume of trade than the WTO had authorized. "The EU believes that such type of shotgun legislation is fundamentally at odds with the basic principles of the Dispute Settlement Understanding," stated one Commission report (European Commission 2000, 13). Other Europeans felt it was time to soften the adversarial nature of the beef dispute. The rhetoric of trade talks should be toned down, said EU Commission President Romano Prodi at a US-EU summit press conference. "We decided that megaphone diplomacy will be replaced by telephone diplomacy," Prodi told reporters. "It's more constructive even though less sexy."¹³¹

But some say that the bad blood created by the beef and bananas cases was apparent in the European Union's decision to bring a new billion-dollar WTO case against the United States. Europe objected to a provision of the US tax code that in 1984 created a new entity, the foreign sales corporation (FSC), which allowed US companies like Microsoft and Boeing to avoid paying taxes on some overseas sales by channeling them through offshore subsidiaries. International trade rules explicitly prohibited export subsidies such as rebates of direct taxes, but FSC supporters argued that the provision leveled a playing field made uneven by different approaches to corporate income: The United States taxed it directly, while European countries taxed it indirectly through a value-added tax. "The FSC is simply an attempt by the US to allow its exporters to compete against foreign competitors that have long enjoyed far bigger tax breaks," wrote Bob Dole, who originally introduced the act in the Senate.¹³²

But in February 2000, the WTO ruled against the United States on the FSC. A front-page *New York Times* article declared it the United States' "largest defeat ever in a trade battle."¹³³ Some wondered if the United States would ease its demands on beef and bananas trade as a part of a settlement deal, but at a Senate hearing, USTR Charlene Barshefsky committed not to link the bananas, beef, and FSC cases, calling them "separate matters; they need to be handled separately." Barshefsky also agreed with Senate Majority Leader Trent Lott that Europe had initiated the FSC case to deflect attention from beef and bananas. "I think the FSC decision, apart from being incorrectly decided . . . was largely put forward by the EU as . . . a means to try and even the litigation scorecard," she said.

131. Prodi, quoted in Alex Keto, "Clinton Turns Attention to Mideast," *Dow Jones Newswires*, May 31, 2000. Also see Erik T. Burns, "EurOpinion: Top Bananas Don't Talk Bananas," *Dow Jones Newswires*, June 1, 2000.

132. Bob Dole, "Comment and Analysis: Upsetting the World's Trade Balance," *The Financial Times*, February 22, 2000, 21.

133. Joseph Kahn, "US Loses Dispute on Export Sales," *The New York Times*, February 24, 2000, A1.

“Nonetheless, we will work with the Congress, work with the EU, with respect to our obligations under that decision.”¹³⁴

Despite the launching of the FSC case at the WTO, there were some signs of transatlantic cooperation. In April 2001, the banana battle between the United States and the European Union moved toward settlement after months of negotiations when the European Commission agreed to shift the European Union’s banana import regime to a tariff-only system by 2006. In return, the United States agreed to suspend \$191 million in annual sanctions on the European Union. In addition, the George W. Bush administration decided not to rotate its sanctions list in the beef dispute as required by the carousel law. “Implementation of carousel would likely kill an agreement with the European Union on low-key handling of the Foreign Sales Corporation dispute, triggering earlier steps toward retaliation in the \$4 billion fight,” noted *Inside US Trade*.¹³⁵ But the beef industry was frustrated that both the Clinton and Bush administrations had chosen to ignore the law.

A new head of the WTO, Thailand’s former commerce minister, Supachai Panitchpakdi, took office in September 2002. Supachai told reporters that one of his priorities would be to attempt to address trade disputes before they became major crises. “We should be able to interpret the rules in a way that would help resolve conflicts,” he said, expressing the hope that more disputes could be settled early, by mutual agreement, as opposed to relying on legal rulings, appeals, and sanctions.¹³⁶

The Standoff Continues

Despite such sentiments, the US-EU standoff over the beef ban continued. Though the European Union offered to lower tariffs or raise import quotas on US hormone-free beef exports as compensation for the ban, no

134. Charlene Barshefsky, testimony before the Senate Finance Committee, Upcoming World Trade Organization Agriculture Negotiations, 106th Congress, 2nd session, March 7, 2000.

Later that year, President Clinton signed the Extraterritorial Income Exclusion Act (ETI) into law, intended to replace the FSC and comply with the WTO decision. But in August 2001, a WTO compliance panel found that the new law also constituted a prohibited export subsidy and violated WTO trade rules—a decision upheld by an appellate panel. In August 2002, WTO arbitrators authorized \$4.043 billion in countermeasures against the United States, by far the largest total sanctions ever permitted by the WTO, but the European Commission held off on putting them into effect.

135. “US Seeks to Restart Compensation Talks with EU in Beef Dispute,” *Inside US Trade*, June 15, 2001.

136. Supachai, quoted in Naomi Koppel, “New WTO Head Sets Out His Priorities,” Associated Press, September 2, 2002.

agreement was reached. Thus, after years of negotiations, new trade agreements, a new system for resolving trade disputes, and long debates at Codex, the ban remained.

In one last twist, after passing legislation in 2003, Europe argued that its ban on hormone-treated beef now complied with the WTO's ruling. The ban on five of the growth hormones was made "provisional" pending further scientific research, while a new risk assessment allowed the ban on the sixth hormone, oestradiol-17 β , to be permanent. Under the SPS agreement, WTO members could take provisional measures in the face of uncertain science and work to provide additional information within a "reasonable period of time." The European Union notified the WTO of its new legislation and reported that it had now implemented the WTO's ruling. The United States argued that Europe was still in violation—making a ban provisional while keeping it in place indefinitely did not meet the WTO's obligation. "The EU ban remains in place and is still unsupported by any scientific rationale," said USTR spokesman Richard Mills.¹³⁷ But in November 2004, the European Union requested WTO consultations on the grounds that the United States had failed to remove its retaliatory tariffs related to the beef hormones case despite Europe's having come into compliance. A WTO panel was established in February 2005.¹³⁸ Interestingly, for the first time, the United States, Canada, and the European Union agreed to open the panel proceedings to the public despite objections from other members. Closed-circuit television cameras would be allowed in the courtroom. Whether such transparency would contribute to greater public understanding or a mutually acceptable resolution to the dispute remained to be seen.

As the beef ban heated up again, tensions were also on the rise over the bananas dispute and FSC as well as a new US case against Europe's de facto moratorium on approving GM crops. Some experts wondered if these high-profile cases put too much pressure on the WTO dispute resolution system. Could WTO panels be expected to solve such politically charged disputes? Would such cases undermine the WTO's legitimacy? Others emphasized that while the contentious disputes got all the attention, the majority of WTO cases were successfully resolved through negotiation. "We've had several hundred cases," trade scholar Claude Barfield has noted, "and most have not created a problem."¹³⁹

137. Mills, quoted in Scott Miller, "EU Renews Fight over Hormones in Beef Products," *The Wall Street Journal*, November 9, 2004, A2.

138. Third parties to the beef case were Australia, Brazil, Canada, China, Chinese Taipei, India, Mexico, New Zealand, and Norway.

139. Barfield, quoted in Edward Alden and Raphael Minder, "Tough Decisions Ahead on World Trade Rules," *The Financial Times*, December 31, 2004, 6.

Case Analysis

Regulation and markets are often seen as antagonists, but in the absence of adequate confidence in regulation, some markets are unable to operate. Lack of such confidence can be particularly damaging when there are concerns about safety and health. We have seen the results in Europe with respect to food, particularly after the mad cow food scares, and in the United States with respect to nuclear power after the 1979 accident at Three Mile Island. Though all perceive the need for regulation, nations may diverge markedly in their regulatory decisions. These decisions may reflect societies' differences in the interpretation of available information, in the internal distribution of power, in the availability of resources for regulatory activities, or in cultural preferences as articulated through political and regulatory institutions.

In this case we learn how the United States and the European Union responded to six hormones that promote growth in cattle by enacting very different regulations. In the United States, where such decisions are made by an independent regulatory agency, the FDA, use of the hormones in question was allowed; another hormone (DES, or diethylstilbestrol) was banned as harmful. In Europe, by contrast, though a commission of scientists found no evidence that the hormones had ill effects on humans, the European Council of Ministers banned their use. The 1989 ban covered all beef—including meat imported from the United States, where growth-enhancing hormones were widely used. This decision was unquestionably influenced by concerns voiced by European farm and consumer groups and by the European Parliament.

What accounts for these differences? Some interpret the European actions as based in cultural attitudes, reflecting a lower tolerance for risk or less faith in the statements of scientists. They see such behavior as perfectly appropriate and laud this approach as sensitive to consumer concerns. To others, the ban on hormone use demonstrates flaws in the European decision-making process that hold it captive to agricultural and consumer interests. Critics also see the ban as a symptom of Europe's failure to persuade the public that government officials are able to guarantee food safety. Opinions about the US position are likewise divided. Some assert that the US decision was more influenced by scientific opinion and reflects a more optimistic view of new technologies; others claim that the US system has given producers' interests too much weight while downplaying consumers' worries about safety.

The "truth" remains elusive, but it is clear that their policies separate the Americans and Europeans almost as thoroughly as the Atlantic does. Europeans seek to carve out more scope for a "precautionary principle," the idea that products suspected but not proven to be hazardous can be prohibited or restricted. Americans seek to give greater weight to what has been proven by science. The beef hormones case is thus just one ex-

ample of the more widespread problems caused by such policy differences within a trading system, problems that are also manifest in the case on genetically modified organisms (GMOs).

Trade Rules

Even if all border barriers are removed, divergent regulations can still impede trade. Indeed, sometimes countries deliberately craft their regulations to protect domestic producers. It is quite natural, therefore, that those concerned with facilitating trade will try to develop mechanisms to deal with the problems created by regulatory diversity. One approach is harmonization: fashioning a single standard agreed on by the trading countries. This option is attractive because it reduces transaction and information costs—but one size may not fit all. Adopting a single international standard may sacrifice the benefits of tailoring rules to local conditions; moreover, deciding which standard should be accepted is itself a knotty problem. An alternative approach is mutual recognition of standards, which the European Union relies on for many regulations. Under this principle, if a product satisfies the regulations of one member state, it can be sold in all members' markets. Mutual recognition avoids the negotiations involved in choosing one standard, but it requires considerable trust in regulations made in other countries. A third approach is tolerance of diversity in regulations so long as they are subject to certain disciplines, such as agreements to follow established scientific standards and methods and commitments not to engage in discrimination simply to further domestic interests.

The SPS agreement in the WTO is a blend of the first and third options: under the SPS, harmonization is promoted and, absent harmonization, disciplines are imposed. The SPS encourages members to base “measures on international standards, guidelines or recommendations, where they exist” (Article 3.1). Indeed, if a country applies international standards, its measures will be presumed to be consistent with WTO rules and it will enjoy safe harbor from challenge. However, WTO member countries may also adopt higher levels of protection if such levels (1) can be scientifically justified or (2) are based on an assessment of risk following rules laid out in Article 5 of the agreement. In these cases, members are also expected to ensure that their measures are not more trade-restrictive than necessary and to avoid discriminating against the products of other members. The SPS agreement also allows a member to provisionally adopt protective measures when it lacks sufficient relevant scientific information to come to a judgment. According to Article 5.7, “In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk . . . within a reasonable period of time.”

When the European Union decided to ban growth-promoting hormones in the 1980s, the United States tried to bring a challenge at the

GATT under the SPS code that had been negotiated in the Tokyo Round. But since the GATT system required unanimity for the case to proceed, the European Community was able to use its veto power to block the action. The United States also sought to have hormones declared safe at the Codex Alimentarius Commission—the international body responsible for setting food standards—but failed to win enough votes. Stymied, the United States unilaterally imposed sanctions on European exports, but Europe refused to back down.

Because the dispute continued in the 1990s, it allows us to explore the differences and similarities in dispute settlement under the GATT and the WTO. When the United States brought the case under the WTO's DSU, the European Union was unable to stop it, because the new system had a reverse consensus rule: It required unanimity to *prevent* a case from being heard. Therefore, the WTO was able to make a ruling on the dispute; its panel found that Europe had indeed violated the SPS agreement. When Europe failed to come into compliance, the United States was authorized to retaliate against European exports deemed to be of equivalent value to the beef exports it had lost.

In some respects, the WTO has made a difference. It has allowed the case to be heard and for the rules to be clarified through the dispute settlement process. Instead of resorting to unilateral and potentially arbitrary retaliation as in the 1980s, when it had acted as prosecutor, judge, and executioner, in the 1990s the United States was validated by an impartial panel and its retaliation made subject to multilateral scrutiny. On the other hand, Europe continued to maintain the ban. And thus in the end the WTO, like the GATT, was unable to achieve compliance. However, some note that the ruling discouraged other WTO members from banning the hormones in question or US beef.

Noncompliance

A particularly interesting feature of the US-EU clash is that the European Union signed the Uruguay Round agreement despite refusing to follow its requirements under the SPS in the case of beef. Why would a member sign an agreement that it was actually violating? One explanation is that the two actions involved different decision makers. The Uruguay Round agreement was ratified by the European Council of Ministers, most of whom are foreign and trade ministers. In contrast, the ban on beef hormones reflected the views of the European Parliament, which is far more concerned about public health than trade, and of agricultural ministers, who placed a high value on internal integration under a single rule. Indeed, since national governments are ultimately responsible for food safety, the ban could have been reinstated in some countries but not in others, thereby interfering with the operation of the internal market.

A second explanation is simply that Europe was outmaneuvered. When Europe signed the SPS agreement in 1993, there was no Codex standard on the hormones in question and thus European countries may have felt that their regulations were justified. Only when they lost the vote at Codex in 1995 was the EU case fundamentally weakened. The efforts by the United States to elevate the role of Codex were, in fact, a classic example of a strategy to “change the game.” Unable to win the battle through negotiation and dispute resolution efforts aimed at the *substance* of the issues, the United States sought to alter the *process* through which decisions were made. But even though it succeeded in that attempt, the resulting changes in the process did not then lead to a “win,” since the European Union continued to refuse imports of US hormone-treated beef.

The continued failure to reach a settlement in part reflects the zero-sum nature of the dispute and the strength of the coalitions on each side. These factors are examples of structural barriers to negotiated agreement. In addition, eliminating the ban would be extremely costly from a political standpoint, given the pervasive public concerns in Europe about food safety. This political bind is an example of an institutional barrier to agreement.

Further complicating the institutional picture, national governments in Europe also regulate food safety; and, as noted above, if the ban were lifted at the European level, some national governments would probably keep the ban in place. Producers in some countries might gain a competitive advantage over those in others, and beef produced in some countries could be banned in others. Thus, Europe is faced with choosing between a unified single market and WTO compliance.

As an alternative to lifting the ban, Europe can come into compliance by meeting the regulatory requirements for justifying the ban. It has attempted to do so; and in 2005 the European Union brought a case at the WTO seeking the elimination of US retaliation on the grounds that it had complied. On the other side, the United States can agree to sell non-hormone-treated beef to Europe. But this decision would mean abandoning the case as a precedent for ensuring that regulation is based on science, something the United States has been unwilling to do. Concerns about precedents and the resulting linkages to future negotiations are further examples of structural barriers to agreement.

How should we view the outcome? As this is being written, the EU ban on hormone-treated beef and the US retaliation remain in place. From one vantage point, the result is disappointing: A member of the WTO has refused to comply with the organization’s rulings. In addition, the parties have failed to reach a compromise settlement that might have involved reducing other European trade barriers or allowing US beef to be sold with a distinctive label. On the other hand, the United States has been legally authorized to suspend concessions of equivalent value—thus gaining what some might regard as a form of compensation. In addition, the European Union has not been compelled to alter its regulations in an area in

which change would be politically costly. Indeed, one could imagine Europeans being driven to reevaluate the benefits of WTO membership if the organization actually tried to ramp up the sanctions on the European Union to force compliance. In this sense, the continuing impasse has operated as a safety valve. De jure, Europe is obliged to come into compliance, but de facto, it faces no additional measures beyond the US retaliation. The outcome thus falls between the Scylla of the European Union's adopting a regulation that undermines the WTO's legitimacy in Europe and the Charybdis of an escalating trade war.

Appendix 1A

Timeline of Key Events in the Beef Hormones Case

Date	Event
1979	The United States bans diethylstilbestrol (DES) but allows other hormones.
1979–80	Europe experiences hormone scares.
1980	The BEUC, a European consumer group, mobilizes against beef from cattle treated with growth-promoting hormones.
1981	The European Commission establishes the Lamming Group to determine if the use of growth-promoting hormones endangers human health.
1982	The Lamming Group’s interim report concludes that the three natural hormones studied “would not present any harmful effects to the health of the consumer when used under the appropriate conditions.”
1985	<p>The European Parliament passes a resolution supporting a ban on all growth-promoting hormones.</p> <p>The European Council of Ministers bans all beef from cattle treated with growth-promoting hormones. The ban is scheduled to go into effect in 1988.</p> <p>The Lamming Group is disbanded, but some of the scientists in it independently publish the group’s findings on the safety of the remaining hormones in question in 1987.</p> <p>A new Codex Alimentarius group to study hormones is created, the Codex Committee on Residues of Veterinary Drugs in Food, with an FDA regulator as its chair.</p>
1986	A group of European hormone manufacturers form their own lobby (FEDESA) and launch a campaign against the ban. FEDESA challenges the ban at the European Court of Justice, which upholds it in 1990.
1987	<p>The Uruguay Round of trade talks begins. The United States hopes it will be “the agriculture round.”</p> <p>The United States lodges a complaint against the ban at the GATT, but it is blocked by the EC. Europe extends the implementation date of the ban from January 1988 to January 1989.</p>

Date	Event
	To forestall congressional action, the Reagan administration threatens section 301 action against Europe over the beef hormones issue.
1988	<p>JECFA concludes that residues of four of the growth-promoting hormones do not create a safety hazard to humans, provided that proper veterinary practice was followed; later, the same findings are released for the fifth.</p> <p>The ban on the use of hormones in Europe goes into effect.</p> <p>The European press reports illegal use of hormones and a growing black market.</p>
1989	<p>The ban on trade in beef from cattle treated with hormones goes into effect, and the United States imposes \$100 million in sanctions against Europe.</p> <p>The United States and Europe create the Hormone Task Force.</p> <p>Europe advocates for hormone-free beef imports.</p> <p>Texas Agriculture Commissioner Jim Hightower offers to sell hormone-free beef to Europe, but is discouraged by the US Department of Agriculture.</p>
1991	<p>The United States loses a public Codex vote to adopt standards for four of the hormones used in beef production, based on the JECFA evaluation. The Codex Committee on General Principles is asked to consider “the status of science in Codex.”</p>
1993	<p>The SPS agreement becomes part of the Uruguay Round of GATT negotiations and Codex is given a major role in setting international health standards for food.</p>
1995	<p>Codex votes by secret ballot to adopt the JECFA MRLs on growth-promoting hormones.</p>
1996	<p>The United States brings a WTO case against Europe over the beef ban.</p> <p>The United States brings a WTO case against Europe over bananas.</p>

(timeline continues next page)

Timeline of Key Events *(continued)*

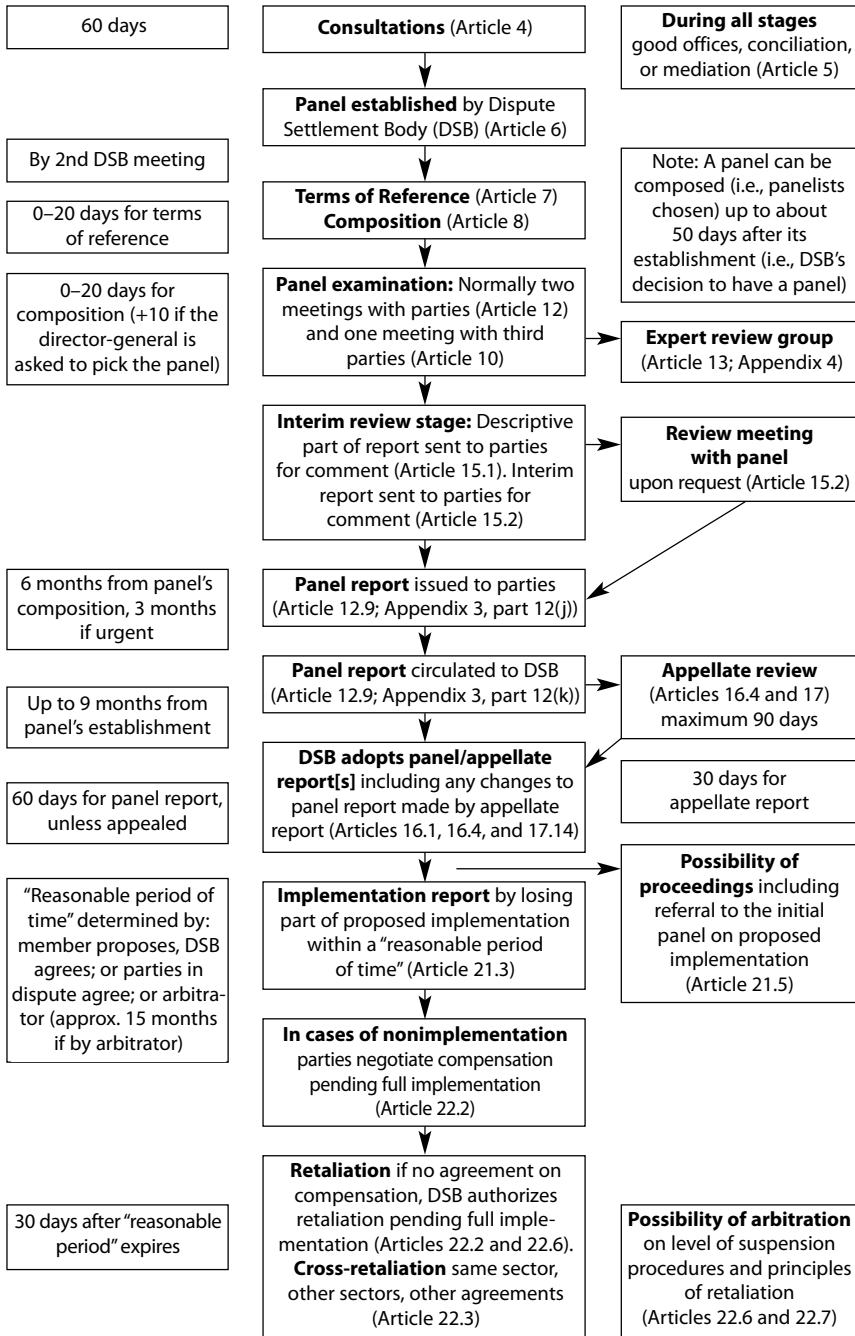
Date	Event
	The European Commission bans all exports of British beef after mad cow disease spreads through British herds.
1997	The United States wins its WTO beef case and Europe and appeals the ruling.
1998	A WTO appellate body upholds the ruling on the beef case. Europe requests four years to implement it. A WTO arbiter allows only 15 months.
1999	Europe does not lift the ban by the imposed deadline. The United States imposes \$117 million in sanctions, as authorized by the WTO. US and EU scientists meet at the National Institute of Health in the United States, but no resolution is reached on the hormones issue. French farmers target McDonald's, and Jose Bové is jailed.
2000	The European Union wins the FSC case against the United States at the WTO. Carousel legislation passes in the US Congress. Both the Clinton and Bush administrations ignore the law.
2003	Europe revises its position on five of its six hormones, making the bans "provisional," and notifies the WTO that it is now in compliance.
2004	The European Communities request WTO consultations, arguing that the United States should remove its retaliatory measures related to the beef hormone case.
2005	The WTO establishes a panel.

Appendix 1B

The WTO Panel Process

At all stages of dispute resolution in the WTO (figure 1B.1), the countries involved are encouraged to consult each other in order to settle “out of court.” At all stages, the WTO director-general is available to offer his good offices, to mediate, or to help achieve conciliation.

Figure 1B.1 WTO dispute settlement procedure



Source: WTO (1999, 42).

Appendix 1C

WTO Agreement on the Application of Sanitary and Phytosanitary Measures (1994), Selected Articles

Members,

Reaffirming that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade;

Desiring to improve the human health, animal health and phytosanitary situation in all Members;

Noting that sanitary and phytosanitary measures are often applied on the basis of bilateral agreements or protocols;

Desiring the establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade;

Recognizing the important contribution that international standards, guidelines and recommendations can make in this regard;

Desiring to further the use of harmonized sanitary and phytosanitary measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention, without requiring Members to change their appropriate level of protection of human, animal or plant life or health;

Recognizing that developing country Members may encounter special difficulties in complying with the sanitary or phytosanitary measures of importing Members, and as a consequence in access to markets, and also in the formulation and application of sanitary or phytosanitary measures in their own territories, and desiring to assist them in their endeavors in this regard;

Desiring therefore to elaborate rules for the application of the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b);¹

Hereby agree as follows:

1. In this Agreement, reference to Article XX(b) includes also the chapeau of that Article.

Article 1

General Provisions

1. This Agreement applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade. Such measures shall be developed and applied in accordance with the provisions of this Agreement.
2. For the purposes of this Agreement, the definitions provided in Annex A shall apply.
3. The annexes are an integral part of this Agreement.
4. Nothing in this Agreement shall affect the rights of Members under the Agreement on Technical Barriers to Trade with respect to measures not within the scope of this Agreement.

Article 2

Basic Rights and Obligations

1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.
2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.
3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.
4. Sanitary or phytosanitary measures which conform to the relevant provisions of this Agreement shall be presumed to be in accordance with the obligations of the Members under the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).

Article 3

Harmonization

1. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.

2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

3. Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5.² Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provision of this Agreement.

4. Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

5. The Committee on Sanitary and Phytosanitary Measures provided for in paragraphs 1 and 4 of Article 12 (referred to in this Agreement as the "Committee") shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations.

Article 5

Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

2. In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant

2. For the purposes of paragraph 3 of Article 3, there is a scientific justification if, on the basis of an examination and evaluation of available scientific information in conformity with the relevant provisions of this Agreement, a Member determines that the relevant international standards, guidelines or recommendations are not sufficient to achieve its appropriate level of sanitary or phytosanitary protection.

inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment.

3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects.

5. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. Members shall cooperate in the Committee, in accordance with paragraphs 1, 2 and 3 of Article 12, to develop guidelines to further the practical implementation of this provision. In developing the guidelines, the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

6. Without prejudice to paragraph 2 of Article 3, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.³

7. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

3. For purposes of paragraph 6 of Article 5, a measure is not more trade-restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

8. When a Member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Member is constraining, or has the potential to constrain, its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Member maintaining the measure.

Annex A *Definitions*⁴

1. *Sanitary or phytosanitary measure*—Any measure applied:
 - (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
 - (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
 - (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
 - (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.

2. *Harmonization*—The establishment, recognition and application of common sanitary and phytosanitary measures by different Members.
3. *International standards, guidelines and recommendations*
 - (a) for food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice;

4. For the purpose of these definitions, “animal” includes fish and wild fauna; “plant” includes forests and wild flora; “pests” include weeds; and “contaminants” include pesticide and veterinary drug residues and extraneous matter.

(b) for animal health and zoonoses, the standards, guidelines and recommendations developed under the auspices of the International Office of Epizootics;

(c) for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with regional organizations operating within the framework of the International Plant Protection Convention; and

(d) for matters not covered by the above organizations, appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all Members, as identified by the Committee.

4. *Risk assessment*—The evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing Member according to the sanitary or phytosanitary measures which might be applied, and of the associated potential biological and economic consequences; or the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feedstuffs.

5. *Appropriate level of sanitary or phytosanitary protection*—The level of protection deemed appropriate by the Member establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory.

NOTE: Many Members otherwise refer to this concept as the “acceptable level of risk.”

6. *Pest- or disease-free area*—An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease does not occur.

NOTE: A pest- or disease-free area may surround, be surrounded by, or be adjacent to an area—whether within part of a country or in a geographic region which includes parts of or all of several countries—in which a specific pest or disease is known to occur but is subject to regional control measures such as the establishment of protection, surveillance and buffer zones which will confine or eradicate the pest or disease in question.

7. *Area of low pest or disease prevalence*—An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease occurs at low levels and which is subject to effective surveillance, control or eradication measures.