FOOD FIGHT
The U.S., Europe, and Trade in Hormone-treated Beef

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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.” 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.”

French hostility towards the American hamburger had its roots in a longstanding U.S.-EU dispute over trade in beef. Ten years earlier, in a much-publicized effort to satisfy a health-conscious public, Europe had banned the use of growth-promoting hormones for 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, especially pork products. 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, Codex Alimentarius, 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 EU continued to refuse 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 on approximately $117 million on foods imported from Europe, again focusing on pork. The rules had changed, but the endgame remained much the same: Europe and the United States were at an impasse.

At the core of the dispute lay fundamental disagreements about trade in food. The United States argued that the European regulatory process had been captured by politics. U.S. officials were frustrated by what they saw as a political move to protect the EU beef market by invoking scientifically unsupported claims about the detrimental health effects of hormones. 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. European officials invoked the “precautionary principle” to justify their position which they claimed entitled the EU to prohibit or restrict products that were suspected, but not proven, to be hazardous.

The real issue, Europe retorted, was that the U.S. trade system had been captured by industry. The United States had soured the entire transatlantic trade relationship by capitulating to the demands of the corporate beef lobby. The “client relationship” between the United States Trade Representative (USTR), Congress, and the beef industry made it difficult to settle the dispute in any politically palatable way. The standoff persisted: no hamburger would cross the Atlantic.

More broadly, the beef case illustrates the often-explosive outcome of mixing food, technology, and culture in the context of trade and globalization. This volatile mix would continue to characterize trade disputes, especially those involving genetically modified organisms (GMOs) such as corn and soybeans, mad-cow disease, and foot-in-mouth. The beef dispute also raised questions about the international trading system, especially with regard to food standards. What standards would regulate food safety in an increasingly globalized market? Who would determine those standards? Was it really the role of a group of trade lawyers and diplomats at the WTO to make decisions related to health and safety? Was the WTO process too adversarial?

BACKGROUND

The Context: Trade and Agriculture

Before the ban, Europe imported a modest amount of U.S. beef – about $100 million annually (out of more than $1 billion worth that U.S. beef producers shipped abroad each year) - a drop in the $166 billion bucket of two-way transatlantic trade. Most of the U.S. shipments were pet foods and other low-grade meat products. But the beef dispute captured the attention of U.S. Congressional leaders, federal agency heads, powerful industry lobbies, top European officials, diplomats, consumer groups, and international organizations. The European Union spent some 600 million euros on the hormone spat. 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 GATT trade talks and was largely exempted from the disciplines that applied to manufactured goods. 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. Worldwide economic growth was strong from the early 1950s through the 1970s, but agricultural trade was an exception to this trend, falling from 34 percent of total world trade in 1950 to only 14 percent in 1976. Meanwhile, falling prices resulted in lower incomes for agricultural workers.

The response of U.S. 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, resulting in large surpluses of some commodities. To reduce surpluses, the European Community provided subsidies to farmers so they could sell their products on international markets without a loss. The United States also utilized price supports and subsidies in the agricultural sector, but moved 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 U.S. 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 so-called 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 U.S. beef shipped to Europe annually consisted of offal (tongue, liver, etc.), but Europe allowed an important 10,000-ton quota 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 U.S. meat exports to Europe consisted of sales to France and Britain.

The History: Beef and Hormones in the United States

At the time of the EC’s 1989 ban on hormone-treated beef, more than half of the 35 million U.S. cattle sent to market each year had received growth-promoting hormones. These hormones included the natural substances oestradiol-17ß, testosterone, and progesterone and the synthetic hormones trenbolone and zeranol. By reducing the feed time required for a steer (a castrated young bull) to reach target weight (about 1,100 lbs.), hormone treatments saved cattlemen 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.”

The hormones in question had been approved for controlled usage by the U.S. Food and Drug Administration (FDA) in the 1950’s, 1960’s, and 1980’s. 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 use of these compounds was safe with proper veterinary practice. “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.” By 1999, 90-95 percent of grain-fed U.S. beef cattle were being treated with growth-promoting hormones.

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 speeded weight-gain in cattle by 10-15 percent. Cattlemen turned to DES feeds in droves and by the early 1960’s, as many as 95 percent of the nation’s cattle feeders used the hormone.

But use of DES was complicated by its status as a potent carcinogen. In 1958, Congress passed the Food Additive Amendment, known as the Delaney Clause, which legislated that any substance known to cause cancer in humans or experimental animals could not be used in the food supply, either directly or indirectly. “What that meant,” explains former FDA-CVM Director Lester Crawford, “was that use of DES had to stop.”

In 1961, however, Congress modified the Delaney Clause by passing what became known as the DES Proviso. The Proviso held that if no DES residues remained in food-producing animals after the hormone was metabolized, DES did not have to be removed from the market. But the Proviso was not a clear solution because detecting hormone residues with the available technology was difficult. Therefore, debate continued, as did the use of DES.
By the 1970’s, the controversy became more publicly charged. The Senate, in an effort led by Edward M. Kennedy and William Proxmire, twice passed DES prohibitions, both of which failed in the House.\(^{14}\) The U.S. Department of Agriculture supported the beef industry’s position and opposed a ban. The FDA issued bans in 1972 and 1973, but both were overturned on procedural grounds by the U.S. Court of Appeals.\(^{15}\)

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, DES 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 FDA what to do about the illegal DES-implanted cattle brought to its feedlots. FDA investigated and initially found 10,000 head of cattle that had been injected. A week later it was found that a half-million had been injected. The FDA investigation concluded that hundreds of beef-cattle businesses had ignored its DES ban.\(^{16}\) The FDA went public, warning consumers not to eat beef. According to former FDA-CVM Director Crawford:

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\text{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.}
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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.\(^{17}\)

The DES story is significant for a number of reasons. For one, DES shaped how beef was produced in the United States. Traditionally, cattle had been raised using largely open-field grazing. However, DES tipped the balance toward confined feeding, encouraging the creation of large commercial feedlots in the mid-western, western, and southern states.\(^{18}\)

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 when opposed by industry.

Though DES was ultimately banned in the United States, other growth-promoting hormones remained available to the U.S. beef industry. FDA officials continued to stand behind their safety, and ultimately 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 UK, and the Netherlands permitted the use of hormones for speeding growth in beef cattle.\(^{19,20}\)

The move to impose a Europe-wide ban was spurred by the disturbing discovery in 1977 that a few dozen boys at the Sisters of the Sacred Heart of Jesus school in Milan, Italy had sprouted breasts. A similar number of five- and six-year old girls had begun showing signs of puberty. Some of the nuns
who taught at the school were admitted to the hospital with acute menstrual pain.\textsuperscript{21} 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 of contamination and researchers hypothesized that an uncontrolled supply of poultry or beef had caused the outbreak. In an August 1979 article in the respected medical journal \textit{The Lancet}, the researchers 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.\textsuperscript{22}

In 1980, soon after the \textit{Lancet} article appeared, an Italian consumer group reported the discovery of 30,000 jars of baby food containing DES-contaminated French veal.\textsuperscript{23} One British tabloid ran the headline “Eat Steak, Change Your Sex.”\textsuperscript{24} Widespread publicity ensued about illegal use of DES in European veal production, especially in France. The German magazine \textit{Der Speigel} published a front-page photograph of a little girl with breasts (which some observers noted was a fake).

After French television broadcast film of calves receiving hormone injections, the Union of French Consumers called for a boycott of veal. French Agriculture Minister Pierre Mehaignerie denounced the demands of the consumer organizations as excessive,\textsuperscript{25} but veal sales in France subsequently dropped by 50\%\textsuperscript{26} and in Italy by 60\%.\textsuperscript{27} 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 boycott throughout the community and lobbied European farm ministers to ban all hormones.\textsuperscript{28} 29

On October 1, 1980, three weeks after the BEUC’s call for a complete ban, the EC Council of Agriculture Ministers agreed that hormones used for raising livestock should be banned. The press reported the decision 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).\textsuperscript{30} “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.”\textsuperscript{31}

Because the hormone issue was vetted by agricultural ministers, as opposed to health or safety officials, some U.S. observers suggested that safety and consumer concerns were not the only motivating factors. As one U.S source notes,

The whole ban happened when prices in the European Community’s meat market were plummeting. The fact that the ban was put in place at the decision of the agriculture ministers makes one suspicious that this was a health-based measure. It was really a response to falling prices and a crisis of consumer confidence. In addition, there was obviously no scientific work done in the three weeks after the incident [to determine the safety of the hormones].

On October 31, 1980, the European Commission proposed legislation banning the use of all hormone products in meat production.\textsuperscript{32} 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. A few months later, the Commission revised its proposal to ban only stilbenes, like the DES supposedly found in the baby-food incident, and provided for controlled use of other growth promotants.\textsuperscript{33}

The European Council adopted the Commission’s proposal as a directive on July 13, 1981.\textsuperscript{34} The Council allowed the use of testosterone, progesterone, oestradiol-17β, trenbolone acetate (TBA), and zeranol for growth promotion purposes pending further study of their effects on consumer health. It directed the Commission to provide this study on hormone safety by July 1, 1984. In the meantime, the regulations of individual member states would continue to apply to 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 comprised of 25 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 question “Does the use for fattening purposes in animals of the substances oestradiol-17ß, 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-17ß, 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.” 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.”

As for the synthetic hormones trenbolone and zeranol, the group determined that additional information was needed before a conclusion could be reached.

U.S. Response

In response to the European debate, the U.S. Food and Drug Administration’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 U.S. hormones.” According to Crawford, the team did not have much experience in the international arena, primarily because no world body dealt with the issue. Though FDA-CVM officials met regularly with their Canadian and British counterparts to share information, Crawford admits that “we were deathly naive 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.”

Europe Bans Hormones

Several years later, hormone use in livestock continued to be 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 gender. 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 observer points out, “Americans don’t really have much appreciation for food safety and they consider it almost kind of humorous. But in Europe it is continues to be a leading political issue, and it was in 1984 and 1985.”

Despite the public outcry, the European Commission moved to de-escalate the hormone issue. In June 1984, the Commission proposed a new Council Directive amending the 1981 Hormone Directive. The Commission envisaged controlled use of the three natural hormones and a re-examination of the ban on the two synthetic hormones after scientific evaluation had been completed. The European Parliament rejected the Commission proposal. 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 banned 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.” The Parliament also noted that “there is overproduction of meat and meat products in the European Community, which adds considerably to the cost of the CAP [the Common Agricultural Policy].”

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In October 1985, following the Parliament vote, the Lamming Group was disbanded by Frans Andriessen, the EEC farm 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.”38 The overwhelming factor, Andriessen held, was the democratic nature of the European Parliament’s vote. In response to its dissolution, the Lamming Group rebelled. Though the Commission told Lamming he could not legally release any of the committee’s findings, 23 of the 25 scientists would later publish their final report.39 The report testified to the safety of the hormones in question.40

On December 31, 1985, with the massive support of the European Parliament, the Council of Ministers voted to adopt a ban on the use of hormones for growth promotion.41 Britain and Denmark voted against it. “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.”42

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 U.S. 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. BEUC director Tony Venables held that legislators were persuaded to go for 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-date hormone growth methods,” he said. 43

The directive inspired a group of hormone manufacturers to form their own lobby, the European Federation of Animal Health (FEDESA), 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.44 The ban, FEDESA warned, threatened investment in other biotechnological 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.”45

Meanwhile, USTR was surprised that the ban actually went through. Former USTR staffer Len Condon (later VP 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 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. 46

**Hormones and International Institutions**

U.S. 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 the hormones safe, U.S. officials reasoned, Europe would be pressured to remove the ban. The FDA first approached the Paris-based OIE, the Office Internationale des Epizooties/World Organization for Animal Health, which was responsible for international regulatory
communications about live animals. The OIE rejected the call to look at hormones. "Therefore," one U.S. 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 appointing a Codex committee on residues of veterinary drugs in foods. "Because of the hormone dispute, the U.S. 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 to public health and consumer concern, and posed potential problems to international trade." The Codex Commission expressed "strong support" of the recommendations and established the Codex Committee on Residues of Veterinary Drugs in Food (CCRVDF).

Various nations vied for the chairmanship of the CCRVDF at the 1985 Codex Commission meeting in Geneva. Competition for leadership 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. "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 Lester Crawford, a self-proclaimed "hormone man," was named chairman of the new CCRVDF. 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). JECFA was made up of independent scientists serving as individuals, not as representatives of their governments or other organizations.

At the first meeting of CCRVDF in 1986, the United States formally nominated 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 U.S." 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.

**Hormones at the GATT**

Meanwhile, the United States also sought to challenge the EC ban at an international trade forum. Until the World Trade Organization came into being in 1995, the international institution that dealt with trade quarrels was the GATT, the General Agreement on Tariffs and Trade.
In March 1987 the United States lodged a complaint against the EC directive at the GATT. The United States contended that the ban violated Article 7 of the Agreement on Technical Barriers to Trade (TBT), which dealt with “certification systems operated by central government bodies.” Article 7 stipulated that certification systems should not obstruct trade of like products from other TBT signatories. The EC responded that the use of hormones was a process and production method (PPM) and that the TBT Code applied to the characteristics of a final product, but not to its methods of production. The United States countered that the EC had deliberately drafted its directive to address only PPMs in order to circumvent the code. The U.S. delegation maintained that the use of controlled hormones in livestock was safe and presented technical reports as evidence. The EC asserted that its directive was aimed at protecting health, and that it doubted the usefulness of relying on current scientific findings because there had been past mistakes in judging the safety of chemical products.

Later in 1987, GATT procedural approaches to the complaint elicited considerable debate. The United States proposed the appointment of a technical expert group to determine whether the measure was really necessary to protect health; the EC favored a panel to examine the application of Code Provisions.55

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 they were used with proper veterinary practice; later, the same findings were released for the fifth. Acceptable daily intake levels (ADI) and maximum residue levels (MRL) 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 for the natural hormones.

JECFA sent its report to the CCRVDF, 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 Commission 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 wasn’t yet as significant as it would later become.

Internal Politics and a Failure to Ease Tensions

As the January 1988 implementation date approached, efforts were made to ease the dispute. EC Farm Commissioner Frans Andreissen proposed to delay the ban on trade of hormone-treated meat by 18 months. A 12-month delay was adopted by EC Agricultural Ministers in November 1987 after West Germany, France, and the Netherlands dropped their objections.56 57 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.

The vote on the delay took place within the context of intense U.S. 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 EC 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 annual EC food imports if the Community proceeded with the ban. President Reagan ordered Congressional hearings to determine which products would be subject to the punitive levies. The U.S. action was called “regrettable and unjustified” by EC Agriculture Commissioner Frans Andriessen and Foreign Relations Commissioner Willy de Clercq.58 EC officials
were surprised and angry that the United States was still making offensive maneuvers after their delay of the ban.

The Reagan Administration’s threats to retaliate under section 301 of the 1974 Trade Act were not motivated solely by the beef dispute. The Administration’s public posturing was also intended to send a message to Congress. Congress 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.”

Ultimately, however, the United States agreed to defer retaliatory sanctions for a year. As one U.S. 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, U.S. sources say, Europeans suggested that the United States sign a document testifying that hormones in U.S. beef production were being used for therapeutic reasons, not for growth promotion. 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. As former USTR official Len Condon (later VP of the American Meat Institute) recalls:

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, said, “It is not surprising that a black market has mushroomed.”

Len Condon remembers the impact of the discoveries on the U.S.-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.

Meanwhile, a group of influential U.S. senators were pressing U.S. 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-Vermont) and Senate Finance Committee Chairman Lloyd Bentsen (D-Texas). 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 meat for public-health reasons that could not be “substantiated by reliable analytical methods.” Observers report that pressure from the beef industry played an important role in drafting the provision.

Many observers point out that the timing of the impending ban was unfortunate. For one, 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. The Uruguay Round 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.

British Labor party European-MP Ken Collins 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 UK’s Foreign Minster, among others, 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.

As European and U.S. 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. “[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.” 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 is for the goose is sauce for the gander.”

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. Despite such conciliatory gestures, the United States refused to backpedal or tone down its rhetoric. “We have tried repeatedly to bring this issue to a scientific dispute-settlement panel under the GATT in order to have it resolved,” USTR 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.”

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. 100-percent tariffs would be levied on a range of EC agricultural products. Pork products made up the majority of the list that also included 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.” European Ministers drew up a list of American exports as target for potential counter-retaliation including honey, walnuts, dried fruit, and hormones.

USTR Clayton Yeutter and Agriculture Secretary Richard Lyng met with EC Farm Commissioner Frans Andriessen and Willy de Clerq, Commissioner for External Relations in mid-November 1988 to try and 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 Clerq.

The Ban Goes into Effect and the U.S. 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. U.S. officials continued to emphasize the safety of hormone use in beef production. Gerald Guest, director of the FDA-CVM and chairman of CCRVDF, the
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.”

Because the United States did not have GATT approval to retaliate, Europe brought a case against the United States at the GATT. But the case went nowhere. “When the U.S. 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.” When the United States imposed its duties, the EC threatened to counter-retaliate if the dispute was not resolved by the end of January. But when President Bush took office, he reiterated the Reagan Administration’s tough stance on the hormone ban.

Press response to the ban was generally critical of continuing escalation of the transatlantic wrangle, blaming both sides. “The U.S. 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.”

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.”

The four-person U.S. 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 non-tariff trade barrier. Therefore, it was really not in our interest to continue playing the science card.”

Attempts to Find a Solution End in Stalemate

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 U.S. Trade Representative; outgoing USTR, Clayton Yeutter became Secretary of Agriculture. (When President Bush appointed Yeutter, he did so saying he was determined to “crack” European agriculture markets for American farmers.) On the European side, Frans Andreissen, the outgoing Agricultural Commissioner, became the Commissioner for External Affairs, a trade position. The new Agricultural Commissioner was Raymond MacSherry.

The key European and U.S. officials promptly met to reassess the state of play of the hormone dispute. Former USTR staffer and American Mean Institute VP 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 MacSherry, Andreissen, 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 U.S.-EC Hormone Task Force. The U.S. participants would be Lester Crawford and Anne Veneman from USDA and Len Condon and Josh Bolton from USTR. The European side included Fernando Mansito from the Commission’s Directorate General-Agriculture and Jean-Pierre Lang from Directorate General-Trade. 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 U.S.-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 abandoning U.S. insistence that Europe set a target date for complete elimination of farm subsidies.

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 wasn’t 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 battle, 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.

In the meantime, however, the conclusions of a European Committee of Enquiry into the Problem of Quality in the Meat Sector were published as the Pimenta Report. The Committee had been established by the European Parliament in 1988 after illegal hormone use was reported in the European press. The Pimenta report, adopted by the European Parliament on March 29, endorsed the ban on hormone-treated beef. The Committee’s essential findings were that the prohibition of hormonal substances for non-therapeutic (growth-promoting) purposes should be maintained and expanded.76

The Hormone-Free Proposal

Europeans on the Hormone Task Force hoped to interest the U.S. 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 U.S. would get all of our market back and the retaliation would stop. You see, the political problem was that the U.S. 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 U.S. would send hormone-free beef to Europe and we would not longer have a basis for retaliation and the problem would be solved.

Neither the U.S. beef industry nor U.S. trade officials were interested at that time in making the hormone-free plan permanent. As USTR’s Ralph Ives explains:

The Cattlemen’s Association was the main association affected by this and they were not satisfied with the hormone-free program. Their view was, “Look, our beef is clearly safe. People in the U.S. have been eating it for years. Indeed, European beef has higher hormone content in some of these hormones than ours.”

The situation was further complicated by a maverick initiative on the part of Texas agriculture commissioner James Hightower. Hightower, a charismatic, controversial populist and former journalist, approached the EC directly with an offer to sell 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 U.S. beef was unsafe. At a time when diets heavy in red meat had been linked to health problems, and Americans had already reduced their average beef consumption (by 23 percent
between 1976 and 1989), beef producers did not want more health-related questions raised about their product. 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.”

Other states were also eager to serve the niche market for hormone-free beef offal in Europe. Mark Ritchie, the trade-policy staff person for the Minnesota Department of Agriculture at that time, says that Minnesota beef producers (as well as producers in Idaho) hoped 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,” Ritchie says. But the federal government was less than enthusiastic. As Ritchie describes,

The U.S. 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 U.S. beef producers that did not use hormones.

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 U.S., 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 U.S. and elsewhere.”

Ritchie and others emphasize that the National Cattlemen’s Beef Association did 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.”

Ultimately, the period between 1989 and 1996 was characterized by continuing debate on the hormone dispute but little activity. U.S. retaliatory tariffs on European goods did not appear to exert much pressure on the EC to change its position. The punitive sanctions only affected a few industries in the European countries most responsible for the ban. As 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 U.S. 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. Ultimately, however the company adjusted the product so it would be classified differently.

As a result, according to Len Condon, “The hormone dispute sort of died out towards the end of 1989, and then we remained in a standoff until 1996. The only other major relevant thing that happened in between was we negotiated the SPS agreement.” Negotiation of the Sanitary and Phytosanitary (SPS) Agreement took place as a part of the multilateral trade negotiations known as the Uruguay Round.
CHANGING THE RULES

The U.S. Moves to Strengthen International Institutions

The United States had not had much luck ending the European ban through existing international rules and institutions. However, the playing field was changing at the international level. Many of these changes occurred during the Uruguay Round (1986-1994), a 96-nation negotiation under the auspices of GATT.

As noted earlier, U.S. officials - especially Agriculture Secretary Richard Lyng - hoped to make the Uruguay Round the “agriculture round.” According to U.S. negotiators, a key problem in agricultural trade was the use of “bogus” health regulations by many countries to protect their own markets; and the beef dispute was a prime example. U.S. negotiators 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 said, “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 “non-tariff 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 non-tariff 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 sanitary and phytosanitary (SPS) measures became a key element of the U.S. 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 U.S. 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.”

Another participant notes that the hormone dispute was pivotal in selling Congress on the idea of the Uruguay Round as the agriculture round. “The idea of reducing agricultural subsidies was unpopular with the Democrats who controlled both houses in Congress,” one source notes. “But the hormone dispute was a big deal with the Democrats in Congress.” Because there was widespread agreement with the U.S. position in this case and little sympathy for the European position, 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 U.S.-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. As one analyst wrote, it was “serious disagreements between the United States and the European Union over hormone-treated beef, nearly a decade in duration, which motivated much of the SPS text.”
Len Condon (then at USTR) was part of the small group that hammered out the U.S. agricultural position. Condon says that unlike many other issues in the Uruguay Round, the SPS talks were a "classical negotiation," involving many countries and a search for common ground. “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 U.S. and the EC and were lived in fits and starts.

Other observers disagree with the idea that the SPS agreement came about as the result of multi-party talks. “The SPS agreement was written by the United States,” says the Community Nutrition Institute’s Rod Leonard. Leonard organized a group of U.S. 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 Citizen, the World Wildlife Fund, the National Wildlife Federation, the Sierra Club, Defenders of Wildlife, the Humane Society, the Environmental Defense Fund, and likeminded groups—met with officials at USDA, USTR, FDA, the State Department, and the Commerce Department. As Leonard summarizes their position:

We tried to get the U.S. 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.81

Ultimately, the final SPS Agreement acknowledged the sovereign right of members to take measures to protect health and life within their territories, but held that they could do so only if such measures were not arbitrary or unjustifiably discriminatory, constituting disguised restrictions on international trade. World Trade Organization 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. According to annex 3(a) of the SPS Agreement, the international standards, guidelines, and recommendations governing food safety would be those established by the Codex Alimentarius Commission. Unlike the earlier GATT process, in other words, Codex standards were to play an official role in solving disputes at the new World Trade Organization.

Codex Votes

While the SPS agreement was being negotiated, the United States continued to press the hormone question at Codex. An important vote took 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 a standard 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. As expected, the United States pushed for adoption of the standard while EEC members expressed opposition to the proposal.82 The EEC position was supported by the International Organization of Consumer Unions. The U.S. position was supported by COMISA, the international federation representing manufacturers of veterinary medicines, vaccines, and other products.83

It was the U.S. delegation’s prerogative to call for a secret ballot. The United States was expected to exercise that option to lessen political pressure on Codex delegates to side with the EEC, but the United States chose not to do so. In open voting, Codex representatives defeated the call to adopt a Codex standard 27-12.84 The status of the hormones was put on hold.
Some observers wonder why the United States did not push for a secret ballot. Lester Crawford, later the head of the U.S. delegation to Codex, explains the U.S. decision as an effort to preserve the credibility of the Uruguay Round:

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 U.S., that opposition, led by groups like Public Voice, was particularly strong and pernicious. They were winning the popularity contest in the U.S. by claiming that these international institutions were all too secretive. We could not call for a secret ballot in that atmosphere. Had the U.S. 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 U.S. ever got this odious hormone thing passed was by secret ballot, and no one knows what pressure or bribery the U.S. 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, Lester Crawford was made vice-chairman of Codex, which he described as “a consolation prize because the U.S. lost the vote on hormones.”

“Other Factors”

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 limits (MRLs) for all five hormones would be held “until such time as guidance would be obtained from the Codex Committee on General Principles on the status of science in Codex policies and procedures.”

What exactly was meant by “the status of science in Codex?” What else would enter into the decision?

It was noted in the Codex proceedings that “other factors” in addition to science would need to be considered during the hormone review. These factors included 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.

Industry was unhappy about the “other factors,” and about the new delay on MRLs. The representative of the animal-medicine industry lobby, 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 veterinary drug-residue standards.

Alongside the question of science vs. “other factors,” other debates were percolating at Codex about how a standard should be determined. One issue was how to analyze risk. A consultant to the Commission pointed out that risk analysis was a relatively new and evolving applied science in the field of food safety, and that Codex could take advantage of an opportunity to improve its performance by adopting risk-analysis principles and methodology.

Finally, questions were also arising about who should participate in the Codex process and in what capacity. In 1993, the International Organization of Consumer Unions (IOCU) presented a paper to Codex representatives on consumer involvement in decision-making about food standards. The IOCU asserted that the ample resources of industry groups enabled them to participate more actively than consumers’ organizations in the Codex decision-making process. There was also a call for greater press access to Codex meetings to improve transparency. The Codex Commission called for a revision of the Codex Guidelines governing public and press attendance at Codex sessions.
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.” At its meeting in 1995, the Codex Commission engaged in “lengthy and exhaustive” debate on four principles drafted by the Executive Committee that “confirmed the pre-eminence of science in Codex decision-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 the four principles as originally drafted. The EU Member Countries expressed opposition to the decision.

The 1995 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 7 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 which, he said, was at odds with the Commission’s decision to increase transparency, and predicted that its “consequences would be grave including the European Community’s rethinking of participation in Codex work.”

Lester Crawford recalls the vote as a victory for the United States, and credits “brilliant work by Steve Sondloff 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.” 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 noted the political nature of decision-making processes, even decisions said to be based on science. “Turning science into action is an inherently political endeavor,” wrote Goldman. “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 governments which are responsible to the people who are directly affected by the outcome of the decisions.”

THE U.S. TRIES AGAIN

A Case at the WTO

With a new set of international rules in place, the United States once again initiated a challenge to the beef ban. On January 1, 1995, the first day of the World Trade Organization’s existence, the United States (and later Canada) invoked WTO dispute-settlement proceedings against the ban.

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.” The system was designed to be stronger, more predictable, and more credible than its GATT predecessor. With 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 Exhibit 1). 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 to address the World Meat Congress in Denver. Fischler then visited the U.S. Department of Agriculture to meet with its new Secretary Dan Glickman and U.S. Trade Representative Mickey Kantor. Sources at the meeting report that Glickman devoted most of the meeting to the hormone issue and that Fischler responded with “positive signals.” Glickman essentially gave 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 for Europe. The United States, joined by Australia, New Zealand, and Canada, requested consultations with the EU at the WTO. In April 1996 the United States filed its formal complaint, with encouragement from the National Cattlemen’s Association. “As you recommended,” USTR Mickey Kantor wrote the Association’s president in February 1996, “we have initiated action against the EU ban under the dispute-settlement procedures of the World Trade Organization.”

A panel of three WTO officials was assigned to the beef dispute in July 1996. Some Commission officials and U.S. consumer-group representatives 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.) The panel met with the parties in October and November. Later in November, the panel chairman informed the Dispute 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 the SPS and the TBT Agreements. European officials argued that analysis of the case in light of the SPS and TBT Agreements should take place only if violations were found. There were, the EC claimed, no such violations: 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.

Some U.S. 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 of the Institute for Agriculture and Trade Policy. “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 U.S. nonprofits, including the Institute for Trade and Agricultural Policy, Public Citizen, the Cancer Prevention Coalition, and the Sierra Club Legal Defense Fund, also prepared a paper on hormones for the WTO. While the WTO allowed panelists to read such briefs, it did not mandate them to do so.

Reflecting on the procedures for WTO dispute resolution, observers said the process resembled that of a courtroom. Some Europeans felt that the litigious nature of the WTO was the result of U.S. influence. As one European official notes:

The U.S. 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 U.S.

Business and Trade in the United States

Soon after the U.S. 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 U.S.-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 left the company at a disadvantage. Previously, Chiquita had been Europe’s largest supplier of bananas.

The banana case was quickly linked with the beef case in the press, since both pitted the United States against Europe. And as the two cases progressed, the beef industry and Chiquita worked together to promote their shared interests at the WTO and in Congress.

Perhaps the most-discussed facet of the banana case was Chiquita CEO Carl Lindner’s vast political contributions. Although relatively few U.S. jobs were at stake, Lindner managed to position his banana problem at the top of the U.S. trade agenda. After donating nothing to the Democrats in 1992, Lindner handed them $250,000 in December 1993. In September 1994, Chiquita filed a petition asking the United States to impose trade sanctions against Europe. Shortly thereafter Carl Lindner and his interests made $580,000 in soft-money contributions, including $275,000 to the Democrats, $250,000 to the Republicans, and $55,000 to GOPAC, the political-action committee of Speaker Newt Gingrich (R-Georgia). On November 17, 1994, in an unusual bipartisan move, House Speaker-designate Gingrich, new Senate Majority Leader Bob Dole (R-Kansas), new House Minority Leader Richard Gephardt (D-Missouri), and Senator John Glenn (D-Ohio) sent a letter to the Clinton Administration in support of Lindner’s position on banana trade. Time magazine reported that the day after the banana case went to the WTO, Lindner and his executives began bankrolling Democrats to the tune of $500,000 mostly through less-examined state party accounts to avoid public scrutiny.

A number of U.S. observers note that the case against Europe over bananas was sound regardless of any political contributions – after all, the WTO ultimately ruled in favor of the U.S. However, many Europeans note that the beef-banana linkage represented a glaring example of big business’s influence in the U.S. trade policy decision-making process. “The perception is certainly that USTR is extremely sensitive to lobbies,” says one European observer, “and will pursue the interests of lobbies to the detriment of more general interests of the U.S.” The main reason the beef case became so politically important in the United States, summarizes the observer, “is simply because of the enormous influence lobbying groups representing specific interests can have in the American political system.”

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.

The WTO Rules

The WTO panel’s interim decision, distributed on May 7, 1997, sided with the United States, ruling that Europe had violated international obligations negotiated in the Sanitary and Phytosanitary (SPS) Measures Agreement. The interim report was followed by a separate ruling on the similar Canadian complaint, which also found against the EU. The EU could not impose rules on hormone exposure 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 EU “indicates that an identifiable risk arises for human health from such use of those hormones if good practice is followed.” Four scientists of different nationalities had also appeared before the panel, each answering more than 30 questions about the safety of the hormones in question.

The final report of the WTO dispute-settlement panel on the hormone issue was released on August 18, 1997. As expected, the report found the EU in violation of its international obligations. In response, the EU charged that the panel had failed to take into account the scientific evidence it presented.
about the hazards of hormones. The EU argued that the ruling undermined a nation’s right to determine
the level of protection appropriate for its own consumers.102

European officials also noted that the ruling flew in the face of what was known as the
“precautionary principle,” which they claimed entitled the EU to prohibit or restrict products that were
suspected, but not proven, to be hazardous. Commission officials explained that the precautionary
principle was neither “a politicization of science or the acceptance of zero risk,” but provided a basis for
action when science was unable to give a clear answer.103

Unsurprisingly, the EU quickly appealed the WTO ruling. An appeals process was a new
development under the WTO dispute settlement mechanism. “There was not an appellate body in the
GATT,” USTR’s Ralph Ives points out. At the WTO, however, three people were assigned through an
internal rotation process to handle an appeal. If the EU was unsuccessful in its appeal, there would be
repercussions: Europe would have to open its market to U.S. 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,” U.S. Agriculture Secretary Dan Glickman testified at a June 1997
hearing of the Senate Agriculture Committee.104 The United States did not want to create the precedent
that the EU could buy its way out of WTO-determined violations of trade rules.

In January 1998, the appellate body affirmed the original ruling, declaring that the beef ban was
inconsistent with the EU’s obligations under the Sanitary and Phytosanitary Measures Agreement. The
WTO adopted the appellate report and the report of the original panel in February 1998.

Implementing the Ruling

The EU 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 an expiration date of May 13, 1999. Many U.S. participants commented on the EU’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.”105

Meanwhile, different alternatives were considered. One possible compromise was for Europe to
accept U.S. beef as long as it was “properly labeled.” But what did it mean to be properly labeled?
USTR’s Ralph Ives describes the discussions:

The U.S. beef industry said they would accept access with labeling if the label said
something like “inspected and approved by the USDA” or “product of the U.S.” Were
they willing to put a big skull and crossbones and say “produced with hormones”? No.
But we’d label it as from the United States and let the market determine whether it sold
or not. Let the consumers decide. That’s the face-saving way of resolving the dispute.
The Europeans came back and said. “Well, if it’s dangerous it shouldn’t be consumed.”
So [the labeling] idea was rejected.

Meanwhile Congressional allies of the Cattlemen’s Association and Chiquita expressed
themselves on the U.S.-EU trade disputes. In October 1998, House Speaker Newt Gingrich and Majority
Leader Trent Lott wrote to President Clinton about the WTO rulings on beef and bananas urging
the White House to “spell out a specific timetable the Administration will take to ensure compliance with the
WTO’s ruling. We understand the Administration is divided on how to respond, and it’s urgent we hear
from you without delay.” The letter went on: “If the Administration will not take action to protect trade
agreements, Congress will have no choice but to take action of its own.” A few weeks later, the American Meat Institute made soft-money donations of $25,000 to the National Republican Senate Committee and $50,000 to the National Republican Congressional Committee.

A few months before the WTO implementation deadline, the WHO/FAO Joint Expert Committee on Food Additives (JECFA) reexamined and reconfirmed the safety of three of the hormones (estradiol, progesterone, and testosterone) when administered with good veterinary practice.

In March 1999, the Administration proposed that if the EU refused to lift the ban, damages should be set at $900 million annually. The March 25, 1999, Federal Register published a preliminary list of products to be considered for 100-percent duties if the EU did not comply with the WTO ruling by the May deadline.

In April 1999, the EU threatened to ban all American beef imports unless the United States could guarantee that beef labeled “hormone-free” was indeed free of hormones. The EU claimed that in product tests, 12 percent of all “hormone-free” beef had shown indications that a growth promotant had been used in its production.

The same month, an interim scientific report commissioned by the EU was released to the public. The report also claimed that one of the hormones in question could cause cancer. “We now have a scientific basis to defend our position,” EU Health Commissioner Emma Bonino declared as the report was released. The U.S. 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 EU has already made before the WTO panel of experts which were flatly rejected by the panel.”

The Deadline Passes

The EU failed to comply with the WTO’s May 13, 1999, deadline. Continuing to hold to its position, Commission officials explained that scientific study was ongoing. “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.” The United States continued to condemn the EU. “The United States and every other WTO member faced with a similar situation has met the measure of its international commitments,” Charlene Barshefsky declared on May 14. “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.” Agriculture Secretary Dan Glickman concurred: “When the EU became a WTO member, it agreed to abide by all WTO rules.”

On May 17, the United States sought WTO authorization to impose tariffs on EU products at a level equivalent to lost U.S. 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.” The United States estimated its annual loss at $202 million (a significant reduction from the initial estimate of $900 million). The EU countered that the cost to U.S. exports was only $53 million and requested WTO arbitration.

Food and Fear

As the beef dispute headed back to the WTO yet again, food-related concerns continued to hold the spotlight in Europe. As the case moved through the WTO process, a panic erupted over food safety in Europe. The European Commission had banned all exports of British beef in 1996, due to fear of infecting people with a deadly brain disease called new variant Creutzfeldt-Jakob Disease (nvCJD). Experts believed nvCJD to be contracted by eating the meat of cattle afflicted with a similar condition called bovine spongiform encephalopathy (BSE), commonly known as “mad-cow disease.”
disease had spread through British herds from processed cattle feed containing the ground-up remains of already-infected animals. The crisis forced Britain to slaughter hundreds of thousands of cattle.

Like the hormone debate, mad-cow disease raised questions about methods of industrial farming and food processing. The mad-cow crisis also magnified distrust in the government’s ability to monitor food safety, especially in light of what the *Economist* called the “incompetence and secrecy” of the British Ministry of Agriculture, Fisheries and Food (MAFF), which had known about mad cow disease long before it was revealed to the public.

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 control and soil protection, had been released for large-scale commercial use in 1996. By 1999, roughly half the U.S. soybean crop and one-third of the corn crop were genetically modified. European farmers, however, scorned GM crops, largely because European consumers did not trust them. Protests, led by organizations like Greenpeace, questioned the ultimate safety of GM technology. What if genetic changes were introduced into the surrounding environment? Would “superbugs” and “superweeds” evolve, resistant to management? What about the effects on public health? By April 1998, Europe had stopped approving new GM crops for use or import into the EU. Brussels issued a food-labeling provision that required member states to mark packaged foods containing GM corn or soy.

Other food-related issues were coming to a head in Europe. In May 1999, following a TV report on contaminated animal feed, 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 had probably resulted from a batch of animal feed tainted with used motor oil. Belgian government officials had reportedly known about the tainted feed and the dioxin crisis 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. In response to the crisis, the United States held 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 U.S. diplomats’ concurrent efforts to convince Europe that its fears about genetically modified crops and growth hormones were based on emotion rather than science.

The food scares did not end. In June, over 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.

Still reeling from the effects of the mad-cow scare, some European Commission officials attributed the spate of food-related incidents to a series of random accidents, rather than 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 were less certain. “My wish is to see whether it might be possible to find a solution able to better guarantee the health of Europeans, of all the inhabitants of the world,” said French President Jacques Chirac. Some 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 foothold. “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.”
Back to the Future – Retaliatory Tariffs and a Stalemate

Before the WTO arbitrators reached a decision, U.S. and EU scientists met to discuss the hormone issue one more time. On June 21, 1999, ten U.S. regulators led by FDA-CVM head Stephen Sundlof sat down with a group of EU scientists and officials at the National Institute of Health (NIH) outside Washington, DC. 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. 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 U.S. 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 now become the only member of the 134-nation membership of the WTO to fail to respect rulings of the dispute settlement panel. . . . The EU will now have a big scarlet ‘F’ for failure.”

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

The list of products targeted in the U.S. retaliatory action was determined by an interagency process involving the Departments of State and Commerce, USDA, and the USTR. U.S. Special Trade Negotiator Peter 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. France, Germany, Italy, and Denmark were the countries most deeply affected by the tariffs because they were the largest countries within the EU—with the exception of Denmark, chosen because it was the EU’s biggest meat exporter. U.S. 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 paté, mustard, and Roquefort cheese; and Italian truffles and canned tomatoes. The most targeted good on the list was European pork. Reportedly, the U.S. National Pork Producers Council had urged President Clinton to put EU pork products on the list. Pork producers in the United States were facing low prices and competing with $247 million of EU exports per year. Ultimately, pork accounted for $30 million of U.S. retaliation.

Both the United States and Canada excluded UK agricultural and food exports from trade sanctions because the British government had generally opposed the ban. British Agriculture Minister Nick Brown also welcomed the U.S. decision: “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 said. “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.” Britain was the only EU nation to escape penalties.

Targeting the U.S. Corporate Food Industry

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

When Bove refused to accept release from jail, preferring to stay in prison until trial, his name became a household word in France. The founder of the farmers’ group Confédération Paysanne, Bove declared that he wanted to be a symbol of resistance to genetically modified food, hormone-raised beef, and anything else he considered “sale bouffé” (dirty grub). Some trade unions and the Green Party rallied around Bove, dubbing him “the Robin Hood of the Larzac [region],” others criticized his record of violent protest, citing his recent role in the destruction of genetically modified crops on experimental plantations. "Jose Bove uses violence as a media tool," said Jacques Godfrain, a former Gaullist minister and mayor of Millau who tried to persuade McDonald’s to introduce a "Roquefortburger" to assuage local anger.

In an attempt to defuse the situation, French agricultural minister Jean Glavany expressed sympathy with the farmers’ plight. Glavany also called Bove's detention “regrettable,” but warned farmers to keep their demonstrations within the law. "There is a crisis that we have to deal with," said the minister, "but do not give the impression that there is a civil war in our countryside." Eric Boultry, head of the Roquefort producers' association, said his organization would pay Mr. Bove'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. "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."

Other American icons were also targeted by protesters. In Dijon, France, where local mustard was affected by the U.S. tariffs, some café owners increased prices on Coca-Cola to more than $100 a bottle. The small town of St. Pierre-de-Trivisy in the Roquefort region imposed its own 100-percent tax on Coca-Cola.

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, and American cultural imperialism. Farmers felt powerless, they said, to combat these large forces. "We led this action, which we know was against the law," Bove announced from jail. "But we are the legitimate victims of a global market economy."

Other farmers expressed fear of losing the French culture and way of life. French farmers declared that the United States had taken Roquefort hostage in its effort to promote globalization of commerce. The farmers’ unrest was also reportedly exacerbated by an announced merger between the supermarket groups Carrefour and Promode’s to create Europe’s biggest supermarket chain. The consolidation prompted complaints by farmers that they felt threatened by the increasing size and power of corporate entities.

**U.S. Industry Increases Pressure**

Despite rising transatlantic tensions, the beef and banana lobbies urged the U.S. government to place further pressure on Europe to comply with the WTO. The tool that industry advocated was “carousel retaliation.” Carousel retaliation would require the U.S. government to rotate the list of products subject to sanctions every six months. Changing the list would increase the number of affected
European industries, increasing pressure on the EU to end the ban. The National Beef Cattlemen’s Association’s Chuck Lambert explains:

What happens, in our viewpoint, is once retaliation goes into effect, the industries adjust or governments shift their subsidies. And once those shifts are made, everyone becomes comfortable and life goes on. We retaliated against Italian tomatoes for virtually seventeen years, 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 review that list and shift to other products in order to generate additional pressure. There are 15 EU countries, but we initially only retaliated on products from four countries. So there were eleven European countries that were breathing easy.

The EU warned that carousel retaliation was illegal and would have a “chilling effect” on a larger volume of trade than the WTO had authorized the U.S. to restrict. U.S. trade officials were not completely enthusiastic about the idea. Testifying before a House Ways and Means subcommittee, USTR Barshefsky said that an interagency panel was weighing two concerns: whether changing the retaliation list could negatively affect negotiations with the European Union, and what impact a change would have on U.S. consumers and business.

Meanwhile, beef and banana industry representatives found allies in Congress. In September 1999, U.S. farmers and food groups backed a Senate carousel retaliation bill (S. 1619) introduced by Republican Senators Mike DeWine (Ohio) and Chuck Hagel (Nebraska). In the House, Agriculture Committee Chairman Larry Combest (R-Texas) introduced similar legislation in H.R. 2991. However, S. 1619 and H.R. 2991 did not become legislation.

Carousel Retaliation is Passed

In May 2000, U.S. cattle and banana producers won a long-sought victory when Congress passed carousel retaliation as Section 407 of the Trade and Development Act of 2000. Section 407 called for revision of the list of products subject to sanctions every six months. Revisions were to be made in a manner most likely to induce the affected country to come into compliance. Exceptions would be made if a solution was imminent or if USTR and the affected U.S. industry mutually agreed that such revisions were unnecessary.

President Clinton signed the legislation May 18. Soon thereafter, a coalition of beef interests wrote to Ambassador 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 U.S. beef,” the letter said. “It should not be about increasing protection for opportunistic U.S. interests.”

The EU charged that carousel legislation 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,” said one Commission report. Other Europeans said it was time to soften the adversarial nature of the beef dispute. The rhetoric of trade talks should be toned down, said E.U. Commission President Romano Prodi at a U.S.-EU summit press conference. “We decided that megaphone diplomacy will be replaced by telephone diplomacy,” Prodi reported. “It’s more constructive even though less sexy.”

Back to the Future: The Standoff Continues

The bad blood created by the beef and banana cases was most apparent, some observers say, in the EU’s decision to bring a new billion-dollar WTO case against the United States. Europe objected to a provision of the U.S. tax code called the Foreign Sales Corporation (FSC), created in 1984, which allowed U.S. companies like Microsoft and Boeing to avoid paying taxes on some overseas sales by channeling
them through offshore subsidiaries. “This would be the mother of all trade disputes if it ended up in a contentious position,” said Stuart Eizenstat, U.S. deputy Treasury Secretary in February 2000.140

International trade rules explicitly prohibit export subsidies, such as rebates of direct taxes.141 When the FSC was conceived, however, Brussels agreed not to challenge it – some say due to the opening of the Uruguay Round negotiations. Supporters of the FSC argued that the provision simply leveled the playing field in light of imbalances created by the fact that the U.S. taxes corporate income directly while Brussels taxes it indirectly through a value-added tax. “The FSC is simply an attempt by the U.S. 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.142

In February 2000, the WTO ruled against the United States on the FSC. “The U.S. has suffered its largest defeat ever in a trade battle,” led off a front-page New York Times article.143 U.S. officials were in an awkward position. After months of arguing that Europe must adhere to WTO rulings on beef and bananas, the tables had been turned. In November 2000, President Clinton signed the Extraterritorial Income Exclusion Act (ETI) into law, intended to replace the FSC and to comply with the WTO decision. Two days later, however, the EU brought the issue back to the WTO arguing that the ETI also constituted a prohibited export subsidy.

Despite the FSC/ETI case at the WTO, there were signs of transatlantic cooperation. In April 2001, the banana battle between the U.S. and the EU moved towards settlement after months of negotiations when the European Commission agreed to shift the EU’s controversial 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 EU. A spirit of U.S.-EU cooperation was also observed at the Doha Ministerial that launched a new round of global trade talks.

However, the standoff over the beef ban continued. Though the EU offered to lower tariffs or raise import quotas on U.S. hormone-free beef exports as compensation for the ban, no agreement was reached. In April 2002, the EU announced that new research by a European Union scientific panel confirmed that eating beef from cattle raised on growth hormones is a potential public health risk.144 Tensions also grew over the FSC/ETI case at the WTO. In August 2001, a compliance panel found in the EU’s favor, ruling that the ETI violated WTO trade rules. The United States appealed the ruling, but the WTO Appellate Body upheld the decision. In August 2002 the EU welcomed a decision by WTO arbitrators authorizing $4.043 billion in countermeasure against the United States – by far the largest total sanctions ever authorized by the WTO. However, the European Commission held off on implementation, hoping the threat would force Washington to make the needed changes to its tax policy. USTR Robert Zoellick was widely quoted as saying that any move to impose sanctions of the size granted by the WTO arbitrators would be like detonating a “nuclear bomb” in the global trading system.145 Outgoing WTO Director General Mike Moore urged the players to work together to resolve the dispute. “The EU and the U.S. both hold a special responsibility to ensure the continued health of the global trading system,” he said.146

The new head of the World Trade Organization, former Thai commerce minister Supachai Panitchpakdi, took office in September 2002. Supachai told reporters that one of his priorities would be to attempt to settle trade disputes before they become major crises. "We should be able to interpret the rules in a way that would help resolve conflicts," he said, and settle more disputes early by mutual agreement, as opposed to relying on legal rulings, appeals, and sanctions. 147
Exhibit 1: The Panel Process

The various stages a dispute can go through in the WTO. At all stages, countries in dispute 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.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Timeframe</th>
<th>Description</th>
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<tbody>
<tr>
<td>Consultations (Article 4)</td>
<td>60 Days</td>
<td>During all stages good offices, conciliation, or mediation (Article 5)</td>
</tr>
<tr>
<td>Panel established by Dispute Settlement Body (DSB) (Article 6)</td>
<td>By 2nd DSB meeting</td>
<td>Note: a panel can be composed (i.e. panelists chosen) up to about 50 days after its establishment (i.e. DSB’s decision to have a panel)</td>
</tr>
<tr>
<td>Terms of Reference (Article 7)</td>
<td>0-20 days for terms of reference</td>
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</tr>
<tr>
<td>Composition (Article 8)</td>
<td>20 days for composition (+10 if the director-general is asked to pick the panel)</td>
<td></td>
</tr>
<tr>
<td>Panel examination (Article 12)</td>
<td>Normally two meetings with parties (Article 12) and one meeting with third parties (Article 10)</td>
<td></td>
</tr>
<tr>
<td>Interim review stage (Article 15.1)</td>
<td>Interim report sent to parties for comment</td>
<td>Descriptive part of report sent to parties for comment (Article 15.1) Interim report sent to parties for comment (Article 15.2)</td>
</tr>
<tr>
<td>Panel report issued to parties (Article 12.9; Appendix 3, par 12(j))</td>
<td>Panel report circulated to DSB (Article 12.9; Appendix 3, par 12(k))</td>
<td></td>
</tr>
<tr>
<td>DSB adopts panel/appellate report[s] including any changes to panel report made by appellate report (Article 16.1, 16.4 and 17.14)</td>
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<tr>
<td>Implementation report by losing party of proposed implementation within a “reasonable period of time” (Article 21.3)</td>
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### The United States, Europe, and Trade in Hormone-Treated Beef

#### In cases of non-implementation
- Parties negotiate compensation pending full implementation (Art 22.2)

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<table>
<thead>
<tr>
<th>Retaliation</th>
<th>Cross-retaliation: same sector, other sectors, other agreements (Art 22.3)</th>
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<tbody>
<tr>
<td>Retaliation If no agreement on compensation, DSB authorizes retaliation pending full implementation (Art 22.2 and 22.6)</td>
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- Possibility of arbitration on level of suspension procedures and principles of retaliation (Art 22.6 and 22.7)

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30 days after “reasonable period” expires

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Source: WTO Trading into the Future: The World Trade Organization April 1999, page 42. Or see [www.wto.org/english/thewho_e/whatis_e/tif_e/disp2_e.htm](http://www.wto.org/english/thewho_e/whatis_e/tif_e/disp2_e.htm)
Timeline for Beef Hormone Case

- U.S. bans DES but allows other hormones (1979)
- Europe experiences hormone scares
- The BEUC, a European consumer group, mobilizes in favor of ban
- The European Commission establishes the Lamming Group (1981)
- 1982 Lamming Group interim report concludes that the three natural hormones “would not present any harmful effects to the health of the consumer when used under the appropriate conditions.”
- In 1985, the European Parliament bans all hormone-fed beef to go into effect in 1988
- The Lamming Group is disbanded in 1985, but the scientists independently publish the group’s findings on the safety of the hormones in question in 1987
- The Uruguay Round begins in 1986. The U.S. hopes it will be “the agriculture round”
- U.S. establishes new CODEX group to study hormones, with FDA regulator at head
- U.S. complains to GATT about the European ban, no resolution (1987)
- Europe extends the implementation date of the ban from January 1988 to January 1989
- Reagan Administration threatens 301 action against Europe to placate Congress
- The ban goes into effect (January 1989)
- The U.S. imposes $100 million in sanctions (January 1989)
- United States and Europe create Hormone Task Force
- Europe advocates for hormone-free beef imports
- Texas Agriculture Commissioner Jim Hightower offers to sell hormone-free beef to Europe, but is rebuffed by the U.S. Department of Agriculture
- The U.S. loses a public CODEX vote (1991) Codex Committee on General Principles is asked to consider “the status of science in Codex”
- SPS agreement becomes part of the Uruguay Round of GATT negotiations, CODEX given a major role (1993)
- U.S. brings the beef case to the WTO
- U.S. brings the bananas case against Europe to the WTO
- Mad cow disease spreads through British herds
- Secret vote in CODEX supports U.S. initiative
- U.S. wins WTO case, Europe does not comply and appeals the ruling (summer 1997)
- WTO Appellate body upholds the ruling (January 1998)
- U.S. and EU scientists meet at the National Institute of Health in the United States. No resolution. (June 1999)
- Europe does not lift the ban. U.S. imposes $117 million in sanctions (July 1999)
- French Farmers target McDonald’s. Jose Bové is jailed.
- EU wins FSC Case at the WTO (February 2000)
- Carousel legislation passes in the U.S. Congress (May 2000)
AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

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) See footnote 1;

Hereby agree as follows:

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. See footnote 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 4
Equivalence

1. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

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 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. See footnote 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.

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.

Article 6
Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area - whether all of a country, part of a country, or all or parts of several countries - from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, inter alia, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

2. Members shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

3. Exporting Members claiming that areas within their territories are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

Article 7
Transparency

Members shall notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B.

Article 8
Control, Inspection and Approval Procedures

Members shall observe the provisions of Annex C in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise ensure that their procedures are not inconsistent with the provisions of this Agreement.

Article 9
Technical Assistance

1. Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations.
Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.

Article 10
Special and Differential Treatment

1. In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.

2. Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.

3. With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.

4. Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.

Article 11
Consultations and Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

2. In a dispute under this Agreement involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical experts group, or consult the relevant international organizations, at the request of either party to the dispute or on its own initiative.

3. Nothing in this Agreement shall impair the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.

Article 12
Administration

1. A Committee on Sanitary and Phytosanitary Measures is hereby established to provide a regular forum for consultations. It shall carry out the functions necessary to implement the provisions of this Agreement.
and the furtherance of its objectives, in particular with respect to harmonization. The Committee shall reach its decisions by consensus.

2. The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues. The Committee shall encourage the use of international standards, guidelines or recommendations by all Members and, in this regard, shall sponsor technical consultation and study with the objective of increasing coordination and integration between international and national systems and approaches for approving the use of food additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.

3. The Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention, with the objective of securing the best available scientific and technical advice for the administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided.

4. The Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations. For this purpose, the Committee should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact. The list should include an indication by Members of those international standards, guidelines or recommendations which they apply as conditions for import or on the basis of which imported products conforming to these standards can enjoy access to their markets. For those cases in which a Member does not apply an international standard, guideline or recommendation as a condition for import, the Member should provide an indication of the reason therefor, and, in particular, whether it considers that the standard is not stringent enough to provide the appropriate level of sanitary or phytosanitary protection. If a Member revises its position, following its indication of the use of a standard, guideline or recommendation as a condition for import, it should provide an explanation for its change and so inform the Secretariat as well as the relevant international organizations, unless such notification and explanation is given according to the procedures of Annex B.

5. In order to avoid unnecessary duplication, the Committee may decide, as appropriate, to use the information generated by the procedures, particularly for notification, which are in operation in the relevant international organizations.

6. The Committee may, on the basis of an initiative from one of the Members, through appropriate channels invite the relevant international organizations or their subsidiary bodies to examine specific matters with respect to a particular standard, guideline or recommendation, including the basis of explanations for non-use given according to paragraph 4.

7. The Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.

**Article 13
Implementation**

Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are
members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement.

Article 14
Final Provisions

The least-developed country Members may delay application of the provisions of this Agreement for a period of five years following the date of entry into force of the WTO Agreement with respect to their sanitary or phytosanitary measures affecting importation or imported products. Other developing country Members may delay application of the provisions of this Agreement, other than paragraph 8 of Article 5 and Article 7, for two years following the date of entry into force of the WTO Agreement with respect to their existing sanitary or phytosanitary measures affecting importation or imported products, where such application is prevented by a lack of technical expertise, technical infrastructure or resources.

ANNEX A
DEFINITIONS See footnote 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;
(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.
Endnotes

3 Europe only allowed 10,000 tons of premium high quality U.S. beef into the EC through its quota system.
6 Untreated, the average number of days cattle spent in the feed lot process was 120 to 180 days. Using hormones, the time dropped to between 102 and 153 days. (Source: Chuck Lambert, Chief Economist, National Cattlemen’s Beef Association)
7 Unless otherwise noted, all quotes from Chuck Lambert are from a December 1999 interview.
8 The hormones were manufactured by companies such as Eli Lily, American Cyanimid, Syntex, Roussel-Uclaf, Vineland Laboratories, Schering-Plough, Upjohn, International Minerals and Chemicals and other pharmaceutical firms.
9 Unless otherwise noted, all quotes from Robert Livingston are from a 2000 interview.
10 Figure from Chuck Lambert at the U.S. Cattlemen’s Beef Association. 15 percent of the total U.S. 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.
12 “no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal” Source: U.S.C. 348(c)(3)(A)
13 Lester Crawford was interviewed in 1999 and in 2000. Crawford was the Director of the Center for Veterinary Medicine at the FDA (1978-1980 and 1982-1985) and in 1985 became the head of the USDA Meat Inspection Program. In 1985, he also became the Chairman of the UN Committee of Veterinary Medicine through the Codex Alimentarius. Crawford was the U.S. delegate to Codex from 1987-1991 and became Vice-chairman of Codex in 1991-1993. In 1993 he became the Director of the Center for Food and Nutrition Policy at Georgetown University.
15 FDA, it was determined, did not hold public hearings on the issue before creating new rules as it should have. Source: Marcus.
17 Alan Marcus, p. 2.
18 Alan Marcus, p. 1.
19 except melengestrol acetate (MGA)
20 Ireland banned the use of growing hormones in July 1985.
23 Figure of 30,000 source Geoff Winestock, p. 1.
28 Founded in 1962, the Brussels-based BEUC brought together 13 EEC consumer groups including the Union of French Consumers. At the time of the veal boycott, the BEUC was also making repeated demands for reform of the community’s CAP, saying it had consistently forced unjustifiably high prices on the EEC consumer and consumed

Except those used for therapeutic purposes, such as managing pregnancy.

During February 1981, discussion in the European Parliament revealed that while a majority supported a ban on all hormones, Belgium, Ireland and the UK favored use of some hormones for growth-promotion in meat animals. Directive 81/602/EEC


This report was published in late 1987.

Geoff Winestock, p. 1.

Directive 85/649/EEC


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

The OIE was established in 1924. Missions of the OIE (Source: www.oie.int visited on June 1, 2000)

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 (3) harmonize regulations for trade in animals and animal products among Member Countries


From 1987-1991, Crawford was the U.S. delegate to Codex and served as Codex Vice Chairman from 1991-1993.

Also in the 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 Alimnetarius.” Interestingly, the U.S. had adopted few Codex standards. “We were mindful of what was happening in Code, but we didn’t come home like some countries did and say, ‘Yes, we’re going to adopt this,’” says one former FDA official..

Established in 1955, JEFCA was a scientific advisory committee to the FAO, WHO, member governments, and Codex.

JEFCA’s mission was 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 (MRL) of agricultural chemical inputs in food such as veterinary drug residues in meat and meat products. JEFCA Homepage, visited May, 2000 (www.fao.org/waicent/faoinfoc/economic/ecn/jefca/jefca.htm)

Only five of the six drugs had data submitted to the committee. Data on MGA was not submitted.

Information from the last two paragraphs comes from *GATT Activities 1987*, General Agreement on Tariffs and Trade, Geneva, Switzerland, page 80.
Belgium, Spain, Greece, and Ireland voted against the deferral. The Financial Times reported that discussions were complicated by French concerns that a continuation of the status quo on trade for 12 months would actually discriminate against French producers. The French Agricultural Minister had promised that French meat would be hormone-free by April 1, 1988 with the assurances from West Germany and Italy that French beef exports to those countries would benefit from easier access. (Tim Dickson, “EC to Delay Effect of Beef Hormone Ban,” Financial Times, (19 November 1987), p. 4.)

In February 1988, the European Court of Justice annulled the beef ban legislation in a case brought by Britain and Denmark. In its ruling, the court said the EC legislation was “invalid” because the member states hadn’t followed the correct technical procedures when adopting the law at the end of 1985. More importantly, however, the court rejected the complaint by the UK 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 with the correct technical procedures.


As discussions were taking place, a fungicide called procymidon was discovered in imports of French wine 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.’ And it wasn’t banned.” Crawford held that if the wine had been banned, it might have put enough political pressure on Europe to end the beef ban.


(a) In general. -- Section 20 of the Federal Meat Inspection Act (21 U.S.C. 620) is amended by adding at the end thereof the following new subsection:

(h)(1) As used in this subsection:

(A) The term 'meat articles' means carcasses, meat and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, that are capable of use as human food.

(B) The term 'standards' means inspection, building construction, sanitary, quality, species verification, residue, and other standards that are applicable to meat articles.

(2) On request of the Committee on Agriculture or the Committee on Ways and Means of the House of Representatives or the Committee on Agriculture, Nutrition, and Forestry or the Committee on Finance of the Senate, or at the initiative of the Secretary, the Secretary shall, as soon as practicable, determine whether 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.

(3) If the Secretary determines that a foreign country applies standards described in paragraph (2) --

(A) the Secretary shall consult with the United States Trade Representative; and

(B) within 30 days after the determination of the Secretary under paragraph (2), the Secretary and the United States Trade Representative shall recommend to the President whether action should be taken under paragraph (4).

(4) Within 30 days after receiving a recommendation for action under paragraph (3), the President shall, if and for such time as the President considers appropriate, 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.

(5) The action authorized under paragraph (4) may be used instead of, or in addition to, any other action taken under any other law.


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

71 Ibid.
75 Veneman and Bolton both became advisors to the George W. Bush campaign in 2000. Veneman would become the Secretary of Agriculture under President Bush.
76 (WTO/DS26/R/USA), 2:31
77 Jim Hightower, If the Gods Had Meant Us to Vote They Would Have Given Us Candidates, Harper Collins, 1999, p. 246.
78 Unless otherwise noted, all quotes from Mark Ritchie are from a May 2000 interview. As of the interview, Ritchie was on staff at the Institute for Agriculture and Trade Policy.
79 Mark Ritchie attended Iowa State, which played a large role in the development of DES.
81 Unless otherwise noted, all quotes from Rod Leonard are from a May 2000 interview.
83 Role of COMISA (Confédération Mondiale de l'Industrie de la Sante Animale) according to the organization’s website www.COMISA.org visited 12/2000.
84 Nine countries abstained.
91 The delegations of the Netherlands, Sweden, Finland, Spain and the United Kingdom dissociated themselves from part or all of the observer’s statement.
92 Prepared statement of Lori Wallach, Global Trade Watch, Before the House Ways and Means Subcommittee on Trade, August 5, 1999.
94 At issue was cattle treated with six hormones, oestradiol-17-beta, testosterone, progesterone, zeranol, and tibolone and melengestrol acetate (MGA). The EU held that these hormones might not be safe for consumers.
96 Letter from USTR Mickey Kantor to Bob Drake, president of the National Cattlemen’s Association, February 8, 1996, on file at Public Citizen.
97 The U.S. claimed that the agreements with the EC measures appeared to be inconsistent included, but were not limited to (1) The GATT 1994 Article III or Article XI, (2) the Agreement on the Application of Sanitary and Phytosanitary Measures, Article 2.3, and 5, (3) The Agreement on Technical Barriers to Trade, Article 2, and (4) The Agreement on Agriculture, Article 4.
98 (WT/DS26/R/USA), 3.6
100 Source: Common Cause, www.commoncause.org
The panel met with scientists in February 1997.  


Geoff Winestock, p. 1.

On October 30, 1998 and November 2, 1998 respectively. These donations represented more than a third of all soft money donations made from 1996 through 1999. Source: Common Cause, www.commoncause.org

Geoff Winestock, p. 1.

Foreign Agriculture Secretary, Joint Statement by Secretary of Agriculture Dan Glickman and United States Trade Representative Charlene Barshefsky on the EU Hormone Report,” (3 May 1999).


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, Release No. 0213.99


The U.S. had banned British beef in 1989.  


Products also included glues and adhesives from France, Germany, and Italy as well as chocolate and foie gras. France was hit by 24 percent of the total value, Germany ahs 24 percent, Italy has 21 percent and Denmark had 15 percent. The remaining percentage was divided between the remaining 10 countries (excluding the UK).


The Canadian list of products included Danish pork, French and Austrian beef, and Spanish gherkins and cucumbers.


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 U.S. Penalties,” *Farmers Guardian*, (23 July 1999), p. 8.


Section 407 amended the Trade Act of 1974.

“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.” Trade and Development Act of 2000 Section 407.

The American Farm Bureau, the American Meat Institute, the National Meat Association, the National Cattlemen’s Beef Association, and the U.S. Meat Export Federation, Letter to USTR Charlene Barshefsky, June 12, 2000.
The United States, Europe, and Trade in Hormone-Treated Beef

141 The U.S. Domestic International Sales Corporation (DISC) was declared an illegal export subsidy by a GATT panel in 1976 (the panel ruling was adopted in 1981).
144 This committee was the EU Scientific Committee on Veterinary Measures relating to Public Health (SCVPH)