



## An Agricultural Law Research Article

### **Hormonal Imbalance: An Analysis of the Hormone Treated Beef Trade Dispute between the United States and the European Union**

by

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# HORMONAL IMBALANCE: AN ANALYSIS OF THE HORMONE TREATED BEEF TRADE DISPUTE BETWEEN THE UNITED STATES AND THE EUROPEAN UNION

Kristin Mueller

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## I. INTRODUCTION

### *A. General Comment on the Importance of International Trade*

Although international trade now occupies an important position in the international political arena, the current structure of international trade has led

to acute tensions between many nations.<sup>1</sup> While the GATT (General Agreement on Tariffs and Trade) and Codex (Codex Alimentarius Commission) serve as mechanisms to eliminate these tensions, there still remain fundamental conflicts between nations as to what constitutes a reasonable safety precaution and what constitutes an unreasonable trade barrier.<sup>2</sup> Regardless of how individual nations view trade disputes, globalization of the economy forces all nations to contend with international standards concerning trade conflicts.<sup>3</sup>

An increase in trade disputes stemming from economic interdependence now plays a vital role in the international trade arena.<sup>4</sup> More specifically, the United States and the European Union (EU) are currently engaged in a trade dispute over United States beef treated with hormones.<sup>5</sup> This dispute illustrates the consequences of differing national standards in food production and consumer response.<sup>6</sup> Moreover, the United States/European Union hormone treated beef trade dispute points to issues involving national sovereignty and how this concept affects international trade.<sup>7</sup> Because of the vital and growing role international trade plays in the world economy, international cooperation correspondingly becomes critically important.<sup>8</sup> Additionally, the role of international institutions (such as GATT or Codex) designed to assist in cooperation and dispute resolution are central in analyzing trade disputes.<sup>9</sup> Each of these issues becomes important when examining the current hormone treated beef trade dispute between the United States and the European Union.

#### B. *A Brief Description of the Hormone Related Trade Dispute Between the European Union and the United States*

Currently, the European Union will not accept United States beef treated with hormones.<sup>10</sup> Dan Glickman, Secretary of the United States Department of Agriculture, has been working to resolve the dispute in favor of the United

1. Jeffery L. Dunoff, *Institution Misfits: The GATT, the ICJ & Trade-Environment Disputes*, 15 MICH. J. INT'L L. 1043 (1994).

2. Franz Fischler, *New Politics and Global Trade*, Address Before the World Meat Congress (June 2, 1995) [hereinafter Fischler] in COMMISSION OF THE EUROPEAN COMMUNITIES, June 2, 1995 at 95-111. See also generally, discussion *infra* parts III A.1 and 2 and III B. 1 to 3.

3. Alberto Bernabe-Riefkohl, "To Dream the Impossible Dream:" *Globalization and Harmonization of Environmental Laws*, 20 N.C. J. INT'L L. & COM. REG. 205 (1995) [hereinafter Bernabe-Riefkohl].

4. John H. Jackson, *Dolphins and Hormones: GATT and the Legal Environment For International Trade After the Uruguay Round*, 14 U. ARK. LITTLE ROCK L.J. 429 (1992).

5. Caroline Southey, *Hormones Fuel a Meaty EU Row*, FIN. TIMES 2 (Sept. 7, 1995) [hereinafter Southey].

6. *Id.*

7. Jackson, *supra* note 4, at 452.

8. *Id.*

9. *Id.* at 452-53.

10. *U.S. Threatens WTO Action on Meat Hormones*, FOOD & DRINK DAILY, June 6, 1995, at No. 106, Vol. 5.

States.<sup>11</sup> In fact, he views the dispute as “. . . a linchpin issue for American agriculture to see that GATT is working.”<sup>12</sup> However, European Union Agriculture Commissioner Franz Fischler is working against Glickman by trying to keep American hormone treated beef out of Europe.<sup>13</sup> The issue is further complicated by an increase in the use of black market hormones in the European Union and United States complaints to the World Trade Organization (WTO) regarding violations of trade rules.<sup>14</sup> The issues to be addressed by both sides include differing views of science and consumer perceptions of food safety.<sup>15</sup>

This discussion will focus on understanding the United States and European perspectives on the hormone treated beef trade dispute. More specifically, differing views on science, consumer perception, and national sovereignty will be addressed. Analysis of GATT and Codex is central in examining the issue. Additionally, a comparison of United States trade disputes related to the hormone treated beef trade dispute (such as bovine somatotropin (BST) and the tuna/dolphin conflict) will be addressed. Finally, consideration of the significant role attorneys and the law play in resolving such disputes will be assessed.

## II. UNDERSTANDING THE FUNDAMENTAL ELEMENTS OF THE HORMONE DISPUTE BETWEEN THE UNITED STATES AND EUROPE

### A. *Description of the European Union Ban on United States Hormone Treated Beef*

Since 1989, the European Union has banned the entry of hormone treated beef into its markets.<sup>16</sup> United States beef which is not treated with hormones, however, may be exported to the European Union.<sup>17</sup> Currently, any cattle destined for import to the European Union must come from a source approved by the European Union, and the cattle must also be slaughtered in a slaughterhouse approved by the European Union.<sup>18</sup> Additionally, the European Union is developing legislation to require identity and physical checks by veterinarians of all animal products destined for import.<sup>19</sup>

Following the European Union ban on hormone treated beef, the United States attempted to reverse this ban through various means.<sup>20</sup> Both entities

11. *Id.*

12. *Id.*

13. *Id.*

14. Peter Blackburn, *Outlook: Set Aside to Forefront of Farm Agenda*, THE REUTER EUROPEAN COMMUNITY REPORT, September 11, 1995.

15. *U.S. Threatens WTO Action on Meat Hormones*, *supra*, note 10.

16. *Knowing EU Import Requirements: A Must for U.S. Exporters; European Community*, 7 AG EXPORTER 14 (1995).

17. *Id.*

18. *Id.*

19. *Id.*

20. Southey, *supra*, note 5, at 2.

initially tried to resolve the dispute through GATT.<sup>21</sup> The United States wanted a resolution of the problem based on the "Standards Code" of GATT in which scientific means would be used.<sup>22</sup> Conversely, the European Union wanted the dispute resolved on the "national treatment" basis where there is equal treatment for foreign and domestic products.<sup>23</sup> The United States then proceeded to impose sanctions on European imports without consideration of GATT procedure.<sup>24</sup> The dispute continued at the Uruguay Round meeting of GATT.<sup>25</sup> This meeting determined that global free trade mandates using the same scientific standards in determining food safety throughout the world.<sup>26</sup> The WTO will then be the "final arbitrator" of any scientific disagreements.<sup>27</sup>

By stating that a country may only use a health-related ban on hormone treatments if scientifically proven, the WTO makes the European ban harder to maintain.<sup>28</sup> Moreover, the United Nations Food and Agriculture Association (FAO) and Codex recently announced that using hormones in animal food production is safe.<sup>29</sup> This FAO decision will also make it harder for the European Union to defend their position under the GATT agreement.<sup>30</sup> A future meeting is scheduled at the end of November in Brussels where scientists, producers, and consumers will meet to discuss the issue.<sup>31</sup> In light of all of these developments, the Clinton administration stated they will give the European Union until the end of the year to lift the ban before complaining to the WTO.<sup>32</sup>

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21. Jackson, *supra* note 4, at 435-36.

22. *Id.*

23. *Id.* at 436. The different approaches taken by the United States and EC demonstrate some of the problems with GATT procedure. Because there is clearly justification for using either approach, difficulty arises in determining which approach to take.

24. *Id.*

25. Janet Day, *End to Europe Hormone Ban on U.S. Beef Urged*, DENVER POST, June 3, 1995, at D1 [hereinafter Day].

26. *Id.*

27. *Id.*

28. *EU: FAO Taking Stalking Horse Role?*, REUTER TEXTLINE GROCER, July 22, 1995, at 49 [hereinafter TEXTLINE].

29. *Id.*

30. *Id.* Hormones used in U.S. beef include: oestradiol beta 17, progesterone, testosterone (all natural) and trenbolone and zeranol (synthetic) [Southey, *supra*, note 5, at 2].

31. Peter Blackburn, *Outlook: Set Aside to Forefront of Farm Agenda*, THE REUTER EUROPEAN COMMUNITY REPORT, June 5, 1995.

32. *Glickman Wants to Sell Beef in Europe This Year*, OMAHA WORLD-HERALD, June 6, 1995, at Business. [hereinafter Glickman.] Franz Fischler, EC's agriculture commissioner, also proposed a conference to study the safety of hormone treated beef. Glickman, U.S. Agriculture Secretary, feels this could be productive as long as it is not a ploy simply to delay addressing the issue.

*B. The Impact of European Union Trade Restrictions on American Beef Producers and on International Trade*

United States exporters claim they are losing between \$300 and \$500 million a year because of the European Union ban on hormone treated beef.<sup>33</sup> The Department of Agriculture, however, estimates the loss to be in the neighborhood of \$100 million.<sup>34</sup> Although the impact on trade has generally been negative, some American companies have been able to meet European standards on hormones and, thus, export beef to the European Union.<sup>35</sup> In fact, the United States balance of trade for beef has "gone from negative \$863 million in 1981 to a positive \$800 million in 1994."<sup>36</sup> The trade balance numbers also take into account exports to various other countries.<sup>37</sup> In 1988, prior to the ban on hormone treated beef, the United States exported \$129 million in beef to the European Union.<sup>38</sup> In 1994, the United States only exported \$34 million in beef to Europe.<sup>39</sup>

Regardless of the dollar amount the United States beef producers are losing to the European trade ban, the bigger issue of international trade relations and regulations must be dealt with.<sup>40</sup> This issue is really a test on international trade to see if GATT is functioning smoothly or if there will only be more difficulties in the future.<sup>41</sup> Although Fischler and Glickman have been discussing this issue and trying to arrive at a solution, fundamental disagreements still exist which may result in forcing resolution of the issue in an international forum.<sup>42</sup> Philip Seng, president of the United States Meat Export Federation, noted: "There is no other segment in American agriculture with as much size and export potential as the red meat sector. . . with . . . the new

33. *Raging Hormones: U.S. Wants Europe to End Ban on Beef*, ROCKY MOUNTAIN NEWS, June 3, 1995 at 46A. Hormones cut the feed expense for cattle between 15% and 20%.

34. *U.S. Sets Deadlines for EU to Lift Beef Ban*, LOS ANGELES TIMES, June 6, 1995 at 6

35. *Agriculture: Hormones Back on Agenda for Europe and USA*, EUROPEAN REPORT, June 3, 1995. The United States exported over 34 million dollars in beef and beef products to the EC in 1994.

36. *General Developments*, 12 INT'L TRADE REP. (BNA) No. 25 at 1080 (June 21, 1995).

37. *Id.* Philip Seng, President of U.S. Meat Export Federation, observed that South Korea, Mexico, Canada, and the Russians have also become significant purchasers of U.S. beef.

38. U.S.D.A. Although meat exports have decreased from the United States to Europe, overall volume (to other nations) has increased from 395,068 metric tons in 1987 to 790,452 tons in 1994. United States beef sales to Japan, Canada, Mexico, Republic of Korea, and Hong Kong have increased dramatically from 1987 to 1994. Only American beef exports to the European Union have decreased substantially.

39. *Id.*

40. Eddie Evans, *U.S. Threatens EU With WTO Beef Hormone Dispute*, THE REUTER EUROPEAN COMMUNITY REPORT, June 5, 1995 [hereinafter Evans].

41. *Id.*

42. *Agriculture, supra*, note 35.

GATT agreement, now is the time for us to capitalize on opportunities these trade agreements offer."<sup>43</sup>

C. *Discussion of the Rationale Behind the European Ban on Hormone Treated Beef: A European and American Perspective*

1. *Consumer Perceptions of Food Safety*

Perhaps one of the most contentious issues upon which Americans and Europeans disagree is their perception of food safety. One of the main reasons the European Union keeps its ban against United States hormone treated beef in place is the European consumer perception that hormone treated beef is unsafe.<sup>44</sup> In a speech before the World Meat Congress, Franz Fischler observed:

Trade is a rather abstract concept for consumers. To them, what counts is the price, the quality, and more and more, the production methods and composition of the food they buy. Their main concern is their own health. They have grown to doubt scientific advice. They even suspect, occasionally, that this is manipulated by producer interests. Consumers tend to believe that their home produce is safer and tastier than foreign produce, whether this is true or not.<sup>45</sup>

Although Fischler stressed that a balance between consumer perceptions and science must be sought, consumer fears often overpower scientific arguments.<sup>46</sup> In fact, European consumer perception stems from the numerous horror stories of hormone treated foods which have caused health problems.<sup>47</sup> For example, some Italian infants consumed baby food which contained hormone contaminated beef products causing them to develop opposite sex characteristics.<sup>48</sup> Additionally, the murder of a Belgian veterinary surgeon who refused to administer hormones by the alleged "hormone Mafia" bolsters European concern over hormones.<sup>49</sup> European consumer fears are supported by statistics which show red meat consumption has dropped in countries where illegal hormone use is present.<sup>50</sup>

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43. *Id.*

44. Evans, *supra*, note 40.

45. Fischler, *supra* note 2, at 103.

46. *Id.*

47. Jackson, *supra* note 4, at 435.

48. *Id.*

49. Fischler, *supra* note 2, at 108.

50. Southey, *supra* note 5, at 2. For example, in Belgium and Luxembourg consumption of red meat has dropped from 26.4kg per person in 1985 to 20.7kg in 1994. Conversely, in Ireland and Denmark, where the meat has a good image, consumption has actually risen from 14.1kg to 20.1kg per person.

Some European beef producers believe they can even use this consumer perception to their advantage.<sup>51</sup> They believe, even if the United States can export hormone treated beef to the European Union, consumers will still prefer their hormone-free meat; the United States hormone treated beef therefore provides them a marketing edge.<sup>52</sup> This idea is supported by the Belgian example.<sup>53</sup> In Belgium, where consumers are extremely aware of the hormone issue, some super markets have begun labeling meat "Bio," indicating it is "free of hormones and other growth stimulants."<sup>54</sup> Kees de Winter, a food officer for the European Consumers Organization, explained that it is not only a matter of science, but "[e]ven if the dangers are small, consumers will still not buy the product. They are not just motivated by fear, but also by principles. These animal rearing practices are considered unnatural."<sup>55</sup>

In a related issue, many American consumers fear genetically treated products in domestic markets.<sup>56</sup> For example, Vermont passed a law mandating that certain genetically engineered foods be labeled.<sup>57</sup> The vice president of a local creamery observed, "The law has no basis in science and is no lesson in consumer protection."<sup>58</sup> Although consumer health issues are one reason many support the law, politics, economics, and social issues also come into play.<sup>59</sup> A major concern focuses on large dairy farmers supplanting small dairy farmers because large dairy farmers can more effectively use this technology to boost milk production.<sup>60</sup> Furthermore, industry sources suggest the European Union is hesitant to accept BST for the same reasons the local Vermont farmers fear the product.<sup>61</sup> Thus, European and American consumer concerns are sometimes similar regarding hormone treated foods.<sup>62</sup>

Conversely, American producers and their supporters generally believe that the European Union ban is nothing more than a trade barrier which "promotes misinformation . . . scaring European consumers needlessly."<sup>63</sup> The National Cattlemen's Association even suggests that sixty percent of

51. Jeanne Gavin, *Union Condemns Plan to Import U.S. Hormone Fed Beef*, THE SCOTSMAN, September 11, 1995, at 29.

52. *Id.*

53. Southey, *supra* note 5, at 2.

54. *Id.*

55. *Id.*

56. Christopher Wilson, *Food Labeling to BST or not to BST?*, REUTERS WORLD SERVICE, Oct. 10, 1995.

57. *Id.* The law requires all milk products treated with the synthetic BST hormone to be labeled with a blue dot.

58. *Id.* Many Vermont farmers are very upset with the law and claim that because the FDA determined that BST is safe for humans, they should be able to use biotech products.

59. *Id.* For instance, Ben and Jerry's view BST as a physical risk as well as a risk to family-owned dairy farms. Consequently, Ben and Jerry's would like to avoid products which use BST.

60. *Id.*

61. *Id.*

62. *Id.*

63. *European Consumers Will Buy U.S. Beef If Properly Labeled, NCA Official Says*, 12 INT'L TRADE REP. (BNA) No. 24, at 1030 (June 14, 1995).



European consumers would buy United States hormone treated beef if properly labeled.<sup>64</sup> Those against the ban also suggest that the European ban merely fuels illegal hormone markets.<sup>65</sup> Moreover, the United States' perspective indicates that lower red meat consumption rates in the European Union are a result of the ban on United States' beef and not a result of beef falling into disfavor with consumers.<sup>66</sup> The United States' position is backed by a recent Codex Alimentarius decision which approved five hormones cattlemen in the United States currently use.<sup>67</sup>

## 2. *The Role of Science in the Hormone Debate*

Consumer concerns are only one area where Europeans and Americans disagree regarding hormone treated beef.<sup>68</sup> Both groups also view scientific involvement with agriculture differently when it comes to this issue.<sup>69</sup> While the United States embraces biotechnological change in agriculture, the European Union is proceeding more slowly with this science.<sup>70</sup> For example, there are currently conflicts between the European Union and the United States regarding recombinant bovine somatotropin (BST) which is used to increase milk production.<sup>71</sup> Because many scientists estimate productivity gain from various biotechnological methods, and because Europeans do not accept some of these methods, differing views of science play a critical role in resolving the hormone controversy.<sup>72</sup>

### III. DISPUTE RESOLUTION: THE ROLE OF GATT AND CODEX

#### A. *The Role of GATT*

##### 1. *Description of GATT and How it Affects the Hormone Treated Beef Trade Dispute*

When the GATT (General Agreement on Tariffs and Trade) was established in the late 1940s, its goal primarily dealt with promoting free trade and

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64. *Id.* The Cattlemen's Association also maintains that EC countries have been unable to locate alternative sources to U.S. beef.

65. Southey, *supra* note 5, at 2.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Biotechnology—Boon or Bane for EU Agriculture?* AGRA EUROPE, Aug. 4, 1995, at 1.

70. *Id.*

71. *Id.* See also Steven J. Rothberg, Note, *From Beer to BST: Circumventing the GATT Standards Code's Prohibition on Unnecessary Obstacles to Trade*, 75 MINN. L. REV. 505 (1990).

72. *Id.*

a reduction in trade barriers.<sup>73</sup> Under GATT, nations limit their national sovereignty in issues relating to trade in order to obtain trade benefits they could not get acting as a single nation.<sup>74</sup> Agriculture, however, has been exempt from many tariff-reducing GATT rules because of its unique nature.<sup>75</sup> GATT also establishes an international mechanism which allows nations to bring conflicts before a dispute resolution body.<sup>76</sup> Although the United States disregarded GATT policy in agricultural matters during the 1950s, some countries now use the GATT dispute resolution system more often and comply with the decision.<sup>77</sup> The most recent round of GATT discussions, beginning in 1986, was the Uruguay Round.<sup>78</sup> This negotiation is particularly remarkable because it attempted to deal with many controversial issues in agriculture, including farm subsidies, price supports, and a reduction in agricultural trade barriers.<sup>79</sup>

One of the major problems in reconciling any international trade dispute is compromising domestic interests with international interests.<sup>80</sup> The European Union and the United States clashed over scientific standards at the Uruguay Round, but GATT concluded in order to promote global free trade, the same scientific standards must be used to determine food safety throughout the world.<sup>81</sup> The World Trade Organization will then act as the final arbitrator of any scientific disputes.<sup>82</sup> The WTO rules mandate that a nation may only restrict imports for health concerns if it can be scientifically supported.<sup>83</sup> Because the FAO has recently determined that the use of hormones in "animal based food" is safe, the issue is further complicated.<sup>84</sup>

## 2. *The United States and GATT: A Look at the Tuna Controversy*

Although the United States would like the European Union to conform to GATT standards (meaning scientific standards) regarding the hormone treated beef issue, the United States has not always followed GATT procedure itself.<sup>85</sup> In fact, the United States has used its trade policy to impose its stan-

73. William P. Browne, et al., *SACRED COWS AND HOT POTATOES: AGRARIAN MYTHS IN AGRICULTURAL POLICY* 83 (Westview Press 1992) [hereinafter Buckingham].

74. Donald E. Buckingham, *A Recipe for Change: Towards an Integrated Approach to Food Under International Law*, 6 *PACE INT'L L. REV.* 285, 303 (1994).

75. *WORLD AGRICULTURE AND THE GATT 2* (W.P. Avery, ed., 1993). GATT rules were written to conform to agricultural policies already in existence.

76. Buckingham, *supra* note 74, at 304.

77. *Id.* Since 1970, there have been 14 violations of GATT provisions regarding agricultural products. In virtually all cases, the nation found in violation of the rules has changed their law to conform with GATT rules.

78. Bernabe-Riefkohl, *supra* note 3, at 206.

79. *See generally, id.*

80. Jackson, *supra* note 4 at 452.

81. Day, *supra* note 25, at D1.

82. *Id.*

83. *TEXTLINE, supra* note 28, at 49.

84. *Id.*

85. Jackson, *supra* note 4, at 434.

dards on other countries.<sup>86</sup> For instance, the United States Marine Mammal Protection Act bans the importation of tuna with methods which could cause the death of dolphins.<sup>87</sup> While this law may have enjoyed wide support in the United States, the GATT resolution panel determined this law to be a trade barrier.<sup>88</sup> GATT found the restrictions considered the method of production rather than the quality of the product.<sup>89</sup> Furthermore, at the time of the United States ban, dolphins were neither an endangered species nor were they on the brink of becoming an endangered species.<sup>90</sup> Instead, just as the European public dislikes hormones for perhaps unscientific reasons, the American public had a love for dolphins.<sup>91</sup> Thus, the dolphin case illustrates that public perception often plays a large role in shaping trade policy, and the United States has been on both sides of the theoretical fence.

GATT has determined, however, voluntary "eco-labels" are appropriate.<sup>92</sup> Labeling allows consumers to have information about potential environmental harms related to the product.<sup>93</sup> This method can be particularly effective.<sup>94</sup> For instance, almost no Mexican tuna was being sold in the United States when the government implemented the ban.<sup>95</sup> Consumer power, coupled with eco-labeling, provided enough strength to avoid contributing to the sale of Mexican tuna.<sup>96</sup> Labeling beef would seem to be a potential solution to the hormone treated beef trade dispute. Oddly, there has been no real consideration of this alternative. Perhaps this is because environmental legitimacy is relevant in labeling and United States producers view hormone treated beef as legitimate and will accept nothing less than full acceptance of their product.

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86. Abram Chayes, *Panel III: International Law, Global Environmentalism, and the Future of American Environmental Policy*, 21 *ECOLOGY L.Q.* 480, 483 (1994) [hereinafter Chayes].

87. Jackson, *supra* note 4, at 434.

88. *Id.*

89. *Id.*

90. Chayes, *supra* note 86, at 483.

91. *Id.*

92. Daniel C. Esty, *Unpacking the "Trade and Environment" Conflict*, 25 *LAW & POL'Y INT'L BUS.* 1259, 1286 (1994). The labeling and consumer power combination reached tremendous success with California's "Proposition 65." This proposition required consumer warnings for any product which had more than a de minimis risk of cancer or birth defects. Many products have consequently become safer. *Id.* at 1285.

93. *Id.* at 1289. In the case of tuna, United States canners began a "dolphin safe" labeling campaign which made it nearly impossible for "unsafe" tuna to be sold in the states.

94. *Id.*

95. *Id.*

96. *Id.* at 1285.

## B. The Role of Codex

### 1. Purpose of Codex

The Codex Alimentarius Commission (Codex) is an international organization which develops standards for safe food.<sup>97</sup> Codex has a three-prong goal in its international activities: "1) Facilitate international trade through the removal of non-tariff barriers caused by differing national food standards; 2) Protect the health of consumers and ensure fair practices in the food trade; and 3) Promote coordination of all food standards work undertaken by international governmental and non governmental organizations."<sup>98</sup> Codex standards gain their power from GATT, which created the WTO.<sup>99</sup> The WTO, in turn, subsequently adopted Codex standards.<sup>100</sup> Thus, Codex provides global standards for safe food, and its rules currently referee any food safety related disputes.<sup>101</sup> More specifically, Codex has established a committee to deal with veterinary drugs in foods.<sup>102</sup> The committee considers the following standards in judging whether veterinary drugs (or hormones) are acceptable:

[1] Determine priorities for the consideration of residues of veterinary drugs in foods, establish a list of priority drugs in foods and establish a list . . . for review; 2) Recommend maximum residue levels of such substances; 3) Develop codes of practice as may be required; and 4) Determine criteria of analytical methods used for the control of veterinary drugs . . .<sup>103</sup>

Countries which implement standards, which are more protective of health, may have to provide a scientific justification to Codex for the higher standard.<sup>104</sup>

97. Rodney E. Leonard, *Codex at the Crossroads: Conflict on Trade, Health*, CNI, July 14, 1995, at 4 [hereinafter Leonard]. Codex frequently considers issues involving food additives, pesticides, chemicals and other contaminants.

98. Donna L. Malloy, *The Codex Alimentarius Provides International Standards for Food Production and Safety*, 12 J. AGRIC. TAX'N & L. 334, 335 (1990-91) [hereinafter Malloy].

99. *Id.*

100. Leonard, *supra* note 97, at 4.

101. *Id.* Codex operates by using a variety of committees. If the organization decides a new standard should be considered, it must first be assigned to the appropriate committee. Then, drafts are discussed by the committee, the commission, national governments and international organizations. If approved, the draft becomes a part of Codex rules. James Walston, *Codex Spells Controversy*, 2 CERES 29 (1992).

102. Malloy, *supra* note 98, at 338.

103. Leonard, *supra* note 97, at 4.

104. *Id.*

## 2. Science versus the "Fourth Criterion"

The hormone treated beef dispute turns on which definition of science Codex should accept.<sup>105</sup> The issue is whether Codex should consider only "hard sciences," such as chemistry and physics, or "soft sciences," such as sociology, statistics, and political science.<sup>106</sup> Accepting soft sciences naturally means considering consumer views and perceptions in establishing standards, while the hard science approach would focus on lab data.<sup>107</sup>

The European Union advocates an approach based on soft science known as the "Fourth Criterion."<sup>108</sup> Codex currently evaluates food based on three criteria: quality, safety, and efficacy.<sup>109</sup> The "Fourth Criterion" requires "the direct involvement of citizens—consumers, farmers, workers—in the process of determining the level of risk that society is willing to accept."<sup>110</sup> More specifically, the "Fourth Criterion" potentially includes: safety of food, animal welfare, impact on environment, economic impact on the farmer and community, social effects, and ethics.<sup>111</sup> Scientific merit and study thus would take second place to consumer demand and perceptions.<sup>112</sup> While the current Codex and GATT approach serves two masters (protection of consumer health and reduction of trade barriers), the "Fourth Criterion" approach would subordinate the trade barrier goal to the consumer concerns and ethical considerations.<sup>113</sup>

While this approach may be popular with Europeans and even many Americans, American farmers and politicians still view this approach as nothing more than a sugar-coated trade barrier.<sup>114</sup> The American perspective is bolstered by the stance of one member of the European Union parliament, Kenneth Collins, and his supporters who developed a plan for a "social needs test."<sup>115</sup> The plan, which the EC is expected to approve, would allow the EU to consider any impact "new technology" would have on employment and

105. *Id.*

106. *Id.*

107. *Id.*

108. Rodney E. Leonard, *Global Trends Indicate 4th Criterion Inevitable*, CNI, July 19, 1991, at 4 [hereinafter Leonard (Global Trends)].

109. Ronald Bailey, *The Fourth Hurdle*, FORBES, Apr. 2, 1990, at 166 [hereinafter Bailey].

110. *Id.*

111. Anthony Phelps, *Definition of EC's "Fourth Hurdle" Sought*, FEEDSTUFFS, May 7, 1992, at 9. Some of these criteria are already covered under existing Codex standards (such as food safety, animal welfare and impact on the environment).

112. Leonard (Global Trends) *supra* note 108 at 5. One study suggests that dairy farmers could obtain higher profits from "rotational grazing" rather than using bovine growth hormone. This type of "Fourth Criterion" approach would serve both producers and consumers. *Id.* at 4. Americans have objected to hormones used to boost milk production at home too. See *supra* n. 82. Several states have even had legislation pending to ban the hormone and some grocery stores have refused to sell hormone treated milk. Bailey, *supra* note 109.

113. Malloy, *supra*, note 98, at 341.

114. See generally Bailey, *supra* note 109.

115. Bailey, *supra* note 109, at 166.

local industry.<sup>116</sup> Fear of the "Fourth Criterion" also stems from every country being able to come up with some social reason for not accepting otherwise acceptable food.<sup>117</sup> For example, Muslims are concerned that Codex does not provide grounds for objections based on religious beliefs.<sup>118</sup>

### 3. *Codex Supports the Scientific Approach*

Not surprisingly, the United States would like Codex to recommend that hormone treated beef poses no safety threat to those who consume it (the American perspective would thus favor a hard science approach).<sup>119</sup> The United States did experience victory at the Codex meeting on July 3-8, 1995, in Rome.<sup>120</sup> First, Codex adopted a set of recommendations which would make Codex the "source of scientific standards for international trade."<sup>121</sup> Second, standards were adopted which would mandate a scientific basis for standards established in international trade.<sup>122</sup> Finally, Codex accepted a determination from an expert committee which accepted tolerances for residues from five growth hormones.<sup>123</sup> These new standards mean the European Union could be found in violation of WTO rules if they continue to maintain trade barriers on hormone treated beef.<sup>124</sup> It is now up to the United States to complain to the WTO in order to force the European Union to remove its trade barriers.<sup>125</sup> The American reaction was summarized by United States Department of Agriculture Secretary Glickman: "The commission's actions will benefit both consumers and producers around the world by establishing standards on food products that are based on sound science."<sup>126</sup> Conversely, the European Union Commissioner of Agriculture responded by commenting on the secret ballot approach taken by the commission: ". . . [i]t was totally unacceptable that an international organization should take such an important and far reaching decision in secret, and this procedure totally contradicts the need to ensure greater transparency in the world of Codex. . . ."<sup>127</sup>

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116. *Id.* The first target for such "new technology" is genetic engineering techniques which make animals grow faster and larger. *Id.* Collins, the EU member who devised the plan, even mentions a concern for British villages which may die out if farming becomes too efficient due to these techniques. *Id.*

117. *See generally, id.*

118. *Id.* There is a provision in GATT which allows countries to restrict trade based "to protect public morals." This provides for religious concerns.

119. Leonard, *supra* note 97, at 4.

120. Jon F. Scheid, *U.S. Wins Two of Three Codex Points*, FEEDSTUFFS, July 17, 1995, at 4.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* The vote was very close, 33 to 29. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

Codex also addressed the related issue of BST, but ruled against the United States.<sup>128</sup> The European Union wanted to delay the vote until the next meeting, which takes place in 1997.<sup>129</sup> To the dismay of American participants, the European Union, by a very narrow margin, managed to delay consideration of this issue.<sup>130</sup> Although Europe won an immediate victory with the delayed vote, it will likely face an uphill battle in 1997 in light of the United States victory in the acceptance of scientific principles over consumer perceptions.

### C. Unresolved Issues

Although GATT and Codex are in place to resolve potential disputes between the United States and Europe regarding the hormone treated beef issue, many options remain for both sides. The European Union plans a conference for the end of November to try and decide what they should do in light of current Codex standards.<sup>131</sup> The hormone treated beef trade dispute is at a critical turning point. The European Union could completely fold and allow hormone treated beef into their markets or they could simply attempt to modify the ban. They could also potentially put off deciding the issue until further meetings as a delay tactic. The United States and other nations could, in turn, begin dispute resolution by notifying the WTO that they had ". . . requested consultation with the offending country."<sup>132</sup> The United States has not yet made this move, but Secretary of Agriculture Glickman has warned that he wants the ban eliminated by the beginning of 1996.<sup>133</sup> The hormone treated beef trade dispute thus becomes a test case for the functioning of the WTO, GATT, and Codex. It remains to be seen how efficient the dispute resolution process will be if the United States presses the issue. Moreover, enforcement of a WTO ruling may present other interesting questions. The next step will likely occur when the Europeans make a determination at the upcoming conference or if the United States goes to the WTO.

## VI. THE ROLE OF ATTORNEYS IN RESOLVING INTERNATIONAL TRADE DISPUTES

Because legal issues are inherently intertwined in international trade disputes, lawyers, professors, and government officials all contribute to under-

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128. *Id.*

129. *Id.* The European Union adopted a five year ban on BST in December of 1994. *Canada, Canadian Firms React to BST Ban*, REUTER TEXTLINE, July 25, 1995, at 35.

130. *Id.* Britain alone made efforts to end the European ban on BST, but they were defeated by other European Union countries. *Britain's Lone Plea Fails to Lift the Ban on BST Injections*, THE SCOTSMAN, Dec. 14, 1994, at 27.

131. Ian Elliott, *EU Moves Toward Modifying Hormone Ban*, FEEDSTUFFS, Oct. 23, 1995, at 3.

132. *Id.* at 7.

133. *Id.*

standing and solving the problem.<sup>134</sup> With a globalized economy and a "fading importance of national sovereignty," governments must learn to cooperate.<sup>135</sup> Cooperation indicates the international system must have some mechanism for gathering diplomats and trying to establish rules or norms to resolve trade disputes.<sup>136</sup> In determining what rules should govern the world, individuals who understand national and international legal concerns are needed.<sup>137</sup> Thus, numerous opportunities exist for attorneys who understand international and national legal rules.

#### V. CONCLUSION

With growing economic interdependence and an increase in international trade issues, cooperation and understanding among nations becomes critical.<sup>138</sup> Although both the United States and the European Union have legitimate concerns regarding hormone treated beef, the best interests of both nations are likely furthered by a consistent international trade policy. Because GATT and Codex both play key roles in resolving the issue, much in the dispute will turn on how these groups view science, consumer perception, and national sovereignty.<sup>139</sup> Thus, regardless of how the issue is ultimately resolved, the hormone treated beef trade dispute provides an excellent backdrop for understanding international trade issues and the function of GATT, Codex, and other international organizations in resolving trade conflicts.

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134. Jackson, *supra*, note 4.

135. *Id.* at 449.

136. *Id.*

137. *Id.* at 432-33.

138. *Id.*

139. *Id.*