Order Code RS20142
Updated December 19, 2000



# The European Union's Ban on Hormone-Treated Meat

Charles E. Hanrahan
Senior Specialist in Agricultural Policy
Resources, Science, and Industry Division

## Summary

The European Union (EU) continues to ban imports of meat derived from animals treated with growth hormones despite rulings by World Trade Organization (WTO) dispute settlement panels that the ban is inconsistent with the Uruguay Round Agreement on health and safety measures used to restrict imports (the Sanitary and Phytosanitary or SPS Agreement). U.S. retaliation, authorized by the WTO, in the form of 100% duties on $116 million of EU agricultural products remains in effect while negotiations to resolve the dispute continue. Thus far, EU offers of compensation (trade concessions) for lost U.S. meat exports in lieu of lifting the ban have been rejected by the United States. This report will be updated as events warrant.

## Use of Hormones in Meat Production

Growth-promoting hormones are used widely in the United States, and in other meat-exporting countries, in beef production. In the United States, they are used on approximately 63% of all cattle and about 90% of the cattle on feedlots. In large commercial feedlots, their use approaches 100%.

Livestock producers use hormones because they speed up growth rates and produce a leaner carcass more in line with consumer preferences for diets with reduced fat and cholesterol. Growth-promoting hormones (manufactured in the form of implants to be placed behind the animal's ear) approved for use in the United States are compounds that either naturally occur in an animal's body or that mimic naturally occurring compounds. The U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) cooperate in regulating the use of implants. These agencies maintain that hormones in beef from an implanted animal have no physiological significance for humans at all.

## The EU Hormone Ban

The EU Commission enacted its ban on production and importation of meat derived from animals treated with growth-promoting hormones in 1985. The ban, however, did not take effect until January 1, 1989. The Commission justified the ban as needed to protect the health and safety of consumers from the illegal and unregulated use of hormones in livestock production in several European countries. During the 1980s, there were widespread press reports of black market sales of "hormone cocktails" by a "hormone mafia" as well as several reports of serious health effects from consuming meat from animals thus treated.

Political and economic considerations reinforced consumer concerns about the use of hormones and may have contributed to the Commission's decision to ban the their use. Beef has benefitted from both high domestic subsidies in the form of price supports and high tariffs to protect it from import competition under the EU's Common Agricultural Policy (CAP). This policy resulted in the accumulation of large, costly-to-store beef surpluses. Generous export subsidies complement high domestic price supports and tariff protection. By 1985, beef surpluses were so large that EU policy makers were supportive of any measure that would limit beef imports likely to compete with domestic production and interfere with the operation of the CAP.

Many European livestock producers support the hormone ban in part because they are concerned about competition from possibly cheaper imported beef from the United States and other beef exporting countries. Consumer resistance to hormone use also creates concerns among livestock producers about maintaining EU beef demand, affected in Europe as in the United States by preferences of many consumers for diets low in fat and cholesterol. Beef demand in the EU has also been reduced by more dramatic circumstances such as the outbreaks during the 1990s in British cattle herds of bovine spongiform encephalopathy (BSE), a fatal brain disease, commonly known as "mad cow disease." Scientifically established links between BSE and Creudzfeldt-Jakob disease (CJD), the human variant of BSE, add to consumer distrust about the safety of the meat supply. Discovery of BSE-infected cattle in a number of European countries in late 2000 has contributed further to an unfavorable political, economic and social environment for resolving the meat hormone dispute. Although BSE has nothing to do with hormones, many European beef producers are fearful of doing anything, like using hormones, that would give consumers another disincentive to buy meat.

In addition, EU agricultural policy makers are resistant to policies that might accelerate the contraction of the agricultural sector and the move of agricultural producers and workers to urban areas where rates of unemployment are high. In response to U.S. threats to challenge the ban in the WTO in early 1996, the European Parliament voted unanimously to keep it. The parliamentary resolution cited consumer worries, questions of animal welfare, meat quality, and effects of hormones on the EU's beef and milk sectors. EU farm ministers also responded to the U.S. threat (on January 22, 1996), by voting 14 to 1 to maintain the ban. Only the Minister of Agriculture of the United Kingdom, who argued that there was no scientific basis for maintaining the ban, voted to end it. On May 11, 1999, two days before the May 13, 1999 deadline to bring the hormone ban into compliance with WTO rulings, the EU Commission voted unanimously to continue the ban. More recently (May 24, 2000), the EU Commission announced legislation to ban one of the listed hormones indefinitely, and the others provisionally, in accord, the Commission

said, with Article 5.7 of the SPS Agreement which permits such provisional bans while information on risk is assessed.[1]

## U.S. Reactions

During 1986-1988, the United States challenged the ban in the Committee on Technical Barriers to Trade under the Standards Code of the General Agreement on Tariffs and Trade (GATT). The EU, however, succeeded in blocking resolution of the issue in the Committee's deliberations. When the ban entered into force on January 1, 1989, the United States retaliated by imposing tariffs high enough to prohibit $100 million of EU exports to the United States. These tariffs were applied to a number of EU agricultural products including tomatoes, citrus fruit, pasta, and hams.

Neither the United States nor the EU appeared to want the hormone dispute to erupt in an expensive trade war or to disrupt Uruguay Round negotiations, which had begun in 1986. To prevent these adverse consequences, a U.S.-EU task force was created in February 1989 with a 75-day deadline to find a solution. U.S. and EU negotiators reached what was termed an "interim agreement" on May 3, 1989. Under the agreement, the EU agreed to set up a certification system that would generate a list of U.S. producers of hormone-free beef who would qualify to export to the EU. Animals would arrive at U.S. slaughterhouses accompanied by affidavits to support the producers' claims of hormone-free beef. The Food Safety and Inspection Service (FSIS) of USDA would insure that animals came from producers certified by the EU system. U.S. retaliation on EU products would be reduced on an annualized basis by the amount of any beef or beef products shipped to the EU under the interim measure.

Although not entirely satisfactory to U.S. beef producers, the interim agreement prevented the outbreak of a trade war and provided for measured responses from both sides. During the 1990s, both sides looked to the Uruguay Round negotiations on food safety measures to provide some new basis for deciding the issue. U.S. livestock and meat producers and exporters continued to press the Administration to challenge the ban using various trade remedies, and, following negotiation of the Uruguay Round agreements, to challenge the ban on the basis that it violated the 1994 Uruguay Round SPS Agreement. Following its successful challenge of the ban on grounds that it violated the SPS Agreement, the United States since early 1999 has been pressing the EU to lift the ban or, as an interim measure, negotiate compensation for lost U.S. beef sales.

## The Uruguay Round Agreement on Sanitary and Phytosanitary Measures

The difficulty of speedily and effectively resolving disputes like the one over the use of hormones in meat production was one reason the United States negotiated vigorously in the Uruguay Round for stronger rules for dispute settlement and the use of SPS measures to restrict trade. Countries often apply such measures to imports based on considerations of food safety or protection of the health of people, animals, and plants;

---

[1] Article 5.7 of the SPS Agreement provides for provisional measures if scientific evidence is not available, but also that "Members shall seek to obtain the additional information necessary for a more objective assessment of the risk and review the sanitary and phytosanitary measures accordingly within a reasonable period of time."

however, there are concerns that these actions are often driven by protectionist sentiments, not the welfare of consumers. Not only did the United States and other participants in the Round seek clarification about the use of SPS measures in trade, they also sought speedier and more effective dispute settlement mechanisms for all trade disputes.

The SPS Agreement, which took effect in 1994, prescribes rules that require a scientific basis for measures that restrict imports on the basis of health or safety concerns. Each country may set its own food safety and animal and plant health standards based on risk assessment and its determination of an acceptable level of risk. Alternatively, countries may use international standards. The SPS agreement recognizes the right of countries to maintain standards that are stricter than international standards. However, stricter standards should be justified by science or by a nondiscriminatory lower level of acceptable risk that does not selectively target imports.

The SPS Agreement provides that the new dispute settlement procedures under the WTO apply also to disputes about food safety and health measures. As under the earlier GATT system, the WTO dispute settlement process begins with consultations between the affected parties and then proceeds to a panel of experts if necessary. Under both old and new rules, other parties may join in lodging a complaint if they have a material interest in the proceedings. In the case of the U.S. challenge to the EU's hormone ban, Australia and New Zealand joined with the United States in challenging the meat hormone ban. Canada, which separately contested the EU ban, also won a favorable judgment from the panel established to adjudicate its challenge.

Under the new procedures and in contrast to previous GATT procedures, a party cannot block the formation of a panel, and strict time limits are imposed on each step of the process. Once a panel has issued its report, no party to the dispute may block its adoption. However, one new aspect of the process is the right to appeal the panel's decision on questions of law or legal interpretation. One of the most significant changes in the process is that the complaining party automatically has the right to retaliate if the offending party does not implement the panel's recommendations within the agreed or arbitrated time limits. The offending party may still provide compensation in the event it does not withdraw the trade-restricting measure, but if satisfactory compensation cannot be agreed upon, the prevailing party may at that point invoke the new retaliation rule. The entire process, if followed through from initiation of consultations, through appeal, to implementation of a panel report, could take from 12 to 18 months, or longer if arbitration results in granting an offending party "a reasonable period of time" during which to implement WTO decisions.

Many trade analysts agreed that the United States had a strong case against the hormone ban based on the new WTO rules that require SPS restrictions to be based on risk assessment and have a scientific justification. The U.S. case also was reinforced by one of the major conclusions of an EU conference on the use of hormones in meat production held in Brussels in late 1995. The conference concluded that on the basis of experience and published data, there was "no evidence of human health risk arising" from the controlled use of five hormones: oestradiol beta 17, progesterone, testosterone, zeranol, and trenbolone. The conference did warn that illegal use of hormones was a global problem and that stricter controls were needed. Scientists in attendance also concluded that there was a need to coordinate better national control systems, target surveillance systems, and improve the efficacy of methods of detecting growth promoting substances, whether used

legally or illegally. Additional support for the U.S. complaint came earlier in 1995 (July) when the Codex Alimentarius Commission, an international organization that recommends food safety standards, voted to approve the use of natural hormones in meat production. As recently as February 1999, a joint United Nations World Health Organization and Food and Agriculture Organization scientific committee reexamined and confirmed the safety of three of the hormones used in cattle as it had done for five others in 1987.

## The WTO Panel Decisions

The WTO panel deliberating the U.S. challenge, initiated in April 1996, to the EU's meat hormone ban ruled (August 1997) that the ban violated several provisions of the SPS Agreement. First, the panel ruled that the it was not based on a risk assessment as required by the SPS agreement (Article 5.1 of the SPS Agreement). Secondly, the EU, "by adopting arbitrary or unjustifiable distinctions in the levels of sanitary protection it considers to be appropriate in different situations which result in discrimination or a disguised restriction on international trade, has acted inconsistently with the requirements..." of the SPS Agreement (Article 5.5). And thirdly, the panel concluded that the EU is acting inconsistently with respect to the SPS Agreement by maintaining sanitary measures not based on existing standards without basing them on a scientific justification (Article 3.1).

The EU appealed the ruling and on February 13, 1998, the Appellate Body of the WTO found that the EU ban did contravene the EU's obligations under the SPS Agreement, but left open the option to the EU of conducting a risk assessment of hormone-treated meat. A WTO arbitration panel ruled subsequently that 15 months (i.e., until May 13, 1999) from the date of the Appellate Body's decision would be a reasonable period of time during which the EU would bring its meat hormone ban into conformity with the panel's ruling.

Following both the panel and appellate decisions, the United States called for the immediate lifting of the ban. The EU, however, has kept the ban in place while it conducts its risk assessment. On May 13, 1999, the deadline by which the WTO had said the EU must comply with its ruling on the ban, the EU indicated that the ban would continue in force. The EU indicated that it could not complete the scientific studies in its risk assessment before the end of the year. Apparently as justification for continuing the ban, the EU Commission offered what it said was evidence that one of the U.S.-approved hormones is carcinogenic. U.S. trade and veterinary officials rejected the EU study, however. Its findings, they said, ignored and contradicted numerous scientific studies, including some by European scientists, that show "absolutely no human risks associated with consumption of beef from animals treated with growth -promoting hormones."

The EU offered to negotiate compensation, but the United States held to its position that compensation would be acceptable only as an interim solution until the EU lifted the ban. Trade policy officials in both the United States and the EU are under enormous political pressure from various interest groups to hold to their positions on the meat hormone ban. U.S. meat producers and exporters are concerned about the continuing loss of the EU as an export market for meat, especially beef, and the prospect that other countries might adopt meat import measures similar to those of the EU. In the EU, opposition to hormone-treated meat continues unabated.

During the 106th Congress, the African Growth and Opportunity Act (P.L. 106-200), included a so-called "carousel retaliation" provision which requires the Administration periodically to rotate, or change, the types of products targeted for trade retaliation. It is aimed primarily at maintaining pressure on the EU to resolve the meat hormone dispute (and another U.S.-EU dispute over banana trade[2]) by penalizing a wider range of foreign products and countries.[3]

Negotiations on compensation have been complicated. The EU's approach focuses on increasing the existing 11,500 metric ton quota for non-hormone treated beef and reducing the 20% in-quota tariff. U.S. exports have filled about 6,500 tons of this quota. Under a compensation scheme, U.S. retaliation would be reduced by the amount of the increased value of exports of non-hormone treated meat. The EU seeks sanctions relief especially for French exports, particularly hard hit by U.S. retaliation. The United States has continue to insist that compensation is an interim measure to be ultimately replaced by ending the ban.

Compensation negotiations were slowed by related disputes over detection of the presence of EU-listed hormones in U.S. shipments of presumably non-hormone treated beef and disagreements over tests, required in the EU but not in the United States, for additional chemical residues. Both these disputes were resolved and raised hopes that a compensation package might be negotiated. However, U.S. beef producers became disenchanted with the compensation negotiations when (May 24, 2000) the EU Commission announced that it was banning outright one of the hormones and that the ban on the others would be maintained provisionally. These new regulations would become effective July 2001. Meat industry representatives expressed concerns that such an approach meant that the EU would in the future ask for WTO approval to remove the U.S. retaliation (and thereby end the compensation) because the ban would then accord with WTO rules.[4] The prospect of ending compensation without lifting the ban, according to the meat industry representatives, would be a disincentive for the industry to invest in the additional production of non-hormone treated beef needed to fill an expanded quota.

Resolution of the hormone dispute could remove a critical irritant to the overall U.S.-EU trade relationship.[5] How it is resolved will have important implications for future WTO disputes involving the use of SPS measures to restrict trade. The WTO meat hormone decision, the first to deal with SPS measures, is a strong affirmation of the Uruguay Round SPS Agreement and its requirements that countries base their SPS measures on scientific justification and risk assessment. Beyond that, this case is a critical test of the durability of internationally agreed upon rules and procedures that are in conflict with popular concerns and national political decisions.

---

[2] *The U.S.-European Union Banana Dispute*, CRS Report RS20130.

[3] *Trade Retaliation: the "Carousel" Approach*, CRS Report RS20751, October 27, 2000.

[4] Industry Letter on U.S.-EU Beef Talks, *Inside U.S.* Trade, November 10, 2000.

[5] *Trade Conflict and the U.S.-European Union Economic Relationship*, CRS Report RL30732, November 8, 2000.

.

: