INTRODUCTION

In the course of the 1990s, trade in hormone-treated beef has lingered as an irritant in the conduct of trade relations between the United States and the European Union. In 1998, the World Trade Organization’s (WTO) Appellate Body issued a decision in the dispute that unfortunately did not definitively settle matters and with which, to date, the European Union has failed to comply. By allowing for measures based on a sufficient risk assessment without setting a certain threshold, the opinion arguably has served to weaken the WTO Sanitary and Phytosanitary Agreement. As a result, the European Union has been able to retain certain of its arguments based on the precautionary principle.

Simultaneously, trade in agricultural goods must be revisited in accordance with the WTO Agreement on Agriculture. To the apprehension of nations with highly protected agricultural markets, the time has come to consider imposing greater discipline and further liberalization on this traditionally problematic area. Not surprisingly, the European Union has called for renewed consideration of the precautionary principle in the New Round of multilateral trade negotiations, while also stressing other nebulous concepts, such as the multifunctionality of agriculture. As one foreign negotiator in Geneva is reported to have said: “It is as if the EU is sitting at a poker table trying to bluff with a pair of twos when everyone in the room knows that is all they have got.”

This chapter will therefore explore the links between the Appellate Body’s decision in the Beef Hormones case and the European Union’s
current negotiating position on agriculture in entering the New Round. The first section considers the Beef Hormones case, including its origins, the decisions in the WTO dispute settlement process, the latest developments, and the EU interpretation of the decisions. This section also includes an overview of the WTO Agreement on Agriculture and of some of the current trends in agriculture within the European Union. The next section introduces the various elements of the EU negotiating position on agriculture in the New Round, including the concept of multifunctionality, clarification of the precautionary principle, and consideration of animal welfare issues. This section also presents the negotiating positions of the United States and the Cairns Group, both in opposition to the European Union. A third section discusses and critiques the EU negotiating position in the realm of agriculture, while also trying to offer certain solutions and approaches to be pursued in the New Round. A brief conclusion follows these sections.

THE BEEF HORMONES DISPUTE AND THE AGRICULTURE AGREEMENT

The Beef Hormones Case

Since at least the 1950s, hormones have been used to varying extents in parts of Europe and throughout the United States in the production of beef. They may be characterized either as natural hormones produced endogenously by animals, including estrogen, progesterone, and testosterone, or as synthetic hormones, including trenbolone acetate, zeranol, or melengestrol acetate. Whether natural or synthetic, hormones promote growth in beef cattle through the more efficient absorption and conversion of feed into muscle. The resultant benefits of using hormones in the production of beef, including a greater proportion of lean meat to fat and a decrease in the time required for cattle to reach market weight, translate into quantifiable economic benefits for beef producers. Thus, beef producers who use hormones can be more efficient and more competitive than hormone-free beef producers.

Origins of the Beef Hormones Dispute

Within the European Union, regulation of the use of hormones in the production of meat varied among the member states until the early 1980s. However, following incidents in which children were adversely affected by the consumption of veal containing a specific hormone, consumer boycotts and the restriction of imports among certain member states prompted the European Community (EC) authorities to enact legislation restricting the use of hormones in the production of meat in 1981.2

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2 Council Directive of July 31, 1981, concerning the prohibition of certain sub-