CHAPTER 11

FINE-TUNING WTO JURISPRUDENCE AND
THE SPS AGREEMENT TO IMPROVE TRADE
INTEGRATION AND HARMONIZATION

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INTRODUCTION

In 1989, the European Economic Community (the EC) implemented Council Directive 96/22, a law prohibiting the import of beef treated with growth hormones. Specifically, as amended in 1996, the directive “prohibits the administration of certain growth promoting hormones to farm animals, bans the sale of domestic and imported meat from animals that received these hormones, and allows an exception for meat from animals that received hormone treatment for therapeutic and zootechnical purposes.” The ban includes three synthetic hormones, trenbolone acetate (TBA), zeranol, and melengestrol acetate (MGA), and three natural hormones, oestradiol-17 beta, progesterone, and testosterone. It is widely recognized that there is little scientific evidence supporting this ban. Since the 1950s, the many studies that have been done worldwide regarding the health impact of these hormones, including those of the EC, have indicated that the proper administration of these hormones presents “no

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1 In 1992, the European Economic Community (EEC) became the European Community (EC).


5 See Charnovitz, supra note 2, at 1781.
indications of a possible human health risk." In 1996, the United States and Canada filed complaints against the EC import ban with the World Trade Organization (WTO) under the recently implemented Agreement on the Application of Sanitary and Physosanitary Measures (the “SPS Agreement” or “Agreement”).

On August 16, 1997, a WTO dispute settlement panel (the “Panel”) issued its report, finding that this EC ban violated the SPS Agreement. In particular, it found that the EC ban was neither based on a risk assessment nor based on existing international standards. The EC appealed this ruling. The WTO Appellate Body (the “Appellate Body”) released its opinion on January 16, 1998. It agreed with the Panel’s finding that SPS measures must be warranted by an appropriately conducted risk assessment, and that the EC hormone ban was not based on such a risk assessment. However, in disagreement with the Panel, the Appellate Body found that the hormone ban was not inconsistent with international standards.

In the last decade, much has been written about the EC hormone ban, and the Panel’s and the Appellate Body’s decisions have been repeatedly analyzed—and criticized. The commentators who favor greater trade liberalization and harmonization of SPS standards critique the Appellate Body’s ruling as having taken much of the SPS Agreement’s thunder and reducing it from a powerful mandate into a precatory suggestion. The greater number of commentators have questioned and critiqued the SPS Agreement as insufficient to deal with global environmental issues. Though they generally breathed a sigh of relief at the Appellate Body’s overruling of the much more strident interpretations by the Panel, these commentators claim that this case has proved just how incapable the WTO is of dealing with cases that involve complex scientific and greater environmental issues.

This chapter argues that the SPS Agreement was not drafted with the intent of being an environmental treaty, and that concern about it weakening member countries’ ability to protect the environment is misplaced. Further, harmonization of SPS standards is a worthy goal that should be pursued. While the SPS Agreement is not perfect, and its force has been weakened by the WTO Appellate Body’s ruling in the Beef Hormones case, it is still the best tool the WTO has to further the goal of harmonization.

The WTO Dispute Settlement Body, like any domestic court, is able to

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7 Hughes, supra note 3, at 917.

8 McNeil, supra note 6, at 91.

9 Id.

10 Id at 92.