INTRODUCTION

People have highly complex and personal reasons behind their dietary decisions. In several countries, consumers are taking an increasing interest in how food is produced, and this interest is only partially based on health concerns. Increasingly, consumers seek information about how production methods affect the environment. Other production-related concerns may be based on religious, moral, or cultural values. Where consumers wish to differentiate between food products based on varying methods of production, the World Trade Organization (WTO) should not prevent governments from mandating accurate labeling. To deny consumers the information they seek is to manipulate the market.

In this chapter, I propose that governments should be allowed to mandate informational labels that address food production methods. I explore two areas of ongoing controversy in food production methods: hormone treatment of beef and genetic modification of agricultural products. I first discuss the background of the hormone dispute, and review the WTO Appellate Body’s decision with respect to the EU’s “precautionary principle” rationale. I then summarize the current state of this ongoing dispute, and suggest mandatory labeling as a solution. I discuss various consumer concerns over hormone-treated beef to demonstrate that many of the concerns are not based on food safety. A parallel examination of the controversy surrounding genetic modification of agricultural products follows.

2 See id. at 28.
I then explain why the mandatory labels discussed herein should not be deemed food safety measures, which are governed under the Agreement on the Application of Sanitary and Phyto-Sanitary Measures (SPS). Instead, the Agreement on Technical Barriers to Trade (TBT) should govern labels that address multiple consumer concerns. The SPS and the TBT are essentially mutually exclusive in the types of measures that they cover, and, apparently, if a measure has any health safety component, the SPS governs in the event of a dispute over that measure. I argue that this leads to perverse outcomes, and that, where a measure serves multiple purposes, the TBT should govern. The consumers’ right to know is an adequate and legitimate basis for purely informative food labeling, even if that labeling strictly concerns the method by which food is produced. When consumers have concerns about particular methods of food production, international trade rules should not prevent governments from enabling their citizens to make informed choices about the food that they buy.

HORMONE USE IN THE CATTLE INDUSTRY

The beef hormones dispute is a small part of a far larger clash between different approaches to agriculture. The dispute raises many questions about who ultimately determines agricultural practices and sets standards and how best to meet the concerns of consumers. The hormone dispute is complex because it involves elements of protectionism on both sides (putative safety regulations that aim to serve multiple purposes), and has led to enormous consumer uproar and distrust on one side of the Atlantic, and apparent consumer apathy on the other.

Farmers use hormones to make their cattle grow at a faster rate. This allows them to save money on feedstock. The use of hormones in cattle is widespread in the United States, and the practice purportedly gives U.S. farmers a 15% cost advantage over EU farmers. Under 10% of U.S. farmers do not treat their beef with hormones, but a niche market has developed in this country for untreated beef. As in Europe, American consumers cite potential health effects among an array of other reasons for their opposition to hormone-treated beef. Other reasons include concerns over animal cruelty, support for small, local farmers, and opposition to agricultural practices that consumers consider unnatural. Most Americans

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4 Agreement on Technical Barriers to Trade, available at http://www.wto.org [hereinafter “TBT Agreement”].
