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Adrian Rafael Halpern

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The U.S.-EC Hormone Beef Controversy and the Standards Code: Implications for the Application of Health Regulations to Agricultural Trade

I. Introduction

Effective January 1, 1989, the European Community (EC) banned all trade in beef treated with growth hormones (hormone beef). This ban resulted in the United States losing an export market valued at approximately 145 million dollars per year. The Europeans claim the ban is needed to protect consumers from possible health risks associated with these hormones. U.S. trade officials, however, have charged that the ban is not based on scientific evidence and is in actuality the institution of an unjustified nontariff trade barrier (NTB). The United States retaliated by imposing tariffs on European imports designed to equal the estimated damage to American beef exports.

This Comment examines the implications of the EC's decision to ban trade in hormone beef in the context of the Agreement on Technical Barriers to Trade (Standards Code or Code), an agreement concluded in 1979 during the Tokyo Round of trade negotiations within the General Agreement on Tariffs and Trade (GATT).

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2 The Directive technically applies to all livestock, but since the European concern and the current trade controversy have been over the Directive's application to beef in particular the Directive will be discussed primarily in that regard.

3 Montgomery, supra note 1.

4 The EC Directive itself carefully skirts this issue, however, and uses a free trade rationale to justify the ban. See infra notes 22-27 and accompanying text.


6 Montgomery, supra note 1.


8 The Standards Code was one of six codes of conduct adopted in the Tokyo Round to address nontariff barriers to trade. Stern and Hoekman, The Codes Approach, in THE URUGUAY ROUND: A HANDBOOK ON THE MULTILATERAL TRADE NEGOTIATIONS 59, 59 (1987). None of the rules contained in the new codes could have been incorporated into the GATT in the form of an amendment to the General Agreement since such an amendment would have required the consent of two thirds of the member countries . . . Only through separate codes, therefore, was it possi-
The United States and the EC have tried, thus far unsuccessfully, to resolve their dispute over the EC's hormone beef legislation through application of this Code. This Comment will highlight substantive and procedural shortcomings of the Standards Code that have been manifested by the hormone beef controversy, placing greater emphasis on the ramifications of the substantive deficiencies.

The current dispute is interesting from an international law perspective not only because of the specific trade conflict itself but because of the questions it raises about the weight that should be given to public health policy questions in international trade agreements. Specifically, what level of health risk warrants trade restrictions on agricultural products? This Comment points out that health risk assessment of food additives is problematic, and suggests that in a world of rising consumer concern over healthy food the problem of food additives may be incapable of being adequately addressed through the present Code.

II. The EC Directive


The Council of Agriculture Ministers9 of the European Communities decided in December 198510 to ban the sale or importation of animals and meat from animals raised with growth hormones.11 This decision was a response to "mounting public concern in Europe over the use of [growth] hormones in animal production."12 Environmentalists and consumer groups had been preoccupied for years

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11 The hormones include natural sex hormones like estrogen and testosterone, as well as synthetic ones. Kolata, Hormone-treated Beef Toned Generally Safe, N.Y. Times, Jan. 1, 1989, at 22, col. 1. A one dollar hormone pellet "can save $20 in fattening costs and cut the feeding period by 18 days, increasing the number of animals that can be fattened at a feed lot each year." Freudenheim, Beef Dispute: Stakes High in Trade War, N.Y. Times, Jan. 1, 1989, § I, at 1, col. 3. "A typical steer or heifer being fattened for slaughter will gain 50 more pounds in lean meat rather than fat if a hormone pellet is implanted [in its ear], and it will eat four fewer bushels of corn." Id. Estimates of the usage of hormones in the United States vary from 50 to 55% of U.S. cattle. Ross, U.S. Assails Import Plan to Ban Treated Beef, Christian Sci. Monitor, Nov. 21, 1988, at 3, to 70 to 90%. Freudenheim, supra. Growth hormones are estimated to save the U.S. meat industry upwards of $650 million a year. Id.
12 U.S. Assails Import Plan, supra note 5.
with the use of growth hormones in animal production and had waged a "long battle" in the European Parliament\textsuperscript{13} to have the ban enacted.\textsuperscript{14}

European worries were first raised in 1981 when a number of infants in Italy became ill after eating baby food contaminated with a synthetic estrogen.\textsuperscript{15} None of the infants died,\textsuperscript{16} but the effects nevertheless were dramatic. "Infants of both sexes developed breasts, for example, and some infant girls began menstruating."\textsuperscript{17}

The outcry over this incident was great, obscuring the fact that the hormone used by the Italian farmers had already been banned in both Europe and the United States and had been illegally purchased by the farmers on the black market.\textsuperscript{18} An inquiry into the use of other hormones in meat was ordered by the European Commission, "but . . . [the] committee of inquiry was disbanded when it became clear it would find no evidence beef-fattening steroids were damaging to humans."\textsuperscript{19} At the time, Franz Andriessen, the EC's farm commissioner, said, "Scientific advice is important, but it is not decisive. In public opinion, this is a very delicate issue that has to be dealt with in political terms."\textsuperscript{20}

\section*{B. The Language of the Directive}

The language of the EC Directive\textsuperscript{21} "prohibit[s]" the "use of hormonal substances for fattening purposes,"\textsuperscript{22} and requires EC member states to "prohibit importation from third countries of animals and of meat from animals to which [hormonal substances] have been administered in any way whatsoever . . . ."\textsuperscript{23} The rationale for the ban is not based on the perceived health effects of growth hormones, the "assessments" of which, the Directive acknowledges,

\begin{itemize}
  \item \textsuperscript{13}"The European Parliament . . . is the Community's only directly elected body. Its 518 members debate issues, question the Commission and the Council, and scrutinize proposed legislation . . . . [It] has not been given legislative powers like those of national parliaments." \textsuperscript{The E.C. Office of Press and Public Affairs, supra note 9.}
  \item \textsuperscript{16}Mackenzie, \textit{supra} note 15.
  \item \textsuperscript{17}Kolata, \textit{supra} note 11.
  \item \textsuperscript{18}\textit{Id.}
  \item \textsuperscript{19}Mackenzie, \textit{supra} note 15; see also Freudenheim, \textit{supra} note 11.
  \item \textsuperscript{20}Freudenheim, \textit{supra} note 11 (emphasis added). According to one commentator, the EC's decision to ban growth hormones marked "the first time the EC took into account the interests of consumers." Hunter, \textit{Francois Lamy: How France's Nader Won Ban on Hormone-Treated Meat}, Wash. Post, Dec. 25, 1988, at H3, col. 1.
  \item \textsuperscript{21}"Directives are binding on the Member States to which they are addressed as regards the results to be achieved, but leave the form and methods of achieving it [sic] to the discretion of the national authorities." E. Noël, \textit{supra} note 9, at 7.
  \item \textsuperscript{22}Council Directive, \textit{supra} note 1, Preamble, 228.
  \item \textsuperscript{23}\textit{Id.} at art. 6, ¶ 1, at 230.
\end{itemize}
“vary.” Instead, the ban is principally grounded on a somewhat disingenuous free trade argument.

The Directive notes that various EC member states had enacted differing regulations on the use of growth hormones, and asserts that the variations in these regulations “distort[ed] the conditions of competition in [animal] products” and was “a serious barrier to intra-Community trade.” The only solution which would overcome the distortions, reasons the Directive, is one which would create “identical conditions of supply and ... correspond to ... [consumer] anxieties and expectations ....” However, it is clear to all parties involved that the primary concern of the EC Council of Ministers in writing the Directive lay elsewhere, namely in the health effects to humans of hormone beef. The controversy has accordingly revolved around this issue.

C. The U.S. Response

As noted above, the U.S. views the ban on the importation of hormone beef as an unjustified nontariff barrier to trade. The United States bases its argument on the language of the Standards Code, a document to which the United States and the members of the EC, both individually and collectively, are signatories. The Code prohibits the imposition of technical specifications that act as barriers to trade.

III. The Standards Code

The Standards Code entered into force on January 1, 1980. The Code was an outgrowth of concern over NTBs that had been mounting in the decades prior to its enactment. Though quanti-
fying the effects of such NTBs is "most difficult," in the latter part of the 1970s their usage was considered responsible for having "increasingly distortive effects on world commerce." Prior to the enactment of the Standards Code one type of NTB—technical barriers to trade—was "subject to virtually no multilateral supervision" despite it being one of the more "numerous" NTBs. The Standards Code was enacted to establish oversight in this area. Agricultural products are specifically covered by the Code.

A. The Substantive Language of the Standards Code

The Standards Code "does not attempt to create or harmonize regulations or standards for individual products," rather, it is designed to ensure that newly imposed "technical regulations and standards do not create unnecessary obstacles to international trade." Technical regulations are "technical specification[s] . . . with which compliance is mandatory." Standards are "technical specification[s] approved by a recognized standardizing body . . . with which compliance is not mandatory."

The operative phrase here is, of course, "technical specification." A technical specification is "[a] specification contained in a document which lays down characteristics of a product such as levels of quality, performance, safety or dimensions. It may include, or deal ex-

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34 Middleton, supra note 33, at 201; see also S. Metzger, supra note 33, at 7.
35 GATT Activities in 1978, at 29, Sales No. GATT/1979/2 (1979). In part, this situation existed because "all of the pre-GATT domestic legislation of each of the twenty-three original (by 1973, eighty-three) signatories that required the imposition of non tariff barriers to international trade was protected by a [GATT] grandfather clause from being considered in violation of GATT." S. Metzger, supra note 33, at 3.
36 Middleton, supra note 33, at 201. See also Bernier, Product Standards and Non-Tariff Obstacles: The GATT Code on Technical Barriers to Trade, in Non-Tariff Barriers After the Tokyo Round 195, 195 (1982).
37 Middleton, supra note 33, at 201. An inventory of non tariff barriers that was taken in the years following the Kennedy Round was one-fifth composed of technical barriers to trade. Nusbaumer, The GATT Standards Code in Operation, 18 J. World Trade L. 542, 542 (1984).
38 Standards Code, supra note 7, at art. 1, ¶ 3, at 414.
40 "The Code is prospective in effect, so there is no obligation to alter existing standards." E. McGovern, International Trade Regulation: GATT, the United States and the European Community 176 (1982).
41 Standards Code, supra note 7, Preamble, 413 (emphasis added).
42 Id. at Annex 1, ¶ 2, at 433.
43 Id. at ¶ 3, at 433 (emphasis added).
clusively with terminology, symbols, testing and test methods, packaging, marking or labelling requirements as they apply to a product.'

Though the Standards Code defines a difference between technical regulations and standards, this difference does not, on its face, create a distinction for dispute resolution purposes. The "consider[ation] that any benefit accruing to . . . [a party], directly or indirectly, under . . . [the] Agreement is being nullified or impaired, or that the attainment of any objective under . . . [the] Agreement is being impeded, by another Party or Parties" will allow an aggrieved party to invoke the consultation and dispute settlement provisions of the agreement. Consequently, whenever a party to the agreement enacts regulations or standards that may "have the effect of creating unnecessary obstacles to international trade" that party may be subject to consultation and dispute settlement proceedings instituted by the adversely affected party.

The Standards Code also recognizes that a party may "consider" that other parties are attempting to "circumvent" the agreement "by the drafting of requirements in terms of processes and production methods (PPMs) [which are not covered by the Code] rather than in terms of characteristics of products." In such cases the "considering" party may also invoke the agreement's dispute settlement procedures.

B. Dispute Resolution

The Code's dispute resolution process begins with consultations between the affected parties. If the consultations prove fruitless they "shall" be followed, "at the request of any Party to the dispute," by a Committee investigation of the matter. Should no "mutually satisfactory solution . . . [be reached] within three months of the request for the Committee investigation . . . any Party to the dispute" may request the Committee to establish either a technical expert

44 Id. at ¶ 1, at 433 (emphasis added).
45 Id. at art. 14, ¶ 2 & 4, at 426 (emphasis added).
46 Generally speaking, standards are enacted by nongovernmental bodies. Nonetheless, if the "standards-related activities [of such bodies] are found to create unnecessary obstacles to international trade, the party in whose territory such . . . bodies are located would be subject to code proceedings." Foster, The MTN Codes in the GATT Ministerial, in Managing Trade Relations in the 1980's 65-66 (1983). See also Standards Code, supra note 7, at art. 14, ¶ 24, at 429. This "second level" of obligations for governments party to the Code is "rare in GATT." Nusbaumer, supra note 37, at 543.
47 Standards Code, supra note 7, at art. 2, ¶ 1, at 414 (emphasis added).
48 Id. at Annex 1, ¶ 1, at 433. But see infra notes 88-109 and accompanying text.
49 Id. at art. 14, ¶ 25, at 429.
50 Id.
51 Id. at ¶¶ 1, 2 & 4, at 426.
52 Id. at ¶ 4, at 426. A Committee investigation of the hormone beef dispute was begun on May 22, 1987. Bodies Established, supra note 31, at 176, ¶ 12.
group\textsuperscript{53} or a panel\textsuperscript{54} of "government officials knowledgeable in the area of technical barriers to trade and experienced in the field of trade relations and economic development"\textsuperscript{55} to examine the matter further. Upon receiving either request the Committee "shall establish" the requested investigative body.\textsuperscript{56}

Both technical expert groups and panels are required to make "findings" but the focus of the findings differ. The findings of technical expert groups are to be concerned with "the detailed scientific judgments involved, whether the measure \textit{was necessary} for the protection of human, animal or plant life or health, and \textit{whether a legitimate scientific judgment is involved}"\textsuperscript{57}. The findings of the panels of government officials are generally "concerned with broad trade-policy issues"\textsuperscript{58} and are to "assist the Committee in making recommendations or giving rulings on the matter."\textsuperscript{59}

The last step in the dispute resolution process is the authorization of suspension of Code obligations. If the Committee on Technical Barriers to Trade\textsuperscript{60} believes "that the circumstances are serious enough to justify such action, it may authorize one or more parties to suspend, in respect of any other Party, the application of such obligations under th[e] Agreement as it determines to be appropriate in the circumstances."\textsuperscript{61}

The dispute resolution procedure of the Standards Code, like those of the other codes adopted in the Tokyo Round, places a greater emphasis on timely resolution of disputes than the GATT. For example, consultations between parties are to be "prompt;" until very recently the GATT contained no such advisory adjectives for the timeliness of consultations.\textsuperscript{62} More importantly, the establishment of technical expert groups and panels is mandatory, rather than

\textsuperscript{54} \textit{Id.} at art. 14, ¶¶ 14-18, at 427-28, and Annex 3, at 437.
\textsuperscript{55} \textit{Id.} at Annex 3, at 437.

\textsuperscript{57} \textit{Id.} at ¶ 9, at 427 (emphasis added).
\textsuperscript{58} Middleton, \textit{supra} note 33, at 217.
\textsuperscript{60} \textit{Id.} at art. 13, ¶ 1, at 425.
\textsuperscript{61} \textit{Id.} at art. 14, ¶ 21, at 428.
\textsuperscript{62} Middleton, \textit{supra} note 33, at 216. In April 1989 the GATT adopted new measures designed to improve the speed of its procedures; "the new measures impose time limits on
merely advisory, as it is in the GATT. Nonetheless, the Code, like the GATT, suffers from the absence of effective sanctions. The most severe punishment that can be meted out by the Committee on Technical Barriers to Trade is to authorize one party to suspend its obligations to another. Suspension of obligations has been authorized only once under the GATT, and there is slim likelihood of it ever being authorized under the Code. R.W. Middleton points out that in the case of standards

the notion of suspension of obligations is largely illusory... Implementation of the Code provisions on standards is likely to be of general benefit to all countries, and not only to the parties to the Code; it is difficult to see how, in practice, such benefit can be withdrawn against one party only.

Given the absence of effective sanctions, the Code's enforcement must depend primarily upon the moral suasion of the Code's free trade ethic and the desire of signatories to avoid diplomatic conflict. Though some observers feel the Code has done well in this respect, the hormone beef dispute has not been one of its success stories.

IV. Application of the Standards Code to the EC Directive

Following fruitless consultations with the EC on the hormone beef ban, in July 1987 the United States invoked the Code's Article 14.9 dispute resolution settlement procedures for the creation of a technical expert group. U.S. officials wanted the group to determine whether the EC Directive had any scientific validity and whether the ban could have been written as a technical specification, rather than as a production method. The United States felt that if the latter were shown then this would be some evidence of circumvention of the Code.

The EC blocked this effort, wanting instead the establishment of a panel of government officials to examine solely the question

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63 De Lacharrière, supra note 56, at 127.
64 Note, The GATT Dispute, supra note 56, at 90.
65 See supra note 61 and accompanying text.
66 Note, The GATT Dispute, supra note 56, at 86-7 & 90.
67 Middleton, supra note 33, at 217 n.11.
68 Lawrence Eicher sees the relative informality of the Code as being one of its "major strength[s]. . . . A simple reference to the possibility of making use of the dispute settlement procedures of the code is incentive enough for the parties to arrive at a gentleman's agreement." Eicher, supra note 39. In 1985, for example, the Code's dispute settlement mechanism was not even invoked. GATT ACTIVITIES IN 1985, at 29, Sales No. GATT/1986-2 (1986).
69 Bodies Established, supra note 31, at 176, ¶ 12.
70 Freudenheim, supra note 11; Moore, supra note 25. See also infra notes 88-109 and accompanying text for a discussion of processes and production methods.
71 Moore, supra note 25 (May 16 and 17, 1989).
whether it was attempting to circumvent the Code.\textsuperscript{72} The United States, in turn, rejected this EC maneuver.\textsuperscript{73} Stalemate has resulted. As of late spring 1989 formal dispute settlement talks have gone on for almost two years and proper application of the dispute settlement procedures of the Code to the hormone beef ban remains in dispute.\textsuperscript{74} This suggests there are some serious weaknesses in the Code's dispute settlement procedures.

\textbf{A. The Circumvention Issue}

The United States notes that the language of Article 14.25 allows the invocation of the Code's dispute settlement procedures whenever a party "considers" there has been a circumvention of an "obligation" under the Code through the use of PPMs for the drafting of technical regulations.\textsuperscript{75} The United States asserts that this "consideration" is a self-judging criteria.\textsuperscript{76} To the Americans the threshold for the invocation of the dispute settlement procedures is a subjective one, a view held by one party about the effects of another party's trade policies. The United States believes that the next step after a party invokes Article 14.25 is an assessment of the merits of its grievances.\textsuperscript{77}

\textsuperscript{72} Moore, supra note 25. A spokeswoman for the Washington, D.C. office of the EC Commission refused to comment on any particulars of the hormone beef controversy, citing their "technical nature." Telephone interview, June 1, 1989.

\textsuperscript{73} Moore, supra note 25. In February 1989 the U.S. blocked a second attempt by the EC to establish a panel. U.S. officials stated that they wanted to see the ban's scientific validity addressed first, which the EC has refused to agree to. Williams, \textit{U.S. Again Blocks EC Bid for Panel on Beef Dispute}, 379 J. Com. Com., Feb. 10, 1989, at 1A, col. 5.

Note that the EC and the United States were able to block the creation of a technical expert group and a panel, respectively, despite the seemingly mandatory language of Articles 14.9 and 14.14, which state that the Committee "shall establish" such bodies "upon the request of any party to the dispute" (emphasis added). Here the informality of the Code which Eicher refers to appears to be a hindrance toward dispute resolution, rather than a strong promoter of it. Eicher, supra note 39.

\textsuperscript{74} Telephone interview with Robert Boehme, a trade officer in the Bureau of European Affairs, U.S. State Department (Mar. 30, 1989). The nub of the problem may be found in the conflicting ends desired by the parties. Guy Ladreit De Lacharrière notes a close connection between the "improper operation" of GATT dispute settlement procedures and the feeling of "at least one of the parties to the dispute . . . that the procedures are being applied to inappropriate rules . . . whose application is . . . not desirable." De Lacharrière, supra note 56, at 130.

The Code has no mechanism to break this sort of deadlock. In this the Code does not differ very much from the GATT itself, in which

\begin{quote}
[t]he objective remains the formulation of a mutually satisfactory solution, concern for which continues to take precedence over pure and simple regard for compliance with the law . . . .

It is still believed that any sanctions against a contracting party would be inadvisable, both as regards the general objectives of the GATT (maximum liberalization of trade) and as regards effectiveness (very doubtful deterrent effect).
\end{quote}

De Lacharrière, supra, 128-29.

\textsuperscript{75} Moore, supra note 25. See also Standards Code, supra note 7, at art. 14, ¶ 25, at 429.

\textsuperscript{76} Moore, supra note 25. See also Standards Code, supra note 7, at art. 14, ¶ 25, at 429.

\textsuperscript{77} Moore, supra note 25.
The Europeans do not agree. They maintain that consideration of circumvention should not be self-judging.\textsuperscript{78} The word "circumvention" itself, they say, implies an intent requirement which one party should not have the right to unilaterally assert about another party.\textsuperscript{79} Central to an examination of the circumvention issue, according to the Europeans, is a demonstration of an intent to circumvent the Code.\textsuperscript{80} Only once this is done should the technical aspects of the matter be addressed. In the case of the EC Directive, say the Europeans, the requisite intent simply does not exist because the Directive does not operate unfairly against foreigners; all livestock producers—both domestic and foreign—are equally affected.\textsuperscript{81}

Insofar as the language of the EC Directive is nondiscriminatory, it is in accord with the free trade goals of the GATT.\textsuperscript{82} One of the basic premises of the GATT is that "[t]he products . . . of any contracting party imported into . . . any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin . . . ."\textsuperscript{83} The language of the EC directive also dovetails nicely with the more subjective nondiscriminatory trade spirit of the Standards Code set out in Article 2.1 of the Code: "Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade."\textsuperscript{84} So far the United States has been unable to show that a

\textsuperscript{78} Id. This dispute over the consideration of circumvention is an excellent example of what De Lacharrière noted as the potential for breakdown in dispute settlement procedures when they are applied to what one party sees as inappropriate substantive rules. De Lacharrière, supra note 56.

\textsuperscript{79} Moore, supra note 25.

\textsuperscript{80} Id.

\textsuperscript{81} Id. Cf. Europeans Critize U.S. Over Sanctions, N.Y. Times, Dec. 29, 1988, at D12, col. 4 (reporting comments of Willy de Clercq, the Community's Minister for External Relations). This argument confounds the traditional criticisms of technical regulations, criticisms which usually attack the "unequal impact [of technical regulations] on domestic and foreign products and their excessive severity." Bernier, supra note 36.

\textsuperscript{82} Kenneth Dam, writing 15 years before the passage of the EC Directive, presciently described a law that would not violate GATT. He gave the example of a domestic law [that] prescribes the kinds of coloring materials that may be used in food, whether domestic or foreign in origin. These coloring materials are the conventional ones used domestically. Certain foreign producers or canners use, however, other coloring materials. Under these facts it would be stretching the point to say that national treatment is not accorded on food imports. K. Dam, THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION 194 (1970)(emphasis added). Frieder Roessler is in accord. He notes that while the GATT aims at integration among markets, it has made practically no efforts . . . to harmonise the interventions within markets. As a result the Contracting Parties have retained almost complete freedom as regards their domestic trade policies; that is, policies which make no distinction between the origin or destination of goods . . . .

Roessler, supra note 8, at 76 (emphasis added).


\textsuperscript{84} Standards Code, supra note 7, at art. 2, ¶ 1, at 414 (emphasis added). Note that this
principal impetus for the EC decision was the creation of an obstacle to international trade in hormone beef, as opposed to the adoption of a set of value preferences\(^8\) for hormone-free beef.

Technically, however, the United States need not win on the discrimination point to carry the day on the circumvention issue. A look at the relationship between Article 14.25 and Article 2.1, which contains "the principle obligations of the Code on technical regulations,"\(^8\) demonstrates why. Article 2.1 enunciates that the Code embraces more than intentionally discriminatory trade actions. Its ambit extends also to technical regulations which simply "have the effect of creating unnecessary obstacles to international trade."\(^8\) Because Article 14.25 covers all "obligations" under the Code, the circumvention language therein applies equally to trade actions with unintentional effects. In view of this, the European argument regarding intent loses much of its force.

**B. The Processes and Production Methods Issue**

A second argument raised by the Europeans goes to the substantive aspects of the Code. It is the assertion that the Code simply does not cover processes and production methods\(^8\) and, as a consequence, does not extend to the hormone beef controversy. The argument over PPMs, considered to be "the major interpretive issue" of the Code,\(^8\) is based upon an explanatory note to Annex 1\(^9\) that excludes from the Agreement "codes of practice,"\(^9\) a synonym for processes and production methods.\(^9\) To the Europeans, the Code only covers regulation of the "characteristics" of the end product.\(^9\) Their position is that the use of growth hormones in cattle raising is a production method, not a characteristic, and as such does not fall

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\(^8\) The author is indebted to Professor Patrick J. Conway, Department of Economics, University of North Carolina at Chapel Hill, for the observation that the European decision reflects the adoption of a value preference which, given its applicability to all producers, is not inconsistent with attaining full gains from free trade. An example of a similar value preference made by the United States was the institution some years ago of tough antipollution controls on all new motor vehicles sold in the United States, a decision which affected both domestic manufacturers and foreign exporters to this country. This decision altered the pattern of trade for the United States, but did not reduce the optimal gains from free trade.

\(^8\) Middleton, *supra* note 33, at 205.

\(^8\) Standards Code, *supra* note 7, art. 2, ¶ 1, at 414 (emphasis added).


\(^8\) Foster, *supra* note 46, at 66.


\(^9\) Standards Code, *supra* note 7, Annex 1, ¶ 1, at 433.

\(^9\) Moore, *supra* note 25.

\(^9\) Cf. *supra* note 39-44 and accompanying text.
under the Code's jurisdiction.94

The language of the EC Directive carefully tracks this viewpoint. The domestic aspect of the ban is phrased in terms of prohibiting "the use of hormonal substances for fattening purposes"95 while the prohibition on imports refers to "meat from animals to which have been administered" growth hormones.96 Nowhere does the Directive speak of meat containing growth hormones.97

To the United States, the argument that the EC Directive is primarily a ban on a production method is simply not credible. The United States sees the Directive as attempting to assure a product characteristic: the absence of artificially-added hormones in beef.98 U.S. officials believe that the Directive could have been drafted less restrictively as a product specification which would fall under the Standard Code's jurisdiction.99 They also believe that present U.S. regulations could have met any hormone tolerance level set, no matter how low.100 That the Directive was instead drafted as a PPM also indicates that there was circumvention of the Code.101

The U.S. view that the Directive could have been written as a product specification has some merit. Given that the true rationale for the EC Directive is to protect public health from the perceived dangers of hormones in animal products,102 the EC stance that its Directive applies to production methods is rebuttable by the argument that the Directive is addressed to a quality or safety characteristic of a product and is therefore legislation ripe for assessment under

94 Farnsworth, supra note 88. Andrzej Olechowski states that NTBs "introduced outside GATT rules" are "illegal NTBs." Olechowski, Nontariff Barriers to Trade, in THE URUGUAY ROUND: A HANDBOOK ON THE MULTILATERAL TRADE NEGOTIATIONS 121, 126 (1987). If the hormone beef ban could be shown to be an unnecessary NTB, keeping the ban "outside GATT rules," as the Europeans are arguing, would presumably cause commentators like Olechowski to classify the ban as an "illegal NTB." For a discussion of the necessity issue in this case, see infra notes 110-27 and accompanying text.

95 Council Directive, supra note 1, Preamble, 228 (emphasis added).
96 Id. at art. 6, ¶ 1, at 230 (emphasis added).
97 There is good reason for this. According to Lester Crawford of the U.S. Agriculture Department, three of the five hormones banned by the EC are naturally produced and cannot be detected. Ross, supra note 11. Properly applied, the synthetic hormones cannot be detected either. Moore, supra note 25 (May 22, 1989).
98 Moore, supra note 25 (May 16 and 19, 1989).
99 Id. (May 22, 1989).
100 The U.S. position is that current U.S. regulations, which require a 60 day withdrawal period prior to slaughter, result in virtually all artificial hormones being "flushed from the animal's system." Id. The use of naturally produced hormones cannot even be detected. Ross, supra note 11.

A simplistic way of assessing the U.S. position is that it considers a product's characteristics to trump its production method and for this reason should be the focus of scrutiny. Insofar as it advances this view, critics might see the current U.S. negotiating stance as an attempt to extend the Standards Code beyond its intended reach.
102 See supra notes 10-27 and accompanying text.
the Code.103

But will the U.S. view prevail? A past trade dispute between the United States and the United Kingdom indicates that its chances may be poor. In 1980 a controversy grew out of the British imposition on imported poultry of processing requirements designed to reduce the possibility of salmonella contamination. These requirements were adopted to conform with an EC Directive on the issue.104 Unlike the hormone ban, the processing requirements were instituted in a discriminatory fashion; poultry imported to Britain from non-EC countries was required to be chilled in accordance with the new process, while poultry from domestic and EC producers was to have the process phased in over a two year period.105

U.S. efforts to characterize the requirements as a product specification and pursue resolution of the dispute through the Standards Code were eventually dropped when U.S. officials realized that many signatories felt the processing methods adopted by the British were indeed legitimate processing methods and outside the Code's jurisdiction.106 Given the nondiscriminatory application of the present EC hormone ban, and the much greater strength of the current opposition, the United States may well be fighting an uphill battle on the technical specification/PPMs issue.

On the other hand, the poultry dispute may be distinguished from the hormone beef dispute in at least two important respects. First, the British processing requirements were directed to a clearly recognizable health threat—salmonella contamination. Second, the EC directive upon which the British trade action was based was passed before the Standards Code came into effect. Since the Standards Code was designed to apply prospectively107 an argument may be made that it should not have applied to the poultry dispute at all.

Yet, there is an important similarity between the two disputes. In both a party to the Code sought to employ PPMs to meet a perceived health threat from agricultural products believed to be contaminated. Both cases therefore raise the question of the dividing line between technical regulations, which fall under the Standards Code, and processes and production methods, which do not. Neither case has answered this question. If there is no answer, as currently seems to be true, any party to the Code can seemingly write

103 Note that the Code’s definition of a technical specification includes “safety characteristics” of a product. Standards Code, supra note 7, Annex 1, ¶ 1, at 433.
106 Foster, supra note 46, at 66. Foster notes that most of the signatories that approved of the British legislation were EC countries. Id. They, too, were bound by the EC directive.
107 E. McGovern, supra note 40, at 176.
technical regulations as PPMs and avoid any application of the Standards Code. If so, the hormone beef controversy may be demonstrating that the Code may be an ineffective instrument for addressing the problem of agricultural additives.

A convergence of views on the nature of product characteristics and process and production methods is absolutely necessary. Without a meeting of minds on the definitions of these terms the Standards Code will lose credibility as an international trading accord. The application of PPMs, which are currently unregulated under the GATT, may well increase, with most undesirable results. In particular, parties to the Code could avoid their Code responsibilities by cloaking technical specifications for agricultural additives in the mantle of PPMs. At least one commentator has observed that “[t]he potential for trade disruption by discriminatory application of . . . [PPM] measures . . . is enormous, particularly in the agricultural area.” As will be shown below, even when “such measures” are nondiscriminatory the likely trade effects could create problems for Third World nations in the near future.

C. A Fundamental Issue: Is the Directive an “Unnecessary” Trade Barrier?

A nation has the sovereign prerogative to promulgate regulations that are designed to secure the physical well-being of its inhabitants, a prerogative that the GATT has always recognized as “an exception to the provisions of the General Agreement.” The Standards Code contains a similar escape clause; parties to the Code may institute technical barriers to trade so long as such barriers are “necessary to ensure . . . the protection of human . . . life or health,” and do not “arbitrar[ily] or unjustifiabl[y] discriminat[e] between countries . . . or [act as] a disguised restriction on international trade.” Thus, even if the EC Directive was found to be a technical regulation, if it could be shown to be “necessary” the directive would be one which the Standards Code would “recognize” the EC as being allowed to “take.” From this it follows that the negotiations over circumvention and PPMs versus technical regulations, while of im-

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108 This is, of course, even truer when the adopted measures are nondiscriminatory.
109 Foster, supra note 46, at 66-67.
110 The GATT states:
Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures . . . necessary to protect human, animal or plant life or health.
GATT, supra note 83, art. XX(I)(b), at 56-57 (emphasis added).
111 K. Dam, supra note 82, at 193.
112 Standards Code, supra note 7, Preamble, 413 (emphasis added).
113 Id.
importance, are simply barriers to reaching the fundamental issue underlying Standards Code treatment of the EC Directive: Does the Directive create an unnecessary\textsuperscript{114} obstacle to international trade?

The burden of proof as to what is unnecessary to protect human life or health lies with the complaining party.\textsuperscript{115} American officials feel that they have sustained that burden of proof,\textsuperscript{116} and assert that the Europeans have not been able to "present any evidence that proper application of the growth-producing hormones in question poses any threat to human health."\textsuperscript{117} The banned hormones have received approval for use in beef by both a U.N. Food and Agriculture commission,\textsuperscript{118} a presumably unbiased organization, and the U.S. Food and Drug Administration.\textsuperscript{119} As previously mentioned, a scientific panel commissioned by the EC itself was disbanded when it could find no evidence that the use of growth hormones was unsafe.\textsuperscript{120}

The Europeans believe that there is no scientific evidence which can provide complete assurances that beef treated with growth hormones will be risk-free.\textsuperscript{121} Insofar as they are fearful of hormone beef causing cancer\textsuperscript{122} there is some basis for the belief that an absolute ban is better than a low threshold for hormone presence.

Animal studies are presently used to determine the cancer-causing effects on humans of a multitude of products found in our environment. Such studies have been used in the United States to

\textsuperscript{114} As will be shown below, "the question whether technical regulations . . . effectively create unnecessary obstacles to trade is open to many interpretations." Nusbaumer, supra note 37, at 545.

\textsuperscript{115} Cf. Middleton, supra note 33, at 206.


\textsuperscript{118} Ross, supra note 11.

\textsuperscript{119} Id. According to Dr. Gerald B. Guest, director of the Center for Veterinary Medicine at the Food and Drug Administration, when properly used the traces of naturally-produced hormones in meat are so minuscule that "a man himself would manufacture 1,500 times more estrogen every day than he would get if he consumed a pound of beef every day, and a pregnant woman would manufacture several million times more estrogen a day than if she ate a pound of beef each day." Kolata, supra note 11. See also similar comments by Dr. Gary C. Smith, head of the Department of Animal Science at Texas A & M University, in Hall, A Confusing Quest for 'Natural' Beef, N.Y. Times, Mar. 1, 1989, at 15. U.S. consumer groups agree that hormone beef is safe so long as it is raised in accordance with government regulations. Where consumer groups part with industry groups is in "how faithfully the regulations are followed." Id.

\textsuperscript{120} See supra note 20 and accompanying text.

\textsuperscript{121} Cf. Auerbach, supra note 14. For a contrasting view on this issue, see Brody, Personal Health, N.Y. Times, Mar. 23, 1989, at 20, col. 1 ("[T]echnological advances. . . permit scientists to detect minute quantities of chemicals, down to levels of one in a quadrillion. . . . Just because a chemical can be detected at very low levels does not necessarily mean it can affect human health.").

\textsuperscript{122} Ross, supra note 11 (noting comments of Ms. Ella Krucoff, spokeswoman for the EC Washington office).
determine the effects on humans of consuming hormone beef.123 Yet, a 1979 report by the National Academy of Sciences concluded that "uncertainty about carcinogenic mechanisms makes it impossible to use animal data to estimate with confidence the degree of human risk."124 Furthermore, the mathematical models used for risk assessment can produce results that vary considerably.125

The debate over what hormone level is necessary or unnecessary to protect human health boils down, in essence, to the question of whether there is a level of acceptable risk. Insofar as economic trade-offs must be made for adopting incrementally higher levels of safety, that question straddles the ground between science and public policy. The existing machinery of the Standards Code appears equipped to deal with this issue through the use of the panels authorized by Article 14.14,126 but as of late spring 1989 it has not had the opportunity to do so in the hormone beef dispute.127

Should the acceptable risk issue ever be reached in the negotiations the United States and the European Community may be forced to deal with three closely related issues.128 First, assuming that food products containing additives are covered by the Code, must an aggrieved party prove a negative: that no risk is presented by food containing particular additives? If so, the Code may be a dead letter in regard to agricultural trade since proving that an additive is 100 percent safe is often impossible.129

Second, if the aggrieved party need not prove a negative, then what level of safety must it prove? And who will determine where the safety levels must be set? This, too, presents a difficult dilemma. Few nations, if any, are willing to subordinate their health legislation to the dictates of outside actors. Fewer still will agree to health regulations less strict than their own.

Third, does the Code's escape clause for "measures necessary to

123 Telephone interview with Dr. Bill Keller, Chief of Hormone and Pharmacologic Agents, Center for Veterinary Medicine, U.S. Food and Drug Administration (Mar. 31, 1989).
125 In the 1979 report by National Academy of Sciences the risk estimates which resulted from the four different mathematical modes used varied five million-fold. Id. at 319.
126 The panels of government officials authorized by Article 14.14 are concerned with the policy aspects, rather than the technical aspects, of a questioned regulation. See text accompanying supra notes 58-59. See also Standards Code, supra note 7, Annex 3, ¶ 1, at 437.
127 See text accompanying supra notes 69-74.
128 The author wishes to acknowledge the insights of Professor Arthur M. Weisburd, School of Law, University of North Carolina at Chapel Hill, which led to these issues. All culpability for any shortcomings in the development of these issues is the author's alone.
129 See supra notes 124-25 and accompanying text. But see Brody, supra note 121.
ensure . . . the protection of human . . . health."130 extend to matters of psychological health? The question here is whether trade legislation which is primarily a response to popular concern over adverse physical health effects, but which is otherwise scientifically untenable,131 may pass muster under the Code. The Code itself,132 like the GATT,133 simply refers to protection of "human, animal or plant . . . health." While human health is not broken down into physical and psychological health, the inclusion of "animal or plant" health in both texts indicates that both sets of drafters intended to limit the respective escape clauses to physical health effects.134

V. Ramifications for World Agricultural Trade

Unless the current stalemate in the U.S.-EC negotiations over the hormone beef ban is resolved, world trade in livestock and agriculture could be threatened by a Pandora's box of NTBs designed to restrict trade in food products containing chemical additives which are thought to be unhealthy. Food products are commonly subject to a wide range of additives; in addition to the use of growth hormones in beef, for example, there is widespread use of antibiotics135 in livestock and pesticides136 in crops. Evidence suggests that, in

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130 Standards Code, supra note 7, Preamble, 413.

131 By "scientifically untenable" I mean a situation where the health benefits of trade legislation are equalled or outweighed by the health costs. In regard to hormone beef this would be the case if it could be shown that the quantities of leaner beef produced by cattle treated with growth hormones, in combination with the associated risks of the hormones themselves, was safer for consumers than hormone-free beef, which has a much higher fat content and presents consumers with adverse health consequences related to this higher fat content. As previously noted, however, determining levels of health risk and conducting the required cost-benefit analysis is an inexact science.

132 Standards Code, supra note 7, Preamble, 413.

133 GATT, supra note 83, art. XX, §1(b).

134 Readers who wish to consider the psychological health issue further may be interested in a unanimous 1982 U.S. Supreme Court decision, Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766. Plaintiffs sought to show that federal law requiring an assessment of "environmental impact" and any unavoidable adverse environmental effects of an agency proposal also required an assessment of psychological damage to residents in the vicinity. The agency in question was the Nuclear Regulatory Commission and the action in dispute was whether to restart a shut down nuclear reactor. The Court found that "the particular psychological injury alleged . . . did not arise . . . out of the direct sensory impact of a change in the environment . . . but out of a perception of risk," and was therefore not covered by the statute in question. Id. at 779 (Brennan, J., concurring) (emphasis added).

135 "Most growers raising livestock give the animals antibiotics in their feed." Antibiotics and Livestock: Feeding A Controversy, 10 HARV. MED. SCH. HEALTH LETTER I (August 1985). There are strikingly similar parallels between the controversy over the use of growth hormones and the use of antibiotics in raising livestock. The use of antibiotics also produces a large economic return to farmers but "[o]pponents contend that the drugs encourage the growth of drug-resistant bacteria, which can be transmitted to people and cause illness . . . . Since the 1970s, several European countries have enacted bans on the use of certain antibiotics in livestock feeds, but no such restrictions exist in this country." Id. at 1-2.

contrast to the use of growth hormones, these other additives pose a
definite risk to human health, and the preoccupation about such
additives is growing. Given the heightened concern in recent
years among western consumers about what they eat, it may only be
a matter of time before the public in western countries begins de-
manding increased curbs on the presence of such substances as an-
tibiotics and pesticides in imported food. The likelihood of
consumer success in obtaining such curbs is far from small; as one
observer has stated, "'[i]nternational trade is mostly a matter of do-
matic politics.'"

In regard to antibiotics see Antibiotics and Livestock: Feeding A Controversy, supra note 135, at 3 ("[A] study conducted by the Centers for Disease Control [in 1984] . . . provided strong circumstantial evidence that a particular strain of salmonella originated in a herd of cattle that had been fed the antibiotic chlortetracycline. These bacteria, in turn, caused 18 cases of diarrhea (one of them fatal) in humans."); Schnieder, Congress Looks to the American Table Amid Questions on Food Safety, N.Y. Times, June 22, 1987, at A14 ("Scott Holmberg, a medical epidemiologist at the Centers for Disease Control, said in an interview that at least 500,000 of the 2 million cases of salmonella illness estimated to occur in the United States each year are linked to the low-level use of antibiotics in livestock.").

In regard to pesticides see Weisskopf, New Pesticide Policy Leaves Residue of Questions, Wash. Post, Oct. 24, 1988, at A11 ("[T]he E.P.A . . . licenses 66 pesticides found to cause cancer in laboratory animals."); Schnieder, Pesticide Regulation Slow and Unsteady, N.Y. Times, Mar. 19, 1989, § 4, at E7, col. 1 (Dozens of other pesticides "are known to cause birth defects, nervous system disorders and other chronic illnesses."). See also id., Food Industry is Testing for Toxics to Reassure Consumers on Crops, N.Y. Times, Mar. 27, 1989, at 1, col. 1. The article describes the growing concern of American consumers over pesticides in their foods and notes a May 1987 National Academy of Sciences report that stated more than 20 widely used pesticides could cause thousands of additional cancer cases in the United States. But see Brody, supra note 121 ("According to the best available scientific estimates 99.9% of carcinogens in the diet come from natural sources."). Brody's figure is somewhat misleading in that it refers to the number of carcinogens in our diet, as opposed to the amount.

Dietary patterns may have more to do with cancer rates than chemical contaminants. According to Dr. Joseph H. Hotchkiss, a food toxicologist at the New York State College of Agricultural and Life Sciences at Cornell University: "There is no evidence that removing [tiny amounts of] chemicals A, B, C and X [from the diet] will do anything to reduce the risk of cancer, but there is a lot of evidence that eating more high-fiber foods and less fat will." Id.

Eighty-four percent of Americans surveyed in a Harris poll between November 9 and 23, 1988, said they would choose organically grown food "if it cost the same as . . . [food] grown with synthetic fertilizers or pesticides . . . ." Forty-nine percent of those surveyed said they would pay more for organically grown food. Organic Produce Preferred, N.Y. Times, Mar. 21, 1989, at A16, col. 1.

At present, for example, only "one percent of the estimated one million food ship-
ments entering the United States annually are ever checked for dangerous pesticide resi-
dues," despite the fact that when checked such shipments show illegal pesticide residues at
twice the level of domestic produce. Meier, As Food Imports Rise, Consumers Face Peril From Use of Pesticides, Wall St. J., Mar. 26, 1987, at 1, col. 1. Even when imports are checked the actual amount of testing currently done is very limited; "a wide variety of pesticides, some of which can cause cancer," are not tested for under present U.S. procedures. Shabecoff, Pesticides Called Manageable Evil, N.Y. Times, May 1, 1987, at A24, col. 6.

In the case of pesticides, many of the most dangerous pesticides are banned by western countries but used extensively in the Third World. A "boomerang effect" presently results to western countries that export dangerous pesticides to the Third World and then import agricultural products from the Third World; the pesticides whose use they ban in their own lands ironically end up on their dinner plates. Growing consumer concern for a healthy diet could well result in the enactment of bans on agricultural products contaminated with pesticides not approved for use in the West. In light of the EC's action on hormone beef and the uncertainties surrounding the ill effects on humans of many pesticides, total bans on agricultural products containing any quantity of unapproved pesticide residues is not an unlikely possibility. Such bans could easily be worded as PPMs, thereby avoiding coverage under the Standards Code or any other GATT arrangement. Since a large portion of the pesticides applied abroad are unapproved in the West, the damage caused to Third World agricultural exports and economies by outright bans on tainted foodstuffs could be considerable.

141 Cf. Note, Restrictions on the Exportation, supra note 136, at 134 (“[T]wenty-five percent of all pesticides sold overseas by U.S. companies [in 1979] were products whose use was prohibited or severely restricted in the United States because of the dangers posed to health, safety, or the environment.”); D. Weir and M. Schapiro, infra note 145.

142 Goldberg, Efforts to Prevent Misuse of Pesticides Exported to Developing Countries: Progressing Beyond Regulation and Notification, 12 Ecology L.Q. 1025, 1028 (1985).

143 Goldberg, supra note 142, at 1028-29; Meir, supra note 142.

144 No other GATT codes presently regulate processes and production methods, and the main provisions of the GATT itself that deal with technical barriers to trade "have not proved very effective" in this respect. Bernier, supra note 36, at 198.

145 A statistical breakdown of the number of illegal pesticides residues on foods imported to the United States may be found in D. Weir and M. Schapiro, Circle of Poison 82 (1981).

146 For example, 70% of the total value of agricultural production in Central America is exported. Id. at 32.

In recognition of the adverse impact on Third World exporters that U.S. standards can have, the U.S. State Department has intervened in the recent past to prevent tightening of regulations for pesticide residues on imported foods. Such intervention occurred in 1985 when a ban on residues of the pesticide ethylene dibromide (EDB), a suspected carcinogen, was to be enforced on imported foods, particularly mangoes. Its domestic use had been banned since 1983. The State Department pressured the EPA into cancelling its planned enforcement of the EDB ban on imported mangoes, arguing "it might be economically harmful to Mexico and Haiti, two major mango-exporting nations, as well as damaging to U.S.-financed mango-growing projects" in Belize and Guatemala that relied on EDB. Meier, supra note 139.

Simply banning the use of dangerous pesticides would not be an easy solution for many Third World countries. Basic food crops in the Third World are now often grown with "miracle seeds" developed as part of the "green revolution." These hybrid seeds produce higher yields but are more susceptible to pests and consequently more dependent on protection with pesticides. D. Weir and M. Schapiro, supra note 143, at 36 & 38. "The FAO estimates that by the year 2000, 67% of the seeds used in underdeveloped countries will be the 'improved' varieties, which in most cases are more vulnerable to pests." Id. at
Given that most of the signatories to the Code are developed countries, and not Third World countries, this would hold with even greater force because aggrieved countries who are not Code signatories are unable to use the Code’s dispute resolution mechanisms. And, as noted above, outside of the Code there are no other mechanisms in the GATT for dealing with technical standards.

VI. Conclusion

Writing two decades ago, in pre-Code times, Kenneth Dam noted that “[o]ne of the most troublesome administrative barriers to trade arises from health and safety regulations.” This Comment has attempted to illustrate the problems of interpretation and public policy which are presented when such regulations are challenged under the Standards Code. Chief among these problems is the undefined level of health risk that parties to the Standards Code must meet in determining, or challenging, technical specifications. At present, it is impossible to say when the desire to maintain historical free trade in a particular product must give way to a country’s right to “take[ ] measures necessary to ensure . . . the protection of human . . . health.” Related subsidiary issues are not even close to being addressed in the present negotiating stalemate. Among these is the intriguing one of whether the Code allows a country to enact trade measures designed solely to assuage unreasonable public concerns over health risks. Namely, can the psychological health of a population serve as a pretext for utilizing the Code’s “necessary” escape clause? Settlement of these questions lies behind resolution of the comparatively minor circumvention and PPM questions that are currently under debate, and ultimately will be far more difficult.

There is at least one possible answer to the Standards Code dilemma on agricultural products. That is to substitute labeling at the retail level for an outright ban on foods that pose uncertain health

43. Furthermore, some of the high yield seeds “require particular applications of . . . pesticides to produce their high yields.” Id. at 44-45.


149 K. Dam, supra note 82, at 192.

150 Even if the question whether the EC Directive is a PPM or a technical regulation is resolved in favor of it being a PPM the issue will survive. This is because a similar “necessity” escape clause is found in the GATT itself. See supra note 110. Consequently, unless a GATT signatory wishes to have its standards-related trade legislation considered an “illegal NTB,” it will always have to confront the health risk issue. See supra note 94.

151 Standards Code, supra note 7, Preamble, at 413. As noted above, however, in an economic sense free trade and the adoption of a preference for certain products are not necessarily incompatible. See supra note 85. On a purely economic level, therefore, the issue of standards-related health legislation can be stripped of its complexity. This is small comfort, of course, to agricultural producers who have embraced the use of additives to enhance their yields.
risks. The information on labels could range from merely stating the country of origin to giving more detailed information. In the case of produce this more detailed information might, for example, state whether the produce was organically grown or whether it was grown with particular pesticides. Labels on meat products could state whether the meat was raised with specific growth hormones or antibiotics.

With this kind of labeling consumers could balance perceived health risks with the benefits of the lower prices and enhanced qualities which additives are said to provide for food products. In this way consumers themselves could be the ultimate arbiters of their well-being, and parties to the Code could meet their free trade responsibilities to one another with less rancor. Although some observers deny labeling as a solution to these kinds of problems, the seeming intractability of the hormone beef dispute and future food additive disputes suggests that labeling may be the only way to deal with the many difficult issues involved in a manner which provides some satisfaction to all parties.

Absent the adoption of labeling, it is quite likely that, given the uncertain scientific data regarding health risks, resolution of the hormone beef dispute and future food additive controversies will be politically impossible for signatories of the Code. While the use of technical expert groups or panels—when utilized—is a way for Code signatories to obtain an impartial assessment of the rationale underlying a particular technical specification, such assessments are ultimately of little value if they are contrary to the popularly expressed wishes of a people regarding such an emotional issue as health. Therefore, even if the current deadlock on dispute resolution procedures is broken, the Standards Code alone may be unable to resolve the food additive problem.

ADRIÁN RAFAEL HALPERN*

152 In at least 80 developing countries where “very toxic pesticides are widely available . . . [there are] no adequate system[s] to approve, register or monitor the material.” Simons, Concern Rising Over Harm From Pesticides in Third World, N.Y. Times, May 30, 1989, at 21, col. 1. Labeling foodstuffs with the country of origin would enable American consumers, for example, to decide whether they would rather eat domestically grown oranges or those from countries like Brazil or Mexico, where pesticide controls are more lax.

153 Nicholas, supra note 143, at 581 (“Consumer labeling has generally been rejected as an approach to the problems of food safety. Regarding pesticide residues, the effort and cost that would be required to institutionalize a labeling program is staggering.”). But see Christopher, Approaches for Achieving Food Safety, 35 Food Drug Cosm. L.J. 58, 61 (1979) (“To be sure, as with most things, there are times when exceptions must be made. It may be that there will be need to allow unsafe foods on the market—safeguarding the public by labeling as best can be. . . . Sugar substitutes may be an example.”).

* The author dedicates this Comment to his grandmother, Sra. Lucia Esther Woodgate de Alfonzo, of Buenos Aires, Argentina.