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BAN ON GROWTH PROMOTANTS IN THE EEC-----

THE ANATOMY OF A TECHNICAL TRADE BARRIER

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INTRODUCTION

In December 1985 the Council of Ministers of the European Economic Community (EEC) enacted legislation in the form of a Directive (85/649/EEC) banning the use of anabolic hormones in livestock production as of 1 January 1988. This Directive was misguided in its conception; by indiscriminately prohibiting all products, it in fact effectively eliminates safe, legitimate products. It thereby encourages the use of unapproved, potentially dangerous products, with the result that the health of consumers is placed in jeopardy—an ironic state of affairs to emerge from legislation ostensibly promulgated to allay “consumer anxieties”. The hormone ban is inherently unenforceable (thus in essence inviting black market violations while economically penalizing those who comply with the directive), and is generally disastrous in its implications for European agriculture, world trade and the future of the technology upon which agricultural productivity depends.

FALSE PERCEPTIONS

Prior to 1980 the European public was largely unaware of the use of hormones in animal production. Public attention was drawn to the “estrogen scandal” in Italy in 1980, when DES residues were discovered in a batch of manufactured baby food and those residues were assumed to have originated from the use of DES as an anabolic agent in veal calves and to have been the cause of several cases of abnormal sexual development in school children. The Italian press fabricated a “link” between the use of hormones in livestock production and a hazard to the public health. The fact that this “link” was purely hypothetical — and that the hypothesis was not even compatible with the facts of the case—was soon forgotten, but the negative image of hormones remained in the mind of the public.

European consumer organizations called for an immediate ban on the use of all hormones as a high-priority item on their agenda. They ne-

glected to note that the Italian estrogen scandal occurred in a country where a hormone ban was already established (and had been for nearly 20 years). The effectiveness of banning something that was already banned did not strike them as questionable.

SCIENTIFIC DELIBERATIONS AND POLITICAL AGENDAS

British Minister of Agriculture, Peter Walker, managed to work out an agreement for interim legislation (81/602/EEC) which did ban the stilbenes (such as DES) and thyrostatic agents, substances already banned in practically every country in the world, and required that the EC Commission conduct a detailed examination as to the "harmless or harmful effects" of the five compounds (estradiol-i/G, progesterone, testosterone, trenbolone acetate and zeranol).

An important feature of the 1981 Directive was that it upheld scientific criteria as the proper basis for the regulation of animal production drugs such as hormones. A scientific committee chaired by Professor Eric Lamming of the University of Nottingham began work in 1981 and produced an interim report in September 1982. This report found the endogenous hormones (estradiol-17 β , progesterone and testosterone) to present no hazard and requested further data on trenbolone acetate and zeranol.

The information requested by the "Lamming Committee" was supplied to the EC Commission by January 1984 and the Lamming committee was reconvened by the Commission to complete their report on trenbolone and zeranol. However, the Commission issued a proposal for new legislation (COM(84)295) without waiting for the Lamming Committee's final report. The Commission proposed a directive that would have authorized the use of the endogenous hormones (on the basis of the first Lamming Committee report) and would have banned the xenobiotics, on the basis of the 1982 Lamming report.

The Lamming report was not finished by the autumn of 1985, and the European Parliament voted an opinion which called for a ban on the use of *all* hormones, including those previously approved by the Lamming Committee.

The Parliamentary vote calling for a total ban took place on October 11, 1985. On October 30, the Commission issued a revised proposal (COM (85) 607) which similarly called for a total ban.

Thus the Commission completely eliminated the role of science from the decision-making process on hormones. The new proposal implicitly rejected the scientific evidence it had *previously accepted* as the proper basis for definitive legislation on hormones. The new proposal, though dealing with a matter of central importance to the protection of the public health, now seemed to be based primarily on political and economic considerations.

WHENCE THE BEEF MOUNTAIN?

“Intervention stocks” consist of subsidized meat which is bought and stored by the EEC, at taxpayers’ expense, until it is so old as to have lost most of its value, at which time it is disposed of to a third country at a price far below the world market price for fresh beef.

By the latter half of 1985, when the European Parliament was debating the hormone issue, the amount of beef in intervention storage had reached a record *700,000 metric tons*. This “beef mountain” was a major source of embarrassment to European politicians, who realized what the problem of overproduction of beef was due to the Common Agricultural Policy (CAP) system of beef intervention payments which directly rewarded overproduction.

The consumer lobbyists offered the Euro politicians a solution to their dilemma. The idea was to ban hormones, which they said, were dangerous in the first place, and which also contributed to the overproduction reflected in the beef mountain.

The Euro politicians did not find the linking of hormone use and the beef mountain to be simplistic. It was that perception, together with continuing doubts as to the safety of hormones (in the absence of a definitive report from the Lamming Committee), that sealed the political fate of hormones in the EEC in 1985.

The result, legal or otherwise, was that on 31 December 1985 the Council of Ministers notified the EEC Member States that the directive banning the use of hormone implants in livestock as of 1 January 1988, was law.

All Member States were under an obligation to implement the Directive into their legal systems by 31 December 1987. All trading partners were under an obligation to ensure that any meat they exported to the EC after 1 January 1988 would have to be certified as not having come from animals

treated with hormones - a deadline later extended by one year to 1 January 1989.

In January 1987, the Standing Committee on Hormone Toxicology of the West German Society of Endocrinology met in Mainz to evaluate the new data on trenbolone and zeranol. Their published opinion was that these two hormones were suitable for use in the production of animals for human food.

The World Health Organization (WHO) and Food and Agriculture Organization (FAO) Joint Expert Committee on Food Additives (JECFA) met in Rome in June 1987 to evaluate the safety data on all five hormones. They concluded that the five hormones posed no danger to human health when proper practices were followed. These JECFA findings were published informally in December 1987, and the full JECFA reports were officially published by WHO and FAO in March 1988.

At the World Veterinary Congress in Montreal on 18 August 1987, members of the Lamming Committee, acting in their private capacities, presented a summary of their findings on all five hormones for the first time. The full findings were then published in the journal *The Veterinary Record* on 24 October 1987.

All five hormones had been declared to be safe for use as growth promoters in cattle by the very scientists who had been selected by the European Commission to review them. What they were concerned about, as they indicated in their Interim Report in 1982, was that if safe hormones were banned, they would be replaced by unsafe products distributed through the Black Market.

Lamming's poignant prophecy has been abundantly fulfilled. In February 1987, 10 months before the deadline by which importers of beef into the EC would have to certify that their meat was not hormone-treated, the United States began consultations under the Standards Code of the General Agreements on Tariffs and Trade (GATT). The U.S. alleged that since the hormone ban was without any scientific basis, it amounted to a technical trade barrier because non-EC countries had to guarantee that their meat exported to the EC had not come from hormone-treated animals - which could not be verified by any objective test.

On 18 November 1987, acting on a proposal from the Commission, the EC Council of Ministers adopted a Decision to extend for 12 months the

deadline by which exporters of beef products to the community had to comply with the hormone ban directive. The new deadline was midnight on 31 December 1988.

Exactly a week after the EC postponement was announced, the U.S. pursuant to an Order signed by President Reagan under section 301 of the amended Trade Act of 1974, published in the *Federal Register* a list of retaliatory tariffs which would apply to selected products from the EC.

Then the unpredictable happened. The United Kingdom of Great Britain (U.K.) had taken the Council to the European Court in March 1986, claiming that the hormone ban directive was invalid for a collection of alleged reasons. The European Court agreed with one of those reasons, a procedural one, and the Directive was invalidated.

At its next regular meeting, on 7 March 1988, the Council legislated by stampede.

On 16 December 1988, Dr. Lester Crawford, Administrator of the Food Safety and Inspection Service (FSIS) of USDA testified as a witness before the European Parliament's Committee of Enquiry investigating the hormone problem. Said Crawford in a press statement issued immediately after delivering his testimony: "If the European Community does not modify its hormone policy soon, meat trade between Europe and the United States will end..." He cited the re-appearance of DES in Europe as further evidence of public health problems caused by the hormone ban, and went on: "Ironically, the hormone ban itself has become the greatest threat to European meat consumers...Each year we must certify to the U.S. Congress that residue controls in exporting countries meet U.S. requirements. In the context of persistent reports of illegal use in EC countries of compounds with increasingly serious public health consequences, I don't think we can make that certification."

The U.S. had now taken two key steps. First, they had decided to retaliate by increasing tariffs on a range of European exports if American hormone-produced meat could not gain entry to the EC. Second, and separate from the retaliation, they were seriously considering banning further imports of European beef and veal owing to its probable contamination by dangerous Black Market hormones.

The amount of money involved is small in the context of total transatlantic trade worth \$166 billion each year. U.S. beef product exports to the

EC amount to about \$155 million. Much of this is offals—"speciality meats" such as kidneys, livers and ox tongues, and about a third of that is imported for use in European pet foods.

At its last meeting before the 1988 Christmas break, on **19** December 1988, the EC's Council of Ministers agreed to allow the U.S. to continue to import hormone-produced beef for use in pet food.

The United States' retaliation list, published in November 1987, imposed 100 percent tariffs on a wide range of European products to a value equivalent to the value of the U.S. meat refused entry into the EC. After the EC conceded over pet food, the U.S. correspondingly scaled down its retaliation to \$97 million worth of tariffs. They targeted canned tomatoes, wine coolers, instant coffee, fruit juices, pet food, beef, tomato sauce and pork hams. The penalties were selected to fall mainly on Italy and West Germany, the two countries most passionately in support of the hormone ban. Between them, Italy and West Germany bore 70 percent of the retaliatory tariffs.

On **5** January 1989 USDA wrote to the Heads of the Veterinary Services of all European Community countries except those in Greece, Portugal and Luxembourg, saying that countries exporting meat products to the U.S. "must apply public health controls at least equal to those administered by the USDA." The letter pointed out that a proper residue control program is characterized by, among other things, an approval system for veterinary products based upon "rigorous scientific process". USDA pointed out that the Black Market reports in Europe... "...have indicated that EEC countries are not effectively controlling use of such compounds. Use of unapproved compounds is occurring across species and is now involving compounds of serious public health consequences."

The trade war over meat from hormone-treated animals was now separating itself from the dispute over the food safety consequences of the EC hormone ban. The U.S. Congress ranks domestic food safety higher than foreign trade. Dr. Crawford's concern over imports of European meat products contaminated by residues of Black Market substances since the EC hormone ban, is not a pawn on the chessboard of international trade.