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WORLD TRADE ORGANIZATION DOWNS EUROPEAN HEALTH STANDARD

The World Trade Organization, called the WTO, is the Geneva-based international organization which administers the new General Agreement on Tariffs and Trade (or GATT 1994). This summer, it released decisions from a trade panel that the European Community (EC) is not entitled to maintain a ban on hormone residues in beef, because the ban does not comply with the 1994 GATT agreement. In two decisions, released in August because of complaints by the Canadian and US governments, the WTO has swung a serious blow at sovereign rights of governments to set standards for health protection.

The EC beef hormones bans were enacted through a series of seven Directives (laws) in the 1980s to respond to consumer fears of health risks from hormone residues, after consumers had boycotted veal treated with hormones. Together, the laws amounted to a complex regulatory scheme concerning the six hormones at issue in the case: three naturally occurring hormones produced by humans and animals, (oestradiol-17beta, progesterone and testosterone) and three artificially-produced ones (trenbolone, zeranol and melengestrol acetate).

The Canadian government argued that the hormone bans were not consistent with the new requirements for standard-setting in the GATT chapter on Sanitary and Phytosanitary Standards (SPS), standards for plant and animal health. The World Trade Organization Dispute Panel agreed. In its 472 page decision, the first to interpret the SPS chapter, the panel meticulously analysed every element of the agreement, with very negative results for health and environmental standards.

The panel held that since the EC ban was not based on risk assessment, resulted in unjustifiable distinctions in different situations, and was not consistent with international standards developed by the Codex Alimentarius Commission (an international body), the ban could not be maintained.

The decision entrenches the need for risk assessment, which the panel considers to be an objective scientific process, in setting standards. Risk assessment consists of a process of examining known scientific studies of the health impacts of a substance, usually conducted on laboratory animals, and then attempting to quantify the risks to human health from exposure to the substance. There is a live scientific and academic debate world-wide about the scientific and ethical limitations and biases of risk assessment, with a widespread view among environmental and health advocates that risk assessment is fancy fiction dressed up to allow the continuing release of toxins into the air, water, and food humans need. This debate is not considered in the decision. As an official interpretation of the SPS chapter, at the instigation of the Canadian government, the decision underlines that environmentalists and health advocates in Canada can expect to meet a solid wall of risk assessment in advocating for Canadian standards.

The Panel rejected a number of important policy arguments advanced by the EC (as well as legal ones.) The EC argued that the Codex standards passed by a slim margin, due to the controversial nature of hormone residue issue; and that in developing them, before the 1994 GATT was in place, countries did not know they would change from being merely advisory

to mandatory due to the WTO. The Panel found these considerations irrelevant. It also dismissed the argument that new scientific evidence should be considered to assess whether the Codex standards were sufficient.

This suggests that Codex standards, on thousands of substances, are now mandatory on all governments, and frozen in time, regardless of new scientific research. To change them, one would presumably have to conduct international campaigns at the Codex, an intergovernmental subsidiary body of the FAO (Food and Agriculture Organization) and WHO (World Health Organization). Its members are national governments, but many large corporate agricultural producers also participate in it. It is largely inaccessible to citizens.

The WTO Dispute Panel also dismissed the precautionary principle, finding that it is not a generally applied principle of international law, and that, in any event, it has been given a specific (and limited) interpretation in the SPS agreement. The precautionary principle, as expressed in the Convention on Biological Diversity, states that it is vital to anticipate and prevent environmental harm, and that where there is a significant threat of harm, lack of full scientific certainty should not be used as s reason for postponing measures to avoid or minimize the harm. Its dismissal by the WTO is another serious incursion by trade law into international environmental law.

The decision undermines two arguments that have been used by environmentalists sympathetic to free trade to respond to criticisms from opponents of free trade, including CELA.

The free-trade supporters have cited wording from the SPS chapter that countries don't have to lower standards; they are entitled to set their chosen "levels of protection", despite the restrictive wording of the Agreements. The EC relied on that right here and lost.

The Panel also found that the use of "should" in a term of the agreement, instead of "shall" creates no obligation on a Party. This interpretation supports CELA's views of the section of NAFTA which says countries "should" not lower environmental standards to attract investment. Free-trade supporters have used that section to argue that NAFTA is a "green" trade agreement. However, the section does not prohibit countries from doing so, (or, in the words of this Panel, it creates no obligation on the Parties) and the avalanche of environmental de-regulation in North American shows that they continue to do so.

The Panel convened its own group of experts to advise it, but its decision is ultimately more legal than scientific, since it strictly interpreted the history and content of the EC directives in comparison to the SPS chapter wording. The EC has appealed the decision to a WTO appeal body, but we are not optimistic that the appeal will be won.

The scope of the 1994 GATT is rapidly being fully implemented, constituting a global legal regime that is anti-democratic and anti-green. It contains s comprehensive series of agreements which seriously constrain the powers of signatory governments to legislate national and local regulations for economic, health, social, labour, and environmental policies. "Free" trade is actually a matter of sweeping de-regulation world wide.

Meanwhile, in Canada, our governments gut health budgets and protections at home. This decision makes the connection between and international and national policies painfully clear.