

THE CALIFORNIA EFFECT IN THE EC'S EXTERNAL RELATIONS

*A COMPARISON OF THE
LEGHOLD TRAP AND BEEF-HORMONE ISSUES
BETWEEN THE EC AND THE US & CANADA*

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1. Introduction¹

1.1 Internationalisation and the California effect

Globalisation (or: internationalisation) has become one of the buzzwords in international politics. Increasingly, national governments fear a loss of policy making powers because of the growing interdependence between states. More specifically, it is often argued that interdependence will lead to a 'race to the bottom' when it comes to regulations in such areas as environmental, consumer and labour protection. Protective regulations are thought to increase production costs, thus shifting business to countries with less strict standards. As a consequence, countries may lower their standards in order to keep firms or even to attract them. The resulting process would be the subsequent lowering of standards to the lowest level or even below that: a race to the bottom.

Although the logic of the race-to-the-bottom argument has wide appeal in both popular and scholarly debate, growing evidence suggests that such a process might not occur at all, at least not when it comes to regulatory policies (Levinson 1996). More surprisingly, some authors have argued that increased interdependence has led to a strengthening, rather than a weakening, of protective standards. Such race-to-the-top processes have been found by Vogel (1995) in the EU, the US and to a lesser extent NAFTA and the GATT/WTO. He calls this phenomenon the 'California effect' after the American state that has often played a frontrunner's role in raising regulatory standards in the United States. Similar results are reported by Eichener (1993) in the EU and Genschel & Plümper (1997) in international banking.

The California effect takes place when a country (or a coalition of countries) exports or imposes its own (stricter) standards upon one or more of its trading partners through the use of market access. This process takes place in a number of steps (Cf. Vogel 1997: 561/562). First, a country with strict standards can deny market access to products that do not conform to or are not produced according to its standards. For instance, a country may deny market access to products that do not meet certain safety standards, or it may ban products that have been manufactured with environmentally unfriendly processes. Such a ban may affect either single products, that do not meet the strict standards, or the products from countries that have less strict standards.

If the ban is aimed at individual products, foreign companies have to comply with the stricter standards if they want to continue to export their products to the country imposing the standards. If they choose to do that, economies of scale may lead the companies to adjust their entire production to these stricter standards. Often it is less expensive to produce all products according to the strictest standards than to maintain separate production lines for exports and imports.

As a consequence, however, the exporting companies may face a competitive disadvantage on their home markets where they have to compete with companies that do not export and thus do not have to comply with the stricter standards. It may therefore be an advantage for the export-oriented companies to have the stricter standards accepted in their home countries as well. If they succeed, often in co-operation with public interest groups that support stricter standards, the sequence is completed and the stricter standards have been exported from one country to another.

Often, market access is not denied to products from individual producers, but rather to products from countries that have less strict standards than the importing country. In that case, the government of the exporting country is involved more directly. It will have to strengthen

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its standards, if its companies are to have market access to the country imposing the stricter standards.

This process can be strengthened if countries co-operate in international organisations with powers of harmonisation. Then, one member state can try to have its own (relatively strict) standards accepted as international (minimum) standards. Since these standards are binding on all member states, the general level of standards will be increased.

Thus, at least three ways of exporting strict standards can be discerned: by requiring producers to conform to certain standards, by requiring other countries to conform to certain standards and by having national standards harmonised in an international organisation. In each case, the attempt to export the strict standards may either succeed or fail. In order to gain a better understanding of the California effect, it is therefore important to formulate the conditions under which these attempts are likely to succeed.

1.2 Central question

In this paper, I will analyse two attempts to export stricter standards: one that failed and one that succeeded. By systematically comparing these two cases, a tentative insight can be gained into the factors that are likely to affect the occurrence of a California effect. In the selection of cases, I have limited myself in two ways. First, I have limited myself to one of the three ways discerned above: I have only studied the process in which one country or coalition of countries required other countries to conform to certain standards. Second, I have limited myself to the relations between the EC and North-America. In both cases, the EC tried to impose its standards directly upon the US and Canada. These limitations are necessary to improve the comparability of the cases.

All in all, the central question of this paper is:

What factors contribute to the success and failure of the European Community in imposing its standards upon the United States and Canada through international trade measures?

I will answer this question by studying two cases: one in which the EC succeeded (to some extent) in imposing stricter standards upon the US and Canada, and one in which the EC attempted but failed to influence American and Canadian standards. As a 'successful' case I have studied the EC ban on the use of leghold traps in trapping fur-bearing animals; the 'unsuccessful' case is the EC ban on the use of growth promoting hormones in meat production.

Selecting cases on their outcomes has several drawbacks, which have been extensively described in the methodological literature (e.g. King, Keohane and Verba 1994: 129-132 & 141/142). Nevertheless, there are two reasons to use this type of selection here. First, the number of cases of the California effect is probably low. Selecting on the outcome may then be the only way to study this phenomenon. Second, these case studies are meant to be exploratory in nature. By comparing two cases that differ in their outcomes, it is possible to get an idea of the relevant factors and the way the processes work. At a later stage, the conclusions will have to be tested against a different set of cases, selected on the explanatory variables, in order to arrive at more solid inferences about the conditions that lead to a California effect.

The remainder of this paper will be organised as follows. In the next section, I will discuss some theoretical points concerning the factors underlying the California effect. In section 3, the background to and a brief history of the two cases will be presented. In section

4, these two cases will be compared on a number of factors that may be relevant in the light of the theory discussed in section 2. In the final section, a number of conclusions will be drawn.

2. Theoretical remarks

As was outlined above, a California effect comes about in a number of steps. In the case of an attempt to impose standards directly upon other countries, two steps are important. First, a country has to decide to require other countries to comply with certain standards if they want to export products. Second, the other countries have to decide to adopt these stricter standards. Several factors seem to be important if these two steps are to be completed successfully. These factors can be grouped into three categories: legal, economic and political factors.

The legal factors consist of the set of trade rules a country has subjected itself to, or the trade regime under which it operates. Under general international law, countries are largely free to restrict their own imports and exports as they see fit (Post 1997). However, most countries are member of the World Trade Organization (WTO), a multilateral trade regime that covers, among others, a set of rules and principles regarding regulatory barriers to trade. The same is true for some regional agreements, such as the European Community or NAFTA. These trade rules may severely restrict the legal powers of countries to deny market access to imports on the grounds of divergent standards.

Yet, trade rules need not be adhered to and countries may choose to neglect their obligations under international treaties. The extent to and the conditions under which this is likely to happen are a matter for debate and research. Here it may be noted, first, that this relationship is complex: rules need not be adhered to, but generally countries do have a stake in upholding some form of legal regime in order to enhance the stability and predictability of the trading system. The effects of legal rules will therefore depend on (combinations of) other factors. Second, the strength of international legal regimes differs markedly. The EC is a good example of a fairly strong set of trade rules that most member states adhere to most of the time. This is much less the case for the WTO and even less so for its predecessor, the General Agreement on Tariffs and Trade (GATT).

The economic factor relates to the market sizes of the countries involved in an attempt to impose stricter standards. An attempt to force other countries to accept stricter standards is only likely to have success if the country with the strict standards has an attractive market to foreign producers. If not, the other countries' governments will probably not react to the pressure and choose to forgo the export opportunities rather than adjust their regulations. Moreover, the market size of those other countries is also important. A big and rich country, that has an attractive market, has more opportunities to retaliate and use access to its own markets as an instrument against the country trying to impose its standards.

Finally, the political factors concern the strength of pressure groups in the countries involved. According to Vogel (1995) this is an important factor in the decision to attempt to impose standards upon others in the first place. Countries are more likely to make such an attempt if they have strong public interest groups (e.g. environmental groups or trade unions) that lobby for strict standards. Often, these public interests groups line up with producers who see the stricter standards as an opportunity to gain a competitive advantage over foreign competitors. Vogel calls these coalitions 'Baptist-bootlegger' coalitions, after the two groups that both had a stake in the American prohibition, although for different reasons. Such coalitions may also form across borders between producers in one country and public interest groups in another. More generally, the strength of public interest groups also plays an important role in the country that has to accept the stricter standards.

Having discerned these (groups of) factors, we can turn to the two case studies to see whether and how these factors seem to have played a role in bringing about or preventing a

California effect. Also we can try to find additional factors that seem to have been important. The theoretical analysis can be modified accordingly.

3. The two cases

The leghold trap and beef-hormone cases present two examples of the EC trying to impose its standards upon Canada and the US. In this section, I will describe the background to these issues and give a brief outline of the process that took place between the EC, and the US and Canada.

3.1 The ban on the use of leghold traps

A leghold trap is designed to 'capture and restrain an animal by means of metal or similar clamps which close tightly upon one or more of the animal's limbs as soon as it comes into contact with the trap' (EP 1990: 16). Animal welfare activists consider these traps to be cruel devices, because they may severely wound an animal or put it under a lot of stress. Also, an animal may have to wait one or more days before the trapper frees and/or kills it. Finally, animals from non-target species may run into a trap, making it an 'indiscriminate means of capture and killing' that is covered by the Berne Convention on the Conservation of European Wildlife and Natural Habitats.

Therefore, in 1991, the European Community decided to ban the use of leghold traps on its own territory. Furthermore, it decided to enact a ban on the import of furs and fur products of thirteen species of furbearing animals from countries that still allowed the use of leghold traps (Council Regulation 3254/91). The import ban was to become effective on 1 January 1995, with the possibility of a one-year delay if the Commission thought sufficient progress had been made in the countries concerned. An exemption from the import ban could be obtained if a country banned the use of leghold traps altogether or if it adhered to international humane trapping standards.

No such standards were in place when the Regulation was enacted, although discussions had been taking place in the International Organisation for Standardisation (ISO) since the 1980s. It was hoped that international standards could be developed before the ban was to become effective.

The Regulation was mainly aimed at Canada, the United States and the Russian Federation, the three most important countries in animal trapping. No nation-wide prohibitions of or restrictions on the use of leghold traps were in place in these countries (Nollkaemper 1996: 242). In the following I will limit myself to Canada and the United States.

Both Canada and the US doubted the GATT consistency of the EC Regulation and threatened to take the case before a GATT panel if the EC was to implement an import ban (Nollkaemper 1996: 242; Weiss 1997: 58). Representatives of indigenous people, mainly in Canada, were worried about the impact a ban would have on the traditional hunting methods and way of life of these people (Lynge 1996; 1997). Moreover, in the US, the regulation of trapping methods was a matter for state governments and the federal government did not intend to bring it to the federal level.

In the meanwhile, representatives in the ISO were not able to reach an agreement on what constituted humane trapping (COM (95) 737 final; Stone 1997: 28; Vingerling 1997: 8/9). Nevertheless, in July 1994, the European Commission postponed the import ban for one year until 1 January 1996 (Commission Regulation 1771/94). In the preamble, the Commission stated that an import ban would 'negatively affect the work of the International

Standardization Organization' and 'seriously reduce the incentive for third countries to make further progress.'

Although the US government opposed the EC Regulation, Congress was mixed. Fourteen members of Congress had the US Trade Representative, Mickey Kantor, promise he would file a GATT complaint (Inside US Trade 1994: 21; High North News 1994). They also sent a letter to the European Commissioner for external trade relations, sir Leon Brittan (High North News 1995a). Eleven other members of Congress urged Kantor not to challenge the European import ban (Inside US Trade 1994). They were supported by environmental and animal welfare groups (High North News 1995a).

Yet, the supporters of animal welfare in the US do not seem to have had much impact on government policies. Their position was not accepted by the government, that remained opposed to the EC Regulation. Proposals for a national ban on the use of leghold traps never reached the floor of the House or the Senate and remained at the committee stage (see e.g. House 1997 & Senate 1997; see also Animal Welfare Institute 1990: 158-159).

In September 1995, the ISO failed to reach an agreement on humane trapping standards and decided to concentrate on standards for testing traps. Subsequently, negotiations on trap performance standards were continued in a working group consisting of the EC, Canada, the US and the Russian Federation, the main countries involved in the issue (COM (95) 737 final; EP 1996b: 16).

The European Parliament (EP), a staunch supporter of the ban on leghold traps, reacted furiously (EP 1996a). The member states were split. Since the regulation had not allowed any further postponement by the Commission, the Dutch government considered the ban to have become effective as of 1 January 1996. As a result, it implemented the import ban on its own. Because the Commission had not drawn up a list of exempted countries, as the Regulation required, the ban covered imports of furs from all thirteen species from all non-EC members (LNV 1995). In a letter the Commission informed the Netherlands that it did not consider Regulation 3254/91 to allow the Netherlands to implement the ban unilaterally (DG I 1996).

Between March and December of 1996, the EC, Canada and the Russian Federation were able to reach an agreement on humane trapping standards. In June 1996, the Council officially authorised the Commission to negotiate a framework agreement with Canada, the US, the Russian Federation and any other country interested (COM (97) 251 final). In December an agreement was initialled by the EC, Canada and the Russian Federation. The US refused to sign it (COM (97) 17 final: 2).

The Draft Agreement contained standards for both restraining and killing traps for nineteen species, including the thirteen species covered by the EC Regulation. For restraining traps two behavioural and fourteen physical indicators were identified. The behavioural indicators were 'self-directed biting' and 'excessive immobility', while the physical indicators ranged from fractures to death with a number of injuries in between. A trap would conform to the standards if at least 80 per cent of at least twenty animals in a test situation showed none of the indicators. For killing traps time limits to unconsciousness or death were established for each of the nineteen species.

Initially, the Draft Agreement was rejected by the Environmental Council of the EC. It requested the Commission to reopen negotiations and take the necessary steps to introduce the import ban (COM (97) 251 final). The EP, that only had a right of opinion in this matter, opposed the Draft Agreement as well. In his report on the Draft Agreement, EP 'Rapporteur' Carlos Pimenta concluded that '[t]he proposed International Agreement fails dramatically in terms of its animal welfare and environmental objectives while also failing to reconcile the Trade & Environment issue other than by effective abandonment of the import ban established under the Regulation' (EP 1997a). The main criticism of the Draft Agreement was that it would still allow certain leghold traps to be used, as long as they met the standards.

The Commission, however, did not reopen negotiations about the standards themselves. Instead, a declaration by the Canadian government was annexed, stating that 'the use of jaw-type leghold restraining traps will be prohibited in Canada' for seven species at the date of entry into force of the Agreement, and for another five species at a later time.

When the Environmental Council did still not endorse the Agreement, it was referred to the General Affairs Council, that approved the Agreement on 22 July 1997. At the same time it called upon the Commission to intensify its efforts to reach an agreement with the US (COM (97) 726 final: 2). The Agreement was officially signed by the EC and Canada on 17 December 1997 and by the Russian Federation on 22 April 1998 (DG XI 1997a; 1998). The EC Council adopted it on 26 January 1998 (Council Decision 98/142/EC).

In the year leading up to the acceptance of the agreement, the Commission had also worked on the implementation of the import ban. On 10 January 1997, Commission Regulation 35/97 was adopted, 'laying down provisions on the certification of pelts and goods covered by Council Regulation (EEC) No 3254/91.' On 22 July 1997 a list of countries that were exempted from the import ban was adopted, already including Canada and the Russian Federation (Council Decision 97/602/EC). On 1 December 1997 the ban became effective (USTR 1997a: 217).

Initially, the US was one of the countries affected by it. On 3 December 1997, though, the EC and the US initialled the text of a bilateral agreement. It included the same standards as the agreement between the EC, Canada and the Russian Federation, but they were non-binding (COM (97) 726 final, adopted by the EC by Council Decision 98/487/EC). Instead, the standards in the Agreement were said to provide a 'common framework for describing and evaluating progress toward the use of more humane traps and trapping methods.' The EC and the US 'intend to encourage and support research, development, monitoring and training programs by their respective authorities that promote the use and application of traps and trapping methods for the humane treatment of such animals [i.e. the nineteen specified animals, S.P.]' (Council Decision 98/487/EC: Articles 1 and 4 of the Agreed Minute).

The Agreement was signed on 18 December 1997 (DG XI 1997b). Although it was rejected by the EP, the Council of Ministers adopted it on 13 July 1998. On 2 March of that year, the Council had already adopted an amended list of countries exempted from the import ban, this time including the US (Commission Decision 98/188/EC).

3.2 The ban on the use of growth promoting hormones in meat production

The use of growth promoting hormones for the production of meat has many advantages for meat producers. Growth hormones affect the way animals convert fodder into meat, making the conversion more efficient. As a result, cattle will grow faster and produce more meat. Also, the animals will grow less fat, leading to a bigger output of leaner meat (Vogel 1995: 160; McNiel 1998: 100).

Growth hormones come in two varieties: natural and synthetic hormones. Natural hormones are the ones that are already present in animals. These hormones can be supplemented in order to heighten their effect. Synthetic or 'xenobiotic' hormones are artificially produced substances that mimic the operation of natural hormones. They have the same effects as natural hormones.

Hormones can be given to animals in a number of way. First, they can be added to the animals' fodder. Second, they can be injected through a pallet in the animal's ear. The pallet contains a certain amount of hormones that are gradually released into the animal. The ear itself is not used for consumption. Finally, the hormones can be injected directly into the cow. This method is generally considered to be less controllable than the second method.

Despite the beneficial effect of growth hormones on meat production, it has also been claimed that the hormones may adversely affect human health. By eating hormone-treated meat, consumers may increase the risk of developing cancer or disturbing their own hormonal activities.

In Europe, the fear of hormones increased in the seventies, when the hormone DES proved to have negative consequences for its users. In the early eighties, a number of children in Italy were reported to have grown oversized genitals as a result of hormone-treated beef, which triggered a consumer boycott of veal (Meng 1990: 819; McNiel 1998: 101). These reports led to a ban on hormone-treated beef by the Italian government.

Subsequently, the European Community moved to harmonise the standards for the use of growth hormones in order to restore the internal market for meat and meat products. In 1981, the EC adopted a Directive banning the use of a number of growth hormones in meat production (Council Directive 81/601/EEC). The ban on these hormones is uncontested. A ban on five other hormones (three natural and two synthetic hormones) was made contingent on scientific research to be carried out in the following years. The results of this research indicated that the five hormones posed no risk to human health. Nevertheless, in 1985, the EC adopted another Directive that completely banned the use of the five growth hormones except for therapeutic treatment (Council Directive 85/649/EEC).²

The ban also applied to meat imports. At first, the import ban was to become effective on 1 January 1988 (Article 6(5) Council Directive 85/649/EEC), but this was delayed by one year (Council Decision 87/561/EEC). Since the ban primarily affected beef imports, it became known as the 'beef-hormone case.'

Among the third countries affected by the hormone ban, the United States had the biggest stakes. Its beef exports to the EC totalled around \$ 100 million, while growth promoting hormones were used extensively in the production of beef, mainly through the second method mentioned above: a pallet in the ear (Vogel 1995: 159/160). The United States argued that a complete ban on growth hormones was unnecessary, since the level of hormones in the meat, once it reached the consumer, was hardly any higher than the natural levels of hormones.

The use of natural hormones was not even detectable, since the additional concentration of hormones in the meat still fell within natural limits. As for the artificial hormones: it had never been proven that they affect human health negatively. Indeed, a number of studies, including those carried out by the EC itself, failed to provide any evidence that hormone-treated meat poses greater risks to human health than other meat. The United States and other opponents of the hormone ban therefore came to the conclusion that the ban was not supported by scientific evidence; it merely responded to irrational sentiments of European consumers and served to protect European meat producers.

The EC, on the other hand, maintained that it had the right to choose whichever level of protection it wished, even if it was a 'zero-risk' level. It also defended a complete ban in the light of scientific uncertainty about the health effects of the hormones. It argued that if the effects were unclear, it would be best to stay on the safe side and prohibit the use of growth hormones altogether, an argument that has become known as the 'precautionary principle.'

Additionally, the EC claimed that other than pure health reasons should also be taken into account. The hormone ban, so it was argued, was necessary to restore and later to retain the confidence of consumers in meat. Even if it was an irrational concern on the part of consumers, these sentiments had to be dealt with.

Moreover, the EC's Common Agricultural Policy had produced large excess supplies of meat. The use of growth hormones could only increase these excess supplies. The hormone

² This directive was declared void on procedural grounds by the Court of Justice on 23 February 1988 (Case 68/86). On 7 March 1998, the same directive was adopted again by the Council (88/146/EEC).

was therefore not deemed economically necessary (see e.g. EP 1985 under I; Vogel 1995: 156/157).³

In late 1986 and early 1987, the US sought to challenge the pending EC ban in the Codex Alimentarius Commission (Vogel 1995: 164/165) and under the GATT's Agreement on Technical Barriers to Trade (Meng 1990: 825). Both times, the EC blocked the attempt. In response, the US established a retaliatory tariff on a range of EC imports, that became effective as the European import ban was implemented (McNiel 1998: 110).

During that same period, international standards for the use of growth hormones in meat production were established. In June 1987, the World Health Organization (WHO) and the Food and Agriculture Organization's (FAO) Joint Expert Committee on Food Additives (JECFA) set Acceptable Daily Intake and Maximum Residue Levels (ADIs and MRLs) for the synthetic hormones. They were not deemed necessary for the natural hormones. Later that year, the Committee on Veterinary Drugs of the WHO/FAO's Codex Alimentarius Commission came to the same conclusion (McNiel 1998: 108).

As the date of the import ban neared, the EC exempted meat intended for pet food from the ban (Vogel 1995: 161). Also, the US quota for high quality beef (the so-called 'Hilton beef') was raised (Meng 1990: 825). The bulk of US beef imports was still affected by the ban, however, and the US retaliatory tariffs were only lowered slightly to account for the EC exemptions.

On 1 January 1989 the import ban finally became effective, as well as the US retaliatory tariffs. The EC announced it would establish counter-retaliatory tariffs and filed a complaint with the GATT. To prevent the conflict from escalating, both parties established a task force and the EC withdrew its threat of retaliation. On 3 May 1989 the task force announced an interim agreement, under which US producers could export beef to the EC if they were certified not to use growth promoting hormones (McNiel 1998: 110/111; Vogel 1995: 168/169).

In the early nineties, the positions remained unchanged, with the EC banning US hormone-treated meat and the US imposing its retaliatory tariffs. In 1993, the European Commission presented a proposal to strengthen controls on the use of hormones, which were still widely available on European black markets, and to ban the use of beta-agonists, another growth-promoting substance (COM (93) 441).

In the meanwhile, the US and the EC were also engaged in the Uruguay Round of negotiations under the GATT. For the beef-hormone case, this round had two important results. First, the Agreement on Sanitary and Phytosanitary Standards (SPS), that concerns standards for food and agricultural products, was strengthened. National standards would have to be based more strictly on scientific risk assessments and on available international standards such as those established by the Codex Alimentarius Commission. Second, the dispute settlement procedure was altered. No longer could one party to a dispute block the establishment of a Panel or the adoption of a report. In addition, parties could appeal the ruling of a Panel to an Appellate Body.

These changes opened up new opportunities for the US to challenge the EC hormone ban, especially after the Codex Alimentarius Commission established MRLs for hormones in meat in July 1995 (EU Food Law 1995a; 1995b). At that meeting of the Codex Commission, the EC had tried to have other than purely scientific criteria, such as consumer concerns, accepted in the setting of standards, but this proposal was rejected (EU Food Law 1995a; 1995b).

Being aware of the changes in the international legal regime, the EC convened a special scientific conference on the risks of growth hormones in meat production. Although at

³ Later, similar socio-economic considerations formed the basis under a ban on the use of BST, a hormone that increases the production of milk in cows (Vogel 1995: 171 ff.).

that conference it was concluded that growth hormones did not pose any special risks to human health as long as they were administered properly, the Council of Ministers reaffirmed its support for the hormone ban (EU Food Law 1995c; McNeil 1998: 106).

On 26 January 1996, the US requested consultations with the EC, the first step in the WTO dispute settlement procedure. In the following weeks, the US was joined by Australia, New Zealand and Canada. The consultations failed and both the US and Canada requested the WTO to set up a Panel. A few days later, the EC Council of Ministers adopted a directive that consolidated earlier directives and decisions, and banned beta-agonists as well (Council Directive 96/22/EC).

On 18 August 1997, the Panel issued its final report (WTO 1997a; 1997b). It found the EC ban to be inconsistent with the SPS Agreement. The EC appealed this conclusion, but it was upheld by the Appellate Body, although with somewhat different arguments (WTO 1998a). The Appellate Body did recognise the EC's right to establish stricter standards than those of the Codex Commission. It also acknowledged that the EC was not required to rely on laboratory experiments alone; the risk assessment could also involve the effects a ban would have in the 'real world.' Nevertheless, the EC ban was struck down because it was not based on a sufficiently specific risk assessment.

Both parties hailed the Appellate Body's conclusion: the US because it confirmed the hormone ban's illegality (USTR 1998); the EC because it appeared to open the window to retaining the ban (Commission 1998). More specifically, the EC argued it did not have to lift the import ban, but could carry out an additional risk assessment in order to bring the ban into conformity with the Appellate Body's ruling. This was contested by the US and Canada. In an arbitration procedure to determine a reasonable period of time for implementing the Appellate Body's decision, it was established that the EC could not claim additional time to carry out another risk assessment and had to bring its legislation into conformity with the ruling by 13 May 1999 (WTO 1998b).

This has not kept the European Commission from setting up additional risk assessments and asking further scientific advice by some of its scientific committees. On 16 February 1999, the Commission informed the Council and the European Parliament that it was considering (a combination of) three options (Commission 1999a):

- Compensating the US for lost exports by giving certain trade concessions;
- Making the ban temporary, depending on new scientific evidence;
- Allowing US meat into the European market under a labelling requirement.

Also, the Commission indicated that the additional risk assessments would not be completed by 13 May and implementation of the WTO ruling might therefore not take place by that date.

These options were also presented to the US (Commission 1999b). After meetings between US and EC officials, the US expressed 'deepening concern' with the EC stance in this case (USTR 1999). Even though the deadline for compliance with the WTO ruling is nearing, it is highly unlikely that the conflict will be resolved on a short notice. The positions in this case remain stalemated, neither party wanting to give in.

4. Explaining the outcomes

In this section I will try to explain how and why these two cases led to such different outcomes. First, I will discuss the outcomes themselves: to what extent do they differ? Then I will show how the three (groups of) factors discerned in section 2 may have led to these outcomes.

4.1 The outcomes: a California effect or not?

As has been stated in the introduction, these two cases have been selected on the basis of their outcomes: the leghold trap case presents an example of a successful attempt to raise other countries' standards, whereas the beef-hormone case shows a failed attempt. However, a closer examination of the outcomes reveals a less clear pattern, especially in the leghold trap case. I will discuss these outcomes in this subsection.

The outcomes of the beef-hormone case are fairly straightforward. The US and Canada have consistently refused to change their own standards under EC pressure. In early 1989, when the ban had just become effective, the Agricultural Commissioner of Texas is reported to have offered hormone-free beef under a state programme, but I have not found any evidence that such a programme has actually been established.

Also in 1989, the EC agreed to exempt meat intended for pet food from the ban on growth promoting hormones. This is only a very slight reduction in the level of protection the standards offer. Moreover, it affects only a small part of the meat imports into the EC.

Neither the EC nor the US or Canada have therefore made any significant changes to their standards governing the use of hormones in meat production. None of the affected parties has been able to impose its own standards upon (one of) the others.

Things are more complicated in the leghold trap case. Before the European Regulation was enacted, neither the US nor Canada had established any nation-wide trapping standards. In the US, only a few states had banned or severely restricted the use of leghold traps: sources mention a number between three and six states (Animal Welfare Institute 1990: 159; Nollkaemper 1996: 242; Senate 1997: Statement on the bill).

As a result of the Regulation, the US and Canada signed agreements with the EC, establishing stricter trapping standards. Four points need to be made about these agreements. First, in the agreement between the EC and Canada, the standards are binding on the parties, whereas they are not in the agreement between the EC and the US. The latter agreement only involves a pledge to stimulate and promote the acceptance of the standards. In the US, the final decisions will still be made at the state level.

Second, in an annex to the agreement, Canada declares that it will ban the use of 'jaw-type leghold restraining traps' for a number of species at the date of the entry into force of the agreement and for other species at a later date (Council Decision 98/142/EC: Annex IV). The US has not made any such declaration, but in a side letter to its Agreement with the EC, an EC official states that '[r]epresentatives of the competent authorities in the United States have indicated that [...] with respect to the *Mustela ermina* and the *Ondatra zibethicus*, the use of all jaw-type leghold restraining traps is being phased out within four years of the entry into force of the Agreement [...] between Canada, the European Community and the Russian Federation. These two species encompass over 2,2 million animals trapped every year in the United States and represent typically 50% of all animals listed in the standards trapped annually in this country.' (Council Decision 98/487/EC: Side Letter at page 35). For the other species falling under the standards, the competent authorities have 'advised' that 'the use of conventional steel-jawed leghold restraining traps' should be phased out within six years. The status of these promises is unclear, as well as the authorities that will have to enact the bans, and the actions that have been taken to actually enact them.

Third, the US promises to apply the standards of the Agreement to an additional ten species of fur-bearing animals (Council Decision 98/487/EC: Side Letter at page 35; USTR 1997b). This would increase the scope of the standards to 29 species in the US.

Fourth, The agreements do not prohibit specific types of traps, but set general standards for all traps. The use of a type of trap is prohibited if it does not meet these standards. The standards of the agreements may therefore be both stricter and less strict than a direct ban on

leghold traps: stricter in that more types of traps are covered by them; less strict in that certain types of leghold traps, or leghold traps as such, may comply with them. Moreover, it is hard to judge the stringency of the standards a priori. Without knowledge of trap performances, it is impossible to assess what types of traps will effectively be proscribed by the standards.

It is therefore hard to compare the standards before and after the process, but the general conclusion seems to be that trapping standards have become stricter in Canada (assuming the agreement is implemented), but that they have hardly become stricter in the US, at least not as a direct result of the European Regulation. Thus, apart from having to explain the difference in outcomes between the leghold trap and beef-hormone cases, I will also have to explain the different outcomes within the leghold trap case.

4.2 Legal factors

The first set of factors I discerned above were the legal factors. Since the EC, the US and Canada were all contracting parties to the GATT and all three are members of the WTO, the GATT and WTO regimes of trade rules have played an important role in both cases. In both cases the US and Canada invoked the illegality of the (planned) European import ban. In this subsection I will discuss the legal status of the two European measures and try to assess to what extent this status influenced the outcomes in the cases.

The GATT and its successor, the WTO, have established rules for the use of standards as trade barriers. Both the ban on the use of leghold traps and that on the use of growth hormones are trade barriers, because they impede the import of products that could have been imported without the bans. They make it more expensive for foreign producers to market their products on the European market.

Such barriers are prohibited unless they can be justified. The GATT Treaty, which has also become part of the new WTO, contains a number of general justifications in Article XX. More specific rules and exemptions have been laid down in a number of side agreements, including an agreement on the use of sanitary and phytosanitary standards, the so-called SPS Agreement. This agreement relates specifically to agricultural products.

The leghold trap Regulation would have been covered by the GATT itself, if the EC had implemented an import ban. The import ban would have violated several provisions in the GATT, since it would have been a quantitative restriction to trade (Article XI GATT), and it would have distinguished between similar foreign and domestic products (Article III) and among similar foreign products (Article I).

The measure could have been justified by one of the general exemptions of Article XX GATT. This provision lists a number of justifications for trade restrictions, including those 'necessary to protect human, animal or plant life or health' (Article XX(b)) and those 'relating to the conservation of exhaustible natural resources' (Article XX(g)).⁴

Such a justification would most likely have failed before a GATT panel, however. Although it is beyond doubt that the fur import ban was aimed at protecting animal life and health, it was aimed at protecting those values in the jurisdiction of other countries. In a similar case between the US and Mexico (the famous Tuna-Dolphin case), it had already been concluded that Article XX(b) GATT only allows countries to use trade measures to protect values in their own jurisdictions (Zarrilli 1997: 108).⁵

⁴ Later, it has been argued that the leghold trap ban could also be justified by Article XX(a) GATT ('public morals'), but this provision had never been invoked before and at the time it did not play any role in the debate over the leghold trap Regulation.

⁵ The two Tuna Dolphin panel reports have never been formally adopted. Nevertheless, they have played an important role in the debate over the protection of extra-jurisdictional values and their arguments have been

The second Tuna-Dolphin panel concluded that measures aimed at extrajurisdictional protection could be justified under Article XX(g). However, earlier case law had interpreted the phrase 'relating to' conservation to mean 'primarily aimed at' conservation. The second Tuna-Dolphin panel argued that a measure was not primarily aimed at conservation if it did not contribute to conservation directly, but needed a change in other countries' policies to bring about this objective (Zarrilli 1997: 106).

Both conclusions have been the subject of heated debate in the international trade community (see e.g. Carr 1997; Nollkaemper 1996). Nevertheless, a consensus seems to have arisen, both among legal scholars and among WTO members, that unilateral trade measures should not be used to protect values in other countries. Moreover, the purpose of the leghold trap regulation would probably not have been covered by Article XX(g) anyway, since many species covered by the Regulation were not endangered. It is therefore very likely that the leghold trap regulation would have failed before a GATT panel.

All parties to the dispute were aware of this. The US and Canada challenged the legality of the planned import ban from the outset, but EC trade officials themselves also pointed at the WTO inconsistency of the Regulation. In fact, during the whole process, the EC seems to have shifted toward a rejection of unilateral trade measures to protect values in other countries.

This change can be witnessed on a number of occasions. The clearest statement came in the Rio Declaration of 1992. Principle 12 rejected the use of unilateral trade measures. This position was restated in a 1996 Communication from the Commission to the Council and EP on trade and environment. There it read: 'the most effective way of dealing with international environmental problems is through international and multilateral agreements, not by unilateral trade measures.' (COM (96) 54 final: 14 & 22) The use of process- and production method-related measures, such as the ban on the use of leghold traps, was rejected as well.

Another clear sign of a changing attitude toward unilateral trade measures can be found in the reports by the EP's Committee on External Economic Relations. The Committee on the Environment, Public Health and Consumer Protection was the primary forum for discussing the leghold trap Regulation in the EP, but the Committee on External Economic Relations was always asked to give an opinion on proposals relating to this issue, as well. Whereas the Committee on the Environment has consistently supported a strict enforcement of the Regulation, the position of the Committee on External Economic Relations shows a remarkable shift.

At first, in its opinion on a draft for Regulation 3254/91, the Committee supported the proposed import ban. In its conclusions the Committee: '[c]onsiders that measures aimed at prohibiting imports of goods made from the fur of species trapped by this method [leghold traps, S.P.] and originating in countries that still use it are an effective means of creating pressure to speed up action to ban the leghold trap.' It even recommended that the deadline for meeting the Regulation's requirement 'should be reduced to one year following approval of the regulation' (EP 1990: 30).

This position had been reversed by 1996, when the Committee was asked to comment on the Commission's proposal to delay the ban and amend the original Regulation. Even though the Committee still '[a]grees to ban cruel and inhumane methods of capturing and killing animals' it now '[c]onsiders necessary to establish internationally agreed humane trapping standards in cooperation with third countries' and '[i]nsists on the necessity of the European Union to respect its international trade obligations, especially in the framework of the WTO.' (EP 1996: 26) Earlier in its opinion, the Committee had already mentioned five criticisms of Regulation 3254/91 and stated that it was incompatible with GATT and WTO

tacitly accepted as GATT/WTO law.

rules. Therefore, the Committee supported the Commission proposal, while the Committee on the Environment and the EP as a whole rejected it.

The same occurred in the opinion on the Draft Agreement between the EC, Canada and the Russian Federation. Whereas the EP denounced it completely, the Committee on External Economic Relations approved the proposed agreement. The Committee '[i]nsists on the absolute necessity for the Community to respect its international obligations, and especially those resulting from the WTO.' (EP 1997b: 15)

In short, a consensus seems to have developed in the EC's external trade community that unilateral measures are undesirable. This attitude is also reflected in the EC's reluctance to implement the import ban. The EC tried to reach an agreement rather than play it hard.

The hormone ban has led to a number of procedures before the WTO. Before the establishment of the WTO, the US had already tried to challenge the hormone ban under the GATT's Agreement on Technical Barriers to Trade, but these attempts had failed because, under GATT rules, each party to a dispute could block a dispute settlement procedure. Under the new WTO rules this was no longer possible and both the US and Canada filed a complaint and requested the establishment of a dispute resolution panel.

The panel issued its report on 18 August 1997. It concluded that the EC import ban was inconsistent with the SPS Agreement on three grounds (WTO 1997a & 1997b: conclusions). First, the hormone ban was not based on a risk assessment. Second, the EC had adopted 'arbitrary or unjustifiable distinctions in the levels of sanitary protection it considers to be appropriate in different situations which result in discrimination or a disguised restriction on international trade' (WTO 1997a: conclusion 9.1(ii)). Third, the hormone ban had not been based on international standards (such as those established by the Codex Commission).

All parties appealed this conclusion. The Appellate Body upheld the general conclusion that the European ban was inconsistent with the SPS Agreement, but it used somewhat different arguments (WTO 1998a). It rejected the idea that distinctions in risk levels could result in disguised restrictions on trade. It also acknowledged that the EC could maintain stricter levels of protection than those offered by international standards. Nevertheless, the Appellate Body concluded that the hormone ban had not been sufficiently supported by a risk assessment. At the same time it stated that such a risk assessment did not have to be confined to quantifiable or experimentally verifiable risks.

All in all, the Appellate Body's ruling has caused some confusion, since it seems to have opened the door to the consideration of other than purely scientific factors. Still, it seems clear that a complete hormone ban is inconsistent with WTO law and that the EC cannot, legally speaking, maintain its ban on meat imports from the US and Canada.

It can therefore be concluded that both the leghold trap and the hormone ban violate(d) international trade law. It is also clear, however, that the outcomes of the two processes do not conform to this legal conclusion. A number of questions arise in this respect:

- Why has the EC been willing to defy GATT/WTO rules in the beef-hormone case and upheld the import ban, whereas it did not want to 'play it hard' in the leghold trap case?
- Why have the US and (especially) Canada accepted agreements in the leghold trap case if they felt sure they would have won a case before the WTO and why do they go all the way in the beef-hormone case?
- Why did the US and Canada accept different agreements in the leghold trap case?

These questions are not meant to suggest that trade law has been unimportant in these cases. Quite on the contrary. They do point, however, to the complex interplay between legal and other factors in international trade disputes. I will now turn to some of these other factors to see whether they can provide the answers to these questions.

4.3 Economic factors

As noted in section 2, economic factors are likely to play an important role in the success or failure of an attempt by one country to impose standards upon other countries. One hypothesis could therefore be that a California effect is more likely to take place if the country trying to impose its standards has more economic leverage over its trading partners. This leverage can be measured in several ways: by looking at the proportion of exports affected by the standards, or by looking at the importance of the affected industries in the total economies of the exporting countries. In either case, one can either look at the value of the affected production or at the employment at stake.

One problem in trying to determine economic leverage is the availability of figures. Often, the consequences of trade measures are hard to quantify. Debates about their exact size may become part of the political process, in which pressure groups try to have their own estimates accepted as official figures. This is apparent in the leghold trap case. In this case, the US national trapper organisation is reported to have claimed that 226,000 jobs were involved in trapping in the US, whereas an animal welfare group came up with a figure of 43,000.

Another problem is that trade measures may have both direct and indirect consequences. The direct consequences consist of the trade volume and employment that are or could be potentially disrupted by the trade measure itself. The indirect consequences consist of the trade and employment that are or could be potentially disrupted in the future or in other parts of the economy. In the beef-hormone case, for instance, the direct consequences consisted of the volumes of US and Canadian meat that had previously been exported to the EC. The indirect consequences were much bigger, however, in that the hormone ban potentially affected exports of other agricultural products and was linked to the more general debate on the liberalisation of agricultural trade, as I will show below.

In spite of these caveats, I will try to estimate the economic consequences of the leghold trap and growth-hormone bans for both the US and Canada. In the case of the leghold trap ban, figures on the direct effects differ widely. Apart from possible measurement errors and differences in definition, estimates of fur exports to the EC as a proportion of total fur exports are difficult because some pelts are exported as raw furskins while others are exported as a part of other products, such as coats.

Nevertheless, the available data suggest that fur exports to the EC were relatively more important to Canada than to the US. In 1994, exports of furs and fur products to the EC seem to have accounted for about 42% of total Canadian exports of furs and fur products, compared to 19 or 10% for the US (Nollkaemper 1996: 241). Also, the fur industry seems to have been more important to the Canadian economy as a whole than to the US economy. Absolute figures of total fur production and exports in the US are higher than those in Canada, but compared to the economy as a whole, they are much higher in Canada (EP 1990: 28/29; Nollkaemper 1996: 241).

The indirect effects of the leghold trap ban appear to have been rather limited. This issue was not linked to many other trade issues between the EC and Canada and the US. It was related to other animal welfare measures the EC had adopted before, such as the bans on baby seal skins and cetacean products, but the total impact of this kind of animal welfare measures would always be rather small.

The direct effects of the hormone ban are easier to estimate than those of the leghold trap ban. Both Canada and the US had a fixed export quota of beef to the EC which was disrupted by the import ban. For the US the quota amounted to 76,000 metric tonnes in 1982. The US government used an estimate of about \$ 100 million worth of beef exports in 1992 as

the basis for its retaliatory tariff. The Canadian quota equalled 161 metric tonnes in 1987 or, according to one source, 0.02% of its total beef production (Vogel 1995: 159). The direct effects therefore seem to have been much bigger for the US, both in absolute and relative figures.

The direct effects of the hormone ban for the EC were also considerable. Banning the hormones had been the European response to consumer boycotts in the early 1980s and it was important in restoring the European beef market and retaining consumer confidence in beef. Allowing imports of hormone-treated beef could have undermined this confidence.

These direct effects are dwarfed, however, by the indirect effects of the hormone ban. The hormone ban is closely linked to the wider debate about liberalisation of agricultural trade that has been taking place in the GATT and the WTO over the last decades, in particular between the US and the EC. Since 1947, the GATT and later the WTO have made considerable progress in liberalising world trade. In a number of negotiating rounds, tariffs have been significantly lowered and a start has been made in reducing the role of non-tariff barriers to trade in many areas.

Trade in agricultural products, however, has largely remained untouched by these accomplishments, although significant progress has been made since 1995. In general, this may be due to the contentious character of agricultural and food policies. More specifically, the EC has always resisted agricultural trade liberalisation that would undermine its internal agricultural policy. This so-called Common Agricultural Policy (CAP) is a highly interventionist system of subsidies and regulations. It is complemented by high external tariffs and a quota system in order to protect the European agricultural markets.

The US, on the other hand, has consistently pushed for further trade liberalisation in agricultural products, since its producers are considered to be more efficient than their European counterparts. One of the most important sources of this higher efficiency is the use of innovative technology, like growth hormones or, more recently, genetically modified organisms.

In order to liberalise trade in agricultural products, the EC would have to decrease the tariffs and quotas accompanying the CAP. This would not be of much use, however, if it were still able to raise all kinds of regulatory barriers to agricultural products. Vogel (1995) discusses many such standards, that are sometimes aimed at protecting consumers but often also reflect traditional beliefs or seek to protect domestic producers.

An important part of the struggle over agricultural trade liberalisation has therefore been carried on in the field of regulatory barriers to trade. For the US, the European hormone ban was and is probably an important test of the strengthened SPS Agreement and of its attempts to increase market access to the EC. If the EC could get away with a standard that was not justified by scientific evidence, the EC would retain a strong instrument to control the access of agricultural products to its markets. Moreover, it would undermine the American comparative/competitive advantage in agricultural production, which rests on technological innovation. For the EC, on the other hand, it would be an important victory if it could ban US products on the basis of consumer concerns. Hence the European efforts at having other than purely scientific criteria recognised as legitimate within the SPS framework.

The stakes in this larger debate are much higher than the \$ 100 million worth of beef exports, although of course it is hard to estimate the exact amount of potential exports affected. Agricultural trade liberalisation is therefore a strategic choice for the US that is likely to yield large, yet not precisely known benefits in the future. It seems warranted to say, however, that the potential benefits are much bigger for the US than for Canada.

To what extent can these factors explain the (differences in) outcomes between and within the cases? First, it seems clear that the economic consequences of the hormone ban were much

bigger than those of the leghold trap ban, both for the US and Canada, and for the EC. This may explain why the countries were more willing to play it hard in the beef-hormone case than in the leghold trap case. The leghold trap ban was more of a symbolic than an economic issue, whereas the hormone ban was linked to considerable economic interests, especially in the EC and the US.

Economic factors may also explain why the EC and the US have remained deadlocked over the hormone ban. Both the EC and the US are important economic powers of similar strength, neither possessing superior economic power over the other.

Finally, economic factors could account for the differences in outcomes within the leghold trap case as well. Canada seems to have been more dependent upon the EC for its fur exports than the US, which could have been the reason why Canada had to accept stricter standards than the US.

In the beef-hormone case, Canada had much smaller stakes both compared to the US and compared to its stakes in the leghold trap case. Nevertheless, it chose to join the US in filing a complaint with the WTO. Probably, Canada could play it hard in the beef-hormone case because it could follow the American lead, whereas it had to yield in the leghold trap case because the US did not seem willing to put a lot of effort into the issue. Under these circumstances, it may have been an advantage for Canada that its stakes in the beef-hormone case were not too high because playing it hard did not affect its exports as much as it would have done otherwise.

4.4 Political factors

The last group of explanatory factors are the political factors. This group relates mainly to the political commitment to impose stricter standards upon other countries. Partly, this commitment may be the result of big economic stakes, as I discussed above, but Vogel (1995) also stresses the importance of pressure groups and coalitions between pressure groups.

In this subsection I will analyse the political factors behind the leghold trap and beef-hormone cases. For practical reasons, I will concentrate mainly on the political processes within the European decision-making institutions. The behaviour of pressure groups and the decision-making processes in Canada and the US still await more in-depth analysis.

The two cases show an interesting difference in the internal division of tasks within the EC. In the leghold trap case, the issue was gradually taken over by the Directorate General for External Relations (DG I) and the Council for General Affairs, composed of the foreign ministers of the member states. In the beef-hormone case, on the other hand, the Directorate General for Agriculture (DG VI), as well as the Agricultural Council, played a pivotal role in the whole process. Below, I will trace the division of tasks between the different DGs and councils in both cases.

Originally, the leghold trap Regulation was a matter for the environmental commissioner and the environmental Council of Ministers. Gradually, however, DG I and the Council for General Affairs took over.

The external trade commissioner seems to have become interested when, in 1994, Canada and the US began to threaten to file a GATT complaint and asked for consultations. Then it became clear that the Regulation could have repercussions beyond its own limited policy area and influence trade relations with the two countries. Several sources mention letters by the external trade commissioner, sir Leon Brittan, in which he stresses the intent to reach an agreement rather than impose a ban. He is also said to have met with the US Trade Representative Mickey Kantor in 1995, but without a result (High North News 1995a; Weiss

1997: 59) In a letter to members of US Congress, Brittan again emphasised that the issue should be resolved in a mode of cooperation rather than confrontation (Commission 1995a).

Up to 1995, all EP questions about the leghold trap Regulation were answered by the environmental commissioner (first Mr Paleokrassos, later Ms Bjerregaard), but from then they were increasingly answered by Leon Brittan. When the Commission had decided it wanted to postpone the ban in December 1995, the letter informing the member states was signed by the Director Generals of External Relations and of Customs (Commission 1995b). Again, when the Netherlands instituted the import ban unilaterally, the Commission reacted through the Directorate General for External Affairs (DG I 1996). Concerns over the trade aspects of the Regulation appear to have gained prominence over the animal welfare aspects.

The most important shift occurred in 1997. The environmental Council had rejected the Draft Agreement with Canada and the US in February and June 1997 and subsequently the issue was transferred to the Council for General Affairs. It adopted the agreement in July 1997.

This shift is important because of the different interests and views that existed between the different DGs and Councils. As I showed above, the EC's external trade officials, exemplified by DG I and the Council for General Affairs, have gradually moved toward a rejection of unilateral trade measures to protect values in other countries. To trade officials, a predictable, stable and relatively open trade regime was the prime objective, while the Directorate General for the Environment and the Environmental Council took more interest in animal welfare. The EC's external trade officials were therefore probably not willing to jeopardise the trade relations with the US and Canada as much as were environmental officials.

The same division of interests can be seen in the European Parliament, although the EP as a whole has always been a strong supporter of the import ban. In the end, however, the EP does not seem to have been very influential in this case.

In the beef-hormone case, the Directorate General for Agriculture (DG VI) has always been the leading force. All decisions regarding the hormone ban have been taken in the Agricultural Council. Still, the issue of hormone-treated beef, and food safety more generally, affects more than one policy area and thus more than one Directorate General. The tasks of the Directorate General for Consumer Protection (DG XXIV) has expanded over time. It has gained increasing powers, culminating in 1997 proposals to formally strengthen the role of DG XXIV in food policy and legislation (COM (97) 176 final; EU Food Law 1997). The commissioner for external affairs has played a role in the conflict with the US and Canada, but always in co-operation with the Agricultural commissioner, as is witnessed, for example, by the letter the two commissioners wrote together to the US Trade Representative and US Secretary of Agriculture (Commission 1999b).

The smaller part played by external trade officials may account for the more uncompromising position the EC has taken in the beef-hormone case. It is doubtful, however, whether the division of tasks can be treated as an exogenous factor; it may well be the result of the links between the hormone issue and the wider issues of agricultural policy discussed above.

The influence of the EC member states in these cases is not very clear. In both cases, the member states were split, but the minorities do not seem to have been able to significantly alter the course of the process and its outcomes.

In the leghold trap case, the Netherlands and the UK were the strongest proponents of the import ban. The Netherlands even implemented it unilaterally. In the end, however, their efforts do not seem to have yielded much result, although they may have contributed to a

compromise that was closer to the original intent of the Regulation than the one that would otherwise have resulted.

In the beef-hormone case, the UK, Ireland, Denmark and France supported more generous hormone standards (Meng 1990: 821), but they switched or were outvoted by the other member states. The UK tried to have the 1985 Directive declared void by the Court of Justice of the European Communities. Although it succeeded, on procedural grounds, the same Directive was re-adopted not much later. The original opponents have not been able to reverse the EC's position since. On the contrary: after having stiffened its position in the mid 1980s, the EC has remained remarkably consistent in its defence of the hormone ban, despite unfavourable scientific reports and a serious trade conflict with the US.

Among the political factors discussed here, the division of tasks between the DGs and Councils in the EC therefore seems to offer a promising contribution to explaining the differences in outcomes between the cases. It cannot account for the differences within the leghold trap case, though. The available evidence does not suggest a big role for the EC member states, but this should be examined more carefully. Also, the role of pressure groups and the internal decision-making processes in the US and Canada merit further consideration.

5. Conclusions and discussion

In this paper I have examined two cases in which the EC tried to impose its standards upon the US and Canada. In the leghold trap case the EC succeeded, although more so with respect to Canada than the US, whereas it failed in the beef-hormone case. I have tried to explain these outcomes by systematically comparing some legal, economic and political aspects of the two cases.

As a result of this comparison, a number of conclusions can be drawn. First, the role of the GATT/WTO regime is complex. Trade rules and principles have been invoked by the US and Canada in both cases and, in the leghold trap case, the EC seems to have been unwilling to jeopardise the stability of the trade regime. On the other hand, the US and Canada did not want to play it hard in the leghold trap case and agreed to a compromise even though they would probably have won before the GATT or WTO. They did go to the WTO in the beef-hormone case, but the EC does not seem willing to accept the outcome of that procedure.

It is probably useful to distinguish between two decisions: first the decision whether or not to start a procedure before the WTO and second the decision whether or not to comply with the outcome of such a procedure. In both cases, countries seem to make a trade-off between the costs and benefits of bringing a case before the GATT/WTO, even if the outcome is relatively clear beforehand, as it was in the leghold trap case and, to a lesser extent, the beef-hormone case.

The decision whether or not to start a procedure involves several types of costs and benefits. The main benefit would be a binding decision that a standard is incompatible with international trade law. Such a decision can be used in negotiations with the country imposing the standard. It may also lead to an authorisation to impose retaliatory tariffs, although the US imposed them without authorisation in 1989. The costs are, first, the time and effort it costs to complete a procedure and, second, the tension it may create in the relationship with other countries. The time and effort involved in the procedure are probably important factors. The US and Canada filed their complaints in the beef-hormone case in 1996 and the issue has still not been resolved. If the conflict is minor and not related to other important issues, it may well be more convenient to try to reach an agreement, especially if the other party is willing to compromise.

Another trade-off is involved in the decision by the country imposing the standards whether or not to comply with WTO law. Here, the main benefit of compliance is the reinforcement of a stable and predictable trade regime. Also, retaliation of the other party is avoided, if such retaliation is a viable threat. The costs are the immediate loss of the benefits associated with the standard involved, and the potential losses if future policies or policies in other areas have to be changed. These losses relate both to the benefits a standard yields in terms of environmental or health protection and to the benefits it yields in terms of its protectionist effects. In the beef-hormone case, the losses to the EC were far higher than in the leghold trap case: they involved a perceived loss of consumer protection, as well as a threat to the EC's Common Agricultural Policy.

Countries have an interest in a stable, predictable and open trade regime, although this interest may be bigger in some areas than in others. An open agricultural trade regime is more important to the US than to the EC, while both have a big stake in an open trade regime for manufacturing products. Apart from this general interest in stable, predictable and open trade relations, all countries may find an interest in impeding trade (in certain products) in specific cases. The interest in upholding the international trade regime is therefore one among many relevant factors in the decision-making process.

The second conclusion relates to the importance of economic factors. As I showed above, differences in economic leverage may account for the differences in outcomes between the two cases and the differences within the leghold trap case. The economic power of the countries involved may explain why Canada had to accept a relatively strict agreement in the leghold trap case, whereas the US agreed to a much weaker agreement, and why the EC and US remain deadlocked over the hormone ban.

In discussing economic factors, it is important to take into account both the direct and the indirect effects of a standard. The direct effects consist of the trade flows disrupted by the standard itself, while the indirect effects relate to the trade flows that are potentially affected by it. Sometimes, the indirect effects are much larger than the direct effects. Moreover, they are often of a different nature: direct effects are concrete and can fairly easily be quantified, whereas indirect effects are general and very hard to quantify. Issues that involve large indirect effects are therefore more of a strategic nature: they revolve more around matters of principle than around concrete trade flows; the stakes in them are higher but less clear.

The importance of economic factors should not conceal, however, that these economic factors also have important political aspects. First, the estimated economic interests are the outcome of a political process in which interested parties try to have their estimates accepted as 'objective' figures. As is obvious from the discussion in the previous paragraph, this is even more so if the indirect effects are potentially big. Second, other than economic factors may also play a role in a country's commitment to strict standards.

This brings us to the third conclusion, relating to the importance of political factors. In this paper I could only examine part of the potential political factors at work in the cases, but even this limited analysis reveals some interesting points. The division of tasks between the Directorate Generals and Councils of Ministers of the EC seems to have played an important role in the commitment the EC had to uphold its stricter standards. In the leghold trap case, the DG for External Affairs and the Council for General Affairs eventually took the lead, which shifted the EC's commitment from animal welfare objectives to free trade. In the beef-hormone case, the DG and Council for Agriculture had the most central role, which probably contributed to a strong commitment to upholding the hormone ban.

Although I have not specifically looked into the role of pressure groups, it is likely that the influence of European consumer and farmer groups was stronger in the beef-hormone case

than the influence of animal welfare groups in the leghold trap case. However, a closer examination of their role would contribute greatly to the analysis of these case studies.

The objective of these exploratory case studies was to assist in the development of a more systematic theory of the California effect. The two cases reveal a number of factors that have already been suggested in the literature, as well as some new elements of a theory. However, the literature also mentions several factors that did not come up in these case studies. In the remainder of this paper, I will discuss the results of the case studies and place them in a wider theoretical perspective.

Among the explanatory factors that have been suggested in the literature and that were also revealed in these case studies, economic size or economic power is the most salient. Vogel (1995) already concluded that the 'lure of green markets' had been an important factor in strengthening environmental standards: 'The evidence demonstrates that another important factor enabling greener countries to promote the export of stricter standards to less green countries has to do with the size and importance of the former's domestic markets.' (Vogel 1995: 261).

However, the two case studies in this paper suggest that in addition to the size of the country wanting to export its standards, the size of the 'target' country matters as well. An economically more powerful country can use its market power to withstand the pressure to adopt certain standards. First, it can impose retaliatory measures. Second, the country trying to impose the standards may also have an interest in market access to the country it is trying to impose its standards upon. It may therefore exercise a greater degree of restraint in its dealings with larger countries than with smaller countries. Third, a country trying to impose its standards may rely on the imports from the target country. Then, it would hurt itself by restricting or prohibiting imports. Although this third point did not apply in the leghold trap and beef-hormone cases, it may be important in others.

The importance of the size of the target country may differ depending on the way a country tries to impose its standards. In section 1, three different ways were discerned. The size of the target country is likely to be most important if a country tries to impose its standards directly upon another country, as in the leghold trap and beef-hormone cases. If a country tries to impose its standards upon foreign producers, foreign governments are not directly involved. Even then, foreign producers may seek retaliation by their own government as for instance under the USTR's Section 301 actions. If stricter standards are exported through supranational organisations, the market size of the target country may matter in that its support may be crucial to further integration efforts.

The role of legal factors has remained somewhat more implicit in earlier accounts. Vogel (1995) states that the 'politics of integration' (pp. 263 ff.) is an important factor in bringing about the California effect. He also analyses the role of GATT rules in 'greening the GATT' (chapter 4). However, the role of these rules remains ambiguous. The two case studies in this paper suggest that their impact can be understood as an element among others in a trade-off between the costs and benefits of complying with international trade law.

Formulated in such general terms, this conclusion does not add much to our understanding of the importance of trade law. In a more advanced theoretical account, the costs and benefits should be specified more precisely in order to arrive at testable hypotheses. Such a theoretical account could be linked to the existing literature and debate on international regimes, a task that is beyond the scope of this paper.

The latter is also true for a comparison of different legal regimes. Vogel observes that '[t]he removal of nontariff barriers and the maintenance or strengthening of health and safety regulations requires a strong international authority' (1995: 55). His thesis is that the stronger

the international authority, the more likely is a California effect to take place. This assertion cannot be properly judged against the two cases in this paper, because they involved the same legal regime (GATT/WTO). Moreover, the two cases differ on too many other relevant factors.

The role of institutional factors, most notably the division of tasks within the government trying to impose its standards, has already been recognised in analyses of harmonisation processes within the EC. Eichener (1993) has drawn attention to the organisation of the European decision-making process to account for the outcomes in the case of European occupation health and safety regulation. Others have suggested that the European Commission has an institutional interest in certain outcomes of harmonisation processes (e.g. Majone 1996: 65) and that the institutional interests of specialised national ministers in the Council of Ministers may account for harmonisation at a high level (Rehbinder & Stewart 1985: 13; cf. Eichener 1993: 37 ff.).

The leghold trap and beef-hormone cases suggest that this may also be important in the EC's external relations. This may explain some of the differences in outcomes of attempts to impose stricter standards, since the division of tasks and the rigidity of this division differ between issues and policy areas.

Nevertheless, the division of tasks may not form an independent explanatory factor, because to a large extent it is probably the result of other factors, such as the power of interest groups in a given policy area or the linkage of an issue with wider policies. These 'deeper' factors would then provide a better explanation of the success and failure in imposing stricter standards upon other countries. Still, differences and changes in the division of tasks may be an important intermediate factor in the explanation. Moreover, institutional structures can also be argued to develop partly independent of other factors; insofar as they do, they form a valuable complement to an explanation of the California effect.

Other factors discussed in the literature did not come up in the case studies in this paper. Partly this is due to limitations in my research design and methods. Because I was not able to conduct interviews, it was very hard to assess the role and importance of interest groups, even though they are likely to have been important in explaining at least part of the outcomes.

On the other hand, some factors may not have been relevant in the type of cases that I have studied, even if they may be relevant in other cases. This is especially true for the role of economies of scale in the dissemination of standards. As was explained in section 1.1, economies of scale may play an important role if standards are imposed on producers. If these economies are big, producers may apply the strictest standards to their whole production, rather than to part of it. If standards are imposed directly upon other countries, as in the leghold trap and beef-hormone cases and in cases of harmonisation, this is not a relevant consideration.

Genschel & Plümper (1997) explain the occurrence of a California effect in terms of two structural conditions. First, a California effect is more likely to take place if the minimum number of countries that would benefit unilaterally from adopting some strict standard is relatively small. Then, those countries will more easily agree upon adopting the standard, even if they have to bear a disproportional part of the associated costs. Second, strict standards are more likely to spread if the benefits relative to the costs of adopting them increase the more countries adopt them. They use the example of strict banking standards, that spread more quickly as they had been adopted by more countries, since they improved a country's credit-rating (Genschel & Plümper 1997: 636/634).

These two factors do not account well for the outcomes in the leghold trap and beef-hormone cases, because a different type of standard was involved. They seem most relevant if

collective goods are at stake. Then, a single, big country or a coalition of countries may be willing to provide that good because it benefits from it unilaterally, as Genschel & Plümper's first condition states. This is the basic reasoning behind theories of hegemony and hegemonic stability in international relations (cf. Kindleberger 1983, in particular pp. 392/393). Their second condition is important if adherence to a standard becomes increasingly profitable the more people use it. For instance, adherence to certain standards of measurement becomes increasingly profitable if more people adhere to it. Similarly, it becomes more profitable to use certain computer programmes (such as MS Windows) the more other people use it.

In the leghold trap and beef-hormone cases, different kinds of standards were at stake. Both involved standards that aimed at protecting one specific group against another: animals against trappers and consumers against beef producers (or: European beef producers against foreign beef producers). Such standards do not have a collective goods character. Also, their application is not likely to spread as more producers adhere to them, except through the impact of reputation effects: if producers could significantly improve their reputation by complying with, for instance, the European standards for the use of growth-hormones, the application of those standards could spread more quickly beyond a certain point. In the two cases discussed here, such processes do not seem to take place, however. For a more general theory of the California effect, it is therefore necessary to distinguish between different types of standards as well.

All in all, the two case studies provide several building blocks for a theory of the California effect. It is impossible to assess the relative importance of the separate factors based on these two case studies alone. They differ on too many relevant factors to justify any such claims. Moreover, it is likely that a California effect is not caused by (a combination of) separate factors. Rather, it is probably the interplay between different factors with each other and the context of the case that will produce certain outcomes. By carefully studying different cases and by linking them to available theoretical insights, it may be possible to gain a more systematic understanding of these factors and their interplay.

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