

## **SETTING INTERNATIONAL STANDARDS FOR FOOD AND AGRICULTURAL TRADE**

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When the Uruguay Round Agreements of the GATT entered into force in January 1995, a new era dawned in agricultural trade regulation at the international level. Agriculture, for the first time, was brought fully into the multilateral regulatory system for trade. Facilitated by these agreements and a booming world economy, agricultural trade has increased rapidly in recent years raising the stakes for the World Trade Organization—as the successor to GATT—and to other international organizations working in this area.

New demands have certainly been placed on my institution--the Food and Agriculture Organization on the United Nations (FAO). From analysis of the impacts of the previous negotiations to assistance in preparation for the upcoming trade talks in 1999, FAO plays an important information and training role in agricultural trade matters for many developing countries. FAO has a substantive technical assistance program emphasizing capacity building in the developing countries themselves on agricultural and food policy, food safety, sanitary and phytosanitary matters, trade-related intellectual property, and similar matters to help these countries meet their trade potential today and to become more equal partners in future negotiations.

However, our work facilitating international trade is not confined to developing countries alone. FAO has a long history in its scientific role in establishing international standards and recommendations relating to plant health and food safety and quality matters. In particular, the Uruguay Round has raised the profile and brought new status and challenges to all international standard setting bodies in the area of sanitary and phytosanitary regulation where FAO plays an integral part.

In a short speech it is hard to cover all of the relevant aspects of international standard setting for agricultural trade. So I will focus my attention on two specific aspects of the Uruguay Round--the Agreement on the Application of Sanitary and Phytosanitary Measures, or the SPS Agreement for short, and the Agreement on the Technical Barriers to Trade – the TBT Agreement – both have important implications for world agriculture.

I will also focus on two international bodies outside of the WTO—the Codex Alimentarius Commission and the International Plant Protection Convention—which now have a critical role in assuring science-based decision-making under the SPS and TBT Agreements. The work of

both of these bodies is undertaken largely within the Food and Agriculture Organization of the United Nations in Rome. I will not address a third key body cited in the SPS Agreement—the International Office of Epizootics which covers animal health and quarantine issues in a manner similar to the IPPC on the plant side. But this institution plays an equally important role.

Ten years ago it would have been impossible to find more than a handful of people in Washington—outside of USDA and FDA scientists—who even knew what the Codex Alimentarius Commission did. Probably even less knew that the International Plant Protection Convention even existed. Today, the Uruguay Round Agreements have made many producer and industry groups well aware of these bodies and their importance in trade disputes.

### **The SPS and TBT Agreements**

The SPS Agreement has as its primary purpose the protection of human, animal and plant health through the sanitary and phytosanitary measures. The SPS Agreement specifically references the standards, guidelines and other recommendations of Codex Alimentarius and the IPPC as international reference points for food quality and safety and plant health. Nations meeting the level of protection in the Codex and IPPC standards in controlling food safety and plant pest problems are presumed to meet the requirements of the SPS Agreement.

However, the Agreement does not limit a country to the level of safety in the Codex and IPPC standards. Those wishing to impose a higher level of protection than called for in the Codex or IPPC standards must take the least trade-restrictive measures based on sound scientific evidence and internationally acceptable methods of risk analysis.

The TBT Agreement applies to all aspects of food standards not covered in the SPS Agreement. Labeling, packaging and similar regulations would fall under this category. TBT measures must have a legitimate purpose, be proportional to the desired purpose and should be based on international standards. Codex is relevant for the TBT Agreement in areas such as food quality and composition requirements, labeling, nutrition and methods of analysis.

### **International Institutions' Response to the Uruguay Round Agreements**

The TBT and SPS Agreements have also caused modifications in the key institutions associated with them. Both the Codex Alimentarius Commission and the IPPC have undergone major changes as a result of the Uruguay Round. They have been modernized and made more relevant in international trade.

The Codex Commission is charged with implementing the Joint FAO/WHO Food Standards Programme. This Programme has dual objectives—protecting consumer health and ensuring fair practices in food trade by elaborating internationally acceptable standards for food. “Standards” are meant in the broadest sense—from specific standards applying to a single commodity to general standards for labeling, additives, food hygiene, and residue limits for pesticides and veterinary drugs as well as codes of good manufacturing practice.

The mandate of the IPPC is similar, but slightly narrower, aiming to protect plant resources in importing countries from harmful pests from exporting countries. The Convention has long-established the concept that exporting countries have an obligation to protect importing countries by insuring that exported agricultural goods are free from pests. The US and other exporters have, for many years, used a system of certification based on a model established in the Convention to assure foreign customers that their imports are free of harmful plant pests.

Although the Uruguay Round Agreements did not enter into force until 1995, it was clear earlier during the negotiations that the roles of Codex Alimentarius and the IPPC as the principal international instruments for food safety and plant health, respectively, would be included in the final agreement. In March 1991, the FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade made a series of recommendations, which now have largely been adopted, to prepare the Codex Commission for its expanded role in international trade.

These recommendations focused on the “horizontal” aspects of Codex work, like food additives, labeling, and hygiene as well as issues relating to the equivalency of import and export inspection and the process of establishing Codex standards. In the seven years since, most of these recommendations have been adopted or addressed and the work of Codex has become integral to the implementation of the SPS and TBT Agreements.

Since 1991, the Codex Alimentarius Commission has:

- Adopted new procedures for the elaboration of Codex standards, including an accelerated elaboration procedure;
- Taken steps to ensure that its standards, guidelines and other recommendations on food safety are soundly based on science;
- Begun the process of incorporating risk assessment principles into all its work on food safety and quality;
- Revised and published new, risk-based, General Principles of Food Hygiene which incorporate the Hazard Analysis Critical Control Point System into the overall recommendations for Good Manufacturing Practice;
- Finalized the first elements of the Codex General Standard for the Use of Food Additives;
- Reviewed, and revised or confirmed, Maximum Residue Limits for pesticides with the result that more than 50% of current Codex MRLs have been adopted or confirmed in the last five years;
- Revised its standards in the areas of Fish and Fishery Products; Fats and Oils; and Cereals and Cereal Products.

The IPPC has likewise undergone significant changes starting in 1993, following a series of recommendations from regional plant protection organizations. Although the IPPC has been in existence since 1952 and can trace its origins back to the *Phylloxera vasatrix* Convention in

1881, until 1993 it had no formal organization and no history of standard-setting apart from the convention itself and a glossary of agreed upon terminology.

In 1993 in anticipation of the SPS Agreement, the FAO Conference, the main governing body of FAO, established a Secretariat and interim standard-setting procedures for the IPPC. This has led to significant progress in completing a number of standards. However, these were interim measures. Many governments recognized that the Convention itself needed to be revised to meet the demands of the SPS Agreement.

Last November, after a two-year negotiation, the FAO Conference unanimously adopted a revised International Plant Protection Convention. This new Convention formally established a Secretariat and standard-setting procedures, including a Commission for standard approval and direction-setting in the IPPC. The provisions of the Convention were modernized and more clearly stated to align them with the SPS Agreement in areas like pest-free areas, the use of risk assessment and harmonization.

### **The Future**

The new status, which has been accorded to Codex under the SPS and TBT Agreements, has not been without some negative effects. Until there is a clear understanding of the implications of these two Agreements, Codex member nations will likely act very cautiously in approving new standards. In the short term this is slowing the Codex process for some controversial standards like BST.

The Codex tradition of arriving at consensus in its decision-making has also broken down in controversial cases. For the United States this has cut both ways. It was on the winning side in a close vote on the maximum residue levels for growth hormones in beef but was not successful in moving forward an MRL standard on BST and on standards for natural mineral waters.

The consensus tradition must be restored. Without it, meaningful progress on controversial items will slow to a standstill. It is especially important for Codex standards of relevance to the TBT Agreement where consensus on standards is specifically required. This matter of consensus decision making will be discussed in detail at the next session of the Codex Committee on General Principles.

Even with the limited number of WTO decisions on SPS disputes, countries are getting a clearer understanding of their obligations when Codex does adopt a standard or other text. A better understanding of the implications of recent WTO decisions should lead to an acceleration of the development of draft Codex standards which have been held pending.

However, it is now clear that the SPS Agreement cannot be interpreted to mean that all national regulations must “conform” to the requirements of Codex standards. Claims made to the effect that Codex standards have the force of international law, or are binding on Member countries, or automatically override national legislation and regulations, are false and even misleading.

Nevertheless, the harmonization of national and international Codex standards remains a goal of the WTO Agreements, and countries which adopt Codex standards for their national regulations enjoy the status of these regulations being presumed to be consistent with the SPS Agreement.

Recent WTO decisions will also assist in the clarification of the role of science in Codex decision-making which will also be discussed by the next session of the Codex Committee on General Principles. The outcome of this discussion should give the Codex Commission the opportunity to differentiate between scientifically-based food safety and quality requirements and other attributes of food trade and consumer opinion, which affect the sale and distribution of foods.

In any case, there can be no doubt that Codex standards will continue to be based exclusively on scientific principles in all elements that deal with protecting the consumers' health and ensuring fair trade. Recent WTO decisions on the SPS Agreement have confirmed, for example, that factors such as the "precautionary principle" invoked by some consumers' groups, cannot be applied when a Member country applies a scientifically-based Codex standard.

As more cases are dealt with by the WTO, many of the uncertainties facing Codex Member countries will be clarified. This process is likely to be continuous and incremental, and as time goes by, it will strengthen the Codex process and the relationship between the way in which Codex elaborates its standards and the way in which Member countries apply them under the Rules of the WTO.

The future of the IPPC is less clear. It does not have a long record of standard-setting as does Codex but the revisions recently adopted to strengthen this role have set it on a path to be more effective in this area. These revisions require adoption by two-thirds of the member nations but this is expected within the next few years. When these changes are implemented the IPPC will have a solid structure to protect agriculture in importing countries from foreign plant pests while facilitating trade at the same time.

## **Conclusion**

Effective implementation of the SPS and TBT Agreements requires, and contributes to, a well-functioning international system of food safety, food quality, and plant and animal health standards. FAO plays a critical role in this process but our success depends on a number of factors:

- cooperation among all parties involved—governments, food manufacturers, farmers, traders and consumers;
- consensus among governments—the international system is held together by shared commitments to reach common goals, without consensus the long-term stability of this system is in doubt;
- dedicated research by food scientists, agronomists, toxicologists, entomologists and other experts to assure that decisions by international bodies remain rooted in sound science;

- commitment to technical assistance to developing countries to bring their food control and plant quarantine systems up to international standards facilitating trade and protecting consumers and farmers everywhere; and
- adequate resources—FAO and other international bodies need sufficient funding to maintain the high priority given Codex and IPPC matters and the United States must pay its international commitments in full to maintain its influence in the decisions taken by these bodies.