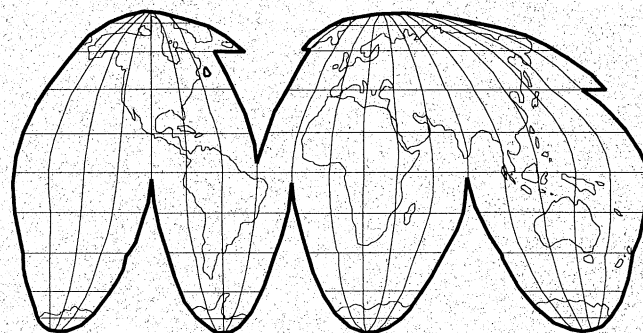

Understanding Technical Barriers to Agricultural Trade

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Impact of WTO on CODEX Alimentarius and Its Implications for World Trade

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Food strikingly illustrates the interdependence of the present day world economy. The annual value of world trade in food for human consumption is approximately US\$300 billion (for about 460 million metric tons of foodstuffs). This, already enormous, global trade is expanding every year, thanks to rapidly growing consumer demand, developments in food science, and technology, and transport, and the need of countries to earn foreign exchange. In view of these developments, countries have a large incentive to ensure the quality and safety of the food they produce.

A world-wide recognition of the importance of international trade and the need for facilitation of such trade while at the same time ensuring the quality and safety of food for the world consumer, led to the establishment of the CODEX Alimentarius Commission [CAC or CODEX] in 1962. Codex Alimentarius is Latin and interprets, literally, as “food code.” The CODEX Alimentarius is a collection of internationally adopted food standards presented in a uniform manner.

CODEX food standards have been used for many years by developing countries as a basis for their own national food control systems and food hygiene regulations, and by industrialized countries to harmonise their national requirements. With the advent of the new rules established by the World Trade Organization [WTO] Agreements on Sanitary and Phytosanitary Measures [SPS Agreement] and on Technical Barriers to Trade [TBT Agreement], CODEX recommendations are now recognized as reference standards for use by trading partners. This development promises to heighten the visibility and importance of the role of CODEX in the international trading community in the post Uruguay Round era.

The CODEX Alimentarius Commission

The CAC is a subsidiary body of the Food and Agriculture Organization of the United Nations [FAO] and the World Health Organization [WHO]. Since 1962 it has been responsible for implementing the Joint FAO/WHO Food Standards Programme. The work of the CAC is serviced by a Secretariat located in FAO Headquarters in Rome. The Commission is an inter-governmental body with membership open to the governments of all nations who are Member Nations, or Associate Members, of FAO and/or WHO. There are currently 153 countries that are CODEX members which covers 98 percent of the world's population. The current budget for a biennium for the joint programme is US\$5.8 million, shared by FAO and WHO with FAO providing 83 percent and WHO 17 percent.

The Reason for a CODEX Alimentarius

The principal role of the CAC is to develop food standards that can be recommended to governments for adoption. The CAC works to internationally harmonize and coordinate all food standards work, whether undertaken by governmental or non-governmental organizations. Its global charter is the protection of the health of consumers and the ensuring of fair practices in food trade. Coverage extends to all the principal foods, whether processed, semi-processed, or raw, in the form that they reach the consumer. The products range from meat, fruit and vegetables, and fish, to such products as edible ices, juices, and bottled water.

The CODEX facilitates trade; it does not restrict trade or interpose unnecessary or artificial barriers. The international food standards of the CODEX are developed so that governments can accept that products complying with those standards can move in international trade without jeopardizing the health or interests of consumers. In addition, industry can trade in foods that comply with CODEX standards confident in the knowledge that they are dealing in products that are internationally accepted as safe.

The Way the CODEX Alimentarius Commission Operates

CODEX is the only international forum able to bring everyone together -- scientists, technical experts, government regulators, consumer activists and industry representatives. CODEX standards are developed based on the best scientific and technical advice available. The standards produced are one reason that international trade has grown so dramatically in recent decades.

It is usual for food standard matters to be subject to official government controls, particularly for foods that move in international trade. Official government certification is normally required as a condition of importation into market countries. With the movement towards limiting the size and cost of government services, full cost recovery from producers and industry for government services, and the emphasis on efficient production, countries are increasingly adopting the approach of industry quality control under official government monitoring.

In the work of CODEX considerations are given to governments, industry, and the consumer. Although CODEX is an inter-governmental organization and the heads of country delegations are therefore government representatives, CODEX encourages the involvement of industry and consumers. Many delegations to the various meetings of CODEX include representatives from the various food industry complexes as well as from consumer organizations. CODEX has recognized that it is not desirable to formulate standards in a vacuum and has thus urged governments to include consumers and industry representatives in their delegations.

The principal developmental work of CODEX is undertaken by its various committees and twenty-five subsidiary bodies. All of these bodies, like CODEX are intergovernmental in nature.

The work of the CAC is divided between two basic types of committees. The first type, Vertical Committees, comprises those commodity committees dealing with specific foods or classes of foods. These commodity committees work vertically in the commodities allotted to them. An example of such Commodity Committees are those dealing with foods of animal origin such as the CODEX Committee on Fats and Oils, the CODEX Committee on Meat Hygiene, the CODEX Committee on Processed Meat and Poultry Products and the CODEX Committee on Milk and Milk Products.

There are also other CODEX committees that deal with a specific subject area of concern on a generic basis across all foods and all commodity committees. These are referred to as Horizontal Committees and include such subject areas as food additives, pesticide residues, labeling, inspection and certification systems, and analysis and sampling.

Another type of CODEX committee deals with matters that are of regional interest. These so-called Regional Committees, numbering five in all, are based in Africa, Asia, Europe, Latin America and the Caribbean, and North America and the South-West Pacific.

CODEX and Quality Control

The entire work of CODEX is related to quality control, albeit quality control restricted to consumer protection, health, and trade. It is not within the mandate of CODEX to establish quality standards in areas that are unrelated to its charter of protection of consumers' health and economic interests, and ensuring fair practices in the trade in food. This means, for example, that CODEX standards have no direct role in such areas as environmental protection, animal welfare or the protection of endangered species unless such issues directly affect food quality or safety.

General Approach to Quality Control by CODEX

Inherent in the development of CODEX standards is that they provide as much flexibility as possible, consistent with the objective of consumer protection. The reasons for this include the need to accommodate the different circumstances that prevail in different geographic areas, different countries and different industries, together with the need to avoid restricting technical innovation and efficiency in the food production industries. CODEX standards have no role in either advantaging or disadvantaging developing country producers and processors relative to their developed country counterparts.

In the past CODEX standards, in some instances, concentrated upon end point inspection and tended to restrict the means of achieving desired objectives. This has changed. The current approach is one of establishing objectives, but of allowing scope for different approaches in achieving the desired end-point. What is now much more important is the term equivalency. Equivalency means that the measures adopted by different countries need not be identical but rather that the results that are obtained are indeed identical and verifiable.

A key element in the development of CODEX standards, recommended codes of practice, and guidelines is the use of the risk analysis approach. This approach, which is of particular

relevance to matters pertaining to the protection of human health, has three elements: the assessment of risk, followed by the development of approaches to manage that risk, and lastly how to communicate that risk to governments, industry, and consumers. The CODEX Executive Committee has recently directed all CODEX Committees to describe the basis of the risk analysis methods that they use, and such descriptions will be a fundamental part of all future standards.

Quality assurance systems have become a focal point for inclusion in the work of CODEX. As an example, the CODEX has recently adopted guidelines for the application of the Hazard Analysis Critical Control Point [HACCP] system. In doing this, it recognized HACCP as being a tool to assess hazards and establish control systems that focus on preventive measures instead of relying primarily on end-product testing. The value of HACCP is that it can be applied throughout the food chain from the primary producer to the final consumer. In addition to enhancing food safety, HACCP allows a better use of resources and a more timely response to problems. It also provides assistance in the inspection and certification service provided by regulatory authorities. The HACCP approach, along with the use of Good Manufacturing Practices [GMPs], is recognized and strongly recommended by CODEX.

CODEX: The Post Uruguay Round Era

Though not the sole reason why the work of CODEX is increasingly being based on formal risk assessment and quality control systems such as HACCP, major impetus has come from the Uruguay Round [UR] of Multilateral Trade Negotiations, which began in Punta del Este in September 1986 and concluded in Marrakech in April 1994. The UR negotiations were the first to deal with the liberalization of trade in agricultural products, an area excluded from previous Rounds of negotiations. The UR also included negotiations on reducing non-tariff barriers to international trade in agricultural products and concluded with two binding Agreements: the SPS Agreement and the Agreement on Technical Barriers to Trade. The Agreements will be applied by all Members of the WTO.

The SPS Agreement

The right to apply measures necessary to protect human, animal and plant life and health was included in the original 1947 General Agreement on Tariffs and Trade [GATT] as a general exclusion from the other provisions of the Agreement provided that “such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.” Despite this stipulation for the application of national measures to protect human, animal, and plant life and health, it had become apparent by the time of the Punta del Este declaration that national sanitary and phytosanitary measures had become, whether by design or accident, effective trade barriers.

The SPS Agreement therefore sets new rules in an area previously excluded from GATT disciplines. It places an obligation on nations that are contracting parties under the WTO to

ensure that SPS measures have a scientific justification, do not arbitrarily or unjustifiably discriminate between nations, are not applied in a manner that would constitute a disguised restriction on trade, are not more restrictive to trade than is necessary to provide the chosen appropriate level of protection, and are established and maintained in an open and “transparent” manner.

A further provision includes the presumption that any nation that is a contracting party to the WTO is complying with its obligations under the SPS text when its national measures conform to the standards established by an appropriate international standard setting organization. CODEX standards, codes of practice, and guidelines dealing with food additives and contaminants, pesticide residues, residues of veterinary drugs, and hygiene measures are thus very relevant for the evaluation of national measures under the SPS text.

Further, the WTO text provides that “to harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary and phytosanitary measures on international standards, guidelines or recommendations, where they exist . . .” This provision is a big step forward towards the obligatory use of CODEX international recommendations. The SPS text also stipulates a proactive agenda for Members’ participation in the relevant international standards setting organizations such as CODEX. It states that countries “shall play a full part . . . to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures . . .”

The TBT Agreement

The TBT Agreement is a revision of the Agreement of the same name first developed under the Tokyo Round of GATT negotiations in the 1970s. Examples given in the TBT Agreement of legitimate TBT measures are those with objectives of national security and the prevention of deceptive practices. The objective of the Agreement is to prevent the use of national or regional technical requirements, or standards in general, as unjustified technical barriers to trade. It covers all types of standards including quality requirements for foods *except requirements related to sanitary and phytosanitary measures* and includes a very large number of measures designed to protect the consumer against deception and economic fraud. The Agreement basically provides that all technical standards and regulations must have a legitimate purpose and that the impact or cost of implementing the standard must be proportional to the purpose of the standard. It also says that if there are two or more ways of achieving the same objective, the least trade restrictive alternative should be followed. The TBT Agreement also places emphasis on international standards, WTO Members being obliged to use international standards, or parts of them, except where the international standard would be ineffective or inappropriate in the national situation. The TBT Agreement does not include a programme of harmonizing national standards.

With the coming into force of the SPS and TBT Agreements, governments are, to a large measure, being compelled to act in a manner which would avoid creation of non-tariff barriers due to their own ideas of food safety and food quality. While CODEX recommendations may

or may not be accepted as such, they have as a result of the UR Agreement assumed a completely new dimension as a “benchmark” or “yardstick” of national requirements.

The Future for CODEX

The future direction of CODEX with respect to quality control will continue to be influenced by the need to satisfy the criteria established within the WTO SPS agreement, as well as with the revised WTO TBT Agreement. There will be an increased emphasis on the frequent review of CODEX standards to ensure they are validly based on current scientific knowledge because of the requirement that measures based on the protection of human health be scientifically justified. Further, we can expect that CODEX recommendations will increasingly stress risk-based decision-making which has the dual benefit of simultaneously reducing costs to inspection authorities and increasing the level of health protection for the consumer. We can also anticipate that more effort will be directed toward making a clear distinction between those measures that are necessary to protect human health from those measures that are based on other criteria, such as non-protective quality measures.

Conclusions

The CODEX food standards have been established to ensure that there are internationally accepted food quality standards to protect the health and economic interests of consumers, as well as to ensure the fair practices in the trade of food. CODEX food safety standards are based on scientific principles, and incorporate the principles of risk analysis and process control. They are designed to permit flexibility in the method of achieving the specified quality standard, so that procedures and approaches may be adopted that are appropriate to a range of production and processing methods.

As the UR SPS and TBT Agreements begin to be implemented it is anticipated that governments will turn increasingly to CODEX recommendations in resolving trade disputes and in reviewing their own requirements. The efforts of countries to improve the quality and safety of their food supplies and to harmonize food standards and codes of practice are being watched very closely by many people and many governments, along with WTO, FAO, and WHO. There remains a lot of work that must still be done by many countries. Certainly the work to strengthen export control systems for food must receive a very high priority. National systems of control also must be improved and transparency ensured. These are very legitimate concerns facing all countries. It is a fact that some countries are indeed not yet capable of ensuring that food products produced within their borders meet the established CODEX standards, or were produced according to the codes of practice or guidelines of CODEX. Where at all possible, CODEX and FAO stand ready to help in this very good effort.