CSPI Center for Science in the Public Interest
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Food Safety and Inspection Service
U.S. Department of Agriculture
Room 102
Cotton Annex
300 12th Street, SW
Washington, D.C. 20250-3700

99-061N
99-061N-1
Benjamin Cohen

Docket #99-061N

Dear Mr. Clerkin:

On behalf of its nearly one million members, the Center for Science in the Public Interest submits these comments on issues to be discussed at the Codex Committee on Food Import and Export Inspection and Certification ("CCFICS") at its meeting in Australia on February 21-25, 2000. Our comments are based, in part, on information contained in the December 14, 1999 Federal Register Notice and on the January 13, 2000 public meeting.

Introduction

In light of the events at the recent World Trade Organization ("WTO") Ministerial Meeting in Seattle, we make some general comments before discussing the five specific papers on the CCFICS agenda.

The apparently technical matters with which CCFICS and other Codex Committees deal frequently raise issues that consumers feel strongly about. For example, the decision in 1995 by the Codex Alimentarius Commission to approve the use of certain hormones in beef triggered a stream of events -- the WTO agreeing with the United States and Canada that the ban of the European Union ("EU") on such hormones violated the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), the refusal of the EU to end its ban, the imposition of tariffs by the United States on food imported from the EU, and the pillaging of MacDonald's restaurants in Europe -- that was one of the foci of the Seattle protests. It is, therefore, not surprising that other democratically governments differed with the United States at Seattle on whether the SPS Agreement should be changed.

The United States should not agree at CCFICS to any standard that provides less protection to consumers than current United States statutes and regulations -- even if this means not reaching an international agreement on a particular Codex standard. Otherwise we may face in the future the same choice the EU faced with beef hormones: weakening our standard to comply with the Codex standard or accepting penalties on our exports because our standard thwarts some other country's exports.

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Comment on Proposed Draft Guidelines/Recommendations for Food Import Control Systems

This Draft (which is at step 3) was prepared principally by Mexico, with the assistance of other governments, and many parts are yet to be written.

Paragraph 6 states that "public health protection should be assigned a higher priority" than "consumer protection." This statement may be interpreted as calling for governments to ignore consumer concerns in the absence of a demonstrated public health problem. Making such decisions is the responsibility of democratically elected governments and not Codex, and so this sentence should be deleted.

Paragraph 30 refers to "occasional" random sampling by the importing country once an "export Inspection and Certification System has been accepted." However, the Food Safety and Inspection Service ("FSIS") now does a 20 percent sample of imported meat and poultry, and it should remain the prerogative of each importing government to decide how often to sample foreign food.

Comment on Proposed Draft Guidelines and Criteria for Official Certificate Formats and Rules Relating to the Production and Issuance of Certificates

As noted at the public meeting, this Draft (which is at step 3) ignores those requirements of the importing country that are not necessarily related to public health, such as the grading of fresh fruits and vegetables and the labeling of food to indicate whether it contains genetically modified organisms. This information often has a material bearing on consumers' purchasing decisions, and the legality of such grading and labeling would probably judged by the WTO's Agreement on Technical Barriers to Trade ("TBT Agreement") rather than the SPS Agreement.

Thus, paragraph 1 of the Draft should be changed to reflect recognition of these legitimate non-health related requirements -- other than "quarantine and public health requirements" -- and corresponding changes should be made throughout the Draft.

Comment on Proposed Draft Guidelines for the Utilization and Promotion of Quality Assurance Systems

We agree with the statement in paragraph 12 of the Draft (which is at step 3) that some of the factors that should be considered "include food safety and legislative requirements, customer requirements, and other quality attributes." As noted above, consumers may desire labeling requirements for such matters as the grading of fresh fruits and vegetables.

However, paragraph 1 of the Draft -- which sets forth its scope -- says it deals only with assuring food safety and facilitating trade. Thus, paragraph 1 should be amended to be consistent with paragraph 12.

Comment on (a) Discussion Paper on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems and (b) Discussion Paper on the Judgement of Equivalence of Technical Regulations Associated with Food Inspection and Certification Systems

Neither of these papers is in the formal Codex "step" process. We discuss them together because there may be disagreement about whether a particular measure is a sanitary measure, a non-sanitary measure, or both. We also discuss them together because they are very similar and have a common deficiency

We were told at the public meeting that there is no WTO case dealing with the question of how to decide whether the WTO legality of a national measure is to be judged under the SPS Agreement or the TBT Agreement. Thus, these papers should either be combined or be considered together throughout the Codex process in order to ensure that they are consistent.

The two papers are attempts to spell out in more detail the provisions on equivalence contained in Article 4 of the SPS Agreement and Article 2.7 of the TBT Agreement. However, it seems premature to try to do this until we have more experience with actual equivalence determinations by national governments.

The experience of the United States government suggests that it is very difficult to make such determinations. The Food and Drug Administration ("FDA") has made no formal decisions on whether any foreign food inspection system is equivalent to the safety standards administered by the FDA. The United States Department of Agriculture ("USDA") announced in December 1999 that it had determined that 32 of the 36 countries then exporting meat and poultry to the United States had an inspection system that -- on paper -- is equivalent to the new Hazard Analysis and Critical Control Point System ("HACCP") announced in July 1996 by USDA for domestic producers; these USDA decisions occurred almost two years after large domestic firms had to be in compliance with these new requirements and more than three years after the new HACCP requirements were announced.

Neither paper explicitly gives any role to the public in the process by which a government decides whether a foreign system is equivalent to its own. Such public participation is a statutory requirement for the FDA and is the stated policy of the FSIS. This important omission in the papers could be cured by defining the term "interested parties" -- which occurs in paragraph 21 of the former paper and paragraph 13 of the latter paper -- to include representatives of consumers and other members of the public.

Respectfully submitted,

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