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Re: Codex Committee on Food Labeling; U.S. Positions on Agenda Items 4-6 for the April 27-30, 1999 Committee meeting in Ottawa, Canada

1. The Institute for Agriculture and Trade Policy (IATP) submits these comments on the draft United States position on items 4 to 6 on the provisional agenda for the 27th session of the Codex meeting on food labeling. These items concern labeling of foods obtained through genetic manipulation and labeling of organically produced foods.

2. Our initial comment concerns the U.S. position on organically produced foods, which contradicts its position on the labeling of foods produced from genetic manipulation. The U.S. comments on the Codex "Draft Guidelines for the Production, Processing, Labeling and Marketing of Organically Produced Foods" acknowledges that the certification and labeling of organic foods concerns production and processing methods. This acknowledgement is consistent with much of the U.S. Department of Agriculture's "National Organic Program Proposed Rule", in which the label "USDA Organic" would be granted only for products having passed through a rigorous production and processing method certification.[1] However, regarding the "Alternative Proposal" on labeling of foods derived from genetic manipulation, "the United States does not believe that disclosure of the method of production should be required". The U.S. Delegate should make every effort to clarify to Codex in Ottawa and to the public any reasoning that supports the contradiction between U.S. opposition to providing information about method of production in labeling for products containing Genetically Modified Organisms (GMOs) and the apparent support of product and process method based labeling for organically produced products.

[1] "National Organic Program Proposed Rule: Accreditation, Equivalency, and State Organic Programs Fact Sheet", U.S. Department of Agriculture, December 1997.

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3. The USDA has tried to overcome the conflict between the recommendations of the National Organic Standards Board and the recommendations of the agro-biotechnology industry concerning organic foods by declaring equivalency between organically produced foods and the genetic manipulation of food, among other practices of industrialized agriculture. In response to overwhelmingly negative comments to the USDA's December 1997 proposed organic standards rule and on the advice of the agro-biotechnology industry itself, the USDA withdrew the proposed redefinition of "organic" to allow for a three-year period of education about GMOs.[2] If the U.S. government continues to follow the advice of the agro-biotechnology industry on the proposed rule for "organic", the U.S. delegate should so clarify this position to Codex. The U.S. Delegate should also present to Codex documents concerning the plans of the U.S. government and the agro-biotechnology industry to educate the public about the purported equivalency between organically products and products containing GMOs. Without further clarification of the U.S. government and biotechnology industry plans for organic/GMO labeling and certification, the U.S. Delegate's comments concerning labeling of organically produced food could be interpreted as misleading, deceptive or even hypocritical.

4. IATP believes that Codex should adopt a version of the presently agrammatical "Alternative proposal" in brackets in the "Proposed Draft Recommendations on the Labelling of Foods obtained through Biotechnology". U.S. opposition to this proposal states that "the United States has seen no evidence to support that, as a class, foods obtained through biotechnology are inherently less safe or differ in quality or any other manner from foods obtained through conventional methods." We contend that the U.S. standard of proof to recommend labeling genetically modified organisms (GMOs) is such that no review of literature and data, no matter how thorough, could rise to that standard. The environmental and sanitary/phytosanitary (SPS) review process concerns genetic manipulation of individual GMOs, and not of all GMOs "as a class". Criticisms of the review process and petitions to revoke or deny approval of a GMO have not contended that they were "inherently" less safe as a class. Rather, many consumers have demanded labeling of GMOs because of the belief that the

[2] E.g. "U.S. Congress criticizes proposed organic foods label", REUTERS, April 27, 1998.

substantive and procedural integrity of the approval process, *on a case by case basis*, has been compromised.[3] When we read that U.S. seed companies are still debating the proper measures needed for Pest Resistance Management (PRM) programs to work for GMO seeds (e.g. 20% or 50% acreage set aside for pest refugia?)[4], should we be surprised that GMOs and the review process of GMOs are so controversial outside the industry? How could GMOs be approved for commercial use prior to the resolution of such a basic controversy in the experiments of Pest Resistance Management programs? While Codex may not have a mandate to consider such questions, certainly all Codex delegates should scrutinize review processes for GMOs before determining the parameters of GMO labeling.

5. Furthermore, if the relatively simple genetic manipulations that produce input traits in GMOs are the subject of present industry controversy, what faith can consumers have that a review process which approved GMOs, despite the ongoing PRM controversy, will not result in approvals of yet more controversial GMOs whose output traits require more complex and numerous genetic manipulations? Despite such controversies, the U.S. position for the Ottawa meeting is that "providing information regarding the method of production on the food label would be highly impractical and inequitable". Instead the United States "supports the use of voluntary labeling". But what GMO producer or food manufacturer would volunteer such labeling when it imposes an additional cost, not borne by competitors, on the marketing of an already expensive technology in a highly price sensitive market? If producers and manufacturers are thus inhibited from voluntary labeling, how will be the goals of practicality and equitability be fulfilled for consumers?

6. In its attempt to repudiate the European Council regulation on labeling of GMOs the United States suggests that "[t]he lack of clarity in the use of labeling could lead to an unrealistic requirement that GMO and non-GMO products be segregated . . . Segregation would require nothing less than establishing two or more parallel storage, transport and processing systems."[5] If

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[3] E.g. Daniel Bellow, "Vermont, the Pure-Food State", THE NATION, March 8, 1999, 18-21, and Jennifer Ferrara, "Revolving Doors: Monsanto and the Regulators", THE ECOLOGIST, Vol. 28, No. 5 (September/October 1998), 280-286.

[4] "Major U.S. seed companies agree to insect resistance management plan for Bt corn", PESTICIDE AND TOXIC CHEMICAL NEWS, January 21, 1999, 14-15.

[5] "European Council Regulation No. 1139/98; Compulsory Indication of the labelling of certain foodstuffs produced from genetically modified organisms."

biotechnology is to fulfill its much publicized promise to producers to enable value-added products for premium prices that will rescue U.S. agriculture from its ongoing crisis for most producers, segregation according to output traits of GMOs will be a necessary feature of the contract-based agricultural production advocated by agribusiness and the U.S. Department of Agriculture. Agribusiness already has the technical capability for such segregation, e.g. segregating hard white spring wheat from hard red. Hence, we assume that U.S. government support for the agribusiness position on GMO segregation merely serves to buy time for agribusiness until it can eliminate competition with identity preserved non-GMO products and restructure the market to induce cash grain farmers into signing output trait based contracts. Given current and developing agribusiness infrastructure and marketing channels for value-added GMO products, we believe that U.S. government support for the industry position against identity preservation of non-GMOs is extremely ill-advised, if not outright cynical.

7. The U.S. position on labeling of foods obtained through genetic manipulation merits qualified praise for recommending deletion of the draft recommendations paragraph attempting to describe "substantial equivalence". We believe that the proposal to find "substantial equivalence" between, e.g. a tomato and a tomato with a fish gene inserted, is impossible except by sophistry, since no amount of diplomacy or science could demonstrate that the latter was "within the natural variation" of the former. However, "substantial equivalence" has been and continues to be a parameter of GMO food labeling for the biotechnology industry, e.g. "Food required to have a label designating the origin or presence of GMOs or GMO derived substances should be evaluated on the basis of substantial equivalence and not simply because they have been derived from a GMO source".[6] If the U.S. Delegate wishes to depart from this industry position, then IATP recommends that the U.S. delegate clarify that not only the term "substantial equivalence" but other concepts of similar purport be deleted from Codex labeling documents. We hope that the recommendation to delete "substantial equivalency" is a first step in a thorough and critical examination of the "equivalency" doctrine that has governed not only U.S. SPS

Submitted by the United States, Committee on Technical Barriers to Trade, WORLD TRADE ORGANIZATION (G/TBT/W/94), October 16, 1998.

[6] "U.S. Industry Letter on Biotechnology to the Honorable Peter L. Scher", INSIDE U.S. TRADE, September 12, 1997.

diplomacy, but also the facilitation of trade through Mutual Recognition Agreements.

8. Having commented on U.S. positions on these agenda items, we request that the U.S. delegate take into consideration the following very brief representation of the context in which the United States has made its comments on food labeling for the Ottawa meeting. IATP makes this representation towards the purpose of broadening the narrow terms of reference of the present debate on labeling at Codex.

9. As the United States government is well aware, the conversion of Codex guidelines into reference texts for the Agreement on Sanitary and Phytosanitary Measures of the World Trade Organization (WTO) has been extremely controversial. As European Union (EU) Commissioner of Agriculture Franz Fischler remarked, "in the meeting of the Codex Alimentarius Commission in June [1997], many countries expressed strong reservations about adopting texts that in the past would have been acceptable to them, but which now may involve them in legally binding obligations that they cannot meet. In addition, although the SPS agreement allows for countries to take stronger action than provided for by the international recommendations, in practice this may be difficult to justify in view of legal precedents now being set by WTO dispute panels."[7] Dr. Fischler's remark points to two issues that IATP believes are germane to U.S. comments on food labeling.

10. First, labeling and SPS measures are only as effective as the SPS budget and infrastructure that implements standards, rules and recommendations. As the Delegations from India and other countries have repeatedly mentioned, most recently at the Codex meeting on Microbiological Risk in October 1998, implementation of Codex reference texts and the SPS agreement rules will require financing beyond the capacity of developing countries.[8] Indeed, SPS budgets and infrastructure have collapsed in many developing countries just as trade and investment agreements have placed greater demands upon SPS systems. For example, the Mexican budget for phytosanitary inspection declined from U.S. $53 million in 1979 to U.S. $5 million in 1995 during a period of exponential growth in

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[7] Quoted in Ian Elliott, "Fischler calls for overhaul of SPS accord at WTO", FEEDSTUFFS, September 15, 1997.

[8] "Food safety objectives and risk profile introduced as concepts for managing food hazards in trade", WORLD FOOD CHEMICAL NEWS, Vol. 5, Number 15 (November 11, 1998), 7.

horticultural trade.[9] The U.S. Delegate should recommend that the Codex Commission establish a Committee on SPS Financing and Infrastructure to investigate the status of SPS budgets and infrastructures among WTO members, and to make recommendations as to how these budgets and infrastructures can be upgraded to enable fulfillment of WTO commitments. Absent such financing and technical assistance in SPS matters, developing countries will continue to regard SPS rules and Codex recommendations as well-intentioned but hypocritical protectionist measures. The presumed government budget savings of industry lead inspection systems such as the Hazardous Analysis Critical Control Point (HACCP) should not be counted on to reduce the SPS financial and infrastructural crisis, since many Codex delegations have already concluded that HACCP-like systems would be very difficult to institute in their countries.[10]

11. Second, the WTO dispute resolution process has been charged with having procedural and substantive problems that put into question the validity, or at least the wisdom, of referencing Codex texts as norms pertinent to the dispute in question. As long as these problems remain unresolved, Codex recommendations may be tarnished by their association with a deeply flawed dispute resolution process. For example, the EU rejection of the U.S. offer to voluntarily label growth hormone produced beef with country-of-origin labeling in exchange for the EU's lifting of its import ban on such beef suggests that U.S. comments on voluntary labeling may be irrelevant to more fundamental SPS problems.[11] The EU contends that the "U.S. did not ask Codex Alimentarius to examine the hormone MGA and refused to provide to the Panel the specific data on the basis of which you have authorized all these hormones for growth promotion".[12] If this contention is true, WTO Members may question not only the integrity of the dispute resolution process, but the integrity of the data and review process in the U.S. approval of such beef. In the interests of the transparency advocated by the United States for the SPS

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[9] *Examen de las políticas agrícolas de México,* ORGANIZATION FOR ECONOMIC COOPERATIONS AND DEVELOPMENT (Paris, 1997), 97.
[10] "HACCP implementation at agricultural level would be difficult, many Codex delegations agree", WORLD FOOD CHEMICAL NEWS, Vol. 5, Number 15 (November 11, 1998), 8-9.
[11] "EU Rejects Initial U.S. Offer To Settle Beef Hormone Dispute", INSIDE U.S. TRADE, February 19, 1999.
[12] "EU Letter on Hormones", INSIDE U.S. TRADE, April 24, 1998.

Agreement,[13] the United States should comment for the Ottawa meeting that Codex recommend complete and timely disclosure of SPS data and review procedures towards an expeditious resolution of SPS disputes brought to the WTO. Since the U.S. Delegation to Codex has recognized that risk management is the responsibility of individual countries,[14] we trust that it can have no objection to timely and complete release of SPS and environmental approval process data and documents for novel foods to the competent authorities of WTO Members, so that they can discharge their risk management responsibilities. A statement on the complete and timely release of approval data and review process documents should be advocated by the United States in the general principles of Codex. If the United States leads by example in data and review process disclosure, its positions on transparency in the SPS agreement will merit respect and credibility.

12. While we would not expect the U.S. government to abandon its support for the industry position on genetic manipulation of food, we do believe that there must be a more thorough and frank discussion of industry practice and planning for GMO based contract agriculture. Without such a public discussion and with the continuing non-enforcement of U.S. law in agribusiness,[15] contract agriculture in GMOs is likely to become synonymous with the sharecropping that has been a scandalous legacy of past replacements of markets with contract based production.

13. We could rebut the October 16, 1998 U.S. critique to the WTO of the EU labeling regulation on biotechnology almost paragraph by paragraph. But rather than accept narrow grounds for discussion of labeling, we believe that the U.S. Delegate should suggest that Codex foster a public discussion of the role of labeling in the context of the SPS realities posed by the policies to restructure global agribusiness as contract and GMO-based production. If U.S. recommendations on labeling and critiques of labeling proposals are based on little more than current industry positions, then the labeling debate will be even less informative than unlabeled products.

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[13] U.S. Submission on Use of International Standards Under the SPS Agreement", WORLD TRADE ORGANIZATION (G/SPS/GEN/76), June 4, 1998.

[14] "Food safety objectives and risk profile introduced as concepts for managing food hazards in trade", 7.

[15] E.g. Kate Shatzkin and Dan Fesperman, "Unprotected and alone: What happens when chicken growers who feel wronged turn to industry regulators for protection? Precious little", BALTIMORE SUN, March 2, 1999.

14. Labeling of products containing GMOs may involve an added expense, although the expense will likely be no more than the expense entailed in labeling health claims for GMO products, e.g. the current U.S. health claims made for soya. However, the expense of labeling products containing GMOs may prove to be minor in comparison to litigation costs and damage awards, if the GMO approval process for specific products is found to be flawed, and U.S. policy has prevented the consumer from making a purchase informed by labeling.

15. IATP respectfully submits the above comments in the hope that they will lead to a broader discussion about the role of food labeling as SPS and environmental agencies attempt to fulfill their statutory responsibilities under the increasing pressure of globalized food trade. IATP looks forward to joining such a discussion at the Codex meeting in Ottawa.

Sincerely,

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