

Codex standards and consumer rights

Steve Suppan outlines the challenges for consumer organisations in the light of the abolition of Codex notification procedures and voluntary standards

In July 2005 the Codex Alimentarius Commission abolished the notification procedure by which Codex member governments voluntarily had accepted Codex standards as a basis for their domestic food quality and food safety regulations. This article outlines three post-abolition challenges for consumer organisations and for government officials responsible for consumer protection who believe that Codex standards should have more functions than to serve as possible evidence in potential trade dispute rulings.

Following the July 2005 session of the Codex Alimentarius Commission, chairperson Stuart Slorach convened an informal meeting of Codex committee chairs to share ideas and concerns about their work. The Codex Secretariat notes from the meeting reflect the situation in which Codex has found itself increasingly since 1995, when Codex's food safety and quality standards were referenced as presumptively authoritative in the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). According to the Secretariat's notes, 'the uncertainty about how eventual WTO panels could interpret Codex standards contributed to the difficulty of finding consensus in Codex committees and in the Commission'.¹ Attempts by Codex delegates to anticipate how standards may be interpreted in SPS Agreement related disputes has added another dimension to Codex meetings, that of pre-trial evidentiary strategy.

The view that the importance of Codex standards is largely that of potential trade dispute evidence should raise alarm bells not only in consumer and public interest organisations, but also among government officials responsible for consumer protection. The long postponed WTO dispute panel decision in the European Commission (EC) Biotech Products case, expected to be announced in February 2006, will bring to wide public attention the influence that trade rules can have on domestic food safety and environmental health legislation and regulations.² The appeal of that ruling to the WTO Appellate Body, together with what will likely be a complicated and protracted process of compliance with the ruling, will further ensure that the attention of the press and the public on this case, and on broader issues of the role of standards in trade, will not fade quickly.

Nevertheless, it is reasonable to question whether consumer organisations, via Consumers International (CI) and other Codex accredited international non-governmental organisations, should continue to invest resources in monitoring and

intervening in the elaboration of Codex standards. Several recent developments raise the question, 'Are Codex standards sufficiently relevant to consumer protection as to justify the investment?'

Consumer participation

So few Codex member governments have notified the Codex Secretariat of their acceptance of Codex standards that members abolished the acceptance procedure at the July 2005 Commission meeting. The Commission instead 'proposed that the Secretariat should work with the WTO Secretariat to consider how to monitor information on the use of Codex standards'.³

Insofar as standards must be implemented and enforced in order to protect consumers, the abolition of the acceptance procedure leaves consumers with no way of determining whether a Codex standard serves as a basis for a domestic food safety regulation, and hence no basis to determine whether that standard supports Codex's mandate to protect consumers. Should consumers participate in making standards that Codex members no longer specifically accept as the basis of their food safety and quality programs?

Elaborating Codex evidence

A representative from the WTO Secretariat told the Commission, 'all Codex texts could be equally relevant under the SPS Agreement and how a particular text would be interpreted by a WTO panel could be determined only in the framework of a specific trade dispute'.⁴

However, few complaints to the WTO SPS Committee about a trading partner's SPS measures result in the formation of WTO dispute panels and even fewer of those result in a ruling in which a Codex standard is mentioned. Of 241 complaints by WTO members to the SPS Committee between 1995 and 2002⁵ just three had gone all the way through the dispute settlement process to the Appellate Body review as of 2003.⁶ Since WTO dispute settlement rules do not require the use of international standards as evidence, are consumer

organisations justified in helping to elaborate Codex 'evidence' that may never be used in the few SPS trade related disputes that result in rulings?

Intervening in elaboration

With the proliferation of private standards with which producers must comply, the harmonisation of standards sought by Codex and the SPS Agreement 'seems to be the exception rather than the rule', according to a recent World Bank study.⁷ Indeed, at a June 29-30, 2005 meeting of the SPS Committee, WTO members notified for the first time that private standards of a European food retailers consortium (Eurep) were more stringent than government requirements of their target markets.⁸ The complaining members argued that government requirements should prevail in the event of a standards conflict.

If private standards are beginning to dominate the marketplace for exporters, should consumer organisations attempt to intervene more in their elaboration and less in Codex work?

Resource investment

The overwhelming Codex member government and industry focus on making food safety and quality standards in order to facilitate trade has diverted governments' political support and financial resources from multilateral food safety initiatives, particularly the World Health Organization (WHO)'s Global Strategy for Food Safety. Should consumer organisations invest fewer resources in Codex meetings and more in helping WHO implement the Global Strategy and related programs that use food safety standards for public health rather than trade facilitation purposes?

These factors are a few in a trend that would make the consumer a passive recipient, rather than a decisive participant, in the determination and use of standards for consumer protection and for the structuring of food markets. Nevertheless, there are still sufficient reasons for consumer organisations to intervene through their national Codex committees or contact points and for Consumers International to continue work at Codex Committees and at the Commission. The simplest of these reasons concerns access to standards making proceedings.

Consumer organisations have, at least in theory, access to the meetings in which their governments determine what positions they will take at Codex committee meetings and at Commission meetings. Currently there is no such access to private sector food standards meetings nor to meetings at which governments determine their positions for the committee that implements the SPS Agreement. Because the binding objective of both private sector standards and the SPS Agreement is trade facilitation, if consumer organisations managed to inter-

vene there, it would be in a policy environment without Codex's mandate to protect consumers.

My other reasons to urge that consumer organisations continue to intervene in Codex, both at national and international levels, can be classified in terms of three kinds of challenges to realising consumer rights through the elaboration, implementation and enforcement of food standards. The first two challenges concern the consumer protection mandate of Codex. The third challenge has to do with consumer participation in ensuring that Codex's mandate to foster fair trade be integrated into broader development planning. The challenges are formulated as the following questions.

- 1 How can consumer organisations best participate in international scientific meetings that are the basis for elaborating standards?
- 1 How can consumer organisations ensure that standards, once agreed, are applied, that is, implemented and enforced, beyond the 10 per cent of food traded internationally, in order to maximise consumer protection?
- 1 How can consumer organisations use the standards debate to foster broader 'social learning', and not just trade facilitation, that former World Bank chief economist Joseph Stiglitz characterises as a pre-requisite for development?

The traditional insistence of consumer organisations on the implementation of consumer rights has no direct constitutional support at Codex.⁹ Consumer rights, for example, the right to choice, are not regarded as legitimate criteria for prioritising Codex work. Instead, trade rules view consumer food choices as '*increasingly being determined by requirements in the area of quality and safety of food*'.¹⁰ To the extent that these requirements derive directly or indirectly from international standards, consumer work at Codex can achieve some of the consumer rights outlined in the United Nations (UN) Guidelines for Consumer Protection.

Consumer participation

Some Codex committees and task forces obtain scientific advice and risk assessments from joint Food and Agriculture Organization (FAO)/WHO committees and ad hoc expert consultations. For example, the FAO/WHO Joint Meeting on Pesticide Residues supports the work of the Codex Committee on Pesticide Residues. The scientific basis of Codex standards was part of the work reviewed in 2002 by a quasi-external Evaluation of the FAO/WHO Food Standards Programme, including the work of Codex. The Evaluation team reported, '*for sound, science-based decision making to be central to the Codex process, the increased funding of risk assessment is a top priority*'.¹¹ Despite the priority that Codex member governments placed in an evaluation survey on getting timely risk assessments in

order to expedite standards setting¹², member governments have not increased that funding.

Nor have FAO and WHO member governments agreed to implement the Evaluation's recommendation to create a scientific coordinator position to prioritise Codex and other requests for scientific advice. Although Codex guidelines on risk analysis call for an interactive relationship between risk managers (policy makers) and risk assessors (scientists)¹³, as presently constituted only Codex, as a kind of international risk manager, can initiate work. Therefore, work on public health priorities is postponed while Codex debates the terms of reference for obtaining scientific advice and elaborating a standard.

For example, in April 2005, a WHO policy paper, summarising several years of scientific debate, identified human anti-microbial resistance (AMR) as one of the world's most serious public health problems. AMR results from, among other factors, the non-therapeutic use of antibiotics in animal feed for meat production. Reference to the animal feed factor in AMR was dropped from a World Health Assembly resolution in May 2005 at the insistence of developed countries whose meat production depends on non-therapeutic use in confined animal feed operations.¹⁴ Despite AMR's risk to human health, Codex has yet to come to agreement on terms of reference for a task force to issue member government guidance on animal feed measures to prevent AMR. By contrast, the World Animal Health Organization (OIE in its French acronym) was able to agree in less than a year on a new Bovine Spongiform Encephalopathy (BSE) standard to facilitate trade, despite controversies over the verifiability of BSE prevention measures in the United States (US), the leading advocate of the new BSE standard.¹⁵

Scientific advice and risk assessments

Scientific advice and risk assessments are the basis for many Codex standards and for evidence in SPS Agreement related trade disputes. The credibility of those standards and dispute rulings hinges on the quality and transparency of that advice. However, the process of providing international scientific advice remains as cloudy as its financial future. A CI position paper noted:

'The work of expert groups is the least open and transparent part of the international policy-making process, reflecting certain old-fashioned attitudes about how science should be applied to policy. Most expert body meetings are closed to the public. Reports by the expert bodies that support Codex committees are often not available for months or years while recommendations [concerning standards] might be issued promptly, the basis for those positions might not be public for a long time. This lack of transparency has led to public distrust of

*certain conclusions by expert bodies on controversial topics.'*¹⁶

An example of this is the attempt to set a Codex standard on veterinary drug residues for bovine somatotropin (BST), a hormone genetically engineered to enhance milk production, was based on a much disputed FAO/WHO risk assessment.¹⁷

CI has supported the work of Lisa Lefferts, an independent consultant commissioned by FAO to write a background paper on transparency issues for a January 2004 FAO/WHO 'Workshop on the Provision of Scientific Advice to Codex and Member Countries.' The paper's recommendations could improve the quality, as well as transparency, of scientific advice, and improve the credibility of the standard setting process.

The workshop report recommendations, yet to be financed and implemented, include making expert consultation reports 'available as soon as possible'¹⁸ and recommending that FAO and WHO consider 'publication of some reports in draft format in order to allow for public comment or peer review before finalisation'.¹⁹ The report also recommends inclusion of a non-technical summary written with the help of risk communication experts.²⁰

The workshop's government member delegates did not accept Leffert's recommendation that a consumer representative be allowed to participate in expert meetings to act as an ombudsman or ombudswoman to make sure that public controversies about a scientific issue are addressed and to aid in risk communication.²¹ She also recommended that private deliberations among experts be the exception, rather than the rule²², a recommendation that workshop delegates likewise did not accept.

In sum, the international scientific advice process upon which standards to protect consumers are to be based is institutionally vulnerable, plagued not only by insufficient funding and inadequate mechanisms for determining public health priorities of Codex work, but by a lack of process transparency. The funding crisis of the international scientific advice bodies for food standards is part and parcel of the larger funding and institutional crisis of the UN.²³ One irony of this crisis is that the WTO, compliance with whose agreements Codex delegates now routinely refer to as the purpose and justification for their work, was created as a *sui generis* entity independent of the UN system.

At the inaugural WTO ministerial in Marrakech in 1995, the WTO Secretariat explicitly disjoined the WTO from the UN system with a formal exchange of letters with the UN Secretariat.²⁴ The concentration of economic policy decision-making in the WTO, the World Bank and the International Monetary Fund has reduced UN specialised agen-

cies to the role of technical advisors, even on issues where their competence clearly exceeds that of the WTO, the Bank and the International Monetary Fund (IMF).

Consumer organisations have little capacity or opportunity to intervene directly to resolve macro-governance conflicts. Consumer organisations cannot reconstitute the multilateral system from which the WTO has alienated itself. But by ensuring that the scientific basis for standards is publicly determined, peer-reviewed and incorporates up to date science and risk analysis practice, consumers can help ensure that Codex carries out its mandate to protect consumers in all its member countries.

Codex and food inspection

According to WHO, *'food and water-borne diarrheal diseases are leading causes of illness and death in less developed countries, killing an estimated 2.2 million people annually, most of whom are children'*.²⁵ In industrialised countries, *'microbiological foodborne illnesses affect up to 30 per cent of the population'*.²⁶ Immune systems weakened by food-borne diseases are more susceptible to other diseases and death. A recent registry based Danish study with about 49,000 participants showed that *'relative mortality within one year [following a gastro-intestinal illness] was 3.1 times higher in patients than in controls [who had experienced no such illness]'*.²⁷ Effective implementation and enforcement of food standards could reduce this incidence of food-borne illness, particularly if the standards were applied to domestically produced food, as well as to the internationally traded food that is the object of Codex standards.

As a result of the increasing incidence and severity of food-borne diseases, the 53rd World Health Assembly called on WHO to *'work towards integrating food safety as one of WHO's essential public health functions'*²⁸ and to work with other international organisations and the Codex Alimentarius Commission to do so²⁹. WHO food safety strategy includes outreach to international public health organisations to encourage them to become involved in Codex work.³⁰ However, to judge by the near absence of international public health organisation participation at Codex, these organisations either see food safety as a low public health priority and/or they do not believe Codex work to be an effective way to achieve public health objectives. Consumer organisations urgently need to broaden their alliances with public health organisations to involve them both at the national and international level of food standards setting.

The consumer interest in Codex should extend beyond the effect of standards on the 10 per cent of global agricultural production that is trade internationally, according to FAO. FAO and WHO created

Codex in 1962 by with the hope that international food standards would be adopted in developing countries without such standards, to the benefit of domestic consumers and public health. However, most developing country Codex members lack the resources to participate in Codex, much less to implement and enforce standards domestically. According to the Evaluation, the *'development of [food safety] legislation is not perceived by developing countries to be a very high priority for [technical] assistance as compared to other areas. This may be because food laws are ineffective in the absence of surveillance and enforcement capability'*.³¹

With the aforementioned abolition of the procedure for Codex member governments to adopt Codex standards, the formal mechanism for delivering domestic consumer protection through implementation and enforcement of rules based on Codex standards comes to an end. What follows Codex's 43 year-long project to improve national food standards through the adoption of international standards is not at all clear.

According to FAO, enforcement of food safety rules by governments is a prior but less effective phase of food safety management history:

*'Food safety has traditionally focused on enforcement mechanisms to remove unsafe food from the market after the fact, instead of a more pronounced mandate for the prevention of food safety problems.'*³²

As an example of this 'pronounced mandate', FAO points to how several FAO member countries are replacing traditional enforcement mechanisms by moving towards *'a food chain approach for the management of food safety by applying regulatory controls at the point where they are most effective'*.³³ FAO points to the Hazard Analysis and Critical Control Point (HACCP) system, adopted by Codex and pioneered as a food quality assurance program in the United States, as an example of effective preventive food safety management. FAO/WHO Food Standards Programme guidance on HACCP and inspection has moved from HACCP as an adjunct to detailed guidance on government inspection to HACCP as a voluntary and industry designed program that minimises end product inspection.³⁴

Despite FAO/WHO Food Standards Programme and Codex promotion of HACCP, it has been strongly criticised in its country of origin, the United States. HACCP implementation, no longer as a food quality assurance program but as a food safety management program, has been criticised by NGOs and government auditors as a form of de facto privatisation of food safety with very weak government enforcement oversight.³⁵ The US Department of Agriculture (USDA)'s Inspector General (IG) harshly criticised a trial program of HACCP implementation in abattoirs, noting that many meatpacking establishments considered their HACCP plans to be confidential business

information and refused to let IG auditors review the plans. The IG's report noted:

*'Under the pre-HACCP system, the production of meat and poultry products was monitored at every stage by Government employees rather than by in-plant production managers. The HACCP program reversed this arrangement by allowing a plant to monitor itself. It gave industry, not Government, the primary responsibility for ensuring the safety of meat and poultry systems.'*³⁶

In January 2002, the US Department of Agriculture's implementation of a trial HACCP program in slaughterhouses was declared by a US Circuit Court to be in violation of the US Meat and Poultry Inspection Acts.³⁷ The USDA has yet to comply with the judgment.

Codex deliberations play a role in the US food industry and the USDA plan to replace current food inspection legislation with legislation for a risk-based inspection program, in which government inspectors would be pulled from plants with a record of good compliance.³⁸ The new legislation, the number one priority of Undersecretary for Food Safety Richard Raymond, together with the employment by the US government of private inspectors, would delegate government inspection authority in the name of a more inexpensive use of resources. For example, US grain and oilseed industries have convinced the US government to employ private inspectors under the supervision of the Federal Grain Inspection Service 'as essential to maintaining the competitiveness of US grain and oilseed exports'.³⁹

At the December 2005 meeting of the Codex Committee on Import and Export Inspection and Certification Systems (CCFICS), the US pushed hard to have CCFICS forward guidelines on risk-based inspection to the Commission for approval using the accelerated procedure for non-controversial Codex deliberations. Despite the objections of CI and New Zealand, the guidelines will be presented to the Commission, without further request for comment, in July 2006.⁴⁰ If approved, the Codex guidelines on risk-based inspection are likely to be cited by the USDA as a reason for the US Congress to replace the Meat and Poultry Inspection Acts with legislation for risk-based inspection implemented by plant inspectors under industry designed HACCP plans.

There is, of course, nothing inherently unsafe about food inspection carried out by industry inspectors. Furthermore, Codex member governments have the right to delegate their authority over food safety to third party agencies that certify the compliance of private sector food processors and exporters with government requirements. However, given the pressure on private inspectors to facilitate exports at the lowest possible cost, the likelihood of non-compliance with standards

increases, particularly if industry designed food safety management systems reduce or eliminate government inspector supervision.

Unlike most government inspectors and enforcement officials, private inspectors have no whistle-blower protection against company retaliation, in the event that a breakdown in food management systems leads to food-borne illness. In civil liability case arising from illness caused by unsafe food products, private inspectors called to testify could face their company's retaliation for doing so, with the result that false or evasive testimony might be presented to the court. Process requirements and food safety management plans carried out by plant employees cannot and should not replace end product inspection. Inspection of imported foods is infrequent: for example, the US Food and Drug Administration (FDA) 'inspects only 1 to 2 per cent of the more than six million consignments of food and cosmetic products imported each year'.⁴¹ Despite the infrequency of inspections in the US and elsewhere, compliance violations are frequent enough that Codex should not continue to avoid giving guidance on enforcement measures.⁴²

Infrastructure and standards

Joseph Stiglitz, when he was chief economist at the World Bank, explained that the Washington Consensus on trade, finance and development 'paid too little attention to the institutional infrastructure that make markets work'.⁴³ After the failure of the Consensus to deliver broadly distributed development benefits, it was necessary to think of development no longer as the end product of accumulating more resources, but as a social and institutional transformation predicated on 'social learning'. Central to the social learning that results in sustainable economic development is learning how to improve the health and education of a country's population.⁴⁴ These improvements require investment in institutional infrastructure, such as that for food safety. This section of the article contends that lowering standards for the sake of trade liberalisation provides few if any development benefits compared to those resulting from the broader 'social learning' in food safety.

The perennially optimistic but now drastically reduced econometric projections of the benefits of multilateral trade liberalisation do not calculate estimates of the health and education welfare benefits for development of the domestic implementation of food standards.⁴⁵ Rather than loan money to broaden and improve the infrastructure for food safety implementation domestically in developing countries, the World Bank has argued for lowering importing country standards in order to increase developing country export benefits.⁴⁶ For example, lower an European Union (EU) aflatoxin standard to

increase African trade, instead of loaning to improve post-harvest storage infrastructure to reduce aflatoxin incidence for the benefit of African consumers. This widely-publicised approach to standards and trade development has been subsequently criticised within the Bank.⁴⁷ However the pressure on developing countries to earn export revenues to repay foreign loans have lead to a search for shortcuts around the problem of how to comply with the proliferation of food standards, particularly where the current food safety infrastructure is weak.

There have been several proposals to the WTO SPS Committee to implement the Special and Differential Treatment provisions in Article 10 of the SPS Agreement without lowering standards. For example, the Committee is considering revisions to the procedure for WTO members to re-notify the Committee of new SPS measures '*when the scope of a measure was changed in such a way that trade from the developing country could be adversely affected*'.⁴⁸ While the proposal does not make it clear how the importing country would determine whether a changed measure would adversely affect trade, the re-notification procedure itself poses no threat to consumer protection.

However, a proposal by Brazil before the Committee since 2002 could potentially harm consumer health. The proposal states:

'If the introduction of SPS measures may have significant effect on trade opportunities for products of interest to developing countries, Members shall notify the WTO and inform concerned Members prior to the application of such measures'.⁴⁹

Under this proposal, SPS measures would no longer be notified promptly after their application, that is, implementation in domestic food regulation. Instead SPS measures would have to be notified before their implementation, in order for developing countries to determine whether such measures would affect not just existing trade in a product but trade opportunities in products of interest to a number of countries.

The proposal is controversial because the delay in applying an SPS measure, while the developing countries assessed the potential economic impact of the measure, would interfere with the WTO member's rights to determine its own level of consumer protection in Article 5.5. More concretely, if the delay interfered with the prevention of a food-borne illness, harm to consumers could be traced back to the pre-application notification. Furthermore, the exporting country product for which the delay in SPS implementation was requested could suffer serious and long-lasting economic damage.

Rather than seeking to increase trade by delaying the implementation of SPS measures in importing countries, developing countries should insist on

SPS technical assistance that would be driven by their dictates, not by the needs of donors. At the WTO Ministerial Conference in Doha, Qatar, the WTO, the World Bank, WHO, FAO and OIE stated their intention to support developing country participation in international standard setting organisations and to provide '*technical assistance in the establishment and implementation of appropriate food safety and animal and plant health measures*'.⁵⁰ To fulfil this intention, the World Bank financed a Standards and Trade Development Facility, coordinated by the WTO, with an initial contribution of \$300,000 and a projected budget of \$2 million, contingent on donor contributions.⁵¹ In 2004, an FAO/WHO Trust Fund to support developing country participation in Codex began operations with less than \$1 million of a 12-year notional budget of \$35-40 million for about a hundred eligible Codex member countries.⁵²

These technical assistance initiatives, while not insignificant, are very far from meeting the needs of developing countries that were promised greatly scaled up assistance in exchange for agreeing to launch the Doha Round of WTO negotiations. The WTO Secretariat has sometimes complained that developing country members don't identify what their technical assistance needs are, apparently not realising that some members lack the means and expertise to assess what infrastructure is needed and what it will cost to comply with standards. A recent United Nations Conference on Trade and Development (UNCTAD) study, financed by the government of Finland, of the existing SPS infrastructure and technical assistance needs for exporting tropical fruits from three African countries determined that set up costs for Mozambique to comply with importing country SPS requirements would be \$9.3 million.⁵³

By contrast one credit window in the WTO/World Bank/IMF 'Aid for Trade' loan and grant program has a \$1 million per country limit.⁵⁴ Aid for Trade has come into disrepute amongst its would be beneficiaries not only because of the small amount of technical assistance offered but because it is offered as a negotiating chip in exchange for costly concessions in agricultural, non-agricultural goods and services industry market access. Lack of agreement on the trade facilitation portion of the draft Hong Kong ministerial text was due in part because of the lack of specific commitments on technical assistance.⁵⁵

Expertise in acquiring social learning about how to use standards for development exists in the multilateral system. For example, an UNCTAD expert's meeting has proposed that micro-credit programs be used to build SPS infrastructure in very small firms in order to comply with standards.⁵⁶ Yet even if adequate funding is secured to scale up SPS social learning, for cost recovery from

SPS measures to occur and to make trade work for sustainable development, it is necessary that prices for developing country commodities and food products improve.

The 53 per cent decline in aggregate agricultural commodity prices between 1997 and 2001 reported by FAO⁵⁷, will be little if at all ameliorated by implementing the proposed Doha Round terms.⁵⁸ Indeed, there are no provisions in the Agreement on Agriculture negotiations to address the factors that have contributed to depressed commodity prices and have prevented developing countries from capturing value in higher value processed food products. Compliance with standards alone will not raise prices and build food safety infrastructure to protect domestic consumers. But without sustained increases in agricultural commodity prices, it will be impossible for most developing countries to afford to implement standards to benefit consumers.

Conclusion

Perhaps because of the ideological dominance of trade liberalisation theory as the primary driver of development, consumer organisations have yet to analyse the institutional infrastructure required for consumer protection, particularly in developing countries. In the neo-liberal and deregulatory ideology of food safety, this institutional infrastructure is the enemy: for example:

'Most food safety regulation is based on a paternalistic view of government – the view that government can make food safety choices better for people than

people can make for themselves. This paternalism then becomes an excuse for inefficiency – people cannot choose for themselves, so it is better to have inefficient government regulations protecting people than to leave them at the mercy of the marketplace'.⁵⁹

Not surprisingly, this deregulation advocate argues that HACCP and other food quality and food safety management programs should be controlled by industry.

But let us no longer be deluded that the food safety consumer lives in the utopian market of Chicago School economics, wherein rational beings optimise their economic well-being by balancing costs and benefits of their food safety decisions, based on the complete information that the market transparently and freely provides. Let us assume instead that the food safety consumer lives in a world in which the economics of information asymmetry, pioneered by Stiglitz, and very imperfect markets rule.⁶⁰ In such a world, let us use standards and build the institutional infrastructure of consumer protection so that the development and public health benefits of standards are more broadly distributed than those that are confined to trade facilitation.

This article is partly based on two longer articles on Codex reform and the WTO SPS Agreement that were written for CI's Decision-Making in the Global Market project and are available at:

http://consint.live.poptech.coop/Shared_ASP_Files/UploadedFiles/1E6FE541-9535-4E43-A86E-D7F66DE4728A_GlobalGovernancefinalpdf.pdf

REFERENCES

- [1] From notes of informal meeting of Codex Committee Chairs.
- [2] For an overview of the case, see Steve Suppan. 'US vs. EC Biotech Products Case: WTO Dispute Background.' Institute for Agriculture and Trade Policy. Nov 2005. Available at: www.tradeobservatory.org
- [3] 'Report of the Twenty-eighth Session of the Codex Alimentarius Commission.' ALINORM 05/28/41. 4-9 Jul 2005. Para 34. Available at: ftp://ftp.fao.org/codex/alinorm05/al28_41e.pdf
- [4] Report of the Twenty-seventh Session of the Codex Alimentarius Commission. ALINORM 04/27/41. 28 Jun - 4 Jul 2004. Para 158.
- [5] Donna Roberts. 'The Multilateral Governance Framework for Sanitary and Phytosanitary Regulations: Challenges and Prospects.' World Bank training seminar on Standards and Trade. 27-28 Jan 2004. Cited in Steven Jaffee and Spencer Hensen. 'Standards and Agro-Food Exports From Developing Countries: Rebalancing the Debate.' World Bank Policy Research Paper 3348. Jun 2004. 6.
- [6] 'Appellate Body: Annual Report for 2003.' World Trade Organization WT/AB/1. 7 May 2004. Annex 4.
- [7] 'Food Safety and Agricultural Health Standards: Challenges and Opportunities for Developing Country Exports.' The World Bank. Report No. 31207. 10 Jan 2005. 32. Available at: www.worldbank.org
- [8] 'Private sector standards discussed as SPS Committee adopts two reports.' WTO. News item. 2005. Available at: http://www.wto.org/english/news_e/news05_e/sps_june05_e.htm
- [9] 'Criteria for the Consideration of the Other Factors Referred to in the Second Statement of Principles.' Procedural Manual. Codex Alimentarius Commission. 12th edition. 2001. Appendix 165.
- [10] 'Report of the Expert Meeting on Market Entry Conditions Affecting Competitiveness and Exports of Good and Services of Developing Countries: Large Distribution Networks, Taking Into Account The Special Needs Of LDCs.' United Nations Conference on Trade and Development. TD/B/COM.1/66. 19 Jan 2004. Para 15.
- [11] 'Report of the Evaluation of the Codex Alimentarius Commission and other FAO and WHO Food Standards Work.' Codex Alimentarius Commission. ALINORM 03/25/3. Dec 2002. Para 181.
- [12] Ibid. Para 184.
- [13] 'Working Principles for Risk Analysis for Application in the Framework of the Codex Alimentarius Commission.' Codex Alimentarius Commission. ALINORM 03/41. 2004. Appendix IV.
- [14] Martin Khor. 'Irrational drug use causing rise of anti-microbial resistance.' *Third World Resurgence*. No. 178. Jun 2005. 17-19.
- [15] Steve Clapp. 'New OIE guidelines for trade status of BSE-affected nations win praise.' *Food Chemical News*. 6 Jun 2005; Carole Sugarman. 'Affidavit slams USDA SRM policy, verification system.' *Food Chemical News*. 4 Jul 2005; Zachary Richardson. 'BSE feed rule: groups criticise "gaping holes" in FDA's new changes.' *Food Chemical News*. 10 Oct 2005.
- [16] Ned Groth. 'Improving the Quality, Openness and Transparency of International Scientific Advice.' Consumers International. Oct 2002. 2.
- [17] John Verall. 'The Manipulation of Codex Alimentarius: A memo to J. Santer, President of the European Commission.' 1999. 9-22.
- [18] 'Report of the Joint FAO/WHO Workshop on the Provision of Scientific Advice To Codex and Member Countries.' FAO and WHO. 9arch 2004. Recommendation 26.
- [19] Ibid. Recommendation 27.
- [20] Ibid. Recommendation 29.
- [21] Lisa Lefferts. 'Ensuring Transparency of the Process of Providing Scientific Advice to Codex and Member Countries.' Prepared for the 'Joint FAO/WHO Workshop on the Provision of Scientific Advice To Codex and Member Countries.' FAO and WHO. Jan 2004. Para 6.2e.
- [22] Ibid. Para 6.4a.
- [23] 'What UN For the 21st Century?: A New North-South Divide.' South Centre. Geneva. 2005.
- [24] Peter Sutherland et al. 'The Future of the WTO: Addressing institutional challenges in the new millenium.' WTO. 2004. 35.
- [25] 'WHO Global Strategy for Food Safety: Safer food for better health.' WHO. 2002. 5. Available at: http://www.who.int/foodsafety/publications/general/global_strategy/en
- [26] David Heymann. 'Introductory Remarks.' FAO/WHO Global Forum of Food Safety Regulators. Appendix IV. 2002. 66. Available at: www.foodsafetyforum.org
- [27] Morton Helms et al. 'Short and long-term mortality associated with food-borne bacterial gastro-intestinal illness: registry based study.' *British Medical Journal*. Vol. 326. 15 Feb 2003. 357.
- [28] 'Food Safety.' Fifty-Third World Health Assembly (WHA53:15). Agenda item 12.3. Paragraph 1.1. 20 May 2000. Available at: http://ftp.who.int/gb/pdf_files/WHA53/ResWHA53/15.pdf
- [29] Ibid. Paragraph 1.9.
- [30] 'WHO Global Strategy for Food Safety.' 3.
- [31] 'Report of the Evaluation of the Codex Alimentarius Commission.' Para 211.
- [32] 'FAO's Strategy for a Safe and Nutritious Food Supply.' Food and Agriculture Organization, Committee on Agriculture. Agenda item 5. COAG/2005/5. 13-16 April 2005. Para 12.
- [33] Ibid.
- [34] Contrast the prescriptive detail of Manual of Food Quality Control: Imported Food Inspection, Food and Agriculture Organization. (Rome, 1993) with the emphasis on the voluntary industry application of HACCP in 'Introducing the Hazard Analysis and Critical Control Point Program System.' World Health Organization. Geneva. 1997.
- [35] 'Weaknesses in HACCP implementation prompt food safety

- concerns.' *HACCP and Food Compliance News*. 10 Jul 2002; Felicia Nestor and Wenonah Hauter, 'The Jungle 2000: Is America's Meat Fit to Eat?: A Survey of the United States Department of Agriculture's Meat Inspectors.' Public Citizen and the Government Accountability Project. Sep 2000. 27-30. Available at: <http://www.citizen.org/CMEP/fad-food/>
- [36] 'Food Safety and Inspection Service: HACCP Implementation.' USDA Office of Inspector General. Jun 2000. Report USDA/OIG-A,24001-3-At. Section I. i. Available at: <http://www.usda.gov/oig/auditrpt/auditrpt.htm/>
- [37] *American Federation of Government Employees et al. v. Ann M. Veneman, Secretary of the U.S. Department of Agriculture, et al.* Appeal from the United States District Court for the District of Columbia (98cv00893). Available at: <http://www.ll.georgetown.edu/federal/judicial/dc/opinions/01opinions/01-5035a.html>.
- [38] Jane Zhang. 'USDA Seeks Changes in Inspection System.' *The Wall Street Journal*. 16 Nov 2005.
- [39] For example: Michael Howie. 'GIPSA allowed to hire private inspectors.' *Feedstuffs*. 10 Oct 2005.
- [40] 'Report of the Fourteenth Session of the Codex Committee on food Import and Export Inspection and Certification Systems.' Codex Alimentarius Commission. ALINORM 06/29/30. Para 49.
- [41] 'Food Safety and Agricultural Health Standards: Challenges and Opportunities for Developing Country Exports.' 25.
- [42] For example: 'Agricultural Imports: Inspections are called lax.' *The Journal of Commerce*. 12 April 2000; Judith Graham. 'Tainted meat warnings ignored: Inspectors sought E. coli investigation.' *Chicago Tribune*. 23 Jul 2002; T.J. Gilles. 'Inspection system 'holes' scare vet.' *The Western Producer*. 7 Feb 2002.
- [43] Joseph E. Stiglitz. 'Towards a New Paradigm for Development: Strategies, Policies and Processes.' The 1998 Prebisch Lecture at UNCTAD in *Joseph Stiglitz and the World Bank: The Rebel Within: Selected Speeches*, introduction by Ha-Joon Chang. London. Anthem Press. 2001. 57.
- [44] *Ibid.* 71-72.
- [45] Frank Ackerman. 'The Shrinking Gains from Trade: A Critical Assessment of Doha Round Projections.' GDAE Working Paper 05-01. Global Development and Environment Institute. Tufts University. Oct 2005. Available at: <http://ase.tufts.edu/gdae/05-01ShrinkingGains.pdf>
- [46] John Wilson and Tsunehiro Otsuki. 'Global Trade and Food Safety: Winners and Losers in a Fragmented System.' The World Bank. Oct 2001.
- [47] Steven M. Jaffee and Spencer Henson. 'Agro-Food Exports From Developing Countries: The Challenge Posed by Standards.' 107-108 in *Global Agricultural Trade and Developing Countries*. Ed. M. Ataman Aksoy and John C. Beghin. The World Bank. Washington DC: 2005.
- [48] 'Report to the Committee on Trade and Development on Special and Differential Treatment.' World Trade Organization. Committee on Sanitary and Phytosanitary Measures. G/SPS/23. 15 Nov 2002. Para 3.
- [49] 'Implementation - Related Issues and Concerns.' World Trade Organization. Committee on Sanitary and Phytosanitary Measures. G/SPS/24. 15 Nov 2002. Para 3.
- [50] 'Agencies to boost developing countries' participation in setting food safety and related norms.' World Trade Organization press release 254. 11 Nov 2001.
- [51] 'Standards and Trade Development Facility.' The World Bank. Jan 2003.
- [52] 'FAO/WHO Project and Fund for Enhanced Participation in Codex: Fourth Progress Report.' Codex Alimentarius Commission. ALINORM 04/27/10F. Paras 1 and 3.
- [53] Ana Larcher Carvalho. 'Costs of Agrifood Safety and SPS Compliance: Mozambique, Tanzania, Guinea Tropical Fruits.' UN Conference on Trade and Development. Division on International Trade in Goods and Services, and Commodities. 2005. Chapter 41.
- [54] 'Window II.' Integrated Framework for Trade Related Technical Assistance for Least Developed Countries. Available at: www.integratedframework.org See also 'The Integrated Framework for Technical Assistance: An Introduction.' Bank Information Center. Fall 2004. Available at: www.bicusa.org
- [55] 'African Group Wants More Assistance In Trade Facilitation Text.' *Inside U.S. Trade*. 11 Nov 2005.
- [56] 'Report of the Expert Meeting on Market Entry Conditions Affecting Competitiveness and Exports of Goods and Services of Developing Countries: Large Distribution Networks, Taking Into Account The Special Needs of LDCs.' UN Conference on Trade and Development. TD/B/COM.1/66. 19 Jan 2004. Para 27.
- [57] FAOSTAT 2004 data cited in 'Productivity growth for poverty reduction: an approach to agriculture.' (Draft paper for comment.) Department of International Development. United Kingdom. Jul 2005. Para 31.
- [58] Antoine Bouët et al. 'Multilateral agricultural trade liberalisation: The contrasting fortunes of developing countries in the Doha Round.' Table 4: Impact of the Doha Round scenario on world prices (import prices); Centre d'Études prospectives et d'Informations internationales. Working Paper 2004-18. Available at: www.cepii.fr
- [59] John M. Antle. 'Choice, Efficiency, and Food Safety Policy.' *Agricultural Policy Reform in the United States*. edited by Daniel Sumner. Washington DC. American Enterprise Institute Press. 1995. 186.
- [60] Ben Fine. *The World of Consumption: The material and cultural revisited*, 2nd edition. Routledge. 2002. 11-16.