



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS



E

Agenda Item 4.1 (a)

**GF/CRD IACFO-1
ORIGINAL LANGUAGE**

FAO/WHO GLOBAL FORUM OF FOOD SAFETY REGULATORS

Marrakesh, Morocco, 28-30 January 2002

Report of the International Association of Consumer Food Organizations (IACFO)

THE WHO INTERNATIONAL HEALTH REGULATIONS AND THE PROMOTION OF FOOD SAFETY IN INTERNATIONAL TRADE

SUMMARY

This paper discusses:

- New food safety challenges posed by the growth of the international food trade,
- Public health implications of the World Trade Organization's (WTO) Agreement on Sanitary and Phytosanitary Measures (SPS), and
- The role of the World Health Organization's (WHO) International Health Regulation's (IHR) in promoting food safety.

The paper reviews various shortcomings of the current leading international agreement in the area of food safety and trade – the WTO SPS agreement – and states that the globalization of the food industry necessitates not only reform of an *international trade agreement* that protects business interests, but also an *international food safety agreement* to protect consumer interests. This paper concludes that this need could be served by supporting the revision of the WHO IHRs as they apply to food in international trade. The paper recommends that developed countries should provide the WHO with extra-budgetary resources to promptly complete this effort. Such steps will help restore public confidence in the safety of the food supply and promote further steps towards trade liberalization in the food sector. Such steps will thus benefit producers as well as consumers.

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INTRODUCTION

1. This paper discusses a) new food safety challenges posed by the growth of the international food trade, b) public health implications of the World Trade Organization's (WTO) Agreement on Sanitary and Phytosanitary Measures (SPS), and c) the role of the World Health Organization's (WHO) International Health Regulations (IHR) in promoting food safety.

FOOD SAFETY CHALLENGES POSED BY THE GROWTH OF THE INTERNATIONAL FOOD TRADE

2. The international food trade has grown rapidly in recent years. Free trade within the industry may appear to make economic sense, but it's also a "vast biological experiment without anyone in charge."ⁱ Pathogens and contaminants that were once confined to a single region of the world can now end up on the other side of the globe in a matter of hours. No single country can solve such problems on their own. As WHO Director General Dr. Gro Harlem Brundtland stated: "In a globalized world, we all swim in a single microbial sea."ⁱⁱ Even highly-developed countries face problems due to the growth of the international food trade. Former U.S. Food and Drug Administration (FDA) Commissioner David Kessler stated: "We built a system back 100 years ago that served us very well for a world within our borders. . . . We didn't build a system for the global marketplace."ⁱⁱⁱ

CURRENT INTERNATIONAL AGREEMENTS DO NOT ADEQUATELY ADDRESS NEW PROBLEMS CAUSED BY THE GROWTH OF THE INTERNATIONAL FOOD TRADE.

3. Currently, the leading multilateral agreement affecting the international food trade is the WTO SPS agreement. The SPS agreement addresses the legitimate objective of reducing unjustified barriers to trade that take the form of health and safety measures. However, facilitating trade, not improving food safety standards, is the chief objective of the SPS.

4. Furthermore, the SPS agreement does not adequately provide for public health responses to urgent events involving foods in international trade.

5. Moreover, three key aspects of the SPS agreement may actually result in the lowering of food safety standards in certain regions of the world. First, under the SPS agreement, WTO members may challenge as trade barriers any national food safety standard that exceeds international norms developed by the Codex Alimentarius Commission (Codex), unless it is determined that such a standard is scientifically justified, based on a proper risk assessment.^{iv} Second, the SPS agreement states that WTO members should strive to treat food safety systems of exporting countries that differ from their own as equivalent if such systems achieve the same level of protection provided by the importing country's system.^v Third, the SPS agreement requires that less developed countries be given special and differential treatment but does not require developed countries to provide technical assistance to developing countries.^{vi} Each of these three aspects of the SPS agreement may work to lower food safety standards.

6. Codex has given priority to setting standards that facilitate trade rather than providing consumers with the highest levels of health protection. In June 2001, the Codex Executive Committee considered a draft Strategic Vision Statement that originally stated that:

"The Codex Alimentarius Commission will promote the highest levels of consumer protection, including food safety, for all peoples through the development of internationally agreed standards"^{vii}

7. The Executive Committee, however, decided to weaken the reference in the Vision Statement to providing the "highest levels of consumer protection" because this goal could be construed as a technical barrier to trade.^{viii} Codex then adopted the weaker, revised statement prepared by the executive committee.^{ix}

8. The equivalency provisions of the SPS agreement may also operate to reduce food safety standards in order to facilitate trade.^x It has been stated that the purpose of equivalence agreements is to “facilitate trade” by “eliminating physical controls that are in place to verify that products that come into the territory of the importing party fulfill the sanitary requirements of that country.”^{xi} Thus, consumers are concerned that such agreements may result in the reduction of protection from unsafe food products.
9. The Inspector General of the U.S. Department of Agriculture issued a report critical of the Department’s equivalency determinations. The Inspector General found that USDA not only missed time frames established for requiring exporters to comply with the USDA’s food safety regulations, but also granted equivalency status before it performed on-site equivalency verification reviews.^{xii}
10. The SPS requires WTO members to provide less developed countries technical assistance. The developed countries, however, have not adequately lived up to their obligations. The requirements for technical assistance should be made mandatory in cases where a new food safety measure is introduced by an importing country that creates particular problems for developing countries.^{xiii}
11. Developing countries should “skip over all the decades of gradual progress and hard-earned experiences of industrial countries and adapt modern food safety systems that work well.≡ While such countries may have no comprehensive food safety system in place at the current time, this situation presents them with an opportunity to make a “leap forward≡ up to world class food safety systems.^{xiv}
12. Until such measures are instituted, developing countries are faced with either arguing for weaker SPS measures or foregoing opportunities for international trade. This Hobson’s choice further leads to downward pressure on food-safety standards.
13. In sum, the SPS agreement does not adequately address new food safety problems caused by the growth of the international food trade. One option for reform is for the adoption of amendments or technical clarifications of the SPS agreement. This step has been recommended by the Transatlantic Consumer Dialogue, an organization of more than 60 national consumer organizations in the United States and Europe. Such efforts, however, may only partially address food safety challenges posed by the growth of the international food trade. In brief, the globalization of the food industry necessitates not just an *international trade agreement* to protect business interests, but also an *international food safety agreement* to protect consumer interests.

THE ROLE OF THE WHO IHRS IN PROMOTING THE SAFETY OF FOOD IN INTERNATIONAL TRADE

14. One option for developing such an agreement would be to enhance the role played by the WHO. The WHO has a natural role in addressing food safety problems associated with the growth of the international food trade. It is the leading international public health organization in the world. The WHO’s expertise is unquestioned in food safety matters and its mission is rooted in protecting the public’s health. The WHO’s World Health Assembly (WHA), with 191 member nations, adopted in May 2000 a Food Safety resolution that among other things, instructs the Director-General “to support the inclusion of health considerations in international trade in food.”^{xv} WHO staff have since conducted an expert consultation to develop a strategic food safety plan.^{xvi} The plan, in part, calls for the revisions of the WHO’s IHRS to address food safety matters. The WHA reaffirmed plans to proceed with expansion of the IHRS in May 2001.^{xvii}
15. Those who envision continued growth of global institutions cannot seriously believe that only one institution, the WTO, should retain responsibility for food safety matters associated with international trade.
16. The WHO’s IHRS provide a unique, legally binding mechanism to address food safety problems in international trade. They represent the only global regulatory framework to prevent the spread of infectious diseases. At the present time, the IHRS only require member nations to notify the WHO of

three infectious diseases (cholera, plague, and yellow fever). WHO then issues recommendations for containment of outbreaks.

17. The WHO is revising the IHRs. Under the revised IHRs, member nations would be required to notify the WHO of any urgent public health risks of international importance. Thus the scope of the revised IHRs will be expanded to cover non-infectious risks, such as toxins and chemicals, in the transport of goods.^{xviii} The IHRs would thus address food-safety problems such as the spread of microbiological hazards from one geographic region to another, antimicrobial resistance due to the misuse of antibiotics in animal feed, transmissible spongiform encephalopathies, chemical hazards, and intentional contamination due to bioterrorism.

18. More than 35 national consumer organizations from North America, Europe, and Asia have written the WHO in support of this effort.^{xix}

19. The revised IHRs would continue to require that member nations notify WHO of health hazards, but WHO would also be able to seek information from any reliable source. In order to rectify a food safety problem the WHO would issue a measured, appropriate response matched to the actual public health threat. The WHO would provide incentives for complying with its recommendations.

20. WHO has been reluctant to use formal mandatory enforcement such as sanctions against members states who do not comply with the regulations. Under the WHO constitution there are no formal punitive sanctions. However, the potential for more effective use of the existing legal framework remains in tact. The IHRs contain a dispute-resolution provision that authorizes member-states to refer any question or dispute to the Director General or a WHO committee to settle. If this referral process fails, a member-state is authorized to bring the dispute to the International Court of Justice.^{xx}

21. The WTO and the WHO should work on the basis of comity and recognize the actions of each other as valid and binding. The WHO and WTO could develop a memorandum of understanding that would delineate mutual responsibilities in the area of food safety and international trade.^{xxi} For example, the WHO's IHRs could be used by WTO dispute-resolution panels as evidence in determining whether a national sanitary measure is consistent with the SPS agreement.

22. Unfortunately, Codex has taken inadequate steps towards this goal. At its meeting in July 2001, it adopted a statement "Promoting Linkages Between Codex and Other Multilateral Regulatory Instruments and Conventions." The original draft of the statement contained a reference to ensuring that Codex standards and other outputs "are consistent with relevant international conventions and agreements."^{xxii} This reference, however, was deleted from the final version of the statement.^{xxiii}

23. The European Union (EU) has recognized the need to reach a global consensus on resolving possible conflicts between WTO rules and multilateral environmental agreements.^{xxiv} Other nations should join the EU's effort to ensure that international trade and international environmental agreements work in harmony to protect the public's health.

CONCLUSION

24. Developed countries should provide the WHO with extra-budgetary resources to promptly complete and implement the IHR revision effort. Such steps will help restore public confidence in the safety of the food supply and promote further steps towards trade liberalization in the food sector. Such steps will thus benefit producers as well as consumers.

ⁱ Joel Achenbach, *Global Hysteria: Fear of Food, Part II*, Wash. Post, March 27, 2001, at C9.

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- ii Dr. Gro Harlem Brundtland, Director General, World Health Organization, Address at the 24th Session of the Codex Alimentarius Commission, Geneva, Switzerland 3 (July 2, 2001).
- iii Jeff Gerth and Tim Weiner, *Imports Swamp U.S. Food-Safety Efforts*, N.Y. Times, Sept. 27, 1997, at A1.
- iv *Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)*, Art. 3.3.
- v Art. 4.1 of the SPS.
- vi Art. 9 and 10 of the SPS.
- vii Consideration of the Draft Strategic Framework, Proposed Draft Medium Term Plan 2003-2007, and the Chairperson's Action Plan (Agenda Item 7), Twenty-Forth Session of the Codex Alimentarius Commission, Geneva Switzerland, 2-7 July 2001, ALINORM 01/6, App. I.
- viii Report of the Forty-Eighth Session of the Executive Committee of the Codex Alimentarius Commission, Geneva, 28-29 June 2001, ALINORM 01/4, para. 22.
- ix Codex Alimentarius Commission Strategic Framework, Report of the Twenty-fourth Session of the Codex Alimentarius Commission, ALINORM 01/41, App II.
- x Alexander Donahue, *Equivalence: Not Quite Close Enough for the International Harmonization of Environmental Standards*, 30 ENVTL. L. 363 (Spring 2000).
- xi Draft Free Trade Agreement for the Americas, FTAA.TNC/w/133/Rev.1(July 3, 2001).
- xii See USDA, Office of the Inspector General, Food Safety Inspection Service, Imported Meat and Poultry Inspection Process Phase 1, Rep. No. 24099-3-Hy (2000).
- xiii South Centre, *WTO Agreement on Sanitary and Phytosanitary Measures: Issues for Developing Countries*, Trade-Related Agenda, Development and Equity (T.R.A.D.E.) Working Papers 3, 25 (July 1999).
- xiv Dr. Gro Harlem Brundtland, Address at the 24th session of the Codex Alimentarius Commission, Geneva Switzerland 4 (July 2, 2001).
- xv WHO, Fifty-Third World Health Assembly, Eight Plenary Meeting A53/VR/8, at 2(12)(May 20, 2000). See, Kazuaki Miyagishima & Fritz Kaferstein, *Food Safety in International Trade*, 19 WORLD HEALTH F. 411 (1998).
- xvi See WHO, *A Global Food Safety Strategy, Exposure Draft*, Geneva Switzerland, June 29, 2001.
- xvii See WHO Fifty-fourth World Health Assembly, Global health security – epidemic alert and response, Report by the Secretariat, Provisional agenda item 13.3 A54/9 (April 2, 2001).
- xviii See WHO, *Global Health Security: Epidemic Alert and Response, Renewing the International Health Regulations*; WHO, *Weekly epidemiological record*, No. 8, at 61 (Feb. 23, 2001).
- xix See Letter from Sue Davies and Bruce Silverglade, co-chairs of the Transatlantic Consumer Dialog (TACD), to Dr. Gro Harlem Brundtland, Director General of the WHO (May 29, 2001); Letter from the International Association Consumer Food Organizations to Dr. Gro Harlem Brundtland, (June 26, 2001).
- xx See WHO, *International Health Regulations*, Art. 93 (1983).
- xxi Bruce Jay Plotkin and Anne Marie Kimball, *Designing an International Policy and Legal Framework for the Control of Emerging Infectious Diseases: First Steps*, *Emerging Infectious Diseases*, vol. 3, No. 1 (Jan.-Mar. 1997) at 6.

^{xxii} Consideration of the Draft Strategic Framework, Proposed Draft Medium Term Plan 2003-2007, and the Chairperson's Action Plan (Agenda Item 7), Twenty-Forth Session of the Codex Alimentarius Commission, Geneva Switzerland, 2-7 July 2001, ALINORM 01/6, App. 1., at 5.

^{xxiii} Codex Alimentarius Commission Strategic Framework, Report of the Twenty-fourth session of the Codex Alimentarius Commission, ALINORM 01/41, para. 49-51 and App. II. at 86.

^{xxiv} Profile: *EU Joins Swiss Call to Clarify Link Between Trade and Environment Pacts*, World Food Regulation Review, Vol. 10, No. 7 at 24 (Dec. 2000).