

Committee on Sanitary and Phytosanitary Measures

CLARIFICATION OF REFERENCES TO CODEX TEXTS

Draft Response to the Codex Alimentarius Commission

Note by the Chairman

At its meeting of 15-16 October 1998, the Committee discussed a letter (G/SPS/W/84) sent to the Chairman by the Secretariat of the Codex Alimentarius Commission (CAC) concerning a request for clarification by the Committee on (a) how it would differentiate standards, guidelines or recommendations and (b) the status it would assign to Codex regional standards and related texts in relation to the implementation of the SPS Agreement. As agreed, the following draft response, based on the suggestions made by Members during informal consultations on the subject, is circulated for consideration by the Committee at its March meeting.

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1. Your letter of 29 September 1997 was discussed by the Committee on Sanitary and Phytosanitary Measures ("the Committee") at its meetings of October 1997 and March 1998. The Committee instructed me to forward to you the following response.
 2. By way of background, it must be clearly understood that the Committee cannot formally interpret the provisions of the SPS Agreement. This can be done only by the WTO Ministerial Conference or General Council, or indirectly through the dispute settlement process with regard to particular cases. Nonetheless, the Committee is required to carry out the functions necessary to implement the Agreement and the furtherance of its objectives and thus may express views, where appropriate, on the meaning of particular terms and provisions of the Agreement.
 3. With respect to your first question on "how the Committee would differentiate standards, guidelines or recommendations in relation to the implementation of the SPS Agreement", Annex A of the SPS Agreement defines *international standards, guidelines and recommendations* as follows:
 - "(a) for food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice; ..."

This definition makes no distinction between standards, guidelines and recommendations. The SPS Agreement does not provide specific definitions for the terms "standards", "guidelines" or "recommendations". This is in contrast to the WTO Agreement on Technical Barriers to Trade, where "standard" has been explicitly defined¹, and where there is no reference to "guidelines" or "recommendations".

4. Throughout the text of the SPS Agreement, the terms "international standards, guidelines or recommendations" always appear together. Article 3.1 of the SPS Agreement states that "[t]o harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations ...". Article 3.2 indicates that sanitary measures which "... conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement ...". Article 3.3 provides that "Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification ...". In no case do these provisions differentiate between the three terms "standards", "guidelines" or "recommendations".

5. Nonetheless, in discussions on this matter [some] Members indicated that how a Codex text was applied depended on its content. [These] Members recognized that a Codex standard, such as an MRL, often provides a higher degree of precision than a guideline or a recommendation, and thus may give a Member less room for interpretation. This might have some bearing on the facility with which a Member could show that its measure "conforms to" an international standard, guideline or recommendation in the context of Article 3.2 of the SPS Agreement. Similarly, the greater precision that often characterizes a standard might affect what deviation from an international standard, guideline or recommendation is allowed under Article 3.3. However, it was noted that Codex standards, guidelines or recommendations are not mandatory, and that Members have the possibility to deviate from them. [Most] Members were of the view that Codex work should not be constrained by this question. Members consider it to be an internal decision of the Codex Alimentarius Commission as to the merits of having a standard, guideline, or recommendation to address each specific food safety issue.

6. With respect to your second question on "the status the Committee would assign to Codex regional standards and related texts", in its discussions [some] Members noted that regional standards are not included in the definition of international standards provided by Annex A of the SPS Agreement,

¹The TBT Agreement defines a "standard" as a:

"Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Explanatory note

The terms as defined in ISO/IEC Guide 2 cover products, processes and services. This Agreement deals only with technical regulations, standards and conformity assessment procedures related to products or processes and production methods. Standards as defined by ISO/IEC Guide 2 may be mandatory or voluntary. For the purpose of this Agreement standards are defined as voluntary and technical regulations as mandatory documents. Standards prepared by the international standardization community are based on consensus. This Agreement covers also documents that are not based on consensus."

cited above. [These] Members recognized that, even if they were based on scientific evidence, regional standards were meant to apply only within a particular geographic region. Despite their relevance for that region, the application of such standards to trade, whether to countries within or outside of the region, could not benefit from any presumption of conformity with the SPS Agreement. However, Members do recognize that such scientifically-sound regional standards could become the foundation for the creation and adoption of international standards.
