

Committee on Sanitary and Phytosanitary Measures

CLARIFICATION OF REFERENCES TO CODEX TEXTS

Draft Response to the Codex Alimentarius Commission

Note by the Chairman

Revision

At its meeting of 15-16 October 1997, 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.

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".

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. The Committee noted that there is no legal obligation on Members to apply Codex standards, guidelines and recommendations and, in accordance with the terms of Article 3 of the SPS Agreement, Members may choose to apply them or not. The Committee observed that how a Codex text was applied depended on its substantive content rather than the category of that text (eg., commodity standards, MRLs, codes of practice, guidelines). This might have some bearing on how a Member could show that its measure is based on an international standard, guideline or recommendation in the context of Article 3 of the SPS Agreement. For example, a Codex standard, such as an MRL which represented a specific numeric value, may provide a higher degree of precision than much of the content of a guideline or other Codex text. On the other hand, the Committee considered that guidelines and recommendations are intended to allow greater discretion as to the choice of measures which can be regarded as being based on the guideline or recommendation. However, the Committee was of the view that Codex work should not be constrained by this question. The Committee considers it to be an internal decision of the Codex Alimentarius Commission regarding the type and content of the texts it develops to address issues before it.

6. With respect to your second question on "the status the Committee would assign to Codex regional standards and related texts", in its discussions Members noted that regional standards are not included in the definition of international standards provided by Annex A of the SPS Agreement, cited above. The Committee recognized that, even if they were based on scientific evidence, regional standards were meant to apply only within a particular geographic region. However, Members do recognize that such scientifically-sound regional standards could become the foundation for the creation and adoption of international standards.
