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**INTERACTION AND CO-OPERATION BETWEEN THE AKS AND OTHER
INTEREST GROUPS FOR THE PRODUCTION AND DISTRIBUTION OF
SAFE AND HIGH QUALITY FOOD PRODUCTS**

**A VIEW FROM THE INTERNATIONAL ASSOCIATION OF CONSUMER
FOOD ORGANIZATIONS**

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(Note by the Secretariat)

This paper is prepared by Mr. Bruce Silverglade, President of the International Association of Consumer Food Organizations.

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SUMMARY

1. This paper discusses the impact of the international food trade on consumer concerns about food safety and how governments could help restore public confidence in the safety of the food supply, focusing specifically on the WTO Agreement on Sanitary and Phytosanitary Measures (SPS).
2. Based on events that have transpired in cities ranging from Seattle, Washington in the United States to Milleau, in France, it should be clear that the SPS agreement in its current form is not working and should be reconsidered.
3. The terms of the agreement can be used to undermine legitimate efforts by a government to improve consumer protection regulation; matters involving scientific uncertainty are handled in a manner that gives the benefit of the doubt to promoting trade -- not food safety; the international standard-setting process may lead to downward harmonization; attention is given to providing special treatment to developing countries in a manner that reduces public confidence in the safety of the food supply; and equivalency agreements may be affected by political considerations. In addition, the SPS agreement contains no mechanism to account for the collision of trade considerations with cultural values and other factors that affect consumer perceptions of risk.
4. In short, the SPS should be transformed from a trade agreement that merely provides a mechanism to strike down unjustified, protectionist health and safety measures into an international food safety agreement that best serves the interests of consumers.

INTRODUCTION

5. The International Association of Consumer Food Organizations (IACFO), is an association of non-governmental organizations that represents consumer interests in the areas of food safety, nutrition, and related matters. IACFO was founded in 1997 by the Center for Science in the Public Interest (CSPI), the Food Commission UK, and the Japan Offspring Fund.
6. IACFO was formed to help consumer organizations in the United States., EU, and Japan coordinate their efforts on an international scale and participate more effectively in the debate over the global food trade. IACFO has been granted observer status before the World Trade Organization (WTO) and the Codex Alimentarius Commission (Codex) and seeks to represent consumers' interests at meetings of those organizations.

7. This paper discusses the impact of the international food trade on consumer concerns about food safety and how governments could help restore public confidence in the safety of the food supply, focusing specifically on the WTO Agreement on Sanitary and Phytosanitary Measures (SPS).

8. Domestic consumer concerns over food safety and nutrition in most OECD Member countries are similar, but can take different forms or receive different emphases during particular time periods. Safety concerns in the United States currently focus on eliminating or reducing pathogens, such as *E. coli* 0157:H7 and salmonella, in the food supply. Consumers in the United States also remain concerned about the safety of food additives. For example, olestra, the new artificial fat substitute, can cause severe GI problems; potassium bromate causes cancer in laboratory animals; and certain color additives may cause hyperactivity in children. There are also concerns in the United States about the use of antibiotics used in human medicine as growth promoters in animals and the health effects of pesticides residues on children.

9. The EU has suffered more than its share of food safety scares. There is a continued moratorium on the use of growth hormones in cattle, grave concern over genetic engineering, renewed concern about “mad cow disease” and dioxin, and new bans on the use of antibiotics as growth promoters in animal feed.

10. Consumers in Japan are also highly sensitive to food safety matters. Genetic engineering remains a top controversy. *E. coli* 0157:H7 contamination took a tragic toll among Japanese school children in 1997 and was a subject of great debate. Pesticide residue levels also remain a concern, along with distrust of many food additives.

11. Based on events that have transpired in cities ranging from Seattle, Washington in the United States to Milleau, in France, it should be clear that the SPS agreement in its current form is not working and is exacerbating the concerns that consumer around the world have about food safety. The SPS agreement should thus be reconsidered. In short, the SPS should be transformed from a trade agreement that merely provides a mechanism to strike down unjustified, protectionist health and safety measures into an international food safety agreement that best serves the interests of consumers.

BACKGROUND

12. The events that took place last month at the WTO meeting in Seattle, Washington may have a profound effect on how governments regulate food and agricultural products in international trade. The street protests by tens of thousands of people (some of whose concerns were acknowledged by United States President Bill Clinton), represent, to say the least, a citizens’ vote of “no confidence” in the current WTO framework.

13. Right behind the clouds of tear gas and furor over labor and environmental matters stood the issue of food safety. The issue loomed large in official negotiations on agriculture, in unofficial seminars and workshops organized by NGOs, and in the streets where protesters carried signs that said “Say No to GMO”.

14. While the United States insisted that the SPS agreement not be reopened, the EU, Japan, and other countries, in the context of negotiations on agriculture, favored including in future negotiations matters pertaining to the “safety of agricultural products”¹ as well as related environmental and animal

¹ Common Working Paper of the EC, Hungary, Japan, Korea, Switzerland and Turkey to the Seattle Ministerial Declaration, Paragraph 17, December 2, 1999.

welfare matters.² This position raises the possibility of technical clarifications and/or interpretative statements that may affect the implementation of the SPS agreement.³ Unfortunately, the talks collapsed. The failure of the negotiations should lead to a consideration of how the SPS agreement could be reformed to better reflect the concerns of consumers.

15. The SPS should also be reviewed because the only case applying the agreement in the area of food and human health -- the WTO decision regarding the challenge of the United States and Canada to the EU's moratorium on the use of growth hormones in cattle -- has led to tariffs and civil unrest. These are two of the very outcomes that international trade agreements are supposed to avoid.

16. Under the SPS, the WTO may force a nation to choose between lowering its health standards for humans, animals, or plants or paying an economic penalty. The penalty can take the form of either compensating the government whose exports to that nation are limited or permitting that country to impose additional trade restrictions on exports from the nation maintaining the health standard.

17. A national health standard is illegal under the SPS Agreement if the WTO decides that it is not based on scientific principles and is ... maintained without sufficient scientific evidence.[≡] Article 2.2 of the SPS Agreement says Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.

18. Article 5.7 says "In cases where scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time."

19. In making that judgment, the WTO examines the extent to which a country has done a scientific assessment of the risk to "human, animal, or plant life or health." Article 5 deals at some length with the assessment of risk and determination of the appropriate level of sanitary or phytosanitary protection. Article 5.1 says "Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations."

20. In January 1998 the Appellate Body of the WTO affirmed a panel decision concluding that the EU's ban on imported beef produced from cattle treated with growth hormones violated the SPS Agreement. The Appellate Body found that the EU, while presenting scientific information, had not conducted the type of risk assessment required by Article 5 of the SPS Agreement.⁴ When the EU refused to rescind the hormone ban, as is its right under the WTO agreement, the WTO permitted the United States to impose a 100 per cent ad valorem tariff on USD 117 million of food imported by the United States from the EU.

² Some of these matters may be governed by the Agreement on Technical Barriers to Trade (TBT). The TBT applies to numerous forms of consumer protection measures, such as labeling requirements for food that do not directly involve health and safety.

³ There are also fundamental defects in the SPS agreement as it relates to environmental matters. Such matters, while important, are beyond the scope of this paper.

⁴ *EC Measures Concerning Meat and Meat Products (Hormones)* (January 1998).

21. McDonald's fast food restaurants were targeted for attacks by farmers and others upset at the imposition of tariffs by the United States led to civil unrest in parts of Europe and results of the WTO decision. The primary benefits of free trade are supposed to be a lowering of tariffs and international harmony. However, the first and only WTO decision under the SPS agreement involving food safety regulation has brought us just the opposite.

22. Two other cases involving the SPS agreement have been decided by the WTO. In October 1998 the Appellate Body of the WTO affirmed a panel decision sustaining a complaint by Canada that Australia's ban on imported uncooked salmon violated the SPS Agreement. The Appellate Body said that, while Australia was free to accept a "zero risk" of protection from exotic diseases entering the country and affecting Australian salmon fisheries, Australia's ban was illegal because Australia had not conducted the type of risk assessment required by Article 5.

23. In February 1999 the Appellate Body of the WTO affirmed a Panel decision sustaining a complaint by the United States against Japan's testing certain types of imported fruit to see whether they are free of codling moths. The Appellate Body said that Japan's testing requirements for apples, cherries, nectarines, and walnuts were not supported by the "sufficient scientific evidence" required by Article 2 of the SPS Agreement and that Japan had not sought additional scientific information within a reasonable time, as required by Article 5.7 of the SPS Agreement; the Appellate Body also found that Japan's testing requirements for apricots, pears, plums, and quince were not based on a proper risk assessment.

24. These cases also demonstrate difficulties in justifying domestic requirements under the current terms of the agreement.

SPECIFIC PROBLEMS WITH THE SPS AGREEMENT

25. The SPS creates an important mechanism to strike down unjustified sanitary and phytosanitary measures that are used to discriminate against imports. IACFO does not oppose this objective and is not demanding an end to free trade. However, IACFO and other consumer and environmental organizations do favor a new set of rules that place their concerns on an equal footing with those of business.

26. As presently written, the SPS agreement merely creates a mechanism for exporting nations to win exemptions from national food safety laws of importing countries -- it does little to ensure that standards used in international commerce, which can supplant national food safety laws, are harmonized in an upward fashion that best serve the interests of consumers. Thus, the current SPS framework does little to build or maintain consumer confidence in the safety of the food supply. To address this problem, the SPS agreement must be fundamentally modified and transformed into an international food safety agreement that both addresses consumer concerns while providing a mechanism to strike down unjustified health and safety measures that are protectionist.

The Terms of the Agreement are Being Misused.

27. While the WTO has decided only one case involving the SPS Agreement as it pertains to food safety and human health, governments may privately threaten action under the SPS Agreement as a way of pressuring another country to accept imports. This type of informal activity, often invisible to any public scrutiny, may represent a more insidious threat to a country's food safety standards than an actual WTO challenge, which is at least subject to some established rules.

28. For example, the United States Trade Representative (USTR) -- seeking to promote United States sales of antibiotics and meat and poultry -- wrote to the European Commission that the EU's ban on the use in livestock feed of human-use antibiotics might be illegal under the SPS Agreement because the EU had

failed to notify the United States of its actions and had not done a “proper risk assessment”. The USTR made this statement even though the United States Centers for Disease Control had concluded that the EU ban is “scientifically justifiable” and “protects the public health”.

29. The World Health Organization had recommended in 1997 that antibiotics used to treat humans should not also be used to promote animal growth, and the United States National Academy of Sciences had concluded in 1998 that “there is a link between the use of antibiotics in food animals, the development of bacterial resistance to these drugs, and human disease”. Thus, the United States attempted to use the SPS process to further exports at the expense of consumer protection regulation.

The Burden of Proof Regarding Scientific Uncertainty is Improper.

30. The USTR claimed that not enough is known yet about the potential hazards of using antibiotics as growth promoters in animal feed to justify a ban. In cases of scientific uncertainty, the SPS places the burden of proof on the party seeking to maintain a health or safety regulation to show that the measure is justified. Article 5.7 of the SPS deals with situations where “relevant scientific evidence is insufficient” and provides that, in such cases, a nation may only “provisionally” adopt a health measure and that the burden of proof is on that nation “to obtain the additional information necessary for a more objective assessment of risk” within a reasonable period of time.

31. This requirement can result in actions that are not consistent with a precautionary approach to food safety regulation. When the scientific evidence is strong, but perhaps not conclusive, governments should be able to maintain health and safety measures. Most importantly, the burden of obtaining additional information to prove that such measures are unjustified should shift to the country challenging the validity of the safety standard -- not by the party seeking to maintain it.

Reliance on International Standards, Guidelines, and Recommendations that Fall Below National Health and Safety Requirements is Inappropriate.

32. In applying the SPS Agreement, the WTO relies heavily on the Codex Alimentarius Commission, a subsidiary body of the United Nations Food and Agriculture Organization and World Health Organization.⁵ The SPS Agreement provides that a national health standard for food is presumptively legal if it conforms to a standard, guideline, or recommendation established by Codex. A national standard that provides a greater level of protection than Codex is a “trade barrier” unless the WTO decides that the stricter national standard is based on a proper “risk assessment” that demonstrates that the Codex standard, guideline or recommendation does not provide sufficient protection or that the country maintaining the stricter standard has other scientific justification.⁶

33. The reliance on Codex standards, guidelines, and recommendations is leading to downward harmonization of some food safety standards.

34. Codex guidelines and recommendations are just that and should have no legal status under the SPS agreement. It makes little sense to make Codex actions that were intended to be non-binding actionable under the SPS agreement. The current terms of the agreement on this matter have forced governments to

⁵ For animal health and zoonoses, the SPS Agreement refers to standards developed by the International Office of Epizootics; for plant health the SPS Agreement refers to standards developed by the Secretariat of the International Plant Protection Convention.

⁶ See Articles 3.2 and 3.3 of the SPS Agreement.

increasingly interject trade considerations into Codex disputes, have confounded the consensus building process that Codex has traditionally operated under, and has made Codex deliberations needlessly difficult.

35. Codex has approved numerous standards that fall below national requirements maintained by the United States, the EU, and perhaps other governments.

36. At its 1999 meeting, Codex approved a tolerance for residues of methyl parathion (and other pesticides) even though the United States Environmental Protection Agency (as mandated under United States law) has banned methyl parathion for fruits and vegetables because of its potential adverse effects on children.

37. Similarly, Codex approved a maximum level for aflatoxin -- a naturally occurring carcinogen produced by mold that grows on peanuts -- of 15 ug/kg. That level was higher than the level sought by the EU and represented a compromise with the United States that permits greater amounts of aflatoxin in peanuts intended for further processing.

38. Recent Codex standards have been based on so-called scientific consensus. What really transpires at Codex meetings, however, is that nations that recognize they don't have the votes to block a Codex standard simply acquiesce to the issuance of that particular standard. That is precisely what happened when the United States did not object to the adoption of Codex pesticide residue standards that provide less protection than United States law. The result is that Codex standards may reflect political compromises, not the best science, and the reliance on Codex standards in the SPS agreement may lead to the downward harmonization of some national food safety requirements.

The SPS Addresses the Needs of Developing Countries in a Manner that Reduces Public Confidence in the Safety of the Food Supply.

39. The SPS also undermines public confidence in the food supply because it provides special and deferential treatment to developing countries in a manner that can lead to downward harmonization of food safety standards. In recognition of the difficulty that developing countries have in complying with the SPS, Article 10 of the Agreement requires that WTO members shall, when preparing and enforcing food safety measures, take into account the special needs of developing countries that cannot comply with various health and safety standards. This requirement can take various forms ranging from extensions of time to comply with an importing country's domestic regulatory requirements, to complete exemption from provisions of the SPS agreement. While these measures may be necessary from the standpoint of reaching political consensus on trade agreements, they do little to instill public confidence in the safety of the food supply.

40. Developing countries should receive special and deferential treatment, but that treatment must be accorded in a manner that increases, not decreases, public confidence. For example, while Article 9 of the SPS Agreement requires that developing countries be provided with technical assistance to assist them in complying with health and safety standards, little assistance has actually been provided. Steps need to be taken to make technical assistance mandatory. This effort, while only a first step, might begin to address the needs of developing countries in a manner that does not reduce public confidence among consumers in developed countries. Until that time, safety must never be compromised in the name of providing special and deferential treatment to developing countries.

The SPS Sets Vague Standards for Equivalency Determinations.

41. The SPS does no better in the area of equivalency. The term is not adequately defined in the agreement and is open to various interpretations, some of which could compromise food safety. For

example, in a dispute between the United States and Australia, the government of Australia argued that meat processing plants inspected by only company employees achieved the same level of public health protection as plants inspected by government officials. The United States government rejected the proposition, but American consumer groups remain concerned about future attempts by Australia and other countries that may wish to argue that inspection by government officials is unnecessary. Such disputes do little to build public confidence in the concept of equivalency.

42. In another controversy, the USDA purported to make equivalency determinations as to whether countries that export meat and poultry to the United States were in compliance with new regulations requiring salmonella testing. The new requirements had applied to large United States producers since January 25, 1998, but, in effect, were waived for importers for more than 21 months while the Department reviewed claims that other measures taken by exporters provided an equivalent level of protection to the new United States regulations. A letter from USDA officials to a member of the United States Congress explained the Department's rationale. The letter stated "*We expect other countries adopting new regulations to continue to accept our exports while they conduct the deliberate process to determine the equivalence of our measures.*" (Emphasis in the original).⁷ This lax approach further raised concerns among American consumer groups about how the equivalency provisions of the SPS are being implemented and whether compliance with new United States food safety regulations is being compromised to facilitate trade.⁸

The Current SPS Framework Leads to Outcomes that Collide with Cultural Values and Other Factors that Influence Consumer Perceptions of Risk.

43. Perhaps one of the most difficult problems raised by the SPS is that the agreement does not provide any method to take into account legitimate cultural values and other factors that may influence consumer perceptions of risk. This problem is at the root of numerous trade disputes and consumer concerns.

44. For example, many so-called scientific debates over Codex standards are really trade disputes based on cultural differences that are portrayed as scientific controversies. For instance, the 1997 decision by Codex to approve a natural mineral water standard based on European traditions (which does not require removal of all contaminants that are considered harmful in drinking water by the World Health Organization) and the 1999 decision to approve dairy standards that do not require pasteurization were argued on the basis of science. These two disputes, however, really represent trade disputes based on cultural and societal differences that lead to different perceptions of risk. Risk assessments, however, inherently cannot consider cultural values.

45. Scientific risk assessments also cannot account for certain values that many consumers share. While scientists use mathematical models to calculate risks, consumers may perceive risks as the actual risk multiplied by what has been called the "outrage" factor. For example, potential risks that can lead to catastrophic outcomes -- such as meltdown of a nuclear power plant -- are feared by the public out of proportion to the actual chances of the risk occurring. Similarly, involuntary risks are perceived by consumers to be much more dangerous than voluntary risks. Risks that involve children are perceived as greater than the same risks that involve adults.

⁷ Letter from Thomas Billy, Administrator, U.S. Food Safety and Inspection Service, to the Honorable Charles W. Stenholm, Ranking Member, Committee on Agriculture, U.S. House of Representatives, May 25, 1999.

⁸ The U.S. Food and Drug Administration has failed to develop any equivalency agreements for food.

46. While the SPS states that a government may maintain the level of protection it deems appropriate, that right is limited by the requirement that governments must produce scientific justifications that cannot account for cultural values and other factors that affect consumers' perceptions of risk. Providing a solution to this problem while maintaining the original purpose of the SPS is extremely difficult. However, this matter must be openly addressed. Simply attempting to ignore this issue, or to discuss it purely in terms of science, will not lead to constructive debate and ultimate solutions.

CONCLUSION

47. In sum, the SPS agreement is reducing public confidence in the safety of the food supply: the terms of the agreement can be used to undermine a government's efforts to improve consumer protection regulation; matters involving scientific uncertainty are handled in a manner that gives the benefit of the doubt to promoting trade -- not food safety; the international standard-setting process may lead to downward harmonization; attention is given to providing special treatment to developing countries in a manner that reduces public confidence in the safety of the food supply; and equivalency agreements may be affected by political considerations. In addition, the SPS agreement contains no mechanism to account for the collision of trade considerations with cultural values and other factors that affect consumer perceptions of risk.

48. The best way to further the international food trade is to restore public confidence in the safety of the food supply. To achieve this objective, the SPS must be transformed into an international food safety agreement that places consumer protection and commerce on an equal footing.