

INTERNATIONAL FOOD STANDARDS

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INTERNATIONAL FOOD STANDARDS

INTRODUCTION

Food standards, quality, and safety issues are often subject to public as well as parliamentary debates. Various private Members' bills proposing to amend the *Food and Drugs Act*⁽¹⁾ have been introduced in Parliament to address concerns about food labelling, natural health products, and alcohol warnings.⁽²⁾

The total value of Canadian agri-food exports in 2004 was \$26.45 billion, and imports were valued at \$20.43 billion.⁽³⁾ With the expansion of the global food trade and growing consumer awareness in matters concerning food, international standards related to food and food safety are becoming increasingly important. Moreover, food production and processing methods in one country may not be acceptable to consumers in another part of the world.

The World Trade Organization (WTO) dispute initiated by Canada, the United States and Argentina against the European Union (EU) in relation to genetically modified agricultural products exemplifies the trade difficulties that arise from differing food standards and consumer attitudes.⁽⁴⁾ In this high-profile dispute currently before a WTO Dispute Settlement Panel, Canada contends that certain measures taken by the EU violate international trade agreements. The dispute arose on account of an EU moratorium, since October 1998, on the approval of certain products of agricultural biotechnology that are produced from genetically modified organisms and biotech products.⁽⁵⁾ The decision of the WTO Dispute Settlement Panel is expected by September 2006.⁽⁶⁾

(1) R.S.C. 1985, c. F-27.

(2) For example, Bill C-283, An Act to amend the Food and Drugs Act (food labelling), was introduced in the 39th Parliament. Similarly, Bill C-420 (Natural Health Products) and Bill C-206 (Alcohol Warning Labels) were introduced but not passed in the 38th Parliament.

(3) Agriculture and Agri-Food Canada, "Exports – Agri-Food for 2004," http://atn-riac.agr.ca/stats/3684_e.pdf.

(4) WT/DS292, WT/DS291 & WT/DS 293.

(5) Communication from the Permanent Mission of Canada to the WTO Dispute Settlement Panel, 7 August 2003.

(6) Communication from Chairman of the Panel, 31 March 2006, WTO Document 06-1473.

The most important issue is that all foods be safe for human consumption. For this reason, almost all countries have a food control system to protect their population against unsafe, adulterated or otherwise poor-quality food.⁽⁷⁾ Internationally, the Codex Alimentarius Commission (the Commission) administers the *Codex Alimentarius*, which is a collection of food standards developed and presented in a uniform and codified manner.

THE CODEX ALIMENTARIUS

Codex Alimentarius (Codex) is the Latin term for “food law.” The Codex has established standards or guidelines for various foods, whether processed, semi-processed or raw in the form that they reach the consumer. Besides food standards, the Codex contains associated material such as codes of hygienic and good manufacturing practices, recognized methods of analysis and sampling, and general principles and guidelines. It also includes a voluntary *Code of Ethics for International Trade in Food*.

The Commission, which is funded by the World Health Organization (WHO) and the Food and Agriculture Organization (FAO) of the United Nations, was established in 1962 and administers the Joint FAO/WHO Food Standards Programme. The Programme’s purpose is: to protect the health of consumers and to ensure fair practices in the food trade; to promote coordination of all food standards work undertaken by international governmental and non-governmental organizations; to determine priorities, and initiate and guide the preparation of draft standards; and to finalize standards and, after their acceptance by governments, publish them as either regional or world-wide standards.⁽⁸⁾

Today, the Commission has 173 member countries, including Canada.⁽⁹⁾ International organizations may also participate in the Commission as observers. However, they have no voting privileges, unlike member nations.

(7) Committee on World Food Security, “The Importance of Food Quality and Safety for Developing Countries,” 25th Session, 31 May-3 June 1999.

(8) FAO/WHO Food Standards, *Codex Alimentarius*,
http://www.codexalimentarius.net/web/index_en.jsp.

(9) Health Canada, *Codex Alimentarius in Canada*,
http://www.hc-sc.gc.ca/food-aliment/friia-raai/ip-pi/codex/e_index.html.

Codex standards are developed through the work of various committees, adhering to an eight-step process from proposal to adoption that provides for input from various interested parties.⁽¹⁰⁾

In Canada, the Codex Program is managed by an interdepartmental committee consisting of senior officials from Health Canada, the Canadian Food Inspection Agency, the Pest Management Regulatory Agency, Foreign Affairs and International Trade, and Agriculture and Agri-Food Canada.⁽¹¹⁾

APPLICATION OF CODEX STANDARDS IN CANADA

Codex standards are voluntary and not legally binding on member countries. The General Principles of the *Codex Alimentarius* state: “The publication of the Codex Alimentarius is intended to guide and promote the elaboration and establishment of definitions and requirements for foods to assist in their harmonization and in doing so to facilitate international trade.”⁽¹²⁾

Canada, like several other countries, maintains its own national food and drug safety approvals process, and does not automatically adopt the Codex. However, in developing and reviewing food standards, Canada tries to make its national standards compatible with those of the Codex.

In matters related to food safety in Canada, Health Canada and the Canadian Food Inspection Agency (CFIA) share unique and complementary roles and responsibilities. Health Canada is responsible for the development of policies, standards and regulations related to food safety. The CFIA is responsible for the enforcement of food safety through its food inspection and compliance activities.⁽¹³⁾ The CFIA is also responsible for the administration and enforcement of food labelling and certain non-safety aspects related to food.

(10) Sometimes there is an accelerated five-step process.

(11) Health Canada (2005).

(12) Section 1 of the General Principles of the Codex,
http://www.fao.org/documents/show_cdr.asp?url_file=/DOCREP/005/Y2200E/y2200e05.htm.

(13) CFIA, *Report on Plans and Priorities, 2003-2004*,
http://www.tbs-sct.gc.ca/est-pre/20032004/CFIA-ACIA/CFIA-ACIAr34_e.asp.

The Codex is referred to in the *Food and Drug Regulations*⁽¹⁴⁾ in the context of selling a food product that does not comply with those regulations and to which vitamins, mineral nutrients or amino acids have been added. Applicants must demonstrate compliance with the *Codex General Principles for the Addition of Essential Nutrients to Foods*⁽¹⁵⁾ when requesting an exemption from the application of the regulations, an Interim Marketing Authority (IMA), and an amendment to the regulations.

APPLICATION OF CODEX STANDARDS IN INTERNATIONAL TRADE

Though Codex standards are voluntary for member countries, the role of the Codex has been significantly enhanced under the WTO trading regime through the Sanitary and Phytosanitary Measures Agreement and the Technical Barriers to Trade Agreement. The Codex is now an international reference point for matters related to food standards and food safety. It is important to note that the North American Free Trade Agreement (NAFTA) also creates a presumption in favour of Codex standards, similar to the WTO agreements.⁽¹⁶⁾

A. Sanitary and Phytosanitary Measures Agreement (SPS Agreement)

This Agreement specifically deals with trade measures taken to protect human, animal and plant health. It covers all measures of which the purpose is to protect human or animal health from food-borne risks or plant-carried diseases or to protect animals and plants from pests or diseases. The SPS Agreement restricts the use of unjustified sanitary (human and animal health) and phytosanitary (plant health) measures for the purpose of trade protection or as unnecessary barriers to international trade.⁽¹⁷⁾

While recognizing the right of member countries to take SPS measures that are necessary to protect human, animal or plant health within their jurisdiction, the Agreement

(14) *Food and Drug Regulations*, C.R.C., c. 870, section B.01.056.

(15) CAC/GL 09-1987 (amended 1989, 1991).

(16) Article 713 of NAFTA.

(17) WTO, "Understanding the WTO Agreement on Sanitary and Phytosanitary Measures," http://www.wto.org/english/tratop_e/sps_e/spsund_e.htm.

instructs members to harmonize these measures with international standards and guidelines.⁽¹⁸⁾ Under this Agreement, Codex standards are considered to be the international benchmark for food safety.⁽¹⁹⁾ National food safety measures that are based on Codex standards are presumed to comply with WTO rules.⁽²⁰⁾ WTO members therefore have a strong incentive to comply with Codex standards.⁽²¹⁾ Members may, however, use standards that are higher than international standards if they can provide a scientific justification or if the decision is based on a proper risk assessment.⁽²²⁾

In short, “domestic measures departing in either direction from SPS-recognized standards must be based on a risk assessment, take available scientific evidence into account, avoid discrimination and disguised restrictions on trade and be the least trade-restrictive possible to achieve the desired level of protection.”⁽²³⁾

(18) Article 3.1 of the SPS Agreement states: “To 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, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.”

(19) Section 3 of Annex A provides:

3. International standards, guidelines and recommendations

- (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.

(20) Article 3.2 of the SPS Agreement states:

Sanitary or phytosanitary 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 and of GATT 1994.

(21) Sara Poli, “The European Community and the Adoption of International Food Standards within the Codex Alimentarius Commission,” *European Law Journal*, Vol. 10, No. 5, September 2004, p. 615.

(22) Article 3.3 of the SPS Agreement states:

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, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5. Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provision of this Agreement.

(23) Jason Sapsin, *et al.*, “International Trade, Law and Public Health Advocacy,” *Journal of Law, Medicine and Ethics*, Vol. 31, No. 4, Winter 2003, p. 549.

Codex standards were crucial in a 1997-1998 WTO dispute between Canada and the European Community (EC).⁽²⁴⁾ This case concerned the EC's prohibition on imports of meat and meat products derived from cattle to which certain growth hormones had been administered. Codex standards were established for five out of the six hormones in question. Therefore, it became very difficult for EC to justify its imposition of a level of health protection that was higher than that established by the Codex. The case was decided in favour of Canada by both the WTO Dispute Settlement Panel and the Appellate Body.

B. Technical Barriers to Trade Agreement (TBT Agreement)

The purpose of the TBT Agreement is to ensure that national regulations, standards, testing and certification procedures do not create unnecessary obstacles to international trade. The Agreement governs technical regulations and standards regarding the use of terminology, symbols, packaging, marketing and labelling requirements as they apply to a product or production method. The TBT Agreement also uses Codex standards as the international benchmark, although they are not specifically referenced.

The relevance of Codex standards to the TBT Agreement is evident from the decision of the WTO Dispute Settlement Panel and Appellate Body in a 2002 case between Peru and the EU.⁽²⁵⁾ The dispute revolved around an EU regulation that reserved the name "sardine" to certain fish species (*Sardine Pilchardus*, amongst others) found in the Mediterranean Sea, to the exclusion of others. The EU regulation in effect precluded Peru from marketing its sardine species (the Peruvian *Sardinops sagax*) under the name of "sardines" within EU territory. In concluding that the EU legislation breached the TBT Agreement, the Panel found that the *Codex Standard for Canned Sardines and Sardine-Type Products*⁽²⁶⁾ was a "relevant international standard" and that it was not used as a basis for the EU regulation in question.⁽²⁷⁾

It is important to note that there is no obligation on countries to adopt Codex standards even if they are members of the Codex Alimentarius Commission and/or the WTO. However, if a trade dispute arises, the WTO can sanction trade penalties against a country that cannot justify a more stringent, trade-restrictive requirement than that specified in the Codex.

(24) WT/DS48/R/CAN, 18 August 1997; WT/DS26/AB/R, WT/DS48/AB/R, 16 January 1998. A similar dispute was filed by the United States, with similar results.

(25) WT/DS231/R, 29 May 2002; WT/DS231/AB/R, 26 September 2002.

(26) Codex Stan. 94-1981, Rev. 1-1995.

(27) WT/DS231/R, p. 87.