

## Chapter 5

# The Politics of Food Safety in the Age of Global Trade

### The Codex Alimentarius Commission in the SPS Agreement of the WTO

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International trade in food increases real and imagined risks to food safety. These risks primarily arise either from noncompliance with existing food safety standards or from substantive differences in sanitary and related standards for agriculture or food processing industries, which may differ across countries in stringency or due to differences in the fundamental principles embodied in the standards (Ansell and Balsiger 2009; Ansell and Vogel 2006; Echols 2001; Levi et al. 2009; Pollack and Shaffer 2009).

As noted in chapter 1, one way to deal with the governance issues that arise from cross-national differences in food safety standards is for governments to cooperate in developing international standards for common use. Where using common international standards is feasible, it has many benefits, which have been discussed at least since the Tokyo Round negotiations of the General Agreement on Tariffs and Trade (GATT) in the 1970s (Bhagwati and Hudec 1996; Trebilcock and Howse 2005). Common standards, for instance, make the detection of compliance problems easier. In addition, policy proposals such as the one outlined in chapter 10 by Kenneth Bamberger and Andrew Guzman, under which importers assume legal responsibility for imported products being “safe,” may require common international standards for their practical implementation. Moreover, many food safety standards are embedded or referenced in government regulations. Common international standards reduce the likelihood that these regulatory measures create unnecessary nontariff barriers to trade—an important

consideration for food-exporting countries such as the United States (Büthe 2008; Epps 2008: 12ff; Josling et al. 2004).

During the Uruguay Round of the GATT (1986–1993), which led to the creation of the World Trade Organization (WTO), the member states of the GATT addressed the issue of cross-national differences in food safety standards by negotiating the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures. Discussed further in chapter 4, the SPS Agreement is an integral part of the treaty establishing the WTO, binding on all member states, and enforceable via the Dispute Settlement Mechanism (see also Alemanno 2007). Through the SPS Agreement, member states committed themselves, among other things, to using “international standards” whenever international standards exist that can achieve the desired (explicitly specified) level of consumer protection. If a country’s regulations mandate compliance with standards that differ from international standards, they may be challenged as nontariff barriers to trade. The regulating country must then provide scientific evidence, using “risk assessment techniques developed by the relevant international organizations” (WTO 1994: Art. 5[1]), to show that the risks against which the regulatory measure is supposed to protect indeed exist and that international standards could not achieve the desired level of consumer protection against these health or food safety risks. By contrast, domestic regulations that effectively “convert” an “international standard” into a domestic one are categorically presumed to be compliant with WTO law.<sup>1</sup>

Where do these international standards come from? As I have shown in previous work (Büthe 2008), the Uruguay Round negotiators recognized quickly that setting technical or scientific standards for food safety during the Uruguay Round trade negotiations would be impractical. Setting or selecting such standards required specialized expertise that the GATT negotiators generally did not have, and having diplomats or trade experts set standards through international negotiations was likely to be excruciatingly slow and therefore not suitable as a method for developing international food safety standards, given the heterogeneity and changing nature of food products traded in global markets. GATT negotiators therefore agreed early on to delegate the task of setting standards to outside bodies of technical experts (Büthe 2008). Specifically, Annex A(3) of the SPS Agreement defines international standards “for food safety” as the standards “established by the Codex Alimentarius Commission” (Codex)<sup>2</sup> (WTO 1994). But how did Codex get written into the treaty? What explains its selection as *the* international food safety standard-setter under the SPS Agreement?

The selection of Codex might seem like a foregone conclusion. There are hundreds of Codex standards for agricultural trade and food

safety that are concerned not only with matters such as pesticide residues, but also quality, labeling, safe handling, transport, and storage of fruits, vegetables, milk products, and many processed foods. An international organization (IO) with 180 countries as members, Codex now is the clear focal point for international food standard-setting. Codex's centrality today, however, is unsuitable as an explanation for why Codex was selected as the international standard-setter, as causation runs the other way. Codex is in many ways a function of the prominence that it acquired by being selected as the designated food safety standard-setter in the SPS Agreement (Tarullo 2000; Veggeland and Borgen 2005). At the launch of the Uruguay Round negotiations in 1986, Codex had a twenty-three-year history of rather modest achievements and faced an uncertain future; some characterized it as "moribund."

Taking Charles Tilly's (1975) warning against teleology seriously (see also Spruyt 1994), I study this case of institutional choice prospectively. I start by analyzing food standard-setting at the beginning of the Uruguay Round and explore the options at that time, rather than starting from the end result, assuming that it was the only possible outcome. Doing so, I find that there were, by the mid-1980s, at least four organizations that developed widely used international standards for food and food safety. Each was viable and credible as an international food standard-setter, and all were discussed repeatedly during the negotiations of the SPS Agreement. At the same time, the four organizations differed in their decision-making rules, with the level of support required for standards adoption ranging from simple majority to unanimity. Moreover, many individuals and diverse groups have a stake in food safety standards—and the four organizations differed in which stakeholders were represented. The choice was therefore likely to be consequential. What explains the choice in favor of Codex?

Because the material and political stakes are high, any government negotiator should want to delegate standard-setting to a body that is likely to set standards that will be favorable to the politically powerful interests from his country. But informational constraints may impede a negotiator's ability to accurately anticipate the distributional consequences of delegating to one organization rather than another. In the absence of good information, I argue, negotiators will form their preferences over multiple available standard-setting bodies based on the perceived legitimacy of those bodies. Extracting a key element of a more comprehensive theoretical discussion of IO legitimacy that I have developed elsewhere (Büthe 2009), I hypothesize that countries oppose delegation of standard-setting authority to organizations that exclude them, provided that more inclusive alternatives exist. Finally, I conceptualize international standard-setting organizations not just

as passive institutional structures but as actors, with interests of their own and the potential for genuine agency. The more central the setting of food safety standards is to an organization's mission and independent existence, the greater should be the organization's incentive to proactively foster its perceived legitimacy, increasing the chance that it will be selected as the standard-setter.

I develop these hypotheses more fully in the next section, then examine them empirically. For the empirical analysis (only summarized here due to space constraints), I was able to draw on a large number of original documents from the Uruguay Round negotiations, released well ahead of the normal schedule for diplomatic documents, through the GATT Digital Library (2006). I supplement information from those documents with insights gained through extensive not-for-attribution interviews with almost all of the surviving core SPS Agreement negotiators and background information provided by other participants. In the conclusion, I discuss some of the policy implications for food safety in a world of global trade.

### Explaining the International Delegation of Regulatory Authority

For copyright reasons, only the introduction of this chapter is available here. To read the full chapter, please contact your bookstore or library to obtain a copy of the book:

# Import Safety

## Regulatory Governance in the Global Economy

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