

April \_\_\_, 2001

Mr. Tom Billy  
Chairperson  
Codex Alimentarius Commission  
c/o U.S. Department of Agriculture  
14<sup>th</sup> St. and Independence Ave. S.W.  
Washington, DC  
USA

Dear Mr. Billy:

We wish to advise the Codex Alimentarius Commission (Codex) and the U.S. government of several resolutions of the TransAtlantic Consumer Dialogue (TACD) that pertain to the Proposed Draft Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems that is pending before the Codex Alimentarius Commission.

Consumers are concerned about how nations undertake equivalency agreements for a variety of reasons. As you know, equivalency agreements are trade liberalization mechanisms promoted by the World Trade Organization Agreement on Sanitary and Phytosanitary Measures. Under the notion of equivalence, significantly different and possibly less protective, regulatory systems and standards of other countries can be declared "equivalent" to domestic regulatory systems. The Inspector General of the U.S. Department of Agriculture (USDA) has issued a report criticizing USDA's equivalency determinations with nations that export meat to the U.S.

In February 2000, the TACD issued a paper on Principles of Harmonization paper that rejects the notion of functional equivalence and asserts:

"The very notion of equivalence allows for imprecise, subjective comparisons that are not appropriate when dealing with issues as important as public health and safety. However, given that equivalency decisions between nations are moving forward with increasing frequency, we must develop strict rules for making such determinations. A standard or a regulatory system should only be determined equivalent if it provides the same or greater level of substantive protection for health, safety or the environment. Criteria for equivalency should be clearly outlined and equivalency proposals should have substantive public input before they are reached."

In April 1999 the TACD also adopted the following resolution pertaining to this topic:

“The US government and the EU must guarantee that consumers can fully participate in the setting of international food standards at the Codex Alimentarius and the WTO. Furthermore, the decision-making process must be transparent, with full disclosure of documents. These requirements must also apply to decisions on equivalency by the US and the EU.”

At its December 2000 meeting, the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) forwarded to the Codex Commission for approval Proposed Draft Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems (Guidelines) that is inconsistent with the spirit of these resolutions. Paragraph 10.11 of the Guidelines merely provides A Countries should ensure transparency in both the demonstration and judgement of equivalence, consulting all interested parties to the extent practicable and reasonable. Paragraph 13 of the Guidelines merely provides that in making its judgment on equivalence the importing country should A include[s] consultation with all interested parties to the extent practicable and reasonable.

Both paragraphs fail to make explicit that consumers are an A interested party and so could be interpreted by other nations as meaning that only governments are interested parties. Moreover, the phrase A to the extent practicable and reasonable renders both paragraphs nugatory.

In addition, there are a variety of other flaws with the proposal that consumer groups will want to comment upon based upon their own nation’s experience with equivalency. Finally, it is inappropriate to speed up the approval of the Codex equivalence guidelines when the Codex Committee on General Principles has yet to reach agreement on how to handle the Precautionary Principle. We believe an agreement must be reached on the Precautionary Principle that preserves a nation’s ability to act in the face of scientific uncertainty before the Codex opens the door to what may be a flood of requests for equivalency determinations. It would be unfortunate if Codex equivalency rules served to undermine a nation’s ability to maintain a precautionary standard.

Accordingly, we urge the both the U.S. government and the Codex Alimentarius Commission to oppose approval of the Guidelines at Step 8 -- the final stage of the Codex process -- because the version approved by the CCFICS has significant flaws and does not adequately provide for consumer participation. Instead, Codex should return the Guidelines to the CCFICS at Step 5 so that they can be improved by national delegations in consultation with consumers and others.

Sincerely,