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Changing the Codex: The Role of International Institutions

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Preface

This working paper is written by Frode Veggeland and Svein Ole Borgen. The authors make an empirical account of how the United Nations food standardizing body Codex Alimentarius Commission has changed after being referred to in the SPS Agreement of the WTO. They also identify and analyze some key issues being discussed in Codex that may significantly affect international food trade. The study is based on documents and on interviews with employees from national administrations, agencies and relevant international organizations. In addition, the authors base some of their claims on the sixteenth session of the Codex Committee on General Principles (CCGP) in Paris, France, April 2001, where they were part of the Norwegian delegation as observers. The working paper is written within the framework of the research programme, “New International Framework for Norwegian Food Processing Industry”, sponsored by the Norwegian Research Council. Thanks to Berit Helen Grimsrud for editorial assistance with the manuscript.

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Abstract

In this article, we present an empirical account of how the Codex Alimentarius Commission (CAC), as an intergovernmental body, has changed after being referred to in the SPS Agreement of the WTO as *the* reference point for the elaboration of international food standards. We explore key issues that have recently been discussed in the Codex and which may have a significant impact on international food trade. Further, we develop a theoretical framework based on two alternative versions of institutional theory. We then analyze the observed changes of the role and functioning of Codex from these frameworks. Our conclusion is that a logic of consequences prevails over a logic of appropriateness in explaining nation-state behavior in an international context. Finally, our study of the Codex recognizes the importance of identifying the core interests of states, their strategic use of arguments based on these interests, as well as the institutional framework that affects them.

1 Introduction¹

The most significant implication for the CAC is that its decisions have a semi-binding effect on governments. This means that the Commission is no longer a “gentlemen's club” and that negotiations within the CAC are more intense than previously was the case.²

The purpose of this paper is twofold. First, we develop an empirical account of how the intergovernmental body, the Codex Alimentarius Commission (CAC)³, has changed after being referred to in the SPS Agreement of the WTO as *the* reference point for the elaboration of international food standards.⁴ We identify some key issues that are discussed in the Codex that may significantly affect international food trade. Second, we develop a theoretical framework based on two alternative versions of institutional theory. This framework is used to analyze the observed changes of the role and functioning of the Codex.

Since its establishment in 1962, the Codex has been responsible for managing the Joint FAO/WHO Food Standards Programme.⁵ Today, it is the (single) most important international reference point for developments associated with food standards. To date,

¹ We would like to thank David G. Victor, Spencer Henson, Stephen D. Krasner, Robert L. Paarlberg, Lennart Johanson, Morten Egeberg and the participants of workshop 1: International Politics, at the 10th Norwegian Conference in Political Science, 7–9 January 2001, for comments on earlier drafts of this paper.

² These comments referred to the possible effects of the Codex Alimentarius Commission (CAC) being a reference point in the SPS Agreement of the WTO, and were made by a representative of the CAC-secretariat in a meeting of the SPS Committee, 15–16 November 1995 (WTO 1995).

³ In this paper we refer to CAC as 'Codex'.

⁴ SPS Agreement: Agreement on the Application of Sanitary and Phytosanitary Measures. WTO: World Trade Organization.

⁵ FAO: Food and Agriculture Organization of the United Nations. WHO: World Health Organization.

the Codex has developed more than 200 food standards for commodities and more than 40 codes of hygiene and technological practices. In addition, standards have been established for approximately 200 pesticides and more than 1,000 food additives. Today the Codex is an inevitable player in any discussion on international food standards. It consists of 163 member states, representing 97 percent of the world's population. For many years however, the Codex did not attract much political attention. This quiet phase ended in 1995 when the WTO was established and both the SPS Agreement and the TBT Agreement entered into force.⁶ Both of these agreements prepared the groundwork for international standardization bodies to play a more prominent role in the WTO.⁷ However, our focus in this paper is limited to food safety aspects relating to the SPS Agreement.

The SPS Agreement deals with measures aimed at protecting plant, animal, or human health, which affect trade. Further, the agreement refers to the Codex as *the* reference point for standards that WTO members should take into account when implementing food safety measures. This reference did not imply that the formal rules of the Codex itself should be changed immediately. However, the establishment of the WTO and SPS meant that the Codex was linked to a powerful legal instrument for regulating global food trade. We present an analysis of how this 'change of context' resulted in pressures for change and thus affected the functioning and role of the Codex. How did the Codex change, and how can we explain these changes?

Our study is based on documents and on interviews with employees from national administrations, agencies and relevant international organizations. In addition, we base some of our claims on the sixteenth session of the Codex Committee on General Principles (CCGP) held in Paris, France, April 2001, where we were part of the Norwegian delegation as observers. Our discussion is also based on reports and minutes from earlier meetings in the CCGP and in the Codex Commission itself. Our main concern is with explaining events at the *international* level. Thus, our principal units of analysis are states, not the persons who act on their behalf. Furthermore, our a priori assumption is that what the delegates express in Codex meetings is a reasonable representation of their respective mandates. Also, we do not pay attention to the processes by which member states develop and formulate their preferences and strategies. Our focus here is not on the political debate within member states of the Codex, but rather on the negotiations between states as represented by their delegates. Thus, we have the preferences and actions of states as points of departure and units of analysis.

The paper is structured as follows. In Section 2 we present the theoretical framework that is based on two versions of institutional theory. In Section 3 we give an empirical account of the two 'positions' of the Codex—before and after 1995—and in Section 4 we analyze the changes that have taken place. Finally, we summarize our findings and present some preliminary conclusions.

⁶ GATT (General Agreement on Tariffs and Trade) was established in 1947, originally as a provisional agreement. Since then, eight negotiating rounds have taken place. The Uruguay Round (1986–93) led to the establishment of the WTO in 1995; at the same time two new agreements—SPS Agreement and TBT Agreement—entered into force. The WTO is responsible for the agreements that previously were under the auspices of GATT.

⁷ TBT Agreement: Agreement on Technical Barriers to Trade. This agreement deals with technical measures (standards and regulations) that affect trade and are *not* covered by the SPS Agreement.

2 Theoretical Framework: Analyzing International Institutions

2.1 Introduction

One consequence of the establishment of the WTO in 1995 was that the Codex was legally and institutionally linked to the most comprehensive international regime for regulating global food trade. Thus, we agree with David Victor in that “... although the Codex system is but one case, in practice it can be extremely powerful in evaluating the ways that international institutions and types of legal instruments influence behavior” (Victor 1997:180). Stephen Krasner has defined international regimes as “... principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area” (Krasner 1983:1). The main elements of this definition are also found in definitions of institutions. Hence, along with Levy et al. (1996), Peters (1999) and Krasner (1999) we see no need for making a sharp analytical distinction between international regimes and international institutions. As a consequence, we analyze the functioning of the Codex by employing an institutional approach; i.e. we assume that (international) institutions do matter in politics (Hasenclever et al. 1997:2). The important question however, is *how* they matter. To approach this question, we employ two different notions of institutions: one based on a ‘logic of consequences’ and the other on a ‘logic of appropriateness’.

2.2 The ‘*Logic of Consequences*’ and Institutions as Rules of the Game

Much of the debate in international politics on the role of international institutions has taken place between two major schools of thought, namely ‘realism’ and ‘liberal institutionalism’ (see for example Kegley (1995)). Here, we confine ourselves to the

fact that supporters of these two ‘schools’ generally share the view that the international system is best described as an anarchistic system which consists of rational states pursuing their self interests. These interests can be state power (‘realists’) or welfare gains (‘liberal institutionalists’). Further, and more important for our analysis, both schools stress that states generally follow a ‘logic of expected consequences’ when acting in an international environment (Krasner 1999). However, ‘liberal institutionalists’ place more emphasis on the significance of international institutional arrangements for state behavior and are therefore closer to the approach chosen in this paper (Kegley 1995).

The approach based on the ‘logic of consequences’ views institutions as ‘rules of the game’, or in the words of Robert O. Keohane as “... persistent and connected sets of rules (formal and informal) that prescribe behavioral roles, constrain activity, and shape expectations” (Keohane 1989: 3). This definition resembles Douglas North’s famous definition of institutions as being “... the rules of the game in a society or, more formally, (...) the humanly devised constraints that shape human interaction” (North 1990:3). Like Keohane, North sees institutions as consisting of *formal constraints* (rules that human beings devise), *informal constraints* (conventions and codes of behavior) and *type and effectiveness of enforcement*.

One consequence of employing these definitions is that a crucial conceptual distinction must be made, conceptually, between institutions and organizations; i.e. the rules are clearly differentiated from the players. Institutions are treated as exogenous to an organization—as a framework within which organizations and individuals operate. The institutional framework influences how organizations evolve. Organizations are further assumed to influence how the institutional framework evolves. Oran Young makes a similar distinction between institutions and organizations in his analysis of international institutions:

Whereas institutions are sets of rules or codes of conduct defining social practices, organizations are material entities possessing offices, personnel, budgets, equipment, and, more often than not, legal personality. Put another way, organizations are actors in social practices (Young 1994:3–4).

Thus, like North, students of international regimes tend to separate analytically the rules of the game (institutions, regimes) from the actors (states, organizations, individuals) (Young 1994; Levy et al. 1995; Hasenclever et al. 1997).

North portrays the path of institutional change as being shaped by (1) the lock-in that comes from the symbiotic relationship between institutions and the organizations that have evolved as a consequence of the incentive structure provided by those institutions and (2) the feedback process by which human beings perceive and react to changes in the opportunity set (North 1990:7). The agent of change is the individual entrepreneur who responds to the incentives embodied in the institutional framework. Individuals (or collective actors such as organizations and states) are portrayed as utility maximizing actors that try to make outcomes fulfill subjective desires. The actors are thus assumed to be driven by a *logic of consequences* (March and Olsen 1989; Krasner 1999). However, the actors are not necessarily assumed to pursue the most optimal or efficient solutions. Because they must frequently act on incomplete information and process the information that they do receive through mental constructs, the outcomes may be persistently inefficient (North 1990:8). Still, institutions can fill an important role by “increasing information and distributing it more symmetrically” (Krasner 1988: 82).

Hence, this notion of institutions is based on a choice theoretic approach where actors act upon subjective rationality and upon assessments of the expected consequences of alternative choices. Further, the “incentives that are built into the institutional framework play the decisive role in shaping the kinds of skills and knowledge that pay

off” (North 1990:78). From this, we propose three assumptions to explain how the Codex has developed and responded to changes in the institutional framework:

1. The Codex member states are engaged in promoting their national interests, and thus act in response to the incentives embedded in the institutional framework surrounding the Codex.
2. Changes in the rules of the game may change the incentive structures of the actors and thus lead to feedback affecting the functioning of the Codex.
3. The actors evoke a logic of consequences when coping with the fact that the Codex was referred to in the SPS Agreement. Furthermore, after 1995 the activities of the WTO are assumed to contribute to the definition of the ‘rules’ of the Codex and are thus reflected in Codex activities.

2.3 The ‘*Logic of Appropriateness*’ and Norms-based Institutions

In the study of international politics the so-called ‘cognitivist’ or ‘knowledge-based’ approaches, the most prominent of which is constructivism, have challenged the utilitarian perspectives discussed above (Hasenclever et al. 1997: 136). In varying degrees these alternative approaches all assert a critique of the rationalism found in utilitarian perspectives. Thus, they challenge the assumption that rational states, driven by short or long-term utility calculations, are the decisive factors in international politics. Instead, focus is placed upon the conception of states as role-players—an idea that is captured by the behavior model that James G. March and Johan P. Olsen call ‘logic of appropriateness’ (March & Olsen 1989, 1998). This approach emphasizes the importance of shared norms, meanings and identities for the maintenance of particular regimes and institutions (Hasenclever et al. 1997:157). Hence, it represents a challenge to the dominant position of the logic of expected consequences that is found in studies of international politics.

According to this perspective, organizations may go through an institutionalization process and thus become infused with values beyond the technical requirements of the task at hand (Selznick 1984:17). An institution, therefore, is conceived of as something (e.g. an international organization) that has acquired a self and a distinctive identity. Thus, conceptions of institutions and organizations are not clearly separated. March and Olsen have further developed these ideas of institutions. They emphasize that values and preferences of political actors develop within political institutions (March & Olsen 1989:40). Further, they define institutions as “... a relatively stable collection of practices and rules defining appropriate behavior for specific groups of actors in specific situations” (March & Olsen 1998:7). This perspective is based on a behavioral model where action involves evoking an identity or role and then matching the obligations of that identity or role to a specific situation (March & Olsen 1998:11). Thus, March and Olsen see the *logic of appropriateness* as a fundamental logic of political action. First, they see action—including action in politically important and novel situations—as becoming institutionalized through structures of rules and routines. Second, they see rules as reflections of historical experience. Third, they view rules as often being ambiguous, and finally, they see networks of rules and rule-bound relations as being sustained by trust, a confidence that appropriate behavior can be expected most of the time (March & Olsen 1989:38). Norms-based institutions are thus assumed to be important in politics.

According to March and Olsen, "... most behavior in politics follows such a logic of appropriateness, that rules are followed and roles are fulfilled" (1989:161). They further assume that "ambiguity or conflict in rules is typically resolved not by shifting to a logic of consequences and rational calculation, but by trying to clarify the rules, make distinctions, determine what the situation is and what definition 'fits' " (March & Olsen 1989:161). Also, institutions are assumed to be relatively robust against pressures stemming from environmental change or deliberate reform. Hasenclever et al. follow the same reasoning in their presentation of the 'sociological turn' in cognitivist regime theory:

Correspondingly, international regimes, due to their being nested within broader normative networks, exhibit a considerably higher degree of robustness than utilitarian reasoning predicts. Consequently, self-interest (even if broadly defined) is considered an unreliable "signpost" when it comes to understanding regime maintenance (Hasenclever et al. 1997:157).

The Codex may be conceptualized as an organization that is designed as a technical instrument and directed towards set aims. For the Codex, these aims have traditionally been to elaborate international food standards, recommendations and guidelines with the purpose of protecting consumer health and ensuring fair practices in food trade. However, based on the notion of norms-based institutions, we could also expect the Codex to have experienced an institutionalization process. The Codex has endured for forty years and its work has been based on consensus. Its efforts have been directed towards a set of common goals that is difficult for the members to oppose or disagree with ('consumer and health protection', 'fair practice in trade').⁸ Additionally, networks of knowledge-based experts have been actively involved in the work of the Codex. Such experts are often assumed to play an important role in developing common, transnational norms (Haas 1992; Scott 1995). By institutionalizing certain norms, values and meanings networks of experts are assumed to influence state interests and contribute to international policy co-ordination (Haas 1992: 3–4).

Based on the idea of norms-based institutions, we thus put forward three assumptions about the development and responses of the Codex and its members to the linkage between the Codex and the WTO:

1. The Codex has developed into an institution with a set of common norms that prescribe appropriate behavior for the members.
2. The Codex shows resistance and robustness when confronted with pressures from the environment (read: the WTO) that are in conflict with these norms.
3. The actors evoke a logic of appropriateness when trying to cope with the new situation resulting from the Codex being referred to in the SPS Agreement.

⁸ According to the Codex procedures, it is possible to put proposals to a vote. This happened twice in the 1990s with the result of standards (on hormones and mineral water) being adopted by a narrow majority. These incidents gave rise to concern among Codex members as to the legitimacy of the standards. Consequently, the need for consensus was again emphasized.

3 Codex and the SPS Agreement

3.1 Introduction

The next task is to further analyze the nature of the Codex's changing role after the SPS Agreement entered into force in 1995. Our discussion is based on the theoretical framework and propositions developed above and aims at capturing the dynamics at the institutional level as well as the Codex members' reactions to the new situation. Our review of institutional theory distinguishes between two explanatory approaches, viz., the 'logic of consequences' and the 'logic of appropriateness'. A priori, both approaches may have explanatory power but they are unlikely to be equally relevant and true when applied to specific cases. The purpose of the remaining part of our article is to critically discuss which of these two analytical frameworks is best equipped to explain the changes in the Codex after 1995. As a necessary prelude to the analysis, we shall present some characteristics of the Codex before 1995, and thereafter provide a more complete presentation of the role assigned to it in the SPS Agreement during the Uruguay Round of GATT.

3.2 The Codex Before 1995: 'A Gentleman's Club'

The Codex is an intergovernmental body established in 1962 by the Food and Agriculture Organization and the World Health Organization. Its purpose is stated as follows:

The Codex Alimentarius Commission shall be responsible for making proposals to, and shall be consulted by, the Directors-General of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) on all matters pertaining to the implementation of the Joint FAO/WHO Food Standards Programme, the purpose of which is:

- (a) protecting the health of consumers and ensuring fair practices in the food trade;
- (b) promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations;

- (c) determining priorities and initiating and guiding the preparation of draft standards through and with the aid of appropriate organizations;
- (d) finalizing standards elaborated under (a) above and, after acceptance by governments, publishing them in a Codex Alimentarius either as regional or world wide standards, together with international standards already finalized by other bodies under (b) above, wherever this is practicable;
- (e) amending published standards, after appropriate survey in the light of developments (Article 1, Statutes of the Codex Alimentarius Commission).

Before 1995, the Codex was quite aptly labeled ‘a Gentleman's Club’ (WTO 1995). This metaphor captures the fact that the Codex initially functioned as a more or less closed community which was quite unaffected by international rule of law and where confrontations between strong national political interests were not put to the fore. Codex committees were essentially fora for quite technical discourses even though the economic interests of member states often played an important role. In smooth cooperation with scientific bodies like JECFA (The Joint FAO/WHO Expert Committee on Food Additives) and JMPR (Joint FAO/WHO meeting on pesticide residues), members of Codex committees were charged with the task of envisaging and suggesting required food safety standards in their respective fields. In addition, the notion ‘Gentleman's club’ referred to the norm that all involved parties should refrain from obstructing the progress of Codex discussions, even when substantial disagreement emerged. A Codex member might disagree with the profile and content of a standard and have no intention of adhering to it, but nevertheless would abstain from halting the process. Thus, it was entirely voluntary for member states to base their national regulations on Codex standards. As long as the standards had limited authority, the costs of demonstrating gentlemanship were relatively low. Thus, it is possible to identify a set of distinct norms that were important in shaping the activities of the Codex.

3.3 The New Role Assigned to Codex in the SPS Agreement

During the Uruguay Round of GATT, the negotiators agreed that Codex standards, guidelines and recommendations should be assigned status as reference points for food quality and food safety. Legitimate international reference points were called for in order to bring potentially arbitrary and unjustified national food regulations under the tight discipline of the WTO. With respect to food safety issues that were regulated by the SPS Agreement, Codex standards appeared as the best candidate to fill this role. The SPS Agreement entered into force on 1 January 1995 and from that date Codex standards have taken on a new significance (Henson 2000; Victor 2000). Under certain conditions, the SPS Agreement allows members of the WTO to protect their consumers. The slogan is ‘protection without protectionism’. The complex issue is what characterizes a legitimate protective measure. Following the SPS Agreement, a national measure is considered legitimate as long as it is in line with internationally accepted standards. Consequently, the WTO must look to the Codex when settling trade disputes in which food safety is a crucial component.

The new role of the Codex is specified throughout the SPS Agreement. Most important in this respect are Article 2 (‘Basic rights and obligations’), Article 3 (‘Harmonization’), as well as the appendix, which encompasses definitions of standards. Article 2.3 acknowledges the members’ right to take measures to protect human, animal and/or plant life but clearly states that this right is not unconditional. The fundamental requirement for a national measure to be perceived as legitimate is that it is based on scientific principles and not maintained without sufficient evidence. Article 2.3 reads as follows:

Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement. 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.

A sufficiently strong reference to the internationally accepted cutting edge of scientific knowledge appears as the Gordian knot of this provision. Quite commonly, this expert knowledge is embodied in internationally accepted standards. Article 3.1 of the SPS Agreement explicitly states that members shall base their sanitary and phytosanitary measures on international standards, guidelines or recommendations where they exist. This is where the Codex enters the scene as the relevant international standards body regarding food safety issues. An explicit reference to Codex standards is also inserted in the appendix to the SPS Agreement (Annex A):

For food safety, the relevant standards, guidelines and recommendations are those 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.

To fulfill their role as specified in the SPS Agreement, Codex standards must convey scientific knowledge of high legitimacy. In addition, high legitimacy results from the process by which standards are made. Engagement and active participation from members enhance the perceived credibility of standards. Therefore, the SPS Agreement also instructs all WTO members to promote maximum membership and participation in preparing standards. This appeal is particularly expressed in Article 3.4 of the SPS Agreement, which reads as follows:

Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

The significance of this point was recently reconfirmed in the so-called ‘Strategic Framework of Codex’, adopted by the 24th session of the Codex Commission (CAC 2001b). This framework states that “full participation by all Codex Members and other interested parties in the work of the CAC and its subsidiary bodies is now more important than ever” (CAC 2001b: 85). Furthermore, the participation of all members and relevant intergovernmental and non-governmental organizations is perceived critical to sound decision-making. Active membership participation is also considered important to ensure that Codex standards and related texts take account of the full range of interests and viewpoints.

Clearly, the requirement that Codex standards be soundly based on science is paramount for the legitimacy of the standards. This requirement was strengthened as a result of the Uruguay Round in GATT. Not surprisingly, the Codex has found it adequate to restate the importance of science in the Codex decision-making process as well as substantiate its principles relating to food safety risk assessment. The Codex states that the food standards, guidelines and other recommendations of the Codex shall be based on the principle of sound scientific analysis and evidence, involving a thorough review of all relevant information, in order that the standards assure the quality and safety of the food supply.

Thus, the Codex entered new terrain in 1995 since it was explicitly referred to in the SPS Agreement and thereby became an integral part of the infrastructure that regulates global food trade. From that time, Codex standards were linked to a legal authority as it was assigned a role in WTO disputes. Before 1995, the Codex procedures were designed to give states and stakeholders maximum control over which standards they adopted. This could in turn dampen potential conflicts. As underlined by Victor (2000), the voluntary elements of the requirements of acceptance, which prior to 1995 was how a country ensured that no Codex standards would be imposed against its wishes, do not have the same standing in the Codex. For the purposes of the SPS Agreement, a standard is considered adopted when approved by the Codex Alimentarius Commission. Victor (op. cit) illustrates the new situation by the reference to the WTO dispute on hormones between the European Community and the USA. The Codex Alimentarius Commission had adopted Maximum Residue Limits (MRL) standards for five of the six hormones in this long lasting dispute. The European Community did not accept the Codex MRL-standards and consequently voted, as part of the minority, against the adoption of these standards in the Codex when they were put to a vote in 1995. However, non-acceptance in the Codex is irrelevant to the requirement in the SPS Agreement that the member states must base their national measures on international standards (and provide justification when they are not). Our research focuses on how this new situation has affected the role of the Codex. In the next section we shall explore the further effects on the dynamics of the Codex after 1995.

At the outset, some clarifications and delimitations are necessary. We make the simplifying assumption that individual representatives fully reflect the intentions and viewpoints of their respective governments. Whether or not this holds true is an intriguing issue. Sometimes the room for the exercise of individual discretion within a given mandate can be substantial. However, we focus on controversial issues being discussed in the Codex, and our observations seem to indicate that the delegates bring with them state views to the debates. Thus, in the case of the Codex we think the simplifying assumption mentioned above can be justified. An important implication is that the two modes of action—logic of appropriateness and logic of consequences—refer to states as the primary unit.

4 Changes at the Codex Level

4.1 Methods and Data

The subsequent sections are based on multiple information sources, the most important of which are our observations at the 16th session of the Codex Committee on General Principles (CCGP) arranged in Paris in April 2001 (see also CAC 2001a). The purpose of this meeting was to develop working principles (guidelines) for performing risk analyses. The CCGP is an important committee because it lays down the general principles for the work of the entire Codex. The decisions taken in this committee have consequences for Codex members in all industries and countries. Particularly, three agenda items of the CCGP-meeting are relevant to our discussion here; first, the scope (area of applicability) of the working principles for risk analysis, second, the use of precaution in risk management, and third, the status of other legitimate factors in risk analysis. Following the terminology of Flyvbjerg (1998), the three issues were selected by virtue of their information content. All three issues provide particularly interesting and relevant information because they are highly controversial and trigger substantial debate within the Codex. Further, they raise multiple ‘horizontal issues’ that cross disciplinary and commodity boundaries. The methodology for risk analysis is potentially very influential. No Codex member will remain unaffected by the final outcome of discussions related to risk analysis in the CCGP. However, we would expect specific economic interests of member states to play an even bigger role in commodity (vertical) committees than in horizontal committees like the CCGP. Two examples of this include the Codex Committee on Fish and Fishery Products (chaired by the major fish exporter, Norway) and the Committee on Cocoa Products and Chocolate (chaired by the major chocolate exporter, Switzerland). Consequently, the CCGP may be seen as a critical case where the work, i.e. on risk analysis, is less likely to be directly related to narrow (trade and economic) interests of particular member states. Our analysis focuses on the debate in the CCGP related to the three aspects of risk analysis.

4.2 National Delegations to the Codex

After 1995, the Codex has attracted considerable attention in the international community, in particular from WTO member states. The increased interest is reflected both in the discussions at Codex meetings and by the fact that representatives of the WTO secretariat attend Codex meetings and are actively consulted on questions concerning the status of the Codex in relation to the WTO. Table 4.1 shows that the number of countries and state representatives attending Codex meetings after 1995 has increased. In this table we have included the so-called Cairns Group as a separate category. The Cairns Group was formed in 1986 at the beginning of the Uruguay Round with a commitment of promoting agricultural trade liberalization. In 2001, it consisted of 18 agricultural exporting countries.⁹ Thus, the increased activity of this group indicates that trade considerations stemming from the WTO are increasingly influencing the work of the Codex.

Tabell 4.1 Meetings of the Codex Committee on General Principles (CCGP) 1989–2001

| | No. of Cairns- countries attending | No. of other countries attending | Total no. of countries attending | No of representa- tives from Cairns- countries | No. of representa- tives from other countries | Total no. of representatives |
|-------------|--|--|--|--|---|---------------------------------|
| 1989 | 6 | 17 | 23 | 9 | 53 | 62 |
| 1992 | 5 | 14 | 19 | 12 | 46 | 58 |
| 2000 | 15 | 39 | 54 | 46 | 147 | 193 |
| 2001 | 15 | 42 | 57 | 50 | 143 | 193 |

Table 4.1 shows that about two and a half times as many countries and more than three times as many delegates participated at CCGP meetings in 2000 and 2001 compared to 1989 and 1992. Also, after 1995 national delegations have become larger. The average size of a national delegation was 2.7 delegates in 1989, 3 in 1992, 3.6 in 2000 and 3.4 in 2001. Nearly three times as many Cairns-countries and more than five times as many delegates from the Cairns Group attended the meeting in 2001 compared to the meeting in 1989. The average size of the delegations from Cairns-countries more than doubled in the same period, from 1.5 in 1989 to 3.3 in 2001. The attention that the Cairns Group gives to the Codex is also reflected by the fact that the countries of this group now coordinate their positions before Codex meetings. Generally, they see both SPS and Codex as important elements of the work on securing market access for their agricultural products. Thus, the coalition of countries that we find in WTO meetings (on agriculture), now seem to be replicated in the Codex.

Another interesting observation is that the share of scientists and food agency officials in national delegations seems to have decreased. Traditionally, the Codex was an arena for delegates with backgrounds from science, food safety agencies and primary industries. At the CCGP meetings in 2000 and 2001, the majority of the national delegates came from diplomatic service and ministries of trade and industry, finance, and foreign affairs. Ten delegates came from one of these services in 1989 and 1992, 32 in 2000 and 41 in 2001. In 1989 there were no delegates belonging to foreign affairs ministries and in 1992 only one. The numbers for 2000 and 2001 were 4 and 14, respectively.

⁹ These countries are: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, the Philippines, South Africa, Thailand and Uruguay.

These findings indicate that the Codex has achieved a more significant role after 1995. They also reveal a tendency for countries to link their work on food safety within the Codex to their work on trade policy within the WTO. Generally, member states perceive their national trade interests to be more at stake in Codex meetings than before.

Nevertheless, the fundamental requirement that Codex standards must be based on 'sound science' was upheld after 1995. No changes were expected with respect to the inherent properties of Codex standards and guidelines. Rather, the new challenges for the Codex were related to the extended area of applicability of the standards, as well as the more serious consequences of deviating from them, and in particular regarding the risk of ending up in WTO disputes.

4.3 Key Issues of the Work in the Codex

The new role of the Codex has also brought forward novel types of uncertainty for Codex members as we shall explore further in the following sections.

4.3.1 Unclear authority of standards

After 1995, the Codex appears as a kind of 'semi-binding legal framework' (WTO 1995). The consequences of not following Codex standards have become more uncertain. These standards do not have the force of international law, are not binding on Member countries, or do not automatically override national legislation and regulation (Randall 1999). The notion 'semi-binding' indicates however, that there are now some ill-defined legal consequences imposed for the member states that deviate from or do not adhere to Codex standards and principles.

But how binding is semi-binding? What type of authority do standards possess, and what sanctions could be expected when deviating from standards? Such fundamental questions are still unclear, seven years after the SPS Agreement was launched. There is still no common understanding of the obligations on countries in situations when the Codex does adopt a standard, guideline or other text. Randall (1999) has argued that the provisions of the SPS Agreement cannot be interpreted to mean that national requirements must 'conform to' the requirements of Codex standards. The WTO Appellate Body came to the same conclusion in its rulings in the 'hormones-case' between the USA and the EU (WTO 1998). The Appellate Body clearly stated that, in the SPS Agreement, the term 'based on' does not have the same meaning as 'conform to'. Clearly, Codex standards do not have the force of international law and are not directly legally binding on member countries. What complicates the situation, however, is that the SPS Agreement is binding for all WTO members. The member states are obliged to follow the provisions of the SPS Agreement, which includes references to Codex standards. Still, following Codex standards is not necessarily obligatory. It is no wonder that this situation induces uncertainty and confusion for Codex members. Christoforou (2000) argue that the SPS Agreement lacks clarity on several key issues that relate to Codex standards. For instance, what constitutes a risk assessment and how should such an assessment be conducted? More precisely, what does it mean that a measure should be based on a risk assessment 'as appropriate to the circumstances'? Since these provisions of the SPS Agreement are not sufficiently clear it is also uncertain what role is assigned to the relevant Codex principles, guidelines and standards. Thus, the members of the Codex have expressed uncertainty as to the benefits of adhering to Codex standards, and to what sanctions are expected when national measures deviate from such standards. However, one thing is certain. The risk of ending up in trade disputes in the WTO is increased when states choose to implement measures that deviate from Codex standards and principles.

4.3.2 'Irreversible' collective decision making

The collective decision-making process of the Codex works much like a 'latch-mechanism': Once a standard is agreed upon, it tends to be difficult to carry out significant changes to it. This 'irreversible' nature of Codex decisions relates to the principle of consensus-based decision-making, which is well established and anchored within the Codex system. To reach a consensus decision in the Codex is a demanding and time-consuming exercise, which is characterized by give-and-take from all involved parties. A consensus decision can be seen as a truce; i.e. a negotiated order that secures stability despite substantial conflicts of interest. Once a negotiated order is attained, dramatic and quick changes are unlikely to be initiated. Minor continuous amendments are more in tune with the established Codex practice. Thus, the nature of the collective decision-making process in the Codex fosters stability. This irreversibility also challenges the members' capability to foresee the dynamics and progress of the discussion.

4.3.3 Uncertainty related to the role of science-based risk analysis

The Codex vision is that food safety measures shall be guided by sound science. But to provide the necessary scientific evidence is often a formidable task. There is a need for a structured way of organizing and analyzing the relevant scientific information. Through the last decades, risk analysis has emerged as a promising framework for this purpose. Risk analysis is a structured approach whereby risks to human health are assessed and the best means for their control are identified. Ideally, the scientific rationale for food safety regulation is fully incorporated into this risk analysis framework. More specifically, risk analysis is a general term for a three-part structure consisting of 1) risk assessment, 2) risk management and 3) risk communication (Henson and Caswell 1999: 501). 'Risk assessment' is an assessment of the risk to human health associated with a particular food-borne hazard. 'Risk management' are decisions regarding the acceptable level of risk and measures implemented for the control of this risk. 'Risk communication' is the phase whereby information about the risk and chosen methods of control are communicated amongst interested parties. The implication is that regulatory decisions based on risk analysis should be consistent across different aspects of food safety and even into other elements of risk, for example environmental protection and transport safety (Henson and Caswell 1999: 501).

In general, the Codex seems filled with positive expectations with respect to the advantages of applying risk analysis as a tool for analyzing the appropriateness of various food safety measures. Risk analysis is assumed to play an important role in promoting fair trade by ensuring that countries establish food safety requirements that are scientifically sound, in full accordance with the purpose of the Codex. A further advantage is that risk analysis provides a means for determining equivalent levels of public health protection between countries. Without such a systematic assessment of risk, countries may establish import restrictions that are not related to food safety and thus create unjustified barriers to trade under the SPS Agreement.

Despite the promises, there are nevertheless difficulties with respect to the implementation of risk analysis. The most notable complication so far relates to the principle of functional separation, which says that a clear-cut distinction must exist between regulatory politics and science. Following this principle, it should be possible in all cases to reach a common, neutral ground consisting of scientific evidence only. In principle, this science-based knowledge is the only legitimate basis for determining appropriate measures. For multiple reasons, however, the idea that science can be completely separated from regulatory politics is an oversimplification. It is misleading to simply assume that there exists such a thing as an absolute 'scientific proof'. Normally, science is incapable of offering such full proof. Following Ward (1999), one could also

ask whose science should be used? In some instances, risk assessment, and indeed science, can be bought or influenced by political interest groups. The general point is that overlapping boundaries between risk assessment and risk management tend to increase the level of uncertainty for all involved parties as to what the appropriate measures should be. Risk analysis is a promising framework, but it also opens for a wide array of new topics and unsolved issues that color the discussions in the Codex system.

4.3.4 Unclear status of 'other legitimate factors'

Clearly, Codex standards need to be based on science, but there is also a general understanding among Codex members that risk analysis should have regard for legitimate factors other than science where this is appropriate. The Codex has therefore agreed on a set of fairly general criteria for considering other legitimate factors than science that are relevant for health protection and fair trade practices. First, risk managers should indicate how these 'other factors' affect the selection of risk management options and the development of standards, guidelines and related texts. Another criterion is that consideration of other factors should not affect the scientific basis of the risk analysis. The separation between risk assessment and risk management should be respected in order to ensure the scientific integrity of risk analysis. It should also be recognized that when establishing their national legislation, some legitimate concerns of governments are not generally applicable or relevant on a worldwide basis. A final criterion is that the integration of other legitimate factors in risk management should not create unjustified barriers to trade. Particular attention should be given to the impact on developing countries of the inclusion of such other factors.

To some extent, such general criteria may help to clarify the conditions under which 'other legitimate factors' can be applied by the Codex. Still, multiple issues remain unresolved. For instance, should 'other legitimate factors' be based on objective criteria in order to prevent them from being used as disguised barriers to trade? Furthermore, some observers claim that the Codex more clearly should differentiate between scientifically-based food safety and quality requirements on the one hand, and other attributes of food trade and consumer opinion on the other. Until a more specific approach is developed, there will remain substantial uncertainty with respect to what importance should be attached to other legitimate factors. Until that time, the more specific consequences of these criteria will be subject to different interpretations by various members.

4.3.5 Uncertainty related to the use of precaution in risk management

Finally, substantial uncertainty rests with the status of the so-called precautionary principle, and precautionary thinking in more general terms. The significance of precaution has been subject of many debates in the Codex since 1995, first and foremost related to Article 5.7 of the SPS Agreement:

In cases where relevant 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.

Particularly the first sentence—that a member may provisionally adopt measures in cases where relevant scientific evidence is insufficient—has been subject to many debates within Codex since 1995. Some Codex members have argued that this provision

legitimizes precautionary strategies, but this conclusion is highly controversial. 'Precaution' is not a generally recognized principle of international law and there is scarcely any guidance for governments on how to apply precaution in a legitimate way. Nevertheless, the precautionary principle may potentially interact with the rules of the multilateral trading system in multiple ways. In that respect, Ward (1999) has suggested the following three issues that need clarification:

1. Whether WTO rules should have an impact on domestic regulation.
2. To what extent WTO rules and dispute settlement should take the precautionary principle into account on the basis that it has become a general principle of international law.
3. How to ensure that WTO rules provide incentives for exporting countries to gather scientific evidence of risks associated with their exports; i.e. that there should be no presumption in favor of trade at the expense of proper scientific assessment.

So far, these questions are not sufficiently clarified in the Codex and may cause substantial confusion. This situation raises the question of how Codex members deal with this confusion.

4.4 How Codex Members Cope with the New Situation After 1995

What are the Codex members' reactions to the new situation as briefly presented above? What are their strategies for coping with the new sources of uncertainty? Without any pretension of providing a complete account, we shall now explore some elements that seem to be vital for the understanding of the dynamics of the Codex after 1995. Three issues have been selected, in line with the preceding discussion. All three issues are related to recent debates within the Codex Committee on General Principles: the scope of Codex guidelines for risk analyses, the use of precaution in risk management and the status of other legitimate sources in risk analysis.

4.4.1 Issue 1: The scope of the working principles for risk analysis

Through the last two decades, the CCGP has tried to agree on a set of working principles for performing risk analyses. There are expectations in the Codex that this methodology will significantly facilitate the future efforts of integrating food safety-measures with international trade. Risk analysis is also expected to bridge scientific knowledge with the current decisions within the framework of the SPS Agreement. However, the debate within the Codex on guiding principles for risk analysis has hitherto turned out to be extremely complex and delayed.

One aspect that has caused considerable disagreement is the scope of the document; i.e., whether the principles for conducting risk analysis should apply only within the Codex, apply only to member governments, or both. Obviously, the issue of scope is intimately linked to the more general discussion of how 'binding' Codex standards, principles and guidelines should be for member states. At the 16th CCGP meeting, the participants were clearly divided into two major positions. One group, dominated by the Cairns-countries and the USA, argued that the working principles for risk analysis should be limited for use within the Codex only, and not be binding for member governments. In other words, the scope for risk analysis should be relatively narrow. This was held to be most in line with the original mandate given to the Committee by

the Commission of the Codex. Another argument for the narrow scope interpretation was that the development of principles for application in the Codex should receive the highest priority and that the development of risk analysis principles for application by governments should be considered at a later date. The US delegation was a prominent proponent of this position, but numerous other delegations also conveyed their support to a narrow scope of the risk analysis.

A very different viewpoint was presented by, among others, the EU countries. They claimed that the scope of the principles for risk analysis should be much wider and include member governments in addition to the Codex itself. The argument was that it was the task of the Codex to provide advice to governments on risk analysis. Finally, it turned out that the member states were not in a position to negotiate an agreement and a decision was made to postpone the discussion until the 17th CCGP meeting.

4.4.2 Issue 2: Use of precaution in risk management

The status of the so-called precautionary principle has also been subject to many debates in the Codex since 1995. During the 16th session of the CCGP, it turned out that the discussion was taken to the extreme in connection with the revision of paragraphs 34 and 35 of the working draft for risk analysis. Prior to the meeting, the draft version of paragraph 34 was as follows:

When relevant scientific evidence is insufficient to objectively and fully assess risk from a hazard in food (1), and where there is reasonable evidence to suggest that adverse effects on human health may occur, but it is difficult to evaluate their nature and extent, it may be appropriate for (risk managers/members governments) to apply precaution (2) through interim measures to protect the health of consumers, without awaiting additional scientific data and a full risk assessment. However, additional information for a more objective risk assessment should be sought and the measures taken reviewed accordingly (within a reasonable time frame/until a more complete risk assessment is performed).

- (1) It is recognized that hazard identification is a crucial step in this process.
- (2) Some members refer to this concept as the 'precautionary principle'.

At the 16th CCGP session, there was general agreement among the participants that governments had the right to take interim measures to protect the health of consumers, as established in Article 5.7 of the SPS Agreement. However, agreement could not be reached about the actions that the Codex should take in situations where there was uncertainty and/or lack of scientific information, including adverse effects on human health.

Again, at one extreme were the Cairns-countries together with USA. Delegates from these countries expressed strong opposition to the paragraph and asked for several deletions. They denied the legitimacy of referring to precaution as a principle of international law. They further claimed that the Codex should not develop international standards, guidelines or recommendations under such conditions of uncertainty. Any reference to precaution was deemed unnecessary and superfluous. In their view, all necessary measures to protect consumer's health when scientific evidence was insufficient were already sufficiently covered by the SPS Agreement. Any additional reference (in the Codex) could foster the use of precaution for the purpose of trade protection. Reference to a diffuse 'precautionary principle' could allow governments to deviate from the disciplines of the SPS Agreement. For example, the Delegation of Argentina stated that it did not recognize any legal status for a so-called 'precautionary principle' and therefore requested the deletion of any reference to such a principle. Several other delegations were also of the opinion that a footnote in the draft text that referred explicitly to 'precautionary principle/precautionary approach' should be

deleted. The Delegation of Bolivia supported deleting the note because the precautionary principle could be “used as a justification for trade protectionism”. Some developing countries see the ‘precautionary principle’ as a tool that the EU wants to use as a substitute for tariffs and subsidies in order to maintain its protectionist agricultural policies.

Other delegations were more positive to ‘precautionary thinking’ and stated that the Codex did, and should, prepare guidance, as appropriate, under such circumstances. For the purpose of understanding and the fostering of consumer confidence in the risk analysis process, a reference to ‘precaution’ was essential. This could be a reference to a ‘precautionary principle’ as well as a ‘precautionary approach’. The spokesman for the EU countries strongly argued for this position. In the opinion of these delegations, the use of either expression would indicate to consumers that a high level of protection was being sought and that precaution was not being used only in acute situations.

The member states were once again (as happened at the CCGP meeting in 2000) unable to agree on a solution and had to leave it to the upcoming meeting in 2002 to find a compromise. In this case, we clearly see that the WTO positioning pattern is replicated in Codex discussions. Of course, this point is further underlined by the fact that the discussion on precaution has also been taking place in the SPS Committee of the WTO.

4.4.3 Issue 3: The status of other legitimate factors in risk analysis

The discussion here followed the same pattern as for the two preceding cases. One group including the USA and the Cairns-countries strongly argued for a restricted practice on this point. Their essential consideration was to avoid that ‘other legitimate factors’ in practice turned out to be disguised trade restrictions. Another group, in which the EU countries played a dominant role, argued for a more flexible approach and held that appropriate focus on other legitimate factors was necessary in order to secure legitimacy among consumers. At the 2001 meeting a proposed text was considered in detail. Referring to the seventh paragraph of the proposal, the Delegation of Sweden, speaking on behalf of the EU, recommended that “concerns relating to the environment, animal and plant health and animal welfare” might be taken into account “if international requirements or recommendations of the competent international fora” existed (CAC 2001a). Several other delegations, in particular from the Cairns Group, strongly opposed this amendment as it was not consistent with the *Statements of Principle* and as it would introduce considerations that were excluded from the mandate of the Codex. These delegations expressed their concern that such amendments would not improve consumer health protection but would be likely to create additional barriers to trade (CAC 2001a).

Hence, the committee could not come to a consensus on the specific factors that should be mentioned in the text. Several elements related to this issue thus remained unresolved. As we can see from the debate, the WTO positioning pattern was again replicated.

5 The Replication of the WTO Coalition and Positioning Pattern in the Codex

5.1 Introduction

Our observations indicate that there is consistency throughout the discussions at the CCGP meeting. This consistency expressed itself in the replication of the members positioning pattern from WTO/SPS meetings and this is the major lesson to be drawn from the abovementioned examples. This replication is manifested in two ways. First, the Codex member states seem to appeal to norms, which are compatible with their perceived trade interests as manifested in the course of the WTO negotiations. The second manifestation is that the logic of consequences takes precedence over the logic of appropriateness when explaining member strategies. More specifically, the consequences in question are the sanctions that may result from breaking WTO obligations. We shall explore these two points further.

5.2 Members appeal to the norms that are compatible with their trade interests as defined during WTO meetings

Generally, Codex members seem to appeal to the general principles and norms that favor their trade interests as revealed during WTO meetings. Our assumption is that a systematic pattern exists in the Codex debate discussed. To a greater extent than other members, the member states that promote free trade strategies in the WTO try to restrict the scope of the Codex infrastructure (standards, principles, guidelines). Their arguments are influenced by an ambition to avoid provisions that may restrict trade. Thus, they want to limit the scope of applicability of Codex principles in order to avoid certain concepts (like precaution) and to establish tight definitions of 'other legitimate factors', etc. They hope thereby to avoid decisions that give member states more

discretion in legitimating import restrictions. The Cairns Group and the USA are the most prominent supporters of this position.

The other category of member states, with the EU as the most prominent representative, is more skeptical towards liberalizing international food trade and may be suspected of preferring a regulatory framework that may allow trade restrictions.

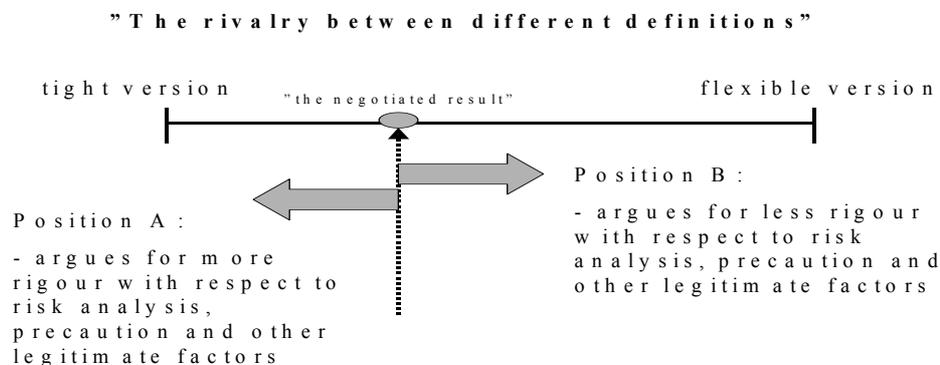


Figure 5.1 The rivalry between different definitions

More or less explicitly, Codex members tend to link their perceived trade interests stemming from the WTO to their views on the elaboration of Codex standards and principles. Figure 5.1 offers a schematic view of the ongoing rivalry between various definitions. The figure distinguishes between the two major approaches to defining risk analysis, precaution and other legitimate factors; i.e., a tight and a flexible version of the respective concepts. One important insight from Figure 5.1 is that the actual content of the terms and concepts in question is the end result of a negotiated order. Moreover, the negotiated order is subject to continuous changes and depends largely on the negotiating power and strength of the arguments of the involved parties. In Figure 5.1, only two major positions are shown: Position A systematically argues for more rigor with respect to risk analysis, precaution and other legitimate factors (in other words: as little room for discretion as possible). This more restrictive version makes strong demands on the performance of risk analysis and application of the precautionary principle as well as on other legitimate factors (than science) that should be taken into account when deciding on national food safety measures. The rationale behind this position is the need for well-specified procedures with no room for disguised trade restrictions. Members with predominantly free trade strategies in the negotiations on agriculture in the WTO are most inclined to prefer and argue for tight and restrictive definitions of this type. The USA and the Cairns Group stand out as the most prominent actors defending this position. These countries are afraid that flexible Codex texts with a broad scope may be used in WTO disputes as excuses for trade restricting measures.

The other position—position B—asks for more flexibility (more room for discretion) with respect to the definitions of risk analysis, precaution and other legitimate factors. From this position, one argues for a wider scope for ‘other legitimate factors’, wider scope for members to base their national measures on a precautionary approach etc. The EU countries actively defend this position.

We find substantial support in the data for the assertion that the coalition pattern from the WTO is replicated in the Codex. When considering whether or not to accept a proposed Codex text, member states seem to make an assessment of the expected

consequences of certain texts being brought into a WTO dispute. Even though member states have a common interest in setting up a solid infrastructure, the focus on trade interests and legal consequences halts the discussions and creates problems in reaching agreement on common grounds.

5.3 Logic of consequences has more explanatory power than logic of appropriateness

The new situation after 1995 has led Codex members to become ‘more calculative’. Compared to the situation before 1995, Codex members seem to think and act more in terms of how Codex decisions may be sanctioned in WTO disputes. In general, our data give substantially more support to the logic of consequences than to the logic of appropriateness. The norms developed by the ‘gentleman’s club’ turned out to be of little help in coping with the partly conflicting norms and values that confronted the Codex through the institutional link to the WTO in 1995. The pre-existing norms did not serve as guidance in the new situation. Consequently, the member states did not act on the basis of what was assumed to be appropriate according to the norms of the ‘gentleman’s club’ of pre-1995 Codex. Rather, the fact that Codex decisions in practice were without severe obligations may have stimulated members to exercise ‘strategic appropriateness’; i.e. somewhat superficial appropriateness and diplomacy without further consequences. As long as members were free to withdraw from implementing the decisions made in the Codex, it was not critical to agree with these decisions. The SPS Agreement changed the rules of the game dramatically. Codex decisions were given more influence than before. Members realized that not engaging in these decisions could have serious consequences. For example: member states could be ‘pressured’ by a Codex decision into lowering their own standards, Codex decisions could be (mis-)used as excuses for disguised barriers to trade, member states could end up in spending time and resources on legitimating deviations from Codex standards, and finally, and probably most importantly, not adhering to Codex decisions could create serious legal complications in future WTO disputes.

After 1995, Codex members placed more focus on identifying national interests and on ‘feeding’ these interests back into Codex discussions. Thus, our major claim is that Codex members are stimulated to estimate a wider array of consequences of Codex decisions, and in particular the consequences related to their trade interests and to the potential sanctions resulting from violations of WTO provisions.

6 Conclusion

We have explored how the operation of the Codex was changed after being referred to in the SPS Agreement as *the* reference point for the development of food safety standards. After 1995, the Codex has attracted considerably more attention from the member states of the WTO, in particular from food exporting developing countries. In line with Victor (2000) and Vogel (1995), we find that the SPS Agreement has ‘politicized’ the Codex. Consequently, political and economic considerations are more openly stated in the course of Codex negotiations. As formulated by Victor (2000), this is a by-product of a shift from a voluntary (and often ineffective) system of standards to a scheme that may have a more binding impact. This shift had caused some players to be less willing to compromise their interests for the sake of agreement. Previously, compromise was less painful because the procedures for creating Codex standards, especially the provisions for acceptance, were rife with opportunity to ignore inconvenient standards. Codex standards have clearly become more relevant.

Furthermore, we have observed that the negotiation and coalition patterns from WTO meetings are replicated in Codex meetings. On several key issues under discussion member states position themselves according to whether or not they are agricultural free traders in the WTO. Thus, countries argue in favor of norms that to a large extent are compatible with their national trade interests as manifested in WTO negotiations. This development may conflict with the mandate of the Codex. At the CCGP meeting in 2001 these tendencies led the representative of the WHO to state “... that risk analysis had to be considered as a health issue with trade implications and not as a trade issue with health implications, and that the debate on precaution should be viewed in this light” (CAC 2001a). Clearly, he was worried that the Codex would end up as simply another arena for trade policy discussions.

Theoretically, our observations do not give much support to the assumptions underlying the ‘logic of appropriateness’ framework. We have identified some of the norms that the members of the Codex adhered to before 1995. Yet, the Codex has not become an institution in the sense that it has developed a set of shared norms, roles and values that lead the members to evoke a logic of appropriateness when confronted with conflicts among norms, roles and values. Individual participants express some frustration concerning the ‘invasion’ of WTO trade discussions in the Codex but these

frustrations do not seem to refrain states from positioning themselves according to their perceived trade interests. On the contrary, after 1995 Codex members have been preoccupied with calculating whether their trade interests may be threatened by the decisions of the Codex or not. Contrary to the assumptions of March and Olsen (1989: 160–161), we come to the conclusion that in the Codex ambiguity and conflict in rules is *resolved by* evoking a logic of consequences and rational calculation. These findings could be interpreted as support for the rather pessimistic claim that Susan Strange made two decades ago with respect to the role of international regimes: “All those international arrangements dignified by the label regime are only too easily upset when either the balance of bargaining power or the perception of national interest (or both together) change among those states who negotiate them” (Strange 1983: 345).

Still, in the case of the Codex, an international arrangement did matter, namely WTO. The tendency of Codex members to focus more on national trade interests was catalyzed by the establishment of the WTO and the SPS Agreement. This institutional change embedded trade interests more strongly in the institutional framework that surrounded the Codex. Thus, the institutional and legal framework of the WTO influenced state behavior in the Codex, although not as originally intended when the SPS Agreement was drafted. Therefore, we may conclude that, in the case of the Codex, the WTO mattered as a set of constraints and opportunities that changed the incentives of member states.

In our study of the Codex we find considerable support for the assumptions of the ‘logic of consequences’ framework. Still, from this case study we cannot altogether reject the relevance of the ‘logic of appropriateness’ framework for studying international institutions. However, based on our findings, the Codex does not seem to have developed into a ‘strong’ and ‘robust’ institution where a ‘logic of appropriateness’ prevails, in the sense that member states follow the inherent institutional norms instead of national interests. This assertion is compatible with Stephen Krasner’s study of the rule of non-intervention, in which he concluded that in the international system a logic of consequences generally prevails above a logic of appropriateness (Krasner 1999). The Codex case shows that in the study of international institutions—including institutions that regulate highly technical and scientific issues—it is important to identify core state interests, the strategic use of arguments based on these interests, as well as changes in the institutional framework that affect the incentives of state actors. Accordingly, our analysis of the Codex revealed that institutions (cf. WTO/SPS) primarily mattered as a way of constraining the activity and shaping the expectations of states.

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