



JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX ALIMENTARIUS COMMISSION

33rd Session

Geneva, Switzerland, 5-9 July 2010

MATTERS ARISING FROM THE REPORTS OF CODEX COMMITTEES AND TASK FORCES

CODEX COMMITTEE ON FRESH FRUITS AND VEGETABLES

A. MATTERS ARISING FROM OTHER ORGANIZATIONS ON THE STANDARDIZATION OF FRESH FRUITS AND VEGETABLES: United Nations Economic Commission for Europe (UNECE) - Working Party on Agricultural Quality Standards – Change of Title of “UNECE” Standards to “United Nations (UN)” Standards

Codex Committee on Fresh Fruits and Vegetables

1. The 15th Session of the Committee on Fresh Fruits and Vegetables (Mexico City, October 2009) noted main issues of interest to its work arising from sessions of the *UNECE Working Party on Agricultural Quality Standards* and its *Specialized Section on Standardization of Fresh Fruits and Vegetables* that had been held subsequent to the last session of the Committee.
2. In relation to the activities of the UNECE, the Committee noted the decision of the Working Party to remove the reference to the “UNECE” from the cover pages of the standards, which was prompted, amongst others, by the specialized sections who did not want to give the impression that the standards they develop are meant to be used within the UNECE region only and the revised Terms of Reference of the Working Party, approved by the Committee on Trade and the Executive Committee of the UNECE in 2008, which give equal participation rights to all member countries of the United Nations.
3. Some delegations expressed concern on the change of the title of “UNECE” standards to “UN” standards as the Working Party is a subsidiary body of the Committee on Trade that operates under the terms of reference of the UNECE, a regional commission of the United Nations which looks at the economic development and integration of a particular region, and thus questioned the international coverage of the standards developed by the Working Party. These delegations supported collaboration between Codex and UNECE, as set out in the Terms of Reference of the Committee, in particular as regards using UNECE standards as a basis for the development of Codex worldwide standards. They noted that Codex standards might require different provisions from those of the UNECE to accommodate the needs of the broader Codex membership and in view of the different mandates and goals of Codex and UNECE.
4. Other delegations supported close cooperation between Codex and UNECE in order to avoid duplication of work. These delegations noted that Codex and UNECE could mutually benefit from the work carried out in their respective subsidiary bodies in order to facilitate the development of international standards. In this regard, the revision of the working procedures of the Working Party and the more frequent sessions of its Specialized Section on the Standardization of Fresh Fruits and Vegetables were aimed at making the Working Party accessible to all member of the United Nations while speeding up the development of international standards for fresh fruits and vegetables.

5. The Codex Secretariat recalled that effective cooperation had been implemented over the years between Codex and UNECE with a view to facilitating the harmonization of Codex and UNECE standards. As regards the matter of the change of the title of “UNECE standards” to “UN standards”, the Secretariat drew the attention of the Committee to a previous discussion on this issue in the Codex Alimentarius Commission¹ and the Codex Committee on Fresh Fruits and Vegetables² and to the decision of the 54th Session of the Working Party³ to withdraw the proposal to change the title of the “UNECE standards” to “UN standards” in view of the response of the Legal Counsel of the United Nations concerning the global status of Codex standards as related to UNECE standards.

6. The Secretariat also informed the Committee that the *Geneva Protocol on Standardization of Fresh Fruit and Vegetables and Dry and Dried Fruit* still referred to the general provisions to be applied in Europe for the commercial standardization and quality control of fresh fruits and vegetables for international trade between or to European countries. The UNECE Representative indicated that the Geneva Protocol would be revised by the Working Party in the framework of the revision of its Working Procedures.

7. In view of the above discussion, the Committee agreed to request the Codex Secretariat to explore the implications of the above decision of the Working Party and also to inform the Commission, through the Executive Committee, of this situation in order to obtain guidance from the Commission on appropriate follow-up to this matter.⁴

UNECE Working Party on Agricultural Quality Standards

8. In view of the concerns raised by some Codex member countries at the 15th Session of the Committee on Fresh Fruits and Vegetables, the 65th Session of the Working Party on Agricultural Quality Standards (Geneva, November 2009) decided to suspend the removal of “United Nations Economic Commission for Europe (UNECE)” from the cover page of its standards and asked the UNECE Secretariat to approach the United Nations Legal Office at Headquarters for advice on this issue.⁵

Executive Committee of the Codex Alimentarius Commission

9. The 63rd Session of the Executive Committee (Geneva, December 2009) considered the request of the Committee on Fresh Fruits and Vegetables and noted that the Secretariat had sought the advice of the FAO and WHO Legal Offices and that the Commission would be updated about further developments at its next session.⁶

UNECE Specialized Section on Standardization of Fresh Fruits and Vegetables

10. The 57th Session of the Specialized Section on Standardization of Fresh Fruits and Vegetables (Geneva, May 2010) took note of the advice of the Senior Adviser of the UN Office at Geneva to put back “UNECE” to the titles of the standards. It was the Adviser’s “... *considered opinion that the legal advice offered by OLA in 1988 would be very similar if not identical if sought and provided at the present time. In particular, point (b) of OLA’s opinion [Member countries having agreed on standards at a global level, in the framework, for example, of FAO, which are not necessarily identical with UNECE Standards may oppose the renaming of UNECE Standards] could be invoked in the present situation. It was the Codex Committee on Fresh Fruits and Vegetables, an expert body which is affiliated with FAO, which formulated a request to examine the implications of the WP’s proposed change in the title of UNECE Standards to UN Standards. This implies that the Codex Committee and by extension, FAO and its Legal Counsel, had some doubts about the practicality of the WP’s proposal. In that particular constellation, it is difficult to see how OLA could come to a different conclusion than in 1998, i.e. that a change in the name of UNECE Standards to UN Standard would unlikely be approved by ECOSOC.*”⁷

¹ ALINORM 95/37, paras. 31-32. CODEX documents are available at: <http://www.codexalimentarius.net>

² ALINORM 99/35A, paras. 12-21.

³ TRADE/WP.7/1998/9, paras. 56-59. UNECE documents are available at: <http://www.unece.org/trade/agr/welcome.htm>

⁴ ALINORM 10/33/35, paras. 7-14.

⁵ ECE/Trade/WP.7/2009/24.

⁶ ALINORM 10/33/3, paras. 133-135.

⁷ ECE/TRADE/C/WP.7/GE.1/2010/4 para. 8.

UNECE Working Party on Agricultural Quality Standards

11. The reply of the Senior Legal Adviser to UNOG will be considered by the 66th Session of the Working Party on Agricultural Quality Standards (Geneva, November 2010). For ease of reference, both an extract of the the reply of the Legal Counsel of the United Nations (November 1998) and the subsequent reply of the Senior Legal Adviser to UNOG (February 2010) are herewith attached as Annexes I and II respectively (English only).

Conclusion

12. The Codex Secretariat will report on the findings concerning consultation with the FAO and WHO Legal Departments on the reply of the UNOG Senior Legal Adviser. Based on these findings, the Commission may wish to recommend appropriate follow-up if necessary.

13. The Commission may also wish to reassert its previous recommendation on the need for the CCFFV to cooperate and coordinate with the UNECE towards the elaboration of harmonized standards without duplication of effort. While avoiding any unnecessary duplication of work, the collaboration would also benefit UNECE by giving international recognition to its standards and in this regard, the Terms of reference of the CCFFV allows the Commission to use UNECE standards and recommend them for worldwide application.⁸

B. CODEX STANDARD FOR FRESH FUNGUS “CHANTERELLE” (EUROPEAN REGIONAL STANDARD CODEX STAN 40-1981)

14. The 15th Session of the Committee on Fresh Fruits and Vegetables noted that the conversion of the Codex Standard for Fresh Fungus “Chanterelle” (European Regional Standard CODEX STAN 40-1981) into a worldwide standard had been referred to the Committee due to an earlier request of the Commission as part as of the process of updating commodity standards including the potential conversion of regional standards into worldwide standards. The Committee recalled that no action had been taken on this request and that at its last session it had agreed to keep chanterelle in the Priority List pending the finalization of the UNECE Standard for Chantarelle.

15. The Committee agreed to request, through the Commission, the Coordinating Committee for Europe, which had elaborated this Regional Standard, to consider the need for a worldwide standard for chanterelle and, if affirmative, to refer a proposal for its conversion to the CCFFV for consideration, accompanied by a project document.⁹

16. It is noted that the 65th Session of the UNECE Working Party on Agricultural Quality Standards adopted a UNECE Standard for Chantarelles (UNECE STANDARD FFV-55).¹⁰

⁸ ALINORM 95/37, para. 32 and AINORM 99/37, para. 206.

⁹ ALINORM 10/33/35, paras. 118-119.

¹⁰ ECE/TRADE/C/WP.7/2009/24, para. 14.



**Economic and Social
Council**

Distr.
RESTRICTED

TRADE/WP.7/1998/8
28 August 1998

ORIGINAL : ENGLISH

ECONOMIC COMMISSION FOR EUROPE

COMMITTEE FOR TRADE, INDUSTRY AND
ENTERPRISE DEVELOPMENT

Working Party on Standardization of
Perishable Produce and Quality Development

Fifty-fourth session, 9 to 11 November 1998,
Geneva

Item 11 of the Provisional Agenda

TITLE OF STANDARDS ELABORATED BY THE WORKING PARTY

Note by the secretariat

Background

1. UN/ECE standards for fresh and dried produce are used widely throughout the world. Indeed, the majority of international trade in these products takes place according to UN/ECE standards.

2. Following a request from the Meeting of Rapporteurs on Seed Potatoes in 1997 and similar requests from delegates to meetings of experts, the Working Party at its 53rd session (12 to 14 November 1997) considered the possibility of changing the title of its standards. The Working Party requested the Committee for Trade, Industry and Enterprise Development to consider whether the reference to ECE could be omitted from the title, i.e. for the Standards to be called "UN standards". If the Committee agreed, the proposal would then need to be approved by UN/ECOSOC (See TRADE/WP.7/1997/11, paras. 54-56).

3. The Working Party decided to initiate the process by submitting a proposal to the Committee on Trade. The issue was discussed at the first session of the Committee (9-11 December 1997). It was that explained the advice of the Legal Counsel of the United Nations was required before any decision could be taken by the Committee (see ECE/TRADE/214, paras. 26-27). That advice has now been received and is summarized below.

Summary of the reply of the Legal Counsel of the United Nations

4. The legal counsel confirms the procedure necessary for the change of title as outlined in paragraph 1 above.

5. The legal counsel is of the opinion that the proposal may **easily be challenged on legal grounds** for the following reasons:

- (a) UN/ECE standards are de facto used internationally, but there are also de jure international standards agreed within the FAO/WHO Codex Alimentarius Commission.
- (b) Member countries having agreed on standards at a global level, in the framework, for example, of FAO, which are not necessarily identical to UN/ECE standards may oppose the renaming of UN/ECE standards.
- (c) Even if standards are the same or compatible, member countries may still oppose the renaming of UN/ECE standards for reasons of maintaining the respective competence of each organization within the existing statutory limits.
- (d) Even if standards are compatible, member countries of other regional commissions are likely to question any move by one Regional Commission which would imply an expansion of its competence and authority to the detriment of other regional commissions.

6. In view of these considerations, the Legal Counsel is of the opinion that the proposal to change the name of UN/ECE standards to UN standards is **unlikely** to be approved by ECOSOC.

Conclusion

7. The Working Party is therefore invited to reconsider this issue and to report its view to the Committee for the third session in 1999.

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MEMORANDUM INTERIEUR

INTEROFFICE MEMORANDUM

CX/CAC 10/33/8-Add.1
ANNEX II (English only)

To: Ms. Virginia Cram-Martos
Director, Trade Development and Timber Division
UNECE

From: Markus Schmidt
Senior Legal Adviser

A handwritten signature in black ink, appearing to read 'Schmidt', written over a horizontal line.

Date: 16 February 2010

Ref.: MS/fc

Subject: ***Proposed change of title of UNECE Standards to UN Standards***

1. The Trade Development and Timber Division of UNECE has asked for an opinion on the proposed change of title of "UNECE Standards" to "UN Standards". You indicate that the *Working Party on Agricultural Quality Standards* (hereafter WP) had proposed this change in title, that the *CODEX Committee of Fresh Fruits and Vegetables* (affiliated with FAO) had, during the 2009 meeting of the WP, requested to examine the implications of the proposed change in title, and that the proposal was subsequently suspended, pending examination of the request made by the CODEX Committee.

2. I note that a comparable issue arose in 1998, when a similar request by a UNECE Working Party was referred to the Office of Legal Affairs (OLA) for advice. OLA, recalling that any proposed change in title of UNECE Standards would have to be approved by ECOSOC, concluded that the change in title could "easily be challenged on legal grounds, for the following reasons:

.....

(b) Member countries having agreed on standards at a global level, in the framework, for example, of FAO, which are not necessarily identical with UNECE Standards may oppose the renaming of UNECE Standards;

(c) Even if standards are the same or compatible, member countries may still oppose the renaming of UNECE Standards for reasons of maintaining the respective competence of each organization within the existing statutory limits;

(d) Even if standards are compatible, member countries of other regional commissions are likely to question any move by one Regional Commission which would imply an expansion of its competence and authority to the detriment of other regional commissions."

3. As Senior Legal Adviser to UNOG, it is my considered opinion that the legal advice offered by OLA in 1998 would be very similar if not identical if sought and provided at the present time. In particular, point (b) of OLA's opinion reproduced above could be invoked in the present situation. It was the CODEX Committee on Fresh Fruit and Vegetables, an expert body which is affiliated with FAO, which formulated a request to examine the implications of the WP's proposed change in title of UNECE Standards to UN Standards. This implies that the CODEX Committee and by extension, FAO and its Legal Counsel, had some doubts about the practicality of the WP's proposal. In that particular constellation, it is difficult to see how OLA could come to a different conclusion than in 1998, i.e. that a change in name of UNECE Standards to UN Standards would unlikely be approved by ECOSOC.

4. As to the editorial layout of the Report of the WP, Administrative Instruction ST/AI/189/Add.6/Rev.5 (22 August 2008), Section 3.1, provides UNECE with some flexibility. This means that while the title "UNECE Standards" should remain, the print reference to the "United Nations Economic Commission of Europe" at the top of the page could be removed.

c.c: Ms. S. Bartolo
Mr. S. Malanichev ✓
Mr. H. Hansell

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