



JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON FOOD ADDITIVES

Forty-fifth Session

Beijing, China, 18-22 March 2013

DISCUSSION PAPER ON RECOMMENDATIONS FOR NOTE 161 OF THE GSFA

(prepared by Australia)

Background

1. The use of the Note 161 has been discussed from the 41st Session until the 44th Session of the CCFA. However, the Committee has not been able to reach consensus on the use of Note 161.
2. At its 43rd Session the Committee was divided between delegations concerned over the implications of the use of Note 161 on trade which, in their view, undermined the international standard-setting efforts of Codex and the value of Codex's science based decisions. Other delegations felt that the use of Note 161 was important in particular because, in their view, the procedures established in Section 3.2 of the Preamble of the GSFA and in the Procedural Manual had not been rigorously followed.
3. Consequently, at the 43rd Session the Committee had agreed to establish an electronic Working Group, led by South Africa, to continue working on a discussion paper on the application of Note 161, and in particular to formulate recommendations to facilitate a uniform implementation of Section 3.2 of the Preamble of the GSFA to address the use of Note 161.

Findings and proposals of the Working Group

4. The Delegation of South Africa introduced the report of the electronic Working Group (CX/FA 12/44/12) and reported that the Analysis of the Use of Note 161 had shown that up to 2010, Note 161 had been assigned to provisions for sweeteners and colours only, and in 2011, no provisions with Note 161 were forwarded to, nor adopted by, the 34th Session of the Commission. Looking at the occurrence of Note 161 in the adopted provisions for sweeteners and colours, the Working Group had found that the use of Note 161 had decreased over time, and that it was associated with a variety of food categories for both sweeteners and colours coinciding with the Committee's working lists of food categories in which the use of sweeteners and colours are technologically justified.
5. It is important to note that not all of the Working Group members agreed with the final version of the discussion paper and the conclusions. It was reported by the Chair of the Working Group that, although there had been no full consensus by all participants on the matters considered, that they had analysed the relation of Note 161 and the implementation of Section 3.2 of the Preamble to the GSFA, and had found that the Preamble provided general guidance to national authorities when interpreting the acceptable maximum use levels in the GSFA to account for differences in national practices relating to food additive uses, while neither imposing national practices on the global community nor preventing progress on the GSFA. The *Procedures for Consideration of the Entry and Review of Food Additive Provisions in the General Standard for Food Additives* (Codex Procedural Manual) explicitly considered the criteria in Section 3.2 of the Preamble by asking the question "Does the food additive use meet the criteria of Section 3.2 of the Preamble of the General Standard for Food Additives?"
6. The Working Group proposed two basic options for discussion in the Committee:
 - (i) to delete Note 161 from all provisions in the GSFA; or
 - (ii) to retain Note 161, either with the current text or revised text, and develop procedures and data/information requirements for the inclusion of Note 161 in the GSFA, and to agree that these procedures and requirements should limit the use of Note 161 as much as possible.

Discussion on the Findings of the Working Group at the 44th Session

7. At the 44th Session, the Chairperson said that the Committee had not used Note 161 at the last Session and had held the relevant provisions. He proposed, as a first step, to agree not to use Note 161 anymore in provisions to be adopted and maintain the existing instances of Note 161 until an agreement could be found on how to deal with them.

8. There was no objection in the Committee that the use of Note 161 should be reduced; however, there was no consensus that the Note should not be used anymore or that it should be deleted. Different proposals were made how to reduce or clarify the use of Note 161. Other interventions reiterated the opinion that Note 161 should be discontinued and/or deleted as it did not deal with safety concerns and was jeopardizing the objective of Codex to harmonize standards and could cause barriers to trade. Other interventions recalled that Note 161 had been introduced to allow making progress in the GSFA, but its use should be consistent and on a case-by-case basis.

9. The Chairperson proposed to set up an electronic Working Group to initially address the use of Note 161 in the provisions for sweeteners, both adopted and in the Step process, and to find a consistent alternative approach. In his opinion trying to find criteria for the use of Note 161 was not a solution. The Committee agreed in principle to the proposal of the Chair.

10. The Delegation of the European Union proposed the terms of reference for such an electronic Working Group, using language from the report of the physical Working Group (CRD 2 of the 44th Session), as follows: "To consider the applicability of replacing Note 161 in provisions for sweeteners where Note 161 is currently listed, with notes which further define the scope of the use of the food additive, or alternative approaches."

11. Different proposals were made how to indicate the goal of the exercise in the terms of reference:

- "The goal is to avoid making reference to national legislation."
- "The goal is to reduce and, if possible, avoid making reference to national legislation".

Conclusion at 44th Session of the Committee

12. As there was no consensus in the Committee on either of these proposals, the Chair concluded that the discussion on the Agenda Item be suspended.

Further Progress since 44th Session of the Committee and Proposed Way Forward

13. Australia suggests that there are several options:

- 1) do nothing,
- 2) replace, if possible, the note by other note(s) to remove the exemption for national legislation,
- 3) revise the preamble and remove the note,
- 4) delete the note, and
- 5) establish criteria for when the note can be used.

14. There may be more options but for now these should be sufficient for the discussion. In analysing the options above, the Committee has tried and failed implementing some of these approaches (1 & 5). Several delegations have expressed strong opposition to Option 4. Option 1 is not acceptable to most delegations. Option 3 would require a proposal for new work. That leaves option 2. There may be others, and the Australian Delegation would be happy to hear them.

Option 2 has several advantages:

1. The committee could take action at the 45th CCFA and progress a solution to solve the problem.
2. It would allow tailoring revisions to the Note for particular situations. E.g. for the sweeteners in the first instance.

15. In this respect Australia proposes to draw on the suggestion of the Chairperson at the 44th Session of the Committee to set up an electronic Working Group to initially address the use of Note 161 in the provisions for sweeteners, both adopted and in the Step process, and to find a consistent alternative approach, and the terms of reference proposed by the EU for such an electronic Working Group, using language from the report of the physical Working Group (CRD 2), as follows: "To consider the applicability of replacing Note 161 in provisions for sweeteners where Note 161 is currently listed, with notes which further define the scope of the use of the food additive, or alternative approaches."

Recommendation

16. It is the view of the Australian Delegation that Option 2 – replace, wherever possible, the note by other note(s) to remove the exemption for national legislation - is the best approach that has a chance of success.
17. Strategically, Australia believes the paper should present a single solution and not an exhaustive list of more options/alternatives.
18. Australia believes that, wherever possible, the replacement of the Note should explicitly address the reason for the initial reservation, and so Note 161 may finally be replaced by a number of more explicit notes.
19. As a process, it seems sensible to progress this approach on the basis of functional classes, beginning with the sweeteners.
20. There would be a preference (1) to replace the Note 161 by a generic note related to the use of sweeteners (e.g. to replace sugar wholly or partly). If a generic note is not considered appropriate then (2) the replacement of Note 161 by other notes that relate specifically to the use of sweeteners in each food category could be considered.
21. The Australian delegation welcomes the views of the Committee on both options.