

codex alimentarius commission



FOOD AND AGRICULTURE
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Agenda Item 7

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JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON FOOD IMPORT AND EXPORT INSPECTION AND CERTIFICATION SYSTEMS

Thirteenth Session

Melbourne, Australia, 6 – 10 December 2004

DISCUSSION PAPER

CLARIFICATION OF THE REFERENCE “A REASONABLE INTERVAL” IN THE GUIDELINES FOR FOOD IMPORT CONTROL SYSTEMS

(Prepared by Paraguay with the assistance of the Australian Secretariat)

BACKGROUND

1. The 26th Session of the Codex Alimentarius Commission (2003) adopted the *Guidelines for Food Import Control Systems*. The Commission also considered a proposal from the delegation of Paraguay that the phrase “a reasonable interval” in paragraph 35 of the Guidelines was open to misinterpretation and should be clarified by the inclusion of a reference to “a previously agreed interval or period of time”. The Commission requested that the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) consider the development of an interpretation of the meaning of “a reasonable interval” in the context of the *Guidelines for Food Import Control Systems*¹.
2. The 12th Session of the Codex Committee on Food Import and Export Inspection and Certification Systems agreed that in view of Paraguay’s absence from the session that Australia, subject to confirmation by Paraguay would assist them in drafting a discussion paper on Clarification of the Reference “a reasonable interval” for consideration at its next session in December 2004².

DISCUSSION

3. The phrase “a reasonable interval” appears in the *Guidelines for Food Import Control Systems* at paragraph 35.

35. Any changes to import protocols, including specifications, which may significantly affect trade, should be promptly communicated to trading partners, allowing a reasonable interval between the publication of regulations and their application.
4. Similarly, within both the WTO Sanitary and Phytosanitary (SPS) and the Technical Barriers to Trade (TBT) Agreements there are references to allowing a "reasonable interval" of time between the publication of a new SPS measure or TBT technical regulation and its entry into force so as to allow time for producers in exporting Members, and particularly in developing countries, time to comply. However, this period was not specified in the text of either agreement when they entered into force in 1995.

¹ ALINORM 03/41 Para, 61

² ALINORM 04/27/30 Para, 88 b)

5. The reference to “reasonable interval” in the SPS Agreement appears in paragraph 2 of Annex B...

*“Except in urgent circumstances, Members shall allow **a reasonable interval** between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products and methods of production to the requirements of the importing Member”*

6. The TBT Agreement states in paragraph 12 of Article 2:

*“Except in those urgent circumstances referred to in paragraph 10, Members shall allow **a reasonable interval** between the publication of technical regulations and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member.*

(The circumstances referred to in paragraph 10 are: where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member.)

7. In November 2001 the WTO issued “Implementation – Related Issues and Concerns - Decision WT/MIN (01)/17”. The Decision provides additional guidance to WTO Members on the implementation of a range of provisions under the various WTO Agreements, including the TBT and SPS Agreements.

This Decision *inter-alia* specifies that “a reasonable interval” is "not less than six months" subject to a number of provisos.

The decision in relation to the SPS Agreement states:

*Subject to the conditions specified in paragraph 2 of Annex B to the Agreement on the Application of Sanitary and Phytosanitary Measures, the phrase "**reasonable interval**" shall be understood to mean normally a period of **not less than 6 months**. It is understood that timeframes for specific measures have to be considered in the context of the particular circumstances of the measure and actions necessary to implement it. The entry into force of measures which contribute to the liberalization of trade should not be unnecessarily delayed.*

The section of the WTO Decision that related to the TBT Agreement states:

*Subject to the conditions specified in paragraph 12 of Article 2 of the Agreement on Technical Barriers to Trade, the phrase "**reasonable interval**" shall be understood to mean normally a period of **not less than 6 months**, except when this would be ineffective in fulfilling the legitimate objectives pursued.*

8. It may be appropriate to take into account the interpretation of the phrase “reasonable interval”, as given in the WTO, and introduce it in the context of Codex and the Guidelines, but without reference to WTO documents. This would clarify the meaning of the term in a self-contained fashion and establish that a reasonable interval under the Guidelines is equivalent to a period of no less than 6 months.

RECOMMENDATION

9. The Committee is invited to:

- Clarify, using an appropriate process, that the reference to “a reasonable interval” as it appears in paragraph 35 of the *Guidelines for Food Import Control Systems* means a period of no less than 6 months or, through a revision of the Guidelines replace “a reasonable interval” with “a period of no less than 6 months”.
- Establish that in all documents prepared by CCFICS, intervals should be clearly determined in each case and not use phrases that may cause difficulties of interpretation or result in ambiguity.