

codex alimentarius commission



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Agenda Item 4

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JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON FOOD IMPORT AND EXPORT INSPECTION AND CERTIFICATION SYSTEMS

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REPORT OF THE ELECTRONIC WORKING GROUP ON QUESTIONS RELATED TO THE CODEX CODE OF ETHICS FOR INTERNATIONAL TRADE OF FOODS

(Prepared by Canada, with the assistance of Angola, Antigua & Barbuda, Argentina, Austria, Barbados, Brazil, Chile, Ecuador, European Community, Finland, France, Guatemala, Iran, Malaysia, Norway, South Africa, Spain, Sweden, Thailand, United States, Zimbabwe, Consumers International, International Dairy Federation and the International Institute of Refrigeration)

Background

1. The 22nd Session of the Codex Committee on General Principles (CCGP) asked the 14th Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) to consider whether it could provide recommendations on the question of “*the subsequent export of food, whether imported or produced domestically, that had been found to be unsafe or unsuitable*”¹.
2. At the 14th Session of CCFICS, the Committee established an intra-session Working Group to consider matters referred by the 22nd Session of the CCGP, including the above-mentioned question and to recommend an approach to reply to the questions posed².
3. The Committee noted the report of the intra-session Working Group and agreed to establish an electronic Working Group (e-WG), led by Canada, to develop a discussion paper for consideration at its 15th Session. The Committee further agreed that in developing the discussion paper, the e-WG would take into consideration the comments included in the working document considered by the 22nd Session of CCGP and other relevant guidance.
4. The invitation to join the e-WG was accepted by 21 countries and 3 observers, and the Committee agreed that the language of the Working Group would be in English only.
5. Members of the e-WG were invited to review the following points, taking into consideration that the discussion paper should address trade in food, including food aid:
 - (1) Review CCFICS terms of reference and advise if the request from CCGP falls within its mandate;
 - (2) Assess the existing CCFICS texts to determine if they respond to the question of “the subsequent export of food, whether imported or produced domestically, that had been found to be unsafe or unsuitable” and, where appropriate, identify gaps where further guidance may be useful;

¹ ALINORM 05/28/33A, para. 72

² ALINORM 06/29/30, paras. 7-9

- (3) Determine if the existing texts respond to the problems faced by countries with insufficient capacity to carry out imported food controls; indicate whether other organizations or agencies are better situated to address the problem; and
 - (4) Identify any other issues of relevance to the matter referred, where appropriate.
6. It was indicated to the e-WG that all CCFICS texts, including those currently under development, should be considered when responding to the 2nd and 3rd points above.

Recommendation

7. The Committee is invited to consider the discussion paper concerning 5. (1)-(4) and the recommendations of the e-WG contained in Attachment 1 with a view to agreeing to a reply to the questions referred to the CCFICS by the 24th Session of the CCGP.

ATTACHMENT 1

DISCUSSION PAPER ON QUESTIONS RELATED TO THE CODEX CODE OF ETHICS FOR INTERNATIONAL TRADE OF FOODS**(1) Review CCFICS Terms of Reference and advise if the request from CCGP falls within its mandate***Summary*

Participants of the e-WG are of the view that the request from CCGP falls within the Terms of Reference of CCFICS, in relation to food import and export inspection and certification systems.

Conclusion

Should there be agreement that new work related to this question is required, such work has to remain within the Terms of Reference of CCFICS.

(2) Assess the existing CCFICS texts to determine if they respond to the question of “the subsequent export of food, whether imported or produced domestically, that had been found to be unsafe or unsuitable” and, where appropriate, identify gaps where further guidance may be useful*Summary*

The e-WG participants reviewed the CCFICS texts and provided their analyses.

Many e-WG participants noted that, since the last revision of the Code of Ethics, CCFICS has adopted a number of texts which address the concerns related to the question of subsequent export/re-export of unsafe or unsuitable food and the principal issue is the lack of infrastructure for import control systems, not the lack of sufficient guidance in Codex texts. Several of the existing CCFICS documents include provisions for rejected consignments and the exchange of information between competent authorities of the exporting and importing countries.

The *Guidelines for Food Import Control Systems* (CAC/GL 47-2003) include provisions for the withdrawal of a rejected consignment when the food is rejected by an importing country but conforms to international standards. The *Guidelines for the Exchange of Information Between countries on Rejections of Imported Food* (CAC/GL 25-1997) provide guidance on the circumstances in which an importing country should notify an exporting country with respect to rejection of an imported food, including evidence of a serious food safety or public health problem and evidence of serious misrepresentation or consumer fraud. This text also contains provisions for the re-export of food, whereby if rejected food is to be re-exported, the conditions attached to such re-export should be stated.

The *Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems* (CAC/GL 26-1997), specify measures that may be applied in respect of a product not in conformity (paragraph 35), including rejection of the product or, in the case of potentially serious risk, its destruction.

The *Principles and Guidelines for the Exchange of Information in Food Safety Emergency Situations* (CAC/GL 19-1995) contain provisions for notification involving serious food safety emergency situations to all potential recipient countries of the affected food.

A key principle of food import and export inspection and certification systems indicates that these systems should be used wherever appropriate to ensure that foods, and their production systems, meet requirements in order to protect consumers against food-borne hazards and deceptive marketing practices and to facilitate trade on the basis of accurate product description (Section 3, paragraph 5 of the *Principles for Food Import and Export Inspection and Certification Systems*, CAC/GL 20-1995).

The *Codex General Principles of Food Hygiene* (CAC/RCP 1-1969) prescribe the controls to be implemented to ensure the safety and suitability of food for consumption. Food safety and suitability are defined as follows in these Principles:

Food safety - assurance that food will not cause harm to the consumer when it is prepared and/or eaten according to its intended use.

Food suitability - assurance that food is acceptable for human consumption according to its intended use.

In this context, it is important to differentiate between safety and suitability, and to recognize that member countries may have different standards with regards to food specifications, composition, etc. Food manufactured for the express purpose of export, to meet the requirements of an importing country, may be considered unsuitable in the country of manufacture if the exporting and importing countries respective standards differ, for example, in the additives permitted for use in food in these countries.

In their evaluation of the texts, other e-WG participants were of the view that CCFICS texts only partially address the question of subsequent export/re-export of unsafe or unsuitable food and some areas requiring further clarification were identified.

The *Guidelines for Food Import Control Systems* (CAC/GL 47-2003) (paragraph 24) include a provision for re-exportation when a product is rejected. It was indicated by some participants that re-exportation should not be permitted when a food is considered unsafe or unsuitable. With regards to the *Guidelines for the Exchange of Information Between countries on Rejections of Imported Food* (CAC/GL 25-1997), one participant noted that the text addresses the exchange of information between the food control authority of the importing country and that of the exporting country, and there are no provisions for notification in the case of subsequent export to a third country. Another participant indicated that a principle was missing with regards to Section 3, paragraph 6 of the *Principles for Food Import and Export Inspection and Certification* (CAC/GL 20-1995), “Inspection and certification systems should be fully effective in achieving their designated objectives having regard to the determination of the acceptable level of protection which is required”, as it is not indicated what to do about food which is unsafe or unsuitable. It was also indicated that this principle does not distinguish between crisis situations and normal situations, and that it might be better to export unsuitable food than no food at all in a crisis/food aid situation.

Conclusion

There was no consensus among e-WG members on this question. Some participants indicated that CCFICS texts adequately address the question and provide sufficient guidance to member countries to address issues of non-conformity. They noted that the absence of infrastructure/capacity could not be addressed by creating additional provisions which would have to be considered/implemented in both developed and developing countries. Other participants were of the view that the texts only partially address the question and that CCFICS could further consider these issues. However, specific proposals for additional CCFICS guidance or texts were not identified.

(3) Determine if the existing texts respond to the problems faced by countries with insufficient capacity to carry out imported food controls; indicate whether other organizations or agencies are better situated to address the problem

Summary

Several members observed that CCFICS texts provide guidance for countries to design and implement provisions to handle the export/re-export of food in situations where products do not conform to standards and regulations. However, lack of infrastructure/capacity or implementation is the issue, not the absence of Codex guidance. It was also noted that Codex does not have a mandate to address the capacity problems faced by these countries and thus, provisions to that effect are not factored in its guidance documents.

Other members indicated that existing CCFICS texts only partially address the problems faced by countries with insufficient capacity to carry out imported food controls. They, however, noted that existing provisions in some texts could help countries with insufficient control capacity if implemented by the exporting countries. For example, Section 3 paragraph 9 of the *Guidelines for the Exchange of Information Between countries on Rejections of Imported Food* (CAC/GL 25-1997), includes provisions related to the re-exportation of rejected food, where the conditions attached to such re-export should be stated. It is also indicated in Section 4, paragraph 11 of the *Principles and Guidelines For Imported Food inspection Based on Risk* (CAC/GL 47-2003, new appendix adopted at Step 5/8 29th Session of the Codex Alimentarius Commission, July 2006), that exporting countries may provide information on the control systems in place in their country and, as appropriate, assurance to the importing countries that a particular food complies with the food safety requirement of the importing country.

With respect to the second part of the question, the e-WG is of the view that Codex is not the appropriate body for providing technical assistance to address the lack of infrastructure for regulatory control systems. To improve capacity, it is necessary to invest in infrastructure (inspection and certification bodies, laboratories, human resources, capacity building, etc.). Such competency and resources may be obtained from other organizations such as the Food and Agriculture Organization (FAO), the World Health Organization (WHO), and the Standards and Trade Development Facility (STDF) which is a global program in capacity building and technical assistance.

Note: FAO has recently issued the publication: Strengthening National Food Control Systems: Guidelines to Assess Capacity Building Needs³, to help identify capacity building needs in the core components of a national food control system (food control management, food legislation, food inspection, food control laboratories, and information, education and communication). Each module includes steps to critically examine existing capacity and performance, consider the desired future improved situation, pinpoint capacity building needs and identify options to address them. Internationally accepted benchmarks are incorporated, as well as practical tools and suggestions to guide the assessment process. FAO is also finalizing "A quick guide to assess capacity building needs" to complement the Guidelines⁴.

Conclusions

There was no agreement with respect to the first part of the question, i.e., whether the texts respond to the problems faced by countries with insufficient capacity to carry out imported food controls.

It was acknowledged that CCFICS is not the appropriate body to provide technical assistance or capacity building. International organizations such as the FAO, WHO, the STDF and others, are better placed to provide such assistance to member governments to remedy the problems of insufficient capacity to carry out imported food controls.

(4) Identify any other issues of relevance to the matter referred, where appropriate.

Some e-WG participants suggested the need for a principle along the following lines:

“A country should not export or re-export food to a country if this food is generally recognized dangerous, unfit for human consumption, adulterated, or misleading to the consumers”.

They were of the view that the establishment of such a principle could be more appropriately addressed outside of the remit of CCFICS, i.e., established at Codex level. Other participants indicated that text incorporating the substance of such a principle could be included in existing CCFICS texts, either in the *Codex Principles for Food Import and Export Inspection and Certification* (CAC/GL 20-1995) or in the *Codex Guidelines for the Exchange of Information Between Countries on Rejections of Imported Food* (CAC/GL 25-1997).

³ Available at <ftp://ftp.fao.org/docrep/fao/009/a0601e/a0601e00.pdf>

⁴ FAO Food Safety and Quality Update news bulletin, Issue No. 41, May 2006, available at ftp://ftp.fao.org/ag/agn/fsq_update/41.pdf

Recommendations of the E-WG

- (1) Some e-WG participants were of the view that existing CCFICS texts only partially address the issue of “*subsequent export of food, whether imported or produced domestically, that had been found to be unsafe or unsuitable*” and the problems of countries with insufficient capacity to carry out imported food controls. Thus, the e-WG recommends that CCFICS asks member countries to identify the specific provisions that may need to be amended or added, and to submit specific proposals for new work for consideration at the next Session.
- (2) Other e-WG participants indicated that sufficient Codex guidance is available in the existing texts, and that enhancement in implementation and/or capacity is the issue. It is, thus, recommended that the following be forwarded for CCGP’s consideration:
 - (a) Codex should encourage member countries to further implement the provisions in existing CCFICS texts related to the “*subsequent export of food, whether imported or produced domestically, that had been found to be unsafe or unsuitable*”;
 - (b) Codex should encourage FAO and other international organizations to give priority to providing technical assistance to member countries with insufficient capacity for establishing and implementing food import and export control systems;
 - (c) Codex should encourage those member countries with insufficient control systems to give priority in their capacity building/technical assistance needs assessments to the issue of import control systems;
- (3) The e-WG recommends that CCFICS debates the merits of the proposal put forth on the establishment of a general principle addressing the export or re-export of unsafe or unsuitable food. Should the Committee agree to the need for such a principle, it should hold a discussion on its most appropriate placement in Codex texts.