

codex alimentarius commission



FOOD AND AGRICULTURE
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Agenda Item 8

CX/FL 04/8

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON FOOD LABELLING

Thirty-second Session
Montréal, Canada, 10 – 14 May 2004

CONSIDERATION OF COUNTRY OF ORIGIN LABELLING

The 29th Session of the Committee on Food Labelling (2001) agreed to seek approval to undertake new work on an amendment to the *General Standard for the Labelling of Prepackaged Foods* in order to amend the provisions on country of origin labelling (ALINORM 01/22A, paras. 118-122). The 49th Session of the Executive Committee did not approve new work but agreed that further discussion was appropriate and requested the Secretariat to provide a discussion paper to be considered by the CCFL.

The 30th Session of the Committee (2002) considered the discussion paper and had an extensive discussion on the need for an amendment to the current provisions on country of origin declaration. As no consensus could be reached, the Committee therefore decided that the paper would be circulated again for further comments and discussion at the next session (ALINORM 03/22, paras. 100-105).

The 31st Session of the Committee (2003) decided not to continue work since there was no consensus and decided to report the discussion held in the session to the Commission (ALINORM 03/22A, paras. 114-119).

The 26th Session of the Commission had an extensive discussion on this question. Many delegations and observers expressed their support for continued work on country of origin labelling in order to clarify existing provisions and to prevent consumer confusion. The Delegation of France noted that such work would not necessarily lead to the revision of the General Standard but might lead to the development of guidelines to facilitate its interpretation.

Several other delegations opposed new work in this area as the current provisions adequately addressed the need for consumer information. They also expressed concern with a duplication of the work undertaken by WTO and the World Customs Organization (WCO) on rules of origin. One delegation pointed out that the WTO Rules of Origin were related to tariff issues, whereas Codex work on food labelling addressed the need for consumer information.

The Commission, recognizing that there was no consensus, agreed to ask the Committee on Food Labelling to continue the discussion on country of origin labelling. It also requested the Committee to report to the next session of the Commission when there would be a final decision taken regarding the approval of new work (ALINORM 04/41, paras. 214-217).

The Committee is invited to consider whether new work should be undertaken on the amendment to the current provisions on country of origin labelling in the *General Standard for the Labelling of Prepackaged Foods*. The earlier discussion paper is attached as background reference.

DISCUSSION PAPER ON COUNTRY OF ORIGIN LABELLING

(Prepared by the Secretariat)¹

BACKGROUND

1. At the 28th Session of the Codex Committee on Food Labelling (2000) the Delegation of the United Kingdom, supported by other delegations, proposed that new work should be started on country of origin labelling. The proposal was prompted by concerns that labels are failing to provide consumers with the information they need to make informed choices.

2. The 29th Session of the Committee considered a discussion paper prepared by the United Kingdom in cooperation with Malaysia and Switzerland (CX/FL 01/12). It pointed out that the current provisions of the *General Standard for the Labelling of Prepackaged Foods* did not entirely address consumer concerns in relation to country of origin declaration. The paper also considered the practical implications of additional labelling provisions, outlined different options for new provisions on origin declaration for both foods and ingredients, and included specific proposals to amend the *General Standard*. The proposals put forward in the paper are reproduced in Annex 1 as a background for further discussion.

3. Many delegations and observers supported the proposal of the United Kingdom to undertake a revision of the current provisions. Some delegations and observers proposed to retain the current provisions and expressed their concerns about the justification of additional labelling requirements for ingredients by origin; the feasibility and practical aspects of ingredient origin declaration; and possible implications in international trade. The Delegation of the United States noted that the results of current consultations in the World Customs Organization would be considered in the framework of WTO.

4. The Committee agreed to seek the approval of the Commission to undertake new work on an amendment to the General Standard to amend current provisions on country of origin labelling (Section 4.5) (ALINORM 01/22A, paras. 118-122).

5. The 49th (Extraordinary) Session of the Executive Committee did not approve new work on an amendment to the General Standard for the Labelling of Prepackaged Foods in relation to provisions for the labelling of country of origin. The Executive Committee agreed however that it was appropriate for further discussions on the need for such an amendment to take place and requested the Secretariat to provide a discussion paper for the next session of the Committee on Food Labelling. It was aware of the considerable interest of consumers in this matter. It noted that there were divisions of opinion among the Member countries of some regions and between the Regions themselves. It also noted the views expressed by some Members that ongoing work in the WTO and World Customs Union on rules of origin needed to be taken into account or might circumvent the need for specific Codex guidance in this matter (ALINORM 03/3, para. 25).

6. The present paper briefly recalls the status of work on rules of origin in the WCO and WTO and considers the possible options for consideration by the Committee as regards the indication of country of origin, in view of earlier discussions.

RULES OF ORIGIN IN THE WORLD TRADE ORGANIZATION (WTO) AND THE WORLD CUSTOMS ORGANIZATION (WCO)

7. In the General Agreement on Tariffs and Trade (GATT 1947) Article IX - Marks of Origin includes the following provisions concerning marks of origins:

paragraph 2. The contracting parties recognize that, in adopting and enforcing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum, due regard being had to the necessity of protecting consumers against fraudulent or misleading indications.

paragraph 4. The laws and regulations of contracting parties relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost

8. The WTO Agreement on Rules of Origin provides the following definition in Article 1:

¹ Presented to the 30th Session of the CCFL as CX/FL 02/11

"For the purpose of Part I to IV of this Agreement, rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article 1 of GATT 1994."

9. "Harmonized Rules of Origin" mean the coherent rules concerning origin determination that are expected to be set out by co-operative efforts between WTO Member countries and applied to non-preferential commercial policy instruments. When they are completed, the Rules will be appended to the Agreement with the objective of contributing to the facilitation of international trade.

10. The *Harmonized Rules of Origin* will consist of Definitions, the General Rules, Appendices 1 and 2. In Appendix 2, Rules for the application of Appendix 2 are followed by the matrix rules covering goods classified in Chapters 1 to 97 of the Harmonized System. At the beginning of each Chapter, the negative standard, the primary rules, the residual rules and definitions may be set out. The architecture will set out the principles under which the various rules are applied and will result in the final results for applying those rules to specific cases.

APPENDIX 1 (DEFINITIONS OF WHOLLY OBTAINED GOODS)

11. This Appendix sets forth the definitions of the goods that are to be considered as being wholly obtained in one country. It provides for the origin determination of live animals born and raised in that country, and plants and minerals harvested or taken in that country.

APPENDIX 2 (PRODUCT SPECIFIC RULES OF ORIGIN)

12. This Appendix sets forth rules for determining the country of origin of a good when the origin of the good is not determined under Appendix 1. It will provide for the rules necessary for origin determination, including the primary rule and residual rule and their application. There are still differing opinions concerning the concept of de minimis, intermediate materials, fungible goods and putting up in sets.

13. Two bodies are responsible for the implementation of the Agreement: the WTO Committee on Rules of Origin (CRO) and the WTO/WCO Technical Committee on Rules of Origin (TCRO). In application of Article 9.2 of the Agreement, the Harmonization Work Programme for non-preferential rules of origin (HWP) was initiated in July 1995 in the World Customs Organization (WCO) Technical Committee on Rules of Origin (TCRO) and scheduled to be completed by July 1998. It was extended to the end of 1999. In the course of those sessions, many rules for origin determination, (e.g. product specific rules including primary rules and residual rules) and overall architecture setting out the applications of those rules were devised and articulated. The Committee submitted its final report on the Harmonization Work Programme in June 1999.

14. The work proceeded in the WTO Committee on Rules of Origin and the HWP was extended to the end of 2001. The latest Report by the Chairman of the Committee to the General Council (December 2001) is available on the WTO website (http://www.wto.org/english/tratop_e/roi_e/). The Report highlights the Remaining Work of the Committee on Product Specific Issues; Horizontal Issues (Section 3-Part A and B) and notes that "significant progress was made in all sectors, but a significant number of issues remain unresolved in the agricultural and the textile chapters".

15. When the Rules are completed, they will become part of the Agreement on Rules of Origin.

LABELLING OF COUNTRY OF ORIGIN: CURRENT PROVISIONS

16. Section 4.5 of the *General Standard for the Labelling of Prepackaged Foods* currently contains the following provisions.

4.5.1 The country of origin of the food shall be declared if its omission would mislead or deceive the consumer.

4.5.2 When a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

17. Specific provisions on country of origin labelling have been established for some classes of commodities, especially fresh fruit and vegetables and milk products.

18. The declaration of the country of origin is requested in all Codex standards for fresh fruits and vegetables. This requirement was included as a result of consensus in the Committee on Fresh Fruits and Vegetables because it corresponds to current practice at the national level in many countries and in international trade. It is equivalent to the country of production.

19. Some standards for milk products such as the standards for processed cheese and related products, cream, and yoghurt, require the declaration of the "country of manufacture" for export purposes only:

Country of Manufacture: The name of the producing country shall be declared (for export only)

20. Other Codex standards generally contain no specific country of origin labelling requirements, and cross-refer to the labelling provisions of the *General Standard*.

21. The current Standard provides a definition of country of origin for the purpose of labelling and conditions for its application: country of origin means country of manufacture of the final product, and it shall be applied if its omission would mislead the consumer. The Committee will need to consider whether a revision of the definition is necessary, in order to introduce the notion of ingredient origin or specific definitions for meat products, as proposed in the UK paper; and /or whether the labelling requirements themselves should be amended.

DISCUSSION

22. The main objections to the earlier discussion paper arise from the proposal to reconsider the current meaning of "country of origin". In the General Standard and in the relevant commodity standards for processed products, the country of origin is understood as the country of manufacture. This question does not arise in the case of fresh fruits and vegetables, as they are not composite or processed foods. The proposals to indicate ingredient origin and possibly several "origins" for meat products goes further than the current definition, whereby the country of origin is defined as the country of manufacture.

23. The concerns expressed related to the practical aspects of the proposed requirements, in particular the declaration of the origin of ingredients and the provisions for meat products. It was pointed out that they would represent an additional burden for the industry and would make enforcement by official authorities very difficult. In addition, some concerns were expressed that this would duplicate the work of the WCO and WTO, or introduce requirements and definitions that might ultimately be inconsistent with rules of origin established by other international organizations.

24. The Committee can discuss country of origin as an element of consumer information in food labelling, in conformity with its mandate "to draft provisions on labelling applicable to all foods", in the same context as other food labelling aspects, such as quantitative declaration of ingredients. A section on country of origin is currently included in the General Standard and it is an accepted principle that country of origin should be indicated when it might be otherwise misleading for the consumer. This is also reflected in the national regulations applied by many member countries. It should be clear that the current discussion is related only to food labelling and that there is no intention to undertake comprehensive work on the rules for the determination of origin. Generally speaking, the responsibility of the Committee is to address country of origin labelling, not rules of origin as understood under the WTO Agreement.

25. The proposed amendments in Annex 1 are within the terms of reference of the Committee and there is no procedural reason to prevent such a discussion in Codex. However, there is no consensus at the moment on the need for new work in this area. The rules to determine the country of origin of commodities are currently under consideration in the WTO Committee on Rules of Origin and it may be noted that agriculture is one of the areas where work has not been completed. As it seems difficult to reach an agreement on a revised concept of "country of origin", the Committee might defer consideration of this question until the Harmonized Rules of Origin have been finalized by the WTO Committee on Rules of Origin.

26. In view of the general coordinating role of Codex for food standardization, it is important for the Committee to take into account work on related issues in other international organizations, especially as the Harmonized Rules of Origin are intended to facilitate trade and will specifically include foodstuffs. Moreover, if consensus on general rules of origin is achieved at the international level, that would facilitate future discussions in the Committee concerning origin declaration for the purposes of food labelling.

27. As regards the labelling of individual ingredients according to their origin, this might be considered as a separate issue, but there does not seem to be consensus at this stage on this approach, in view of practical difficulties. As a first stage, the Committee might consider the need for the labelling of ingredients when they

are part of the name of the food or otherwise mentioned specifically in the labelling. In addition when such labelling is used on a voluntary basis, misleading or deceptive descriptions should be avoided, in accordance with the general principles of food labelling, and especially the current provisions on country of origin.

28. The Committee might therefore defer consideration of revised definitions of country of origin and take another approach to the revision of the *General Standard*: retaining the current definition of country of origin and revising the labelling requirements for its declaration. In general, any additional provision should address a clear need for consumer information in order to prevent misleading or deceptive labelling and unfair trade practices in accordance with the general objectives of food labelling.

29. The requirements for country of origin labelling might be extended to specific categories of foods, on the basis of current practice and regulations in member countries, as this is already the case for fruit and vegetables and certain milk products. A general extension of the declaration to all foods might also be considered but it would probably be difficult to reach an agreement at this stage and a case-by-case approach might be preferable. The United Kingdom raised the specific issue of meat products and the Committee might consider the application of origin declaration for products of animal origin, while retaining the current definition.

30. The declaration of the country of origin could also be linked to the declaration of the manufacturer or packer under Section 4.4 - Name and Address. This would also provide information on the country of manufacture, although indirectly, and a separate declaration of origin would not be required in this case. The country of origin and the name and address of the operator in the exporting country (manufacturer, packer or exporter) might be considered as alternative requirements. A consequential amendment to section 4.4 could also be proposed and the application of such provisions might be considered for specific foods or under specific conditions as a first stage in the discussion.

31. The resulting amendments to section 4.5.1 and 4.4 might read as follows and are presented in order to facilitate the discussion:

4.5.1 The country of origin of the food shall be declared if its omission would mislead or deceive the consumer and in all cases for [specific foods or foods categories (to be determined)]

or

4.5.1 The country of origin of the food shall be declared [for all foods] or [for specific foods or foods categories]

or

4.5.1 The country of origin of the food shall be declared unless it is already indicated in the address of the manufacturer or packer.

and/or

4.4 The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the food shall be declared. The name and address of the manufacturer, packer or exporter shall be declared [for specific foods or foods categories][unless the country of origin is declared].

32. The Committee is therefore **invited** to consider the following options:

- discussion of the amendments proposed by the United Kingdom (Annex 1): amended definition of country of origin and provisions on meat products;
- consideration of the origin of ingredients;
- deferring such discussion until harmonised rules of origin have been established in the WTO;
- retaining the current understanding of "country of origin" and considering the extension of current labelling requirements;
- additional or alternative requirements concerning the declaration of the manufacturer or packer.

**PROPOSALS FOR AMENDMENTS INCLUDED IN THE PAPER PREPARED BY THE UNITED
KINGDOM FOR THE 29TH CCFL (CX/FL 01/12)**

4.5 COUNTRY OF ORIGIN

PRODUCTS

4.5.1 The country of origin of the food shall be declared.

4.5.1.1 The term 'produce of' (or equivalent, such as 'product of', 'produced in', 'origin', Swiss etc) shall only be used where all the significant ingredients or components come from the identified country and virtually all of the production/manufacturing processes associated with the food occur within that place or country. An exception is allowed where significant ingredients cannot come from the country in question.

4.5.1.2 For meat, the country of origin is the place of birth, rearing and slaughter. If these places differ, then each shall be declared.

4.5.1.3 Where the term 'produce of' or equivalent is not used the origin declaration should identify the country in which the food last underwent a substantial change in its nature and use appropriate terminology, such as "cured in", "made in", "prepared in", "manufactured in". Packing, cutting, slicing, mincing, shredding, grating and other similar processes are not, for these purposes, processes that substantially change the nature of the food.

4.5.2 Where the label carries other material that may imply origin, the declaration should be sufficiently prominent to avoid misleading consumers

INGREDIENTS

4.5.3 The origin of any ingredient must be given if its omission would mislead or deceive the consumer. This is particularly important where the labelling implies that the country of origin of the ingredients is the same as the country of processing.

4.5.4 Except where the country of origin of the ingredient in question is the same as the country of origin of the product, the origin shall always be declared for:

- [the main ingredients (threshold to be determined)], or
- [specific identified ingredients, (e.g. meat and dairy products, threshold to be determined)], or
- [ingredients that are mentioned in the name of the food, or which are usually associated with that name by the consumer, unless they have been used in small quantities (threshold to be determined)]

4.5.5 Declarations of ingredient origin should, whenever possible, relate to a single country. In other cases the declaration may refer to groups of countries or use phrases like 'origin may vary' or 'produce of more than one country'.