

codex

alimentarius

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FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD HEALTH
ORGANIZATION

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Agenda Item 5

CX/GP 99/6

**JOINT FAO/WHO FOOD STANDARDS PROGRAMME
CODEX COMMITTEE ON GENERAL PRINCIPLES**

Fourteenth Session

Paris, France, 19–23 April 1999

**REVIEW OF THE GENERAL PRINCIPLES OF CODEX
REVISION OF THE ACCEPTANCE PROCEDURE**

1) Background

The 21st Session of the Codex Alimentarius Commission considered the implications of the World Trade Organization Agreements on the Application of Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) at the level of Codex, including the acceptance of Codex standards. The Commission agreed that the Committee on General Principles should undertake the revision of the acceptance procedure as a matter of high priority and develop the format of a revised notification scheme which would include information about the use of Codex standards and related texts, to meet the needs of Codex Members and also the needs of WTO Members under the SPS Agreement, and consequential revisions should be made to the Guidelines for the Acceptance Procedure.

The 12th Session of the CCGP recognized that the current acceptance procedures, although they offered transparency in the use of Codex standards, had not completely achieved this goal and in any case were no longer appropriate in the light of the SPS and TBT Agreements. The Committee recommended that revised proposals to be prepared for the next session in order to provide for clearly defined objectives and simple procedures, the least bureaucratic possible (ALINORM 97/33, para.23). The 22nd Session of the Commission recommended that the acceptance procedure be revised along the lines proposed by CCGP rather than abolished (ALINORM 97/4, para. 19; ALINORM 97/37, paras. 174-175).

The 13th session of the CCGP did not consider the revised proposal in detail, but had a general discussion and reasserted that the procedure should not be abolished but updated and simplified. However no specific comments were put forward to the 13th Session on the proposals presented in document CX/GP 98/8. The Committee agreed during the discussion that governments should not be required to identify the differences between national regulations and Codex texts, and the text was amended accordingly for consideration by the 14th Session. Reference to the possibility for government to provide an explanation for the differences between Codex texts and national legislation is included in the Guidelines for the Acceptance Procedure.

It may be recalled that the revision of the acceptance procedure was identified as a high priority by the 21st Session of the Commission (1995); the CCGP has met twice since that date without reaching a conclusion, although there seems to be a basis for consensus on the revision. The Committee is therefore invited to consider this question as a matter of priority in order to make specific proposals to the next session of the Commission.

2) Acceptance procedures in the perspective of the WTO agreements

Under the Codex General Principles, countries undertake specific obligations only when they declare acceptance according to one of the modalities indicated in section 4.A, 5A and 6A. A country has the obligation to accept a product for distribution on its territory only when it has declared acceptance or free distribution.

In the framework of WTO member countries have to meet specific obligations with respect to harmonization with international standards; in particular, they have to justify national regulations when they deviate from Codex standards or texts, especially if challenged. In practice, this means an importing country has to provide justification when it does not allow the import of products complying with the relevant international standard. In the case of the SPS Agreement, justification for any deviation should be based on scientific evidence.

For the purpose of international trade, acceptance of a standard by member countries is not taken into account and is not recognized in the framework of WTO. Once standards and related texts have been adopted by the Codex Alimentarius Commission, they are recognized as a reference under the SPS Agreement in matters of food safety and under TBT for other technical matters relevant to food legislation. As obligations now exist independently of acceptance as a consequence of the SPS and TBT Agreements, the continuation of the present system may create duplication with the Agreements and may even be in conflict with them. It defines additional requirements which are not compatible with the provisions under SPS and TBT, and should therefore be discontinued in order to avoid any confusion as to the status of Codex texts.

3) Consideration of the need for a revised procedure

The Guidelines for Acceptance indicate that the Codex is a "comparative record" of the similarities and differences between Codex standards and corresponding national legislation, which is still valid in the context of the SPS and TBT. Member countries may still need a mechanism to assess their national regulations against international standards in the framework of the Agreements. Developing countries could also refer to Codex notifications to ascertain the position of other member countries with respect to Codex standards, especially for import/export purposes.

The revised procedure should provide information to member countries and facilitate the monitoring of harmonization of national regulations with international standards and related texts. Its purpose should be to provide a comparative record of national and Codex texts, for information purposes only, and without any of the legal implications included in the current acceptance provisions.

The Commission agreed in principle that the revised system would apply to Codex standards and related texts so that governments might have access to all relevant information on Codex decisions. In terms of international trade, codes, guidelines and related texts cannot be separated from the standards themselves since they encompass SPS and TBT provisions which governments may apply in assessing imports; they also provide guidance to governments when they are establishing their national regulations.

The revised system would focus on the comparison aspects, in order to provide a general view of the similarities and differences between national and international requirements. Consequently, all relevant national regulations should be taken into account in the reply, whether they are new/amended or not. In this perspective, Members would also be asked to provide information on the use of Codex texts, especially whether they are integrated in the national legislation, applied for import or export purposes, or used as a reference when no national legislation exists.

4) Proposals for a revision of the General Principles

In view of the above considerations, it is proposed that sections 4, 5 and 6 on Acceptance in the General Principles of the Codex Alimentarius be deleted and replaced by the following section, intended to cover all Codex texts and MRLs.

Section 4. Notification of Status and Use of Codex Standards and Related Texts

A member country may harmonize its national regulations with Codex standards or related texts, or parts thereof, in accordance with its established legal and administrative procedures in one of the following ways:

A. Approximation

The provisions of Codex standards or related texts are incorporated into national legislation.

B. Harmonization

In the case of a standard or other text containing provisions relating to end-product specifications such as MRLs, or levels of contaminants or additives, the country agrees with the specific requirements established by the relevant Codex text

C. Equivalence

For provisions which are not related to the end-product but are intended to ensure food quality and safety throughout the production or processing chain, the country applies regulations or measures which ensure the same level of quality or safety in the final product.

D. Use as reference

Codex standards are not integrated into national legislation but are used as a reference for the purpose of assessing the safety and quality of food, and especially as a condition for imports and exports.

E. A country which considers that it cannot harmonize its regulations with the standard or text or part of it, according to any of the modalities indicated above, should indicate in what ways its present or proposed requirements differ from the standard or text [and, if possible, the reason for these differences].

C. (of the current version)

- (i) deleted¹*
- (ii) deleted²*

In addition, Section 7 is amended as follows:

Amendment to the Notification

7. The amendment to the notification concerning a Codex standard or related text shall be notified in writing to the Codex Alimentarius Commission's Secretariat who will inform all Member States and Associate members of FAO and WHO of the notification and its date of receipt.

5) Proposals for a revision of the *Guidelines for the Acceptance Procedure of Codex Standards*

In addition to the proposed revision of the General Principles of Codex (Acceptance Procedure), the Committee is invited to consider the following proposed revised Guidelines for the Acceptance, the title of which should be changed to ***Guidelines for Notification***, where a number of consequential amendments have been made, as follows.

Guidelines for Notification concerning Codex Standards and Related Texts

The importance of a response to every notification

1. The Codex Alimentarius is the record of Codex Standards **and related texts and of the notifications** by Member countries or international organizations to which competence in the matter has been transferred by their Member States. It is revised regularly to take account of the issue of new or amended standards and the receipt of notifications. It is important that governments respond to every issue concerning new or amended standards.

¹ This section addressed the application of the standards and is now covered by the SPS and TBT Agreements

² This section addressed import and export issues and is now covered by the Principles for Food Import and Import Inspection and Certification

Governments should aim at **harmonization with Codex standards. If harmonization, conformity or equivalence cannot be achieved, governments may indicate how its present or proposed requirements differ from the standard or text and, if possible, the reason for these differences.** Early and regular responses will ensure that the Codex Alimentarius can be kept up-to-date so as to serve as an indispensable reference for governments and in international trade.

2. Governments should ensure that the information in the Codex Alimentarius reflects the up to date position. When changing national laws or practices the need for a notification{ XE "Acceptance of Codex Standards" } to the Codex Secretariat should always be kept in mind.

3. The Codex procedure for elaboration of standards enables governments to participate at all stages. Governments should be able to make an early response to the issue of a Codex standard and should do their utmost to be ready to do so.

The Codex Alimentarius: not a substitute for, or alternative to, referring to national legislation

4. Every country's laws and administrative procedures contain provisions which it is essential to understand and comply with. It is usually the practice to take steps to obtain copies of relevant legislation and/or to obtain professional advice about compliance. The Codex Alimentarius is a comparative record of the substantive similarities and differences between Codex Standards **and related texts** and corresponding national legislation. The Codex Standard or **related text** will not normally deal with general matters of human, plant or animal health or with trade marks. The language which is required on labels will be a matter for national legislation and so will import licences and other administrative procedures.

5. The responses by governments should show clearly which provisions of the Codex Standard **or related text** are identical to, similar to or different from, the related national requirements. General statements that national laws must be complied with should be avoided or accompanied by details of national provisions which require attention. Judgement will sometimes be required where the national law is in a different form or where it has different provisions.

Obligations under the Acceptance Procedure

6.,7. and 8. Deleted

The Response to Notification

9. The principal decision which is required is whether to notify **harmonization according to one of the modalities indicated in section 4, or non-harmonization as provided for in 4.E**

The Need for an Informed, Responsible Judgement when Comparing the Codex Standard or Related Text with National Laws

10. There will be some occasions when the detailed provisions in Codex standards are identical with national laws, **or when government incorporate the provisions of Codex texts into their national legislation. In many cases however, national regulations are different in their presentation or their contents, they may include requirements which correspond only partially to the provisions of the relevant Codex text. There may also be no standard or related text in the country which covers the same subject as the Codex text. The authority responsible for notifying the response to the CAC should exercise its best endeavours to determine how far these provisions are harmonized or equivalent, where and how they actually differ, after such consultations as may be appropriate with the national organizations.**

Presumptive Standards

11.,12.and 13 Deleted

Format and Content of Codex Standards

Scope

14. This section, together with the name of the standard and the name and description laid down in the labelling section, should be examined **carefully** in order to assess **if national regulations are harmonized or equivalent with the relevant Codex standard.**

15. These sections will define the minimum standard for the food. **When a country** has taken part in the elaboration of the standard either by attending the meetings or by sending comments under the Step Procedure has, it has, no doubt, consulted national organizations on the extent to which the draft provisions in the standard would be acceptable nationally. **This will help the responsible authorities to assess their national requirements against the relevant sections of the Codex standard in order to notify their position in this respect. Where applicable, countries should indicate the motives for the major differences with the Codex standard, especially whether it related to food safety or fair trade practices.** Some of the **non-essential** quality criteria may represent good manufacturing practice or be left to trade contracts. This will have to be taken into account.

Food additives

16. The food additives included in the **commodity standard or in the General Standard for Food Additives** have been assessed and cleared by JECFA. The Commodity Committee and the CCFAC have assessed technological need and safety in use. If national laws are different, the detailed differences may be reported **and the justification given.** It should be borne in mind, however, that the aim of international food standardization work is to harmonize policies and attitudes as much as possible. Therefore every effort should be made to keep deviations to the minimum.

Contaminants and Pesticide Residues

17. **National provisions may be quoted if they differ from the limits set in the commodity standard or the General Standard for Contaminants and Toxins in Food, and the justification should be given, especially when it relates to food safety concerns. As regards pesticide residues, national provisions may be quoted if they differ from the Codex MRLs, and the justification should be given, especially when it relates to food safety concerns.**

Hygiene and Weight and Measures

18. If national requirements are different they should be reported. **Governments should consider their national regulations carefully in order to determine whether they are equivalent to the requirements included in the Codes of Hygienic Practice, or in the sections of the Codes of practice relating to food hygiene; they should indicate how their national provisions differ in terms of the level of protection to be achieved.**

Labelling

19. The General Standard for the Labelling of Prepackaged Foods, **the Guidelines on Nutrition Labelling and the General Guidelines on Claims and the Guidelines for use of Nutrition Claims** represents the international consensus on information to be included on the labels of all foods.

20. Governments are **encouraged** to use the General Standard, **the Guidelines on Nutrition Labelling, the General Guidelines on Claims and the Guidelines for use of Nutrition Claims** as a basis for their national legislation and to keep differences to an absolute minimum especially those of detail or minutiae. Governments should observe the footnote to the Scope section and **consider whether all provisions relating to presentation of information which are additional to, and different from, those in the standard need** be notified. Any other compulsory provisions in national legislation should also be notified if they are not provided for in the Codex standard. The labelling{ XE "Food Labelling" } provisions in Codex standards include sections of the

revised General Standard by reference. **A country which has already notified its position concerning the General Standard can refer to the terms of that notification** { XE "Acceptance of Codex Standards" } in any subsequent responses. As much specific information as is relevant and helpful should be given. In particular, this should include the name and description relating to the food, the interpretation of any special requirements relating to the law or custom of the country, any additional details about presentation of the mandatory information and detailed differences if any in the labelling requirements e.g. in relation to class names, declaration of added water, declaration of origin. It will be assumed that the language(s) in which the particulars should be given will be as indicated by national legislation or custom.

Methods of Analysis

21. Deleted

Note: It is proposed to delete the entire section, as the obligations no longer apply and as the definition of methods is also included under the Section *Guidelines for the Inclusion of Specific Provisions in Codex Standards and Related Texts*. The CCGP may wish to recommend that CCMAS proceed with its review of the methods classification in the light of the CCGP's recommendations concerning the acceptance procedure.

Summary

Governments are urged to respond to every **request for notification concerning Codex standards and related texts, as far as possible**. The inclusion of responses in the Codex Alimentarius will enable the CAC and member Governments **to assess national regulations against Codex standards, and facilitate the approximation of international and national requirements in the perspective of the WTO SPS and TBT Agreements**. Governments are urged to take the Codex standards and related texts fully into consideration when establishing or changing their national legislation. The Codex Alimentarius will always be an **essential** reference for governments and for international traders although national legislation must always be consulted and complied with.

5) **Priorities for notification**

While discussing issues related to acceptance, the 21st Session of the Commission also agreed that the CCGP should advise on priorities, and a time-frame for Members reporting under the revised notification scheme. This was discussed in conjunction with the consideration of standards with a major impact on trade at the level of Coordinating Committees. However, the last session of the Commission agreed that this exercise should be discontinued.

As it is intended to establish a comparative record which should be as complete as possible, countries are encouraged to reply on all Codex issues; however, if the revised format applies to all Codex texts, the assessment of national regulations will be a long and complex exercise. Insofar as prioritization relates to the schedule for notification, it has been suggested to determine the areas or subjects where governments would be required to notify harmonization as a priority.

The decision to notify is the responsibility of each member country and it appears difficult to give a general orientation in this respect. Member countries will give information on the status of Codex standards in relation to national regulations according to their own priorities and it is doubtful whether any general recommendations would be actually useful. Moreover, all Codex texts have been developed and regularly reviewed in accordance with the Criteria for the Establishment of Work Priorities, ensuring their relevance for international trade, and there is no need to carry out a further review *a posteriori* to determine which text belongs to a priority area for notification.

Confusion should be also avoided between Codex notification and SPS or TBT notification, and they may rather be regarded as complementary in the overall perspective of harmonization. Notification in Codex is intended to provide information in areas which are not entirely covered by the Agreements. The SPS notification format requires Members to indicate whether or not there is a "relevant international standard" and if so, how their proposed or changed regulation differs from the international standard. Codex notification would cover current

and new legislation as its objective is to assess the position of member countries in relation to Codex texts as a whole.

The revised notification system would provide more detailed information, for example on harmonization with specific sections of a standard or guidelines and it would allow members to indicate if they use Codex texts as a reference or as a condition for import when no national regulation exists, and such information could be used directly by interested countries for import/export purposes. Notification in the framework of Codex would not duplicate the work of the SPS and TBT Committees, but it may facilitate the monitoring of harmonization as a whole and assist countries in meeting their obligations under WTO.

In any case, it should be clear that WTO Member countries can meet their obligations under WTO exclusively as individual Members in the framework of the SPS and TBT Committees. In particular, they have to provide the required information to the SPS Committee as regards monitoring of harmonization with international standards. At this time, the information provided within Codex cannot be used as such by WTO as the two organizations are entirely distinct and proceed according to their own objectives and working procedures. However, specific arrangements regarding cooperation may need to be considered in the future.

The Committee is therefore invited to consider the following proposals relating to priorities:

- the revised notification should apply to all Codex texts;
- member countries should be encouraged to reply as completely as possible on all Codex issues;
- the definition of priorities should be left to the responsibility of member countries