

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



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Agenda Item 4

CX/GP 02/5

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

Seventeenth Session

Paris, France, 15 - 19 April 2002

PROPOSED DRAFT REVISED CODE OF ETHICS FOR INTERNATIONAL TRADE IN FOODS

The 13th Session of the CCGP agreed to undertake the revision of the Code of Ethics for International Trade in Foods (ALINORM 99/33, paras. 84-90) and this new work was subsequently approved by the 23rd Session of the Commission. The current Code was circulated for comments and redrafted by the Secretariat in the light of the comments. The 15th Session of the Committee (2000) had a general discussion on the text and returned it to Step 3 for redrafting and further comments (ALINORM 01/33, paras. 96-108).

The 16th Session of the Committee had a general exchange of views on the main issues and agreed that the text should be redrafted by the Secretariat in the light of the comments and discussion. As no decision was taken on a number of important questions, no substantial changes have been made to the text presented at the 16th Session. The introductory part of the document highlights the areas where further discussion will be needed and the changes made for clarification purposes and to take into account earlier discussion (Annex 1). The revised text is attached as Annex 2.

The Proposed Draft Revised Code is hereby circulated for government comments at Step 3. Governments and international organizations wishing to submit comments should do so in writing to the Secretary, Codex Alimentarius Commission, Joint FAO/WHO Food Standards Programme, FAO, via delle Terme di Caracalla, 00100 Rome, Italy, with a copy to the Codex Contact Point for France, SGCI/CODEX, Carré Austerlitz, 2 Boulevard Diderot 75703 Paris Cedex 12, Fax. 33 (0)1 4487 16 04, Email: sgci-codex-fr@sgci.finances.gouv.fr, **before 20 March 2002**.

GENERAL ASPECTS

As the Committee did not discuss the text in detail, several questions of principles remain to be addressed, including the applicability of the code to private operators, the responsibilities for implementation, the requirements for harmonisation of national standards with Codex standards, and the consequences of non-compliance. No substantial change was introduced as these questions need further consideration.

Article 1 and 7 refer to “all those engaged in international trade in food”, and this general statement will require further clarification. As Codex is an intergovernmental body and its recommendations are directed to governments, the Committee will need to consider to what extent direct recommendations to traders and the industry should be included in the Code. There may be a need to specify that is the responsibility of governments to implement the code and to ensure that it is applied by exporters and importers at all stages. Further discussion will probably be necessary to determine how detailed and prescriptive the recommendations should be in this area.

ARTICLE 4

The last session of the Committee discussed the application of the Code to food aid transactions, which had also been mentioned in the comments received. Section 4.1 specifies that the Code also applies to food aid, and there is also a reference to food aid in section 2.1. The Committee will also need to clarify further the question of “exceptional circumstances” in Article 8, as it was mentioned in earlier discussions and in the comments.

ARTICLE 5

The Committee discussed whether national legislation should “take into account” or “be in accordance with” Codex standards, but no consensus was reached as the last session. Both expressions were therefore retained in square brackets for further discussion.

As regards specific requirements, there was general agreement to delete the specific sections relating to different areas covered by Codex standards and related texts. The relevant provisions in Codex texts are applicable in any case and it does not appear necessary to duplicate them. These sections were therefore replaced by the general statement included as an alternative text in the earlier version.

However, there was some support to retain the former sections 5.10 and 5.11 applying to nutritional requirements and vulnerable groups. Section 5.10 was retained also because it refers to recommendations that do not appear in Codex standards and related texts.

Section 5.11 refers to nutrition claims and nutrition labelling, which were not covered in specific texts when the Code was initially developed. However, in view of the existence of the *Guidelines on Nutrition Labelling*, the *Guidelines on Use of Nutrition Claims* and relevant standards on foods for infants and children, this section may not be necessary as it duplicates existing provisions. In addition, since nutrition claims are allowed with specific conditions in the framework of Codex, their general prohibition under certain circumstances should be clarified to avoid inconsistency between Codex recommendations. Section 5.11 was retained in square brackets for further consideration, to decide whether it should be deleted or retained with additional explanations.

ARTICLE 6

In Section 6.1 the relationship between regulations in the importing country and Codex texts will require further consideration. This issue had been raised in earlier comments but was not discussed in previous sessions. The current section had been amended on the basis of the written comments and no change was made to the text presented at the 16th Session.

In order to address the problem of countries exporting food which does not correspond to their own national standards, the text had been amended earlier to include the procedures of the “exporting country”, as proposed in the discussion. An amendment to the same effect was introduced in **Article 7.1. (i)**.

However, it appeared from the comments received that the relationship between exports and national regulations require some clarification. Countries may export food that does not comply with its national regulations because they meet the requirements of the importing country, for example differences in quality characteristics, presentation or labelling that correspond to different commercial practices and regulations in that country, but do not affect the safety or essential quality of the products. A similar situation may occur when exporting countries have to apply certain treatments in order to comply with phytosanitary or other requirements of the importing country, and such treatments are applied only for exported foods but not for the domestic market. This is a different case from the export of sub-standard or unsafe food that cannot be marketed in the country of origin.

It is therefore proposed to add a statement to this effect at the end of Section 6.1 for clarification purposes.

Several delegations expressed their concern in the comments and in the discussion as regards the reexport of foods which had already been rejected in another country, and stressed the need to strengthen the provisions of the Code in this respect. It is therefore proposed to include a specific recommendation concerning reexport to address this situation at the end of Section 6, as proposed in earlier comments of the EC and as a basis for discussion.

ARTICLE 7

In Section 7.1 (c) the reference to the operators concerned with international trade and the relationship with the responsibilities of governments will need to be discussed in principle, in conjunction with the discussion of the Scope.

ARTICLE 11

This section was not discussed in detail but it was proposed by India to strengthen the provisions concerning developing countries in the light of the provisions of the SPS Agreement. It is proposed to include a reference to the provisions of the SPS and TBT (since similar provisions are included in both Agreements), as was done in Section 6.1, rather than repeating the provisions of the Agreements.

PROPOSED DRAFT REVISED CODE OF ETHICS FOR INTERNATIONAL TRADE IN FOOD
CAC/RCP 20-1979, Rev. 1 (1985)
(At Step 3 of the Procedure)¹

PREAMBLE

THE CODEX ALIMENTARIUS COMMISSION,

RECOGNIZING THAT:

- (a) Adequate, safe, and wholesome food is a vital element for the achievement of acceptable standards of living and that the right to a standard of living adequate for the health and wellbeing of individuals and their family is proclaimed in the Universal Declaration of Human Rights of the United Nations, the Rome Declaration of the World Food Summit;
- (b) Food is a vital and critical item of international trade and its quality is influenced primarily by prevailing commercial practices and such food legislation and food control practices as are in operation in particular countries;
- (c) Food purchases utilize a significant portion of the income of consumers, particularly low-income consumers, who often also represent the most vulnerable group and for whom ensuring of safe, sound and wholesome food and protection from unfair trade practices is critical;
- (d) There is ever present concern about food safety, unfair trade practices in quality, quantity and presentation of food, misleading claims, food losses and wastage and, generally about food quality and nutritional status everywhere;
- (e) Food legislation and food control infrastructures may not be sufficiently developed in many countries to enable adequate protection of their food exports and imports and to prevent the dumping of sub-standard and unsafe foods;
- (f) The World Trade Organization Agreements on trade, particularly the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT) establish the rights and obligations of Members for measures that affect international trade directly and indirectly;
- (g) The International Code of Marketing of Breast-milk Substitutes and relevant resolutions of the World Health Assembly set forth principles for the protection and promotion of breastfeeding which is an important aspect of primary health care;
- (h) The World Food Summit encourages the assurance of adequate supplies of safe and nutritious food for all people, which is dependent upon the facilitation of trade and the use of appropriate food production and process controls exercised by both the food industry and governments;
- (i) Developing country Members may encounter special difficulties in complying with the food regulations of importing Members, and as a consequence in access to markets, and also in the formulation and application of food regulations in their own territories, and desiring to assist them in their endeavours in this regard;

AND CONSIDERING THAT:

¹ Additions to the earlier version are underlined.

- (a) The major objectives of the work of the Codex Alimentarius Commission are to protect the health of the consumers and ensure fair practices in international trade in food through the elaboration and harmonization of standards and related texts addressing food safety and quality, methods of analysis and sampling, inspection and certification systems;
- (b) The above stated objectives can best be achieved by each country establishing or strengthening its food legislation and food control infrastructures and, where necessary, taking advantage of the work of international organizations competent to advise and provide assistance in these areas and particularly of the standards and related texts of the Codex Alimentarius Commission;
- (c) A code of ethical conduct for international trade in food embodying the principles of consumer protection can be complementary to national food legislation and food control infrastructures and, at the same time facilitate effective international cooperation,
- (d) Due consideration should be given to the particular needs of developing countries, enabling them to produce and maintain a safe and wholesome food supply;

HEREBY DECIDES TO RECOMMEND THAT ALL THOSE ENGAGING IN THE INTERNATIONAL TRADE IN FOOD COMMIT THEMSELVES TO THE ETHICAL FRAMEWORK SET FORTH IN THIS CODE AND UNDERTAKE TO SUPPORT ITS IMPLEMENTATION IN THE LARGER INTEREST OF THE WORLD COMMUNITY

ARTICLE 1 - OBJECTIVE

1. The objective of this code is to establish standards of ethical conduct for all those engaged in international trade in food or responsible for regulating it and thereby to protect the health of the consumers and promote fair trade practices.

ARTICLE 2 - SCOPE

2.1 This code applies to all food introduced into international trade and applies *mutatis mutandi* to concessional and food aid transactions.

2.2 This code establishes standards of ethical conduct to be applied by all those concerned with international trade in food.

ARTICLE 3 - DEFINITION AND INTERPRETATION

3.1 For the purposes of this code, "food" means any substance, whether processed, semi-processed or raw which is intended for human consumption and includes drink, chewing gum and any substance which has been used in the manufacture, preparation or treatment of "food" but does not include cosmetics or tobacco or substances used only as drugs.

3.2 The provisions of this Code are interrelated. Their interpretation and application shall be consistent with the context of all provisions.

ARTICLE 4 - GENERAL PRINCIPLES

4.1 International trade in food and food aid transactions should be conducted on the principles of consumer protection, food safety and fair trade practices and take into account the Codex *Principles for Food Import and Export Certification and Inspection*

4.2 Subject to the provisions of Article 5 below, no food should be in international trade which:

- (a) has in or upon it any substance in an amount which renders it poisonous, harmful or otherwise injurious to health unless the food is subject to further processing so as to address those risks;

where special processing or culinary practices or conditions are required to render the food harmless, the exporter should provide adequate information on such processing; or

- (b) consists in whole or in part of substance which is unfit for human consumption or contains foreign matter to an extent which makes it unfit for human consumption; or
- (c) is adulterated; or
- (d) is labelled or presented in a manner that is false, misleading or deceptive or that may adversely affect the safety of the food; or
- (e) is prepared, packaged, stored, transported and marketed under unsanitary conditions.

ARTICLE 5 - SPECIFIC REQUIREMENTS

Food Standards

5.1 Appropriate national food standards, based on risk analysis where applicable, should be established and enforced taking into account that the protection of consumers' health and fair trade practices can be ensured [through harmonization with] [taking into account] the standards and related texts established by the Codex Alimentarius, especially those referring to hygiene, additives and contaminants, irradiated foods, residues of pesticides and veterinary drugs, labelling, foods for special dietary uses, foods derived from biotechnology.

Foods for Infants, Children and other Vulnerable Groups

5.2 Food for infants, children and other vulnerable groups should be in accordance with standards elaborated by the Codex Alimentarius Commission. The labelling of foods for infants and children should be in accordance with relevant provisions of the International Code of Marketing for Breast-milk Substitutes (Article 9), World Health Assembly resolutions and Codex standards and related texts.

Nutritional Aspects concerning in particular Vulnerable Groups and Regions where Malnutrition exists

- [5.3 (a) No claims in any form should be made about food - particularly processed food - with minimal nutritive value which implies that the food can make a valuable (significant) contribution to the diet;
- (b) information concerning the nutritional value of food should not mislead the public and should follow the relevant Codex Guidelines.]

ARTICLE 6 - IMPLEMENTATION

6.1 Food that is exported should conform:

- (a) to the requirements of Codex Alimentarius Commission's standards and related texts; or
- (b) to such food legislation, regulations, standards, codes of practice and other legal and administrative procedures as may be in force in the exporting and importing country; when these are more stringent than the requirements in relevant Codex standards and related texts, they should be notified to the exporting country by the importing country and reference should be made to the relevant provisions of the SPS and TBT Agreements; or
- (c) to the provisions contained in bilateral or multilateral agreements signed by the exporting country and the importing country; or

- (d) in the absence of such provisions to such standards and requirements as may be agreed upon, taking into account the provisions of Codex Standards and related texts wherever possible.

A country may export food that does not comply with its national regulations if that food complies with the regulations of the importing country and is exported in accordance with the requirements of the importing country and.

6.2 Where the General Principles stated in Article 4 above, as expanded in specific terms in Article 5, are not covered by appropriate food legislation, regulations, standards, codes of practice and other legal and administrative procedures in the importing country, food that is exported should conform to the General Principles stated in Article 4, taking into account such standards and related texts elaborated by the Codex Alimentarius Commission as applicable to the food or practice concerned.

6.3 Where, in an importing country, a food product:

- (a) is found not meeting health and safety requirements , or
- (b) claiming to be in compliance with a standard, code of practice or other generally accepted certification system is found not to be in compliance, whether in respect of the label accompanying the product or otherwise, or
- (c) is the subject of unfair trade practices, or otherwise not conforming to the provisions of this code,

the authorities of the importing country should, in accordance with *the Codex Guidelines for the Exchange of Information between Countries on Rejections of Imported Food*, inform the competent authorities in the exporting country of all the relevant facts of serious cases involving considerations of human health or fraudulent practices and, in particular, the details of the origin of the product in question, and appropriate action should be taken by the exporting country in accordance with its legal and administrative procedures, and a statement concerning the facts of the matter made to the importing country.

Food that has been exported and subsequently rejected should only be offered anew for import into another country if the precise reasons for the rejection are disclosed to the potential importer before re-export.

ARTICLE 7 - RESPONSIBILITIES FOR IMPLEMENTATION

7.1 The implementation of this code rests with:

- (a) governments of all countries, who should provide adequate food legislation and food control infrastructures, including certification and inspection systems and other legal or administrative procedures that also apply to re-exports of food as appropriate and necessary, and
- (b) more especially governments of exporting countries who should:
 - (i) employ as appropriate and practicable, legal or administrative controls aimed at preventing the exportation of shipments of food which does not comply with the provisions of Articles 6.1 or 6.2 and prevent the export of food that does not meet their national standards;
 - (ii) promptly notify the importing country of the exportation of shipments of food found not to comply with 6.1 when legal or administrative means of preventing exportation are not available or were unsuccessfully applied or where non-compliance was determined after exportation;
 - (iii) make available to the importing country upon request appropriate certification, inspection or other procedures as appropriate with the manner of compensation for these services to be agreed upon between the governments.

- (c) all food manufacturers, distributors, transporters and all others concerned with the international trade in food - particularly in respect of Article 6.1 (c) - who should take into account, as appropriate, the General Principles in Article 4,

and further, will depend on

- such cooperation and consultative procedures as may be established between governments of importing and exporting countries, and, generally, between all those concerned with international trade, and
- the extent to which international food standards and related texts, elaborated by the Codex Alimentarius Commission are considered and applied where relevant and appropriate.

7.2 In order to facilitate the implementation of the Code, countries should apply the *Codex Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems* to the fullest extent possible.

7.2 The code should be promoted by governments in their respective territorial jurisdictions in accordance with their legal and administrative procedures regulating the conduct of exporters and importers.

ARTICLE 8 - EXCEPTIONAL CIRCUMSTANCES

8. Where special circumstances exist under which it is neither possible nor desirable to apply certain provisions of this code, as in the case of famines and other emergency situations (where the appropriate competent authorities in recipient and donor countries responsible for food control may decide to establish mutually agreed criteria), due regard should always be given to the basic principles of the safety of the food and other provisions of this code as may be applicable under those circumstances.

ARTICLE 9 - EXCHANGE OF INFORMATION

9. Countries denying entry to food for reasons involving serious considerations of human health or fraud and having reason to believe the food may be offered for sale in other countries should inform the competent authorities in the other countries in accordance with *the Codex Guidelines for the Exchange of Information between Countries on Rejections of Imported Food* . For emergency situations countries should follow the current version of the *Codex Guidelines for the Exchange of Information between Countries on Rejections in Food Control Emergency Situations*. In addition, should an exporting country become aware of a problem related to an exported food product, the exporting country should immediately inform the competent authority in the importing country about the problem.

ARTICLE 11 DEVELOPING COUNTRIES

In the preparation and application of food regulations, countries should take into account the special needs and situation of developing countries, in conformity with the provisions of the SPS and TBT Agreements. Importing countries should ensure that their national regulations do not create unnecessary obstacles to exports from developing countries. While not lowering the level of consumer health protection, developed countries should recognize the limitations of developing countries to ensure that the food they produce, import and export meets international standards. Developing countries should be encouraged to ensure the safety and quality of the food they produce on the basis of international standards. Developed countries should facilitate programmes, including those of FAO and WHO, to enhance the capability of developing countries to produce, import and export safe and wholesome food.