

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



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Agenda Item 7

CX/GP 09/25/7

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

Twenty-fifth Session

Paris, France, 30 March - 3 April 2009

REFERENCES TO APPLICATION IN CODEX STANDARDS

Background

The 32nd Session of the Commission considered the changes proposed by the Secretariat as consequential amendments to various standards, as a result of earlier decisions of the Commission or in order to ensure consistency throughout Codex standards. Among these amendments, it was proposed to review the statement appearing in several standards and referring to the acceptance procedure, as follows.

“The Annex to this standard contains provisions which are not intended to be applied within the meaning of the acceptance provisions of Section 4.A (I) (b) of the General Principles of the Codex Alimentarius”.

The Commission noted the discussion in the Executive Committee on potential problems associated with defining different applicability for different parts of Codex standards, as the World Trade Organization was unlikely to make a distinction between these different parts of Codex standards.

The Commission agreed to the recommendation of the Executive Committee to invite the Codex Secretariat to draw up a list of all standards containing the text mentioned above or a similar text for submission to the 25th Session of the Committee on General Principles for advice on how to deal with this issue in a consistent and horizontal way. The Commission noted the request of some delegations to make this list available at the earliest possible time to allow delegations to study the issue in advance (ALINORM 08/31/REP, paras 79-81).

The present document recalls earlier discussions concerning the inclusion of an annex with a different status in some Codex standards and related matters, the current status of such annexes, and presents some possible recommendations to ensure a consistent approach throughout Codex.

Status of the Annex in Codex Standards – General Aspects

The need for an annex and the use of a statement reflecting a separate status for that annex were discussed in the context of specific standards in some commodity committees and from a general point of view in the Committee on General Principles, the Executive Committee and the Commission between 1994 and 1999. This discussion was held in relation to the consideration of the acceptance procedure and the status of Codex texts under the WTO Agreements. The acceptance procedure was discussed from the point of view of both the SPS and TBT Agreements, while the status of the annex was discussed in relation to the TBT Agreement only, as it concerned quality provisions.

The review of the acceptance procedure was initiated by the 21st Session of the Commission (1995) and was concluded when the 14th Session of the Committee on General Principles (1999) recognised that it was not possible to revise that procedure in view of the different views expressed on this question (ALINORM 99/33A, para. 59).

Subsequently the Commission abolished the acceptance procedure at its 28th Session (2005), as proposed by the 22nd Session of the Committee on General Principles, and consequential amendments were made immediately to some standards and related texts, but the reference to acceptance in the annexes was not considered at that time.

Under the item on “Review of the Status of Codex Texts under the WTO Agreement”, the 22nd Session of the Commission (1997) agreed on several recommendations concerning the elaboration of Codex texts and their relevance under the WTO Agreements, and in particular the following:

- In view of the confusion created by the use of the term “advisory” and as the term cannot be defined satisfactorily and the SPS and TBT Agreements do not appear to distinguish between mandatory and advisory texts, its use within the Codex framework should be discouraged, as well as the use of the term “mandatory”;
- All Codex texts specific to the control of food moving in international trade should be elaborated with the same degree of rigour and scientific justification where appropriate as Codex standards;
- Codex standards or any other texts which establish quality criteria for products additional to essential quality factors should clearly indicate that such criteria are intended for voluntary application by commercial partners, as follows: “This text is intended for voluntary application by commercial partners and not for application by governments”;
- The degree of explanatory material contained in Codex texts should be adequate for the interpretation of the text; and
- That Codex Committees review the codes, guidelines and related texts under their responsibility in order to determine to what extent they should be redrafted as standards.

The Commission also decided to request the SPS Committee to clarify how the SPS Committee would differentiate “standards, guidelines and other recommendations” in relation to the implementation of the SPS Agreement by WTO Members (ALINORM 97/37, paras 171-172)

The reply from the SPS Committee was considered by the Executive Committee at its 45th Session and by the Committee on General Principles at its 13th Session (1998). The Committee concluded its discussions on SPS related provisions and decided to consider further TBT related issues (ALINORM 99/33, paras 50-57). The 14th Session of the Committee therefore considered an analysis of the status of Codex standards with respect to the TBT Agreement, and in particular the relevance of the statement recommended by the Commission, as mentioned above: “*This text is intended for voluntary application by commercial partners and not for application by governments*”

The Committee considered various proposals, including the deletion of the statement, but did not come to a conclusion and did not propose any change to the statement itself or the use of annexes. The Committee however agreed that all Codex texts, including standards and their annexes, were covered by the TBT definition of “standard”, and that distinctions based on Acceptance (under the Codex Procedures) were not relevant in the framework of WTO (ALINORM 99/33A, paras 58-61). This question was not further discussed in the following sessions.

The 23rd Session of the Commission (1999) did not return either to the issue of acceptance or to the status of Codex texts under the WTO Agreements. However it was mentioned in the Medium-Term Plan 1998-2002 that clarification of the relationship between the Commission and the WTO SPS and TBT Committees was expected during that period, especially insofar as notification of the use of standards or acceptance of standards was concerned, and it was also foreseen that modernisation of existing commodity standards, and the transfer of material from commodity standards to applicable general standards should be completed (ALINORM 99/37, Appendix II).

Status of the Annex in Commodity Committees

The list of standards including a statement concerning the annex is presented in the Appendix and the background to each specific case is presented below.

Committee on Cereals, Pulses and Legumes

Prior to the general discussion in the Commission and the Committee on General Principles, the issue of an annex with a different status was raised in the Committee on Cereals, Pulses and Legumes (CCCPL). When it revised the standards covered by its terms of reference, the Committee was following the general recommendation made by the Commission in 1991 to revise and simplify standards, in particular transferring non essential provisions to an annex or to codes of practice.

The standards concerned were finalised by the last session of the Committee on Cereals Pulses and Legumes (as an active committee) in 1994, prior to the general discussion on acceptance. At the time general concerns were expressed as to the future status of Codex texts in the framework of the WTO in various committees. It also appears from the discussion in the CCCPL on the content of the annexes that there would have been no agreement to finalise the standards if the statement on acceptance had not been included. The revised standards for cereals, pulses and legumes were adopted by the Commission in 1995. As no change was made to the acceptance procedure in the following years and as the standards were not revised further, the statement was not reconsidered and remained unchanged.

Committee on Fats and Oils

When the general discussion on the status and annex referring to voluntary use by commercial partners took place, that statement was actually included only in the draft standards for fats and oils, under revision at that time. The question of a statement on the nature of the annex was raised and discussed extensively in the Committee on Fats and Oils before it was discussed in the Committee on General Principles.

The situation was somewhat similar to the CCCPL insofar as there would have been no agreement to finalise the standards if the provisions had not been included in an annex, due to the general concern about the status of Codex texts and to the views of certain delegations on potential trade problems with the provisions in the annexes.

Committee on Sugars

The statement on acceptance appears only in another standard: the revised Standard for Sugars, adopted in 1999, and in addition the statement on voluntary application appears in the annex itself. The standard was revised by correspondence and these statements were not specifically discussed. The Committee on Sugars reconvened for a single session in 2000 with the main task of revising the standard for honey and some provisions in the Standard for Sugars. It did not re-discuss the statement relating to the Annex for sugars and when it discussed it for honey, it agreed to include the same statement on voluntary application as in the standards for fats and oils, referring to commercial partners, noting that this was the usual approach in Codex. The difference in the processes of standard development for these two standards would explain the lack of consistency between the statements appearing in two standards developed by the same committee.

Other Standards

A large number of standards were reviewed according to the earlier recommendations by the Commission and as a result, provisions were combined or made more general with different practical approaches according to the nature of the products concerned, but there are no other cases of committees including an annex with a statement on its status. This is the case in particular of milk and milk products (the statements remain in only one milk products standard at the moment – CODEX STAN 290-1995, formerly A-18), fresh fruit and vegetables, processed fruit and vegetables, vegetable protein products, foods for special dietary uses, and several “miscellaneous” products.

In the case of fish and fishery products, non essential provisions were transferred to the relevant sections of the Code of Practice for Fish and Fishery Products under the title Optional Provisions as they were considered to provide useful references on the quality of the products, and several of these sections are still in the parts of the Code under development.

In the standards developed prior to the cereals standards and which were not revised later, there are no annexes and all provisions are included in the standard, including provisions such as percentages of defects (for example the Standard for Dates (CODEX STAN 143-1985)). Another approach to non essential

characteristics is the inclusion of a section on “Optional Provisions” in the main standard, for example in the Standard for Bouillons and Consommés (revised by correspondence).

Conclusions

Earlier sessions of the Committee focused much of their discussion on the need for the provisions in the annex. However it is not the responsibility of the Committee on General Principles to decide on the relevance of these provisions and this should be left to the committees concerned in view of the nature of the product concerned. The Committee should focus its discussion on the status of the annex, not on its content, and on the fundamental question: whether it is appropriate for an intergovernmental organisation to specify that a part of a Codex standard should not be used by governments, whether this is of any relevance in relation to the TBT Agreement, taking into account the earlier conclusion of the Committee that all Codex standards are covered by the definition of “standard” under the TBT Agreement.

Following this approach, the Committee is invited to recognise that:

- The format used for the large majority of commodity standards does not appear to have created any particular difficulty or barrier to trade, and conversely the provisions included in the “voluntary annexes” of the standards mentioned above have not created specific problems, and neither has the statement been considered in relation to trade disputes;
- The situation has significantly evolved since the first discussions in this area were initiated in 1995, as considerable experience has been gained with the application of the WTO SPS and TBT Agreements and with the development and use of Codex standards in the context of the WTO Agreements;
- Following the clarification provided earlier by the TBT Committee, as recognised by the Committee on General Principles, that all Codex texts were covered by the definition of “standard” under the TBT Agreement, a reference to a different status of any section in the standard may not be appropriate; and
- Codex texts are intended for application by governments, they are of a voluntary nature and there are no provisions in the Procedure allowing Codex Committees or the Commission to decide by whom or how standards will be used once they are adopted. Following the discussion on acceptance and the status of Codex texts, a large number of commodity standards were revised, provisions of various individual standards were integrated into more general standards, in the large majority of cases without any annex or specific statement. The statement in the annexes represents an exception to the general approach followed for Codex standards as it currently appears only in a very limited number of standards (fats and oils, sugars and casein products),

and to reaffirm that:

- As the acceptance procedure was abolished and most references were consequentially deleted throughout Codex (as agreed by the 28th Session of the Commission), the reference to acceptance should be deleted from the statement in the relevant standards (cereals, sugars and casein products).

Recommendations

- (1) Given the conclusions above and as a matter of principle, the Committee may consider a general recommendation to eliminate all statements indicating that the Annex and the Standard have a different status.
- (2) If the Committee cannot agree on deleting all statements, it might consider recommending the deletion of the statement regarding acceptance as a first stage, since the acceptance procedure was abolished, and to discuss further how to address the statement on voluntary application
- (3) The Committee may make the following recommendations for action by the Commission in order to harmonise the approach to the presentation of Codex standards and ensure that they are adequately updated:
 - a. To retain the provisions in all annexes under a header such as “Other Provisions” or “Optional Provisions”, or as a section within the main standard under the header of “Optional Provisions”, such as appears in some standards, as mentioned above.
 - b. To recommend that the Committee on Cereals Pulses and Legumes and the Committee on Sugars review the standards covered by their terms of reference in order to determine whether the annexes are still needed, and whether the provisions currently included in the annexes might be either integrated into the standards or deleted, taking into account their relevance to the essential quality of the product. This proposal may not be feasible on a short term basis because the Committees are adjourned. A possible solution at this stage might be to retain the Annexes without the statement on acceptance/voluntary application with a simple descriptive title such as mentioned under point a. above so as to establish some measure of distinction between the “essential quality requirements” in the Standard itself and the Annex, without substantially amending the provisions of the standards.
 - c. To recommend that the Committee on Fats and Oils reconsider the Annexes. Taking into account that the annexes are regularly reviewed and updated, especially for named vegetable oils, it is clear that the provisions therein are of importance for the description of the products and would not be recommended for deletion. The Committee on Fats and Oils might therefore consider whether these provisions could be integrated into the standards.

Appendix

Standards including a statement concerning the status of the Annex

Standard	Statement on acceptance ¹	Statement on voluntary application ²
All standards for cereals, pulses and legumes adopted in 1995 ³	included in the Standard	
Standard for Named Animal Fats (CODEX STAN 211-1999)		included in the Standard
Edible Fats and Oils not Covered by Individual Standards (CODEX STAN 19-1981)		included in the Standard
Standard for Named Vegetable Oils (CODEX STAN 210-1999)		included in the Standard
Standard for Olive Oils and Olive-Pomace Oils (CODEX STAN 33-1981)		included in the Standard
Standard for Honey (CODEX STAN 12-1981)	included in the Standard and in the Annex	
Standards for Sugars (CODEX STAN 212-1999)	included in the Standard	included in the Annex
Codex Standard for Edible Casein Products (CODEX STAN 290-1995) (formerly A-18)	included in the Standard	included in the Annex

¹ “The Annex to this standard contains provisions which are not intended to be applied within the meaning of the acceptance provisions of Section 4.A (I) (b) of the General Principles of the Codex Alimentarius”

² “This text is intended for voluntary application by commercial partners and not for application by governments”

³ When preparing the recent special publication on Cereals, Pulses and Legumes the statement was inadvertently deleted together with other references to the acceptance procedure. Depending on the decisions taken on the matter this error will be corrected in future editions of the publication and on the Codex website.