

**Agenda Item 5****CX/GP 14/28/5****JOINT FAO/WHO FOOD STANDARDS PROGRAMME****CODEX COMMITTEE ON GENERAL PRINCIPLES****Twenty-eighth Session**

Paris, France, 7–11 April 2014

**Discussion Paper on Mechanisms for Examining Economic Impact Statements***Prepared by Malaysia and Australia***1. BACKGROUND**

At the 26<sup>th</sup> Session of the CCGP (April 2010), the Committee considered proposed amendments to its Terms of Reference (TOR) and had agreed on three points to be included in the TOR. However, there was no consensus on the inclusion of a paragraph on development of a mechanism for examining economic impact statements in the TOR, which was maintained in square brackets.

The Committee had agreed that independently of the decision on the inclusion of the paragraph in its TOR it would explore work in this area through an electronic working group (eWG) co-chaired by Malaysia and Brazil, with the mandate of developing a mechanism for examining any economic impact statements submitted by governments concerning possible implications for their economies of some of the individual draft standards or some of the provisions thereof, including the development of a template or harmonized format for the submission of such economic impact statements.

The 27<sup>th</sup> Session of CCGP (April 2012) considered the report of the eWG which summarized that the positions according to the replies could be classified into three groups: (1) Provisions exist in the current step procedure for addressing economic impact concerns but without clear procedure. A mechanism and template would facilitate members to submit such statements and ensure that they are submitted and can be evaluated in a uniform and transparent manner. The template will ensure core information is made available in a uniform manner while allowing flexibility to submit additional information (2) Provisions are in place in the Procedural Manual thus there is no need to create a specific new mechanism. It might be a burden to developing countries to provide the information and to those who need to review it and a template could deprive members of flexibility. The existing provisions for the Elaboration of Codex Standards and Related Texts of the Procedural Manual allow adequate opportunity for members to raise concerns with regard to the possible economic implications of a particular standard. The Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces in the Codex Procedural Manual also cite economic interests. No further guidance on this is needed. (3) CCGP could remind other Committees of the importance of considering potential economic impacts of draft standards if Codex members raise such issues. It could be useful to develop some general guidance for Codex members on issues they should consider when preparing comments on implications of draft Codex standards on their economic interests.

Based on the exchanges in the working group and acknowledging that there had been a low participation from members, the Delegation of Malaysia proposed three options to the Committee: (a) to continue working on developing a mechanism and template for examining economic impact statements; (b) not to proceed with such work; and (c) to develop additional guidance for Chairpersons concerning the importance of considering potential economic impacts of draft standards if Codex members raise such issues. The delegation proposed specific text to be included in the Guidelines to Chairpersons to ensure that questions related economic impact would be treated within the relevant committees at Steps 4 and 7 of the procedure.

After some discussion, the Committee agreed that it was premature to propose any amendments to the procedural manual at this stage or harmonized templates for the submission of economic impact statements.

The Committee agreed to the proposal from Australia to continue discussions at the next session on the basis of a discussion paper that would be developed jointly by Malaysia and Australia. The paper would be pragmatic and explain how committees can consider balancing economic impact of measures with food safety issues and other elements. The paper would consider examples from Codex Committees and show how these have been considered and identify if any further Codex provisions were needed on this issue.

## **2. CONSIDERATIONS OF ECONOMIC IMPLICATIONS IN DEVELOPMENT OF STANDARDS**

The consideration of economic impact should be seen as an important aspect of a standard development process. While protecting health of consumers is a priority for Codex, the role of Codex in assuring fair practices in food trade should also be given adequate attention. For this reason, while ensuring food safety should be of primary concern, economic considerations should also be given attention when the issue is not related to safety.

Food standards affect producers, distributors and consumers. A new measure or standard may present challenges to some countries especially developing countries in ensuring compliance. In some cases, it may also lead to major trade barriers to these countries in exporting their products internationally. The direct impact of introducing a new measure or standard to a country's international export may consequently adversely affect its economy.

Although Codex standards are voluntary, the World Trade Organization (WTO) uses Codex standards as the benchmark in the adjudication of international trade disputes involving foods. It is therefore important to ensure that new measures or standards being developed would not unnecessarily obstruct trade. Development of standards must be based on the principles such as openness for other country's comments, transparency in setting rules and regulations and inclusiveness of others comments and suggestions. By giving serious consideration to the potential economic impact of an intended measure, there could be better acceptance of the proposed standard.

## **3. EXISTING PROVISIONS IN CODEX**

There are provisions concerning the consideration of economic implications in the Codex Procedural Manual, in the following sections:

### **3.1 Section II: Elaboration of Codex Standards and Related Texts**

In the sub-section on *Procedures for the Elaboration of Codex Standards and Related Texts*, provisions have been made for Members of the Commission to comment on all aspects, including possible implications of the draft standard for their economic interests at Steps 3, 5, 6 and 8 of the standards elaboration procedure.

### **3.2 Section III: Guidelines for Subsidiary Bodies**

Subsequently, in the sub-section on *Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces*, under the subsection on *Conduct of Meetings*, it is stated in para 4 that:

*Chairpersons of Codex Committees should ensure that all questions are fully discussed, in particular statements concerning possible economic implications of standards under consideration at Steps 4 and 7.*

### **3.3 Section IV: Risk Analysis**

In the sub-section on *Working Principles for Risk Analysis for Application in the Framework of the Codex Alimentarius*, under the *Risk Management*, para 34 and 35 states that:

*34. In order to avoid unjustified trade barriers, risk management should ensure transparency and consistency in the decision-making process in all cases. Examination of the full range of risk management options should, as far as possible, take into account an assessment of their potential advantages and disadvantages. When making a choice among different risk management options, which are equally effective in protecting the health of the consumer, the Commission and its subsidiary bodies should seek and take into consideration the potential impact of such measures on trade among its Member countries and select measures that are no more trade-restrictive than necessary.*

35. Risk management should take into account the economic consequences and the feasibility of risk management options. Risk management should also recognize the need for alternative options in the establishment of standards, guidelines and other recommendations, consistent with the protection of consumers' health. In taking these elements into consideration, the Commission and its subsidiary bodies should give particular attention to the circumstances of developing countries.

### 3.4 Appendix: General Decisions of the Commission

Provisions concerning the consideration of economic implications are also provided in the *Statements of Principle Concerning the Role of Science in the Codex Decision-Making Process and the Extent to which Other Factors are Taken Into Account*.

Under the *Criteria for the Consideration of the Other Factors Referred to in the Second Statement of Principle*, the last two bullets states that:

- *the feasibility of risk management options due to the nature and particular constraints of the production or processing methods, transport and storage, especially in developing countries, may be considered; concerns related to economic interests and trade issues in general should be substantiated by quantifiable data;*
- *the integration of other legitimate factors in risk management should not create unjustified barriers to trade; particular attention should be given to the impact on developing countries of the inclusion of such other factors.*

However, there is no elaboration in the Procedural Manual or elsewhere, on the mechanism to submit such comments or statements related to economic concerns. In view of this, there could be inconsistent submission of statements such that in some cases, such statements may be presented to the relevant committee, whereas in other instances, they are not presented. Such inconsistencies could have influenced the elaboration process and the conclusions reached by Codex Committees.

The following section of this paper examines specific past standards that have been developed in which economic impact concerns had been considered, as well as some which had not been considered by the relevant Committees. The role that economic impact considerations were given in each of these case studies will be discussed.

## 4. BALANCING ECONOMIC IMPACT OF MEASURES WITH FOOD SAFETY ISSUES AND OTHER ELEMENTS

Below are examples from Codex Committees in which concerns related to economic impacts had been part of the discussion during the standard elaboration process. These examples are cited in this document merely for discussion on the hypothetical outcome that consideration of economic impact analysis might have on the deliberations at the committees. The cases cited are not intended to slight any party. The comments and remarks contained below are not intended to be judgemental on the decisions made, or to re-open up the debate on the matter.

### Case 1: Codex Standard for Bitter Cassava (CCFFV)

The Codex Standard for Sweet Cassava was adopted in 2003 with a footnote to define "sweet" cassava varieties as those containing less than 50 mg/kg hydrogen cyanide on fresh weight basis. As a result, this standard excludes varieties of cassava with more than 50 mg/kg of hydrogen cyanide and **became a technical barrier to exports from certain countries such as Tonga and Fiji for which cassava was one of their major export commodities**. In considering that cassava was an important staple food in many other regions of the world, the 12<sup>th</sup> Session of the Codex Committee on Fresh Fruits and Vegetables (CCFFV) (May 2005) supported the proposal by Tonga and Fiji to revise the standard.

In view of safety concerns associated with the level of hydrogen cyanide in bitter varieties and that the coexistence of both produce used for different purposes in the same Standard might create confusion, the 28<sup>th</sup> Commission (July 2005) agreed to initiate new work to develop a separate standard for bitter varieties of cassava. It was felt that a separate Standard was necessary especially since the lack of an international standard for bitter cassava had led to barriers in trade. It was proposed that the maximum level for hydrogen cyanide could be revisited once a safety assessment had been carried out by JECFA. The CCCF also decided that it should address the preparation instructions on the label to ensure safe use of the produce. After much discussion, the Committee agreed to advance the proposed draft Standard for Bitter Cassava as amended by the session to the 31<sup>st</sup> session of the Commission for adoption at Step 8. However, the

Commission felt that the instructions on the label were inadequate and therefore held the draft standard at Step 8.

The Standard for Bitter Cassava was finally adopted by the 33<sup>rd</sup> Commission (July 2010), after the safety instructions on the label were revised.

### Summary and remarks on Case 1:

The CCFFV had considered the economic impact concerns raised by Tonga and Fiji based on quantified data on international trade. Data on content of hydrogen cyanide in different varieties were made available to support the proposal for amendments to the level of hydrogen cyanide in the existing standard. However, due to safety concerns, the level of hydrogen cyanide in the Standard for Sweet Cassava was not amended despite economic implications raised by Tonga and Fiji. As a way forward, a separate standard was developed to provide for the need of Tonga and Fiji with a specific labeling provision on "Preparation Instructions" to deal with health concern associated with the level of hydrogen cyanide in bitter cassava.

This is one example where economic impact concerns were raised early in the standard elaboration process and were seriously addressed by CCFFV. The efforts to find an acceptable way forward had led to the adoption of a standard which would facilitate international trade of bitter varieties of cassava without compromising on protecting the health of consumers.

### Case 2: Codex Standard for Canned Sardines and Sardine-type Products – Inclusion of *Clupea bentincki* (CCFFP)

The proposal to include *Clupea bentincki* in the standard for canned sardines and sardine-type products was put forward by Chile at the 21<sup>th</sup> Session of Codex Committee of Fish and Fish Products (CCFFP) in 1994.

The 22<sup>th</sup> CCFFP (1996), noting that the proposal did not meet all of the requirements for existing procedure for inclusion of new species, decided to request for organoleptic testing of the proposed species by 3 laboratories which would report back to the next session. The 23<sup>rd</sup> CCFFP (1998) agreed to accept the conclusion of the three participating laboratories, that *Clupea bentincki* should be included into the Codex Standard for Canned Sardines and Sardine-type products as a new sardine-type species and forwarded the Proposed Draft Amendment to Step 5 of the Accelerated Procedure, for final adoption by the 23<sup>rd</sup> CAC (1999). However, there was no consensus on the adoption of the amendment and the proposed draft was returned to Step 3 for further consideration.

At the 24<sup>th</sup> CCFFP (2000), the Delegation of Chile pointed out that Codex standards were intended for international trade and should include relevant species of commercial importance. The Delegation pointed out that all relevant taxonomical and economic information had been provided on *Clupea bentincki* and the laboratory tests conducted according to the procedure confirmed that it should be included as a sardine-type species.

The Delegation of Morocco expressed its objections to the inclusion of *Clupea bentincki* in the standard for various reasons, including the following:

- i. The addition of this species would create confusion for the consumer and in international trade.
- ii. The current standard included species which should not be considered as sardines.
- iii. The current procedure should be reviewed, since organoleptic testing did not provide an adequate scientific basis and could result in the inclusion of many species which were not related to sardine into the standard.

Within the course of the discussion, there were concerns that the current standard allowed to present as "sardine-type" some products which were known as herring or anchovies when sold as fresh fish. **The Committee recognized that there were separate issues to be discussed: 1) the inclusion of *Clupea bentincki* in the current Standard, 2) the need to consider labelling requirements in the standard, and 3) to review the current procedure, which should be considered as future work.** Hence, during the subsequent sessions of CCFFP from 2005, the committee deliberated on two additional matters, in addition to the proposal to include *C bentincki* in the current standard, **namely:** an Amendment to the Labelling Section in the Standard for Canned Sardines and Sardine-Type Products and establishing a Procedure for the Inclusion of Additional Species in Standards for Fish and Fishery products.

At the 30<sup>th</sup> CAC (2007), the **Proposed Draft Amendment to include *Clupea bentincki* and to amend the labeling provisions in the Standard for Canned Sardines and Sardine Type Products to include the**

**name of a country, a geographic area, the species or the common name of the species was adopted. The proposal for new work on the Procedure for the Inclusion of Additional Species in Standards for Fish and Fishery Products was also approved by the CAC.**

From 2008 onwards, CCFFP deliberated on establishing a procedure for the inclusion of additional species.

At the 32<sup>nd</sup> CCFFP (2013), the Committee agreed to advance the proposed draft Revision to the Commission for adoption at Step 5/8 with the recommendation to omit Steps 6 & 7, and subsequently for inclusion in the Procedural Manual. The proposed draft Revision was adopted by the 36<sup>th</sup> CAC (2013).

### **Summary and remarks on Case 2:**

The discussion involved three separate issues:

- i) The inclusion of *Clupea bentincki* in the Standard for Canned Sardines and Sardine-type products;
- ii) Labeling requirements in the Standard;
- iii) Review of the Procedure for the Inclusion of Additional Species in Standards for Fish and Fishery Products.

The issue continued to be debated because it involved economic implications to certain member countries. After 13 years of discussion, the inclusion of *Clupea bentincki* in the Standard was finally adopted with amendments to the labeling provisions in order to address concerns regarding naming of species. Additionally, so as to facilitate inclusion of new species in the future, the Committee agreed to review the Procedure for the Inclusion of Additional Species in Standards for Fish and Fishery Products.

There was clearly potential for economic impact on both parties involved, namely Chile and Morocco. This should be recognized early and both parties could have been invited to provide clear statements on potential impact. The Committee would have an opportunity to examine the economic impact data of both parties which could have helped the progress of the deliberations of the Committee.

### **Case 3: Codex General Standard for Cheese – Inclusion of standard for Parmesan Cheese (CCMMP)**

The proposal to elaborate a new standard for Parmesan cheese was initiated by Germany during the 2<sup>nd</sup> Session of the Codex Committee on Milk and Milk Products (CCMMP) in 1996. The Committee agreed that Germany (in collaboration with France and IDF) prepares a paper on trade statistics and justification for the elaboration of the standard for consideration by the Committee at its next Session.

The proposal was discussed in several sessions of CCMMP. There were two opposing views among members of CCMMP on this proposal. The predominant reasons for support of the proposal were claimed to be issues of fair trade practice and consumer protection as follows:

- “Parmesan” is a generic name;
- Extensive production and trade on a world-wide basis;
- Potential for misleading consumers on a world-wide basis because of inadequate standardization of cheeses currently named parmesan;
- Lack of a standard is an impediment to development of industry and meeting consumer needs, especially in developing countries;
- Information submitted to support the proposal for new work was more than adequate to address the Codex Criteria for the Establishment of Work Priorities applicable to commodities, including a large volume of production and trade between countries, diverse national legislation with potential impediments to international trade and substantial market potential, and complied with the CCMMP criteria for revision of standards;
- Labelling the products adequately allowed the consumers to make informed choices.

The predominant reasons for opposition to the proposal were also claimed to be issues of fair trade practice and consumer protection with the following justification:

- The draft proposed Standard for “parmesan” concerns products that are traded under different names and in some cases with different national or regional standards, therefore cannot be grouped

within one Standard under the name "Parmesan".

The last session this proposal was discussed was at the 28<sup>th</sup> session of CAC in 2005. There was again no consensus on the proposal. The Commission agreed to defer the decision on whether to start the elaboration of a standard on Parmesan cheese to a future (non-dated) session.

### **Summary and remarks on Case 3:**

There were no specific comments regarding economic implications raised on the proposal for Standard on Parmesan Cheese. However, concerns were with regard to intellectual property protection e.g. trademarks, certification marks, geographical indications (GI's) or Protected Designation of Origin (PDO) which were questioned as to whether these were legitimate factors for consideration by Codex.

The work on the standard did not set off. However, the discussion on whether to start the elaboration of a standard on Parmesan cheese continued from 1996 through to 2005. It was eventually deferred by the 28<sup>th</sup> CAC (2005) to a future (non-dated) session.

Had economic implications been put forth for consideration, the Committee would have been able to consider all the facts put forth and discussions could have taken on different directions. The proposal could have a different outcome.

## **5. SUMMARY**

The three case studies highlighted in this paper have demonstrated that economic impact was the main concerns in all the three standards and was the main reason for the slow progress or non-progress in the standard elaboration process. From these three examples, it may be seen that early recognition of economic impact, clearly expressed, can provide the committee with clear data to help make decisions. Such data could potentially serve to expedite efforts to find ways forward, thereby making progress. Case study 1 is one such example.

On the other hand, lack of clarity in expressing economic impact or failure to recognize such impact could result in delay in agreement amongst members. Case studies 2 and 3 are such examples.

For this reason, it is felt that guidance on how and to what extent economic impact statements are considered in the deliberation of a proposed draft standard would be beneficial to Members. Thus, a mechanism, including the development of a template or harmonized format for examining any such economic impact statements will ensure a uniform procedure to be applied across different Codex Committees in consideration of possible economic implications of a standard being elaborated.

## **6. CONCLUSION**

Codex should continue to acknowledge the differences in interests and expectations of its member countries, by giving serious consideration to countries' views and concerns. This should include considerations related to potential economic implications of a standard being elaborated. By doing so, the Committee could have a better sense of members' acceptance of the proposed standard and could prevent work from being suspended due to strong opposition for its adoption at the final stage.