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Agenda Item 4

CRD2

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEx COMMITTEE ON FOOD IMPORT AND EXPORT INSPECTION AND CERTIFICATION SYSTEMS

Twenty-seventh Session

REPORT OF PHYSICAL WORKING GROUP ON CONSOLIDATION OF CODEx GUIDANCE RELATED TO EQUIVALENCE

A physical working group meeting chaired by the New Zealand Chair was held on 15 September in Cairns, Australia. The meeting was fully hybrid with over 20 delegations present in Cairns and 18 members attending via Zoom, and was conducted in English, French, and Spanish. The PWG was held over two x two-hour sessions on Sunday morning prior to the plenary with free and open discussions based on comments received in response to the circular letter associated with CX 24/27/04 as consolidated in CX 24/27/04 Add 1 and CRD07.

The Chair also highlighted the relevance of CRD14 which summarized the previous work relating to the equivalence of technical regulation (food trade related technical measures falling under the WTO/TBT agreement definitions). The intention of the PWG was to discuss and capture key concepts, areas of consensus, and areas where some additional Plenary attention may help the progression of the draft text.

The Chair made the following introductory comments:

- This work is complex – although guidance has existed over 25 years it is only in more recent times that more than a small number of countries have more substantively engaged in equivalence.
- One of the reasons for this has been the lack of clear more practical guidance that balances the higher-level system and equivalence agreement guidance with some of the more detail and process specific guidance.
- It is the objective of the current work to consolidated, rationalize and update the existing guidance so as to provide clear, consistent and practical guidance covering the full scope of equivalence considerations.
- This continues to be a challenge – how to condense almost 20,000 words into something more manageable (the current draft is under 5,500 words) without losing clarity by over-simplifying.
- There is also the challenge of the passage of time and that delegations change – this presents the opportunity for new and fresh ideas but also means that continuity can be lost and matters previously discussed are raised again –
- Consolidate, rationalize and update 27 years of existing guidance on a core concept of both the WTO/SPS and WTO/TBT Agreements is not easy. It is not the fundamental 'concepts' that have changed over time – rather the language used to describe these and the style / format of the Codex text.
- There is a need therefore to achieve a balance between replicating existing language versus the need to find language that bridges the diversity of some of the previous language and new ways of expressing the same concepts.
- As regards food safety (sanitary) and more technical elements (broadly TBT) the key is to think in terms of how we as competent authorities all administer our NFCSs differently.
- The reality that whereas some countries may have a single competent authority others may have multiple competent authorities covering the domestic production, export or import of the same food consignment.
- The Recognition of Equivalence is a tool to facilitate trade and reduce unnecessary repetition of controls and processes that have already been applied.
- It is about whether different measures or combinations of different measures achieve the same objective – whether this is stated as an objective, and related outcomes or level of protection.

The Chair then invited general comments from the participants, which included:

- Strong support for the language in the recently concluded CXG 101-2023.
- General support for the consolidation work, with an acknowledgement of the significant progress made to date, whilst still noting that this was not an easy task,
- The desirability to maximize the consistency of terminology, where appropriate,
- Ensuring the decision criteria for sanitary and technical measures were appropriately differentiated,
- Clarity of the ultimate fate of the three guidelines dedicated to equivalence and the part of CXG 26-1997 which also provided high-level guidance,
- The need to potentially revisit the necessity for the definitions covering Requirements, Measures, Sanitary measures, and Technical measures, and the desirability to have consistency with other guidance.
- The identification of some concepts which may not have been appropriately captured or were not clear, including:
 - Reciprocity, the progression of equivalence assessment independent of any reciprocal considerations (preamble CXG 101-2023),
 - The difference in the definition of Requirements (CXG 34-1999),
 - The concept that equivalence could incorporate comparisons of different numbers or combinations of measures e.g., one-to-one, one-to-many, or many-to-one (footnote 8 CXG 53-2003),
 - The potential missing principle on assessment (CXG 101-2023),
 - How the concept of prioritization was dealt with (CXG 34-1999)
 - Who carries the cost of onsite visits and audits, where they occur (the Annex of CXG 26-1997)
 - The use and potential value of pilot studies (CXG 34-1999)
 - Whether the use of qualitative or quantitative analysis was appropriately covered (CXG 101-2023 and CXG 53-2003)
 - How equivalence recognitions could also impact certification (CXG 34-1999),
 - Whether there was a need to provide further guidance around termination of equivalence agreements (CXG 34-1999),
 - Whether the concept of different hazard profiles between countries was appropriately captured (CXG 24-1999),
 - The missing differentiation of the decision process for sanitary versus technical measure (CXG 101-2023)

Working group discussion – potentially missing concepts

1. There was general consensus from the PWG that the last paragraph of CXG 101-2023 preamble section dealing with reciprocity should be reintroduced to the preamble of the draft consolidation.

“The consideration, assessment, recognition, and maintenance of the equivalence of one country’s NFCS in whole or the relevant part is independent of any reciprocal process occurring. Reciprocal considerations, where requested, may have different scopes and durations, and may also arrive at different conclusions.”
2. It was noted the same definition for “Requirement” was contained in CXG 20-1995, CXG 26-1997, CXG 34-1999, and CXG 47-2003. Accordingly, while some of the language could be updated to reflect current Codex terminology, e.g., “food” for “food stuffs” and “protection of the health of consumers and ensuring fair practices in the food trade” for “protection of public health, the protection of consumers and conditions of fair trading”, the terms “criteria” should not be changed to “conditions”. Furthermore any consideration of a potential change from “by competent authorities” to “by the importing competent authority” should not occur without checking what impact this may have on the other guidance documents.
3. Some delegations were of the opinion that there should only be one definition, either “requirement” or “measure”. Several delegations indicated a preference to only have a definition of “measure” and not “sanitary measure” or “technical measure”. Other delegations emphasized the importance of the definition of “sanitary

measure” and a possible variation to the proposed definition of “technical measure”. There was also divided opinion on the use of the qualifiers “specified”, and/or “specific” in front of “measures” in the general text.

The Chair pointed out that “requirement” is used throughout the document in the context of what the importing competent authority required of the exporting competent authority. Similarly, the terminology “specified measure” was used consistent with how it was used in Article 4 of the WTO-SPS to indicate which measures the exporting country was requesting a consideration of equivalence for. Differentiating the definition of “sanitary measure” from “technical measure” was important when it came to applying the appropriate decision criteria. Lastly, as the scope of the consolidation needed to cover the assessment of equivalence of a single measure through to the whole NCFS or the relevant part of an NFCS, which by definition consisted of groups of measures, the term “specific” was also appropriate in certain situations.

While there was not time to reach consensus the Chair undertook to try and re-review whether the variations throughout the document were only used where specifically justified and necessary for clarity.

4. With respect to whether the concept of equivalence and potentially multiple scenarios of different measures or combinations of measures be compared (Footnote 8: CXG 53-2003), there was general consensus that the concept did not need to be in the principles, but that a further sentence somewhere further in the text could be explored.
5. There was general support that there would be value in adding the Principle 4.4 Assessment’ from CXG 101-2023 into the list of Principles before or after Principle F with some small edits to reflect the wider scope of the consolidation to include specific measures.

4.4 Assessment

The assessment process should evaluate whether the relevant objectives, and related outcomes or level of protection, of the importing country’s NFCS are achieved and the process should be documented, transparent, evidence-based, outcome-focused, efficient, and be conducted in a cooperative and timely manner.

6. The PWG noted that paragraph 19 of CX/FICS 24/27/4 encouraged countries to agree on a plan, and then subsequently went on to say that the plan may also include anticipated timeframes and if necessary priorities. There was discussion on whether this adequately captured the concept of setting priorities as described in paragraph 8 and 9 of CXG 34-1999. One possible area identified that could be added was the concept of resources.
7. The PWG noted that the Annex of CXG 26-1997 discussed which costs should be borne by which country as part of assessments. It was noted that the Annex had a wider focus beyond equivalence assessments and as such it was unlikely to be affected as part of the consolidation work. Nevertheless, several delegations were of the opinion that including some commentary regarding costs in the consolidation could be of value. This could be achieved through inclusion in the text or a footnote reference to the Annex of CXG 26-1997.
8. There was a suggestion that the consolidation should capture the core concept of pilot studies (section 8 of CXG 34-1999). It was noted that it was important that any language used did not inappropriately encourage or mandate the undertaking of pilot studies in all situations.
9. It was suggested that the potential for different hazard profiles between countries had not been fully captured. The Chair noted that the concept was potentially captured by the first and last bullet points of paragraph 22 in the consolidated text, the majority of which had come directly from CXG 53-2003. Some delegations noted that the reference to the absence of certain hazards in paragraph 16 of CXG 34-1999 was a potentially narrower concept that what was covered in paragraph 22.
10. The PWG noted that the potential differentiation of decision criteria for sanitary versus technical measures was currently only handled in a relatively generic fashion under paragraph 24 and 43 of the consolidated text. It was noted that both paragraph 17 of CXG 34-1999 and section 5.3 of CXG 101-2023 included text that more clearly differentiated the two scenarios. Some delegations noted that the inclusion of the language referred to CXG 101-2023 was pivotal to allowing the progression of this guideline. While there was positive discussion there was not sufficient time to reach consensus as to the usefulness of picking up the two paragraphs from CXG 101-2023.

11. With respect to some of the specific questions asked

- 1) There was general support for the use of the full phrase “objectives, related outcomes or level of protection” throughout the text unless there was a specific contextual reason not to. The co-chairs undertook to review the text accordingly.
- 2) Following discussions, there was reasonable comfort with the current version of Principle F.
- 3) Following discussions there were several suggested modifications made to the previously proposed addition of a new principle dealing with assessment based on the same principle from CXG 101-2023 to ensure its consistency with the wider scope of the consolidation.
- 4) No substantive conclusions reached.
- 5) No substantive conclusions reached.

Recommendation

- The plenary note this report to help guide their discussions.