

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
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Agenda Item 5

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

Twentieth Session

Paris, France, 3 - 7 May 2004

PROPOSED DRAFT REVISED CODE OF ETHICS FOR INTERNATIONAL TRADE IN FOODS

GOVERNMENT COMMENTS AT STEP 3

(Canada)

CANADA

Canada wishes to thank the Codex Secretariat for redrafting the Revised Code and is pleased to offer the following comments on the *Proposed Draft Revised Code of Ethics for International Trade in Food*:

GENERAL COMMENTS

While Canada sees merit in an “inspirational” Code, Canada’s preference is for a revised Code that would be predictable in its application, and be adopted and implemented by all Codex Member Governments. The current draft still contains many ambiguous provisions, a situation which is not helpful if the objective is to prevent the trade of unsafe or unsuitable products and address the current and future regulatory challenges faced by developing countries.

Canada believes the revised Code should continue to address the current and future regulatory challenges faced by developing countries. Canada would prefer that the Code clearly recognize, and its provisions reflect, the fact that all Member countries, including developing countries, are both importers and exporters. In this regard, the Code should not contain unrealistic provisions for Governments of exporting countries. Canada finds some part of the text problematic, particularly Article 7, as it implies that all Member Countries have appropriate legislation to establish controls and/or certification for food exports.

Given the importance of the Code, Canada would want it to precisely describe the circumstances under which Member Governments would not be expected to comply with some or all of the provisions of the Code (i.e., Exceptional Circumstances).

Given the scope and objective of the Code, it is Canada’s view that it would not fall under Paragraph 3(a) of Annex A of the WTO *SPS Agreement*. However, the revised Code will likely have status internationally under Article 2.5 of the WTO *TBT Agreement* and, therefore, Canada believes that its scope, purpose and provisions must be clear.

Canada’s preference is for a revised Code that does not duplicate the provisions of other relevant Codex documents but instead complements and builds upon these documents.

Regarding the last point, we note that a number of Codex texts relevant to this Code have been developed by the Codex Committee on Food Import and Export Inspection and Certification Systems. These texts did not exist in 1985, at the time of the last revision of the Code of Ethics. These documents are as follows:

- S *Principles for Food Import and Export Inspection and Certification* (adopted in 1995);
- S *Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems* (adopted in 1997);
- S *Guidelines for the Exchange of Information between Countries on Rejections of Imported Food* (adopted in 1997);
- S *Guidelines for the Exchange of Information in Food Control Emergency Situation* (adopted in 1995, currently under review).

Several recommendations contained in the Proposed Draft Revised Code of Ethics are already contained in the above mentioned Codex texts. As far as possible, the relevant Codex texts should be referenced and, as appropriate, should replace some paragraphs of the Code of Ethics.

In this regard, Canada recommends that the Committee examines these and other Codex documents, already adopted or under review, to determine if they already adequately address the intended objectives of the Code of Ethics and to identify where any issues of concern remain unaddressed.

SPECIFIC COMMENTS

We offer the following specific comments on the text of the document:

PREAMBLE

In Article “b” under “and Considering that”, Canada recommends adopting the wording as published in the 13th Edition of Codex Alimentarius Commission Procedural Manual so ensure consistency between Codex text.

“The publication of the Codex Alimentarius is intended to guide and promote the elaboration and establishment of definitions and requirements for foods to assist in their harmonization and in doing so to facilitate international trade.”

ARTICLE 1: OBJECTIVE

Article 1.1

Canada favours using the term “guidance” rather than “advice”. The use of “guidance” would be consistent with second paragraph (c) in the Preamble which states:

“The above stated objectives can best be achieved by each country establishing or strengthening its food legislation and food control infrastructure, **taking into account the standards and related text in the Codex Alimentarius Commission...**”

This relates more to guidance rather than simply providing information as advice.

ARTICLE 4: GENERAL PRINCIPLES

Article 4.1

Canada would like to suggest the following changes for the purpose of clarity.

International trade in food and food aid transactions should be conducted in a manner that is consistent with the objectives of the Codex Alimentarius Commission, i.e., ensuring the protection of consumers’ health and fair practices in food trade, ~~especially~~ taking into account ~~the Codex~~ CAC/GL 20-1995 *Principles for Food Import and Export Inspection and Certification*.

Article 4.2

The WTO Agreements apply to members of WTO, therefore the inclusion or deletion of an additional Article in the Code would not affect the rights and obligations of members under the Agreements. Furthermore, not all members of Codex are members of the WTO and thus this article would not apply to them. For these reasons we suggest that Article 4.2 be deleted.

Article 4.3

In addition to the point raised with respect to Article 4.2, Article 4.3 only partially covers the intent of the TBT Agreement. As it is an incomplete statement covering the relevant WTO Agreements, we suggest that 4.3 be deleted

Article 4.4

As per our general comment regarding the SPS and TBT Agreements, the Committee should decide what would be the most appropriate wording for this section in light of the existing trade agreements and the objective of the Code. Canada would favour using the term “take into account”.

Article 4.5

To be consistent with the wording used in preamble, point (f) under “Recognizing that”, we suggest this section be rephrased as follows:

“While not lowering the level of consumer health protection, importing countries should recognize the specific needs and situation of developing countries in conformity with the **relevant provisions of WTO Agreements, particularly** the SPS and TBT Agreements. While not lowering the level of consumer health protection, importing countries should recognize the difficulties of developing countries in ensuring that the food they produce, import and export meets international standards.

ARTICLE 5: REQUIREMENTS FOR FOOD IN INTERNATIONAL TRADE

Article 5.1

Paragraph 5.1 (d) is not clear when read with the opening paragraphs a, b, c, d. For clarity, we suggested the following changes.

- 5.1 Food that is exported should ~~conform~~:
- (a) **conform** to the requirements of Codex Alimentarius Commission’s standards and related texts; or
 - (b) **conform** to such food legislation as may be in force in the exporting and/or importing country; when these are more stringent than the requirements in relevant Codex standards and related texts, the importing country should inform the exporting country accordingly; or
 - (c) **conform** 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.

Article 5.2

The underlined text, “Except when the food represents a hazard to health”, may be subjective as to what represents a hazard to health. While the intent of the wording should be maintained, Canada recommends that the word “risk” replace “hazard, as “risk” is recognized and defined within the context of Codex. To establish “risk” requires the application of the risk analysis process. Therefore, we suggest modifying the first sentence read as followed:

“Except when the food represents a ~~hazard~~ **risk** to health, a ~~country may export~~ food that does not comply with its national regulations **may be exported** if that food complies with the regulations of the importing country and is exported in accordance with the requirements of the importing country.”

ARTICLE 6: IMPLEMENTATION

Article 6.1

The last part of 6.1 (b) could be deleted as it does not add clarity. The text could then read as follows:

“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~~”

The second last paragraph should be rephrased as follows to more directly refer the reader to the *Codex Guidelines for the Exchange of Information between Countries on Rejections of Imported Food*:

“The exchange of information between authorities of the importing and exporting countries regarding the rejections of imported food should be in accordance with the *Codex Guidelines for the Exchange of Information between Countries on Rejections of Imported Food*; and”

The last paragraph should include reference to the to *Codex Guidelines for the Exchange of Information between Countries on Rejections of Imported Food* and the *Codex Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems*, as the latter provides the overall context for actions to address non-compliance and criteria to ensure that actions are proportionate to the degree of public health risk, potential fraud or deception of consumers. Therefore, we suggest redrafting as follows:

“the competent authorities of the importing and exporting country should take appropriate actions in accordance with their legal and administrative procedures, taking into account the *Codex Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems*, in particular paragraphs 30 to 37, and the *Codex Guidelines for the Exchange of Information between Countries on Rejections of Imported Food*, in particular, paragraphs 4 to 10.”

Section 6.2

2nd bullet point - It should be further clarified that the “potential importer” is the responsible competent authority in the importing country. Therefore, we suggest rephrasing as follows:

“Allowed to be re-exported to another country only if the precise reasons for the rejection are disclosed to the ~~potential importer~~ **competent authority in the importing country** before re-export.”

A paragraph should be added at the end of Section 6.2 to recognize relevant CCFICS text.

“Information should be supplied regarding the action taken following the rejection or retention of a consignment of food, taking into account the *Codex Guidelines for the Exchange of Information between Countries on Rejections of Imported Food*.”

ARTICLE 7: RESPONSIBILITIES FOR IMPLEMENTATION

Section 7.1

This section implies that all Member Countries have appropriate legislation to establish controls and/or certification for food exports. Care must be taken, when addressing the challenges faced in regulating imports, to avoid placing burdensome provisions in regulating exports. A better balance may be reached in the text by also attributing some legislative and enforcement responsibilities to importing countries, recognizing the legitimacy of their actions if they follow the provisions of Articles 4 and 6. In this regard, we suggest changes to the lead statement noting the exporting and importing countries’ dual responsibility for implementation.

Also, Canada would like to note that the Codex documents: *Principles for Food Import and Export Inspection and Certification* and the *Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems* have been adopted since the last revision of the Code of ethics in 1985. These documents provide principles and guidelines to ensure that the outcome is consistent with consumer protection and facilitation of trade and the overall context under which import/export responsibilities are spelled-out. As these documents cover the intent of sub-paragraphs 7 (b) (I), (ii) and (iii), we suggest these sub-paragraphs be replaced by a reference to the relevant CCFICS documents. Hence, Canada suggests that section 7.1 (a) and (b) be re-drafted as follows:

“7.1 *The implementation of this code rests with:*

(a) ***importing and exporting countries*** who should:

(i) ***provide adequate food legislation and food control infrastructures to comply or verify compliance with Articles 4 and 6 of this Code, including certification and inspection systems and other legal or administrative procedures that also apply to re-exports of food as appropriate and necessary, and***

(ii) ***work with the regulated industry, including all food manufacturers, distributors, transporters and all others concerned with the international trade in food—particularly in***

~~respect of Article 5~~ to ensure that the General Principles in Article 4 are taken into account; and

(b) use the Codex Principles for Food Import and Export Inspection and Certification and the Codex Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems to the fullest extent possible.

The intent of the last two paragraphs of 7.1 is unclear. The opening phrase: “and further, will depend on” brings ambiguity and suggests that the implementation of the Code may be optional. As noted in the general comments, Canada’s preference is for a Code that would be predictable in its application and be adopted and implemented by all Member Countries.

Article 7.2

This section should be deleted if the Committee agree to incorporate Canada’s suggested text for 7.1 (b) as the intent of 7.2 would be fully covered.

Article 7.3

We believe this paragraph brings ambiguity and suggests that the implementation of the Code may be optional. We therefore recommend that it be deleted.

ARTICLE 8: EXCEPTIONAL CIRCUMSTANCES

Given the importance of the Code, Canada would want it to precisely describe the circumstances under which Member Governments would not be expected to comply with some or all of the provisions of the Code (i.e., Exceptional Circumstances).

Canada is questioning whether “exceptional circumstances” are circumscribed sufficiently in the text.