

CLASSIFICATION OF REFERENCES TO CODEX TEXTS

Request from the Codex Alimentarius Commission

The following letter and attachment, dated 29 September 1997, have been provided to the Chairman of the Committee by the Secretariat of the Codex Alimentarius Commission.

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The Twenty-second Session of the Codex Alimentarius Commission meeting in Geneva in June this year has requested clarification from your Committee on how it would differentiate "standards, guidelines and other recommendations" in relation to the implementation of the SPS Agreement by WTO Members. On the instructions of the Commission, I am writing to call the SPS Committee's attention to the Commission's discussion of this issue. The relevant paragraphs of the reports of both the Commission and the Executive Committee are attached to this letter (Attachment 1).

Codex texts cover a very wide range of subject matters. Codex general standards, commodity standards and codes of practice, guidelines and recommendations vary widely in content, with many provisions which could be considered SPS-related measures. Most of the other content of these Codex documents could be considered as TBT-related measures.

During the Twenty-second Session of the Codex Alimentarius Commission, questions were also raised in relation to the use which might be made of Codex regional standards and related texts under the WTO Agreements (ALINORM 97/37, paragraph 15 - Attachment 1). These standards and related texts are listed in Attachment 2.

It is our understanding that your Committee, in anticipation of this correspondence, determined at its last meeting (July 1997) that these issues would be addressed at the same time. We also understand that the WTO and the SPS Committee are currently discussing further the interpretation of various provisions of the SPS Agreement. These deliberations and discussions include WTO considerations of the SPS provisions in light of matters deemed by members to be violations of the SPS provisions, along with further discussions by your Committee. In view of this, it may be premature at this point in time for a definitive response, but in light of the request of the Codex Alimentarius Commission I would be very grateful if your Committee could provide any current clarification on how it would differentiate Codex standards, guidelines and other recommendations, and on the status which it would assign to Codex regional standards and related texts in the implementation of the SPS Agreement.

Attachment 1: Extracts from the Reports of the Codex Alimentarius Commission  
and the Executive Committee of the Codex Alimentarius Commission

A. Codex Alimentarius Commission, 22nd Session 1997, ALINORM 97/37

MATTERS RELATING TO THE IMPLEMENTATION OF THE WTO AGREEMENTS  
ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES  
AND THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE  
(Agenda Item 11)<sup>1</sup>

Review of the Status of Codex Texts under the WTO Agreements

168. The Representative of WTO reminded the Commission that the Agreement on Technical Barriers to Trade (TBT Agreement) allowed WTO Members to deviate from international standards for various reasons when Members considered that the international standards were inappropriate to their circumstances. The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), on the other hand, made specific reference to Codex texts without providing any clear distinction between standards, guidelines and recommendations. The Representative also expressed a view that those Codex texts that were meant to apply only within a geographic region would not be particularly relevant outside that region and that other Codex texts or provisions not intended for application by governments but by commercial partners would not be relevant under the SPS Agreement either. Neither would guidelines intended for the working procedures of the Codex Alimentarius Commission and its subsidiary bodies. The Representative however noted that these issues could formally be clarified through two possible ways: either in the form of decisions by WTO Panels resulting from individual dispute cases or by requesting clarification from the SPS Committee.

169. Several delegations stressed that the Commission should preserve its right and authority to pursue its work based upon its own priorities. It was also stated that the Commission should be able to differentiate between different categories of texts, such as standards, guidelines and recommendations, on the basis of the statutory objectives of Codex. The Delegation of the United States and others recommended that the Committee on General Principles initiate work on the type and nature of Codex texts in relation to their intended use by Governments.

170. In regard to the opportunity of deleting those Codex texts not intended to be applied by governments for the purpose of protecting the health of consumers or for ensuring fair practice in the food trade, one delegation noted that the elaboration of such texts should be discouraged in future.

171. The Commission recognized the views expressed in paragraph 9 of the ALINORM 97/7 and endorsed the following recommendations:

- *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";*

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<sup>1</sup>ALINORM 97/7; ALINORM 97/4, paragraphs 15-20

- *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.*

172. The Commission also concurred with the view of the Executive Committee<sup>2</sup> and decided to request the SPS Committee through the Secretariat 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.

173. The Representative of the WTO expressed concern that insufficient understanding of the WTO Agreements was apparently hampering the adoption of Codex standards and guidelines at a time when WTO Members, and especially developing countries, had an immediate need for Codex texts to assist them to fulfil their obligations under the WTO. The Representative urged increased involvement of all Commission members in the work of the WTO, in particular, through their participation in the work of the SPS Committee.

B. Executive Committee of the Codex Alimentarius Commission, 44th Session 1997, ALINORM 97/4

MATTERS RELATING TO THE IMPLEMENTATION OF THE WTO AGREEMENTS  
ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES  
AND THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE  
(Agenda Item 5)<sup>3</sup>

Review of the Status of Codex Texts under the WTO Agreements

15. The Executive Committee was of the opinion that at least as far as Codex was concerned differences were intended in the application of standards and the application of other (Codex) texts. There was some uncertainty as to how these other texts would be handled within the framework of WTO. It proposed that the Commission request the SPS Committee through the Secretariat 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.

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<sup>2</sup>ALINORM 97/4, paragraph 15

<sup>3</sup>ALINORM 97/7

16. The Executive Committee noted the five recommendations made by the Codex Committee on General Principles as contained in paragraph 8 of the working paper. It proposed that the Commission endorse these recommendations with the following amendment to be made to the third of these:

*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 mandatory application by governments."*

17. The Executive Committee also stated that in regard to the elaboration or revision of texts intended to guide internal working arrangements (paragraph 9 of the working paper) these should not be considered as standards, guidelines or recommendations for the purposes of either the SPS or the TBT Agreements.

18. The Executive Committee discussed whether or not texts not intended for application by governments should continue to be considered by Codex but came to no firm conclusion on the matter.

Attachment 2: List of Adopted Codex Regional Texts

| Title  | Reference   | Year |
|--|-------------|------|
| Codex Standard for Vinegar (European Regional)   | CX/STAN 162 | 1987 |
| Codex Standard for Mayonnaise (European Regional)  | CX/STAN 168 | 1989 |
| Guidelines for the Design of Control Measures for Street-Vended Foods in Africa (African Regional)   | CAC/GL      | 1997 |
| Recommended International Code of Hygienic Practice for Preparation and Sale of Street-Vended Foods (Latin America and Caribbean Regional) | CAC/RCP 43  | 1995 |