



**JOINT FAO/WHO FOOD STANDARDS PROGRAMME**  
**CODEX COMMITTEE ON GENERAL PRINCIPLES**  
**Thirty-second Session**  
**Bordeaux, France, 23 - 27 March 2020**

**PROCEDURAL GUIDANCE FOR COMMITTEES WORKING BY CORRESPONDENCE**

*(Prepared by the Electronic Working Group chaired by New Zealand and co-chaired by Germany, Japan and the United States of America)*

**1. INTRODUCTION**

1.1 After extensive discussions on the issue of committees working by correspondence (CWBC), the Codex Committee on General Principles (CCGP) at its 31<sup>st</sup> session (CCGP31) in 2019 agreed to set up an electronic working group (EWG), chaired by New Zealand and co-chaired by Germany, Japan and the United States of America working in English only to consider what, if any, procedural guidance might be needed to support the efficient operation of CWBC.<sup>1</sup>

1.2 Taking into account the Discussion Paper on Procedural Guidance for Committees working by Correspondence presented at CCGP31<sup>2</sup> and comments made at CCGP31, the EWG was tasked with the following terms of reference (TOR)<sup>1</sup>:

- i. Develop criteria to identify work appropriate to be undertaken by CWBC and develop procedural guidance for such committees based on and consistent with relevant guidance in the *Procedural Manual* (including decision making, and reporting) and in keeping with the values of the Commission; and
- ii. Consider, and make recommendations as appropriate, whether procedural changes related to CWBC are necessary.

1.3 An email inviting registrations was posted on the EWG Forum on 1 May 2019. Registrations included one member organization (the European Union), 21 member countries<sup>3</sup>, four observer members<sup>4</sup> and the World Health Organization, a Codex parent organization.

1.4 The EWG undertook two rounds of consultation. The first, a draft paper on criteria and procedural guidance for CWBC was prepared and posted on the Codex EWG Forum on the 6 June 2019 with comments requested by 19 July 2019.

1.5 Comments were submitted on the EWG Forum by one member organization (the European Union) and 11 member countries<sup>5</sup>.

1.6 The substantive comments were collated, analysed and outlined in a paper. This paper and the second working document on Criteria and Procedural Guidance for CWBC, with comments incorporated, were posted on the EWG Forum on 13 September 2019 with comments requested by 1 November 2019.

<sup>1</sup> REP19/GP, paragraph 26

<sup>2</sup> CX/GP 19/31/3

<sup>3</sup> Angola, Australia, Austria, Canada, Costa Rica, Egypt, France, Indonesia, Iran, Republic of Korea, Malaysia, Mexico, Netherlands, Norway, Paraguay, Senegal, Slovakia, Sweden, Switzerland, Thailand, and Uruguay

<sup>4</sup> Global Food Safety Initiative, International Council of Beverages Associations, International Dairy Federation and SSAFE-Food

<sup>5</sup> Austria, Brazil, Canada, Costa Rica, France, Iran, Malaysia, Norway, Slovakia, United States of America, and Uruguay

1.7 Comments were submitted on the EWG Forum by one member organization (the European Union) and 9 member countries<sup>6</sup> and one observer (the International Dairy Federation).

1.8 The draft was further updated based on comments submitted. There was consensus on most issues with contrasting views only expressed on two key issues: whether or not guidance should include voting; and the extent to which the host country should bear responsibility for any costs associated with translating Codex Committee documents and member/observer comments into the official languages of Codex. Some suggested changes were already provided for in the *Codex Procedural Manual (Procedural Manual)*<sup>7</sup> so were not included to avoid duplication.

## 2. BACKGROUND

2.1 In recent years, several Codex committees adjourned *sine die* were reactivated to undertake specific and discrete items of work by correspondence. Examples include the following:

- Codex Committee on Sugars (CCS) reactivated to work on developing a standard for non-centrifuged dehydrated sugar cane juice (panela);
- Codex Committee on Milk and Milk Products (CCMMP) reactivated to work by correspondence on developing a standard for processed cheese and a standard for dairy permeate powders; and
- Codex Committee on Cereals, Pulses and Legumes (CCCPL) reactivated to work by correspondence on developing a standard for quinoa.

2.2 The experience and results of these deliberations have been mixed. Discussions in CCS encountered considerable difficulties particularly with regard to the scope and definition issues necessitating several extensions of the timeframe for advancement of the draft standard. This work was discontinued at CAC42 (2019)<sup>8</sup>.

2.3 It should be noted that the experience of CCMMP was similarly mixed. While the committee was able to progress the work on the standard for dairy permeate powders successfully, the work on a standard for processed cheese had to be discontinued because of irreconcilable differences on core issues.<sup>9</sup> The intractable differences did not come as a surprise as they were highly evident at previous physical meetings of the committee, prior to its adjournment, and working by correspondence and convening physical working groups did not resolve them.

2.4 CCCPL was able to resolve the majority of the issues surrounding the standard for quinoa, except for moisture content and grain size. These two issues were raised by countries at CAC41 (2018). After further discussion, CCCPL forwarded provisions to CAC42 (2019) with a recommendation for final adoption at Step 8. CAC42 adopted the standard with moisture content provisions: only the grain size issue remains unresolved<sup>10</sup>.

2.5 In 2018, the Codex Committee on Processed Fruits and Vegetables (CCPFV) met electronically through an electronic user group called "CCPFV-online" using the Codex electronic forum in order to complete three specific tasks laid out for CCPFV by CAC40 (2017). The invitation to CCPFV29 (working by correspondence) was issued by the Director General of the Food and Agriculture Organization (FAO) and the Director General of the World Health Organization (WHO) and was circulated to Codex members and observers with the provisional agenda in accordance with the *Procedural Manual*<sup>11</sup>.

2.6 Twenty countries, one member organization, and seven observer organizations joined CCPFV-online. CCPFV-online used the results of an online survey and other inputs to develop recommendations for each of the three tasks. These recommendations were presented to CAC41 in a report. CAC41 endorsed continuing with the next steps that CCPFV-online had recommended. In short, CCPFV successfully used the electronic meeting forum to complete the specific tasks it was assigned while using resources efficiently. Participation to date in some of the CCPFV EWGs has been low; however, that may change when the full committee reviews the EWG reports and conclusions with respect to the standards under development. CAC42 approved the

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<sup>6</sup> Brazil, Canada, Costa Rica, Japan, Malaysia, Norway, Thailand, the United States of America, and Uruguay

<sup>7</sup> All references to the *Procedural Manual* refer to the Twenty-sixth edition

<sup>8</sup> REP19/CAC, paragraph 111(i)

<sup>9</sup> REP17/CAC, paragraph 129

<sup>10</sup> REP19/CAC, paragraphs 44-45

<sup>11</sup> Rule VII.4 Agenda, Rules of Procedure of the Codex Alimentarius Commission, Section 1: Basic Texts and Definitions, *Procedural Manual*

CCPFV chairperson's recommendations to continue working by correspondence, reconvene CCPFV-online, and assess whether a physical meeting in 2020 would be appropriate based on the progress of the work<sup>12</sup>.

### 3. CONSIDERATION OF THIS ISSUE BY CODEX

3.1 Concerns relating to CWBC were first raised at CCGP30 (2016) by way of a discussion paper prepared by France and Germany. CCEXEC72 (2016)<sup>13</sup> requested a subcommittee, chaired by a Vice-Chairperson, to consider options and report back to CCEXEC73 (2017). CCEXEC73 asked the Secretariat to prepare a document for CCEXEC75 (2018) which analyzed the advantages and disadvantages of the options presented, and for CAC40 (2017) to consider the possibility of a pilot Committee on Standards Advancement (CCSA) (with a view to CCSA being reviewed by CAC in 5 years' time).<sup>14</sup>

3.2 CAC40 asked the Secretariat to prepare a more detailed proposal highlighting possible terms of reference (TORs), modalities of work and cost implications of a CCSA for consideration at CCEXEC75 and at CAC41.<sup>15</sup> The document was to include a discussion of the advantages and disadvantages of the options based on the CAC40 discussion that could then be discussed at CCGP31 in 2019.

3.3 CAC41 deferred the question of implementing a CCSA pilot and instead asked CCGP31 to review the issues related to CWBC and to formulate procedural guidance, as appropriate, based on, and consistent with, relevant existing guidance in the *Procedural Manual*. CAC41 also asked the Codex Secretariat to prepare a discussion paper for CCGP on this issue.<sup>16</sup>

3.4 CCGP31 reviewed the discussion paper which, after consultation with the Codex Secretariat, had been prepared by the legal offices of FAO and WHO and established an EWG charged with developing criteria to identify work appropriate to be undertaken by CWBC and procedural guidance for CWBC. The criteria is to be consistent with relevant guidance in the *Procedural Manual* (including decision making, and reporting) and in keeping with the values of the Commission. After considering these items of work, the EWG was asked to make recommendations as appropriate on whether procedural changes related to CWBC are necessary.

### 4. CODEX VALUES

An overarching consideration in relation to CWBC is the need to respect and adhere to the Commission's core values of collaboration, inclusiveness, consensus building and transparency. The proposals set out in this document are very much guided by these values.

### 5. ISSUES FOR DISCUSSION

Discussions thus far in the Executive Committee and the Codex Alimentarius Commission (CAC) acknowledge the usefulness of CWBC as one of several mechanisms available to CAC to advance its work. However, members also recognized that CWBC posed specific challenges and procedural issues that need to be addressed if it is to be recognized and accepted as an efficient and appropriate option for advancing Codex work. Some of the specific issues that need to be addressed include:

- i. The role of Chairpersons in situations where there are no physical meetings;
- ii. Assessment and determination of consensus;
- iii. Criteria and process for advancement of standards through the step process, particularly in the case of failing to make progress on the core elements;
- iv. Verification of membership and credentials for participation;
- v. Status of conclusions and recommendations of CWBC;
- vi. Transparency and inclusiveness considerations (reporting and use of official languages); and
- vii. The role of the Codex Secretariat to enhance transparency and neutrality in CWBC.

### 6. CRITERIA FOR WORK APPROPRIATE FOR ASSIGNMENT TO CWBC

6.1 Having a clear set of criteria for the assignment of appropriate work to CWBC is an essential prerequisite and critical first step in deciding on the mechanism for advancement of an item of work. Without prejudice to the provisions of paragraph 6.2 below, a clear set of criteria should be established for the appropriate work of each CWBC.

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<sup>12</sup> CX/CAC 19/42/11 Add. 1, paragraph 5

<sup>13</sup> REP17/EXEC1, paragraphs 32-33

<sup>14</sup> REP17/EXEC2, paragraphs 126-127

<sup>15</sup> REP17/CAC, paragraphs 150-152

<sup>16</sup> REP18/CAC, paragraph 101

6.2 Any criteria would be used by the Commission in making a decision on whether a CWBC will proceed (alongside the Commission's decision on a proposal for new work or revision). As with any new work proposal, all Member countries (and observers) are provided with the opportunity to comment.

6.3 To date, CWBC has only been implemented for commodity standards (and therefore there was an inherent focus on commodity committees in considering the correspondence setting). It is, however, important to recognise that while commodity committees may dominate the requests to work in this setting to date, it is reasonable that the criteria developed should apply broadly to all Codex committees to ensure they are relevant and durable. On a related note, while the criterion listed below on 'amenability of the work to standardisation' strongly relates to commodity committees, there is no reason to exclude non-commodity committees as the criterion is also applicable to horizontal work.

6.4 It is worth noting at the outset that CWBC will generally be the exception rather than the rule and should only be considered in specific circumstances or situations. These could include such factors as the status of the committee and its work programme. When the Commission is faced with a request to commence work in an area that falls within the terms of reference of a committee adjourned *sine die* (or which has completed all work in the step process and has not set a date for a future meeting), it has the option of either reconvening the committee or assigning that work to another committee that is actively meeting<sup>17</sup>. The latter approach was adopted in the case of histamine work which was assigned to the Codex Committee on Food Hygiene (CCFH) when the Codex Committee on Fish and Fishery Products (CCFFP) adjourned. If the Commission decides to assign the work to the committee that has the mandate for that area of work, the next issue for determination is the mode of operation: whether to reactivate the committee and request that the previous host provide for physical meetings, or whether to reactivate it to conduct work by correspondence.

6.5 The determination of the mode of operation has, for the few times that it was made, generally been made taking into account the workload of the committee, sometimes without sufficient regard to the complexity of the work and prospects for advancement by electronic means. This was indeed the situation that was faced by the Commission when presented with renewed calls for restarting work on processed cheese. The issue of developing a revised standard for processed cheese had been discussed in CCMMP without success over a period of 18 years. During that time, numerous physical meetings of the committee failed to make progress on core elements of the standard. When CCMMP was adjourned *sine die* in 2010 having completed its work programme, the Commission also revoked the existing standards for processed cheese products, as recommended by CCMMP.

6.6 The Commission later decided to restart work on a revised standard for processed cheese and agreed to reactivate CCMMP to work by correspondence on this issue, given continuing interest in this work and recognising opportunities for possible physical meetings at the working group level. Some members expressed the view that this was unlikely to be successful, but the Commission nevertheless agreed to make a further attempt given the continuing interest from a number of members.

6.7 Interestingly, while CCMMP failed to make progress on processed cheese despite these renewed efforts, it was successful in developing the *Standard for Dairy Permeate Powders* entirely through working by correspondence and within the prescribed timeframe.

6.8 The experience of CCMMP clearly demonstrates the need for clearer criteria for selection and assignment of work to reactivated committees. The experience of CCMMP may also illustrate that amenability to standardization, and the likelihood of reaching consensus in light of past experience, should be considered.

#### 6.9 **Proposal for criteria when deciding on work to be assigned to CWBC**

6.9.1 It is proposed that the Commission consider the following criteria as a whole (and not in isolation) when deciding on work to be assigned to CWBC versus meeting physically:

- i. Nature and complexity of the proposed work, its previous and recent history in Codex (for example, this may include, amongst others, time-frame to develop the proposed work, diversity of stakeholders involved, characteristics of the proposed work and/or related factors);
- ii. Potential for assigning the proposed work to a relevant existing committee given CWBC should only be considered in specific circumstances or situations (consider whether the work could be progressed within a set timeframe such as 1-3 sessions);
- iii. Resource implications for Codex members, the Secretariat and the host, (whether the amount of work merits a lesser investment required for a meeting by correspondence, rather than expending the resources needed for a physical meeting);

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<sup>17</sup> Procedures for the Elaboration of Codex Standards and related texts, Section II: Elaboration of Codex texts, *Procedural Manual*

- iv. Potential for the use of real-time technology (such as Webinar) where there is potential for a limited number of highly technical and challenging issues that may arise in the correspondence setting;
- v. Scope, objective and content of the proposed work assigned to the CWBC;
- vi. Amenability of the work to standardisation;
- vii. Participation/attendance history in past plenary sessions of the relevant committee; and
- viii. Prospects for achieving consensus within the prescribed time-frame.

6.9.2 The above criteria should be read in conjunction with the Commission's *Procedures for Elaboration of Codex Standards and Related Texts*<sup>18</sup> and the *Criteria for the Establishment of Work Priorities*<sup>19</sup> as set out in the *Procedural Manual*.

6.9.3 If there are proposals for new work that have not been reviewed by the relevant committee, CCEXEC (in the critical review process) and the Commission should carefully consider whether the project document meets the criteria in the *Procedural Manual*.

6.9.4 Other possible ways to consult with committees should be considered, e.g. circulation for comments prior to submission to CCEXEC, to increase inclusiveness and participation.

6.9.5 Resource implications for Codex members, the Secretariat and the host countries should also be considered.

## **7. ROLE OF CHAIRPERSON (AND POSSIBLE CO-CHAIRPERSON, RAPPORTEUR) OF CWBC; THE ROLE OF THE CODEX SECRETARIAT, AND THE ROLE OF THE CODEX COMMITTEE (ACTIVE OR ADJOURNED SINE DIE)**

7.1 One of the major issues raised in the Secretariat paper to CCGP31 was the role of Chairpersons of CWBC. It has been suggested that in CWBC there is potential for Chairpersons to assume a greater degree of influence over proceedings and determination of conclusions. In the absence of dynamic and real-time interaction such as those in physical meetings, the conclusions and recommendations of Chairpersons are entirely based on written comments. A challenge for CWBC is that the participants do not have an opportunity to communicate and interact directly and immediately with other participants. In face-to-face meetings, participants' interventions are dynamic and take account of comments from other delegations. In-person dialogue can be helpful to chairpersons in assessing national positions and identifying opportunities for consensus building.

7.2 These are legitimate concerns that need to be addressed if the Commission is to have confidence in CWBC. It is important that chairpersons of CWBC take all practical steps to ensure that the views of all members who participate in the work are considered and that conclusions and recommendations are clearly documented.

7.3 The *Procedural Manual* provides for co-chairpersons, rapporteurs along with the Codex Secretariat and the Committee itself. How these roles operate in the correspondence setting needs to be clarified. Where the roles vary from that in the physical setting justification needs to be provided.

7.4 The Chairperson should clearly document where there are significant points of difference either in relation to the content of the work or with respect to the advancement of the standard. In particular, conclusions and recommendations on advancement of work through the step process should be clearly documented and based on the views of the members participating in the work.

7.5 When, in the judgement of the Chairperson it becomes clear that no progress is possible by a CWBC, the committee Chairperson may propose one of the following alternative options to the CWBC (in the first instance) before referring to CCEXEC/CAC to:

- i. Switch from working by correspondence to a physical way of working for example by asking the Secretariat to convene a meeting of a Rule XI 1. (a) subsidiary body;
- ii. Reconvene the original committee in a physical meeting; or
- iii. Propose the discontinuation of the work.

7.6 Specific procedural guidance covering the above mentioned options may be useful.

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<sup>18</sup> Procedures for the Elaboration of Codex Standards and Related Texts, Section II: Elaboration of Codex Texts, *Procedural Manual*

<sup>19</sup> Criteria for the Establishment of Work Priorities, Section II: Elaboration of Codex Texts, *Procedural Manual*

## 7.7 Proposal on guidance for chairpersons of CWBC

7.7.1 Based on the above, it is proposed that the Commission consider the development of specific procedural guidance for chairpersons of CWBC similar to what is already contained in the *Procedural Manual*<sup>20</sup>.

7.7.2 Such guidance to chairpersons of CWBC could include, *inter alia*, the following specific considerations:

- i. The role of the Codex Committee (active or adjourned *sine die*);
- ii. The role of the Codex Secretariat;
- iii. The importance of inclusiveness and recognition of all participants;
- iv. The role of silence, and the importance of clarifying that silence will be taken as support;
- v. The potential role of a co-chairperson;
- vi. The role and place of voting in the correspondence setting as a measure of support or otherwise;
- vii. The potential role of a rapporteur generally but also specifically in relation to consensus-building; and
- viii. The importance of transparency, including suggestions on how this could be achieved such as:
  - Outlining the steps taken to determine whether consensus has been reached
  - Clear documentation of all comments received, who they are from, and how they are considered and/or addressed in the text or standard under consideration and rationale. This documentation should be available to other members.

7.7.3 Chairpersons having circulated their proposal to the CWBC may refer, for consideration of the Commission, alternative mechanisms for advancement of work (e.g., convening a physical meeting) as provided for under Rule XI.6. (b)<sup>21</sup> in the event that a CWBC has failed to make progress.

## 8. COMMUNICATION AND INCLUSIVENESS - LANGUAGE AND TRANSLATIONS

8.1 The *Procedural Manual*<sup>22</sup> provides that the host country has the responsibility for operating costs such as processing of all working documents in the working languages of Codex committees. This includes providing interpretation services in those languages at physical meetings of the committee<sup>23</sup>. CWBC should continue to have responsibility for such costs unless there is a rationale for why they should be different.

8.2 CWBC have typically tended to work in only one of the Commission's languages. While this is an eminently pragmatic approach, it does have the potential to limit inclusiveness, which is one of the core values of the Commission. In light of this and continuing advances in technology, CWBC should work in multiple official languages.

8.3 It may be that, as in the case of physical committees, at times the financial and technical constraints may limit the extent to which the provision of translations are practical. Such cases call for a flexible approach (as occurs in the physical setting) with options available such as the CWBC translating working documents and reports only, and not all comments. This is to ensure such costs do not provide a barrier to the hosting of CWBC.

### 8.4 Proposal regarding languages

8.4.1 For the sake of inclusiveness and maximum participation CWBC, should operate, in the official working languages of the Commission or relevant Committee (with the costs met by the host). All comments should be submitted within the specified time to allow time for them to be translated.

8.4.2 There may at times be justification for flexibility where financial and technical constraints may limit the extent to which translating of all documentation could realistically be achieved. For example the host country may choose to provide translations of working documents and reports only and not all comments, where

<sup>20</sup> Guidelines to Chairpersons of Codex Committees and *Ad Hoc* Intergovernmental Task Forces, Section III: Guidelines for subsidiary bodies, *Procedural Manual*

<sup>21</sup> Rule XI.6.(b) - Subsidiary Bodies, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual*

<sup>22</sup> Rule XIII.4 - Budget and Expenses, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual*

<sup>23</sup> Secretariat, Guidelines to Host Governments of Codex Committees and *Ad Hoc* Intergovernmental Task Forces, Section III: Guidelines for subsidiary bodies, *Procedural Manual*

financial or technical constraints could otherwise provide a barrier to the hosting of CWBC (just as physical meetings may not always operate in all the official languages). Commenters themselves may also choose to provide translations of their comments.

## **9. MEMBERSHIP AND CREDENTIALS OF DELEGATIONS (IDENTITY AND AUTHORITY)**

9.1 Some concern has been raised about how membership and representation is determined when committees are working by correspondence.

9.2 Membership<sup>24</sup> and representation<sup>25</sup> at meetings are covered in the *Procedural Manual* provisions that apply to physical meetings of committees and working groups. Under the current rules of procedure, meetings of Codex committees and working groups are open to all members of the Commission and observer organizations. Codex procedural rules require all official communications to Codex, including those relating to membership and participation in meetings of committees and working groups, be notified through the designated Codex Contact Point (CCP). The status and credentials of participants in Codex committees are also subject to scrutiny and verification by the Codex Secretariat.

9.3 Consistent with the charge given to the EWG, the same procedures should apply to CWBC. Further, all comments submitted to the committee should be submitted either through the head delegate to the committee or through the CCP of the member country or observer organization. There should be consistency with the rules and procedures that currently apply to establishing and accrediting official representatives of Members and observer organizations to physical meetings of Codex committees and working groups.

### **9.4 Proposal regarding membership and representation**

It is proposed that the Commission clarify that the rules and procedures for accreditation and official recognition of the credentials of representatives of Member countries and observer organizations to Codex CWBC are the same as those already in place for physical meetings of committees and require designation of a single representative/head of delegation for participating members and observer organizations to be designated by the relevant CCP or observer organization. For clarity, and for consistency with physical Committees, the Codex Secretariat should provide written procedures for confirming the credentials of those who wish to participate in CWBC.

## **10. DETERMINING A QUORUM (BEFORE A COMMITTEE CAN MAKE A DECISION)**

10.1 Determination of a quorum is as much an issue for CWBC as it is for committees working through physical sessions. It is important that deliberations and recommendations of CWBC are in accordance with the Commission's values and procedural requirements. In general, a quorum is required to ensure that there is sufficient interest and attention by a significant percentage of an organization's membership, to ensure that an action or standard will be broadly representative of the members' priorities and interests and/or warrant investment of organizational resources.

10.2 The *Procedural Manual*<sup>26</sup> stipulates that in cases where there are recommendations to amend the Commission's Statutes and when adopting amendments or additions to the present rules, a quorum is determined only when there are a majority of Commission members.

10.3 For all other cases, a quorum is determined when there is a majority of Commission members attending the session, provided that such a majority is not less than 20 percent of the total Commission membership, nor less than 25 members (or for a regional meeting one third of the members belonging to the region).

10.4 In the case of CWBC determination of a quorum should include 'registration'. In the interests of clarity and transparency, the period to which registration applies should be stipulated.

### **10.5 Proposal regarding quorum**

10.5.1 For a CWBC, a majority of Commission Members registering for the committee shall constitute a quorum, provided that such a majority is not less than 20 percent of the total Commission membership, nor less than 25 members (or for a regional meeting, one third of the Members belonging to the region or group of countries concerned).

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<sup>24</sup> Rule I – Membership, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual*

<sup>25</sup> Rule VIII – Voting and Procedures, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual*

<sup>26</sup> Rule VI.7 Sessions, Rules of Procedure of the Codex Alimentarius Commission, Section I, Basic texts and definitions, *Procedural Manual*

10.5.2 The period in which registration applies should be stipulated.

## **11. ADVANCEMENT OF STANDARDS AND RELATED TEXTS INCLUDING DETERMINING AND FACILITATING CONSENSUS, REPORTING CONCERNS (OR RESERVATIONS) AND VOTING**

11.1 The *Procedural Manual*<sup>27</sup> directs Chairpersons to consider a number of measures to facilitate consensus building in the elaboration of standards, including ensuring that matters are not progressed through the step process until all relevant concerns are taken into account and adequate compromises worked out.

11.2 While the question of determining whether consensus has been reached is not unique to CWBC, it may be that when working by correspondence, consensus is harder to gauge.

11.3 Recommendations relating to advancement of standards through the step process represent one of the major points of debate and concern about CWBC. This is often linked to the complexity of the item of work under consideration and divergence of thinking among members. This was clearly illustrated by the comparison of the experience of CCMMP with dairy permeate powders and processed cheese. Whereas there was strong consensus for the recommendation to advance the standard for dairy permeate powders through the step process, there were significant objections to the recommendations to advance the draft standard for processed cheese.

11.4 There are a number of responses that delegations could provide to help clarify their positions and the overall “sense of the virtual room” on a particular point. For example, in response to a question, such as “Do you support advancing the draft standard to Step X,” replies could include “Yes”, “No” or “Do not oppose advancement.” It may be beneficial to establish a set of possible responses to help standardize how delegations respond (however, they could always add more detail to explain their positions more completely).

11.5 To reduce uncertainty caused by silence in the correspondence setting, it is proposed that when Members are asked to express their position on the progression of a specific proposal, they need to be made aware that silence (i.e. lack of an affirmative or negative response to the question) is considered as agreement (in line with what occurs in physical meetings and would not block proceeding through the step procedure).

11.6 In determining whether consensus has been reached, it may be useful to ask a specific question of the committee such as: ‘Do you support advancing the draft standard to Step X?’ or ‘Do you oppose advancing the draft standard to Step X?’ as deemed appropriate by the chairperson. This would enable the positions of members to be accurately recorded. Where there is broad support for advancing the draft standard it should be clearly reflected in the report.

11.7 When the committee Members express divergent views (or reservations) the Chairperson of the committee should ensure that this is clearly reflected in the committee report. Recommendations relating to advancement of a draft standard through the step process are of course subject to further review and comment at the level of the Commission, whether a committee is working by correspondence or meeting physically.

11.8 While the *Procedural Manual* makes it clear that every effort should be made for Committees to reach agreement by consensus<sup>28</sup>, it also provides for voting<sup>29</sup>.

11.9 When the Chairperson of the CWBC decides to call a vote, determination of majority of votes needs more transparency in the correspondence setting. In contrast to the physical committee where the total number and majority of votes cast can be determined by simply counting, for CWBC the number of total votes, majority of vote cast, how to deal with silence, and a timeframe of voting should be elaborated on in the criteria.

### **11.10 Proposal regarding advancement of standards**

11.10.1 In determining whether consensus has been reached when progressing through the step process, committee members working by correspondence should be asked specifically ‘Do you support advancing the draft standard to Step X?’ or ‘Do you oppose advancing the draft standard to Step X?’ as deemed appropriate by the chairperson.

11.10.2 CWBCs may use a similar approach (or suitable variation) when determining consensus on more detailed points of discussion, such as text changes. It should also be clarified that silence (e.g., lack of an affirmative or negative response to this question) will be interpreted as not opposing advancement in the same way that silence is accounted for in physical meetings.

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<sup>27</sup> Subsection - Guidelines to Chairpersons of Codex Committees and *Ad Hoc* Intergovernmental Task Forces, Section III: Guidelines for Subsidiary Bodies, *Procedural Manual*

<sup>28</sup> *Consensus*, Guidelines to Chairpersons of Codex Committees and *Ad Hoc* Intergovernmental Task Forces, Section III: Guidelines for Subsidiary Bodies, *Procedural Manual*

<sup>29</sup> Rule VIII Voting and Procedures, Rules of Procedure of the Codex Alimentarius Commission, Section I, Basic texts and definitions, *Procedural Manual*

11.10.3 Recommendations relating to advancement of a draft standard through the step process by a CWBC are subject to further review and comment by the Commission. Reports of CWBC shall record any reservations to advancement of standards as is done in reports of physical meetings of committees.

11.10.4 Finally, any guidance should clarify the difference between the following terms: Not oppose; Making a reservation; Opposition to a decision; and Voting in the correspondence setting.

## 12. REPORTING TO THE COMMISSION

12.1 Reporting of the outcome of discussions and recommendations is just as important for CWBC as it is for physical sessions. The *Procedural Manual* states that the duties of a Codex committee include reporting to the Commission<sup>30</sup>. Whereas committees holding physical sessions are able to finalize reports of meetings before formal conclusion of the session, finalizing reports of CWBC is more challenging and calls for active engagement by electronic means.

12.2 Chairpersons of CWBC should make every effort to ensure that the report accurately reflects the views of the members participating in the work. The conventions that apply to preparation of meeting reports by committees holding physical sessions should also apply, as far as possible, to CWBC. These include objectivity, clarity of conclusions and recommendations and recording of reservations or concerns when these are specifically requested by members.

12.3 Reports of committees should clearly identify significant matters on which there is no consensus. It is worth noting that the *Procedural Manual*<sup>31</sup> provides that any country may ask to have its opposition to a decision recorded (whether a vote is taken or not).

12.4 Members could consider the extent to which divergent views should be included where countries do not specifically ask to have their opposition recorded, for example, should divergent views always be recorded when a vote is taken. A rationale would be needed to justify the need for a change in the correspondence setting.

12.5 The provision of a report template could be warranted (possibly optional). The report could include a format providing members comments and responses (possibly included as an Annex).

12.6 The role of the Codex Secretariat in the preparation of reports of CWBC needs to be addressed to ensure objectivity and comparability of reporting processes as between physical meetings and CWBC. The coordination and collaboration between Codex Secretariat and Chairperson and Host Country in a CWBC should be just as active as in a physical meeting.

12.7 Currently the *Procedural Manual* provides that the Joint FAO/WHO Secretariat should ensure that not later than one month after the end of the session, copies of the final report, as adopted in the languages of the Committee, are sent to all members and observers of the Commission (with CLs attached).

12.8 There is already a process that gives members an opportunity to comment before adoption of a report (and this point could be made clear for CWBC).

12.9 It may also be useful to include some discussion around the timeline requirements for dissemination of the final report (as are outlined in the *Procedural Manual*<sup>32</sup>). A requirement for archiving correspondence may be useful too.

### 12.10 Proposal regarding reporting

12.10.1 CWBC should make every effort to ensure that the report of the committee accurately reflects discussions and decisions reached during the identified period of activity of the CWBC. The conventions and practices that apply to the drafting of reports of committees holding physical meetings should also be observed, to the extent relevant, by CWBC (possibly with the aid of a report template).

12.10.2 The conventions and practices include objectivity and clarity of conclusions and recommendations, as well as recording of reservations or concerns when specifically requested by members. Depending on the extent of the Chairperson's role in drafting the report, a timeframe for finalizing the report may be required.

12.10.3 As is the case with preparation of reports of committees holding physical meetings, the Codex secretariat should be closely involved in the preparation and finalization of reports of CWBC.

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<sup>30</sup> *Duties and Terms of Reference*, Guidelines on the Conduct of Meetings to host Governments of Codex Committees and *ad hoc* Intergovernmental Task Forces, *Procedural Manual*

<sup>31</sup> Section III, *Conduct of Meetings*, Guidelines on the conduct of meetings of Codex Committees and *ad hoc* intergovernmental task forces, *Procedural Manual*

<sup>32</sup> Section III, *Reports*, Guidelines on the conduct of meetings of Codex Committees and *ad hoc* intergovernmental task forces, *Procedural Manual*

### 13. CONCLUSIONS AND RECOMMENDATIONS

13.1 There is no doubt that CWBC present unique challenges that are directly related to their *modus operandi*. It is also recognized that CWBC will generally be the exception rather than the rule. There are, however, sound reasons for the Codex system to recognize and facilitate CWBC when this mode of operation is seen as most efficient and appropriate.

13.2 The working group recognizes the concerns that have arisen about the complexities of this mode of operation and the absence of clear, documented procedures to ensure that CWBC operate in accordance with the values and rules of Codex. This document readily acknowledges these concerns and has proposed possible options for addressing them. The analysis and conclusions of this document support the elaboration of specific procedural guidance to facilitate the conduct and management of CWBC. Such guidance could serve to instill greater confidence among Codex members about this mode of working when it is deemed appropriate. At the same time documented procedural guidance could also be beneficial to chairpersons of committees and help dispel some of the current concerns around their role and level of influence.

13.3 This working document identifies the following areas where specific procedural guidance may be appropriate:

- i. Criteria for work appropriate for assignment to CWBC;
- ii. Role of the Chairperson (and possible Co-chairperson, rapporteur) of CWBC;
- iii. Role of the Codex Secretariat;
- iv. Role of the Codex Committee (active or adjourned sine die);
- v. Communication and inclusiveness - language and translations;
- vi. Membership and credentials of delegations (identity and authority);
- vii. Determining a quorum (before a committee can make a decision);
- viii. Advancement of standards and related texts including determining and facilitating consensus, reporting concerns (or reservations) and voting; and
- ix. Reporting to the Commission.

### 14. RECOMMENDATIONS

It is recommended that CCGP32:

- i. Consider the analysis and proposals on criteria and procedural guidance for committees working by correspondence; and
- ii. Discuss the next steps to advancing this issue.