

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



JOINT OFFICE: Viale delle Terme di Caracalla 00153 ROME Tel: 39 06 57051 www.codexalimentarius.net Email: codex@fao.org Facsimile: 39 06 5705 4593

ALINORM 09/32/33

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX ALIMENTARIUS COMMISSION

*Thirty-second Session
Rome, Italy, 30 June - 4 July 2009*

REPORT OF THE TWENTY-FIFTH SESSION OF THE CODEX COMMITTEE ON GENERAL PRINCIPLES

Paris, France, 30 March – 3 April 2009

Note: This document incorporates Circular Letter CL 2009/11-GP

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CX 4/10

CL 2009/11-GP
April 2009

TO: Codex Contact Points
Interested International Organizations

FROM: Secretary, Codex Alimentarius Commission, Joint FAO/WHO Food Standards Programme,
FAO, 00153 Rome, Italy

SUBJECT: **Distribution of the Report of the 25th Session of the Codex Committee
on General Principles (ALINORM 09/32/33)**

MATTERS FOR ADOPTION BY THE 32TH SESSION OF THE CODEX ALIMENTARIUS COMMISSION

Proposed Amendments to the Procedural Manual

1. Proposed amendment to the *Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces* (para 87 (d) and Appendix III)
2. Proposed Amendment to the Terms of Reference of the Committee on General Principles (para 145 and Appendix IV)

Governments and international organizations wishing to submit comments on the above amendments should do so in writing, preferably by E-mail to the Secretary, Codex Alimentarius Commission, Joint FAO/WHO Food Standards Programme, FAO, Viale delle Terme di Caracalla, 00153 Rome, Italy (Email: codex@fao.org, fax : +39 06 57054593) **before 30 May 2009.**

Proposed Draft Text at Step 5/8 of the Procedure

3. The Proposed Draft Revised Code of Ethics for International Trade in Foods at Step 5 with a recommendation to omit Steps 6 and 7 and to adopt them at Step 8 (para 43, Appendix II)

Governments and international organizations wishing to submit comments should do so in writing, preferably by E-mail to the Secretary, Codex Alimentarius Commission, Joint FAO/WHO Food Standards Programme, FAO, Viale delle Terme di Caracalla, 00153 Rome, Italy (Email: codex@fao.org, fax : +39 06 57054593) **before 30 May 2009.**

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SUMMARY AND CONCLUSIONS

Matters for adoption by the Commission:

The Committee agreed to forward to the Commission the:

- Proposed Draft Revised Code of Ethics for International Trade in Foods at Step 5 with a recommendation to omit Steps 6 and 7 and to adopt them at Step 8 (para 43, Appendix II).
- Proposed amendment to the *Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces* (para 87(d), Appendix III).
- Proposed Amendment to the Terms of Reference of the Committee on General Principles (para 145, Appendix IV).
- The Committee endorsed the nutritional risk analysis principles provided by the CCNFSDU and recommended their adoption by the Commission (para 10).
- The Committee endorsed two proposals (criteria approach: amendments and a new section and consequential amendment) from the Committee on Methods of Analysis and Sampling.

Matters for action by the Commission:

- To further debate on the length of reports and inclusion of names of delegations (paras 12-19).
- To reflect on the usefulness of having a study on introducing qualified majority voting on the adoption of standards, analyzing advantages and disadvantages implied by such system (para 90).
- The Committee agreed a number of actions related to the facilitation of consensus but remained divided on the need for a definition of consensus (para 87). The Commission is invited to advise the CCGP how to move forward on this issue.
- To endorse the confirmation that the full freedom was given under the current Terms of Reference of FAO/WHO Coordinating Committees to issue regional opinions on all themes under discussion in Codex of strategic importance to the region concerned and to promote the adoption of regional positions on strategic subjects, and therefore there was no need to modify the Terms of Reference (para 103).
- The Committee agreed the editorial inclusion of an information footnote to the fourth paragraph of 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* indicating that the acceptance procedure had been abolished in 2005 (para 111).

Other matters of interest to the Commission:

- The Secretariat will prepare a draft review of risk analysis policies and distribute it through a Circular Letter asking for comments, in order to prepare a revised document for consideration by the next session of the Committee (para 98).
- The Committee agreed that the points made in the document on new definitions of risk analysis should be borne in mind in the ongoing and further work of the Commission as it relates to risk analysis, and also agreed that there was no need to continue work on this document (para 117).
- The Committee discussed the data provided by the secretariat on the participation of developing countries and the proposals to improve the situation to the Commission (paras 118-140).
- The Committee agreed that the Codex Secretariat should approach the OIE Secretariat and prepare a discussion paper on the possible development of joint standards between Codex and OIE, addressing all relevant procedural and other issues, as well as implications, for consideration by its next session.(para 153).

INTRODUCTION

1. The Codex Committee on General Principles held its Twenty-fifth Session in Paris, France, from 30 March to 3 April 2009 at the kind invitation of the Government of the French Republic. The Session was chaired by Professor Michel Thibier. The session was attended by 200 delegates representing 68 member countries, one Member Organization (European Community), and 18 international organizations. A full list of participants, including the Secretariat, is attached as Appendix I.

2. The session was opened by Mr. Jean-Marc Bournigal, Director-General of Food, Ministry of Agriculture and Fishery, who welcomed the participants on behalf of the French Government. Mr. Bournigal recognized the Working Principles for Risk Analysis for Food Safety for Application by Governments, developed by the Committee and adopted by 30th session of the Commission, as a corner stone of Codex work, especially in the content of its links to the WTO Agreements. He expressed the hope that the Committee could, at the present session, finalize revision work on the Code of Ethics for International Trade in Foods, and hold productive discussion on the concept of “consensus” and its application in Codex as well as the issue on the participation of developing countries in the work of Codex.

Division of Competence

3. The Committee noted the division of competence between the European Community and its Member States, according to paragraph 5, Rule II of the Procedure of the Codex Alimentarius Commission, as presented in CRD1.

ADOPTION OF THE AGENDA (Agenda Item 1)¹

4. The Committee agreed to adopt the Provisional Agenda as proposed in document CX/GP 09/25/1 as the Agenda for the session, and to discuss the following items under the other business:

- Terms of reference of CCGP (proposed by Japan).
- Development of joint OIE-Codex standards (proposed by OIE).

5. Additionally the Committee agreed that the references to the abolished “acceptance” provisions found in the Procedure Manual (proposed by Japan) could be discussed under the Agenda Item 7. The issues raised at the last session of the CCLAC would be discussed in agenda items 2 and 4.

6. The committee also agreed to allocate sufficient time for the discussion of agenda item 9 in view of its importance to Codex members.

MATTERS REFERRED TO THE COMMITTEE (Agenda Item 2)²

Committee on Methods of Analysis and Sampling

7. The Committee noted that the Committee on Methods of Analysis and Sampling had completed its review of the Working Instructions for the Implementation of the Criteria Approach in Codex in the Procedural Manual in order to provide guidelines for the Identification of Relevant Analytical Methods and had proposed amendments to the current section and a new section on Guidelines for establishing numeric values for method criteria and/or assessing methods for compliance thereof. That Committee had also proposed a consequential amendment on terminology to the General Criteria for the Selection of Methods of Analysis.

8. The Committee endorsed both proposals as put forward by the Committee on Methods of Analysis and Sampling.

Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU)

9. The Committee recalled that the CCNFSDU had forwarded the Draft Nutritional Risk Analysis Principles and Guidelines for Application to the Work of the Committee on Nutrition and Foods for Special Dietary Uses. The Committee noted a comment that the principles should be applied to the work of other committees, especially the Committee on Food Labelling, that scientific advice should be the main responsibility of FAO and WHO, and that approval criteria for internationally recognised expert bodies would be required.

¹ CX/GP 09/25/1, CRD 7(Japan), CRD 11(OIE)

² CX/GP 09/25/2, CX/GP 09/25/2-Add.1 and Add.2 (proposals from the Committee on Methods of Analysis and Sampling), CRD 2 (comments of CRN), CRD 6 (comments of Thailand)

10. The Committee agreed that, as the document had been developed specifically to address nutrition issues, it could not be extended to other areas of work at this stage. However, as all risk analysis policy documents from Codex Committees were scheduled for review, the possible extension of the Draft Nutritional Risk Analysis Principles could be considered in the framework of this review. The Committee endorsed the nutritional risk analysis principles and recommended their adoption by the Commission.

11. The Representatives of FAO and WHO reaffirmed their commitment to strengthen their mechanisms to provide scientific advice in the area of nutrition and indicated that significant progress had been made on the establishment of an FAO/WHO body, which would provide such advice.

FAO/WHO Coordinating Committee for Latin America and the Caribbean

12. The Committee considered several proposals and questions put forward by the CCLAC concerning the length of reports, the reopening of substantive discussion while adopting reports, and the recording of objections.

13. As regards the length of Codex reports, several delegations supported the views of the CCLAC and expressed the view that the reports of Codex sessions should not concentrate only on the decisions, but should include a clear and detailed description of the discussion in order to ensure transparency in the decision process and to provide important information to the countries that could not participate in the meetings, especially developing countries. These delegations proposed to ask the Executive Committee to rescind its decision on the length of reports, as proposed by the CCLAC. Other delegations pointed out that if reports were too detailed, this would create practical difficulties for the preparation and adoption of reports, and noted that current reports were usually balanced and that it was always possible for delegations to correct or complement Codex reports during their adoption.

14. The Committee noted that the decision on the length of reports had been taken by the Executive Committee and the Commission and invited delegations to bring this matter to the attention of the Executive Committee or the Commission, which could determine the need for any revision.

15. As regards the recommendation that “delegations should strictly refrain from opening substantive discussion during the adoption of the report”, some delegations supported the views of the CCLAC and indicated that it was sometimes necessary to return to substantive issues if the report did not adequately reflect the discussion.

16. The Committee considered the question from the CCLAC whether the current section in the Procedural Manual under Point 1 of Rule X – Records and Reports and the final paragraph of the Section Conduct of Meetings - Guidelines on the Conduct of Meetings of the Codex Committees and Ad Hoc Intergovernmental Task Forces was the same as the recommendation from the Executive Committee approved by the Commission that “The names of delegations should be recorded in the report upon their request whenever a decision has been taken by the Commission or its subsidiary bodies despite their opposition”³

17. The Committee agreed with the view of several delegations that the recommendation from the Commission was consistent with and complementary to the existing provisions in the Procedural Manual.

18. Several delegations proposed to include the above statement in the Procedural Manual, as delegations may not be aware that they had to ask for their objection to be recorded and it would therefore be useful to make it widely available. The Committee agreed to recommend that the Executive Committee and the Commission integrate the above statement into the Procedural Manual.

19. The Committee agreed to report the discussion above to the attention of the CCEXEC and the CAC for further debate.

³ ALINORM 08/31/3A, para. 36

PROPOSED DRAFT REVISED CODE OF ETHICS FOR INTERNATIONAL TRADE IN FOODS (Agenda Item 3)⁴

20. The Committee recalled that its last session had agreed to consider a revised and shortened version of the Code that concentrated on ethical principles and had returned it to Step 3 for further comments and consideration at the 25th Session. The Committee had also considered and endorsed the recommendations put forward by the Committee on Food Import and Export Inspection and Certification Systems (CCFICS), which were subsequently endorsed by the 30th Session of the Commission.

21. The Committee recognised the importance of ethics in trade in order to protect consumers, especially to prevent the export of unsafe food to countries with inadequate legislation and/or food control systems, and had a general discussion on how to proceed with the code.

22. Several delegations expressed their support for the development of a code of ethics and proposed that the Committee continue its work on the basis of the Proposed Draft presented at the last session, as this short version focused on essential principles and the Code should not duplicate recommendations that already existed in other Codex texts.

23. Some delegations, while expressing their support with the objective of the code, noted that in practice there were no provisions concerning its implementation and it was not clear how non-compliance with the provisions would be addressed.

24. Some other delegations expressed the view that there was no need for a code of ethics as issues related to import and export were adequately addressed in the principles and guidelines developed by the Committee on Food Import and Export Inspection and Certification Systems (CCFICS) and trade issues were addressed in the WTO Agreements. Concerns were also expressed that the provisions of the code might be interfering with the rights and obligations of WTO members and the right of governments to establish their appropriate level of protection at the national level.

25. The Committee agreed to consider the text section by section and made the following comments and amendments.

Article 1

26. The text of Article 1 was retained as currently drafted.

Article 2: Scope

27. In paragraph 2.1, the Committee agreed that the footnote concerning the applicability of the text to concessional and food aid transactions would be integrated into the main text, in order to improve clarity and to reflect one of the main objectives of the code. The title was also amended accordingly.

28. The Committee agreed that in order to make the code more generally applicable, it should refer to “all parties involved in international trade” and the text of paragraph 2.2 was amended accordingly. Some delegations questioned the usefulness of the code as it was not clear how the principles would be applied and by whom, and proposed that the code should be more focused towards implementation. A new sentence was therefore added to the effect that governments should work with other parties to promote full application of ethical conduct at the national level, in order to reflect the role of governments and the need to involve all relevant stakeholders.

Article 3: Principles

29. Some delegations pointed out that the current text of the section might be interpreted as preventing countries from establishing their appropriate level of protection at the national level. The Committee recognised that the current text of section 3.2 was not up-to-date as regards the application of risk analysis and therefore agreed to refer to “hazard” instead of “substance”, in order to cover both chemical and microbiological contamination, and to the application of the risk analysis principles.

⁴ CX/GP 09/25/3, CX/GP 09/25/3-Add.1 (comments of Colombia, Costa Rica, Egypt, European Community, India, Iran, Philippines, United States, FAO/WHO, ICGMA), CX/GP 09/25/3- Add.2 (comments of Norway), CX/GP 09/25/3-Add.3 (comments of Canada, IBFAN), CRD 3 (comments of Kenya), CRD 4 (comments of Mexico), CRD 5 (comments of India), CRD 8 (comments of Indonesia), CRD 13 (comment of the Philippines), CRD 12 (comments of Mali), CRD 14 (revised version following the discussion), CRD 15 (comments of the United States), CRD 17 (comments of the European Community)

30. Several delegations proposed to address the issue of import of food with a short remaining shelf life, which did not leave sufficient time for distribution before the date of expiration in the importing country. Other delegations pointed out that in many cases the exporting countries were not in a position to know in advance what would be the ultimate destination and use of the exported products, or had no control over delays in the distribution at the import stage. Some delegations proposed to specify a minimum percentage of the remaining shelf life; however, it was noted that such requirements would be difficult to apply in practice and it was agreed to include a general statement as a new section f).

Article 4: Requirements for Food in International Trade

31. The Committee discussed some proposals to change the title of the section. Some delegations expressed the view that the term “requirements” was too prescriptive as Codex texts were voluntary, and therefore proposed to mention “conditions necessary”, as it appeared in the French version. Other delegations proposed to refer to “obligations” to strengthen the role of the code and make it clear that it described ethical obligations. After some discussion the Committee agreed that the title should read “conditions necessary for food in international trade”.

32. The Committee agreed to delete paragraph a) as the main purpose of the code was to ensure that trade was conducted on an ethical basis in relation to the legislation applied in the exporting and/or importing country, and not to address the compliance with Codex standards as such. It was also agreed that compliance with Codex standards should be considered when no legislation existed in the exporting and the importing country.

33. The Committee discussed how the code should describe the responsibility of governments. Some delegations pointed out that the code of ethics was a Codex document intended for governments and that the enforcement of legislation at the export stage was the responsibility of governments. Other delegations expressed the view that the code should be intended for general application to all stakeholders. The Committee recognised that these approaches were not contradictory and that the section should include both recommendations to governments in view of their responsibility to apply ethical conduct, and more general recommendations regarding exported food. It was therefore agreed to insert a paragraph (new 4.1) addressing the role of competent authorities in applying ethical conduct, as described in Article 3, noting that “competent authority” was commonly used in Codex texts and in many countries.

34. The Committee agreed that the second paragraph (new 4.2) should include all the elements of the current indents b) to d) and had an extensive discussion on the conditions for food export, in particular the ethical considerations involved in compliance with the importing and exporting country legislation.

35. Several delegations expressed the view that the primary consideration should be compliance with the legislation of the exporting country, as the main ethical problem was the export of food that could not be sold on the domestic market as it did not comply with national legislation but was exported, taking advantage of the absence of legislation or adequate inspection system in the importing countries.

36. Other delegations and one observer supported a reference to the legislation of the importing country as the main condition for the purpose of export. Some delegations recalled that the issues related to compliance with legislation should not be confused with ethical principles, and that food import and export issues were covered by Codex texts applying to import and export inspection and certification systems, while trade issues were addressed in the WTO Agreements. Some delegations noted that although these issues were addressed elsewhere, the code should not be developed in isolation and international trade aspects should be taken into account, and a reference to the rights and obligations conferred by bilateral or multilateral agreements was therefore included. With this clarification, the Committee agreed that the first condition for food export was compliance with the legislation of the exporting country; that non compliance with this condition was acceptable only when the legislation of the importing country was different or when it was explicitly accepted by the importing country; and that Codex standards could be taken into account wherever appropriate.

37. The Delegation of Tunisia expressed its reservation on these provisions, as it considered that given the universal nature of the concept of food safety there should be no exception allowing exporting countries to export food, which did not comply with its national legislation.

38. The Committee agreed to add a footnote to paragraph 4.2 indicating that food standards and safety requirements of importing countries should be transparent and available to exporting countries.

39. The Committee agreed with the proposal to include a new paragraph (4.3) specifically reflecting that food should not be placed in international trade for the purpose of disposing of unsafe or unsuitable food, as one of the objectives of the code was to prevent such practices.

40. The Committee agreed to include a new paragraph (4.4) referring to the obligations under the International Health Regulations, and to the International Code on Marketing of Breast Milk Substitutes and relevant WHA Resolutions, as proposed by several delegations, one observer and the Representative of WHO.

Conclusion

41. Several delegations expressed the view that, although substantial progress had been made with the revision, the document should not be advanced for final adoption by the Commission as many changes had been made at the session and more time was necessary to study the revised text carefully at the national level. Many other delegations stressed the importance of a revised code, noted that all issues had been adequately addressed, and supported the advancement of the document to Step 5/8.

42. The Chairperson pointed out that the Executive Committee, while conducting the critical review, had specifically recommended that the revision of the Code should be completed by 2009 and noted that delegations would have the opportunity to send comments at Step 8 for consideration by the Commission

Status of the Proposed Draft Revised Code of Ethics for International Trade in Food

43. The Committee agreed to advance the Proposed Draft Revised Code of Ethics for adoption at Step 5/8 by the 32nd Session of the Codex Alimentarius Commission with the omission of Steps 6 and 7 (see Appendix II).

44. The Delegations of Argentina, Brazil, Chile, Costa Rica, India, Indonesia, Malaysia, Mexico, Philippines, Thailand, Tunisia, Uruguay expressed their reservation on this decision., observing there was no consensus on the advancement of the document to step 5 and 8.

THE CONCEPT OF “CONSENSUS” AND ITS APPLICATION IN CODEX (Agenda item 4)⁵

45. The Committee recalled that the 30th Session of the Commission had noted that the definition of consensus and how the concept was handled in practice in Codex was considered an important issue by many members, to be further discussed as a matter of priority within the CCGP⁶.

46. To prepare the discussion at the CCGP, the 60th Session of the Executive Committee had developed a questionnaire to request chairpersons of Codex subsidiary bodies to provide their input on the matter and especially their experiences with the application of the Measures to Facilitate Consensus⁷. The replies had been collected and summarized by the Secretariat and sent for comments in CL 2008/34-GP together with background information on the history and on the application of the concept in other international organizations as well as recommendations to improve the situation.

47. The Representative of the Legal Office of FAO pointed out that while being a subsidiary body of FAO and WHO, Codex, due to its particular nature and mandate, had over time developed a number of procedures different from those of the parent organizations and other organizations in the UN system (e.g. concerning the admission of observer organizations or the voting rights of regional economic integration organizations).

48. Concerning the application of the concept of “consensus” within the United Nations system, the Representative explained that per an opinion letter issued by the United Nations Under-Secretary-General for Legal Affairs on 17 June 2002, “[i]n United Nations practice, the concept of “consensus” is understood to mean the practice of adoption of resolutions or decisions by general agreement without resort to voting in the absence of any formal objection that would stand in the way of a decision being declared adopted in that manner.”

⁵ CL 2008/34-GP; CX/GP 09/25/4 (Comments of Australia, Colombia, Cuba, European Community, Iran, Japan, Norway, New Zealand and United States); CX/GP 09/25/4-Add.1 (Canada, Chile, Mexico and Uruguay); CRD 3 (Comments of Kenya); CRD 5 (Comments of India); CRD 6 (Comments of Thailand); CRD 8 (Comments of Indonesia); CRD 10 (Comments of China); CRD 13 (Comments of the Philippines)

⁶ ALINORM 07/30/REP paras 198-200

⁷ Codex Procedural Manual, Appendix

49. The Representative indicated that, from a legal point of view, there were no impediments to the adoption of a definition of consensus. However for the sake of consistency with UN and FAO procedures there might not be a need for such definition. Insofar as the issue of consensus had been raised in the past in connection with that of the required majority for the adoption of standards, the Committee might wish to revisit the issue of the required majority in the event that consensus could not be reached and there was a need to vote. The Representative stated that if Codex should wish to revisit the possibility of introducing the two-thirds majority vote, the legal office was prepared to assist with preparing a study on the implications.

General discussion

50. The Committee held a general discussion on document CL 2008/34-GP before addressing statements and proposals contained in its sections D.3 and D.4 .

51. Some delegations regretted that in the preparation of the Circular Letter only the opinions of chairpersons had been collected because in their view interesting information could have been received if all members had been asked similar questions concerning the work of chairpersons and the secretariat. It was also mentioned that the document did not allow comparing the handling of procedures by different chairs.

52. Several delegations stated that in their opinion, negotiations in Codex often took place among only a small number of industrialized countries, and that the views of developing or transition countries were not properly taken into account during the discussion and reflected in the reports of the sessions.

53. Some delegations stressed that decision-making should be all-inclusive to maintain the legitimacy and transparency of Codex, taking into account the views and concerns of all regions and that no decision should be taken until everyone's opinion was heard especially on matters related to food safety.

54. Working groups, which according to the chairs were an important means to facilitate consensus, were seen by several delegations rather as an obstacle for developing countries because of a lower level of their participation in working groups and the difficulty to overturn the recommendations of a working group at the committee level.

55. In this context one delegation noted that one of the Measures to Facilitate Consensus, i.e. to promote the participation of developing countries, had been seen by chairs as giving "legitimacy" to Codex standards. The delegation felt that to give true legitimacy to Codex standards, the effective participation of developing countries was indispensable and that their opinion should be taken into account when decisions were taken.

56. Some delegations mentioned specific problems that existed, in their opinion, with the way chairs handled the sessions:

- Chairs have too much power to decide and often impose consensus on a matter even when several members expressed clear opposition especially in the case of deciding to advance a document to a specific step in the elaboration procedure;
- Chairs take different decisions under similar circumstances not only between different Committees but also during the same committee session; and
- Sometimes chairs do not act independent of the interest of their countries and do not show the necessary objectivity and neutrality.

57. The Coordinator for Latin America and the Caribbean recalled that the last session of the CCLAC, had discussed the issue and found that there was no harmonious application of consensus within Codex. To improve the decision taking process and make it more harmonious, the CCLAC proposed a definition of consensus developed by Paraguay, namely "consensus is the absence of justified opposition from any member present at the meeting where the decision is taken".

58. Several delegations supported the CCLAC definition of consensus as a starting point for further discussion in order to avoid situations where consensus was declared despite a significant number of oppositions. The delegation of Uruguay proposed that consensus should be defined as "consensus is the absence of formal, justified opposition from any member present at the meeting where the decision is taken".

59. One delegation stated that consensus could not be a mechanical process; there should be a definition and broad accompanying principles and guidance for chairpersons on when to declare consensus. All effort should be made to come to an agreement as even a vote based on a two-third majority meant that one-third of votes would be disregarded.

60. Several delegations stressed the need to observe timelines and maintain efficiency in the standards development of the Commission. Given the cost of organizing Codex meetings, a decision should be taken for how long Codex was prepared to work on an issue, as working for decades on the same issue was not acceptable.

61. One delegation stated that in their opinion seeking full consensus could lead to weaker or more diluted standards. They considered that the key issue was to seek consensus on science and risk assessment following an inclusive, objective and transparent process. In their view, variations in risk management in case of disagreement among countries were not as much a problem as they used to be as there was more transparency than in the past these days. They felt that a larger review of the usefulness of Codex standards in the world after the entry into force of the WTO agreements was needed.

62. Several delegations stated that Codex had failed to find consensus mainly on trade issues whereas on food safety issues where scientific advice was available consensus could usually be achieved and that there was a need for the Executive Committee to properly exercise its standards management function and not to allow Codex to embark on new work if there was not a broad consensus at the initial step as this was likely to cause problems with consensus at later stages of the work.

63. Several delegations were of the opinion that the Procedural Manual already contained sufficient guidance for chairs and that the Measures to Facilitate Consensus had been applied successfully. They did not consider that consensus was either unanimity or a quantifiable concept or that a definition would be helpful because a narrow, rigid definition could lead, in their view, to blockages and inefficiency. It was mentioned that the correct application of the concept of consensus was a challenging task not only for the chairpersons but also for the delegates as the process involved a give-and-take among all delegations.

64. Many delegations recognized that in Codex meetings all had the right to be heard and that the Codex process was all about inclusiveness and transparency. The need for Codex to be efficient because of cost considerations should not work against developing countries. Codex therefore needs to continually improve the consensus building process and foster development of the capacity of countries to effectively participate e.g. through mentoring.

65. One delegation stated that their country had benefited significantly from the work of Codex even from work in which they were not able to participate.

66. The Representative of FAO noted that the issue of the participation of developing countries and that of consensus although they were inter-connected should be addressed separately. The Representative assured the Committee that FAO and WHO were doing everything possible to improve quantity and quality of participation of developing countries.

Discussion on the statements contained in Section D.3 of CL 2008/34-GP

67. Most delegations that intervened agreed in principle with the statements contained in Section D.3 of CL 2008/34-GP. Additional interventions are reflected below under each statement (no additional comments were made on D.3.3 (The basic precondition to being able to reaching consensus is that the parties are willing to negotiate and move positions)).

D.3.1- Satisfactory interpretation of consensus and non-consensus by Codex chairpersons

68. One delegation stated that the statement was not correct as in their view, Codex chairs appeared interpret in several cases as a consensus, what could have been equivalent to the results of a vote.

D.3.2 - Need to learn to work together in an even more structured and more collaborative manner/ informal meetings/ need for openness and transparency

69. One delegation expressed its concern that the importance of informal meetings was over-emphasized here while it was clear that developing countries could not even participate sufficiently in formal meetings.

D.3.4 - Application of consensus in the UN system and other international intergovernmental organizations (e.g. WTO)/ definition of consensus

70. Several delegations stated that creating a rigid definition for consensus might prove to be a very difficult task and might not be the most productive way to improve its application within Codex. They saw this statement supported by the fact that none of the international organizations using the concept of consensus in their decision making have chosen to create such a definition. They remained open to any suggestion that would maintain a certain level of flexibility, for example to develop further operational guidance on how to reach consensus, supplementing the existing guidelines on consensus in the Procedural Manual (e.g. proposals contained in Section B.2 of CL 2008/34-GP)

D.3.5 Cases in Codex meetings in which there is clearly no consensus but it is not clear how to proceed in order to get achieve consensus

71. Several delegations stated that the statements in D.3.5, 3.6 and 3.7 reflected their deep concerns with the current process in Codex. One delegation felt that the statements in 3.5 and 3.6 were contradictory to 3.1.

72. One delegation stated that in some cases the inflexible positions of a few countries kept items that had little chance of being resolved on the agenda for years, which was not acceptable. In other cases it had to be accepted that negotiations could take a long time e.g. where the necessary risk assessment was not available.

73. One delegation noted that there were actually very few cases as mentioned in 3.5 and that these could be prevented through the critical review of the Executive Committee when accepting new work proposals especially when the basis to start new work was not strong enough.

74. The Representative of WHO noted cases where Codex had been very successful and timely in developing standards and related texts such as those for safety assessment of foods derived from biotechnology. The Representative indicated that Codex had been doing very good work on major health issues even when there was disagreement at the outset.

D.3.6 - Cases where delegations feel that the concept of consensus has not been applied harmoniously between different Committees or even within the same session

75. One delegation stated that Codex was sometimes stalled just because of the opposition of one delegation whereas at other times the work was brought to the next step despite the opposition of several delegations. These situations should be handled harmoniously.

Discussion on the proposals to improve the situation contained in Section D.4 of CL 2008/34-GP

D.4.1 - Development of a chairs' booklet

76. Delegations supported the creation of such a booklet in principle.

77. One delegation mentioned that even with difficulties it was possible to arrive at a consensus in most cases if the process used was transparent thus a guidebook available for all was a good idea.

78. Several delegations felt that there was already significant guidance in the Procedural Manual but suggested to evaluate the performance of the chair after each committee sessions, which could assist chairs to improve their work where necessary.

79. Many delegations were of the opinion that such guidance should also be directed to delegations with the following objectives:

- Delegations could learn more how to build consensus, move positions and work in a structured and collaborative way.
- Delegations could be reminded that Codex is trying to create global solutions, which were best for all parties.
- Delegations could be reminded that it was their responsibility to make an effort in negotiations to reach consensus, although such guidance should not restrict the freedom of governments to choose and maintain their positions.

D.4.2 - Taking up problematic cases such as mentioned in D.3.5, 3.6, and 3.7 in the informal meeting of chairs and CCEXEC

80. Delegations agreed in principle with this proposal.

D.4.3 - Codex Chairs to meet once a year in a facilitated forum

81. Delegations agreed in principle with this proposal, suggesting that for budgetary reasons such a meeting should be best organized in conjunction with the annual meeting of the Commission, where many chairs were expected to be present.

D.4.4 - Addition to the “Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces”

82. There was general support for the proposal on the use of a facilitator and the following additional remarks were made:

- The Committee concerned should clearly state the terms of reference of the facilitator.
- The facilitator should be experienced in Codex matters but neutral on the matter concerned.

- All parties participating in the process should agree on the selection of the facilitator.
- The SPS Committee had experience in using the chair as facilitator while exercising good offices, similarly it could be considered that in Codex the Chairperson of the Commission could act as facilitator.

83. The Delegation of Malaysia proposed to include in the Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces in the section on consensus in front of the paragraph starting with the words “ The chairperson should also consider...” the following new paragraph: “Where there is justified sustained opposition to substantial issues the chairperson should ensure that the views of concerned members be taken into consideration by reconciling conflicting arguments before deciding that a consensus has been reached.”

84. Several delegations supported this proposal, as it would give some guidance to chairs in the absence of a definition of consensus.

85. Other delegations, while not opposed to the principle of giving additional guidance to chairs, were of the opinion that more time was needed to study the proposal. One delegation pointed out that it was not clear from the proposal how to decide when an opposition was judged as “justified”

86. The Committee agreed to the proposal of the Chairperson that the Committee would ask the Commission whether the Committee should continue work on the proposal from Malaysia.

Conclusion

87. The Committee agreed to the following:

- (a) The Secretariat would continue work on a brochure for chairs (as suggested in D.4.1), which will be in the public domain as a work in progress.
- (b) Problematic cases such as mentioned in D.3.5, 3.6, 3.7 could be addressed by the informal meeting of chairs and the Executive Committee (as suggested in D.4.2).
- (c) The Secretariat would continue to convene an informal meeting of chairs (as suggested in D.4.3) in conjunction with the session of the Commission.
- (d) Following the discussion under D.4.4, the Committee agreed to the proposed amendment to the Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces as proposed in the working document with a modification to the effect that the choice of the facilitator should be agreed upon by the committee concerned. The Committee decided to forward the proposed amendment for adoption by the Commission (see Appendix III).
- (e) The Committee remained divided on the need for a definition of “consensus”.
- (f) The Secretariat would explore possibilities for developing a reference document for delegates on consensus building as mentioned by several delegations during the discussion on D.4.1.
- (g) An evaluation sheet would be prepared on the basis of a participant satisfaction questionnaire used in recent Codex meetings to be completed by delegates on the last day of a session, which would also contain also questions on the performance of the chairperson.

Possibility for a study on the possible introduction of qualified majority voting and its implications

88. When introducing CL 2008/34-GP and the history of the discussion on consensus which had started after the Commission had taken a number of decisions based on simple majority voting in the 1990s, the Representative of the Legal Office of FAO had indicated he was prepared to assist with a review of the implications of introducing voting by two-thirds majority in Codex, if the Committee so wished.

89. Several delegations stated that the introduction of two-thirds majority in Codex would mean a major change in the system and the implications needed to be studied carefully but were not against studying this option in more detail, with the understanding that importance be given to seeking consensus as the preferred means for decision-making. Other delegations did not agree that such a study was necessary.

90. While the general sense of the Committee was to use consensus as a primary tool, the Committee agreed that the Executive Committee and the Commission reflect on the usefulness of having a study on introducing qualified majority voting on the adoption of standards, analyzing advantages and disadvantages implied by such system.

REVIEW OF THE RISK ANALYSIS POLICIES OF CODEX COMMITTEES (Agenda Item 5)⁸

91. The Secretariat recalled that this item was considered in the framework of the Strategic Plan 2008-2013 - Activity 2.1 “Review of the consistency of risk analysis principles elaborated by the relevant Codex Committees”, as discussed earlier in the Executive Committee and the Commission, and presented an outline of the general considerations that could be taken into account in the review, such as consistency with the structure of the general Working Principles for Risk Analysis.

92. Several delegations stressed the importance of this work and supported the completion of Activity 2.1 following the initial deadline specified in the Strategic Plan (2011). The need for consistency with the general Working Principles for Risk Analysis was highlighted.

93. Some delegations noted that some differences in the documents on risk analysis policy developed by Codex Committees might be due to the nature of the specific risks considered and that they should be compared with the Working Principles, taking into account the specificities of risks while ensuring that the approach to risk analysis was harmonised throughout Codex. Some delegations noted that the content might not need to be amended as such but rather reordered according to the components of risk analysis.

94. Some delegations expressed different views on the various documents, which were annexed to and were used in conjunction with risk analysis principles, such as criteria for prioritization or data requirements. It was proposed to clarify their role, as they related to the risk analysis policies, and it was also noted that they were useful to facilitate the work of some committees. It was agreed that these documents would also be taken into account in the review of risk analysis principles.

95. The Committee noted a proposal to consider how the current risk analysis principles were applied by the relevant committees, but recalled that the main purpose of the review was to consider their consistency with the general Working Principles.

96. It was pointed out that the establishment of the relevant risk assessment policies was essential to the risk analysis process and that several elements should be considered when reviewing risk analysis policies: the difference between chemical and microbiological risks; the different approaches to MRL setting (based on GAPs or on ADIs); and the need to clarify the impact of assumptions and uncertainties on the risk assessment process.

97. The Committee agreed to confirm its objective of completing the review of risk analysis policies by 2011 as initially scheduled. It was noted that, subject to the adoption by the Commission, the risk analysis policy developed by the CCNFSDU would also be considered. The Committee noted that the document on risk analysis policy for consideration by the Committee on Food Hygiene was being circulated for comments and would be considered by the next session of that Committee.

98. The Committee agreed that the Secretariat would prepare a draft review of risk analysis policies and distribute it through a Circular Letter asking for comments, in order to prepare a revised document for consideration by the next session of the Committee.

TERMS OF REFERENCE OF FAO/WHO COORDINATING COMMITTEES (Agenda Item 6)⁹

99. The Committee recalled that it had agreed at its last Session that all Coordinating Committees be invited to discuss the amendment to their terms of reference proposed by the CCLAC, including institutional and other implications, at their 2008/2009 sessions and to report back to the CCGP on their experiences.

100. The Committee noted the views of the Coordinating Committees reproduced in the working documents. Five of the Coordinating Committees (CCNASWP, CCEURO, CCASIA, CCNEA and CCAFRICA) generally agreed that the current terms of reference should remain unchanged, because the current Terms of Reference were sufficiently broad to allow Coordinating Committees to formulate regional positions among members, where necessary, and that the possibility to carry out this activity was adequately covered by bullet point (g) “exercises a general coordinating role for the Region and such other functions as may be entrusted to it by the Commission”. It was also noted that the Terms of Reference of all Coordinating Committees should be kept harmonized and that the development of regional positions could be more effectively addressed by implementing specific activities within each region than by amending the Terms of Reference of Coordinating Committee.

⁸ CX/GP 09/25/5

⁹ CX/GP 09/25/6, CX/GP 09/25/6-add.1

101. The Committee further noted the specific request from the CCLAC to clarify whether the current terms of reference for the Coordinating Committees could be interpreted to give them full freedom to issue regional opinions on all themes under discussion in Codex of strategic importance to the region concerned.

102. The Secretariat clarified that in addition to the present Terms of Reference of Coordinating Committee, bullet (iii) of paragraph 3 of Rule IV of the Rules of Procedure also conferred the Coordinators the function to advise the Executive Committee and the Commission of the view of countries of the respective region.

103. The Committee concluded the discussion by confirming that the full freedom was given under the current Terms of Reference of FAO/WHO Coordinating Committees to issue regional opinions on all themes under discussion in Codex of strategic importance to the region concerned and to promote the adoption of regional positions on strategic subjects, and therefore there was no need to modify the Terms of Reference.

REFERENCES TO APPLICATION IN CODEX STANDARDS (Agenda Item 7)¹⁰

104. The Secretariat recalled that the 31st Session of the Commission had considered the proposal to review the statements appearing in a number of Codex standards and referred this question to the Committee on General Principles. The working document prepared for the present session recalled the background to the development and consideration of two types of statements on the status of the annex found in certain categories of Codex standards and proposed some recommendations in order to ensure a more consistent approach throughout Codex standards.

105. Several delegations pointed out that, due to the late availability of the document, they had not had sufficient time to consider it in detail and therefore proposed to defer consideration of this question until the next session of the Committee.

106. The Committee noted that a document on amendments to Codex standards and related texts would be prepared for the 32nd Session of the Commission (ALINORM 09/32/8) and agreed that the reference to application in Codex standards could be integrated into that document for further consideration by the Commission, especially as regards the proposed deletion of provisions relating to acceptance of Codex standards.

Related Matters

107. As agreed under Agenda Item 1, the Committee considered the proposal from the Delegation of Japan in CRD 7 to review the use of the term “acceptance” 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, and to replace it with an alternative wording taking into account that the Acceptance Procedure had been abolished.

108. Some delegations expressed the view that the use of the term “acceptance” in the Statement of Principles could be interpreted as not referring to the acceptance procedure per se but to final adoption of the standard in the Elaboration Procedure or to the use of the standard at the national level. It was also proposed to ask the Commission to clarify the interpretation of Paragraph 4 of the Statements of Principle in this respect.

109. Other delegations pointed out that before making any change to the Statements of Principle, careful consideration should be given to possible legal implications and that it was premature to undertake a revision of the text at this stage.

110. Some delegations expressed the view that the discussion on the Statements of Principle had been very long and complex and that there was no need to reconsider this question, and the statement could therefore be retained in the Manual without change insofar as the Statements factually represented the decision taken by the Commission in 1995.

111. After some discussion, the Committee agreed that no revision of the Statement should be considered and recommended to the Commission to insert a footnote to Paragraph 4 of the Statements of Principle indicating that the Acceptance Procedure had been abolished in 2005.

¹⁰ CX/GP 09/25/7, CRD 5 (comments of India), CRD 7 (comments of Japan)

PROPOSED NEW DEFINITIONS OF RISK ANALYSIS TERMS RELATED TO FOOD SAFETY (Agenda Item 8)¹¹

112. The Committee recalled that it had agreed at its last session that the Delegation of New Zealand, in cooperation with the United Kingdom, would prepare a revised document for consideration by this session, taking into account the discussion of the Committee.

113. The Delegation of New Zealand recalled that several definitions that describe aspects of risk analysis as well as the working principles for risk analysis as applied throughout the Codex system or in specific areas as relate to the work of Codex committees had been adopted by Codex. Yet, there sometimes remained confusion as to the intent and application of the term risk based or based on risk assessment when describing a standard.

114. The Delegation pointed out that work on an explanatory text to clarify the issues described in the document would help to correctly describe Codex standards, position risk assessment as one of several options for developing Codex standards that are useful and fit-for-purpose, and at the same time maintain the integrity and value of risk assessment to Codex. Codex standards should be developed in a timely manner, and should be such that are applied widely after adoption.

115. The Delegation also pointed out that development of an explanatory text should not in any way imply a hierarchy between different types of Codex standards.

116. Several delegations, while recognizing that the document offered valuable insight into the important issues related to risk analysis, expressed the view that it was premature to initiate new work on an explanatory text, as under the WTO SPS Agreement, measures taken by the member countries shall be based on scientific principles and scientific assessment of risks as appropriate to the circumstances, which allowed sufficient flexibility.

117. The Committee expressed its appreciation to the document prepared by the Delegation of New Zealand and the United Kingdom, noted that the points made in the document should be borne in mind in the ongoing and further work of the Commission as it relates to risk analysis, and also agreed that there was no need to continue work on this document.

PARTICIPATION OF DEVELOPING COUNTRIES IN THE WORK OF CODEX (Agenda Item 9)¹²

118. The Secretariat introduced document CX/GP 09/25/9, which had been prepared at the request of the 31st Session of the Commission. The document included the data on the participation of developing countries in Codex sessions (Section 1) and proposals to improve the situation (Section 2). The Secretariat indicated that the proposals were not meant to be exhaustive nor mutually exclusive and that the matter should also be examined in the broadest possible context, especially in the light of the operation of the FAO/WHO Trust Fund for Enhanced Participation in Codex (Codex Trust Fund) as the latter instrument had been established in 2003 as the direct response to the issue of developing countries participation as highlighted in the Codex Evaluation in 2002.

119. The Representative of WHO, on behalf of the Secretariat for the Codex Trust Fund, introduced document CX/GP 09/25/9 Add. 1, recalling the basic principles that had been agreed upon at the launch of the trust fund, namely the criteria for eligibility of beneficiary countries as well as the overall fund allocation among the countries of Groups 1, 2 and 3 (60%, 30% and 10% respectively). Despite year-to-year fluctuation in the number of supported delegates, depending on the level of available funding, over 200 delegates attended Codex sessions in 2005, 2007 and 2008. The Representative indicated that Graph 2 of CRD 16 showed that in the African region, where many least developed countries were located, the number of participants in Codex meetings not supported by the Codex Trust Fund had increased over the past years, which could be taken as a sign of countries' commitment to sustain their participation in Codex meetings on their own funding.

¹¹ CX/GP 09/25/8, CRD 9

¹² CX/GP 09/25/9; CX/GP 09/25/9 Add.1 (FAO/WHO Project and Fund for Enhanced Participation in Codex); CX/GP 09/25/9 Add.2 (Discussion in the FAO/WHO Coordinating Committees); CRD 5 (Comments of India); CRD 6 (Comments of Thailand); CRD 8 (Comments of Indonesia); CRD 10 (comments of China); CRD 16 (Codex Trust Fund).

120. Many delegations noted that the level of participation of developing countries in Codex work remained insufficient, despite the efforts made through the Codex Trust Fund to rectify disparity in participation between developing and industrialised countries. This problem was linked to the Codex committee structure, the way Codex meetings were organised, the difficulties in obtaining visas and the availability of documentation in French and Spanish and it was urgent to address this issue to ensure the legitimacy and transparency of the process. Concern was expressed on the number of physical working groups, as the participation of developing countries was even weaker in these instances than in more formal meetings.

121. Many delegations proposed that an integrated plan of action be put in place comprising three elements: (1) improved operation and transparency of the Codex Trust Fund; (2) Strengthening of capacity building activities to enhance national technical competence offered by FAO and WHO; (3) concentrating Codex meetings in Rome/ Geneva.

122. Many delegations that intervened stressed the importance of effective participation of Codex members in the standards setting process, including, but not limited to, physical presence at Codex sessions. While physical participation allowed delegates to directly contribute to the elaboration of standards, interact with each other and gain valuable experience to better understand technical and procedural matters, effective participation required the capacity to analyse technical issues in between sessions, contribute scientific data, and coordinate among national stakeholders. Delegations recognised that the Codex Trust Fund had contributed an initial momentum to increase awareness on Codex matters in developing countries and have them involved in Codex work, continuous effort should be made to foster more effective participation of developing countries in Codex meetings including those of working groups established by Codex subsidiary bodies.

123. The Committee agreed that Proposal A (Make best use of written comments at Steps 3 and 6) was an important pillar in the standards development process and that countries should be encouraged to send written comments especially where they could not participate physically in Codex sessions. However, the Committee recognised that this proposal alone was unlikely to solve fundamental problems.

124. While Proposal B (Foster dynamic exchange of opinions/comments outside physical meetings) attracted the favourable attention of some delegations, the Committee noted that opening an electronic discussion forum for each of many Circular Letters sent out every year would put enormous burden to Codex Contact Points, which would have to monitor and contribute to the e-forums. The Committee agreed that some of the regional websites maintained by the FAO/WHO Coordinating Committees or Coordinators that provided facilities for a virtual “chat room” could serve as a useful tool for the exchange of information and knowledge among countries and that full use should be made of these facilities.

125. The views of delegations were divided over Proposal C (Reduce the number of Codex sessions per year and per biennium). Several delegations were of the view that the reduction in the number of Codex sessions was the most straight-forward solution to alleviating the workload of Codex members and to allowing them to focus available resources on a smaller number of meetings. Other delegations opposed to this top-down approach, pointing out that the number and frequency of meetings should be proposed by the committees concerned, depending on the amount of work to be carried out by them. In this regard, the importance of standards management in the framework of the Critical Review was also highlighted. As regards the frequency of Commission sessions, several delegations stated that its annual sessions should be maintained in order to ensure transparency and inclusiveness of Codex work as well as the timeliness of standards development including their final adoption.

126. Several delegations considered Proposal D (Concentrate all Codex sessions in Rome or in Geneva) as an option that could be studied further, including cost/benefit and financial implications to the Codex programme and to the host governments of subsidiary bodies as well as the availability of interpreters and meeting rooms on the FAO premises. Many other delegations did not support this proposal, as the need for national experts to travel from country capitals to Geneva or to Rome would remain unchanged due to the limited capacity of Geneva or Rome-based diplomats to take active part in technical discussions and consensus building process through negotiations and due to the fact that not all Codex members had an embassy or a mission in these two locations.

127. The secretariat indicated that an approximate cost of USD 200,000 would have to be borne by a host government holding a one-week Codex session in Rome or in Geneva to cover interpretation, security and other expenses, in addition to, among others, the costs of transferring the national secretariat to Rome/Geneva prior to each session.

128. Several delegations stated that wherever a Codex session was held, there should be facilities for obtaining an entry visa well in advance. It was also pointed out that meeting venues should be accessible for travel by all countries, especially developing countries. Some delegations stated that visiting different countries as venues of Codex sessions provided opportunities to learn about other countries' experience in food control.

129. There was no support to Proposal E (Introduce Video-conference for Codex sessions) in view of many practical problems and costs associated with this option, although some delegations noted that modern communication technologies could be useful in the future in complementing the need for physical meetings.

130. Many delegations expressed their opposition to Proposal F (Restrict the membership of Codex Committees and Task Forces). The transparency and inclusiveness were the core values of the Codex standards setting process and these values should be safeguarded at all cost. Some delegations noted that from a practical point of view, full participation in all meetings was neither feasible nor necessary; they stressed that it was important that standards development benefit from input of different views representative of various locations/situations and, as far as these conditions were met, a smaller group could play a role at certain stages of standards development in speeding up Codex work. An innovative approach could be found in this regard.

131. The Committee considered that Proposal G (Extend the Codex Trust Fund to all Codex members and all Codex sessions) was desirable. Nonetheless the implementation of proposal G remained a big challenge given the current funding situation of the Codex Trust Fund.

132. Some delegations expressed their support to further studying Proposal H (Introduce remote voting in the Elaboration Procedure at Step 1), as a means to engage the whole Codex membership in the initial decision making in the standards development process without delaying the Codex work. The Delegation of Malaysia expressed its opposition to pursuing this proposal. The Committee noted that there was no strong support for this proposal.

133. In addition to the proposals contained in Section 2 of the document, the Committee noted that there existed other mechanisms that would enhance participation of developing countries, such as mentoring, cooperation between Codex Contact Points, co-hosting of Codex sessions, national and regional seminars/workshops, and South-South cooperation. Co-hosting arrangements had been useful to promote awareness on Codex work in the venue country or in the region concerned and allow sharing experience related to holding Codex sessions. Reference was also made to mentoring arrangements coordinated by the WTO SPS Committee and its secretariat, aimed at promoting compliance of WTO members regarding their obligations under the transparency provisions of the SPS Agreement. Earlier distribution of Codex working documents, especially in languages other than English, would also facilitate effective participation of Codex members.

134. The Committee recognised the positive role played by the Codex Trust Fund in enhancing the participation of developing countries in Codex work in the past years. Several delegations expressed their appreciation to the trust fund, its donors, FAO and WHO for their support which had allowed them to strengthen their infrastructure and capacity to address Codex issues and identify priorities among them, and had also contributed to increased awareness among policy makers concerning the importance of food safety and food control.

135. Several delegations however observed that the management of the Codex Trust Fund by WHO should be made more transparent and predictable to the Codex members. Proposals were made to review the modality of operation of the Codex Trust Fund, including its eligibility criteria, and to extend the life-span of the trust fund. Several delegations referred to the cases where travel had to be cancelled because of non-availability of entry visas in time. The Committee noted a request that WHO prepare a document outlining the main thrust of the forthcoming medium-term evaluation of the Codex Trust Fund covering the main issues raised in the previous evaluations conducted in cooperation with the United Kingdom Department for international Development (DFID) and with the support of the Government of Sweden, for discussion at the 32nd Session of the Commission. This document should be made available well in advance in order to allow full study by Codex members.

136. The Representative of WHO informed the Committee that the annual and progress reports of the trust fund had been made available to the Commission and to the Codex members and that efforts were being made to cater to the demand of beneficiary countries on a case-by-case basis. The Representative stressed the necessity to maintain distinction between different categories of beneficiary countries because the degree of the need for support differed among them.

137. The Representative of FAO stated that promoting capacity building of countries in Codex-related matters had always been a priority in FAO and WHO. Extra-budgetary funding was being sought to satisfy the need of countries in need. FAO and WHO had developed a training package for enhanced participation in Codex, also available on Internet as e-learning course, and had often organised regional workshops in conjunction with the meetings of FAO/WHO Coordinating Committees. The Representative expressed his hope that the Coordinating Committees would serve as a privileged forum for discussing capacity building issues at the regional level.

138. The observer from IBFAN proposed to include consumer associations in capacity building organised by FAO and WHO.

139. The Secretariat reminded the Committee that a Codex-wide plan of action for enhancing the participation of developing countries existed in the form of Goal 5 of the Codex Strategic Plan 2008-2013, comprising six specific Activities. The Committee noted that several FAO/WHO Coordinating Committees had developed a regional plan of action to support Goal 5 of the Strategic Plan and that various capacity building activities implemented by countries in cooperation with regional economic communities, donor agencies or FAO/WHO, could be concerted along these action plans. The Committee noted that the Standards and Trade Development Facility (STDF) also assisted in coordinating capacity building efforts.

140. The Committee recognised that promoting capacity building in developing countries was a vital work to be undertaken in order to ensure their greater participation in Codex work. The Committee agreed to report the discussion above to the attention of the 32nd Session of the Commission for further debate.

STRUCTURE AND PRESENTATION OF THE PROCEDURAL MANUAL (Agenda item 10)¹³

141. The Secretariat introduced the item and recalled that the 24th Session of the Committee had discussed the matter based on a proposal from the Secretariat¹⁴. Taking into account the discussion at that session, the Secretariat had proceeded to produce the 18th Edition of the Procedural Manual in a revised format with an improved index and table of contents. The Secretariat mentioned that the question of including general decisions of the Commission in the Annex as well as texts that had been adopted by the Commission but were currently included in other publications or in working documents needed further consideration. The Secretariat informed the Committee that French, Spanish, Arabic, Chinese and Russian versions of the Manual were under preparation. The Secretariat invited all delegations to send any wishes for improving the structure or layout of the Manual to the Codex Secretariat.

OTHER BUSINESS AND FUTURE WORK (Agenda Item 11)¹⁵

Terms of reference of CCGP

142. The Delegation of Japan drew the attention of the Committee to the reference to acceptance in the terms of reference of the Committee and proposed to amend it in order to avoid confusion relating to the acceptance procedure, which had been abolished in 2005.

143. The Secretariat noted that the second sentence of the terms of reference referred to examples of previous activities, whereas the mandate of other committees usually described their current responsibilities.

144. Several delegations supported deletion of the whole second sentence of the terms of reference, as the first sentence was clear enough to describe the responsibilities of the Committee. In reply to some concerns about the deletion of the reference to economic impact statement, the Secretariat indicated that the consideration of economic impact was specifically addressed in the Elaboration Procedure at Step 5

145. After some discussion, the Committee agreed to propose to the Commission an amendment to its terms of reference to delete the second sentence (see Appendix IV).

146. The Delegation of Malaysia expressed its opposition to this decision, due to the deletion of the reference to economic impact statements and proposed to retain the present text with an addition of a footnote indicating that the acceptance procedure had been abolished in 2005.

¹³ Advance copy of the 18th Edition of the Procedural Manual

¹⁴ ALINORM 07/30/33, paras 156 - 165

¹⁵ CRD 7 (comments of Japan), CRD 16 (comments of OIE), CRD 19 (History of discussion on joint standards within Codex)

Development of joint OIE-Codex standards

147. The Observer from the World Organization for Animal Health (OIE) introduced CRD 16 and highlighted the work of OIE on animal production food safety and its close relationship with Codex work, and the effective cooperation with Codex through participation in standard setting activities. In order to make such cooperation more effective, the Observer proposed that the Committee consider arrangements for the development of joint standards, which might address several areas of common interest with Codex, such as standards for controlling pathogens transmitted through food products of animal origin, use of antimicrobials in food producing animals, or commodity standards for meat products.

148. The Secretariat informed the Committee that the history of consideration by the Committee of the guidelines for cooperation with intergovernmental organizations, including the development of joint standards, was presented in CRD 19.

149. Many delegations recalled that close cooperation existed with OIE on matters of common interest (e.g. information exchange between Codex and OIE, OIE participation in several areas of Codex work), and supported continued efforts to ensure food safety of animal products throughout the food chain.

150. Several delegations expressed the view that the current Guidelines on Cooperation between the Codex Alimentarius Commission and International Intergovernmental Organizations in the Elaboration of Standards and Related Texts were adequate to allow efficient cooperation with OIE and that there was no need for additional procedures, and that in any case, Codex texts should be adopted through the Codex procedures, in order to ensure transparency and inclusiveness. It was also pointed out that the differences in the approaches to risk analysis, operational and elaboration procedures between Codex and OIE should be taken into account as they might create some difficulties to develop joint standards.

151. Some delegations supported joint work on matters that were covered by the mandates of both organizations, and noted that it was also important to ensure coordinated efforts at the national level in order to effectively manage risks related to animal health and food safety with a view to protecting consumers' health in an integrated framework.

152. The Observer from WTO informed the Committee that, in the framework of the second review of the implementation of the SPS Agreement, the SPS Committee had agreed to review the cooperation between WTO and the OIE, Codex and IPPC in order to improve coordination and avoid duplication of work, and that a workshop on the standard setting process of the "three sisters" and the cooperation between the SPS Committee and these bodies would be convened in October 2009 for that purpose.

153. The Chairperson recalled that cooperation with OIE was important and that issues related to possible modalities and procedures could be further considered at the next session, in order to improve cooperation with OIE. The Committee agreed that the Codex Secretariat should approach the OIE Secretariat and prepare a discussion paper on the possible development of joint standards between Codex and OIE, addressing all relevant procedural and other issues, as well as implications, for consideration by its next session.

DATE AND PLACE OF THE NEXT SESSION (Agenda Item 12)

154. The Committee was informed that its 26th Session would most likely be held in 2010 or 2011, depending on the outcome of the 32nd session of the Commission. The Delegation of Mali offered to co-host a CCGP session in 2011 with France in Bamako. The Committee noted that the final arrangements would be subject to confirmation by the Host Country and the Codex Secretariat.

SUMMARY STATUS OF WORK

SUBJECT MATTER	STEP	ACTION BY	REFERENCE
Proposed amendment to the <i>Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces</i>	-	Governments, CAC32	para 87 (d) and Appendix III
Proposed Amendment to the Terms of Reference of the Committee on General Principles	-	Governments, CAC32	para 145 and Appendix IV
Proposed inclusion of an information footnote to the fourth paragraph of the <i>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</i> indicating that the acceptance procedure had been abolished in 2005	-	CAC32	para 111
Proposed Draft Revised Code of Ethics for International Trade in Foods	5/8	Governments, CAC32	para 43, Appendix II

APPENDIX I

**LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS
LISTA DE PARTICIPANTES**

Chairperson/Président/Presidente

Professeur Michel THIBIER

Secrétariat Général des Affaires Européennes
Carré Austerlitz
2, boulevard Diderot
75572 Paris Cedex 12 (France)
Tel : + 33 1 44 87 16 03 - Fax : + 33 1 44 87 16 04
Email : sgae-codex-fr@sgae.gouv.fr

ALGERIA - ALGÉRIE**Dr. Ali ABDA**

Membre du Comité national CODEX
Direction des Services Vétérinaires
Ministère de l'Agriculture et du Développement Rural
12, boulevard Colonel Aminouche
Alger
Tel : + 213 21 74 63 33
Fax : + 213 21 74 63 33
Email : dsva@wissal.dz

ANGOLA**Dra Lidia MORAIS**

2a Secretaria Executiva Adjunta do Codex - Angola
Codex-Angola, Ministerio da Agricultura
Rue Comandante Jika,
Largo Antonio Jacinto CP 527
Tel : + 244 222 32 37 24/244 92316678
Fax : + 244 222 32 37 24
Email : secretariado_codex@yahoo.com.br
or lidiamorais43@hotmail.com

Mr. Joao GOMES

Membro do Codex-Angola
Codex-Angola, Ministerio das Pescas
Avenida 4 Fevereiro
Edifício Atlantico CP 183
Tel : + 244 222 32 37 24 / + 244 923401363
Fax : + 244 222 32 37 24
Email : secretariado_codex@yahoo.com.br
or joagomes43@hotmail.com

ARGENTINA - ARGENTINE**Mme Gabriela CATALANI**

Coordinadora Tecnica del Punto Focal del Codex
Secretaria de Agricultura, Ganaderia, Pesca y Alimentos
Paseo Colon 922 – Planta Baja – Oficina 29
1063 Buenos Aires
Tel : + 54 11 43 49 25 49
Fax : + 54 11 43 49 22 44 / 25 49
Email : gcatal@mecon.gov.ar

Mme Alicia BARONE

Funcionario Embajada Argentina
Ministerio Relaciones Exteriores
6, rue Cimarosa
75116 Paris (France)
Tel : + 33 1 44 05 27 00 / 22
Email : abr@mrecic.gov.ar

AUSTRALIA - AUSTRALIE**Mr Richard SOUNESS**

General Manager
Food and Product Safety and Integrity Branch
Department of Agriculture, Fisheries and Forestry
GPO BOX 858
Canberra ACT 2061
Tel : +61 26272 4899
Fax : + 61 26272 5692
Email : richard.souness@daff.gov.au

Mme Ann BACKHOUSE

Manager
Codex Australia
Food and Product Safety and Integrity Branch
Department of Agriculture, Fisheries and Forestry
GPO BOX 858
Canberra ACT 2061
Tel : +61 26272 5692
Fax : + 61 26272 3103
Email : ann.backhouse@daff.gov.au

AUSTRIA - AUTRICHE**Dr. Erhard HÖBAUS**

Head of Division
 Nutrition and Quality Assurance
 Federal Ministry of Agriculture, Forestry, Environment
 and Water Management
 A-1012 Vienna
 Stubenring 12
 Tel : + 431 71100 - 2855
 Fax : + 431 71100 - 2901
 Email : erhard.hoebaus@lebensministerium.at

Dr. Michael SULZNER

Federal Ministry of Health
 Unit IV/B/8 – Food Safety & Consumer Protection
 Specific Goods, FAO/WHO Codex Alimentarius
 Radetzkystrasse 3
 A-1031 Vienna
 Tel : + 43 1 71100-4793
 Fax : + 43 1 713 79 52
 Email : michael.sulzner@bmg.gv.at

BELGIUM – BÉLGIQUE - BÉLGICA**Mr. Charles CREMER**

Conseiller Général
 SFP Santé publique, Sécurité de la Chaîne alimentaire et
 Environnement
 Service Denrées alimentaires et Alimentation animale
 Place Victor Horta, 40/10
 B-1060 Bruxelles
 Tel : + 32 2 524 73 71
 Fax : + 32 2 524 73 99
 Email : charles.cremer@health.fgov.be

Dr. Marc CORNELIS

Conseiller Général
 Agence fédérale pour la Sécurité de la Chaîne
 alimentaire
 DG Politique de Contrôle
 Relations Internationales
 Food Safety Center
 Boulevard du Jardin Botanique, 55
 B-1000 Bruxelles
 Tel : + 32 2 211 8622
 Fax : + 32 2 211 8640
 Email : marc.cornelis@favv.be

Dr. Guido KAYAERT

Vice-Président
 Relations with the European Institutions
 Nestlé Coordination Center
 Rue de Birmingham, 221
 B-1070 Bruxelles
 Tel : + 32 2 529 53 30
 Fax : + 32 2 529 56 67
 Email : guido.kayaert@be.nestle.com

BRAZIL - BRÉSIL**Mr. José Antonio MARCONDES DE CARVALHO**

Ambassador
 Permanent Representative of Brazil to FAO
 Visa Santa Maria Dell' Anima 32 00186
 Roma (Italie)
 Tel : + 39 06 6789353
 Fax : + 39 06
 Email : rebrafao@brafao.it

Mme Maria Aparecida MARTINELLI

Coordinator of Brazilian Codex Committee
 INMETRO
 Sepn 511, Bloco B, Edifício Bittar III, 4º Andar
 Brasilia DF, CEP : 70750-542
 Tel : + 55 61 3340 2211
 Fax : + 55 61 3347 3284
 Email : codexbrasil@inmetro.gov.br

Mr. Carlos Henrique ANGRISANI

Second Secretary
 Ministry of Foreign Affairs
 Esplanada dos Ministérios
 Brasilia
 Tel : + 55 61 3411 8927
 Fax : + 55 61 3411 8918
 Email : angrisan@mre.gov.br

Mme Denise DE OLIVEIRA RESENDE

Manager of Safety's Food
 Brazilian Health Surveillance Agency
 SIA Trecho 05
 Area Especial 57
 CEP 71205-050 - Brasilia – DF
 Tel : + 55 61 3462 5313
 Fax : + 55 61 3462 5315
 Email : denise.resende@anvisa.gov.br

Mme Diana Carmem ALMEIDA NUNES DE OLIVEIRA

Executive Manager of Safety's Food
 Brazilian Health Surveillance Agency
 SIA Trecho 05
 Area Especial 57
 CEP 71205-050 - Brasilia – DF
 Tel : + 55 61 3462 5328
 Fax : + 55 61 3462 5315
 Email : diana.oliveira@anvisa.gov.br

Mme Etelvina Maria SOARES CARL

Coordenadora-General
 MDIC / SECEX / DECEX/ CGEX
 Ministério do Desenvolvimento, Industria e
 Comercio Exterior
 Esplanada dos Ministérios
 Bloco J
 CEP 70053-900 – Brasilia – DF
 Tel : + 55 61 2109 7160
 Fax : + 55 64 2109 7429
 Email : etelvina.carl@desenvolvimento.gov.br

Mr. Felipe HADDOCK LOBO GOULART

First Secretary
 Permanent Representation of Brazil to FAO
 Visa Santa Maria Dell' Anima 32 00186
 Roma (Italie)
 Tel : + 39 06 6789353
 Fax : + 39 06
 Email : fgoulart@brafao.it

Mme Patricia PEREIRA

Specialist in Regulation and Health Surveillance
 Brazilian Health Surveillance Agency
 SIA Trecho 5
 Area Especial 57
 CEP 71205-050 – Brasilia – DF
 Tel : + 55 61 3462 5406
 Fax : + 55 61 3462 5414
 Email : patricia.pereira@anvisa.gov.br

Mr. Rogério PEREIRA DA SILVA

Coordinator for Codex Alimentarius Mattes
 Food Inspector
 Ministry of Agriculture, Livestock and Food Supply
 Secretariat of Agribusiness International Relations
 Esplanada dos Ministérios
 Bloco D – Edificio Sede – Sala 349
 Brasilia DF - CEP : 70043-900
 Tel : + 55 61 3218 2968
 Fax : + 55 61 3225 4738
 Email : rogerio.silva@agricultura.gov.br

CAMBODGIA - CAMBODGE - CAMBOYA**Mr. Khlauk CHUON**

Email : kchuon@gmail.com

CAMEROON - CAMEROUN - CAMERÚN**Mr. LATTE BIOUELE**

Chef de Laboratoire National d'Analyse
 Diagnostique
 Direction de la Réglementation et du Contrôle de la
 Qualité des Intrants Agricoles
 Ministère de l'Agriculture et du Développement
 Rural
 Yaoundé
 Tel : + 237 79 91 06 05 / 94 71 81 23
 Fax : + 237 22 31 11 36
 Email : lattebiouele@yahoo.fr

CANADA – CANADÁ**Mr. Ron BURKE**

Codex Contact Point for Canada
 Food Directorate, Health Canada
 200 Tunney's Pasture Driveway (0702C1)
 Ottawa, Ontario, K1A 0L2
 Tel : + 1 613-957 1748
 Fax : + 1 613-941 3537
 Email : ronald_burke@hc-sc.gc.ca

Mme Debra BRYANTON

Executive Director, Food Safety and Consumer
 Protection
 Canadian Food Inspection Agency
 1400 Merivale Road
 T2-6-350
 Ottawa, Ontario, K1A 0Y9
 Tel.: + 1 613 773 5445
 Fax: + 1 613 773 5603
 Email : debra.bryanton@inspection.gc.ca

Mr. Bertrand GAGNON

Député Director,
 Codex and Food Safety Coordination
 Canadian Food Inspection Agency
 1400 Merivale Road
 T1-5-339
 Ottawa, Ontario, K1A 0Y9
 Tel : + 1 613-773 6092
 Fax : + 1 613-773 6088
 Email : bertrand.gagnon@inspection.gc.ca

Mr. Karl DUPUIS

Deputy Director,
 Technical Trade Policy
 Agriculture and Agri-Food Canada
 1305 Baseline road
 T5-3-145
 Ottawa, Ontario, K1A 0C5
 Tel : + 1 613-773-1632
 Fax : + 1 613-773-1616
 Email : karl.dupuis@agr.gc.ca

CENTRAL AFRICAN REPUBLIC –
RÉPUBLIQUE CENTRAFRICAINE –
REPÚBLICA CENTROAFRICANA

Mr. Romain Serge SANA

Chef de Service des Normes et de la Qualité
 Ministère du Commerce et de l'Industrie (MCI)
 BP 1988 Bangui
 Tel : + 236 75 05 84 98
 Fax : + 236 21 61 76 53
 Email : sromainserge@yahoo.fr

CHILE - CHILI

Mme Antonieta URRUTIA

Ingeniero Agronomo
 Servicio Agrícola y Ganadero
 Ministerio de Agricultura
 Avenida Bulnes 140
 Santiago
 Tel : + 56 2 3451585
 Fax : + 56 2 3451578
 Email : antonieta.urrutia@sag.gob.cl

M Maya Alejandra FERNANDEZ ALLENDE

Asesora Unidad de Medidas Sanitarias y
 Fitosanitarias
 Direccion General de Relaciones Economicas
 Internacionales (DIRECON)
 Teatinos 180. Piso 11
 Santiago Centro
 Tel : + 56 2 827 5249
 Email : mfernandez@direcon.cl

CHINA - CHINE

Dr. Xiumei LIU

Professor
 National Institute of Nutrition and Food Safety,
 China CDC, MOH
 7 Panjianyuan Nanli, Chaoyang District
 Beijing 100021
 Tel : + 86 10 67770158
 Fax : + 86 10 67711813
 Email : xiumeiliu@ccfa.cc
 or xmliu01@yahoo.com.cn

Mme Zhihong XUE

Division Director
 Bureau of Quality and Safety Supervision, MOA
 11 Nongzhanguan Nanli
 Beijing 100125
 Tel : + 86 10 59193156
 Fax : + 86 10 59193315
 Email : xuezhihong@agri.gov.cn

Dr. Xiongwu QIAO

Vice President
 Academy of Agricultural Sciences
 Shanxi
 64 North Nongke Road, Taiyuan
 030031
 Tel : + 86 351 7581865
 Fax : + 86 351 7126215
 Email : xwqiao@public.ty.sx.cn

Mr. Zhaoying TIAN

Deputy Director
 Standardization Administration of the P.R. China,
 SAC
 N° 9 Madian Donglu Haidian
 District Beijing 100088
 Tel : + 86 10 82262906
 Fax : + 86 10 82260687
 Email : tianzy@sac.gov.cn

Prof. Yumei WU

Professor
 Heilongjiang University
 74 Xuefu Road, Nangang District, Harbin
 Heilongjiang 150080
 Tel : + 86 451 86609502
 Fax : + 86 451 86609502
 Email : zjzxwym@163.com

Mme Lei ZHU

Research Assistant
 National Institute of Nutrition and Food Safety,
 China CDC, MOH
 7 Panjianyuan Nanli, Chaoyang District
 Beijing 100021
 Tel : + 86 10 67791259
 Fax : + 86 10 67711813
 Email : zhulei513@163.com
 or zhulei@ccdfa.cc

Mme Xuemei NIE

Research Assistant
 Chinese Academy of Inspection and quarantine
 N° 3 Gaobeidian North Road
 Chaoyang District Beijing 100123
 Tel : + 86 10 85749377
 Fax : + 86 10 85759377
 Email : niexuemei-00@yahoo.com.cn

Mr. Min PU

Director
 WTO/SPS National Notification Authority and
 Enquiry Point
 N° 9 Madian Donglu Haidian
 District Beijing 100088
 Tel : + 86 10 82262429
 Fax : + 86 10 82260621
 Email : pumin@aqsiq.gov.cn

Mr. Jinxi WANG

Director
Fujian Entry-Exit Inspection & Quarantine Bureau
N° 312 Hudong Road Fuzhou
Tel : + 86 591 87065261
Fax : + 86 591 87065260
Email : wjx83cn@yahoo.com.cn

Mr. Sheng pu GAO

Engineer
China National Institute of Standardization
N° 4 Zhichun Road, Haidian
District Beijing 100088
Tel : + 86 10 58811635
Fax : + 86 10 58811655
Email : gaoshengpu@126.com

COSTA RICA**Mme Isabel Cristina ARAYA BADILLA**

Punto de Contacto Codex Costa Rica
Directora de Mejora Regulatoria y Reglamentacion
Tecnica
10216-1000
San José, Costa Rica
Tel : +506 2236 2538
Fax : +506 2297 1439
Email : iaraya@meic.go.cr / infocodex@meic.go.cr

Mr Sergio VINOCOUR

Ministre conseiller,
Consul Général du Costa Rica
Ambassade du Costa Rica
4, square Rapp
75007 Paris (France)
Tel : +33 1 45 78 50 93
Email : consulat.cr@gmail.com

CÔTE D'IVOIRE**Mr. Edmond N'DRI APIA**

Point Focal Côte d'Ivoire
Directeur des Productions Alimentaires
et de la Diversification
Ministère de l'Agriculture
BPV 82 Abidjan
5^{ème} étage de la Caistab
Tel : + 225 20 22 24 81
Email : ndriapia@yahoo.fr

CROATIA - CROATIE - CROAZIA**Mme Nevenka GASPARAC**

Assistant Director
Center for Quality
Croatia Chamber of Economy
Rooseveltov trg 2
10000 Zagreb
Tel : +385 1 4561 776
Fax : +385 1 4561 614
Email : ngasparac@hgk.hr

CUBA**Mr. Gabriel LAHENS ESPINOSA**

Director de Regulaciones Tecnicas y Calidad del
Ministerio del Comercio Exterior y para la
Colaboracion Extranjera
Infanta N° 16 esq. 23, Vedado
La Habana – CP 10400
Tel : + 537 838 0454
Fax : + 537 838 0364
Email : gabriel.lahens@mincex.cu

**CZECH REPUBLIC - RÉPUBLIQUE
TCHÈQUE - REPÚBLICA CHECA****Mr. Frantisek SLADEK**

Director General of Food Authority and
Section of Food Production
Ministry of Agriculture
Tesnov 17
11705 Praha 1
Tel : + 420 221 812 485
Fax : + 420 222 812 895
Email : Frantisek.sladek@mze.cz

Mr. Jindrich FIALKA

Director of Food Production and Legislation
Department
Ministry of Agriculture
Tesnov 17
11705 Praha 1
Tel : + 420 221 812 465
Fax : + 420 222 314 117
Email : jindrich.fialka@mze.cz

Mr. Martin STEPANEK

Deputy Director of Food Production and Legislation
Department
Ministry of Agriculture
Tesnov 17
11705 Praha 1
Tel : + 420 221 812 838
Fax : + 420 222 314 117
Email : martin.stepanek@mze.cz

Dr. Leos CELEDA

Third Secretary
 Ministry of Foreign Affairs CR
 Permanent Representation of the Czech Rep.
 15, rue Caroly
 1050 Brussels (Belgique)
 Tel : + 32 2 2139 427
 Fax : + 32 2 2139 184
 Email : leos_celeda@mzv.cz

Mr. Kari TÖLLIKKÖ

Principal Administrateur
 Secrétariat Général du Conseil de l'Union
 Européenne
 175, rue de la Loi
 B-1048 Bruxelles (Belgique)
 Tel : + 32 2 281 7841
 Fax : + 32 2 281 6198
 Email : kari.tollikko@consilium.europa.eu

DENMARK – DANEMARK - DINAMARCA**Mr. Knud OSTERGAARD**

Head of Division
 Danish Veterinary and Food Administration
 Morkhoj Bygade 19
 DK-2860 Soborg
 Tel : + 45 339 56120
 Fax : + 45 339 56001
 Email : koe@fvst.dk

Mme Jytte KJAERGAARD

Head of Section
 Danish Veterinary and Food Administration
 Morkhoj Bygade 19
 DK-2860 Soborg
 Tel : + 45 339 56233
 Fax : + 45 339 56001
 Email : jk@fvst.dk

**DOMINICAN REPUBLIC – RÉPUBLIQUE
DOMINICAINE – REPÚBLICA DOMINICANA****Dr. Matilde Josefina VASQUEZ CABRAL**

Subsecretaria de Estado de Salud en Nutricion
 Punto de Contacto del Codex
 Secretaria de Estado de Salud Publica y Asistencia
 Social (SESPAS)
 Av. Tiradentes esquina Av. Homero Hernandez,
 Ensanche La Fe,
 Santo Domingo, D.N.
 Tel : + 809 541 3121 ext. 2381 al 2385
 Fax : + 809 541 0382
 Email : nutrisespas@hotmail.com
 Email : codexsespas@yahoo.com

EGYPT – ÉGYPTE - EGIPTO**Prof. Mohamed Fahmi AHMED**

Professor of Food Hygiene
 Vice-President, Consumer Egyptian Society
 19 Hassan Mohamed Str., El-Harem
 Cairo
 Tel : + 202 358 798 68
 Fax : + 202 228 455 04
 Email : ilsi@tedata.eg

Mme Reda Mohamed ESMAIL

Food Standards Specialist
 Egyptian Organization for Standardization
 and Quality (EOS)
 16 tadreeb El-modarrebeent., Ameriya str.
 Cairo
 Tel : + 202 228 455 31
 Fax : + 202 228 455 04
 Email : moi@idsc.net.eg

ECUADOR –ÉQUATEUR**Mr. Juan GRANJA**

Délégué Commercial
 Troisième Secrétaire
 Ambassade d'Equateur en France
 34, avenue de Messine
 75008 Paris (France)
 Tél : 06 48 26 21 63
 Email : jugranja@hotmail.com

ESTONIA - ESTONIE**Mme Reili KIVILO**

Senior Specialist
 Food Safety Office of the Food
 and Veterinary Department
 Ministry of Agriculture
 39/41 Lai Street
 Tallinn 15056
 Tel : + 372 6 256 509
 Fax : + 372 6 256 210
 Email : reili.kivilo@agri.ee

**EUROPEAN COMMUNITY
COMMUNAUTÉ EUROPÉENNE
COMUNIDAD EUROPEA****Dr. Jérôme LEPEINTRE**

Chef d'Unité f.f.
 Commission Européenne
 Rue Froissart 101
 B-1049 Bruxelles (Belgique)
 Tel : + 32 2 299 37 01
 Fax : + 32 2 299 85 66
 Email : jerome.lepeintre@ec.europa.eu

Dr. Risto HOLMA

Administrateur
Commission Européenne
Rue Froissart 101
B-1049 Bruxelles (Belgique)
Tel : + 32 2 299 86 83
Fax : + 32 2 299 85 66
Email : risto.holma@ec.europa.eu

Dr. Michaela Christine MAJEWSKI

Strategy & Prospective Adviser to EFSA Executive
Director
European Food Safety
Authority – EFSA
L.go Natale Palli 5/A
43100 Parma (Italie)
Tel : + 39 0 521 036 256
Fax : + 39 0 521 036 0 256
Email : christine.majewski@efsa.europa.eu

FINLAND – FINLANDE - FINLANDIA**Mme Anne HAIKONEN**

Counsellor, Legal Affairs
Ministry of Agriculture and Forestry
PO Box 30
FIN-00023 Government
Tel : + 358 9 1605 2786
Fax : + 358 9 1605 3338
Email : anne.haikonen@mmm.fi

FRANCE - FRANCIA**Mme Roseline LECOURT**

Chargée de Mission
Ministère de l'Économie, de l'Industrie et de
l'Emploi
DGCCRF – Télédéc 251
59, boulevard Vincent Auriol
75703 PARIS CEDEX 13
Tel : +33 1 44 97 34 70
Fax : +33 1 44 97 30 37
Email : roseline.lecourt@dgccrf.finances.gouv.fr

Mr. Loïc EVAIN

Sous-Directeur des affaires sanitaires européennes et
internationales
Ministère de l'Agriculture et de la Pêche
DGAL - SDASEI
251, rue de Vaugirard
75732 Paris Ccedex 15
Tel : + 33 1 49 55 81 20
Fax : + 33 1 49 55 55 91
Email : loic.evain@agriculture.gouv.fr

Mr. Jean-Pierre ORAND

Chef du bureau des négociations communautaires et
multilatérales
Ministère de l'Agriculture et de la Pêche
DGAL - SDASEI
251, rue de Vaugirard
75732 Paris Cedex 15
Tel : + 33 1 49 55 83 95
Fax : + 33 1 49 55 44 62
Email : jean-pierre.orand@agriculture.gouv.fr

Mme Anne LEGENTIL

Conseillère Technique
Fédération Nationale de Familles Rurales
7 Cité d'Antin
75009 Paris
Tel : + 33 1 44 91 88 88
Fax : + 33 1 44 91 88 89
Email : anne.legentil@famillesrurales.org

GEORGIA – GÉORGIE**Mr. Tamta MIKANADZE**

Senior Specialist of Food Safety and Quality
Supervision Division
National Service of Food Safety, Veterinary and
Plant Protection
Ministry of Agriculture
15a, Tamarashvili str.
Tbilisi 0177
Tel : + 995 32 31 16 49
Fax : + 995 32 31 16 49
Email : tamtamikanadze@yahoo.com

GERMANY – ALLEMAGNE - ALEMANIA**Mr. Gerhard BIALONSKI**

Head of Unit
Bundesministerium für Ernährung, Landwirtschaft
und Verbraucherschutz
Rochusstrasse 1
D-53123 Bonn
Tel : + 49 228 99529 4651
Fax : + 49 228 99529 4947
Email : 314@bmelv.bund.de

Mr. Michael HAUCK

Administrator
Bundesministerium für Ernährung, Landwirtschaft
und Verbraucherschutz
Mauerstrasse 29 – 32
D-10117 Berlin
Tel : + 49 30 2006 3263
Fax : + 49 30 2006 3273
Email : codex.germany@bmelv.bund.de

Prof. Dr. Rolf GROSSKLAUS

Direktor und Professor
Federal Institute for Risk Assessment
Thielallee 88-92
D-14195 Berlin
Tel : + 49 30 8412 3230
Fax : + 49 30 8412 3715
Email : rolf.grossklaus@bfr.bund.de

GHANA**Mme Geneviève BAAH**

Codex Contact Point Officer
Ghana Standards Board
PO Box MB-245
Accra
Tel : + 233 21 519 758, 501937
Fax : + 233 21 500 092, 500231
Email : gsbnep@ghanastandards.org
or codex@ghanastandards.org

GREECE – GRÈCE – GRECIA**Mme Stamatina LOUKA**

Agriculturalist
Directorate for Nutrition
Policy & Research
Hellenic Food Authority (EFET)
124, Kifisias Av. & 2, Iatridou Str.
11526 Athens
Tel : + 30 210 6971644
Fax : + 30 210 6971552
Email : slouka@efet.gr

Mr. Vasileios KONTOLAIMOS

Legal Advisor
Ministry of Rural Development and Food
Acharnon 29
10439 Athens
Tel : + 30 210 8250307
Fax : + 30 210 8254621
Email : cohalka@otenet.gr

GUINEA-BISSAU – GUINÉE-BISSAU**Mr. Julio Malam INJAI**

Point focal du Comité National du Codex
Alimentarius
Direction du Service de la Protection des Végétaux
Ministère de l'Agriculture et du Développement
Rural
BP 844 Bissau
Tel : + 245 662 11 82
Fax : + 245 322 10 19
Email : julioinjai@hotmail.com

HUNGARY – HONGRIE – HUNGRÍA**Mme Viktoria PALLAGA**

Attachée Agricole
Ambassade de Hongrie à Paris
5, square de l'Avenue Foch
75116 Paris (France)
Tel : + 33 1 45 00 37 01
Fax : + 33 1 56 36 02 68
Email : vpallaga@kum.hu

INDIA - INDE**Mr. Debasish PANDA**

Joint Secretary (Head of Delegation)
Ministry of Health and Family Welfare
Room N° 146 'A' Wing
Nirman Bhavan
New Delhi – 110108
Tel : + 91 11 23061447
Fax : + 91 11 23061447
Email : debasish.panda@nic.in

Dr. Debasish CHATTOPADHYA

Assistant Director General (International Food)
Liaison Officer, National Codex Contact Point
Ministry of Health and Family Welfare
Directorate General of Health Service
Room N° 526 'A' Wing
Nirman Bhavan
New Delhi – 110108
Tel : + 91 11 23061968
Fax : + 91 11
Email : adgif-mohfw@nic.in
Codex-india@nic.in

Mr. Sameer BARDE

Senior Director
Federation of Indian Chambers of Commerce and
Industry (FICCI)
Federation House Tansen Marg
New Delhi – 110001
Tel : + 91 11 23311920 / + 91 11 23738162
Fax : + 91 11
Email : sameer@ficci.com

Mr. Sudhir GARG

Director
Ministry of Commerce, Government of India
Room n° 223 'B'
Ministry of Commerce
Udyog Bhavan
New Delhi – 110107
Tel : + 91 11 23062926
Fax : + 91 11 23062926
Email : sudhir.garg@nic.in

INDONESIA - INDONÉSIE**Mme Erniningsih HARYADI**

Head of Standards Application System
National Standardization Agency,
Secretariat of CCP
Manggala Wanabakti Block IV, 4th floor
Jenderal Gatot Subroto, Senayan
Jakarta 10270
Tel : + 62 21 5747043
Fax : +62 21 5747045
Email : ning@bsn.or.id - ning@bsn.go.id

Mr. Singgih HARJANTO

Secretariat of the Codex Contact Point
National Standardization Agency
Manggala Wanabakti Block IV, 4th floor
Jenderal Gatot Subroto, Senayan
Jakarta 10270
Tel : + 62 21 5747043
Fax : +62 21 5747045
Email : singgih@bsn.or.id

Mr. Yohpy Ichsan WARDANA

Section Head of Free Trade Area
Ministry of Foreign Affairs
Jalan Taman Pejambon N° 6
Jakarta Pusat
Tel : + 62 21 381 2133
Fax : + 62 21 3519593
Email : yohpyiw@yahoo.com

Mr. Aditya HARYADI

University of Indonesia
Faculty of Science Human
Kampus UI Depok
West Java
Tel : + 62 21 7863528
Fax : + 62 21 7270038

Mme Hapsari KUSUMANINGRUM-MAHENDRA

Troisième Secrétaire
Economie
Ambassade d'Indonésie à Paris
47-49, rue Cortambert
75116 Paris (France)
Tel : + 33 1 45 03 07 60
Fax : + 33 1 45 04 50 32
Email : sari_mahendra@yahoo.fr

ICELAND - ISLANDE**Mr. Thordur ASGEIRSSON**

Director of Fisheries
Directorate of Fisheries
Dalshraun 1
210 Hafnar Fjordur
Tel : + 354 825 7930
Fax : + 354 569 7991
Email : thordur@fiskistofa.is

IRELAND – IRLANDE – IRLANDA**Dr. Pamela BYRNE**

Agricultural Inspector
Department of Agriculture, Fisheries & Food
7C, Agriculture House
Kildare Street
Dublin 2
Tel : + 353 1 607 2954
Fax : + 353 1 661 6263
Email : Pamela.byrne@agriculture.gov.ie

ITALY - ITALIE - ITALIA**Mme Brunella LO TURCO**

Ministero delle Politiche Agricole Alimentari e Forestali
Via XX Settembre 20
I - 00187 Roma
Tel : + 39 06 4665 6041
Fax : + 39 06 4880 273
Email : b.loturco@politicheagricole.gov.it

Mr. Ciro IMPAGNATIELLO

Ministero delle Politiche Agricole Alimentari e Forestali
Via XX Settembre 20
I - 00187 Roma
Tel : +39 06 4665 6046
Fax : +39 06 4880 273
Email : c.impagnatiello@politicheagricole.gov.it

JAPAN - JAPON - JAPÓN**Dr. Taro TSUKAHARA**

Counsellor
Minister's Secretariat
Ministry of Health, Labour and Welfare
1-2-2, Kasumigaseki, Chiyoda-ku
Tokyo 100-8916
Tel : + 81 3 3595 2326
Fax : + 81 3 3503 7965
Email : codexj@mhlw.go.jp

Mr. Ryosuke OGAWA

Director
International Affairs Division, Food Safety and
Consumer Affairs Bureau
Ministry of Agriculture, Forestry and Fisheries
1-2-1 Kasumigaseki, Chiyoda-ku,
Tokyo 100-8950
Tel : + 81 3 3502 8732
Fax : + 81 3 3507 4232
Email : ryosuke_ogawa@nm.maff.go.jp

Dr. Chieko IKEDA

Director
Office of International Food Safety
Policy Planning and Communication Division
Department of Food Safety
Ministry of Health, Labour and Welfare
1-2-2, Kasumigaseki, Chiyoda-ku
Tokyo 100-8916
Tel : + 81 3 3595 2326
Fax : + 81 3 3503 7965
Email : codexj@mhlw.go.jp

Dr. Hiroshi YOSHIKURA

Adviser
Department of Food Safety, Pharmaceutical
and Food Safety Bureau
Ministry of Health, Labour and Welfare
1-2-2 Kasumigaseki, Chiyoda-ku,
Tokyo 100-8916
Tel : + 81 3 3595 2326
Fax : + 81 3 3503 7965
Email : codexj@mhlw.go.jp

KENYA**Mme Eva ODUOR**

Director
Standards Development Division
Ministry of Industrialization
Kenya Bureau of Standards
54974-00200
Nairobi
Tel : + 254 733897000
Fax : + 254 609665
Email : oduore@kebs.org

Mr. Charles Nkonge MATHIU

Programme Officer
Kenya Research Institute
P.O. Box 57811
Nairobi
Tel : + 254 722 327936
Fax : + 254 020 4183244
Email : cnkonge@kari.org

**KOREA (REPUBLIC OF)
CORÉE (RÉPUBLIQUE DE)
COREA (REPÚBLICA DE)****Dr. Jae-Hong CHANG**

Deputy Director
Bilateral Cooperation Division
Ministry for Food, Agriculture, Forestry & Fisheries
88, Gwanmunro, Gwacheon-si
Gyeonggi-do 427-719
Tél : + 82 2 500 1873
Fax : + 82 2 504 6659
Email : changjh@mifaff.go.kr

**KYRGYZSTAN – KIRGHIZISTAN –
KIRGUISTÁN****Mr. Talaibek DIUSHEEV**

Vice-Director
National Institut for Sandard and Metrology
Bichkek, St. Panfilova 197
Tel : + 996 312 62 68 70
Fax : + 996 312 66 13 67
Email : nism@nism.gov.kg

LITHUANIA – LITUANIE – LITUANIA**Mr. Albertas BARZDA**

Deputy Director
State Environment Health Centre
Ministry of Health
Kalvariju Str. 153
LT 08221 - Vilnius
Tel : + 370 5 277 8919
Fax : + 370 5 277 8713
Email : rmc@vilnius.omnitel.net

MALAYSIA – MALAISIE - MALASIA**Mme Nor Aini SUDIN**

Food Technology Consultant
Food Safety and Quality Division
Ministry of Health Malaysia
Level 3, Block E7, Parcel E
Federal Government Administration Centre
62590 Putrajaya
Tel : + 603 2092 5355
Fax : +603 8889 3815
Email : nenanorainei@yahoo.com

Mme Noraini MOHD OTHMAN

Director
Food Safety and Quality Division
Ministry of Health Malaysia
Level 3, Block E7, Parcel E
Federal Government Administration Centre
62590 Putrajaya
Tel : + 603 8883 3500
Fax : +603 8889 3815
Email : noraini_othman@moh.gov.my

Mme Ezlin ABDUL KHALID

Assistant Director (Codex)
 Food Safety and Quality Division
 Ministry of Health Malaysia
 Level 3, Block E7, Parcel E
 Federal Government Administration Centre
 62590 Putrajaya
 Tel : + 603 8883 3568
 Fax : +603 8889 3815
 Email : ezlin@moh.gov.my

Dr. Nagendran BALA SUNDRAM

Minister Counsellor
 Embassy of Malaysia
 Avenue de Tervueren 414A
 1150 Brussels (Belgium)
 Tel : + 32 2 776 0340
 Fax : + 32 2 762 5049
 Email : nagen@mpob.gov.my

MALI – MALÍ**Mr. Mahamadou SAKO**

Directeur Général Adjoint
 Agence Nationale de la Sécurité Sanitaire des
 Aliments (ANSSA)
 Ministère de la Santé
 Quartier du Fleuve, Centre Commercial
 Rue : 305 - BPE 2362
 Bamako
 Tel : + 223 20 22 07 54 – + 223 66 79 99 79
 Fax : + 223 20 22 07 47
 Email : mahamadousako@yahoo.fr

MEXICO – MEXIQUE – MÉXICO**Melle Ingrid MACIEL PEDROTE**

Directora de Normalizacion Internacional
 Direccion General de Normas (DGN)
 Secretaria de Economia (SE)
 Puente de Tecamachalco N° 6
 Colonia Lomas de Tecamachalco
 C.P. 53950, Estado de México
 Tel : +52 (55) 57 29 94 80
 + 52 (55) 57 29 93 00 Ext. 43216
 Fax : + 52 (55) 55 20 97 15
 Email : imaciel@economia.gob.mx

Mr. Jorge Antonio LOPEZ ZARATE

Subdirector para la Atencion del Codex
 Alimentarius y otros Organismos
 Direccion General de Normas (DGN)
 Secretaria de Economia (SE)
 Puente de Tecamachalco N° 6
 Colonia Lomas de Tecamachalco
 C.P. 53950, Estado de México
 Tel: + 52 (55) 57 29 94 80
 + 52 (55) 57 29 93 00 Ext : 43218
 Fax: + 52 (55) 55 20 97 15
 E-mail: jalopez@economia.gob.mx

Lic. Francisco ACOSTA MINQUINI

Coordinador General del Sistema Federal Sanitario
 Comision Federal para la Proteccion Contra Riesgos
 Sanitarios
 Secretaria de Salud
 Monterrey 33 piso 1. Col. Roma, Del. Cuauhtémoc
 Mexico DF 06700
 Tel : + 52 (55) 55 14 66 18
 + 52 (55) 55 14 85 88
 Fax : + 52 (55) 52 08 29 74
 Email : facostam@salud.gob.mx

Mme Rocio ALATORRE EDEN-WYNTER

Comisionada de Evidencia y Manejo de Riesgos
 Comision Federal para la Proteccion contra Riesgos
 Sanitarios
 Secretaria de Salud
 Monterrey 33 Piso 9 Col. Roma, Del. Cuauhtémoc
 Mexico DF 06700
 Tel : + 52 (55) 55 14 85 72
 + 52 (55) 55 14 85 57
 Fax : + 52 (55) 55 14 85 57
 Email : rocioal@salud.gob.mx

Mr. Guillermo ARROYO GOMEZ

Gerente de Seguimiento de Programas
 Direccion Ejecutiva de Programas Especiales
 Comision de Operacion Sanitaria
 Comision Federal para la Proteccion contra Riesgos
 Sanitarios
 Secretaria de Salud
 Monterrey 33 Piso 3 Col. Roma, Del. Cuauhtémoc
 Mexico DF 06700
 Tel : + 52 (55) 50 80 52 62
 Fax : + 52 (55) 55 14 14 07
 Email : garroyo@salud.gob.mx

MOROCCO – MAROC - MARRUECOS**Mr. HILALI Abderrahmane**

Directeur de la Protection des Végétaux, des
Contrôles Techniques et de la Répression des
Fraudes (DPVCTRF)
Ministère de l'Agriculture, du Développement Rural
et des Pêches Maritimes
BP 1308
10400 Rabat
Tel : + 212 37 29 75 43
Fax : + 212 37 29 75 44
Email : ahilali@menara.ma

Mr. BACHAOUCH Mohammed

Secrétaire Général Adjoint
Association Professionnelle des Boissons
BP : 8062 – OASIS
Casablanca
Tel : + 212 522 435 107
Fax : + 212 522 335 715
Email : mbachaouch@mena.ko.com

Dr. Youssef TAHIRI

Etablissement Autonome de Contrôle et de
Coordination des Exportations
Ministère de l'Agriculture, du Développement Rural
et des Pêches Maritimes
BP 1312
Sidi Mohamed Agadir
Tel : + 212 528 823 315
Fax : + 212 528 820 324
Email : tahiri@eace.org.ma

Dr. Fadoua EL IDRISSE

Vétérinaire
Société SAPAK
Rue Ibn Khaldoun
Mohammedia 20800
Tel : + 212 523 319090
Fax : + 212 523 314966
Email : felidris@koutoubia.net

Melle Bouchra ELAYCHI

Responsable de la Direction Qualité
Société SAPAK
Rue Ibn Khaldoun
Mohammedia20800
Tel : + 212 523 319090 + 212 661 04 1095
Fax : + 212 523 314966
Email : belaychi@koutoubia.net
or belaychi@yahoo.fr

MOZAMBIQUE**Dr. Ana CHARLES**

Head of Department
Codex Contact Point
Ministry of Health
Av. Eduardo Mondlane/Salvador Allend
1008
PO Box 269
Tel : + 258 82 3944478
Fax : + 258 21 326164
Email : acharles@misau.gov.mz

NETHERLANDS - PAYS-BAS - PAISES BAJOS**Mr. Frank jan VAN DER VALK**

Policy Manager Food Safety
Ministry of Agriculture, Nature and Food Quality
P.O. Box 20401
2500 EK The Hague
Tel : + 31 70 378 5036
Fax : + 31 70 378 6141
Email : f.j.van.der.valk@minlnv.nl

**NEW ZEALAND – NOUVELLE-ZÉLANDE -
NUEVA ZELANDIA****Dr. Steve HATHAWAY**

Director Science
New Zealand Food Safety Authority
86 Jervois Quay
PO. Box 2835 Wellington
Tel. : + 64 29 8942519
Fax : + 64 6 8942501
Email : steve.hathaway@nzfsa.govt.nz

Mme Carole INKSTER

Director, Policy
New Zealand Food Safety Authority
86 Jervois Quay
PO. Box 2835 Wellington
Tel. : + 64 6 894 2505
Fax : + 64 6 894 2501
Email : carole.inkster@nzfsa.govt.nz

NIGERIA**Mme Arizunma MADUKWE**

Director
National Agency for Food and Drug Administration
and Control (NAFDAC)
3/4 Oshodi-Apapa Express Way,
Lagos
Tel : + 234 80 33 07 92 85
Email : arizmadukwe@yahoo.com

Mme Jane OMOJOKUN

Deputy Director
National Agency for Food and Drug Administration
and Control (NAFDAC)
3/4 Oshodi – Apapa Express Way
Lagos
Tel : + 234 80 33 33 81 84
Email : janeomojokun@yahoo.com

Dr. Yaya OLANIRAN

Permanent Representative of Nigeria to
United Nations Agencies for Food and Agriculture
Via Cassiodoro 2C
0193 Rome (Italie)
Tel : + 39 06 6896093
Fax : + 39 06 6877040
Email : nigeriapermrep@email.com

NORWAY – NORVÈGE - NORUEGA**Mme Sissel Lyberg BECKMANN**

Deputy Director General
Ministry of Health and Care Services
P.O. Box 8011 Dep
N-0030 Oslo
Tel : + 47 22 24 87 12
Fax : + 47 22 24 86 56
Email : slb@hod.dep.no

Mme Gissen THOEN

Head of Section
Norwegian Food Safety Authority
P.O. Box 383
N-2381 Brumundal
Tel : + 47 23 21 66 29
Fax : + 47 23 21 68 01
Email : gibth@mattilsynet.no

Mme Vigdis VEUM MOELLERSEN

Senior Advisor
Norwegian Food Safety Authority
PO Box 383
N-2381 Brumundal
Tel : + 47 23 21 66 69
Fax : + 47 23 21 68 01
E-mail : visvm@mattilsynet.no

Mme Tone MATHESON

Senior Advisor
Ministry of Agriculture and Food
PO Box 383
N-2381 Brumundal
Tel : + 47 22 24 94 13
Fax : + 47 22
E-mail : tone-elisabeth.matheson@lmd.dep.no

Mr. Ivar Andreas HELBAK

Senior Adviser
Ministry of Fisheries and Coastal Affairs
PO Box 8118 Dep
NO-0032 Oslo
Tel : + 47 22 24 64 20 / + 47 47 23 82 99
Fax : + 47 22 24 56 78
Email : ivar.helbak@fkd.dep.no

PARAGUAY**Mme Elina LOPEZ CABALLERO**

Ambassade du Paraguay à Paris
Premier Secrétaire
1, rue Saint-Dominique
75007 Paris (France)
Tel : + 33 1 42 22 85 05
Fax : + 33 42 22 83 57
Email : paraguay.ambassade@wanadoo.fr

PHILIPPINES – FILIPINAS**Mr. Giberto LAYESE**

Director
Bureau of Agriculture and Fisheries Product
Standards
Department of Agriculture
BPI Cmpd, Visayas Avenue,
Diliman, Q.C.
Tel : + 455 2858 (063)
Fax : 920 6181 (063)
Email : bafps.da@yahoo.com

Mme Maribel MARGES

WTO – SPS Desk Officer
Department of Agriculture
Policy Research Service
3/F Dept. of Agriculture Bldg
Elliptical Road, Diliman, Quezon City
Tel : + 632 9288741 local 2318
Fax : + 632 9280590
Email : mgmarges@yahoo.com

POLAND – POLOGNE - POLONIA**Mme Magdalena KOWALSKA**

Senior Specialist
International Cooperation Department
Agricultural and Food Quality Inspection
30 Wspolna St.
00-930 Warsaw
Tel : + 48 22 623 29 04
Fax : + 48 22 623 29 97
Email : mkowalska@ijhars.gov.pl

Mr. Marcin KOZLOWSKI

Acting Director of Food Safety Office
 General Veterinary Inspectorate
 30 Wspolna St.
 00-930 Warsaw
 Tel : + 48 22 623 25 53
 Fax : + 48 22 623 14 08
 Email : marcin.kozlowski@wetgiw.gov.pl

PORTUGAL**Mr. Luis SALINO**

Codex Contact Point
 Ministry of Agriculture
 Gabinete de Planeamento e Politicas
 Rua Padre Antonio Vieira n° 1
 1099-073 Lisboa
 Tel : + 351 213819305
 Fax : + 351 213866650
 Email : lsalino@gpp.pt

SAMOA**Mme Gladys FUIMAONO**

Principal Officer
 Fair Trading & Codex Development Division
 Ministry of Commerce Industry and Labour
 P.O. Box 862
 Apia
 Tel : + 685 20 441
 Fax : + 685 20 443
 Email : gladys.fuimaono@mcil.gov.ws
 Or codex.samoa@mcil.gov.ws

SLOVAKIA – SLOVAQUIE - ESLOVAQUIA**Dr. Zuzana BIROSOVA**

Director
 Food Safety and Nutrition Department
 Ministry of Agriculture
 Dobrovicova 12
 812 66 Bratislava
 Tel : + 4212 59266 572
 Fax : + 4212 59266 704
 Email : zuzana.birosova@land.gov.sk

SLOVENIA - SLOVÉNIE**Dr. Blaza NAHTIGAL**

Codex Contact Point
 Ministry of Agriculture, Forestry and Food
 Food Safety Directorate
 Dunajska 58
 1000 Ljubljana
 Tel : + 386 1 478 9398
 Fax : + 386 1 478 9055
 Email : blaza.nahtigal@gov.si

SUDAN – SOUDAN – SUDÁN**Mr. Zakaria Mohamed Suliman Salih**

Port Sudan Branch Manager
 Sudanese Standards & Metrology Organization
 SSMO
 Port Sudan
 Tel : + 249 311 839455
 Fax : + 249 311 828889

Mr. Elhussein Abdelgadir Ahmed Abdelgadir

Standardization Institute Manager
 Sudanese Standards & Metrology Organization
 SSMO
 Khartoum
 Tel : + 249 923 473894
 Fax : + 249 183 774852
 Email : hasien3@hotmail.com

SWEDEN – SUÈDE - SUECIA**Mme Kerstin JANSSON**

Deputy Director
 Ministry of Agriculture
 SE-103 33 Stockholm
 Tel : +46 8 405 11 68
 Fax : + 46 8 20 64 96
 Email : kerstin.jansson@agriculture.ministry.se

Mme Eva LÖNBERG

Codex Coordinator
 National Food Administration
 Box 622
 SE-751 26 Uppsala
 Tel : + 46 18 17 55 00
 Fax : + 46 18 10 58 48
 Email : codex@slv.se

Mme Carmina IONESCU

Senior Administrative Officer
 National Food Administration
 Box 622
 SE-751 26 Uppsala
 Tel : + 46 18 17 55 00
 Fax : + 46 18 10 58 58
 Email : caio@slv.se

Mme Camilla LÖÖW LUNDIN

Deputy Head
 National Food Administration
 Box 622
 SE-751 26 Uppsala
 Tel : + 46 18 17 55 00
 Fax : + 46 18 10 58 48
 Email : call@slv.se

Mme Catharina ROSQVIST

Senior Administrative Officer
 Ministry of Agriculture
 Fredsgatan 8
 103 33 Stockholm
 Tel : + 46 70 519 0258
 Fax : + 46 8 20 64 96
 Email : catharina.rosqvist@agriculture.ministry.se

SWITZERLAND – SUISSE – SUIZA**Mme Awilo OCHIENG PERNET**

lic. In law, cert.human Nutr.
 Federal Office of Public Health
 Federal Department of Home Affairs
 Schwarzenburgstrasse 165
 CH-3097 Liebefeld
 Tél : + 41 31 322 00 41
 Fax : + 41 31 322 9574
 Email : awilo.ochieng@bag.admin.ch

Mme Irina DU BOIS

Regulatory Affairs
 Nestec Ltd.
 Avenue Nestlé 55
 CH-1800 Vevey
 Tel : + 41 21 924 22 61
 Fax : + 41 21 924 45 17
 Email : irina.dubois@nestle.com

Dr. Hervé NORDMANN

Director Scientific & Regulatory Affairs
 Ajinomoto Switzerland AG
 En Crochet 1
 CH-1143 Apples
 Tel : + 41 21 800 37 63
 Fax : + 41 21 800 40 87
 Email : herve.nordmann@asg.ajinomoto.com

THAILAND - THAÏLANDE - TAILANDIA**Melle Oratai SILAPANAPORN**

Director
 Office of Commodity and System Standards
 National Bureau of Agricultural Commodity and
 Food Standards
 Ministry of Agriculture and Cooperatives
 50 Phaholyothin Rd, Ladyao, Chatuchak
 Bangkok 10900
 Tel : + 662 561 3390
 Fax : + 662 561 3373 or + 662 561 3357
 Email : codex@acfs.go.th

Melle Chutiwan JATUPORN PONG

Standards Officer
 Office of Commodity and System Standards
 National Bureau of Agricultural Commodity and
 Food Standards
 Ministry of Agriculture and Cooperatives
 50 Phaholyothin Rd, Ladyao, Chatuchak
 Bangkok 10900
 Tel : + 662 561 2277 Ext 1414
 Fax : + 662 561 3373 or + 662 561 3357
 Email : chutiwan9@hotmail.com

Mr. Boonpeng SANTIWATTANATAM

Vice-President of Food Processing Industry Club
 The Federation of Thai Industries
 Queen Sirikit National Convention Center,
 Zone C, 4th floor
 60 New Ratchadapisek Road, Klongtoey
 Bangkok 10110
 Tel : + 662 345 1167
 Fax : + 662 345 1281-3
 Email : boonpeng@cpf.co.th

Mme Wacharawan CHOMDONG

Assistant Executive Director
 Thai Frozen Foods Association
 Board of Trade of Thailand
 92/6 6th Floor Sathorn Thani II
 North Sathorn Road, Bangrak
 Bangkok 10500
 Tel : + 662 235 5622-4
 Fax : + 662 235 5625
 Email : wacharawan@thai-frozen.or.th

Mr. Chaiwat INTRACHATORN

Trade Manager
 Thai Food Processors' Association
 Board of Trade of Thailand
 170/21-22 9th Floor, Ocean Tower I BLDG
 New Ratchadapisek Road, Klongtoey
 Bangkok 10110
 Tel : + 662 261 2684-6
 Fax : + 662 261 2996-7
 Email : thaifood@thaifood.org

TUNISIA – TUNISIE – TÚNEZ**Mme Melika HERMASSI BELGACEM**

Sous-Directeur,
 Chargée du Secrétariat permanent du Comité
 Tunisien du Codex
 Centre Technique de l'Agro-Alimentaire
 Ministère de l'Industrie, de l'Énergie et des PME
 12, rue de l'Usine
 2035 Charguia 2 Tunis
 Tel : + 216 71 940 198
 Fax : + 216 71 941 040
 Email : codextunisie@topnet.tn

Docteur Thouraya ANNABI ATTIA

Médecin responsable du contrôle sanitaire de
l'Agence Nationale de Contrôle Sanitaire et
Environnemental des produits
Ministère de la Santé Publique
2, rue Ibn Nadim
Monplaisir Tunis
Tel : + 216 71 901 835
Fax : + 216 71 909 233
Email : thouraya.attia@rns.tn

Mme Amine MESTIRI

Juriste chargé de la Réglementation relative à la
sécurité sanitaire des produits alimentaires
Agence Nationale de Contrôle Sanitaire et
Environnemental des produits
Ministère de la Santé Publique
32, rue Ibn Nadim
Monplaisir Tunis
Tel : + 216 71 901 496
Fax : + 216 71 909 233
Email : aminecheba@yahoo.fr

TURKEY – TURQUIE – TURQUÍA**Melle Nesrin BULUT**

Food Engineer
Ministry of Agriculture and Rural Affairs-General
Directorate of Protection and Control
Tarım ve Köyisleri Bakanlığı, Koruma ve Kontrol
Genel Müdürlüğü
Akay Street N03 Bakanliklar
Ankara, Turkey 06100
Tel : + 90 312 417 41 76 Ext 6202
Fax : + 90 312 425 44 16
Email : nesrinb@kkgm.gov.tr

UGANDA – OUGANDA**Dr. Ben MANYINDO**

Deputy Executive Director (Technical)
Uganda National Bureau of Standards (UNBS)
P.O. Box 6329
Kampala
Tel : + 256 41 4505995 / 222367
Fax : + 256 414 286 123
Email : ben.manyindo@unbs.go.ug

**UNITED KINGDOM - ROYAUME-UNI -
REINO UNIDO****Mr. Bill KNOCK**

Head EU & International Strategy
Food Standards Agency
Aviation House
125 Kingsway
London – WC2B/6NH
Tel : + 44 20 7276 8183
Fax : + 44 20 72768104

Email : bill.knock@foodstandards.gsi.gov.uk

Mr. Mike O'NEILL

EU & International Strategy
Food Standards Agency
Aviation House
125 Kingsway
London – WC2B/6NH
Tel : + 44 20 7276 8664
Fax : + 44 20 7276 8104
Email : mike.oneill@foodstandards.gsi.gov.uk

**UNITED STATES OF AMERICA
ÉTATS-UNIS D'AMÉRIQUE
ESTADOS UNIDOS DE AMÉRICA****Dr. H. Michael WEHR**

Codex Program Coordinator
US Food and Drug Administration
Center for Food Safety and Applied Nutrition
5100 Paint Branch Parkway
College Park, Maryland 20740
Tel : + 301 436 1724
Fax : + 301 436 2618
Email : michael.wehr@fda.hhs.gov

Mr. Terry BANE

Branch Chief
Chair CCPFV
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Ave, SW, Stop 0247
Washington DC 20250
Tel : + 202 720 4693
Fax : + 202 690 1087
Email : terry.bane@ams.usda.gov

Mme Camille BREWER

Director, International Activities Staff
Center for Food Safety and Applied Nutrition
U.S. Food and Drug Administration
5100 Paint Branch Pkwy HFS-550
College Park, MD 20740
Tel : + 301 436 1723
Fax : + 301 436 2618
Email : Camille.Brewer@fda.hhs.gov

Mme Melissa R. CLARKSON

Director, Agricultural Affairs
Office of the United States Trade Representative
600 17th St NW
Washington, DC 20509
Tel : + 202 395 9629
Fax : + 202 395 4579
Email : Melissa.Clarkson@ustr.eop.gov

Dr. Bernadette DUNHAM

Director
Center for Veterinary Medicine
US Food and Drug Administration
7529 Standish Place, MPN-IV
Room 181, HFV-1
Rockville, Maryland 20855
Tel : + 240 276 9000
Fax : + 240 276 9001
Email : Bernadette.dunham@fda.hhs.gov

Dr. Jose Emilio ESTEBAN

Scientific Advisor Laboratory System
Chair CCFH
Food Safety and Inspection Service
US Department of Agriculture
950 College Station Road
Athens, Georgia 30604
Tel : + 706 546 3429
Fax : + 706 546 3428
Email : Emilio.esteban@fsis.usda.gov

Mme Renee HANCHER

Standards Coordinator, Market Access and
Compliance
U.S. Department of Commerce, International Trade
Administration
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
Tel : + 202 482 3493
Fax : + 202 482 5939
Email : renee.hancher@mail.doc.gov

Mme Mary Frances LOWE

Senior Program Advisor
U.S. Environmental Protection Agency (7506P)
Ariel Rios Building
1200 Pennsylvania Ave
Washington, DC 20460
Tel : + 703 305 5689
Fax : + 703 308 1850
Email : lowe.maryfrances@epa.gov

Mme Tshanda KALOMBO

Senior International Trade Specialist
International Trade Administration
US Department of Commerce
Room 3513
1401 Constitution Avenue, NW
Washington, DC 20230
Tel : + 202 482 2561
Fax : + 202 482 2897
Email : tshanda_kalombo@ita.doc.gov

Mme Barbara McNIFF

Staff Officer,
US Codex Office
U.S. Department of Agriculture
Room 4870 South Building
1400 Independence Avenue
Washington, DC 20250
Tel : + 202 690 4719
Fax : + 202 720 3157
Email : barbara.mcniciff@fsis.usda.gov

Mr. Richard CAPWELL

Deputy Director
International Regulations and Standards Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave. SW, Ag. Stop 1014
Washington, DC 20250-1014
Tel : + 202 720 7054
Fax : + 202 720 0433
Email : rick.capwell@fas.usda.gov

Mme Marsha ECHOLS

Washington Counsel
National Association for the Specialty
Food Trade, Inc.
3286 M Street NW
Washington, DC 20007
Tel : + 202 625 1451
Fax : + 202 625 9126
Fax : mechols@earthlink.net

Mr. Raul GUERRERO

Consultant
International Regulatory Strategies
793 North Ontare Road
Santa Barbara, California 93105
Tel : + 805 898 1830
Fax : + 805 898 1830
Email : guerrero_raul_j@yahoo.com

Mr. David P. LAMBERT

Principal
Lambert Associates
5105 Yuma Street, NW
Washington, DC 20016
Tel : + 202 966 5056
Fax : + 202 966 5094
Email : lambertdp@yahoo.com

Mr. Daniel STONE

Senior Fellow
N/A Global Initiative for Food System Leadership
of Minnesota
2257 Cedar Cove Court
Reston VA 20191
Tel : + 301 928 9769
Email : whole.system@verizon.net

URUGUAY**Mr. Martin ALVEZ**

Tercer Secretario
 Ministerio de Relaciones Exteriores
 Colonia 1206, 4th floor
 Montevideo
 Tel : + 598 2 902 10 10 ext. 2034-2220
 Email : martin.alvez@mrree.gub.uy

**UZBEKISTAN – OUBÉKISTAN –
UZBEKISTÁN****Dr. Natalya SHARIPOVA**

Contact Point
 Head of Department State Sanitary
 Epidemiological Surveillance
 Ministry of Health
 12, Navoi Str. Tashkent, 700011
 Tel : + 998 71 239 41 98
 Fax : + 998 71 239 41 98
 Email : codex_al@med.uz

PRÉSIDENTE DE LA COMMISSION**Dr. Karen HULEBAK**

Chairperson, Codex Alimentarius Commission
 USDA/FSIS
 1400 Independence Ave., SW, Room 4861-S
 Washington, DC 20250
 USA
 Tél : + 202 205 7760
 Fax : + 202 720 3157
 Email : karen.hulebak@fsis.usda.gov

**INTERNATIONAL GOVERNMENTAL
 ORGANIZATIONS
 ORGANISATIONS GOUVERNEMENTALES
 INTERNATIONALES
 ORGANIZACIONES GUBERNAMENTALES
 INTERNACIONALES**

**IIF – IIR (Institut International du Froid –
International Institute of Refrigeration –
Instituto Internacional del Frio)****Mr. Daniel VIARD**

Directeur Délégué
 Institut International du Froid
 177, Boulevard Malesherbes
 75017 Paris (France)
 Tel : + 33 1 42 27 32 35
 Fax : + 33 1 47 63 17 98
 Email : iif-iir@iifiir.org

**O.I.E. (Organisation Mondiale de la Santé
Animale – World Organisation for Animal
Health – Organización Mundial de Sanidad
Animal)****Dr. Sarah KAHN**

Chef Service du Commerce International
 12, rue de Prony
 75017 Paris (France)
 Tel : + 33 1 44 15 18 88
 Fax : + 33 1 42 67 09 87
 Email : s.kahn@oie.int

**OIML (International Organization of Legal
Metrology – Organisation internationale de
métrologie légale – Organización Internacional
de Metrología Legal)****Mr. Willem KOOL**

BIML Assistant Director
 International Organization of Legal Metrology
 11, rue Turgot
 75009 Paris (France)
 Tel : + 33 1 48 78 57 83
 Fax : + 33 1 42 82 17 27
 Email : willem.kool@oiml.org

**OIV (Organisation internationale de la Vigne et
du Vin – International Organisation of Vine and
Wine – Organización Internacional de la Viña y
el Vino)****Mr. Yann JUBAN**

Adjoint au Directeur Général
 18, rue d'Aguesseau
 75008 Paris (France)
 Tel : + 33 1 44 94 80 95
 Fax : + 33 1 42 66 90 63
 Email : yjuban@oiv.int

Mr. Jean-Claude RUF

Coordinateur Scientifique
 Chef d'unité Œnologie – Sécurité & Santé –
 Méthodes d'analyse
 18, rue d'Aguesseau
 75008 Paris (France)
 Tel : + 33 1 44 94 80 94
 Fax : + 33 1 42 66 90 63
 Email : jruf@oiv.int

**WTO/OMC (World Trade Organisation –
Organisation Mondiale du Commerce –
Organización Mundial del Comercio)**

Mme Serra AYRAL

Economic Affairs Officer
Agriculture and Commodities Division
WTO/OMC
Centre William Rappard
Rue de Lausanne 154
CH-1211 Genève 21 (Suisse)
Tel : + 41 22 739 54 65
Fax : + 41 22 739 57 60
Email : serra.ayral@wto.org

***INTERNATIONAL NON-GOVERNMENTAL
ORGANIZATIONS
ORGANISATIONS NON-
GOUVERNEMENTALES INTERNATIONALES
ORGANIZATIONS INTERNACIONALES NO
GUBERNAMENTALES***

**AVEA / AVA (Association Veterinary Euro-
Arabe / Association Vétérinaire Africaine)**

Dr. Faouzi KECHRID

Président
Association Vétérinaire Euro-Arabe
Boîte Postale n° 267
Tunis – Mahrajène 1082
Tel : + 216 22 317 601 / 216 98 317 601
Fax : + 216 71 380 210
Email : vetatvac@yahoo.com

CRN (Council for Responsible Nutrition)

Dr. John HATHCOCK

Senior Vice President, Scientific and International
Affairs
Council for Responsible Nutrition
1828 L Street, NW, Suite 510
Washington, DC 20036 (USA)
Tel : + 1 202 204 7662
Fax : + 1 202 204 7701
Email : jhathcock@crnusa.org

Mr. Mark LE DOUX

Chairman
Natural Alternatives International
1185 Linda Vista Drive
San Marcos, California 92078 (USA)
Tel : + 1 760 736 7742
Fax : + 1 760 597 9637
Email : mledoux@nai-online.com

Mr. Mark MANSOUR

Partner
Bryan Cave LLP
700 Rhirteenth Street, NW
Washington, District of Colombia 20005-3960
(USA)
Tel : + 1 202 508 6019
Fax : + 1 202 220 7319
Email : mark.mansour@bryancave.com

Mr. John VENARDOS

Chair
International Trade and Market Development
Committee
Council for Responsible Nutrition
1828 L Street, NW, Suite 510
Washington, DC 20036 (USA)
Tel : + 1 310 851 2346
Fax : + 1 310 767 3316
Email : johnv@herbalife.com

CROPLIFE INTERNATIONAL

Dr. Douglas NELSON

Executive Vice President / General Counsel
Croplife America / Croplife International
1156 15th St NW
Suite 400
Washington DC 20005
Tel : + 202 872 3880
Fax : + 202 443 0474
Email : dnelson@croplifeamerica.org

**EFLA- AEDA (Association Européenne pour le
Droit de l'Alimentation)**

Mr. Xavier LAVIGNE

Member
EFLA-AEDA
Rue de l'Association 50
1000 Brussels (Belgique)
Tel : + 32 2 218 1470
Fax : + 32 2 219 7342
Email : secretariat@efla-aeda.org

**ENCA (European Network of Childbirth
Association)**

Mr. Joseph VOSS

Initiativ Liewensufank
ENCA / Codex Taskforce
20 rue de Contern
L-5955 Itzig (Luxembourg)
Tel : + 352 360597-11
Fax : + 352 366134
Email : info@liewensufank.lu

IBFAN (International Baby Food Action Network)

Mme Maryse ARENDT
 Chargée de Direction
 Initiativ Liewensufank
 20 rue de Contern
 L-5955 Itzig (Luxembourg)
 Tel : + 352 360597-13
 Fax : + 352 366134
 Email : info@liewensufank.lu

ICA (International Co-operative Alliance)

Mr. Kazuo ONITAKE
 Head of Unit, Safety Policy Service
 Japanese Consumers' Co-operative Union
 Co-op Plaza, 3-29-8, Shibuya, Shibuyaku
 Tokyo 150-8913 (Japon)
 Tel : + 81 3 5778 8109
 Fax : + 81 3 5778 8125
 Email : kazuo.onitake@jccu.coop

ICGMA (International Council of Grocery Manufacturers Association)

Mme Peggy ROCHETTE
 Sr. Director International Affairs
 Grocery Manufacturers Association
 1350 I Street NW
 Washington, DC 20005 (USA)
 Tel : + 1 202 639 5921
 Fax : + 1 202 639 5991
 Email : prochette@gmaonline.org

Mme Lucyna KURTYKA
 Global Lead, International Organizations
 Monsanto Company
 1300 I St., NW, Suite 450 East
 Washington, DC 20005 (USA)
 Tel : +202 383 2861
 Fax : + 202 789 1748
 Email : lucyna.kurtyka@monsanto.com

IDF-FIL (International Dairy Federation)

Mr. Jörg SEIFERT
 Technical Director
 International Dairy Federation
 Diamant Building
 Boulevard Auguste Reyers,80
 B-1030 Brussels (Belgique)
 Tel : + 32 2 706 8643
 Fax : + 32 2 733 0413
 Email : jseifert@fil-idf.org

Mme Dominique BUREL
 Responsable Réglementation
 FIL-IDF France / ALF / CNIEL
 42, rue de Châteaudun
 75314 Paris Cedex 9 (France)
 Tel : + 33 1 49 70 71 15
 Fax : + 33 1 42 80 63 45
 Email : dburel-alf@cniel.com

Melle Jennifer HUET
 Chargée d'étude service – Codex/Normallisation
 FIL-IDF France / ALF / CNIEL
 42, rue de Châteaudun
 75314 Paris Cedex 9 (France)
 Tel : + 33 1 49 70 71 08
 Fax : + 33 1 42 80 63 45
 Email : jhuet@cniel.com

IFAH (International Federation for Animal Health)

Dr. Olivier ESPEISSE
 IFAH
 1 rue Defacqz
 B-1000 Bruxelles (Belgique)
 Tel : 00 32 2 476 666 704
 Email : espeisse_olivier@lilly.com

IFU (International Federation of Fruit Juice Producers)

Mme Elisabetta ROMEO-VAREILLE
 Secretary General
 International Federation of Fruit Juice Producers
 23, boulevard des Capucines
 75002 Paris (France)
 Tel : + 33 1 47 42 82 80
 Fax : + 33 1 47 42 82 81
 Email : ifu@ifu-fruitjuice.com

ISDI (International Special Dietary Foods Industries)

Dr. Andrée BRONNER
 Directrice
 194 rue de Rivoli
 75001 Paris (France)
 Tel : + 33 1 53 45 87 87
 Fax : + 33 1 53 45 87 80
 Email : andree.bronner@isdifederation.org

Mr. Jean-Claude JAVET

Executive Director
194 rue de Rivoli
75001 Paris (France)
Tel : + 33 1 53 45 87 87
Fax : + 33 1 53 45 87 80
Email : andree.bronner@isdifederation.org

WVA (World Veterinary Association)**Prof. Dr. Leon H. RUSSELL**

Professor of Epidemiology, Rural Public Health,
Food Science & Technology, Toxicology and
Medical Microbiology & Immunology
College of Veterinary Medicine
Texas A&M University
33 Linda Lane, College Station,
Texas – 77845 (USA)
Tel : + 1 979 845 2828
Fax : + 1 979 847 8987
Email : lhussell@cvm.tamu.edu

Dr. Tjeerd JORNA

President
World Veterinary Association
Sydwende 52,
9204 KG Drachten (Pays-Bas)
Tel : + 31 512 520605
Fax : + 31 512 520605
Email : t.jorna3@upcmail.nl

Dr. Duane LANDALS

Vice-Président
World Veterinary Association
RRI Site 2 Box 2
Onaway, AB – TOE IV0 (Canada)
Tel : + 1 780 489 5007
Email : duane.landals@abvma.ca

JOINT FAO/WHO SECRETARIAT**Dr. Kazuaki MIYAGISHIMA**

Secretary, Codex Alimentarius Commission
Joint FAO/WHO Food Standards Programme
FAO - Via delle Terme di Caracalla
Rome 00153 (Italie)
Tel : + 39 06 5705 4390
Fax : + 39 06 5705 4593
Email : kazuaki.miyagishima@fao.org

Mme Selma DOYRAN

Senior Food Standards Officer
Joint FAO/WHO Food Standards Programme
FAO - Via delle Terme di Caracalla
Rome 00153 (Italie)
Tel : + 39 06 5705 5826
Fax : + 39 06 5705 4593
Email : selma.doyran@fao.org

Mr. Tom HEILANDT

Senior Food Standards Officer
Joint FAO/WHO Food Standards Programme
FAO - Via delle Terme di Caracalla
Rome 00153 (Italie)
Tel : + 39 06 5705 4384
Fax : + 39 06 5705 4593
Email : tom.heilandt@fao.org

Mr. Wim VAN ECK

Consultant without compensation
Chief Public Health Officer
Food and Consumer Product Safety Authority
Consultant FAO
PO Box 19506
2500 CM The Hague (Pays-Bas)
Tel : + 31 704484814
Fax : + 31 704484061
Email : wim.van.eck@vwa.nl

Dr. Yongxiang FAN

Consultant without compensation
Joint FAO/WHO
Food Standards Programme
FAO
Via delle Terme di Caracalla
00153 Rome (Italie)
Tel : + 39 06 570 52221
Fax : + 39 06 570 54593

FAO**Mr. Ezzeddine BOUTRIF**

Director
Nutrition and Consumer Protection Division
Food and Agriculture Organization of the United
Nations (FAO)
Viale delle Terme di Caracalla 0153
Rome (Italie)
Tel : + 39 06 5705 6156
Fax : + 39 06 5705 4593
Email : ezzeddine.boutrif@fao.org

WHO**Mr. Jorgen SCHLUNDT**

Director
Department of Food Safety, Zoonoses and
Foodborne Diseases
World Health Organization
20 avenue Appia
CH-1211 Geneva 27 (Suisse)
Tel : + 41 22 791 34 45
Fax : + 41 22 791 48 07
Email : schlundtj@who.int

Mme Catherine MULHOLLAND

Administrator, FAO/WHO Project and Fund for
Enhanced Participation in Codex
World Health Organization
20 avenue Appia,
1211 Geneva 27 (Suisse)
Tel : + 41 22 791 30 80
Fax : + 41 22 791 48 07
Email : mulhollandc@who.int

LEGAL COUNSEL
CONSEILLER JURIDIQUE
ASESOR JURÍDICO

FAO**Mr. Antonio TAVARES**

Chief, General Legal Affairs Services
Legal Office
FAO
Via delle Terme di Caracalla
00153 Rome (Italie)
Tel : +39 06 5705 5132
Fax : + 39 06 5705 4408
Email : antonio.tavares@fao.org

Mr. Ilja BETLEM

Legal Officer, General Legal Affairs Service
Legal Office FAO
Via delle Terme di Caracalla
00153 Rome (Italie)
Tel : +39 06 5705 2778
Fax : + 39 06 5705 4408
Email : ilja.betlem@fao.org

WHO**Mme Egle GRANZIERA**

Legal Officer
Office of the Legal Counsel
World Health Organization
20 avenue Appia,
1211 Geneva 27 (Suisse)
Tel : + 41 22 791 36 80
Fax : + 41 22 791 44 58
Email : granzierae@who.int

FRENCH SECRETARIAT
SECRETARIAT FRANCAIS

Mr. Pascal AUDEBERT

Point de Contact Codex Français
Secrétariat Général des Affaires Européennes
Carré Austerlitz
2, boulevard Diderot
75572 Paris Cedex 12 (France)
Tel : + 33 1 44 87 16 03
Fax : + 33 1 44 87 16 04
Email : pascal.audebert@sgae.gouv.fr
Email : sgae-codex-fr@sgae.gouv.fr

Mme Dominique CHAMPIRE

Ministère de l'Économie, de l'Industrie et de
l'Emploi
DGCCRF – Télédéc 251
59, boulevard Vincent Auriol
75703 Paris Cedex 13 (France)
Tel : + 33 1 44 97 29 63
Fax : + 33 1 44 97 30 37

Mme Céline GERMAIN

Adjointe au Chef du bureau des négociations
communautaires et multilatérales
Ministère de l'Agriculture et de la Pêche
DGAL - SDASEI
251, rue de Vaugirard
75732 Paris Cedex 15
Tel : + 33 1 49 55 47 78
Fax : + 33 1 49 55 44 62
Email : celine.germain@agriculture.gouv.fr

Mme Geneviève RAOUX

Ministère de l'Économie, de l'Industrie et de
l'Emploi
DGCCRF – Télédéc 251
59, boulevard Vincent Auriol
75703 Paris Cedex 13 (France)
Tel : + 33 1 44 97 29 68
Fax : +33 1 44 97 30 37
Email : genevieve.raoux@dgccrf.finances.gouv.fr

Mr. Vincent CRISTIA

Point de Contact Codex Français
Secrétariat Général des Affaires Européennes
2, boulevard Diderot
75572 Paris Cedex 12 (France)
Tel : 00 33 (0)1 44 87 16 03
Fax : 00 33 (0)1 44 87 16 04
Email : sgae-codex-fr@sgae.gouv.fr

**PROPOSED DRAFT CODE OF ETHICS FOR INTERNATIONAL TRADE IN FOOD INCLUDING
CONCESSIONAL AND FOOD AID TRANSACTIONS**

(AT STEP 5/8)

ARTICLE 1 - OBJECTIVE

1.1 The objective of this Code is to establish principles for the ethical conduct of international trade in food, thereby protecting the health of the consumers and ensuring fair practices in the food trade.

ARTICLE 2 - SCOPE

2.1 This Code applies to all food introduced into international trade including concessional and food aid transactions.

2.2 This Code establishes principles of ethical conduct to be applied by all parties involved in international trade in food. Governments should work with other parties to promote ethical conduct at the national level.

ARTICLE 3 - PRINCIPLES

3.1 International trade in food should be conducted on the principle that all consumers are entitled to safe, sound and wholesome food and to protection from unfair trade practices.

3.2 No food (including re-exported food) should be in international trade which¹:

- a) has in or upon it any hazard in an amount which renders it poisonous, harmful or otherwise injurious to health, taking into account the application of risk analysis principles; or
- b) consists in whole or in part of any filthy, putrid, rotten or decomposed substance or foreign matter, or is otherwise unfit for human consumption; or
- c) is adulterated; or
- d) is labelled or presented in a manner that is false, misleading or deceptive; or
- e) is prepared, packaged, stored, transported or marketed under unsanitary conditions ; or
- f) has a remaining shelf life, where applicable, which does not leave sufficient time for distribution in the importing country before the expiration date.

ARTICLE 4 – CONDITIONS NECESSARY FOR FOOD IN INTERNATIONAL TRADE

4.1 Competent authorities involved in assuring the safety and suitability of food in international trade should apply principles of ethical conduct as mentioned in Article 3

4.2 Without prejudice to the rights and obligations conferred by bilateral or multilateral agreements, no food, including in the context of concessional and food aid transactions, should be allowed for export or re-export which does not comply with the minimum requirements imposed by the legislation of the exporting country, unless otherwise established by the legislation as may be in force in the importing country or explicitly accepted by the competent authorities of the importing country, taking into account the provisions of Codex standards and related texts wherever appropriate.²

4.3 Food should not be placed in international trade for the purpose of disposing of unsafe or unsuitable food as described in 3.2.

4.4 National authorities should be aware of their obligations under the International Health Regulations (2005) with regard to food safety events, including notification, reporting or verification of events to the World Health Organisation (WHO). They should also make sure that the international code of marketing of breast milk substitutes and relevant resolutions of the World Health Assembly (WHA) setting forth principles for the protection and promotion of breast-feeding be observed.

¹ The provisions of Article 3.2 do not prevent the export of raw or semi processed foods which are not edible as such in order to be further processed, re-processed or reconditioned in the importing country for the purpose of human consumption.

² Food standards and safety requirements of importing countries should be transparent and available to exporting countries.

PROPOSED AMENDMENT TO THE *GUIDELINES TO CHAIRPERSONS OF CODEX COMMITTEES AND AD HOC INTERGOVERNMENTAL TASK FORCES*

Add at the end:

“Where there is a deadlock in the standards development, the Chairperson should consider acting as a facilitator, or appointing a facilitator in agreement with the relevant Codex Committee, working during a session or between sessions to work with members to reach consensus. The facilitator should orally report on the activity undertaken and the outcome of the facilitation to the plenary.”

**PROPOSED AMENDMENT TO THE TERMS OF REFERENCE OF THE COMMITTEE ON
GENERAL PRINCIPLES**

SUBSIDIARY BODIES UNDER RULE XI.1 (b)(i)

CODEX COMMITTEE ON GENERAL PRINCIPLES (CX-716)

Terms of Reference:

To deal with such procedural and general matters as are referred to it by the Codex Alimentarius Commission. ~~Such matters have included the establishment of the General Principles which define the purpose and scope of the Codex Alimentarius, the nature of Codex standards and the forms of acceptance by countries of Codex standards; the development of Guidelines for Codex Committees; the development of a mechanism for examining any economic impact statements submitted by governments concerning possible implications for their economies of some of the individual standards or some of the provisions thereof; the establishment of a Code of Ethics for the International Trade in Food.~~