

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
United Nations



World Health
Organization

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Agenda Item 4

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JOINT FAO/WHO FOOD STANDARDS PROGRAMME
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PROCEDURAL GUIDANCE FOR COMMITTEES WORKING BY CORRESPONDENCE

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

1. INTRODUCTION

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

2. Taking into account the Discussion Paper on Procedural Guidance for Committees working by Correspondence presented at CCGP31² and comments made at CCGP31, the EWG was tasked with the following terms of reference (TOR)¹:

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

First EWG registration (first two EWG consultations)

3. An email inviting registration was posted on the EWG Forum on 1 May 2019. Registrations included 21 Member countries, one Member organization (the European Union), four observer organizations³ and the World Health Organization, a Codex founding organization.

4. The EWG undertook two rounds of consultation with comments due on 19 July 2019 and 1 November 2019 respectively. The draft was further updated based on comments submitted. There was consensus on most issues with contrasting views only expressed on two key issues: whether or not guidance should include voting; and the extent to which the host country should bear responsibility for any costs associated with translating Codex Committee documents and Member/observer comments into the working languages of Codex.

Circular Letter consultation (on e-Forum)

5. The updated draft was then submitted as an agenda paper for CCGP32. A Circular Letter⁴ (CL) posted on 13 December 2019 inviting members and observers to comment on the document by 16 February 2020,

¹ REP19/GP, paragraph 26

² CX/GP 19/31/3

³ Global Food Safety Initiative, International Council of Beverages Associations, International Dairy Federation and SSAFE-Food

⁴ CL 2019/115/OCS-GP

ahead of the at that time scheduled CCGP32. Comments in response to the CL were submitted by 11 Member countries⁵ and the European Union.

6. With the onset of the COVID-19 pandemic and the consequential rescheduling of CCGP32, the EWG was extended to continue this work. Comments⁶ submitted in response to the CL were considered and incorporated into the revised agenda paper. In addition to the agenda paper, a second document was prepared setting out draft procedural guidance covering the key areas relevant to CWBC for possible inclusion in the *Procedural Manual*. This new document drew on the conclusions and proposals contained in the revised agenda paper.

Second EWG registration (additional EWG consultation given postponement of CCGP32 to February 2021)

7. An invitation was posted on the EWG Forum inviting any members who had not yet registered to the EWG to join. An email was also sent to those that had not yet registered on the Forum to do so. Registrations increased to 50 Member countries, one Member organization (EU), and eight observer organizations.

EWG consultations (final two rounds)

8. The EWG undertook a further two rounds of consultation on the revised agenda paper on procedural guidance for CWBC, and the stand-alone procedural guidance for CWBC for comment by 15 July 2020 and 15 October 2020 respectively. Comments on the first round of revised agenda paper were made by five Member countries⁷. Comments on the stand-alone procedural guidance were submitted by 21 Member countries⁸, one Member organization (the European Union), and two observer organizations; the International Council of Beverages Associations (ICBA) and the International Dairy Federation (IDF).

9. After the initial consultation, the paper was revised to reflect feedback on whether or not guidance should include voting; and the extent to which the host country should bear responsibility for any costs associated with translating where financial and technical constraints limit the extent to which translations could realistically be provided, particularly given the importance of inclusiveness and transparency.

10. In the fourth and final round of consultation, just three Member countries⁹ made comments on the revised paper. Comments were made by five Member countries¹⁰ on the draft stand-alone procedural guidance. The minimal number of comments on this round of consultation suggested a reasonable level of consensus.

11. However, while there was consensus on most issues there was one issue unresolved. Contrasting views were expressed on the scope of working by correspondence as it refers to virtual and hybrid sessions. While it was recognised that the TOR for the EWG on CWBC did not explicitly refer to virtual or hybrid sessions, there was no consensus on the way forward.

12. Some Member countries considered virtual meetings (and in some case hybrid meetings) should be included as part of the guidance for CWBC particularly in the context of the current uncertainties with the scheduling of regular meetings of the Commission and its subsidiary bodies.

13. While others agreed with the concept of virtual sessions, they did not wish to delay the process by such inclusion at this point, noting it could be developed separately. In recognizing that there are likely elements of guidance for CWBC that would apply to virtual meetings and the use of virtual technology, one Member commented that CWBC and Committees holding virtual sessions are distinctly different. The Member considered the inclusion of virtual meetings in the current scope, while timely in the current Global Pandemic context, would require separate consideration by the CAC for this potential new work proposal. This would include the need for a thorough analysis from a legal perspective on the implications of virtual meetings before procedural guidance could be considered by CCGP. For that reason, the Member considered CCGP should focus first on completing the work related to CWBC. In addition, it was suggested it may be premature to develop any procedural guidance without an assessment of recent experiences and lessons learned in conducting virtual meetings.

⁵ Brazil, Costa Rica, Egypt, Guatemala, Japan, Kenya, Netherlands, Norway, the Philippines, United States of America, and Senegal

⁶ [Comments](#)

⁷ Canada, Chile, Costa Rica, United States of America, Uruguay

⁸ Argentina, Brazil, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, France, Iran, India, Japan, Malaysia, Morocco, Netherlands, Nicaragua, Norway, Slovak Republic, Thailand, United States of America, Uganda and Uruguay

⁹ Canada, United States of America, Uruguay

¹⁰ Canada, Costa Rica, Malaysia, United States of America, and Uruguay

14. Still other Member countries considered that virtual sessions (and hybrid) should only occur in extraordinary circumstances. There is no clear agreement within the EWG on this issue.

15. Given there is no consensus, in the EWG, on the way forward for virtual (and hybrid) meetings all such references in this paper and the draft stand-alone procedural guidance, have been placed in [] for further discussion at the committee level.

16. Regardless of the discussion regarding virtual and hybrid meetings, any decision to initiate work by correspondence by one or more Codex committees would always be taken by the CAC taking into consideration the advice of the host country and on the basis of any advice provided by the Executive Committee of the CAC. All Codex members and observers can participate in all committees and also receive CLs.

2. BACKGROUND

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

- Codex Committee on Sugars (CCS) reactivated to work on developing a *Codex Standard for Non-Centrifuged Dehydrated Sugar Cane Juice/Panela*;
- Codex Committee on Milk and Milk Products (CCMMP) reactivated to work by correspondence to develop *Codex Standards for Processed Cheese and Dairy Permeate Powders*; and
- Codex Committee on Cereals, Pulses and Legumes (CCCPL) reactivated to work by correspondence to develop a *Codex Standard for Quinoa*.

2.2 The experience and results of these deliberations have been mixed. Discussions in the CCS encountered considerable difficulties particularly regarding the scope and definition issues necessitating several extensions of the timeframe for advancement of the draft standard. This work was discontinued at CAC42 (2019).¹¹

2.3 It should be noted that the experience of the CCMMP was similarly mixed. While the committee was able to progress the *Standard for Dairy Permeate Powders* successfully, the work on *Standards for Processed Cheese* had to be discontinued because of irreconcilable differences on core issues. The intractable differences did not come as a surprise as they were highly evident at previous physical meetings of the committee, prior to its adjournment, and working by correspondence and convening physical working groups (PWGs) did not resolve them.

2.4 The CCCPL was able to resolve the majority of the issues surrounding the draft *Standard for Quinoa*, except for moisture content and grain size. These two issues were raised by countries at CAC41 (2018). After further discussion, CCCPL forwarded provisions to CAC42 (2019) with a recommendation for final adoption at Step 8. CAC42 adopted the standard with moisture content provisions: only the grain size issue remains unresolved.¹²

2.5 In the first half of 2018, the Codex Committee on Processed Fruits and Vegetables (CCPFV) met electronically through an electronic user group called “CCPFV-online” using the electronic Codex Forum in order to complete three specific tasks laid out for CCPFV by CAC40 (2017).

2.6 Twenty Member countries, one Member organization (EU), and seven observer organizations joined CCPFV-online. CCPFV-online used the results of an online survey and other inputs to develop recommendations for each of the three tasks. These recommendations were presented to CAC41 in a report. CAC41 endorsed continuing with the next steps that CCPFV-online had recommended (which included establishing 7 EWGs to work on 5 standards and responses to matters referred from CCFA and CCMAS). In short, CCPFV successfully used the electronic meeting forum to complete the specific tasks it was assigned while using resources efficiently. From the latter half of 2018 through to June 2019 participation in some of the seven CCPFV EWGs was low; however, all made progress. In July 2019, CAC42 approved the CCPFV Chairperson’s recommendations to continue working by correspondence and assess whether a physical meeting in 2020 would be appropriate.¹³ Based on the progress of the EWGs, the decision was made to post the work of the EWGs on the Codex Online Commenting System (OCS) for inputs by all Codex members, and

¹¹ REP19/CAC, paragraph 111(i)

¹² REP19/CAC, paragraphs 44-45

¹³ CX/CAC 19/42/11 Add. 1

then convene a full plenary session of CCPFV by correspondence to further elaborate the draft standards being reviewed in the OCS and finalize responses to the matters referred.

2.7 In September 2019, an invitation to CCPFV29 (working by correspondence) was issued by the Director General of the Food and Agriculture Organization (FAO) and the Director General of the World Health Organization (WHO) and was circulated to Codex members and observers with a provisional agenda in accordance with the *Procedural Manual*¹⁴. CLs were distributed inviting members and observers to comment on the five draft standards via the OCS and on matters referred from CCFA and CCMAS. This 12-item provisional agenda and the associated working documents were posted on the Codex website established for the meeting. On December 3, 2019, the CCPFV Chair posted a welcome and introductory message on the Codex Forum for CCPFV29, which established that activities at the Codex Forum site would begin on January 2, 2020, provided a proposed schedule for the meeting, and provided procedural guidelines, including the provision that a delegation's silence on a proposal would be interpreted as "not opposed". The session began on January 2, 2020 and concluded on July 29, 2020. It worked in the three languages used by CCPFV.

2.8 In early July 2020, the CCPFV29 Chairperson provided an update to CCEXEC79 as part of the Critical Review process (see CX/EXEC 20/79/2 Add.1). At that time, CCPFV29 had finalized its recommendations for three standards and was very near finalizing the remaining two, with the aim to see all five standards considered by CAC43 for final adoption at Step 5/8. This status was conveyed to CCEXEC79 via the Critical Review. CCEXEC79 agreed to recommend CAC adopt the three completed standards at Step 5/8, and noted in its report that, in the case of a successful conclusion of the remaining two, there would be no impediment to recommending CAC43 to adopt them at Step 5/8 (see REP20/EXEC2 paras. 53-65). In late July, CCPFV29 completed these last two standards and they were included in the CCPFV29 final report for consideration by CAC43 for final adoption at Step 5/8 along with the responses to matters referred from CCFA, CCMAS, and CCFFV. CCPFV29 posted its Final Report and concluded its session on July 29, 2020. Overall, CCPFV29 was successful in completing its agenda and achieving the outcomes of a typical plenary session. Notable was the length of time required, the need to adapt protocols to the CWBC venue, and the added resources required of the Secretariat and Chairperson in part to provide ongoing status of agenda items as a part of regular postings.

2.9 Finally, it is worth noting that because of unexpected disruptions during the 21st session of the Regional Coordinating Committee for Latin America and the Caribbean (CCLAC), the Regional Committee decided to suspend its meeting and continue with unfinished business by correspondence. CCLAC later convened a virtual regional meeting that achieved consensus on the adoption of the report.

3. CONSIDERATION OF THIS ISSUE BY CODEX

3.1 Concerns relating to CWBC were first raised at CCGP30 (2016) by way of a discussion paper prepared by France and Germany. CCEXEC72 (2016)¹⁵ requested a subcommittee, chaired by a Vice-Chairperson, to consider options and report back to CCEXEC73 (2017). CCEXEC73 asked the Secretariat to prepare a document for CCEXEC75 (2018) which analyzed the advantages and disadvantages of the options presented, and for CAC40 (2017) to consider the possibility of a pilot Committee on Standards Advancement (CCSA) (with a view to the CCSA being reviewed by CAC in 5 years' time).¹⁶

3.2 CAC40 asked the Secretariat to prepare a more detailed proposal highlighting possible terms of reference (TORs), modalities of work and cost implications of a CCSA for consideration at CCEXEC75 and at CAC41.¹⁷ The document was to include a discussion of the advantages and disadvantages of the options based on the CAC40 discussion that could then be discussed at CCGP31 in 2019.

3.3 CAC41 deferred the question of implementing a CCSA pilot and instead asked CCGP31 to review the issues related to CWBC and to formulate procedural guidance, as appropriate, based on, and consistent with, relevant existing guidance in the *Procedural Manual*. CAC41 also asked the Codex Secretariat to prepare a discussion paper for CCGP on this issue.¹⁸

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

4. CODEX VALUES

¹⁴ Section III, Guidelines for Subsidiary Bodies, *Procedural Manual* (27th edition).

¹⁵ REP17/EXEC1, paragraphs 32-33

¹⁶ REP17/EXEC2, paragraphs 126-127

¹⁷ REP17/CAC, paragraph 150-152

¹⁸ REP18/CAC, paragraph 101

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

5. ISSUES FOR DISCUSSION

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

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

6. CRITERIA RELEVANT FOR SELECTION AND ASSIGNMENT OF WORK BY CORRESPONDENCE

6.1 Having a clear set of criteria for the assignment of appropriate work to a CWBC is an essential prerequisite and critical first step in deciding on the mechanism for advancement of an item of work (including new or revision work). Without prejudice to the provisions of paragraph 6.11.1 below, a clear set of criteria should be established for appropriate work by a CWBC.

6.2 The Chairperson has the responsibility for ensuring members (and observers) have had every opportunity to comment on a new work proposal. This is typically achieved via circulation of proposals and discussion at a physical meeting of the committee.

6.3 A flexible approach would be required, however, particularly in the case of a committee adjourned *sine die*, where it may not be practicable to meet physically to discuss the work proposal. In such situations, the CAC may well provide the forum for discussion of new work proposals as was the case with processed cheese and dairy permeate powder standards.

6.4 It is worth noting at the outset that CWBC will be the exception rather than the rule and should only be considered in specific circumstances or situations. These could include such factors as the status of the committee and its work programme. We do not envisage a time where CWBCs will ever entirely replace the need for physical meetings. [The issue of whether virtual committee sessions are appropriate in certain circumstances, and how they may be conducted, is arguably a separate issue from working by correspondence. Some members of the working group believe that these issues are beyond the scope of the work assigned to CCGP and require further consideration by CCEXEC and CAC].

6.5 To date, CWBC have only been implemented for commodity standards (and, therefore, there was an inherent focus on commodity committees in considering the correspondence setting). It is important to recognise that while commodity committees may have dominated the requests to work by correspondence to date, it is reasonable that the criteria developed should apply broadly to all Codex committees to ensure they are relevant and durable and cover the full range of Codex work.

6.6 When the Commission is faced with a request to commence work in an area that falls within the terms of reference of a committee adjourned *sine die* (or which has completed all work in the step process and has not set a date for a future meeting, (such as was the case of CCPFV), it has the option of either reactivating the committee or assigning that work to another committee that is actively meeting.¹⁹ The latter approach was adopted in the case of histamine work, which was assigned to the Codex Committee on Food Hygiene (CCFH) when the Codex Committee on Fish and Fishery Products (CCFFP) adjourned. If the Commission decides to

¹⁹ Section 5. (iii) Guide to the Procedure for the Amendment and Revision of Codex Standards and Related Texts, Procedures for the Elaboration of Codex Standards and Related texts, Section II: Elaboration of Codex Standards and Related Texts, *Procedural Manual (27th Edition)*

assign the work to the committee that has the mandate for that area of work, the next issue for determination is the mode of operation: whether to reactivate the committee and request that the committee host provide for physical meetings, or whether to reactivate it to work by correspondence. The CCFFP was re-activated by CAC43 (2020) to work by correspondence on a new task that falls under its mandate .

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

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

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

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

6.11 Proposal for criteria when deciding on work to be assigned to CWBC

6.11.1 It is proposed that the Commission consider the following criteria as a whole (where they apply) when deciding on proposed work (new, and revision) to be assigned to CWBC versus meeting physically:

- i. Scope, objective and content of the proposed work assigned to a CWBC;
- ii. Nature and complexity of the proposed work and its previous and recent history in Codex (for example, this may include, *inter alia*, the timeframe to develop the proposed work, diversity of stakeholders involved, characteristics of the proposed work and/or related factors);
- iii. The urgency and importance of work;
- iv. Need for and availability of adequate scientific information and/or other supporting information, including any support from expert bodies;
- v. Potential for assigning the proposed work to an existing committee, with relevant expertise, that is meeting physically. This should take into consideration factors such as whether:
 - a. the work can reasonably be expected to be completed within a set timeframe such as indicated in the TOR of the relevant CWBC, and
 - b. the committee to which it is intended to be assigned has a recent history of timely completion of its work programme;
- vi. [Potential for the use of web-based tools and real-time technology to facilitate meetings either and committee or working group level to help progress the work of the Committee among members (including for a limited number of issues that may be challenging to manage in the correspondence setting);]
- vii. Amenability of the work to standardisation;
- viii. Participation/attendance history in past plenary sessions of the relevant committee; and
- ix. Prospects for achieving consensus within the prescribed timeframe.

6.11.2 The above criteria should be read in conjunction with the Commission's *Procedures for Elaboration of Codex Standards and Related Texts*²⁰ and the *Criteria for the Establishment of Work Priorities*²¹ as set out in the *Procedural Manual*.

6.11.3 All possible ways should be considered on how to consult with committees around the proposal to work by correspondence prior to submission of the proposal to the CCEXEC. For example, circulation for comments (including the issuance of CLs [and the use of technology such as webinar], to increase inclusiveness and participation should be considered. The protocols and practical management of web tools are beyond the scope of this paper and will require separate and dedicated consideration]. If there are proposals for new work that have not been reviewed by the relevant committee, CCEXEC (in the critical review process) and the Commission should take extra care in considering whether the project document meets the criteria in the *Procedural Manual*.

7. ROLE OF CHAIRPERSON AND THE CODEX SECRETARIAT IN CWBC

7.1 One of the major issues raised in the Secretariat paper to CCGP31 was the role of Chairpersons of CWBC. It has been suggested that in CWBC there is potential for Chairpersons to assume a greater degree of influence over proceedings and determination of conclusions. This may be especially true if only the Chairperson of the Committee has access to responses to CLs. It has been suggested that, in the interests of transparency, all members should be able to review the comments to CLs that are posted in the Codex Online Commenting System (OCS).

7.2 Further, it was emphasized that members need to participate actively by providing comments and inputs into the discussions of the CWBC and regularly checking the website. A Chairperson could fill a void, if needed, but it is preferable for members to contribute to the discussion dynamically and provide the committee with proposals for consideration. Member countries and observers with an interest in the work should register for the committee so that they will have access to all documents and deliberations on the Codex Forum. In the absence of dynamic and real-time interaction such as those in physical meetings, the conclusions and recommendations of Chairpersons are entirely based on written comments. A challenge for CWBC is that the participants do not have an opportunity to communicate and interact directly and immediately with other participants. In face-to-face meetings, participants' interventions are dynamic and take account of comments from other delegations. In-person dialogue can be helpful to Chairpersons in assessing national positions and identifying opportunities for consensus building.

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

7.4 A key principle in providing guidance on committee roles is that where the roles vary between that in the physical setting and that in CWBC, justification needs to be provided. The aim is to ensure the correspondence setting mirrors, as closely as possible, the physical setting to ensure confidence in the process.

7.5 The role of the Codex Secretariat includes providing guidance and support to the Chairperson on procedural and other matters relating to the work of the CWBC to support the efficient operation of the CWBC. This is particularly the case with respect to provision of procedural guidance and drafting of the report, and this will be different from that in the physical setting where they are privy to real time discussions. It will be important therefore that the guidance clarifies those aspects of the role to ensure comparability of procedures and processes as between meetings in physical setting versus those in the correspondence setting.

7.6 The *Procedural Manual* also provides for the roles of a Co-chairperson, Facilitators and Rapporteurs. When advancing work in the correspondence setting it is worth considering if these roles can be used with good effect. The Chairperson will make the determination (as provided for in the *Procedural Manual*).

7.7 The role of the Chairperson should include working with the Codex Secretariat (and in consultation with the Co-Chairpersons and the EWG Chairpersons) to ensure that the report clearly documents where there are significant points of difference either in relation to the content of the work or with respect to the advancement of the standard. In particular, conclusions and recommendations on advancement of work through the step process should be clearly documented, transparent, and based on the views of the members participating in the work. It will be important to ensure there is enough time and opportunity for members to

²⁰ Procedures for the Elaboration of Codex Standards and Related Texts, Section II: Elaboration of Codex Standards and Related Texts, *Procedural Manual (27th Edition)*

²¹ Criteria for the Establishment of Work Priorities, Section II: Elaboration of Codex Standards and Related Texts, *Procedural Manual (27th Edition)*

respond to comments made by other members, much like a plenary conversation in real time. The Codex Secretariat has a role in providing the necessary functions to support the efficient operation of the CWBC.

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

- i. Convene the physical session of the original committee; or
- ii. Switch from working by correspondence to an alternative, physical mode of working, for example recommending referral to another committee that is meeting physically or
- iii. Request the Secretariat to convene a meeting of a Rule XI 1. (a) subsidiary body (establishing an entirely new committee);²² or
- iv. Propose the discontinuation of the work.

7.9 Specific procedural guidance covering the above mentioned options may be useful to ensure all options are clear.

7.10 This was the approach taken by CCMMP deliberating on the draft Standard for Processed Cheese. Two PWGs were held, one in Brussels (Belgium) and one in Montevideo (Uruguay), providing members the opportunity to attend if they wished to participate.

7.11 Current global dynamics have accentuated the case for working by correspondence since this work on CWBC began 12 months ago. A flexible approach ensuring that work can be readily switched to the different modes of operation, as appropriate, will therefore be essential.

7.12 Proposal on guidance for Chairpersons of CWBC

7.12.1 Based on the above, it is proposed that the Commission consider the development of specific procedural guidance for Chairpersons of CWBC similar to what is already contained in the *Procedural Manual*²³.

7.12.2 Such guidance to Chairpersons of CWBC could include, among other things, the following specific considerations:

- i. The role of the Codex Secretariat in providing all of the functions to support the efficient operation of the CWBC including verification of credentials of participants, preparing and circulating Committee reports and providing support and guidance to the Chairperson on procedural and other matters relating to the work of the CWBC.
- ii. The importance of inclusiveness and recognition of all participants;
- iii. The interpretation of silence, and the importance of clarifying that silence in the absence of specific contrary views or objection will be taken to mean tacit agreement or no objection to proceeding (such as the steps the Chairperson can take to highlight this factor when seeking comment on the progression of a standard);
- iv. The role and place of voting in the correspondence setting as a measure of support or otherwise (as distinct from determining the level of consensus);
- v. The potential role of a Co-Chairperson, Facilitator, and Rapporteur; and
- vi. The importance of transparency, including suggestions on how this could be achieved.
- vii. Chairpersons having circulated their proposal to the CWBC may refer, for consideration of the Commission, alternative mechanisms for advancement of work (e.g., convening a physical meeting) as provided for under Rule XI.6. (b)²⁴ in the event that a CWBC has failed to make progress.

²² Rule XI. Subsidiary Bodies, Rules of Procedure of the Codex Alimentarius Commission, Section I, Basic Texts and Definitions, *Procedural Manual (27th Edition)*

²³ Guidelines to Chairpersons of Codex Committees and *Ad Hoc* Intergovernmental Task Forces, Section III: Guidelines for subsidiary bodies, *Procedural Manual (27th Edition)*

²⁴ Rule XI.6.(b) Subsidiary Bodies, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27th Edition)*

8. INCLUSIVENESS, PARTICIPATION AND LANGUAGE

8.1 The *Procedural Manual*²⁵ provides that the host government has the responsibility for operating costs such as processing of all working documents and reports of Codex committees (i.e., agenda papers and CLs) in not less than three of the working languages of the Commission²⁶. Interpretation services are also the responsibility of the host government with simultaneous comments in the working languages provided at physical meetings of the committee.²⁷ Written comments provided after a specified deadline may not be translated.

8.2 CWBC have typically tended to work in only one of the Commission's languages. While this is an eminently pragmatic approach, it does have the potential to limit inclusiveness, which is one of the core values of the Commission.

For the sake of inclusiveness and maximum participation, CWBC should operate by default, in not less than three of the working languages of the Commission²⁸ as determined by CAC. There may at times be justification for flexibility where financial and technical constraints limit the extent to which translations could realistically be provided. These are, ultimately, matters for the Commission to decide.

8.3 Host governments should continue to have responsibility for translation of documents for CWBC, particularly the translation of working documents and reports in the Commission's working languages. It will also be important to have the flexibility to trial new technology (for translation) as it continues to be advanced. Where there is justification for a flexible approach (as occurs in the physical setting), various options are available, such as:

- the CWBC translating comments made in 'session' (via an internet translator, or machine translation); and
- the submitters themselves providing (voluntarily) a translation of their comments with their submission.

8.4 This approach ensures such costs do not provide a barrier to the hosting of CWBC and can facilitate timely progress of the CWBC's work.

8.5 Proposal regarding languages

8.5.1 For the sake of inclusiveness and maximum participation, CWBC should operate by default, in not less than three of the working languages of the Commission, as determined by CAC. Further all agenda papers and reports should be translated (into the working languages of participating members), where possible. Comments should be submitted within the specified time to allow time for the working documents to be translated.

8.5.2 There may at times be justification for flexibility where financial and technical constraints limit the extent to which translations could realistically be provided. Given the importance of inclusiveness and transparency, any proposal to deviate from the requirement to operate in not less than three of the working languages of the Commission should be based on careful consideration of all relevant factors.

Commenters themselves may choose to provide translations of their comments. Alternatively, and where appropriate, the host country may choose to use online/electronic translations (provided they are appropriately referenced and meet quality standards).

9. VERIFICATION OF MEMBERSHIP AND CREDENTIALS FOR PARTICIPATION

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

²⁵ Rule XIII.4 Budget and Expenses, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27th Edition)*

²⁶ These are the working languages of both the Food and Agriculture Organization of the United Nations and the Health Assembly of World Health Organization.

²⁷ Secretariat, Organization and Duties, Guidelines to Host Governments of Codex Committees and *Ad Hoc* Intergovernmental Task Forces, Section III: Guidelines for subsidiary bodies, *Procedural Manual (27th Edition)*

²⁸ These are the working languages of both the Food and Agriculture Organization of the United Nations and the Health Assembly of World Health Organization.

9.2 Membership²⁹ and representation³⁰ at meetings are covered in the *Procedural Manual* provisions that apply to physical meetings of committees and working groups. Under the current rules of procedure, meetings of Codex committees and working groups are open to all members and observer organizations of the Commission. Codex procedural rules require all official communications to Codex, including those relating to membership and participation in meetings of committees and working groups, be notified through the designated Codex Contact Point (CCP) and require designation of a single representative/head of delegation. This does not prevent the head of delegation being supported by an alternate representative who can respond where the head of delegation authorises (as occurs in the physical setting). The status and credentials of participants in Codex committees are also subject to scrutiny and verification by the Codex Secretariat.

9.3 There is a need to define what constitutes 'a session' in correspondence setting. Physical meetings of committees are typically held over a finite period of time and members come together to consider its work programme. It is of course worth noting that a lot of the preparatory work is conducted by electronic means such as electronic working groups. Using this analogy, in a correspondence setting, committees will have recourse to electronic working groups [and virtual meetings] (formal and informal) to discuss its work programme including advancement of standards through the step process. To ensure comparability of sessions of committees meeting physically and those meeting by correspondence, sessions of CWBC would refer to those occasions when the committee engages in formal consultations with participants by correspondence [or virtual means over a specified date or period of time].

9.4 Proposal regarding verification of membership, and credentials for participation

9.4.1 It is proposed that the Commission clarify that the rules and procedures for accreditation and official recognition of the credentials of representatives of Member countries and observer organizations to Codex CWBC are the same as those already in place for physical meetings of committees. These include the requirement to notify through the official National Codex Contact Point (CCP) the head of delegation and other members of national delegations. The same provisions that apply currently to physical meetings of Codex Committees should be included in any guidelines for CWBC.

9.4.2 To ensure comparability of sessions of committees meeting physically and those meeting by correspondence, sessions of CWBC would refer to those occasions when the committee engages in formal consultations with all registered participants by correspondence [or virtual means] over a specified date or period of time.

9.4.3 Sessions of CWBC should be held over a specified period of time and should be concluded with reports submitted to the Executive Committee for critical review.

9.4.4 Each session of the CWBC (if there are multiple sessions) should be concluded in time to facilitate the critical review requirements of the Executive Committee. After new work is assigned to a CWBC, and before work commences, there shall be a defined period for registration with a clear commencement and closure date during which members and observers may register.

10. DETERMINING A QUORUM (BEFORE A CWBC SESSION CAN BEGIN, AND MAKE DECISIONS)

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

10.2 The *Procedural Manual*³¹ stipulates that in cases where there are recommendations to amend the Commission's Statutes and when adopting amendments or additions to the present rules, a quorum is determined only when there is a majority of Commission members.

10.3 For all other cases, a quorum is determined when there is a majority of Commission members attending the session, provided that such a majority is not less than 20 percent of the total Commission

²⁹ Rule I. Membership, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27th Edition)*

³⁰ Rule VI. Sessions, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27th Edition)*

³¹ Rule VI.7. Sessions, Rules of Procedure of the Codex Alimentarius Commission, Section I, Basic texts and definitions, *Procedural Manual (27th Edition)*

membership, nor less than 25 members (or for a regional meeting one third of the members belonging to the region).

10.4 Proposal regarding quorum

10.4.1 For a CWBC, a majority of Commission members registering for the committee shall constitute a quorum, provided that such a majority is not less than 20 percent of the total Commission membership, nor less than 25 members (or for a regional meeting, one third of the members belonging to the region or group of countries concerned). For the avoidance of doubt, it may be useful to provide specific examples of how to determine if a quorum is reached.

10.4.2 The period in which registration applies (i.e. a session) should be stipulated.

11. ADVANCEMENT OF STANDARDS AND RELATED TEXTS

11.1 The *Procedural Manual*³² directs Chairpersons to consider a number of measures to facilitate consensus in the elaboration of standards, including ensuring that matters are not progressed through the step process until all relevant concerns are taken into account and adequate compromises worked out. There is an acceptance that the measures to ‘facilitate consensus’ in the *Procedural Manual*³³ are clearly applicable to committees in both physical and correspondence setting and no further and more specific guidance is needed for CWBC.

11.2 In contrast, while the challenges of determining whether consensus has been reached are not unique to CWBC, it may be that, when working by correspondence, the level of consensus is harder to gauge.

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

11.4 In all Codex meetings, it is the responsibility of the Chairperson to determine whether or not consensus is met. To help gauge the level of consensus and the overall “sense of the virtual room” on progressing a draft Standard in a CWBC, the Chairperson should be asked to propose a conclusion. For example, a chairperson could propose a conclusion to advance a standard by asking a specific question such as “*Do you support advancing the draft standard to Step X?*”. This is consistent with the practice in physical committees. Members’ replies could include “Yes”, “No” or “Do not oppose advancement.” Determining consensus is different from voting where a formal head count would be required.

11.5 To reduce uncertainty caused by silence in the correspondence setting, it is proposed that when members are asked to express their position on the progression of a specific proposal, they need to be made aware that silence (i.e., lack of an affirmative response to the question) is considered as tacit agreement or no objection to proceed (in line with what occurs in physical meetings) and would not block proceeding through the step procedure.

11.6 Where there is broad support for advancing the draft standard, it should be clearly reflected in the report.

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

11.8 While the *Procedural Manual* makes it clear that every effort should be made for Committees to reach agreement by consensus³⁴, it also provides for voting³⁵. However, the voting provisions are rarely used in the physical setting, particularly at the committee level. Codex is a consensus-based organization and voting has been used at the CAC level only in situations when all efforts to achieve consensus have failed. Given the complexities of replicating and assuring the integrity of voting processes outside of physical meetings and

³² Consensus, Guidelines to Chairpersons of Codex Committees and *Ad Hoc* Intergovernmental Task Forces, Section III: Guidelines for Subsidiary Bodies, *Procedural Manual (27th Edition)*

³³ Measures to facilitate consensus, Appendix: General decisions of the Commission, *Procedural Manual (27th Edition)*

³⁴ Consensus, Guidelines to Chairpersons of Codex Committees and *Ad Hoc* Intergovernmental Task Forces, Section III: Guidelines for Subsidiary Bodies, *Procedural Manual (27th Edition)*

³⁵ Rule VIII. Voting and Procedures, Rules of Procedure of the Codex Alimentarius Commission, Section I, Basic texts and definitions, *Procedural Manual (27th Edition)*

because of the predominantly negative feedback regarding the inclusion of voting in the correspondence setting, it is proposed that CWBC not resort to voting to resolve difference. Instead, the use of alternative mechanisms (as described above in Section 7.8) to resolve differences and advance work should be submitted to the CAC for its consideration.

11.9 Proposal regarding advancement of standards

11.9.1 In determining the level of consensus when progressing a standard through the step process, Chairpersons should propose conclusions for consideration by the committee.

11.9.2 CWBCs may use a similar approach (or suitable variation) when determining the level of consensus on more detailed points of discussion, such as text changes. It should also be clarified that silence (e.g., lack of specific contrary views or objections to a proposal) will be interpreted as tacit agreement or no objection to proceed in the same way that silence is accounted for in physical meetings. Where all efforts to achieve consensus have failed, CWBC shall not resort to voting to resolve differences. Instead, the use of alternative mechanisms (as described above in 7.8) to resolve differences and advance should be submitted to the CAC for its consideration.

12. REPORTING TO THE COMMISSION

12.1 Reporting of the outcome of discussions and recommendations is just as important for CWBC as it is for physical sessions. The *Procedural Manual* states that the duties of a Codex committee include reporting to the Commission.³⁶ Reports are to be prepared by the Codex Secretariat in consultation with the Chairperson and follow the same model as that of physical meetings, where there is opportunity for members to comment on the draft report.

12.2 Whereas committees holding physical sessions are able to finalize reports of meetings before formal conclusion of the session, finalizing reports of CWBC can be more challenging and calls for active engagement by electronic means.

12.3 Chairpersons of CWBC should make every effort to ensure that the report accurately reflects the views of the members participating in the work. The conventions and practices that apply to drafting of reports of committees holding physical meetings should also be observed, to the extent relevant, by CWBC. Reports of CWBC should be objective and accurately reflect the discussions, conclusions, and recommendations.

12.4 Reports of committees should clearly identify significant matters on which there is no consensus. It is worth noting that the *Procedural Manual*³⁷ provides that any country may ask to have its reservation making a statement of position, recorded in the meeting report (whether a vote is taken or not).

12.5 Members could consider the extent to which divergent views should be included where countries do not specifically ask to have their position recorded, for example, should divergent views always be recorded when the Chairperson is determining the level of consensus. A rationale would be needed to justify the need for a change in the correspondence setting.

12.6 Reports of CWBC should adhere, as far as possible, to the format that is already used in physical meetings. Where a CWBC holds multiple consultations and informal meetings (that are open to all members registered to the committee meeting) during its period of operation, it should prepare accurate records of such engagements and take these into account in the development of the final report.

12.7 The role of the Codex Secretariat in the preparation of reports of CWBC needs to be addressed to ensure objectivity and comparability of reporting processes as between physical meetings and CWBC. The coordination and collaboration between Codex Secretariat and Chairperson and Host Country in a CWBC should be just as active as in a physical meeting. With respect to drafting of the report in the correspondence setting, it may be different from that in the physical setting where they are privy to real time discussions. It will be important therefore that the guidance clarifies those aspects of the role to ensure comparability of procedures and processes as between meetings in physical setting versus those in the correspondence setting.

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

³⁶ Duties and Terms of Reference, Guidelines to Host Governments of Codex Committees and *ad hoc* Intergovernmental Task Forces, Section III: Guidelines for Subsidiary Bodies, *Procedural Manual (27th Edition)*

³⁷ Conduct of Meetings, Guidelines on the Conduct of Meetings of Codex Committees and *ad hoc* Intergovernmental Task Forces, Section III: Guidelines for Subsidiary Bodies, *Procedural Manual (27th Edition)*

12.9 It may also be useful to include some discussion around the timeline requirements for dissemination of the final report (as are outlined in the *Procedural Manual*)³⁸. A requirement for archiving correspondence may be useful too.

12.10 Proposal regarding reporting

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

12.10.2 As is the case with preparation of reports of committees holding physical meetings, the Codex Secretariat should be primarily involved in the preparation and finalization of reports of CWBC.

13. CONCLUSIONS

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

13.2 [A particular issue that will require specific consideration is the possibility for inclusion of virtual meetings as part of this work on guidelines for CWBC even if this is not explicitly mentioned in the ToR. When CCGP initiated this work in March 2019, the world was not in the midst of a global pandemic and resultant disruptions to Codex meetings and its traditional *modus operandi*. Against the background of the active consideration of the issue of virtual and hybrid meetings by the Executive Committee, some commenters observed that there may be merit in including virtual and hybrid meetings within the scope of this work.]

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

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

- i. Criteria relevant for selection and assignment of work by correspondence;
- ii. Roles of the Chairperson and Codex Secretariat in CWBC;
- iii. Sessions of CWBC;
- iv. Inclusiveness, participation and languages;
- v. Verification of membership and credentials for participation;
- vi. Determining a quorum (before a CWBC session can begin, and make decisions);
- vii. Advancement of standards and related texts; and
- viii. Reporting to the Commission.

13.5. [Finally, it is suggested that there may be a need to develop some protocols and guidance on practical management of web-based tools, but this may require separate consideration alongside the issue of virtual meetings³⁹.]

14. RECOMMENDATIONS

14.1 It is recommended that CCGP32:

³⁸ Reports, Guidelines on the Conduct of Meetings of Codex Committees and *ad hoc* Intergovernmental Task Forces, Section III. Guidelines for Subsidiary Bodies, *Procedural Manual (27th Edition)*

³⁹ This may already be underway as part of the discussion at CAC43 on Codex and the Pandemic and the subcommittee report.

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- i. Consider the analysis and proposals on criteria and procedural guidance for committees working by correspondence contained in this document and its annex; and
 - ii. [Note that given the divergent views on whether virtual meetings and use of virtual technology falls within the ToR of this work, any proposal to include this issue within the current work will require the approval of the CAC].

ANNEX

1. CRITERIA AND PROCEDURAL GUIDELINES FOR CODEX COMMITTEES AND AD HOC INTERGOVERNMENTAL TASK FORCES WORKING BY CORRESPONDENCE¹

Introduction

The criteria and procedural guidelines set out herein are intended to guide the work and conduct of sessions of Codex Committees and *ad hoc* Intergovernmental Task Forces working by correspondence (CWBC).

The Rules of Procedure of the Commission apply *mutatis mutandis* to CWBC.

Codex values

An overarching consideration and guiding principle in relation to CWBC is the need to respect and adhere to the Commission's core values of collaboration, inclusiveness, consensus building, and transparency.

2. Circumstances relevant to decision making on CWBC

CWBC will be the exception rather than the rule and shall only be considered in specific circumstances or situations.

The decision to initiate work by correspondence by one or more Codex committees shall be taken by the Codex Alimentarius Commission taking into consideration the advice of the host country and the views of Codex members and observers and on the basis of any advice provided by the Executive Committee of the Codex Alimentarius Commission. All Codex members and observers are able to participate in all committees and also receive Circular Letters (CLs).

3. Criteria relevant for selection and assignment of work by correspondence

The criteria for selection and assignment of work to CWBC shall be consistent with the Commission's *Procedures for Elaboration of Codex Standards and Related Texts*² and the *Criteria for the Establishment of Work Priorities*³ as set out in the *Procedural Manual*.

The following criteria should be taken into account when deciding on whether to assign work to a CWBC:

- i. Scope, objective and content of the proposed work assigned to a CWBC;
- ii. Nature and complexity of the proposed work and its previous and recent history in Codex (for example, this may include, *inter alia*, the timeframe to develop the proposed work, diversity of stakeholders involved, characteristics of the proposed work and/or related factors);
- iii. The urgency and importance of work;
- iv. Need for and availability of adequate scientific information and/or other supporting information, including any support from expert bodies;
- v. Potential for assigning the proposed work to an existing committee, with relevant expertise, that is meeting physically. This should take into consideration factors such as whether:
 - a. the work can reasonably be expected to be completed within a set timeframe such as indicated in the TOR of the relevant CWBC, and
 - b. the committee to which it is intended to be assigned has a recent history of timely completion of its work programme;
- vi. [Potential for the use of web-based tools and real-time technology to facilitate meetings either at the committee or working group level to help progress the work of the Committee (including for a limited number of issues that may be challenging to manage in the correspondence setting);]

¹ [For the purposes of this work, 'working by correspondence' may include the use of virtual technology and conference calls for informal discussions and working groups. Guidance on practical management of web tools may require separate and dedicated consideration (this may be already underway given the discussion on the subcommittee report at CAC43).]

² Procedures for the Elaboration of Codex Standards and Related Texts, Section II: Elaboration of Codex Standards and Related Texts, *Procedural Manual (27th Edition)*

³ Criteria for the Establishment of Work Priorities, Section II: Elaboration of Codex Standards and Related Texts, *Procedural Manual (27th Edition)*

- vii. Amenability of the work to standardisation;
- viii. Participation/attendance history in past plenary sessions of the relevant committee; and
- ix. Prospects for achieving consensus within the prescribed timeframe.

The above listed criteria should be considered as a whole (where they apply), rather than in isolation.

4. Verification of membership and credentials for participation

The *Procedural Manual* provisions that apply to physical meetings of committees and working groups shall also apply to membership⁴ and representation⁵ in CWBC.

Codex procedural rules require all official communications to Codex, including those relating to membership and participation in meetings of committees and working groups, be notified through the designated Codex Contact Point (CCP). Members and observer organizations are required to nominate, through their official CCPs, a single representative/head of delegation. This does not prevent the head of delegation being supported by an alternate representative who can respond where the head of delegation authorises (as occurs in the physical setting).

The status and credentials of participants in Codex committees are subject to scrutiny and verification by the Codex Secretariat.

After new work is assigned to a CWBC, and before work commences, there shall be a defined period for registration with a clear commencement and closure date during which members and observers may register.

5. Sessions of CWBC

To ensure comparability of sessions of committees meeting physically and those meeting by correspondence, sessions of CWBC are those occasions when the committee engages in formal consultations with members by correspondence [or virtual means⁶], over a specified date or period of time as approved by the CAC.

The working languages, the timeframes for implementing the work plan and tasks for the session of the CWBC should be clearly documented and should have been agreed to among members at the outset of the session. This would include the timeframes for preparation of working documents, consultations and preparation of reports (including translations) to CCEXEC or CAC, where decisions will be made and about how and whether work should continue, new work approved, and recommended texts adopted.

Committee agenda, working documents and reports are published on the Codex website.

The work and outputs of the committee are subject to critical review by the Executive Committee prior to submission to the CAC.

Each session of the CWBC should be concluded on time to facilitate the critical review requirements of the Executive Committee.

6. Inclusiveness, participation and languages

For the sake of inclusiveness and maximum participation, CWBC should operate by default, in not less than three of the working languages of the Commission⁷ as shall be determined by the CAC.

There may at times be justification for flexibility where financial and technical constraints limit the extent to which translations could realistically be provided. Given the importance of inclusiveness and transparency, any proposal to deviate from the requirement to operate in not less than three of the working languages of the

⁴ Rule I. Membership, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27th Edition)*

⁵ Rule VI. Sessions, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27th Edition)*

⁶ [In the context of these guidelines, a virtual session includes the use of real-time virtual technology. It is acknowledged that virtual meetings are not explicitly covered in the *Procedural Manual* and will require specific consideration.]

⁷ These are the working languages of both the Food and Agriculture Organization of the United Nations and the Health Assembly of World Health Organization.

Commission should be based on careful consideration of all relevant factors. It is the responsibility of the host government to ensure adequate funding for translation of working documents.

7. Determining a quorum (before a CWBC session can begin, and make decisions)

Applying the same rules that apply to a committee holding a physical meeting to a CWBC (where *registering* constitutes attending), a majority of commission members '*registering*' for the CWBC shall constitute a quorum, provided that such a majority is not less than 20 percent of the total Commission membership⁸. For a regional meeting, a quorum is met if 1/3 of members belonging to the region or group of countries concerned *register*⁹.

In the interests of clarity and transparency, the time period for registration (the closing date for registration and period for which the registration is valid) should be stipulated.

In the absence of a quorum, no decisions may be made, nor recommendations provided by the CWBC to the Commission.

8. Roles of the Chairperson and the Codex Secretariat in CWBC

The role of the Chairperson

The Guidelines to Chairpersons of Codex Committees and *Ad Hoc* Intergovernmental Task Forces¹⁰ apply *mutatis mutandis* to Chairpersons of CWBC.

In addition, Chairpersons of CWBC should ensure that:

- All communications are open to all registered members and observers and are carried out in an open and transparent manner and in accordance with any guidelines or protocols that may be established by the Commission;
- All questions are fully considered [either on the basis of correspondence or through virtual consultations];
- There is enough time and opportunity for members to respond or build on comments made by other members, much like a plenary conversation in real time;
- The reports of the committee clearly document where there are significant points of difference either in relation to the content of the work or with respect to the advancement of a standard through the step process; and
- The rules/procedures specified in the *Codex Procedural Manual* are adhered to in the CWBC setting.

The Chairperson of CWBC may be supported by one or more co-chairpersons.

The role of the Codex Secretariat

The Codex Secretariat shall perform all of the usual functions it does in support of the efficient operation of the CWBC, including verification of credentials of participants, preparing and circulating Committee reports and providing guidance and support to the Chairperson on procedural and other matters relating to the work of the CWBC.

Consensus

Chairpersons of CWBC should make every effort to promote consensus-based decision making. Where necessary, the chairperson may take on the role of facilitator or appoint a facilitator to work with members to reach consensus. The terms of reference of an appointed facilitator should be clearly stated and agreed among the members of the Committee and the facilitator should be someone who is experienced in Codex matters but neutral on the matter concerned.

⁸ Refer Rule VI.7. Sessions, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27th Edition)* Therefore, if the CAC membership was 189, at least 38 member countries would need to register for the CWBC in order to reach a quorum.

⁹ Refer Rule IV.7 Sessions, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27th Edition)* Therefore, if there are 36 member countries, then a minimum of 12 member countries would be required to register for a CWBC to reach a quorum.

¹⁰ Section III: Guidelines for Subsidiary Bodies, *Procedural Manual (27th Edition)*

The chairperson should also consider implementing measures as described in the Guidelines to Chairpersons¹¹ on measures to facilitate consensus building in the elaboration of standards at the Committee stage.

As appropriate, Chairpersons of CWBC, with the concurrence of the committee, may appoint rapporteurs to assist with preparation of summary reports and related documents.

Interpretation of silence

The interpretation of silence in deliberations of CWBC should be clearly established. Specifically, this means that silence, the absence of specific contrary views or objections, will be taken to mean tacit agreement or no objection to proceed. This point should be clearly communicated to all members of the committee to avoid any misunderstanding when seeking comment on specific matters under discussion including proposed conclusions on progression of a standard through the step process. Chairpersons should allow sufficient time for response to assure that silence is not the result of temporary technical problems.

9. Advancement of standards and related texts

In determining the level of consensus when progressing through the step process, Committee chairpersons typically propose a conclusion for consideration by members, which may be modified and presented as revised to achieve consensus. The same practice should be followed by CWBCs. For example, a chairperson could propose a conclusion to advance a standard by asking a specific question, such as, “*Do you support advancing the draft standard to Step X?*”

CWBCs may use a similar approach (or suitable variation) when determining the level of consensus on more detailed points of discussion, such as text changes.

For the avoidance of doubt in the correspondence setting, a reservation is making a statement of position, which will be recorded in the meeting report upon request (in line with provisions in the *Procedural Manual*)¹².

Options for the Chairperson when a CWBC is not able to progress work

When, in the judgement of the Chairperson, it becomes clear that no progress is possible by a CWBC, the committee Chairperson may refer the matter to CCEXEC/CAC for consideration.

In doing so the Chairperson may propose one of the following options to the CWBC for endorsement in view of the referral to CCEXEC/CAC:

- i. Convene a physical session of the original committee;
- ii. Switch from working by correspondence to an alternative, for example recommending referral to a committee (other than the original committee) that has relevant expertise on the topic under consideration and is meeting physically;
- iii. Request the Secretariat to convene a physical meeting of a Rule XI 1. (a) subsidiary body (i.e. convene an entirely new Codex subsidiary body);
- iv. Propose the discontinuation of the work.

Voting

While the rules of procedure of the Codex Alimentarius Commission provide for voting in situations when all efforts to achieve consensus have failed, CWBC should not resort to voting to resolve differences.

Instead, the option of alternative mechanisms (as described above) to resolve differences and advance work should be submitted to the Codex Alimentarius Commission for its consideration.

10. Reporting to the Commission

¹¹ Guidelines to Chairpersons of Codex Committees and *Ad Hoc* Intergovernmental Task Forces, Section III: Guidelines for subsidiary bodies, *Procedural Manual (27th Edition)*

¹² Conduct of Meetings, Guidelines on the Conduct of Meetings of Codex Committees and *ad hoc* Intergovernmental Task Forces, Section III: Guidelines for Subsidiary Bodies, *Procedural Manual (27th Edition)*

CWBC shall report to the Codex Alimentarius Commission. As with reports of physical sessions of Codex committees, reports of CWBC sessions shall be prepared by the Codex Secretariat in consultation with the Chairperson.

The conventions and practices that apply to drafting of reports of committees holding physical meetings should also be observed, to the extent relevant, by CWBC. Reports of CWBC should be objective and accurately reflect the discussions, conclusions, and recommendations.

Members of CWBC have the right to ask that their positions, including reservations, or opposition to a recommendation or decision be recorded in the report of the committee.

Members of CWBC should refrain from raising issues or seeking inclusion of comments that were not part of the deliberations, and such comments will not be included in the report of the session, consistent with CAC procedure and practice.

[Where deemed necessary provision should be made for virtual consultations to facilitate consideration of the draft report prior to its finalisation.]

Draft reports of the CWBC should be made available to all Codex members and observers who were registered in the session within one week of the conclusion of the plenary agenda and deliberations, for review and comment within two weeks of report circulation. The procedures for review and comment should be clearly communicated to all members.

The Codex Secretariat should circulate the final report as adopted in not less than three of the working languages of the Commission within one month of conclusion of the CWBC session.