

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

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ORGANIZATION



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Agenda Item 10

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX ALIMENTARIUS COMMISSION

Twenty-sixth Session, FAO Headquarters, Rome (Italy), 30 June-7 July 2003

JOINT FAO/WHO EVALUATION OF THE CODEX ALIMENTARIUS AND OTHER FAO AND WHO WORK ON FOOD STANDARDS

Addendum 4: Review of the Rules of Procedure and Other Procedural Matters

1. INTRODUCTION

1. A significant number of recommendations arising from the FAO/WHO Evaluation of Codex Alimentarius and other FAO and WHO Work on Food Standards require changes to the basic texts in the Commission's Procedural Manual. This paper will consider all of recommendations arising from the Evaluation Report that have implications for changes to the Procedural Manual.

2. In its Statement to the parent bodies adopted at its 25th (Extraordinary) Session, the Commission committed itself to pursue with all speed full consideration of the recommendations addressed to it in the Evaluation report. In this regard the Secretariat, in its papers on "Improved processes for standards management" and "Review of the functions of the Executive Committee", has recommended that significant changes in the way by which the Commission manages its budget, work planning, programme development and standards management can be implemented immediately without changing the texts contained in the Procedural Manual, but that in the longer term it would be preferable to amend the Procedural Manual to reflect these changes. This paper will include these matters as well, but stress will be placed on the importance of the immediate implementation of this group of recommendations without the need to change the Procedural Manual.

3. Many of the changes required to the Procedural Manual will require detailed drafting; for example, in the section on *Guidelines for Codex Committees* which will require comprehensive changes if the Recommendations in the Evaluation Report are agreed to. This paper will not address the detailed changes required; these will need to be discussed by the body entrusted by the Commission with the procedural review. This is the first matter to be addressed in this paper, following which the paper will address the sections of the Procedural Manual one by one so that the Commission will be able to provide general direction to the body responsible for the procedural review on the desired outcomes and timeframe for the procedural review.

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2. IMPLEMENTING THE PROCEDURAL REVIEW

4. In its paper to the 25th (Extraordinary) Session of the Commission, the Secretariat proposed the establishment of a specialized Task Force to draft the required changes to the Procedural Manual, but noted that such a task would normally be allocated to the Codex Committee on General Principles¹. The Delegation of France, as host country of the Committee on General Principles, offered to convene one or more extraordinary sessions of the Committee to deal with those matters within its mandate². This offer was subsequently confirmed at the 18th Session of the Codex Committee on General Principles³.

Proposal No.23: Responsibility for the Procedural Review

a) Option No. 23.1 - Specialized Task Force on Procedures

5. In order to provide the immediate impetus for the procedural review while allowing the Codex Committee on General Principles to continue with its current work, the Commission may wish to establish a specialized Task Force under Rule IX.1(b)(i) of the Commission's Rules of Procedure to draft the required changes to the Procedural Manual, and to submit them to the Commission for consideration not later than 2005. Proposed draft Terms of Reference for the Task Force on Codex Procedures have already been presented in Annex 4 of ALINORM 03/25/3-Add.2.

b) Option No. 23.2 - Additional meetings of the Codex Committee on General Principles

6. In order to provide the immediate impetus for the procedural review while allowing the Codex Committee on General Principles to continue with its current work, the Commission may wish to request that Committee to hold one or more special sessions to draft the required changes to the Procedural Manual, and to submit them to the Commission for consideration not later than 2005.

3. STATUTES OF THE CODEX ALIMENTARIUS COMMISSION

Mandate of the Commission (Article 1 of the Statutes)

7. At its 25th (Extraordinary) Session, the Commission noted the Evaluation's recommendations concerning the Commission's mandate in particular Recommendation No.4, but was of the opinion that its existing mandate to protect consumers' health and to ensure fair practices in the food trade continued to be appropriate but might be discussed in the future. Within this mandate, the Commission emphasized that its first priority would be the development of standards having an impact on consumer health and safety.

8. In response to CL 2003/8-CAC, nine countries, the EC and three NGOs commented on this issue. The comments received cover a wide range of possible responses: some countries supporting the recommendation fully; other countries opposing; and still other countries indicating that the recommendation was acceptable except the reference to cooperation with other international organizations. Some of the comments received indicated that it would be more productive for the Commission to work within the priorities determined by the Strategic Framework and the Medium-Term Plan rather than changing the current mandate.

Proposal No.24: - Amendment of the Codex Mandate

c) Option 24.1 - Amendment of the mandate (Article 1 of the Statutes)

9. The Commission may wish to invite the body responsible for implementing the procedural review to propose a revision of Article 1 of the Commission's Statutes with a view to submitting a formal proposal for consideration of the Governing Bodies of the parent organizations in 2005.

¹ ALINORM 03/25/3-Add.2, para. 6.

² ALINORM 03/25/5, para. 27.

³ ALINORM 03/33A, paras. 2 and 101-108.

d) *Option 24.2 - Retention of the current mandate*

10. The Commission may wish to decide not to change the current mandate but to work within the priorities determined by the Strategic Framework and the Medium-Term Plan. Such a decision should not prejudice the possibility of taking the matter up at a future date.

4. RULES OF PROCEDURE OF THE CODEX ALIMENTARIUS COMMISSION

11. In other papers prepared as a follow up to the Evaluation, the Secretariat has indicated that a number of actions to implement the recommendations in the Evaluation Report can be taken immediately by the Commission without waiting for changes to be made to the Rules of Procedure (or other relevant sections of the Procedural Manual), but that in the longer term amending to reflect these changes would be desirable. In the discussions that follow, this approach will be maintained. On the other hand, some of the proposals made require early action in relation to the Rules of Procedure, if the changes are to be made smoothly and effectively within a reasonable time.

The Executive Committee (Rule III)

12. In its paper on the Review of the Functions of the Executive Committee, the Secretariat noted that certain proposals required action to amend the Rules of Procedure. It is recommended that the Commission and the body responsible for implementing the procedural review give highest priority to the consideration of the following proposals:

- Enlargement of the Executive Committee to include Regional Coordinators (Rules II.4(c) and (d) and Rule III.1);
- Establishment of a Sub-Committee on Programming, Budget and Planning (New Rule); and
- Funding the participation of members of the Executive Committee at its meetings (New Rule).

Proposal No.25: - Revision of the Rules and working procedures governing the Executive Committee to enhance overall management

13. The Commission should request the body responsible for implementing the procedural review to draft amendments and additions to the Rules of Procedure on the above matters as a matter of priority, with a view to their adoption by the Commission in 2004.⁴

Proposal No.26: - Subsequent revision of the Rules and working procedures of the Executive Committee

14. The Commission should request the body responsible for implementing the procedural review to draft amendments and additions to the Rules of Procedure dealing with the remaining issues contained in ALINORM 03/26/11: Part 2 with a view to their adoption by the Commission in 2005.

15. It should be noted that Proposals No.25 and No.26 are not mutually incompatible and that the most desirable outcome would be a comprehensive set of amendments that could be adopted in 2004. However, a two-stage process seems more achievable and pragmatic.

Voting and Procedures (Rule VI)

Proposal No.27: Right to address the Chair

16. Although not a formal recommendation, the Evaluation Report in paragraph 129 expresses concerns about the composition of national delegations to Codex Committees and the right on non-government advisors in these delegations to speak. The Report states that “Whilst Codex cannot impinge on the rights of sovereign states, steps could be taken by Codex to tighten its checks on credentials and issue a guideline that delegation heads should clearly and formally represent the member government”. In this regard, the Commission may wish to ask the body responsible for the procedural review to consider a new rule, based on a comparable Rule of the

⁴ Amendments to the Rules of Procedure once adopted by the Commission, come into force only after their approval by the Directors-General of FAO and WHO.

World Health Assembly⁵ to the effect that “In plenary meetings the chief delegate may designate another delegate who shall have the right to speak and vote in the name of his delegation on any question. Moreover, upon the request of the chief delegate or any delegate so designated by him the President [Chairperson in the case of Codex] may allow an adviser to speak on any particular point.”

Observers (Rule VII)

17. The Evaluation Report in Recommendation 27 states that “Codex should review its principles and procedures for observer status as required by the Procedural Manual and should consider applying stricter criteria to ensure that observers are genuinely international. New rules should apply to existing observers as well as future ‘applicants’ and the credentials of Codex observers should be approved individually by the Executive Board.” This recommendation has been supported by all of the countries that have commented on it and by most of the international non-governmental organizations that commented. One international non-governmental organization questioned the need for new procedures.

18. Currently, the relations between the Commission and international organizations are governed by Rule VII.5 and, in the case of international non-governmental organizations, by the *Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission*. These Principles are consistent with the procedures of the parent bodies in dealing with such organizations. A text on the relations between the Commission and international intergovernmental organizations is in preparation. The Commission is invited to consider the following options (which are not mutually incompatible).

Proposal No.28: Observer Organizations

e) *Option 28.1 - Review of the status of observer organizations by FAO and WHO*

19. The Commission may wish to request FAO and WHO to prepare a report on the status of the current international organizations in “Observer Status” with the Commission and submit the report to the Commission’s next Regular Session.

f) *Option 28.2 - Revision of Rule VII.5*

20. The Commission may wish to invite the body responsible for the procedural review to revise Rule VII.5 so that the Executive Committee provides an opinion to the Directors-General on the status of the international organizations in “Observer Status” or requesting such status, and submit its proposals to the Commission in 2004.

g) *Option 28.3 - Revision of Principles governing international organizations in “Observer Status”*

21. The Commission may wish to invite the body responsible for the procedural review to revise the *Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission* and to complete the guidelines on the relations between the Commission and international intergovernmental organizations in a manner that is consistent with the revised Rule VII.5. This work should be completed by 2005.

Host Government Arrangements (Rules IX and XI)

22. Recommendation 27 in the Evaluation Report calls for clear criteria to be met in becoming a host country should be developed, including the resource requirements and that the Commission consider shared hosting of committees. Although the impact of this Recommendation falls mostly under the section of the Procedural Manual on *Guidelines for Codex Committee and ad hoc Task Forces*, there may also be implications under Rules IX.10 and XI.3. The body responsible for the procedural review should be invited to take this into account (See also the discussion on this matter under options concerning the revision of the Guidelines, below).

23. The Evaluation Report recommends that explicit criteria for selection of chairpersons should be drawn up and chairpersons should be confirmed by the Executive Board (Recommendation 22). The recommendation

⁵ Rule 19 of the Rules of Procedure of the World Health Assembly.

also states that more emphasis should be placed on training and assessment of chairs and the explicit role of the Codex secretariat in supporting effective chairpersonship should be fully recognized.

24. Among the elements of this recommendation, the process of *confirmation of chairpersonship* by the Executive Committee may need to be expressly stated in the Rules of Procedure in association with Rule IX.10. Few countries commented on this specific aspect of Recommendation 22, and of those that did, most of them stressed that it was the responsibility of the host country to appoint a chairperson. On the other hand, all countries that commented welcomed the proposal that explicit criteria for the appointment of chairs be established and the proposal for training of chairs to improve performance and ensure greater consistency.

25. Again, most of this will need to be discussed under the section dealing with Guidelines for Codex Committees and ad hoc Task Forces, however, the Commission's guidance is needed on whether or not the body responsible for implementing the procedural review should draft a new rule to provide for the confirmation of chairpersons by the Executive Committee.

Proposal No.29: Chairpersons of Codex Committees and Task Forces

h) Option 29.1 - Confirmation of Chairpersons by the Executive Committee

26. The Commission may wish to request the body responsible for implementing the procedural review to draft a new rule to provide for the confirmation of chairpersons by the Executive Committee.

i) Option 29.2 - Status quo, but with Criteria for the appointment of Chairpersons

27. The Commission may decide to maintain the *status quo* in regard to the appointment of chairpersons by host countries, but may wish to request the body responsible for implementing the procedural review to develop criteria for the appointment of chairpersons (See also Proposal 33, below).

Funding Participation at Codex Meetings (Rule XI.4)

28. Although not a recommendation of the Evaluation, the Commission may wish to invite the body responsible for the procedural review, in cooperation with FAO and WHO, to amend this Rule so as to allow for participation under the FAO/WHO Trust Fund for the Participation of Developing Countries and Countries in Transition in the Work of the Codex Alimentarius Commission, or other funding mechanisms.

Proposal No.30: Revision of Rule XI.4

29. Rule XI.4 should be revised to allow for participation under the FAO/WHO Trust Fund for the Participation of Developing Countries and Countries in Transition in the Work of the Codex Alimentarius Commission and also to take into account the Commission's decision concerning funding of participation of Members of The Executive Committee from the Codex budget (See ALINORM 03/26/11: Add.2, Option 11.4). The body responsible for the procedural review should submit a proposal to the Commission in 2004 on this matter.

5. PROCEDURES FOR THE ELABORATION OF CODEX STANDARDS AND RELATED TEXTS

30. See the Secretariat paper on Improved Processes for Standards Management (ALINORM 03/26/11: Add. 3). The decisions taken by the Commission in response to the options in this paper will need to be translated into revised Procedures for the Elaboration of Codex Standards and Related Texts. The Commission may wish to instruct the body responsible for the procedural review to undertake this revision as a matter of priority and to submit proposals at its next Regular Session in 2004.

31. The Commission may also wish to instruct the body responsible for the procedural review to consider, in due time (by 2006), the revision and simplification of the following elements contained in the current elaboration procedures:

- Subsequent Procedure Concerning Publication and Acceptance of Codex Standards including the Subsequent Procedure Concerning Publication, Acceptance and Possible Extension of Territorial Application of the Standard

- Guide to the Consideration of Standards at Step 8 of the Procedure for the Elaboration of Codex Standards including Consideration of any Statements Relating to Economic Impact
- Guide to the Procedure for the Revision and Amendment of Codex Standards
- Arrangements for the Amendment of Codex Standards Elaborated by Codex Committees which have Adjourned *Sine Die*.

6. GENERAL PRINCIPLES OF THE CODEX ALIMENTARIUS AND GUIDELINES FOR THE ACCEPTANCE PROCEDURE FOR CODEX STANDARDS

32. Paragraph 156 of the Evaluation Report indicates that the acceptance and notification procedures for Codex standards under the General Principles of the Codex Alimentarius are dormant and no longer relevant. The Secretariat does not wish to present options on this matter at this time, but is of the opinion that this question must be addressed sooner or later by the Commission and that these sections of the Procedural Manual should be revised.⁶

7. GUIDELINES FOR CODEX COMMITTEES AND AD HOC INTERGOVERNMENTAL TASK FORCES

Advice to Host Governments and Conduct of Meetings

33. This Section of the Procedural Manual deals with two type of information:

- Arrangements to be followed by host governments in organizing Codex meetings; and
- The conduct of meetings, including the matter of *consensus*, reporting, etc.

34. The Secretariat wishes to propose that the body responsible for implementing the procedural review be requested to revise the Guidelines as two separate documents along these lines. The first document, on advice to host governments, could take up the questions of criteria for the appointment of chairpersons; arrangements for co-chairmanship; and functional arrangements. The second document could provide guidance for chairpersons (and delegates) in the conduct of meetings, including procedural matters and the determining of consensus (See also below).

Proposal No.31: - Separation of advice to Host Governments and advice on the conduct of meetings

35. The Commission may wish to instruct the body responsible for implementing the procedural review to develop two separate texts dealing with these matters separately. These texts should be presented to the Commission for consideration not later than 2005, but in the case of delay the document dealing with the conduct of meetings should have priority. Within these texts, however, the criteria for the selection of chairpersons could be developed separately and as a matter of high priority (submission in 2004).

Advice to Host Governments: Co-chairmanship

36. Recommendation 26 states that “*Committees should be encouraged to appoint co-chairs of equal status, one of which would be from a developing country. Host countries should also hold meetings in the co-chair’s country*”. Although most of the comments received were favourable (only one was not), several countries expressed concern at the cost implications of this recommendation and requested further discussion.

Proposal No.32: - Co-chairmanship

37. The Commission may wish to ask the body responsible to develop guidelines for the co-chairing of Codex Committees and Task Forces, including the cost implications.

⁶ This matter was discussed at the 14th Session of the Codex Committee on General Principles (1999) but the Committee agreed to advise the Commission that due to the diversity of opinions it was not possible to recommend changes to the current Acceptance Procedure at that time. The Committee agreed to return to this matter in the future (ALINORM 99/33A, para 57).

Advice to Host Governments: Criteria for the Selection of Chairpersons

38. As noted above, there was very strong support for the development of criteria for the selection of Chairpersons.

Proposal No.33: - Criteria for the selection of chairpersons

39. The Commission may wish to ask the body responsible to develop draft criteria for the appointment of chairpersons of Codex Committees and Task Forces and to submit these for consideration by the Commission at its next Regular Session (2004). The criteria should recognize the right of the host country to appoint a chairperson.

Conduct of Meetings: Consensus

40. The Evaluation Report goes into considerable depth in its treatment of Consensus and Decision-Making (Paragraphs 132-137 and Recommendation 24). Comments received in regard to this recommendation are perhaps the most detailed of all comments received. There is a wide range of opinions, that may be summarized as follows:

- The concept of “near-consensus” has no support;
- Consultative postal-balloting has very little or no support;
- The proposed definition of consensus (“no formal objection by more than one member present at the meeting”) has mixed support, with some countries in favour and some opposed;
- Qualified majority (two-thirds) voting for the adoption of standards has some support;
- Several countries support the *status quo*.

Proposal No.34: - Determination of consensus

41. In view of the divergence of opinions on this matter the Commission may wish to maintain the *status quo* in this matter. It may wish to advise the body responsible for implementing the procedural review that resolution of the question of consensus in regard to decision-making is a matter of importance and that efforts should be made to develop appropriate guidance for Codex Committees and Task Forces. In view of the diversity of opinions currently held on this matter, the Commission may wish to request a progress report on the issue at its Regular Session in 2005.

Conduct of meetings: Reports

42. Recommendation 21 of the Evaluation Report proposes that the trend towards action-oriented reports of meetings which focus on decisions and not discussion, should be further reinforced. Such reports facilitate a task-orientation as well as freeing up meeting time for more productive use than report writing. Comments received on this recommendation either give full support or are qualified in the sense that countries find value in a record of the discussions that have taken place and the desires of countries to have their positions stated in the record for issues of particular importance to them. One country was opposed to the recommendation.

Proposal No.35: - Conduct of meetings: Reports

43. The Commission may wish to ask the body responsible for implementing the procedural review to take into account the opinions of the countries that have commented on this matter when drafting the text dealing with reports.

Conduct of meetings: Country groupings

44. Recommendation 25 of the Evaluation Report proposes that groups of countries with common interests should be encouraged to coordinate their positions and present these as positions of the group at committee meetings. This recommendation was particularly developed to address the interests of smaller developing countries. The proposal has received some support (or support in principle) from the countries commenting, but other countries doubt the necessity of this recommendation (because countries that have a common interest are coordinating their positions informally even at present) or do not wish to encourage the formation of “blocs”.

Proposal No.36: - Conduct of meetings: Country groupings

45. The Commission may wish to ask the body responsible for implementing the procedural review to consider how the opinions of groups of countries, especially smaller developing countries unable to be represented fully at Codex meetings, could best be taken into account.

8. RELATIONS WITH OTHER INTERNATIONAL ORGANIZATIONS

Relations with the OIE and IPPC

46. The Office International des Epizooties (OIE) and the International Plant Protection Convention (IPPC) are international intergovernmental standards-setting bodies which, together with the Codex Alimentarius Commission are referred to in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Recommendation 8 states that Codex and OIE should intensify their collaboration to minimize overlaps and avoid gaps in standard setting and that there should be continued close collaboration between Codex and IPPC. The Recommendation also proposes the possibility of a joint memorandum of responsibilities between Codex and the OIE and the establishment of joint task forces where this is in the interests of both.

47. Replies are generally positive in relation to an increased level of collaboration, but several countries express a caution on how this might be implemented. Some countries are of the opinion that a formal agreement is not necessary. One country recommends that coordination should be on a case-by-case basis and limited to the respective mandates in relation to food safety issues only.

48. It should be noted that the Codex Committee on General Principles is currently considering modalities of cooperation with other international intergovernmental standards-setting bodies. It should also be noted that cooperation at the Secretariat level between the organizations on food safety issues already exists.

Proposal No.37: - Relations with OIE

49. The Commission may wish to endorse the recommendation in principle, noting the on-going work on modalities of cooperation with other international intergovernmental standards-setting bodies.

Relations with other international organizations

50. This has been discussed under the Section on Rules of Procedure, above (See Proposal No.28).

9. CRITERIA FOR THE ESTABLISHMENT OF WORK PRIORITIES

51. This Section of the Procedural Manual has remained substantially unchanged since the *Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies of the Codex Alimentarius Commission* were adopted by the 6th Session of the Commission in 1969.⁷ The criteria no longer reflect the priorities of the Commission - either the current priorities or the priorities proposed in Recommendations 1, 2 and 3 of the Evaluation Report.

52. The question of the Commission's priorities is discussed in the Secretariat paper ALINORM 03/26/11. The Commission may wish to consider two approaches on how to incorporate these priorities into the Procedures of the Commission. In either case, the Commission's decision in regard to priorities at its present session should be regarded as immediate and definite and the amendments to the Procedural Manual as consequential.

Proposal No.38: - Criteria for the establishment of work priorities

j) Option 38.1 - Revision of the Criteria for the establishment of work priorities

53. The Commission may wish to instruct the body responsible for implementing the procedural review to redraft the Criteria for the Establishment of Work Priorities to reflect the current priorities of the Commission. The revised criteria should provide explicit judgment tools for assessing work proposals against priorities.

⁷ The only major change has been the adoption of new *Criteria for the Establishment of Subsidiary Bodies of the Codex Alimentarius Commission*, by the Commission's 23rd Session, 1999.

k) Option 38.2 - Inclusion of the priorities in the Procedures for the Elaboration of Codex Standards and Related Texts

54. The Commission may wish to instruct the body responsible for implementing the procedural review to include a statement reflecting its priorities in the introductory paragraphs of the Procedures for the Elaboration of Codex Standards and Related Texts and delete the Criteria for the Establishment of Work Priorities from the Procedural Manual. Also in this case, the criteria should provide explicit judgment tools for assessing work proposals against priorities.

10. GUIDELINES FOR THE INCLUSION OF SPECIFIC PROVISIONS IN CODEX TEXTS and RELATIONS BETWEEN COMMODITY COMMITTEES AND GENERAL COMMITTEES

55. Revision of these Sections of the Procedural Manual will need to await the outcome of the review of Codex Subsidiary Bodies. Proposals and options under this heading, which could be expected to be substantial, are therefore premature.

11. CONCLUSIONS

56. In this paper, the Commission is being asked to do two things:

- a) Assign the work on the review of the Rules of Procedure and other procedural matters to the Committee on General Principles or to a specialized Task Force; and
- b) Give some general guidance (with time frames) on what is expected.

Within this general guidance, it is important to point out that in order for the main objectives of the Evaluation to be attained, top-most priority must be given to the Rules concerning the Executive Committee.

57. The Commission should also note that some of the most important recommendations critical to the success of implementing the Evaluation can be acted upon without waiting for changes to the Procedural Manual.