

codex alimentarius commission

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Agenda Item 9

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX ALIMENTARIUS COMMISSION

Thirtieth Session

FAO Headquarters, Rome (Italy), 2 - 7 July 2007

FINANCIAL AND BUDGETARY MATTERS

CONSIDERATION OF ALTERNATIVE FUNDING MECHANISMS

Background

1. The 29th Session of the Commission agreed to request the Secretariat to prepare a discussion paper, in collaboration with FAO and WHO, on the possibilities for more sustainable funding including through other funding sources and alternative ways of achieving it.¹ The present paper summarises the history of the funding of the Codex programme since its establishment in 1960s and examines possible, alternative funding mechanisms, taking into account the financial regulations and rules of FAO and WHO and the financial rules of other international conventions and agreements that are comparable to the Codex programme. In view of the novel and complex nature of the issues involved in this paper, it retains the character of a provisional working document.

Brief History

2. The 11th Session of the FAO Conference adopted, in 1961, Resolution No. 12/61 establishing under Article VI of the FAO Constitution, a Codex Alimentarius Commission. A special Trust Fund was also set up, to which governments were asked to make voluntary contributions, in accordance with Articles 8 and 9 of the Statutes of the Codex Alimentarius Commission. These articles² read as follows:

8. The operating expenses of the Commission and of members of the secretariats of FAO and WHO directly serving it shall be defrayed by a special Trust Fund administered by FAO on behalf of the two Organizations in accordance with FAO Financial Regulations. Contributions to the Trust

¹ ALINORM 06/29/41 paragraph 150

² They correspond to Articles 9 and 10 of the current Statutes.

Fund from participating countries shall be accepted only through or with the approval of the government concerned. At the end of each year unused sums shall be returnable to contributors or carried over to the following year;

9. All expenses involved in preparatory work on draft standards undertaken by participating governments, whether independently or upon recommendation of the Commission shall be defrayed by the government concerned.

3. The Joint FAO/WHO Conference on Food Standards (1962) noted that the first contributions had been received in the Trust Fund and observed that the future of the Programme through 1963 appeared very encouraging. The Conference appreciated that no exact pattern of expenditure or scale of contributions could be fixed at the early stage of the programme, but that it should be done as soon as practicable, in order to clarify the position for contributing governments. In respect of the method of financing, the Conference noted that it appeared that some Governments preferred to see the costs borne by the regular budgets of the two international agencies instead of by a special FAO Trust Fund.³

4. The First Session of the Codex Alimentarius Commission (1963) reviewed the method of financing of the Food Standards Programme and recommended that the costs involved should be covered by the regular budgets of FAO and WHO as soon as the different budgetary procedures of the two organizations could make this step practicable.⁴

5. The Second Session of the Codex Alimentarius Commission (1964) was concerned that despite the contributions received from Governments and the promises of contributions from a number of other countries, it had become clear that there was a possibility of a deficit of US\$50,000 against the “*proposed austerity budget for 1965*”. The Commission therefore strongly urged Member Countries to enlarge their contributions. The Commission received reports from representatives of FAO and WHO concerning the arrangements being made by the Directors-General of both Organizations for the financing of the Joint FAO/WHO Food Standards Programme after 1965. It adopted a resolution which recommended to the governing bodies of FAO and WHO that, in view of its importance to all Member Countries of both organizations, the Joint Food Standards Programme should be included in the regular programmes and budgets of both organizations from 1 January 1966 onwards.⁵

6. In accordance with the amendments to the Statutes of the Commission in 1966, the Fourth Session of the Commission was informed that the governing bodies of FAO and WHO had approved the following provisions in the Regular Budgets of both Organizations for the biennium 1966/67: FAO US\$ 170,000 and WHO US\$ 54,000.⁶ Since then and until today, the budget of the Joint FAO/WHO Standards Programme is operated using the funds from the Regular Budgets of FAO and WHO.

Methods of Financing

7. This section reviews the methods of financing of international conventions, agreements and other instruments classified in three groups as follows: (i) bodies established under Article VI of the FAO Constitution; (ii) bodies established under Article XIV of the FAO Constitution; and (iii) conventions concluded outside the framework of FAO or WHO and entrusted to FAO or WHO for their administration. Insofar as a considerable number of documents on the issue of the financing of bodies of this type have been prepared within FAO, this paper draws substantially from such documents.

Article VI bodies

8. The Codex Alimentarius Commission was established as a joint commission, in conjunction with WHO, on the basis of Article VI.1 of the Constitution as far as FAO is concerned. As far as WHO is concerned, the Commission was established by the Health Assembly under Article 18 of the Constitution. In

³ ALINORM 1962/8, paras (l)-(o)

⁴ ALINORM 63/12 para. 73

⁵ ALINORM 1964/30 paras 11-15

⁶ ALINORM 66/30 paras 23-25

general, the bodies established under Article VI of the FAO Constitution are financed by the Regular Budget, by voluntary extra-budgetary contributions, or by both.

9. In accordance with the provisions of Articles 9 and 10 of its Statutes, the budget of the Joint FAO/WHO Food Standards Programme (Codex Alimentarius Commission) is funded by the Regular Budgets of FAO and WHO, complemented by voluntary in-kind contributions of some member states in the form of the secondment of professional officers to the Codex Secretariat. Moreover, a significant portion of the expenses associated with the operation of subsidiary bodies of the Commission are borne by the host governments of these bodies.

Article XIV bodies

10. Article XIV of the FAO Constitution provides that the FAO Conference may approve and submit to Member Nations conventions and agreements concerning questions relating to food and agriculture. The article, in contrast to Article VI, does not explicitly provide for the establishment of a joint body in conjunction with other intergovernmental organizations. Furthermore, participation by non-member States of FAO in those conventions and agreements establishing commissions and committees is subject to prior approval by at least two-thirds of the membership of such commissions or committees.

11. Paragraph 33 of Part R of the Basic Texts of the FAO provides that bodies established under Article XIV of the Constitution fall into one of the three following categories:

- a) bodies entirely financed by the FAO;
- b) bodies, that, in addition to being financed by the FAO, may undertake cooperative projects financed by members of the body;
- c) bodies that, in addition to being financed by the FAO, have autonomous budgets.

12. The following bodies set up under Article XIV have autonomous budgets: the **European Commission for the Control of Foot and Mouth Disease**, the **Indian Ocean Tuna Commission**, the **Regional Commission for Fisheries**, the **Regional Animal Production and Health Commission for Asia and the Pacific**, the **Agreement for the Establishment of a General Fisheries Commission for the Mediterranean**, the **International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)** and the four **Desert Locust Commissions** for North-West Africa, South-West Asia, the Central Region and the Western Region respectively. However, the autonomous budgets of all these bodies, financed by mandatory contributions, are in addition to contributions from the Regular Programme except for the Indian Ocean Tuna Commission the autonomous budget of which covers all activities of the Commission. In general, the autonomous budgets correspond to a limited percentage of the overall level of funding of the bodies in question and are to be seen as a complement to the financing provided by the Organization. The autonomous budget of the General Fisheries Commission for the Mediterranean covers a substantial part of the activities carried out by the Commission.

13. The autonomous budgets of the above mentioned bodies are funded by mandatory contributions in accordance with the constituent agreements, with the exception of the ITPGRFA. The First Session of the Governing Body of the ITPGRFA (June 2006) adopted financial rules according to which the Core Administrative Budget comprises of the resources from the Regular Budget of FAO as well as the voluntary contributions from Contracting and Non-Contracting Parties.⁷

14. Other agreements, such as the **International Plant Protection Convention (IPPC)** and the **Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas**, make no provision at all for budgets or cooperative projects, and their expenses are met entirely by FAO. It is worth noting that within the IPPC, an analysis of potential funding arrangements has been in discussion since 2001. The options examined, which were not necessarily mutually exclusive, included (i) mandatory assessed contributions, (ii) voluntary assessed contributions, (iii) multilateral trust fund, (iv) bilateral trust funds and in-kind contributions, and (v) fees or service charges. The Second Session of the Commission on Phytosanitary Measures (March 2007) decided that the subject of mandatory assessed contributions should not be further pursued as a mechanism to supplement the IPPC budget, unless in the framework of a possible future general revision of the IPPC; and that the subject of

⁷ IT/GB-1/06/Report paragraph 10 and appendix E

voluntary assessed contributions should not be further pursued as a mechanism to supplement the IPPC budget unless recommendations of the independent evaluation of the IPPC or a possible future general revision of the IPPC warranted it.⁸ This implies that the core budget of the IPPC will continue to be covered by the Regular Budget of FAO, complemented by in-kind contributions from countries and by trust funds.

Other Conventions and Agreements

15. Two examples are provided below: (i) the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals in International Trade and (ii) the WHO Framework Convention on Tobacco Control.

16. The Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals in International Trade (Rotterdam Convention) was adopted in 1998 and entered into force in 2004. FAO and UNEP jointly perform the Secretariat functions for the Rotterdam Convention. According to the financial rules adopted by the First Meeting of the Conference of Parties (COP), the resources of the COP comprise of (a) contributions made each year by parties on the basis of an indicative scale adopted by consensus by the Conference of the Parties, and based on such a scale of assessments of the United Nations, as may be adopted from time to time by the General Assembly. This is adjusted so as to ensure that no party contributes less than 0.01 per cent of the total, that no one contribution exceeds 22 per cent of the total and that no contribution from a least developed country party exceeds 0.01 per cent of the total; (b) contributions made by parties in addition to those made pursuant to paragraph (a), including those made by the Government(s) hosting the Convention secretariat; (c) contributions from States not parties to the Convention, as well as governmental, intergovernmental and non-governmental organizations, and other sources; (d) the uncommitted balance of appropriations from previous financial periods; and (e) miscellaneous income.⁹

17. The WHO Framework Convention on Tobacco Control (FCTC) was adopted in 2003 and entered into force in 2005. The secretariat to the Conference of Parties to the FCTC is provided by WHO. The Conference of the Parties decided to use the Financial Regulations and Rules of the WHO as the financial rules referred to in Article 23.4 of the Convention.¹⁰ Its core budget is funded by voluntary assessed contributions, based on a scale of contributions in force for WHO, adapted for differences in membership between WHO and the COP. No one contribution exceeds 22 per cent of the total.¹¹

Implications of Possible Methods of Financing

18. Each of the possible methods of financing, as applied to the context of the Codex Alimentarius Commission, would have advantages, disadvantages and other implications, as follows.

a) Mandatory assessed contributions

19. Mandatory assessed contributions would result in additional obligations on the members of the Codex Alimentarius Commission over and above their obligations as FAO and/or WHO members. Since such additional obligations cannot be created within a body established under Article VI of the FAO Constitution, it would become necessary to transform the Codex Alimentarius Commission into a body established under Article XIV of the FAO Constitution, or a body established by an international convention or treaty concluded outside the framework of the FAO Constitution. It should also be noted that the Constitution of WHO provides, under Article 19, authority for the adoption of "conventions or agreements with respect to any matter within the competence of the Organization."

20. If this option were to be pursued, the issues that may need to be examined would include the following:

- A legal framework on which to base a future Codex Alimentarius Commission;

⁸ The Report of the Second Session of the Commission on phytosanitary Measures is in preparation.

⁹ UNEP/FAO/RC/COP.1/33 paras 38-40 and annex I

¹⁰ FCTC/COP1(9) Adoption of Financial Rules of the Conference of the Parties (Decisions of the First Session of the Conference of the Parties, A/FCTC/COP/1/DIV/8)

¹¹ FCTC/COP1(11) Budget and workplan 2006-2007 (Decisions of the First Session of the Conference of the Parties, A/FCTC/COP/1/DIV/8)

- The timeframe and modalities for negotiating an international convention or treaty under which the Codex Alimentarius Commission is to be (re)established;
- Transitional arrangements (legal, financial and procedural) to be followed until the entry into force of the convention or treaty; and
- Identification of an international agency(ies) to exercise the secretariat role.

21. If an autonomous budget is established by an international treaty and is funded by mandatory assessed contributions, then the budget might need to make provisions for the costs presently not included in the Codex Budget *per se* but are covered by the Regular Budget of FAO and WHO, such as programme support cost for legal, protocol, personnel, accounting and other services.

22. It should be stressed, however, that the issue of whether the Codex Alimentarius Commission should be transformed into a body established by agreement under Article XIV of the FAO Constitution or outside the framework of FAO was informally and tentatively discussed in some detail several years ago. This solution was deemed to involve a number of intractable legal and practical issues and was not pursued. Some of these reasons are the following:

- It is extremely difficult to reconcile the current joint FAO/WHO nature of the Commission with the re-establishment of a Codex Commission through an international agreement ;
- The actual process of change in the status of the Codex Commission would be a complex and cumbersome one, involving ratifications by parties over a considerable period of time, and might be highly disruptive of the activities of the Commission;
- The Codex Alimentarius Commission enjoys at present a high degree of functional autonomy, in the interest of the Commission and its Members, while benefiting from a number of advantages derived from its current links with FAO and WHO, and not much might be gained from a change in its status.

Overall, the disadvantages and uncertain outcome of the process seemed to far outweigh any eventual advantages of such process. It does not seem that any of the shortcomings affecting the functioning of the Codex Commission which could not be addressed under its current status. Therefore, it would seem preferable to seek to address financing issues within the context of the current status of the Commission.

b) Voluntary assessed contributions

23. A close examination of legal and other aspects would be required to determine whether voluntary assessed contributions are possible and feasible for an Article VI body and whether it is indeed “fit for purpose” as a funding mechanism for the FAO/WHO Codex Alimentarius Commission. While this matter may need further review, the determination of voluntary assessed contributions does not seem to be incompatible with the current status of the Commission. Without prejudice to the above, voluntary assessed contributions are considered to have the following advantages and disadvantages.

24. The advantages of voluntary assessed contributions include:

- A clear budgetary target resulting in greater facilitation of planning of activities, through a direct link between the decisions of the governing body (i.e. the Commission) and the execution of the decisions;
- Codex members able to plan their contributions on an annual basis; and
- Increased financial independence from the funding of FAO and WHO.

25. The disadvantages include:

- Some Codex members may choose not to pay voluntary assessed contributions, resulting in less certainty of income (such non-payment would not result in any type of sanctions and may result in large arrears); and
- FAO and WHO may decrease their funding to the core Codex budget.

26. Both mandatory and voluntary assessed contributions are normally done on a pro-rata basis, in accordance with a scale of contributions to be agreed upon. The scale of contributions may be based on those in force for FAO and WHO, which, in turn, are based on the United Nations scale of assessment. The scale would have to be adapted for differences in membership between FAO/WHO and the Commission and for

exemption of small economies from paying contributions, as it would not be economic to process contributions of small sums.

c) *Regular Budgets of FAO and WHO (statu quo)*

27. The advantages of the current arrangements include:

- Any member of FAO or WHO can become or remain a member of the Codex Alimentarius Commission without paying any further fees over and above the assessed contribution payable as a member of FAO and/or WHO; and
- The administration of funding remains relatively simple, including receipt and expenditure of funds;
- Once FAO and WHO contributions have been determined for a given biennium, the total income for that budgetary period can be considered final.

28. The disadvantages include:

- The Codex Alimentarius Commission does not have a full control over its own programme of work, as the final budget level is dependent on, and determined by, the fund allocation by the membership of FAO and WHO.

29. In order to place the above in a correct perspective it is important to stress that the membership of FAO and WHO is, subject to some minor differences, the same as the membership of the Codex Alimentarius Commission and, therefore, the fund allocation is not made by FAO and WHO but by the Members of the organizations in the context of the relevant budgetary processes. That said, the delegations which are represented within the Codex Commission and the governing bodies of the parent organizations may be different and express different views and priorities. Thus calling for a better alignment of the positions of delegations in FAO, WHO and Codex.

30. Apart from the above, consideration should be given to the current funding mechanisms of FAO/WHO activities closely related to Codex. For example, the provision of scientific advice to Codex through JECFA, JMPR, JEMRA and expert consultations, which is not part of the Joint FAO/WHO Food Standards Programme, is funded by the mixture of regular budgets and extra-budgetary contributions in FAO and WHO; FAO's programmes are mainly funded by the Regular Budget while WHO is more dependent on extra-budgetary resources. Any considerations that may lead to proposing a change in the method of financing of the Codex Alimentarius Commission may have to be seen in the overall context.

Conclusion

31. The Commission is hereby invited to review this paper and note the information provided and advise whether the matter requires further study. The Commission is in particular invited to advise on any specific issues that would require further study and review.