CODEX ALIMENTARIUS COMMISSION

Food and Agriculture Organization of the United Nations

World Health Organization

E

Viale delle Terme di Caracalla, 00153 Rome, Italy - Tel: (+39) 06 57051 - Fax: (+39) 06 5705 4593 - E-mail: codex@fao.org - www.codexalimentarius.net

AGENDA ITEM NO. 6(b) **CX/FL 11/39/13-Add.1**

JOINT FAO/WHO FOOD STANDARDS PROGRAMME
CODEX COMMITTEE ON FOOD LABELLING

Thirty-ninth Session

Quebec City, Canada, 9 – 13 May 2011

COMMENTS ON THE PROPOSALS OF THE FACILITATED WORK SESSION: LABELLING OF FOOD INGREDIENTS OBTAINED THROUGH CERTAIN TECHNIQUES OF GENETIC MODIFICATION/GENETIC ENGINEERING (CL 2010-19-FL)

COMMENTS FROM:

COSTA RICA
NEW ZEALAND
UNITED STATES OF AMERICA
BIO
ICGMA

COSTA RICA

Costa Rica appreciates the opportunity to comment regarding the above mentioned document and proposes consideration of:

OPTION 1: (Reference to relevant texts).

Justification: Costa Rica considers that option 1 fits the objective and the functionality that the document wishes to attain. At the same time, the Codex has enough approved guidelines for all the countries that wish to label foods of any origin.

Regarding the title, we support the use of the following title ***[Proposed Draft Compilation of [references] Codex Labelling texts and other texts relevant to labelling foods derived from modern biotechnology].***

Due to this Costa Rica proposes to eliminate the brackets around the term **References** and to eliminate the term ~~texts~~, to read as follows:

"Proposed Draft Compilation of Codex Labelling references and other texts relevant to labelling foods derived from modern biotechnology".

Justification: Costa Rica considers that this title adequately reflects the fact that the document is only a compilation of references and eliminates the possibility of confusion in its use.

NEW ZEALAND

New Zealand was pleased to be part of the facilitated discussion on the Labelling of Foods and Food Ingredients obtained through certain techniques of Genetic Modification/Genetic Engineering held in Brussels in November 2010. The discussions were lengthy and ultimately did not progress the agenda item. We would therefore like to restate our position to this issue and make some specific comments regarding the three options posed should discussions proceed on these.

New Zealand has participated in the discussions on GM labelling over the past decade. We have been active members at all of the intersessional workshops including Oslo (2007) and Ghana (2008). Although New Zealand did not and does not support continued work on this agenda item we did support the collation of Codex texts that were applicable to GM foods as a way of meeting the needs of those countries seeking extra guidance in managing GM labelling in their countries.

As an overall comment New Zealand believes that the essence of what is being proposed and what countries are expecting from the texts now under discussion may be at odds. Clarification is needed to ensure that all members are aware that the collation of texts is not a standard or guideline and does not introduce any new text. It was merely proposed as a convenient way for members to work with relevant Codex texts (as of 2008).

New Zealand is pleased to see that discussions will not focus on an introductory chapeau and that if there is any further discussion of content it should focus on simple factual information. However New Zealand remains concerned to ensure that the efforts of the Committee are better focused on issues where there is potential for a coordinated approach and for impact on global health and safety. We therefore restate our position that as the Committee is unable to come to a harmonised position on the labelling of foods or food ingredients obtained through genetic modification/genetic engineering that work should not continue on this agenda item. It is also worth noting that the Executive Committee stated as far back as June 1996 in the context of discussion on labelling of foods derived from biotechnology that the 'claimed right to know was ill defined and variable and in this respect could not be used by Codex as the primary basis of decision making on appropriate labelling. Furthermore the Commission's rules of procedure is clear that work should not proceed where no basis for consensus exists (see Procedural Manual, 19th Edition, *Measures to facilitate consensus*, p 183)

New Zealand strongly recommends that if discussions do continue on the texts currently under discussion that the Committee clarify the purpose of the document and that this should be reflected in the title of the document. We believe that there may be some countries that understand that CCFL is working on new

labelling guidance for GM foods and are not familiar with outcomes and history that underpin this work to date. If the collation of texts is not going to provide any useful assistance to countries and if there is not a process of keeping the collation current and up to date it would appear to serve no useful purpose for members.

We have specific comments regarding the options should discussions proceed in this way.

The three options appear similar except for the fact that they provide different reproduction of the actual texts referred to. New Zealand suggests that those countries requiring guidance should comment on the requirement for text reproduction and should also comment on the usefulness of what is being proposed.

Although what is being provided is not posing to be an exhaustive list of texts it remains important that if it is to be useful it is updated and kept current.

Discussion would still be required on where the text should be located and the size of the proposed text may influence any decisions on this.

New Zealand supports a title that reflects that the text is a compilation of existing text and is not new guidance material.

We will be happy to participate in discussions at the 39th session of the CCFL and we hope that these will be the concluding discussions on this agenda item.

UNITED STATES OF AMERICA

The United States is pleased to offer the following comments regarding the Chairperson report on the facilitated work session for Labelling of Foods and Food Ingredients Obtained through Certain Techniques of Genetic Modification/Genetic Engineering (CX/FL 11/39/13), which was held in Brussels, Belgium on November 15-16, 2010 and facilitated by the Chair of the Codex Committee on Food Labelling (CCFL), Mr. Paul Mayers. Our response is to the report and options proposed therein.

As noted in our previous comments (found in CX/FL 11/39/12 which contains comments to CL 2010/19-FL), the U.S. believes that to the extent possible within Codex the original objective for this work has been met. In the Codex *General Standard for the Labelling of Prepackaged Foods* (GSLPF, Codex Stan 1-1985), specific recommendations for the labelling of foods derived through modern biotechnology when such foods contain allergenic proteins have been included (GSLPF, Section 4.2.2). Additionally, CCFL reviewed a Background Paper[1] prepared by the United States, Canada, and Nigeria that explains how current Codex texts relate to the labelling of food and food ingredients obtained through certain techniques of genetic modification/genetic engineering. The paper explains, among other things, how Codex labelling texts contain provisions to protect consumers from false and misleading labelling information and provides advice to governments on the use of existing Codex text in this context. As noted in our previous position, stopping work at this point is an appropriate action and logical step in the Codex process because CCFL can point to section 4.2.2 of the GSLPF and the Background Paper as ways that the original objective of the Commission for the work has been met.

The U.S. recognizes that at the 39th session of CCFL the Chair's report from the facilitated discussion and proposed options will be discussed by the Committee. We are interested in hearing the discussion because it is not clear what value the type of summary document outlined in the options has for member countries. It is our sense that, if a need exists for a reference document, the Background Paper prepared by Nigeria, Canada and the United States in its entirety is a more complete and useful document for national authorities. The document could also be used by FAO and WHO for development of outreach on labeling of foods. However, if the Committee proceeds with work on the options in the report from the facilitated discussion, the US will evaluate the options with the following objectives in mind:

- The purpose of the document is to summarize existing Codex texts, not to introduce new concepts or principles.
- Statements in the document need to reference existing Codex texts and be consistent with those texts (i.e. Codex texts do not contain provisions for mandatory process/method of production labeling).
- Certain statements in the summary document were taken out of context from the Background Paper and need to be revised to provide relevant context.

[1] See CL 2007/39-FL, Annex 1: *Background Paper on the Labelling of Foods Obtained Through Certain Techniques of Genetic Modification/Genetic Engineering*

- The document should not recognize, acknowledge, endorse or validate existing government approaches since such actions are not the purpose of Codex or within its scope.
- The title must be revised to be consistent with the nature of the text.
- If consumer preference is referenced in the document, it should only be in the context of claims, given the Codex Executive Committee opinion[2] that the claimed right to know is ill-defined and variable and in this respect could not be used by Codex as the primary basis of decision-making on appropriate labeling.

BIOTECHNOLOGY (BIO)

The Biotechnology Industry Organization (BIO) is the world's largest biotechnology organization, providing advocacy, business development and communication services for more than 1,100 members worldwide. Corporate members range from entrepreneurial companies developing their first products to Fortune 100 multinationals. We also represent state and regional biotechnology associations, service providers to the industry, and academic centers. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnology. Many BIO members use biotechnology to improve the agronomic, nutritional, and other properties of plants and animals for food, feed, fiber and bioenergy.

BIO appreciates the opportunity to comment on the above-referenced document, specifically to provide comments on the options as outlined in Appendix 3 of the Report on the Facilitated Work Session (CX/FL 11/39/13) of the Codex Committee on Food Labelling (CCFL). We also include comments on those aspects of the Chairperson's report that relate to language or debate characterized in Appendix 3.

BIO delegations have consistently participated in the work of the CCFL as the debate on the labelling of food produced using modern biotechnology has continued, even though the need and rationale for conducting the work have not been clearly articulated. Given the uncertain need and questionable rationale for the work, difficulty in moving the dialogue and debate beyond discussion of the scope and purpose/objective of the work might have been expected. To date, no progress in developing guidance or language appropriate to such labelling has been made in the many and varied fora in which dialogue and debate have occurred. The CCFL has not progressed past development of a Step 3 document in over 10 years.

We applaud the Chair of the CCFL in his efforts to convene a facilitated work session to explore objectives and rationale for the work among different delegations, and we appreciate the opportunity to have been included in the debate. The facilitated work session convened in November 2010 did not serve to resolve the fundamental differences that have existed within the CCFL over the course of the near twenty years of debate. The essential differences that have divided CCFL on this issue continue to divide the group coming out of the facilitated work session.

In the Chairperson's report, it was noted that it was not possible to agree on a revised title for text, and three options for such were provided for further consideration [CX/FL 11/39/13 (Appendix 3)]. The Chair reported that since full consensus was not achieved, the three options will be presented to CCFL for consideration at its 39th Session. We question whether the *Considerations* text in Appendix 3 reflects the very same lack of full consensus among delegations. Specifically, considerable discussion occurred about the need to acknowledge (or not) that different approaches to such labelling exist; however, there was no consensus as to such acknowledgement. Some delegations stated they could not accept the first phrase, "Acknowledging that different approaches regarding labelling of foods derived from modern biotechnology are used." Others clearly stated they could not accept the removal of the same phrase.

However, all three options listed in Appendix 3 contain the identical *Considerations* language, none of which is bracketed, giving readers the impression that all delegations accept that language as written. Point 13 of the Chairperson's report does nothing to correct that misconception. Delegations did not agree on this language; agreement to consider this language at the next CCFL meeting did exist. Therefore, we suggest that the text of the *Considerations* statement be placed in brackets.

[2] The Codex Executive Committee noted opinions that consumers may claim the right to know that foods had been prepared by certain techniques of genetic modification/genetic engineering. However, the Executive Committee stated that the claimed right to know was ill-defined and variable and in this respect could not be used by Codex as the primary basis of decision-making on appropriate labelling (ALINORM 97/3).

Recalling the purpose of the text, "is only to recall and assemble in a single document some important elements of guidance from Codex texts, ***which are relevant to labelling of foods derived from modern biotechnology*** (emphasis added)," we believe that reference to Codex texts not specific to labelling should be removed from the listing. We specifically recommend removal of named standards and guidelines from the listing of existing Codex texts that have no relation to labelling or claims. Therefore, each of the options in Appendix 3 should contain only the first three references to existing Codex texts in the bulleted lists:

. The Codex General Standard for the Labelling of Prepackaged Foods (Codex Stan 1-1985);
. The Codex General Guidelines on Claims (CAC/GL 1-1979); and
. The Codex Guidelines for Use of Nutrition and Health Claims (CAC/GL 23-1997).

BIO continues to maintain its historic position on this work in CCFL. We believe that such work should be discontinued, because existing Codex text adequately covers labelling and claims for food, feed and food ingredients, including foods derived from modern biotechnology. The General Standard for the Labelling of Prepackaged Foods [Codex Stan 1-1985 (Rev. 1- 1991)] applies to labelling of all prepackaged foods to be offered as such to the consumer. Terms within the Standard are defined, provisions for sharing of information detailed, and elements required for protection of consumer health and fair trade in foods elaborated. There is no fundamental difference in food, feed or food ingredients derived through the use of biotechnology from foods in the marketplace globally. Existing Codex standards, including the Codex Guidelines for Use of Nutrition and Health Claims [CAC/GL 23-1997 (Rev. 1-2004)] provide specific guidance for provision of information on food labels, as well as specific considerations when some type of nutrition or health claim is to be made by a food manufacturer, including both mandatory and voluntary elements.

BIO continues to support those delegations that believe it is an inappropriate use of CCFL resources to continue work in this area when existing Codex text is appropriate for such labelling considerations. This is especially true in these times of shrinking budgets and staffing constraints in governments and international organizations. BIO strongly urges CCFL to discontinue work on this topic so that limited resources may be conserved and put to better use. We appreciate the opportunity to provide these comments and very much look forward to active participation in the discussions during the 39th Session of CCFL in May 2011.

INTERNATIONAL COUNCIL OF GROCERY MANUFACTURERE ASSOCIATIONS (ICGMA)

The International Council of Grocery Manufacturers Associations (ICGMA) appreciates the opportunity to provide comments on the options outlined in the above referenced document that were considered by the facilitated work session in November 2010 in Brussels, Belgium. ICGMA, a recognized INGO before the Codex Alimentarius Commission, represents the interests of the consumer packaged goods industry including several hundred food companies that trade food products globally. In this regard, ICGMA strongly supports the work of Codex Alimentarius and promotes the harmonization of scientific standards and policies concerned with health, safety, packaging, and labeling of foods and beverages.

ICGMA participated in the work group and has participated in the work of the Codex Committee on Food Labelling (CCFL) for many years in discussions related to labeling products derived from biotechnology. As noted in the concluding paragraph of the report of the work session, "…full consensus was not achieved…." Consequently, ICGMA notes that the Executive Committee in its Critical Review indicated that it expected the work on this issue to be completed by 2011 and "if it did not, the Executive Committee would recommend corrective action" (Alinorm 9/32/3, 2009). Considering that consensus has not been achieved, even by the recent work session, ICGMA reiterates a previously stated position that "CCFL should discontinue further work on this topic" and focus Codex' scarce resources on "those items more directly relevant to consumer health such as the implementation of the WHO Global Strategy."

Specifically related to the three options presented by the work group, "Considerations" for all three options acknowledge that different approaches are used by national governments. While ICGMA does not disagree that this is the case, ICGMA does not believe it is appropriate, within the context of an international standard to defer to national "approaches." For this reason, ICGMA cannot support any of the three options. In comments filed in August 2010, related to Note 161, ICGMA stated, "the Codex system should not encourage government delegations to defer to national legislation without providing substantive reasons or technical justification." Deferring to national approaches undermines the scientific basis of Codex and the foundation of Codex as an international standard setting organization." The recognition within a Codex standard of national regulatory differences is inconsistent with the Codex and WTO goal of harmonization.

If this work is to proceed, ICGMA believes the most appropriate introductory text would be simply: "The purpose of this document is to recall and assemble in a single document some important elements from Codex texts which are relevant for foods obtained by GM/GE techniques as they are for all foods…."