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Agenda Item 3

CX/MMP 10/9/3 Add.3

January 2010

JOINT FAO/WHO FOOD STANDARDS PROGRAMME CODEX COMMITTEE ON MILK AND MILK PRODUCTS

Ninth Session

Auckland, New Zealand, 1-5 February 2010

DISCUSSION PAPER FOR THE PHYSICAL WORKING GROUP MEETING ON THE DRAFT AMENDMENT TO THE *CODEX STANDARD FOR FERMENTED MILKS (CODEX STAN 243- 2003)* PERTAINING TO DRINKS BASED ON FERMENTED MILK

*to be held on Sunday 31 January 2010 at 09.00 hours at the Tasman I Room, Rendezvous Hotel,
Auckland*

prepared by Indonesia, Chair of the Physical Working Group

I. INTRODUCTION

1. The 9th Session of the Codex Committee on Milk and Milk Products will consider at Step 7 the final adoption of the draft Amendment to the Codex Standard for Fermented Milks pertaining to Drinks based on Fermented Milk under agenda item 3. At the 8th Session of the Committee, a physical Working Group was established under the leadership of Indonesia to facilitate the discussion on the Draft Amendment.

2. The Delegation of Indonesia has prepared this discussion paper, taking into account all comments received at Step 6, with the aim of facilitating the discussions during this Working Group meeting.

II. BACKGROUND

3. At its 26th Session in 2003, the Codex Alimentarius Commission (CAC) recommended that the Codex Committee on Milk and Milk Products (CCMMP) consider new work on Fermented Milk Drinks and noted that it would need to decide whether this should be taken up as an addition to the current standard or as a new standard¹.

4. At its 6th Session in 2004, the CCMMP agreed to establish a Drafting Group led by Indonesia to consider how to proceed with the development of new work on Fermented Milk Drinks and prepare a proposal for the consideration at the next Session².

5. There was consensus among the Committee Members that regardless of the decision on how to proceed with this new work on Fermented Milk Drinks, the Committee should not re-open any discussions on the provisions already contained in Codex Standard on Fermented Milks.

6. The CCMMP agreed to circulate a template for Fermented Milk Drinks Provisions, part of the IDF comments as contained in CX/MMP 04/6/2-Add. 1, for comments at Step 3 and further consideration at its next Session. It was understood that the document was circulated for comments on its contents only and not in regard to its development as either an addition to the current Standard on Fermented Milks or as a separate Standard³.

7. At its 7th Session in 2006, the CCMMP agreed to proceed with this work as proposed by the Working Group led by Indonesia and with the clear understanding that the scope of this work would be limited to the

¹ ALINORM 03/41, paras. 98 and 141.

² ALINORM 04/27/11, para.146.

³ ALINORM 04/27/11, para. 148.

development of provisions for fermented milk drinks for inclusion in the Codex *Standard for Fermented Milks* without re-opening any discussion on the provisions currently included in the Standard⁴.

8. The CCMMMP noted that in the market there were fermented milk drinks that were not covered by the Standard. In order to better understand the types of products to be covered by this new work, the Committee requested the International Dairy Federation (IDF) to conduct a review of the nature of drinkable fermented milk products that exist in the market and which were not covered by the Codex *Standard on Fermented Milks*⁵.

9. It was noted that the provisions needed to be revised as to their content, language and presentation and to be presented in such a way to clearly separate them from the provisions currently contained in the Standard.

10. The Committee agreed to return the renamed proposed draft Amendment to the Codex *Standard for Fermented Milks* pertaining to composite fermented milk drinks to Step 2 for redrafting by an electronic Working Group led by Indonesia. It agreed that the Working Group in redrafting the document would take into consideration the above discussion and the information provided by IDF. The revised document would be circulated for comments at Step 3 and consideration by the next Session of the Committee⁶.

11. The Committee indicated that this work would be completed by 2010 (by its 9th Session)⁷.

12. The IDF review concluded that more than a hundred drinkable fermented milk products not covered by the Standard exist in the market worldwide, the vast majority of which having a milk protein content with a lower limit of 1.1 % and an upper limit of 1.3 %. As was implied by the IDF questionnaire, milk or milk constituents are an essential part in terms of quantity in the final products⁸.

13. The 8th Session of the CCMMMP in 2008 agreed to forward the proposed amendment to the Codex *Standard for Fermented Milks* pertaining to Drinks based on Fermented Drinks, as renamed by the Committee, to the 31st Session of the Commission for adoption at Step 5 (see attached, as an annex to the Discussion Paper, Appendix IV of ALINORM 08/31/11) and to submit the section on food additives for endorsement by the Codex Committee on Food Additives. In order to facilitate discussion at the next session and further progress of the work in the Step procedure, the Committee agreed to establish a physical Working Group, under the leadership of Indonesia, to consider the document along with comments submitted at Step 6. The Working Group, open to all delegations and observers and working in English only, would meet immediately prior to the next session of the Committee⁹.

14. The Committee indicated that this work would be completed by its Ninth session.

15. The 48th Session of the Codex Committee on Food Additives endorsed the food additives section of the proposed amendment¹⁰ and the 31st Session of the Codex Alimentarius Commission adopted the proposed draft Amendment at Step 5 and advanced it to Step 6, as proposed by the 8th Session of the Committee on Milk and Milk Products. It requested those members that had made comments on the description (i.e. minimum content of dairy ingredients), composition and other aspects of the proposed draft, to forward their comments to the Committee for further consideration¹¹.

16. Following the adoption at Step 5, the Codex Secretariat distributed a Circular Letter CL 2008/23-MMP to all Codex members and observers requesting comments on the draft Amendment by 30 September 2009. The comments received can be found in documents 'CX/MMP 10/9/3 Rev. December 2009' and 'CX/MMP 10/9/3 Add. 1 December 2009' recently circulated by the Codex Secretariat.

III. PROGRESS MADE AT LAST CCMMMP MEETING

17. Significant progress was made at the 8th Session of the CCMMMP that led the Committee to support the advancement of the proposed draft amendment to Step 5. In particular, the CCMMMP agreed to the

⁴ ALINORM 06/29/11, para. 89.

⁵ ALINORM 06/29/11, para. 93.

⁶ ALINORM 06/29/11, para. 96.

⁷ ALINORM 06/29/11, para. 97.

⁸ Review of the nature of drinkable fermented milk products that exist in the market and which were not covered by the Codex Standard for Fermented Milks (Codex STAN 243-2003), By International Dairy Federation (IDF), 070112.

⁹ ALINORM 08/31/11, para. 48.

¹⁰ ALINORM 08/31/12, para. 56 and Appendix III.

¹¹ ALINORM 08/31/REP, para. 68.

following¹²:

- Change the title to “Drinks based on fermented milk” in order to differentiate these products from those already covered in the existing standard.
- Amend the description in section 2.4:
 - To include other ingredients such as ‘whey’; and
 - To replace the minimum content of ‘dairy ingredients’ with minimum content of ‘fermented milk’, thereby emphasizing that fermented milk is the key ingredient in these products and avoiding the use of “dairy ingredients” for which no definition is available.
- Insert the following concluding paragraph in section 2.4 - “Other microorganisms than those constituting the specific starter cultures may be added.” - to reflect current practice for use.
- Add in section 3.2 Permitted Ingredients: “to include other suitable and harmless microorganisms (for those products covered in Section 2.4) and “milk and milk products (in products covered by section 2.4)” to the list of permitted ingredients in line with the amendments of the description (see paragraphs 40-41).
- Include in section 4 the food additive functional classes that are technologically justified for use in these products as recommended by the in-session Working Group on Food Additives (see para. 4) as presented in CRD 14 (recommendation 5). The Committee also agreed that the same food additives used for Fermented Milks and Heat-treated Fermented Milks were appropriate for use in drinks based on fermented milks.
- Move the proposed section 7.1.3 relating to drinks based on fermented milk to a new section 7.1.4; to amend this paragraph so as to indicate that these products should be designated as drinks based on fermented milk, while also allowing the use of variety names or common usage names in accordance with national legislation; and to further indicate that when these products were flavoured the designation should include the principal flavouring substances or flavours added.

18. While the CCMMMP reached consensus to resolve most of the issues on the draft Amendment, in relation to the description, labelling and other sections throughout the text, it agreed to keep the minimum content of [40%] fermented milk in square brackets due to the concerns raised by seven countries, even though the majority of countries were in support of adopting the 40%.

19. In particular, the Committee had a lengthy discussion on the required minimum content of fermented milk for these products. The Observer from IDF reported that the IDF survey, undertaken at the request of the 7th CCMMMP, had indicated that the majority of the products surveyed had a protein content corresponding to 40-50% fermented milk. In view of the results of the survey, many delegations proposed a minimum content of 40% fermented milk. Seven delegations proposed a minimum of 50% fermented milk in order to comply with the definition for composite milk product, as specified in the *General Standard for the Use of Dairy Terms* (CODEX STAN 206-1999) and to ensure that the main component was fermented milk. The Committee noted that there were various interpretations of that definition¹³.

20. The Committee further recalled its decision not to reopen discussion on other provisions in the current Standard¹⁴.

IV. DISCUSSION OF ISSUES AND COMMENTS RECEIVED

21. The mandate of the physical Working Group is to consider the draft Amendment to the Standard for Fermented Milks pertaining to Drinks based on Fermented Milk along with the comments submitted at Step 6 in order to facilitate the discussion at the CCMMMP session and further progress of the work in the Step procedure¹⁵.

22. Member countries and observers are requested to focus their comments on the square brackets around the minimum percentage of fermented milk in section 2.4. This is the only pending issue for which no consensus

¹² ALINORM 08/31/11, paras. 39-47.

¹³ ALINORM 08/31/11, para. 42.

¹⁴ ALINORM 08/31/11, para. 33.

¹⁵ ALINORM 08/31/11, para. 48.

was reached at the last CCMM meeting. All the elements of the draft Amendment apart from the square brackets have been discussed and agreed upon by the Committee. In addition, it is also important to recall the Committee's decision not to reopen discussion on other provisions in the current Standard.

23. Comments have been received from 21 member countries and can be found in documents CX/MMP 10/9/3 Rev. – December 2009 and CX/MMP 10/9/3 Add. 1 - December 2009.

24. The large majority of comments (16) support the removal of the square brackets and keeping a minimum content of 40% fermented milk.

25. Some of these comments are supported by additional comments indicating that the current wording of the draft Amendment with a reference to the minimum content of 40% fermented milk concurs with the outcome of the 2007 Review of the International Dairy Federation (IDF), which concluded that more than a hundred drinkable fermented milk products, not covered by the Standard, exist in the market worldwide, and that the vast majority have a milk protein content with a lower limit of 1.1% and an upper limit of 1.3% (equivalent to a lower limit of 40% and an upper limit of 50% fermented milk); and that this market reality led Codex member countries to initiate the work to accommodate this category of products and this was particularly acknowledged by the majority of countries present during the last CCMM meeting in 2008 when the adoption of the minimum of 40% fermented milk was actively supported in line with the outcome of the IDF Review.

26. In addition, it is also indicated that while Section 2.3 of the General Standard for the Use of Dairy Terms states that "composite milk product is a product of which the milk, milk products or milk constituents are an essential part in terms of quantity in the final product, as consumed provided that the constituents not derived from milk are not intended to take the place in part or in whole of any milk constituent", no percentage is specified. Drinks based on Fermented Milk are traditional products, obtained by an optimized production process in which milk is the essential core ingredient. The non-milk constituents do not take the place of any milk constituent and therefore "fermented milk" is the essential element in these products. The non-dairy constituents add additional characteristics to the product, such as palatability, drinkability, flavouring and sweetness.

27. Furthermore, it is stated that the inclusion of this category of products would allow that Drinks based on Fermented Milk are defined within a narrow specification and distinguished from Flavoured Fermented Milks, the only category of composite milk products included in the Standard at this moment. This would avoid that countries could incorrectly consider Drinks based on Fermented Milk to have to comply with any of the categories currently included in the Standard. By accommodating the DBFM category of drinkable products in the Codex Standard for Fermented Milks would contribute to the further development, growth and innovation of this category, better consumer understanding, and fair trade in this type of products.

28. Other comments highlight that while the minimum content of 40% fermented milk is predominant in different drinks based on fermented milk, the 50% level may be a barrier to trade for developing countries. One of the major purposes of Codex is to facilitate the fair practice in food trade and that a minimum of 40% would be acceptable for countries, particularly developing countries, in producing and trading this type of product.

29. Among the countries that support the adoption of the draft Amendment as currently drafted, two countries have formulated additional specific requests. While Cuba requests that in subparagraph 3.3, all the criteria assessed therein for drinks based on fermented milk be grouped in the table of composition, Thailand proposes an allowance of the application of the packaging gases in the plain fermented milks and drinks based on fermented milk in the table of the application of food additives in the section on Food Additives, as they are used in the processing of this type of product.

30. On the other hand, the comments of five countries suggest a higher minimum level, 50%, as the minimum of fermented milk.

31. In particular, Argentina, supported by Paraguay, suggests that the minimum content of dairy ingredients be set at 51% in order to ensure that dairy ingredients are the key components in accordance with the *General Standard for the Use of Dairy Terms* (CODEX STAN 206-1999) and that the minimum content of 40% be established for fermented milk addition. Argentina proposes the following amendment to the last sentence in the first paragraph of section 2.4: "*Drinks Based on Fermented Milk contain a minimum of 50 % (m/m) dairy components and of 40 % (m/m) fermented milk.*"

32. In addition, Uruguay also supports that the minimum content to be 50% in order to comply with the relevant definition of compound milk products, as specified in the *General Standard for the Use of Dairy Terms* (CODEX STAN 206-1999). It further agrees with replacing the minimum "milk ingredient" content with a "fermented milk" minimum content, questions how the minimum fermented milk content is to be checked, agrees on the addition in Section 3.2 of other suitable and harmless microorganisms, but request that this point is clarified with a list of accepted microorganisms, as it does not agree that it remains so open (it is lactic acid bacteria that must contribute to the characteristics of the finished product). Uruguay also reiterates the need to make a clear distinction between fermented milks and drinks based on fermented milk, in order to avoid any confusion for the consumer.

33. Furthermore, although Costa Rica supports including "drinks based on fermented milk" in the Codex Standard for Fermented Milk, it does not agree with the suggested 40% under the name "*Drinks Based on Fermented Milk*" and proposes the following alternatives to be used as the case may be:

- i) For the name "Drink based on fermented milk" the fermented milk content must be equal to or more than 50%.
- ii) When this percentage is less than 50% and more than or equal to 25%, it is suggested using the name "Drink with fermented milk".

34. Iran proposes also to set the minimum level at 50% because in the designation of "drinks based on fermented milk", the word "based on" means "essential part" in terms of quantity in product formulation, as the latter word is described in Section 2.3 of the *Codex General Standard for the Use of Dairy Terms* (CODEX STAN 206-1999) regarding the definition of "composite milk products". Reasonably, the amounts less than [50]% does not represent "essential part" or "based on", respecting to the definition of composite milks presented in *Codex General Standard for the Use of Dairy Terms* (CODEX STAN 206-1999). In addition, Iran also provides comments on other areas such as on the use of dairy ingredients or dairy portions instead of fermented milk and on section 3.2 Permitted ingredients.

35. On the basis of the comments received, the majority of comments coming from sixteen countries (Australia, Cuba, Dominican Republic, Guatemala, India, Indonesia, Japan, Lao PDR, Malaysia, Mexico, New Zealand, the Philippines, Singapore, Thailand, United States, Vietnam) support the final adoption of the draft Amendment with the minimum content of 40% fermented milk and thereby the removal of the square brackets around the 40%. Five countries (Argentina, Costa Rica, Iran, Paraguay, Uruguay) propose to modify the level and set it at 50%.

V. CONCLUSIONS AND NEXT STEPS

36. The Delegation of Indonesia is honored of having had the opportunity of chairing over the last years, since the 6th Session of the CCMMMP in 2004, the working group discussions on the work on drinks based on fermented milk, either during CCMMMP meetings (in-session working group discussions) or through electronic working group discussions.

37. It is acknowledged that the member countries and organization active on this work have actively participated in most of the working group discussions since 2004. The Delegation of Indonesia is very grateful for the outstanding contributions from members to the work of the working group leading to very constructive discussions and important breakthroughs throughout the process. In particular, the Delegation of Indonesia would like to thank the International Dairy Federation (IDF) for their technical support and contributions to the debate, providing a first template that served as the basis of the current draft Amendment and a complete review of the drinks based on fermented milk products existing on the market worldwide but not covered by the Standard for Fermented Milks. All this work provided by the IDF has helped very significantly to the working group moving forward to where we are now, and to the CCMMMP, particularly following the progress made during the 8th Session of the CCMMMP in 2008.

38. The work on drinks based on fermented milk is at the final stages of the discussions, concentrated now in what remains in square brackets, the minimum content of fermented milk [40]%. The aim of the physical working group meeting is to help progressing on this work with the view of providing a recommendation to the CCMMMP on how to move forward for the final adoption of the draft Amendment and thereby removing the square brackets from the text.

39. The CCMM indicated that this work would be completed by its Ninth Session¹⁶, and therefore the working group should aim to contributing to fulfill the CCMM's mandate to accommodate and include the category of drinks based on fermented milk in the Standard for Fermented Milks.

40. Taking into account the above and, in particular, the written comments provided at Step 6 by member countries, the Delegation of Indonesia would like to suggest that the physical Working Group reflects further on the following:

- i. Whether the mandate given by the Codex Alimentarius Commission in 2003 to accommodate the category of Drinks based on Fermented Milk is fulfilled by setting a fermented milk minimum level at: 40% or 50%. What is the view of member countries and observers regarding the most adequate approach to fulfill this mandate taking into account the realities on the market concerning this type of products?
- ii. Section 2.3 of the General Standard on the Use of Dairy Terms defines composite milk product as "a product of which the milk, milk products or milk constituents are an essential part in terms of quantity in the final product, as consumed provided that the constituents not derived from milk are not intended to take the place in part or in whole of any milk constituent". However, no percentage is specified. While the milk content shall be an essential part regarding its quantity in the product, would the working group accept that an amount of 40% fermented milk qualifies as being "essential" in relation to drinks based on fermented milk?
- iii. When setting the minimum content of fermented milk, the working group should reflect on:
 - a) The benefit for the consumer to have a better understanding of this category of products for which there is no harmonized provisions at this moment;
 - b) The market reality identified by the IDF review that concluded that the vast majority of drinks based on fermented milk in the market have a milk protein content with a lower limit of 1.1% and an upper limit of 1.3% (equivalent to a lower limit of 40% and an upper limit of 50% fermented milk);
 - c) That the minimum content is in line with the Codex aim of facilitating fair practices in food trade, and in this case, fair practices in the trade of these products.

¹⁶ ALINORM 08/31/11, para. 49.