

CODEX ALIMENTARIUS COMMISSION **E**



**Food and Agriculture
Organization of
the United Nations**



**World Health
Organization**

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REP14/EXEC

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX ALIMENTARIUS COMMISSION

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**REPORT OF THE SIXTY-NINTH SESSION OF THE
EXECUTIVE COMMITTEE OF THE CODEX ALIMENTARIUS COMMISSION**

WHO Headquarters, Geneva, Switzerland, 8-11 July 2014

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INTRODUCTION

1. The sixty-ninth Session of the Executive Committee of the Codex Alimentarius Commission was held at WHO Headquarters, Geneva, from 8 to 11 July 2014. The Session was chaired by Mr Sanjay Dave (India), Chairperson of the Codex Alimentarius Commission, with the assistance of the three Vice-chairpersons, Dr Samuel Godefroy (Canada), Mrs Awilo Ochieng Pernet (Switzerland) and Professor Samuel Sefa-Dedeh (Ghana). A complete list of participants is attached as Appendix I to this report.

OPENING

2. The Executive Committee observed one minute's silence in memory of the late Dr Ehoussou Narcisse, who served as advisor to the member for Africa in several sessions of the Executive Committee.

3. The Session was opened by Dr Bruce J. Aylward, the Assistant Director General for Polio, Emergencies and Country Collaboration, WHO. He welcomed the Members of the Executive Committee to Geneva on behalf of WHO and FAO and highlighted the importance of the Executive Committee in preparing, monitoring and evaluating the standard-setting work for the Commission. He reaffirmed that the contribution of WHO to the Codex budget during the current biennium was sustained at the same level as in the last biennium where it had been increased by 40%. He reported that in view of the end of the current Codex Trust Fund (CTF) in December 2015, steps were being taken to conduct an end-of-project evaluation of CTF and develop concepts on a successor initiative to CTF. Finally, he stated that the appointment of a new Secretary for Codex at an earliest opportunity was among the priorities of FAO and WHO.

4. Dr Renata Clarke, Head, Food Safety and Quality Unit, FAO and the Chairperson of the Commission also welcomed the members.

ADOPTION OF THE AGENDA (Agenda Item 1)¹

5. The Executive Committee adopted the Provisional Agenda and agreed to consider under:

- Agenda Item 2c "Critical Review, Proposal for Elaboration of new standards": Project document for new work on processed cheese², and
- Agenda Item 8 "Other Business and Future Work": Codex work management; Functioning of the Executive Committee; Update on the communication strategy for Codex; and Role of Chair and Vice-Chairs of the Commission for the purposes of Rule V.1 of the Rules of Procedure.

CRITICAL REVIEW FOR THE ELABORATION OF CODEX STANDARDS AND RELATED TEXTS (Agenda Item 2)

DRAFT STANDARDS AND RELATED TEXTS SUBMITTED TO THE COMMISSION FOR ADOPTION (Agenda Item 2a)³

Part I – Proposed Draft and Draft Standards and Related Texts at Steps 8, 5/8 or 5 Accelerated Committee on Residues of Veterinary Drugs in Foods (CCRVDF)

Risk Management Recommendations (RMRs) for chloramphenicol, malachite green, carbadox, furazolidone, nitrofurantoin, chlorpromazine, stilbenes and olaquinox

6. Some members commented that: the current language was overly prescriptive and did not adequately recognize the role and responsibilities of competent authorities in taking risk management decisions at the national level; and that RMRs should be developed only after completion of the JECFA evaluation. The Executive Committee noted that one member had concerns on the adoption of the RMRs considering that some compounds need to be examined on a case-by-case basis.

7. The Representative of WHO explained that CCRVDF had formulated the RMRs leaving flexibility to national authorities to regulate the use of these compounds. Their discussion had taken into account concern regarding data gaps and CCRVDF had formulated different RMRs for compounds for which data were sufficient to identify a clear health concern (advanced to Step 5/8), and for those for which data gaps warranted a review (held at Step 4 and included in the Priority List for evaluation or re-evaluation by JECFA).

¹ CX/EXEC 14/69/1.

² CX/CAC 14/37/10 Add.1.

³ CX/EXEC 14/69/2; CRD7 (Correction to the GSFA provisions forwarded for adoption to CAC37); CRD8 (Comment by the Chairperson of CCNFSDU).

8. The Secretariat informed the Executive Committee that the RMRs reflected the consensus at the CCRVDF.

Conclusion

9. The Executive Committee, recognising that the criteria for the critical review were met, recommended the adoption of the proposed draft RMRs.

Committee on Food Hygiene (CCFH)

Guidelines for the Control of *Trichinella* spp. in Meat of Suidae

10. The Executive Committee noted that the Guidelines had been submitted for adoption at Step 5/8. It noted concerns about the late availability of the Expert consultation report and the lack of clarity with regard to the implementation of the Guidelines as well as the comments provided by OIE. Therefore the Executive Committee agreed to recommend the adoption at Step 5. FAO and WHO will provide further information to improve the understanding of the implementation and will report in a timely manner to CCFH.

Conclusion

11. The Executive Committee, recognising that the criteria for the critical review were met, recommended the adoption of the Guidelines at Step 5.

Committee on Fish and Fishery Products (CCFFP)

Performance criteria for methods for the determination of marine biotoxins (Section I-8.6) in the Standard for Live and Raw Bivalve Molluscs

12. The Executive Committee noted that the proposal from CCFFP had been endorsed by the Committee on Method of Analysis and Sampling (CCMAS) with amendments. Concerns were expressed in relation to the typing of the widely used mouse bioassay as Type IV method, that this decision would have an impact on trade and that the proposal should be returned to CCFFP or CCMAS for further consideration. Others supported the decision taken by CCMAS which was in line with the proposal of CCFFP, noting that the typing of methods was not hierarchical and all were recognized from a regulatory point of view.

13. The Executive Committee noted that CCMAS was addressing concerns in relation to biological methods in a more general manner.

Conclusion

14. The Executive Committee, recognising that the criteria for the critical review were met, agreed to recommend the adoption of Section I-8.6 as amended by CCMAS.

Standard for Fresh and Quick Frozen Raw Scallop Products

15. The Executive Committee, recognising that the criteria for the critical review were met, recommended the adoption of the standard while noting that the labelling provisions should be endorsed by the Committee on Food Labelling (CCFL).

Committee on Fresh Fruits and Vegetables (CCFFV)

Standards for Passion Fruit, for Durian, and for Okra

16. The Executive Committee, recognising that the criteria for the critical review were met, recommended the adoption of the standards while noting that the labelling provisions should be endorsed by CCFL.

Committee on Food Additives (CCFA)

Food Additive Provisions of the General Standard for Food Additives (GSFA)

17. The Executive Committee recommended the adoption of the food additive provisions of the GSFA with the corrections prepared by the Codex Secretariat (CRD7).

Committee on Contaminants in Foods (CCCF)

Maximum Level for Fumonisin in Maize and Maize Products and Associated Sampling Plans

18. The Executive Committee recommended the adoption of the maximum levels and the sampling plans while noting that sampling plans should be endorsed by CCMAS.

General Conclusion (Item 2a Part I)

19. In addition to the above comments and decisions, the Executive Committee, recognising that the criteria for the critical review were met, recommended the adoption of all the other standards and related texts for which no specific comments were made.

20. The Executive Committee noted the view of the Representative of WHO that the mandate of the Executive Committee conducting the Critical Review was not to “recommend” or not the adoption of a draft text by the Commission – the decision on whether or not to adopt a text being the prerogative of the Commission; rather, the task of the Executive Committee was to verify whether all the criteria enumerated in the relevant section of the Procedural Manual had been met and thus the text in question was ready for consideration by the Commission at Step 8.

Part II – Proposed Draft Standards and Related Texts at Step 5

General Conclusion

21. The Executive Committee, recognising that the criteria for the critical review were met, recommended the adoption at Step 5 of all texts submitted.

MONITORING OF STANDARDS DEVELOPMENT (Agenda Item 2b)⁴

Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU)

Proposal to Review the Standard for Follow-up Formula

22. The Executive Committee noted that while this work was scheduled for completion by 2017, follow-up formula and a Codex standard for these products required discussion before the work could proceed.

23. The Representative of WHO reminded the Executive Committee that WHO continued to consider that there was no need for a Codex standard on follow-up formula, the reason being that if the commodity was considered as breast milk replacement then it should comply with the *Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants* (CODEX STAN 72-1981). For other uses, the relevant *Standard for Milk Powders and Cream Powder* (CODEX STAN 207-1999) would apply. WHO and UNICEF had published an official statement on this matter. The Representative further stated that whether Codex should develop or maintain a standard for a commodity the existence of which is questioned by a parent organization of Codex was a fundamental question of principle that would warrant discussion and a decision by the Commission.

24. Some members noted that this product was traded and it was necessary to review the existing standard to avoid confusion in trade and ensure the safety of this product.

Conclusion

25. The Executive Committee acknowledged the intervention of WHO and noted that the work was proceeding within its schedule with a target for completion by 2017. The Executive Committee noted further that the CCNFSDU had undertaken the development of a discussion paper to consider the scope of the revision and the need for a standard. The Executive Committee recommended that the CCNFSDU consider WHO's concerns in its further deliberations on this issue.

Proposed Draft Amendment to the Standard for Processed Cereal-Based Foods for Infants and Young Children to include a new Part B for Underweight Older Infants and Young Children

26. The Executive Committee noted that this was behind schedule and that CCNFSDU was reconsidering the scope.

Conclusion

27. The Executive Committee encouraged CCNFSDU to confirm the scope of the work including the need for the standard, taking into account the guidance provided by WHO.

Committee on Food Hygiene (CCFH)

28. The Executive Committee noted the good progress of CCFH work, and the importance of scientific advice from FAO and WHO; and that CCFH might benefit from knowing when FAO/WHO advice would be available.

29. The Representative of FAO pointed out that in order to facilitate better planning of resources and a robust process for the delivery of scientific advice to CCFH it was necessary to clearly define the request at the proposal stage and to consider a two-year timeframe for its delivery.

⁴ CX/EXEC 14/69/3; CRD8 (Comment by the Chairperson of CCNFSDU).

Committee on Sugars (CCS)

30. The Executive Committee noted that this was the second time that extra time had been requested for completion of the standard for non-centrifugated dehydrated sugar cane juice. The Executive Committee agreed to request Colombia, as host country of CCS, to provide further clarification on the impediments to the progression of the standard and to recommend a realistic forecast for its finalization.

General Conclusion (Item 2b)

31. In addition to the comments and decisions above, the Executive Committee noted that work on other standards and related texts was progressing according to schedule and following the recommendations previously made in the critical review.

PROPOSALS FOR THE ELABORATION OF NEW STANDARDS AND RELATED TEXTS (Agenda Item 2c)⁵

Committee on Residues of Veterinary Drugs in Foods (CCRVDF)

Priority List of Veterinary Drugs for Evaluation or Re-evaluation by JECFA

32. With regard to the request of CCRVDF to the Commission concerning the inclusion of ethoxyquin in the Priority List⁶, the Executive Committee noted that feed additives were not included in the CCRVDF's Terms of Reference, but that expertise existed in CCRVDF and its advisory body, i.e. JECFA, to develop recommendations for this substance. Therefore, the Executive Committee supported the inclusion of ethoxyquin in the Priority List.

Others

Standard for Whey Permeate Powder

33. The Executive Committee noted that the proposal for new work on a standard for whey permeate powder, submitted by Denmark, fell within the mandate of the Committee on Milk and Milk Products (CCMMP) and that the project document required more consultation with other countries and information on the international trade of these products.

34. The Executive Committee agreed to recommend the Commission establish an Electronic Working Group (EWG) to revise the project document for submission through CCMMP, if reactivated, at the 2015 Session of the Commission and the Executive Committee. The Executive Committee noted the offer of New Zealand to co-chair with Denmark, the EWG.

Standard for Processed Cheese

35. The Executive Committee recalled that the 36th Session of the Commission had established an EWG to conduct a further study on the possibility to develop standard(s) for processed cheese and, depending on the outcome of the study, prepare a project document for new work and report back to the 37th Session of the Commission.

36. Though this item had been added during the adoption of the Agenda, the Executive Committee considered that it was not in a position to conduct the critical review and agreed to defer consideration of the project document to the Commission.

General Conclusion (Item 2c)

37. In addition to the comments and recommendations above, the Executive Committee agreed to recommend that the Commission approve all other items proposed as new work.

CODEX STRATEGIC PLAN 2014-2019 - GENERAL IMPLEMENTATION STATUS (Agenda Item 3)⁷

38. The Executive Committee reiterated the importance of developing tools to monitor the implementation of the Strategic Plan as well as clarifying the parameters used for the monitoring; remaining with the indicators set in the Strategic Plan as adopted by the 36th Session of the Commission; and reporting against these indicators in the timeline identified in the plan.

⁵ CX/EXEC 14/69/4, CRD8 (Comment by the Chairperson of CCNFSDU); CRD9 (Proposal from Denmark: Proposed Draft Codex Standard for Whey Permeate Powder).

⁶ CX/CAC 14/37/10

⁷ CX/CAC 14/37/11.

39. The proposal to develop higher-level indicators for the strategic goals or objectives was not generally supported and it was noted that the Strategic Plan had been adopted originally to use existing or easily obtainable information to monitor its implementation. Existing indicators could be considered together to assess the overall progress of Codex to fulfill its strategic goals.

40. The Representative of WHO expressed the willingness of WHO and FAO to contribute data to support the monitoring of the Strategic Plan. In fact, many data were already available, especially for the activities linked to the CTF. He stated that the work of the parent organisations in general was also being guided by the strategic planning process, with a very limited number of indicators to describe a baseline and a target. He suggested that Codex concentrate on a small number of indicators that were representative of the Codex performance. Monitoring indicators could be resource-intensive in itself and therefore it was important to balance resources used to monitor the implementation of the plan with those needed for the delivery of the main Codex mandate of standard development.

41. The Executive Committee noted a proposal that the Secretariat should also set a timeline for a mid-term review of the implementation of the Strategic Plan.

Conclusion

42. The Executive Committee agreed to establish a monitoring framework for the implementation of the Strategic Plan including mechanisms for systematic data collection (e.g. templates) to make assessing information from multiple committees easier where these were the main providers of monitoring information.

43. The Executive Committee recommended that the Secretariat be tasked with the elaboration of this framework using sources of data recommended in the discussion paper and other suggestions made during the discussions of the Executive Committee. This monitoring framework could be used for an initial report on progress at the next session of the Executive Committee meeting and the 38th Session of the Commission. It was also acknowledged that this monitoring framework is expected to be iterative, in order to maximise its effectiveness.

FINANCIAL AND BUDGETARY MATTERS (Agenda Item 4)

Codex Budget⁸

44. The Executive Committee noted with appreciation the increase in the contribution of WHO to the Codex budget since the last biennium and the in kind contributions from host governments including coordinators as well as the secondment of officers from the Republic of Korea and Japan. The Executive Committee was of the opinion that these contributions should have more prominence in future reports.

45. The Executive Committee noted the significant underspend during the 2012-2013 biennium and that this was mainly due to extended vacancies. These vacancies had led to savings in travel which added to those savings caused by organization-wide travel restrictions. The Executive Committee noted that unspent Codex funds could not be carried over to a new biennium because in accordance with the FAO rules⁹ unspent funds from the biennial allocation are cancelled from the appropriation.

46. The Executive Committee noted that costs should be broken down to the Committee level to better inform members of the Executive Committee on workload versus expenditure of the Codex programme and that the number of Codex sessions held should be included in the report.

47. The Executive Committee noted that the chargeback item presented a large portion of the budget and was not broken down to specific products and services purchased within FAO. Consideration should be given to comparing the chargeback costs with outside services.

48. The Executive Committee advocated for improved budgeting and planning to reduce the risk of over and underspending. It further noted that adequate staffing of the Secretariat and modernised practices would enable it to better respond to the Commission's demands.

⁸ CX/CAC 14/37/12.

⁹ FAO Financial Rule IV.

Conclusion

49. The Executive Committee:

- i. Took note of the report from the Secretariat and welcomed the continued financial support from the parent organisations including a significant increase from WHO since the 2012-2013 biennium as well as the in kind contributions outside the Codex budget made to the Codex programme including secondments of Food Standards Officers to the Codex Secretariat, the contributions of member governments hosting sessions should figure more prominently in future reports.
- ii. Took note of under-spending (2012-2013) compared to the initial budget and the reasons given for this and highlighted the need for a better budgeting and work-planning process to anticipate the future need and use the allocated budget more efficiently as well as fully staffing the Codex Secretariat.
- iii. Expressed the need for more transparency concerning a breakdown of chargeback and to examine if external providers could be used for selected services without a loss of quality.
- iv. Noted the savings in the 2014-2015 biennium due to current vacancies, but that overall expenditure would be closer to the allocated budget as there would be an increase in expenditure on communications, the website, translation/interpretation services and publications.
- v. Encouraged Codex Members to advocate for adequate budgetary allocations through the governing bodies of the parent organisations.

FAO/WHO Scientific Support to Codex¹⁰

50. Members expressed concern with the current funding gap.

51. It was confirmed that there is total and seamless collaboration between FAO and WHO on defining priorities for the provision of scientific advice requested by Codex.

Conclusion

52. The Executive Committee:

- i. Expressed appreciation to FAO and WHO for the scientific support provided.
- ii. Stressed the importance of funding to ensure provision to the scientific advice that is critical to the setting of standards.
- iii. Acknowledged the extra budgetary contributions by member countries.
- iv. Highlighted concerns regarding gaps in funding that might delay the provision of scientific advice and thus might jeopardize the Codex work plan.
- v. Encouraged FAO and WHO to continue supporting and continue funding Codex and related scientific advice activities.

Discussion Paper on Sustainable Funding for the Provision of Scientific Advice to Codex and Member States¹¹

53. The Executive Committee noted the different budgetary mechanisms between FAO and WHO and the difficulties encountered by FAO and WHO in bringing together funds from different sources to deliver scientific advice as requested by Codex.

54. The Executive Committee considered the three options for securing funding for scientific advice put forward in the paper and expressed support for further exploration of options 1 and 3 while noting that option 2 was not viable in the short term because of the current FAO and WHO policies related to funding from "non-State" actors and the apparent lack of interest amongst major non-State donors of FAO and WHO.

55. The Executive Committee noted that in particular option 1 required Member states strong collective commitment that must be translated in concrete actions at FAO's and WHO's governing bodies.

56. The Executive Committee noted that contributions from member countries as proposed under option 3 were voluntary and not to be confused with the assessed contributions to FAO and WHO. Concern was expressed about the acceptability of new assessments to national governments even if voluntary

¹⁰ CX/CAC 14/37/12-Add.1.

¹¹ CX/CAC 14/37/12-Add.2.

57. Discussions were held on the nature, feasibility and possible timelines of the options presented in the paper. Members highlighted the lessons that could be learned from some of the funding strategies pursued by other bodies operating under Art. VI and XIV of the FAO Constitution, such as the IPPC¹², and from initiatives like the FAO/WHO Codex Trust Fund (CTF). The Executive Committee also raised the question why previous initiatives in this area, such as GIFSA¹³, had been less successful than envisaged.

Conclusion

58. The Executive Committee:

- i. Recommended that the Commission examine the three options noting that option 2 is not implementable in the short term and give additional guidance to FAO and WHO as to which options should be further explored and possible processes.
- ii. Requested FAO and WHO to examine the lessons learned from funding mechanisms used by other bodies operating under Art. VI and XIV of the FAO Constitution, such as the IPPC and from initiatives like the FAO/WHO CTF and why GIFSA was not successful.
- iii. Invited FAO and WHO to explore the possibility of reallocating funds for scientific advice from any unutilised funds from the Codex regular budget.
- iv. Called upon Codex members:
 - to consider providing in-kind contributions to scientific advice; and
 - to make efforts at the national and regional levels in order to raise funds for scientific advice and contribute them to FAO and WHO.

RELATIONS BETWEEN THE CODEX ALIMENTARIUS COMMISSION AND OTHER INTERNATIONAL ORGANIZATIONS: APPLICATIONS FROM INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS FOR OBSERVER STATUS IN CODEX (Agenda Item 5)¹⁴

59. The Executive Committee recommended to the Director Generals of FAO and WHO:

- i. To approve the following applications:
 - AHPA (American Herbal Products Association)
 - OENOPPIA (Oenological Products and Practices International Association)
 - GOED (Global Organization for EPA and DHA Omega-3s)
 - NSF (NSF International)
- ii. Not to approve the application from:
 - CIDCE (Centre International de Droit Comparé de l'Environnement; International Centre of Comparative Environmental Law) on the grounds that the Executive Committee requires further details on how the applicant proposes to contribute to the Codex programme.
- iii. To defer approval of the application from:
 - ISC (International Stevia Council) until they have provided adequate information as to why they cannot seek to participate in the work of Codex as part of an umbrella organisation working on comparable issues related to sweeteners. The application would be decided on when the response from ISC has been examined and approved by FAO and WHO.
- iv. Noted that many approved observers were not active for different reasons and that the Secretariat could evaluate participation through data provided by the on-line registration system. Based on this evaluation, inactive Observers could be contacted to verify whether they were still interested in participating in Codex.

¹² International Plant Protection Convention.

¹³ Global Initiative for Food-related Scientific Advice.

¹⁴ CX/EXEC 14/69/5; CRD 1 (AHPA); CRD 2 (CIDCE); CRD 3 (OENOPPIA); CRD 4 (GOED); CRD 5 (NSF); CRD 6 (NSC).

MATTERS ARISING FROM FAO AND WHO (Agenda Item 6)**FAO/WHO PROJECT AND TRUST FUND FOR ENHANCED PARTICIPATION IN CODEX (Agenda Item 6a)¹⁵**

60. The Representative of WHO introduced the papers and provided an update on progress regarding the end-of-project evaluation of the CTF, which would end in December 2015 and the preliminary ideas for the successor initiative. She stressed the ongoing collaboration between WHO and FAO to implement the end-of-project evaluation under the guidance of the WHO evaluation unit and that their expectations were to have a final report from the contracted external evaluator company submitted in a timely fashion in early 2015 to report to the Executive Committee and the Commission in advance as well as to inform the development process of the successor initiative.

61. Members commented on the vital nature of the work of the Trust Fund in their regions and in the context of inclusiveness and capacity building. It was suggested to reinforce the CTF Secretariat to provide more assistance to CTF participants to obtain their visas on time.

62. In response to members' questions the WHO Representative stated that they were looking to close collaboration with the Regional Offices if FAO and WHO as well as Coordinators concerned in the planning of Codex training activities in regions. In recognising difficulties with obtaining visas for some CTF-funded travellers, it was confirmed that the CTF Secretariat can only facilitate the issuance of visas by host governments by providing letters supporting visa applications and this only at the appropriate time in the process.

Conclusion

63. The Executive Committee:

- i. Acknowledged with appreciation the financial support given by donors to the Codex Trust Fund.
- ii. Noted that the Codex Trust Fund would end in December 2015, as originally planned.
- iii. Noted the progress being made towards the development of the successor initiative.
- iv. Looked forward to the successful completion of the current Codex Trust Fund as well as a timely launch of the successor initiative.

MATTERS ARISING FROM FAO AND WHO: CONSIDERATION OF REQUESTS FOR SCIENTIFIC ADVICE (Agenda Item 6b)¹⁶

64. The Representative of WHO highlighted the expert meetings and outputs on various aspects in food safety and nutrition in support of the work of Codex, including the FAO/WHO project on mycotoxins in sorghum supported by the Codex Trust Fund (2012-2014)¹⁷. She stressed that the numbers of pending requests for scientific advice was growing and that resource constraints might jeopardise the ability of WHO and FAO to respond in a timely manner.

65. The Representative of FAO stressed the importance of capacity development in countries and regions in need. The document for this Agenda Item had been given a new structure to make it a better tool for discussion at the Executive Committee and the Commission. Looking ahead, she expressed her hope that the regional coordinating committees would play a greater role to discuss and identify the capacity development needs in respective regions.

Conclusion

66. The Executive Committee:

- i. Expressed appreciation to FAO and WHO for all the essential scientific advice undertaken in direct support to Codex work.
- ii. Noted the resource constraints that the parent organisations were facing and which may jeopardise the timely provision of scientific advice.
- iii. Called upon Codex members to provide financial and other support to FAO and WHO in order to ensure the provision of scientific advice in Codex.

¹⁵ CX/CAC 14/37/13, CX/CAC 14/37/14-Add.1; CRD 10 (FAO/WHO Information Note on the Successor Initiative to the Codex Trust Fund).

¹⁶ CX/CAC 14/37/14; CX/CAC 14/37/14-Add.1.

¹⁷ CX/CAC 14/37/14 para 14.

- iv. Noted of the important capacity development activities in the fields of food safety and quality and expressed appreciation to both FAO and WHO for their efforts.

DRAFT PROVISIONAL AGENDA OF THE 38TH SESSION OF THE CODEX ALIMENTARIUS COMMISSION (Agenda Item 7)¹⁸

67. The Executive Committee was informed that the Draft Provisional Agenda comprised the usual agenda items and that the item related to the reports of the FAO/WHO Coordinating Committees (Item 3) had been inadvertently omitted.

68. The Executive Committee agreed with the Draft Provisional Agenda and noted that the final Agenda would be prepared by the Directors-General of FAO and WHO.

OTHER BUSINESS AND FUTURE WORK (Agenda Item 8)

(a) Codex work management

69. This matter arose following a proposal of the 28th Session of the Committee on General Principles (CCGP)¹⁹ to the Executive Committee.

70. The Director of the FAO Office of Evaluation explained that over the years evaluation has become more structured and provides a useful tool to reply to complex questions with credibility and analytical depth. He further explained that evaluation could be a costly and time consuming exercise and some issues could be better addressed by internal reviews or with the help of process analysis using management consultants. He stressed that if evaluation was envisaged, clear evaluation questions needed to be defined.

71. The Director of the FAO Office of Evaluation advised the Executive Committee to consider proceeding in two sequential steps to assess the needs:

- i. To explore if an internal process review can resolve issues through a Secretariat study in collaboration with a management consultant.
- ii. To involve the FAO Office of Evaluation for aspects that require an external, objective assessment and where the parent bodies can take the lead.

72. The Representative of WHO stated that the apparent lack of efficiency in Codex work could be multi-factorial with possible causes such as: (i) under-staffed Codex Secretariat due to prolonged position vacancies, (ii) internal Codex governance structure, (iii) operational factors such as meeting frequencies of Codex bodies, (iv) incomplete adherence to the rules set by the Commission and contained in the Procedural Manual; and (v) growing participation of Codex members in Codex work, which inevitably delays the speed for the overriding values of inclusiveness and transparency. A Secretariat-led evaluation could assist in elucidating the interactions between and contribution of these possible causes to the problems perceived.

73. The Executive Committee noted that the key concerns needed to be identified and analysed first, before concrete decisions could be made on the way forward. The Committee noted further that this could be best addressed through a discussion paper prepared by the Secretariat in cooperation with FAO and WHO.

74. The Executive Committee:

- i. Agreed that a two stage process, first internal and Secretariat-led and then external could be undertaken in order to evaluate the work management of Codex.
- ii. Requested the Secretariat to prepare, in collaboration with FAO and WHO, a paper identifying scope and processes to evaluate the work management of Codex for consideration by CCGP in May 2015. The background to this paper should also include an analysis of the implementation of the 2002 Codex evaluation. Taking into account comments expressed at CCGP, the Secretariat-led internal review will be initiated in a form to be decided and approved by the Commission at its 38th Session. The case and process for an external review will also be examined by the Commission.

(b) Functioning of the Executive Committee

75. The Secretariat presented the issue raised by the Delegation of Cameroon during CCGP28²⁰ regarding the effectiveness and representativeness of the Executive Committee.

¹⁸ CX/EXEC 14/69/6.

¹⁹ REP 14/GP para.122.

²⁰ REP14/GP para. 138.

76. The Committee noted that this matter was closely linked to the discussion on the Codex work management and that it could be dealt within the discussion paper agreed upon (see Agenda Item 8a).

(c) Update on the Communication Strategy for Codex

77. The Executive Committee recalled that at previous sessions the development of a communication strategy for Codex had been discussed. The first step was a survey on how stakeholders perceive Codex.

78. The Executive Committee noted that the tendering process to select the company to carry out a survey had taken longer than expected and at this time there was only a partial preliminary report based on an online survey component. Once the full survey is available and has been analysed, it is expected that work on the communication strategy will move forward swiftly.

79. The Secretariat will work closely with FAO and WHO on this matter. Both the communications and technical departments will be involved to ensure compatibility of the strategy with those of the parent organizations.

80. Members underlined the importance of a communications strategy to raise awareness of the work of Codex among all stakeholders, not only on the work of Codex, but also the economic benefits derived from participation and utilisation of Codex standards. The need to communicate effectively in all languages was emphasized.

Conclusion

81. The Executive Committee:

- i. Noted the update on the development of the communications strategy.
- ii. Encouraged the Secretariat to conclude the exercise and present a report to the next session of the Executive Committee.

(d) Role of Chairs and Vice-Chairs of the Commission for the purposes of Rule V.1 of the Rules of Procedure

82. The Coordinator for Europe introduced the item affirming that all Chairpersons and Vice Chairpersons of the Executive Committee represent the Commission as a whole. He stated that the Executive Committee seeks to be as inclusive as possible and that this concept is enshrined in Rule V.1 of the Codex Rules and Procedures that states that "*Not more than one delegate from any one country shall be a member of the Executive Committee*". He added that this had not always been the practice and that for reasons of inclusiveness, transparency and credibility the Executive Committee should abide by the rules and there should not be two members from any one country.

83. The WHO Legal Counsel, speaking on behalf of the Legal Counsels of WHO and FAO, concluded that, in their analysis of Rule V.1 taking into consideration the text of Rules of Procedure of the Codex Alimentarius Commission, the context and specificity of Codex governance, the use of the word "delegate" points to including the chair and vice-chairs within the term "delegates" for the purpose of Rule V.1. He noted that Rule V.1 was in place since the time when only the officers and the members elected on a geographical basis were members of the Executive Committee and, as a consequence, the words "further" members contained in Rule V.1 could only have been read to imply that officers were members of the Committee.

84. The WHO Legal Counsel further stated that the officers of the Commission are elected from among the delegates of members of the Codex Alimentarius Commission and can only remain in office with the continuing endorsement of their delegations under Codex Rule III.1²¹. This explicitly stated link between the officer and his/her delegation creates a clear organic connection between the two.

85. He then put this interpretation in the context of discussions that have taken place over the last 10 years and explained the approach which was followed in 2009 and in 2013 when the Commission agreed to proceed to the election of the members of Executive Committee on a no-objection basis and without setting a precedent, which partly raises the current question.

86. The WHO Legal Counsel said that it would be desirable that members of the Codex Alimentarius Commission attempt to agree on an arrangement that would allow for a holistic solution and to also seek a long-term solution.

²¹ The Commission shall elect a Chairperson and three Vice-Chairpersons from among the representatives, alternates and advisers (hereinafter referred to as "delegates") of the Members of the Commission.

87. The Executive Committee agreed on the need for a permanent solution to this issue and sought clarification as to the understanding contained in the report of the 18th Session of the Commission (1989),²² and its relation with the Rules of Procedure. In response to the requests for clarification, the WHO Legal Counsel stated that the understanding of 1989 was an agreed interpretation of the Rules and in his opinion not in contradiction with Rule V.1. He reaffirmed that the Rules in the Procedural Manual should take precedence over subsequent understandings.

88. One Member noted that previous opinions provided by the Legal advisors had acknowledged that alternative interpretation could be supported and questioned the timing of requesting another opinion. The importance of not adopting policies that would result in exclusion was also noted. Other Members noted that the imbalance of regional distribution within the Executive Committee might lead to issues of representation and inclusiveness, more for some regions than for others.

89. With regard to the latter, the WHO Legal Counsel affirmed that the textual and contextual interpretation of Rule V.1 should not negatively impact the possibility of being elected as officers for any member of the Codex Alimentarius Commission and, in particular, those belonging to the region of North America which is composed of only two countries.

90. Some Members also raised the question whether the varying terms of office of Executive Committee members in conjunction with the rule that not more than one delegate from any one country shall be a member of the Executive Committee could additionally affect the prerogative of members of the Commission of becoming officers. The WHO Legal Counsel, speaking on behalf of the Legal Counsels of WHO and FAO, commented that pragmatic solutions could be found to address this potential challenge.

91. In his conclusions, the WHO Legal Counsel stated that the role of Legal Counsels was to give Members clarity on the interpretative history of the rules and its implications. He added that, if the Executive Committee and the Commission were to accept the WHO and FAO Legal Counsels' interpretation, no State should have more than one person sitting on the Executive Committee at the same time. He emphasized that the current state of affairs is not entirely satisfactory and requires more reflection to aim at a broader and permanent solution that would not lead to the same issue arising regularly.

92. In response to the request of the Coordinator for Asia, regarding the possibility to be elected as a Vice Chair at the Session of the Commission next week, the WHO Legal Counsel indicated that, in line with the proposed interpretation, a possibility would be that the Coordinator steps down at that time and that the region proposes a new Coordinator to step in and fill the mandate for the remaining term. In view of the advanced status of the arrangement for the 19th Session of CCASIA (to be held in November in Tokyo, Japan) the Secretariat said that a practical arrangement could be found for co-hosting the Session.

Conclusion

93. The Executive Committee:

- i. Noted the full discussions that had taken place and the varying opinions expressed regarding the interpretation of Rule V.1.
- ii. Noted that the interpretation given by the Legal Counsels of WHO and FAO added clarity to the reading of Rule V.1 by concluding that the use of the word "delegate" includes chair and vice-chairs within the term "delegates" for the purpose of Rule V.1, to the effect that no country should have more than one person sitting on the Executive Committee at the same time.
- iii. Recommended that any matters arising from the interpretation of Rule V.1 should be dealt with by the Commission in a way that ensures clarity and predictability for the future, taking into account the interpretation proposed by the Legal Counsels of WHO and FAO.

²² ALINORM 89/40, para. 183, i.

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