

CODEx ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
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World Health
Organization

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

Agenda Item 3

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CEXEC sub-committee on the application of the Statements of Principle concerning the role of science

Options for operationalisation of Statements of Principle: Use of footnote in standards

(prepared by the Chairperson of the CCEXEC sub-committee on the application of the Statements of Principle concerning the role of science)

1. One of the options under consideration to operationalise Statement of Principle 4 is the proposal to include a footnote reference in the standard to recognise transparently how a decision to advance the standard was reached (see para 6.2 of CX/EXEC 21/81/6). As noted in CX/EXEC 22/82/3, Members of the Executive Committee subcommittee on the application of the Statements of Principle concerning the role of Science (SoP) are divided on this issue with a majority of Members not in favour of inclusion of footnote references in Codex standards to record abstention from acceptance. Some of the reasons for their opposition to such a footnote includes the need to minimise use of footnotes in standards and the practicalities of maintaining and updating standards particularly if Members' positions were to change over time. There are also concerns that inclusion of footnotes that record the level of support or otherwise for a standard might not be good practice and may undermine the status of such standards. Conversely, those Members in favour argue that footnotes are used frequently by subsidiary bodies for a variety of reasons, including to enable advancement of standards that may otherwise be held due to a lack of consensus.

2. While the above-mentioned concerns are valid, the option of using footnotes in the standard in conjunction with recording Members' positions in the report merits further consideration given the apparent rare circumstances that may lead to Members to consider using SoP4. Specifically, the purpose of such a footnote would be to recognise that the standard was progressed in accordance with the rules of procedure (Statement 4 of the Statements of Principle concerning the role of science in the Codex decision making process and the extent to which other factors are taken into account and criterion (d) of the Criteria for the consideration of the other factors referred to in the Second Statement of Principle. It can be argued that such a footnote would afford greater transparency with regard to the process that led to a decision and the advancement of a standard where there is a consensus in the Commission on the science but not on other considerations, which go beyond those deemed relevant to the mandate of Codex.

3. Footnotes in standards are not used as a matter of course in Codex texts but have been included in specific situations or to capture, at a generic level, any specific factors or considerations that were pertinent to the advancement of the standard. There is often some discomfort amongst Members when footnotes appear to provide a derogation on the basis of national rules. Some examples of footnotes in Codex include the following:

- Use of notes in the *General Standard for Food Additives*, for example notes 477 and 478 (CXS 192-1995)
- Footnote 5 in the *Code of Practice to minimise and contain antimicrobial resistance* (CXC 61-2005)
- Note appended to the *Codex MRL for Clenbuterol* (CXM 2-2018)

These notes have been instrumental in supporting the advancement of specific Codex standards and related texts that may otherwise have been held up in the step procedure.

4. In suggesting the use of footnotes to facilitate the advancement of specific standards, it is acknowledged that the use of footnotes in standards should be only considered when the exceptional conditions set down in the Statements of Principle are met.

5. The Statements of Principle were developed to facilitate the timely progression of Codex standards in those exceptional situations when Members agree on the science and the necessary level of protection of public health but hold differing views on other considerations. While recording of Members' views and positions in the report of meetings provides a well-established and understood pathway for advancement of standards, it can be argued that a factual footnote in the standard to reflect the basis for advancement of a standard, in accordance with the conditions set down in Statement 4 might ensure greater transparency, particularly with regard to recognition that there is a consensus on the science and necessary level of protection of public health but continued divergence of views on other considerations.

6. The foregoing would suggest that use of statements of national positions in reports in line with current practice in conjunction with a generic footnote in the standard that recognises Members' positions (as recorded in the report) could offer a practical way forward and in doing so operationalise the SoP by fostering broad agreement to progress the standard in line with the conditions set out in Statement of Principle 4.

Proposal

7. To facilitate consideration of the footnote options, the following alternative text is presented for further consideration:

Members listed in paragraph ... of REP../CAC whilst agreeing on the science and necessary level of protection maintained their objection to the standard due to other considerations and abstained from acceptance in accordance with Statement 4 of the Statement of Principles concerning the role of science in the Codex decision making process and the extent to which other factors are taken into account and criterion (d) of the Criteria for the consideration of the other factors referred to in the Second Statement of Principle.