

codex alimentarius commission

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Agenda Item 4

CX/GP 99/5
March 1999

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON GENERAL PRINCIPLES

Fourteenth Session, Paris, 19 - 23 April 1999

IMPROVEMENT OF PROCEDURES FOR THE ADOPTION OF CODEX STANDARDS AND MEASURES TO FACILITATE CONSENSUS

1. During the past few years, a number of votes have been taken within the Codex Alimentarius Commission on the adoption of standards or other Codex provisions. The votes were almost evenly balanced with a substantial number of abstentions and did not reflect a consensus of all Codex Members governments. Under the WTO Agreements, and in particular the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement), Codex standards acquire legal relevance by virtue of their adoption by the Commission. At its Twenty-second session, in June 1997, the Commission agreed with a proposal that the Committee on General Principles should address the question of the improvement of procedures in order to facilitate consensus in the formulation and adoption of standards¹. In this connection, it was also envisaged that the question of appropriate decision-making procedures be addressed in the event that it should not be possible to achieve consensus.

2. This document reviews the status of Codex standards and related texts in light of the entry into force of the above agreements. It lays particular emphasis on the need to improve the methods of achieving consensus in the process of elaborating and adopting standards, both in the Codex Committees and in the Codex Commission itself. It also considers the issue of the method of adoption of proposed standards should consensus not be achieved. The document takes into account the views expressed during a preliminary discussion at the Thirteenth session of the Committee on General Principles in September 1998.

IMPLICATIONS OF THE SPS AND TBT AGREEMENTS WITH RESPECT TO CODEX STANDARDS

3. The SPS and TBT Agreements have major implications for the Commission, as shown by increasing controversy in the debates and procedures in the course of the Commission's recent sessions. The SPS Agreement recognizes that international standards, guidelines and recommendations for food safety are those standards, guidelines and recommendations established by the Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice.

4. The TBT Agreement contains similar but less explicit provisions, since it covers all aspects of Codex work which are not covered by the SPS Agreement. Where technical regulations are required and relevant international standards exist or their completion is imminent, WTO Members "shall use them, as a basis for

¹ ALINORM 97/37, paras. 124-125.

their technical regulations”, except when they would be an ineffective or inappropriate means for the fulfilment of the objectives pursued.

5. The first *Statement of Principle Concerning the Role of Science in the Codex Decision Process and the Extent to which Other Factors are Taken into Account* adopted by 21st Session of the Commission indicates that “*the food standards, guidelines and other recommendations shall be based on the principle of sound scientific analysis and evidence, in order that the standards assure the quality and safety of the food supply*”. Standards and related texts are regularly reviewed and updated in order to ensure that they reflect current information in the area of food science and technology. It is essential to establish the scientific basis of the decision process in order to facilitate consensus on matters related the quality and safety of food.

6. Following their recognition as reference points for the international community by the SPS and TBT Agreements, Codex standards now acquire legal relevance by the act of their adoption, independent of their acceptance by individual member countries. In particular, countries applying an adopted standard need not justify it as constituting an appropriate restriction on imports from the sanitary point of view. Countries may apply stricter standards, but they may be then called upon to justify the actual need for those stricter standards. The recognition accorded to Codex standards by the above agreements increases the importance of ensuring that those standards reflect the widest possible agreement in the international community.

7. Three possible approaches are examined below: improving consensus building in the elaboration procedures at the technical Committee level; avoiding where possible voting on the adoption of standards in the Commission itself; and finally reviewing the procedures for the adoption of standards where consensus cannot be achieved and voting cannot be avoided.

IMPROVEMENT OF THE ELABORATION PROCEDURES IN ORDER TO FACILITATE CONSENSUS

8. Any review of the procedures for the adoption of standards must be seen in the light of two at times conflicting considerations. The first is the need for speedy action in setting standards, especially at a time when WTO Members have an immediate requirement of Codex standards to assist them to fulfil their obligations under the various WTO agreements. In the course of the Twenty-second session of the Codex Alimentarius Commission, the WTO Representative laid particular emphasis on this issue. The second consideration is the need to achieve consensus among the countries as to the content of, and justification for, proposed standards, which may, in turn, require that a more deliberate approach be taken to the elaboration of those standards.

9. Under the present procedures, the Secretariat arranges for the preparation of a “proposed draft standard”, which is circulated to governments for comments and is then considered, in the light of any such comments, by the technical or other Committee concerned. The Committee may then present the text to the Commission as a “draft standard”. If the Commission adopts the “draft standard”, it is sent to governments for further comments and, in the light of these and after further consideration by the Committee concerned, the Commission reconsiders the draft and may adopt it as a “Codex standard”. The procedure from start to finish consists of 8 steps. In order to expedite this procedure, an “accelerated” procedure, consisting only of 5 steps, was set up. Under this procedure, the “draft standard” is reviewed by the subsidiary body concerned and referred to the Commission for adoption, without any further consultation of the governments. This accelerated procedure is used for non-controversial issues where there is a clear consensus, in particular when it is generally recognized that there is an urgent need to amend a standard.

10. The Guidelines for Codex Committees, which form an integral part of the Procedural Manual, already provide that “the chairperson should always try to arrive at a consensus and should not ask the Committee to proceed to voting if agreement on the Committee’s decision can be secured by consensus”. However, additional measures may be identified that might facilitate consensus building in the elaboration of standards at the Committees stage.

11. Possible additional measures could include any or all of the following:

- reallocating work priorities to take into account the possibility of reaching consensus on particular subject areas;

- ensuring that the scientific basis is well established on current data, and where necessary carry out further studies in order to clarify controversial issues;
- ensuring that issues are thoroughly discussed at meetings of the Committees concerned;
- organizing informal meetings of the parties concerned where disagreements arise.
- redefining the scope of the subject matter being considered for the elaboration of standards in order to cut out issues on which consensus cannot be reached;
- ensuring that matters are not progressed from step to step until all relevant concerns are taken into account and adequate compromises worked out;
- emphasizing to Committees and their Chairpersons that matters should not be passed on to the Commission until such time as consensus has been achieved at the technical level.

AVOIDING VOTING ON THE ADOPTION OF STANDARDS IN THE COMMISSION

12. As noted above, the Guidelines for Codex Committees, which form an integral part of the Procedural Manual, reflect the urge that Codex decisions should be reached by consensus. The Rules of Procedure of the Commission itself, however, and in particular Rule VI.2² and Rule VI.4³, could be viewed as implying that decisions should be taken by vote and that any Member of the Commission has the right to call for a vote to be taken on any matter at any time.

13. It may be desirable for the Commission to amend its Rules of Procedure to make it clear that every effort should be made to reach consensus on all matters, including the adoption of standards. It may also be clarified that the scope of Rule VI.2 is not to provide for automatic decision-making by voting and that the scope of Rule VI.4 is not to accord the power to any single Member to call for a vote, but merely to call for a vote to be by roll-call rather than by show of hands where the Commission has already decided to proceed to voting.

ADOPTION OF STANDARDS

14. As indicated above, with the entry into force of the SPS and TBT Agreements, Codex standards, guidelines and recommendations have acquired additional legal relevance as reference points on their adoption by the Commission. Under the present Rules of Procedure, all decisions of the Commission, including those on the adoption of standards, are taken by a simple majority of the votes cast. As noted above, a number of votes have been taken in recent sessions of the Commission on the adoption of standards. The votes were almost evenly balanced with a substantial number of abstentions. As a result, Codex standards were adopted or rejected by a relatively small majority and with a large number of Members of the Commission not voting in favour. Two recent examples illustrate this situation. At the Twenty-first session of the Codex Alimentarius the standard on maximum residue limits for growth hormones (beef) was approved by 33 votes in favour, 29 against and 7 abstentions⁴. At the Twenty-second session of the Codex Alimentarius Commission the revised standard for natural mineral waters was approved by 33 votes in favour, 31 against and 10 abstentions.

15. As noted above, the most desirable approach would be to try to avoid situations where voting on the adoption of standards is resorted to. In situations where consensus cannot be achieved and voting cannot be avoided, one possible approach would be to increase the majority required for the adoption of standards from the present simple majority to a qualified majority. In this context, it is to be noted that a two-thirds majority is

² Rule VI.2 provides that "Except as otherwise provided in these rules, decisions of the Commission shall be taken by a majority of the votes cast."

³ Rule VI.4 provides that "Subject to the provisions of paragraph 5 of this Rule, any member of the Commission may request a roll-call vote, in which case the vote of each Member should be recorded."

⁴ This standard was extensively referred to in the context of the dispute on EC measures concerning meat and meat products (hormones). See Report of the Appellate Body of 16 January 1998 which can be found on the Web site <http://www.wto.org/wto/dispute/distab.htm>.

usually required in established international practice for the adoption of legally binding international instruments and is the prevalent practice followed in similar standard-setting organizations. In this regard, it should be noted that a two-thirds majority is required for the adoption of conventions and agreements by the FAO Conference and the Health Assembly of WHO. In addition, bodies set up under the aegis of FAO entrusted with authority to adopt international regulatory measures normally take decisions by a two-thirds majority. Examples of this include the Indian Ocean Tuna Commission (IOTC), the General Fisheries Commission for the Mediterranean (GFCM) and the Commission on Phytosanitary Measures to be established under the revised International Plant Protection Convention (IPPC), as well as the Interim Commission on Phytosanitary Measures established by the FAO Conference in 1997 pending the entry into force of the revised Convention. The example of this latter Commission is of particular relevance, since its phytosanitary standards have the same status under the SPS Agreement as the food safety standards developed by the Codex Alimentarius Commission. On the other hand, it should be noted that decisions on the adoption of standards by the International Office of Epizootics (OIE), the third organization whose standards are explicitly recognized by the SPS Agreement are adopted by a simple majority of the votes cast. Other organizations entrusted with standard-setting functions, such as the International Organization of Standardization (ISO) and the International Electrochemical Commission (IEC), require a qualified majority for the adoption of standards. In the case of ISO and IEC, standards are elaborated in groups of restricted membership rather than in the plenary. It is to be noted that the existence of a requirement of at least a two-thirds majority for adoption may also have the effect in practice of promoting a genuine search for consensus.

16. Should the Commission consider that the requirement of a two-thirds majority vote for the adoption of standards could constitute an undue block on the process of adopting standards, it may wish to consider an alternative approach whereby a two-thirds majority vote would be required for the adoption of standards on the first two sessions at which the standard is proposed for adoption but that if the same standard is reconsidered for adoption at a subsequent session, only a simple majority would be required for its adoption.

SUGGESTED ACTION BY THE COMMITTEE

17. The Committee is invited to review this document, with particular reference to the three approaches suggested, and to submit its proposals to the Commission for adoption, together with any further views and recommendations that the Committee may wish to present.