

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
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Agenda Item 4

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JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON GENERAL PRINCIPLES

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

1. The Committee on General Principles at its Fourteenth Session in April 1999 considered a document prepared by the FAO Legal Counsel analysing procedures for the adoption of Codex standards and measures to facilitate consensus. The Committee recommended that Rule X – Elaboration of Standards be amended to make it clear that decisions by the Commission on the adoption of standards may be taken by vote only when other means of reaching a decision had been thoroughly explored. An amendment to this effect was adopted by the Commission at its Twenty-third session in July 1999¹.
2. During the adoption of the amendment to Rule X, a number of delegations expressed the view that when decision could not be reached by consensus and voting was required, a two-third majority should be introduced, in view of the importance of Codex texts as a reference in international trade. The Commission noted that this question was currently under consideration in the Committee on General Principles and agreed that the Committee should proceed with its work on this issue as a matter of priority.
3. It is of course too soon to judge the full impact of the amendment to Rule X on the process of elaboration and adoption of standards, although it is to be noted that during the last session of the Commission, one proposal for a standard that did not achieve consensus was not voted on in the Commission but was referred back to the relevant committee for further consideration. Matters that require further consideration by the Committee on General Principles include practical procedures for achieving consensus in the process of elaboration of standards, the interpretation of Rule VI of the Rules of Procedure; and the majority required for voting on the adoption or amendment of standards if consensus cannot be achieved.

¹ The amendment to Rule X of the Codex Rules of Procedure, now entitled "elaboration and adoption of standards", consisted of the addition of a new paragraph 2 which reads as follows:

"2. Members of the Commission shall make every effort to reach agreement on the adoption or amendment of standards by consensus. Decisions to adopt or amend standards may be taken by voting only if such efforts to reach consensus have failed".

IMPROVEMENT OF THE ELABORATION PROCEDURES IN ORDER TO FACILITATE CONSENSUS

4. 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.

5. 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.

6. 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”. This provision has been strengthened and reflected in the Rules of Procedure of the Commission in so far as the adoption and amendment of standards by the Commission are concerned. It is suggested that the Chairpersons of Codex Committees should be reminded once again of the importance of achieving consensus at all stages of the elaboration of standards and that draft standards should, as a matter of principle be submitted to the Commission for adoption only where a large measure of consensus has been reached. While complete agreement may not always be possible, acceptable compromises should be sought in order to complete the elaboration of Codex texts within a reasonable period of time and avoid the disruption of progress in Codex work.

7. While much of the responsibility for facilitating the achievement of consensus will lie in the hands of the Chairpersons and members of the Codex Committee, additional measures may be identified that might facilitate consensus building in the elaboration of standards at the Committees stage.

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

- 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, provided that the objectives of any such meetings are clearly defined by the Committee

concerned and that participation is open to all interested delegations and observers in order to preserve transparency;

- 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.

THE INTERPRETATION OF RULE VI OF THE RULES OF PROCEDURE;

9. 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. This has been further reflected in the new Rule X.2 of the Codex Rules of Procedure adopted by the Commission at its last session. The Committee, however, at its Fourteenth Session in April 1999, expressed concern that Rule VI.2² and Rule VI.4³ should not be interpreted 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. The Committee agreed that relevant amendments should be proposed for consideration at the present session.

10. Given the amendment to Rule X adopted by the Commission in July 1999, it would not seem necessary to propose any further amendment to Rule VI.2. It is already clearly stated that the reference to decisions being taken by a majority of votes cast in Rule VI.2 is subject to the other provisions of the Rules, and this would include of course the special provisions relating to the procedure for the adoption and amendment of standards.

11. The provisions of Rule VI.4 on the other hand may still be open to possible misunderstandings. This could be dispelled by inserting the words “and paragraph 2 of Rule X ” after the words “paragraph 5 of this Rule”. Rule VI.4 as modified would thus read as follows:

Subject to the provisions of paragraph 5 of this Rule and paragraph 2 of Rule X, any Member of the Commission may request a roll-call vote, in which case the vote of each Member shall be recorded.

THE MAJORITY REQUIRED FOR VOTING ON THE ADOPTION OR AMENDMENT OF STANDARDS IF CONSENSUS CANNOT BE ACHIEVED

12. 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. 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 examples illustrate this situation. At the Twenty-first session of the Codex Alimentarius Commission the standard on maximum residue limits for growth

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.”

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.

13. 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 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.

14. 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.

15. In the discussions on these options at its Fourteenth Session, many delegations supported the amendment of the majority required for the adoption and amendment of standards to two-thirds, one country expressing its objections on the grounds that it would make it more difficult to adopt and revise standards. Several delegations supported the proposal to require a two-thirds majority of the votes cast on the first two sessions at which a text is considered for adoption, and a simple majority at a subsequent session if a two thirds majority could not be met, in order to avoid excessive delays in the adoption of standards. Some delegations, while not opposing the amendment, proposed that the discussion focus on the measures to achieve consensus as a first stage and a clarification of Rule VI.4 before considering specifically the amendment of the majority. The Committee requested that

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>.

relevant proposals for amendments to the Rules be presented in the revised document. A possible wording for such amendments is presented in Annex 1 to this document.

16. During the adoption of the amendment to Rule X of the Rules of Procedure by the Commission in July 1999, a number of delegations again expressed the view that when decision could not be reached by consensus and voting was required, a two-third majority should be introduced, in view of the importance of Codex texts as a reference in international trade.

SPECIAL NEEDS OF DEVELOPING COUNTRIES

17. During the discussions on this matter at the Fourteenth Session of the Committee on General Principles, the possibility of increased use of advanced information technologies (such as the Internet) was raised, as well as the possibility of instituting a system of postal voting. There was no consensus on this, many delegations stressing that current procedures allow for full discussion and exchange of views on the issue under consideration, in order to ensure the transparency of the process and arrive at compromises that would facilitate consensus. However, the Committee recognized that the involvement of developing countries should be facilitated and increased, and that this could be done through a number of measures, especially technical assistance to improve the infrastructure and capacity of such countries to participate in the Codex process.

18. Technical assistance to developing Member countries has been a feature of the Codex and FAO and WHO Regular Programmes over the past 5-6 years. Under the Codex programme and in cooperation with WTO, national and sub-regional workshops and seminars on the establishment and administration of national Codex Committees and/or Contact Points have been held. FAO's Technical Cooperation Programme provides more comprehensive support to individual Member countries. WHO provides technical cooperation through its network of Regional Offices.

SUGGESTED ACTION BY THE COMMITTEE

19 The Committee is invited to review this document, with particular reference to the three outstanding matters outlined above, and to submit its proposals to the Commission for adoption, together with any further views and recommendations that the Committee may wish to present.

ANNEX

**POSSIBLE AMENDMENT TO RULE X.2 OF THE RULES OF PROCEDURE OF THE
CODEX ALIMENTARIUS COMMISSION⁵**

Rule X - Elaboration and adoption of standards

1. Subject to the provisions of these Rules of Procedure, the Commission may establish the procedures for the elaboration of world-wide standards and of standards for a given region or group of countries, and, when necessary, amend such procedures.

Option I

2. Members of the Commission shall make every effort to reach agreement on the adoption or amendment of standards by consensus. Decisions to adopt or amend standards may be taken by voting only if such efforts to reach consensus have failed. **In the event of voting on the adoption or amendment of a standard, the required majority shall be two-thirds of the votes cast.**

Option II

2. Members of the Commission shall make every effort to reach agreement on the adoption or amendment of standards by consensus. Decisions to adopt or amend standards may be taken by voting only if such efforts to reach consensus have failed. **In the event of voting on the adoption or amendment of a standard, the required majority shall be two-thirds majority of the votes cast at the first two sessions of the Commission at which such adoption or amendment is considered, and a majority of the votes cast at subsequent sessions.**

⁵ In this Annex, words shown underlined are to be added.