

# codex alimentarius commission



FOOD AND AGRICULTURE  
ORGANIZATION  
OF THE UNITED NATIONS

WORLD  
HEALTH  
ORGANIZATION



JOINT OFFICE: Viale delle Terme di Caracalla 00153 ROME Tel: 39 06 57051 www.codexalimentarius.net Email: codex@fao.org Facsimile: 39 06 5705 4593

Agenda Item 4

CX/GP 09/25/4-Add.1

**JOINT FAO/WHO FOOD STANDARDS PROGRAMME  
CODEX COMMITTEE ON GENERAL PRINCIPLES  
Twenty-fifth Session  
Paris, France, 30 March to 3 April 2009**

**CONCEPT OF “CONSENSUS” AND ITS APPLICATION IN CODEX**

**Replies to CL 2008/34-GP**

**(Canada, Chile, Mexico and Uruguay)**

## **Canada**

Canada would like to express its appreciation to the Codex Secretariat for the preparation of the background paper on “consensus” contained in CL2008/34-GP. Canada has carefully reviewed the statements in Section D.3 and the proposals in Section D.4 and submits the following comments and, where warranted, additional information with respect to each statement and proposal.

### **D.3. Conclusions**

#### **3.1 Consensus and non-consensus are in most cases interpreted satisfactorily by Codex Chairs.**

Canada agrees. The large number of standards, guidelines and recommendations that are consistently adopted without contention at each session of the Codex Alimentarius Commission demonstrate that the Chairpersons of Codex Committees and Task Forces are successful at facilitating the achievement of consensus. Canada is of the opinion that the elaboration of a definition of consensus, which could also require the development of an ancillary process to verify achievement of consensus, might unduly restrain the flexibility of Chairpersons to work out means specific to the situation in order to achieve consensus. This could be detrimental to advancing standards in the step process.

**3.2 Many of the proposals made by Chairs to increase chances of reaching consensus point to the need for the Codex family (meaning all involved – Chairs, Secretariat and Delegations) to learn to work together in an even more structured and more collaborative manner. Much of this work will have to take place outside of plenary halls in various forms of informal meetings (which were seen as an essential way of fostering consensus by all who replied), but it must also take place in a manner that is as open and transparent to all parties as possible without obstructing the possibility to find consensus.**

Canada supports this conclusion, but believes it would benefit from further elaboration. As noted in Canada’s comments under 3.1, although there are notable exceptions, consensus is generally achieved in Codex Committees and Task Forces, even if it sometimes takes many sessions to do so. Where such is not the case, it may be attributable to intransigency, where the “Codex family” is unable to work together in a collaborative manner, possibly because the context of the work (which provides the structure noted above) is disregarded. The context is the mandate of Codex (protecting the health of consumers and ensuring fair practices in the food trade), and in the interests of achieving consensus, positions that either support or

oppose an aspect of a draft Codex standard, guideline or recommendation should be defensible on the basis of the Codex mandate.

With respect to the use of informal meetings to foster consensus, Canada is strongly of the opinion that those Delegations that hold opposing views must actively participate in the informal meetings. To promote openness and transparency, a summary record of decisions or recommendations resulting from the informal meetings should be prepared for distribution and consideration in plenary.

**3.3 The basic precondition to being able to reaching consensus is that the parties are willing to negotiate and move positions.**

Canada agrees. However, it is also imperative for the parties to be working towards a common goal in order for them to be able to consider and accept alternate means to attain it. As Canada has stated under 3.2, the common goal is the fulfilment of the Codex mandate, which should not be adversely influenced by outside considerations.

**3.4 Consensus is frequently applied within the UN system and other international intergovernmental organizations (e.g. WTO) and while there seems to be a good common understanding of the meaning of consensus no legal definition of consensus has been adopted by any of these organizations. Should Codex see the need to adopt such a definition it would be advisable that it is in line with the general understanding and common practice in the UN system.**

Canada questions whether Section 2 of CL2008/34-GP supports the conclusion that there is a good common understanding of the meaning of consensus within the UN system and other international intergovernmental organizations. Rather, it appears that the understanding is more general - "variations on a theme" so to speak. Hence, no specific legal definition has been forthcoming. Canada is not convinced that Codex can or should adopt a definition for consensus. Definitions have, as their purpose, to make the meaning of words or concepts more definite and detailed. This could restrict the flexibility for achieving consensus within Codex Committees and Task Forces, which is provided by the more general understanding of the concept.

**3.5 There are cases in Codex meetings in which there is clearly no consensus but it is not clear how to proceed in order to get achieve consensus.**

Canada agrees. The reason for the lack of consensus must be identified so as to determine how to proceed. If the reason is intransigence on the part of certain delegations, which is based on considerations outside of the mandate of Codex, such concerns should not carry the same weight with respect to concluding on consensus as those within the mandate of Codex (e.g., insufficiency of scientific evidence).

**3.6 There are cases where delegations feel that the concept of consensus has not been applied harmoniously between different Committees or even within the same session.**

Canada allows that this may be the case but it should be expected, to a certain degree, when Chairpersons are individually responsible for "working out the means of progressing the work of a Committee." (Reference: Guidelines for Committees, Consensus, Codex Alimentarius Commission Procedural Manual). Obviously, extreme variations in application of the concept of consensus are to be avoided but Canada notes that the proposals in Section 4 are likely to promote an acceptable level of consistency.

**3.7 There are cases where the Chair declares consensus and some delegations do not agree and are not content with the decision. They may feel that the correct process has not been followed but decide not to block the decision.**

Canada allows that this may be the case. However, it would be important to ascertain whether the lack of agreement by a particular delegation is based on considerations within or outside of the Codex mandate.

**D.4. Measures to describe and improve the Codex Consensus Building Process**

**4.1 The Secretariat will complete the first version of the Chairs-booklet with any guidance given by the Chairs in this document and by members and observers in comments and during the discussion in the**

**Committee on General Principles including a description of the Codex Consensus Building Process as to be followed by Chairs. The booklet primarily meant for the use by Codex Chairs as their personal guide will be publicly available on the Codex website as a work in progress building on the actual experience with the process in Codex sessions.**

Canada supports this proposal but is of the opinion that an understanding of the Codex Consensus Building Process is essential for delegates as well as Chairs. The guidance booklet for Chairs may also be a valuable reference for delegates. Furthermore, Codex Contact Points for all member countries should be encouraged to include discussion of the building of consensus in the training of Codex delegates and the Codex Secretariat could consider preparing a "Guide to Building Consensus" to support such training.

**4.2 Cases as in 3.4, 3.5, and 3.6 could be taken up in the informal meeting of chairs and CCEXEC as appropriate so that the process can be reviewed and, if necessary, adapted and corrective action taken.**

Canada supports this proposal but notes that the reference should be to cases as in 3.5, 3.6 and 3.7 of Section D.

**4.3 The Codex Secretariat could provide the means for the Chairs to meet once a year in a facilitated forum to further discuss problem cases and to develop the Codex Consensus Building Process. Any new results are to be included in the Chairs booklet.**

Canada fully supports this proposal. Peer level discussion of problem cases is a very practical way to transfer experience and knowledge gained, particularly to new(er) Chairs. Canada is also of the opinion that, in addition to providing the means for the Chairs to meet annually, the Codex Secretariat should participate in these meetings given their role as advisors to Chairpersons.

**4.4 The following could be added at the end of the "Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces":**

*Where there is a deadlock in the standards development, the Chairperson should consider acting as a facilitator, or appointing a facilitator, working during a session or between sessions to assist members to reach consensus. The facilitator should orally report on the activity undertaken and the outcome of the facilitation to the plenary.*

Canada sees merit in this proposal but notes that an appointed facilitator must be a neutral party with sufficient knowledge of the issue to assist in advancing the deliberations. This might limit the facilitation role to the Chairperson or the Codex Secretariat, unless the "opposing" parties mutually agree to accept another delegate in the role. The report presented by the facilitator to plenary should be summarized in the report of the meeting.

## **Chile**

### **1.- General Comments**

It should be clarified that, in reality, the Codex Committee on General Principles has been requested by the Commission to work on a 'DEFINITION' of consensus. The background material compiled by the Secretary in the document under consideration contains information that the members were familiar with when the work was decided. This is especially true of the references to the procedures. This is fine but only if it is considered as background material. Furthermore, the definition of "consensus" is a task pending the recommendations of the FAO/WHO experts, who will be conducting an analysis of Codex work (which has been postponed). It would be productive to add the experts' grounds for their recommendation to the background material.

Regardless of the decision that is reached after discussion, the goal is to try and achieve a consensus about the definition of consensus.

The document points out that other organisations have not defined the term (and refers to the United Nations and the WTO). However, depending on the organisation, the criteria are different. In the case of the WTO, a single Member's opposition is enough to block a given decision. On the other hand, at the

United Nations, depending on the forum, the criteria are different. However, particularly in the case of the Codex Alimentarius, the concept of consensus-based decisions in the standard-setting process has to be strengthened.

An appropriate definition would provide the process with increased transparency, on the one hand, and the Chairs with an objective tool for decisions, on the other.

This work does not impede procedures; on the contrary, it is a complement to fine-tuning procedures facilitating the consensus building process.

## **2.- Comments on Section D.3.**

### **3.1.- *Consensus and non-consensus are in most cases interpreted satisfactorily by Codex Chairs.***

When there is no opposition, there is no problem, and this is the majority of the cases. However, when there is an opposition, there is no study that objectively bears out this statement, and any response would be subjective.

**3.2.- *Many of the proposals made by chairs to increase chances of reaching consensus point to the need for the Codex family (meaning all involved – Chairs, Secretariat and Delegations) to learn to work together in an even more structured and more collaborative manner. Much of this work will have to take place outside of plenary halls in various forms of informal meetings (which were seen as an essential way of fostering consensus by all who replied), but it must also take place in a manner that is as open and transparent to all parties as possible without obstructing the possibility to find consensus.***

This statement refers to the procedures for reaching or facilitating consensus, an issue that should be addressed and agreed upon, possibly – as proposed by the Secretary in point 4 - in a booklet or guidelines, based on what has already been worked on, and with the consent and agreement of everyone through parallel independent work that is, however, complementary to the ‘Definition’.

**3.3.- *The basic precondition to being able to reaching consensus is that the parties are willing to negotiate and move positions.***

We agree, but this is also part of process directives or guidelines.

**3.4.- *Consensus is frequently applied within the UN system and other international intergovernmental organizations (e.g. WTO) and while there seems to be a good common understanding of the meaning of consensus no legal definition of consensus has been adopted by any of these organizations. Should Codex see the need to adopt such a definition it would be advisable that it is in line with the general understanding and common practice in the UN system.***

As was said in our general comments, within the WTO, it is very clear that when one Member is opposed, no decision is made. Within the United Nations, depending on the relevant forum, the criteria vary. If this make it easier, in a transparent manner, to reach a definition that would facilitate Codex decision-making, nothing prevents this example from being adopted by other forums, although we are aware that the Codex process is quite special and different from that of the other forums.

Among other recommendations of the FAO/WHO Experts, there is the recommendation to provide the standard-setting process with greater expediency and transparency.

**3.5.- *There are cases in Codex meetings in which there is clearly no consensus but it is not clear how to proceed in order to achieve consensus.***

We agree; it is a fact that underscores the need to work on the definition and the procedures in a complementary manner.

**3.6.- *There are cases where delegations feel that the concept of consensus has not been applied harmoniously between different Committees or even within the same session.***

We agree; in these cases, the decision is subject to the session Chair’s criteria, a situation where a definition and guidelines could be of substantial help to the chairs, and heterogeneous decisions could be avoided.

**3.7.- *There are cases where the Chair declares consensus and some delegations do not agree and are not content with the decision. They may feel that the correct process has not been followed but decide not to block the decision.***

We agree because the many delegations feel that it depends on where the opposition is coming from that determines whether it will be considered in the decision. This feeling could be avoided or abated by removing subjectivity from the decisions and by relieving the weight of decision-making for the Chairs, primarily through a consensually agreed-upon definition of consensus and with guidelines for facilitating the said consensus.

### **3.- Comments on Section D.4**

**4.1.- *The Secretariat will complete the first version of the Chairs booklet with any guidance given by the chairs in this document and by members and observers in comments and during the discussion in the Committee on General Principles including a description of the Codex Consensus Building Process as to be followed by Chairs. The booklet primarily meant for the use by Codex Chairs as their personal guide will be publicly available on the Codex website as a work in progress building on the actual experience with the process in Codex sessions.***

We agree; we support this but it should be subsequent to the work on the definition, and not a substitute to this work.

**4.2.- *Cases as in 3.4, 3.5, and 3.6 could be taken up in the informal meeting of chairs and CCEXEC as appropriate so that the process can be reviewed and, if necessary, adapted and corrective action taken.***

We agree; this could also be done in a complementary way, somewhat like monitoring the process that is reached, and it should ensure transparency and the participation of all Members, as noted in the second part of the paragraph, including when there is agreement that there is no need to review the process and its grounds.

**4.3.- *The Codex Secretariat could provide the means for the Chairs to meet once a year in a facilitated forum to further discuss problem cases and to develop the Codex Consensus Building Process. Any new results are to be included in the Chairs booklet.***

In keeping with the above comments, this will have to be worked on when the processes are discussed. This is a good recommendation that could be integrated into the two previous points. However, it is also essential to consider the participation and opinions of the members at the sessions; this is why we would like to recall the fact that most of the Chairs are from developed countries.

**4.4.- *The following could be added at the end of the “Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces”:***

***Where there is a deadlock in the standards development, the Chairperson should consider acting as a facilitator, or appointing a facilitator, working during a session or between sessions to assist members to reach consensus. The facilitator should orally report on the activity undertaken and the outcome of the facilitation to the plenary.***

This will formalise something that may now be done informally. However, along with the formalisation, it is necessary to clarify: the concept of facilitator, especially when it is not the Chair, how the facilitator is appointed, elected or selected, and how funding for the facilitator is defined if a trip is required, and so on.

### **4.- Other issues involved in the application of the consensus concept**

The conclusions as well as the proposals submitted by the Secretary focus on the “Consensus Building Process” and they will be very useful when this issue is addressed. However, as was said before, it is

unrelated to the work required to define consensus, work that will have to focus on the **proposals for a definition** submitted by the Members.

## 5.- Proposal for a definition

As a starting point for the discussions, we support the definition adopted to this effect at the Coordinating Committee for Latin America and the Caribbean, which is, “consensus is the absence of justified opposition from any member present at the meeting where the decision is taken.”

## Mexico

Mexico would like to express its appreciation to the Codex Secretary for the work that has been done and for the importance it is giving to the issue.

Similarly, we consider that the proposals drawn up by Codex to facilitate consensus have proven to be of great help in the different committees. However, we recognise that they have not always been applied consistently, especially regarding highly controversial issues within Codex, which has produced some inconsistencies in the adoption of issues without receiving widespread approval or disapproval. For this reason, we would like to reintroduce what was said at the last CCLAC session, on the convenience of defining the “consensus” concept within Codex, with a view to ensuring its consistent interpretation and application so that the decision-making process is transparent. This is because there is a concern about the disparity of the ways that the term “consensus” has been interpreted and applied at the different Codex sessions. However, it is of the utmost importance that the Codex establish a definition of consensus, without resorting to a voting system at all. Concerning the adoption of standards, Codex procedures will have to be reviewed to avoid resorting to a vote.

For the purpose of submitting proposals to be discussed at the next GP meeting, we would like to take the definition established by the Paraguay Delegation as the basis:

**“Consensus is the absence of justified opposition from any member present at the meeting where the decision is taken.”**

Comments about other proposals to facilitate consensus:

### 2.1 Informal meetings

Although this has facilitated consensus during plenary halls, when this type of informal meeting is held, simultaneous translations into the three Codex working languages must be guaranteed, so as to strengthen the initiative and ensure the transparency of its application.

#### 2.1.3 Contact between the sessions

We consider that this proposal is very useful; the governments that have opposing positions could settle their differences bilaterally, and reach an agreement that would make it possible to continue the discussions during the plenary halls, thus facilitating the approval of Codex work.

#### 2.2.2 Consider the written comments submitted

- This is a common practice in some Codex committees; the aim is to ensure that the comments of the countries that cannot attend for economic or other reasons are presented by another Member present at the Codex meeting or by the regional coordinator, so that their comments or concerns can be considered.
- The Codex could work on an outline or template for the comments, which would facilitate reading and reduce costs for the host governments and Codex Secretariat. On numerous occasions, adding comments to the body of the document does not allow for a rapid identification of the changes, added to the short time in which to translate the entire document.
- Propose a general evaluation of the chairs that would allow the members present at the session to qualify the performance of the chair, which would be handed in at the end of each session and analysed by the Secretariat. The purpose is to improve the chair’s performance in case of an improper application of the measures taken to facilitate consensus.

- We suggest that the participants at Codex sessions have power of decision, as much as possible, so as to expedite Codex standard-setting procedures and not have to wait a year or more to establish a position on the issue to address.

## Uruguay

Concerning the CL 2008/34-GP document, Uruguay is pleased to submit the following comments:

**Section D.3:** Generally speaking, we agree with all the conclusions drawn by the Codex Secretary and mentioned in 3.1 to 3.7. However, we would like to make the following remarks:

3.2 We do not think it advisable that the consensus rest substantially on the work and result of informal meetings, such as those described in the second sentence of this paragraph. Many members of developing countries have trouble attending the formal bodies of Codex. Attending informal meetings is even more difficult for the said Members, thus they would be excluded from a part of the process.

3.5 We consider that this point denotes a reality within Codex, but we believe that when the “booklet” for the chairs is drafted (paragraph 4.1), the reasons for non-consensus will have to be analysed in depth. With this in mind, the cases where “non consensus” refers to questions of a scientific nature should be separate from cases where “non consensus” is about to non-scientific issues.

3.7 The wording is not clear. The process or way in which the chair reaches the conclusion that there is, or is not, a consensus must be separate from the decision per se, which is adopted based on the said consensus, or non-consensus.

### Section D.4:

4.1 We agree with the proposal.

4.2 (a) The reference to 3.4 should be removed because it is a merely descriptive paragraph, and other international organisations should be mentioned. Furthermore, we believe that, if it is necessary to adopt a definition of consensus (as said in the second sentence of the paragraph), the work should not be the sole competence of the informal meeting of the chairs and the CCEXEC.

(b) The link between what is written in 3.6 and the cases being taken up in the informal meetings of chairs or CCEXEC is not clear.

4.3 The yearly meetings of the chairs should not be unduly onerous compared to the expected results; preference should be given to virtual meetings over face-to-face meetings.

4.4 We agree with the use of facilitators. Uruguay believes that this possibility could substantially contribute to reaching consensus.