

codex alimentarius commission



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Agenda Item 4

CX/GP 10/26/4

**JOINT FAO/WHO FOOD STANDARDS PROGRAMME
CODEX COMMITTEE ON GENERAL PRINCIPLES
Twenty-sixth Session
Paris, France, 12 - 16 April 2010**

PROPOSAL TO AMEND THE GUIDELINES FOR CHAIRPERSONS

Replies to CL 2009/26-GP

**(Canada, Colombia, Costa Rica, Dominican Republic, Egypt, Iran, Japan, Kenya, Philippines,
New Zealand, United States)**

Canada

The proposal suggests the addition of the following text in front of the paragraph starting with the words “The chairperson should also consider...”:

“Where there is justified sustained opposition to substantial issues the chairperson should ensure that the views of concerned members be taken into consideration by reconciling conflicting arguments before deciding that a consensus has been reached”.

Canada does not support the proposed addition as it is our opinion that the additional text will not assist a chairperson in determining whether there is consensus. It is not clear to us as to what would constitute “justified” opposition or how a determination would be made as to what is a “substantial” issue.

To date, there are no agreed criteria whereby a chairperson can determine whether opposition is “justified”. It is Canada’s opinion that opposition to provisions under consideration for inclusion in Codex standards must be based on considerations relevant to the Codex mandate. As Codex has yet to have discussions on what would constitute such criteria, it would be premature at this time to introduce the concept.

Given this absence of criteria, it is our view that interpretation by Chairpersons of what is “justified” would be inconsistent and ultimately result in impediments to progressing Codex texts rather than enhancing achievement of consensus.

Canada, therefore, does not support the proposed amendment.

Colombia

First, our remarks are in reference to the Spanish version of CL 2009/26-GP.

The proposal may enrich the guidelines to chairpersons when a consensus has not been reached. However, how to reach a decision when an opposition is considered as “justified” is not clear.

For the purpose of clarifying this issue, Colombia proposes the following:

A list of representatives from three organisations independent of the parties shall evaluate and assess whether the opposition can be deemed justified. We suggest that representatives of the FAO, WHO and a consumer organisation be on this list.

Costa Rica

With regard to the draft proposal submitted by the Malaysian delegation, Costa Rica suggests the following wording:

“Where there is ~~justified~~ informed sustained opposition to substantial issues the chairperson should ensure that the views of concerned members be taken into consideration by reconciling conflicting arguments before deciding that a consensus has been reached.”

Dominican Republic

The Dominican Republic welcomes this opportunity to comment on the **Proposal to amend the section on consensus in the Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces**, in view of strengthening the document.

Concerning the proposal of the Delegation of Malaysia to include the following in front of the paragraph starting with the words “The chairpersons should also consider...” in the section on consensus in the Guidelines to Chairpersons of Codex Committees and Ad Hoc Intergovernmental Task Forces:

“When there is justified sustained opposition to substantial issues the chairperson should ensure that the views of concerned members be taken into consideration by reconciling conflicting arguments before deciding that a consensus has been reached.”

The Dominican Republic agrees to support Malaysia’s paragraph and, at the same time, suggests adding “**in addition to**” after Malaysia’s paragraph. For further clarity, we suggest that the relevant paragraph be drafted as follows:

“The chairpersons should also ensure, “where there is justified sustained opposition to substantial issues, that the views of concerned members be taken into consideration by reconciling conflicting arguments before deciding that a consensus has been reached”, in addition to ensuring that the following measures be applied to facilitate consensus-building during the procedure to draft standards within the Committees: (...)”

Egypt

Egypt agrees with the proposal presented by Malaysia with an amendment in the wording as follows:

Consensus means no objection after completing the whole procedures and after scientific views and principles were taken into consideration. This should be the guidance for the chairperson before declaring consensus. After that, in the case of sustained opposition to substantial issues; lastly, the Chairperson should follow the voting procedures.

Iran

- In the case of a stalemate, in principle we agree to the appointment of a facilitator who would work with the concerned parties and assist in the realization of a consensus.
- That facilitator would ideally be both knowledgeable and capable.
- To strengthen the principle of consensus, the appointed facilitator should take care that inputs from country delegations &/or their representatives - whether they propose or oppose a motion - are supported by acceptable scientific rationale, objective evidence and tangible observations.

Japan

Regarding the proposed inclusion by Malaysia, as reproduced below in English and in French,

“Where there is justified sustained opposition to substantial issues the chairperson should ensure that the views of concerned members be taken into consideration by reconciling conflicting arguments before deciding that a consensus has been reached”

« Lorsqu’il y a une opposition durable justifiée sur des questions de fond, le Président devrait faire en sorte que les vues des membres concernés soient prises en considération en conciliant les arguments contradictoires avant de décider que l’on est parvenu à un consensus ».

1. It is difficult to interpret the underlined part above exactly, because “issues” or “questions” are something to be debated, not something to be opposed or supported.
2. Is it intended to say “Where there is justified opposition to the majority’s opinion on substantial issues, (...)?””
3. If the above interpretation is correct, the content of the proposed inclusion is largely covered by points (b) and (e) in the last paragraph of the Guidelines, i.e.
The Chairperson should also consider implementing the following measures in order to facilitate consensus building in the elaboration of standards at the Committee stage:
 - (a)
 - (b) ensuring that issues are thoroughly discussed at meetings of the Committees concerned;
 - (c) ensuring that matters are not progressed from step to step until all relevant concerns are taken into account and adequate compromises worked out.
4. Before advancing the debate, Japan wishes to request clarification from Malaysia first.

Kenya

Kenya agrees with the Malaysian view but with amendments and would like to rephrase it as indicated below and insert it as new item (c) (the previous (c) being changed to (d)):

“(c) the views of concerned members, where there is justified sustained opposition to substantial issues, by reconciling conflicting arguments before deciding that a consensus has been reached.”

New Zealand

New Zealand believes that the Commission has made significant advances in promoting consensus based decision making in Codex. The establishment of Measures to facilitate consensus and the Guidelines to chairpersons of Codex committees and ad hoc inter governmental task forces are important steps in this process and clearly signalled the importance that the Commission and its members attached to consensus based decision making.

The guidelines set out in the Procedural Manual provide, in our view, clear and pragmatic guidance to chairpersons on the application of consensus based decision making. In terms of these guidelines chairpersons of Committees and task forces have very clear responsibilities to ensure that issues are thoroughly discussed at meetings and ensuring that matters are not progressed from step to step until all relevant concerns are taken into account and adequate compromises worked out. The guidelines provide for the convening of informal meetings where disagreements emerge and consider ways for resolving differences. It is incumbent on chairpersons to take all pragmatic steps to ensure that the views of all members are taken into account and issues are not advanced until all relevant issues are addressed. The guidelines also provide for possible redefinition of scope of work where consensus cannot be reached. We also note the proposal to develop a guidance booklet for chairs to help them promote consensus based decision making. The recent practice of holding informal meeting of chairs to discuss problems and experiences with the application of consensus based decision making will also be helpful to promote the practical application of the guidelines. Accordingly we believe that existing guidelines already address the kind of situation envisaged in the Malaysian proposal and do not see the need for any further additions to the Guidelines at this stage.

New Zealand believes that the focus and priority of the commission at this stage should be on furthering the practical implementation of its measures to facilitate consensus and the companion guidelines for chairpersons of committees and task forces.

Philippines

Proposed Text:

“Where there is justified sustained opposition to substantial issues the chairperson should ensure that the views of concerned members be taken into consideration by reconciling conflicting arguments before deciding that a consensus has been reached.”

Rationale: The Philippines supported the position of Malaysia in the last session of the CCGP. We believe that there should be an exerted effort by the Chairman to resolve various positions. Based on past experiences, there were Codex Committee meetings where the Chairman would immediately make a ruling without giving adequate attention on and consideration of the counter positions thus, leaving out the views of concerned members. Moreover, the creation of a small group of countries tasked by the Chairman to resolve a specific issue or issues that come up during plenary is also an effective manner of achieving consensus.

United States

General Comments

The United States is firmly committed to consensus as the approach to decision-making in the standards-related work of Codex, and appreciates Malaysia’s efforts to ensure that consensus is applied uniformly and consistently in the Codex standard setting process.

We also recognize the important responsibility of the committee chairs in ensuring progress through consensus. To that end, if a delegation brings forward an opposition to a particular issue, a chair must accept that it is a genuine and legitimate concern of that delegation. Given that premise, then it behooves the chair to bring to bear all means available to have the opposing and supporting delegations work through their differences and find the points of agreement that they can mutually support. While we believe that the intent of Malaysia’s proposal is to move us closer to a definition of consensus and provide the chairpersons with additional guidance on resolving some of the stalemates in which Codex finds itself, we do not believe that this proposal will have the desired effect. Furthermore, we note that the Codex *Procedural Manual* already contains substantial guidance on this matter.

Specific Comments

The United States is specifically concerned about the use of the new undefined terms, “justified,” “sustained,” and “substantial” which, we believe, are relative and open to interpretation. Rather than help in reaching consensus, these terms could provide the opportunity for further dissent and conflict among the delegations. We believe that these terms would become distracting points of focus, inasmuch as delegates would be debating whether the threshold indicated by these terms had been met, instead of focusing on the issue at hand and trying to achieve consensus.

The United States notes that the *Procedural Manual* focuses on the importance of consensus in Rule XXI, Elaboration and Adoptions of Standards (paragraph 2) which states, “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.”

Furthermore, we note that the *Guidelines to Chairpersons of Codex Committees and Ad-Hoc Intergovernmental Task Forces* and the *Measures to Facilitate Consensus* stress the importance of consensus as well as provide specific guidelines for achieving it. Among other things, this guidance recommends that chairpersons (1) ensure that issues are thoroughly discussed at meetings, (2) organize informal, open and transparent meetings of the parties concerned where disagreements arise, and (3) ensure that matters are not progressed from step to step until all relevant concerns are taken into account and adequate compromises worked out.

Similar guidance is given in “*Measures to Facilitate Consensus*,” and the United States believes this guidance is essentially the same as the provisions in Malaysia’s proposal.

The United States believes that the ongoing discussion on consensus and the efforts to collect feedback for improving committee activities are positive steps and help raise the awareness about the challenge of working together to develop agreed-upon solutions and documents. We believe the discussion should not be about how the chair interprets consensus (or justified or sustained), but rather how the entire committee interprets and applies the term.