

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



JOINT OFFICE: Viale delle Terme di Caracalla 00100 ROME Tel: 39 06 57051 www.codexalimentarius.net Email: codex@fao.org Facsimile: 39 06 5705 4593

Agenda Item 2

CX/MMP 06/7/2
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JOINT FAO/WHO FOOD STANDARDS PROGRAMME CODEX COMMITTEE ON MILK AND MILK PRODUCTS

Seventh Session

Queenstown, New Zealand, 27 March – 1 April 2006

MATTERS REFERRED BY THE CODEX ALIMENTARIUS COMMISSION AND OTHER CODEX COMMITTEES AND TASK FORCES ¹

PART 1. MATTERS ARISING FROM THE 27TH AND 28TH SESSIONS OF THE CODEX ALIMENTARIUS COMMISSION

1.1 Proposed Draft Standards and Related Texts adopted at Step 5²

1. The 27th Session of the Commission **adopted at Step 5 and advanced them to Step 6** as proposed the following proposed Draft Standards noting that some parts of the texts, in particular the sections on scope, composition and labelling needed further work:

- Proposed draft Standard for a Blend of Evaporated Skimmed Milk and Vegetable Fat;
- Proposed draft Standard for a Blend of Skimmed Milk and Vegetable Fat in Powdered Form; and
- Proposed draft Standard for a Blend of Sweetened Condensed Milk and Vegetable Fat.

2. The Commission **adopted at Step 5 and advanced them to Step 6** as proposed the proposed draft Revised Standards for Cheddar, for Danbo and for Whey Cheeses.

1.2 Others Matters

Proposal for a New Standard on Parmesan Cheese³

3. The questions referred by the 6th Session of the Codex Committee on Milk and Milk Products related to new work on a standard for parmesan cheese, were considered by the 27th and 28th Sessions of the Commission. A copy of the discussion held at the two meetings is reproduced in Appendix 1 of this document.

4. The 27th Session of the Commission noted the clarification provided by the Legal Office of FAO and WHO in reply to the two questions asked by the 6th Session of the Committee on Milk and Milk Products. In view of the lack of consensus and considering that the 7th Session of the CCMMP was tentatively scheduled in April 2006, the Commission **agreed** to defer its decision on the development of a Standard on Parmesan cheese until its 28th Session.

¹ This document only contains information on matters arising from or referred by the Codex Alimentarius Commission (Part 1), the Executive Committee (Part 2) and other Codex Committees and Task Forces (Part 3) that are specific to the activities of the Committee or required action by the Committee. The Codex Secretariat will report verbally on matters of horizontal nature as appropriate to the discussion of the Committee.

² ALINORM 04/27/41, paras 75-76 and Appendix IV.

³ ALINORM 04/27/41, paras 146-150 and ALINORM 05/28/41, paras. 167-176.

5. The 28th Session held an extensive debate on this matter. Recognising its inability to reach a decision on whether or not new work should start on the elaboration of a standard for parmesan, the Commission **agreed** to hold the issue in abeyance for possible future consideration. The Commission further encouraged those parties interested in the subject to continue informal consultations among themselves in order to determine whether and how a decision on this issue might be reached. The Commission noted that the issue could be raised at a future session of the Commission if a Member wished to do so.

6. In response to the request of the Chairperson of the CCMMP on the status of the discussion of this item in the Committee, it was clarified that the report of the Commission would be brought to the attention of the CCMMP and that, while the Commission decided to hold the issue in abeyance and not to provide specific instructions to the CCMMP, nothing would prevent Members of the Commission from bringing up this matter at future sessions of the CCMMP.

Clarification on time-bound decision-making⁴

7. The 27th Session of the Commission **endorsed** the view of the 54th Session of the Executive Committee that a five-year timeframe should be maintained as a general rule, while the standards development process should be monitored on a case-by-case basis.

PART 2. MATTERS ARISING FROM THE 57TH SESSION OF THE EXECUTIVE COMMITTEE (GENEVA, SWITZERLAND, 6 -9 DECEMBER 2005)⁵

8. The Committee agreed to propose that the Commission recommend the following to Codex Committees and Task Forces:

- To prioritize work when the agenda of the Committee includes many items of work;
- To invite all Chairpersons, or host countries for adjourned committees, to provide their comments on the items of work that have been under consideration for more than five years; and
- To inform the Executive Committee and the Commission of the proposed timeframe for completion of all items that have been approved as new work prior to 2004.

9. Pending consideration of these proposals by the Commission, the Committee **agreed** to invite Codex Committees to implement the three proposals above without delay.

10. The Committee **is invited** to inform the 58th Session of the Executive Commission of the proposed timeframe for completion of all items approved as new work prior to 2004.

PART 3. MATTERS REFERRED BY OTHER CODEX COMMITTEES AND TASK FORCES

3.1 Codex Committee on Methods of Analysis and Sampling (27th Session, Budapest, Hungary, 4 – 8 April 2005)⁶

11. The Committee considered the clarifications provided by CCMMP⁷ and endorsed the following methods.

Fermented Milks

Lactic Acid

12. After an exchange of views, the Committee **agreed to endorse** the ISO and IDF methods for lactic acid (total acidity expressed as lactic acid).

Starter cultures

13. The Committee noted that no collaborative study had been carried out and **endorsed** the IDF method as Type IV.

⁴ ALINORM 04/27/41, para 151.

⁵ ALINORM 06/29/3, paras 63-65.

⁶ ALINORM 05/28/23, paras 75-80 and Appendix III.

⁷ CX/MAS 04/27/7-Add.2.

Streptococcus and Lactobacillus in Yoghurt

14. The Committee noted that a comprehensive inter-laboratory study had been carried out in 1978 for the IDF 117B: 1997 and ISO 7889 method, although the results used for the calculation of the precision figures were no longer available, and **endorsed** the ISO/IDF method as proposed in CRD 1 as Type I method because the figures for the repeatability limit and the reproducibility limit were still available. The Committee also endorsed the ISO 9232/IDF 146:2003 method as a Type I method, with additional clarification as to the principle of the methods covered by this reference.

Individual Cheeses

Dry Matter (total solids)

15. The Committee **endorsed** the ISO and IDF methods as Type I and deleted the AOAC method, with the understanding that the CCMMP would have the opportunity to discuss this question further at its next session and provide further clarification.

16. The status of the endorsement of methods of analysis and sampling is attached as Appendix II.

17. The matters referred by the 27th Session of the Codex Committee on Methods of Analysis and Sampling will be considered under agenda item 8 (a).

3.2 Codex Committee on Food Additives and Contaminants (37th Session, The Hague, The Netherlands, 25 – 29 April 2005)⁸

18. The Committee reviewed the proposals for endorsement of food additive provisions in the proposed draft Standards for a Blend of Evaporated Skimmed Milk and Vegetable Fat, for a Blend of Skimmed Milk and Vegetable Fat in Powdered Form, the proposed draft revised Standards for Cheddar, for Danbo and for Whey Cheeses, submitted by the 6th Session of CCMMP. The Committee agreed with the recommendation of the *ad hoc* Working Group on the GSFA to return most of the proposed food additive provisions to CCMMP for further consideration and clarification. The Committee also agreed to request CCMMP to clarify the use of numerical maximum levels as quality factors for additives with non-numerical ADIs assigned by JECFA, rather than GMP, in the proposed draft revised Standards for Cheddar and for Danbo.

19. The Committee, recognizing that JECFA had evaluated paprika oleoresins (INS 160 c) only as a spice and not as colour, agreed to recommend to CCMMP to delete paprika oleoresins from the list of food additives in the proposed draft Standards for Cheddar and for Danbo.

20. The status of endorsement of food additive provisions is attached as Appendix III.

21. The matters referred by the 37th Session of the Codex Committee on Food Additives and Contaminants will be considered under item 3 (b), (c), (d), (e), (f) and (g).

3.3 Codex Committee on Food Labelling (33rd Session, Kota Kinabalu, Malaysia, 9 – 13 May 2005)⁹

Draft Standard for a Blend of Evaporated Skimmed Milk and Vegetable Fat

Draft Standard for a Blend of Skimmed Milk and Vegetable Fat in Powdered Form

Draft Standard for a Blend of Sweetened Condensed Skimmed Milk and Vegetable Fat

22. The Committee endorsed the labelling provisions as proposed in the three draft standards and asked the CCMMP to consider whether the second paragraph of section 7.2 required further clarification or amendment, with the understanding that any amendment would be referred back to the CCFL for endorsement.

⁸ ALINORM 05/28/12, paras 44 – 45 and Appendix V (pages 69 – 74).

⁹ ALINORM 05/28/22, paras. 14 – 22.

Draft Revised Standard for Cheddar***Draft Revised Standard for Danbo***

23. Some delegations expressed the view that mandatory declaration of country of origin in the Draft Standards was not consistent with the General Standard and proposed to replace the current text of section 7.2 with the text of section 4.5 of the General Standard. Other delegations pointed out that the declaration of country of origin should be retained as it was required in all individual cheese standards in order to provide clear information to consumers. The Committee **asked** the CCMMP to reconsider section 7.2 and in particular to clarify the mandatory country of origin labelling provisions.

24. The Committee endorsed all other labelling provisions in both Draft Standards.

Draft Revised Standard for Whey Cheese

25. The Committee **endorsed** the labelling provisions as proposed.

26. The matters referred by the 33rd Session of the Codex Committee on Food Labelling will be considered under item 3 (b), (c), (d), (e), (f) and (g).

3.4 Codex Committee on Nutrition and Foods for Special Dietary Uses (27th Session, Bonn, Germany, 21 – 25 November 2005)¹⁰***Protein Conversion Factor***

27. Some delegations expressed their concern regarding the nitrogen conversion factor of 6.25 used for calculation of protein content. The Delegation of Germany informed the Committee that this issue had been discussed at the Working Group at length. It was proposed to use the nitrogen conversion factor of 6.25 if scientific justification was provided. The Secretariat clarified that the calculation of nitrogen conversion factor was specific to the consideration for the Standard on Infant Formula and should not be regarded as recommendation to extend this type of calculation to other standards. The Delegation of New Zealand also requested that the relevant Codex Committees, in particular the CCMMP, be informed of the decision regarding the nitrogen conversion factor for the Standard on Infant Formula. The Observers of IDF and EDA indicated that there were a number of scientific publications recommending a protein conversion factor of 6.38 for total milk protein (i.e. FAO Food and Nutrition Paper 77/2003) and supported the inclusion of this factor.

28. The Committee noted the clarification by the Observer of ESPGHAN that different food proteins contain differing amounts of nitrogen however FAO/WHO used a factor of 6.25 for all their reports on protein requirements and quality. The Observer indicated that proteins derived from cows' milk used in current infant formula are usually modified with lower conversion factors than caseins and that variations of non-protein nitrogen contents in infant formula depending on the methods of production result in further marked changes of the nitrogen conversion factor, therefore, the use of nitrogen conversion factor of 6.38 for all milk derived protein sources in infant formula was not justified.

¹⁰ ALINORM 06/29/26, paras 80 – 82.

APPENDIX I**27TH SESSION OF THE CODEX ALIMENTARIUS COMMISSION (Geneva, Switzerland, 28 June – 3 July 2004)****Proposal for a New Standard on Parmesan¹¹**

146. The Commission noted the clarification provided by the Legal Offices of FAO and WHO in reply to the two questions asked by the 6th Session of the Committee on Milk and Milk Products (CCMMP). It noted the legal advice shown in document LIM.15¹². It also noted that the TRIPS Secretariat had also been consulted on aspects of intellectual property protection¹³.

147. The views of the delegations which intervened were split among those against and those in favour of the development of a new Standard on Parmesan cheese.

148. Arguments put forward by delegations opposing included, among others: the need for Codex to work on consensus; the protection of geographical indications and designation of origin for agricultural products and foodstuffs under EC legislation; non-generic nature of the product name; risk of misleading consumers; Objective 3 of the Codex Strategic Framework 2003-2007 “Promoting linkages between Codex and other multilateral regulatory instruments and conventions”; the need to protect traditional and local culture, including geographic and regional products; the need to give priority to the work related to consumer protection in view of the budget constraint of Codex; the need to give priority to horizontal standards encompassing different products; ongoing work on Geographical Indication (GI) in the World Trade Organization (WTO). Some delegations suggested considering the revision of the Codex Standard on Extra Hard Grating Cheese (CODEX STAN C35-1978) as a compromise solution.

149. Arguments put forward by delegations in favour of the new standard included, among others: the importance for Codex to base work on agreed rules; the compliance of the proposal to develop a Standard on Parmesan with both Codex Criteria for Establishing New Work Priorities and CCMMP criteria for revision of standards; the generic nature of the product name in question; the international practice in which many products with denomination of origin were covered by internationally recognised standards; the fact that intellectual property rights are territorial and therefore the provisions in the EC are not binding for third countries ; that Codex had no mandate on intellectual property issues; that labelling adequately allowed the consumers to make informed choices; that national/regional legislation should not set precedence over Codex work; and that from a legal point of view there was no impediment to the development of the Standard.

150. The majority of delegations who spoke were against the development of a new standard but a large number of delegations were in favour of such development. In view of the lack of consensus and considering that the 7th Session of the CCMMP was tentatively scheduled in April 2006, the Commission **agreed** to defer its decision on the development of a Standard on Parmesan cheese until its 28th Session. Due to its late availability only in English, it was agreed to attach LIM.15 “Opinion of the Legal Offices of FAO and WHO” as an Appendix to the report of the Session (see Appendix X to this report) in order to allow all Members of the Commission to consider this document in detail.

¹¹ ALINORM 04/27/41, paras 146-150 and Appendix X.

¹² According to this legal opinion, “the fact that Parmigiano-Reggiano is registered as a Protected Designation of Origin by the European Community would not preclude a majority of the Members of the Codex Alimentarius Commission from deciding to elaborate a Codex standard on Parmesan cheese, if applicable criteria for acceptance of new work have been met” and “there are no requirements to the effect that aspects of intellectual property protection e.g. trademarks, certification marks, geographical indications (GI’s) or PDO’s be considered as criteria to be taken into consideration by Codex when deciding on acceptance of new work or adopting standards” (LIM.15, paras 13 and 19).

¹³ LIM.15, para. 17.

**OPINION OF THE LEGAL OFFICES OF FAO AND WHO ON THE LEGAL ASPECTS
INVOLVED IN THE QUESTIONS RAISED BY
THE COMMITTEE ON MILK AND MILK PRODUCTS¹⁴**

INTRODUCTION

1. At its Sixth Session, held in Auckland, New Zealand, 26-30 April 2004, the Codex Committee on Milk and Milk Products (CCMMP) discussed the possibility of elaborating an individual cheese for parmesan but was not able to reach agreement on whether or not to proceed with this work. The Committee agreed to the following text in respect of specific questions to be asked to the Codex Alimentarius Commission:

“The majority of the CCMMP present at the 6th Session are of the opinion that the name ‘Parmesan’ is and has been generic for quite some time. On the other hand, the denomination ‘Parmigiano-Reggiano’ is officially registered as a Protected Designation of Origin (PDO) by the European Community. The EC currently considers that there is a ‘indissoluble relationship’ between the words ‘Parmigiano-Reggiano’ and ‘Parmesan’.

Reference to EC legislation is preventing a decision on the establishment of a world wide standard for Parmesan Cheese by the CCMMP. Further, the inability to reach a decision on this issue is hindering the work of the CCMMP on this matter and might have important horizontal implications for work in other Codex Committees.

Two questions are addressed to the Commission.

1. *To what extent, if any, should a PDO recognized in EC legislation for a product otherwise considered to be generic by the majority of the members present be grounds for rejecting elaboration of a Codex standard when in the opinion of the majority of members present existing criteria for acceptance of new work have been met?*
2. *Should aspects of intellectual property protection e.g. trademarks, certification marks, geographical indications (GI’s) or PDO’s be considered as legitimate criteria by Codex when deciding on acceptance of new work or adopting standards?*

If the answers to both questions are that these matters are not legitimate considerations for CCMMP, will the CAC request that the CCMMP begin new work on the promulgation of a standard for Parmesan Cheese?”

2. The Legal Offices of FAO and WHO were asked to offer their views on the legal aspects involved in the questions raised.

3. Prior to examining the questions raised, in order to place them in a correct perspective, it would be useful to recall the relevant provisions of the Codex Alimentarius Commission’s mandate and procedures governing the decision to elaborate a standard, as well as past consideration of the issues at hand within the Codex Alimentarius Commission.

RELEVANT PROVISIONS OF THE CODEX ALIMENTARIUS COMMISSION’S MANDATE AND PROCEDURES GOVERNING THE DECISION TO ELABORATE A STANDARD

4. Under the terms of its Statutes, the Codex Alimentarius is responsible for making proposals on all matters pertaining to the implementation of the Joint FAO/WHO Food Standards Programme, the purpose of which is:

- (a) protecting the health of the consumers and ensuring fair practices in food trade;
- (b) promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations;

¹⁴ ALINORM 04/27/41, Appendix X.

- (c) determining priorities and initiating and guiding the preparation of draft standards through, and with the aid of, appropriate organizations;
- (d) finalizing standards elaborated under (c) above and, after acceptance by governments, publishing them in a Codex Alimentarius, either as regional or world-wide standards, together with international standards already finalized by other bodies under (b) above, wherever this is practicable; and
- (e) amending published standards, after appropriate survey, in the light of developments.

5. The Codex Alimentarius Commission has developed procedures for the elaboration of Codex Standards and related texts as set out in the Procedural Manual. Under these procedures, the Commission decides, taking into account the Criteria for the Establishment of Work Priorities, to elaborate a world-wide Codex Standard and also decides which subsidiary body or other body should undertake the work. Under such criteria, when a Codex Committee proposes to elaborate a standard within its terms of reference, it should first consider the priorities established by the Commission in the Medium-Term Plan of Work, any specific relevant strategic project currently being undertaken by the Commission and the prospect of completing the work within a reasonable period of time. It should also assess the proposal against the following criteria applicable to commodities:

- (a) consumer protection from the point of view of health and consumer practices¹⁵;
- (b) volume of production and consumption in individual countries and volume and pattern of trade between countries;
- (c) diversification of national legislations and apparent resultant or potential impediments to international trade;
- (d) international or regional market potential;
- (e) amenability of the commodity to standardization;
- (f) coverage of the main consumer protection and trade issues by existing or proposed general standards;
- (g) number of commodities which would need separate standards indicating whether raw, semi processed or processed; and
- (h) work already undertaken by other international organizations in their field.

PAST CONSIDERATION OF THE MATTER BY THE CODEX ALIMENTARIUS COMMISSION

6. The issue of whether the Commission could adopt standards with respect to commodities protected under geographical denominations was the subject of much debate in the Sixties and early Seventies. At its Ninth Session, held in 1971, the Commission, after having noted the complexity of the questions connected with “*appellations d’origine*”, agreed that some consideration should be given to this subject by the Executive Committee at its next session, insofar as the work of the Commission was concerned, in the light of background material to be made available by the Legal Office of FAO.

¹⁵

The phrase should read: “consumer protection from the point of view of health and fraudulent practices”.

7. The Legal Office of FAO prepared an information note entitled “*Appellations d’origine and international food standards*”. The document reviewed past discussions on the matter within Codex Alimentarius Commission and its subsidiary bodies, international instruments relevant to the protection of “*appellations d’origine*” and the relevant provisions of the Codex Alimentarius. The document indicated that the general provisions on the elaboration of standards did not contain any rules on the matter. On the one hand, the “*mere elaboration and adoption of a standard without special regard to the protection recognized in certain countries for a given name can in no way alter the law or detract from existing international obligations of those countries. If a government should find that acceptance of a standard would be incompatible with such laws or international obligations, it may wish to decline to accept the standard (...) On the other hand, the rules governing the work of the Codex Alimentarius Commission do not contain any provision which would enable these countries to prevent the elaboration and adoption of standards for the varieties concerned and under the names which are at present protected in their territory on the basis of national legislation or by virtue of bilateral or multilateral agreements, such as the Lisbon Agreement or the Stresa Convention*”. The document further indicated that “*the introduction of a special clause whereby countries accepting a standard may be allowed to maintain the status quo with regard to the protection for certain names, is neither prescribed nor excluded by any of the rules covering the work of the Codex Alimentarius Commission*”.

8. At its Tenth Session, held in 1974, the Commission examined the issue of “*appellation d’origine*” in relation to the work of the Commission in some detail. The Commission noted that the matter had been discussed by the Executive Committee at its May 1972 Session and that it was a question which had arisen in the Committee of Government Experts on the Code of Principles concerning Milk and Milk Products. The Commission noted the recommendation of the Executive Committee on the matter¹⁶. In particular, the Commission agreed with the view of the Executive Committee that it was not essential to arrive at a definite recommendation at this stage since the controversial issues had been resolved within the Joint FAO/WHO Committee of Government Experts on the Code of Principles concerning Milk and Milk Products on a pragmatic basis and might not arise again in the immediate future. Eventually, in 1978, the Committee of Government Experts on the Code of Principles concerning Milk and Milk Products, completed work on the Standard for Extra Hard Grating Cheese which was adopted as Codex STAN C-35-1978.

¹⁶ The Executive Committee considered the matter on the basis of the document that had been prepared by the FAO Legal Office. The Executive Committee proposed a solution “*which would permit the elaboration and adoption of a Codex standard while at the same time safeguarding the interest of those countries who wished to maintain protection of the appellation d’origine. This might be achieved by the introduction of an alternative name (apart from the appellation d’origine) and of a special clause whereby countries accepting the Standard would be allowed to maintain the status quo with regard to the protection of the appellation d’origine. This special clause would enable governments to accept the standard for the commodity concerned with a declaration 1. that the name as appellation d’origine will be reserved to the products produced in the area of origin in accordance with the traditional local requirements, and 2. that products corresponding to the standard but manufactured outside that area will have to be sold on their territory under an alternative name. The inclusion in the standard itself of such an enabling clause and of the alternative name would avoid doubts and disputes as to the validity of any declarations that may be made to this effect by countries accepting the standard. It would also enable a potential importing country in whose territory the appellation d’origine is protected on the basis of a multilateral or bilateral agreement to accept the international standard in a manner compatible with pre-existing international obligations*”.

9. At its Second Session, in 1996, the Codex Committee on Milk and Milk Products, considered a proposal of Germany to elaborate a new individual cheese standard for “*Parmesan*” and requested Germany to identify products in question and prepare a paper on trade statistics and justification for the elaboration of the Standard for consideration by the Committee at its next session. France and the International Dairy Federation offered to collaborate with Germany (ALINORM 97/11, paragraph 87). At its Third Session in 1998, the Committee noted the request of Italy to delete consideration of a Codex standard for “*Parmesan*” from the Provisional Agenda on the basis that Parmesan (Parmigiano Reggiano) was recognized all over the world. In view of the decision taken at the Second Session, the Committee decided to consider its elaboration as scheduled under Agenda Item 11 (ALINORM 99/11, paragraph 4). The proposal on the matter (CX/MMP 98/11) mentioned, *inter alia*, that Parmesan was a generic name and there is no clear definition of the product at international level. There was considerable trade on cheese under this denomination. The document referred to difficulties to provide statistical data from official sources on the production and marketing of Parmesan as in the majority of countries it was not recorded as a separate item but it was covered by headings such as “*hard cheese*” or “*grated cheese*” or cheese in general. Data provided by the International Dairy Federation indicated that Parmesan cheese was produced in 11 countries; consumed in 19 and that 6 countries had a legal standard. Production was at least 64,620 tons and exports amounted to 11,577 tons.

10. Due to time constraints the matter was deferred to the Fourth session of the Committee in 2000. At the Fourth session, the Delegation of Portugal, speaking on behalf of the member States of the European Community, and in view of continuing EC discussions on the question relating to the denomination “*Parmesan*”, indicated that it was premature for the Committee to make a decision at this time. Several delegations and the observer from IDF stated that, utilizing the Criteria for the Elaboration or Revocation of Individual Standards for Cheeses and the data contained in CX/MMP 00/18, the elaboration of a standard for “*Parmesan*” would be justified. Notwithstanding the opinion of several delegations, the Committee agreed that discussions concerning the possibility of a new individual cheese standard for “*Parmesan*” would be deferred until its next session where it would consider whether or not to proceed with work on the basis of CX/MMP 00/18 and preliminary texts of a standard as contained in CX/MMP 00/18-Add.1 (ALINORM 01/11, paragraphs 132-133).

11. At its Fifth Session in 2002, the delegation of Spain, speaking on behalf of the Member States of the European Community present at the Session, requested the postponement of the consideration of the elaboration of a standard, in view of ongoing negotiations within the Community related to the use of the term “*Parmesan*”. It was also suggested that the Codex Standard for Extra Hard Grating Cheese (Codex STAN C-35) could be revised, thereby avoiding the naming issue. Other delegations strongly supported the elaboration of a Codex Standard for Parmesan Cheese, and noted that information submitted and compiled in support of the elaboration of a standard was more than adequate to address the Codex Criteria for the Establishment of Work Priorities applicable to commodities, including a large volume of production and trade between countries, diverse national legislation with potential impediments to international trade and substantial market potential. It was also noted that regardless of the negotiations within the Community, a Codex standard would apply to all 165 member states of the Codex Alimentarius Commission, The Committee could not reach a consensus position and therefore, postponed the consideration of the elaboration of a proposed draft Codex Standard for Parmesan until its next meeting. The delegation of the United States objected to this decision (ALINORM 03/11, paragraphs 124-126). At its Sixth Session in 2004, the Committee raised the two questions.

FIRST QUESTION: TO WHAT EXTENT, IF ANY, SHOULD PDO RECOGNIZED IN EC LEGISLATION FOR A PRODUCT OTHERWISE CONSIDERED TO BE GENERIC BY THE MAJORITY OF THE MEMBERS PRESENT BE GROUNDS FOR REJECTING ELABORATION OF A CODEX STANDARD WHEN, IN THE MAJORITY OF MEMBERS PRESENT EXISTING CRITERIA FOR ACCEPTANCE OF THE NEW WORK HAVE BEEN MET?

12. The above-mentioned provisions of the Statutes of the Codex Alimentarius Commission, the provisions on the elaboration of Codex Standards and related texts and the Criteria for the Establishment of Work Priorities (Cf. paragraphs 4 to 5 of this document) do not contain any clauses whereby, in deciding whether a standard should be prepared, under the above reference framework, the Commission and its subsidiary committees should be restricted by any national or related legislation regarding protection of geographical indications adopted by its Members. It may be of interest to recall that the same views on this matter were presented in 1972 by the Legal Office of FAO (Cf. paragraph 7 of this document).

13. Accordingly, the fact that Parmigiano-Reggiano is registered as a Protected Designation of Origin by the European Community would not preclude a majority of the Members of the Codex Alimentarius Commission from deciding to elaborate a Codex standard on Parmesan cheese, if applicable criteria for acceptance of new work have been met.

SECOND QUESTION: SHOULD ASPECTS OF INTELLECTUAL PROPERTY PROTECTION E.G. TRADEMARKS, CERTIFICATION MARKS, GEOGRAPHICAL INDICATIONS (GI'S) OR PDO'S BE CONSIDERED AS LEGITIMATE CRITERIA BY CODEX WHEN DECIDING ON ACCEPTANCE OF NEW WORK OR ADOPTING STANDARDS?

14. When deciding to elaborate a standard on a particular commodity, the Commission is required to act under the framework established by its mandate, the procedures for the elaboration of standards and the Criteria for the Establishment of Work Priorities and to take into account the criteria laid down in that framework.

15. From a legal point of view, insofar as this would not be precluded or incompatible with these provisions, the Commission could take into consideration additional criteria not listed among those criteria. As reflected earlier in this document, it would be entirely open to the Commission to take into account criteria of political convenience when deciding whether or not to proceed with the elaboration of a particular standard.

16. In the same vein, the Commission could decide to take into consideration criteria and aspects related to intellectual property protection such as trade marks, certification marks, geographical indications or protected designations of origin, when deciding to elaborate a particular standard. However, this would be done at the discretion of the Commission and not as a result of any specific legal requirement arising from its mandate, from the procedures for the elaboration of standards or from the Criteria for the Establishment of Work Priorities. Furthermore, the possibility for the Commission to do so would have to take into account the following two legal parameters.

17. First, at the Sixth Session of the Codex Committee on Milk and Milk Products, references were made to work in process under the Agreement on Trade-Related Aspects of Intellectual Property Rights (the so-called TRIPS Agreement). Under Article 22 of the TRIPS Agreement a minimum level of protection is established in respect of all goods for geographical indications which identify a good as originating in the territory of a Member where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin. Under that Article geographical indications have to be protected in order to avoid misleading the public and to prevent unfair competition. A special, reinforced regime is established for geographical indications for wines and spirits in Article 23. As a result of the so-called Doha mandate, work is under way within the WTO on issues related to the extension of the higher level of protection beyond wines and spirits but no consensus on this matter has yet been reached. Once this work is completed, any results might be taken into account by Codex Members when reaching their decisions within the Codex Alimentarius Commission.

18. Second, following on the above observation, the rights and obligations of the Members of the Codex Alimentarius Commission derive from their membership of FAO or WHO and their decision to become Members of the Commission. Consequently, such rights and obligations are defined by the relevant statutory provisions of the Codex Alimentarius Commission which do not foresee, neither in their letter, nor in the practice developed thereunder, that aspects related to intellectual property protection be taken into consideration when deciding to undertake work on a particular standard. Consequently, within the Codex Alimentarius Commission, its Members are expected to act under the legal framework set forth above, as long as that framework is not amended with a view to introducing other criteria. A different approach to issues of the nature of that under consideration, would be likely to undermine the autonomy and integrity of the mandate of the Codex Alimentarius Commission.

19. In view of the foregoing considerations, from a strictly legal point of view, there are no requirements to the effect that aspects of intellectual property protection e.g. trademarks, certification marks, geographical indications (GI's) or PDO's be considered as criteria to be taken into consideration by Codex when deciding on acceptance of new work or adopting standards.

20. The above considerations are obviously without prejudice to the fulfilment of all relevant criteria and procedural requirements for the elaboration of standards, including the need for a document on the basis of which the Commission would take its decision.

28TH SESSION OF THE CODEX ALIMENTARIUS COMMISSION (Rome, Italy, 4 – 9 July 2005)

Proposal for a New Standard on Parmesan Cheese¹⁷

167. The Commission recalled that this matter had been referred from its 27th session and agreed on the need to make progress on this matter beyond the discussion of its last session by focusing on elements that would allow making a decision on the issue, while taking into account the arguments that were put forward previously for and against the development of a new Standard for Parmesan¹⁸. The Commission noted that there continued to be a diversity of views on this matter.

168. The Delegation of the European Community, supported by many delegations, stated that it opposed the development of a Codex Standard for parmesan cheese, stressing that the name “parmesan” should not be considered as a generic term as it was a geographical indication in the territory of the European Community. The Delegation underlined that it did not seek to use Codex procedures to prevent the use of “Parmesan” as a generic term in those countries where this was the case. The Delegation proposed, in turn, to revise the Codex Standard for Extra Hard Grating Cheese (Codex Stan C 35-1978). The Delegation stated that the Commission would not be able to reach consensus as long as the term “parmesan” was used in the Standard.

169. Many other delegations, which spoke in favour of new work on a Standard for Parmesan, stressing that Codex must function as a rule-based organization, stated that the proposal for a new Standard on Parmesan cheese met both Codex Criteria for Establishing New Work Priorities and CCMMP criteria for the development and/or revision of the standards for cheese. These delegations recognised that Parmesan should be considered as a generic term. They referred to the opinion of the Legal Offices of FAO and WHO that “from a strictly legal point of view, there were no requirements to the effect that aspects of intellectual property protection be considered as criteria to be taken into consideration by Codex when deciding on acceptance of new work or adopting standards”.

170. The Representative of WIPO, referring to the exchange of correspondence between WIPO and FAO Legal Office, noted that the opinion of the FAO and WHO Legal Offices had given rise to concerns in the international intellectual property rights community and stated that international obligations for the protection of intellectual property rights in general, and of industrial property rights in particular, were stipulated in a number of international treaties administered by WIPO.

¹⁷ ALINORM 05/28/41, paras. 167-176

¹⁸ ALINORM 04/27/41, paras 148 and 149.

171. After an extensive debate, the Chairperson of the Commission summarised the discussion that the request for the elaboration of a new standard for Parmesan was considered to have met the CCMMP criteria for the development and/or revision of the standards for cheese and that, according to the advice provided by the Legal Offices of FAO and WHO, there was no legal impediment to the elaboration of such a standard.

172. The Delegation of the European Community expressed its reservation on the Chairperson's summary, stating that in the view of the delegation, the legal opinion of FAO and WHO was not complete. The Delegation of Italy, supported by the Delegation of the European Community, stated that in its view the CCMMP criteria had not been met.

173. Many delegations supported the Chairperson's summary. The Delegation of the United States stated that the credibility of Codex should not be undermined.

174. Recognising its inability to reach a decision on whether or not new work should start on the elaboration of a standard for parmesan, the Commission **agreed** to hold the issue in abeyance for possible future consideration. The Commission further encouraged those parties interested in the subject to continue informal consultations among themselves in order to determine whether and how a decision on this issue might be reached. The Commission noted that the issue could be raised at a future session of the Commission if a Member wished to do so.

175. In response to the request of the Chairperson of the CCMMP on the status of the discussion of this item in the Committee, it was clarified that the report of the Commission would be brought to the attention of the CCMMP and that, while the Commission decided to hold the issue in abeyance and not to provide specific instructions to the CCMMP, nothing would prevent Members of the Commission from bringing up this matter at future sessions of the CCMMP.

176. The Delegation of the United States reserved its position on the conclusion of the discussion.

APPENDIX II**STATUS OF ENDORSEMENT OF METHODS OF ANALYSIS AND SAMPLING¹⁹****G. CODEX COMMITTEE ON MILK AND MILK PRODUCTS**

COMMODITY	PROVISION	METHOD	PRINCIPLE	TYPE	STATUS
Fermented milks	Lactic acid (total acidity expressed as lactic acid)	IDF 150:1991 ISO 11869:1997	Potentiometry, titration to pH 8.30	I	E
	Microorganisms constituting the starter culture	IDF 149A:1997 (Annex A)	Colony count at 25°C, 30°C, 37°C and 45°C according to the starter organism in question	IV	E
Yoghurt	<i>Streptococcus thermophilus</i> & <i>Lactobacillus delbrueckii</i> subsp. <i>Bulgaricus</i> ≥ 10 ⁷ cfu/g	ISO 7889/IDF 117: 2003	Colony count at 37°C	I	E
Yoghurt	<i>Streptococcus thermophilus</i> & <i>Lactobacillus delbrueckii</i> subsp. <i>bulgaricus</i> ≥ 10 ⁷ cfu/g	ISO 9232/IDF 146:2003	Test for identification: morphological, cultural and biochemical characteristics	I	E
Individual cheeses	Dry matter (Total solids)	ISO 5534/IDF 4: 2004	Gravimetry, drying at 102°C	I	E

¹⁹ ALINORM 05/28/23 – Appendix III

APPENDIX III**STATUS OF ENDORSEMENT AND/OR REVISION OF MAXIMUM LEVELS FOR FOOD ADDITIVES AND PROCESSING AIDS IN CODEX STANDARDS²⁰****PART 1 – CODEX COMMITTEE ON MILK AND MILK PRODUCTS**

PROPOSED DRAFT STANDARD FOR A BLEND OF EVAPORATED SKIMMED MILK AND VEGETABLE FAT			
INS	Substance	Maximum Level	Endorsement Status
<i>Firming Agents</i>			
508	Potassium Chloride	GMP	Not Endorsed - List with appropriate INS functional effect
509	Calcium Chloride	GMP	Endorsed
<i>Stabilizers</i>			
331i	Sodium Dihydrogen Citrate	GMP	Endorsed
331ii	Trisodium Citrate	GMP	Endorsed
332	Potassium Citrates	GMP	Not Endorsed - List as individual additives 332i, ii as appropriate
333	Calcium Citrates	GMP	Not Endorsed - List with appropriate INS functional effect
<i>Acidity Regulators</i>			
170	Calcium Carbonates	GMP	Not Endorsed - List individual additives 170i, ii as appropriate, with functional effects in INS
339	Sodium Phosphates	10 g/kg Combined Total	Not Endorsed - List individual additives 339i-iii as appropriate
340	Potassium Phosphates		Not Endorsed - List individual additives 340i-iii as appropriate
341	Calcium Phosphates		Not Endorsed - List individual additives 341i-iii as appropriate
450	Diphosphates		Not Endorsed - List individual additives 450i-iii as appropriate
451	Triphosphates		Not Endorsed - List individual additives 451i-ii as appropriate
452	Polyphosphates		Not Endorsed - List individual additives 452i-v as appropriate
500	Sodium Carbonates	GMP	Not Endorsed - List individual additives 500i-ii as appropriate
501	Potassium Carbonate	GMP	Not Endorsed - List individual additives 501i-ii as appropriate
<i>Thickeners</i>			
407	Carrageenan	GMP	Endorsed
<i>Emulsifier</i>			
322	Lecithins	GMP	Not Endorsed - Clarify whether is intended to include lecithin or hydrolyzed lecithin, or both

²⁰ ALINORM 05/28/12, Appendix V.

PROPOSED DRAFT STANDARD FOR SKIMMED MILK POWDER MILK AND VEGETABLE FAT IN POWDERED FORM			
INS	Substance	Maximum Level	Endorsement Status
<i>Stabilizers</i>			
331(i)	Sodium Dihydrogen Citrate	GMP	Not Endorsed - Clarify ML for 331iii
331iii	Trisodium Citrate		
332i	Potassium Dihydrogen Citrate		Not Endorsed - Clarify ML for 332i
332 ii	Tripotassium Citrate	GMP	
<i>Firming Agents</i>			
508	Potassium Chloride	GMP	Not Endorsed - List with appropriate INS functional effect
509	Calcium Chloride	GMP	Endorsed
<i>Acidity Regulators</i>			
339	Sodium Phosphates	10 g/kg total	Not Endorsed - List individual additives 339i-iii as appropriate
340	Potassium Phosphates		Not Endorsed - List individual additives 340i-iii as appropriate
450	Diphosphates		Not Endorsed - List individual additives 450i-iii as appropriate
451	Triphosphates		Not Endorsed - List individual additives 451i-ii as appropriate
452	Polyphosphates		Not Endorsed - List individual additives 452i-v as appropriate
341iii	Tricalcium Orthophosphates		Not Endorsed - Should be Tricalcium Orthophosphate
500	Sodium Carbonates		GMP
501	Potassium Carbonates	GMP	Not Endorsed - List individual additives 501i-ii as appropriate
<i>Emulsifier</i>			
322	Lecithins (or phospholipids from natural sources)	GMP	Not Endorsed - Clarify whether is intended to include lecithin or hydrolyzed lecithin, or both
471	Mono- and diglycerides of fatty acids	GMP	Endorsed
<i>Anticaking Agents</i>			
170i	Calcium carbonate	GMP	Endorsed
504i	Magnesium carbonate	GMP	Endorsed
530	Magnesium Oxide	GMP	Endorsed
551	Silicon Dioxide	GMP	Endorsed
552	Calcium Silicates	GMP	Not Endorsed - Should be Calcium Silicate
553i	Magnesium Silicate	GMP	Endorsed
553iii	Talc	GMP	Endorsed
554	Sodium Aluminosilicate	GMP	Endorsed
556	Calcium Aluminum Silicate	GMP	Endorsed
559	Aluminum Silicate	GMP	Endorsed
341iii	Tricalcium orthophosphate	10 g/kg combined	Not Endorsed - ML should apply to both 341iii and 343iii
343iii	Trimagnesium orthophosphate		

PROPOSED DRAFT STANDARD FOR SKIMMED MILK POWDER MILK AND VEGETABLE FAT IN POWDERED FORM			
INS	Substance	Maximum Level	Endorsement Status
Antioxidants			
300	Ascorbic Acid	0.5 g/kg as ascorbic acid	Endorsed
301	Sodium Ascorbate		
304	Ascorbyl Palmitate	0.01% m/m 0.01% on fat or oil basis 0.01 % on fat or oil basis 0.01 % on fat or oil basis	Not Endorsed - Express ML on mg/kg basis Express use of BHA, BHT and TBHQ as “singly or in combination”
320	BHA		
321	BHT		
319	TBHQ		

PROPOSED DRAFT STANDARD FOR A BLEND OF SWEETENED CONDENSED SKIMMED MILK AND VEGETABLE FAT			
INS	Substance	Maximum Level	Endorsement Status
Firming Agents			
508	Potassium Chloride	GMP	Not Endorsed - List with appropriate INS functional effect
509	Calcium Chloride	GMP	Endorsed
Stabilizers			
331i	Sodium dihydrogen Citrate	GMP	Endorsed
331iii	Trisodium Citrate		Not Endorsed - Specify ML
332	Potassium Citrates	GMP	Not Endorsed - List individual additives 332i, ii as appropriate
333	Calcium Citrate	GMP	Not Endorsed - Should be Calcium Citrates; List with appropriate INS functional effect
Acidity Regulators			
170i	Calcium Carbonate	GMP	Not Endorsed - List with appropriate INS functional effect
339	Sodium Phosphates	10 g/kg Combined Total	Not Endorsed - List individual additives 339i-iii as appropriate
340	Potassium Phosphates		Not Endorsed - List individual additives 340i-iii as appropriate
341	Calcium Phosphates		Not Endorsed - List individual additives 341i-iii as appropriate
450	Diphosphates		Not Endorsed - List individual additives 450i-iii as appropriate
451	Triphosphates		Not Endorsed - List individual additives 451i-ii as appropriate
452	Polyphosphates		Not Endorsed - List individual additives 452i-v as appropriate
500	Sodium Carbonates		GMP
501	Potassium Carbonates	GMP	Not Endorsed - List individual additives 501i-ii as appropriate
Thickeners			
407	Carrageenan	GMP	Endorsed
Emulsifier			
322	Lecithins	GMP	Not Endorsed - Clarify whether is intended to include lecithin or hydrolyzed lecithin, or both

PROPOSED DRAFT REVISED STANDARD FOR CHEDDAR (C-1)			
INS	Substance	Maximum Level	Endorsement Status
Colours			
160a(i)	Beta-Carotene (synthetic)	25 mg/kg	Endorsed
160a(ii)	Carotenes (vegetable)	600 mg/kg	Not Endorsed - Use INS nomenclature for additive
160b	Annatto extracts	25 mg/kg of cheese on bixin/norbixin basis	Endorsed
160c	Paprika oleoresins	GMP	Not Endorsed - Delete
160e	β -apo-8'-carotenal	35 mg/kg	Endorsed
160f	β -apo-8'-carotenic acid, methyl and ethyl ester	35 mg/kg	Endorsed
Acidity regulators			
170i	Calcium carbonate	GMP	Not Endorsed - List with appropriate INS functional effect
504	Magnesium carbonates		Not Endorsed - INS should be 504i for Magnesium Carbonate List ML
575	Glucono-delta-lactone		Not Endorsed - List ML
Preservatives			
234	Nisin	12.5 mg/kg	Endorsed
251	Sodium nitrate	50 mg/kg of cheese, expressed as Na NO ₃	Endorsed
252	Potassium nitrate		Endorsed
1105	Lysozyme	GMP	Endorsed
Salt substitutes			
508	Potassium chloride	GMP	Not Endorsed - Salt Substitute is not an INS functional effect; list with appropriate INS functional effect
For surface/rind treatment only			
200	Sorbic acid	1000 mg/kg of cheese, singly or in combination, calculated as sorbic acid	Not Endorsed - List under appropriate functional effect with notation that is for surface/rind treatment only
201	Sodium Sorbate		
202	Potassium sorbate		
203	Calcium sorbate		
235	Pimaricin (natamycin)		
280	Propionic acid	3000 mg/kg, calculated as propionic acid	
281	Sodium propionate		
282	Calcium propionate		
Anti-caking agents			
460	Cellulose	GMP	Not Endorsed - List individual additives 460i, ii as appropriate
551	Silicon dioxide, amorphous	10 g/kg singly or in combination Silicates calculated as silicon dioxide	Endorsed
552	Calcium silicate		Endorsed
553i	Magnesium silicate		Endorsed
553iii	Talc		Endorsed

PROPOSED DRAFT REVISED STANDARD FOR CHEDDAR (C-1)			
INS	Substance	Maximum Level	Endorsement Status
554	Sodium aluminosilicate		Endorsed
556	Calcium aluminum silicate		Endorsed
559	Aluminum silicate		Endorsed

Request CCMMP to clarify use of numerical ML as quality factor for additives with non-numerical ADIs assigned by JECFA, rather than GMP.

PROPOSED DRAFT REVISED STANDARD FOR DANBO (C-3)			
INS	Substance	Maximum Level	Endorsement Status
Colours			
160a(i)	Carotenes (synthetic)	25 mg/kg	Endorsed
160a(ii)	Carotenes (vegetable)	600 mg/kg	Not Endorsed - Use INS nomenclature for additive
160b	Annatto extracts	10 mg/kg of cheese on bixin/norbixin basis	Endorsed
160c	Paprika oleoresins	GMP	Not Endorsed - Delete
160e	β -apo-8'-carotenal	35 mg/kg	Endorsed
160f	β -apo-8'-carotenic acid, methyl and ethyl ester	35 mg/kg	Endorsed
Acidity regulators			
170(i)	Calcium carbonates	GMP	Not Endorsed - List with appropriate INS functional effect
504	Magnesium carbonates		Not Endorsed - INS should be 504i for Magnesium Carbonate List ML
575	Glucono-delta-lactone		Not Endorsed - List ML
Preservatives			
234	Nisin	12.5 mg/kg	Endorsed
251	Sodium nitrate	50 mg/kg of cheese, expressed as Na NO ₃	Endorsed
252	Potassium nitrate		Endorsed
1105	Lysozyme	GMP	Endorsed
Salt substitutes			
508	Potassium chloride	GMP	Not Endorsed - Salt Substitute is not an INS functional effect; list with appropriate INS functional effect
For surface/rind treatment only			
200	Sorbic acid	1000 mg/kg of cheese, singly or in combination, calculated as sorbic acid 2 mg/dm ² surface of whole cheese. Not present at a depth of 5 mm. For rind treatment or added to coatings only 3000 mg/kg, calculated as propionic acid	Not Endorsed - List under appropriate functional effect with notation that is for surface/rind treatment only
201	Sodium Sorbate		
202	Potassium sorbate		
203	Calcium sorbate		
235	Pimaricin (natamycin)		
280	Propionic acid		
281	Sodium propionate		
282	Calcium propionate		

PROPOSED DRAFT REVISED STANDARD FOR DANBO (C-3)			
INS	Substance	Maximum Level	Endorsement Status
Anti-caking agents			
460	Cellulose	GMP	Not Endorsed - List individual additives 460i, ii as appropriate
551	Silicon dioxide, amorphous)	10 g/kg singly or in combination Silicates calculated as silicon dioxide	Endorsed
552	Calcium silicate		Endorsed
553i	Magnesium silicate		Endorsed
553iii	Talc		Endorsed
554	Sodium aluminosilicate		Endorsed
556	Calcium aluminum silicate		Endorsed
559	Aluminum silicate		Endorsed

Request CCMMP to clarify use of numerical ML as quality factor for additives with non-numerical ADIs assigned by JECFA, rather than GMP

Proposed Draft Revised Standard for Whey Cheeses			
INS	Substance	Maximum Level	Endorsement Status
Only those food additives listed below may be used for products obtained through the concentration of whey and only within the limits specified			
Preservatives			
200	Sorbic Acid	1 g/kg as sorbic acid	Endorsed
201	Sodium Sorbate		Endorsed
202	Potassium Sorbate		Endorsed
203	Calcium Sorbate		Endorsed
Only those food additives listed below may be used for products obtained through the coagulation of whey and only within the limits specified			
Acidity Regulators			
260	Acetic Acid Glacial	GMP	Endorsed
270	Lactic Acid		Endorsed
296	Malic Acid		Endorsed
330	Citric Acid		Endorsed
575	Glucono delta-lactone		Endorsed
Preservatives			
200	Sorbic Acid	1 g/kg as sorbic acid	Endorsed
201	Sodium Sorbate		Endorsed
202	Potassium Sorbate		Endorsed
203	Calcium Sorbate		Endorsed
234	Nisin	12.5 mg/kg	Endorsed
235	Pimaricin	2 mg/dm ² surface of whole cheese. Not present at a depth of 5 mm.	Endorsed
280	Propionic Acid	3 g/kg calculated as propionic acid	Endorsed
281	Sodium Propionate		Endorsed
282	Calcium Propionate		Endorsed