



## JOINT FAO/WHO FOOD STANDARDS PROGRAMME

### CODEX COMMITTEE ON GENERAL PRINCIPLES

#### Thirty-second Session

Virtual, 8, 9, 11, 12, 15 and 17 February 2021

#### Comments of New Zealand

#### **Agenda item 4 - Procedural Guidance for Committees Working by Correspondence**

##### **Analysis of comments and amendment proposals**

New Zealand and the co-chairs of the working group on procedural guidance for Committees working by Correspondence (CWBC) thank all the members and observers that provided comments on document CX/GP 21/32/4. To facilitate consideration of this item at the 32<sup>nd</sup> session of CCGP, New Zealand has prepared this CRD that addresses the following:

- The question of whether virtual meetings fall within the terms of reference of the current work;
- Amendment proposals submitted on the agenda paper.

Based on comments received thus far (both in the working groups as well as in the CL) there is broad agreement on most areas of the text set out in the annex. In addition to detailed scrutiny and revision of the draft guidelines a key point for discussion will be the question on whether virtual meetings and use of virtual technology falls within the ToR of the working group. Comments from members were divided with some members supporting including virtual meetings within the scope of the current guidelines while others taking the view that virtual meetings are distinctly different to committees working by correspondence and opposed to their inclusion within these guidelines. A related issue is whether the guidelines should include provisions for the use of web based tools such as video conferences and real time communications.

##### **Comment**

Virtual meetings are indeed distinctly different from CWBC which typically work through written correspondence, emails, and non real-time communication. By contrast virtual meetings are held in real time using the internet and online communication platforms. Virtual meetings are more akin to physical session in this respect and it is possible to argue that the Procedural Manual already contains specific guidelines for conduct of physical meetings of Codex committees, Guidelines to chairpersons of Codex committees and ad hoc intergovernmental task forces that could, for the most part, apply to virtual meetings as well.

It is also noted that the issue of virtual meetings has been the subject of discussion in recent virtual meetings of the CAC and the Executive Committee as part of the broader consideration of '*Codex and the Pandemic- strategic challenges and opportunities*'. While there are no specific proposals to develop guidance covering virtual meetings at this stage, Codex members have the opportunity to revisit this issue in the light of the experience gained thus far and on the basis of any feedback from this and other Codex meetings.

If members agree with the above comments a possible way forward would be to agree to keep the focus of the draft guidelines as set out in the annex to document CX/GP 21/32/4 to CWBC in line with the Terms of Reference agreed at the 31<sup>st</sup> session of CCGP.

## Revision of the draft guidelines

Attached to this CRD is a revised Draft Criteria and Procedural Guidelines that has been prepared taking into account the comments received.

### ANNEX

## 1. CRITERIA AND PROCEDURAL GUIDELINES FOR CODEX COMMITTEES AND *AD HOC* INTERGOVERNMENTAL TASK FORCES WORKING BY CORRESPONDENCE<sup>1</sup>

### Introduction

The criteria and procedural guidelines set out herein are intended to guide the work and conduct of sessions of Codex Committees and *ad hoc* Intergovernmental Task Forces working by correspondence (CWBC).

The Rules of Procedure of the Commission apply *mutatis mutandis* to CWBC.

### Codex values

An overarching consideration and guiding principle in relation to CWBC is the need to respect and adhere to the Commission's core values of collaboration, inclusiveness, consensus building, and transparency.

### Recommendation

Agree to the texts in the introductory section as proposed and deletion of footnote 1 to remove reference to virtual technology.

## 2. Circumstances relevant to decision making on CWBC

The decision to initiate work by correspondence by one or more Codex committees shall be taken by the Codex Alimentarius Commission taking into consideration the advice of the host country and the views of Codex members and observers and on the basis of any advice provided by the Executive Committee of the Codex Alimentarius Commission. There may be many circumstances when CWBC may be appropriate (e.g. limited workload, pandemics, and other global events).

### Summary of comments received on this section:

Delete first sentence which is seen as subjective.

For clarity add indicative examples of circumstances when CWBC may be an appropriate mode of working.

### Recommendation

Delete 1<sup>st</sup> sentence; and

Add the following sentence at the end of the second paragraph:

There may be many circumstances when CWBC may be an appropriate (e.g. limited workload, pandemics, and other global events).

### 3. Criteria relevant for selection and assignment of work by correspondence

The criteria for selection and assignment of work to CWBC shall be consistent with the Commission's *Procedures for Elaboration of Codex Standards and Related Texts*<sup>2</sup> and the *Criteria for the Establishment of Work Priorities*<sup>3</sup> as set out in the *Procedural Manual*.

The following criteria should be considered when deciding on whether to assign work to a CWBC:

- i. Scope, objective, and content of the proposed work assigned to a CWBC;
- ii. Nature and complexity of the proposed work and its previous and recent history in Codex (for example, this may include participation/attendance history in past plenary sessions of the relevant committee; and prospects for achieving consensus within the prescribed timeframe;
- iii. Potential for assigning the proposed work to another committee, with relevant expertise, that is meeting physically and the work can reasonably be expected to be completed within a set timeframe such as indicated in the Terms of Reference of the relevant CWBC
  - a. , and

The above listed criteria should be considered as a whole (where they apply), rather than in isolation.

#### Summary of comments received on this section:

A number of submitters made the following comments on the criteria (to add more clarity and avoid duplication of the criteria in the Project document, and the critical review process).

- Criteria ii – Delete the examples under second criteria as they do not provide any added value to this bullet, and they are rather confusing;
- Criteria iii - The urgency and importance of work while correct, applies to all new work proposals, and does not give any meaning without further explanation here;
- Criteria iv – Delete as superfluous;
- Criteria v.b. – Delete as not recognised as a main factor that results in prolonging the work;
- Criteria vi. – There was a mixture of views with some supporting its inclusion and others not;
- Criteria vii – Delete Amenability to standardisation as it applies to all new work proposals; and
- Criteria viii and ix are good examples that can be used at Criteria ii.

#### Recommendation

Agree to text as amended.

### 4. Verification of membership and credentials for participation

The *Procedural Manual* provisions that apply to physical meetings of committees and working groups shall also apply to membership<sup>4</sup> and representation<sup>5</sup> in CWBC.

Codex procedural rules require all official communications to Codex, including those relating to membership and participation in meetings of committees and working groups, be notified through the designated Codex Contact Point (CCP). Members and observer organizations are required to nominate,

<sup>2</sup> Procedures for the Elaboration of Codex Standards and Related Texts, Section II: Elaboration of Codex Standards and Related Texts, *Procedural Manual (27<sup>th</sup> Edition)*

<sup>3</sup> Criteria for the Establishment of Work Priorities, Section II: Elaboration of Codex Standards and Related Texts, *Procedural Manual (27<sup>th</sup> Edition)*

<sup>4</sup> Rule I. Membership, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27<sup>th</sup> Edition)*

<sup>5</sup> Rule VI. Sessions, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27<sup>th</sup> Edition)*

through their official CCPs, a single representative/head of delegation. This does not prevent the head of delegation being supported by an alternate representative who can respond where the head of delegation authorises (as occurs in the physical setting).

The status and credentials of participants in Codex committees are subject to scrutiny and verification by the Codex Secretariat, according to official information provided by the Contact Points.

After new work is assigned to a CWBC, and before work commences, there shall be a defined period for registration with a clear commencement and closure date during which members and observers may register.

**Summary of comment received on this section:**

One member proposed to include additional text to make it clear that the Secretariat's verification is in accordance with the official information provided by the Codex Contact Points.

**Recommendation**

Add the text 'according to official information provided by the Contact Points' to the sentence beginning "The status and credentials of participants in Codex ....."

## 5. Sessions of CWBC

To ensure comparability of sessions of committees meeting physically and those meeting by correspondence, sessions of CWBC are those occasions when the committee engages in formal consultations with members by correspondence -, over a specified date or period of time as approved by the CAC.

The working languages, the timeframes for implementing the work plan and tasks for the session of the CWBC should be clearly documented and should have been agreed to among members at the outset of the session. This would include the timeframes for preparation of working documents in accordance with the Procedural Manual

Committee agenda, working documents and reports are published on the Codex website.

The work and outputs of the committee are subject to critical review by the Executive Committee prior to submission to the CAC.

Each session of the CWBC should be concluded on time to facilitate the critical review requirements of the Executive Committee.

**Recommendation**

Delete [or virtual means with footnote]

Amend the second sentence of paragraph 2 above by adding the words ' in accordance with the Procedural Manual to replace descriptor of timeframes for the preparation of reports.

## 6. Inclusiveness, participation, and languages

CWBC should operate by default, in not less than three of the working languages of the Commission<sup>7</sup> or as shall be determined by the CAC.

It is the responsibility of the host government to ensure adequate funding for translation of working documents.

**Summary of comments received on this section:**

Comments received on this section relate to the issue of flexibility on the issue of translation and appropriateness of including interpretive text.

**Recommendation**

<sup>7</sup> These are the working languages of both the Food and Agriculture Organization of the United Nations and the Health Assembly of World Health Organization.

Amend the language in this section by deleting 'interpretive' text and keeping it concise and in accordance with the provisions of the Procedural Manual.

## 7. Determining a quorum (before a CWBC session can begin, and make decisions)

Applying the same rules that apply to a committee holding a physical meeting to a CWBC (where *registering* constitutes attending), a majority of commission members '*registering*' for the CWBC shall constitute a quorum, provided that such a majority is not less than 20 percent of the total Commission membership<sup>8</sup>. For a regional meeting, a quorum is met if 1/3 of members belonging to the region or group of countries concerned *register*<sup>9</sup>.

In the interests of clarity and transparency, the time period for registration (the closing date for registration and period for which the registration is valid) should be stipulated.

In the absence of a quorum, no decisions may be made, nor recommendations provided by the CWBC to the Commission.

### Summary of comments received on this section:

It is acknowledged that in physical meetings, quorum is based on both registration *and* attendance. In a CWBC, however, registration is seen as the most pragmatic way to establish interest and participation. Once a member registers for a CWBC it is seen as evidence of interest and participation.

### Recommendation

Agree to text as proposed.

## 8. Roles of the Chairperson and the Codex Secretariat in CWBC

### The role of the Chairperson

The Guidelines to Chairpersons of Codex Committees and *Ad Hoc* Intergovernmental Task Forces<sup>10</sup> apply *mutatis mutandis* to Chairpersons of CWBC.

- The rules/procedures specified in the *Codex Procedural Manual* are adhered to in the CWBC setting.

The Chairperson of CWBC may be supported by one or more co-chairpersons.

### The role of the Codex Secretariat

The Codex Secretariat shall perform all of the usual functions it does in support of the efficient operation of the CWBC, including verification of credentials of participants, preparing and circulating Committee reports and providing guidance and support to the Chairperson on procedural and other matters relating to the work of the CWBC.

### Consensus

Chairpersons of CWBC should make every effort to promote consensus-based decision making and should also consider implementing measures as described in the Guidelines to Chairpersons<sup>11</sup> on measures to facilitate consensus building in the elaboration of standards at the Committee stage.

<sup>8</sup> Refer Rule VI.7. Sessions, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27<sup>th</sup> Edition)* Therefore, if the CAC membership was 189, at least 38 member countries would need to register for the CWBC in order to reach a quorum.

<sup>9</sup> Refer Rule IV.7 Sessions, Rules of Procedure of the Codex Alimentarius Commission, Section I: Basic texts and definitions, *Procedural Manual (27<sup>th</sup> Edition)* Therefore, if there are 36 member countries, then a minimum of 12 member countries would be required to register for a CWBC to reach a quorum.

<sup>10</sup> Section III: Guidelines for Subsidiary Bodies, *Procedural Manual (27<sup>th</sup> Edition)*

<sup>11</sup> Guidelines to Chairpersons of Codex Committees and *Ad Hoc* Intergovernmental Task Forces, Section III: Guidelines for subsidiary bodies, *Procedural Manual (27<sup>th</sup> Edition)*

## Interpretation of silence

Means of communication to signal support or objection shall be explicitly clarified in advance of sessions. Specifically, this means that silence, the absence of specific contrary views or objections, will be taken to mean tacit agreement or no objection to proceed. This point should be clearly communicated to all members of the committee to avoid any misunderstanding when seeking comment on specific matters under discussion including proposed conclusions on progression of a standard through the step process. Chairpersons should allow sufficient time for response to assure that silence is not the result of temporary technical problems.

### Summary of comments related to this section:

- The removal of all information that is already contained in the PM.
- Amendment of the text in the section on the interpretation of silence to improve the clarity of the process.

The role of the chairperson has been one of the major points for discussion in the working group and the text as drafted was intended to clarify and supplement the text that is already in the Procedural Manual. The draft guidelines have been amended to reflect the comments received on the following:

- Deletion of reference to virtual consultations.
- Simplification of texts in relation to consensus and interpretation of silence.

### Recommendation

Agree to amend Section 8 as set out above.

## 9. Advancement of standards and related texts

In determining the level of consensus when progressing through the step process, Committee chairpersons typically propose a conclusion for consideration by members, which may be modified and presented as revised to achieve consensus. The same practice should be followed by CWBCs. For example, a chairperson could propose a conclusion to advance a standard by asking a specific question, such as, “*Do you support advancing the draft standard to Step X?*”

CWBCs may use a similar approach (or suitable variation) when determining the level of consensus on more detailed points of discussion, such as text changes.

For the avoidance of doubt in the correspondence setting, a reservation is making a statement of position, which will be recorded in the meeting report upon request (in line with provisions in the *Procedural Manual*)<sup>12</sup>.

### Options for the Chairperson when a CWBC is not able to progress work

When, in the judgement of the Chairperson, it becomes clear that no progress is possible by a CWBC, the committee Chairperson may refer the matter to CCEXEC/CAC for consideration.

In doing so the Chairperson may propose one of the following options to the CWBC for endorsement in view of the referral to CCEXEC/CAC:

- i. Convene a physical session of the committee;
- ii. Convene a virtual session of the Committee;
- iii. Switch from working by correspondence to an alternative, for example recommending referral to a committee (other than the original committee) that has relevant expertise on the topic under consideration and is meeting physically;
- iv. Request the Secretariat to convene a physical meeting of a Rule XI 1. (a) subsidiary body (i.e. convene an entirely new Codex subsidiary body);
- v. Propose the discontinuation of the work.

<sup>12</sup> Conduct of Meetings, Guidelines on the Conduct of Meetings of Codex Committees and *ad hoc* Intergovernmental Task Forces, Section III: Guidelines for Subsidiary Bodies, *Procedural Manual (27<sup>th</sup> Edition)*

## Voting

While the rules of procedure of the Codex Alimentarius Commission provide for voting in situations when all efforts to achieve consensus have failed, CWBC should not resort to voting to resolve differences.

Instead, the option of alternative mechanisms (as described above) to resolve differences and advance work should be submitted to the Codex Alimentarius Commission for its consideration.

### Summary of comments on this section:

This section was the subject of much comment and discussion in the working group and the text reflects the need for specific guidance on the core considerations pertinent to advancement of standards.

The latest comments in response to the CL propose moving the first paragraph to Section 8 and including a new option to 'convene a virtual session' when a CWBC is unable to progress work.

### Recommendation

Agree to text as amended above with the inclusion of a new (ii) on the option to convene a virtual session of the committee.

## 10. Reporting to the Commission

CWBC shall report to the Codex Alimentarius Commission. As with reports of physical sessions of Codex committees, reports of CWBC sessions shall be prepared by the Codex Secretariat in consultation with the Chairperson.

The conventions and practices that apply to drafting of reports of committees holding physical meetings should also be observed, to the extent relevant, by CWBC. Reports of CWBC should be objective and accurately reflect the discussions, conclusions, and recommendations.

Members of CWBC have the right to ask that their positions, including reservations, or opposition to a recommendation or decision be recorded in the report of the committee.

Members of CWBC should refrain from raising issues or seeking inclusion of comments that were not part of the deliberations, and such comments will not be included in the report of the session, consistent with CAC procedure and practice.

[Where deemed necessary provision should be made for virtual consultations to facilitate consideration of the draft report prior to its finalisation.]

Draft reports of the CWBC should be made available to all Codex members and observers who were registered in the session within one week of the conclusion of the plenary agenda and deliberations, for review and comment within two weeks of report circulation. The procedures for review and comment should be clearly communicated to all members.

The Codex Secretariat should circulate the final report as adopted in not less than three of the working languages of the Commission within one month of conclusion of the CWBC session.

Comments on this section mainly relate to the text in [ ] with some supporting the language with minor amendments while others propose its deletion.

### Recommendation

Agree to delete the text in [ ].