

# CODEX ALIMENTARIUS COMMISSION



Food and Agriculture  
Organization of the  
United Nations



World Health  
Organization

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Re: Conduct of discussions at CAC45

Dear Codex Members and Observers,

In my informal briefing to CCEXEC83 yesterday, I outlined my proposed approach to our discussion of maximum residue limits (MRLs) for zilpaterol hydrochloride in the coming week. As I said, these are informed by an iterative series of discussions with the Codex Secretariat and with the FAO Legal Office in order to test and revise the approach I might take. I continue to seek and receive such advice and now need to revise some aspects on my briefing to CCEXEC83. I am also able to expand on other aspects of my briefing to CCEXEC83.

This note therefore supersedes my briefing to CCEXEC83. Please treat its contents as provisional and subject to further change.

My first objective, in preparing for and chairing the discussion of MRLs for zilpaterol hydrochloride at CAC45 is to facilitate and encourage the identification of compromises to established positions which may be acceptable to Members and which may permit resolution by consensus.

Recognizing that consensus may remain elusive, and consistent with the reluctant conclusion from the Chairperson and Vice-chairpersons (CVCs) following our earlier informal consultations, we should all prepare for a potential vote on MRLs for zilpaterol hydrochloride at CAC45.

The first report of the CVC informal consultation notes “that we should ensure everyone is clear on the status of the draft proposed MRLs for zilpaterol hydrochloride in the step process, and on the latitude that the Commission has in making a decision in the absence of any consensus recommendation from CCRVDF25”

First, the proposed MRLs are currently at Step 4.

Second, the Commission must follow its rules of procedure. However, the Commission is the primary organ of the Codex Alimentarius and may decide to suspend any rule it has made and replace it with an alternative provision, for a specified time, by consensus or by an appropriate majority in the case of a vote. The majority required would depend on the nature of the decision or the majority required for the initial decision.

Our procedures require 24 hours' notice of any proposal from the chairperson to apply a change to the Codex rules of procedure. Accordingly, I will formally set out on Tuesday my proposals in this regard, and I will follow these should we not be able to reach consensus in the discussions that follow. Again, the search for consensus remains my first objective.

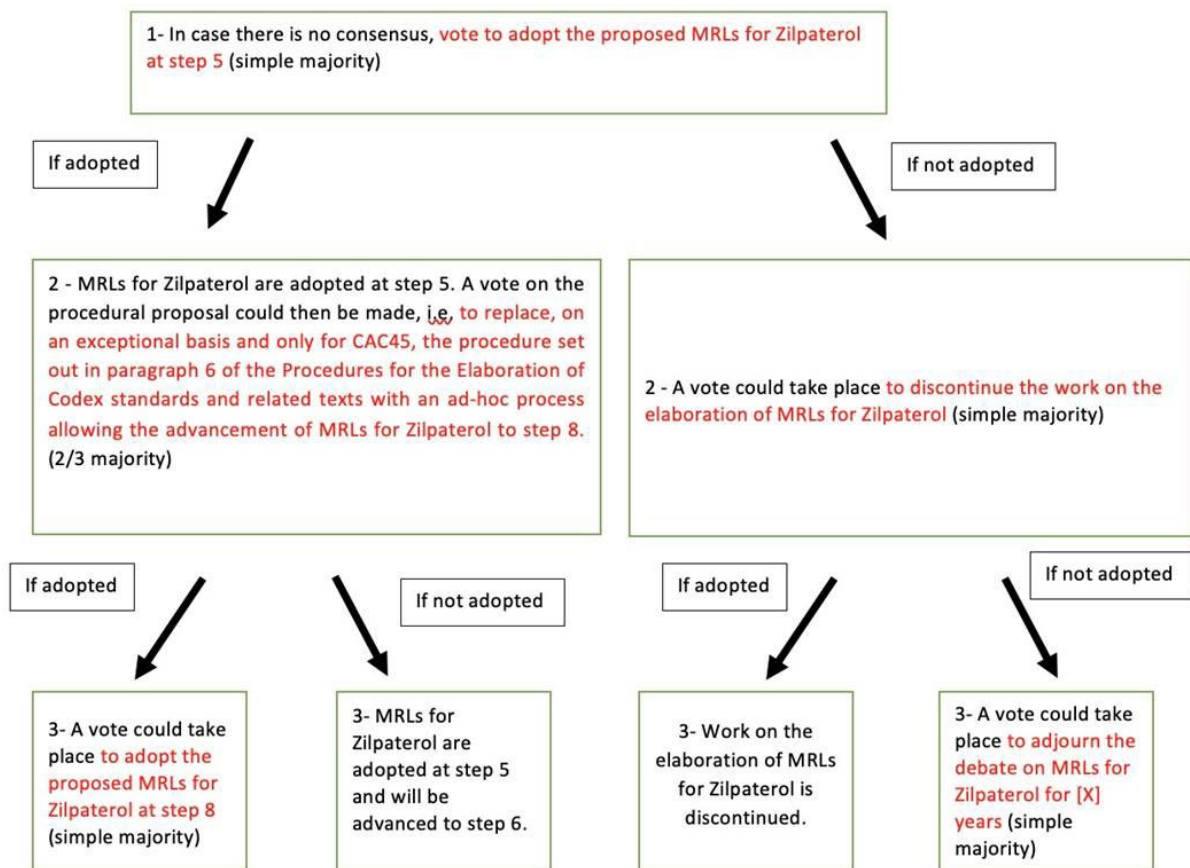
This period of notice is a matter of procedure – it does not prejudice our discussions and does not mean that any or all of the series of votes I will outline will take place. But should we need to vote, we will be able to do so.

I will not propose a vote on Tuesday afternoon.

It is open to me to give more than 24 hours' notice. And so, in the interests of transparency and to facilitate my discussion with those who have requested to meet with me to discuss I set out my proposals below, should there be no consensus.

In developing these, I have aimed to be fair and to propose a series of votes that would allow the Commission to adopt any of the conclusions I have heard characterized as one or other Member's preferred outcome. You will note that there is no outcome of adoption at Step 5/8, which is one preferred outcome I have heard. This is the shorthand we often use, particularly when advancing numerical MRLs for pesticides and residues of veterinary drugs in food. Where those decisions are taken by consensus, it is a serviceable and well understood shorthand. But in the absence of an accelerated procedure having been agreed at Step 1, a decision to adopt at Step 5/8 is, procedurally, a combination of three separate decisions – to adopt at step 5; to skip steps 6 and 7; and to then adopt at Step 8. If any proposal to adopt at Step 5/8 does not have consensus, we should break the proposal down into its constituent parts.

The series of questions I would propose to the Commission, which it may decide either by consensus or by vote, are set out in the chart below. The text in red reflects the proposed wording in case of a vote.



I would first ask the Commission whether it will adopt the proposed MRLs for zilpaterol hydrochloride at step 5. If there is not consensus on this question, we will proceed to a vote, which will be determined by a simple majority. If the outcome of the vote is negative, further discussions may take place on the possible discontinuance or adjournment of the work, which may include a vote or several votes to determine, as indicated on the right hand side of the chart.

However, if the Commission agrees to the adoption at step 5, MRLs for zilpaterol hydrochloride would be moved to step 6. Or, the Commission could decide to further advance the work and immediately proceed to vote on whether to adopt it at step 8.

Bearing in mind that the omission of steps 6 and 7 requires a recommendation by the Codex Committee pursuant to paragraph 6 of the Procedures for the Elaboration of Codex standards and related texts – which CCRVDF did not make for the MRLs for zilpaterol hydrochloride – the Commission would need to agree on an exceptional ad-hoc process for these specific MRLs and at CAC45 only, whereby the MRLs could be immediately advanced to step 8 during this session. I believe that our consideration of such an exceptional process is warranted, as we find ourselves in the exceptional position of CCRVDF25 having been unable to reach any conclusion that was supported by consensus and that meeting, being virtual, did not have tools available to allow it to reach a conclusion by means other than consensus.

Therefore, and with a view to ensuring that all options are open at CAC45, I would propose a vote to replace part of our procedures with an ad hoc procedure that would allow us to advance the MRLs for zilpaterol hydrochloride to step 8 at this session, were we to have adopted the MRLs at step 5. If there is no consensus to this procedural proposal and a vote is needed, the required majority will be two-thirds.

If the outcome of the vote on the procedural proposal is negative, the MRLs for Zilpaterol would be automatically advanced to step 6.

If the procedural proposal is adopted, I would then propose we adopt the proposed MRLs at Step 8. In the case of a vote, that would then need a simple majority.

This is my proposal for how we would proceed, should we be unable to reach agreement by consensus. As I said at the outset, my first objective, remains to facilitate and encourage the identification of compromises to established positions which may be acceptable to Members and which may permit resolution by consensus.

Yours sincerely,



Steve Wearne

Chairperson, Codex Alimentarius Commission