



## **Report of The United States Delegate Codex Alimentarius Commission - 32nd Session**

The 32nd Session (2009) of the Codex Alimentarius Commission (CAC) held June 29-July 4, 2009, Rome, Italy, was notable for having substantive discussions on all the agenda items, something that the Commission has not always been able to accomplish. The Commission was able to achieve this with two evening sessions, and the result was a significant output.

The United States was generally pleased with the results of the Commission meeting. The Commission made key decisions on the adoption of Codex standards, approval of new work, and operating policies and procedures that were consistent with U.S. positions. Discussions occurred on strategic issues including the participation of developing countries in the work of Codex and the operation of the Codex Secretariat.

The Commission was attended by 463 delegates from 125 Member countries, 1 member organization (the European Community), 2 observer countries, and 33 international intergovernmental or non-governmental observer organizations. The United States was represented by the U.S. Delegate, Ms. Karen Stuck, Manager, U.S. Codex Office; the U.S. Alternate Delegate, Dr. Michael Wehr, Codex Coordinator for the FDA Center for Food Safety and Applied Nutrition; and 16 government and 8 non-government advisors.

The full report of the 2009 Session can be found in ALINORM 09/32/REP on the Codex Web site, [www.codexalimentarius.net](http://www.codexalimentarius.net).

### **Election of Officers and Members of the Executive Committee**

In addition to the re-election of Dr. Karen Hulebak of the United States as Chairperson of the Codex Alimentarius Commission, three Vice-Chairpersons were also re-elected: Mr. Sanjay Dave, India; Mr. Ben Manyindo, Uganda; and, Mr. Knud Ostergaard, Denmark. The United States believes this Codex Bureau will provide strong leadership to progressively advance the work of Codex.

The United States was elected to the Executive Committee as the geographic representative of North America. In taking this decision, the Commission decided that the Chairperson of the Commission did not serve in the capacity as a delegate from a specific country (in this case the United States) but rather as member of Codex at-large, thus exempting this position from inclusion in Rule V of the Codex Rules of Procedure, which specifies that no more than one person from a Member Country may serve on the Executive Committee at any given time.

### **Decisions on Standards**

Over 35 standards, codes of practice, and related texts were adopted at Step 8 and step 5/8 by the Commission. Among these were codes of practice for the reduction of acrylamide in foods and for the prevention and reduction of Ochratoxin A contamination in coffee; microbiological criteria for *Listeria monocytogenes* in ready-to-eat foods and for powdered infant formulae; standards for jams, jellies and marmalades and for canned vegetables; and maximum residue levels (MRLs) for the veterinary drugs, melengestrol acetate, avilamycin, dexamethason and tylosin. Additionally, over 400 food additive provisions were adopted and added to the General Standard on Food Additives and multiple pesticide residue MRLs.

Considering that the general structure of the Revised Code of Ethics for International Trade in Foods was well advanced, the Commission adopted the document at Step 5 and returned it to the Committee on General Principles (CCGP) for additional work in specific areas. The Commission directed countries to submit their specific objections in writing to the Chair of CCGP and emphasized the need to finalize this work within the next session of the Committee.

The Commission was divided over a course of action on the MRL for the veterinary drug ractopamine which had been held at Step 8 by the 2008 Commission session. At that meeting, Member Countries were requested to provide new information, if available, to the Committee on Residues of Veterinary Drugs in Food (CCRVDF) to enable the Committee to decide whether ractopamine would need to be re-evaluated by the Joint Expert Committee on Food Additives (JECFA). The Chairperson of CCRVDF reported to the Commission that CCRVDF concluded there was no significant new data available that would justify a need for re-evaluation by JECFA. However, the European Commission proposed that the MRL be returned to Step 6 for further discussion. China supported this proposal and reported on their residue studies, which showed residue levels in muscle, liver and kidneys exceeding the draft MRLs established by JECFA.

The JECFA Secretariat addressed China's concerns and explained that JECFA's exposure assessment had taken a very conservative approach. The United States and other delegations believed that the MRLs should be adopted because there was no scientific justification for delaying or rejecting adoption.

The Commission agreed to request that JECFA, as a priority, review new data submitted by China, with an emphasis on the implication of these data for the MRLs for ractopamine, and agreed to continue holding them at step 8. The 2010 Commission will consider the MRLs for ractopamine in light of the outcome of the JECFA evaluation.

Looking more broadly at texts retained at Step 8, the Chairperson proposed that an Electronic Working Group prepare a discussion paper for consideration by the Committee on General Principles (CCGP) to examine factors that result in standards

being held at Step 8. The Commission agreed that the matter would be considered by CCGP.

### **Standards at Step 5**

The Commission adopted six texts at Step 5 including MRLs for pesticides and veterinary drugs. Adoption at this level denotes approval for continuing work on the texts for later consideration at Step 8, which represents final adoption by the Commission.

The proposed Draft Criteria to Assess the Acceptability of Substances for Inclusion in a List of Acceptable Previous Cargoes was adopted by the Commission at Step 5. The United States and some other delegations supported development of criteria but questioned the need for continued work on lists of banned immediate cargoes. The Codex Executive Committee encouraged the Codex Committee on Fats and Oils (CCFO) to finalize its work on the lists at its next session in 2011.

### **New Work**

The Commission approved new work:

- By the Committee on Processed Fruits and Vegetables (CCPFV) to revise standards for canned bamboo shoots and canned mushrooms and table olives and desiccated coconut.
- The Codex Committee on Near East and Asia (CCNEA) submitted a proposal for development of a regional standard for pomegranate. After considerable discussion about whether it should be a regional or an international standard, the Commission referred it to the Codex Committee on Fresh Fruits and Vegetables (CCFFV). If CCFFV determines that, because of its heavy workload, it could not undertake the work, CCNEA would then begin work on a regional standard.
- The Codex Committee on Contaminants in Food was authorized to begin work on several proposals including Maximum Levels for Fumonisin in Maize and Maize products; a Code of Practice for the Prevention and Reduction of Aflatoxins in Tree nuts, and Maximum Levels for Melamine in Food and Feed.
- The Codex Committee on Food Hygiene can begin work on a Code of Hygienic Practice for Control of Viruses in Food
- Priority Lists of Chemicals and Veterinary Drugs for Evaluation and Re-evaluation by the Joint Committee on Pesticide Residues and the Joint Expert Committee on Food Additives, respectively.

The Commission agreed that the Executive Committee should set up an electronic working group, led by the Chair and Vice Chairpersons, to determine if further guidance is needed on the application of the Criteria for the Establishment of Work priorities.



## **Amendments to the Procedural Manual**

The Commission adopted an amendment to the *Guidelines to Chairpersons of Codex Committees and Ad-Hoc Intergovernmental Task Forces* to permit the use of facilitators to help resolve impasses in achieving consensus on Codex standards and related texts.

The Commission also adopted *Nutritional Risk Analysis Principles and Guidelines for Application to the Work of the Committee on Nutrition and Foods for Special Dietary Uses* to be included with the section on "Working Principles for Risk Analysis."

Additionally, the Committee adopted amendments to the *Codex Working Instructions for the Implementation of the Criteria Approach in Codex* relating to methods of analysis and consequential amendments to the *General Criteria for the Selection of Methods of Analysis*.

## **Matters Arising from Other Codex Committees and Task Forces**

### **Future Work on Animal Feeding**

The Commission established an electronic Working Group, hosted by Denmark and co-chaired by the United States, to review the current Codex documents related to animal feeding and to determine suitable mechanisms for addressing the remaining items proposed by a working group established in the 2008 Commission session. That Working Group identified six items for future work, the first three calling for a review of current Codex texts to ascertain their applicability to animal feed. The remaining three items involved the development of guidelines for governments, the development of a prioritized list of hazards, and the establishment of criteria for global identification and notification of emergency situations affecting feed.

While most Member Countries were in agreement with the need for work on animal feeding, there was a divergence of opinion over how this work should be conducted, i.e., and its scope.

### **Lactoperoxidase**

The Commission approved the lifting of the restriction on the use of the lactoperoxidase system (LPS) in the production of milk and milk products traded internationally. The restriction was established by the 1991 Commission and reconfirmed in 1999. The current discussion derived from incorporation of the LPS into the Code of Hygienic Practice for Milk and Milk Products, which was developed by the Codex Committee on Food Hygiene (CCFH). The issue had been considered previously by CCFH and the Commission, but no consensus was reached on removing the restriction. At the 2008 Session of the Commission, New Zealand proposed to lift the restriction and add the following to footnote 9 of the Code: "Any trade in milk treated by the lactoperoxidase system should only be on the basis of mutual agreement between countries concerned,



and without prejudice to trade with other countries."

The Commission agreed to lift the restriction on the use of the LPS system with the addition of the amendment to the footnote. Several developing countries expressed their reservation on this decision.

### **Length of Reports and Simultaneous Distribution in Documents in all Languages**

Several delegations requested reconsideration of a decision of the 2008 Commission Session that reports of Codex sessions should be concise, outcome-orientated reports. These delegations were of the view that reports of Codex sessions should fully reflect the discussion, focusing not only on the outcome but also on the views voiced by various delegations. Concern was also raised regarding the timely distribution of reports and working documents, particularly in languages other than English.

The Commission agreed that Chile, supported by other countries, would prepare a paper with recommendations on ways to approach the timely and simultaneous distribution of documents and the length and content of reports for consideration by the next Session of CCGP. The Commission also agreed that the United States, supported by Finland, Argentina, and India, would explore new translation tools for use on an experimental basis and report to the next Session of the Commission.

### **Items from Codex Committee on Food Import and Export Inspection and Certification**

The Commission agreed to request the Codex Committee on Fish and Fishery Products and the Codex Committee on Milk and Milk Products to revise, respectively, the Model Certificate for Fish and Fishery Products and the Model Certificate for Milk and Milk Products to ensure consistency with the newly adopted Generic Model Export Certificate.

The Commission also endorsed the recommendation to request FAO/WHO Regional Coordinating Committees to discuss whether there was a need for further guidance on traceability/product tracing and report back to the 2011 Session of the Commission.

### **Food Additive Provisions in Commodity Standards**

The Commission endorsed the recommendation of the Codex Committee on Food Additives (CCFA) to encourage commodity committees to reference the Codex *Guidelines for the Use of Flavorings* in sections on flavorings in commodity standards, as appropriate. It further agreed to request CCFA to prepare a proposal for revising the Format for Codex Commodity Standards (Food Additives) of the Codex Procedural Manual to include a reference to the *Guidelines for the Use of Flavorings*.

### **Concept of Consensus and its Application in Codex**

The Commission discussed several items under the general subject of consensus.

A number of delegations believed that, in some cases, conclusions reached by Committee Chairpersons did not reflect a consensus opinion on the matter under consideration. In particular, these delegations expressed their interest in further discussions on a definition of consensus. The Commission endorsed development of a "Brochure for Chairs," providing instructions on applying consensus uniformly across Codex Committees. The Commission also noted these additional tools to aid in facilitating consensus: (a) guidelines on the use of facilitators; (b) participant satisfaction questionnaires; (c) informal meetings of Committee Chairs to facilitate discussion on achieving consensus; and (d) a reference document for delegates on consensus building.

The Commission considered a proposal from Malaysia to amend the section on consensus in the *Guidelines to Chairpersons of Codex Committees and Ad-Hoc Intergovernmental Task Forces* by adding: "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." Delegates expressed mixed views on the proposal, and after considerable discussion the Commission agreed to ask the Codex Secretariat to issue a Circular Letter soliciting comments on the proposal, for consideration by CCGP at its next Session.

### **Qualified Majority Voting**

The 2009 Session of the Codex Committee on General Principles had forwarded to the Commission a proposal for a study on the use of qualified majority voting in Codex decision making. While some delegations supported such a study, many others were of the view that this approach was not appropriate for Codex. The Commission agreed that, while a study on the impact of the introduction of qualified majority voting was a possibility, it would not be pursued while discussion continued on the above noted proposal on consensus and while steps were being taken to facilitate decision making by consensus.

### **Terms of Reference of FAO/WHO Coordinating Committees**

Based on discussions in the 2009 Session of the Codex Committee on General Principles, the Commission agreed that the Terms of Reference for FAO/WHO Regional Coordinating Committees were sufficiently flexible to permit the Committees to issue regional opinions on items before Codex committees and task forces.

### **Strategic Planning**

#### **Evaluation of the Capacity of the Codex Secretariat**

At the request of the 2008 Session of the Commission, FAO/WHO undertook an evaluation of the Codex Secretariat carried out by a consultant. The consultant's report



contained 11 recommendations relating to Codex funding from FAO/WHO; Secretariat management, operations, and staffing; and Codex operations, particularly with respect to Information Technology processes such as the Codex web site and other internet use.

The Report of the Evaluation was extensively discussed by the Codex Executive Committee prior to the Commission Session and the Chairperson requested the Commission to focus its discussion on Recommendation 5 (relating to FAO and WHO joint support for Codex relative to the efficiency of Codex and strengthening Codex's relative autonomy where possible) and Recommendation 11 (relating to annual sessions).

Regarding Recommendation 11, the Commission was of the view that it should not return to biennial, sessions, but rather continue to meet annually.

Regarding Recommendation 5, there was no clear conclusion. Some delegations noted that FAO and WHO should consider strengthening the autonomy of Codex and that joint support for Codex should be strengthened. The representative from FAO noted that, in response to the Independent External Evaluation of FAO, the Immediate Plan of Action approved by the FAO Special Conference in November 2008, included a review of FAO statutory bodies and international organizations established under Article 14 with a view to allowing them more financial and operational autonomy.

The Commission made no decision regarding the findings and recommendations of the Consultant's report, with the exception to retain annual sessions, and agreed that all recommendations would be referred to the December 2009, Executive Committee Session and the 2010 Session of the Commission.

### **Evaluation of Sessions Held in Developing Countries**

The 2008 Session of the Commission requested the Codex Secretariat to conduct a study of the effectiveness of holding Codex committee meetings in developing countries under co-hosting arrangements with the country that chairs the committee. A statistical analysis of participants in co-hosted meetings indicated that, with some exceptions, the number of developing country participants did not increase when meetings were held in developing countries. The study also indicated that one problem associated with co-hosting was timely completion of FAO Letters of Agreement and Memoranda of Responsibility, which are required before invitations to meetings can be issued.

The Commission supported holding Codex committee sessions in developing countries, recognizing that co-hosting arrangements should not be seen solely in terms of the level of participation. The United States noted that holding Codex sessions in developing countries provides opportunity for participants from the country to gain experience in the work of Codex and knowledge about Codex standards, and for increased awareness of



Codex and its role in international food standards setting within the host government and its stakeholders.

The Commission agreed to ask the Codex Secretariat to prepare a Discussion Paper on holding Codex sessions in developing countries. The paper, for consideration at the next Session of CCGP, will focus on measures to expedite the formal processes for co-hosting Codex sessions including the use of standard formats for Letters of Agreement and Memoranda of Understanding.

### **Codex Committee Structure and Mandates of Codex Committees**

The Commission noted the previously prepared proposals to merge or adjust the Terms of Reference of various Codex committees in order to reduce the number of Codex committees and streamline the committee structure and mandates.

The Commission concluded that proposals to merge committees had generated very little interest and, although there was some support for merging CCMH and CCFH, the impact was questioned since CCMH is currently inactive. It was concluded that merging committees might not be the best way to improve the efficiency of Codex, and that the entire work process needed to be addressed. The Commission agreed to discontinue discussion on the merging or dissolution of Committees.

### **Codex Trust Fund/Participation of Developing Countries in the Work of Codex**

The Representative from WHO advised the Commission that a mid-term evaluation of the Trust Fund was planned to assess its achievements and provide strategic direction for the Fund and its possible extension beyond the initial 12-year authorization period.

Some delegates spoke about the benefits they gained as Trust Fund recipients, while others focused on logistical problems experienced by Trust Fund recipients, including visa problems. Discussion centered on the need to increase the fund, including the possibility of finding new donors. Some delegations expressed concern about transparency, efficiency, and equity in the distribution of the funds and stressed the need for a review of the allocation of trust fund monies.

The Commission agreed with the draft proposal for the mid-term review and urged that recommendations of Member Countries be taken into account throughout the review.

A significant amount of time was devoted to a proposal to hold all Codex sessions in Rome or Geneva. Some countries felt this would facilitate participation because most countries have permanent diplomatic representatives stationed in those two cities. Concerns expressed with this proposal included reduced quality and diversity of the representation in Codex meetings, increased costs for host countries, and elimination of opportunities for developing countries to co-host meetings.



Strengthening the Trust Fund, WHO/FAO capacity building activities, giving greater weight to written comments when countries are not physically present at meetings, and mentoring mechanisms were all identified as effective ways to increase the participation of developing countries.

### **Private Standards**

In accordance with the Executive Committee's request that the Codex Secretariat monitor the discussions of private standards in the World Trade Organization (WTO), FAO/WHO contracted with consultants for a report on this subject. The consultants suggested some specific actions that Codex could take to mitigate the perceived need for private standards; e.g., a change in Codex procedures to better enable the Commission to respond to the challenges presented by the rise of private standards.

The concern that many Member Countries have with private standards was evidenced in the discussion on the consultant's report and by what is perceived by many Member Countries as a negative impact of private standards on their ability to trade. The Commission noted that the proper forum to address the legal implications of private standards is the WTO SPS Committee where all stakeholders are present.

The Commission agreed: (1) a study should be conducted focusing on the impact of private standards on developing countries, for consideration by the Executive Committee, and (2) to monitor the development of private standards and to encourage cooperation with the World Organization for Animal Health (OIE) and the International Plant Protection Convention to develop a common strategic position on private standards.

In an attempt to refute the charges that the slow pace of Codex is responsible in some ways for the development of private standards, the Commission requested the Secretariat to prepare an analysis of the speed of the Codex standard setting process for consideration by the Executive Committee.

### **Codex Budget**

The Codex Secretariat noted the implementation of a new results-based budgeting and management approach with the goal of ultimately connecting results to resource allocations to improve the planning and reporting processes.

The Secretariat outlined the budget for the current 2008-2009 biennium with a contribution from WHO of \$1.225 million (US) and an FAO contribution of \$7.195 million (US). Anticipated for 2010-11 is a WHO contribution of \$1.225 million (US) and an FAO contribution of USD \$6.989 million (US), with the possibility of compensation for cost increases.



FAO and WHO representatives said that the ratio of FAO/WHO contributions would continue at approximately 85/15. Several delegations noted the continued difference and the need to move toward the originally agreed 75/25 contribution ratio or to an even more equitable contribution split.

### **Other Matters**

The Commission received reports from:

- FAO/WHO regarding the provision of scientific advice.
- The FAO/WHO Trust Fund for Enhanced Participation in the work of Codex.
- Other international organizations interested in the work of Codex including OIE, WTO, International Atomic Energy Agency, and the International Organization for Standardization (ISO).

The Commission re-confirmed the same host countries for the Codex committees and the Task Force on Antimicrobial Resistance.