

MEMBERSHIP IN WTO AND INTERNATIONAL STANDARD-SETTING BODIES

Submission by the European Communities

1. In the note G/SPS/GEN/49/Rev.4 on 30 April 2002, the Secretariat provides information regarding the membership of the WTO and of the three standard-setting bodies explicitly referred to in the SPS Agreement.
2. The European Communities would like to thank the Secretariat and to draw Members' attention to the fact that the European Communities is not a member of the Codex Alimentarius, OIE and IPPC. This situation is not satisfactory because the European Communities has a large amount of competence in all the areas covered by these three standard-setting bodies.
3. Moreover, the SPS Agreement stipulates in Article 3.4 that:

"Members shall play a full part, within the limits of their resources, in the relevant international organizations and of their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote, within these organizations, the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures."
4. For these reasons, the European Communities requested the Codex Alimentarius Commission to amend its internal Rules of Procedure to allow for membership of regional economic integration organizations. An information note from the European Communities (CX/GP 02/INF.1) has been circulated amongst members of the Codex Alimentarius Commission in order to clarify the manner in which the European Communities will exercise its membership rights on an alternative basis with its member States, and the practical consequences on the functioning of the meetings of the Codex Alimentarius Commission and its subsidiary bodies. A copy of this note is attached for information of the Members of the SPS Committee.
5. The European Communities hopes that the Members of the SPS Committee will support the membership of the European Communities to the Codex Alimentarius Commission.

ANNEX

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS



WORLD
HEALTH
ORGANIZATION

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Agenda Item 6

CX/GP 02/INF.1

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON GENERAL PRINCIPLES

Seventeenth Session

Paris, France, 15 - 19 April 2002

MEMBERSHIP IN THE CODEX ALIMENTARIUS COMMISSION OF REGIONAL ECONOMIC INTEGRATION ORGANIZATIONS

INFORMATION NOTE SUBMITTED BY THE EUROPEAN COMMUNITY

BACKGROUND

1. At the sixteenth session of the Codex Committee on General Principles (hereinafter CCGP), held in Paris on 23-27 April 2001, the Codex Alimentarius Secretariat introduced a working document proposing amendments to the Procedural Manual of the Codex Alimentarius Commission in order to allow Regional Economic Integration Organisations (hereinafter "REIO") to become members of the Codex Alimentarius Commission.
2. Article 2 of the Statutes of the Codex Alimentarius Commission¹ allows the European Community, as a full member of FAO since 1991, to notify the Director General of FAO of its wish to become a full Member of the Codex Alimentarius Commission when the proposed amendments to the Codex Alimentarius Rules of Procedure are adopted.
3. In the above CCGP meeting, certain delegations raised some questions on the consequences of the proposed amendments enabling REIOs to become full Members, in particular with regard to the distribution of the respective competence between the European Community and its Member States in the areas falling within Codex Alimentarius areas of work. Other delegations requested clarifications on whether the proposed changes to the Rules of Procedure would enable the Member States of REIOs to enjoy privileges that are not currently available to other individual Members of the Codex Alimentarius Commission. Moreover, some delegations pointed out that,

¹ "Membership of the Commission is open to all Member Nations and Associate Members of FAO and WHO which are interested in international food standards. Membership shall comprise such of these nations as have notified the Director General of FAO or of WHO of their desire to be considered as Members."

over the years, the work of the Codex Alimentarius had been enriched by the diversity of views expressed by all Members and that this should continue.

4. The European Community submitted in May 2001 an Information Note (CAC/LIM-10) to the Codex Alimentarius Commission in order to respond to the points raised by some Members at the 16th session of the CCGP, in particular the manner in which the European Community will exercise its membership rights on an alternative basis with its Member States, and the practical consequences on the functioning of the meetings of the Codex Alimentarius Commission and its subsidiary bodies.
5. At the 24th session of the Codex Alimentarius Commission (Geneva, 2-7 July 2001), the Commission recalled (ALINORM 01/41, paragraphs 87 and 88) that the CCGP had not reached a decision on the proposals to amend the Rules of Procedure to allow the participation of REIOs as Members of the Codex Alimentarius Commission. Revised proposals had been put forward to the CCGP meeting, after further discussions and consultations between the Legal Counsels of FAO, WHO and the European Commission. As the quorum was not constituted, the Codex Alimentarius Commission decided to defer the discussion of the proposed amendments to the Rules of Procedure until its next session. The Commission decided to request the CCGP in the meantime to consider them thoroughly, in order to clarify relevant issues and facilitate the debate at the next session in April 2002.
6. The purpose of the present Information Note is to follow up on the previous one by responding to the comments made since then by some Members of Codex Alimentarius and by providing, in a comprehensive manner, additional information and clarifications, in particular with regard to the nature and powers of a REIO in the areas of work of the Codex Alimentarius.

REGIONAL ECONOMIC INTEGRATION ORGANISATIONS

7. The term "Regional Economic Integration Organisation" is a well-known and established concept that is being used in a very large number of international agreements and conventions. In short, it denotes an organisation to which the participating sovereign states have agreed to transfer authority and powers in a number of domains with the general objective to integrate their economies into a free trade or a customs union. Today, the European Community is the most advanced of all the REIOs that exist.
8. Article II.(4) of the Constitution of the FAO specifies that to be eligible to apply for membership of the FAO, an organisation must be constituted by sovereign states, a majority of which are member nations of the FAO, and to which its member states have transferred competence over a range of matters in the fields covered by the FAO, including the authority to make decisions binding on its member states in respect to those matters. There is no doubt that the European Community fulfils these conditions both as regards matters falling under the statute of FAO as well as under the statute of the Codex Alimentarius Commission.
9. All member states of the European Community are sovereign states. They are member nations of the FAO and of the Codex Alimentarius Commission. They are bound with the Treaty establishing the European Community, which aims to establish, *inter alia*, a common market, an economic and monetary union and to implement common policies or actions in a very large number of domains. This is in particular the case in the areas of safety and health, consumer protection, setting of food standards and of promoting fair practices and international trade. It follows that the European Community has a large amount of competence in all the areas covered by the Codex Alimentarius Commission. The implementation of the tasks entrusted to the European Community by the EC Treaty is ensured by its competent institutions. The European Commission is authorised to represent the European Community internationally, including before

the FAO. This will be also the case, after completing the accession, before the Codex Alimentarius Commission.

REPARTITION OF COMPETENCE

10. Article II(5) of the Constitution of the FAO stipulates that each REIO applying for membership to FAO submits a declaration of competence specifying the matters in respect of which competence has been transferred to it by its member states. Although the actual repartition of competence between the European Community and its Member States is an internal matter that is decided on the basis of European Community law, the Members of Codex Alimentarius should know that, as is established practice, a declaration on the repartition of competence between the European Community and its member states will be deposited upon its formal accession to the Codex Alimentarius. A copy of this 3 initial repartition of competence for matters covered by Codex Alimentarius is attached hereto (*Attachment 1*). In addition, the general rules of the FAO stipulate that before any type of FAO meeting it should be indicated who between the REIO or its member states has competence and which of them shall exercise the right to vote in respect of each agenda item.
11. It should be noted that the proposed amendments to the Codex Alimentarius' Rules of Procedures do not deviate in any substantive way from what is already applicable in the context of FAO since 1991. As the European Community has been a full member of FAO, the above provisions have been applied during all its meetings. As examples, the declarations deposited by the European Community in the International Conference on International Food Trade beyond 2000 (Melbourne 11-15 October 1999) and the 31st session of the FAO Conference (Rome, 2-13 November 2001) are attached hereto for the information of the Codex Alimentarius Members (*Attachments 2 and 3*). In practical terms, the chairman reminds the participants at the beginning of each meeting what the declaration provided by the European Community lays down on the distribution of competence and how the right to vote for each item on the agenda of the meeting will be exercised. This procedure has been working without any problem for the other members of the FAO since 1991 and there is indeed no reason to suggest that it may not work in the framework of the meetings of the Codex Alimentarius Commission and its subsidiary bodies.
12. Moreover, any Member of the Codex Alimentarius Commission may request additional information on the competence of the European Community and of its Member States with regard to any specific agenda item or question. The distribution of the competence at the meetings of the Codex Alimentarius Commission will, therefore, not suffer from any ambiguity and it is expected that very soon the other Codex Members will become fully acquainted with such distribution and exercise of competence, as this is now the situation in the context of FAO.

RIGHTS TO VOTE

13. The European Community will exercise the right to vote of its Member States for the issues falling within its part of competence. This means that the European Community membership in the Codex Alimentarius Commission will not provide additional or extra voting rights whatsoever to the European Community or its Member States beyond those they actually enjoy. Simply, the European Community will be counted as representing a number of votes equal to the number of its Member States that are entitled to vote in the meeting, which means that whenever there are requirements to register and present credentials in order to be able to vote they are respected. In any case, the European Community will never have sixteen votes. In reality, therefore, nothing will change, since the votes will be expressed by the representative of the European Community instead of being expressed individually by the delegations of the Member States in the cases where the competence will belong to the European Community.

DIVERSITY OF VIEWS

14. The diversity of views expressed by the Members of the Codex Alimentarius Commission will not be affected or diminished in any way by the accession of the European Community. Indeed, until now when the European Community expressed a view in a field of its competence, its position was the agreed position of its Member States. As already explained, currently this position is expressed by the Member State that holds the (revolving) Presidency of the European Community. The search for a consensus within the Codex Alimentarius Commission or its subsidiary bodies requires a large diversity of views and the Member States of the European Community will not, and indeed should not, be prevented from taking part fully in these frequently technical debates. Only when the competence on an issue falls within the competence of the European Community its representative will express acceptance for the purposes of achieving consensus (or will vote if the issue is put to a vote).
15. In practical terms, therefore, the adoption of the proposal for amending the Rules of Procedure should have no impact on the nature and richness of the debate that has traditionally characterised the discussions within Codex Alimentarius. It is expected that the other Members of the Codex Alimentarius will gain in clarity, in comparison to the current situation, where the same delegate expresses either the 4 position of its own Member State (on national matters) or the position of the 15 Member States (on matters of competence belonging to the European Community).

WORLD TRADE ORGANISATION

16. It should also be noted that the European Community has been a full member of the World Trade Organisation (WTO) since 1995. The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) of the WTO established that the sanitary measures which conform to international standards, guidelines or recommendations would be presumed to be consistent with the requirements of the agreement (Article 3.2). In addition, the SPS Agreement considers that for food safety, the relevant international standards, guidelines and recommendations are those which are established by the Commission of the Codex Alimentarius (Annex A, paragraph 3.a.). Also in Article 3.4, the SPS Agreement stipulates that:

"Members shall play a full part, within the limits of their resources, in the relevant international organisations and of their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organisations operating within the framework of the International Plant Protection Convention, to promote, within these organisations, the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures"

17. Moreover, the WTO Agreement on Technical Barriers to Trade (TBT Agreement) contains similar provisions. In this Agreement the Codex Alimentarius Commission is a relevant international standard setting body, in the sense of Article 2.4. thereof. In particular, Annex 1. 4. of the TBT Agreement provides that an international standard setting body or system is the "*Body or system whose membership is open to the relevant bodies of at least all Members*".
18. The current factual and legal situation does not enable the European Community to take part as a full member in the various activities of the Codex Alimentarius Commission despite the fact that it has the substantive authority to implement the Codex Alimentarius standards, guidelines and recommendations in a very large number of domains.

19. It follows that it would be incoherent that an international standard setting body for food products, specifically designated by the WTO as being the reference for the conformity of the measures to the requirements of the SPS and TBT Agreements, is not in a position to admit as full member all members of the WTO. This would be inconsistent with the relevant provisions of the SPS and TBT Agreements explained above and would not be in line with international law. The status of Codex Alimentarius as a relevant international standard setting body is, therefore, likely to be jeopardised if full membership cannot be granted to all Members of the WTO, including the European Community.
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