

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



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Agenda Item 4a)

CX/MAS 01/4-Add.2

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON METHODS OF ANALYSIS AND SAMPLING

Twenty-Third Session

Budapest, Hungary, 26 February – 2 March 2001

CRITERIA FOR EVALUATING ACCEPTABLE METHODS OF ANALYSIS FOR CODEX PURPOSES

DISPUTE SITUATIONS

Background: Discussions in the CCMAS (22nd Session, November 1998)

Dispute Situations

29. The Delegation of France presented Annex IV of the referenced paper (CX/MAS 98/5) and recalled that at the last Session the Delegations of the United States and France had expressed concerns that how to deal with trade dispute situations had not been fully addressed in CX/MAS 97/3. The Delegation explained that the annex included all possible trade dispute situations envisaged. The settlement procedure started with the comparison of the results of the export laboratory and import laboratory. If no agreement was reached in this phase, the two laboratories should first agree to the method to be used for a new analysis. If no agreement was yet obtained after the second analysis, they should take new samples according to the procedure specified in the annex. Further settlement would involve an arbitrating laboratory. The Delegation also mentioned other conditions such as quality assurance of the laboratory and archives of samples.

30. Many delegations highly appreciated the annex for its illustration of all possible scenarios. However, the Delegation of the United States stated that within its governmental system, it would not be possible to delegate authority to third parties.

31. Recognizing that the Codex Committee on Food Import and Export Inspection and Certification System is the Committee which deals with horizontal issues relating to food import and export, the Committee agreed to refer Annex IV of CX/MAS 98/5 to that Committee.

Advice from the Committee on Food Import and Export Inspection and Certification Systems (7th Session, February 1999)

Criteria for Evaluating Acceptable Methods of Analysis for Codex Purposes: Dispute Settlement Procedure

100. In relation to its work in the above area, the Codex Committee on Methods of Analysis and Sampling had referred to this Committee for consideration, a technical annex on a proposed dispute settlement procedure to be used in cases where the results of laboratory analyses were not in agreement.

101. Delegations were of the opinion that the Annex as presented was overly technical for consideration by CCFICS and that the model presented was only one of several possible solutions to the problem. By being overly prescriptive, it was considered that the model could restrict the rights that WTO Members had acquired under the SPS and TBT Agreements. It was also suggested that under the circumstances described in the document consideration might be given to developing advice based on relevant principles that took into account problems relating to sampling (including consideration of the inherent heterogeneity of samples and which party bore the cost of re-sampling) and the time period for the settlement of the dispute.

102. Although the Committee noted the number of issues raised, it questioned whether it was competent to consider such technical issues. The Committee recommended the use of laboratory accreditation systems based on objective quality assurance criteria as a means of minimizing situations where disputes might arise.

The CCMAS is invited to consider the question of dispute situations in the light of the advice provided by the CCFICS.