

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
United Nations



World Health
Organization

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Agenda Item 5

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CODEX COMMITTEE ON FOOD IMPORT AND EXPORT INSPECTION AND CERTIFICATION SYSTEMS

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DRAFT GUIDELINES ON THE PREVENTION AND CONTROL OF FOOD FRAUD

(Step 3/4)

(Report prepared by the Electronic Working Group¹ chaired by the United States of America and co-chaired by China, European Union, Islamic Republic of Iran, and United Kingdom)

Codex Members and Observers wishing to submit comments, at Step 3/4, on this draft (Appendix I) should do so as instructed in CL 2024/71/OCS available on the Codex webpage/Circular Letters 2024: <https://www.fao.org/fao-who-codexalimentarius/resources/circular-letters/en/>

INTRODUCTION & BACKGROUND

1. At the 24th Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS24) (October 2018), the European Union, as Co-Chair of the EWG on Food Integrity and Food Authenticity, introduced a discussion paper, which contained definitions of food integrity, food authenticity, food fraud and Economically Motivated Adulteration (EMA); provided an analysis of how different CCFICS texts took into account the issues around food integrity and authenticity; noted a number of areas where further work may be justified; and presented recommendations for the Committee's consideration based on inputs from the EWG.
2. CCFICS24 agreed on the important cross-cutting nature of issues relating to food integrity and food authenticity and held a wide-ranging discussion in which many delegations engaged. There was recognition that CCFICS may have a role to play in this area.
3. An EWG was established, the task of which was to conduct a comprehensive analysis of existing Codex texts within and outside of CCFICS and to propose new work, within the mandate of CCFICS, for consideration at CCFICS25. The EWG used a questionnaire to gather information that was used to develop the discussion paper and to frame the scope of potential new work. Furthermore, a comprehensive review of the Codex texts related to food fraud was also undertaken and it was recognized that food fraud was already covered in a variety of Codex texts. The EWG updated the discussion paper and streamlined the scope of the potential new work.
4. At CCFICS25 (May-June 2021), the discussion paper (CX/FICS 21/25/8) and project document were considered. The CCFICS Chairperson noted that there was strong interest in food fraud, both within Codex and beyond, and that CCFICS should seek to agree on the project document with a view to promptly starting new work on this important topic.
5. CCFICS25 noted that the scope of the work should be within the mandate of CCFICS and should address the dual mandate of Codex, protecting consumer health and ensuring fair practices in food trade.

¹ Argentina, Australia, Bhutan, Brazil, Canada, Chile, China, Costa Rica, Dominican Republic, El Salvador, Estonia, European Union, France, Germany, Ghana, Guatemala, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Japan, Republic of Korea, Kenya, Liberia, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Norway, Panama, Poland, Saudi Arabia, Senegal, Singapore, Spain, Sweden, Thailand, Togo, Türkiye, Uganda, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Fédération internationale des vins et spiritueux (FIVS), FoodDrinkEurope, Food Industry Asia (FIA), International Chewing Gum Association (ICGA), International Council of Beverages Associations (ICBA), International Dairy Federation (IDF), International Feed Industry Federation (IFIF), Organisation internationale de la vigne et du vin (OIV), Tea & Herbal Infusions Europe (THIE), and the United States Pharmacopeial Convention (USP)

Additionally, CCFICS25 noted that the new work should not overlap with existing Codex texts and the guidance should not cause trade barriers.

6. CAC44 (November-December 2021) approved the new work for CCFICS (REP21/CAC).
7. At CCFICS26 (May 2023), the Committee discussed the draft document (CX/FICS 23/26/6) and most of the discussion focused on several sections. The discussion included comments on:
 - definitions used in the draft document;
 - the need to ensure that recommendations in the guidelines are appropriate to the level of risk;
 - whether feed for food-producing animals should be included within scope of the draft guidelines;
 - whether to include language related to criminal offenses in the draft guidelines; and
 - whether the scope of the guideline should explicitly exclude issues related to intellectual property (IP), including geographical indications (GIs).
8. With respect to the inclusion of language excluding IP and GIs in the scope of the guidelines, different opinions were voiced by Members, including:
 - GIs are outside the mandate of Codex and CCFICS because they are related to matters of intellectual property and are not within the scope of these guidelines; further, GIs are not consistently recognized on a global basis. Given that, some Members thought the footnote should be included for clarity, while others thought that the footnote is not necessary and should be deleted.
 - GIs are within the mandate of Codex and CCFICS as it is an issue related to food and food quality requirements, and therefore falls under fair practices in food trade so the footnote should be deleted from the guidelines.
9. At CCFICS26, the CCFICS Chairperson advised that she would write to the CAC Chairperson/CCEXEC Chairperson to seek advice about the extent to which GIs could be considered within the mandate of CCFICS and would share the correspondence with the Committee. It was further agreed to continue discussion on the inclusion of GIs in the guidelines in the EWG and to maintain all text currently in square brackets for consideration by the EWG.

TERMS OF REFERENCE

10. At CCFICS26 (REP23/FICS), the Committee agreed to:
 - Return the proposed draft guidelines on the prevention and control of food fraud to Step 2 for redrafting, using the edited version from the plenary.
 - Establish an EWG open to all Members and Observers, chaired by the United States of America and co-chaired by the United Kingdom, the Peoples Republic of China, the European Union, and the Islamic Republic of Iran, working in English only, with the following terms of reference:
 - i. To prepare draft guidelines on the prevention and control of food fraud, taking into account all discussions and the comments (including text found in square brackets) submitted at CCFICS26, for consideration at CCFICS27.
 - ii. To submit the report of the EWG at least three months in advance of the next session.
 - To keep open the option to hold a physical working group session immediately prior to the next CCFICS session and/or a virtual intersessional meeting, to address any outstanding issues.

PARTICIPATION AND METHODOLOGY POST CCFICS26

11. Codex Member and Observers were invited to register (by 1 September 2023) to participate in the EWG. Forty-Seven (47) Members and ten (10) Observers registered for the EWG.
12. The revised draft guideline was circulated by the chair and co-chairs, in English, to the EWG on December 14, 2023, highlighting that there were a few places that required further discussion that were included in square brackets. Responses and comments were requested by February 2, 2024.
13. Seventeen (17) Codex Members and Observers submitted comments on the draft.
14. The EWG comments provided improved language and pointed toward consensus for parts of the draft guidelines. However, a lack of consensus remained for other portions of the draft guidelines. In response to the EWG comments, the chair and co-chairs prepared a revised draft document indicating the seven areas for which there is no consensus at this time. **Appendix 1** of this paper includes the draft text of the guidelines and the seven questions where there is no consensus (e.g., language around geographical indications; limiting

the inclusion of references to animal feed to situations where it has potential impact on human food safety; the investigation and prosecution of food fraud; and use of neutral technology to combat food fraud).

15. In addition, in June 2024, the Chairperson of CCFICS wrote to the Chairperson of the Codex Alimentarius Commission to seek his views about the extent to which geographical indications could be considered within the mandate of CCFICS. As of August 5, 2024, no response to that letter has been received.

CONCLUSIONS OF THE EWG

16. The EWG Chair and Co-Chairs acknowledge and thank Codex Members and Observer organizations for their continued engagement during the intersessional EWG process.

17. The EWG responses did not clearly point to consensus on certain issues.

18. Further discussion of the guidelines by the Committee is needed, particularly around the following:

- whether the scope of the guideline should explicitly exclude issues related to intellectual property (IP), such as geographical indications (GIs);
- definitions used in the draft document;
- the need to ensure that recommendations in the guidelines are appropriate to the level of risk;
- whether feed for food-producing animals should be included within scope of the draft guidelines; and
- whether to include language related to criminal offenses in the draft guidelines.

RECOMMENDATIONS OF THE EWG TO THE COMMITTEE

19. The Committee is invited to:

- note the extensive work undertaken by the EWG and the level of support for progressing this guideline;
- discuss the text of the guideline and, in particular, consider the specific questions highlighted in **Appendix 1**; and
- if agreement can be reached, consider recommending advancing the Draft Guidelines on the Prevention and Control of Food Fraud as contained in **Appendix 1** and revised during CCFICS27.

APPENDIX I**DRAFT GUIDELINES ON THE PREVENTION AND CONTROL OF FOOD FRAUD****(at Step 3)****Section 1: Preamble / Introduction**

1. The increasing complexity of food systems and global trade in food makes food supply chains more vulnerable to food fraud. Protecting the global food supply from intentional actions that undermine protection of public health and upholding fair practices in food trade are common goals for all stakeholders.
2. Food fraud incidents can present a risk to public health and can result in economic loss for consumers and other stakeholders, disruption in trade, reputational damage, and unfair economic advantages.
3. Government oversight and good manufacturing practices by food business operators (FBOs) are important to protect public health, to limit the opportunity for food fraud and to maintain consumer confidence in the safety, authenticity, integrity, suitability², and quality of food.
4. Food fraud can be prevented or minimized using the existing controls and mitigation measures available to countries through their National Food Control Systems (NFCS) or by adopting new measures, if necessary.
5. The prevention and control of food fraud is a shared responsibility, with FBOs responsible for producing safe and suitable food, and for presenting it in a manner so as not to deceive consumers. Competent authorities provide regulatory oversight and have an important role in increasing awareness about food fraud by building partnerships and collaborating with relevant stakeholders to prevent, detect, mitigate, and control food fraud.
6. Work in the area of food fraud is widespread in a range of international organizations. Countries may wish to consider work from these and other organizations, as appropriate, when developing tools and strategies to prevent, detect, mitigate, and control food fraud.

Question 1:**Should sub-paragraph “6 bis” be retained?**

[6 bis. Fundamental to the successful functioning of any food fraud combatting strategy is the establishment and maintenance of an anti-food fraud culture acknowledging the importance of human behaviours in protecting integrity of the food supply chain and presenting food/feed in a manner so as not to deceive consumers.]

Section 2: Purpose / Scope**Question 2:****In paragraph 7, should the addition of “that may impact human food safety” be retained?**

7. The purpose is to provide guidance to competent authorities and FBOs on the prevention, detection, mitigation, and control of food fraud to help protect the health of consumers, and to ensure fair practices in food trade, including feed for food producing animals [that may impact human food safety]. Aspects related to food fraud are already addressed through many existing Codex texts; this guidance is intended to support or supplement existing Codex texts by providing additional guidance specific to food fraud that can be considered within NFCS³.

Question 3:**What, if anything, should be explicitly stated with respect to Geographical Indications (GIs)? This issue is currently in Footnote 3 as bracketed text.****Exchanges on this question should be supported by information from the CAC Chairperson and the Codex secretariat.**

² Food suitability is defined in CXC 1-1969 as “Assurance that food is acceptable for human consumption according to its intended use”.

³ [Issues of intellectual property, such as geographic indicators and related labeling restrictions which do not represent a risk to public health and are beyond the scope of Codex are not addressed within this guideline.]

Question 4:
Should 7bis be retained?

7bis. [the investigation and prosecution of food fraud offenses are outside the scope of this guideline and need to be handled by countries under their respective laws.]

Section 3: Definitions

For the purposes of this document, the following definitions apply:

Food Fraud: Any deliberate practice intended to deceive others in regard to the prescribed specifications or expected characteristics of food to gain an unfair economic advantage.

Food Integrity: The status of a food product in which it is not altered or modified from its expected characteristics, including food safety, quality, composition and nutritional properties.

Food authenticity: Conformity between the food product characteristics and the corresponding information provided through food product labelling or other information associated with food trade.

Section 4: Types of food fraud:

The following section provides examples, when done intentionally for economic gain, of types of food fraud:

Addition: Adding an undeclared substance to a food product that would not ordinarily be present, or present in that quantity, in the food.

Substitution: Replacing an ingredient, in whole or in part of a food product with another ingredient, in whole or in part of a product of lower value without declaring it.

Dilution: Adding a material to make another ingredient present at a lower concentration than represented.

Counterfeiting: Making an imitation of a food product with the intention to deceive or defraud.

Misrepresentation: Labelling or marketing a food product in a manner that is false, misleading, or deceptive.

Concealment: Hiding or not disclosing information on the safety, suitability, or quality of food ingredients or food products.

Question 5:

- a. **Regarding Section 5 “Principles”, can the text of this Section be revised to better enhance the flow and alignment of the document as a whole? During the EWG process, one member questioned how the principles looked after the last revision. Is the Committee in agreement with the two principles currently articulated in Section 5?**
- b. **Under Principle 1, specifically, which phrase in square brackets should be retained? Or should both be retained?**

Section 5: Principles

8. Prevention, detection, mitigation, and control of food fraud should be based on the following principles:

Principle 1: Control and Prevention of Food Fraud

NFCS can reduce the risk of food fraud by having measures, proportionate to the level of risk, in place to prevent, detect, mitigate, and control food fraud, including surveillance and monitoring activities in order to protect consumers and [the integrity of the food supply chain] [fair trade practices].

Principle 2: Coordination, Cooperation, and Collaboration Between Competent Authorities

Coordinated cooperation and collaboration between Competent Authorities within or between countries can help prevent, detect, mitigate, and control food fraud.

Section 6: Roles and Responsibilities

9. The relevant competent authorities have the role and responsibility to, as appropriate to the risk and the circumstances existing in their territories or associated with imports:
 - a. Establish or maintain controls in an NFCS’ legal structures and requirements to prevent, detect, mitigate, and control food fraud.

- b. Establish or maintain oversight programs to prevent, detect, mitigate, and control food fraud.
 - c. Build partnerships and collaborations with other competent authorities, industry, academia, and other stakeholders to prevent and control food fraud.
 - d. Communicate, coordinate and collaborate with stakeholders and other government authorities, as needed.
 - e. Notify any countries thought to be impacted when incidents of food fraud are identified or suspected.
10. FBOs have the role and responsibility to, as appropriate:
- a. Comply with all regulations relevant to prevent, detect, mitigate and control food fraud.
 - b. Analyze and understand the vulnerabilities in their supply chain and products/ingredients/packaging there that may be susceptible to food fraud.

Question 6:

Commenters pointed out redundancies between sub-paragraphs 'b. bis' and 'e'. Should one of the sub-paragraphs be deleted?

- b. bis** [Have measures in place to mitigate the risk that the food products and ingredients are not authentic and ensure that the nature, safety, quality, and substance are accurately represented.]
- c. Represent food for sale in a manner that does not deceive or mislead consumers.
- d. Inform the competent authority when they detect or suspect food fraud.
- e. Take reasonable precautions to prevent, detect, mitigate, and control food fraud, including having processes in place for rapid removal of affected product from the market.
- f. Create awareness and understanding of food fraud throughout the FBO and build an anti-food fraud culture in all elements of the organization.

Section 7: Relevant Activities for Competent Authorities

11. Measures to prevent, detect, mitigate, and control food fraud incorporate aspects of food safety and quality, consumer protection, and ensuring fair practices in food trade, and so may be addressed within the structure of a NFCS. Competent authorities should consider conducting a range of activities to mitigate risks of food fraud, as appropriate for the level of risk, including, for example:
- a. Reviewing their NFCS and determine whether their system has an adequate regulatory and legislative framework (laws, regulations, guidance) and appropriate policies and procedures to monitor, prevent, detect, control, and respond to food fraud incidents and strengthen fair trade. Such policies could include legal requirements, including sanctions, and responsibilities of the FBOs related to food integrity and authenticity.
 - b. Establishing procedures to receive and evaluate reports of food fraud and determine appropriate follow-up, consistent with the food safety risk identified and national priorities.
 - c. Developing tools to protect persons acting as "whistle blowers" reporting such incidents.
 - d. Establishing surveillance activities to detect food fraud. These activities could be conducted on a routine basis or in response to specific risk that has been identified.
 - e. Providing practical guidance to FBOs and other stakeholders on how to address food fraud. Such guidance could include resources and access to tools on how to develop procedures to prevent, detect, mitigate, and control food fraud.
 - f. Establishing appropriately secure communication channels with other governments, FBOs, academia, and other stakeholders to obtain information about situations involving food fraud and to share relevant knowledge, experience, and tools for combatting food fraud, such as food standards and analytical methods.
 - g. Establishing communication mechanisms for timely reporting to stakeholders about incidents involving food fraud, as appropriate.
12. Policies, procedures, and regulatory requirements related to food fraud prevention and control should be transparent and risk-based.
13. If a food fraud incident might impact food safety and threaten public health, the competent authority should immediately alert all other relevant competent authorities.

Section 8: Cooperation, collaboration and exchange of information between competent authorities

14. Competent authorities should cooperate, collaborate and exchange information with the relevant competent authorities in situations where food fraud is suspected or identified, as appropriate and in accordance with national law and information sharing agreements. This exchange of information could be expanded when there is awareness that fraudulent product poses a food safety risk and has been distributed to other countries.
15. The exchange of information should be made as early and rapidly as possible, recognizing that the initial information may often be incomplete and more detailed information will be provided as it becomes available. Identification of key elements, including relevant information in *CXG 19-1995 Annex*, that contribute to international harmonization and collaboration on the prevention and control of food fraud are essential.
- 15 bis.** Information exchanged should be sufficient to allow competent authorities to evaluate the food fraud incident and mitigate its impact, especially with regard to risk to consumers, without jeopardizing ongoing investigations.

Question 7:

A member of the EWG suggested the inclusion of Para. 15 ter. Should this new para. be included?

- 15 ter.** Enhance collaboration to better integrate neutral technologies and use of data mining and machine learning technologies in the food chain which can aid in more effectively preventing food fraud.
16. Competent authorities may benefit from establishing appropriate information exchange routes with relevant enforcement bodies and agencies, including those responsible for dealing with criminality. In establishing such routes, competent authorities should give due consideration to information security around personal data, operationally sensitive material and also have in place systems to assure the integrity of any evidence gathered and/or shared.