



JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON FOOD IMPORT AND EXPORT INSPECTION AND CERTIFICATION SYSTEMS

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DISCUSSION PAPER ON APPEAL MECHANISM IN THE CONTEXT OF REJECTION OF IMPORTED FOOD

(Prepared by India and Nigeria)

Background

1. The main objective of food control authorities is to protect public health and to prevent economic loss and trade disruption, so as to ensure reliable global food supply chain.
2. Border rejection of consignments is one of the critical issues in the global food trade. Sometimes rejections could be due to reasons other than food safety. Therefore, any decision on destruction /discarding or alternative (non-food) use of food, without fair opportunity to demonstrate safety and compliance as per importing country requirements, may eventually lead to food loss.
3. Although each individual case may represent a huge economic cost and food loss for the involved stakeholders, the main problem associated with border rejections is still the overall loss of trust and confidence of buyers in the safety and quality of the produce of exporting country.

Food Loss due to rejection of imported Food - Global Scenario:

4. Food and Agricultural Organization (FAO) of the United Nations (FAO 2019)¹ defines food loss as “the decrease in the quantity or quality of food resulting from decisions and actions by food suppliers in the chain, excluding retailers, food service providers and consumers.” This refers to food that is discarded, incinerated or otherwise disposed along the food supply chain from harvest /slaughter, but excluding the retail level, and does not re-enter into any other productive utilization, such as feed or seed.
5. Food loss can be measured by the Food Loss Index (FLI) and the global average is 13.8 per cent. Sustainable Development Goal 12 emphasizes that reducing food waste is critical to maximizing the value of agricultural land and ensuring that natural resources are used in sustainable way. Target by 2030 is to halve per capita global food waste at the retail and consumer levels and reduce food losses along production and supply chains, including post-harvest losses.
6. Food losses occur in various forms during international trade, however, accurate information regarding food losses that occur during international trade is very limited. Failure to comply with minimum food safety standards, non-tariff trade barriers and failure to “harmonize” or adopt accepted food standards result in food shipments being rejected by importing countries and compliance testing results in rejections of products at border. The rejected agricultural produce by importing countries results in seizures and detentions of consignments, and consequent re-export to exporting countries, dumping into unsuspecting countries or outright destruction, which causes considerable economic, environmental, and social losses.
7. When we look into the direct causes of food loss, consignment rejection at borders, detainment of perishable products due to non-compliance, destruction and re-export of rejected food, are also among various reasons. The direct and indirect causes (not exhaustive) of food loss is represented in Figure1.

¹ Food and Agriculture Organization of the United Nations (FAO) (2019). The State of Food and Agriculture 2019. Moving Forward on Food Loss and Waste Reduction. Rome: FAO.

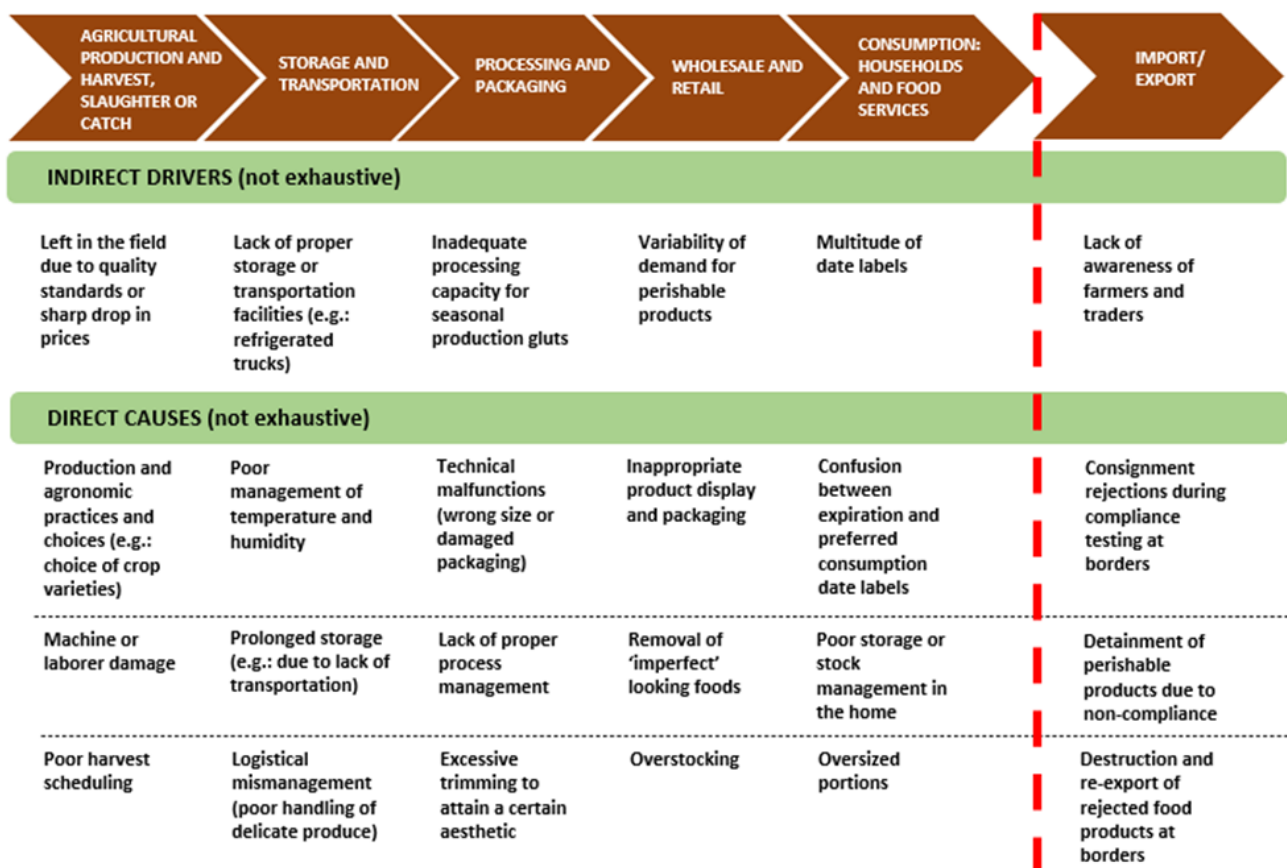


Figure 1: Direct and indirect causes/drivers of food loss (Source: FAO 2019)

8. Such rejections and detentions are costly and lead to food losses. In some instances, food may be reconditioned or relabeled and thus salvaged, however it is not always possible to do this particularly with perishable food. Often, the food is rejected outright, and the exporter looks for a nearby buyer². Such rejections, detentions and seizures are critical food losses that occur further down the food value chain during international trade that require great concern, as these losses have a higher economic value than losses that occur earlier in the supply chain (FAO, 2019).

9. The FAO estimates that in 2020, approximately 720.4 million to 811.0 million people around world were undernourished, and approximately 1.6 billion metric tons of food were lost or wasted globally. According to the FAO's State of Food and Agriculture (2019) report, around 14 per cent of the world's food (valued at \$400 billion per year) continues to be lost after it is harvested before it reaches the shops. Therefore, any attempt to reduce/minimize the food losses due to rejection of imported food consignments will eventually contribute to the food security.

10. Based on the data taken from UNIDO's Knowledge Hub³ for HS 1-23: Food and Feed in respect of 15 major food exporting countries to different markets during the period 2010 to 2022, it is observed that the possible reasons for rejection of food consignment are labelling, hygienic conditions, adulteration, missing documents, additives, bacterial contamination, pesticide residues, veterinary drug residues, mycotoxins, heavy metals and packaging which is tabulated in Table 1.

² ASIA-PACIFIC RESEARCH AND TRAINING NETWORK ON TRADE – Working Paper No. 228: 2023 - Food losses in international trade of agricultural commodities: a case study in Sri Lanka

³ UNIDO Knowledge Hub – Border rejections in major global markets: Standards Compliance Comparison [https://hub.unido.org/rejection-data/data-explorer]

Reasons for rejection	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Additive	18.74	5.26	8.85	8.93	7.14	8.45	9.94	16.24	11.70	7.23	12.36	8.66	6.05	4.81	14.78
Adulteration/Missing Documents	10.41	6.40	7.15	7.63	12.24	10.29	10.06	7.05	12.61	5.42	10.32	10.85	5.08	6.08	12.44
Bacterial Contamination	3.96	25.58	14.42	19.31	1.02	8.47	10.54	6.19	8.54	29.43	16.44	14.50	17.22	14.43	5.03
Heavy Metals	1.40	0.35	1.67	1.93	0	0.79	12.15	0.76	2.85	1.50	0.94	1.60	0.58	2.40	0.82
Hygienic Conditions/Controls	8.85	25.30	5.05	5.19	0	11.23	5.84	16.06	13.65	32.63	4.00	23.70	15.15	10.96	9.72
Labelling	23.94	27.24	38.16	26.95	61.22	51.58	25.96	25.76	23.41	9.62	29.77	23.40	29.90	14.14	44.07
Mycotoxin	21.70	3.10	1.61	1.51	0	0.19	2.12	4.77	3.57	3.74	1.21	1.00	4.46	34.02	0.62
Other contaminants	1.27	0.53	7.40	6.34	2.04	0.98	4.82	5.56	0.95	5.34	0.99	2.71	1.42	3.18	2.22
Others	5.74	0.69	6.99	11.44	0	1.90	6.56	2.54	11.43	1.31	2.96	3.45	1.19	0.92	4.61
Other microbiological contaminants	1.21	0.42	2.86	3.14	0	0.22	4.41	0.45	2.53	0.69	1.61	1.01	0.27	3.11	1.75
Packaging	0.58	0.32	1.67	1.15	0	0.16	1.79	0.07	2.98	0.40	0.48	0.35	0	0.50	0.54
Pesticides Residues	1.93	3.19	3.82	5.76	16.33	5.14	5.50	8.92	5.42	0.40	1.24	7.52	16.64	4.95	3.06
Veterinary Drug Residues	0.28	1.62	0.35	0.72	0	0.60	0.30	5.61	0.36	2.28	17.68	1.24	2.01	0.50	0.34

Table 1: Country wise data on reason and frequency of rejection (%). (Source: UNIDO Knowledge Hub – Border rejections in major global markets: Standards Compliance Comparison [<https://hub.unido.org/rejection-data/data-explorer>])

Note: The Alphabets A to O indicates 15 major food exporting countries, however, names of the countries are not being mentioned deliberately.

11. The data indicated that the most common reason for rejection across the countries was labelling with average frequency of 30.34% with highest and lowest frequency being 61.22 % and 9.62% respectively. Adulteration/Missing documents as reason for rejection was also having average frequency of 8.9 % and others (not specified) at average 4.11%. (Fig.2)

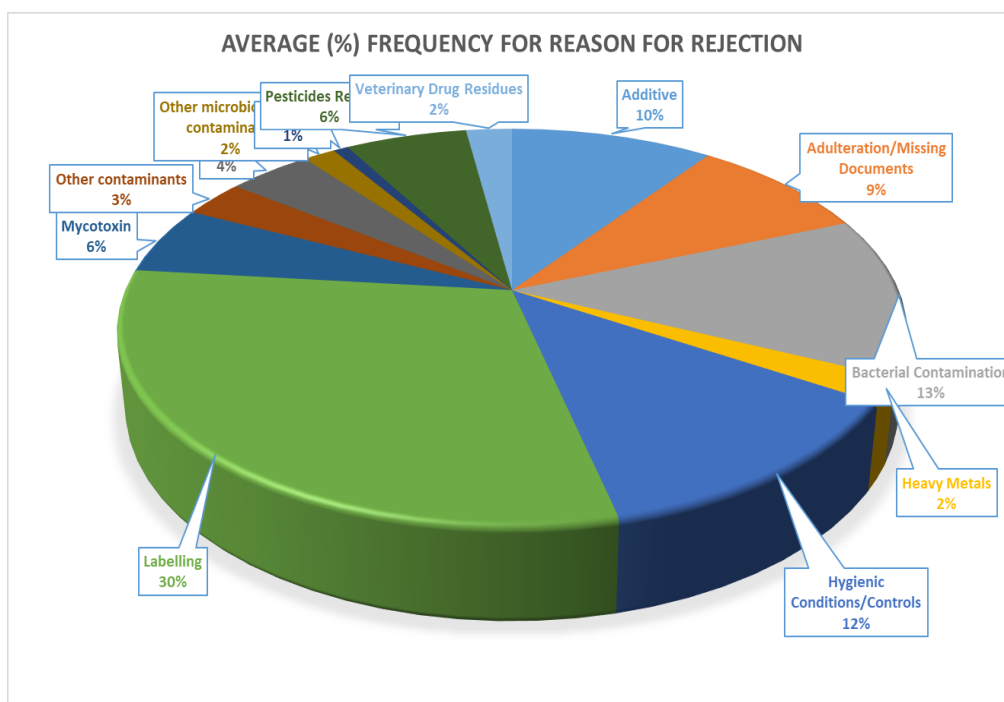


Fig. 2: Average (%) of frequency for different reasons for rejections in imported food

12. The data indicates that reasons for rejections having no direct bearing to food safety are quite common in international trade as compared to the reasons/factors related to food safety, like, Pesticides residues, Veterinary Drug Residues, Contaminants. As the percentage for rejections having no direct bearing to food safety is over 40%, a fair opportunity to appeal against such reasons for rejection of imported consignment and bringing the product to compliance through reconditioning/relabeling and proper documentation can help in avoiding considerable food losses during international trade.

13. Further, the opportunity for retesting during appeal can help to reduce the number of rejections, particularly in cases of marginal difference in analytical results, without any compromise with food safety.

Appeal against rejection: Global Situation

14. The FAO's Risk Based Imported Food Control Manual⁴ suggest that decision making rules should be clearly established and available to importers and include formal communication of results and opportunity for appeal. The competent authority should provide a clear and transparent process for administrative appeals including, where available, options for use or disposal of the non-compliant consignment. Once an imported product has been determined to be in violation of the importing country's requirements, the importer should be advised on the options available, depending on the nature of the violation. In addition, information on the rejected lot should be provided to the exporting country. With respect to the non-compliant product, the options may include, (1) Bringing the product into compliance if possible (e.g. where the violation is associated with labelling infractions and can be mitigated through relabeling). Another possibility is to designate the product as animal feed, based on the risk of transmission to animals and the level of product control during storage and distribution. (2) If no mitigating process is possible, the importer may seek to: (a) return product to supplier, particularly where the product remains the property of the exporter/supplier; or (b) seek to re-export (where appropriate) the product. If the product is re-exported, consideration should be given to informing trading partners about the inspection decision. (3) Where there are serious health risks, a decision to require the lot to be destroyed should be considered.

15. Codex document "Guidelines for food import control systems (CXG 47-2003)" has also emphasized that there should be an appeal mechanism and/or opportunity for review of official decisions on consignments.

16. However, it is observed that only few countries are having the provisions for review/appeal against the rejection of the imported food consignments and even wherever available, the information/procedure/guidance is not available in public domain thereby limiting the use of provisions. An attempt was made to review the

⁴ FAO's Risk based Imported Food Control Manual (2016) – Food Safety and Quality Series: ISSN 2415-1173

provisions of appeal of some of the member countries (name of the countries are deliberately avoided) and details are given in the following paragraphs.

17. In one of the countries, the Regulatory Authority notifies the responsible parties that an imported product violates the laws and regulations by issuing a "Notice of Detention and Hearing." The Notice of Detention and Hearing provides a "respond by" date (20 calendar days) for the importer, owner, and/or consignee to provide with evidence, also called testimony, to overcome the appearance of a violation. The rejected goods may be subjected to Review, Reconditioning, Re-export and Destruction.

18. In another case, similar four steps i.e. Review, Reconditioning, Re-export and Destruction are followed in treatment of rejected goods. Importers are notified by competent authorities when their imported food products are rejected at the port of entry and have a specified timeframe (10 to 15 days) within which they must submit a formal request for review. The review panel examines the importer's request, along with any supporting documents and evidence provided. Importers are notified of the outcome of the review process and if the importer disagrees with the outcome of the review process, they have the right to appeal the decision to the appropriate appellate body. Depending on the outcome of the appeal process, the imported food products may be cleared for entry into the market or remain subject to rejection. A non-compliance report (NCR) is a formal document issued by regulatory authorities or inspection agencies to inform an organisation about deviations, violations, or failures to comply with specified standards, regulations, or contractual requirements. Importers may opt to destroy the rejected food products voluntarily when bringing the product into compliance is deemed impractical or economically unfeasible. Importers may choose to re-export the rejected food products which may involve shipping the goods back to their country of origin or another destination where they meet regulatory requirements. Re-exporting is one of the options available to importers to address the rejection of their food products and mitigate the financial and regulatory consequences associated with non-compliance. If voluntary destruction or re-exportation is chosen or required, the competent authorities issue authorization for the disposal of the rejected food products.

19. In another country, if the imported food product has been rejected, the importer has the right to appeal the decision. Certain decisions can be reconsidered. If the importer is not satisfied with the outcome of an initial decision, the importer can apply for a review of the decision within 28 days after being notified of it. The importer will receive written notice of the decision within 28 days of submission. If the interests are affected by the decision after reconsideration, the importer may apply to the Administrative Appeals Tribunal (AAT) for a review. The steps for treatment of rejected goods are same i.e. Review, Reconditioning, Re-export and Destruction.

20. One of the countries has included the Codex text in their Food Import guidelines without specifying the actual procedure for review or appeal.

21. In another case, if a regulated import is rejected, a reject message will be received in the importer or customs broker's IID system which will include what item or commodity was rejected, and the reason why it was rejected. When an inspector determines that an imported food is non-compliant, or was imported in contravention of the legislation, the inspector may use their discretionary authority to choose the appropriate response in order to mitigate the risk and respond to non-compliance. Depending on the scenario, the inspector may use inspector powers to apply one of the following: seize and detain the imported food; order the imported food be removed or destroyed; seize and detain the imported food and order the food be removed or destroyed. The authority to order destruction of food applies only if removal is not possible. All costs related to the destruction are at the importer or owner's expense. The destruction may or may not be conducted under an inspector's supervision.

22. In one country, the cargo that has been judged not to comply with the law (the cargo that "did not pass" the inspection) cannot be imported in terms of Import Procedure under Food Sanitation Act. The quarantine station will notify the importer how the cargo violates the Food Sanitation Law, and the importer will take necessary measures like disposal, reshipment, or diversion to non-food uses by following the instructions from the station.

23. Based on the available information, it is observed that opportunity for appeal against a rejected food consignment is available to the importer. It is true that importer (the operator responsible) is the most relevant contact point whenever imported food consignment is rejected, however, the two other important stakeholders i.e. exporter and exporting country cannot be overlooked in such situations, particularly when their commercial and national image are at stake. Therefore, exporter either directly or through competent authority of the exporting country should be provided opportunity to file appeal against decision of rejection in case importer is not coming forward to file the appeal.

24. There was a view that appeal mechanism may be a conflict with the customs procedures and WTO platform is already available for raising such import rejections. However, we may need to keep in mind that Specific Trade Concerns (STCs) and Dispute Settlement Body (DSB) in the WTO may not be appropriate mechanism for the day-to-day operational issues and are generally used for raising violations of the provisions

of the WTO's agreements, like SPS and TBT etc. Further, it may not be out of the context to mention here that the Trade Facilitation Agreement (TFA) of the WTO emphasize on the need for publishing procedure for appeal or review in non-discriminatory and easily accessible manner⁵.

Review of existing Codex Text

25. The Codex document⁶ “*Guidelines for the exchange of information between countries on rejections of imported food (CXG 25-1997)*” has given some important provisions related to rejection of imported food like:

- When the competent authority rejects a consignment of food presented for importation due to non-compliance with importing country requirements, information should be exchanged to advise **relevant parties** of the rejection, to enable relevant parties to attain any necessary clarifications, and where appropriate implement corrective and preventative measures.
- Where appropriate, information should be provided to the **competent authority of the exporting country** (or embassy if the competent authority is not known) and the importer **and/or exporter** of the rejected consignment.
- Where appropriate, the **competent authority of the exporting country should have reasonable access to the evidence found by the importing country**, so as to be able to investigate the cause of the non-compliance and implement and manage any corrective actions as required.
- Based on the information provided, in accordance with the importing country's legislation, the importer **and/or exporter**, in consultation with the competent authority of the importing and **exporting countries** as appropriate, may determine what action to take.

26. In the context of the above provisions of CXG 25-1997, the Codex document⁷ “*Guidelines for food import control systems (CXG 47-2003)*” suggest under paragraph 29 that there should be an appeal mechanism and/or opportunity for review of official decisions on consignments.

Need for Proposed Codex Guidance

27. In view of the above position, certainly there is gap in the text due non-availability of Codex guidance on appeal mechanism and appeal mechanisms currently being followed by the limited countries provided only importer to file appeal which is contrary to CXG 25-1997 wherein exporter/competent authority of exporting country have been identified as important stakeholders. Therefore, the proposed guidance will have the following benefits:

- Address the gap in the existing Codex text
- Helping countries to have appeal mechanism, wherever it is not there, thereby helping them to comply to Trade Facilitation Agreement
- Transparency and harmonization of appeal mechanisms in member countries.
- Opportunity to Exporter/Exporting Country to file appeal – if importer does not come forward for appeal
- Reduction in the food loss due to rejection of imported food consignment without any compromise on food safety.
- Contribution to fair trade, food security and sustainability in food trade

An indicative Process flow for appeal mechanism is given in the **Annex I**.

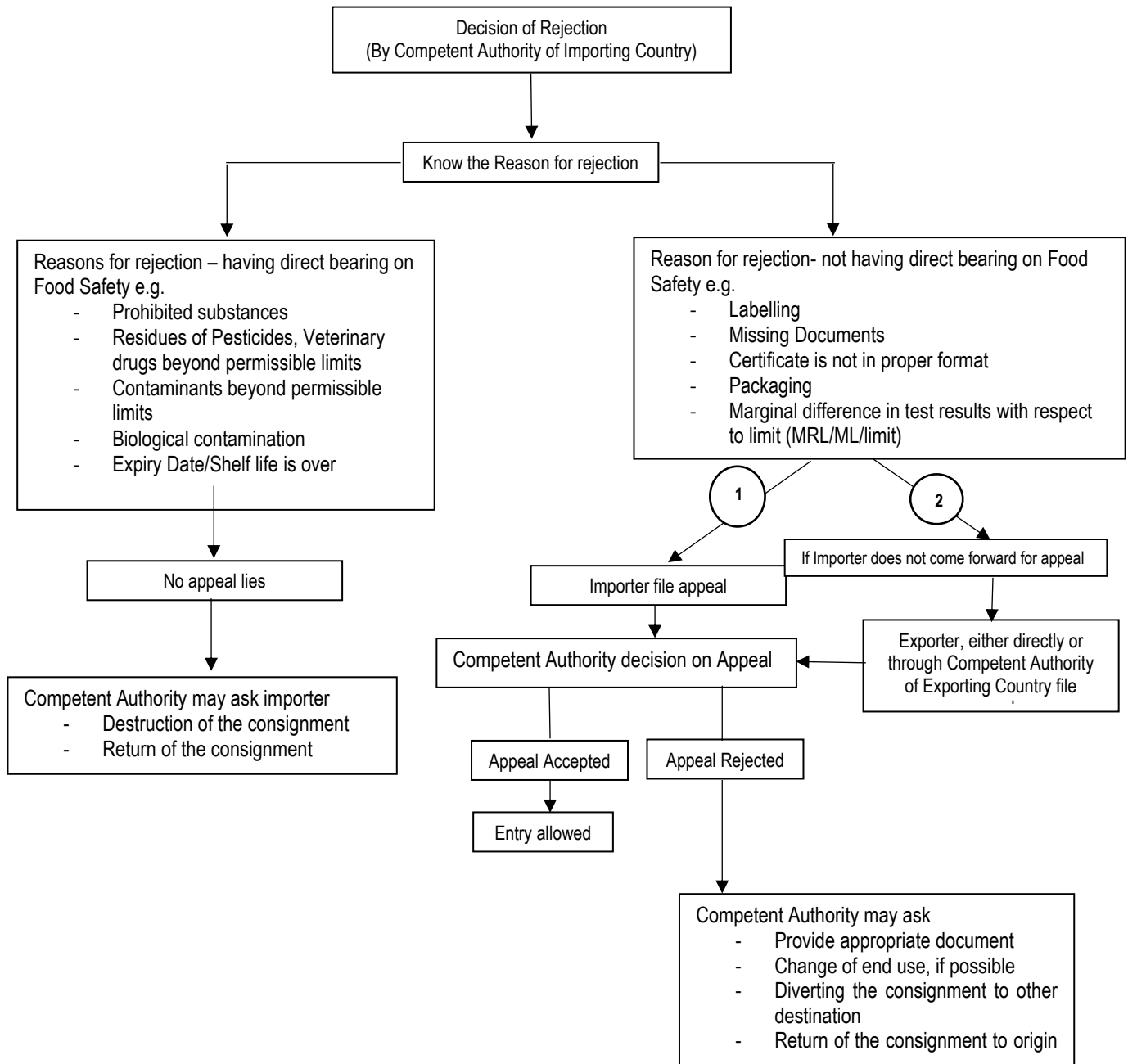
28. The committee may consider and forward for approval to the Commission the new work on development of guidance on appeal mechanism in the context of rejection of imported food (**Appendix**).

⁵ WTO's Agreement on Trade Facilitation – Article 1.1(h) and Article 4 [https://www.wto.org/english/docs_e/legal_e/tfa-nov14_e.htm]

⁶ Guidelines for the exchange of information between countries on rejections of imported food (CXG 25-1997- Revision 2016)

⁷ GUIDELINES FOR FOOD IMPORT CONTROL SYSTEMS (CXG 47-2003: Revision 2006)

Process Flow for Appeal against decision of rejection of import food



Project document**Codex Guidance on appeal mechanism in the context of rejection of imported food**

(Submitted by India and Nigeria)

1. Purpose and Scope of Proposed guidance

The purpose of the work is to provide guidance to competent authorities of importing and exporting countries and industry on the procedure and mechanism of appeal in the situation of rejection of the imported food in order to ensure fair practises in the food trade. The scope of the guidance is to develop step-by-step procedures to be followed in case a food consignment is rejected by the importing country and importer/exporter wish to file appeal against the decision of rejection. This includes the communication of decision of rejection, appeal to importing country, consideration of the appeal by importing country and communicating the decision on the appeal.

2. Relevance and Timeliness

The main objective of food control authorities is to protect public health and to prevent economic loss and trade disruption, thereby ensuring reliable global food supply chain. Border rejection of consignments is one of the critical issues faced by exporters and sometimes rejection could be due to reasons other than food safety. There could be situations when food is rejected because it fails to meet national standards of the importing country but conforms to international standards and in such cases, the option of withdrawing the rejected consignment should be considered. Destruction, Discarding or alternative (non-food) use of food that is safe and nutritious for human consumption, on account of rejection of consignment, may also fall in the category of food loss.

Although each individual case may represent a huge economic cost and food waste for the involved exporters, the main problem associated with border rejections is still the overall loss of trust and confidence by buyers in the safety and quality of the produce delivered by exporting country. Any final decision on the rejection of the food consignment by importing country need to be taken in a transparent manner by providing ample opportunity to relevant stakeholder.

The Codex “*Guidelines for Food Import Control Systems (CXG 47-2003)*” requires under paragraph 29 that there should be an appeal mechanism and/or opportunity for review of official decisions on consignments. The existing Codex text (CXG 25-1997) provide general guidance on exchange of information between countries during rejection of imported food, however, specific guidance on appeal mechanism during rejection is not available. The possibility of reducing food loss with the availability of such guidance also has the potential to contribute to other SDGs, including the Zero Hunger goal (SDG 2), which calls for an end to hunger, the achievement of food security and improved nutrition, and the promotion of sustainable agriculture. Therefore, the proposed work, on guidance on appeal mechanism in the context of rejection of imported food, is a timely endeavour.

3. The main aspects to be covered

The work will include development of guidance on appeal mechanism in the context of rejection of food consignment by importing country with a goal to provide opportunity to relevant stakeholders to present their case and decisions are taken in transparent manner without any compromise with food safety and fair trade. The guidance may include the following elements: Preamble, Purpose, Definition, Principles, Process Steps. The existing CCFICS text will be examined and reviewed to avoid the duplication of the text.

4. An assessment against the criteria for the establishment of Work**Priorities General Criterion**

The proposed work will facilitate trade of safe food while ensuring that decision on rejection of food consignment are taken in transparent manner by providing due opportunity to relevant parties to promote fair trade.

Criteria applicable to General Subjects**a) *Diversification of national legislations and apparent resultant or potential impediments to international trade***

Some of the countries in their legislation have the provisions of appeal against the decision of rejection of imported food consignment. Development of Codex guidance in this area would help in achieving harmonization at global level.

b) *Scope of work and establishment of priorities between the various sections of work*

Refer to scope of work above.

c) **Work already undertaken by other international organizations in this field and/or suggested by the relevant international intergovernmental body (ies)**

Not applicable

d) **Amenability of the subject of the proposal to standardisation**

Guidance on appeal mechanism will bring transparency and uniformity in decision making process of rejection of food consignment.

e) **Consideration of the global magnitude of the problem or issue**

Rejection of food consignment is a major socio-economic burden, particularly in developing countries and any wrong decision of rejection may lead to food loss.

5. Relevance to Codex strategic objectives

The proposed work is directly related to the purpose of the Codex Alimentarius Commission, according to its statutes, to protect the health of the consumers and ensure fair practices in the food trade. Further, the work relates to the first Strategic Goal of the Codex Alimentarius Commission's Strategic Plan 2020-2025 to "address current, emerging and critical issues in a timely manner", and is consistent with Objective 1.1 "identify needs and emerging issues". This guidance is relevant to the needs of the Members and will improve the ability of Codex to develop standards relevant to the needs of its members. It is also consistent with Objective 4.2 "Increase sustainable and active participation of all Codex Members" through participation in the work of CCFICS and the related working groups.

6. Information on the relation between the proposal and other existing Codex documents

Based on the review of existing Codex text it is observed that the Codex "*Guidelines for the exchange of information between countries on rejection of imported food (CXG 25-1997 Revised in 2016)*" contains guidance on basic information exchange between countries on rejections of imported food where the reason for the rejection is related to food safety and fair practices in food trade and specifies a standard format for such information exchange. The proposed guidance will specify the procedure for appeal by relevant parties & its consideration by importing country, once information exchange on rejection of imported food in terms of CXG 25-1997 has been done by the importing country to relevant parties. Therefore, the proposed guidance will elaborate on the appeal mechanism as specified in CXG 47-2003.

7. Identification of any requirement for and availability of expert scientific advice

Not required.

8. Identification of any need for technical input to the standard from external bodies so that this can be planned for:

Not required at this stage.

9. Completion of the new work and other conditions

Subject to the Codex Alimentarius Commission approval at its 47th Session in 2024, it is expected that the new work can be completed within two or three sessions of CCFICS.