



JOINT FAO/WHO FOOD STANDARDS PROGRAMME
CODEX COMMITTEE ON FOOD IMPORT AND EXPORT INSPECTION
AND CERTIFICATION SYSTEMS

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PROPOSED DRAFT REVISION OF THE *GUIDELINES FOR THE EXCHANGE OF INFORMATION*
BETWEEN COUNTRIES ON REJECTIONS OF IMPORTED FOOD (CAC/GL 25-1997)

Prepared by the Electronic Working Group led by Australia and Canada

(At Step 3)

Governments and interested international organizations are invited to submit comments on the attached Draft Proposed Revision of the *Guidelines for the Exchange of Information Between Countries on the Rejections of Imported Food (CAC/GL 25-1997)* at Step 3 (see Appendix I) and should do so in writing in conformity with the Uniform Procedure for the Elaboration of Codex Standards and Related Texts (see *Procedural Manual of the Codex Alimentarius Commission*) to: Codex Australia, Australian Government Department of Agriculture & Water Resources, GPO Box 858, Canberra ACT, 2601 (E-mail: codex.contact@agriculture.gov.au) with a copy to: The Secretariat, Codex Alimentarius Commission, Joint WHO/FAO Food Standards Programme, FAO, Rome, Italy, email codex@fao.org by **8 January 2016**.

Format for submitting comments: In order to facilitate the compilation of comments and prepare a more useful comments document, Members and Observers, which are not yet doing so, are requested to provide their comments in the format outlined in the Annex I to this document.

Please do not reproduce the document in track changes as this substantially increases the costs of translation and printing.

1. CCFICS19 (2011), under Matters Referred by the Codex Alimentarius Commission, Other Codex Committees and Task Forces and Other International Organizations (CX/FICS 11/19/2) considered specific proposals from an electronic Working Group (eWG) on future work on animal feeding to include feed in the scope of the *Principles and Guidelines for the Exchange of Information in Food Safety Emergency Situations (CAC/GL 19-1995)* and the *Guidelines for the Exchange of Information between Countries on Rejections of Imported Food (CAC/GL 25-1997)*. CCFICS agreed that it was important to consider feed as related to food safety in these documents but there were different opinions on how to proceed. Some delegations supported the proposed changes while others were of the opinion that more reflection was needed on each of the proposed changes to ensure that the focus and scope of the documents remained on food safety. The United States was asked to prepare a Discussion Paper that, among other things, would present proposals for the inclusion of feed as related to food safety in both CAC/GL 19-1995 and CAC/GL 25-1997.
2. CCFICS20 (2013) considered the Paper prepared by the United States and reached consensus on the revisions to *Principles and Guidelines for the Exchange of Information in Food Safety Emergency Situations (CAC/GL 19-1995)* to incorporate feed into the scope of the document. CAC36 adopted the amendments as proposed by the Committee.
3. Due to time constraints, CCFICS did not have sufficient time to fully discuss and consider the revisions to the *Guidelines for the Exchange of Information between Countries on Rejections of Imported Food (CAC/GL 25-1997)*. The Committee did agree to include a footnote to the term “feed” and to replace “food control authority” throughout the text with “competent authority”. Additionally, a Member brought forward specific proposals for some adjustments and further revision to the proposed text that could not be fully considered. The Committee was of the opinion that the proposed amendments needed further reflection and agreed that the United States would, in consultation with interested members, prepare a revised proposal for consideration at the next Session of CCFICS.

4. At CCFICS21 the delegation of the United States introduced CX/FICS 14/21/6. The Committee discussed the paper in detail and noted, that there were shortcomings in the guideline which went beyond the mandate to include animal feed in the scope, such as the lack of consideration on the importance of informing the competent authorities of the exporting country on reasons for rejections of food. The Committee also noted that including animal feed in the guideline caused the need for additional revisions to the text that also went beyond the original scope of the work.

5. In this regard, the Committee agreed that it was not possible to complete the currently proposed revision relating specifically to animal feeds without a more complete revision. The Committee agreed to propose new work to revise the guideline to address the shortcomings identified and to complete the task of including animal feed, and noted in particular that:

- Information exchange on rejections of imported food should involve competent authorities as well as other relevant parties; and
- Existing Codex documents referring to measures taken in case of rejections of food/feed should be taken into account, in particular, CAC/GL 47-2003 and CAC/GL 19-1995.
- The revised guideline should be clearly distinct in scope and coverage to that provided in CAC/GL 19-1995.

6. The Committee also noted that not only food safety but other aspects such as invalid certification, fraud and mislabelling can be the reason for rejections of food/feed.

7. The Committee acknowledged that it was important to proceed with the review in a timely manner to ensure that the Guideline can achieve its purpose of providing adequate guidance to competent authorities on the exchange of information on rejected food/feed. The Committee also agreed to establish, an eWG¹ working in English only (with a possibility of convening a physical working group working in English, French and Spanish), chaired by Australia and co-chaired by Canada, to prepare the proposed draft standard for circulation for comments at Step 3 and consideration at its next Session.

8. The CAC38 approved the new work on the revision of the *Guidelines for the Exchange of Information between Countries on Rejections of Imported Food* (CAC/GL 25-1997).

9. Australia, in consultation with Canada, distributed a discussion paper in February 2015 for consideration by an eWG to inform the revision of these guidelines. The discussion paper outlined the shortfalls that had been identified in the guideline at the last session of CCFICS but also additional issues which Australia considered could also be addressed. Issues identified included:

- a) the text does not provide the desired outcome of transparency in informing the exporting country authority of the reason for rejection;
- b) The guidelines do not explicitly identify who (i.e. which stakeholders) the importing country should provide information to, with importers and exporters referred to under paragraph 4 in the original document, and the remainder of the guidelines seemingly applying to importing and exporting country competent authorities only.
- c) these guidelines (and all Codex text) should apply only to governments and that the commercial considerations of the importer/exporter should not be included in these guidelines.
- d) where a rejection arises from evidence of a **serious** food safety or public health problem in the exporting country, the exporting country should be notified. Australia believes this issue is more appropriately dealt with under the *Principles and guidelines for the exchange of information in food safety emergency situations* (CAC/GL 19-1995).
- e) the current structure is confusing and does not assist importing countries in determining when, what and how information should be provided to exporting country competent authorities.
- f) there should be broader discussion to better define what/when issues should be reported to exporting country competent authorities and what issues would be considered serious in nature.

¹ Argentina, Benin, Belgium, Brazil, Canada, Chile, Croatia, Ecuador, European Union, France, India, Indonesia, Ireland, Italy, Jamaica, Japan, Korea, Mauritius, Mexico, Micronesia, Netherlands, New Zealand, Norway, Philippines, Solomon Islands, Sweden, Thailand, the United States, FAO, OIE and the International Dried Nut and Fruit Council (INC)

10. In addition to the issues identified above the discussion paper asked a number of questions of the members of the eWG. These included whether there was an ongoing need for the guideline, if so, should the guidelines be left as a standalone document or combined into another text as an annex, one of the more important questions related to the scope of the guidelines and whether they should cover both rejected and detained consignments.

11. With respect to the inclusion of feed the eWG was asked to identify which aspects of the guidelines could include feed, are there any limitations on the types of feed that the guidelines would apply to and were there pros and cons to including feed?

12. Comments were received from Belgium, Brazil, the EU, India, Indonesia, Jamaica, Mauritius, Mexico, the Netherlands, New Zealand, Norway, Thailand, United States of America and the International Nut and Dried Fruit Council (INC).

13. General consensus of the eWG indicated that guidance on this issue is required and that the guidelines need to be revised. There was a lack of consensus whether the guidelines should be standalone or attached as an annex to existing text, however on balance the argument for standalone guidelines was stronger.

14. Members of the eWG indicated that information should be exchanged when a consignment is rejected for not meeting importing country requirements, particularly in respect to food safety. Some countries felt that the guidelines should cover rejected food only while others felt that both rejected and detained consignments should be included in the guidelines. This issue will need further consideration by the Committee.

15. The eWG members identified that feed for food producing animals should also be covered in the guidelines where the reason for rejection is related to food safety.

16. It was also identified that the guidelines should not imply importing countries can make a judgement on an exporting country's food control systems in the event of a rejection, and if reference to the seriousness of a rejection is made, 'serious' should be better defined.

17. The eWG members identified that information should be exchanged between importing and exporting countries through the competent authority (and/or embassy as appropriate), as well as importers and/or exporters due to the commercial and financial implications of rejected food. Some eWG members suggested the roles and responsibilities of relevant parties should be better articulated in the guidelines.

18. The need for flexibility was suggested by some eWG members, for example allowing for bilateral discussions on when and what information should be exchanged, and identifying that exporting countries may approach importing countries to initiate the exchange of information and/or request further information about rejections.

19. While the guidelines provide detail on when and what information should be exchanged, eWG members identified that the existing guidelines do not provide detail on *how* information should be exchanged and that this should be rectified.

20. Other suggestions from eWG members include:

- better linking these guidelines to the *Principles and Guidelines for the Exchange of Information in Food Safety Emergency Situations* (CAC/GL 19-1995) and articulating the difference between a rejection and a food safety emergency
- incorporating and providing guidance on appeal mechanisms and/or the ability to review official decisions
- providing a greater emphasis on outcomes
- updating text to include reference to more recent (e.g. CAC/GL 43-2003) and other relevant (e.g. CAC/RCP 20-1979) guidelines
- reducing duplication in the body of the text (particularly Section 3) and updating the annex as appropriate
- recognising the importance of timeliness in the exchange of information.

21. The guidelines have been revised based on comments received, including incorporating new concepts, revising existing text to improve clarity and moving text to improve the flow of the document. The revised proposed draft guidelines are provided in **Appendix I** for consideration by the Committee.

RECOMMENDATION AND CONCLUSIONS

The Committee is invited to consider the revised proposed draft Guidelines at **Appendix I**, in submitting written comments at Step 3 members and observers are invited to consider the following questions which will need to be resolved by the Committee:

Scope of the Guidelines

Q: Should these guidelines cover rejected consignments only or should they also include detained consignments? If detained consignments are included, under what conditions?

Format and Layout of the Guidelines

Q: Are the section headings still appropriate? Should they be revised and if so, what should they be?

Paragraph 13 – Appeals mechanism

Q: Should guidance on appeals/review of official decisions be included in the guidelines? If so, what sort of guidance should be provided?

Q: If guidance is provided on appeals/review of official decisions, what sort of information should be exchanged?

Section 3 Detailed Information

Q: Are there any other points to consider regarding how information should be exchanged?

ANNEX I

GENERAL GUIDANCE FOR THE PROVISIONS OF COMMENTS

In order to facilitate the compilation of comments and prepare more useful comments' document, Members and Observers, which are not yet doing so, are requested to provide their comments under the following headings:

- (i) General Comments
- (ii) Specific Comments

Specific comments should include a reference to the relevant section and/or paragraph of the document that the comments refer to.

When changes are proposed to specific paragraphs, Members and Observers are requested to provide their proposal for amendments accompanied by the related rationale. New texts should be presented in **underlined/bold font** and deletion in ~~striketrough font~~.

In order to facilitate the work of the Secretariats to compile comments, Members and Observers are requested to refrain from using colour font/shading as documents are printed in black and white and from using track change mode, which might be lost when comments are copied / pasted into a consolidated document.

In order to reduce the translation work and save paper, Members and Observers are requested not to reproduce the complete document but only those parts of the texts for which any change and/or amendments is proposed.

Example of how comments should be prepared

SECTION 2 OBJECTIVE

Paragraph 4 - At the end of the last sentence add the words "and can be applied as relevant to any inspections of establishments or other facilities that may occur as part of an audit." So the last sentence would read "This annex applies equally to assessments carried out onsite or by documentary review alone **and can be applied as relevant to any inspections of establishments or other facilities that may occur as part of an audit**".

Rationale: To remove duplication of concepts – standardized and consistent. Efficiency is an outcome of following these guidelines and should be included here. To clarify the use of inspection as an associated tool not the prime focus.

PROPOSED DRAFT REVISED GUIDELINES FOR THE EXCHANGE OF INFORMATION BETWEEN COUNTRIES ON REJECTIONS OF IMPORTED FOOD²

CAC/GL 25-1997

SECTION 1 – INTRODUCTION

1. The following guidelines provide the basis for structured information exchange on import rejections. The guidelines are intended to cover all types of food as well as feed for food producing animals where the reason for the rejection is related to food safety.
2. These guidelines apply where food has been refused entry to a country due to a failure to comply with importing country requirements. Where it has been identified that food represents a serious and as yet uncontrolled foodborne risk³ to public health, the *Guidelines for the Exchange of Information in Food Control Emergency Situations* (CAC/GL 19-1995) should be used.
3. The use of these guidelines is intended to improve transparency where food is rejected and to build on:
 - the *Principles for Food Import and Export Inspection and Certification* (CAC/GL 20-1995), in particular the transparency provisions contained in paragraph 15 of the Principles
 - the *Guidelines for Food Import Control Systems* (CAC/GL 47-2003), in particular the decisions and information exchange provisions contained in paragraphs 27-29 and 34 of the guidelines respectively.

SECTION 2 – GENERAL CONSIDERATIONS

4. Rejections may occur where the competent authority of the importing country has identified that:
 - there is evidence the consignment presents a food safety risk
 - the consignment has been compromised during handling, storage or transport subsequent to inspection/certification
 - there is reason to suspect misrepresentation or consumer fraud.
5. 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 implement appropriate corrective and preventative measures; and to ensure food control systems in the exporting country consistently produce product that meets importing country requirements is fit for purpose.
6. Where appropriate, information should be provided to relevant parties with a regulatory or commercial interest in the product, including the competent authority (or embassy if the competent authority is not known) of the exporting country and the importer and/or exporter.
7. The competent authority in the exporting country may then investigate the non-compliance and implement and manage any corrective actions as required or appeal the decision as appropriate.
8. If requested, the competent authority in the exporting country should provide the competent authority in the importing country with information on the outcome of the necessary investigations and corrective actions taken.
9. The importer and/or exporter, in consultation with the competent authorities of the importing and exporting countries, may determine what action to take, for example appealing an analysis, reconditioning the consignment or re-exporting the product.

² For the purposes of these guidelines, food shall be taken to include feed for food producing animals where the reason for the rejection is related to food safety.

³ A food safety emergency is defined in CAC/GL 19-1995 as a situation, whether accidental or intentional, that is identified by a competent authority as constituting a serious and as yet uncontrolled foodborne risk to public health that requires urgent attention.

10. If the rejected goods are re-exported, the *Code of ethics for international trade in Food, including concessional and food aid transactions* (CAC/RCP 20-1979) should be followed. Additionally, the conditions attached to such re-export should be stated. For example, some countries permit re-export only to the country of origin or to countries which have stated in advance that they are prepared to accept the consignment knowing that it has been refused entry elsewhere.

11. Where there is evidence of repeated failures of a correctable nature that are not associated with food safety (e.g. labelling errors, mislaying of documents) or there have been systematic failures subsequent to inspection / certification, the competent authority in the importing country may also make appropriate notification to the competent authority in the exporting country, either periodically or upon request.

12. Bilateral discussions should take place as necessary. The importing country may choose to supply information on rejections to an exporting country even when this is not specified in these guidelines. The exporting country may request notification of particular types of rejection as required.

13. [Comments from the eWG suggest that there should be an appeal mechanisms and/or opportunity for the review of official decisions. Suggested text:

There may be cases where an exporting country should be able to appeal a decision to reject an imported food consignment and ask for a review. For example, where post arrival test results have caused the decision to reject the consignment, but the test results are inconsistent with pre-export test results.]

14. In some countries information about the results obtained in public food control is freely available, whereas in others legal constraints may prevent or restrict the dissemination to third parties of information on, for example, import rejections. In some cases information cannot be exchanged before a certain time has elapsed. So far as possible countries should minimise restrictions on the disclosure to other countries of information on rejected foods.

15. To enable FAO and WHO to assist exporting countries in their efforts to meet the requirements of importing countries, information on rejections of imported food should be made available to FAO and WHO if their assistance is requested by an exporting country.

SECTION 3 – DETAILED INFORMATION

16. Information exchange should be:

- transmitted electronically to all relevant parties wherever possible
- transparent, structured and timely to ensure rapid resolution and so alternative actions may be taken wherever possible
- made in the importing country's language, English or a third language as mutually agreed.

17. Importing countries should provide as much information as is available to allow confirmation of the identity of the consignment or subunit examined, the exact nature of the issue found, the importer and exporter of the consignment and any actions taken. Details on the type of information to exchange are provided at Annex I.

18. The reason(s) why a consignment of food has been rejected should be clearly stated and reference should be made to the regulations or standards which have been contravened. A clear description of the criteria for rejection should be provided to ensure transparency.

19. Where a consignment is rejected on the basis of analysis performed in the importing country, the importing country authority should make available upon request details of the sampling and analytical methods employed, the results obtained and the details of the testing laboratory.

20. Where the level of a contaminant has been found to be above the maximum permitted level, the contaminant should be specified, together with the level found and the maximum permitted level. In the case of biological contamination or contamination by biological toxins, where no maximum level has been fixed, the identity of the organism or toxin should be given as specifically as possible, and as appropriate, the level of contamination found.

21. Contraventions of regulations on food additive or compositional standards should be specified.

22. Some countries accept certain foods (e.g. fresh meat) only from specifically approved establishments in the exporting country. If such foods are refused entry because evidence that they come from such an establishment is lacking or incomplete, this should be stated.

ANNEX I**STANDARD FORMAT FOR EXCHANGE OF INFORMATION BETWEEN COUNTRIES ON REJECTIONS OF IMPORTED FOOD**

The following information should be provided by countries in relation to rejections of imported food as available and appropriate to the circumstances.

Identification of the food concerned

The foods concerned should be described as completely as possible. If available, the following information should be provided:

- Description and quantity of product
- Type and size of package
- Lot identification (number, production date, etc.)
- Container number, bill of lading or similar transportation details
- Other identification stamps, marks or numbers
- Certificate number (if applicable)
- Name and address of manufacturer, producer, seller and/or exporter, establishment number

Importation details

Information on the following should be provided:

- Exporter name and contact information
- Importer name and contact information
- Container and shipping details, including port of origin and destination
- Date presented for entry

Details of rejection, decision

Information about the decision to refuse importation should be provided including:

- Whole/part of (specify) consignment rejected
- Name and address of food control authority making decision to reject
- Date of decision
- Name and address of food control authority which can provide more information on reason for rejection

Reason(s) for rejection

The reasons for rejection must be specified and supporting evidence provided as appropriate. The reason for rejection may include:

- Biological/microbiological contamination
- Chemical contamination (pesticide or veterinary drug residues, heavy metals, etc.)
- Radionuclide contamination
- Incorrect or misleading labelling
- Compositional defect
- Non-conformity with food additive requirements
- Organoleptic quality unacceptable
- Technical or physical defects (e.g., packaging damage)
- Incomplete or incorrect certification
- Does not come from an approved country, region or establishment
- Other reasons

Action taken

Information on action taken should be provided, such as:

- Food destroyed
- Food held pending reconditioning/rectification of deficiencies in documentation
- Food held pending final judgement
- Place where food is held
- Import granted for use other than human consumption
- Re-export granted under certain conditions, e.g. to specified informed countries
- Importer notified
- Embassy/food control authorities of exporting country notified
- Authorities in other likely destination countries notified
- Other

[Appeals / review of official decisions]

[When appealing an official decision, information to exchange may include:]

- Information regarding test results is disputed. For example, importing country test results differ from those obtained by the exporting country.
- Unreasonable time period to comply with changed importing country requirements. For example, new labelling requirements are implemented within the time period required for the export of sea-freight consignments from an exporting country.
- Other?