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Agenda item 6

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JOINT FAO/WHO FOOD STANDARDS PROGRAMME

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GUIDELINES ON THE PROVISION OF FOOD INFORMATION FOR PRE-PACKAGED FOODS TO BE OFFERED VIA E-COMMERCE (STEP 7)

(Prepared by the Electronic Working Group (EWG) chaired by the UK and co-chaired by Japan, Chile, India and China.)

Codex members and Observers wishing to submit comments on the recommendations in this document should do so as instructed in CL 2024/54-FL available on the Codex webpage/Circular Letters:

<http://www.fao.org/fao-who-codexalimentarius/resources/circular-letters/en/>

INTRODUCTION

1. At the 47th Session of the Codex Committee on Food Labelling (CCFL47), the committee agreed to forward the proposed draft guidelines on the provision of food information for pre-packaged foods to be offered via e-commerce to CAC46 for adoption at Step 5. The guidelines were adopted at Step 5 at CAC46.
2. It was agreed to re-establish the EWG, chaired by the UK and co-chaired by Chile, Japan, India and China, working in English and Spanish, to further develop the text enclosed in square brackets.

TERMS OF REFERENCE

3. CCFL47 agreed the EWG, would further develop the Guidelines focusing on the text in square brackets, taking into account the discussions at CCFL47, for circulation for comments at Step 6 and consideration by CCFL48.

PARTICIPATION AND METHODOLOGY

4. Between November 2023 and May 2024, the chair and co-chairs of the EWG ran two consultations with the EWG which focused on reaching consensus on the text in square brackets. This included further amendments following comments and suggestions from the members of the EWG from each consultation. A complete list of EWG members can be found in Appendix III.
5. For the first round of consultations, a total of twenty-four (24) responses were received, sixteen (16) of which were from Member countries and eight (8) from Observer Organisations. For the second round of consultations, a total of twenty-six (26) responses were received, seventeen (17) of which were from Member countries and nine (9) from Observer Organisations.
6. A full summary and analysis of comments can be found in Appendix I and the guidelines on the provision of food information for pre-packaged foods offered via e-commerce is presented in Appendix II.

SUMMARY OF DISCUSSION

7. Following the consultations, most of the bracketed text was agreed upon including:
 - a. The text in brackets under the 'Purpose' section:
It was agreed by most of the EWG members that the inclusion of a sentence with the same meaning as the text in brackets (that was agreed upon at the informal meeting during CCFL47) should be included. However, the two EWG consultations highlighted the need for the proposed text in square brackets to be streamlined and altered. This altered text is reflected in the draft guidelines (Appendix II).
 - b. The text in brackets of Section 5.3 regarding Small Unit Exemptions:
It was agreed by a large majority that Section 5.3 regarding the Small Unit Exemption should remain in the draft guidelines, and over the two EWG consultations it was confirmed that the wording, as agreed upon during the informal meeting during CCFL47, had the support of the majority and would remain the same. This unchanged text is reflected in the draft guidelines (Appendix II).

c. The text in brackets of Section 5.4 regarding costs for the consumer:

It was agreed by a large majority during the two EWG consultations that Section 5.4 should remain in the draft guidelines. However, a common theme amongst respondents was that the current wording was not specific enough, so the wording has been slightly altered in the draft guidelines (Appendix II).

8. Whilst most bracketed text issues seem to have reached consensus via the EWG, the issue regarding the role and definition of 'durability' in the draft guidelines remains outstanding:

a. The text in brackets under Section 5.1 regarding the 'indication of durability':

Following a lack of clear consensus after the consultations, the EWG could not agree on the text in brackets regarding the 'indication of durability'. The results of both the first and second consultations showed that most EWG members wanted the provision of a form of the 'indication of durability' sentence, but there was no clear consensus on wording. A running theme amongst alternate wording suggestions after the first consultation was the replacement of 'required or recommended' with 'encouraged' so we presented this alteration to EWG members for the second consultation. However, consensus on the said wording was still not reached.

b. The text in brackets under Section 5.1 regarding the definition of 'durability':

The EWG could not agree on the text in brackets regarding the definition of 'durability'. Despite a slight majority desiring complete removal of the 'durability' definition after the first consultation, the EWG chair proposed alternate wording and positioning of the definition in a bid to alleviate concerns and seek consensus. However, despite less than half now opposing the definition, there was still a lack of clear consensus regarding the exact wording of the definition.

Option B in the 'Recommendations' section proposes an alternate wording which removes the term 'durability' and the need for a definition.

CONCLUSION

9. The EWG has prepared the guidelines on the provision of food information for pre-packaged foods to be offered via e-commerce (Appendix II) which provides a good representation of consensus in the EWG.
10. The chairs believe that the outstanding discussion point regarding 'durability' can be resolved at CCFL48 and that the proposed guidelines will then be ready to be advanced to Step 8.

RECOMMENDATIONS

11. CCFL48 is invited to consider the guidelines on the provision of food information for pre-packaged foods to be offered via e-commerce (Appendix II) with the aim of advancing it to Step 8; and, in particular, to consider the proposed bracketed text in clause 5.1, and whether:
 - a) the current proposed wording can gain a consensus (option A),
 - b) new wording to achieve the same aim can gain a consensus; in particular, to consider whether replacing the current bracketed text with the following text, which removes the term 'durability' and the need for a definition, will gain a consensus: *'It is encouraged that an indication of the minimum number of days the product will be delivered to the final consumer before the "Use-by Date", "Expiration Date", "Best-Before Date" or "Best Quality Before Date" be provided'* (option B), or
 - c) the 'indication of durability' clause and definition should be removed entirely (option C).

APPENDIX I

ANALYSIS AND CONSIDERATION OF COMMENTS

1. Amendments Based on Comments

Altering of text in brackets under the 'Purpose' section:

In the first consultation of the EWG, a large majority of respondents supported the inclusion of a sentence with the same sentiment as the text in brackets that was presented at CCFL47 in this section. Those who opposed this sentence altogether reasoned that these draft guidelines are intended to address the specific complexities of providing product information for food offered for sale via e-commerce, not just Section 5, therefore the sentence is not needed. However, the broad consensus was that this sentence draws attention to the provision of exceptions specific to an e-commerce context in the draft guidelines, therefore is relevant to keep in the 'Purpose' section of the draft guidelines. The first consultation highlighted that most EWG Members thought that the sentence should be streamlined, and the second consultation reflected that a large majority of respondents were happy with this simplified wording, albeit a small alteration for the sake of grammatical correctness. This wording is reflected in the draft guidelines below.

Altering of text in brackets of Section 5.4 regarding Costs for the Consumer:

In the first consultation, three-quarters of EWG members either agreed with the wording of Section 5.4 in brackets or agreed with its meaning but suggested alternate wording. A common theme amongst both respondents who agreed with the inclusion of Section 5.4 and those who disagreed with its inclusion was that the wording was not suitably specific since there are indirect costs to consumer such as Wi-Fi, mobile data costs and the cost of a device to access the information on the e-page of the pre-packaged food. Therefore, in the interest of reaching maximum consensus, in the second consultation the word 'additional' was added to the wording to define the scope of the costs incurred by the consumer. Most member countries and Observers agreed to this altered wording, rendering it supported by a majority.

2. Comments to Consider

One member highlighted that the Proposed Draft Revision of the *General standard for the labelling of pre-packaged foods* (CXS 1-1985): Provisions Relevant to Allergen Labelling (REP23/FL Appendix II) removes the exemption for small units from applying to the declaration of the listed foods and ingredients (allergens) in sections 4.2.1.4, 4.2.1.7 and, where applicable, 4.2.1.5 of the GSLPF. The member urges CCFL to consider how the application of Section 5.3 of this draft guidance, with its current wording of 'unless justified in specific situations or circumstances', would interact with the proposed changes to Section 6 for allergen labelling.

3. Issues not yet resolved:

The 'indication of durability' and clause-specific 'durability' definition.**Text in brackets under Section 5.1 regarding 'indication of durability'.**

Following a lack of clear consensus after the consultations, the EWG could not agree on the text in brackets regarding the 'indication of durability'. The results of both the first and second consultations showed that most EWG members wanted the provision of a form of the 'indication of durability' sentence, but there was no clear consensus on wording. Concerns raised amongst both those who disagreed with the inclusion of this clause entirely and those who agreed with the sentiment but not the exact wording included that the meaning of 'indication of durability' would be confused with date marking terms defined in the GSLPF such as 'use-by date' or 'best-before date', the clause could mislead consumers on the precision of any date offered, and there was ambiguity of who would be responsible for providing an 'indication of durability'. A few members and observers highlighted the logistical difficulty which providing such an indication presents.

Those that supported the inclusion of a clause regarding the 'indication of durability' mainly reasoned that, as stated in the "Purpose" section of the guidelines, consumers buying pre-packaged foods via e-commerce should have the information needed to make informed choices, as they would on the physical label of the food. One Member pointed out that since some countries have requirements in place prohibiting the sale of foods after their "use-by dates"/ "expiration dates", food business operators must have systems in place to ensure that food products offered for sale via E-Commerce are not sold/ delivered to consumers after these dates anyway.

After the first consultation, a running theme of suggested alternate wording was to remove the sentiment of an 'indication of durability' being 'required', and rather just 'encouraged'. This alteration was put to EWG members in the second consultation, but consensus was still not reached. A majority supported or did not object to the notion of a clause regarding an 'indication of durability', but consensus was not reached regarding wording. Suggestions included adding '...when it is possible to do so with accuracy' to the end of the clause so that dates are not provided if they cannot be done so accurately, and others cited a preference for the original wording suggested in the first consultation of the indication of durability being 'required or recommended to be

provided.’ One member suggested avoiding use of the term ‘durability’ at all to prevent any confusion with the GSLPF.

The text in brackets under Section 5.1 regarding the definition of ‘durability’.

The results of the first consultation showed that just over half of EWG members disagreed with the proposed definition of ‘durability’ altogether and supported its removal. A common justification for this disagreement is that it would likely cause confusion with the definitions of ‘use-by date’/ ‘expiration date’ or ‘best-before date/ best quality before date’ found in the GSLPF. Some suggested that if a ‘durability’ definition was really wanted, then it should be included in the GSLPF instead.

The main rationale of those who agreed with the inclusion of a definition of “durability” but suggested alternate wording was that the definition needed to achieve maximum alignment with the GSLPF, perhaps by inserting ‘best-before’ date or ‘use-by’ date into the definition, to ensure consistency with the terminology used when ‘date marking’ is discussed in the GSLPF.

Despite a slight majority (9/16 EWG Members) disagreeing with the inclusion of this definition all together, the Chair chose to propose an alternative wording and positioning of this definition to the EWG for the second consultation. The Chair wanted to highlight the importance of including a ‘durability’ definition in these guidelines since it has a different meaning from ‘best-before’ or ‘use-by’ date in an E-Commerce context. ‘Durability’ describes the period, starting from point of delivery or agreed collection date, within which the food retains its specific properties. This meaning ensures fairness for consumers who, even though they may order food in advance, will nonetheless reasonably expect that on delivery or collection, the food will remain suitable for consumption for a reasonable period.

We thought that the concerns expressed regarding this definition could be addressed with a re-wording and re-positioning of the ‘durability’ definition. We moved this definition to just behind the ‘indication of durability’ clause in Section 5.1 of the draft guidelines and inserted the wording ‘For the purpose of this clause’ to highlight that this definition is not to be applied to the term ‘durability’ used in other Codex texts. Furthermore, we altered the wording of the definition to include the terms ‘best-before’ and ‘use-by’ to directly address how this definition interacts with the terms used in the GSLPF.

However, the results from the second consultation highlighted that there was still no consensus regarding this alternate wording and positioning. Whilst just under half of EWG members now oppose the inclusion of this definition altogether, there is no consensus over wording amongst those who either support the definition inclusion or would not object to it. Some Members suggested the term ‘remaining durability’ being preferable, one member suggested inserting ‘to the consumer’ after ‘point of delivery’ to ensure clarity about that ‘point of delivery’ means when the consumer receives the item, not when the item is delivered to a warehouse for example. One member mentioned the potential for confusion since this definition now relies on the definitions of ‘use-by date’ or ‘best-before date’ found in the GSLPF, and these guidelines are supposed to be standalone and separate from the GSLPF. One Member suggested that if the ‘durability’ definition were to be removed, then the ‘indication of durability’ clause must be revised to reference the ‘best-before’ and ‘use-by’ date terms.

We have left the text as proposed in the second consultation to reflect the results of the e-working group. We intend to resolve this matter with the Committee at CCFL48. Considering the feedback from the e-working group, we will raise, as a possible solution, the wording set out in 10.i.b above that omits the use of the term ‘durability’ and therefore a definition of it.

4. Summary

Due to the numerous suggestions of alternate wording for both the ‘indication of durability’ clause and the ‘durability’ definition, as well as lack of clear consensus, we recommend that this issue is discussed further during CCFL48 to reach a conclusion. We then expect to progress the draft guidelines for adoption at Step 8

APPENDIX II

GUIDELINES ON THE PROVISION OF FOOD INFORMATION FOR PRE-PACKAGED FOODS OFFERED VIA E-COMMERCE

(changes are in **bold/underline or strikethrough** mode)

(for comment through CL 2024/54-FL)

1. PURPOSE

The purpose of these guidelines is to ensure consumers buying pre-packaged foods via e-commerce have the information needed to make informed choices, similar to the information they would find on the physical label of the food **as well as other considerations for pre-packaged foods offered for sale via e-commerce.**

2. SCOPE

- 2.1** These guidelines apply to the food information required, or provided voluntarily, that is displayed on the product information e-page for pre-packaged foods offered for sale via e-commerce, and to certain aspects relating to the presentation thereof.
- 2.2** They do not apply to information that is required on the label of pre-packaged foods at the point of delivery as set out in the *General standard for labelling of pre-packaged foods* (CXS 1-1985).

3. DEFINITIONS

The following terms shall be used in conjunction with Section 2 of the *General standard for labelling of pre-packaged foods* (CXS 1-1985) for the purposes of applying this text.

“At the point of delivery” means the moment when consumers receive pre-packaged food.

“E-commerce” means the production, distribution, marketing, sale or delivery of goods and services by electronic means as applicable to foods.”

“Food information” means the information that is the subject of a Codex text about a pre-packaged food.

~~**“Minimum durability” means the period (e.g. in hours, days, months etc.) between the point of delivery or agreed date for collection in-store and the best before or use-by date, as applicable.]**~~

“Prior to the point of e-commerce sale” means provided before consumers commit to ordering and purchasing the food.

“Product information e-page” means the virtual space on any consumer-facing transactional electronic platform, which is intended to facilitate informed e-commerce sale.

4. GENERAL PRINCIPLES

The general principles in Section 3 of the *General standard for the labelling of pre-packaged foods* (CXS 1-1985) are applicable to food information shown on the product information e-page of the pre-packaged food that is being offered for sale.

5. FOOD INFORMATION PRINCIPLES

- 5.1** The food information required to be provided on the label of a pre-packaged food or in associated labelling, shall be provided on the product information e-page of the pre-packaged food prior to the point of e-commerce sale, except to the extent otherwise expressly provided in these guidelines, or any other Codex text.

This includes the following food information indicated in/by:

- Section 4 and Section 5 of the *General standard for the labelling of pre-packaged foods* (CXS 1-1985) except information required by 4.6 and 4.7.1; **[An indication of durability of pre-packaged food is encouraged to be provided.] [For the purpose of this clause, “durability” means the period between the point of delivery and the best-before or use-by date in which the food retains its specific properties when properly stored.] (option A)**

or

- **It is encouraged that an indication of the minimum number of days the product will be delivered to the final consumer before the “Use-by Date”, “Expiration Date”, “Best-Before Date” or “Best Quality Before Date” be provided]**, (option B)
- Section 3 of the *Guidelines on nutrition labelling* (CXG 2-1985);
- Any other relevant Codex text.

- 5.2 A statement shall appear on the product information e-page prior to the point of e-commerce sale to direct the consumer to check the food information on the physical label before consumption.
- 5.3 The labelling exemption of small units as outlined in Section 6 of the *General standard for labelling of pre-packaged foods* (CXS 1-1985) does not apply unless justified in specific situations or circumstances.**
- 5.4** The information on the pre-packaged foods offered for sale in e-commerce shall be provided without any additional costs for the consumer.}
- 6. OPTIONAL FOOD INFORMATION PRIOR TO THE POINT OF E-COMMERCE SALE**
- Section 7 of the *General standard for labelling of pre-packaged foods* (CXS 1-1985) is applicable to food information shown to consumers on the product information e-page for the pre-packaged food that is being offered for sale.
- 7. PRESENTATION OF MANDATORY FOOD INFORMATION**
- 7.1** Food information required by these guidelines shall be clear, prominent, and readily legible by the consumer under normal settings and conditions of use for a product information e-page.
- 7.2** The language or languages on a product information e-page shall be suitable to the consumer in the country in which the food is marketed and to which it may be delivered.

APPENDIX III

LIST OF EWG PARTICIPANTS

Members

Argentina
Australia
Brazil
Canada
Chile
China
Columbia
Costa Rica
Ecuador
Egypt
European Union
Guatemala
India
Indonesia
Iran
Japan
New Zealand
Saudi Arabia
Thailand
United States of America

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International Special Dietary Foods Industries (ISDI)