

# CODEX ALIMENTARIUS COMMISSION



Food and Agriculture  
Organization of the  
United Nations



World Health  
Organization

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Agenda item 7

CRD2

## JOINT FAO/WHO FOOD STANDARDS PROGRAMME

### CODEX COMMITTEE ON FOOD IMPORT AND EXPORT INSPECTION AND CERTIFICATION SYSTEMS

#### Twenty-fourth Session

Brisbane, Australia, 22 - 26 October 2018

#### DISCUSSION PAPER ON FOOD INTEGRITY AND FOOD AUTHENTICITY

Comments from Cuba, European Union, Philippines, Thailand, African Union, International Food Authenticity Assurance Organization and World Customs Organisation

#### Cuba

La República de Cuba analizó el documento correspondiente al tema 7 de la 24 Reunión del CCFICS, y presenta a continuación sus comentarios.

CONCLUSIÓN, Página 7, en relación con la orientación de las recomendaciones de los sistemas de control y los incisos que se ponen como ejemplo, a continuación emitimos nuestros comentarios.

**Inciso e)** Mantener efectivas medidas administrativas, esenciales en la prevención del fraude alimentario

**Comentarios.-** Consideramos que el Codex no debe inmiscuirse en medidas administrativas, no está en su mandato ni en sus objetivos, por lo que recomendamos sean excluidas.

**Inciso d)** Mantener vínculos efectivos e intercambio de información entre las diferentes autoridades (por ejemplo, autoridades de control alimentario y organismos judiciales de investigación)

**Comentarios.-** Consideramos que debe incluirse en ese intercambio las organizaciones de protección al consumidor, más que las judiciales de investigación. Recomendamos se evalúe sean incluidas las de protección al consumidor.

**Inciso h)** La comunicación con las partes interesadas y el público en general

**Comentarios.-** No se entiende que se pretende por el Codex en establecer comunicación con el público en general, somos del criterio que si se mantienen intercambios con las organizaciones de protección al consumidor, no es necesario que se den orientaciones para la comunicación con el público en general, ya que se interpreta que dentro de las funciones de esas organizaciones, se encuentra la de comunicarse o recibir información del público en general. Recomendamos se sea más explícito en el documento

**Inciso i)** Una mayor inclusión de los requisitos de integridad y autenticidad de los alimentos en los textos actuales del CCFICS

**Comentarios.-** Como se explica en el documento, el tema del fraude aparece de forma general en varios documentos de ese comité (CCFICS), pensamos que tal vez sería más efectivo, en aras del tiempo y de la urgencia en combatir el fraude, elaborar un apéndice o anexo específico, ya que de lo contrario habría que revisar documento por documento del CCFICS, para insertar aquellos aspectos que requieran ser más precisados, y eso prolongaría más el tiempo para la conclusión de lo que se persigue. Recomendamos que el documento figure como un apéndice.

#### European Union

The European Union and its Member States (EUMS) would like to thank Iran, Canada and the eWG participants for excellent cooperation and constructive contributions in preparing the discussion paper on food integrity and authenticity.

Food fraud, while not a new phenomenon, has come under the spotlight in recent years. Food chains are vulnerable to fraud at national and international level. Initiatives are under way by many governments and within the industry to combat food fraud.

It is therefore very timely to consider how Codex could contribute to tackle fraudulent practices in food trade. The discussion paper provides a basis for these considerations, starting with the necessary definitions.

The EUMS agree to develop definitions for food integrity, food authenticity and food fraud. The proposed definitions can be supported subject to some minor adjustments. The proposed definition for “economically motivated adulteration” (EMA), is a specific definition which is already covered by the general definition for food fraud and would therefore deserve additional consideration.

As the definitions are of importance for the work of several Codex committees it would be appropriate to adopt them as formal Codex definitions by including them in the Procedural Manual in the section “Definitions for the purposes of the Codex Alimentarius”. CCFICS should ask CCGP to further consider this matter.

The EUMS agree with the conclusion of the discussion paper that prevention and control of food fraud is generally covered by most CCFICS texts as their scope extends to the dual mandate of Codex, i.e. protecting the health of consumers and ensuring fair practices in food trade. The EUMS also agree with the conclusion that there may be a need for further specific guidance addressing issues surrounding food fraud.

Apart from the definitions which are the first priority, CCFICS could elaborate guidance on what type of risks competent authorities should consider when designing control programmes targeting specifically food fraud. Another priority area meriting CCFICS guidance would be the exchange of information and cooperation between different authorities at national and international levels as well as communication with stakeholders and general public on incidents of food fraud. Further guidance could also be developed on administrative measures specifically targeting food fraud. Such guidance could be a standalone text but would also nicely fit as an annex to the *Principles and Guidelines for National Food Control Systems* (CAC/GL 82-2013).

After commencing this work, CCFICS could repeat its call to other Codex committees to consider whether there is any need for fraud related work in their respective areas of competence. This would apply in particular to CCGP, CCFL and CCMAS.

## Philippines

### POSITION

The Philippines would like to thank the Electronic Working Group led by the Islamic Republic of Iran with the European Union and Canada in coming up with the Discussion Paper on Food Integrity and Food Authenticity.

We acknowledge the importance of this issue and its effect on food safety and fair practices in trade. The Philippines supports the conduct of new work on this area specifically on the use of a risk-based approach to food fraud, including commodity specific risks. We would like to express our willingness to participate in working groups.

## Thailand

Thailand appreciates the work done by EWG, chaired by the Islamic Republic of Iran and co-chaired by the European Union and Canada, in preparing a Discussion Paper on Food Integrity and Food Authenticity.

We recognize the important role of Codex on protecting consumers' health and ensuring fair trade practices in food trade and we believe that food fraud is one of the important issues concerned and addressed in several Codex texts, for example existing CCFICS' texts analyzed by the EWG. In addition, the issue on intentional action taken by Food Business Operators (FBOs) to deceive consumers is already covered in “General Standard for the Labelling of Prepackaged Foods” and “Code of Ethics for International Trade in Food Including Concessional and Food Aid Transactions (CAC/RCP 20-1979)

We note that, apart from food safety, the issue of food suitability is also covered by Codex texts, in particular General Principles of Food Hygiene (CAC/RCP 1) “Code of Ethics (CAC/RCP 20-1979). And, we consider that the term “food suitability” defined in CAC/RCP 1 as “assurance that food is acceptable for human consumption according to its intended use” of which “food fraud” and “food authenticity” are already covered.

We are of the opinion that it is unnecessary to develop horizontal guidance, as it is difficult to develop the clear requirements for all commodities in the single guidance. In particular, the inclusion of a risk based approach to food fraud will create confusion, as the term “risk” defined by Codex as “A function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food” which relates to food safety only.

However, if it is agreed to develop new work on food authenticity and food fraud, it would be more appropriate to be under taken by commodity committees, as each commodity has different characteristics. General guidance

without specific testing methods to guarantee the authenticity of commodity may likely result in technical barriers to trade in the future.

### African Union

#### Issue

A discussion paper on food integrity and authenticity was discussed at CCFIC23. It was proposed to undertake a review of existing Codex texts with a view to obtaining a clear picture not only of gaps but also of how and to what extent food integrity and authenticity were already covered by Codex texts, focusing primarily on texts of CCFICS. Given that there was broad support in the Committee for the need to pursue further preliminary work in this area, the Committee agreed to establish an electronic working group (eWG), chaired by the Islamic Republic of Iran and co-chaired by Canada and the European Union, working in English only, with the following terms of reference:

- a) clarify the definitions of food integrity, food authenticity, food fraud and economically motivated adulteration (EMA) and delineate the scope for the preliminary assessment of CCFICS texts;
- b) based on those definitions, undertake a preliminary assessment of existing CCFICS texts to identify possible gaps and the impact, whether positive or negative, of those texts in mitigating potential problems; and
- c) prepare a discussion paper presenting the findings of that assessment and any need for further work or potential new work.

#### Position

African Union supports new work in this area taking into cognizance its importance for consumer health and fair trade practices.

#### Issue

Overlap in definitions of; Food integrity, Food Authenticity, Food Fraud and Economically Motivated Adulteration.

#### Rationale

There is no clear cut distinction between food integrity and Authenticity and also food fraud and economically motivated adulteration. This distinction is necessary to facilitate resolution of potential trade dispute.

### Section 5- Conclusion

#### Issue

Para e): The use of “Administrative measure” in the statement is unclear.

#### Position

African Union seeks clarification on the intent of the use of the term “Administrative measure”.

#### Rationale

The term “Administration measure” is an unfamiliar Codex language and therefore needs to be clarified.

### International Food Authenticity Assurance Organization (IFAAO)

#### 1. Introduction

Robust discussions about food integrity, food authenticity and food fraud took place in two side events entitled CAC41 Side Event: Food Integrity and Food Authenticity: a way forward at the Codex Alimentarius Commission 41<sup>st</sup> Session in July 2018. A wide range of opinions were expressed in the side events. There was consensus on many points, the most important being that the issues of food integrity, food authenticity and food fraud require a lot more attention, consideration and work. In preparation for the 24<sup>th</sup> Session of CCFICS, the electronic Working Group on Food Integrity and Food Authenticity (eWG) was asked to prepare a discussion paper entitled Discussion Paper on Food Integrity and Food Authenticity.

IFAAO thanks the eWG and the contributors to the side events for their valuable contributions. IFAAO has had the opportunity to review the eWG discussion paper as well as to consider the comments made by the contributors to the two side events at CAC41. IFAAO would like to offer some observations and opinions about the approaches and definitions proposed thus far. What follows is a commentary on these critical issues, which IFAAO respectfully submits to the Codex Secretariat and the Chair of Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS).

## 2. Background

The International Food Authenticity Assurance Organization (IFAAO) was created in 2014 to find ways to broadly and uniformly address food authenticity, food integrity and food fraud. IFAAO was granted Observer Status by the Codex Alimentarius Commission in October of 2017.

Unlike organizations focused on food safety, who are singularly focused, IFAAO was organized to be a forum where stakeholders from all sectors of the food industry, as well as those peripheral to the food industry, and food consumers, can express their views and ideas. Accordingly, it is on behalf of this pluralistic and diverse team of experts and stakeholders, that we offer our comments on the Discussion Paper on Food Integrity and Food Authenticity and our comments on the critical subject matters of food authenticity, food integrity and food fraud.

The melamine in milk scandal in China in 2008 sensitized the world to the issue of food fraud. However, it was only after the horse meat scandal in Europe, did the discussion about food integrity, food authenticity and food fraud began in earnest with the creation of the Global Food Safety Initiative (GFSI) Food Fraud Think Tank. The Food Fraud Think Tank was co-chaired by Danone and Walmart. The other members of the Food Fraud Think Tank were Royal Ahold, INSCATECH, Eurofins and Michigan State University.

In July of 2014, the GFSI published the GFSI Position on Mitigating the Public Health Risk of Food Fraud. The report defined food fraud and recommended the Food Fraud Vulnerability Assessment and the Food Fraud Control Plan.

The position of the GFSI with respect to food fraud was, as the title of the GFSI report suggests, focused on “mitigating the public health risk of food fraud”. Those governments and organizations that enacted regulations and standards to address food fraud were largely focused on the public health risk of food fraud. The public health risk of food fraud is fortunately, only a relatively small subset of the much larger issue relating to food fraud, namely the economic issue. The economic issue of food fraud has been largely ignored, yet it is arguably the central issue to food integrity, food authenticity and food fraud.

The narrow focus on the public health impacts of food fraud, combined with the overall lack of harmonization in standards relating to food fraud and solutions (vulnerability assessments and food fraud control programs), which identify but do not prescribe mitigation steps, have resulted in significant gaps in the handling of food fraud. Unfortunately, notwithstanding these efforts, there has not been a measurable reduction in food fraud since 2013.

Accordingly, the Codex Alimentarius Commission is uniquely positioned to address these critical issues.

## 3. Definitions

Definitions are the starting place for standards and best practices relating to food integrity, food authenticity and food fraud. Food fraud has been defined the most often. It is important to analyze the definitions of food fraud before suggesting a new one

### (i) Food Fraud

The following definitions of food fraud have been published by various academics:

- *John Spink and Douglas Moyer’s (2011) food fraud definition:*

*Food fraud is a collective term used to encompass the deliberate and intentional substitution, addition, tampering, or misrepresentation of food, food ingredients, or food packaging; or false or misleading statements made about a product, for economic gain. Food fraud is a broader term than either the economically motivated adulteration (EMA) defined by the Food and Drug Administration (FDA) or the more specific general concept of food counterfeiting. Food fraud may not include “adulteration” or “misbranding” as defined in the Food, Drug, and Cosmetic Act (FD&C Act), when it involved acts such as tax-avoidance and smuggling’.<sup>1</sup>*

- *Lord et al (2016)<sup>2</sup> definition:*

*The abuse or misuse of an otherwise legitimate business transaction and an otherwise legitimate social economic relationship in the food system in which one or more actors undertakes acts or omissions of deception or dishonesty to avoid legally prescribed procedures (process) with the intent to gain personal or organizational advantage or cause loss/harm (outcome).<sup>3</sup>*

- *UK National Food Crime Unit, UK Food Standards Agency definition:*

<sup>1</sup> John Spink and Douglas C Moyer, ‘Defining the Public Health Threat of Food Fraud’ (2011) 76(9) *Journal of Food Science* 157, 158.

<sup>2</sup> Nicholas Lord et al, ‘In Pursuit of Food System Integrity: The Situational Prevention of Food Fraud Enterprise’ (2017) *European Journal on Criminal Policy and Research*, 3.

<sup>3</sup> Nicholas Lord, Cecilia Flores Elizondo and Jon Spencer, ‘The Dynamics of Food Fraud: The Interactions between Criminal Opportunity and Market (Dys)Functionality in Legitimate Business’ (2016) (October) *Criminology and Criminal Justice* 1, 10.

*Food crime is dishonesty relating to the production or supply of food which is either complex or likely to result in serious detriment to consumers, businesses or the overall public interest.... when the scale and potential impact of the activity is considered to be serious... the activity has cross-regional, national or international reach, that there is significant risk to public safety, or that there is a substantial financial loss to consumers or businesses.*<sup>4</sup>

*Food fraud is a dishonest act or omission, relating to the production or supply of food, which is intended for personal gain or to cause loss to another party.*<sup>5</sup>

- *Elliott Review into the Integrity and Assurance of Food Supply Networks: Final Report*<sup>6</sup> remarks:

*Food fraud becomes a food crime when it no longer involves random acts by ‘rogues’ within the food industry but becomes an organized activity by groups which knowingly set out to deceive, and or injure, those purchasing food.*<sup>7</sup>

- *GFSI (2018) definition*

*Food Fraud is the collective term encompassing the intentional substitution, addition, tampering or misrepresentation of food/feed, food/feed ingredients or food/feed packaging, labelling, product information or false or misleading statements made about a product for economic gain that **could impact consumer health**’ (emphasis added – limiting definition)<sup>8</sup>*

#### IFFAO COMMENTARY

With the exception of the Lord et al., definition, and the Food Standards Scotland definition, the definitions of food fraud are unsuitable for the creation of a law or standard relating to food fraud. Explicit examples of food fraud should not be included in definitions. These are merely interpretive tools which give context to food fraud but that dilute its severity. Additionally, by explicitly listing certain types of food fraud, other types of food fraud are excluded if they are not enumerated. The definition of food fraud should be broad enough to capture all kinds of food fraud.

The definition of food fraud must set the stage for action by legislators, regulatory bodies, law enforcement and the judiciary. This is a key distinction from the approaches taken thus far. The eWG has suggested the following definition:

*Any deliberate action of businesses or individuals to deceive others in regards to the integrity of food to gain undue advantage. Types of food fraud include but not limited to: adulteration, substitution, dilution, tampering, simulation, counterfeiting, and misrepresentation.*

The first part of this definition has key words which should be included in the definition, namely “deliberate” to show intention (mens rea), and “deceive” and “action” (actus reus), to denote the actual commission of a crime. The second part of the definition is not necessary for the reasons discussed above.

#### **IFAAO - Food Fraud – Proposed Definition**

**The act of altering and/or misrepresenting the integrity, authenticity, safety and/or provenance of a food or food ingredient with the intention to deceive a third party for the perpetrator’s economic gain, or to cause loss and/or harm to another party.**

#### **(ii) Food Authenticity**

The eWG has proposed the following definition of food authenticity:

<sup>4</sup> National Food Crime Unit on behalf of the Food Standards Agency and Food Standards Scotland, ‘Food Crime Annual Strategic Assessment: A 2016 Baseline’ (2016). See, also <https://www.food.gov.uk/enforcement/the-national-food-crime-unit/what-is-food-crime-and-food-fraud>.

<sup>5</sup> National Food Crime Unit, Food Standards Agency/Food Standards Scotland ‘Food Crime Annual Strategic Assessment’, (2016) [page] See, also <https://www.food.gov.uk/enforcement/the-national-food-crime-unit/what-is-food-crime-and-food-fraud>.

<sup>6</sup> Christopher Elliott, ‘Elliott Review into the Integrity and Assurance of Food Supply Networks – Final Report A National Food Crime Prevention Framework’ (Independent Review Report, Department for Environment Food & Rural Affairs (DEFRA), July 2014), 12. (‘Elliott Review’)

<sup>7</sup> Department for Environment Food & Rural Affairs (DEFRA), above n 4.<sup>6</sup>

<sup>8</sup> Global Food Safety Initiative (GFSI), ‘Tackling Food Fraud Through Food Safety Management Systems’ (GFSI Benchmarking Standard Version 7, 2018). <http://www.fssc22000.com/documents/graphics/version-4-1-downloads/fssc-22000-guidance-on-food-fraud-final-100418.pdf>

*Food authenticity is the quality of a food to be genuine and undisputed in its nature, origin, identity, and claims, and to meet expected properties.*

A food does not have to be qualitative to be authentic. The words “expected properties” is vague and require additional explanation or clarification. The eWG definition of food authenticity is missing the most critical component of authenticity, namely verification.

#### **IFAAO - Food Authenticity - Proposed Definition**

**Irrefutable verification that a food or food ingredient is in its intended original, unaltered form as declared and represented.**

#### **(iii) Economically Motivated Adulteration**

The words “economically motivated adulteration” are self-explanatory. They fall under the umbrella of food fraud. If used in a standard in place of food fraud, they greatly limit the scope of standard because adulteration is one of many different types of food fraud. IFAAO submits that Economically Motivated Adulteration should not be defined in a Codex Standard.

The eWG has proposed the following definition of Economically Motivated Adulteration:

*Economically motivated adulteration is a subset of food fraud. It is the intentional substitution or addition of a substance in a product for the purpose of increasing the apparent value of the product or reducing the cost of its production, for economic gain.*

IFAAO concurs with this definition of economically motivated adulteration.

#### **(iv) Food Integrity**

The eWG has proposed the following definition of food integrity:

*The status of a food product where it is authentic and not altered or modified with respect to expected characteristics including, safety, quality, and nutrition.*

The eWG definition is very good. It properly includes authenticity, safety, quality and nutrition, all of which should be included in defining integrity.

IFAAO recommends only minor adjustments to the eWG definition of food integrity:

#### **IFAAO - Food Integrity – Proposed Definition**

**A state of a food or food ingredient that represents its intended optimal authenticity, provenance, safety, quality and nutritional specifications.**

#### **4. New Work - Recommendations**

As was expressed by many of the panel members and representatives of member countries at the CAC 41 Side Events on food integrity, food authenticity and food fraud, there must be cooperation on these issues from all levels of society, including IGOs, NGOs, governments, private sector companies and most importantly, food consumers. This latter group of food consumers includes everyone in the former categories, yet as a group, they have virtually no voice when it comes to the formulation of standards and best practices.

IFAAO is a pluralistic and diverse organization that consists of stakeholders from all walks of life, including those listed above. One of our initial focus areas is consumer opinion and behaviour.

It is with these ideas in mind that IFAAO makes the following comments for consideration regarding the aforementioned subject and New Work:

1. Consumers worldwide must be consulted and their opinions must be recorded and made known to Codex Alimentarius before any concrete actions are taken to address food integrity, food authenticity and food fraud. (IFAAO will be engaging consumers and continuously consulting with consumers with respect to the positions it takes on the issues of food integrity, food authenticity and food fraud.)
2. Workers involved in the growth, harvesting and production of food, as well as small food producers and food establishments should be consulted and be given a voice on these issues.
3. A holistic systems-based risk management and prevention approach must be taken to address food integrity, food authenticity and food fraud. The holistic approach taken must include the following elements: (i) forensically-based fraud detection and prevention protocols (ii) risk management protocols (iii) the use of technology (iv) science-based analysis (where possible) and (v) mitigation (commercial and/or criminal).
4. Food safety issues represent only a very small portion of food fraud cases. Food safety standards and practices should not be the basis for a food authenticity, food integrity or food fraud standard. An entirely new regulatory and enforcement based standard needs to be created.

5. Food fraud has a negative connotation and is often not an enforcement priority. More often than not, food fraud is only enforced where it presents a food safety issue. We believe a new approach with new terminology is needed. Food authenticity is a concept that is easily understood by consumers, presents a positive message for the food industry, and infers verification.

6. A new standard and certification should be created using unannounced forensic audits as the foundation to the standard and certification.
7. Non-compliance should be handled by law enforcement.
8. The food industry should not be expected to solve the problem of food fraud on its own by self-regulation.
9. Existing protocols and practices should be assessed as to value.
10. An independent third-party auditing organization should be created that is funded both by regulators and the food industry. This auditing organization should work closely with law enforcement in each member country to prosecute and punish those found to violate laws and standards pertaining to food authenticity, food integrity and food fraud.
11. The gaps in the CCFICS texts as identified by the eWG should be addressed and the language in CCFICS texts should align with the accepted definitions.

IFAAO would like to thank the Codex Alimentarius Commission for the opportunity to participate in this critical discussion. IFAAO would also like to thank the members of its Advisory Board for their valuable inputs on this document, and in particular, its Vice-Chair, Michael Roberts Esq., and Advisory Board Members Dr. Janine Curll and Joanne Carter, for their outstanding contributions.

### **World Customs Organisation (WCO)**

The World Customs Organization is grateful for the opportunity to comment on this programme, welcomes this initiative taken by this Committee, and concurs with the introductory remarks that measures need to be taken to counter increasing food fraud. Operation OPSON that Europol and Interpol are spearheading gives a clear indication that this is a growing area of crime.

WCO has the following comments:

In the Conclusion, point 5d, WCO would like to remark that Customs or border enforcement agencies should be included in the examples provided, in addition to juridical and investigative bodies, as it is Customs that in many cases performs the first line of defence in the control of food crossing the borders. We feel that the term investigative bodies does not necessarily cover Customs administrations as these in many cases do not have investigative powers. Therefore we suggest to add to or replace investigative bodies by the term “enforcement agencies” which furthermore would include any medical authorities that might have stake in this as well.

We would also like to add these comments to this commendable work:

The committee has, in the definition under point 2.3 Food Fraud, included ‘Counterfeits’. WCO welcomes this and commends it. However with this term also come the holders of these rights and we recommend for the committee to include the exchange of information with the Rights Holders. The committee has got an open mandate at the end of the document to consider possible new work, and we recommend that this cooperation is included in some way.

We would also like to comment on the definition under point 2.4 Economically Motivated Adulteration. We see that this may bring some new aspect into the definition of Fraud, but we will recommend restricting the number of definition to the three first ones. In our experience there is always an economic incentive behind any fraud, and the element under point 2.4 is already covered under 2.3. From an enforcement point of view it is always better to have fewer but more clear definitions to adhere to.

WCO wishes you the best of luck in this work and welcomes any further discussion on border protection in the area of food and foodstuffs.