

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
United Nations



World Health
Organization

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Agenda Item 4 (CX/FL 19/45/4)

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ORIGINAL LANGUAGE ONLY

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON FOOD LABELLING

Forty-fifth Session

Ottawa, Ontario, Canada, 9 – 13 May 2016

CONSIDERATION OF LABELLING PROVISIONS IN DRAFT CODEX STANDARDS (ENDORSEMENT) (CCCPL, CCFH, CCNFSDU & CCSCH)

(Comments from Dominican Republic, European Union, India, Malaysia, Nigeria, Thailand, Vietnam, EFLA)

DOMINICAN REPUBLIC

1. En la Norma de Quinoa (Comité del Codex sobre Cereales, Legumbres y Leguminosas (CCCPL))

República Dominicana apoya que el CCFL, ratifique y apruebe las disposiciones en los párrafos 8 y 8.1; pero en el párrafo 8.2 sugerimos se modifique y adapte a la versión que acepte el CCFL45, sobre ventas a no minoristas.

2. En el Anteproyecto de código de prácticas sobre la gestión de los alérgenos alimentarios por parte de los operadores de empresas de alimentos (Comité del Codex sobre Higiene de los Alimentos (CCFH))

República Dominicana apoya todas las propuestas contenidas entre corchetes.

3. En el Anteproyecto de revisión de la Norma para preparados complementarios (CXS 156-1987) (Comité del Codex sobre Nutrición y Alimentos para Regímenes Especiales) (CCNFSDU)

República Dominicana sugiere que en el párrafo 9.1.2, se elimine la frase entre corchete [o de la región], y apoya todas demás propuestas contenidas en los párrafos propuestos incluyendo las frases y textos dentro de corchetes.

4. En los documentos del (Comité del Codex sobre Especies y Hierbas Culinarias (CCSCH)):
 - a) Anteproyecto de norma para el ajo seco o deshidratado
 - b) Anteproyecto de norma para hojas secas: albahaca seca
 - c) Anteproyecto de norma para partes florales secas: clavo seco
 - d) Anteproyecto de norma para el azafrán
 - e) Anteproyecto de norma para las raíces secas, rizomas y bulbos: jengibre seco o deshidratado
 - f) Anteproyecto de norma para el orégano seco

República Dominicana apoya que el CCFL, ratifique y apruebe las disposiciones en los párrafos del 8 al 8.5 en cada Anteproyecto; pero en el párrafo 8.6 de cada Anteproyecto del CCSCH, sugerimos se modifique y adapte a la versión que acepte el CCFL45, sobre ventas a no minoristas.

EUROPEAN UNION

B. COMMITTEE ON FOOD HYGIENE (CCFH)

Proposed draft code of practice on food allergen management for food business operators

*Mixed Competence
European Union Vote*

The European Union and its Member States (EUMS) welcome the work carried out in the field of precautionary allergen labelling in the context of the Committee on food hygiene (CCFH50).

With regard to paragraphs 158 and 159 of the proposed code of practice on food allergen management for food business operators, the EUMS support them.

C. COMMITTEE ON NUTRITION AND FOODS FOR SPECIAL DIETARY USES

European Union Competence

European Union Vote

1. General Comments on the proposed draft revised Standard for follow-up formula (CXS 156-1987):

Section A: follow-up formula for older infants

The European Union (EU) in general agrees with the proposed labelling provisions for follow-up formula for older infants, which reflect what was agreed in CCFSDU39 and CCNFSDU40. Furthermore, the EU considers that the proposed text adequately addresses one of the main concerns, which is to make sure that the labelling of follow-up formula for older infants does not discourage breastfeeding. This principle is also reflected in a number of provisions of EU legislation applicable to follow-on formula as well as in the Infant Formula Standard.

2. Specific Comments on the proposed draft revised Standard for follow-up formula (CXS 156-1987):

Section A: follow-up formula for older infants-section 9.6.4

With respect to section 9.6.4 the EU strongly supports the first sentence of the section, as the EU considers essential to ensure that different products intended for infants and young children are clearly distinguishable from each other by the consumers. The best way to achieve this is to include in the Standard a provision clearly specifying how that should be ensured. The EU therefore particularly welcomes the inclusion of the specific reference to “*text, images and colours used*” in the provision, which is also in line with the EU legislation (Article 6(6) of delegated Regulation (EU) 2016/127.).

However, the EU does not at this stage support the second sentence of the section on cross-promotion.

The concept of cross-promotion was introduced as a new concept for the labelling provisions during the 40th plenary session of CCNFSDU. Upon request of the Committee the representative of WHO clarified at CCNFSDU40 that “*the intent of the provision on cross-promotion was to avoid messages on labels that a product for a particular age group was also suitable for another age group or that reference was made to a similar product for another age group*”.

The EU wishes to note that the term cross-promotion is not defined in Codex texts and it may therefore be subject to different interpretations at national level. In other literature, the term is broadly defined and often covers different concepts. By way of example, cross-promotion is referred to in the WHO Guidance on ending the inappropriate marketing practices of foods for infants and young children as follows: “*Cross-promotion (also called brand crossover promotion or brand stretching) is a form of marketing promotion where customers of one product or service are targeted with promotion of a related product. This can include packaging, branding and labelling of a product to closely resemble that of another (brand extension). In this context, it can also refer to use of particular promotional activities for one product and/or promotion of that product in particular settings to promote another product*”.

As a consequence, the interpretation of the term given by the WHO Representative in CCNFSDU40 appears to differ from the definition used in the WHO Guidance document. In addition, it can not be excluded that other definitions than the one provided by WHO could be used.

The EU is of the view that CCNFSDU should further clarify the intent of the sentence “Cross promotion between product categories is not permitted on the [label/labelling] of the product.” and consider an alternative formulation without the use of the term “cross promotion”. This new formulation would ensure that this sentence is interpreted and implemented in a consistent way by Codex members. In case where the use of the term “cross promotion” would be considered necessary, the EU is of the opinion that a Codex definition of this term should be developed.

INDIA

C. COMMITTEE ON NUTRITION AND FOODS FOR SPECIAL DIETARY USES (CCNFSDU)

Proposed draft revised *Standard for follow-up formula (CXS 156-1987)*

Section A: follow-up formula for older infants

Paragraph 9.5 Information for use

Comment: We propose to add “ Recommended portion size” under this section.

Rationale: It is important for such kind of products to have an indication of portion sizes.

MALAYSIA

C. COMMITTEE ON NUTRITION AND FOODS FOR SPECIAL DIETARY USES

Proposed draft revised *Standard for follow-up formula (CXS 156-1987)*

Section A: follow-up formula for older infants

Malaysia generally has no objection on the proposed endorsement for Section 9, Labelling of Section A of the Proposed draft revised *Standard for follow-up formula*, except for Section 9.2.2 and 9.6.4. Our comments on these two sections are as follows:

9.2 : List of Ingredients

9.2.2 *The specific name shall be declared for ingredients of animal or plant origin and for food additives. In addition, appropriate functional classes for these ingredients and additives may be included on the label. The food additives INS number may also be optionally declared.*

Malaysia would like to highlight that the current text of Section 9.2.2 is not consistent with the labeling provision for food additives under the General Standard for the Labelling of Prepackaged Foods (CXS 1-1985), in which CXS 1-1985 requires that the functional classes shall be used together with the specific name or recognized numerical identification such as the INS number as required by national legislation. Similarly, at national level declaration of food additive functional class is a mandatory requirement that is important to provide information to the consumer on the. Hence, 9.2.2 should be made consistent with labelling provision of food additive in the CXS 1-1985.

9.6 : Additional Labelling Requirements

9.6.4 *Products shall be distinctly labelled in such a way as to avoid any risk of confusion between infant formula, follow-up formula for older infants, (name of product) for young children, and formula for special medical purposes, in particular as to the text, images and colours used, to enable consumers to make a clear distinction between them, Cross promotion between product categories is not permitted on the [label/labelling] of the product.*

Malaysia is of the opinion that the statement “*Cross promotion between product categories is not permitted on the [label/labelling] of the product*” need to be defined clearly to avoid any misinterpretation. Lack of clarity in the phrase may create various difficulties in the national and international level.

The term “cross promotion” may lead to different interpretation and implementation at national level which may create difficulty for enforcement in the regulatory system. It may also result in legal and regulatory obstacles in international trade and create issues on intellectual property rights. In addition, considering that the term *[label/labelling]* is still in square brackets, Malaysia proposes clarification on the definition to be further deliberated in CCNFSDU.

NIGERIA

C. COMMITTEE ON NUTRITION AND FOODS FOR SPECIAL DIETARY USES (CCNFSDU)

Proposed draft revised *Standard for follow-up formula (CXS 156-1987)*

Section A: follow-up formula for older infants

9. LABELLING

Proposed draft revised Standard for Follow-Up Formula (CXS 156-1987) Section A: Follow-Up Formula for older infants

9.6.4 Products shall be distinctly labelled in such a way as to avoid any risk of confusion between infant formula, follow-up formula for older infants, (name of product) for young children, and formula for special CX/FL 19/45/4 5 medical purposes, in particular as to the text, images and colours used, to enable consumers to make a clear distinction between them.

Cross promotion between product categories is not permitted on the [label/labelling] of the product.

Nigeria supports the endorsement of the labelling provisions as presented by the CCNFSDU

Nigeria however agrees to the use of the term “Labelling” as it is broader, and encompasses Marketing and Advertisements Practices of Food.

THAILAND

CCCPL - Quinoa

Thailand agrees with the labelling provisions in Standard for Quinoa.

CCNFSDU – Follow-up formula

9.2.2

Thailand would like to seek clarification on the second sentence that require to include functional classes of ingredients on the label. Since current General Standard for the Labelling of Prepackaged Foods provides class names for ingredients, not the functional classes.

9.3

Thailand is in favor of using an abbreviated unit or symbol of unit such as SI unit in the declaration of nutritive value on the label. Thailand therefore, proposes that all units specified in Section 9.4 should be replaced by symbol of unit, to be in line with the Guidelines on Nutrition Labelling (CAC/GI 2-1985).

9.4.1

Since older infants' immune systems are not as strong as those of young children, it is necessary to ensure the safety and quality of products for them. Therefore, Thailand suggest replacing "Best Before Date" or "Best Quality Before Date" with "Use- by Date" or "Expiration Date".

9.4.2

Thailand supports to open the square brackets in the first sentence in order to ensure that products are safe for infants.

9.6.4

Thailand considers it is important to have a clear distinction between the labelling of infant formula, follow-up formula for older infants and young children, and formula for special medical purposes as reflected in the first sentence of Section 9.6.4. For the second sentence, its meaning and the intent is not very clear. If such provision concerning cross-promotion on the label or labelling is only to avoid message that a follow-up formula for older infants is also suitable for another age group, this second sentence would result in duplication with the first sentence. Therefore, we suggest deleting the second sentence to ensure that standard is clear, concise and avoid duplication.

CCSCH – several draft standards

Thailand agrees with the labelling provisions in all six draft standards from CCSCH. Nonetheless, we would like to seek clarification on the use the term "Country of Origin/Country of Harvesting". We do not object if the intent of CCSCH to use both terms, however if only "country of harvesting" can be used on the labelling, Thailand is not certain if that would conflict with the mandatory labelling requirement stated in the Codex Stan 1-1985.

VIETNAM

C. COMMITTEE ON NUTRITION AND FOODS FOR SPECIAL DIETARY USES (CCNFSDU)

Proposed draft revised *Standard for follow-up formula* (CXS 156-1987)

Section A: follow-up formula for older infants

Regarding to the endoresement of labelling provision in draft Codex Standard for FUF (Older Infant) which will be discussed at the 45th Session of CCFL in Canada next month, Vietnam would like to provide comments as following:

Vietnam is not in favour of provision "Cross promotion" to include in Section 9.6.4, So Vietnam proposes to remove this provision from Section 9.6.4.

Rationale:

- The definition of "Cross promotion" is not defined clearly in Codex Standards and Codex Procedural Manual; It refers advertistment/marketing rather than technical issues in Codex Standards;
- The provision mentioned above may beyond of mandate of the Codex Committee of CCNFSDU;

- It differs significantly from the established provisions for food labelling in Codex Standards.¹ There is no justification – neither scientific or market-based – for the substantial deviation from labeling section in Codex Standards. References to additional labelling provisions and marketing prohibitions go beyond the provisions of the Codex Procedural Manual.²

ASSOCIATION EUROPÉENNE POUR LE DROIT ET L'ALIMENTATION (AEDA/EFLA)

C. COMMITTEE ON NUTRITION AND FOODS FOR SPECIAL DIETARY USES (CCNFSDU)

Proposed draft revised *Standard for follow-up formula (CXS 156-1987)*

Section A: follow-up formula for older infants

The CCNFSDU, at its 40th meeting held on November 26-30, 2018, has sent to the CCFL for endorsement part of labeling provisions of the revised Codex Standard for follow up formula, including some “Additional Labeling Requirements”, among which point 9.6.4. which reads as follows:

Products shall be distinctly labeled in such a way as to avoid any risk of confusion between infant formula, follow up formula for older infants, (name of product) for young children, and formula for special medical purposes, in particular as to the text, images and colors used, to enable consumers to make a clear distinction between them. Cross promotion between product categories is not permitted on the [label/labeling] of the product” (emphasis added).

The European Food Law Association is of the view that, for legal reasons explained below, the last sentence imposing a ban on “cross promotion”, as it is drafted, should not be accepted.

Point 50 of the Report of 40th CCNFSDU meeting (REP19/NFSDU) explains that “The Representative of WHO clarified that the intent of the provision on cross-promotion was to avoid messages on labels that a product for a particular age group was also suitable for another age group or that reference was made to a similar product for another group. Based on the clarification on the meaning of cross-promotion, the Committee agreed that the wording in the last section of 9.6.4. should refer to label/labeling and that “label/labeling” should remain in square brackets” (emphasis added).

While EFLA has no objection to this purpose, it considers that the sentence banning “cross promotion” is not adequate and would even be confusing:

Cross promotion is not defined in Codex. It is not legally acceptable to ban something which is not defined. This creates legal uncertainty which is contrary to the purpose of Codex and, more generally, contrary to general principles of law. The scope of prohibitions, which may be sanctioned in case of non-compliance, should be clear and strictly interpreted

For an international standard to be transposed into national laws, the lack of common and precise definition may give rise to different national understandings, and therefore different national laws, thus creating barriers to trade contrary to WTO rules. Such barriers would not be proportionate to their purpose (article 2.1 of the TBT agreement). Even more so, this would be contrary to the very purpose of Codex Standards, which is to facilitate trade.

Because cross promotion is not defined in Codex, and only commented by a specific and focused remark in the Report of the CCNFSDU which has no legal value as such, it could be understood in some member States as banning any allusion to products sold under the same brand name, whichever the purpose, in contexts which may have nothing to do with the purpose expressed and endorsed by the CCNFSDU. This inconsistency between the purpose and the measure taken would also be contrary to the TBT agreement.

This purpose can be achieved by a more simple, direct and clear phrasing banning explicitly any mention implying that a product designed for a specific age group could be suitable for another age group.

¹General Standard on Food Labelling (CX STAN 1-1985) and General Standard on Labelling and Claims of Foods for Special Dietary Uses (CX STAN 146-1985)

²Procedural Manual, 26th edition, Section II – Relations between commodity standards and general subject committees, p.60

“Where commodity committees are of the opinion that the general provisions are not applicable to one or more commodity standards, they may request the responsible general subject committees to endorse deviations from the general provisions of the Codex Alimentarius. Such requests should be fully justified and supported by available scientific evidence and other relevant information. Sections on food [...]labelling [...] which contain specific provisions or provisions supplementing the General Standards, Codes or Guidelines shall be referred to the responsible general subject committees at the most suitable and earliest time in the Procedure for the Elaboration of Codex Standards and Related Texts, though such referral should not be allowed to delay the progress of the standard to the subsequent Steps of the Procedure.”

Such a solution, specific to the purpose of the Standard for follow up formula, would not create any precedent contrary to general Codex principles and to general principles of law. More particularly, Codex standards should:

Avoid the use of terms which are not defined in Codex.

Stick to its mandate, and particularly to the terms of reference of the CCFL, which is not competent for promotion. It may have some competence on marketing, but only to avoid misleading claims. This competence does not extend to how marketing and promotion is done by the operators.

Refrain to impose measures or bans which may be applied in such a way to limit the use of trade marks, which are protected by the TRIPS agreement.