

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



JOINT OFFICE: Viale delle Terme di Caracalla 00100 ROME Tel: 39 06 57051 www.codexalimentarius.net Email: codex@fao.org Facsimile: 39 06 5705 4593

Agenda Item 11

CRD.1

JOINT FAO/WHO FOOD STANDARDS PROGRAMME CODEX COMMITTEE ON FOOD LABELLING

Twenty-ninth Session
Ottawa, Canada, 1 - 4 May 2001

OTHER BUSINESS AND FUTURE WORK PROPOSAL FOR NEW WORK: CLAIMS ON THE ABSENCE OF FOOD PRODUCED USING GENE TECHNOLOGY (NEGATIVE CLAIMS) (proposal by Australia and South Africa)

Background

1. Labelling claims made regarding the absence of food or food ingredients produced using certain techniques of genetic modification/genetic engineering¹, so called 'negative claims', are increasingly being applied on a voluntary basis by food businesses in many countries to address a perceived consumer demand or market niche for such foods. The number of food products carrying such negative labelling claims often far exceeds the occurrence of positive labels even in countries where positive labelling is mandatory.
2. Such negative labelling claims may be regulated under general provisions within food law regarding false or misleading conduct, and/or through general provisions within consumer protection or fair trading/trade practices legislation that regulate false, misleading or deceptive conduct.
3. Negative labelling claims on food produced using gene technology however bring with them issues not specifically recognised in such legislation. For example;
 - negative claims made regarding the absence of novel GM components (recombinant DNA or novel protein) within a food may lead consumers to conclude gene technology was not used at any step of production,
 - negative claims made on food or ingredients that do not have a genetically modified/engineered counterpart while truthful may be deceptive, and

¹ Abbreviated to: food produced using gene technology

- negative claims may erroneously be applied to foods or ingredients which contain GM components but fall below a permitted ingredient threshold for positive labelling.

Regulation and Guidance on Negative Claims

4. Some countries (e.g. Netherlands, Austria and Germany) have recognised these anomalies difficulties by developing regulations specific to negative claims for foods produced using gene technology.
5. Australia provides specific advice on the use and limitation of negative claims in the Compliance Guide for Labelling of Food Produced using Gene Technology developed to support positive labelling requirements coming into effect in December 2001.
6. The scope and general principles of the Codex General Guidelines on Claims (clause 1.2) emphasises the importance of regulations on the representation of food in stating: “*no food should be described or presented in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect*”. The Guideline also emphasises (clause 3.5) that: “*claims that could give rise to doubt about the safety of similar food or which could arouse or exploit fear in the consumer*” should be prohibited.
7. While these general Codex provisions recognise the importance of setting wide-ranging regulations to prohibit misleading claims, they do not adequately address issues specific to negative claims for food produced using gene technology.
8. The *Codex Guideline for the Labelling of Food and Food Ingredients Obtained Through Certain Techniques of Genetic Modification/Genetic Engineering* (CX/FL 01/7; at Step 3 of the Codex Procedure) incorporates no guidance with respect to negative claims.
9. Lack of international harmonisation on the application and use of negative labelling claims for food produced using gene technology has potentially serious implications in the trade of such foods. There is thus an imperative to establish common approaches to regulating such claims.

Proposal for New Work

10. Clear and specific guidance must provided by Codex on the use and applicability of negative labelling claims for food produced using gene technology. Developing guidance on this issue may be approached by either:
 - reviewing the *Codex General Guideline on Claims* to elaborate the applicability and use of negative claims for food produced using gene technology, or
 - incorporating guidance on the issue in the proposed *Codex Guideline for the Labelling of Food and Food Ingredients Obtained Through Certain Techniques of Genetic Modification/Genetic Engineering*.
11. Specific issues on which guidance should be provided include:
 - The availability and accreditation of evidence to substantiate statement or claims regarding the absence of food produced using gene technology;

- Whether the statement or claim is likely to mislead consumers regarding the food or ingredients safety, nutritional value or composition as compared to food or ingredients produced using biotechnology;
- That where an absolute statement or claim is made, such as “GM free” the claim applies to the production of all components within the food or ingredient (such absolute claims should not allow for accidental presence of a genetically modified component or presence of biotech components as minor or trace ingredients and would be technically difficult to enforce);
- Where the statement or claim cannot be guaranteed, as is likely for food or ingredients marketed or processed using identity preservation systems, the statement should be qualified to accurately reflect the efforts of the manufacturer including systems of accreditation used;
- Where a food or ingredients produced using gene technology is specifically exempt from positive labelling, the application of a negative claim is potentially deceptive and could mislead consumers; and
- Negative labelling statements or claims should be limited to those foods or ingredients for which biotech counterparts exist in the market.