



JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON FOOD LABELLING

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REVISED DISCUSSION PAPER ON EXCHANGE OF INFORMATION BETWEEN COMPETENT AUTHORITIES WHEN SUSPECTING FRAUD CONCERNING ORGANIC PRODUCTS

Prepared by the European Union

Introduction

At its 38th Session the Committee debated the discussion paper introduced by the European Union and concluded that the Delegation of the European Union would prepare a revised version on the basis of the comments received to Circular Letter CL 2010/20-FL (See Annex).

10 Codex members provided comments. While some members supported the proposals, others raised fundamental questions or opposed the proposal as being superfluous.

Taking these comments into account, the EU revised its discussion paper along the following lines:

- (1) The objective to better highlight the need for communication in order to prevent fraud;
- (2) Limiting the proposed amendments to adding references to specific sections of CAC/GL 25 and in such way better describing the cases in which such communication is required;
- (3) Limiting the actors communicating on suspected fraud to competent authorities only and maintaining the recommendation to FAO to set up and maintain a worldwide list of competent authorities for organic farming to facilitate communication between them.

Background

One of the objectives of the Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods (CAC/GL 32-1999) is the protection of consumers against deception and fraud in the market place and unsubstantiated product claims.

Another aim is to protect producers and processors of organic produce against misrepresentation of other agricultural produce as organic.

The international market for organic products has grown rapidly and is still developing. Unfortunately the number of serious infringements indicating fraud has also grown in proportion. There is a danger that infringements will damage consumer confidence in organic products resulting in significant damage to the market.

In order to ensure attaining the above mentioned objectives of the Guidelines, it is of crucial importance that competent authorities (e.g. authorities of both importing countries and exporting countries) exchange relevant information when appropriate. Such exchange is in the first place needed to prevent exporters with fraudulent intentions redirecting their products to other countries when certain importing countries take preventive measures.

Possible new work

Having regard to the background explained above, it seems appropriate to better highlight the need for communication in the Guideline.

The Committee is therefore invited to consider the following proposals.

1. The CCFL should recommend the FAO to set up and maintain a list of all Competent Authorities as referred to in section 6.2.
2. Section 6.10 of the Guideline should be amended as follows:

"The requirements of the *Guidelines for the Exchange of Information between Countries on Rejections of Imported Food*¹ should apply where the competent authority finds irregularities and/or infringements in the application of these guidelines. **In particular, and as set out in paragraph 5 of the above-mentioned Guidelines, the importing country shall notify the exporting country on evidence of serious misrepresentation or consumer fraud and on evidence of serious failure in the inspection or control system in the exporting country. Moreover, as foreseen in the last section of the Annex to Guidelines CAC/GL 25, when there is a risk that exporters try to redirect fraudulent products that have been rejected by certain third countries to other third countries, the competent authorities of the third country who rejected the products should notify this rejection to authorities in other likely destination countries.**"

¹ CAC/GL 25-1997

ANNEX: REPLIES TO CL 2010/20-FL from

AUSTRALIA
 CHILE
 COSTA RICA
 IRAN
 KENYA
 MEXICO
 NEW ZEALAND
 NORWAY
 SWITZERLAND
 UNITED STATES
 URUGUAY

AUSTRALIA

Australia supports the proposal for the “exchange of information” to help mitigate fraud in the international trade arena for organic products. However we note that:

- the Codex Committee on Food Import and Export Certification Systems (CCFICS) has developed text regarding fraudulent certificates in its *Guidelines for Design, Production, Issuance and Use of Generic Official Certificates* CAC/GL 38/2001.
- CCFICS guidelines also already exist for the *Exchange of Information between Countries on Rejections of Imported Food* CAC/GL 25/1997. These Guidelines apply to rejections of imported foods that fail to comply with importing country requirements including where there is evidence of serious misrepresentation or consumer fraud or where there is evidence of repeated failures of a correctable nature (e.g. labelling errors).
- In supporting the new work, in principle Australia:
 - agrees to the addition of references to all relevant texts, in particular respecting the specific sections of CAC GL 25-1997;

Would like to clarify with respect to the FAO maintaining a list of competent authorities referred to in 6.2; would defer to FAO as to whether this is possible or whether there already exists mechanisms for this purpose i.e. INFOSAN?

- agrees with the addition of the new paragraph c) for Section 6.7;
- agrees with the addition of the new paragraph d) for Section 6.9;
- Australia would like to propose additional wording to the Section 6.11 to include arrangements between a competent authority of an importing country and an officially recognised certification/control body in an exporting country. The additional wording is in line with the language in paragraph 6.6 which refers to “the competent authority or its designate”. Australia would propose that the new 6.11 read as follows:

“6.11 The competent authority **or its designate** should notify to the competent authorities of other countries likely to be concerned any information deemed necessary when a risk of serious irregularity in the export of products labelled as organic”.

Alternate to ‘**or it’s designate**’ could be ‘**or officially recognised certification/control body**’

In these guidelines the definition of **competent authority** means the official government agency having jurisdiction.

There are several Australian certified organic organisations that currently have conformity assessment recognition with a number of countries; under this type of arrangement AQIS (the competent authority) has no involvement in the inspection and/or certification of export of organic product to these countries.

The proposed change to add “**or it’s designate**” **provides additional clarification to include these types of arrangements.**]

CHILE

Chile is grateful for the opportunity to present the following comments about the document produced by the Codex Secretariat regarding the exchange of information between competent authorities when suspecting fraud concerning organic products.

Regarding this issue, Chile agrees that it is convenient and necessary to respect the indications of the CCFICS, and particularly is established in the CAC/GL 25, with the purpose of making it adequate for organic products, as the procedure established on it is useful for the purpose of the issue being analyzed.

Regarding modifications to *Section 6 of the Guidelines*, Chile proposes the following text:

“6.7 The official and/or officially recognized certification bodies or mentioned on paragraph 6.2 should:

- a) Ensure that, at least the inspection measures and precautions specified in Annex 3, are applied to companies subject to inspection,;
- b) Not to disclose any information or confidential data obtained during their inspection or certification activities to persons not responsible for the company in question and the competent authorities.

c) Communicate to its counterparts in third countries the relevant information about infraction or verifiable irregularity cases, regarding compliance with the guidelines that impact trade or that present a risk of trading in products wrongly labelled as organics.

6.9 The designated authority and the official and/or officially recognized certification bodies mentioned on paragraph 6.2 should:

- a) Ensure that, when an irregularity is found in the implementation of Sections 3 and 4, or of the measures mentioned in Annex 3, the indications provided on paragraph 1.2 regarding the organic production method be eliminated from the full lot or from the production series affected by the aforesaid irregularity;
- b) If an obvious infraction or an infraction with lasting effects is observed, the affected operator should be forbidden from marketing products with indications referring to the method of organic production for a period to be agreed with the competent or designated authority.
- c) To exchange relevant information on the results of their controls when needed to justify and guarantee that a product has been produced in accordance with the guidelines or when products incorrectly labelled as organic are or have been traded

6.11 The competent authority of each exporting country should notify to the competent authorities of other countries likely to be concerned any information deemed necessary when a risk of serious irregularity in the export of products labelled as organic.²”

COSTA RICA

Costa Rica welcomes the opportunity to present the following comments:

- 1- Costa Rica welcomes that this issue be included and analyzed by the Labelling Committee, as it is very specific for organic products and this is the only Committee that knows the issue of organic products.
- 2- Costa Rica considers necessary to specify which would be the frauds about which information should be exchanged; also, it proposes that this be limited to Competent Official Authorities and not include control authorities and organizations. If not, to limit the actions of these last mentioned organisms to just exchanges of information among them without being allowed to do so towards other Importing or Exporting Governments or Competent Authorities of countries other than the one in which the information is generated.

The aforesaid is due to the fact that this is a sensitive issue for national economies and could produce negative results on country exports. Truthfulness of the information that needs to be exchanged should not remain in private hands. Only the Competent Authorities are official entities.

Costa Rica considers that both the specific issues regarding this information as well as the scope of each participating actor in the process should be defined.

² For this purpose the procedure established in the 19 CAC/GL 25-1997 should be taken into consideration, taking into account that it is not a sanitary emergency.

The list of Competent Authorities should be elaborated according to the responsible institution rather than emphasizing the persons, as it is noted that persons can frequently change.

IRAN

Iran believes the CCFL should recommend to FAO to set up and maintain a list of all Competent Authorities as referred to in section 6.2 like as Eu-Standard No.2092 for organic products .

Also we set up a list for developing the organic products in our national standard.

KENYA

Kenya would like to thank European Union for coming up with a very good discussion paper for comments and discussion. We support this work to proceed on to prevent many frauds which can re-occur between countries to bar fair trade and safety of food. We therefore would like to submit the following comments as indicated below:

Possible new work

Having regard to the background explained above, it seems appropriate to integrate the need for communication in the Guidelines while taking into account and respecting the relevant provisions established by CCFICS in particular in CAC GL [25 Guidelines on Exchange of Information between Countries on Rejections of Imported](#)

The committee is invited to consider the following proposals.

We would like to amend the sentence below in italic and bold as follows:

Specific comment

Kenya is in agreement with this statement with amendment as indicated below in bold and italic to create some consistent.

The CCFL should recommend to FAO to set up and maintain a list of all Competent Authorities and **officially recognized certifying bodies as** referred to in section 6.2 –

Add references to all relevant CCFICS texts, in particular to specific sections of CAC GL 25.

Amendment to section 6 of the Guideline:

Add a new paragraph to section 6.7

Specific comment

We propose to delete the word 'other official and/or' and add 'competent'

*:c) to communicate to ~~other official and/or~~ officially recognised certification bodies or **competent** authorities concerned the relevant information on any case of serious infringement or irregularity with regard to the respect of the guidelines which has an effect on trade or presents a risk of trading products incorrectly labelled as organic *Add a new paragraph to section 6.9:**

Specific comment

We propose to add the word 'on request' between the word 'information' and 'on the results....'

*c) to exchange relevant information **on request** on the results of their controls where justified by the necessity to guarantee that a product has been produced in accordance with the guidelines or when products incorrectly labelled as organic are or have been traded.*

Introduce a section 6.11 to the Guideline:

Specific comment

We propose to add the word 'officially recognized/certify bodies' since some countries might not have 'competent authorities' but has officially recognized /certifying body that does the same work competent authority does for the country.

The **officially recognized/certify bodies**/competent authority of each exporting country should notify to the competent authorities of other countries likely to be concerned any information deemed necessary when a risk of ~~serious~~ irregularity in the **import**/export of products labelled as organic.

Justification for adding the word 'import'

We add the word 'import' to cater for both countries.

MEXICO

Mexico would like to express our thanks for the opportunity to present our comments regarding the CL 2010/20-FL proposed for discussion during the next meeting of the Codex Food Labelling Committee

The request for comments and information regarding the exchange of information between competent authorities, when suspecting fraud concerning organic products, is valid. However, it should be taken into account that some countries don't have established yet a competent control authority. On the other hand, the lack of sufficient infrastructure and competent staff may be a limiting factor for a good response capacity on the part of the competent authorities for regulation, and monitoring organic or ecological products, in addition to the fact that they are generally also responsible for other issues, which often create higher problems as irritants to trade.

In other cases, the Codex national contact points do not always consult with the competent authorities, as it was commented in the 2010 meeting of Latin American Organic Agriculture Competent Authorities.

On the other hand, it is necessary to generate a procedure for the documented justification of the suspicion or accusation. It is not clear that the FAO should be the one responsible for having available such up-to-date data base on Competent Authorities, when member countries can themselves provide this information directly to the Codex as member states.

We consider appropriate that this issue should also be addressed by the Food Inspection and Certification Systems Committee, as it is not specific of the organic nature not of the control system.

We understand that frauds are isolated cases and, therefore, that a case by case evaluation is appropriate.

The inclusion of the texts proposed in sections 6.7, 6.9 and 6.11 of the CAC/GL 25 1997 Guidelines is considered appropriate.

NEW ZEALAND

New Zealand supports initiatives to develop a mechanism to protect consumers against deception and fraud in the market place and unsubstantiated product claims, specifically the misrepresentation of agricultural produce as organic.

With regard to the proposal that the CCFL should recommend to FAO to set up and maintain a list of all Competent Authorities:

We would suggest that the wording include the option to assign this task to a designated "National Focal/Contact Point". Cases of fraud in labelling may not necessarily be administered under the same national framework as organic standards. The list of competent authorities should note the area of competence of each authority.

With regard to possible mechanisms for communicating cases on non-conforming consignments:

We understand that there are similar mechanisms³ available to address similar situations in other topic areas, and would suggest that any work undertaken for the organic guidelines should begin with a comprehensive study to investigate other similar methods. It may be more efficient to amend existing programs to include non-conforming organic consignments, rather than to create an additional new programme. The aim of this initial study would to ensure that the CCFL committee is not doubling up on work that has already been done.

The CAC/GL 25 (1997) "Actions Taken" section includes a number of options: Re-export granted under certain conditions, e.g. to specified informed countries; Importer notified; Embassy/food control authorities of exporting country notified; and Authorities in other likely destination countries notified. It appears that this would be the natural place for developing a mechanism for competent authorities to communicate

³ European And Mediterranean Plant Protection Organization, Reporting Service, Item 2010/109 - *EPPO report on notifications of non-compliance*,

<http://archives.eppo.org/EPPOReporting/2010/Rse-1005.pdf>

The International Food Safety Authorities Network (INFOSAN) http://www.who.int/foodsafety/fs_management/infosan/en/

Rapid Alert System for Food and Feed http://ec.europa.eu/food/food/rapidalert/index_en.htm

We suggest that CCFL should request CCFICS consider appropriate material to cover notification of fraud covering organic products. CCFL would need to be specific about what should be covered.

With regard to amendments to Section 6 of the Guidelines:

The discussion document does not differentiate between exchanges of information between certification bodies within a country, and the exchanges of information between competent authorities in different countries. We would like to see this distinction clarified between intra-national and inter-national communication to ensure protection of confidential information, and proper authorisation and control of the communication. The procedure should include provision for the reporting competent authority to verify the validity of the information before communicating to other bodies. There has to be some sound evidence of fraud before information is shared as a matter of natural justice. We would like to see the criteria for triggering these exchanges explained.

NORWAY

Appreciating that Codex and the European Union has followed up the discussion at the 38th CCFL on how to improve the exchange of information between competent authorities in case of suspected fraud with organic products, Norway would like to give some comments:

With reference to CX/FL 10/38/15 we are also aware of the challenges of exchanging information between countries on rejections of imported organic food.

The Guidelines for exchange of information between countries on rejections of imported food, (CAC/GL 25-1997) point 5, says that the food control authorities in an importing country shall notify to the food control authorities in the exporting country when there are;

- evidence of a serious food safety or public health problem in the exporting country, or
- **evidence of serious misrepresentation or consumer fraud**, or
- evidence of a serious failure in the inspection or control system in the exporting country.

However, for these above mentioned evidences there is already an international system in place for food safety issues. The International Food Safety Authorities (INFOSAN) covers more than 150 countries, where each member country has designated one or several INFOSAN Focal points. Since such a system involves many people and has a significant cost, we are not convinced that building up a new independent system on issues concerning fraud with organic products should be done. We would therefore rather recommend Codex to explore the possibilities to expand the already existing system, INFOSAN, for inclusion of products where serious misrepresentation or consumer fraud is an issue (point 5.1, second dot).

SWITZERLAND

Switzerland is of the opinion, that measures to prevent fraud are necessary. We appreciate the discussion led in Codex Alimentarius to develop an improved mechanism for the exchange of information between competent authorities when suspecting fraud concerning organic products. Switzerland supports the revised proposal in CL 2010/20-FL. In particular, we support the idea that a list of all competent authorities is set up and maintained, and that in any case of serious infringement or irregularity the competent authorities of countries likely to be concerned should be notified. We explicitly stress that the notifications should be restricted to serious cases and to countries likely to be concerned, in order to prevent a flood of notifications on minor non-conformities which would be difficult to handle.

UNITED STATES

The United States appreciates the work completed by the Delegation of the European Union in preparing the discussion paper for this upcoming Session of the Codex Committee on Food Labeling and offers the following comments in response to CI 2010/20FL, *Request for Comments and Information Concerning Exchange of Information between Competent Authorities When Suspecting Fraud Concerning Organic Products*.

The United States considers new work in this area as redundant and unnecessary since the work is already adequately covered in **CAC/GL 25-1997, GUIDELINES FOR THE EXCHANGE OF INFORMATION BETWEEN COUNTRIES ON REJECTIONS OF IMPORTED FOOD**. Specifically, the Guidelines state the following:

Paragraph 1: “[t]he guidelines are intended to cover all types of food;” therefore, these guidelines cover organically produced foods.

Paragraph 5: the Guidelines lists the rejection reasons which would trigger food control authorities notification for “evidence of a serious food safety or public health problem...or evidence of serious misrepresentation or consumer fraud.”

Paragraph 7: provides instruction on minor circumstances for notification “where there is evidence of repeated failures of a correctable nature (e.g. labeling errors...) calling for communication between food control authorities.

Paragraph 8: “[i]t is also open to an importing country to supply information on rejections to an exporting country even when this is not specified in these guidelines.”

The United States does not believe it is necessary to define a specific electronic system for sharing such information, as many different national approaches exist. Many national authorities have developed specific approaches on sharing information in their recognition or equivalence agreements. The guidelines are not limiting in the type of information that can be shared between countries, and communication between food control authorities already exists.

The United States believes that this new work is duplicative of other existing Codex guidance and resources would be better spent on more urgent concerns brought forward within the committee.

URUGUAY

Uruguay welcomes the opportunity to present its comments regarding the CL 2010/20-FL.

Uruguay considers that CAC/GL25 Guidelines of the CCFICS provide sufficient elements in their recommendations to ensure the exchange of information regarding commercial rejections of organic foods. As pointed out in the Guidelines, imported foods can be rejected, among other reasons, due to incorrect or misleading labelling. This item includes labelling as “organic” and would be considered a fraud when the labelling does not correspond to the “organic” nature of the food.

Regarding the addition of a bullet to section 6.7 of the Guidelines, Uruguay would like to indicate that it compares the proposal that the certification agencies should be the ones that should communicate serious irregularity cases to their peers.

Regarding the addition of a bullet to section 6.9, Uruguay considers that it is not necessary to exchange the result of the controls and that, if such possibility is accepted, unjustified barriers to trade may be generated based on subjective suspicions or lack of trust regarding the way in which each competent authority manages its control system.

Regarding the introduction of a 6.11 section in the Guidelines, Uruguay considers that there is no need to add this section as those elements are already clearly covered in the CAC/GL25 Guidelines of the CCFICS.