



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

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PROPOSED DRAFT GUIDELINES ON THE PROVISION OF FOOD INFORMATION FOR PREPACKAGED FOODS OFFERED VIA E-COMMERCE

Prepared by the EWG chaired by the UK and co-chaired by Japan, Chile, India and Ghana

Codex members and Observers wishing to submit comments on the recommendations in this document should do so as instructed in CL 2023/07/OCS-FL available on the Codex webpage/Circular Letters:

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

I. Introduction

1. At the 45th Session of the Codex Committee on Food Labelling (CCFL45), the Committee agreed to start new work on internet sales/e-commerce through reviewing and then revising Codex food labelling texts (project document is available in REP19/FL, Appendix II). The new work was approved by CAC42¹.
2. It was agreed to establish an electronic working group (EWG) chaired by the United Kingdom, and co-chaired by Chile, Ghana, India, and Japan, working in English and Spanish to prepare a proposed draft text for circulation at Step 3 and consideration by CCFL46.
3. At CCFL46, the 'Proposed Draft Supplementary Text to the GSLPF on the Food Information Requirements for Pre-packaged Foods to be Offered via e-Commerce' was discussed. The Committee agreed the work to return the work to Step 2 for further development with the United Kingdom chairing the EWG and Chile, Ghana, India, and Japan co-chairing. A full list of EWG members can be found in Appendix III.

II. Participation

4. Between October 2021 and January 2023, the co-chairs of the EWG ran two consultations with the EWG. This included further amendments following comments and suggestions from the members of the EWG from each consultation. A full summary and analysis of comments can be found in Appendix I.

III. Outcomes

5. Following the consultations, core issues within the guidelines were agreed upon including
 - a. Purpose: It was agreed that a 'Purpose' section is included within the draft guidelines to give clarity and explain what the text is trying to achieve.
 - b. Scope: It was agreed that the proposed text covered food information which shall be available on the product information e-page which is the information available prior to the moment of e-commerce sale. It was also agreed that the text did not apply to information that shall be available at the point of delivery as such information was already provided for in the *General Standard for Labelling of Prepackaged Foods* (GSLPF) (CXS 1-1985).

¹ REP19/CAC, para.96 and 98, Appendix V

- c. The definitions: It was agreed that a line is added above the definitions to clarify that each definition is given to define terms within the context of this specific text. It was also agreed that 'prior to' is used throughout the text including the definition "Prior to the point of e-commerce sale".
 - d. General principles: It was agreed that Section 4 would be simplified and limited to the fact that the general principles in Section 2 of the GSLPF apply to food information shown on the product information e-pages of the prepackaged food.
 - e. Inclusion of nutritional properties: It was agreed that the requirement to include nutritional labelling is added via the inclusion of Section 3 of the *Guidelines on Nutrition Labelling* (CXG 2-1985) under Section 5 within the text.
 - f. A referral was made to the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) to consider matters of cross-jurisdictional sales by e-commerce as part of their work.
6. Whilst core issues have been agreed some issues remain outstanding. These issues include:
- g. Status as a supplementary text: Following a lack of clear consensus after the consultations, the EWG could not agree on the nature of the text either as a supplementary text or a standalone guideline. Some members expressed a strong preference for the text to become a standalone guideline as the text extended beyond the scope of the GSLPF, whilst others argued that it should remain as a supplementary text. One member has suggested that the 'Purpose' section be amended if the draft text remains as a supplementary text to the GSLPF. The title of the draft text was amended to reflect that it is a standalone text as the chairs agreed with the majority view following consultations.
 - h. Definition of e-Commerce: There was a lack of clear consensus on the definition of e-commerce following the consultations. Whilst the majority of members agreed to the proposed definition amended from the WTO definition of e-commerce, some members indicated that they would rather support an unamended version of the WTO definition. We also note that one member expressed a strong preference for the development of a new specific definition to be used within the text. This suggested definition is included in square brackets.

The definition of e-commerce was amended to reflect the majority view and support of the amended WTO definition of e-commerce.
 - i. Minimum Durability and Small Unit Exemption: Following the lack of consensus on the inclusion of small unit exemptions and minimum durability periods, the chair and co-chairs decided to remove these points. Instead, we have added 5.3 to allow competent authorities to allow these if they so wish. At the request of one member, the chairs have also included the 'minimum durability' point in square brackets for discussion and included an accompanying definition. In addition, a sentence on small unit exemptions was also included in square brackets for discussion.

IV. Conclusions and Recommendations

7. Conclusion:

- a. The EWG have prepared proposed draft guidelines on the provision of food information for prepackaged foods to be offered via e-commerce (Appendix II) which provides a good representation of the consensus in the EWG. The chairs believe that the proposed guidelines are ready to be advanced to Step 5 and that outstanding discussion points should be resolved within the Committee discussion.

8. Recommendations

The Committee is invited to:

- i) Review the proposed draft guidelines on the provision of food information for prepackaged foods to be offered via e-commerce (Appendix II) and consider whether it can be advanced to Step 5.

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- ii) Review the status of the draft text as a supplementary text to the GSLPF and consider whether the text extends beyond the scope of the GSLPF.
 - iii) Review the proposed definition of e-commerce, as amended from the WTO definition, and consider whether:
 - (1) The definition should be adopted as proposed in the draft text.
 - (2) The unamended WTO definition should be used instead.
 - (3) A new specific definition is developed such as the one included in the text in square brackets.
 - iv) Review the removal of the minimum durability period and small unit exemptions to consider whether:
 - (1) The minimum durability should remain removed or included as suggested in the first sentence of 5.3 in square brackets (Appendix II, Section 5. Food Information Principles).
 - (2) The small unit exemption should remain removed or included as suggested in the second sentence of 5.3 in square brackets (Appendix II, Section 5. Food Information Principles).
 - (3) The inclusion of 5.3 to sufficiently cover the removal of the above points.
 - v) Reconvene the EWG, chaired by the United Kingdom and co-chaired by Japan, Chile, India and Ghana if the paper cannot be advanced to Step 5 at this stage in development.

Appendix I

Analysis and Consideration of Comments

1. Amendments based on comments

- a. **Inclusion of a 'Purpose' section:** A large majority of respondents indicated that they supported the inclusion of a 'Purpose' Section which will hopefully help countries understand what the text is trying to achieve. A 'purpose' section gives context to the draft text and many Codex guidelines include introductory text by way of preamble or a purpose section for that reason. The introduction of the 'Purpose' section to the text was largely supported by members of the EWG and amendments have been made to the wording based on suggestions. For example, 'similar to the information they would find on the physical label of the food' has been removed to simplify the purpose and 'digital platforms' has been amended to the already defined 'product information e-page' for consistency throughout the document.
- b. **Scope of the text:** There was extensive discussion on the scope of the text following CCFL46 and subsequent consultations. Different proposals were made to clarify that the proposed text covered food information which shall be available on the product information e-page which is the information available at the point of e-commerce sale. However, CCFL46 did not provide a firm decision on the exact wording but it was agreed what the overall concepts addressed in the scope were. The chair and co-chairs edited the scope to provide greater clarity, removing ambiguous language, and specified the point in the e-commerce purchase process when the information will be displayed. It additionally outlines where the text did not apply to information that shall be available at the point of delivery as such information was already provided for in the GSLPF.
- c. **Amendments to existing definitions:**
 - **e-commerce:** There was a lack of consensus on the definition of e-commerce within the responses from the first round of consultations. Given this, the chair and co-chairs adapted the definition of e-commerce to the WTO definition with amendments. Following the second round of consultations, we found that the majority of respondents supported this amended definition.
 - 'prior to' the point of e-commerce sale: We received a consensus in support of the term 'prior to' and this has been adopted throughout the text, including the definition "Prior to the point of e-commerce sale". This changed the definition to "provided before consumers commit to make the purchasing order....".
 - **Removal of 'or required by national legislation':** The chair and co-chairs have removed "or required by national regulations" from the end of Food Information definition so that it aligns with the Use of Technology text which also uses this definition – the two texts now have identical definitions of food information.
 - **Minimum durability:** The chair and co-chairs have added in a definition for "minimum durability" in square brackets as it is a useful and relevant definition. We believe this will be helpful in the discussion around the inclusion of a sentence on minimum durability periods.
- d. **Inclusion of additional languages:** Based on suggestions from countries/blocs that have more than one national language, the mention of additional languages was added to the draft text. Following the second consultation, we reached a consensus on this inclusion and have amended the text based on the suggestions of the respondents. Amendments were made to Section 7.2 to include 'or languages' and 'in the country in which the food is marketed and to which it may be delivered' for greater clarity.
- e. **General principles:** Following majority consensus, Section 4 has been simplified and limited to include that general principles in Section 3 of the GSLPF apply to food information shown on the product information e-pages of the prepackaged food.

- f. Inclusion of nutritional properties: Following strong support from members of the EWG, a nutritional labelling requirement was added via the inclusion of Section 3 of the *Guidelines on Nutrition Labelling* (CXG 2-1985) under Section 5 within the text.

2. Comments that were considered but did not result in amendments

- a. **Removal of national legislation from 5.1:** A couple of respondents have suggested the removal of the mention of 'national legislation' in 5.1. One member noted that there might be concern of circumventing the Codex Alimentarius process by incorporating elements of national regulations into the Codex text. This was considered however given that this is also indicated at in point 5.3, the chair and co-chairs felt it was an important inclusion at this stage.
- b. **Use of the World Trade Organisation Definition of e-commerce** We note that a couple of respondents indicated that they would support an unamended version of the WTO definition instead. We believe that the current amended definition of e-commerce is more suitable for the text given the need to be specific in relation to the sale of prepackaged foods. In addition, the term 'production' was dropped from the amended WTO definition to reflect this. We also note that one respondent was not supportive of the WTO definition, amended or otherwise, following the second consultation and suggested that a new specific definition be made within the text.

c. Amendments to existing definitions:

'prior to the point of e-commerce sale: We note that one respondent was not supportive of this change following the second consultation and suggested the use of 'at the point of e-commerce sale.' However, given the consensus on the use of 'prior to', the chair and co-chairs amended the definition to reflect this. We also note that one respondent suggested the use of the term 'and before' instead of 'regardless'. This was not amended as the term 'regardless' indicates clearly that the information should be available without the need for any payment.

- **Removal of 'or required by national legislation':** one member has objected to the removal of 'or as required by national legislation' as it may impact Section 5 and the mention of 'any national legislation'. No amendments were made based on this suggestion as the consensus was in favour of the removal.

3. Issues not yet resolved

- a. **Status as a supplementary text:** Following the distribution of the text's first draft after CCFL46, we found that some members believed this document extended beyond the GSLPF and that the document should be a standalone guideline rather than a supplementary text. The chair and co-chairs believed this to be a sensible approach as the text did extend beyond the scope of the GSLPF in Section 5 and by introducing new definitions such as e-commerce and product information e-page. In addition, the title of the document was changed from 'Proposed Draft Supplementary Text to the GSLPF on the Provision of....', to 'Proposed Draft Guidance on the Provision of...' before the first round of consultations. Following the second round of consultations, we amended the title to 'Proposed Draft Guideline on the Provision of...' in line with other Codex Texts (i.e. General Standards, Guidelines and Codes of Practice). We note that some members were in support of the text remaining as a supplementary text to the GSLPF as this approach was generally agreed upon at the 46th session of the CCFL (in accordance with paragraph 103 of the REP21/FL) and because both texts have overlap in terms of content. We note that a couple of members considered that the foods sold via e-commerce channels are captured by the scope of the GSLPF as they are "prepackaged foods offered as such to the consumer" and that adding extra definitions in a complementary text/annex was not unusual.

The chair and co-chairs considered these comments in depth and believed that due to the complexity of e-commerce, a standalone text allows for definitions of specific concepts for the field of e-commerce that do not apply to physical labels. For example, the potential removal of

the small unit exemption which is not relevant within the confines of product information e-pages. In addition, as the landscape of e-commerce may continue to develop in the future, a guideline may have more manageable procedures in case of needed revisions and updates. Any references to other Codex texts such as the GSLPF are made clear throughout the text. Following a second round of consultations we found that approximately 70% of the respondent supported this view and therefore we opted to put forward the document as a standalone text.

We recommend that the text is adopted as a standalone guideline but that the decision is left for discussion as the next CCFL session.

We note that some members have commented on the need to change the content of the 'Purpose' section, in particular the second sentence, depending on whether this text is included as a supplementary text to the GSLPF or is a standalone guideline. As outlined above based on the general response from other members regarding the nature of the text, the chair and co-chairs believe that the second sentence is vital in clarifying the need for the creation of this text as it exists to specifically provide distinct provisions for the sale of food products via e-commerce.

- b. **Definition of e-Commerce:** There was a lack of consensus on the definition of e-commerce within the responses from the first round of consultations. Given this, we have adapted the definition of e-commerce to an amended version of the WTO definition. Following the second round of consultations, we found that the majority of respondents supported this amended definition. We note that a couple of respondents have indicated that they would support an unamended version of the WTO definition instead. We believe that the current amended definition of e-commerce is more suitable for the text given the need to be specific in relation to the sale of prepackaged foods. We also note that one respondent was not supportive of the WTO definition, amended or otherwise, following the second consultation and suggested that a new specific definition be made within the text.
- c. **Minimum Durability and Small Unit Exemptions:** Given the lack of consensus on the inclusion of small unit exemptions and minimum durability periods, we have decided to put this text in square brackets. Following the second consultation, we found that the majority of respondents agreed with the removal of the small unit exemption. We believe that the small unit exemption does not apply to e-commerce as product information e-pages do not have the issue of space when providing information to consumers. We also found that the majority of the respondents supported the removal of the minimum durability period. However, we note that a couple of respondents supported the inclusion of the minimum durability period as it is information needed for consumers to make informed choices and such information would be present on a physical label. One member has asked that this be added in brackets into the text so that it may be discussed at the next CCFL meeting. There was also a lack of consensus on the inclusion of 5.3 as a replacement for the removal of the Minimum durability period and small units exemption. The chair and co-chairs have agreed that this was a useful addition in order to cover any further information required by a competent authority. We note that some members have said that this does not cover 'exemptions' only additional information. In addition to this, 5.1 also covers any information required by each country and therefore 5.3 is not needed. We believe that the section is useful as it does address the need for exemptions and states that a competent authority 'may specify at which point in the e-commerce sale that information shall be shown'.

4. Comments on issues related to e-commerce outside the scope of these guidelines

- a. **Cross-border Issues:** One respondent suggested a referral be made to the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) to consider matters of cross-jurisdictional sales by e-commerce as part of their work.

Appendix II

**PROPOSED DRAFT GUIDELINES ON THE PROVISION OF FOOD INFORMATION FOR
PREPACKAGED FOODS OFFERED VIA E-COMMERCE****(for comments at Step 3 through CL 2023/07/OCS-FL)****1. PURPOSE**

1.1 The purpose of these guidelines is to ensure consumers buying prepackaged foods via e-commerce have the information needed to make informed choices. It also aims to provide additional provisions that should be used specifically when food is offered for sale via e-commerce, as outlined in Section 5, to address the specific complexities of product information e-pages.

2. SCOPE

2.1 These guidelines apply to the food information required, or provided voluntarily, for prepackaged foods offered for sale via e-commerce, and to certain aspects relating to the presentation thereof prior to the moment when a consumer commits to making a purchase.

2.2 It does not apply to information that is required on the label of prepackaged foods at the point of delivery for which the general standards are outlined within the *General Standard for Labelling of Prepackaged Foods* (GSLPF) (CXS 1-1985).

3. DEFINITIONS

The following terms shall be used in conjunction with Section 2 of the GSLPF (CXS 1-1985) for the purposes of applying this text.

“At the point of delivery” means the moment when consumers receive prepackaged food.

“e-commerce” means the distribution, marketing, sale or delivery of goods and services by electronic means by methods specifically designed for the purpose of receiving or placing of orders. [Adapted from the WTO definition as of 2022]

[“**e-commerce**” means the marketing, sale, or purchase of food stuffs through electronic or virtual means.]

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

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

“Prior to the point of e-commerce sale” means provided before consumers commit to make the purchasing order regardless of making any payment.

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

4. GENERAL PRINCIPLES

The general principles in Section 3 of the GSLPF (CXS 1-1985) are applicable to food information shown on the product information e-page of the prepackaged 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 prepackaged food or in associated labelling, shall be provided on the product information e-page of the prepackaged 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 GSLPF (CXS 1-1985) except information required by 4.6 and 4.7.1;

- Section 3 of the *Guidelines on Nutrition Labelling* (CXG 2-1985);
- Any other relevant Codex text;
- Any national legislation.

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 A competent authority may require that additional information about the prepackaged food be stated on the product information e-page and may specify at which point in the e-commerce sale that information shall be shown.

[A competent authority may require that the product information e-page should state that a product is expected to arrive before a minimum period before the expiry date, within their national boundaries. The specific length of this expected period shall be determined by the producer.]

[A competent authority may require that the labelling exemption of small units outlined in Section 6 of the GSLPF (CXS 1-1985) should apply in an e-commerce context within their national boundaries.]

6. OPTIONAL FOOD INFORMATION PRIOR TO THE POINT OF E-COMMERCE SALE

Section 7 of the GSLPF (CXS 1-1985) is applicable to food information shown to consumers on the product information e-page for the prepackaged 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 of such 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

Australia
Brazil
Canada
Chile
China
Cuba
Ecuador
Egypt
European Union.
Honduras
Hungary
India
Indonesia
Iran
Ireland
Japan
Malaysia
Mexico
New Zealand
North Macedonia
Norway
Peru
Philippines
Russia
Singapore
Spain
Switzerland
Uruguay
USA
Yemen

Observers

ESSNA (European Specialist Sports Nutrition Alliance)
FIVS
Food Industry Asia
Food Drink Europe
IFU (International Fruit & Vegetable Juice Association)
Institute of Food Technologists
International Chewing Gum Organisation
International Council of Beverages Association
International Council of Grocery Manufacturers
International Food Additives Council
International Special Dietary Foods Industries
OIV (International Organisation of Vine and Wine)
SSAFE
The Consumer Goods Forum
The International Confectioners Association