

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
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World Health
Organization

Viale delle Terme di Caracalla, 00153 Rome, Italy - Tel: (+39) 06 57051 - E-mail: codex@fao.org - www.codexalimentarius.org

Agenda Item 6

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JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON FOOD IMPORT AND EXPORT INSPECTION AND CERTIFICATION SYSTEMS

Twenty Sixth Session

PROPOSED DRAFT GUIDELINES ON THE PREVENTION AND CONTROL OF FOOD FRAUD

(Report prepared by the Electronic Working Group¹ chaired by the United States of America and co-chaired by China, European Union, Islamic Republic of Iran, and United Kingdom)

Step 3

INTRODUCTION & BACKGROUND

1. At the 24th Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS24) (2018), the European Union, as Co-Chair of the EWG on Food Integrity and Food Authenticity, introduced a discussion paper, which contained definitions of food integrity, food authenticity, food fraud and Economically Motivated Adulteration (EMA); provided an analysis of how different CCFICS texts took into account the issues around food integrity and authenticity; noted a number of areas where further work may be justified; and presented recommendations for the Committee's consideration based on inputs from the EWG.
2. CCFICS24 agreed on the important cross-cutting nature of issues relating to food integrity and food authenticity and held a wide-ranging discussion in which many delegations engaged. There was recognition that CCFICS may have a role to play in this area. CCFICS24 noted the following views:
 - a. The need for horizontal guidance should be carefully considered since several existing Codex texts already addressed relevant issues.
 - b. Any future CCFICS work in this area should be refined to avoid duplication with existing texts and well defined within the CCFICS mandate, considering the discussion held in 2008 on the prevention of intentional contamination of food.
 - c. Further consideration of relevant definitions may be needed and CCFICS could consider seeking advice from the Commission in that regard, including on which Codex body or bodies had the required expertise. Some delegations considered that this could be done following initial consideration by the EWG.
 - d. Other Codex committees were awaiting the outcome of the discussion in CCFICS on food integrity and food authenticity.
 - e. CCFICS could elaborate on a range of guidance, including what types of risks competent authorities should consider when designing control programmes; exchange of information and cooperation between different authorities at the national and international levels; communication with stakeholders between different authorities at the national and international levels; communication with stakeholders and the general public on food fraud incidents; and measures for targeting food fraud.
3. An EWG was established, the task of which was to conduct a comprehensive analysis of existing Codex texts within and outside of CCFICS and to propose new work, within the mandate of CCFICS, for consideration at CCFICS25. The EWG used a questionnaire to gather information that was used to develop the discussion paper and to frame the scope of potential new work. Furthermore, a comprehensive review of the Codex texts related to food fraud was also undertaken and it was recognized that food fraud was already covered in a variety of Codex texts. The EWG updated the discussion paper and streamlined the scope of the potential new work.

¹ Argentina, Australia, Botswana, Brazil, Canada, Chile, China, Cuba, Customs of PR China, Ecuador, El Salvador, ENAC, European Food Law, FIVS, Food Safety Consortium, FoodDrink Europe, GFSI, Hungary, ICBA, ICGA, IDF, IFU Fruit Juice, Indonesia, Iran, Japan, Kenya, Luxembourg, Malaysia, Maroc, Mexico, New Zealand, Nigeria, Norway, OIV, Panama, Peru, Republic of Korea, Singapore, Slovenia, Spain, Sweden, Switzerland, Thailand, THIE, Turkiye, United Kingdom, United States

4. At CCFICS 25, the discussion paper (CX/FICS 21/25/8) and project document were considered. The CCFICS Chairperson noted that there was strong interest in food fraud, both within Codex and beyond, and that CCFICS should seek to agree on the project document with a view to promptly starting new work on this important topic.

5. CCFICS25 noted that the scope of the work should be within the mandate of CCFICS and should address the dual mandate of Codex, protecting consumer health and ensuring fair practices in food trade. Additionally, CCFICS25 noted that the new work should not overlap with existing Codex texts and the guidance should not cause trade barriers.

TERMS OF REFERENCE

6. The Committee agreed to:

- a. Start the new work and forward the project document on the development of guidance on the prevention and control of food fraud to CAC44 for approval.
- b. Establish an EWG, chaired by the United States of America and co-chaired by China, EU, Iran and United Kingdom, working in English and Spanish, subject to approval of the new work, to prepare proposed draft guidance on the prevention and control of food fraud for circulation for comments and for consideration at CCFICSS26; and that:
 - i. The EWG may meet prior to CCFICS26 to address any outstanding issues
 - ii. The report of the EWG should be submitted at least three months before the next session.
- c. To keep other relevant Codex Committees informed of the progress of the new work.

PARTICIPATION AND METHODOLOGY

7. Codex member and observers were invited to register (by 9 September 2021) to participate in the EWG. 35 members and 8 observers registered for the EWG.

8. A draft proposed outline and questions for the EWG were prepared by the chair and co-chairs and circulated, in English and Spanish, to the EWG in February 2022. Questions posed to the EWG included:

- a. Whether feed for food producing animals should be included in the guideline
- b. Whether the guideline should include test methodologies
- c. Feedback on the terms included
- d. Whether information related to cooperation and exchange of information between importing and exporting countries should be included.

9. The EWG provided feedback that the guideline should include feed for food producing animals. Further, the EWG provided feedback that test methodologies should not be identified as those are not within scope of CCFICS. The EWG identified additional terms for consideration for inclusion and noted that the guideline should include guidance on cooperation and information exchange between importing and exporting countries.

10. A second draft guidance based on the written comments was prepared and circulated to the EWG, in English and Spanish, in August 2022.

11. Following the final scheduling of CCFICS26 to 2023, a third draft of the guideline was circulated to the EWG in December 2022.

12. In January 2022 an invitation was issued to all Codex Members and Observers to attend a CCFICS workshop on food fraud, to be held virtually on 8 February 2023 in English and Spanish.

13. The objectives of the workshop were to:

- a. find agreement on the text;
- b. focus on definitions to agree on terms to be defined and their definitions.

14. 26 Codex Members and Observers, the Chairperson of CCFICS, and the Codex and Australia CCFICS secretariats participated in the workshop. The United States as chair of the EWG lead the discussion supported by the co-chairs.

15. The Chairperson and co-chairs were very appreciative of the comments received and the discussion at the workshop which they noted had greatly assisted in the preparation of the revised Draft Guidelines on the Prevention and Control of Food Fraud.

16. Based on the EWG comments received and comments received during the workshop, the final draft of the guideline is attached as Appendix 1 for consideration by CCFICS26.

SUMMARY OF DISCUSSION

17. General consensus of the EWG was reached on the Principles, Roles and Responsibilities, and Relevant Activities for Competent Authorities sections of the documents.

18. Consensus was also reached on the Annexes. While they appear in the document for purposes of discussion, consensus of the EWG was that they should be removed when the document is finalized.

19. Substantial agreement was reached on the Scope and Purpose section. One area of where lack of consensus continues is with regard to the footnote to the Scope related to exclusion of intellectual property from the scope of the document. Further discussion within the Scope section is needed on the exclusion of matters related to criminal proceedings and matters related to deliberate contamination of food in order to cause harm.

20. There continues to be comments on the Definitions and Types of Food Fraud sections. EWG members have suggested limiting the Definitions sections further, such as removing the definitions for food fraud vulnerability and authenticity. In the Types of Food Fraud section, consensus is needed on whether to include this section and, if so, which terms to include. On the final section of the draft guideline, further discussion is needed on whether to reframe the section from a focus on collaboration to cooperation.

CONCLUSIONS

21. The EWG Chair and Co-Chairs acknowledge and thank the Codex Members and Observer organizations for their ongoing and continued engagement during the development process and multiple rounds of comment on these guidelines.

22. It is the view of the EWG Chairperson and co-chairpersons that given the extensive work undertaken by the EWG, the draft has reached a stage where it is now appropriate for CCFICS to recommend progress within the step process.

RECOMMENDATIONS

23. The Committee is invited to:

- a. note the extensive work undertaken to date and the level of support for completing this guideline; and
- b. consider recommending advancing the proposed Draft Guidelines on the Prevention and Control of Food Fraud as contained in **Appendix 1**.

APPENDIX I**PROPOSED DRAFT GUIDELINES ON THE PREVENTION AND CONTROL OF FOOD FRAUD****(Step 3)****Section 1: Preamble / Introduction**

1. The increasing complexity of food systems and global trade in food makes food supply chains more vulnerable to food fraud. Protecting the global food supply from intentional actions that undermine protection of public health and upholding fair practices in food trade are common goals for all stakeholders.
2. Food fraud incidents can present risk to public health and can result in economic loss for consumers and other stakeholders, disruption in trade, reputational damage, and unfair economic advantages.
3. Government oversight and good manufacturing practices by food business operators (FBOs) are important to protect public health, to limit the opportunity for food fraud and to maintain consumer confidence in the safety, authenticity, integrity, suitability², and quality of food.
4. Food fraud can be prevented or minimized using the existing controls and mitigation measures available to countries through their National Food Control Systems (NFCS) or by adopting new measures, if necessary.
5. The prevention and control of food fraud is a shared responsibility, with FBOs are responsible for producing safe and suitable food, and for presenting it in a manner so as not to deceive consumers. Thus, the FBOs should understand their supply chains and should have effective measures in place to detect, prevent, mitigate and control food fraud where appropriate.
6. Competent authorities have regulatory oversight responsibility and an important role in increasing awareness of food fraud prevention by building partnerships and collaborating with industry, academia, and other stakeholders to detect, prevent, mitigate and control food fraud.
7. While several existing Codex texts address fraudulent activities and provide tools for Members wishing to detect, prevent, mitigate, and control such activity, a need for specific guidance was identified by Codex Members. [See Annex 1 for a list of existing Codex documents addressing food fraud.]
8. Work in the area of food fraud is widespread in a range of international organizations, [some of which are noted in Annex 2]. Countries may wish to consider work from these and other organizations, as appropriate, when developing tools and strategies to detect, prevent, mitigate, and control food fraud.

Section 2: Purpose / Scope

9. The purpose is to provide guidance to competent food safety authorities, other relevant agencies, and FBOs on the detection, prevention, mitigation and control of food fraud to help protect the health of consumers, and to ensure fair practices in food trade, including feed for food producing animals. Aspects related to food fraud are already addressed through many existing Codex texts; this guidance is intended to support or supplement existing Codex texts by providing additional guidance specific to food fraud that can be considered within NFCS³.

9bis. [It should be noted that the investigation and prosecution of food fraud offenses may be dealt with under criminal law, which is outside the scope of this guideline.]

9bis.bis [Additionally, intentional adulteration, deliberate contamination of food in order to cause harm, is outside the scope of this guideline.]

Section 3: Definitions

For the purposes of this document, the following definitions apply:

Food Fraud: Any deliberate action to deceive others in regard to the prescribed specifications or expected characteristics of food to gain an unfair economic advantage.

Food Integrity: The status of a food product in which it is not altered or modified with respect to expected characteristics, including food safety, quality, and nutrition.

Food authenticity: Conformity between the food product characteristics and the corresponding information provided through food product labelling or other information associated with food trade.

² Food suitability is defined in CXC 1-1969 as "Assurance that food is acceptable for human consumption according to its intended use".

³ [Issues of intellectual property, such as geographic indicators and related labeling restrictions which do not represent a risk to public health and are beyond the scope of Codex are not addressed within this guideline.]

Food Fraud Vulnerability: Susceptibility or exposure due to a gap or deficiency that could place consumer health or fair trade at risk and/or have a negative impact on an FBO if not addressed.

Food Fraud Vulnerability Assessment: A documented process of collection and evaluation of information on potential food fraud risk factors and their likelihood of occurring, as well as control and mitigation measures which, when combined, determine the actual food fraud vulnerability.

Section 4: Types of food fraud:

The following section provides examples, when done intentionally for economic gain, of types of food fraud, noting this list is not all inclusive.

Addition: Adding an undeclared substance to food products that would not ordinarily be present, or present in that quantity, in the food

Substitution: Replacing an ingredient, or part of a food product, of high value with an ingredient, or part of a product, of lower value.

Dilution: Adding a material, such as water, to make another ingredient present at a lower concentration than represented.

Counterfeiting: The process of making an imitation of food products.

Misrepresentation: Marketing or labelling food products as having characteristics that are not present.

Concealment: Hiding or not disclosing information on the safety, suitability, or low quality of food ingredients or food products.

Section 5: Principles

10. Prevention and control of food fraud should be based on the following principles:

Principle 1: Protection of Consumers

- Systems to address food fraud should be in place to protect the health of consumers and to maintain consumer confidence in the safety, integrity, authenticity, suitability, and quality of food.

Principle 2: Protect the Integrity of the Food Supply Chain and Legitimate FBOs

- Food fraud controls and surveillance systems should be in place to protect the integrity of the entire food supply chain, which also helps to protect legitimate FBOs.

Principle 3: Legal Foundation

- The government within each country should have in place an appropriate legal framework to address food fraud.

Principle 4: Coordination, Cooperation, and Collaboration Between Competent Authorities

- Competent authorities should operate in a coordinated, cooperative, and collaborative manner to detect, prevent, mitigate and control food fraud.

Section 6: Roles and Responsibilities

11. A relevant governmental body has the role and responsibility to, as appropriate:

- a. Establish or maintain legal structures and requirements to detect, prevent, mitigate and control food fraud
- b. Empower competent authorities to control, investigate and establish sanctions to deter and dissuade food fraud

12. The competent authorities have the role and responsibility to, as appropriate:

- a. Establish or maintain oversight programs to detect, prevent, mitigate, and control food fraud.
- b. Develop or maintain mechanisms/platforms to better detect food fraud.
- c. Build partnerships and collaborations with other governments, industry, academia and other stakeholders to combat food fraud.
- d. Communicate with stakeholders and other government authorities, as needed.
- e. Notify any potentially impacted countries when incidents of food fraud are identified or suspected.

13. FBOs have the role and responsibility to, as appropriate:
 - a. Understand their supply chain and which products/ingredients/packaging in it may be susceptible to food fraud.
 - b. [Have measures in place to mitigate the risk that the food products and ingredients are not authentic and ensure that the nature, safety, quality, and substance are accurately represented.]
 - c. Represent food for sale in a manner that does not deceive or mislead consumers.
 - d. Inform the competent authority when they detect or suspect food fraud.
 - e. Take reasonable precautions to detect, prevent, mitigate, and control food fraud.

Section 7: Relevant Activities for Competent Authorities

14. Measures to detect, prevent, mitigate, and control food fraud incorporate aspects of food safety and quality, consumer protection, and ensuring fair practices in food trade, and so may be addressed within the structure of a NFCS.
15. Competent authorities may consider reviewing their NFCS and determine whether their system has an adequate [legal] [legislative] framework and appropriate policies and procedures to monitor, detect, prevent, control, and respond to food fraud incidents and strengthen fair trade. Such policies could include legal requirements, including sanctions, and responsibilities of the FBOs related to food integrity and authenticity.
16. Competent authorities may consider establishing procedures to receive and evaluate reports of food fraud and determine appropriate follow-up, consistent with the food safety risk identified and national priorities.
17. Policies, procedures, and regulatory requirements related to food fraud prevention and control should be transparent and risk-based.
18. Competent authorities should consider including risk-based planning of measures to prevent food fraud.
19. Competent authorities may consider establishing surveillance activities to detect food fraud. These activities could be conducted on a routine basis or in response to specific risk that has been identified.
20. Competent authorities may consider providing practical guidance to FBOs and other stakeholders on how to address food fraud. Such guidance could include resources and access to tools on how to develop procedures to detect, prevent, mitigate, and control food fraud.
21. Competent authorities may consider establishing appropriately secure communication channels with other governments, FBOs, academia, and other stakeholders to obtain information about situations involving food fraud and to share relevant knowledge, experience, and tools for combatting food fraud, such as food standards and analytical methods.
- 21 bis Competent authorities should consider developing tools to protect persons acting as “whistle-blowers” reporting such incidents.
22. If there is a potential for a food fraud incident to have an impact on food safety, the competent authority detecting the incident should immediately alert the relevant competent authority within their government if it is not the same organization.
23. Competent authorities may consider establishing communication mechanisms for timely reporting to stakeholders about incidents involving food fraud, as appropriate.

Section 8: [Cooperation] [Collaboration] and exchange of information between competent authorities

24. Competent authorities should cooperate [collaborate] and exchange information with the relevant competent authorities in situations where food fraud is suspected or identified. This exchange of information could be expanded when there is awareness that fraudulent product poses a food safety risk and has been distributed to other countries.
25. The exchange of information should be made as early as possible, recognizing that the initial information may often be incomplete and more detailed information will be provided as it becomes available. Identification of key elements, including relevant information in CXG 19-1995 Annex, that contribute to international harmonization and collaboration on the prevention and control of food fraud are essential.
- 25 bis. Information exchanged should be sufficient to allow competent authorities to evaluate the food fraud incident and mitigate its impact, especially with regard to risk to consumers, without jeopardizing ongoing investigations.

26. Competent authorities may benefit from establishing appropriate information exchange routes with relevant enforcement bodies and agencies, including those responsible for dealing with criminality. In establishing such routes, competent authorities should give due consideration to information security around personal data, operationally sensitive material and also have in place systems to assure the integrity of any evidence gathered and/or shared.

Annex 1: Existing Codex Documents Addressing Food Fraud

[Note: it is proposed to remove this annex prior to finalizing the guideline]

The Committee's comprehensive review of existing Codex texts illustrates that food fraud is already covered in a variety of Codex documents.

- The Codex *Code of Ethics for International Trade in Food Concessional and Food Aid Transactions* (CXC 20-1979)
- Food fraud as it pertains to improper, inaccurate, false, or misleading labelling is addressed in:
 - *General Standard for the Labelling of Pre-packaged Foods* (CXS 1-1985)
 - *General Standard for the Labelling of Food Additives when sold as such* (CXS 107-1981).
- *Principles and Guidelines for National Food Control Systems* (CXG 82-2013)
- *Principles for Traceability / Product Tracing as a Tool Within a Food Inspection and Certification System* (CXG 60-2006)
- *Guidelines for Design, Production, Issuance and Use of Generic Official Certificates* (CXG 38-2001)
- Principles and guidelines for the exchange of information between importing and exporting countries to support the trade in food (CXG 89-2016)
- *Guidelines for the Exchange of Information between Countries on Rejections of Imported Foods* (CXG 25-1997)
- *Principles and Guidelines for the Assessment and Use of Voluntary Third-party Assurance Programmes* (CXG 93-2021)
- *Principles and Guidelines for the Exchange of Information in Food Safety Emergency Situations* (CXG 19-1995)

Annex 2: International Organizations Working in the Area of Food Fraud

[Note: it is proposed to remove this annex prior to finalizing the guideline]

- Food and Agriculture Organization of the United Nations (FAO)
- Global Food Safety Initiative (GFSI)
- Institute of Food Technologists-Global Food Traceability Center (GFTC/IFT)
- International Association for Food Protection—Food Fraud Professional Development Group (IAFP/PDG)
- International Life Sciences Institute (ILSI)
- The International Criminal Police Organization (INTERPOL)
- The United Nations Interregional Crime and Justice Research Institute (UNICRI).