



## Report of The United States Delegate 45<sup>th</sup> Session of the Codex Committee on Food Labelling

May 13-17, 2019  
Ottawa, Canada

The 45<sup>th</sup> Session of the Codex Committee on Food Labelling (CCFL45) convened in Ottawa, Canada, May 13-17, 2019. The Session was chaired by Ms. Kathy Twardek, Canadian Food Inspection Agency. 55 member countries, one member organization (the European Union), and 26 observer organizations participated in the session. The United States delegation was headed by Dr. Douglas Balentine of the U.S. Food and Drug Administration (U.S. Delegate), with support provided by Mr. Bryce Carson of the USDA Food Safety and Inspection Service (alternate U.S. Delegate), seven additional U.S. government advisors, and five non-government advisors.

Overall, the session was productive, and the U.S. delegation was successful in resolving major issues consistent with objectives for the meeting. A number of issues will require continuing attention; however, as work will proceed in key areas related to front-of-pack nutrition labeling (FOPNL) and labeling of non-retail containers (NRC). The Committee will also review a new discussion paper on labeling of alcoholic beverages at its next session.

### **HIGHLIGHTS**

At its 45<sup>th</sup> Session, CCFL:

- Forwarded draft guidelines on labeling of non-retail containers to the 42<sup>nd</sup> Session of the Codex Alimentarius Commission (CAC42, July 2019) for adoption at Step 5, which will allow for another round of comments and consideration at the next CCFL session.
- Endorsed the proposed labeling provisions in the draft revised *Standard for Follow-up Formula for Older Infants* with minor revisions, except for the provision on “cross promotion,” which was referred back to the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) for further consideration.
- Reached agreement on the “Purpose” of proposed draft Guidelines for Front-of-Pack Nutrition Labeling and re-established an electronic working group (EWG) to further develop the guidelines for comment and discussion at the next session.
- Concluded that there was no need for a definition for “biofortification” the context of food labeling (in response to a request from CCNFSDU).
- Agreed to recommend that CAC42 approve new work on internet sales/e-commerce and allergen labeling, and to postpone further consideration of “high in” nutritional descriptors for fats, sugars and sodium.

- Deferred conclusions on a late discussion paper on labeling alcoholic beverages pending further comments and submission of a revised discussion paper for the next session.

A full report of the meeting, REP19/FL, can be found on the website of the Codex Alimentarius Commission:

[www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCFL&session=45](http://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCFL&session=45). The following is a summary of the Committee's substantive discussion on the various agenda items.

## **MEETING SUMMARY**

### **Agenda Item 2: Matters Referred**

#### **Definition of "biofortification"**

The Committee reviewed the definition of "biofortification" developed by CCNFSDU and the questions originally posed by the Executive Committee when this work was first approved and discussed at CCFL41 (2013), i.e., how the definition is intended to be used and where it would be best placed. The Committee acknowledged the significant effort CCNFSDU had devoted to developing the draft definition but agreed that existing Codex labeling texts were adequate for CCFL purposes and that there was no need for a definition on biofortification in the context of food labeling. Some observers expressed the view that the definition should be limited to foods produced through conventional breeding and exclude biotechnology.

### **Agenda Item 4: Matters for Endorsement**

CCFL45 considered a number of labeling provisions referred for endorsement by other Codex committees prior to adoption by CAC42.

- **Codex Committee on Cereals, Pulses and Legumes (CCCPL)**  
CCFL45 endorsed the amended labeling provisions of the draft *Standard for Quinoa* for final adoption by CAC42.
- **Codex Committee on Spices and Culinary Herbs (CCSCH)**  
CCSCH referred six proposed draft standards for endorsement, covering Dried or Dehydrated Garlic; Dried Oregano; Dried or Dehydrated Ginger; Dried Basil; Dried Cloves; and Saffron. CCFL45 endorsed the labeling sections of these draft standards except for the sections relating to country of origin/country of harvest and inspection marks, which were returned to CCSCH for further clarification.
- **Codex Committee on Food Hygiene (CCFH)**  
The Committee endorsed the labeling provisions in the draft Code of Practice on Food Allergen Management for Food Business Operators.

- *Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU)*

The Committee had an extensive discussion of the proposed labeling provisions in the draft revised Follow-up Formula Standard, Section A: Follow-up Formula for Older Infants.

New Zealand, as chair of the CCNFSDU working group on this Standard, acknowledged that it is the result of hard work and compromise and asked CCFL to focus on areas where the text may need improvement from a labeling perspective.

The committee discussed the text in detail, made minor technical revisions for clarity and consistency with other Codex texts (notably with respect to the recently updated provisions on date marking in the *General Standard for the Labelling of Prepackaged Foods (GSLPF)*), and endorsed labeling provisions for adoption by CAC42, with the exception of the last sentence in Section 9.6.4, which read: “Cross promotion between product categories is not permitted on the [label/labelling] of the product.”

The committee noted that the reference to “cross promotion” received very little discussion in CCNFSDU and the lack of a definition for “cross promotion” had raised concerns for members in that committee. Among the countries supporting deletion of the sentence on “cross promotion” as unnecessary were the United States, Japan, Colombia, Argentina, and the Dominican Republic. Brazil, Canada, Chile, the European Union (EU), and New Zealand also opposed endorsement and favored returning the provision to CCNFSDU for further consideration. Many delegations and observers intervened on the subject. Following are some major points from the discussion, excerpted from the committee report (REP19/FL, Paragraph 26):

- It was important to protect and support breastfeeding and that labelling should be distinct on follow-up formula for older infants and should avoid confusion with other products such as infant formula and formula for special medical purposes.
- Without a definition for “cross-promotion” and understanding of the intent of the provision, it would be difficult to consider endorsement of the provision. Such lack of definition could lead to different interpretations of the provision and to unnecessary trade barriers.
- Restricting cross-promotion might go beyond the mandate of Codex and could result in legal uncertainties and trade impediments and infringe on intellectual property rights and trade marks as recognized in international agreements such as the World Trade Organization (WTO) Agreement on the Technical Barriers to Trade (TBT) and Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It was necessary to determine if restrictions on cross promotion were compatible with the established rules for international trade by the WTO and the *World Intellectual Property Organization (WIPO)*.
- There were views that exceptions that allow countries to implement measures to pursue legitimate health objectives.

- A proposal for a footnote was made to clarify that for section 9.6.4 was without prejudice to international framework on trademarks conferred registered trademarks to their owners.
- The term “cross promotion” should not be used but if the concept were needed, alternative wording was required.
- The intention of the statement was not clear. If the intent of cross-promotion is to avoid messages that a follow-up formula for older infants is also suitable for another age group, then the issue was sufficiently covered by the first sentence in section 9.6.4 and [it] would therefore be appropriate to delete the last sentence to avoid duplication.
- Even if cross-promotion were defined, it would be difficult to implement and enforce.
- The statement on cross-promotion should be retained, as it was important to guard against confusion to consumers when products are not readily distinguishable in order to protect public health. It was critical to protect consumers and such guidance would help countries to limit or prohibit types of promotion.
- Cross-promotion was defined and used by WHO and could be used within Codex. It was important to ensure conformity of the World Health Assembly (WHA) resolutions and Codex.
- The issue of cross-promotion was important, and consideration should be given to expanding the first sentence in section 9.6.4 to address the intent of limiting or prohibiting cross-promotion.

The Representative of the World Health Organization (WHO) intervened actively in the CCFL debate, arguing in favor of retaining the provision on cross promotion and stating her view that the concept fell within the scope of work of CCFL. She noted that cross promotion was defined in two WHO technical guidance documents as encompassing “broader aspects of advertising and marketing promotion which include packaging, branding and labelling of a product to closely resemble that of another, such as brand extension.”<sup>1</sup> She further responded to comments by members by noting that “if the meaning of cross promotion is not clear, it seemed contradictory to say that an undefined term would create a trade or intellectual property-related problem.” During the CCFL session, WHO also issued a joint WHO/UNICEF “Information Note” denouncing cross promotion as “a threat to breast feeding and infant health.”

The Committee agreed to inform CCFNSDU that it had endorsed the labeling sections with amendments, except for the last sentence of Section 9.6.4, which was returned for further consideration by CCFNSDU.

---

<sup>1</sup> [Note: At CCFNSDU 40 (2019), “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 age group.” REP19/NFSDU, paragraph 50]]

## **Agenda Item 5: Proposed draft Guidance for the Labelling of Non-Retail Containers (NRC)**

An intersessional EWG, chaired by India and co-chaired by the United States and Costa Rica, has continued this work since the last session. In advance of the CCFL45 plenary, a physical working group (PWG) led by India made substantial changes in the EWG's draft text, which were reflected in a Conference Room Document (CRD02) considered in plenary. Major areas of discussion included definitions, information that should be mandatory on the label, information that must or can be included in the accompanying documents, and information that can be replaced by an identification mark.

During plenary, the committee discussed if the proposed new text (CRD02) would be a guideline or a standard; whether amendments to the *Codex Procedural Manual* were needed; and how to deal with the need to revise commodity standards making reference to labeling of non-retail containers (NRCs). The committee agreed on revised and refined definitions for "food business" and "non-retail container" as follows:

"Food Business" means an entity or undertaking, carrying out one or more activity(ies) related to any stage(s) of production, processing, packaging, storage and distribution (including trade) of food.

"Non-retail container" means any container that is not intended to be offered for direct sale to the consumer. The food in the non-retail containers is for further food business activities before being offered to the consumer.

The Committee endorsed the draft document in CRD02 with minor amendments. The Secretariat advised the committee that there was no clear guidance in Codex as to when a document should become a guideline or standard. The present text had been drafted more in line with the practice used for standards, so it could be called "*General Standard on the Labelling of Non-Retail Containers*," but there was little or no significance to whatever name was chosen. The committee noted that this could be decided at a later stage.

The committee noted that there had been a lot of progress, and therefore agreed to forward the proposed draft text to CAC42 for adoption at Step 5, which would allow for another round of comments and consideration of the text at the next session of CCFL, and to inform the relevant Codex commodity committees of the progress of the work on NRC. The United States joined the consensus to advance the text. The committee noted that, once the document is final, there could be a need for consequential amendments to the *Codex Procedural Manual*, the GSLPF (CXS 1-1985), and relevant commodity standards.

## **Agenda Item 6: Proposed draft Guidelines on Front-of-Pack Nutrition Labelling (FOPNL)**

Costa Rica is leading the EWG on FOPNL, with New Zealand as co-chair. The committee discussion focused on Sections 1 – 4 (Purpose, Scope, Definition, and General Principles).

The committee reached agreement on the following purpose for the guidelines:

Provide general guidance to assist in the development of front-of- pack nutrition labelling, a form of supplementary nutrition information, as a tool to facilitate the consumer's understanding of the nutritional value of the food and their choice of food, consistent with national dietary guidance or health and nutrition policy of the country or region of implementation.

The committee noted general support for the work, its purpose and scope, but did not reach conclusions on other provisions discussed during the plenary. There was considerable discussion on scope (including exclusions and exemptions) and definitions. The United States and others noted that the definition should be kept broad to allow countries to decide on their own FOPNL schemes to address their specific situation and meet the needs of their consumers.

Ultimately, the committee agreed that there were a diversity of views and that further work on the refinement of the definition should take into consideration the previously submitted written comments and discussions at CCFL45. Similarly, while there was some agreement on some aspects of Section 4 (General Principles), the committee took no decisions on specific wording.

In the interest of time and providing greater opportunity to build consensus, the committee agreed to re-establish the EWG to develop a new draft, taking into account the written comments submitted and the comments and decisions made at this session, for circulation for comments and consideration by CCFL46; and to convene a PWG to meet immediately prior to CCFL46. Costa Rica and New Zealand will continue as chair and co-chair of the work.

#### **Agenda Item 7: Discussion Paper on Internet Sales/e-commerce**

The United Kingdom introduced the discussion paper, which was co-sponsored by Chile, Ghana, India, and Japan. There was general support for new work and the committee agreed to:

- Submit the project document for approval by CAC42;
- Establish an EWG (chaired by the United Kingdom and co-chaired by Chile, Ghana, India, and Japan) to prepare a proposed draft text for comments in advance of consideration by CCFL46; and
- Keep open the possibility of a PWG (with the same chair and co-chairs) to meet immediately prior to the CCFL46.

#### **Agenda Item 8: Discussion Paper on Allergen Labelling**

Australia presented the discussion paper, which was developed with the United States and the United Kingdom as co-drafters. Subject to approval by CAC42, the committee agreed to start new work to review and clarify the provisions relevant to allergen labeling and to develop guidance on precautionary/advisory labeling. The committee also agreed to

- Establish an EWG to prepare proposed draft revisions and guidelines for circulation for comments and consideration by CCFL46. The EWG is to take into account scientific advice from FAO/WHO and evidence-based information on consumer understanding of allergen labeling and advisory statements, as necessary.
- Request scientific advice from FAO/WHO on the list of allergenic foods and ingredients in Section 4.2.1.4 of the GSLPF (CX 1-1985): whether the published criteria for assessing additions and exclusions to the list are still current and appropriate; whether there are foods and ingredients that should be added to or deleted from the list; whether certain foods and ingredients, such as highly refined foods and ingredients, that are derived from the list of foods known to cause hypersensitivity should be exempt from mandatory declaration.

The committee agreed to inform CCFH that it was not in a position to provide a reply on the use of precautionary or advisory allergen labeling statements at this time, and that CCFL had agreed to start new work that would include guidance on precautionary or advisory labeling and a review of the list of allergens in the GSLPF. CCFL will keep CCFH updated on progress of this work. In the meantime, CCFH should use the current list.

#### **Agenda Item 9: Discussion Paper on Innovation/Use of Technology in Food Labelling**

There was general interest in this subject. Canada agreed to prepare a discussion paper for the next session that would clarify the scope of potential work and differentiate it from the work on internet sales/e-commerc. A CL will solicit input from members and observers.

#### **Agenda Item 10: Discussion Paper on Labelling of Alcoholic Beverages**

The Russian Federation presented the discussion paper (CX/FL 19/45/10), which contained a number of options for consideration by the committee. (Co-drafters included the EU, Ghana, India, and Senegal.) There was no clear consensus from the drafters and respondents to the relevant Circular Letter (CL 2018/24-FL) on how/whether to proceed.

A number of countries joined the United States, Japan, the Dominican Republic, and Argentina in opposing initiation of new work in Codex, noting that existing texts were applicable and sufficient and that the issue was best dealt with at the national level. Others sought additional clarification and expressed some interest in potential work that might be limited to alcohol content (EU, Norway, France, and Mexico). Chile favored new work to provide clarity on the applicability of existing texts to alcoholic beverages. Panama, Brazil, and Nigeria were among supporters of initiating new work to provide clarity on the applicability of existing texts and to consider revisions in terms of labelling of alcohol content and nutritional information, including energy value (calories). Chile favored new work to provide clarity on the applicability of existing texts to alcoholic beverages. Some observers and the WHO representative strongly supported the initiation of new work; with WHO representative noting that alcoholic beverages were “special” and required “special provisions,” not just existing texts/the GSLPF. Ghana supported new work as advocated by WHO.

Due to the late availability of the paper, several countries (the Dominican Republic, New Zealand, and others) also noted that there had not been sufficient time to coordinate and develop national positions.

The Codex Secretariat clarified that the definition for food in the *Codex Procedural Manual* also covered alcoholic beverages and that several Codex texts relating to food safety already specifically addressed alcoholic beverages. The Codex Secretariat further clarified that as the GSLPF (CXS 1-1985) and related guidelines on nutrition labeling and claims were applicable to all foods they also applied to alcoholic beverages. The Codex Secretariat further noted that even though this was the case, there seemed to be a low level of harmonization. Thus, to assist members in developing their regulatory requirements, a question that could be addressed was whether there were gaps in the existing texts.

The Chair concluded that there was no clear consensus on initiating new work, or on any of the options or recommendations. There is no EWG charged with developing the matter further. Rather, there will be a new Circular Letter (CL) requesting comments on CX/FL 19/45/10. The Russian Federation, EU, and India will prepare a new discussion paper for consideration at CCFL46, taking into account the comments in response received in response to the new CL as well as the discussion and written comments submitted to CCFL45.

#### **Agenda Item 11: Discussion Paper on a Criteria for the Definition of “High In” Nutritional Descriptors for Fats, Sugars, and Sodium**

Canada and India co-drafted this discussion paper, and Canada presented it. The last session of CCFL had identified criteria for the definition of “high in” nutritional descriptors for fats, sugars and sodium as a subject of possible new work, and agreed to issue a CL to collect information on current practices, issues, and any potential role for CCFL. Canada summarized the responses received, highlighted recommendations for consideration by CCFL to clarify the scope and intended applications of “high in” nutritional descriptors, and explained that if new work were supported, it should entail development of principles/guidelines for the elaboration of criteria and review the evidence on the impact, including consumer understanding and use of “high in” labeling and for other uses, as appropriate. Canada had prepared a project document (CRD16) for consideration by the committee. The committee noted the importance of the issue, but there was no support to start new work at this stage.

The committee agreed that “while the work was valuable, it was premature to consider it at this time” and it should await both the outcomes of the work on FOPNL and discussions on potential work in CCNFSDU on nutrient profiling. The topic would be retained in the paper on future work and directions for CCFL (see Agenda Item 13).

## **Agenda Item 12: Discussion Paper on Labelling of Foods in Joint Presentation and Multipack Formats**

Colombia was responsible for drafting the discussion paper, which was submitted too late for review, and proposed postponing discussion until the next session. CCFL45 agreed to postpone and to request Colombia to update the paper and identify any gaps in the current GSLPF, for consideration by CCFL46.

## **Agenda Item 13: Future Work and Direction for CCFL**

The Chair noted that ideas for future and emerging work are being collected on an ongoing basis through a CL, Members and observers may make proposals for consideration and inclusion in a paper that would be updated for each session. The paper will be updated for each session, with a different delegation taking on responsibility each time. Canada drafted the paper for the last session; India prepared the updated draft presented to CCFL45.

Delegates discussed the proposal to develop prioritization criteria to assist in managing the work of the committee. India explained that criteria had been developed for both CCFH and CCFICS. CCFH used a ranking mechanism based on risk, while CCFICS does not take ranking into account.

The committee discussed the broad concept of the criteria, and the following views were noted (REP19/FL, Paragraph 130):

- Objectively quantifying the risk was important and this could help with prioritization;
- It was not clear how the rating scale had been developed; it would be useful to circulate proposed criteria for comment and to consider the approach and criteria at the next session; and
- CCFL needed to explore if there was a need for the criteria; and how best to adapt the criteria to the needs of the committee and encouraged further work around it.

The United Kingdom will update the paper on future work and direction for CCFL. In addition to soliciting ideas for possible new work and emerging issues, the CL will request comments on the proposed approach and draft criteria for evaluation and prioritization of the work of CCFL for further consideration at CCFL46.

## ***DATE AND PLACE OF THE NEXT SESSION***

CCFL will meet for its 46<sup>th</sup> Session in October 2020 with the location to be confirmed. Based on the increase in agenda items, a delegation raised the possibility of moving to annual sessions. Canada, as the host country, and the Secretariat will consider this suggestion in developing future plans.