

Date: March 24, 2024

Title: Comments to the US Codex Delegation for the Food Fraud EWG Discussion Document

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NOTE: the comments here are mine alone.

To: US Codex Delegation,

Discussion and comments are summarized here.

Summary comments:

- <<FFPA: Recommendation 2024: Accept as-is to finalize the document and not lead to any more extensions. There is a need for a CODEX definition of food fraud, and it is not worth delaying the publication of the report versus the benefit of any additional or supplemental details. While it would be ideal to include all the related definitions, the details can be added to future works.
- <<FFPA Note: The first draft of the food fraud discussion paper was presented to the full CCFICS23 meeting in 2017 in Mexico City. Time ran out in the previous year's meeting to review the document. A group has been working on the paper since 2016, and many drafts have been circulated annually for comments. Any additions would delay the publication by at least two years or more.

Review of the document section by section. The deletions are noted with a strikethrough, and additions are in bold font.

Title: "PROPOSED DRAFT GUIDELINES ON THE PREVENTION AND CONTROL OF FOOD FRAUD"

- <<FFPA: The title is excellent and efficient, especially with the emphasis on prevention and clearly stating the term food fraud.
- "The increasing complexity of food systems and ~~increasing~~ 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 its integrity**, to protect public health and **upholding fair practices in food** to prevent economic loss and trade are ~~disruption is a~~ common goal for all stakeholders."
 - <<FFPA: Comment: Regarding the addition of 'upholding fair practices,' this is an excellent addition that expands the scope to WTO, FAO, and others.
- ~~"Definitions for related terms: Economically Motivated Adulteration (EMA): The intentional substitution or addition of a substance in a product for the purpose of increasing the~~

~~apparent value of the product or reducing the cost of its production, for economic gain. Economically motivated adulteration is a subset of food fraud. Examples of EMA include replacing a valuable ingredient with a less valuable ingredient, dilution, or enhancing flavor or color with undeclared substances.”~~

- <<FFPA: Although it is best to include as many definitions and terms as possible, it is ok to have removed the EMA term since it is a rarely used term, but it probably should be included since it is the term in US food laws.
 - The previous text was: “Economically Motivated Adulteration (EMA): The intentional substitution or addition of a substance in a product for the purpose of increasing the apparent value of the product or reducing the cost of its production, for economic gain. Economically motivated adulteration is a subset of food fraud. Examples of EMA include replacing a valuable ingredient with a less valuable ingredient, dilution, or enhancing flavor or color with undeclared substances.”

- ~~“[Food Fraud Vulnerability: Susceptibility or exposure to a gap or deficiency that could place consumer health at risk and/or have an economic or reputational impact on a food company’s operations if not addressed.]”~~
- ~~“[Food Fraud Vulnerability Assessment: The process of collection and evaluation of information on potential food fraud risk factors as well as mitigation measures which, when combined, determine the actual fraud vulnerability.]”~~
 - <<FFPA: Consider re-inserting these deleted definitions. While it is crucial to create a definition of food fraud, it is also helpful to help the users understand how to address the problem. The foundation of prevention is the concept of vulnerability versus risk and a vulnerability assessment.

- “Section 4: Types of food fraud:”
- “Types of food fraud can include:
- 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, in whole or in part, of a food product, with another ingredient, in whole or in part of a product [of lower value] without declaring it.
- Dilution: Adding a material to make another ingredient present at a lower concentration than represented.”
 - <<FFPA -- Note: Together, these three types are often categorized under adulterant-substance.
 - <<FFPA -- Suggestion: include “adulterant-substance” as the over-arching term that includes addition, substitution, and dilution. This is the common globally used term. Most importantly, it helps clarify the difference between the US food law use of “adulterated/ adulteration.”
 - <<FFPA – Suggestion: include a definition of adulterant/ adulterant-substance to go along with the CODEX definition of contaminant. Also, possibly also then define

adulteration and adulterated (for example, for a product to be considered adulterated does it require an adulterant-substance.)

- <<FFPA – Note: Presumable “addition” is an “adulterant” – but adulterant is not defined in any CODEX document.
 - **Adulterant/ Adulterant-Substance (CODEX):** not defined.
 - To note, CODEX does define “contaminant” in the CODEX Procedural Manual as
 - **“Contaminant (CODEX, Procedural Manual:** "Any substance not intentionally added to food, which is present in such food as a result of the production, manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination. The term does not include insect fragments, rodent hairs and other extraneous matter." (CODEX STAN 193-1995)

- “Counterfeiting: Making an imitation of food products with the intention to deceive or defraud for the purpose of economic gain.”
 - <<FFPA: Recommendation: Counterfeiting should clarify either (1) application to intellectual property rights of trademark/ patent or (2) the entire product and packaging has been completely illegally copied. As it is stated, this is the exact same definition as food fraud – food fraud and ‘counterfeit food’ are different. It is suggested to add to the end “...that is an intellectual property rights infringement such as trademark or patent.”

- “Section 5: Principles: Detection, mitigation, prevention, and control.”
 - <<FFPA: Suggestion: each of these four terms should be defined since they are included and expected to be implemented.

- **“Policies, procedures, and regulatory requirements related to food fraud prevention and control** should be transparent, ~~justified~~, and risk-based.”
 - <<FFPA: It is excellent to add the concept of policies to procedures and regulatory requirements (they are three different activities). Also, it is helpful to add prevention and control to emphasize the focus on being proactive rather than reactive and the importance of control as a separate subject.

Appendix: Definition of Food Fraud

Since here was no one, single overall formal definition of food fraud, CODEX created their own definition. It is helpful that the definitions of food fraud are all basically the same. There is a need to further define the types of food fraud (all) as well as clearly define the products (not just raw materials):

- **Food Fraud (CODEX, draft Food Fraud Discussion Paper, 2023):** “Any deliberate action of food business operators (FBO) or other individuals to deceive others in regard to the prescribed specifications or expected characteristics or integrity of food to gain unfair advantage.”

This is similar and correlates with the most widely used definition of food fraud. This definition is referred to in other formal and official publications such as the EU food fraud report:

- **Food Fraud (Common definition):** “Intentional deception of food or food ingredients for economic food, includes all types of fraud (e.g., not only adulterant-substances and counterfeits to include stolen and some diverted goods) and all products (e.g., raw materials and finished goods).” (Spink & Moyer, Journal of Food Science, 2011)

Also, for example, here is a definition from a European Union report:

- **Food Fraud (EU, food fraud report, 2013):** “EU law does not currently provide a definition of food fraud “ but “According to Spink and Moyer, ‘Food fraud is a collective term used to encompass the deliberate and intentional substitution, addition, tampering, or misrepresentation of food, food ingredients, or food packaging; or false or misleading statements made about a product for economic gain.”

Further, another widely adopted definition is the definition used for most of the industry adopted food safety management systems that are based on the Global Food Safety Initiative (GFSI):

- **Food Fraud (GFSI, Benchmarking Document 2017 to current):** “A collective term encompassing the deliberate and intentional substitution, addition, tampering or misrepresentation of food, food ingredients or food packaging, labeling, product information or false or misleading statements made about a product for economic gain that could impact consumer health.”

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