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22/10/01

OUR REF : DATE : 19 October 2001

YOUR REF :

TO : Australia New Zealand Food Authority

ATTENTION : Project Manager - Proposal P236 FAX NO : 6271 2278

COPY :

SUBJECT : Development of Joint Food Regulation for Sports Foods No. OF PAGES : 8
(Including this page)

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Dear Sir/Madam,

Following is the submission from Nestlé Australia Ltd and Nestlé New Zealand Ltd to the request for comment on the Initial Assessment Report on Proposal P236.

Regards,
Nestlé Australia Ltd

Regulatory Affairs and Nutrition Manager
Oceania

NESTLÉ COMMENTS ON THE DEVELOPMENT OF JOINT FOOD REGULATION FOR SPORTS FOODS – PROPOSAL P236

This submission is made on behalf of Nestlé Australia Ltd and Nestlé New Zealand Ltd. Nestlé is a manufacturer and importer of a wide variety of foods for the Australian and New Zealand markets. Nestlé also exports a wide range of products that are manufactured in Australia and New Zealand. Some of the brand names belonging to Nestlé include MAGGI, NESCAFE, MILO, NESTLE PETERS, PAPA GUISEPPI'S, FINDUS, LEAN CUISINE, SUNSHINE, NESTLE GOLD MEDAL, CARNATION, ROWNTREE, LIFESAVERS, ALLENS, KANDYLAND, MINTIES, INTERNATIONAL ROAST, COFFEE-MATE, MASTERCRAFT, IDEAL, BEARBRAND, SWEETACRES, THOMY, VIOLET CRUMBLE, WALCO, ANDRONICUS, ALPEN BLEND, BACI, CROSSE & BLACKWELL, VITARI, GOLD BLEND, BUITONI, PERRIER, VITTEL, WONKA and KIT KAT, to name a few.

1 General Comments:

Nestlé agrees with the development of a joint food regulation for Sports Foods. Option 2 would be the best option, allowing for the harmonisation of the trading of these types of products. The continuation of the current situation does not allow for the fair trading of equivalent products between and within countries. For example, if the provisions for the Dietary Supplements Regulation continue within New Zealand and by virtue of the Trans Tasman Mutual Recognition Agreement, Australian manufacturers will not be able to manufacture and sell in Australia the same products as their New Zealand counterparts.

There is a need for full regulation of these products because there is the potential, where there is insufficient regulation, for inappropriate use of these products due to inadequate labelling. There is also the potential for products to contain inappropriate levels of particular nutrients and other nutritive substances.

The standard does not cover the requirements for different types of sports foods. The labelling requirements will need to be modified for the different types of products that are available. Those products that do not contain ingredients carrying a maximum daily amount or maximum claimed daily amount or a maximum amount added per one-day quantity within the standard should not be subject to having to state the recommended daily intake for the product within the label.

There also needs to be a modification made to some of the permitted additives for some product types that do are not taken into account within the current standard R10. The permission for the addition of preservatives needs to be modified for gel type products that do not appear to be catered for within standard R10

2 Regulatory Options:

2.1 Option 1:

This option is not acceptable because it does not allow the manufacture in Australia of all product types that are able to be manufactured in New Zealand and subsequently sold in Australia. This does not permit a level playing field for the manufacture and sale of these products. This would mean that some of these products would need to be manufactured in New Zealand rather than in Australia and this may not be the most cost-effective way to produce and sell the products within Australia. There may be an added cost to consumers due to the need to import products from New Zealand. Every step in the process will add cost to the product that will be passed onto the consumer. We would also not be able to import directly into Australia from other overseas markets. The ability to import into New Zealand and then into Australia is an option but is more costly than importing directly into Australia. These additional costs would again be passed onto consumers. There would then be a cost disadvantage compared with those products that would be manufactured in New Zealand and then just imported into Australia.

2.2 Option 2:

This is our preferred option as it provides a level playing field for the manufacture of all product types in both Australia and New Zealand or the importation of products directly into Australia or New Zealand from other countries. There is also a need for regulation covering all types of products and also the resultant labelling of these products. The ingredients that are permitted to be added to these foods need to be controlled through regulation, as there is the potential for inappropriate levels and inappropriate use if there is no regulation for these products.

The disadvantage is that a food standard would not necessarily include all product types and ingredients that may be permitted in other countries. This would mean that if different ingredients were used or product types developed, then the manufacturer would need to ensure that the appropriate applications are made for inclusion within the standard prior to the product being marketed.

2.3 Option 3:

The use of an Industry Code of Practice for these product types will mean that some manufacturers, especially the small to medium sized manufacturer, will not comply to the Code. This is because they either choose not to comply or they will not know about it. Codes of Practice, and this has been the case with the Code of Practice on Nutrient Claims, are not able to be controlled through the relevant Enforcement Officers as they carry no legal standing. Nor are they enforceable for imported foods under the Imported Food Programme. It is therefore up to the industry itself to enforce the Code of Practice. The general experience is that larger manufacturers will comply and attempt to ensure that smaller manufacturers comply, but there are no guarantees that everybody will comply with a Code of Practice. Our experience is that the smaller manufacturers or

importers are not aware of the requirements of the Code of Practice for Nutrient Claims and they therefore make claims about nutrients that are not within the limits imposed through it. This will mean that there is the potential for consumers to receive the inappropriate advice about these products and manufacturers that choose to comply will be disadvantaged over those that do not.

2.4 Option 4:

This option would not be appropriate as it would mean that products currently manufactured would not be able to be marketed within Australia or New Zealand, thereby removing products that are currently useful to a specific group of people. Alternatively, it would mean that the products would be reformulated to fit within the current set of other standards that permit the addition of vitamins and minerals and would therefore be inappropriate for their actual intended use. For example, a product may be reformulated to fit within the Formulated Supplementary Food category. If the products move to within the therapeutics area then the higher costs of attaining and maintaining the therapeutic requirements would be passed onto the consumer.

3 Other Issues:

The proposal canvasses for information on resourcing issues relating to the monitoring and enforcement of a Code of Practice by industry. It is our opinion that in this case, there are some importers and manufacturers who would be unaware of the existence of a Code of Practice or who would choose to ignore the requirements of a Code of Practice. They might consider that it is too costly to label according to the requirements of a Code of Practice. It is Nestlé policy to comply with the legislation and any related Codes of Practice, so the cost of compliance to either legislation or a Code of Practice would be the same for us. The cost of enforcement is an added cost that does not seem to be effective, based on our experiences with the Code of Practice on Nutrient Claims.

The cost of enforcement for Government is already in place. There are certain aspects of a food label that need to be included on food and are already legislated for. These aspects of a label need to be and are enforced by the responsible regulatory bodies. The enforcement of other aspects of the label such as statements on the use of the product and levels of nutrients will add a minor increase in cost for the enforcement of these products. These products are also a small part of the entire food market so any added enforcement costs will only be a small fraction of the overall enforcement costs.

4 Purpose of Regulation:

The current standard for Sports Food does not fully encompass all the types of Sports Foods that are available. The standard seems to focus on the addition of vitamins and minerals and other nutritive ingredients. Not all sports foods, however, contain these as ingredients, and the advisory statements that are required to be included are not necessarily appropriate for all foods under this standard. The standard seems to focus more specifically on the drinks and bar type products without allowing for some of the

other 'sports foods' that are available. For example, gels are also available and these are intended to be used during periods of strenuous activity and consist mostly of carbohydrates without the addition of added vitamins and minerals. In some cases, they may include some added amino acids as well as electrolytes, and in other cases they may just include added electrolytes. The electrolyte level of these types of products are generally not concentrated as the products are intended to be consumed on their own and then followed with a drink of water.

The main purpose of these types of products is to supply a carbohydrate source at the time when it is needed. These products would be considered as carbohydrate energy foods. These products should not need to carry a statement of the recommended consumption in one day, where there are no added amino acids, because the consumption amount would be dependent on the amount of strenuous activity undertaken. It would seem that while these are consumed during intense activity and the directions indicate that this is the purpose of the product, then there would not be a need for a daily consumption recommendation.

There are occasions when the consumption of sports foods by children would be appropriate. There are times when intense activity of children would require the consumption of these foods. There are some children that undertake serious sports training, either on their way to the elite athlete status or simply because they enjoy the sports in which they participate. There are many younger children that participate in the more popular marathon runs such as the Sydney 'City to Surf'. Some of the products that are manufactured would be appropriate for this group. Children under 15 years of age, for example, could consume the carbohydrate energy product, which is used during strenuous activity.

There are also some other sports foods that do not contain added minerals or vitamins or other nutritive substances, for example some protein energy bars. These products are simply a mixture cereals and protein materials and may not be inappropriate for consumption by other groups. These also may be an appropriate sports food for children under 15 years of age when they are actively participate in sporting activities. It would then be inappropriate to have to include the mandatory advisory statements on the labels of these products.

5 Addition of Preservatives:

Particular permissions for some of the additives need to be revised, particularly for those products that are not currently covered by the standard. Of particular concern is the permission for the addition of preservatives to the gel type carbohydrate sports foods. These products are intended to provide a quick, easy to consume energy source, rather than providing a means to hydrate, so the concentration of carbohydrate is quite high creating a gel-like, highly concentrated product.

Where these products are hot-filled particularly, rather than aseptically filled, there is a need to provide additional control measures, by way of acidifiers and antimicrobial food

additives, to inhibit the growth of yeasts, moulds and bacteria. These products can be manufactured overseas where jurisdictions permit higher levels of preservatives for these types of product. Again, as with labelling, the take-off levels of these types of products into Australia and New Zealand are so small that it is not possible to develop individual formulations or filling arrangements eg aseptic filling, so that the levels contained in the product can fit around the permission for additions within our standards. Our standards do not necessarily allow for some of these products and therefore an increase in the permission for the level of preservative is requested.

We request that the permission for the addition of sorbic acid and its salts (sorbates) and benzoic acid and its salts (benzoates) be increased to 1000mg/kg for each preservative. This would not be inconsistent with the permission for other products with a similar consistency and make-up ie levels of carbohydrates. It would also not be inconsistent with levels that are permitted or proposed in other jurisdictions.

5.1 Standard 1.3.1

Standard 1.3.1 allows the addition of benzoates and sorbates to similar levels for foods such as icings and frostings (sorbates 1500mg/kg, benzoates 1000mg/kg), liquid preparations of table top sweeteners (sorbates and benzoates to GMP levels), coconut milk, coconut cream and coconut syrup (sorbates 1000mg/kg and benzoates 1000mg/kg), dairy and fat based desserts, dips and snacks (sorbates 500mg/kg, benzoates 700mg/kg), sauces and toppings (sorbates 1000mg/kg and benzoates 1000mg/kg). Standard 1.3.1 allows for the addition of benzoates and sorbates for water based beverages at a level of 400mg/kg. It would seem that the intention of the level provided for the addition of preservatives for liquid sports foods (ie sports beverages) was based upon the permission for water based flavoured drinks.

5.2 International Standards:

Codex is currently reviewing the additive levels and the permissions for the different additives are at various stages of adoption. Some of the additives are already adopted, whereas others are at step 8, step 6 or step 3. The section relating to the proposed uses for sorbates and benzoates is at step 6 of the process. The category of dietetic foods (food category 13.5) permits the addition of benzoates and sorbates to levels of 2000mg/kg.

5.3 New Zealand Regulations:

The standard for Special Purpose Foods permits the addition of sorbates and benzoates to a level of 1000mg/kg. This same permission needs to be included so that foods that are currently legal in New Zealand can remain legal once the joint standards are all finalised. There is no limit placed on the level of preservatives that can be added to Dietary Supplements in New Zealand, although it would seem that these could be added to GMP levels.

As previously stated, there are some types of sports foods that would not necessarily require all of the advisory statements required in standard 2.9.4 as these are sometimes inappropriate for the intended use. For example, gel products that are intended as a carbohydrate source during periods of strenuous activity, as previously stated in our

section 4, Purpose of Regulation, do not necessarily need to carry a statement for the recommended level of consumption in one day.

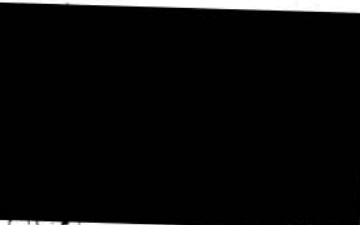
It may also be that there are some sports foods that might be appropriate for consumption by children and other groups under certain circumstances, such as during times of intense activity, for example if they participate in popular long distance running events such as the City to Surf in Sydney. This would especially be so where vitamins, minerals and other substances requiring specific permission in the standard have not been added to sports foods.

The use of performance enhancing claims, whether specifically regulated in standard 1.2.7 (when available) and thus requiring submission prior to using or not, still needs to be scientifically substantiated by the manufacturer/importer.

Conclusion:

The current standard does not cover some sports foods currently available. Due to the lack of inclusion within the standard, there are issues relating to the permission of the addition of additives ie preservatives in some foods. There are also labelling issues with the use of some of the sports foods that need to be addressed.

Nestle Australia Ltd



**Regulatory Affairs and Nutrition Manager
Oceania**

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Yours faithfully,

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Page 8 of 8

Page 8 of 8

Page 8 of 8