Commission Discussion Paper on Nutritional and Functional Claims

(SANCO/1341/2001)

Comments issued by UnileverBestfoods

GENERAL COMMENTS

Intro and Scope

UnileverBestfoods welcomes the Discussion Paper on Nutritional and Functional claims as a first step in the harmonisation of this area, but is at the same time disappointed by the limited scope of the paper. Scientific evidence supports the important role of diet in modifying the risk of developing a diet-related chronic disease. Consumers are also increasingly interested in selecting a nutritious diet in order to maintain or improve their health. The role of appropriate food choices and a healthy lifestyle are significant in reducing the incidence of these multi-factorial diseases.

The individual's capacity to adopt a healthy pattern of eating is influenced both by the availability and understanding of nutrition and health related information received from many sources, including food labels. The list of ingredients, nutrition labelling, nutrition claims, functional claims and health claims all provide information about nutrition to consumers. By excluding health claims consumers will be deprived from health relevant information.

UnileverBestfoods would like to refer to the existence of dietary recommendations towards the public. The food industry is willing and able to support these recommendations, and thus help the consumer to choose more knowledgeably, but this is only achievable if claims can be made about the products developed to fit those diets.

Current scientific evidence warrants the introduction of a regulatory framework and process for diet-related health claims. Moreover, by excluding health claims the Commission continues a situation in which increasingly barriers to trade occur resulting from different national approaches and divergent interpretations of the EU labelling provisions regarding claims[1]. Restrictions in the free movement of goods neither benefit the industry for reasons of competitiveness, fair trade and innovation, nor the consumer for reasons of restricting their right to information to be able to make an informed choice.

Definitions

It is the belief of UnileverBestfoods that specific and detailed categorisation of claims with differing criteria for each is arbitrary and leads to confusion. As correctly stated in the Discussion Paper the difference between them is not always significant and consumers will not always be able to distinguish between the different type of claims[2]. In the scope of a harmonised Community measure a distinction between so-called "content" claims and claims related to "function" (including health claims) would be sufficient, given the objectives and conditions (substantiation) under which these type of claims can be made.

Objectives

Proposed regulations would ensure that "content" and "functional"claims for foods:
- enable consumers to make informed dietary choices
- are consistent, accurate and non-misleading
- are based on recognised health and scientific criteria
- take into account the context of the total diet

[1] Article 2, 1 (b) Labelling Directive 2000/13 prohibits the use of medicinal claims (negative), which is in most member states interpreted as to allow the use of claims related to health (positive)

[2] point 15., Commission Discussion Paper

Proposed implementation

The twin objective of achieving both the free movement of foodstuffs between Member States and a high level of consumer protection is best accommodated by taking into account existing Community measures and, where necessary, expand on these.

This could lead to a change in the Labelling Directive, laying down general conditions under which health related claims can be made, whereas the detailed rules and procedures could be incorporated in a European Guideline (co-regulation). See Annex I for a text proposal.

DETAILED COMMENTS

3. It is correct to state that the food industry has responded to the growing interest of consumers regarding nutrition and health. In order to emphasize the nutritional qualities of the products, for which money and development resource have been spent, claims are indispensable. Responding to the needs of the consumer while also using the opportunity of claims as a marketing tool is a twin objective, which could have been stated in a more positive way. There is nothing intrinsically wrong in making such claims provided the proper scientific backing is available.

4. The statement made on the current situation is even more true in the area of health claims, for which only a very general provision exists in Community law. This is subject to differing interpretations by different Member States enforcement authorities. The general interpretation supports the fact that claims related to improving health rather than preventing disease should be permitted[3]. UnileverBestfoods believes therefore that the Labelling Directive is to be interpreted as permitting health claims, and that the Commission could helpfully clarify this point.

   The fact that there are differing interpretations means that the many producers who now rely on harmonised products for sale in the whole of the European Union, and wish to make use of the internal market, have considerable difficulty in doing so.

7. Given the general provision in the Labelling Directive, as explained in point 6 of the discussion document, this provision seems somewhat superfluous although it is supported by UnileverBestfoods.

8. Again, given the general provisions in the Labelling Directive –which are also applicable to advertisement and the presentation of foodstuffs- as well as the Directive on Misleading Advertisement, a specific provision seems superfluous.
   The fact that information provided on foods is not always understood well by consumers might also trigger the question on the status of consumer education. Consumer information in general will only be effective when the information is both available and understood.

10. Bioavailability of the nutrient in question in sufficient quantity would be a prerequisite to make a claim which is non-misleading, unless it is irrelevant (e.g. bioavailability for fiber).

11. As a general rule the claim should refer to the product as consumed (e.g. as made up as directed, diluted, or cooked according to the manufacturer's instructions).

12-15. Definitions, when deemed necessary, should as much as possible be uniform throughout the international community. As correctly stated consumers do not distinguish claims into different categories. Their concerns relate to whether the claims are truthful and substantiated. Therefore descriptions of the broad categories of claims (i.e. related to content or related to function/health) should be used as a guide to the type of justification that is necessary, without getting into a specific defined legal framework.

17. UnileverBestfoods welcomes the idea of incorporating other substances which do not necessarily have a nutritional effect such as lactic bacteria, phytosterols, antioxidants etc. when these can have a beneficial effect.

[3] See for instance the explanatory memorandum to the Dutch Food Act regarding Articles 19 and 20 (prohibition to make medicinal claims and the allowance to use health claims).

18. The compilation of existing legislation/guidelines in the Annex does not incorporate the provisions of Regulation 2991/94 on fat spreads. “Reduced fat” may be used for fat spreads containing 41-62% fat, whereas “low fat” and “light” may be used for products below 41% fat. UnileverBestfoods fully supports the ability to successfully continue to use these terms for fat spreads, since they help consumers to reduce fat in their diet.

21. See comments made under point 18 regarding the term “light” for fat spreads.

23. The important issue is to ensure that the reference product against which a comparison is to be made is clear. It could be a product from the same manufacturer, a competing product, a standard product on the market dictated by compositional requirements, or it could be the market as a whole if this happens to be at a consistent level. The manufacturer would need to be able to prove that he has used and communicated clearly the basis of comparison.

26. The Commission might want to review the need for “low sodium” products under the dietetic products Directive. At the moment this category of products is only mentioned in the Annex of the Directive without specific rules in place. In the light of dietary recommendations encouraging the reduction of sodium in the diet, it would be helpful to be able to make "low sodium" claims for a number of staple foods. The current level in the Annex to make a low sodium claim is too stringent to be able to do this for many products. UnileverBestfoods would suggest that the Commission consider setting a level which would be achievable in a greater number of products so as to encourage a greater awareness and consumption of low sodium foods.

27. UnileverBestfoods supports that the ability to make claims should apply to all foods.

28. UnileverBestfoods believes that the misunderstandings related to x% fat free claims derive from the fact that such claims have been used for relatively higher fat containing products. If the message from such claims is indeed a strong one, we believe that these claims should be added with a reference to the nutrition panel, as consumers will find the actual fat level in the panel.

30. Even more accurate would be the claim “naturally low/high/rich in (nutrient)”. However, one can dispute the added value of the fact that a food is by its nature low/high/rich in a certain nutrient, as this would apply to all products of the same category.

31. The Commission should take into account the current Codex Guidelines as has been done when the Nutrition Labelling Directive was published. For certain micronutrients, it would be useful to consider what levels would be valuable and achievable in order to make claims.

32. UnileverBestfoods would like the Commission to clarify what is meant by “comparative nutrient claims”. It is questioned whether the quantification of the difference is necessary. Depending on the definition the rules on comparative advertisement should be taken into account.

37-39. Codex definition is preferred. Other serious examples can be found at national level as well as in the Council of Europe Document and the ILSI consensus documentation. Both in the USA and -more recently- in Canada[4] legislation is in place, including definitions.

[4] Regulations Amending the Food and Drug Regulations (Nutrition Labelling, Nutrition Claims and Health Claims), *Canada Gazette Part I*, June 16 2001

40-49. See general comments and Annex I for a text proposal.

41-42. These general rules should be a prerequisite for all claims (also nutrient claims).

50. UnileverBestfoods would like to point at the recent developments in Sweden regarding extension of the current system with product specific physiological claims[5]. This initiative is taken as an intermediate alternative while awaiting EU-harmonised legislation.

[5] Extension of the Swedish code to Product-specific Physiological Claims, *Swedish Nutrition Foundation*, press release June 12 2001

Annex

Labelling Directive

Article 2

1. The labelling and methods used must not:

(a) be such as could mislead the purchaser to a material degree, particularly:

(i) …

(ii) by attributing to the foodstuff effects or properties which it does not possess

(b) … attribute to any foodstuff the property of preventing, treating or curing a human disease, or refer to such properties

2. Attributions related to the maintenance of healthy bodily functions or to the reduction of risk are not considered to constitute prevention as within the meaning of paragraph 1(b).

(a) claims within the meaning of this paragraph must be substantiated by generally accepted scientific data

(b) the Commission, in accordance with the procedure in Article 20, shall draw up a non-exhaustive list of claims within the meaning of this paragraph for which there is well-established scientific support and/or which are recognised by authoritative scientific bodies

(b) substantiation of claims other than those referred to in paragraph 2(b) must be reviewed by an independent expert panel [in accordance with the *European Guidelines on the Substantiation of Health Claims*]/[Before the entry into force of this paragraph, the Commission shall publish recommendations concerning scientific aspects of substantiation]

(c) submissions for extension or amendments to the non-exhaustive list, in accordance with Article 20, shall be addressed to the Commission and be accompanied by the documentary evidence warranting the extension

3. The ~~prohibitions or restrictions~~ provisions referred to in paragraphs 1 and 2 shall also apply to:

(a) the presentation of foodstuffs ….

(b) advertising

European Guidelines on the Substantiation of Health Claims

The basis should be formed by the current CIAA Code of Practice, the Council of Europe Document, ILSI consensus documentation etc., taking into account the commonalities of the different national initiatives. Right from start on it should be a joint effort of BEUC, CIAA, FLEP and the Commission.