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QUALITY MANAGEMENT

9

October 13, 2000

Mr. Charles W. Cooper  
Director, International Activities Staff  
Center for Food Safety and Applied Nutrition  
Food and Drug Administration  
HFS-585  
200 C. Street, S.W.  
Washington, D.C. 20204

B-041N

RE: Codex Committee - Chocolate : Draft Proposal ALINORM 99/14 Appendices II-V

Dear Mr. Cooper:

Nestlé is a major producer of chocolate products in this country and around the world. Nestlé supports the comments submitted in the August 29, 2000 letter from Chocolate Manufacturers Association (CMA). However, CMA did not offer comment on several of the issues, particularly the vegetable fat issue (Section 2.1), currently in square brackets. Nestlé would like to comment on several of those.

Vegetable Fat Up To 5% Should Be Allowed

The vegetable fat issue will likely receive major discussion at the next committee meeting now that the EU has officially allowed vegetable fats up to 5% of the finished product. Although the current U.S. standard of identity does not allow for vegetable oils, Nestlé strongly suggests that the *U.S. delegation remain silent* on this issue and not enter the floor debate unless it is to support removing the brackets.

We recognize it is sensitive for you to argue for removing the brackets since the U.S. disallows vegetable oils, but you certainly can elect to remain silent. Just because the U.S. standard does not allow them should not dictate that the U.S. has to fight to have the Codex standard match its own current standards. The U.S. should recognize that having the 5% vegetable oil allowance is desirable to allow for fine-tuning the functional characteristics of chocolate in various climates around the world.

Arguments for and against vegetable oil in chocolate tend to be emotional and non-factual, based more on "principles" and "quality reasons" than on scientific arguments. The main

advantage of adding other vegetable oils to chocolate is that the manufacturer can be more flexible in sourcing and in the ability to produce chocolates and coatings with special melting behavior, e.g. high melting, "tropical" chocolate. This is ultimately an advantage to the consumer as well. There are no safety or nutritional issues concerned here.

~~Analytically, the vegetable oil additions can be detected but not readily quantified, i.e. it would be difficult to enforce the 5% threshold by this means. Therefore, Nestlé recommends that a tracer be included in the vegetable oils so that the 5% compliance can be easily monitored.~~

Eventually, the U.S. standard should be modified to allow this minor change. In the meantime, until which time the U.S. can change its standard, Codex and the rest of the world should not have their hands tied on this technological advancement. In other words, the U.S. delegation can facilitate the rest of the world moving forward, which in turn will eventually trigger the needed change in our own standard, either by supporting the 5% vegetable oil or by remaining silent on the issue. There will be no trade barriers as a result because the use of vegetable oils is voluntary, not mandatory.

Nestlé submitted extensive comments to FDA and USDA in 1997 on the ANPR regarding food standards modernization. We supported maintaining minimum standards that define basic foodstuffs/ingredients, but not recipes for foods or products (e.g., a fruit pie) where individual preferences dictate what the consumer desires in the marketplace. Even where we supported retaining standards, we felt they should be simplified as much as possible so as to increase flexibility and to respond to changing needs of consumers. While the chocolate standards fall more under this first category of basic ingredients, the standard itself needs to be modernized to cover primarily minimum levels of characterizing ingredients. Allowing 5% vegetable oils is a step in this direction to modernize the chocolate standards in the U.S.

I hope the delegation can agree with the ultimate goal of improving our chocolate standard even though only one major U.S. company currently favors leaving it alone. With FDA priorities elsewhere, and without an external pressure, there will never be an improvement in any of our standards of identity if there is less than unanimity among U.S. manufacturers. Therefore, having the Codex standard allow vegetable oil will provide a stimulus to the U.S. to more vigorously seek making this same improvement in its own chocolate standards.

#### Other Issues

(1) **Agenda Item 3:** Draft Revised Standards at Step 7 for Cocoa Butters; Cocoa Mass and Cocoa Cake for Use in the manufacture of Cocoa and Chocolate Products; Cocoa Powders and Dry Cocoa-Sugar mixtures (CX/CPC 00/3).

Substantial work was completed on the Draft Revised Standards for cocoa products during the 1998 meeting session. The Standards for Cocoa Nibs and Cocoa Dust were deleted and the remaining Standards were significantly simplified. Nestlé supports a further

simplification of these standards by merging them into a single Standard or by merging them into the Standard for Chocolate and Chocolate Products (as done in the EU Chocolate Directive).

Nestlé also recommends maintaining the section on food additives in the cocoa/chocolate standards until the revision of the General Standard on Food Additives is sufficiently advanced.

In the draft Revised Standards for Cocoa Mass and Cocoa Cake for Use in the manufacture of Cocoa and Chocolate Products, Nestlé suggests Section 2.1 be simplified to be consistent with the fact that the section on Cocoa Nibs was deleted during last Session. Possible wording may be "Cocoa (Cacao) Mass or Cocoa/Chocolate Liquor is the product obtained from cocoa nib without removal or addition of any of its constituents". The words "cocoa nibs" could be substituted by "cocoa beans [of merchantable quality]".

In the draft Revised Standards at for Cocoa Powders and Dry Cocoa-Sugar mixtures, Nestlé supports adding "and/or sweeteners". These words should also be added to sections 3.1.1.1 and 3.1.2.1. Also, we support removing the square brackets in these same two sections.

In Section 3.1.3: Nestlé supports removing the square brackets and deleting the words "calculated on the dry matter". Should these words be maintained, the 32% value must be changed to 29%.

Section 4: Nestlé supports the addition of polydextrose. For compatibility with additives permitted in Cocoa Cake, we suggest adding magnesium oxide and calcium hydroxide to the list.

(2) Agenda Item 4: Proposed Draft Standards for Chocolate and Chocolate Products at Step 4 (CX/CPC 00/4)

As stated in the first two pages, the most important point for Nestlé is the **allowance for the use of vegetable fats other than cocoa butter**. However, Nestlé does not support the additional labeling language being suggested such as "Milk chocolate with vegetable fat" (section 6). These names would only cause confusion with regard to quality, and should be unnecessary given that the vegetable oils would be allowed by the standard; typically, a food described by a standard is allowed to use the standardized name, nothing more or less!

Section 2.1.5.2 on milk chocolate with high milk content: remove square brackets: Nestlé supports other non-pejorative names such as "family milk chocolate."

Section 2.1.7 on cream chocolate: delete "not less than 35% total cocoa and milk solids combined, of which". The 35% minimal value is already in place by adding the 25% min. for cocoa solids and the 10% min for milk solids. The 35% value should also be deleted from the Table on compositional requirements.

Charles Cooper  
Nestlé Comments – Codex Chocolate  
Page 84

Section 3.4 on Sweeteners: Nestlé recommends that the U.S. delegation support addition of sucralose and other sweeteners. These would allow more flexibility to respond to consumer demand for reduced-calorie products.

Section 3.6 on Antioxidants: Nestlé supports removing the square brackets.

Sections 3, 4 and 5 on Food Additives, Contaminants and Hygiene: Nestlé again recommends maintaining the section on food additives in the cocoa/chocolate standards until the revision of the General Standard on Food Additives is sufficiently advanced (as previously mentioned for Agenda Item 3 above).

Section 6.1.2 and 6.1.8: We support removing the square brackets.

Thank you for taking our Nestlé comments into consideration.

Sincerely,

Kenneth Mercurio  
Director, Regulatory and Nutrition