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10 October, 2000

Via Federal Express

Mr. Charles W. Cooper
Office of Constituent Operations
Director, International Activities Staff (HFS-585)
Center for Food Safety and Applied Nutrition
200 C Street, S.W., Room 5807
Washington, D.C. 20204

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Paul Michaels

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**Re: Comments of M&M/Mars on the Codex Committee on
Cocoa Products and Chocolate Proposed Draft Standard for Chocolate and
Chocolate Products; Documents No. CX/CPC 00/3 and 00/4**

Dear Mr. Cooper:

For consideration by U.S. government representatives, M&M/Mars submits these comments on the proposed Standard for Chocolate and Chocolate Products, prepared by the Swiss Secretariat of the Codex Committee on Cocoa Products and Chocolate. As you know, the 18th meeting of the Committee will take place at Fribourg, Switzerland, November 2-4, 2000.

M&M/Mars, a Division of Mars, Incorporated, is a major producer and distributor of chocolate products in the United States as well as throughout the world. M&M/Mars is a member of the Chocolate Manufacturers Association (CMA) and generally supports the CMA comments submitted on August 29, 2000 to you by CMA. However, as you will recall, there is disagreement among CMA members on several critically important issues, and comments are being submitted separately on these issues by members. As discussed more fully below, M&M/Mars strongly supports the use in chocolate of:

- Up to 5% vegetable fat;
- A wide range of milk products;
- Other edible foodstuffs;
- A wide range of sweeteners;
- Polydextrose

Finally, other than a complete ingredient listing, no further labeling should be required when any of the ingredients identified above are used in chocolate.

The development and/or revision of existing Codex Alimentarius Commodity Standards has taken on enhanced significance in light of the World Trade Organization (WTO) reference to Codex standards as a major factor in determining resolution of trade disputes by the WTO. At

the same time, in recent years, the Codex Alimentarius Commission has endorsed the view, originated with a 1991 joint FAO/WTO conference, that food standards should be simplified and limited to public health and safety concerns and to the assurance of fair trade practices.

M&M/Mars has long believed that food standards, including FDA standards of identity, should not be used as an attempt to mandate subjective, cultural or recipe preferences disguised as quality factors. For chocolate and milk chocolate products it is reasonable for the standard to prescribe minimum levels of the characterizing materials: safe and suitable ingredients derived from cacao beans and milk; and safe and suitable sweeteners. It is also not inappropriate for the standard to include provisions for emulsifiers and flavors. The evolving Codex position is congruent with this view, and the U.S. has also declared its willingness and intent to adopt Codex standards. The reason for this international and domestic focus is prompted by the recognition that strict recipe-based standards stifle creativity, impede innovation, thus limiting consumer product offerings, and often serve as barriers to competition and free trade.

In our view, the recent Codex draft standards represent a significant improvement over the prior version in recognizing current international practices and recent advances in technology. We now turn to our comments on the important provisions not addressed by CMA.

The Use of up to 5% Vegetable Fat in Chocolate Should be Allowed (Section 2.1)

M&M/Mars agrees with the Codex proposal to allow for the addition of up to 5% vegetable fat to chocolate. During the 16th Session of the Committee in 1996, square brackets were added to the provisions, which were continued following the 17th session in 1998. We recommend that these brackets now be removed. Technological advances are making available a range of specialty vegetable fats, producing a variety of improved properties when used in chocolate which has well known temperature sensitivity. Because of wide-ranging climatic and storage conditions, the improved eating qualities of chocolate containing certain vegetable fats will result in superior products being offered to consumers. Additionally, consumers are interested in food choices that are lower in fat and calories. Some of these specialty vegetable fats will have lower caloric density than cocoa butter, and thus will offer significant potential benefits to consumers by providing wider choice without compromising taste, texture, or quality. Thus, the change in the standard will allow a broader range of products to be made available to the consumer.

The inclusion of vegetable fats in chocolate confectionery also poses no health or safety concerns. Finally, allowance of vegetable fat limited to 5 %in chocolate products will not pose a barrier to trade because vegetable fat is an optional, not mandatory, ingredient under the Codex draft standard. Chocolate products containing no vegetable fat will still comply with the standard, and therefore may be freely marketed as chocolate.

Optional use of vegetable fat in chocolate is also consistent with standards in many countries, such as the recently amended European Union (fifteen member countries) Chocolate Standard, (Directive 2000/36/EC), and provisions in Switzerland and Japan, and the proposed standards in Australia and Mexico, to name just a few. These regulatory provisions provide clear evidence of consumer acceptance of vegetable fat in chocolate on a broad international level.

We recognize that vegetable fat is not currently permitted in certain chocolate products under U.S. standards, and that the U.S. representative may indicate this at the Codex Committee meeting. However, it is also our understanding that the U.S. would like to see progress made on finalizing the standard and thus will not oppose inclusion of vegetable fat as an optional ingredient in chocolate.

A Wide Range of Milk Products Should be Permitted (Section 2.1)

M&M/Mars supports the proposal in the Codex standard to permit the use of a wide range of safe and suitable milk products in chocolate. This option is more acceptable from a consumer and an industry standpoint than the current U.S. approach, which defines a prohibitively narrow range of dairy-derived ingredients as being acceptable in the manufacture of chocolate. The Codex standard would allow chocolate manufacturers worldwide to take advantage of recent technological advances, and new products/ingredients that have been made available by the dairy industry. These advances and new milk products when used in chocolate will certainly benefit consumers.

Similarly, we support elimination of the requirement that the dairy or milk-derived ingredients be present in the proportions naturally found in milk since there is no appropriate rationale for such a requirement. The ability to vary milk fat and solids levels allows for a wider range of chocolate textures and flavors to be produced. A "natural" proportionality requirement would also be difficult to define given that seasonal variations occur in raw milk and that products produced today by milk solids separation technology exist in a wide range of milk fat and milk solids proportions. Indeed, similar criteria were eliminated in 1993 by FDA from the U.S. standard for "milk chocolate." Use of a broader range of milk products would provide the opportunity to produce a much wider range of consumer products that contain the prescribed amounts of dairy ingredients but are superior in texture, more milky tasting, more nutritious and/or lower in fat.

Other Edible Foodstuffs Should be Permitted in Chocolate (Section 2.1)

The draft Codex standard authorizes the use of other edible foodstuffs, excluding added flour and starch, and animal fats other than milk fat, for use in the manufacture of chocolate. Use of other edible foodstuffs is limited to 40% of the total weight of the finished product. M&M/Mars supports this proposal. There are a variety of wholesome ingredients, such as peanuts, tree nuts, cereals, grains, and caramel which may be used to make high quality chocolate products. These products are already sold throughout the world with great consumer acceptance. Thus, the Codex standard appropriately encompasses these types of products and should be supported.

A Wide Range of Nutritive and Non Nutritive Sweeteners Should be Permitted (Sections 2.1 and 3.4)

M&M/Mars supports the current Codex proposal to permit a wide range of sweeteners. The flexibility to use sugar alcohols and intense sweeteners is important to allow the development of reduced calorie products. Additionally, these sweeteners would also encourage the development of safe, high quality products for those on carbohydrate restricted diets. We

note that the use of such sweeteners (and polydextrose) in chocolate is also consistent with 21 CFR § 130.10 and thus already authorized under U.S. standards.

Polydextrose Should be Permitted as a Bulking Agent (Sections 2.1 and 3.8)

Polydextrose is a reduced calorie carbohydrate. The combination of polydextrose and intense sweeteners can be used to produce chocolates which are reduced in calories yet have the taste and texture that consumers know as chocolate. M&M/Mars supports this increased flexibility to allow greater choice to consumers on products, while not affecting the taste and texture experience of chocolate. As noted above, polydextrose use in chocolate is currently authorized under U.S. standards.

M&M/Mars Position on Labeling (Section 6)

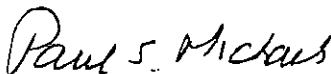
M&M/Mars supports the complete label disclosure, in the statement of ingredients, of all ingredients in chocolate. The draft Codex standard now proposes that additional label statements should be mandated on the label or in conjunction with the product name if the chocolate contains vegetable fat, sweeteners that totally replace sugar, or specified levels of edible foodstuffs. We urge the U.S. to reject any arguments that individual additive or ingredient usage should be declared on the label, e.g., "Milk Chocolate with Vegetable Fat", "Milk Chocolate with Aspartame," etc. Such declarations may be perceived as pejorative and could suggest to uninformed consumers that the product is inferior to other milk chocolate products. These types of label statements would also place undue emphasis on ingredients that do not adversely affect - and may well be improving - the quality, taste or texture of the product. Accordingly, such label statements are not effectively informative to consumers about the quality of the product and serve no health or safety purpose. Consumers will be sufficiently informed if the presence of all safe and suitable ingredients and additives are declared in the ingredient list.

* * *

Finally, we should emphasize that the use of up to 5% vegetable fat, other edible foodstuffs, a variety of milk products and sweeteners, and polydextrose, (1) poses no health or safety concerns, (2) is no more restrictive than current U.S. standards, (3) is fully consistent with the current draft Codex standard, and (4) will result in greater harmonization of chocolate standards globally. When this standard is ultimately adopted by Codex, we have no doubt that both manufacturers and consumers of chocolate products will be the beneficiaries.

We appreciate this opportunity to comment on the above mentioned issues.

Sincerely yours,



Paul Michaels
President