16 June 2006

Directorate General for Health and Consumer Protection
Commission of the European Communities
Brussels
(by e-mail to sanco-labelling@cec.eu.int)

Dear Sirs

Labelling: Competitiveness, Consumer Information and Better Regulation for the EU

I am responding on behalf of Danisco Sweeteners to the Consultation Paper and Discussion Document circulated by the Commission at the end of April on the subject of labelling. Danisco Sweeteners, based in the UK, is a division of Danisco AS, a major supplier of food ingredients to the food industry both in the EU and worldwide with a turnover in 2004/5 in excess of EUR 2.3 billion. Our product portfolio includes ingredients which have technological function, nutritive function and physiological/health function. We are therefore affected by many aspects of the existing food labelling legislation in the EU and by the proposals for health and nutrition claims which are presently nearing adoption by the European Parliament and the Council of Ministers.

We welcome this consultation as an opportunity to participate in the future development of this body of legislation which is important to the food industry and the consumers it serves. There are aspects of the legislation on which we have no special reason to comment so I hope you will forgive me for not responding to all the questions you have posed, relevant as they are to the overall regulatory environment for food labelling. On the other hand there are aspects of the legislation which the Commission has not highlighted for comment in this document but which we feel are important to us and to the consumers we serve so I am providing some input on points additional to those you have identified. I hope, in the interests of ensuring this process is truly consultative, you will take them into consideration.

- the overall approach set out by the Commission

We agree with the four bullet points by which the Commission defines the strategic goal of its action on labelling (paragraph 7 of the Consultation Paper). To these we would, however, add a fifth: "to create a framework which encourages industry to respond through innovation to consumer demands". It is important that labelling not only enables food operators to sell their products as described at the second bullet point, but that it provides incentive to food operators to develop products that respond to consumers' needs.
should there be more or less prescription in labelling legislation?
- is there sufficient flexibility in existing EU legislation to allow industry to quickly adapt to changing consumer needs and demands?
- is there a role for self-regulation or co-regulation in relation to labelling issues?

These three aspects are inter-linked and inter-changeable. Whatever the form of the legislation, it should result in certainty for consumers and for the food industry and it should facilitate and encourage change where this is to the mutual benefit of all stakeholders, with least cost. As long as certainty for consumers and industry can be achieved, self-regulation would likely provide the lowest cost means. But where there is question about the certainty for consumers in relation to the information conveyed, or where differences in national legislation introduce uncertainty for industry over access to the single market, an element of prescription may be desirable.

There is, however, nothing of merit in prescriptive legislation for its own sake and we would hope this principle is recognised in any proposals for change to the legislation. If it is to realise all of the potential benefits it offers to consumers and to business operators, food labelling must be responsive to changes in consumer understanding and the development of scientific knowledge. Where the balance of argument is found to favour prescriptive legislation some means must be found to ensure that legitimate changes to the legislation can be introduced in a timely fashion without undue procedural and administrative delays. Otherwise it will act as a barrier to, rather than a facilitator of, effective food labelling.

future scope and structure of food labelling legislation

Given that EU Member States are now at more or less the same point in the development of food labelling legislation, Regulation would seem to be the most appropriate legal instrument for future revisions. The use of Regulations would provide the simplest means to ensure consistency of timeliness, intent and application across the EU.

nutrition labelling

We are aware that the Commission has embarked on a consultation exercise to explore the merits of making changes to "technical aspects" of the Nutrition Labelling Directive but we are concerned that any changes made as a result will be overly narrow in their scope and application. Nutrition science, its use by the food industry and consumer understanding of it, has moved on considerably since the Nutrition Labelling Directive was adopted on 1990 but the Directive itself has changed hardly at all. In particular, it is not sensible to deal with nutrition labelling in isolation from the proposal on nutrition and health claims currently nearing adoption.

There are elements in the proposal on nutrition and health claims which require an understanding of terms and concepts established in the nutrition labelling Directive as presently drafted. Any revision of the nutrition labelling Directive must be undertaken from the perspective of how the terms it defines are to be used in the context of health and nutrition claims. There is a pressing need to bring the Directive up to date in a comprehensive fashion in order to make it relevant to current thinking and usage in nutrition science as it relates to food products presently on the market.
Only by doing this will the impending legislation on nutrition and health claims enable consumers to benefit fully from the opportunities for healthy eating choices now available to them.

From Danisco Sweeteners' point of view, we see that terms describing the glycaemic characteristics of foods are now in common use. The glycaemic characteristics of foods are of importance for consumers as indicators of healthy choice but nowhere are they dealt with in the legislation. In order that there is a sound basis for claims relating to the glycaemic characteristics of foods subsequently to be controlled by the proposed Regulation on nutrition and health claims, it is essential that the concepts and terminology are defined in law and the inclusion of definitions in the Nutrition Labelling Directive would seem to be the obvious way of achieving this.

Another area where the Nutrition Labelling Directive is in need of updating is in relation to the energy values listed at Article 5. The list of values remains largely unchanged since 1990 while the list of food ingredients available, and their application in food products targeted at healthy eating, has grown. In Danisco Sweeteners' case, our low digestible carbohydrate product polydextrose has the potential to contribute to the range of healthy eating choices available to consumers. However, the lack of an energy value harmonised at EU level leads to different labelling requirements and consequent uncertainty in the market place for food manufacturers and consumers in different Member States despite the fact that scientific data unequivocally point to an energy value of 1 kcal/g.

Lastly in relation to the Nutrition Labelling Directive, at its adoption in 1990 Article 4(j) expressed an intention to establish a definition for dietary fibre. Despite the lapse of 15 years this has not yet been done and the lack of a harmonised EU definition, at a time when the proposal for health and nutrition claims is moving towards the adoption of the terms “source of fibre” and “high fibre”, leads to uncertainty for food manufacturers and confusion for consumers. We would hope that the definition recently adopted by Codex might provide the basis for a harmonised EU definition.

I understand that these last two points may be within the scope of the parallel consultation on technical aspects of the nutrition labelling Directive. We are nevertheless anxious to ensure that they are addressed at an early stage and so we may perhaps be forgiven for raising them also in the context of the present consultation.

In summary, Danisco Sweeteners welcomes the opportunity to contribute to the consultation on EU food labelling. While I have not responded to all of the questions identified in the Discussion Paper, I hope that the comments I have made will add positively to body of information you receive in response to this important and worthwhile initiative undertaken by the Commission. If we can assist in any further way, or if I can provide further information or discussion on any of the above points, please do not hesitate to let me know.

Yours sincerely,

Julian Stowell,
Director Food Regulatory and Scientific Affairs