Chairman: Mr Basil Mathioudakis

1. Letter from Denmark concerning:

   a) Chocolate products, defined in Annex I (A) (2c – d) and (3- 10), that have been placed on the market with no added sugars, or which contain both sugar and sweeteners even though they are not reduced by 30% in energy. *Document SANCO/A/2006/540346*

   b) Chocolate products, defined in Annex I (A) (7) and (10) that have been placed on the market without the indication of the total dry cocoa solids content. *Document SANCO/A/2006/540346*

   The Danish delegation reiterated the doubts already expressed in its letter of 25.11.2005 according to which it is not clear whether a cocoa product containing no added sugars would be in compliance with the definition of chocolate and could be labelled as such according to the provisions of Annex I of Directive 2000/36/EC. On the other hand, the Danish delegation also pointed out that the labelling requirements as regards the indication of the percentage cocoa content of products provided for in Annex I(7) and (10), where they are used as ingredient, are not sufficiently clear.

   The Commission (DG AGRI) representative confirmed the position already expressed on these subjects, which have been discussed in the Standing Committee in 2002. On partial or total replacement of sugar, in particular, the Commission reiterated that products covered by Directive 2000/36/EC may contain sweeteners provided that the conditions of Directive 94/54/EC are fulfilled.

   Several delegations also recalled that the subject has already been discussed in the Committee previously. One delegation added that the CODEX definition of chocolate is in line with the Commission interpretation. One delegation noted that the real problem is the difficulty for a "chocolate" product to meet the 30% energy reduction criteria, which is the criterion for making a "reduced energy" claim, even when no sugar is added.

   The fruit jams Directive (2001/113/EC) which makes a specific reference to the possibility of sugars being wholly or partly replaced by sweeteners was mentioned as an example to be followed and it was suggested by a number of delegations that the Directive 2000/36/EC on cocoa products be modified to follow the same approach.

   It was therefore concluded that, as already concluded in 2002 within the Standing Committee (See summary record of 4th meeting – December 19th, 2002 Section on Toxicological Safety of the Food Chain point 11), chocolate products in which the added sugar has been totally or partially replaced by sweeteners are not prohibited by Directive 2000/36/EC in so far that they comply with the labelling requirements applicable to foodstuffs containing sweeteners.
Regarding the second question, it is recalled that an interpretation note issued by DG AGRI in 2001 states that the labelling requirements applicable to chocolate products pursuant to Directive 2000/36/EC also apply where these products are used as ingredients in foodstuffs. That interpretation note is attached to the present minutes.

2. **Information point regarding the possible revision of Article 19 of Regulation (EC) no 178/2002 for the extension of the obligation to notify food safety problems to the competent Authorities**

The Commission informed the Member States that after further examination it does not intend to propose an extension of the scope of Article 19 as requested by Germany following the recent food safety problems found in cold stores in Germany. Most of the Member States did not support such a measure, as it is of general scope and would not be specifically designed to address the issue of frozen food in cold stores.

However, the Commission informed the Member States that it intends to address the issue of frozen meat storage by specific hygiene measures.

The Commission is investigating several options—legislative or not—in the field of hygiene which would apply to the storage of frozen foodstuffs. They will be discussed within the SCOFCAH hygiene section.

3. **Letter from France concerning food supplements containing medicinal plants.**

*Document SANCO/A/2006/10287*

France raised the issue of the classification of food supplement containing medicinal plant as medicinal products or as food.

Many Member States express their wish for Community harmonization on this issue, i.e. rules/criteria for classification.

The problem is not a new one, since it has already given rise to several Court cases. The European Court of Justice stated that the classification of a medicinal product has to be carried out following a case by case evaluation which takes into account such elements as the presentation of the product, its labelling, its ingredients and their concentration etc. etc.

It follows that if Member States intend to classify these substances, they have to take into account both the provisions set by the Treaties and the ECJ jurisprudence. More in general, for the classification of a product as food all the applicable horizontal Community provisions (e.g. Directive 2000/13/EC on labelling, the forthcoming regulation on Claims etc.) have to be taken into account.

It was concluded that:

The concern raised by France is shared by several delegations.
Some forthcoming pieces of EU legislation and reports will have an influence on the issue. In particular:

- The forthcoming entry into force of the Regulation on the addition of vitamins and minerals and of certain other substances to foods, that in Chapter III will provide the possibility to scrutinize (under certain conditions) substances other than vitamins and minerals used in foods, including food supplements;

- The report on the advisability of establishing specific rules on the use of substances other than vitamins and minerals in food supplements, which should be submitted by the Commission to the European Parliament and the Council no later than 12 July 2007 in the context of Directive 2002/46/EC;

- The establishment of a list of health claims, as an implementing measure of the forthcoming Regulation on Nutrition and Health Claims made on food.

In view of the above, the Committee considers that further discussion on the harmonization of the issue in question could take place following the evolution of the abovementioned provisions.

4. **Labelling of water content in fish and fishery products**

*Document SANCO/A/2006/18722*

The Committee, following a request of the Czech Republic, exchanged views on the question of the labelling of added water in glazed deep frozen fish. In particular, the Czech Republic expressed the view that water retained by water retention agents (polyphosphates) cannot be considered as added water if the amount of these agents contained in the final product does not exceed the maximum limit set by the legislation and consequently it should not be labelled as an ingredient.

The Commission recalled that, according to the labelling provisions, a distinction has to be made between glazing water, which must be taken into account for the calculation of the drained net weight, and added water, considered as ingredient.

Several delegations stated that added water should be labelled when it exceeds 5% by weight of the finished product. Some of these delegations also pointed out that the addition of water should be in line with the good manufacturing practices and must be considered separately from the use of polyphosphates products, and that the use of polyphosphates should be labelled in compliance with the rules for labelling of food additives.

It was concluded that any addition of water that results in the presence of water in the final product entails an obligation to include water in the list of ingredients provided that its amount exceeds 5% by weight of the finished product.
5. **Letter from Spain concerning the use of the claim "lactose-free" and consequent discussion regarding the definition of conditions of claims under Directive 89/398/EEC**

Spain had asked for a discussion within the Committee on the use of lactose-free or reduced-lactose labelling on foodstuffs and whether Member States applied specific criteria for the use of such labelling. During the discussion many Member States indicated that they would support Community harmonisation of the level of lactose that should be met to justify the claim “lactose-free”. The discussion confirmed, as agreed during the discussion on the Regulation on nutrition and health claims made on food, that such conditions should be defined under the legislation on food for particular nutritional uses without prejudice to such conditions being applicable to normal foodstuffs in accordance with the existing provisions of the legislation.

It was concluded that many delegations would support the harmonization of conditions for the use of lactose-free or reduced lactose and, to that end, a Commission measure could be examined. The Committee also discussed the possibility to advance the work with other work on claims under the dietetic foods framework related to the content of sodium and gluten provided it would not lead to undue delays. Some Member States considered that the opinion of the European Food Safety Authority would be useful in order to clarify the levels of lactose that could be supported by a wide range of individuals concerned, for example those with galactosaemia or lactose intolerance.

6. **Any other business**

**Notifications under Article 11 of Directive 89/398/EEC**

The Commission informed the Committee that, following the notifications received from Germany earlier this year, and discussed within the Committee, no further action is needed as there is no conflicting view amongst the Member States on the German decision not to allow the marketing of certain products as foodstuffs intended for a particular nutritional use.

The Commission clarified that, in principle, Article 11 of Directive 89/398 only requests Member States to start the notification procedure where they have not authorised the marketing of a product as dietetic food, while the same product is already circulating as such in one or more other Member States.

**Nutrition claims on omega-3 fatty acids**

Spain asked for an update on the progress of the work related to the inclusion of nutrition claims related to the content of omega-3 fatty acids in the annex of the Regulation of the European Parliament and of the Council on nutrition and health claims made on foods. The Commission explained that in the absence of the publication of the Regulation it was not possible to put forward an amendment. In addition, the Commission expected that the interested stakeholders intended to review the conditions for those claims on which the EFSA had given an opinion.
INTERPRETATION NOTE

Subject: Indication of cacao content of chocolate.


2. Article 3 (1), point 2, of Directive 2000/13/EC provides that the ingredients of a foodstuff shall be listed on the labelling. Article 6 (5) provides that this list of ingredients shall include all the ingredients of the foodstuff, in descending order of weight, as recorded at the time of their use in the manufacture of the foodstuff. It shall appear preceded by a suitable heading which includes the word "ingredients". Additionally it is provided pursuant to Article 3 (1), point 3 and Article 7 that in certain cases the quantity of an ingredient or category of ingredients used in the manufacture or preparation of a foodstuff shall be stated by indicating the quantity, expressed as a percentage, corresponding to the quantity of the ingredient or ingredients at the time of its/their use. However, Article 7 (3) (a) provides that this Article does not apply if the quantity of an ingredient or category of ingredients is already required to be given on the labelling under other Community provisions.
3. The entrance sentence of Article 3 of Directive 2000/36/EC provides that Directive 2000/13/EC, which replaces Directive 79/112/EEC, shall apply to the products defined in Annex I, subject to the following conditions which are listed in Article 3. The Commission services understand this clarification in this way that Directive 2000/36/EC does not replace the provisions of Directive 2000/13/EC but complete them in relation to cocoa and chocolate products.

Concerning certain cocoa and chocolate products, Article 3 point 3 of Directive 2000/36/EC provides that "the labelling must indicate the total dry cocoa solids content by including the words: "cocoa solids: ... % minimum"." This concerns powdered chocolate, chocolate in powder, drinking chocolate, sweetened cocoa, sweetened 'cocoa powder, chocolate, milk chocolate, family milk chocolate, chocolate a la taza and chocolate familiar a la taza. It follows from the wording that the indication of the total dry cocoa relates only to these cocoa and chocolate products. The percentage of the cocoa solids gives an indication of the quality of these chocolate products.

However, Annex I Section B of Directive 2000/36/EC allows that other edible substances with certain exceptions may also be added to certain chocolate products listed in Article 3 point 3 of Directive 2000/36/EC but not exceeding 40 % of the total weight of the finished product. Annex I Section C of Directive 2000/36/EC provides that the minimum contents of the cocoa and chocolate products shall be calculated after deduction of the weight of these other ingredients provided for in Section B. From this wording it follows that this calculation method is only in relation to the other substances added to the cocoa and chocolate products as defined in Section A. It does not relate to the calculation of the indication provided in Article 3 point 3 of Directive 2000/36/EC as concerns the indication of the total dry cocoa solids content in the chocolate parts qualifying these parts.

4. From all this follows in the opinion of the Commission services that the indication of the dry cocoa solids as provided in Article 3 point 3 of Directive 2000/36/EC provides an indication of the quality of the cocoa and chocolate products as listed in Annex I (A)(2)(c), (2)(d), (3), (4), (5), (8) and (9) of Directive 2000/36/EC. If certain of these products are parts of other products it indicates the quality of the chocolate parts of these products.

The indication of the other ingredients or categories of ingredients of products with cocoa and chocolates parts, is ruled by Directive 2000/13/EC.

Article 2 (1) of Directive 2000/13/EC provides that the labelling and methods used must not be such as could mislead the purchaser to a material degree; including as to the characteristics of the foodstuff and its composition. Therefore, the indication of Article 3 point 3 of Directive 2000/36/EC concerning the dry cocoa solids of the chocolate parts of the product and the indication in accordance with Article 3 (1), point 2, of Directive 2000/13/EC as concerns the list of ingredients have to be done in such a way that it is clear for the consumer to what the indications are related and what information they provide.

5. The result shall be summarised by following example: The indication of a chocolate with hazelnuts shall provide a list of ingredients (Article 3 (1), point 2, of Directive 2000/13/EC) and of the quantity of ingredients or categories of ingredients if provided in Article 7 of Directive 2000/13/EC. Additionally, as regards the cacao
and chocolates parts (the chocolate parts being a product as listed in Annex I
(A)(2)(c), (2)(d), (3), (4), (5), (8) and (9) of Directive 2000/36/EC), the total dry
cocoa solids content has to be indicated by including the words: "cocoa solids:... % minimum". This indication in accordance with Art. 3 (3) of Directive 2000/36/EC only relates to these chocolate parts of the product, but not to the total product. So the indication for this example could be: "Ingredients: Sugar, cocoa butter, hazelnuts (25%), cocoa mass, emulsifier (soya lecithin), flavouring (vanillin). Chocolate part contains: Cocoa solids 35% minimum."

6. This interpretation does not prejudge any decision by the Court of Justice, which alone is competent to hand down legally binding rulings on the validity and interpretation of acts adopted by the Community institutions.