codex alimentarius commission

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

WORLD HEALTH ORGANIZATION

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CODEX COMMITTEE ON FOOD LABELLING
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PROPOSED DRAFT DEFINITION OF ADVERTISING IN RELATION TO NUTRITION AND HEALTH CLAIMS (CL 2006/31-FL)

GOVERNMENT COMMENTS AT STEP 3

COMMENTS FROM:

AUSTRALIA
BRAZIL
COSTA RICA
EUROPEAN COMMUNITY
GUATEMALA
MEXICO
NEW ZEALAND
PERU
SOUTH AFRICA
UNITED STATES
CONFEDERATION OF THE FOOD AND DRINK INDUSTRIES OF THE EU (CIAA)
INTERNATIONAL ALLIANCE OF DIETARY/FOOD SUPPLEMENT ASSOCIATIONS (IADSA)
INTERNATIONAL CHEWING GUM ASSOCIATION (ICGA)
INTERNATIONAL UNION OF FOOD SCEINCE AND TECHNOLOGY (IUFoST)
NATIONAL HEALTH FEDERATION
WORLD FEDERATION OF ADVERTIZERS (WFA)
WORLD SUGAR RESEARCH ORGANISATION (WSRO)

PROPOSED DRAFT DEFINITION OF ADVERTISING IN RELATION TO NUTRITION AND HEALTH CLAIMS - (CL 2006/31-FL)

GOVERNMENT COMMENTS AT STEP 3

AUSTRALIA:

Australia wishes to provide the following comments with regard to CL 2006/31-FL … Draft Definition of Advertising, in relation to nutrition and health claims:

> *"[**Advertising**: any representation to the public, by any means other than a label, that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of the food.]"*

Australia considers that the scope of this proposed definition to be too broad and considers there is a need for clarification or expansion of some terms. The following amendments are suggested:

- Inclusion of the term 'representation' is insufficient to describe the different forms of advertising that would be captured. It is recommended that this term be qualified by including the phrase 'written, pictorial or descriptive communication'.

- Expansion of the term 'the public' to illustrate that some nutrition and health claims are targeted to certain population sub-groups while others are intended to be more general in nature.

- Inclusion of the phrase 'for financial consideration' to distinguish between commercial interests and non-commercial communications and to narrow the definition. Thus, the definition would not capture advice or information imparted by genuine news, bona fide editorial and public interest programmes and government, academic and professional organisations.

- Removal of the phrase 'shape attitude, beliefs', as the impact of advertising on ways of thinking is too difficult to quantify. Include the term 'choices' in conjunction with behaviour to denote that advertising influences food purchasing behaviour.

Australia proposes a new Draft Definition of Advertising in relation to nutrition and health claims:

> *"[**Advertising**: any form of written, pictorial or descriptive communication or representation, other than a label, that is made for financial consideration and is directed to the general public or a section of the public and is intended to influence choices and behaviour in order to promote directly or indirectly the sale of food.]"*

Australia notes that further explanatory notes might be needed to either describe the types of media that would be captured by the proposed definition (e.g. television, radio, cinema, newspapers, point of sale material, direct mail, Internet (?), etc.) or to exempt specific applications (e.g. academic papers, genuine news, editorial and public interest programmes, text books, restaurant writers, etc.).

BRAZIL:

Proposed Draft Definition of Advertising in relation to nutrition and health claims:

*"[**Advertising**: any representation to the public, by any means other than a label, that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of the food.]"*

Brazilian position: To alter the text to:

*"[**Advertising:** any representation **or information** to the public, by any means other than a label, that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of the food. **The advertising must be identified by the consumer as such**.]"*

COSTA RICA:

Costa Rica supports the definition of advertising in the terms proposed, understanding that such definition must be applicable only within the scope of the Guidelines for the Use of Nutrition and Health Claims.

Nevertheless, with the objective of facilitating a coherent wording in the proposal, we consider important to incorporate the following changes:

*["**Advertising**: means any representation to the public, by any ~~means~~, other **means, different** from the label, that is intended, or is likely, to influence and shape attitude, beliefs, and behaviours to promote directly or indirectly the sale or disposal of any ~~product~~ **food.***

EUROPEAN COMMUNITY:

The European Community and its Member States (ECMS) welcome the new work on the definition for advertising in relation to nutrition and health claims.

The ECMS consider that it is of the utmost importance to agree on a definition for advertising as related to claims to be included in the Guidelines for Use of Nutrition and Health Claims. The ECMS consider advertising as an essential aspect when dealing with claims made on food. It is indeed often pointed out that in some cases consumer deception was more likely to originate from advertising than from labelling itself.

The ECMS can globally support the definition as originally proposed by Canada, but wish however to propose the following amendment:

***Advertising**: **any form of commercial communication** to the public, by any means other than a label, that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale **or the consumption** of the food.*

GUATEMALA:

Through this communication, and in compliance with CL 2006/31-FL, we present to the Codex Alimentarius Commission the comments of Guatemala regarding the Proposed Draft Definition of Advertising in relation to nutrition and health claims.

The definition proposed by Guatemala is as follows:

***"Advertising**: means any image, figure or idea directed to the public, by any means whatever, different from the label that is intended to influence and shape attitude, beliefs, and behaviours so to promote directly or indirectly the sale of any product without misleading or deceiving".*

The following table provides details of the changes made and its justification. The terms or sentences added are in brackets.

"***Advertising**: means any ~~representation~~ [image, figure or idea] directed to the public, by any means whatever, ~~other that a~~ [different from the] label that is intended~~, or is likely,~~ to influence and shape attitude, beliefs, and behaviours so to promote directly or indirectly the ~~marketing or disposal~~ [sale] of any product [without misleading or deceiving]."*	
Original	**Modification**
Eliminate the term "representation"	It is considered that the term "representation" could lead to confusion and we suggest substituting it for the concepts of image, figure or idea, based on the definition of representation given by the Dictionary of the *Real Academia Española* [T.N. The Royal Spanish Language Academy], to further clarify the term.
Eliminate the sentence "other than"	We suggest substituting it by "different from the" for greater clarity in the wording
Eliminate the sentence "or is likely"	The purpose of advertising is to influence and shape attitude, beliefs, and behaviours. We consider therefore that the use of the term "or likely" is not applicable.
Eliminate the terms "marketing" and "disposal"	Based on the original English version we consider that the term sale is more appropriate. The term "disposal" causes confusion.
The sentence "*without misleading or deceiving*" has been added.	We consider it important to emphasize that advertising should not mislead or deceive.

MEXICO:

Mexico would like to thank the Government of Canada for its efforts in preparing this draft definition of advertising and would like to make the following comments:

Mexico considers that it is not necessary to work on new definitions or guidelines involving advertising in general as this is a subject defined by national legislations in those cases where local authorities are competent regarding this subject.

Regarding guidelines for the use of nutrition and health claims, we believe that we should seek consistency between what is allowed for food advertising in relation to nutrition and health claims and what is established for product labelling to avoid misleading the consumer.

Nevertheless, if a definition for advertising is considered necessary, only for the purpose of these Guidelines, Mexico proposes a definition on the margin of nutrition and health claims which, therefore, would be more focused on the results of the purchasing and consumption decisions than on the modification of the behaviour or beliefs of the consumer. The proposed definition would be the following:

Advertising means any representation, by any means, in order to promote directly or indirectly, the sale or intake of a food through the use of nutrition and health claims in relation to the food and its ingredients.

NEW ZEALAND:

New Zealand is thankful for the opportunity to comment on the following *Proposed Draft Definition of Advertising in relation to nutrition and health claims:*

> *"[**Advertising**: any representation to the public, by any means other than a label, that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of the food.]"*

New Zealand fully supports the work on developing a definition for advertising as it relates to nutrition and health claims.

New Zealand is pleased to submit the following comments on the proposed draft definition in relation to nutrition and health claims:

New Zealand considers that the proposed definition is very broad and, although it captures the key areas of advertising, its broadness will also require considerable clarification of what is and is not intended to be covered. For example, we believe that significant discussion will be required to determine the types of media that are intended to be captured by the proposed definition (e.g. television, radio, cinema, newspapers, point of sale material, direct mail, Internet). We also believe that significant discussion will be required to determine possible exemptions from the definition such as the provision of professional advice; the publication of research; statements by politicians, Government agencies, professional bodies, and Non-Government Organisations; bona fide editorials and programmes; and public speeches. This would also clarify the boundaries between advertising and dietary education/advice.

New Zealand considers that the term "representation" requires clarification, and that the thrust of the definition should be focussed on the sale and purchase of foods, not on changing attitudes and beliefs.

New Zealand therefore proposes the following definition for advertising to be used in the context of nutrition and health claims for consideration by the Committee:

> *"[**Advertising**: any representation to the public, whether made directly or by implication, omission, ambiguity or exaggerated claim, by any means other than a label, that is intended or is likely to influence choice and behaviour in order to promote directly or indirectly the sale of the food.]"*

We note that use of this definition would not eliminate the need to define the types of media that are intended to be both captured by, and excluded from, the proposed definition.

PERU:

Proposed draft definition of advertising in relation to nutrition and health claims

*["**Advertising:** means any representation to the public, by any means, other than the label that is intended, or is likely, to influence and shape attitude, beliefs, and behaviours so to promote directly or indirectly the sale or disposal of any product."]*

Peru is in agreement with the definition of Advertising proposed in the Circular Letter.

SOUTH AFRICA:

This issue is already adequately addressed in the national legislation in South Africa. The term "advertisement" is defined in the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972), in South Africa, as:

"Advertisement" in relation to any foodstuff means any written, pictorial, visual or other descriptive matter or verbal statement, communication, representation or reference-
a) appearing in a newspaper or other publication; or
b) distribution to members of the public; or
c) brought to the notice of members of the public in any manner,
and which is intended to promote the sale or encourage the use of such foodstuff and "advertise" has a corresponding meaning.

South Africa's proposal

South Africa felt it necessary to add to Canada's proposed definition, that scientific, reputable journals are to be excluded from the definition of "Advertising".

Reputable scientific journals serve the purpose of providing facts. Interpretation of these facts can be utilised to influence and shape attitudes, beliefs and behaviours. Therefore, it is South Africa's opinion that articles in scientific journals should be excluded from the definition of "Advertising".

Therefore, South Africa proposes the following:

"[*Advertising: any representation to the public, by any means other than a label, that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of the food* ***but excludes scientific, peer-reviewed articles as published in reputable journals***]".

UNITED STATES:

The United States is pleased to respond to CL 2006/31-FL regarding the proposed draft definition of advertising in relation to nutrition and health claims. Specifically, CL 2006/31-FL invited member countries to provide comments on the following Proposed Draft Definition:

> *"**Advertising**: any representation to the public, by any means other than a label, that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of the food."*

The United States notes that the 29th Session of the Codex Alimentarius Commission approved new work on a definition of advertising with the scope limited only to a definition in relation to health and nutrition claims and not to any broader use of the definition (See Alinorm 06/29/41, paragraphs 132-135).

The United States does not support the adoption of a definition of advertising in relation to nutrition and health claims. As the United States has previously noted, we believe that advertising is best regulated at the national level and, therefore, there is no need to consider a Codex definition for advertising. We note the reference to advertising in the Codex *Guidelines for Use of Nutrition and Health Claims*, specifically the Scope of the Guidelines, which reads, in part: "These guidelines relate to the use of nutrition and health claims in food labelling and, where required by the authorities having jurisdiction, in advertising" (CAC/GL 23-1997, Rev. 1-2004). The U.S. observes that this text within the Guidelines explicitly leaves matters related to the use of these claims in advertising to national authorities.

The United States observes that product advertising is regulated differently from product labelling in many countries and that a definition of advertising within the Guidelines could likely restrict the dissemination of truthful and non-misleading nutrition and health information. Further, the
development of a Codex definition for advertising with respect to health and nutrition claims raises broad policy, technical and legal issues that could impact how governments regulate advertising and labelling in their own countries. The United States strongly believes that the term "advertising" should remain undefined in the Codex Guidelines. In addition, the United States notes that the existing Codex *Guidelines for Use of Nutrition and Health Claims*, which do not define "advertising," can be currently applied to advertising as deemed appropriate by national authorities.

The United States believes that consumers and trade benefit from truthful and non-misleading nutrition and health claims in food advertising. Therefore, the United States is especially concerned that a Codex definition for advertising that potentially restricts the dissemination of truthful and non-misleading nutrition and health information, ultimately, may have the effect of restricting fair trade in food, the opposite of a key Codex overarching goal.

With respect to the Proposed Draft Definition of advertising, the United States opposes the current definition as it is overly broad and is likely to restrict truthful and non-misleading information, including educational and non-promotional material such as that dispensed by government agencies and health professionals or that appearing in scientific journals. To ensure that any definition of advertising does not restrict the dissemination of truthful and non-misleading information, the United States strongly encourages CCFL to consider specific criteria, such as:

- The definition should explicitly state that it applies only to the use of nutrition and health claims defined in the Guidelines (and as directed by the Commission);
- The definition should focus on the promotional intent of the communication such that non-commercial communications are excluded from the definition;
- The definition should specify the type of media in which the communication appears such that it does not prevent dissemination of material in other media used for educational and informational purposes; and
- The definition should ensure that media that would be considered "labelling" in the country of sale are excluded from the definition.

INTERNATIONAL ALLIANCE OF DIETARY/FOOD SUPPLEMENT ASSOCIATIONS (IADSA):

IADSA would like to provide the following comment on the Circular Letter CL 2006/31-FL concerning the proposed draft definition of advertising in relation to nutrition and health claims circulated at Step 3:

*"[**Advertising**: any representation to the public, by any means other than a label, that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of the food]"*

IADSA is concerned that the use of the words "*is likely to*" in relation to influencing and shaping *"attitude"* could be open to wide interpretation, beyond the intended meaning. In IADSA's view, because the cost of advertising is generally high, the intention of the advertiser is that his or her advertising will be effective. IADSA would therefore suggest that the words "*is likely to*" be deleted, or substituted with the words, "*… or would be reasonably expected to…*".

CONFEDERATION OF THE FOOD AND DRINK INDUSTRIES OF THE EU (CIAA):

CIAA considers that there is no need for an internationally accepted definition of *advertising* and that the national definitions are appropriate to reflect the political, cultural and social traditions, which shape advertising practices in individual countries. However, should it be deemed necessary to proceed with developing such a definition, it should

a) make a difference between paid representation and any other kind of representation:

i. Whilst advertisers must be responsible for advertising content that they create, the

current definition would place the responsibility for all content – created by any user – on the shoulders of the manufacturer. Consumers and other parties are increasingly engaging with advertising communications in an interactive way, often tailoring advertiser-generated content and creating their own content from it.

ii. Advertisers cannot and should not be responsible for brand-related content that they do not produce. The current Canadian definition will place the burden onto manufacturers, even in situations where they have not been responsible for the content. This will include, but will not be limited to: press coverage in the media, editorials or opinion pieces, reports, word-of-mouth, blogging, personalised/tailored advertising, etc.

iii. It is quite conceivable that the appearance of products or services (such as restaurant chains, cars, domestic appliances, etc.) appearing in programme editorial would be captured under the proposed definition, despite the fact that the manufacturer or service provider having no control over their editorial inclusion.

b) the scope of the definition should be narrowed down to the field of the application, i.e. in the context of nutrition and health claims labelling:

iv. The CCFL agreed that Codex should adopt a definition of advertising only as it relates to the Guidelines on Health and Nutrition Claims. This must be stipulated explicitly, in order for the definition of advertising to apply only to the remit in which the definition was originally conceived. Without this qualification, the scope of its proposed application remains unclear.

v. It does not indicate the economic link between advertiser and advertisement

vi. It includes the term ‘indirectly’, which does not conform to international norms relating to advertising definitions in legislation and could result in a de facto ban.

Therefore, on the basis of the aforementioned rationale, and presuming it remains necessary to develop such a definition, the following definition is proposed:

“For the purposes of applying the Guidelines on the Use of Nutrition and Health Claims, advertising shall be defined as 'any paid representation (other than labelling) in any media that is made to promote directly the sale of a food product through the use of a health or nutrition claim.”

INTERNATIONAL CHEWING GUM ASSOCIATION (ICGA):

The International Chewing Gum Association (ICGA) welcomes the opportunity to provide comments on the proposed Codex Definition of Advertising in relation to nutrition and health claims at Step 3 of the procedure.

The ICGA represents the interests of the international chewing gum industry (chewing gum and gum base manufacturers and suppliers) and ensures that chewing gum and gum base products produced by its members are safe, wholesome and fulfil the highest quality standards wherever in the world they are manufactured and sold.

The ICGA submits that great care ought to be exercised so that the definition of advertising (1) restricts itself to covering "food advertising" alone and is "for the purposes of applying the guidelines on nutrition and health claims" and that it is specified as being so; and (2) applies only to *direct* promotion activities.

(1) the CCFL agreed that the definition of advertising should be adopted only as it relates to nutrition and health claims and to this effect, the ICGA advocates that in order to avoid any ambiguity as to the actual scope of this definition, it should ultimately be included into paragraph 2 of the Codex Guideline for Use of Nutrition and Health Claims[1].

(2) The draft definition proposed by Canada is inappropriate for application at international level. Indeed it does not take into consideration the economic link between advertiser and advertisement and includes the term 'indirectly' which does not conform with international standards relating to advertising.

In view of the above considerations, the ICGA submits that the definition of advertising in relation to nutrition and health claims should be worded as is outlined below:

"[*"for the purposes of applying the Guidelines on the Use of Nutrition and Health Claims, advertising shall be defined as 'any (paid) representation (other than labelling) in any media that is made to promote directly the sale of a food product through the use of a health or nutrition claim"*]"

The ICGA once again thanks the Committee for this opportunity to submit its comments.

INTERNATIONAL UNION OF FOOD SCIENCE AND TECHNOLOGY (IUFoST):

The International Union of Food Science and Technology (IUFoST), the global organisation of food science and technology representing over 200,000 scientists and technologists in 62 countries is offering an amendment to the proposed CODEX Advertising definition as follows:

"Advertising: any representation to the public, by means other <u>than a labelled container displayed on sale</u>, that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of food."

NATIONAL HEALTH FEDERATION:

The National Health Federation (NHF) respectfully submits the following comments and notes that the current proposed definition of advertising reads as follows:

> "*Advertising: any representation to the public, by any means other than a label, that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of the food*."

[1] CAC/GL 23-1997, Rev. 1-2004

Problems with Current Definition

Unfortunately, the current proposed definition is so overbroad and so overly-inclusive that it will create more problems than it solves. Some of the problems we anticipate with the Proposed Definition include the following:

- **Overbreadth of the Definition.** Any advertising suggesting particular nutritional uses for a product will effectively be viewed as a health claim, meaning that if the health claim is not approved, any advertising containing an unapproved health claim would be illegal.

- **Emerging Science.** Advertising, based upon the proposed definition, would include all verbal statements. This would mean, for example, that a presentation made by a company to potential customers, in which findings from a scientific study were presented, would be viewed as advertising. This would block any dissemination of emerging science if the dissemination were to occur in a commercial context, given that emerging science is unlikely to be sufficient to allow scientific substantiation of health claims.

- **Advertisements including Scientific References.** Any advertisement that attempted to inform consumers of the value it places upon science would be prevented from including reference to published, peer-reviewed scientific journals if the implied health claim made in the journal, or, in the advertisement as a whole, was not yet an approved health claim.

- **Disproportionate Impacts on Small Businesses.** If a company is prevented from promoting its existing or emerging science to potential customers, it is very difficult for them to fund further studies to allow the development of more conclusive findings that would be accepted in the "scientific substantiation of claims" process. It would also serve as a brake upon further advancement in knowledge.

- **Education.** Any educational literature or website that refers to published scientific research that was used directly or indirectly by a company commercially would come under the ambit of the proposed advertising definition.

- **Freedom of Opinion and Expression.** Most of the work of non-commercial, non-governmental organizations, with interests in the promotion and protection of natural healthcare, could be perceived (given the proposed definition) as advertising for companies that, directly or indirectly, support their work. This is clearly nonsense and a major infringement of Article 19 of the UN's Universal Declaration of Human Rights, viz: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

More Narrowly Tailored Definition

Bearing all of the above in mind, the NHF suggests that the Proposed Definition read as follows (with changes highlighted):

"*Advertising: any **commercial** representation to the public, by any means other*

> *than a label, that is intended ~~or is likely~~ to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of the food.*"

Inserting the word "commercial" in front of the word "representation" would substantially alleviate many of the concerns about the Proposed Definition inhibiting non-commercial free speech and educational rights. Such rights should be protected.

In the second instance, deleting the phrase "or is likely" would eliminate the considerable vagueness and overbreadth of that term that would otherwise cause numerous problems by roping into its ambit all manners of communication that would never be considered advertising. Advertising, by the customary and usual definition, is an ***intentional*** and deliberate act. In point of fact, there is a generous body of Anglo-Saxon law – both statutory and case – that makes a distinction between intentional and non-intentional representations. We therefore submit that the current Proposed Definition violates a substantial body of long-established law, which definitional problems must be cured by way of the above changes.

Summary

In short, the current proposed definition of advertising must be amended to avoid being overbroad and overly-inclusive. In its current form, it grossly errs on the side of attempting to cover all utterances that might be deemed in any way "advertising." This is highly offensive to those countries and individuals enjoying free-speech rights that would be directly infringed by such an overly-broad definition.

To those who think that the regulatory authorities will judiciously use the current overly-broad definition in a wise and judicious manner without interfering with the free-speech rights of institutions and individuals, we need only remind them that many centuries of history are replete with example after example of constant misuse by regulatory officials of such overly-broad language to arbitrarily infringe on those rights. After all, that is precisely why constitutions were put in place so as to avoid such arbitrary infringements by public officials.

We must be equally careful here and only create a definition that is ***narrowly*** tailored to achieve the precise purpose required without infringing on free-speech rights. To do otherwise would be a dereliction of our own duties.

WORLD FEDERATION OF ADVERTIZERS (WFA):

In 2004, the Codex Alimentarius Commission (CAC) adopted a set of Guidelines for the Use of Nutrition and Health Claims on Food. Discussions regarding a potential definition of advertising resumed at the latest CCFL meeting, held on 1-5 May 2006 in Ottawa. In July 2006, the Canadian government circulated to Codex members and interested international organisations its draft definition of advertising in relation to nutrition and health claims.

The proposed Canadian draft definition is: "Advertising: any representation to the public, by any means other than a label that is intended or is likely to influence and shape attitude, beliefs and behaviours in order to promote directly or indirectly the sale of the food."

We welcome the opportunity to send comments on the proposed draft definition of advertising in relation to nutrition and health claims. On reviewing the proposed draft definition, we have the following concerns:

a. The current definition does not discriminate between paid representation and any representation.

   i. Whilst advertisers must be responsible for advertising content that they create, the current definition would place the responsibility for all content – created by any user – on the shoulders of the advertiser. Consumers are increasingly engaging with advertising communications in an interactive way, often tailoring advertiser-generated content and creating their own content from it.
   ii. Advertisers cannot and should not be responsible for brand-related content that they do not produce. The current Canadian definition will place the burden onto advertisers where they have not been responsible for the content.~ This will include, but will not be limited to: press coverage in the media, editorials or opinion pieces, reports, word-of-mouth, blogging, personalised/tailored advertising, etc.
   iii. It is quite conceivable that the appearance of products or services (such as restaurant chains, cars, domestic appliances, etc.) appearing in programme editorial would be captured under the proposed definition, despite the fact that the manufacturer or service provider having no control over their editorial inclusion.

b. The definition is too broad

   i. The CCFL agreed that Codex should adopt a definition of advertising only as it relates to the Guidelines on Health and Nutrition Claims. This must be stipulated explicitly, in order for the definition of advertising to apply only to the remit in which the definition was originally conceived. Without this qualification, the scope of its proposed application remains unclear.
   ii. It does not indicate the economic link between advertiser and advertisement
   iii. It includes the term 'indirectly', which does not conform to international norms relating to advertising definitions in legislation and could result in a de facto ban.

c. On the basis of the aforementioned rationale, we propose the following definition:
   i. "For the purposes of applying the Guidelines on the Use of Nutrition and Health Claims, advertising shall be defined as any paid representation (other than labelling) in any media that is made to promote directly the sale of a food product through the use of a health or nutrition claim."

WORLD SUGAR RESEARCH ORGANISATION (WSRO):

It is the opinion of WSRO that while this definition has considerable merit it has significant disadvantages related to the fact that the definition is drawn too widely.

The wording highlighted in bold (by us)

> *'**any** representation to the public…...in order to promote directly **or indirectly** the sale of the food'*

could limit the ability of any organisation (whether trading or not) to convey factual educational information to health professionals, journalists and public authorities, as well as to the public at large. The legitimate activities of organisations that are not engaged in trade but are funded partly, or wholly, by industry could be seriously hampered by mischievous challenges by pressure groups intent on monopolising public information. It could also have the same effect on charities wholly unconnected with trade if they convey information to which pressure groups take exception.

Furthermore the wording highlighted in bold (by us)

> *'….to **promote** directly or indirectly the sale of the food'*

is open to very wide interpretation. A non-commercial organization that recommends the consumption of fruit and vegetables, for example, would be deemed to be engaged in advertising. In countries where there are taxes on advertising, this could seriously impede useful nutrition education work.

We would argue that, at a time when Governments are encouraging the food industry to play a constructive part in educating and informing the consumer about nutrition, it would be a major discouragement to such worthwhile activity to have it potentially considered to be advertising.

The definition of advertising should exclude legitimate educational and information activities, whether or not they are associated with a particular product class, ***unless*** such activities can be demonstrated to be materially misleading. In judging this matter, regulatory authorities and the Courts should have regard to the local circumstances in which the education and information is conducted. In particular, even though health professionals, government officials and journalists could be said to be sectors of the public, they should be excluded from any restriction on the provision of written or graphical material or verbal comment. These groups of well informed and well educated citizens should be allowed to judge the worth of such material for themselves.

We would urge the Codex Alimentarius Commission to consider a more circumscribed definition of advertising than that proposed. Indeed, there are exceptions specified in Section 8.10 of Canada's Guide to food Labelling and Advertising on "Educational Material Versus Advertising Material" that are not mentioned in this paper and could usefully be included in this proposal (http://www.inspection.gc.ca/english/fssa/labeti/guide/ch8e.pdf).