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To the Legislative Council Panel on Food Safety and Environmental Hygiene

Submission by FrieslandCampina (Hong Kong) Limited to the Hong Kong Legislative Council Panel on Food Safety and Environmental Hygiene on the Proposed Regulatory Framework on Nutrition and Health Claims on Infant Formula, Follow-up Formula, and Prepackaged Foods for Infants and Young Children Under the Age of 36 Months in Hong Kong

FrieslandCampina commends the Hong Kong SAR Government and supports its efforts to create a clear and transparent regulatory framework to govern nutrition and health claims on infant formula, follow-up formula and prepackaged foods for infants and young children under the age of 36 months marketed in Hong Kong by companies in our industry. The purpose of this submission is to both endorse the position of the Hong Kong Infant and Young Child Nutrition Association (named as "HKIYCNA" below) regarding its comments and input on the proposed regulatory framework and to provide additional perspective on that proposed framework based on our experience in the more than 30 countries around the world in which our company operates.

FrieslandCampina has had a presence in Hong Kong for more than 77 years and we are proud to be a responsible member of the Hong Kong business community. As a global company that places compliance as a top priority, we are able to consider the proposed framework in a global context and, as such, we are able to share our experience complying with relevant regulations in the European Union (EU) and other relevant jurisdictions.

As we indicated in our submission to the Working Group on the Regulation of Nutrition and Health Claims on Formula Products and Food for Infants and Young Children in Hong Kong of the Centre For Food Safety in July 2014, we believe that this is an issue regarding the best approach the government should take to protecting the interests of consumers while also preserving access to the factual and scientifically substantiated information that consumers require to make informed product-purchasing decisions for their families and babies.

After reviewing the Consultation Document, we are providing, below, topline comments on the proposed framework. Those comments are based on four key areas of focus – legislation approach, approval mechanism, technical advice, and implementation timeline and grace period.

Legislation Approach

a) Our company endorses regulation through legislation - as long as the application of that legislation ensures a level-playing-field for all companies in our industry in Hong Kong and minimizes any possibility of confusion in the market if it is to be applied on a voluntary basis;

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b) We also believe that regulation must be done in a way that recognizes the rights of responsible companies to carry out their business activities in Hong Kong in a manner that is consistent with Hong Kong's commitment to respect global practices and free-market principles;
c) We believe an inclusive approach to product claims is the best means of ensuring that parents have access to the scientifically substantiated nutrition information they require when considering the purchase of products in our industry;
d) We support the proposed mechanism to prohibit disease risk-reduction claims as outlined in the Consultation Document;
e) All products imported to Hong Kong through different channels, including unofficial importation, should comply with the local legislation. An effective enforcement mechanism is essential to determining the party responsible for the importation and sale of any non-complying products.

Approval Mechanism

f) Given that all infant formula, follow-up formula , and prepackaged foods for infants and young children under the age of 36 months are supplied to Hong Kong through importation, we suggest that the Government do everything possible to ensure that the application process is simple to operate and comply with and that it is aligned with international product claim review practices;
g) We suggest that the Government accept approval by the relevant health authorities in a number of designated jurisdictions as the key supporting documentation for proposals for claim approval in Hong Kong, including documentation from the European Food Safety Authority (EFSA) of the EU, or the US Food and Drug Administration (FDA), and relevant bodies in countries such as New Zealand and Australia, which are the most widely used product claim regulatory regimes in the world;
h) We support the creation of a positive list of approved claims and the clear communication with the industry of the countries and relevant regulatory authorities that are used as reference for each of the approved claims, and we suggest that there be a continuous update of the list to keep abreast of scientific developments;
i) It is important for the Government to provide sufficient and transparent information related to approval procedures, the required supporting documentation, the review processing timeline, etc., for the submission of proposed claims, including those claims included on any positive list. That will ensure smooth operation of the approval process;
j) For claims that have not yet been approved by any other designated jurisdiction, we suggest that the Government outline a clear proposal review and approval process and the related documentation requirements with the relevant timeline and related costs;

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k) We request that the legislation and the technical guidelines provide clarity regarding the details and timeline for the mechanism to appeal any claim proposal rejected by the Government;
l) From a purely administrative standpoint, we don't believe it is practical or necessary to provide reports and declarations of approval or rejection of claim proposals in other jurisdictions;
m) We ask that Government continue to ensure clarity for the public and our industry regarding all stages of the legislative development and review process up to the point of the final submission of the legislation for approval;

Technical Advice

n) We understand from clause 4.12* and 4.14* of the Consultation Document that the Government suggests that reference be made to the NL Scheme for general prepackaged foods, and that Dietary Reference Intakes (DRIs) or Nutrient Reference Values (NRVs) for the respective claims for the designated age group of 0-36 months as a prerequisite for approval of all nutrient content claims, nutrient comparative claims and nutrient function claims. We suggest that the Government clearly outline the development timeline, and that it enforce the new legislation only when the DRIs or NRVs for the age group of 0-36 months for international or local practice are available. In the interim, we suggest that Government continue current local practice to accept claims that are scientifically substantiated;
o) We request that the Government ensure that the industry will have the opportunity to express its views in the development of the relevant technical guidelines for the new regulatory framework and that the technical guidelines will be made available either before or on the day the legislation is published;

Implementation Timeline and Grace Period

p) We agree with the proposal to include this new regulatory framework as subsidiary legislation to the current Cap 132W legislation;
q) Based on our industry experience in compliance with the product labelling legislation, we can foresee that a process based on negative vetting may result in a shortened grace period considering that there may be potential challenges related to the time required for official reviews and discussion, and delays in the launch of finalized technical guideline. We understand the treatment of every single subsidiary legislation could be different. For that reason, we request that this new regulatory framework adopt a positive vetting approach;
r) We believe that the Government will receive a large number of claim approval requests as soon as the legislation is finalized and published. From a practical and administrative standpoint, we suggest that government determine a clear approval time frame for the first submissions, and that the grace period for industry compliance be set at not less than 24

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months from the date of formal approval of claims that are granted, with the aim to allow sufficient time for implementation by the industry. Companies in our industry may need that time to revise labeling artwork design and production, address changes in pre-export inspection procedures by government authorities in the manufacturing country, ship products, and carry out phase-in and phase-out procedures at the retail level etc.;

s) We consider supply stability reassurance at the retail level to be essential and suggest that the Government consider that claim proposals for brands supplied to the Hospital Authority, under Hospital Authority milk tenders, be given priority in any review process.

FrieslandCampina is committed to manufacturing and selling high-quality products in a manner that is responsible and in compliance with local regulations and codes. This commitment is demonstrated by the sophisticated processes applied to the manufacture of our products as well as by the stringent standards we apply to all aspects of our operations.

We thank the Government and the Panel for providing us with an opportunity to provide our perspective on the Consultation Document. We support any regulation that links application approvals with factual and scientifically substantiated information. Please be assured that we will continue to cooperate with the Government and the Panel as this consultation process is carried out, and that we will continue to study the Consultation Document and provide our inputs to the Government throughout the consultation period.

FrieslandCampina (Hong Kong) Limited
Feb 10, 2015