



World Health Organization (WHO) Public Consultation:

Safeguarding against possible conflicts of interest in nutrition programmes: “Approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level”

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Introduction

The Grocery Manufacturers Association (GMA)¹ thanks the World Health Organization (WHO) for the opportunity to comment on the draft “Approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level.”

The draft tool and accompanying documents impact a number of issues of interest to GMA, particularly regarding the transparent application of good regulatory practices during policy development and the role of the private sector in contributing to improving nutrition and health. While GMA supports member states’ efforts to develop transparent, equitable approaches to maximizing the benefits and managing the risks of engagement with non-state actors, we have serious concerns about the draft tools and discussion documents in the present consultation. Contrary to recognized international best practice, the draft tools and documents recommend member states significantly restrict engagement with large swaths their own citizenry, without regard to their own legal frameworks, international obligations for transparency in regulatory development, or standards for good regulatory practice (GRP).²

Furthermore, GMA strongly encourages the WHO to reconsider the practices by which it develops and releases documents for public consultation. Stakeholders, particularly the private sector, have not had transparent access to the technical consultation that led to development of this work, nor is the comment period sufficient to allow meaningful input. Similarly, GMA doubts that comments can be adequately reviewed and taken into account by WHO or member states in the short time prior to the planned October in-person consultation.

Nevertheless, industry stands ready to continue working collaboratively with governments, consumers, and other stakeholders to help provide the products and information people need to eat healthy, balanced diets. To truly achieve the Sustainable Development goals, all facets of

¹ Founded in 1908 and based in Washington, D.C., GMA is the voice of more than 300 leading food, beverage and consumer product companies that sustain and enhance the quality of life for hundreds of millions of people in the United States and around the globe.

² For example, see obligations for transparency as elaborated in the World Trade Organization Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Agreements. See also, the 2012 Organization for Economic Cooperation and Development (OECD) Recommendation of the Council on Regulatory Policy and Governance.

society, including the private sector, have an important role to play in supporting economic growth and development and helping people everywhere achieve and maintain healthy diets and lifestyles. Given the complex nature of nutrition and health, real progress is only possible through constructive, transparent engagement between governments, the private sector, and civil society.

The food and beverage industry's many contributions to global efforts to improve nutrition and combat NCDs are guided by science-based principles that include:

- Providing a range of nutritious product choices and marketing them in ways that promote healthy lifestyles;
- Emphasizing the importance of achieving a balance throughout life of physical activity and nutrition;
- Improving awareness and understanding of nutrition and energy balance;
- Undertaking responsible advertising practices, taking into account the special needs of children;
- Communicating clearly through labeling, packaging, websites, brochures, and in-store communications to enable consumers to make informed choices; and
- Partnering with other stakeholders in these endeavors.

The food and beverage industry has undertaken significant initiatives across all of these areas, in particular on new and reformulated products, packaging innovations, enhanced nutrition information, communications to promote healthy lifestyles, and partnerships aimed at promoting physical activity and nutrition education. We provide further detail on these efforts in the appendix to this document. Much work remains, but we are committed to continuing our efforts to work in collaboration with governments, the WHO, and other stakeholders in this endeavor.

General Comments

The food and beverage industry has a long and successful history of engaging national governments during policy development and other stages of consultation, in addition to engaging with international organizations and carrying out various voluntary initiatives individually and in collaboration with public-private partnerships. In fact, key public health initiatives, such as the development of national salt reduction strategies, could not realistically have been achieved without constructive engagement between health authorities and the food and beverage industry.

It is not appropriate for the WHO to establish mechanisms that counsel member states to disregard the knowledge, expertise, and resources of non-state actors, so long as this communication is conducted transparently and reserves the independence of member states who rightfully maintain the exclusive prerogative to create policies. At the same time, it is incumbent on member states to observe their legal and normative obligations to free and open governance to deliver regulations that meet public policy objectives and will have a positive impact on the economy and society. During the policy development process, the role of the private sector is helping to inform science-based policy development and assisting in implementation, drawing on our breadth of technical expertise (e.g., in product reformulation) to help people everywhere achieve and maintain healthy diets and lifestyles.

GMA further notes that the draft tools and discussion documents apply an inherently negative view to engagement with the private sector, rather than taking an equitable view of the benefits and risks of engaging all types of non-state actors. As we observed when the WHO developed its Framework for Engagement with Non-State Actors (FENSA), all types of non-state actors similarly have areas of particular expertise and knowledge they can bring to bear to assist the WHO and member states in achieving their missions. At the same time, all non-state actors have intrinsic interests which may sometimes create actual or perceived conflicts. As such, all stakeholders must disclose their interactions and be subject to the same standards for engagement. Robust, transparent disclosure standards and clear, equitable processes can identify, manage, and resolve potential conflicts of interest appropriately, in an unbiased and timely manner.

Comments on the “Discussion Paper”

GMA notes that the discussion paper claims the proposed approach is “developed consistent and in line with WHO’s overall policies and practices including, inter alia, the WHO Framework for Engagement with non-State Actors.” However, we observe discrepancies between the documents throughout. Several terms defined in the discussion paper are not included in FENSA or are more broadly used in the present consultation, including: “non-state individuals,” “arm’s-length,” and “purpose of engagement.” More fundamentally, the approach in the present consultation of isolating only one kind of non-state actor (the private sector) and, indeed, isolating a single sector is, itself, inconsistent with the approach taken in FENSA. Nor does the present consultation sufficiently take into account the benefits of engagement, despite FENSA’s considerable content on that topic. Member states and non-state actors spent significant time developing FENSA, its definitions, and are still working to understand the implications of its implementation. GMA requests the WHO reconsider these divergences and prioritize work to efficiently and equitably implement FENSA rather than recommending member states adopt new, burdensome, and overly restrictive rules for engagement without regard to their existing domestic and international legal obligations.

It is critical to underline the paramount importance of members states’ domestic and international legal frameworks. Member states’ own requirements and procedures governing transparency in rulemaking, stakeholder consultation, free speech, and other related issues are beyond the scope of the WHO. The draft tool and discussion documents should be revised throughout to refer to conformance with relevant domestic and international legal obligations.

Comments on the “Introductory Paper”

GMA requests the WHO review the introductory paper to ensure consistency and clarity of definitions when compared to the “discussion paper,” taking into account the comments above. While the introductory paper makes reference to “multistakeholder approaches,” “policy coherence,” and “whole-of-government approaches,” it does not appear to meaningfully consider the policy linkages and synergies that can be achieved by leveraging contributions of both public and private sector actors. For example, the OECD screening tool notes, “The private sector has a central role in advancing innovation, creating wealth, mobilizing jobs and driving sustainable development.”

In general, GMA notes areas of significant overlap between the “discussion paper” and the “introductory paper” and a general lack of clarity in both documents. The introductory paper makes clear one organizing principle with which GMA strongly disagrees, namely that “government’s engagement with non-state institutions and individuals may be successful if it conforms with government’s agenda.” Governments should not pre-judge the outcomes of their agenda, and government and industry share many common objectives, specifically in this context the objective to improve nutrition. Agreement with specific policy or other tactics should not be a prerequisite for engagement.

Of the subsequent general principles identified, and taking into consideration the comments above regarding national legal obligations for rulemaking and protected speech, GMA notes particular concern with the following:

- “Appropriateness of role:” All stakeholders can play appropriate roles, and engagement with any stakeholder may produce actual or perceived conflicts of interest. The relevant questions to assess actual or perceived conflicts relate not to an actor’s sector but rather to the transparent management of inputs and outcomes in policy considerations. Further, it is inappropriate for the draft documents to take an inherently negative view of the industry responsible for making and distributing the products that consumers around the world rely on every day. The food and beverage industry is a key contributor to economic growth, development, employment, and nutrition and, as stated above, has more than demonstrated commitment and capacity for meaningful inclusion in policy debate. Moreover, the negative connotation in the draft document’s discussion of industry “tactics” and comparison to other should be deleted.
- “Policy coherence:” The introductory paper seems to take a negative view of the goals of other ministries and their potential alignment with non-state actors, rather than recognizing that governments must assess holistic priorities and thereby align actions of all ministries. The SDGs are already agreed as whole-of-government priorities by member states. GMA suggests the WHO focus on helping member states assess how inter-ministerial coordination and aligned actions can accelerate achievement of the SDGs.
- “Legal framework:” GMA agrees that transparent and accountable regulations are critical, and good governance (including anti-corruption measures) are indeed critical to government’s ability to succeed. However, the scope of this paragraph appears well outside the mandate and expertise of the WHO.

Comments on the Decision-Making Process and Tool

Given the extensive concerns raised with the rationale and content of the discussion paper and the introductory paper, GMA believes the WHO should postpone consideration of any decision-making process or tool pending resolution of these concerns. In any future draft, any specific tools should clearly and explicitly reference the context of national and international legal

obligations and, indeed, the difficulty of laying out global processes and tools given the diversity of national contexts.

No tool recommended by the WHO should include the “exclusionary criteria” on page 6, which are not consistent with FENSA, nor with meaningful approaches to transparency and open governance in domestic or international contexts.

Finally, GMA notes that implementation of the tool as currently drafted would be unnecessarily burdensome and would require prohibitively-high budgetary and staffing resources. Implementation would be infeasible, potentially leading to arbitrary and unnecessarily restrictive approaches.

Conclusion

GMA encourages the WHO to explicitly recognize the benefit of engaging with non-state actors as an important opportunity to align evidence-based efforts that leverage each stakeholder’s strengths and resources to accelerate progress and help people everywhere achieve and maintain healthy diets.

If adopted by member state governments, the proposed approach would deprive member states of resources and expertise necessary to improve public health. Any future consideration of national approaches to managing the benefits and risks of engagement should include transparent, consistent rules that reflect and encourage the value of multi-stakeholder, evidence-based initiatives. Policies should not imply or assume that conflict of interest concerns apply only to the private sector and should recognize the importance and legitimacy of the private sector’s role and contributions.

At a time when governments, international institutions, the private sector, and civil society are increasingly aware of the critical need to work together in innovative and mutually-beneficial ways, the WHO risks isolating members and damaging their own credibility and functioning by moving in the opposite direction to close off partnership opportunities. Many governments have made advances in transparent and inclusive rulemaking, inviting views from all that may be impacted, emphasizing freedom of speech and the right to inform the policy debate. The WHO should both apply and recommend similar good governance practices in working with stakeholders. Due to the exceedingly short timeline for comments on the current consultation, and the significant foundational concerns raised here, GMA requests the WHO withdraw the current consultation and reconvene a transparent, inclusive platform for discussion of appropriate member state approaches to engaging non-state actors.

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Appendix: Industry Contributions to Improving Nutrition

To augment the suggestions above and provide further information about industry's contributions to improving nutrition, GMA includes below some illustrative examples of industry achievements in the United States. These approaches offer important lessons learned that can be considered for implementation of nutrition policies and initiatives in other settings.

Product Innovation

GMA has documented efforts by U.S. food and beverage companies to reformulate and innovate products and provide clear nutrition labeling and consumer information. In 2014, GMA published cumulative results (2002-2013) of these efforts by 69 member companies representing about \$245 billion in annual U.S. sales (roughly half of U.S. food and beverage sales). Highlights include:

- 94 percent of companies reported nutritional improvements in over 30,000 products and sizes, with reductions in saturated fat, trans-fat, calories, sugar and carbohydrates and sodium;
- 81 percent of companies reported providing enhanced front-of-pack labeling information; and
- 77 percent of companies reported sponsorship of national and local initiatives to improve nutrition education and encourage regular physical activity, investing over \$300 million in these activities between 2002 and 2013.

A separate study in 2014 by GMA demonstrated a 16 percent reduction in sodium in member-company products purchased between 2008 and 2013, with decreases appearing in those food categories that contributed the most to sodium intakes in the United States.

To further demonstrate the impact of industry initiatives, GMA offers the example of the Healthy Weight Commitment Foundation (HWCF). Founded in 2009, the HWCF is a partnership between industry, non-governmental organizations, and educators whose aim is to reduce obesity, especially childhood obesity. HWCF members voluntarily pledged to collectively remove one trillion calories from their products (against a 2007 baseline) by the end of 2015. HWCF focuses its efforts on families and schools and promotes ways to help people achieve a healthy weight through energy balance – calories in and calories out.

A study published in 2014 by the American Journal of Preventive Medicine and funded by the Robert Wood Johnson Foundation (RWJF) found that by 2012 HWCF participating companies had collectively cut 6.4 trillion calories, exceeding their 2015 goal by more than 400 percent. Companies achieved this calorie-reduction goal by taking a variety of actions, including innovating lower-calorie products, reformulating products where possible, and reducing portion sizes.

Researchers at the Hudson Institute evaluated the impact of HWCF's commitments on product sales. The study concluded:

- 82 percent of participating companies' sales growth was driven by lower-calorie products – over four times the growth rate for higher-calorie products;
- Lower-calorie products' sales increased \$1.25 billion vs. less than \$300 million for higher-calorie products; and
- Lower-calorie products accounted for ten of the 15 new products with sales of over \$50 million.

Nutrition Information and Education

GMA supports fact-based nutrition labeling that helps consumers make informed choices about balanced diets. Facts Up Front (FUF) is a voluntary initiative created in 2011 by the Washington, DC-based Grocery Manufacturers Association (GMA) and the Food Marketing Institute (FMI). FUF is a simple and easy-to-use labeling system that puts key nutrition facts on the front of food and beverage packages – displaying the calories, saturated fat, sodium, and sugar in each serving.

Almost 90 percent of U.S. grocery sales by GMA members use FUF. GMA members have made significant investments to develop the FUF consumer website (www.factsupfront.org), consumer research, and stakeholder outreach including media campaigns and ongoing consumer education efforts. To continue to improve consumer understanding, GMA and FMI are extending the reach of consumer education efforts through key partnerships with groups such as Share our Strength. Share Our Strength's Cooking Matters program, in support of its goal of "No Kid Hungry," will feature FUF in training materials for teaching basic nutrition, shopping, and cooking skills to individuals in low-income areas in the United States.

A study published in September, 2015³ in the Journal of Consumer Affairs reflects the Facts Up Front communications campaign evaluation survey. The publication provides further support that Facts-Up-Front icons are visible, easy to understand, and helpful to the consumer. Additionally, two important articles on front-of-pack nutrition labeling were published in respected journals in spring 2014. The first article, published in the Journal of the Academy of Nutrition and Dietetics (JAND)⁴, is based on consumer research GMA commissioned the International Food Information Council Foundation to conduct in 2010 to examine consumer comprehension, ease of understanding, and interpretation of nutrition information in the uniformly formatted, voluntary front-of-package labeling system that was under consideration by GMA and FMI. The research and subsequent JAND article finds that robust front-of-package labeling can significantly

³ Kees, J. and Fitzgerald, M. P. (2015), [Who Uses Facts Up Front? A Baseline Examination of Who is Using Standardized Front-of-Package Nutrition Disclosures](#). Journal of Consumer Affairs, 50: np.

⁴ Smith Edge, Marianne et al. [The Impact of Variations in a Fact-Based Front-of-Package Nutrition Labeling System on Consumer Comprehension](#). Journal of the Academy of Nutrition and Dietetics, 114: 843 - 854.e8.

improve consumers' ability to identify and understand a food's nutrition information, and to make informed choices about their purchases. Several articles in respected journals have found that fact-based front-of-package labeling like FUF significantly improves consumers' ability to identify and understand nutrition information and make informed choices about their purchases.⁵

GMA strongly supports efforts to improve and expand nutrition education. As noted above, GMA and FMI are extending the reach of consumer education efforts through key partnerships with groups such as Share our Strength. In addition, GMA is a founding member of the U.S. Nutrition Labeling Education Consortium (NLEC), a consumer-focused public-private partnership aimed at coordinating efforts to strengthen public information and education on food, menu, vending, and other nutrition labeling in the United States. NLEC is designed to bring together representatives from the food and beverage industries, health professional organizations, consumer organizations, and others, including potentially government liaisons to coordinate efforts for stronger consumer nutrition labeling education.

We note there are significant evidence gaps in understanding how label format impacts consumer behavior. GMA supports the development of science-based global standards in the Codex Alimentarius, for example, to establish dietary reference values for individual nutrients. Where science-based standards exist, GMA urges countries to work toward regulatory coherence wherever possible, so as to avoid unnecessary divergences.

GMA believes that all public health policies must be based on scientific evidence. International recommendations and national-level policies that are not based on science undermine international norms and standards, including those set by the Codex Alimentarius, and impose direct and indirect costs that could limit improvements to public health. Furthermore, interventions that isolate individual products or nutrients and fail to address total dietary consumption and lifestyles (including ways to encourage less sedentary behavior) are unlikely to impact meaningfully the incidence of obesity and NCDs.

Responsible Marketing

The 2010 WHO Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children formally recognized industry-led self-regulation as an effective means of reducing the impact of food marketing on children. U.S. companies have voluntarily taken concrete steps to help drive changes in the marketplace and improve the types of products advertised to children. In 2006, the U.S. Council of Better Business Bureaus (BBB) and leading U.S. food and beverage advertisers created the Children's Food & Beverage Advertising Initiative (CFBAI).

Under CFBAI's Core Principles⁶ participants commit that in advertising primarily directed to children under age 12 ("child-directed advertising") they will depict only healthier or better-for-

⁵ Kees, J., Royne, M. B. and Cho, Y.-N. (2014), Regulating Front-of-Package Nutrition Information Disclosures: A Test of Industry Self-Regulation vs. Other Popular Options. *Journal of Consumer Affairs*, 48: 147–174.

⁶CFBAI's Core Principles and other program materials are available on CFBAI's website at www.bbb.org/kids_food.

you foods. The participants agree to CFBAI oversight and to be held accountable for failure to comply with their commitments. CFBAI extensively monitors covered media for compliance and requires participants to submit detailed self-assessments annually. Each year CFBAI publishes a compliance and progress report.⁷ It has found outstanding compliance every year.

Since December 31, 2013, participants may advertise only foods that meet CFBAI's category-specific uniform nutrition criteria in advertising primarily directed to children under age 12. CFBAI's uniform nutrition criteria replaced and are stronger than previously used company-specific nutrition criteria.

⁷ A Report on Compliance and Progress During 2013 (Dec. 2014), available at <http://www.bbb.org/globalassets/local-bbbs/council-113/media/cfbai/cfbai-2013-progress-report-dec-2014.pdf>.