

# **Conventional Foods Being Marketed as ‘Functional Foods’**

**Comments of the National Association for the Specialty Food Trade, Inc.**

**Submitted to the Food and Drug Administration  
Docket No. 2002P-0122**

The National Association for the Specialty Food Trade, Inc. (NASFT) thanks the Food and Drug Administration for this opportunity to comment on “Conventional Foods Being Marketed as ‘Functional Foods’”.

## **NASFT**

NASFT, based in New York City, is the trade association for all segments of the specialty food industry. Specialty food products are foods and beverages that are differentiated from those in the mainstream, for example, by their creativity and novelty, their ingredients and their exceptional packaging. By virtue of their differentiation, specialty food products maintain a high perceived value and often command a premium price. According to the NASFT/Mintel *The State of the Specialty Food Industry 2006*, total specialty food sales at retail were \$34.77 billion. However, NASFT members are small businesses with an entrepreneurial spirit. Most have annual sales under \$5 million.

## **NASFT Members’ Products and Functional Foods**

Among the many products created and marketed by NASFT members are foods like tea and dark chocolate, as well as products with ingredients like blueberries and bran, not to mention the many others that could be considered “functional foods”. Some NASFT members market foods with added vitamins and minerals.

However, few NASFT members label their products with health or nutrition claims. The labels rarely declare the effect of the food or ingredient on the body or make overt health claims. The “functional” nature of a specialty food is secondary to its quality and traditional nutritive value. A “Contains...” statement or a graphic depiction of an ingredient are the preferred marketing tools for small food companies that sell functional foods. In other words, “functional” (the adjective) pairs with “food” (the noun and controlling concept). The dominant element is “food”.

### **Food Is Food**

NASFT believes that “food” is “food”, that functional foods are foods and that the current regulatory system is adequate at this time. NASFT does not support a new notification process or a changed (and probably more complex) system of committees and reviews.

### **New Regulations Unneeded**

NASFT as a representative of small businesses opposes unneeded regulatory initiatives that create onerous rules resulting in huge costs and commercial difficulties for small businesses. We believe that the current level of regulation of these foods by FDA is sufficient. There is no need now to expand the already complex and demanding system of regulation that applies to functional foods.

## **Harmonized Labels Needed**

The National Association for the Specialty Food Trade, Inc. also supports a harmonized approach (federal-state and government-government) to food labeling in general. As FDA considers its scheme for regulating functional foods, it should be aware of the barriers and burdens created by differing rules among the states, between the states and federal authorities and in international trade. Harmonization makes it possible for small food companies to engage more easily in interstate and international commerce.

As you are aware, the European Communities and Japan, among others, regulate functional food labeling. Canada has addressed the issue. These three jurisdictions are among the most important export markets for U.S. processed foods – markets that NASFT's small business members are beginning to penetrate. FDA, with the Office of the U.S. Trade Representative, should endeavor to bring the approaches to functional foods and other labeling topics into closer harmony or to urge a system of mutual recognition, so that the costs and complexities of exporting are limited.

## **Conclusion**

In conclusion, NASFT urges FDA to maintain the current approach to functional foods. No new rules are needed. It also urges FDA to work toward the harmonization of any new rules both within the United States and in international trade.

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