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FOOD LABELLING – THE CASE OF DAIRY PRODUCTS: ECONOMIC, LEGISLATIVE AND TRADE ASPECTS

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INTRODUCTION

Food labelling is a complex field, and its ramifications go beyond merely making information available to consumers examining food products on store shelves. Labels certainly provide information on product composition (nutritional value, quality, and potential allergen content), but they can also serve as an advertising vehicle.(1) Regardless of which role they play, they must comply with the following principle: the information given must not be misleading. Canadian regulatory requirements are designed to protect consumers, while ensuring fair competition for the industry.

International trade also influences the way in which food products are labelled. Thus the notion of country of origin labelling(2) (COL) has appeared, presenting two possibilities: it can provide information for consumers, and promotion for foreign producers and distributors. However, COL is disputed when it takes the form of technical barriers to trade – which is how it is viewed in the cattle industry, for example. In other sectors, though (notably the wine and spirits industry), the "appellation d'origine contrôlée" (AOC) is increasingly the subject of international agreements protecting the names and geographical origins of products such as Chablis (France), Ouzo (Greece) and others.(3) Far from being considered a discriminatory labelling approach, the AOC is often viewed as a source of more specific, and thus better, information, which does not mislead consumers and provides producers with their own distinctive brand in a highly competitive market. Without guaranteeing higher sales, the AOC nevertheless affords a certain trade advantage.

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(1) Not surprisingly, the authoritative labelling reference work in Canada is entitled *2003 Guide to Food Labelling and Advertising* (see the following section of this text).

(2) For further details on this concept, see *Country of Origin Labelling*, PRB 03-02E, Parliamentary Information and Research Service, Library of Parliament, 10 April 2003.

(3) One example is the agreement signed in September 2003 between Canada and the European Union, which led Canada to draft legislation (the Spirit Drinks Trade Act) to provide the legal basis for implementation of the trade agreement.

The label is often the decisive element for the consumer who wishes to buy a food product. The arrival on the market of genetically engineered food products, the sharp increase in the number of organic products, consumers' demand for nutrition information, and the rising number of new products are all competitive factors that call for clear, specific labelling. This requirement does not prevent processors from developing new products (many of which are substitute products), or from promoting them.(4) In an arena as competitive as the retail food market, where annual sales in Canada in 2002 totalled more than $24 billion (constant 1997 dollars), the economic aspects of labelling are extensively debated among the main players in the agri-food industry. Dairy product labelling in Canada is an interesting, and also striking, example of the complexities facing an entire industry, and of the power relationships – or diverging interests – among Parliament, dairy producers, dairy processors and food retailers.

In a complex food market, balance among the stakeholders' various needs is difficult to achieve, which explains why it takes so long to amend regulatory labelling measures. This document examines and analyzes the economic, legislative and trade context, both internationally and interprovincially, of food labelling in general and, more particularly, of the recent legislative proposal on dairy product labelling made in the context of the study of Bill C-27, the Canadian Food Inspection Agency Enforcement Act.(5)

LABELLING STANDARDS IN CANADA

In Canada, responsibility for developing and administering food labelling requirements is shared between two federal organizations, Health Canada and the Canadian Food Inspection Agency (CFIA).

Health Canada is responsible, under the *Food and Drugs Act* (FDA), for developing policies and standards relating to the health, safety and nutritional quality of food sold in Canada.

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(4) In the case of ice cream, for example, some substitute products do not contain cream; instead, they contain butteroil, made from milk fat.

(5) Short title. The full title is: An Act to regulate and prohibit certain activities related to food and other products to which the Acts under the administration of the Canadian Food Inspection Agency apply and to provide for the administration and enforcement of those Acts and to amend other Acts.

The CFIA is responsible, under the FDA, for the administration of policies intended to prevent misrepresentation and fraud with respect to food labelling, packaging and advertising, and for the administration of general provisions on the labelling of fish and agri-food products with regard to grade, quality and composition, as specified in the *Canada Agricultural Products Act* (CAPA), the *Meat Inspection Act* and the *Fish Inspection Act*. In addition, the CFIA is responsible for administering the food-related provisions of the *Consumer Packaging and Labelling Act* (CPLA), including basic food label information, net quantity, metrication and bilingual labelling.(6)

Responsibility for inspecting food products at all marketing levels falls to the CFIA. At the retail level, the Agency administers the Retail Food Inspection Program as part of its mandate to ensure food safety and protect consumers by enforcing the provisions of the federal legislation for which it is responsible, as well as the provisions of a number of provincial statutes. The labelling provisions of those acts are designed to protect consumers against commercial fraud and product misrepresentation and to help them make informed food product choices by establishing standards with regard to net quantity, quality, composition, substitution, labelling and advertising for all food sold in Canada. The CFIA shares responsibility for the safety of food sold at the retail level with the provincial health services.

Where violations occur at food stores, restaurants or other retail food outlets, CFIA inspectors inform retailers of the regulatory provisions they must respect and take any necessary measures to enforce the law.

A. Purpose of Labelling

For agri-food processors and retailers, the label on a food product is a way of communicating product information to buyers easily and directly. For consumers, it is one of the primary means of differentiating among different foods and brands and making informed purchasing choices.

A label serves three primary functions:

- it provides basic product information (including common name, list of ingredients, net quantity, “best before” date, grade/quality, country of origin, and name and address of manufacturer, distributor or importer);

(6) See the CFIA Web site, *2003 Guide to Food Labelling and Advertising*, Chapter 1 (http://www.inspection.gc.ca/english/fssa/labeti/guide/ch1e.shtml#1.2).

- it provides health, safety and nutrition information. This includes instructions for safe storage and handling, nutrition information (e.g., details in the Nutrition Facts table regarding the quantity of fats, proteins, carbohydrates, vitamins and minerals present per serving of stated size), and specific information for consumers following restricted diets;

- it acts as a vehicle for food marketing, promotion and advertising, in order to encourage sales (via label vignettes, promotional information and claims such as "low fat," "cholesterol-free," "good source of fibre," "product of Canada," "natural," "organic," "no preservatives added," etc.).(7)

In short, the label is often the element that makes a consumer decide to buy, or not to buy, a food product. The purpose of labelling is thus essentially twofold:

- to inform consumers without deceiving them; and

- to serve as a means of advertising.

B. *2003 Guide to Food Labelling and Advertising*

The authoritative reference work on labelling in Canada is the *2003 Guide to Food Labelling and Advertising* (the "*2003 Guide*"). Its importance is evident in a market as competitive as the agri-food market, where labelling and advertising go hand in hand. Known originally – in 1961 – as the *Guide for Food Manufacturers and Advertisers*, then as the *Guide to Food Labelling and Advertising*, the document was revised in 2003 and published under its current title. It has served as an authoritative reference for the industry since its original publication.

The 2003 edition, issued 10 years after the 1993 revision, reflects amendments to the *Food and Drug Regulations* concerning nutrition labelling, nutrient content claims and health claims. Consultations were held on it, and stakeholders were able to make comments until the end of December 2004. The Guide is an evolving document that can be amended in future to further clarify existing policies or include new ones.

The *2003 Guide* is based on the following principles.

(7) *Ibid.*

Guiding principles for the federal food labelling and advertising system

1. Policies will be developed in a responsible manner to ensure that federal food labelling policies and regulations:
   - are necessary to protect health and safety and to prevent product misrepresentation and fraud;
   - promote an informed food choice, by providing consumers with reliable and comparable information, that reflects current food technology and nutrition recommendations and that can be easily understood;
   - support marketplace equity and fair competition;
   - respect obligations under international and federal provincial trade agreements;
   - do not entail costs of implementation that outweigh benefits to society.

2. Consultations will be conducted in a timely and thorough manner with interested parties so that regulations and policies will be responsive to stakeholder needs.

3. Final regulations and policies will be communicated to all stakeholders:
   - those who are subject to the policy or regulation will be informed in a timely manner; and,
   - communications will be clear, concise and complete, so that requirements will be readily understood by all those affected.

4. Enforcement of regulations and policies will be applied in a fair and responsible manner.

Guiding principles for labelling and advertising by the Canadian food and beverage industry

The Canadian food and beverage industry, working in partnership with government, is committed to:

- maintain truth and integrity in consumer communications;
- strive to ensure that product communications comply with existing food regulations and current practices and policies;
- allow consumers to make informed choices by striving to promote messages in advertising and labelling that:
  - reflect consumer requirements for food consistent with current health, safety and nutrition recommendations;

– reflect current technological advancements;
– do not mislead the consumer;
– promote fair competition in the marketplace.[8]

C. The Codex Alimentarius

The Codex Alimentarius is a collection of food standards developed and presented in standard fashion. It is administered by an international organization called the Codex Alimentarius Commission, which is funded jointly by the World Health Organization (WHO) and the UN Food and Agriculture Organization (FAO). Member countries adhere to the Codex on a voluntary basis.

The Codex Alimentarius Commission was created in 1962 to administer the Joint FAO/WHO Food Standards Programme. The Commission has 164 member countries, including Canada. Its role is to develop, by consensus, international food standards designed to protect the health of consumers and facilitate the use of fair practices in food trade. The Commission facilitates better coordination of work conducted by governments and international non-governmental organizations on food standards, and, where those standards are accepted by governments, publishes them as regional or world standards.

The Codex Committee on Food Labelling is responsible for considering international problems related to food labelling, developing provisions on labelling that apply to all foods, amending them as necessary, and endorsing labelling provisions established by the other Codex committees responsible for developing standards, codes of practice and guidelines. The member countries are currently reviewing their positions on the labelling of foods derived from biotechnology in order to discuss them at the Labelling Committee meeting that will be held in Ottawa in May 2006.

Codex standards are not binding: member countries do not have to adopt them by including them in their statutory or regulatory instruments. The relationship between the Codex and dairy terms is discussed in greater detail in the section on trade below, but the fact sheets on the Codex standards for butter and cheddar cheese are included as appendices to this document for information purposes.[9] Those sheets alone illustrate the complexity of dairy product labelling.

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(8) The guiding principles are taken from the Preface to the *2003 Guide*, which may be found on the CFIA Web site (http://www.inspection.gc.ca/english/fssa/labeti/guide/prefacee.shtml).

(9) See Appendices A and B, respectively, of this document.

DAIRY PRODUCT LABELLING

In Canada, dairy product labelling is subject to a number of statutes and regulations; together, these form a complex regulatory framework that can be difficult to navigate and that sometimes, whether intentionally or not, allows for some latitude in interpretation. The main dairy products standards and labelling requirements are described in Division 8 ("Dairy Products") of the *Food and Drug Regulations*,(10) the enabling statute of which is the FDA, and in the *Dairy Products Regulations,* the enabling statute of which is the CAPA. The two regulations at times differ subtly over definitions and standards for certain dairy products. In addition, some provinces also set their own standards, a situation that further complicates the interpretation and enforcement of regulations.

It would take too long to enumerate the specific standards of each of the many dairy products, but a brief look at the *Dairy Products Regulations*(11) illustrates how the regulations specify standards, a number of which are similar to those found, at the international level, in the Codex. For example, the *Food and Drug Regulations* (section B.08.003) clearly state that milk or whole milk "shall be the normal lacteal secretion obtained from the mammary gland of the cow, genus *Bos*." If milk comes from another type of animal, the label must indicate that fact (e.g., "goat's milk"). The standard names of dairy products must be used to describe them. For example, "cheddar cheese" must contain not less than 31% milk fat; "skim milk powder" may not be called "powdered milk" or simply "milk." Butter must contain not less than 80% milk fat, and the only ingredients authorized by the regulations are milk solids, salt, air or inert gas, the authorized food colouring agent and an authorized bacterial culture.

In addition, according to the *2003 Guide*: "When a food includes a dairy flavour, such as cheddar cheese flavour, which is highlighted on the label, the words 'flavour' or 'artificial flavour' should accompany the flavour designation. When flavours are used to characterize a product, claims must not give the impression that the flavour is the result of the presence of a dairy ingredient."(12)

While the regulations under the CAPA serve as guiding principles for labelling food products, the CPLA and related regulations provide a framework for the use of food standards and other standards with regard to the packaging, labelling, sale, import and advertising of pre-packaged products.

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(10) *Food and Drug Regulations* (http://laws.justice.gc.ca/en/F-27/C.R.C.-c.870/123054.html).

(11) *Dairy Products Regulations* (http://laws.justice.gc.ca/en/C-0.4/SOR-79-840/index.html).

(12) *2003 Guide*, section 9.4.2.

Labels are defined in several different ways in the statutes and regulations of Canada; in some instances, there are variances between English and French definitions within the same document:(13)

(a) In Bill C-27, the Canadian Food Inspection Agency Enforcement Act:

"label" includes a product legend, word, mark, symbol, design, imprint, stamp, brand, ticket or tag or any combination of those things that is or is to be applied or attached to or included in, or that accompanies or is to accompany, any regulated product or its container.

« étiquette » Toute indication – notamment estampille, mot, marque, symbole, dessin, impression, cachet, empreinte, carte et bague, ou combinaison de ceux-ci – qui est ou doit être placée sur ou dans un produit réglementé ou son emballage, ou qui l'accompagne ou est destinée à l'accompagner.

(b) In the *Canada Agricultural Products Act*:

"label" means a label, legend, word, mark, symbol, design, imprint, stamp, brand, ticket or tag or any combination thereof that is, or is to be, applied or attached to an agricultural product or a container or that accompanies or is to accompany the product or container.

« étiquetage » Signes, mentions, marques ou images destinés à un produit agricole ou à son contenant.

(c) In the *Consumer Packaging and Labelling Act*:

"label" means any label, mark, sign, device, imprint, stamp, brand, ticket or tag.

« étiquetage » Mentions, marques, labels, images ou signes se rapportant à un produit et figurant sur toute étiquette, fiche ou carte l'accompagnant, indépendamment du mode d'apposition – notamment par fixation ou impression.

(In this case, the English and French terms are not entirely equivalent, and the CPLA contains a notice to that effect.)

(d) In the *Food and Drugs Act*:

"label" includes any legend, word or mark attached to, included in, belonging to or accompanying any food, drug, cosmetic, device or package.

« étiquette » Sont assimilés aux étiquettes les inscriptions, mots ou marques accompagnant les aliments, drogues, cosmétiques, instruments ou emballages.

(13) English and French versions of the definitions are provided here for purposes of comparison.

(e) In the regulations under the FDA (and the CPLA):

"principal display panel" means,

(*a*) in the case of a container that is mounted on a display card, that part of the label applied to all or part of the principal display surface of the container or to all or part of the side of the display card that is displayed or visible under normal or customary conditions of sale or use or to both such parts of the container and the display card,

(*b*) in the case of an ornamental container, that part of the label applied to all or part of the bottom of the container or to all or part of the principal display surface or to all or part of a tag that is attached to the container, and

(*c*) in the case of all other containers, that part of the label applied to all or part of the principal display surface. (*espace principal*) SOR/96-278, s. 1.

« espace principal » désigne,

a) dans le cas d'un emballage qui comprend une carte réclame, la partie de l'étiquette apposée entièrement ou en partie sur la principale surface exposée de l'emballage ou entièrement ou en partie sur le côté de la carte réclame qui est exposé ou visible dans les conditions normales ou habituelles de vente ou d'utilisation ou sur ces deux parties de l'emballage et de la carte réclame,

b) dans le cas d'un emballage décoratif, la partie de l'étiquette apposée, entièrement ou en partie sur le dessous de l'emballage, sur la principale surface exposée, ou sur une étiquette mobile fixée à l'emballage, et

c) dans le cas de tous les autres emballages, la partie de l'étiquette apposée entièrement ou en partie sur la principale surface exposée. (*principal display panel*) DORS/96-278, art. 1.

As will be noted below, this range of definitions of the term "label" may have helped create a certain degree of confusion, even profound disagreement, among the main dairy industry stakeholders as to Parliament's actual intent.

EVENTS LEADING TO AN AMENDMENT REGARDING DAIRY TERMS IN BILL C-27

The Uruguay Round of multilateral trade negotiations in the late 1980s – which concluded in the mid-1990s – consolidated the foundation of market globalization, a phenomenon that had begun some 15 years earlier. Even though markets were not completely opened up, favourable conditions were created for the importation and development of new agri-food products, and increased competition forced Canadian processors to innovate in order to better position themselves in the markets. Canada's value-added strategy for agri-food exports also supported processors in their search for innovative products. As a result, a new range of products was offered to Canadian consumers.

The value of the Canadian food and beverage sector increased from $14.2 billion in 1991 to $24.2 billion in 2000 (in 1997 dollars). This steep rise in little more than 10 years reveals the size and potential of this sector. The sector, however, remains subject to a legislative framework for labelling and standards that is widely perceived as necessary, but unduly restrictive and complicated.

In the view of the Dairy Farmers of Canada (DFC), the arrival on the market of new products and trade names imitating traditional dairy products has quickly become a double problem: some substitute products that include no dairy ingredients are replacing dairy products on the market, while other products use dairy ingredients to create mixtures whose names, without being misleading, may be confusing. For example, butter blends, frozen desserts and various types of cheese spreads that meet consumers' price expectations have become common and achieved a degree of popularity that has eaten into the market share of traditional dairy products. This new market configuration was a key factor in encouraging the DFC to implement a lobbying strategy to demand the fairer and more accurate use of standard dairy terminology for labelling in Canada. Since the late 1990s, certain events have shaped the labelling debate.

- In 1999, the Codex Commission revised and ratified its general standard for the use of dairy terms. That standard replaced the former code of principles concerning milk and dairy products.

- The Codex Commission's review and redefinition of dairy terms attracted the interest of certain MPs, including Joe McGuire, who considered the possibility of developing a private Member's bill on dairy terms.

- On 15 April 2002, during the 1st Session, 37th Parliament, MP Maurice Vellacott introduced Bill C-440, An Act respecting the use of dairy terms, saying: "Dairy terms are popular for labelling food items because of the reputation dairy products have among consumers for quality and nutrition. Consumers looking for a dairy product could unintentionally buy a non-dairy alternative due to the misuse of dairy terms in the label, and that has happened."(14)

- Mr. Vellacott reintroduced his bill on 11 December 2002, during the 2nd Session, 37th Parliament, this time as Bill C-340, saying, "Consumers are entitled to a properly informed choice in the matter of dairy products and non-dairy alternatives."(15)

(14) House of Commons, *Debates*, 1st Session, 37th Parliament, 15 April 2002, p. 10394.

(15) House of Commons, *Debates*, 2nd Session, 37th Parliament, 11 December 2002, p. 2568.

- The same bill was introduced once again by the same member on 2 February 2004, during the 3rd Session, 37th Parliament. Bill C-340 received second reading on 12 March 2004 and was debated in the House. All the parliamentarians taking part in the debate agreed there was a need to clarify the use of dairy terms, and most recognized that the regulations in effect were probably not clear enough to provide consumers with accurate information. Parliamentarians were also aware that the needs of the processing industry had to be considered. However, the debate clearly revealed that participants were divided as to how to proceed. While some were in favour of Mr. Vellacott's bill, others advocated the CFIA approach:

> As members can see, this is a very complex issue and the government is taking it very seriously. In fact, the CFIA is seeking a solution to address labelling for all food products. It seeks to give consumers products that are labelled in such a way that consumers can make informed decisions. The CFIA has been consulting on proposals for highlighted ingredients and flavours, which would be applied to all types of ingredients and foods.
>
> Consultations took place between January and April of last year and again between July and September. There were also two more workshops held on labelling issues, last November in Toronto and again in January in Saint-Hyacinthe, Quebec. In addition, CFIA has conducted bilateral meetings with stakeholders and has commissioned a consumer survey, because at the end of the day we have to sell our products to the consumer.(16)

- Although Bill C-340 died on the *Order Paper* when the 37th Parliament was dissolved, dairy term labelling returned to the parliamentary agenda in the context of Bill C-27, An Act to regulate and prohibit certain activities related to food and other products to which the Acts under the administration of the Canadian Food Inspection Agency apply and to provide for the administration and enforcement of those Acts and to amend other Acts (short title: the Canadian Food Inspection Agency Enforcement Act). The bill was referred to the House of Commons Standing Committee on Agriculture and Agri-Food immediately upon first reading.

- When they appeared before the Standing Committee in the context of its study of Bill C-27, DFC representatives argued that the *Dairy Products Regulations* contained incomplete and obsolete provisions and emphasized that those of the CAPA required amendments.

- When the DFC appeared on 15 February 2005, the Committee Chair mentioned that an amendment to Bill C-27 would be prepared to clarify the regulations in effect on the use of dairy terms and make them more precise.

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(16) House of Commons, *Debates*, 3rd Session, 37th Parliament, 12 March 2004, 13:45.

- The Standing Committee held 20 meetings on Bill C-27. At the 17th meeting, held on 2 June 2005, an amendment regarding dairy terms was moved and debated, ultimately receiving unanimous agreement by Committee members present.

  The amendment reads, in part:

> 65.1 The Act [CAPA] is amended by adding the following after section 18:
>
> Dairy ingredients
>
> 18.1(1) No person shall market an agricultural product using a dairy term on the label unless that product contains the dairy ingredient represented by the dairy term.
>
> Substitute product
>
> (2) No person shall market an agricultural product that has a dairy term on the label if the agricultural product is intended to substitute for the dairy product.

  The amendment further provides certain exceptions and definitions for the terms "dairy ingredient," "dairy term" and "milk."

- The Standing Committee adopted its sixth report on 21 June 2005, and the Chair tabled it in the House of Commons the next day.

- At the report stage, only one minor amendment concerning dairy terms was introduced on 26 September 2005 for subsequent debate:

> *Motion No. 3 – 23 June 2005 – Ms. Finley (Haldimand–Norfolk) –*
> That Bill C-27, in Clause 65.1, be amended
>
> (a) by replacing line 12 on page 35 with the following:
>
> "represented by the dairy term and the label displays the percentage of each ingredient contained in the product."
>
> (b) by replacing lines 3 and 4 on page 36 with the following:
>
> "milk, sour cream, whey or yogurt;"[17]

(17) House of Commons, *Order Paper* No. 125, 26 September 2005. The first amendment concerned the following new provision of the CAPA, set out in section 65.1 of the bill: "18.1(1) No person shall market an agricultural product using a dairy term on the label unless that product contains the dairy ingredient represented by the dairy term." The second amendment concerned the following new provision: "[18.1](4) For the purposes of this section, (*a*) "dairy ingredient" means butter, butter-milk, butter oil, cream, cheese, ice cream, milk, sour cream, whey, yogurt or any other thing prescribed."

To sum up: the debate over dairy terms goes back far beyond the introduction of Bill C-27. That bill's referral to the House of Commons Standing Committee on Agriculture and Agri-Food before second reading allowed the Committee to hear witnesses and make amendments, in particular the amendment regarding dairy terms, which was approved on 2 June 2005.

AMENDMENT REGARDING DAIRY TERMS – ANALYSIS OF CONSTITUTIONAL AND TRADE LAW IMPLICATIONS

The proposed amendment has prompted certain questions as to its legitimacy. Consequently, the following sections of this document examine whether Parliament has the legislative authority to enact the amendment. They also consider the implications of the amendment with regard to international trade law under the World Trade Organization (WTO) regime, as well as its implications with regard to the Agreement on Internal Trade.

A. Legislative Authority of Parliament

Parliament has the exclusive authority to legislate on matters that fall under section 91 of the *Constitution Act, 1867*. On the basis of this section, Parliament has legislative authority with respect to all matters relating to the regulation of trade and commerce as well as criminal law. Further, Parliament may make laws for the peace, order and good government of Canada.

The provinces, for their part, have authority to make laws regarding subjects enumerated in section 92 of the Constitution, including property and civil rights in the province.

It is accepted that, in general, matters relating to interprovincial or international trade and commerce fall within Parliament's power to regulate trade and commerce under section 91(2). On the other hand, matters relating to trade and commerce within a province (intraprovincial) generally fall under the provincial power over property and civil rights under section 92(13).[(18)]

The full title of the CAPA states, in part, that it is "An Act to regulate the marketing of agricultural products in import, export and interprovincial trade." Thus it is implicit that the amendment is intended primarily to deal with import, export and interprovincial trade, and that it is within the legislative purview of Parliament under section 91(2) of the Constitution.

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(18) Peter Hogg, *Constitutional Law of Canada*, 3rd ed., Vol. 2, Carswell, Toronto, 1992, p. 20-2. See also *Citizens Insurance Co.* v. *Parsons*, (1881) 7 App. Cases 96.

However, the difference in wording between the present section 17[19] and the proposed section 18.1 of the CAPA (the amendment proposed in section 65.1 of Bill C-27) is noteworthy. Section 17, which concerns trade in agricultural products, explicitly refers to "marketing" in "import, export or interprovincial trade."

The amendment prohibits the marketing of agricultural products under certain conditions. Among other things, the term "marketing" includes advertisement, conveyance, purchase, sale, processing, storing, inspecting, grading, packing, assembling, pricing, marking, labelling, and any other act necessary to make agricultural products available for consumption or use. Given the broad scope of the amendment, it is likely to encroach into provincial jurisdiction over property and civil rights.

However, if the primary purpose of the amendment is to regulate international and interprovincial trade, it falls within the legislative purview of Parliament; and any incidental encroachment into provincial jurisdiction does not negate Parliament's legislative authority. Canadian courts have already upheld certain items of federal and provincial legislation that incidentally affected the jurisdiction of the other legislator.[20] In this context, the Supreme Court observed:

> … the success or failure of a legislator depends upon whether the pith and substance or primary objective of the statute or regulation is related to the heads of power of the legislative authority in question. Incidental effect on the other legislative sphere will no longer necessarily doom the statute to failure.[21]

In *Murphy* v. *Canadian Pacific Railway*[22] and *R*. v. *Klassen*,[23] the validity of the *Canadian Wheat Board Act* was upheld by the Supreme Court and the Manitoba Court of Appeal respectively. The impugned Act imposed a quota system on producers and applied to local processing and sale of grain. The Act was designed to ensure equal access by producers to interprovincial and export markets for wheat.

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(19) Section 17 states: "No person shall, except in accordance with this Act or the regulations, (a) market an agricultural product in import, export or interprovincial trade; (b) possess an agricultural product for the purpose of marketing it in import, export or interprovincial trade; or (c) possess an agricultural product that has been marketed in contravention of this Act or the regulations."

(20) See *Murphy* v. *C.P.R.*, [1958] S.C.R. 626; *R*. v. *Klassen*, [1959], 20 D.L.R. (2d) 406; *Caloil* v. *Canada (Attorney General)* [1971] S.C.R. 543; *Re Agricultural Products Marketing Act*, [1978] 2 S.C.R. 1198; *UL Canada* v. *Procureur Général du Québec et Fédération des Producteurs de Lait du Québec*, Cour d'Appel, Québec, 500-09-008256-992, 1 October 2003, upheld by the Supreme Court on 17 March 2005.

(21) See *Labatt Breweries* v. *Canada (Attorney General)*, [1980] 1 S.C.R. 914, pp. 942-943.

(22) [1958] S.C.R. 626.

(23) [1959] 20 D.L.R. (2d) 406.

It may be noted, however, that in *Labatt Breweries* v. *Canada (Attorney General)*[24] the Supreme Court held that the provisions of the *Food and Drugs Act* that prescribed standards of food composition, strength, potency, purity or quality were *ultra vires* Parliament. The Court was of the opinion that those provisions related to the *production* of beer. The current amendment deals with the *marketing* of agricultural products, not their production.

Similarly, in *Reference re s. 5(a) of the Dairy Industry Act (Margarine case)*[25] the Supreme Court held that the federal prohibition of the manufacture, sale or possession of margarine was wholly invalid because it related to transactions that could be completed within a province. The Court's following observation in the case is relevant in the present context:

> … to give trade protection to the dairy industry in the production and sale of butter; to benefit one group of persons as against competitors in business in which, in the absence of the legislation, the latter would be free to engage in the provinces. To forbid manufacture and sale for such an end is prima facie to deal directly with the civil rights of individuals in relation to particular trade within the provinces.[26]

It may also be argued that the amendment proposed by Bill C-27 falls within the criminal law power of Parliament under section 91(27), because it is aimed at preventing deception of the public.[27] It prevents consumers from being deceived into believing that an agricultural product is in fact a dairy product or that it contains a dairy product. On the other hand, the scope of the amendment may be considered too broad to justify that its intent is to prevent such deception. It may also be asked whether such deception could not be prevented by the existing legal and regulatory regime for food labelling and advertising, rather than invoking Parliament's criminal law power under the Constitution.

An argument may further be made that the federal government has the legislative authority to make such an amendment to protect the health of Canadians. In this case, again, the federal power would be authorized under the head of criminal law under section 91(27).[28]

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(24) [1980] 1 S.C.R. 914.

(25) [1949] S.C.R. 1.

(26) *Ibid.*

(27) Hogg (1992), pp. 18-9 to 18-10.

(28) *Ibid.*, p. 18-12. See also *Reference re s. 5(a) of the Dairy Industry Act (Margarine case).*

B. Implications Under International Trade Law

This section considers the international trade law implications of the amendment in the context of three WTO treaties.

1. General Agreement on Tariffs and Trade

Article III of the General Agreement on Tariffs and Trade (GATT) provides for National Treatment with regard to regulation and internal taxation. It requires that imported goods, once they have satisfied the applicable border measures, shall be treated no less favourably than similar domestic goods. The amendment does not distinguish between products of Canadian origin and imported agricultural products. Hence there is no violation of the National Treatment principle.(29)

2. Technical Barriers to Trade Agreement

The Technical Barriers to Trade Agreement (TBT Agreement) is intended to ensure that national regulations, standards, testing and certification procedures do not create unnecessary obstacles to international trade. The Agreement governs technical regulations and standards regarding the use of terminology, symbols, packaging, marketing and labelling requirements as they apply to a product or production method.

A basic principle of the TBT Agreement (and the WTO regime in general) is that the measures adopted by a country should not be discriminatory towards countries or represent a disguised restriction on international trade. Article 2.2 of the TBT Agreement provides that technical regulations should:

- not be more trade-restrictive than necessary, and
- fulfil certain legitimate objectives.

(29) It may also be noted that the Most Favoured Nation (MFN) Treatment provided for in Article I of GATT cannot be invoked. The MFN Treatment requires that countries cannot normally act in a discriminatory manner towards their trading partners.

Domestic measures that are aligned to internationally accepted standards are considered to be non-restrictive. The standards established by the Codex Alimentarius are considered international standards for matters related to food and food safety. For example, in the sardine dispute between Peru and European Union,(30) Codex standards were considered to be the relevant international standard for the TBT Agreement.

The Codex Alimentarius has established certain guidelines for the use of dairy terms in the *General Standard for the Use of Dairy Terms* (GSUDT).(31) It has also established the *General Standard for the Labelling of Prepackaged Foods* (GSLPF). According to Codex standards, labelling of both prepackaged and non-prepackaged goods shall not be false, misleading, deceptive, or create an erroneous impression regarding those goods' character in any respect. The labelling shall also not be suggestive of any other product with which the food might be confused.(32)

Section 3 of the GSUDT provides that food shall be presented in a manner that ensures the correct use of dairy terms intended for milk and milk products. The definitions of the terms "milk,"(33) "milk products"(34) and "dairy terms"(35) in the GSUDT are closely aligned with the definitions provided for in the amendment to Bill C-27.

Although the amendment is in keeping with Codex standards, the legitimacy of its purpose may be questionable. National security, prevention of deceptive practices, and the protection of human health and safety are some of the stated legitimate objectives under the TBT Agreement. As stated earlier, it may certainly be argued that the objective of the current amendment is to prevent deceptive practices; but it might also be suggested that the amendment's sole objective is to protect the domestic dairy industry. Such an argument could be supported by the broad scope of the amendment: it applies not only to purchasing, sale and labelling, but also to processing, storing and assembling of agricultural products. Measures taken to protect the domestic dairy industry against competition from foreign imports might be considered a disguised restriction on international trade in agricultural products, and hence a potential violation of the TBT Agreement.

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(30) WT/DS231/R, 29 May 2002; WT/DS231/AB/R, 26 September 2002.

(31) Codex Stan 206-1999; see Appendix C of this document.

(32) See International Dairy Federation, *The Codex General Standard for the Use of Dairy Terms – Its Nature, Intent and Implication*, Bulletin 397/2005, p. 6.

(33) Section 2.1 of GSUDT.

(34) Section 2.2 of GSUDT.

(35) Section 2.6 of GSUDT.

3. Sanitary and Phytosanitary Measures Agreement

The Sanitary and Phytosanitary Measures Agreement (SPS Agreement) deals specifically with trade measures taken to protect human, animal and plant health. It restricts the use of unjustified sanitary (human and animal health) and phytosanitary (plant health) measures for the purpose of trade protection or as unnecessary barriers to international trade.(36) Similar to the TBT Agreement, the SPS Agreement also encourages member countries to use international standards and guidelines, including the Codex, in determining risks to human or plant health.

C. Agreement on Internal Trade

The Agreement on Internal Trade (AIT) is an intergovernmental agreement signed by Canadian First Ministers that came into force in 1995.(37) Its purpose is to foster improved interprovincial trade by reducing or eliminating barriers to the free movement of persons, goods, services and investments within Canada and by establishing an open, efficient and stable domestic market.(38)

The general principles of the AIT include Reciprocal Non-Discrimination and the Right of Entry and Exit.

Article 401.3 requires the federal government to respect the principle of Reciprocal Non-Discrimination by offering the same treatment to all provinces for like goods, competing goods and substitutes. With regard to the proposed amendment to Bill C-27, all provinces are to be treated alike in its application. A distinction is made between competing goods and substitutes, but it is equally applicable to all provinces. Hence, the amendment does not violate Article 401.

Article 402, the Right of Entry and Exit, requires that no party shall adopt or maintain any measure that restricts or prevents the movement of goods across provincial boundaries. The amendment is applicable to all provinces of Canada and does not in any way restrict or prevent the movement of agricultural goods from one province to another.

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(36) See WTO, *Understanding the WTO Agreement on Sanitary and Phytosanitary Measures*, http://www.wto.org/english/tratop_e/sps_e/spsund_e.htm.

(37) See *A Consolidation of the Agreement on Internal Trade*, http://www.intrasec.mb.ca/index_en/ait.htm.

(38) See Article 100 of the AIT.

An argument might be made that the amendment would be an obstacle to internal trade under Article 403 or Article 905. However, the amendment represents an exercise of the federal government's legislative authority to regulate trade and commerce. Article 300 of the AIT reaffirms the constitutional powers and responsibilities of the federal and provincial governments.

Arguing that the amendment could be an obstacle to internal trade might potentially mean that any federal legislation that regulates trade and commerce and imposes an obligation on traders could be perceived as an obstacle. On the contrary, the uniform application of such laws may make interprovincial movement of goods easier. Producers and suppliers do not have to comply with differing standards in different provinces.

Transparency is one of the general principles of the AIT.(39) It requires that parties to the AIT should notify other parties of any impending measures that may materially affect the operation of the AIT. The amendment cannot reasonably be perceived to materially affect the operation of AIT. Article 907, which deals with transparency in matters relating to trade in agricultural and food goods, requires the federal government to provide copies of proposed amendments to interested persons and give them an opportunity to provide their comments. However, it should be noted that the amendment will not take effect unless it is adopted by the Parliament.

ANALYSIS OF PARLIAMENT'S INTENT

Analysis of debate on the use of dairy terms, both in the House of Commons and during meetings of the Standing Committee on Agriculture and Agri-Food, indicates conclusively that Parliament's intent was always essentially, if not solely, to ensure clarity in the use of dairy terminology in order to ensure that consumers are well informed. In that respect, the Codex standards and the guiding principles applicable to the federal food labelling and advertising system, both of which advocate that labelling must not mislead consumers, served as benchmarks for Parliament.

(39) See Article 406 of the AIT.

The following two passages from the House of Commons *Debates* leave no doubt as to Parliament's objective: to provide consumers with clear information on dairy products, while acknowledging the importance of maintaining open collaboration among producers, processors and consumers. In addition, as the previous section on constitutional and trade law shows, Parliament did not disregard Canada's international and interprovincial trade obligations:

> *Ms. Diane Finley (Haldimand–Norfolk, CPC):*
>
> […] We understand that dairy producers are concerned with the use of non-dairy substitutes in the production of products which are similar to ice cream and cheese but not actually processed with authentic dairy products.
>
> We recognize that this is a complex trade issue that affects supply management producers on one side and food processors on the other. […] Another partial solution that the Conservative Party is considering supporting is truth in labelling legislation that would ensure that dairy terms referring to milk and milk products are used accurately in the description and presentation of food.
>
> This truth in labelling legislation would allow consumers the freedom to make informed decisions as to what food products they wish to purchase and consume. I encourage the supply management industries to work with other representatives of Canadian agriculture, including the export dependent sectors, to develop solutions that will meet the needs of all Canadian agriculture and which will be accepted by our international trading partners.(40)
>
> *Ms. Rose-Marie Ur (Lambton–Kent–Middlesex, Lib.):*
>
> […] The government has been working hard for some time to establish a fair and equitable regulatory regime for dairy product standards and the use of dairy terms. For the dairy producers there are two key issues: the definition of dairy products contained in the regulations; and the labels used to describe dairy products and food containing dairy ingredients. Both of these issues fall under the responsibility of the Minister of Agriculture and Agri-Food and the Canadian Food Inspection Agency, the CFIA.
>
> Let me first discuss the need for clear regulatory definitions. There are some inconsistencies in the dairy products regulations' definition of milk product and the definition included in the food and drug regulations. The government wants to remove these inconsistencies, but we should do it in a manner that is transparent to all interested involved. That includes both dairy producers and dairy processors.

(40) House of Commons, *Debates*, 1st Session, 38th Parliament, No. 110, 7 June 2005, 19:55.

> […] The issues are complex. To make informed choices, Canadians rely on the accuracy and the truthfulness of product information. The CFIA protects consumers and industry and promotes fair market practice by setting and enforcing standards related to the accuracy of product information appearing on food labels.
>
> In fact, the Canadian Food Inspection Agency launched an extensive consultation on food labelling related to highlighted ingredients and flavours which include new rules for dairy terms. The stakeholders who participated in this consultation included producers, including the Dairy Farmers of Canada, processors, exporters, importers and consumers.
>
> Producers and consumers were very much in favour of rules for clear food labelling.(41)

A certain contradiction in Canadian standards on dairy products, and some inconsistency in the enforcement of those same standards over time, gave Parliament sound, valid reasons to take action to correct dairy terminology. Parliament's intent remains entirely clear: if statutes and regulations establish standards, that is to say specific descriptions of what dairy products are, those standards must be complied with and, if necessary, clarified, tightened up or both. In introducing the amendment regarding dairy terms, parliamentarians have only performed their role as parliamentarians, in spirit and to the letter.

Essentially, Parliament's intent is to call agri-food products by their real names: butter is butter, cheddar is cheddar, margarine is margarine, and so on. This approach is not unique to Canada: in other countries, particularly in Europe, legislatures have adopted many standards that protect and restrict the use of names of agri-food products. The "appellation d'origine contrôlée" for many wines and spirits; protected geographical designations; the Red Seal,(42) whose presence on the label attests that the product is of superior quality and that this quality is directly perceptible to the consumer – all these are measures that both better inform consumers and serve as promotional vehicles. Compliance with the specifications – in other words, the standards – for these products confers the right for the label to carry a logo that guarantees superior quality. Fundamentally, what the DFC is seeking is nothing other than an AOC of dairy terminology: butter can come only from cow's milk, just as champagne can come only from the Champagne region.

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(41) *Ibid.*, 20:50.

(42) See the Red Seal (Label Rouge) Web site at: http://www.label-rouge.org/index.html.

Another well-known example in Canada is “Angus” beef, which is implicitly a controlled designation for that type of beef and gives consumers additional information. The use of the name “Angus” to identify any other type of beef or a mix of meats would undeniably be considered misleading.

The current debate on the use of dairy terms is also reminiscent of the debate in the early 1990s over the use of the terms fruit “juice” and fruit “drinks,” which required a legislative adjustment in order to provide a better framework. The goal is the same for dairy terminology: to provide better consumer information.

In its desire to provide more accurate information on dairy products, Parliament has introduced an amendment to the CAPA that would restrict the use of recognized dairy terms on the labels of products that do not meet the definition of dairy products. In Parliament’s view, the term “label” referred merely to the essential part of the information on the label – not all of that information, which could also include a list of ingredients. Given the various definitions of a label that are provided in Canadian laws and regulations, one unintended consequence of the amendment could be to restrict the use of a dairy term beyond Parliament’s intent and thus unintentionally prevent the use of dairy ingredients in a range of food products.

It was this possibility that led dairy processors to claim that the proposed amendment would prevent hundreds of agri-food products from being marketed and impede the development of new products. While a very limited analysis of the amendment proposed by the Standing Committee on Agriculture and Agri-Food suggests that the processors might be right, this was certainly not Parliament’s purpose.

Should the amendment be acknowledged as having ramifications that unintentionally result in economic costs that outweigh the benefits to consumers, it must be remembered that the legislative process allows for corrective action to be taken right up to the end of the Senate’s consideration of the bill. It is to be hoped that Parliament’s intent, which is to establish a fair and equitable regulatory system regarding dairy product standards and the use of dairy terminology in order to provide consumers with clear information, will prevail and that the corrective action taken will meet the needs of all dairy industry partners.

Thus, in proposing this amendment, Parliament has not exceeded its mandate, and it has taken into consideration the implications for international and interprovincial trade and commerce. Nor has it deviated from its original intent, which was to amend the existing, somewhat contradictory, regulations with regard to the use of dairy terms on labels. Parliament's objective was, and is, to provide the consumer with truthful and accurate information. The debates in recent years, notably those that took place during the study of Bill C-27, indicate clearly that there has never been any question of creating barriers to the development of dairy products, or "entailing costs of implementation that outweigh benefits to society." If the amendment that was adopted during the Committee's review of the bill has the unintended effect of exceeding the spirit or letter of Parliament's intent, then the legislative process offers further opportunities for amending the proposed legislation so that it meets the needs of the various stakeholders in the dairy sector, and thus fosters the growth and cooperation that are essential to that sector's development and prosperity.

CONCLUSION

Early in the series of 20 public meetings on Bill C-27 that the Standing Committee on Agriculture and Agri-Food held between February and June 2005, the Chair announced that the Committee intended to propose an amendment in order to clarify dairy terms. The amendment was proposed during the 17th public meeting, on 2 June 2005. It was debated and then approved unanimously by the Committee members present. If passed by Parliament, it will modify the *Canada Agricultural Products Act*.

The issues raised by Bill C-27 clearly illustrate the complexity of food labelling in general. On one hand, consumers must be given the information they need in order to make knowledgeable choices, and regulations may require revisions to achieve that objective. On the other, such action may have significant economic, legal and trade-related repercussions. The dairy industry is a case in point: although the revised definitions reflect Parliament's intention to assist consumers by calling agri-food products by their real names, the proposed amendment is a cause of concern to a major sector of the industry. Overall, this situation serves to indicate the difficulty of finding a balance among the needs and interests of multiple stakeholders in a diversified food market.

APPENDIX A

CODEX STANDARD FOR BUTTER

CODEX STANDARD FOR BUTTER

CODEX STAN A-1-1971, Rev.1-1999, Amended 2003

1 SCOPE

This Standard applies to butter intended for direct consumption or for further processing in conformity with the description in Section 2 of this Standard.

2 DESCRIPTION

Butter is a fatty product derived exclusively from milk and/or products obtained from milk, principally in the form of an emulsion of the type water-in-oil.

3 ESSENTIAL COMPOSITION AND QUALITY FACTORS

3.1 RAW MATERIALS

Milk and/or products obtained from milk.

3.2 PERMITTED INGREDIENTS

Sodium chloride and food grade salt
Starter cultures of harmless lactic acid and/or flavour producing bacteria
Potable water.

3.3 COMPOSITION

Minimum milkfat content	80% m/m
Maximum water content	16% m/m
Maximum milk solids-not-fat content	2% m/m

4 FOOD ADDITIVES

Only those food additives listed below may be used and only within the limits specified.

INS No.	*Name*	*Maximum Level*
	Colours	
160a(i)	β-Carotene (synthetic)	25 mg/kg
160a(ii)	Carotenes (natural extracts)	600 mg/kg
160b	Annatto extracts	20 mg/kg (bixin/norbixin basis)
160e	β-apo-Carotenal	35 mg/kg
160f	β-apo-8'-Carotenoic acid, methyl or ethyl ester	35 mg/kg
	Acidity Regulators	
339	Sodium phosphates	2 g/kg
500(i)	Sodium carbonate	)
500(ii)	Sodium hydrogen carbonate	) Limited by GMP
524	Sodium hydroxide	)
526	Calcium hydroxide	)

5 CONTAMINANTS

5.1 HEAVY METALS

The products covered by this Standard shall comply with the maximum limits established by the Codex Alimentarius Commission.

5.2 PESTICIDE RESIDUES

The products covered by this Standard shall comply with the maximum residue limits established by the Codex Alimentarius Commission.

6 HYGIENE

6.1 It is recommended that the products covered by the provisions of this standard be prepared and handled in accordance with the appropriate Sections of the Recommended International Code of Practice - General Principles of Food Hygiene (CAC/RCP 1-1969, Rev.3-1997), and other relevant Codex texts such as Codes of Hygienic Practice and Codes of Practice.

6.2 From raw material production to the point of consumption, the products covered by this standard should be subject to a combination of control measures, which may include, for example, pasteurization, and these should be shown to achieve the appropriate level of public health protection.

6.3 The products should comply with any microbiological criteria established in accordance with the Principles for the Establishment and Application of Microbiological Criteria for Foods (CAC/GL 21-1997).

7 LABELLING

In addition to the provisions of the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985, Rev.1-1991; Codex Alimentarius, Volume 1A) and the General Standard for the Use of Dairy Terms (CODEX STAN 206-1999), the following specific provisions apply:

7.1 NAME OF THE FOOD

The name of the food shall be “Butter”. The name "butter" with a suitable qualification shall be used for butter with more than 95% fat.

7.1.1 Butter may be labelled to indicate whether it is salted or unsalted according to national legislation.

7.2 DECLARATION OF MILKFAT CONTENT

If the consumer would be misled by the omission, the milkfat content shall be declared in a manner found acceptable in the country of sale to the final consumer, either (i) as a percentage by mass, or (ii) in grams per serving as quantified in the label provided that the number of servings is stated.

7.3 LABELLING OF NON-RETAIL CONTAINERS

Information required in Section 7 of this Standard and Sections 4.1 to 4.8 of the General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985, Rev.1-1991; Codex Alimentarius, Volume 1A), and, if necessary, storage instructions, shall be given either on the container or in accompanying documents, except that the name of the product, lot identification, and the name and address of the manufacturer or packer shall appear on the container. However, lot identification, and the name and address of the manufacturer or packer may be replaced by an identification mark, provided that such a mark is clearly identifiable with the accompanying documents.

8 METHODS OF SAMPLING AND ANALYSIS

See Codex Alimentarius, Volume 13.

APPENDIX B

CODEX INTERNATIONAL INDIVIDUAL STANDARD FOR CHEDDAR

CODEX INTERNATIONAL INDIVIDUAL STANDARD FOR CHEDDAR

CODEX STAN C-1-1966

1 DESIGNATION OF CHEESE

Cheddar

2 DEPOSITING COUNTRY

United Kingdom (country of origin)

3 RAW MATERIALS

3.1 KIND OF MILK: cow's milk

3.2 AUTHORIZED ADDITIONS

3.2.1 Necessary additions

- cultures of harmless lactic acid producing bacteria (starter)
- rennet or other suitable coagulating enzymes
- sodium chloride

3.2.2 Optional additions

- calcium chloride, max. 200 mg/kg of the milk used
- annatto[1] and beta carotene, singly or in combination, max. 600 mg/kg of cheese
- sorbic acid and its sodium and potassium salts, max. 1000 mg/kg calculated as sorbic acid
- a preparation of safe and suitable enzymes of animal or plant origin capable of aiding in the curing or development of flavour of Cheddar cheese may be added during the procedure, in such quantity that the weight of the solid of such preparation is not more than 1000 mg/kg of the milk used

4 PRINCIPAL CHARACTERISTICS OF THE CHEESE READY FOR CONSUMPTION

4.1 TYPE (CONSISTENCY): hard pressed

4.2 SHAPE: cylindrical or block (cuboid)

4.3 DIMENSIONS AND WEIGHTS: various

4.4 RIND

4.4.1 Consistency: hard

4.4.2 Appearance: smooth, may be coated with wax or cloth wrapped

4.4.3 Colour: pale straw through dark straw to orange; rindless blocks may be in air-tight, flexible film.

4.5 BODY

4.5.1 Texture: firm, smooth and waxy

4.5.2 Colour: uniform, pale straw through dark straw to orange

4.6 HOLES: gas holes should be absent; none to few mechanical openings

4.7 MINIMUM FAT CONTENT IN DRY MATTER: 48%

4.8 MAXIMUM MOISTURE CONTENT: 39%
MINIMUM DRY MATTER CONTENT: 61%

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[1] Temporarily endorsed.

4.9 **OTHER PRINCIPAL CHARACTERISTICS:** normally consumed mild from three months or mature up to twelve months or more. Flavour typical of the variety, varying in intensity from mild to sharp and typical of ripening controlled by lactic acid producing bacteria.

5 METHOD OF MANUFACTURE

5.1 Method of coagulation: rennet or other suitable coagulating enzymes.

5.2 **HEAT TREATMENT**

5.2.1 ***Heat treatment of the milk:*** milk for cheese-making may be raw, heat treated or pasteurized to 161°F (71.7°C) for 15 seconds.

5.2.2 ***Heat treatment of the coagulum:*** the curd is subsequently cut and scalded to 100° - 106°F (37.5° - 40°C) depending on the season.

5.3 **FERMENTATION PROCEDURE:** 1.0 – 2.5% lactic starter is added to the milk, to give a ripening period of up to two hours before rennetting.

5.4 **MATURATION PROCEDURE:** after scalding the curd, it is stirred until slight acid development, customarily 0.18 or 0.19% expressed as lactic acid, is reached.

The whey is run off and the process of "cheddaring" (which may take place in a separate container) continues, during which the curd is cut into blocks, which are turned and progressively piled. During this process the curd is kept warm and the drainage of whey, together with the development of acidity, results in the curd becoming compressed smooth and elastic. When a substantial acidity which may reach 0.90% expressed as lactic acid has been reached, the curd is milled.

About 2.0 – 2.5% salt is added to the curd to give 1.5 – 1.8% salt in the cheese.

The curd is then mixed and moulded. The cheeses are stored and subsequently graded. They may mature in store for 3-12 months according to temperature of the store and degree of maturity required.

6 SAMPLING AND ANALYSIS

See Volume 13 of the *Codex Alimentarius*.

7 MARKING AND LABELLING

Only cheese conforming with this standard may be designated "Cheddar". It shall be labelled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese".

APPENDIX C

CODEX GENERAL STANDARD FOR THE USE OF DAIRY TERMS

CODEX GENERAL STANDARD FOR THE USE OF DAIRY TERMS

CODEX STAN 206-1999 [1]

1. SCOPE

This General Standard applies to the use of dairy terms in relation to foods to be offered to the consumer or for further processing.

2. DEFINITIONS

2.1 Milk is the normal mammary secretion of milking animals obtained from one or more milkings without either addition to it or extraction from it, intended for consumption as liquid milk or for further processing.

2.2 Milk product is a product obtained by any processing of milk, which may contain food additives, and other ingredients functionally necessary for the processing.

2.3 Composite milk product is a product of which the milk, milk products or milk constituents are an essential part in terms of quantity in the final product, as consumed provided that the constituents not derived from milk are not intended to take the place in part or in whole of any milk constituent.

2.4 A reconstituted milk product is a product resulting from the addition of water to the dried or concentrated form of the product in the amount necessary to re-establish the appropriate water to solids ratio.

2.5 A recombined milk product is a product resulting from the combining of milkfat and milk-solids-non-fat in their preserved forms with or without the addition of water to achieve the appropriate milk product composition.

2.6 Dairy terms means names, designations, symbols, pictorial or other devices which refer to or are suggestive, directly or indirectly, of milk or milk products.

3. GENERAL PRINCIPLES

Foods shall be described or presented in such a manner as to ensure the correct use of dairy terms intended for milk and milk products, to protect consumers from being confused or misled and to ensure fair practices in the food trade.

4. APPLICATION OF DAIRY TERMS

4.1 GENERAL REQUIREMENTS

4.1.1 The name of the food shall be declared in accordance with Section 4.1 of the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985, Rev. 1-1991; *Codex Alimentarius,* Volume 1A).

4.1.2 A word or words denoting the animal or, in the case of mixtures, all animals from which the milk has been derived shall be inserted immediately before or after the designation of the product. Such declarations are not required if the consumer would not be misled by their omission.

4.2 USE OF THE TERM MILK

4.2.1 Only a food complying with the definition in Section 2.1 may be named "milk". If such a food is offered for sale as such it shall be named "raw milk" or other such appropriate term as would not mislead or confuse the consumer.

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[1] This Standard replaced the Code of Principles Concerning Milk and Milk Products.

4.2.2 Milk which is modified in composition by the addition and/or withdrawal of milk constituents may be identified with a name using the term "milk", provided that a clear description of the modification to which the milk has been subjected is given in close proximity to the name.

4.2.3 Notwithstanding the provisions of Section 4.2.2 of this Standard, milk which is adjusted for fat and/or protein content and which is intended for direct consumption, may also be named "milk" provided that:

- it is sold only where such adjustment is permitted in the country of retail sale;
- the minimum and maximum limits of fat and/or protein content (as the case may be) of the adjusted milk are specified in the legislation of the country of retail sale. In this case the protein content shall be within the limits of natural variation within that country;
- the adjustment has been performed according to methods permitted by the legislation of the country of retail sale, and only by the addition and/or withdrawal of milk constituents, without altering the whey protein to casein ratio; and
- the adjustment is declared in accordance with Section 4.2.2 of this standard.

4.3 USE OF THE NAMES OF MILK PRODUCTS IN CODEX COMMODITY STANDARDS

4.3.1 Only a product complying with the provisions in a Codex standard for a milk product may be named as specified in the Codex standard for the product concerned.

4.3.2 Notwithstanding the provisions of Section 4.3.1of this Standard and Section 4.1.2 of the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985, Rev. 1-1991), a milk product may be named as specified in the Codex standard for the relevant milk product when manufactured from milk, the fat and/or protein content of which has been adjusted, provided that the compositional criteria in the relevant standard are met.

4.3.3. Products that are modified through the addition and/or withdrawal of milk constituents may be named with the name of the relevant milk product in association with a clear description of the modification to which the milk product has been subjected provided that the essential product characteristics are maintained and that the limits of such compositional modifications shall be detailed in the standards concerned as appropriate.

4.4 USE OF TERMS FOR RECONSTITUTED AND RECOMBINED MILK PRODUCTS

Milk and milk products may be named as specified in the Codex Standard for the relevant milk product when made from recombined or reconstituted milk or from recombination or reconstitution of milk products in accordance with Section 4.1.2 of the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985, Rev. 1-1991), if the consumer would not be misled or confused.

4.5 USE OF TERMS FOR COMPOSITE MILK PRODUCTS

A product complying with the description in Section 2.3 may be named with the term "milk" or the name specified for a milk product as appropriate, provided that a clear description of the other characterizing ingredient(s) (such as flavouring foods, spices, herbs and flavours) is given in close proximity to the name.

4.6 USE OF DAIRY TERMS FOR OTHER FOODS

4.6.1 The names referred to in Sections 4.2 to 4.5 may only be used as names or in the labelling of milk, milk products or composite milk products.

4.6.2 However, the provision in Section 4.6.1 shall not apply to the name of a product the exact nature of which is clear from traditional usage or when the name is clearly used to describe a characteristic quality of the non-milk product.

4.6.3 In respect of a product which is not milk, a milk product or a composite milk product, no label, commercial document, publicity material or any form of point of sale presentation shall be used which claims, implies or suggests that the product is milk, a milk product or a composite milk product, or which refers to one or more of these products[2].

4.6.4 However, with regard to products referred to in Section 4.6.3, which contain milk or a milk product, or milk constituents, which are an essential part in terms of characterization of the product, the term "milk", or the name of a milk product may be used in the description of the true nature of the product, provided that the constituents not derived from milk are not intended to take the place, in part or in whole, of any milk constituent. For these products dairy terms may be used only if the consumer would not be misled.

If however the final product is intended to substitute milk, a milk product or composite milk product, dairy terms shall not be used.

For products referred to in Section 4.6.3 which contain milk, or a milk product, or milk constituents, which are not an essential part in terms of characterization of the product, dairy terms can only be used in the list of ingredients, in accordance with the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985, Rev. 1-1991). For these products dairy terms cannot be used for other purposes.

5. LABELLING OF PREPACKAGED FOODS

Prepackaged milk, milk products and composite milk products shall be labelled in accordance with Section 4 of the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985, Rev. 1-1991), except to the extent otherwise expressly provided in a specific Codex standard or in Section 4 of this Standard.

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[2] This excludes descriptive names as defined in Section 4.1.1.3 of the General Standard for the Labelling of Prepackaged Foods (GSLPF) and ingredients lists as defined in Section 4.2.1.2 of the GSLPF providing the consumer would not be misled.