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Produits alimentaires et de
consommation du Canada



October 25, 2007

The Right Honourable Stephen Harper, P.C., M.P.
Prime Minister of Canada
House of Commons
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister:

RE: Proposed changes to cheese compositional standards in Canada, as published in *Canada Gazette, Part I* on June 16, 2007

We, the undersigned organizations, have joined together to express our shared concerns regarding the proposed changes to cheese compositional standards in Canada, as published in the *Canada Gazette, Part I* on June 16, 2007 (the “proposed regulations”). Due to the lack of consultation that has occurred on this issue, we have found it necessary to form a coalition and to bring our concerns to your attention. Specifically, these concerns are:

- The inadequate consultation process on this issue, as well as the fact that the proposed regulations are not in conformity with the Government of Canada’s *Cabinet Directive on Streamlining Regulations*
- The negative impact on the health of Canadians as a result of implementation of the proposed regulations
- The negative impact on all Canadian consumers as a result of implementation of the proposed regulations

- The detrimental impact that the proposed regulations will have on Canadian competitiveness and innovation
- The proposed regulations are in direct violation of Canada's international trade obligations
- The proposed regulations are not enforceable and do not propose a realistic enforcement mechanism

Consultation Process

We believe that government should consult widely with all stakeholders before introducing regulations that would affect them.

In spite of a Ministerial announcement that the government would act on this issue, the proposed regulations were published in the *Canada Gazette, Part I* with as little public attention or consultation as possible. There was no Ministerial press release to announce the publication of the proposed regulations and the websites for neither Agriculture and Agri-Food Canada nor the Canadian Food Inspection Agency (CFIA) contained information to readily alert visitors of these proposed amendments. Indeed, a comment period of only 75 days over the course of the summer was provided (the minimum comment period required for proposals that may affect international trade). This short comment period is one of the only ways that the proposed regulations comply with the Government of Canada's *Cabinet Directive on Streamlining Regulation*. As outlined below, the cost of the proposed regulations on, among other things, the health, social and economic well-being of Canadians, the costs to Canadian business and the impact on Canada's international competitiveness, as well as the impact on Canada's foreign affairs far outweigh any likely benefit to be derived from the proposed regulations.

Despite this lack of consultation, we understand that there were an unprecedented number of comments received, the vast majority of which were critical of the proposed regulations. This large response, as well as the diverse nature of the undersigned organizations, should emphasize that the proposed regulations are of concern for and affect many sectors other than dairy producers and dairy processors that should be consulted on this issue.

Effect on the Health of Canadians

We believe that one way for the federal government to support the health of Canadians is to encourage a wide choice of healthy foods in the Canadian marketplace at a price that makes a healthy diet affordable to most Canadians. Canada's new nutritional guidance document, *Eating Well with Canada's Food Guide*, recommends that Canadians choose lower-fat dairy products, such as lower-fat cheese. Federal regulations should aim to support the ability of Canadians to make healthy dietary choices.

As a result of these regulations, there is concern that lower-fat cheese will not be as readily available in the Canadian marketplace and that the taste, texture, common names and cost of lower-fat cheese will be negatively impacted. As a result, many Canadians

will be forced to choose higher-fat cheese products, contrary to Health Canada's recommendations in *Canada's Food Guide*. This could have grave implications for the health of Canadians, furthering our obesity problems and promoting diseases such as diabetes and cardiovascular disease.

Lower fat dairy products can make a valuable contribution to the health of Canadians. It is imperative that the importance of the nutritional quality of dairy products – and how they can help meet Canadian goals for a healthy population – be incorporated into these regulations.

Impact on Consumers

We believe the government should introduce regulations that benefit consumers – these should allow for the greatest consumer choice in the Canadian marketplace, not impose burdensome expenses on Canadian consumers and provide greater clarity with respect to consumer products.

The proposed regulations will affect Canadian consumers. Specifically, consumers will be faced with increased costs, decreased selection and confusion. As noted in the Regulatory Impact Assessment Statement (RIAS), the proposed regulation will result in increased production costs for dairy processors and further processors, which will be passed on to the Canadian consumer. These costs are not insignificant – the RIAS places the cost to dairy processors at \$72 million annually; we believe this sum is drastically understated. For example, the RIAS only focused on the single ingredient commodities and did not include the full economic implications on multi-ingredient food products containing cheese, as well as other food products such as processed cheese. Such implications would include the cost of reformulation, as well as sensory evaluation and packaging changes; according to the RIAS, such costs were assumed to be 'minimal.' In any event, the effect of the proposed regulations would be to put many of these products beyond the reach of many consumers.

In respect of decreased selection, we have already outlined the impact on lower-fat cheese in the Canadian marketplace. In addition, the restrictions on cheese-making and the need for expensive, complex audit systems that the proposed regulations will require will drive some cheese exporters away from the Canadian marketplace. The result will be that specialty cheeses from other countries, which have been a key factor in the growth of the cheese market in Canada and are often not made by Canadian producers, will no longer be available in Canada.

The proposed regulations are also likely to create confusion for the Canadian consumer. Many products currently sold as cheese could no longer be marketed as such if the proposed regulations were implemented. Consequently, these products would need to be labeled as something other than cheese, which is only likely to confuse the consumer. This is particularly the case since there is no demand from the Canadian consumer for the compositional changes proposed for cheese. Consumers have not been consulted, nor have they requested any changes.

Impact on Competitiveness and Innovation

Regulations introduced by the federal government should strive to promote Canadian competitiveness and innovation by ensuring that Canada's regulatory regime is in line with our global partners. In this way, the federal government can help to ensure the prosperity of Canadians.

The proposed regulations restrict the use of dairy ingredients that are currently used in cheese manufacturing globally, and have been used throughout the last century, and contravene modern dairy processing methods. As a result of these restrictions, the economic model developed by the CFIA forecasts a more than twenty percent decline in the productivity of Canadian factories producing cheese.

Restricting the use of these new technologies is a highly regressive move that contradicts the objectives of innovation and market sustainability contained in the Agricultural Policy Framework II recently proffered by the Department of Agriculture and Agri-Food. Consequently, the proposed regulations put Canadian food manufacturing innovation and growth, as well as Canadian jobs, at risk.

Regulations are Contrary to Canada's International Trade Obligations

As set out in the *Cabinet Directive on Streamlining Regulation*, federal regulations are to be in compliance with, among other things, Canada's international trade obligations. Further, regulations are required to "use available international standards...as a basis for technical regulations where they achieve the intended regulatory objective."

It is evident that the proposed regulations would be in contravention of Canada's international trade obligations in respect of the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA). The proposed regulations are a new non-tariff barrier that breaches the WTO Agreement on Technical Barriers to Trade and Chapter 9 of NAFTA, as the rationale for the proposed regulations does not fall within any of the legitimate reasons for making such changes. At the very least, the proposed regulations also likely fall foul of the WTO's Agreement on Trade-Related Investment Measures and the Agreement on Import Licensing. Already, a number of our trading partners, such as the United States, the European Union, Australia and New Zealand, have expressed their displeasure with the proposed regulations, making a challenge of these regulations at the WTO a likely outcome. In addition, the proposed regulations likely contravene Canada's obligations under NAFTA's Chapter 11, meaning that the Government of Canada risks opening itself to claims for restitution from all American and Mexican investors in the dairy processing and food sectors.

One of the stated regulatory objectives for the proposed regulations is "to provide for consistency with certain international standards, as appropriate." The *Codex Alimentarius*, both the general and the specific provisions, allow for both milk and milk products to be used as raw materials in cheese-making. The role of the *Codex Alimentarius* is to develop international food standards to protect consumer health and to

facilitate fair trading practices in foods. Canada, under its WTO obligations, is expected to use international standards except where use would be inappropriate or ineffective in fulfilling a legitimate objective; the *Codex Alimentarius* is identified as the relevant international standard in respect of food safety. However, the proposed regulations are not in alignment with the *Codex Alimentarius* and no sound rationale is put forward for not adopting the *Codex* standards.

The proposed regulations also appear to contravene the federal government's domestic trade obligations. Specifically, Article 905 of the Agreement on Internal Trade (AIT) prohibits the amending of measures that would restrict internal trade in an agricultural or food good. The purpose of the proposed regulations is not to protect consumers, their health and safety or the environment. As a result, the proposed regulations also likely breach the provisions of the AIT.

Regulations are not Enforceable

The federal government should not be introducing regulations for which there are no means to monitor compliance without imposing burdensome administrative costs on companies and the government departments charged with enforcing the regulation.

At present, there is no credible, cost-effective way to monitor compliance with the proposed regulations. There is no acceptable technical procedure that will allow the CFIA to properly assess whether a Canadian manufacturer has complied with the proposed regulations. An audit system that would properly monitor compliance would be complex. The administrative costs that would fall on Canadian companies and the CFIA would be significant.

In enforcing the proposed regulations on imports of cheese, the Government of Canada is essentially forcing cheese importers to become cheese inspectors, offering evidence that the manufacturer of each cheese imported meets the requirements of the proposed regulations. As discussed previously, this likely contravenes Canada's international trade obligations. Further, Canada is the only jurisdiction requiring such evidence, with the likely result that many will simply forego exports to the relatively small Canadian market altogether, which will further negatively impact the consumer by reducing choice in the Canadian marketplace.

Conclusion

There are significant negative impacts associated with the proposed regulations that will be distributed across the entire Canadian economy. We recommend that CFIA re-assess the proposed regulations in light of the federal government's obligations to its citizens and to the international community it operates within. Consequently, we recommend that:

- The proposed regulations should not proceed to *Canada Gazette, Part II*

- The issue of cheese compositional standards should be the subject of inclusive consultations among a broader and more complete range of interested and affected stakeholders; and
- Any proposed revisions to cheese compositional standards should be consistent with our international trade obligations.

We request a meeting with you to discuss this issue further.

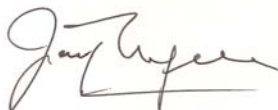
Sincerely,



Perrin Beatty
President & CEO
Canadian Chamber of Commerce



Don Jarvis
President & CEO
Dairy Processors' Association of Canada



Jayson Myers
President
Canadian Manufacturers and Exporters



Mary Anderson
President
I.E.Canada, Canadian Association of
Importers and Exporters



Nancy Croitoru
President & CEO
Food & Consumer Products of Canada



Nick Jennery
President and CEO
Canadian Council of Grocery Distributors



Diane J. Brisebois
President and CEO
Retail Council of Canada



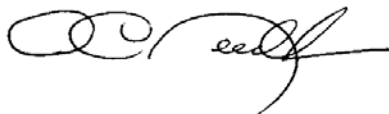
Michael C. Howlett
President and CEO
Canadian Diabetes Association



David Tyers
Chairman
International Cheese Council of Canada



Bonnie Hostrawser
Executive Director
Chronic Disease Prevention Alliance of
Canada



Douglas Needham
President
Canadian Restaurant and Foodservices
Association

CC: Members of Cabinet
Members of the Joint Senate and House of Commons Committee on the Scrutiny
of Regulations
Carole Swan, President, Canadian Food Inspection Agency