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August 10, 2005

Dear Mr. Willis and Mr. Robbins,

**Request for Agreement on Internal Trade Article 906 Consultations with the Government of Canada**

The Dairy Processors Association of Canada / Association des Transformateurs Laitiers du Canada (DPAC/ATLC) represents the interests of the dairy processing industry nationally. Our fourteen members operate in every region of the country and purchase, process and market more than 90 percent of milk produced in Canada. These companies employ more than 20,000 Canadians in their federally inspected plants and have sales in excess of \$10 billion annually.

I am writing to you at the request of three members - Saputo, Parmalat and Agropur. They are the three largest dairy processors in Canada and have substantial operations in Alberta. As such, they wish to ask the Alberta government to consult with the government of Canada as provided by Article 906 of the Agreement on Internal Trade (AIT).

**The Issue:**

The issue they ask the Alberta government to address with the Federal government is a proposed amendment to the *Canadian Agricultural Products Act (CAP Act)* contained in Bill C-27 that is now being considered by the House of Commons. The Bill is intended to establish the *Canadian Food Inspection Agency Enforcement Act*. It is not clear what the amendment has to do with this proposed Act or why it is necessary to implement it. A copy of the proposed amendment is attached.

The *CAP Act* is the Federal legislation that regulates interprovincial and international trade in food and agricultural products in Canada. The proposed amendment would make it

illegal to use dairy terms on labels of any product that competes with a dairy product even if the product contains dairy ingredients.

The effect of this amendment would be to restrict domestic trade by restricting the use of dairy terms on products that contain dairy ingredients and compete with dairy products.

No food product can be marketed in Canada unless the label accurately describes the ingredients of the product. This is essential to protect consumers. However, the proposed amendment would make it illegal to accurately describe on their labels products that contain dairy ingredients that consumers use instead of standardized dairy products. These products would not meet Federal labelling standards and, therefore, they could not be marketed interprovincially.

These products include such things as spreads, beverages, refrigerated and frozen desserts and cheese-like products that contain some amount of dairy ingredients but are not standardized dairy products.

In effect, if the *CAP Act* is amended as proposed any product that combines dairy and other ingredients that consumers can substitute for a dairy product could not be manufactured and sold in Canada.

This amendment will:

- make existing food products illegal, including, but not limited to, blends of butter and canola oil, processed cheese products, margarines that include small amounts of dairy ingredients, milk beverages, and frozen desserts that include dairy ingredients but are not ice cream;
- discourage innovation and product development that would increase consumer choice and help consumers develop more nutritious diets;
- compromise the principle that labels must accurately describe product ingredients by making it illegal to use specific terms for ingredients that might be contained in a product; *and*
- undermine the integrity of Canada's food labelling system by using it to protect specific products from competition.

### **Impact on Alberta Dairy Processors:**

In Alberta, Saputo, Parmalat and Agropur own and operate half a dozen dairy processing plants that employ thousands of people. These plants produce and distribute products exceeding \$1 billion in sales. The plants are located throughout the province including in Edmonton, Calgary, Lethbridge, Wetaskiwin and Glenwood. The products they process include both standardized dairy products and non-standardized products that are

manufactured from dairy ingredients and designed to meet consumer demand and changing nutritional needs.

Non-standardized dairy based products are an important part of the dairy processors' production as DPAC/ATLC members compete with other food manufacturers for the market in spreads, beverages, desserts and other food products.

If domestic trade in these products is restricted it is likely that dairy and dairy based products will continue to lose market share and this will inevitably lead to plant closures and loss of employment opportunities in Alberta and other provinces.

### **Why should Alberta intervene in this issue?**

These businesses are asking the Alberta government to intervene with the Federal government concerning the proposed amendment to the *CAP Act* for the following reasons:

- (i) They have significant presence in and commitment to dairy processing in Alberta. They believe that the proposed amendment to the *CAP Act* will: (1) restrict domestic trade in legitimate products containing dairy ingredients; (2) discourage innovation in new health food products; (3) reduce the competitiveness of, and growth potential for, dairy processors; *and* (4) lead to plant closures and job losses for dairy processors in Alberta;
- (ii) Alberta is one of two provinces in Canada (the other is British Columbia) which does not regulate non-standard dairy products or dairy blends. For Alberta, an open domestic market in dairy blends is an economic opportunity for its dairy processing industry. Unilateral action by the Federal government to close the domestic market for these products should not be acceptable to Alberta; *and*
- (iii) Alberta used the AIT to successfully challenge Ontario's *Edible Oil Products Act (EOPA)* to remove barriers to trade for non-standard dairy products in Ontario. The proposed amendment to the *CAP Act*, if adopted, will cancel the gains made in liberalizing domestic trade in non-standard dairy products.

### **The Proposed Amendment to the *CAP Act* is inconsistent with the AIT:**

The AIT applies to the proposed amendment to the *CAP Act* because the amendment will mean that products that can be made and sold in Alberta will not be able to be traded interprovincially because the product description/brand name and/or ingredients list cannot meet the requirements of the amended *CAP Act*.

Since this is the case, the amendments to the *CAP Act* can be challenged under the AIT. Following is a summary of how the AIT applies to this issue:

- (i) As a Party to the AIT, the Federal government has an obligation to ensure that the Federal government's measures relating to agricultural and food goods, and the way they are applied, are consistent with the AIT (Preamble and Chapter One: Operating Principles);
- (ii) Measures that regulate products that can be used as an alternative to standardized dairy products, whether they include dairy ingredients or not, are covered by the AIT (Article 902(3): Scope and Coverage. This was established by a letter to the co-chairs of the Committee on Internal Trade (CIT), dated October 1, 1997. Based on this letter, five technical barriers with policy implications were included in Chapter Nine including "*standards regarding dairy blends (mixtures of butter and margarine) and imitation dairy products*");
- (iii) The Federal government has an obligation not to adopt or amend measures so as to restrict trade in an agricultural or food good (Article 905: Non-Sanitary and Non-Phytosanitary Measures). Since the amendments to the *CAP Act* will restrict trade in products that contain dairy ingredients that consumers use as an alternative to standardized dairy products, the amendments to the *CAP Act* should be withdrawn;
- (iv) Since the amendments to the *CAP Act* may affect trade in products that contain dairy ingredients that consumers use as an alternative to standardized dairy products, the Federal government must consult with the government of Alberta and take their comments into account before adopting the amendments to the *CAP Act* (Article 907(1)(d): Transparency);
- (v) The proposed amendments to the *CAP Act*, if implemented, would be inconsistent with the general trade rules in Chapter Four. The proposed amendment is not justified to accomplish a legitimate objective (Articles 401(3), 402, 403 and 404);
- (vi) In 1998, the government of Alberta requested an internal trade panel to determine if the Federal government's *MMT Act* was consistent with the AIT. The Panel determined that if Federal legislation limits domestic trade, it is subject to the AIT and likely inconsistent with it. The Panel also determined that the AIT obliges the Federal government to consult provinces on trade measures before they are introduced to, or adopted by, Parliament. These principles apply to the proposed amendment to the *CAP Act*.

If the proposed amendment to the *CAP Act* is adopted by Parliament and applied by the Federal government, Saputo, Parmalat and Agropur believe that it will effectively cripple the dairy processing industry by removing its ability to innovate and compete with non-dairy food processors. Furthermore it will reduce consumer choice by foreclosing access

to the domestic market for non-standard dairy products for no reason other than to protect standard dairy products.

We believe this to be an improper use of the Federal regulatory authority under the *CAP Act*. It is also inconsistent with the AIT.

We ask that the Alberta government consult with the Federal government concerning the proposed amendment to the *CAP Act* as provided by Article 906: Consultations. The amendment is now before Parliament. Therefore this is an urgent issue and we hope that you will act as quickly as possible.

Please, do not hesitate to contact me if you wish to discuss this matter.

Also, for your information, Robert Knox of R.H. Knox & Associates is advising DPAC/ATLC on this matter. Please do not hesitate to contact him. He can be reached at (519) 922-3459 or by e-mail at [knox@lynx.org](mailto:knox@lynx.org).

Sincerely,

*Original signed by*

Don Jarvis,  
President and CEO,  
Dairy Processors Association of Canada

**Attachment:**

*Amendment to Bill C-27*

cc Executive Director, Internal Trade Secretariat  
Internal Trade Representatives for:  
Canada  
British Columbia  
Saskatchewan  
Manitoba

Nicolas Todd, Policy Advisor to the Federal Minister for Internal Trade