

## COMPOSITIONAL STANDARDS FOR CHEESE IN CANADA

Mathieu Frigon  
Economics Division

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## COMPOSITIONAL STANDARDS FOR CHEESE IN CANADA

### INTRODUCTION

Federal compositional standards for cheese have been debated and discussed at length in recent years by Canada's dairy industry. The purpose of these standards is to describe the basic requirements for cheese so that cheese available to consumers has a uniform composition and nutritional value.<sup>(1)</sup> Of course, cheese is not the only food for which there are compositional standards. However, what makes cheese unique is that the product is subject to two different sets of federal regulations. The dairy industry does not agree on how these two regulations should be interpreted exactly or on which regulations would have precedence should a dispute over interpretation or contradictory provisions arise. This paper outlines the current situation with respect to compositional standards for cheese; focuses on problems or disagreements over interpretation among dairy industry stakeholders; describes the proposed new regulations of the Canadian Food Inspection Agency (CFIA); and gives an overview of the reaction of the principal dairy industry stakeholders to the proposed regulations.

### CHEESE COMPOSITIONAL STANDARDS: CURRENT SITUATION

As mentioned previously, compositional standards for cheese are currently subject to two federal regulations: the *Food and Drug Regulations* (FDR) and the *Dairy Products Regulations* (DPR). Having two different sets of regulations would not be controversial if the industry as a whole agreed on how these two regulations should be interpreted and if the regulations were viewed as complementary, rather than contradictory. However, this is not the case. Not only does the industry generally disagree on how each of these regulations should be interpreted, but also, certain provisions of the FRD appear to contradict the DPR.

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(1) *Regulations Amending the Food and Drug Regulations and the Dairy Products Regulations*, SOR/2007-302, *Canada Gazette*, Part 1, Vol. 141, No. 24, 16 June 2007.

For example, the FRD require that cheese be made only with milk, skim milk, partly skimmed milk, buttermilk, whey cream or cream, or these same ingredients in their concentrated, dried or reconstituted form. The DPR, on the other hand, allow these same ingredients, as well as whey, butter, butter oil, whey butter, whey protein concentrates and *other milk solids*. It is the inclusion of “other milk solids” that is especially important to this debate. Generally speaking, dairy processors interpret this provision as including all milk products not explicitly mentioned in the regulations. Dairy processors favour the definition contained in the DPR to argue that virtually all milk solids can be used in the production of cheese. Dairy producers, on the other hand, have traditionally looked to the compositional standards prescribed in the FDR and favoured a far more restrictive list of ingredients permitted in the manufacture of cheese.

This technical battle with legal overtones also has major economic implications. Since technological advances have made possible the creation of a whole new generation of milk products (for example, isolates or milk protein concentrates), which are not necessarily subject to tariff quotas and can therefore be imported freely into Canada,<sup>(2)</sup> how the FDR and the DPR are interpreted clearly has economic implications for industry stakeholders. On a practical level, the use of isolates or imported milk protein concentrates allows cheese processors to reduce their costs, since imported milk protein is typically much cheaper than milk protein originating in Canada. Therefore, it is to the processors’ advantage to rely on the DPR interpretation whereby all milk solids can be used in cheese production, in that this interpretation allows for an increase in low-cost milk protein imports. However, this interpretation puts Canadian dairy producers at a serious economic disadvantage in that a higher level of milk protein imports would result in reduced revenues from milk sales. When cheese processors import milk proteins, the result is lower sales of milk proteins derived from Canadian milk. Canadian milk proteins are thus “displaced” by imports and must be sold off on domestic markets that yield a low return, such as the market for animal feed. This state of affairs translates into major economic losses for Canadian dairy producers. Therefore, strict enforcement of the FDR is very beneficial economically for Canadian dairy producers.

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(2) A tariff quota is an import duty system. A lower tariff rate applies to imports up to a certain threshold (quota) for a given period, while a higher tariff rate applies to imports above that threshold. This system is used in Canada, in particular to protect supply management production. Milk imports are subject to this kind of system, but not milk protein isolates.

In spite of the misunderstandings and confusion as to which of the two sets of regulations applies, the dairy processors' interpretation of the DPR has held sway. As a result, imports of milk proteins have increased steadily over the past 10 years and dairy producers have suffered increasingly large economic losses. Against this backdrop, the Minister of Agriculture and Agri-Food created the Dairy Industry Working Group (DIWG), which is made up of dairy producer and processor representatives. While the DIWG was given a relatively broad mandate, one of its main tasks was to help producers and processors reach common ground for paving the way for harmonization of the FDR and the DPR, with an ultimate goal of one consistent interpretation of the regulations by all industry stakeholders. The DIWG met throughout 2006. In the absence of a consensus among the parties, the moderator tabled his report to the Minister. The CFIA subsequently put forward a proposal in Part 1 of the *Canada Gazette* aimed at amending and harmonizing the FDR and the DPR. This proposal was broadly based on the report of the DIWG's moderator.

## **THE CFIA'S PROPOSED NEW REGULATIONS**

The report of the DIWG's moderator and the CFIA's proposed new regulations strive to achieve two goals:

1. to identify and formalize the "historic levels" of dairy ingredients (in the form of milk proteins) that can be used by cheese processors;
2. to ensure uniformity and harmonization through the adoption of minimum standards governing the use of fresh milk in cheesemaking.

Very early on in the DIWG initiative, the adoption of new harmonized regulations based on ratios was seen as the best way of ensuring that these goals were met. The "ratio" concept meant that the new harmonized regulations would stipulate that a minimum percentage of the protein content of a particular variety of cheese must derive directly from fresh milk, whereas a certain percentage of content could derive from other dairy ingredients. For example, a ratio of 87 to 13 would mean that a minimum of 87% of the protein content of cheese must derive directly from fresh milk, whereas 13% of the content could be derived from other dairy ingredients. The new regulations proposed by the CFIA and set out in Part 1 of the *Canada Gazette* are based on the "ratio" concept. The following table illustrates the ratios proposed by the CFIA to amend the FDR and the DPR.

Variety of cheese	Minimum percentage of casein content that is derived from milk, partly skimmed milk, skim milk or cream (as a percentage of the total protein content of cheese)	Limit on the use of dairy ingredients (as a percentage of the total protein content of cheese)
Pizza Mozzarella, Part Skim Pizza Mozzarella	63%	37%
Asiago, Baby Edam, Baby Gouda, Blue, Butterkase, Bra, BrieCaciovallo, Camembert, Danbo, Edam, Elbo, Emmental, Esrom, Feta, Fontina, Fynbo, Gouda, Gournay, Gruyère, Havarti, Kasserli, Limburger, Maribo, Montasio, Muenster, Neufchâtel, Parmesan, Provolone, Romano, St-Jorge, Saint-Paulin, Samsoë, Tilsiter, Tybo	95%	5%
Cheddar, Brick, Canadian Style Brick, Colby, Farmer's, Jack, Monterey (Monterey Jack), Mozzarella (Scamorza), Part Skim Mozzarella (Part Skim Scamorza), Part Skim Pizza and any other variety of cheese not referred to	83%	17%
Traditional Cheddar Cheese	100%	0%

Under the CFIA's proposed new regulations, licensing of cheese importers would also be mandatory. This requirement would ensure improved follow-up procedures to verify that imported cheeses are meeting the new Canadian standards.

The CFIA's cost-benefit analysis also appears in the *Canada Gazette*. According to this analysis, producers (proteins and solids) would see their revenues increase by \$187 million, whereas processors would face a cost increase for cheese ingredients of approximately \$72 million. The increase in producer revenues would come primarily from new markets for Canadian milk proteins, whereas the cost increase for dairy processors would be borne primarily by cheesemakers who currently use less milk than the minimum content requirements in the proposed new regulations. These processors would in fact have to use more proteins derived directly from fresh milk, which would mean higher costs to them. Conversely, cheesemakers currently exceeding the minimum requirements in terms of milk use in cheese production would be affected very little or not at all by the proposed new regulations.

The CFIA expects that the new regulations will have little or no financial impact on cheese importers since it is believed that most imported cheeses already satisfy the requirements set out in the new regulations. The CFIA also believes that the impact will probably be minimal on further processors (that is on processors that use cheese as an ingredient in the manufacture of other food products, such as frozen pizza) since this industry already benefits from lower prices under the Special Milk Class Permit Program.<sup>(3)</sup> As for retailers and the food service sector (restaurants), the CFIA expects that they will face higher costs, since cheese processors would be able to pass along all cost increases to buyers of their products. Similarly, retailers and the food service sector could also pass along higher costs to consumers in the form of higher retail prices. Still according to the CFIA's analysis, enforcement of the new regulations could also cost the Agency an additional \$3.2 million in year one, and \$2.2 million a year thereafter.

## **REACTION OF PRINCIPAL STAKEHOLDERS TO THE PROPOSED REGULATIONS**

No consensus has been reached on the CFIA's proposed regulatory amendments. The following paragraphs summarize the reactions of the principal stakeholders.

### **A. Dairy Farmers of Canada**

The reaction of the Dairy Farmers of Canada (DFC) to the proposed regulations in Part 1 of the *Canada Gazette* has been positive for the most part. DFC believes that the proposed regulations will provide Canadian consumers with the assurance that whatever variety of cheese they purchase, the product will always meet their expectations in terms of taste, texture and flavour. DFC does, however, have some questions and concerns about the technical details of the proposed regulations. Furthermore, DFC is sceptical about the CFIA's estimates in terms of costs to, and increased revenues for, processors and dairy producers. It believes that over the long run, the net effect on processor costs and producer revenues should be neutral since the proposed regulations contain a sort of "grandfather clause" for cheesemakers in terms of the overall percentage of dairy ingredients they can use in their production.

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(3) The Special Milk Class Permit Program provides further processors with milk at US prices.

## **B. Dairy Processors Association of Canada**

The Dairy Processors Association of Canada (DPAC) is staunchly opposed to the CFIA's proposed new regulations. Among other things, DPAC believes that incorporating the recommendations of the DIWG's moderator into the draft proposed regulations is aimed at forcing processors to buy more milk from dairy farmers and to turn their backs on modern cheesemaking processes, on productivity gains, and on the benefits generated for consumers over the past 30 years.<sup>(4)</sup> Moreover, DPAC is concerned that other dairy products might be the next target of regulations. According to DPAC's calculations, enforcement of the new regulations will result in minimum losses of \$115 million in cheese sales and in maximum gains of \$93 million in milk sales for dairy farmers, rather than in an additional \$187 million in revenues as calculated by the CFIA. Furthermore, DPAC also foresees a significant drop in cheese consumption since retail prices are likely to rise. Still according to DPAC, the CFIA must bear in mind, in addition to the extra costs to processors for the raw material, those costs associated with the reformulation of cheese and packaging changes, as well as the losses associated with equipment rendered obsolete by the new regulations. The further processing food industry would also be directly affected, since food products containing cheese would have to meet the new regulatory standards, which could mean reformulation and new packaging costs. This industry could ultimately decide to use analogs (non-dairy products) instead of cheese. Furthermore, in the opinion of DPAC, given the complex nature of the regulations, it would be extremely difficult to verify their application and to ensure compliance. Lastly, compositional standards as well as new requirements for imported cheese could prove very unpopular with our trade partners, thereby increasing the risk of trade disputes at the World Trade Organization.

## **C. Other Dairy Industry Stakeholders**

The Consumers' Association of Canada (CAC) sees no benefit to Canadian consumers in the proposed regulations and is particularly concerned about their impact on low-income families. In the opinion of the CAC, these regulations are primarily a means of increasing revenues for Canadian dairy producers. It maintains that it is satisfied with the current regulatory regime. The Canadian Restaurant and Foodservices Association is also opposed to the proposed regulations because of their potential impact on prices and on the range of products available to consumers.

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(4) DPAC, second submission to the CFIA on the proposed regulatory amendments published in the *Canada Gazette*, Part 1, p. 3.

## CONCLUSION

The CFIA's proposed regulatory changes represent a compromise between the Dairy Farmers of Canada's interpretation of the FDR and the dairy processors' interpretation of the DPR. It is important to note that the FDR and the DPR both deal with cheese compositional standards and that their respective provisions are viewed by some as being contradictory, hence the need for harmonization. By proposing to amend the FDR and the DPR, the CFIA is endeavouring to acknowledge that, historically, processors have used certain milk ingredients, and to reassure producers that a minimum amount of fresh milk will also be used in cheesemaking. The regulatory changes proposed on 16 June 2007 in the *Canada Gazette*, Part 1, have been strongly opposed by the Dairy Processors Association, while the Dairy Farmers of Canada have welcomed them. The official version of the new regulations was published on 26 December 2007 in the *Canada Gazette*, Part 2.<sup>(5)</sup> In spite of a number of technical amendments or clarifications, this version of the regulations fully conforms to the spirit and objective of the proposed regulations initially published in the *Canada Gazette*, Part 1.

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(5) *Regulations Amending the Food and Drug Regulations and the Dairy Products Regulations*, SOR/2007-302, *Canada Gazette*, Part 2, Vol. 141, No. 26, 26 December 2007.