ISSN 0014-6579

FAO
LEGISLATIVE
STUDY

54

Legislation governing food control and quality certification

Authorities and producers

Food
and
Agriculture
Organization
of
the
United
Nations

1945 - 1995

Legislation governing food control and quality certification

Authorities and producers

Jean-Pierre Chiaradia-Bousquet
Development Law Service
FAO Legal Office

FAO
LEGISLATIVE
STUDY

54

Food
and
Agriculture
Organization
of
the
United
Nations

Rome, 1995

The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

M-82
ISBN 92-5-103494-X

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying or otherwise, without the prior permission of the copyright owner. Applications for such permission, with a statement of the purpose and extent of the reproduction, should be addressed to the Director, Publications Division, Food and Agriculture Organization of the United Nations, Viale delle Terme di Caracalla, 00100 Rome, Italy.

© FAO 1995

FOREWORD

In terms of volume and quality, the international food trade is developing all the time. Almost three-quarters of all the food traded, worth around 150 billion US dollars[1] involves the developed countries alone, although the developing countries now account for 50 percent of certain non-processed or semi-processed agricultural products such as fresh fruit and vegetables, coffee, tea, cocoa, cane sugar, certain vegetable oils and fish products[2]. These figures need to be adjusted subjectively to take account of the internationalisation of tastes, and changes in eating habits creating a demand for original, exotic or higher quality products. Since demand is dependent on product quality[3], it is essential for producers to stand out from their competitors by offering attractive food for sale.

But high quality food can only be provided if standards, whether mandatory or voluntary, are set by the authorities or by the producers. These standards must then be enforced to protect the consumer (quality assurance) and to stimulate production (recognising certain specific features). The approach of the Codex Alimentarius and the EEC system is highly relevant here, particularly with regard to the GATT agreements.

The most commonly used form of achieving this is through traditional standards, quality assurance, business or commodity certification, appellation of origin or indication of source, specific provisions of trade mark legislation, and international legal instruments designed to provide quality guarantees. The purpose of this study is to describe how these operate, to provide exporters, particularly in the developing countries with a straightforward account of the types of control and requirements of the rich markets. Furthermore, the governments of potential exporting countries will be able to draw useful lessons from this on which to set up their own inspection/control and certification procedures geared to their local structures. Examples are given of the current legislation of a number of countries, chosen according to specific geographical and technical criteria. No value judgements should be read into this, nor should inferences be drawn regarding any countries not mentioned there. Since this study has been prepared on the basis of legal texts available at the FAO Development Law Service archives, it makes no pretence at being an exhaustive or comprehensive treatise or complete manual on current legislation. But it does provide the reader with an overview of general principles governing food control and quality certification. We wish to thank Miss Valérie Billet who researched and studied all the documentation needed by the authors.

Lawrence C. Christy
Chief, Development Law Service
Legal Office

---

1 R.B. Burke and B.L. Smith, "Import/Export control: new approaches to considering import/export requirements under national food control systems", FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, Rome 18-27 March 1991, ALICOM 91/18.

2 R.K. Malik, "Import/Export Control: identification of major problems in food import/export control affecting international trade in food", FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, Rome, 18-27 March 1991, ALICOM 91/15.

3 F.G. Winamo, "Food Standards: approaches to harmonization of critical requirements during production and processing", FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, Rome 18-27 March 1991, ALICOM 91/7.

TABLE OF CONTENTS

	Page
PART ONE - GENERAL PRINCIPLES	1
Chapter I - Scope	3
l. Food	3
2. Quality foodstuff: different concepts of quality	3
2.1 Implicit needs	4
2.2 Explicit needs	4
Chapter II - Background	5
Chapter III - Today's approach	8
1. The Community's approach to food quality	8
1.1 The Common Agricultural Policy	8
1.2 The new approach	8
1.3 Admission of superior quality products	12
2. The approach of the GATT negotiations in the Uruguay Round and the decisions taken by the Codex Alimentarius Commission	12
Chapter IV - The need for quality at every stage in production and trade	13
1. Agricultural products	13
2. Food	13
3. The trade in agricultural products and foodstuffs	14
PART TWO - TOOLS FOR ESTABLISHING FOOD QUALITY	15
Chapter I - the notion of food standard	17
1. Different concepts of standards	17
1.1 Standards	17
1.2 Technical regulations	18
2. Different types of standards	19
2.1 Mandatory versus non-mandatory standards	19
2.2 Technical requirements/standard criteria	19
2.3 Horizontal standards/vertical standards	20

Page

3. Other types of documents used 20
3.1 Non-mandatory documents 20
3.2 Mandatory documents 21
3.3 Codes of practice 21
3.4 The standards and code of practice in the Codex Alimentarius 22
4. The scope of standards 24
4.1 Commodity specification standards 24
4.2 Commodity environmental standards 25
4.3 Standards for analysis and testing methods 26
4.4 Guidlines 26
Chapter II - Developments in the administrative approach 26
1. The traditional approach 27
1.1 National practices 27
1.2 The EEC system 28
1.3 Rules recommended by FAO 31
2. The new approach - voluntary instruments 31
2.1 Reference to the standard 32
2.2 The legal status of standards in the Civil-Law system 33
2.3 The legal status of new standards 34
2.4 Relations between the new standards and official quality control measures 35
2.5 National standard-setting procedure 35
2.6 within the Community 35
2.7 International standards 37
PART THREE - QUALITY CONTROL OF FOOD PRODUCTS: TOWARDS SELF-REGULATED CONTROL 39
Chapter I - Traditional quality control 41
1. General background 41
2. Control of home-produced food for domestic consumption 42
2.1 The stages at which controls are carried out 42
2.2 Types of controls 42
2.3 Qualifications of officers 43
2.4 Product liability 43
2.5 The powers of inspection officers 44
2.6 Rules regarding sampling 44
3. Control of imported food 44
3.1 The type of control at the point of import 44
3.2 Responsibility for control 45
3.3 The scope of control 45

Page

3.4 Information on seizure or rejection 46
3.5 Import licences 46
4. The control of food for export 46
5. Community control of foodstuffs 47
5.1 Official control of foodstuffs 47
5.2 Food hygiene 51
5.3 Post mortem veterinary examinations 51
5.4 Types of control authorised for trade in foodstuffs 53
6. Food control infrastructure recommended by FAO 54
7. The limitations of traditional control 55
Chapter II - Control by producers: A practice in expansion 55
1. Quality assurance 56
1.1 Standards on which quality assurance might be based 56
1.2 Standards suitable for the food industry 57
1.3 Another approach to quality assurance 57
2. The HACCP system 57
2.1 HACCP and quality assurance 58
2.2 The specific features of the HACCP method 58
2.3 Implementation of the HACCP method 59
2.4 Encouragement to use the HACCP method 59
PART FOUR - QUALITY MARKS IN THE FOOD INDUSTRY 61
Chapter I Signs of quality recognised by a national Authority 63
1. General principles of certification 63
1.1 Business certification: quality assurance 63
1.2 Certification of food products 66
2. Particular types of certification 68
2.1 Certification of conformity 68
2.2 Collective marks 69
2.3 Labelling 70
3. Appellations of origin 73
3.1 Types of protection for appellations of origin 74
3.2 Establishing the "appellation d'origine contrôlée" 75
3.3 Institut National des Appellations d'Origine (INAO) 75
3.4 Products subject to specific procedures 75
4. Countries in which quality signs are regulated by trade mark legislation 76

Page

5. Consequences in terms of the protection of designations of origin 76
Chapter II - Signs of quality recognised in the EEC 77
1. The mutual recognition of national certification 77
1.1 Community certification of conformity with standards, and certification of conformity with essential requirements in areas regulated by EEC Directives 77
1.2 The mutual regognition system 77
1.3 Relations with third countries 78
2. Certificates of specific character 79
2.1 Compliance with specifications 79
2.2 Eligibility to request registration 80
2.3 Community registration procedure 80
2.4 Control authority 80
2.5 Protection afforded 80
2.6 Relations with third States 81
3. Protection of appellation of origin and geographical indications (AOP and IGP) 81
3.1 Appellations of Origin 81
3.2 Geographical indications 82
3.3 The operation of the system 82
3.4 Protection afforded 83
3.5 Relations with third States 84
Chapter III - International protection of quality marks 85
1. International certification 85
2. International conventions 85
2.1 The Paris Union Convention 85
2.2 The Madrid Agreement 85
2.3 The International Stresa Convention (1951) 86
2.4 The Lisbon Agreement 86
3. Bilateral agreements 86
PART FIVE - NATIONAL LEGISLATION 89
Australia 91
1. Import controls 91
1.1 Control certificate 91
1.2 Powers of the Ministry of Primary Industries and Energy 91
1.3 Powers vested in the authorised officers 91
1.4 Inspection advice 92
1.5 Holding orders 92
1.6 Penalties 92

Page

2. Export controls 93
2.1 Notice of intention 93
2.2 Food subject to authorisation 93
2.3 Control and holding 94
2.4 Official stamps and certification 94
3. National Food Authority 94
3.1 Functions and powers 94
3.2 Procedures for drafting standards 95
4. Certified trade marks 95
4.1 Procedures for registering certified trade marks 96
4.2 Penalties 96
Chile 96
1. General controls 96
1.1 Food intended for the national market and imported food 96
1.2 Stages at which food controls are performed 97
1.3 Competent authorities 97
1.4 Powers and responsibilities of municipal authorities 98
1.5 Powers of the inspection officials 98
1.6 Penalties 98
1.7 Penalties and public health provisions 99
2. Export controls 99
3. Food quality control 99
4. Quality standards 99
5. Certification of products intended for export 100
5.1 Reference document 100
5.2 Control of certification bodies 101
5.3 Striking-off 101
United States 102
1. Administrative controls 102
1.1 Food intended for the domestic market 102
2. Imports and exports 105
2.1 Imports 105
2.2 Exports 106
3. Food standards 106
4. Guidelines 107
5. Certification mark 107

Page

France 108
1. Quality control 108
1.1 Control of foodstuffs for domestic consumption 108
2. Control of imported foodstuffs or foodstuffs intended for export 110
2.1 Imported foodstuffs 110
2.2 Foodstuffs intended for export 110
3. Standards 110
3.1 The elaboration of voluntary standards 111
3.2 Mandatory standards 112
4. Codes of practice 113
United Kingdom 113
1. The control of food for national consumption 113
1.1 Stages at which controls are carried out 113
1.2 Types of controls 114
1.3 Seizure 114
1.4 Measures adopted by inspectors 114
1.5 Liability 115
1.6 Sampling and analysis 115
1.7 Qualifications of food examiners 115
1.8 Codes of good practice 116
2. Control of imported food and food intended for export 117
2.1 Food intended for export 117
2.2 Imported food 117
2.3 Codes of practice 118
2.4 Certification marks.. 118
Bibliography 121

PART ONE - GENERAL PRINCIPLES

The international food trade is continually evolving, in terms both of volume and quality. The developed countries alone account for about three-quarters of the food trade, which is worth a total of 150 billion U.S.$. However, for certain unprocessed or semi-processed foodstuffs, such as fruit and vegetables, coffee, tea, cocoa, sugar, certain vegetable oils and fish products, the share of the developing countries now exceeds 50 percent. This development is mainly due to the internationalisation of consumer tastes and feeding habits and the larger the number of developing countries that are now producing exportable food. However, producers in these countries cannot export their products unless there is a demand for them from the importing countries. This demand depends on the quality of the products on the market, making it essential to offer consumers attractive food.

Various quality inspection and control systems can be used to do this. This study sets out to describe the sources from which exporters in the developing countries can acquire unambiguous information on the types of control and the requirements of the rich markets. It will also help the governments of potential exporting countries when establishing their own national quality control or certification systems.

CHAPTER I - SCOPE

1. FOOD

The technical expression "agri-food" generally stands for everything that is covered by the word "food", including raw agricultural products (agricultural products or commodities) and foodstuffs processed by the agri-food industry.

The general term "food" means anything that is fit for human consumption. This is a very general definition and has been qualified in legislation, since it is agreed that the concept of food is based upon is based upon its nutritional function. The definition therefore excludes any substance which is sought after purely for its flavour, or which is used for therapeutic purposes. However, the scope of the law may also include these substances in some cases, even though they are not foodstuffs in the strict sense of the term. German law, for example, equates tobacco with food[4].

In the United States, the term "food" is used for any substance used or intended for use as a food or drink by man or animal, which also includes chewing gum and any other substance used as an ingredient in any one of these products[5].

In Australia the term covers any substance or thing of a kind used or capable of being used as food or drink by human beings, or as an ingredient or an additive in, or substance used in the preparation of a substance or thing used, or capable of being used, as food of drink, as well as any other substance or prescribed thing, whether or not in a condition fit for human consumption, which therefore only excludes therapeutic goods[6].

In Chile, "food" and "food product" mean any substance or mixture of substances intended for human consumption, including drinks and any related ingredients or additives[7].

The definition given by the Codex Alimentarais (hereafter "Codex") in the Code of Ethics for International Trade in Foods was proposed for the first time at the fourth session of the Codex Commission in November 1966; the expression "food" was to be understood as *"any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum and any substance which has been used in the manufacture, preparation or treatment of "food", but does not include cosmetic or tobacco or substances used only as drugs",*

2. QUALITY FOODSTUFF: DIFFERENT CONCEPTS OF QUALITY

Since the notion of quality is primarily subjective, any legal analysis of the term must take account of elements that generally lie outside the legal sphere proper: the personal taste of each individual (the same product will be considered excellent by one person, and bad by another); different motivations, due to religion, social class, a taste for things foreign, an irrational fear of irradiated food,

---

4 A. Gérard, "Droit de l'alimentation et produits nouveaux - les aspects législatifs", Alimentex, special issue, December 1991, p. 455.

5 "Food, Drug and Cosmetic Act", section 201(f).

6 National Food Authority Act, 1991, No. 118, article 3.

7 *Código sanitario,* Decree No. 725, 11 December 1967, article 108.

or the ingrained ancestral habits of each society[8].

Some even hold that it is difficult to define quality at all, even though everyone seems to intuitively sense what it means.

According to Juran[9], it is "fitness for use" which is determined by the characteristics of the product that the user, rather than the supplier or the seller, considers to be beneficial.

According to the French Standards Association (hereafter "AFNOR"), quality is the aptitude of a product or service to meet the actual or potential needs of users (standard NF-X-50-109). It is therefore what one expects of a product that determines its quality.

The International Standards Organisation (hereafter "ISO") (ISO 9000 standards) defines quality as "the totality of characteristics of an entity that bear on its ability to satisfy stated and implied needs". This is a much more comprehensive definition because it bases the analysis of quality on the physical characteristics of the product. It is also more specific, because by using the term "implicit" it takes account of what the consumer expects of a foodstuff.

Whatever approach is taken to defining quality, there are always four components to be considered: hygiene, nutrition, enjoyment, and use. Whether these four components are dealt with separately or together, they must respond to the needs and wishes of the consumer who seeks to meet those needs as fully, enjoyably, safely, conveniently and cheaply as possible. It follows from this that as far as quality is concerned, it is the consumer who must have the last word[10].

2.1 Implicit needs

Hygiene quality is based upon the "safety" of the commodity. This aspect of quality which refers to its non-toxic character therefore reflects its chemical and bacteriological harmlessness.

Hygiene quality is "standardisable". As a rule, regulations set the ceilings on the main toxic contaminants. The European Union considers the quality factor to be the basic element in both national and Community legislation.

Nutritional quality helps to enhance health: the nutritional function of a food is manifested in terms of both quantity (calories) and quality (ingredients).

2.2 Explicit needs

Satisfaction derives from the enjoyment or organoleptic quality. It has to do with the relationship between the product and the five senses. In theory, on an industrial scale, the pleasurable or enjoyment quality is good when it satisfies the consumer at a particular moment in time. Since it

---

[8] J.L. Multon and J. Davenas, "Qu'est-ce que la qualité d'un produit alimentaire et quels en sont les opérateurs?", in "La qualité des produits alimentaires". Coll. Sciences et techniques agro-alimentaires, APRIA

[9] J.M Juran, RM. Gryma and R.S. Bingham, "Quality Control for the Food Industry", McGraw Hill Book Company, 1979.

[10] See the theory of the four S's developed by P. Mainguy in "La qualité dans le domaine agro-alimentaire", Report produced at the request of the French Minister of Agriculture and Forests, and the Secretary of State for Consumer Affairs.

is impossible to satisfy all potential buyers as a whole, the manufacturer must target a specific market and lay down sensorial quality standards for his product in terms of his particular market segment.

Quality of use is determined by the service rendered. It has to do with how the consumer benefits from a particular foodstuff; it is additional to the purely nutritional or psycho-social qualities. The various components of quality of use are suitability for conservation, ease of use, price, commercial aspects, and legal and regulatory aspects[11].

A distinction must therefore be drawn between two complementary but distinct concepts of quality.

The first is to establish a "quality threshold" to distinguish between products that are fit or unfit for consumption, and most cases means ensuring uniformity between the commodities concerned. This is the main trend in the countries following the Anglo-American tradition.

The second is based upon the specific features of a commodity: once a quality specification has been established, the commodity can be classified not only as "good" or "bad", but also in terms of its other features, relating to its organoleptic qualities, taste, material, source or origin, etc... This is the approach used by France and the Latin countries, and it has also been adopted to a certain extent by the EC Commission[12].

Depending on the system, producers and the authorities will address the question of establishing quality (first stage: using regulatory and certification systems) and designing ways of enabling consumers to recognise that quality (second stage: using standards, voluntary certification, agricultural labelling and appellations of origin).

Whatever the choice, there are extremely important economic policy implications. For countries with a powerful agri-food industry are generally inclined to emphasise the "health/safety" aspect of their commodities, with the risk of squeezing out the small producers that do not have the necessary investment capacity. One of the consequences is the risk that products supplied may become completely uniform.

In countries where food is produced on a smaller scale, it is easy to try to satisfy consumers by offering them a wider variety of commodities, with a less systematically organised economic fabric made up of a larger number of producers.

CHAPTER II - BACKGROUND

The quest for quality is nothing new, by any means, and there are different ways of achieving it. From the earliest times, man felt the need to be certain about the quality of the food he consumed. In the Old Testament it was forbidden to eat the meat of animals that had not been properly slaughtered. In Chinese, Indian, and Greek literature reference is made to embryonic food legislation. In Athens, for example, beer was controlled and wine was inspected "in order to guarantee the purity and wholesomeness of the products". Rome set up a food inspection system to protect consumers against poor quality and fraud, and this imperial system remained in force until the end of the 7th century.

---

[11] J.L. Multon and J. Davenas, *op. cit.*, pp. 5-9.

[12] P. Creyssel, "Agro-alimentaire, pour une stratégie de normalisation", Enjeu, from No. 113, February 1991, p. 21.

Most systems to protect consumer health were also backed by a fraud prevention system. Any legal action taken against offenders was, however, to punish those guilty of fraudulent dealing rather than to protect public health.

The adoption of a legislative system and an authority responsible for ensuring fair trading was to protect honest traders, and consequently consumers, from their competitors who did not comply with fair-trading practices.

In the Middle Ages, to complement what was still only fragmentary legislation, such as the Assize of Bread promulgated in England in the reign of King John (to punish bakers who manufactured poor quality bread or who sold under weight), or, the Barley Ale Statute promulgated in 1269 by Louis XI of France (stipulating the statutory operations to be performed at various stages in the manufacture of barley ale), or the trade guilds' definitions of "local, fair and constant practices relating to the conditions for processing and preparing most foodstuffs"[13], which enabled them to draw up various professional and ethical codes.

The representatives of the producers involved also enforced these codes and rules. Michel de Notre-Dame, better known as Nostradamus, wrote a treatise in 1555 on jam making, which was taken up and used as a mandatory standard by the jam-makers' Guild in Paris. This code of practice, like all codes of practice, was eventually incorporated into the "Livre des métiers".

Material interests and consumer health were therefore protected, and the high reputation of the members of the trade was assured. Conformity with these rules of the art was signified by a stamp, or wax seal or certifícate issued by the Guild. In some instances, the mere fact that a manufacturer was a member of a professional community was sufficient to guarantee the conformity of his products.

France abolished the Guilds during the 1789 Revolution, which proclaimed the freedom of trade and industry. By so doing, they also did away with all professional and trading standards, leaving only the regulations on hygiene laid down by the authorities.

Food inspection and control was subsequently entrusted to a central or local government administrative authority. This was the case in Germany, the Netherlands and in England. The Industrial Revolution and the social upheavals that followed encouraged the authorities to improve their food inspection and control procedures in order to meet new needs and deal with new hazards.

In Amsterdam, for example, a municipal authority was instituted in 1858 to inspect foods and beverages. The first modern food legislation was enacted in England (the 1860 Act to prevent the adulteration of food and drink, and instituting an analyst to ascertain the wholesomeness of food and beverages). By the end of the 19th century most of the industrialised countries had gradually adopted food legislation. In countries with a federal structure, like Canada, the United States and Australia, jurisdiction was vested in the provinces or the States.

However, these laws only governed "fraud prevention and guaranteeing the value of the foodstuffs" as a rule, while the health of the consumers was only considered — if at all — indirectly. The French Criminal Code of 1810 made it a criminal offence to sell food likely to damage the health of consumers (articles 318 and 475) or food which did not match the description given (article 432). The 1875 Sale of Food and Drugs Act in the United Kingdom (replacing the 1860 Act) made traders fully liable for the consequences of selling their products. In 1884 Germany set up food inspection

---

[13] J.F. Homardinquer, "Pour une histoire de l'alimentation", Cahiers des annales, No. 28, A. Colin, Paris, 1990.

offices. Laws with similar purposes were also enacted in Canada, Germany, Belgium, Italy, Austria and Scandinavia. Analysing these various systems, one can see that for the very first time the authorities had become aware of the importance of inspection services and even more importantly, the need for skilled analysts.

At the beginning of the 20th century, existing legislation was amended to introduce the notion of consumer protection and to give a fresh boost to the food trade.

As specific food production technologies developed, the consumers' behaviour had changed. What had become relevant now was not only to have wholesome, safe products subject to effective and efficient inspection and control measures, but also to be able to distinguish between superior or special quality products, and ordinary products. Products differed in terms of quality according to the following three notions: the source of the product, the rules of production, and producer liability.

We know that ancient Egypt it was necessary to indicate the origin of products, because at Saqqarah (the pyramid of Pepi II, the 4th king of the 6th dynasty who ruled over Memphis about 35 centuries ago) mention is made of wines as being "from Peluse" or "from Letopolis". This specification, which we know of thanks to archaeology, was essential, because the other wines were only differentiated in terms of their colour[14].

At the end of the 18th century, in his writings on gastronomy, Grimod de la Reynière indicated the places of origin of the best foods: fattened pullets from Bresse, mutton from Cabourg, salt from Guérande ... [15]. In this connection, although French legislation on appellations of origin is the most highly developed, it was Portugal that first enacted the relevant legislation.

In mediaeval France, and until the 24 June 1791 Act, the origin of products was strictly controlled by the Guilds or the local authorities. The Revolution did away with this type of guarantee, and so specific legislation had to be enacted to define and protect indications of source.

When no connection whatsoever exists between the production or manufacturing method and the locality in which it takes place, the indication of source cannot be used to guarantee product quality. In this case the essential element is the production technique itself, since the producer's intention is no longer to distinguish his products from products of the same type, but to ensure that they are of a minimum quality standard[16].

In view of the wide variety of similar products, with different compositions or presentations, it became necessary to use distinctive signs to enable the consumer to recognise the specific quality of each product and to differentiate it from other similar products.

Using a system of trade marks proved useful not only to producers but also to the administrative authorities responsible for inspecting and controlling foodstuffs, by making it possible to identify the producer. At the present time France has two types of "collective marks" suitable for

---

[14] S. Vivez, "Pour une histoire détaillée de l'origine des indications de provenance: les appellations d'origine - législation et jurisprudence actuelle", doctoral thesis in jurisprudence, Bordeaux, 1932.

[15] P. Waleffe, "Les classiques de la table", Jean Biron SA, Lausanne, 1967, p. 48 et *seq.*

[16] See *infra.*

agri-food products exist: "labels" and "appellations of origin"[17]. In the United States and in Australia, on the other hand the only way to protect a product is through trade mark legislation.

CHAPTER III - TODAY'S APPROACH

Developments in food quality inspection, control and protection have mainly occurred as a result of the increasing demands of international trade. The purposes of this legislation is to protect the consumer and facilitate international trade.

1. THE COMMUNITY'S APPROACH TO FOOD QUALITY

This has developed in three successive phases: firstly, there was the Common Agricultural Policy (CAP), then the "new approach", and lastly the admission of products of superior quality.

1.1 The Common Agricultural Policy

The quality of agricultural products was originally seen as an element to underpin the CAP[18]. The common market organisations laid down quality rules for the benefit of a number of commodities: fruit, vegetables, wine, milk and eggs.

The Community then adopted a new approach which gave pride of place to the free movement of goods.

1.2 The new approach

Under articles 2 and 3 of the Treaty of Rome, "the Community shall have its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it"; this was to be achieved by "establishing a common market and progressively approximating the economic policies of Member States". The concept of a common market "involves the elimination of all obstacles to intra-Community trade in order to merge the national markets into a Single Market bringing about conditions as close as possible to those of a genuine internal market"[19]. This Single Market became effective on 1 January 1993 (the Single Act was signed in Luxembourg on 17 February 1986 and at The Hague on 28 February 1986).

One of the basic planks of the Single Market is the free movement of goods, which requires the Member States to prohibit any quantitative restrictions on trade and any measures having an equivalent effect on trade between them.

---

[17] See "Guidelines for developing an effective national food control system", FAO/WHO Food Control Series No. 1, Rome 1976; and J.L. Barbier, "Evolution de la politique française en faveur des produits agro-alimentaires de qualité". Revue de droit rural, No. 196, October 1991, pp. 322-325.

[18] See "De l'agriculteur au consommateur", Europe vene DG10, CCAK 90002 FRC.

[19] Decision Schul, Case 15/81, 5 May 1982, ECR. 1982, p. 1409.

In order to ensure that the free movement of goods is as unimpeded as possible, it became necessary to amend the national legislation of the Member States that reflected their traditions, ways of life, and essential values. The Community was responsible for "the approximation of the laws of Member States to the extent required for the proper functioning of the common market" (article 3(h) of the Treaty of Rome. The approximation of national legislation was only one of the ways of attaining the purposes for which the Community had been established, and was only required in areas in which the constraints mentioned in article 3(h) made it necessary. This meant that the principle of subsidiarity applied, according to which Community law is only to be adopted where national legislation is unable to achieve the same objectives.

The European Council firstly issued a general draft for harmonising legislation to remove all the technical barriers to the agri-food trade; it required the adoption of "horizontal measures" regarding all foodstuffs, and "vertical measures" dealing with specific categories of commodities[20]. However, in view of the highly complex nature of the task and of the widely differing national legislation, the programme was never able to be fully implemented.

As a result of the Cassis de Dijon Case[21], the Commission gave up the vertical harmonisation policy; after 1985 it defined a "New Approach" to technical harmonisation and standardisation. In the Rewe (Cassis de Dijon)[22] judgment, the Court of Justice of the European Communities (hereafter "ECJ") laid down the principle that once a product has been lawfully manufactured and fairly traded in the Member State of origin, its importation must be accepted in the Member State of destination. This is the principle of mutual recognition, whose bases were laid by the Commission in its Communication on "The completion of the internal market: Community foodstuff legislation"[23]. This document explained how the principles set out in the White Paper on the completion of the internal market[24] would be applied to foodstuffs. The strategy now adopted by the Community is to encourage harmonised rules at the Community level in application of article 100A of the Treaty of Rome introduced by the Single Act and articles 30 and 36 dealing with the principle of the mutual recognition of national rules and standards.

Article 100A (3) provides that "the Council shall, acting by a qualified majority on a proposal from the Commission in cooperation with the European Parliament and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market". "The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental and consumer protection, will take as a base a high-level of protection" (article 100A(3)). Paragraph 5 provides that, in appropriate cases, there shall be a safeguard clause authorising the Member States to take provisional measures subject to a Community inspection and control procedure.

Article 30 provides that "quantitative restrictions on imports and all measures having equivalent effect, shall... be prohibited between Member States". This means that any provisions are prohibited

---

[20] See the harmonisation programmes of the European Community Council of 28 May 1969, *Official Journal of the European Communities* C 70 of 17 June 1969 and *Official Journal of the European Communities* C 17 of 31 December 1973.

[21] Communication on the follow up of the Cassis de Dijon Decision, 3 October 1980, *Official Journal of the European Communities* C 256, 30 October 1980.

[22] Decision Rewe, Case 120/78, 20 February 1979, ECR 1979.

[23] Communication of the Commission, "Achèvement du marché intérieur: législation communautaire des denrées alimentaires", Com (85) 603 final, 8 November 1985.

[24] See "Livre blanc sur l'achèvement du marché intérieur", Com (85) 310 final, 14 June 1985.

which totally or partially ban exports[25]. In this connection, a **"measure having equivalent effect"** is any legislative, regulatory or administrative measure, practice or any other public authority act[26] has the effect of impeding, reducing or in any way hampering trade. The ECJ[27] defined measures having an equivalent effect as: "all trading rules enacted by Member States which are capable of hindering directly or indirectly, actually or potentially, intra-Community trade". This being so, the prohibition covers any government measures whose aim or effect is to discriminate against imported products or to favour national products, even if they apply indistinctly to both[28]. This case-law led the Commission to conclude, in its communication on the follow-up to the Cassis de Dijon case of 30 October 1980, that any product manufactured and marketed legally in one Member State must, in principle, be admitted to the market of every other Member State, whether the product is manufactured in a Member States or whether it is freely placed on sale within the Community[29].

In the absence of harmonisation, the ECJ therefore gives pride of place to complementary labelling rules to differentiate products and to inform the national consumer who attributes specific qualities to the product which he is accustomed to consuming[30]. In Smanor[31] and Deserbais [32], the ECJ ruled that in some cases it is necessary to change the name under which a commodity is sold in order to protect consumers from being misled between substantially different products. This tendency to give pride of place to informing consumers rather than laying down specific regulations protecting the features of domestic products, is due to the influence of the Common Law tradition. Thus the legislation of the United States encourages the drafting of food regulations only when the labelling rules are not sufficiently effective to protect consumers[33].

With regard to intra-Community trade, article 34 states that "quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States". Any measure which is likely to hamper exports in general, or discriminate against particular exporters rather than others, is forbidden. Any measure whose object or effect is to restrict or impede exports must be considered as measures having the equivalent effect of a restriction on exports[34]. The ECJ is of the view that for a measure to be deemed to infringe article 34 it must have its object or effect a specific restriction on exports, thereby creating difference of treatment between the domestic trade of a Member State and its export trade which would give a particular advantage to domestic production or to the internal market of the State concerned. There is therefore a difference in the interpretation of measures having an equivalent effect on imports and exports, the latter being more restrictive[35].

---

25 Decision Geddo, Case 2/73, 12 July 1973, ECR 1973.

26 Directive No. 70/50, 22 December 1979, *Official Journal of the European Communities* L 13, 19 January 1970.

27 Decision Dassonville, Case 8/74, 11 July 1974, E.C.R. 1974.

28 Decision Rau, Case 261/81, 10 November 1982, Rec. 1982 and Decision Prantl, Case 16/83, 13 March 1984, ECR 1984.

29 Decision Dassonville, *op. cil.*

30 See, for example, case 193/80, Commission v. Italy, 9 December 1981, ECR 1981, regarding the use of the term "vinegar" reserved exclusively for products derived from wine.

31 Decision Smanor, Case 298/87, 14 July 1988, *Official Journal of the European Communities* L215, 17 August 1989.

32 Decision Deserbais, Case 286/86, 22 September 1988, unpublished.

33 "Food, Drug and Cosmetic Act", Section 401 "Code of Federal Regulations", Subchapter B, sections 130.3 to 130.17.

34 Decision Bouhelier, Case 53/76, 3 February 1977, ECR 1977 and Decision Groenveld, Case 15/79, 8 November 1979, ECR 1979.

35 A. Mattera, "Le Marché Unique européen", Coll. Jupiter, pp. 511-523.

In the food sector, restrictions on imports or exports can be legally justified on grounds of "the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."[36]

In order for a measure to be **justified** it must pass the three tests set out in *Rau* (Case 261/81): the measure must be necessary to achieve its stated aim, it must be proportionate to its purpose, and there must be no other means of attaining the same objective that is less of a hindrance to trade.

According to article 36, justified restrictions on imports must not be a means of enforcing arbitrary discrimination, or be a disguised restriction on trade between Member States, in order to ensure that restrictions are not diverted from their proper purpose and used in such a way as to indirectly protect certain national producers[37].

Lastly, it should be noted that the burden of proof for claiming exemption under article 36 lies with the State claiming it, which must show that those three conditions are met.

The "New Approach" is therefore based on the following four principles:

(a) harmonisation is limited to setting out essential safety requirements;

(b) technical standards-setting is to be delegated to organisations specialised in this work to ensure compliance with the technical standards for manufacturing and marketing products that comply with the directives;

(c) the technical specifications and standards must not be compulsory but remain voluntary;

(d) national authorities are required to recognise that any products manufactured according to the harmonised standards are assumed to be in conformity with the essential requirements set out in the relevant directive[38].

The success of this strategy can only be assured if it is accompanied by a policy designed to put all States on an equal footing in terms of their ability to ascertain conformity; in effect, the need for a supplier to provide certificates or marks to accompany his products to show that they comply with the Directive on each different market is an impediment to trade[39].

The best way of harmonising national legislation with regard to food products is the horizontal Directive (and a few regulations have been drafted). The national competent authorities or producers, as appropriate, will then choose how to ensure compliance with Community requirements[40].

This is always a topical issue, but because of the limitations of labelling and the implementation of Community policy for the rural economy since 1988, interest in it has tended to wane.

---

[36] Article 36 of the Treaty of Rome.

[37] Decision Henn and Darby, Case 34/19, 14 December 1979, ECR 1979.

[38] Council Resolution of 7 May 1985, *Official Journal of the European Communities* C 136, 4 June 1985.

[39] Communication of the Commission, "Une approche globale en matière de certification et d'essais", COM (89) 209 final, 15 June 1989.

[40] A. Mattera, *op. cit.* p. 162 *et seq.*

1.3 **Admission of superior quality products**

Standardisation is designed to specify products, but it can also apply to traditional industrial products as well as agri-food. In 1988 it became necessary to define a quality policy: a number of procedures for providing legal protection[41] of high-quality products were introduced in order to encourage or protect the development of certain rural industrial areas. It was felt that maintaining and promoting high quality products could be a major trump card, particularly in the least favoured areas, and that it was also a way of meeting the expectations of consumers. The increase in producers' incomes also helps to keep the people in the agricultural regions.

In this connection the Commission emphasised the importance of the specific character of agricultural products: in particular, Regulation 2082/92 of 14 July 1992 was adopted on the attestation of the specific character of agricultural products and foodstuffs, protecting know-how, the particular features of the product, and Regulation 2081/92 of 14 July 1992 protecting the geographical indications of appellations of origin of agricultural products and foodstuffs mentioning the origin of the product. Both texts are based upon the French system of agricultural labelling and appellations of origin.

2. THE APPROACH OF THE GATT NEGOTIATIONS IN THE URUGUAY ROUND AND THE DECISIONS TAKEN BY THE CODEX ALIMENTARIUS COMMISSION

For the Gatt negotiators the main object is the international harmonisation of the standards and rules forming the basis of the legislation of different Member States, to ensure that they are no longer mere hindrances to trade. This is why they recommend that they should be based upon the Codex provisions[42], which were drafted by international consensus. GATT and the Codex consider that if references to the Codex norms, standards and codes of practice are incorporated into the GATT Agreements, this will substantially contribute towards boosting the international trade in food and reduce to a minimum the problems that arise today as a result of differences between national regulations, and which are likely to give rise to technical impediments to trade[43]. In the absence of any international standards or rules, or where national regulations differ from them, and where the rules and standards are likely to have an effect on international trade, the parties must notify the other parties concerned of their intention to adopt standards or regulations, indicating the objects for which they are intended to be adopted and, upon request, supply details about these documents so that the parties concerned can submit their comments. They must also publish the texts as soon as they are adopted[44].

On the subject of product quality, the Codex Committee on General Principles had agreed that "quality criteria should be taken to mean only those factors which are essential for the designation, definition or composition of the product concerned". This is a Common Law concept of quality. The inclusion of these factors in a Codex standard defines: "a characteristic below which free movement of the commodity involved should be restricted". But these factors could include the quality of the raw

---

41 See Communication of the Commission, "Avenir du monde rural", COM (88) 501, 28 July 1988.

42 See Food Standards, "A review and evaluation of the procedures and structure of the FAO/WHO Codex Alimentarius Commission", Report of the FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, *op. cit.*

43 R.J. Ronk and D. Dodgen, ""Food Standards: an overall strategy for common requirements applicable to all foods", FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, *op. cit.*, ALICOM 91/6.

44 See, "Les accords du GATT" in "Les relations internationales de la CEE", Dictionnaire du marché commun, 1989, No. 4, p. 199.

materials in order to protect consumer health, and could include provisions relating to the taste, the smell, the colour and the texture, which could be evaluated by the senses, and the fundamental criteria for characterising the end product. For these elements could also be a source of fraud[45]. At the present time the Commission is planning to adopt an approach similar to that of the EEC. It has taken on board the conclusions of the Committee of General Principles according to which the horizontal approach and provisions relating to additives must be given priority, together with aspects relating to food hygiene, labelling, pesticides and other contaminants; it is less necessary to emphasise the standards for foodstuffs, since the horizontal standards are more favourable to the liberalisation of international trade for they relate to all commodities, including new commodities, whereas the adoption of vertical standards only makes it possible to reduce impediments to trade in the products concerned. It is also planned to ensure that the standards do not contain any optional provisions which are not essential for the protection of consumers, the quality of commodities and sound commercial practice. Nevertheless the provisions relating to the size, the type, the nutritional value of the product, *inter alia*, can also constitute an impediment to trade. This is why GATT intends to subject these to voluntary standardisation[46].

CHAPTER IV - THE NEED FOR QUALITY AT EVERY STAGE IN PRODUCTION AND TRADE

It is equally important for the developing countries to have the instruments they need to implement a quality-assurance policy, for quality is a source of value-added. Quality must be a feature of all commodities, basic (agricultural), processed (industrial) and traded.

1. AGRICULTURAL PRODUCTS

These can only be exported if they satisfy the taste of the consumers on the domestic and other markets. The products must be uniform, not constitute a health hazard and pose no threat to consumer safety. When intended for processing, they must be reliable and freely available.

2. FOOD

The sale of high quality processed foods makes it possible to optimise the value-added. To do this the efficiency of the production system must be enhanced, processing losses, deterioration, maintenance and contamination reduced, and also to increase the production and volume capacities and the complexity of the manufacturing rules applicable to exported products.

Lastly, it is essential for the basic products and the foodstuffs to be processed in total conformity with the rules of hygiene.

---

[45] See the report of the Fifth Session of the Codex Alimentarius Commission, Rome, 20 February-1 March 1968, ALINORM 68/35.

[46] Ali M.A. Kidiku, "Food Standards - An evaluation of the essential requirements and acceptable quality criteria included in Codex standards", FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, *op. cit.,* ALICOM 91/8 and the complete Report of the Conference.

3. THE TRADE IN AGRICULTURAL PRODUCTS AND FOODSTUFFS

Even if a country has a local potential market of its own, acquiring outlets in certain importing countries with strong currencies is clearly a matter of great interest. But in order to be able to be exported or imported, a food commodity must meet the national or international quality food standards.

With regard to the developing countries there are two situations. With exports, if a control system has been put into place and works satisfactorily, agricultural products and foodstuffs from these countries will meet the standards, whether mandatory or voluntary, of the developed countries. This will make their goods more attractive abroad, ensure fair-trading practices, and protect the local consumer. For if the authorities and the producers keep to the standards set by the industrialised countries when drafting their own national rules, the local consumer also benefits incidentally from the increased safety and enhanced quality of the local products consumed. This is the first stage towards international harmonisation in this area[47].

Conversely, the absence of a reliable inspection and control system has repercussions both on the volume of exports and the quality of the imports. For it seems that the countries that try to export food are subject to substantial losses because of breakdowns in the production chains: the legislation of the importing countries is generally very strict, which means that products which are not safe are not accepted. Furthermore, if the inspection and control measures are ineffective, the quality of the imports will leave much to be desired, and unscrupulous exporters will try to dispose of all their poor quality food[48].

---

[47] F.G. Winamo, *op. cit.*

[48] E. Morales, "Problems faced by Latin American and Caribbean Countries in the import and export of food products", Workshop on Export/Import Food Control and Food Protection Programmes for Latin America and the Caribbean, San José (Costa Rica), 17-18 February 1989.

PART TWO - TOOLS FOR ESTABLISHING FOOD QUALITY

When drafting the basic rules, whichever authorities or private sector organisations are responsible for them, generally prefer one particular type of instrument: the standard. Even though standards vary in terms of their legal nature, they meet the demands and specific features of a food quality policy. However, the word "standard" means different things to different economic or para-economic partners. It is therefore difficult to decide exactly what is a standard in terms of a mere definition, as is always the case in administrative law of the Roman-French tradition[49].

[49] See L. Gonzalez Vaqué, "Pesticide Labelling Legislation", Legislative Study No. 43, FAO, 1988.

CHAPTER 1 - THE NOTION OF FOOD STANDARD

The reason why this is such a complex area is the fact that no uniform definition or interpretation of standard exists. This has important legal consequences.

1. DIFFERENT CONCEPTS OF STANDARDS

According to Murray[50], food standards comprise all the rules relating to foodstuffs, from every aspect possible.

In English the word "standard" means a "basis of measurement", a criterion, a recognised or accepted model, a given level of excellence or of required, expected or possible adequacy.

Any feature that can be clearly described can be standardised. Even though these definitions are extremely broad, their various interpretations lead to the drafting of voluntary or mandatory standards.

1.1 Standards

According to the international definition adopted by the Economic Commission for Europe, a standard is defined as "a technical specification approved by a recognized standardizing body for repeated or continuous application, with which compliance is not compulsory".

Conversely, it should be noted that for the Codex Commission the standard is more rigidly defined as "any of the recommendations of the Commission intended to be submitted to Governments for acceptance". For it is only on this condition that the purpose of the Codex can be achieved, namely, to reduce non-tariff barriers to trade resulting from the differences between national regulations.

Since the definitions differ, it is necessary to analyse the substance of a standard by a descriptive study of its constituent elements. In this connection it should be noted that a standard must be:

(a) **accessible to the public:** the standard is created for all those who want it and it is applied by all those who require it. It should be made accessible to all (in other words published and disseminated widely) because the more people who use it, the more effective it will be;

(b) developing: the standard must be able to develop in order to keep pace with changes in the market, technological progress and innovation in general;

(c) **non-mandatory:** except in exceptional cases, namely when the authorities specify mandatory procedures to create a "technical regulation", standards are not compulsory. They are the result of a freely entered-into agreement between the various partners concerned. However this does not prevent the standard from being taken to indicate

---

[50] See "Quality Control in the Food Industry", vol. 1, 2nd, Ed Herschodoerfer, p. 353.

conformity with the essential requirements of the law, and courts may refer to these standards as a commonly accepted rule applied in a specific professional sector,

(d) **repeated and continuous application:** this feature differentiates standards from the individual documents setting out the specifications applying to only one particular use.

In general terms, standards are market regulation instruments. They encourage economies of scale linked to the compatibility of products and make it possible to better identify their quality. Standard-setting is therefore one of the most commonly used instruments of regional economic integration organisations, such as the European Community.

Whether the organisation responsible for drafting the standard is national, regional or international, the standard must be recognised by the authorities — it may be recognised under contract (Germany), by an Act of Parliament or by secondary legislation (France) — or it may simply be recognised by the economic partners concerned (United States).

1.2 **Technical regulations**

With regard to technical regulations, the definition given by GATT is that it is a "document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory"[51].

According to this definition the technical regulation is the contrary of a standard, because it is a mandatory specification adopted by the authorities in order to protect the health and safety of the public, and is not a voluntary instrument.

However, this is the very same definition used for the word "standard" in the Codex[52].

Here again, it is the analysis of the substance rather than its definition that determines what is a technical regulation.

According to the most commonly accepted view, the technical regulation in itself contains all the elements on which to base consumer protection. In addition to provisions relating to the composition and the name of products, it also includes elements relating to health, consumer safety and fair-trading practices.

However, present thinking tends to limit the content of technical regulations[53] to its original function, namely, the composition, the presentation and the identity of the product, and to put the provisions relating to consumer health and fair-trading relations in different sets of regulations on

---

[51] Annex 1 to "General Principles for Food Import and Export Inspection and Certification", Joint FAO/WHO Food Standards Programme, Codex Committee on Import and Export Food Inspection and Certification Systems, Canberra, 21-25 September 1992, CX/FICS 92/5, p. G.20.

[52] See, *infra*, the Codex Alimentarius standards, while the meaning given to it by GATT is the same as the meaning used by the EEC and most governments. See for example P. Creyssel, *op. cit.;* L. Brykman, "The Single Market, Technical Standards and Certification, Insiders-outsiders and Global Competition", Journal of Development Planning, No. 22, 1992, p. 161; the Agreement (1991) on Technical Barriers to Trade; Codex Committee on import and export food Inspection and Certification Systems, *op.cit.*, p. G. 20.

[53] Or mandatory standards (see *infra).*

labelling, additives, etc.[54]

2. DIFFERENT TYPES OF STANDARDS

2.1 Mandatory versus non-mandatory standards

According to Gérard, a standard is mandatory when it has the force of legislation. This type of standard is therefore backed by sanctions and penalties both in terms of the provisions of the standard itself, and by the law on foodstuffs in general, and by criminal law provisions in general[55].

Since a standard is "voluntary" by nature, the lack of any specific decision to make it mandatory means that it remains non-mandatory[56].

Technical regulations can therefore qualify as mandatory standards, even through, strictly speaking, a standard is necessarily voluntary.

Reference to standards is a way of drafting technical regulations in which the text of the regulations is replaced by the detailed technical specifications made by reference to one or more standards which then become mandatory. The drafters in departments of agriculture generally follow the method of referring to one or several specific standards under such conditions that any revisions of the standard or standards only apply if the regulations themselves are amended.

The scope may also be limited to making a general reference to the standards as state-of-the-art rules (a voluntary standard). The application of all the standards referring to the particular object being regulated enables the product to be in conformity with the regulation.

In other words, the standard may completely take the place of the regulation[57].

By drafting voluntary standards, food producers can make changes and adjustments to their usual procedures in such a way that when the rules become mandatory, they are already being applied by certain businesses and have therefore been tested and tried out.

Legal drafters generally use the so called "specification process"[58].

2.2 Technical requirements/standard criteria

The Technical requirements: they describe in detail the systems to be used to ensure that the product in question effectively possesses the required technical features. Voluntary standards are generally of this kind.

---

[54] L. Bigwood and A. Gérard, "Objectifs et principes fondamentaux d'un droit comparé de l'alimentation", vol. 4, Bale, S. Karger pp. 222-228.

---

[55] A. Gérard, "An outline of food law", Legislative Study No. 7, FAO, 1975, p. 19.

[56] D. Nguyen-Bourgeais, Juris-classeur concurrence consommation, 1990, fascicule 870, No. 60, p. 11.

[57] D. Nguyen-Bourgeais, *op. cit.*

[58] L. Bombin, "Plant Protection Legislation", Legislative Study No. 28, FAO, 1983.

Standard criteria: they simply describe the specific features required of the product without specifying its internal make-up or the steps to be taken in order to obtain the desired result[59].

2.3 **Horizontal standards/vertical standards**

A standard is called "horizontal" when it applies to an element shared by all the products (labelling, additives ...); it is "vertical" when it comprises all the provisions relating to a particular product or specific category of products.

The Codex uses the expressions "general standards" and "specific standards". While specific standards are always vertical, however, general standards sometimes contain vertical and horizontal provisions[60]. The Codex now tends to use the expressions vertical and horizontal[61].

The general trend nowadays is to develop horizontal standards.

3. OTHER TYPES OF DOCUMENTS USED

Reference is also used to a number of documents that similar to standards. These documents may be used to complement basic food legislation, or as the basis for drafting voluntary food standards.

3.1 **Non-mandatory** documents

These are similar to standards, but they differ in the way they are drafted and above all in their adoption. They generally take on board the practices that have been adopted by professionals in the agri-food sector since the profession was first created.

These documents are:

(a) **Guides to good professional practice in the field of food safety.** These guides are drafted by professionals jointly with technical organisations, while the authorities have competence over the matter. They are mandatory, complementary recommendations, laying down the specifications required for consumer safety. They also indicate the procedures which businesses are required to carry out themselves in order to inspect and control their own products, and offer recommendations for mastering the critical points to be used when setting up monitoring programmes.

Even if they refer to statutory obligations, these guides are optional in terms of their application. However, the fact that a business produces in compliance with these documents may be taken into consideration by the inspection and control authorities as a ground for presuming that they meet essential requirements, and may also be taken into account by the civil courts (particularly when dealing with product liability).

---

59 A. Penneau, "Règles de l'art et normes techniques", LGDJ 1989, No. 94 et *seq.*

60 R.H. Murray, "National and International Standards", in "Quality Control in the Food industry", vol. 1, 2nd Ed., S.M. Herschdoerfer.

61 See the "FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade", *op. cit.*

(b) **Optional professional codes.** Some associations, unions or professional organisations occasionally prefer the codes of conduct or good professional practice relating to their professions not to be mandatory, in order to win over the voluntary consent to rules drawn up by joint agreement. This also makes it possible to develop them as necessary to keep pace with techniques and markets.

(c) **Normative-type specifications.** These indicate the composition or use, processes for obtaining, producing, conserving or transporting products. Normative-type specifications indicate the methods of inspection and control to be used to ensure that the specified features are present. These form the basis of the French certification system[62].

3.2 **Mandatory documents**

Some texts may quality as standards even though they do not meet the definitions given above:

(a) **Micro-biological safety standards or criteria.** These lay down thresholds below which products cannot be put on sale. These standards exist in the United States and Canada;

(b) **Minimum quality requirements in Community regulations.** These lay down minimum mandatory quality standards for businesses wishing to qualify for Community aid for their products (peeled tomatoes or canned pears in syrup);

(c) **Common marketing standards set out in Community regulations.** This group comprises the following regulations: (i) regulation 1906/90 for poultry; (ii) regulation 1907/90 for eggs; (iii) regulation 2136/89 for sardines; (iv) regulation 1035/72 for fruits and vegetables (amended in 1992). These regulations lay down the minimum quality standards to qualify for a "dénomination de vente".

3.3 **Codes of practice**

Sometimes the expressed 'Code of Good Practice' is used[63]. These are collections of documents drawn up by a professional organisation recognised by governments or professional associations or unions (in the latter case they are generally approved by the relevant minister). These documents contain all the professional decisions (on manufacturing procedures and sometimes on quality assurance rules) which, under current legislation, make it possible to draw up rules to check the quality of products, and which can be used against imported products[64]. They attribute particular importance to the safety of the product, emphasising aspects relating to production conditions. When these texts are explicitly recognised by the responsible minister, and when they are used by the inspection and control authorities, their application becomes mandatory (non-compliance constitutes an offence).

---

[62] See *supra.*

[63] See for example the Codex Alimentarius.

[64] However EEC regulation differs in this respect as far as products from other Community Member States are concerned.

3.4 The standards and code of practice in the Codex Alimentarius

3.4.1 The Codex standards

Contents. The standards elaborated by the Codex for adoption by governments are intended to guide and promote the elaboration and establishment of definitions and requirements for foods to assist in their harmonization and in doing so to facilitate international trade[65].

These standards lay down the specific features of both raw and processed products; they can also serve as recommendations and codes of practice both for commonly shared elements of a "horizontal" nature, such as additives or labelling, or relate to specific aspects of manufacturing hygiene.

In order to prevent them from merely acting as impediments to trade, the Codex standards must have scientific basis and be verifiable[66]. The notion of the scientific character of international standards formed the subject-matter of the Codex meeting held on 28 June-7 July 1993[67],

Elaboration. The procedures for the elaboration and adoption of the Codex standards were amended at the last session of the Codex Alimentarius Commission (the 8th Edition of the Procedural Manual has just been published, taking account of the amendments adopted at that session). They are now as follows:

- the Commission decides to elaborate a world-wide Codex standard taking into account the "Criteria for the Establishment of Work Priorities", and decides which subsidiary body, or other entity, should undertake the work. The decision to elaborate a standard may also be taken by subsidiary bodies of the Commission in accordance with the aforementioned criteria, subject to subsequent approval by the Commission or its Executive Committee at the earliest possible opportunity. In the case of Codex regional standards, the Commission is required to base its decision on the proposal of the majority of the members belonging to that region, or a group of countries from it (Step 1);
- the Secretariat then makes provision for the preparation of a "proposed draft standard", which is distributed to the Members of the Commission to receive their comments on all its aspects, which are then considered by the subsidiary body concerned before being submitted to the Commission as a "draft standard" (Steps 2, 3 and 4);
- in the case of regional standards, all the members of the Commission may present their comments but only the majority of the members of the region attending the session can decide to amend or adopt the draft, taking account of the comments made (Step 5);
- if the Commission adopts the "draft standard" it is once again submitted to the governments concerned for their comments; after being re-examined by the competent subsidiary body, the Commission may adopt the draft as a "Codex Standard". In the case of regional standards, all the members and interested international organisations may

---

65 "Guidelines for Developing an Effective National Food Control System", *op. cit.*, p. 98.

66 C.W. McMillan, "Food Standards and the Control of Chemicals in Food. Their Impact on International Trade' FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, *op. cit.*, ALICOM 91/2.

67 See *supra.*

present their comments, but only the majority of the members of the region can decide whether to amend or adopt the draft (Step 8);

- the Commission, the Executive Committee or any subsidiary body, subject to the approval of the Commission or the Executive Committee, are empowered to identify standards subject to an accelerated elaboration process in view of its urgency (Step 1). The Secretariat then arranges for the preparation of a proposed draft standard (Step 2). The Commission or the competent subsidiary body, or any other interested international organisation, may then decide to submit the draft standard for comment (Step 3). The comments received are then sent by the Secretariat to the subsidiary body or to another relevant body (Step 4).

The same elaboration procedure is followed when revising standards, even though certain steps may be omitted.

The Codex standards are then published and issued to all Member States for their acceptance (Step 7). Acceptance is signified by notification.

Legal Status - A Codex Standard may be accepted in one of three different ways:

(a) full acceptance by the country concerned. In this case the country undertakes (i) to incorporate the standard into its own legislation; (ii) not to permit products which are not in compliance with the standard to be distributed in the country until the standard is incorporated into domestic legislation, and (iii) to accept all products meeting the standard;

(b) acceptance with specified waivers. This has the same scope as full acceptance except for certain aspects of the standard which the government declares it is unable to accept[68];

(c) free distribution (a notion added at the recent Codex meeting). The countries concerned undertake to ensure that the products conforming with the relevant requirements of a Codex standard can be distributed freely throughout their territory[69].

The status of Codex standards not subject to the acceptance procedure. - In these cases the norms are merely international technical references or benchmarks which can be considered for various purposes such as (i) their inclusion in international contracts to define the minimum quality of the foodstuffs forming the subject-matter of the contract, (ii) their use when drafting a national standard or technical regulations[70].

However, in implementation of the draft agreement on the acceptance of Codex norms adopted at the June 1993 Session, the GATT contracting parties may be required to justify the exceptions they make to the health aspects of the Codex standards (health specifications having nothing to do with

---

[68] See the 20th session of the Codex Alimentarius Commission, *loc. cit.*

[69] Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, 20th Session, Geneva, 28 June-7 July 1993, ALINORM 93/40.

[70] See, for example, "Government Approaches to Codex - Some Case Studies: the National Approach in the Netherlands to Food Standards", Report of the FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, *op. cit.*, ALICOM 91/5A.

health protection) regardless of the country's position regarding acceptance[71]. More specifically, the parties must specify whether they consider the standard to be insufficiently strict to guarantee an appropriate level of protection if it considers that the standard is not stringent enough to provide the appropriate level of sanitary or phytosanitary protection[72]. This is an important consideration, particularly for the countries of the European Union, because in most cases they do not accept the Codex standards where this would require them to review all their legislation which generally pre-dates the standards and is more restrictive. They may therefore be obliged to accept food from non-EU States, even where the products are not in accordance with Community health rules, by virtue of the fact that they comply with the Codex standards.

3.4.2 **Codex code of practice on hygiene**

These provisions are comparable to technical guidelines such as codes of good hygiene practice[73] [74] [75].

4. THE SCOPE OF STANDARDS

Four types of standards are used for the food sector, depending upon their scope.

4.1 **Commodity specification standards**

These comprise all the qualitative and quantitative data appropriately chosen to define a specific commodity[76]. As a result of improved scientific knowledge and the development of its application to specific cases, there is a tendency today to concentrate on identifying the physical and chemical characteristics of food. The fact that it is possible to measure these parameters exactly, accurately and reliably, makes them convenient, reliable and appropriate for worldwide use.

Commodity specification standards generally state:

(a) the subject-matter and scope of application;

(b) useful technical references for users;

(c) the definition of the commodity, which may take account, for example, of the botanical origin or the procedure for obtaining it;

---

[71] Codex Alimentarius Commission, 20th Session, op. cit., agenda item 15; "Report of the 20th Session of the Codex Committee on General Principles", Paris, 7-11 September 1992; "Proposed draft uniform procedures for the elaboration of Codex Standards and Related Texts", ALINORM 93/33, Add. 1.

[72] Codex Committee on Import and Export Food Inspection and Cerfication Systems, *op. cit.*, Addendum 1, p. L.42.

[73] See *supra.*

[74] P. Creyssel, *op. cit.*

[75] "Guidelines for Developing an Effective National Food Control System", *op. cit.*

[76] P. Mainguy, *op. cit.*, p. 21.

(d) the features or specifications of the commodity, which are classified into two categories:

- **general features or specifications,** relating to the presentation of the product (raw, quick-frozen), the production technique used (chopping), the presence of additives or of major ingredients (sugar), the colour, the smell, the consistency, the flavour, the absence of defects which are clearly specified;
- **particular characteristics or specifications,** namely, the organoleptic or chemical features, which are often set out in tabular form giving references to the testing or assay methods used and certain physical characteristics;

(e) the methods used for analysis and sampling, and in particular the manner of preserving
the samples.

The analysis methods are set out either in the table of specifications, or in the references, or in an annex to the standard.

The purpose of these Codex standards[77] is to facilitate the harmonisation of different systems. They include all the items needed to define a product for regulatory purposes, and contain highly detailed specifications.

Of particular relevance to this study are the "essential description and factors relating to composition and quality" which include:

(a) the description of the scope of the standard and a set of data (the definition of the product, description of the raw materials used and any other information relevant to the manufacturing processes, the forms in which the product is presented, the type of packaging);

(b) the essential composition and quality factors such as minimum basic ingredient contents, essential raw materials, secondary ingredients, mandatory and optional adjuvants, authorised food additives, coverage, tolerance margins for defects;

(c) provisions regarding labelling (product name, list of ingredients, net contents, name and address of producer, country of origin, dating, original lot or batch), all of which must be subsequently included in the horizontal standards[78].

4.2 Commodity environmental standards

These standards are designed to define the packaging procedures for the commodity, the technical requirements relating to marketing, hygiene standards and the safety of the materials used for production, as well as the nomenclature used in a given sector, they do not deal with the effects on man or the environment. They may be classified in the following manner:

(a) vocabulary and nomenclature standards, defining the morphological aspect, the quality or the presentation of a product;

---

[77] Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, Procedural Manual, Eight Edition, 1993.

[78] Ali M.A. Kidiku, *op. cit.*, pp. 1 and 2.

(b) packaging standards, which determine the technical specifications for packaging, namely the dimensions and the type of materials that can be used depending upon the intended purpose of the product;

(c) standards relating to certain technical requirements, dealing with various aspects relating to the marketing of these products, such as storage, transport, and conservation conditions;

(d) hygiene and safety standards for materials used in the food industry, laying down rules to be applied to the design and construction of tools and instruments for the agri-food industry, to guarantee food hygiene and the safety of the users of the equipment during preparation, packaging, storage, transport, and distribution operations. In principle, these standards are intended for manufacturers of equipment;

(e) standards relating to control over processes or ingredients.

4.3 **Standards for analysis and testing methods**

Most agri-food sector standards of this kind: they define the methods to be used in order to ensure optimum (objective or subjective) food quality; this is why they are found even in countries which do not have commodity standards (the United Kingdom and Germany). They are intended to harmonise the methods used, mainly the sampling methods, and the methods for physical, chemical, micro-biological or sensorial analysis. They refer to the priority area for standardisation.

4.4 **Guidelines**

These are typical of the Common Law system, containing recommendations regarding the methods to be used in order to optimise the quality of the products in terms of health, hygiene, organoleptic features or serviceability.

Such standards describe the techniques to be used (for example, storage standards given in conjunction with certain environmental standards, giving the commonly used practical criteria to be applied to determine the best harvesting date), or they can be used to prepare good food security practice manuals; these manuals are particularly useful for setting up quality assurance systems in businesses (even though at the moment no such standards exist)[79].

CHAPTER II - DEVELOPMENTS IN THE ADMINISTRATIVE APPROACH

With regard to food standards, the instruments on which quality is based have moved on from the concept of compliance with mandatory standards towards the idea of the concomitant application of voluntary standards, except in fields in which there is a risk to public health.

---

[79] For the definition of the different types of standards, see P. Creyssel, *op. cit.*, p. 46 *et seq.*

1. THE TRADITIONAL APPROACH

1.1 National practices

The standard practice adopted by governments used to be the following: technical rules governing food were drafted in the form of legislation, secondary legislation or administrative measures, laying down technical specifications, and codes of conduct or good practice.

1.1.1 The basic legislation

A basic piece of legislation (hereafter "the law") is enacted laying down the general principles governing food production, handling and marketing. The aim is to safeguard the health of the consumer and protect against fraud. Since enforcement is the responsibility of several government departments (mainly the ministries of agriculture, health, trade and industry, fisheries) difficulties are likely to emerge enforcing the law, because this is done under subordinate legislation.

In countries with a federal structure, this responsibility may be vested in the federal institutions (United States), or in the States or federated provinces (Australia in the case of food produced and consumed within the country).

The law generally includes a definition of food (Chile: Decree No. 725; United States: "Food, Drug and Cosmetic Act"; United Kingdom "Food Safety Act"), a definition of the statutory conformity requirements, and the offences created; sometimes there is also a definition of food unfit for human consumption.

The scope of the law may be wide-ranging (composition, hygiene, labelling, as in the United States and France) or limited merely to the hygiene rules (Chile).

Stages at which the inspections are carried out

The protection of consumer health is ensured at the stage of production, processing, storage, transport, maintenance and sale; it may also imply to imported food (France and Chile) save where this is governed by specific legislation (United States) or a special Act (Australia).

Inspection and control procedures will be examined later in this study. However, wherever products do not meet statutory conformity requirements, the authorities or the courts may order the food to be seized, impounded with authorisation (France, United States) or without authorisation (Chile), or the food may be destroyed or denatured, or the offender given a mere warning (Chile).

Sanctions range from fines and/or imprisonment (France, United States, United Kingdom).

Secondary sanctions can also be imposed: the business may be closed down (Chile), the court judgment published, and the products confiscated (France).

Judicial procedures are set out in more or less detailed form, because they usually only a complement to the existing code or rules of criminal procedure (France, United States). In the United Kingdom there is a specific code called the "Food Safety Act Code of Practice, No. 2".

Generally speaking, the law specifies the persons who may institute proceedings (the victim, the administrative authorities or the courts), the type of evidence required, the extent of liability.

1.1.2 **Technical regulations for implementation**

The specifications set down in the law cannot be too detailed (a very comprehensive law which is difficult to amend subsequently could not be easily adjusted to take account of future technical developments). For this reason **enforcement regulations** are drawn up by the government or some other enforcement authority. Provisions relating to food processing, hygiene and inspection fall within the scope of these regulations. They also make provision for (i) the registration of establishments and licences[80]; (ii) the prescribed notification[81]; (iii) delegated powers relating to inspection, taking samples, seizure decisions (France, Chile); and (iv) the number of, and payment for, any samples taken (France).

1.1.3 **Other legal instruments - professional codes of conduct, codes of good practice and standards**

In some countries (Italy), provisions governing the composition and specifications of products are incorporated into regulations; in others (France) they are put into separate texts which generally comprise professional codes or mandatory standards. The codes can be used for drafting those standards.

1.2 **The EEC System**

1.2.1 **Community legal instruments**

Community policy relating to food quality is based on three types of statutory instruments[82].

(a) Regulations: These "have general application, [they are] binding in their entirety and directly applicable in all Member States" (article 189 of the Treaty of Rome). The Member States have no discretion regarding the enforcement of the regulations, which are binding in all respects, without need for national implementing measures on the part of the Member States. The regulation therefore lays down rights and obligations which are binding on private individuals and on the authorities of the Member States from the date of entry into force.

(b) **Directives:** These lay down obligations of result, leaving it to the national authorities to decide how to implement them (article 189(3) of the Treaty of Rome). Unlike Regulations, Directives are mandatory in terms of the purpose to be attained, and the Member States are required to adopt all the measures necessary within the time limit set in each measure to incorporate the principles of the Directive into national legislation. With Directives the obligation relates only to the result.

With regard to **adapting domestic legislation to incorporate Directives,** this is done through provisions equivalent to those existing in the national legal system to enforce compliance with rules that are similar to those set out in **a** particular Directive[83]. If the provisions are not incorporated into domestic law, they can nevertheless be invoked under

---

80 Chile, Decree No. 60 of 5 April 1982.

81 United Kingdom, "Detention of Food (Prescribed Forms) Regulations, 1991"; France, Decree of 22 January 1991.

82 B. Goldman, "Droit commercial européen", Dalloz, Paris, 1988.

83 Decision Commission v. Belgium, Case 102/79, 6 May 1980, ECR 1980.

the principle that Community law is directly applicable in all Member States. When their content is clear, precise and unconditional, the Directive vests individuals with rights which national courts are required to safeguard and protect. The State may not therefore enforce national legislation which is not in conformity with the Directive[84].

(c) Decisions: These are unilateral acts of the relevant Community institution, binding in their entirety on those to whom it is addressed (article 189 of the Treaty of Rome). They are not generally applicable but are addressed to specific individuals or bodies corporate: a State, Member States as a whole, or private individuals. According to the ECJ, a decision must be directly enforced under the principle of primacy.

1.2.2 Enforcement in Member States

The authority responsible for enforcing Community law varies from one Member State to another. In Italy and in Germany this is mainly the responsibility of Parliament. In Germany the government may nevertheless adopt enabling measures on a piecemeal basis (article 80 of the Constitution). Other countries routinely use the parliamentary channel. In the United Kingdom the government and ministers are authorised to implement Community law through an Order in Council or a Simple Regulation even if this implies amending Acts of Parliament (section 2.2 of the European Communities Act). In Luxembourg, the Act of 9 August 1971 vests the government with full, permanent administrative policy-making powers. In France the most commonly used method is through direct regulations.

Technical regulations may also be the responsibility of decentralised authorities. In Germany, for example, the authorities of the Länder are responsible for implementing Community policy and federal law, particularly in commercial matters. In Italy, regional government powers are very limited in reality. Central government has general powers, and controls the legitimacy and appropriateness of administrative laws and activities.

1.2.3 Procedures for keeping the Commission informed

In order to prevent national legislation from creating barriers to trade, the Council adopted Directive 83/189 of 28 March 1983[85] laying down an optional procedure with regard to technical standards and rules. Even though it is not obligatory to inform the Commission, it is always preferable to do so. The procedure informing the Commission replaces the *status quo* agreement, and has been extended to food by Directive 88/182 of 22 March 1988[86]. The purpose is to give the Commission sufficient time to propose amendments to standards or to the technical rule being contemplated, or prepare a Community Directive to deal with the matter.

Phase I: Once a draft standard or national technical rule has been elaborated (except where it is the verbatim transcription of an international or Community standard) it must be submitted by the government to the Commission at a stage in its preparation in which the Commission is able to make substantial amendments to it[87].

---

84 Decision Rewe, Case 158/80, 7 July 1981, ECR 1981, G. Isaac, Rewe v. Hauptzollamt Kiel.

85 *Official Journal of the European Community* L 109/8, 26 April 1983.

86 *Official Journal of the European Community* L 81/75, 26 March 1988.

87 Directive 83/189.

Phase 2: Upon receipt, the Commission forwards the proposed draft to the other Member States.

Phase 3: The Commission and the other Member States have three months to examine the project.

Phase 4: The Member State or the Commission may submit their comments to the government which has proposed the text. During this three-month period, the Commission may also announce its intention to propose the drafting of a Directive governing the matter covered by the text proposed by the Member State.

All the comments submitted by a Member State or by the Commission must be taken into account by the government which took the original initiative. However, this is only a moral obligation.

The Member States or the Commission may also issue a reason opinion, requiring the text to be amended or adapted in order to take account of the existence of other draft standards or technical rules, and any enforcement or implementation problems that may exist

If a reasoned opinion is issued, the adoption of the draft is postponed for a further six months. If the Commission decides that proposal should form the subject-matter of a Directive, the extension period is 12 months.

When the government notifying a draft text considers that it is an urgent measure, it must state this from the very beginning of the procedure. In this case the text can be adopted as soon as it has been notified to the Commission, and it is the responsibility of the latter to ascertain whether or not it is really urgent.

Phase 5: The Commission ensures that the government responsible for the draft has taken full account of all the comments and opinions given.

Once a Member State has formulated a draft standard or a technical rule, it is firstly examined by the Commission, it then placed on the agenda of the European Committee for Standardisation, CEN (see above), for examination on the instructions of the Commission.

At the present time this procedure is voluntary, but the Commission has decided to revise it in order to ensure that the work conducted at the national level is transparent[88].

It should be noted that this procedure does not apply to attestations of specific character, appellations of origin or geographical indication[89], in so far as these rules are required by Community legislation (and not by national governments).

1.2.4 Technical rules adopted by the Commission regarding the composition of goods

Although the Commission favours the adoption of horizontal regulations, there are also numerous vertical regulations: for example, for chocolate (Directive 73/241 of 24 July 1973), sugars (Directive 73/437 of 11 December 1973), honey (Directive 74/409 of 22 July 1974), fruit juices (Directive 75/726 of 17 November 1975), tinned milk (Directive 76/118 of 18 December 1975), coffee

---

[88] See the proposed Council Directive modifying Directive 83/189.

[89] Article 1 of Regulations 2082/92 and 2081/92.

and chicory extracts (Directive 77/436 of 27 June 1977), jams and preserves (Directive 79/693 of 24 July 1979), mineral water (Directive 80/777 of 15 July 1980) and milk proteins (Directive 83/417 of 27 July 1983).

13 **Rules recommended by FAQ**

According to the "Guidelines for Developing an Effective National Food Control System"[90] the implementation of any modern food legislation only requires the principles of general control to be incorporated into basic legislation. Regulations, on the other hand, contain detailed provisions that apply to different types of commodities.

The law therefore provides the following main general provisions:

- the fundamental purposes and scope,
- the definition of basic concepts,
- the authorities responsible for enforcement,
- inspection and analysis procedures and facilities,
- procedures for establishing food standards,
- penalties.

Technical regulations must deal with the following points: food standards, hygiene, additives, pesticide residues, food packaging and labelling, publicity.

General regulations are necessary to lay down the way in which the law is to be implemented and enforced, particularly with regard to the seizure of documents and sampling.

With regard to **mandatory food** standards, the product must be described fully and in detail, particularly with regard to its essential composition (the optional factors should form part of non-mandatory standards), and the minimum and maximum concentrations. These standards may also require compliance with codes of practice. Sampling and analysis methods must also be specified in order to ensure the use of uniform techniques the consistent and uniform interpretation of the results.

2. THE NEW APPROACH - VOLUNTARY INSTRUMENTS

This new approach is based upon the drafting of non-mandatory standards. The standard-setting procedure is the means whereby solutions are found for repeated application to matters mainly falling within the scientific, technological and economic spheres, in order to achieve the optimum degree of order in a given context[91].

---

[90] "Guidelines for Developing an Effective National Food Control System", *op. cit.*

[91] See France or the United Kingdom for examples of how the standardisation procedure is organised; also Greece (Law No. 872 of 24 June 1976, E.K. I 166 of 30 June 1976), Portugal (Regulatory Decree No. 56/91 of 14 October 1991, D.R. I series B No. 236 of 14 October 1991).

For a long time, standardisation was restricted to industrial products alone, but its scope has now been extended particularly to food products. It has now become one of the techniques forming part of a general policy not only to ensure rational production but also corporate competitiveness, to boost exports, to protect the interests of consumers, and to provide technical cooperation to the developing countries. It therefore pursues new objectives of general interest, and in this regard it is seen as an alternative to traditional mandatory legislative provisions and regulations.

By voluntarily accepting standards, the producer knows that production costs can be reduced and a quality assurance policy applied which will please the distributors and the consumers. The consumers, in turn, can rely on the information given them on the quality certificates, agricultural labels, attestations of specific character, and appellations of origin, when making their choices.

Standardisation is therefore a contribution to the development of two aspects of quality: quality-specificity-excellence, and quality-security-regularity.

However, laws and regulations are still necessary to ascertain the existence of health hazards, and it is the responsibility of the government to protect public order.

Within the Community, standardisation is an essential tool for the operation of the Single Market. Maintaining specific national regulations governing the composition of particular commodities places national producers at a disadvantage in comparison with producers from other Member States, because they cannot be required to comply with the same regulations because of the principle that barriers to trade must be removed.

The same applies to codes of conduct and good practice which, unlike standards, are not mutually recognised.

Standardisation is also envisaged by GATT as a way of removing barriers to trade.

Although food standardisation is not yet very highly developed, it will be used increasingly in the future judging from the support it is attracting at all levels.

2.1 **Reference to the standard**

2.1.1 In businesses

Standardisation is labour-saving and cost-effective, in that it provides solutions to repetitive problems more cheaply. Either at their own initiative or in order to meet the repeated demand for products complying with the same standards, businesses are encouraged to take the non-mandatory standard as their basic benchmark for their products.

2.1.2 In contracts

Using non-mandatory standards makes it possible to provide a very clearcut definition of the subject-matter of the contract and the required product quality. It pre-empts any future disagreements on these points. It is also preferable for explicit and unambiguous reference to be made to standards to avoid any future disputes. This has a number of legal implications with regard to the enforcement and performance of the contract: if a product is not in accordance with the standard agreed upon in

the contract, the buyer can either require the vendor to supply standardised products or have the contract declared null and void, with consequential damages and interest.

2.1.3 In regulations

Standards can be used as ancillary measures to complement regulations, stating whether they are mandatory, voluntary, or non-mandatory with a mandatory result (in the latter case the standard can be ignored, provided that the same results can be obtained by other means which are at least equivalent to the results prescribed by the standard). Furthermore, in some countries where reference is not made to standards, the producers must at least justify the conformity of their products to non-mandatory standards regarding health and safety[92].

2.2 The legal status of standards in the Civil-Law system

The essential feature of the new approach to standards, namely that they should be non-mandatory, does not contrast with the classical principles of the civil-law system. For the new standards are equivalent to instruments already being used by producers.

2.2.1 The distinction between private law and public law

Public law comprises all the rules which govern the authorities on the one hand, and relations between the authorities and the public on the other. It is therefore complementary to private law, which only governs relations between private individuals.

Until quite recently, government intervened directly in the economic sphere. This can be explained by the expansion of the concept of public order or public policy which kept a political and moral character, but it also involved protecting and even steering the economy[93].

2.2.2 The standard as an administrative act

In civil-law countries, standards are set by government agencies: they are therefore administrative acts in the full sense of the term.

2.2.3 The particular case of France

Even though the standard is an act produced by a private body, AFNOR (the French Standards Association), it is nevertheless issued as a public service in the exercise of a government prerogative.

---

[92] J. Mihailov, "La normalisation en tant qu'instrument de la sécurité des consommateurs", and J.C. Fourgoux, "Normalisation et obligation de sécurité", in Colloque sécurité des consommateurs et responsabilité du fait des produits défectueux, LGDJ, 1987.

[93] J. Carbonnier, "Introduction au droit civil", Thémis, PUF.

The standard can therefore be considered an administrative act In this regard, court practice[94] and legal writers are unanimous[95].

A public service

The principle that its work is a public service in the general interest emerges from the objectives of the remit given to AFNOR[96], which is the only organisation empowered to elaborate standards[97]. AFNOR therefore holds a monopoly, which is the decisive consideration when a private body is vested with the function of a public service[98]. The duties of general interest given to AFNOR are supervised by the government: a standards delegate, appointed by Cabinet decree, performs the functions of a government commissioner within AFNOR.[99]

Government prerogative

Since standards are non-mandatory, no penalties can be applied to producers who fail to apply them. Nevertheless, AFNOR is responsible for approving and registering standards, and is thereby vested with the prerogatives of government.

2.3 The legal status of new standards

Standards, even those which are approved and registered, are not intrinsically mandatory. They are only mandatory if the authorities issue legislation making them mandatory. Generally speaking, producers only refer to standards because of the technical advantages in terms of the certainty they confer.

Non-mandatory standards are similar to sound and consistent professional or commercial practice[100]. In reality, it is the general consent of professionals to apply them along the lines of professional rules of conduct that justifies this comparison. However, in both the civil-law and the common-law[101] systems the practice must be well known, certain and reasonable, even if it is fair and constantly applied. Such practice only becomes well known when it has been well established and recognised by all the professionals as a whole. This being so, the practice must be long-standing and spontaneous.

---

94 CE 28 June 1946 Morand, Rec. Lebanon 1946, p. 183; CE 13 January 1961, Magnier Revue de Droit publique 1961-63, Trib. Com. 6 November 1978, Brenardi, AJDA, p. 35.

95 P. Devolve, "L'acte administratif, Sirey, 1986, No. 12 and following; F. Moderne, "Remarques sur le concept d'acte administratif dans ses relations avec les notions de personne privée et de service à gestion privée", AJDA 1975-4.

96 See the standard-setting procedure below.

97 See, for example, the French Act of 24 May 1941, and article 5 of the Decree of 26 January 1984.

98 R. Théry, "Les associations à monopole: Pourquoi", Droit Social, pp. 971-987.

99 Articles 3 and 4 of the 1984 Decree.

100 J. Milhaïlov, "Normes européennes et droit national", Enjeux, No. 87, p. 69; et J. Boucouréchliev, "Usages commerciaux, usages professionnels, élaboration et formulation", in "Dix ans de droit de l'entreprise", Litec, 1978, p. 19.

101 J. Dupichot et E. du Pontavice, "Traité de droit commercial", Thémis, PUF.

2.4 **Relations between the new standards and official quality control measures**

Voluntary controls by the administrative authorities are facilitated when the businesses being inspected comply with the standards set for their sphere of activity. In France, an administrative circular has established that it is not generally necessary to inspect and control products that have been produced in accordance with a given standard, "when a safety standard, or a performance standard is generally recognised as representing current practice, the inspection of products submitted without reference to the standards takes priority over the verification of the conformity of products which are submitted as being in conformity[102]".

When interpreting a contract, the courts generally refer to non-mandatory standards, either on the basis of the concept of supplementary usage, or by drawing on the common-law technique of the standard, which authorises the court to deal with the contract in terms of the principles of good faith, diligence, security and contractual equilibrium.

When interpreting the will of the parties to a contract, the court attributes to the standards a *de facto* authority[103]. They most frequently refer to them when examining the scope of a contract or in a breach of contract suit.

When construing a technical term, the court can refer to the standardised definition in order to specify the exact scope of the term at issue. In this case there is a *defacto* presumption that failure to comply with the non-mandatory norm constitutes a breach of contract unless the party can show that the standard is no longer consistent with standard practice because it has fallen out of use. If the products do not comply with the standardised definitions, the party may submit that the contract is null and void on the grounds of error in respect of the substantive elements or on the grounds of wilful representation, and may even claim damages.

If the flaw in the product turns out to be due to defective manufacture, failure to comply with the standard may be considered to be the cause of the defect in the product

2.5 **National standard-setting procedure**

Each country has its own procedure for setting standards (see above).

2.6 **Within the Community**

In the absence of any Community standards applicable to food, the principle of the mutual recognition of national standards applies between Member States. However, a number of standards for specifying products and specific analysis methods are currently being prepared: standards governing methods for analysing and sampling fruit juices, milk and dairy products, oils and facts; standards for general methods for analysing foodstuffs; standards for defining preserved fruit and vegetable products[104]. This "delay" is due firstly to the Commission's decision to develop its own product safety standards before laying down standards regarding consumer health, and secondly to the hostility of the Northern European countries to standardising product specifications.

---

[102] See circular of 28 November 1985, *Journal officiel de la République française*, 24 December 1985.

[103] Le droit des normes professionnelles et techniques" Meeting of 16 and 17 November 1983, Liège University, Ed. Bruylant, 1985.

[104] "EC food law", 16 April 1993, p. 7.

The basic Community provisions governing standards are set out in the Council resolution 85/C136 of 4 June 1985, which introduced a new approach to technical harmonisation and standardisation. The Commission has proposed that the procedure for referring to standards should be extended to the foodstuff sector[105].

Standardisation falls within the province of the European Committee for Standardisation (CEN) which comprises all the national standardisation bodies in the EC and EFTA countries.

2.6.1 The elaboration of Community standards

The initiative for elaborating a standard may come from the Commission applying the procedure set out in Directive 83/189 of 28 March 1983[106]. Working on the basis of a national standard, a specialised committee chaired by a Commission representative may request CEN to elaborate a Community standard by a specific deadline.

The initiative can also come from professional associations within the Community or national standard-setting bodies. In this case, once the matter has been included in the CEN programme, it requires a qualified majority vote at the technical bureau, which is made up of representatives of all these bodies.

Community standards are elaborated under the authority of the technical secretariat. There are two procedures, depending upon whether or not there is a reference document.

(a) If there is no reference document, the Technical Committee calls a meeting of competent experts. The draft is then submitted to each of the Member States for a public inquiry conducted by their national standards bodies.

(b) If a reference document does exist, a simplified procedure is followed. A preliminary questionnaire is sent out with the document to all the Member States for an inquiry in each country.

In all cases, before the standard can be adopted it requires a formal qualified majority vote from the Technical Bureau of CEN. It is then published by the national standards bodies.

While the Community standard is being elaborated[107] [108], the Member States must take all the necessary steps to ensure that the national standard-setting bodies do not meanwhile issue standards in that particular field.

The purpose of standardisation within CEN is to harmonise existing national standards in order to obtain homogeneous quality. Community standards must therefore necessarily be incorporated into existing national standards, and the national standards bodies must undertake to withdraw any national

---

[105] Communication of the Commission "Achèvement du marché intérieur: législation communicaire des denrées alimentaires", Com (85) final of 8 November 1985.

[106] Directive 83/189, *op. cit.*

[107] Directive 83/189, *op. cit.*

[108] Communication of the Commission on European standards in the context of technological integration (Com (90) 456 final of 16 October 1990).

standard that conflicts with them. Furthermore, Community standards must, as far as possible, be identical to the ISO international standards[109], adopted wholesale into the Community.

Setting national standards is one way of paving the way for future Community standards. National standards make it possible to see whether there is any possibility of agreement regarding the substance of a future Community standard, or whether it is possible to base a strategy for an alliance between countries that have compatible views and rules regarding production.

2.6.2 The relevance of Community standards for non-EEC producers

Their main interest is economic. National standards fragment the Community market because of the differences between the national systems. It is therefore much more beneficial in economic terms to have Community standards. Producers will be certain that the quality of their products meets the standards of other countries, increasing the possibility of exporting them without having to adapt them to the requirements of each Member State.

Furthermore, the development of Community standards aligned with international standards will encourage product quality harmonisation, as GATT envisages.

By adopting Community standards or, until they are adopted, using harmonised national standards, producers in non-EEC States will be able to gain access to the whole of the Common Market. If different specifications are used, the producer can only gain access if some form of certification issued by a third organisation is recognised by the Community[110].

2.7 **International standards**

These are set by ISO, which was established in 1947. The whole purpose of international standards, like the Codex, is to facilitate trade, which includes the food trade. ISO elaborates and published international standards that can be adopted by each Member State as they stand, or with some adjustments. The non-mandatory character of ISO standards is the main difference between them and CEN standards.

ISO is composed of member committees, which are the most representative standard-setting bodies in their countries. The work is carried out in technical committees whose secretariats are shared between the member committees.

The ISO standardisation procedure is as follows:

(a) work is proposed and approved by the competent technical committee;

(b) a preliminary draft standard is prepared;

(c) this draft is registered as a draft international standard (DIS);

---

[109] See *infra.*

[110] L. Brykman, *op. cit.*, "Implications of the single European Act for non-member countries", Part II. Ed. United Nations, pp. 164-166.

(d) the DIS is put to the vote (for adoption, 75 percent of the committees must vote in favour);

(e) the ISO standard is then published.

With regard to food, ISO has elaborated standards for methods of analysis and for specifying raw materials. ISO company organisation standards are also used as the basis for quality assurance (see above).

PART THREE - QUALITY CONTROL OF FOOD PRODUCTS: TOWARDS SELF-REGULATED CONTROL

The quality control of food products is based on government responsibility, which includes the general duty to protect citizens against health hazards and commercial fraud. Control is carried out by an administrative body and relates both to domestically produced food and imported food. The purpose of this type of control is to seek out and ascertain breaches of the law, regulations and food practices.

CHAPTER I - TRADITIONAL QUALITY CONTROL

1. GENERAL BACKGROUND

In the case of imports, the purpose of controls is to ensure that the products comply with national legislation. Procedures vary from one country to another; some require an import licence, others an import certificate issued by the competent government service in the exporting country showing that the product meets certain minimum standards.

With regard to exports, some countries have put into place a system to guarantee the quality and the safety of food sold abroad and to meet foreign buyers' specifications, and to comply with the importing countries' food regulations in order to pre-empt the rejection of the commodities at import entry points.

This control generally consists of certification, with or without inspection.

The food inspection system

This comprises all the resources and techniques used to guarantee that food meets certain specified standards, by inspecting the food, the raw materials, the manufacturing procedures and the distribution systems.

Food certification system

This comprises all the procedures used by the authorities to ensure that food meets certain standards, and to provide opinions for the parties concerned[111].

However, when the official structures are inadequate, the quality certification of foodstuffs, particularly those intended for export, can be issued by private bodies under government supervision, as is the case of the grape producers in Chile; however, ultimate responsibility lies in every instance with the government[112].

Whatever the level considered, whether national or international, everything relating to consumer health is covered by mandatory provisions to which criminal sanctions apply; the rules designed to improve food quality (composition, calorie content, nutritional content) can be set out in non-mandatory standards without criminal penalties.

This is where the main difference lies between agricultural products and food produced by the agri-food industry. For the rules that apply to agricultural basic commodities are often mandatory because they are directly relevant to consumer health or to sound commercial relations. Generally speaking, governments have specific legislation governing milk, fruits and vegetables and meat[113]; this is the case in countries with well-structured professional associations (France, South America). The control of foodstuffs from the agri-food industrial food sector relates to the complementary scientific

---

[111] General Principles for Food Import and Export Inspection and Certification, *op. cit.*, p. 2.

[112] Decree-Law No. 4 of 25 April 1983, *Diario Oficial*, No. 31.603, 27 June 1983 and Decree No. 238 of 12 September 1984, *Diario Oficial* No. 32.028, 22 November 1984; E. Morales, *op. cit.*

[113] See the United Kingdom's legislation or Community regulations, *supra.*

aspects, (for example, the nutritional value) or more subjective aspects (ingredients, colour) whose application may be left to the discretion of the businesses concerned, and subsequently subjected to public supervision.

The quality control of agri-food products for domestic consumption, of for export or import, is generally the responsibility of an inter-departmental administrative authority.

2. CONTROL OF HOME-PRODUCED FOOD FOR DOMESTIC CONSUMPTION

Not all countries are equally concerned about control measures; some are particularly concerned about the chemical composition of products, or the presence of residues, while others are more interested in germs. But despite this difference in strategy, control is always based on the same principles. Responsibility for carrying out the controls may lie directly with the central administrative services or be delegated to the local authorities: in the United Kingdom the local authorities are responsible for authorising the Sampling Officers to take samples, while in most of the other countries it is the central government authority that issues this authorisation (Chile, United States, France).

2.1 **The stages at which controls are carried out**

Control over production relates to the equipment, manufacturing processes (pre-production chain, during production chain or at the end of it), and the materials used (the raw materials, the semifinished product, or the finished products); in France and in the United Kingdom controls may also be carried out of the products going into the composition of a foodstuff and the materials in contact with it. In the Netherlands the inspection service (Rijkskeuringsdienst van Waren: RW) may inspect all the materials, but the final products are only inspected for legal purposes if they are marketed or intended to be marketed (the law governing the quality of agricultural products).

Only by controlling all these elements is it possible to ascertain whether the product has been adulterated or spoilt (France, United Kingdom, United States, Chile), because inspecting and controlling the finished product only reveals that an offence has been committed, but it does not explain the reasons.

2.2 **Types of controls**

The different types of controls carried out are physical, chemical, micro-biological and organoleptic; their purpose is to ensure that the food is in conformity with the law (mostly subordinate legislation or regulations) governing the chemical composition, and the micro-biological and organoleptic features (Chile).

(a) Product quality. This refers to verifying the composition or the genuineness of the products in terms of regulations and current codes of practice, and ensuring compliance with the rules relating to certification, agricultural labelling, appellations of origin and trade marks[114]. While this type of control may be the responsibility of one single authority — in France, the Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes (hereafter DGCCRF), and in the United States, the Food and Drug Administration (FDA) — in some cases, such as the United Kingdom other

---

[114] See *supra.*

officers may be empowered to act in addition to those responsible for checking the physical aspects of the goods: Trading Standards Inspectors. Nevertheless, the samples that they take must be examined by an official expert or by a government chemist in some cases[115].

(b) Production and product hygiene[116]. There is generally a specific piece of legislation governing this. In Chile, the basic texts mainly relate to hygiene control, but they also refer to nomenclature and to established names. This type of control may be carried out by specific officials, as in the United Kingdom, where only environmental hygiene inspectors are competent.

(c) Internal control systems. In this case the effectiveness of the self-regulated control systems established by the businesses themselves is controlled.

(d) Documents. Officials may also inspect accounting, commercial and technical records, and any other document to facilitate their control work (France). However in the United States, the inspection cannot cover financial or commercial information other than information on transport, price-setting and personnel; research data is also excluded. In the Netherlands, documents can only be controlled by tax inspectors, and the officials of the RW, for example, have no right to see them.

2.3 Qualifications of officers

Generally speaking, there are two types of officer: inspectors and controllers.

Inspectors must hold a degree (France, United States) or be graduates of a higher education establishment (particularly a veterinary institution for controlling foodstuffs of animal origin).

Controllers must hold a professional technical diploma (France, Chile). Sometimes they can obtain technical and vocational training on the job in their own department (Belgium).

2.4 Product liability

Several authorities usually play a part in the control operations; their remit depends upon the products. In France, the veterinary services belong to the Ministry of Agriculture and are competent to control products of animal origin, while other types of food control are carried by the DGCCRF which depends on the Ministry of the Economy.

In the United States, the FDA is responsible for most products while Department of Agriculture officials are responsible for controlling beverages containing 7 per cent or more alcohol, poultry meats, certain meat-based processed foods and/or processed foods based on poultry meat and egg products.

In the United Kingdom, control is generally carried out by Ministry of Health officials while specific aspects relating to quality, composition, and authenticity are the responsibility of Trading Standards officers.

---

[115] The Sale of Goods Act, 1979.

[116] Chile, Decree No. 60 of 5 April 1982; France, Decree No. 91-406 of 28 April 1991.

2.5 **The powers of inspection officers**

In order to carry out inspections, officials are generally empowered to:

(a) gain access to production premises. They are authorised to visit any place which is necessary to ascertain the facts, at any reasonable times, and they are issued with written authorisation;

(b) seize or impound the goods if necessary;

(c) consult documents;

(d) gain access to products and manufacturing receipts, with certain restrictions regarding manufacturing secrets;

(e) gain access to raw materials and products.

2.6 **Rules regarding sampling**

'The number of samples that may be taken varies from one country to another. Three samples may be taken in France, while in the United Kingdom the inspectors must be content with only one sample, which is divided into three parts; in the Netherlands they may take only one sample, with a right to a counter-sample.

In the United States, the officer must give part of the sample back to the proprietor or to any other person responsible for the goods, upon request.

The sampling officer must generally send a copy of the results of tests to the proprietor or the person responsible for the goods (France, United States, United Kingdom).

3. CONTROL OF IMPORTED FOOD

Governments are required to ensure that any food introduced into their territories meet national quality standards. Food imports can therefore be inspected in order to prevent any unforeseen health hazards and to protect the population against fraud. Any lot or batch deemed to be substandard will then be treated, re-exported or destroyed depending upon circumstances. Some countries require an import licence for food to be imported into the national territory, while others accept the certification issued by the competent authorities in the exporting country[117].

3.1 **The type of control at the point of import**

Some countries impose border controls on all imported food: Australia, Imported Food Control Act, 1992; United States, Food, Drug and Cosmetic Act; Finland, the Food Act. In Canada, under the Food and Drug Act, inspections are not routinely carried out at the border, but they may be effected in warehouses and on the premises of the wholesalers or distributors.

---

[117] R.K. Malik, *op. cit.*, p. 4.

In Denmark, food imports are not subject to control except products of animal origin (Directive 90/675/EEC) such as meat, fish and dairy products, in which case the inspections are carried out at various points in the marketing chain.

3.2 **Responsibility for control**

There may be only one authority responsible for controlling imported food quality. In Australia, for example, the responsibility lies with the quarantine and inspection services which come under the Department of Primary Industry and Energy; in Poland, quality specifications have been entrusted to quality inspectors from the Ministry of Foreign Economic Relations; the control of products of animal and vegetable origin is carried out by the Ministry of Agriculture and the Food Economy, while the Ministry of Health and Social Affairs is responsible for controlling all other commodities.

In other countries, such as Finland, responsibility lies with a number of different authorities: customs laboratories are responsible for controlling food and consumer products requiring chemical analysis or any other laboratory tests, while labelling is dealt with by the customs districts.

In the United States, products such as milk, meat, dairy products and meat products, as well as eggs and alcoholic beverages, may be subject to specific regulations and entrusted to special services. In Canada, depending upon the product, responsibility for inspection lies with one of four Federal Departments: Health and Welfare Canada, Health Protection Branch; Agriculture Canada, Food Production and Inspection Branch, with a different office responsible for different products; Pêche et océan Canada, Inspection Services Directorate, and Consommateurs et entreprises Canada, Consumer Products Branch. Each of these departments has a programme for monitoring imported food and ensuring conformity with regulatory specifications.

In the United States egg products cannot be imported unless they come from countries approved by the Department of Agriculture, namely countries with a similar inspection system to the one in force in America. At the moment only Canada and the Netherlands meet these conditions.

Lastly, the control systems may be decentralised, as in Norway and Switzerland, where the Cantons are responsible or they may be national systems, as in the United States, Canada or the United Kingdom.

3.3 **The scope of control**

As a rule, the scope of the control system depends upon the degree of risk posed by the foodstuff or the type of product imported. In Australia and Canada products belonging to categories posing a high risk (those constituting a serious or immediate threat to the consumer) are routinely inspected; food which may be a less immediate hazard is also inspected in Australia, but in Canada this is done with a specific frequency. Low risk products may be inspected by sampling (Canada) or through random checks at sales outlets (Australia).

Classification by risk is generally carried out according to the manufacturer's past track record, information on the manufacturing processes available in the importing State, and the results of checks carried out in the State of origin. In other cases (Finland and Denmark) products are classified in terms of their risk to health, but also according to the type of consumption, such that products consumed on a large scale are subject to the strictest controls.

3.4 **Information on seizure or rejection**

Reasons for rejection are automatically given to the importer as a rule, (Australia, France, Denmark), while the Community countries also notify the Commission. Information can also be given to the exporter (United States) or the inspection services in the exporting State (Canada).

3.5 **Import licences**

Imports of some types of food may be subject to an import licence; this is the case in the United States. But since licences may also constitute a serious barrier to trade, GATT has regulated the issue of licences under an agreement which came into force on 1 January 1981. Under this agreement, import licences are an administrative procedure used to implement an import licensing regime requiring applications or other documents other than those needed for Customs purposes to be submitted to the relevant licensing authority as a pre-condition for importing goods into the customs territory of the importing country. The procedures for submitting an application and the list of products for which a licence is required must be published.

A distinction should be drawn between import licences which are not issued automatically, and which are for the purpose of administering quotas and other import restrictions, and import licences issued automatically upon request without any restrictions, and which in practice are required purely for the record, or for statistical control or import forecasts.

4. THE CONTROL OF FOOD FOR EXPORT

Export control legislation is intended to prohibit the export of food which is not in accordance with current legislation. In most countries there is specific legislation making such controls mandatory (France, United Kingdom). However the control of the quality of food intended for export may be non-mandatory, in which case controls are organised by the producers who draw up their own quality standards and use their own inspectors. This is the case of hazelnuts exported from Turkey.

When the system put in place enjoys a high reputation, the credibility of the certificate issued is enhanced and the controls carried out by the importing country are less stringent.

All countries (except the EEC Member States with regard to intra-Community trade) are free to require any certificate they deem necessary whenever there is no international legislation prohibiting them from so doing, and the type of certificate varies from one type of exported foodstuff to another[118].

In the developed countries, food exports are not necessarily subject to inspection. However, specific controls may always be carried out at the request of the importing country (the United Kingdom, "Food Safety (Exports) Regulations, 1991"). Some products, such as meat (United States, "Animals and Animal Products Act"), eggs, fruit and vegetables (France, Decree of 2 August 1947) must sometimes undergo routine checks when exported.

In the Community countries, even though a particular foodstuff for export does not necessarily have to comply with the legislation and standards of the country of origin, there are nevertheless

---

[118] "Manual of Food quality Control, Food for Export, 6. Food for Export", FAO, Food and Nutrition Paper 14/6 rev. 1, 1990, p. 10, 19 et *seq.*

certain conditions with which they must comply: the conditions required by the country of destination, its labelling requirements, and conformity with the specifications of the foreign purchaser.

In Australia, the Export Control Act requires the competent authorities to ensure compliance with licensing conditions. To do this, inspectors have the right to visit the premises. Any commodities which are not in accordance with the Act may be seized.

Many countries, such as Latin America, have no governmental or institutional structure responsible for controlling the quality of exports. However, quite frequently the producers and the exporters carry out checks themselves and issue some kind of certification[119]. This certification may be supervised by the authorities[120].

In all the countries mentioned in this publication, an export quality certificate may be issued if so requested by the recipient.

GATT Member States must nevertheless comply with the principles set out in the "Agreement on Technical Barriers to Trade". According to this document, the parties must apply a no less favourable treatment to imported products than that applied to similar products of national origin, or to similar products from any other country. With regard to the certification systems, in order to ensure that the imported products are in accordance with the standards laid down, the parties must guarantee that they will be accepted for tests under the same conditions as similar products of national or any other origin, and that the methods used for testing, the administrative procedures and any fees that may be charged will also be identical for all imported goods. The results must be notified. Furthermore, the parties must accept the results of tests and assays, certification or marks of conformity established by the other parties wherever possible, particularly those established by the producer or exporting country.

5. COMMUNITY CONTROL OF FOODSTUFFS

In order to complete the internal market, it became necessary to harmonise legislation regarding official control procedures. The removal of border controls necessarily requires tighter internal controls, particularly at the production stage.

5.1 **Official control of foodstuffs**

This is based on Directive 89/397 of 14 June 1989 (*Official Journal of the European Communities* L186/89, 30 June 1989) on the official control of foodstuffs, which requires which all control measures must be carried out regardless of the destination or origin of the products. This Directive does not prevent foodstuffs from being controlled from the beginning using the rules current in the Member State for which they are intended, even if these rules are not the same as those applicable in the producer Member State; this is why the products intended for exports towards another Member State are controlled "with the same care" as those intended for marketing in the Member State in which they are produced. Member States must not exclude from inspection a particular commodity simply because it is to be exported outside the Community. In these cases, the Directive requires the inspection to be "appropriate". Since this is not a compulsory inspection, the third country must

---

[119] R.K. Malik, *op. cit.*, p. 6.

[120] See Chile, *supra.*

necessarily check all Community products imported into their territory to prevent Community producers from dump products rejected by other Member States.

Control is either carried out routinely, or when there is suspicion that food is sub-standard (administrative control). This may relate to the raw materials, the semi-finished products or the finished products, all the articles used for maintenance and cleaning during the production of food. Food may be inspected when it is produced, manufactured, imported into the Community, processed, stored, transported or marketed. It is the responsibility of the inspection authorities in each case to choose the most appropriate stage.

Inspections may be carried out in advance, without prior warning, and must be the most appropriate to attain the desired end. The procedures used are: inspection, sampling and analysis, inspection of staff hygiene, examination of written and documentary material, as well as any verification systems set up by the business, and of the results obtained by these systems.

The parties concerned must be able to appeal against any decisions of the inspectors with the competent authorities.

To complement Directive 89/397, the Commission issued a draft Directive (COM (91) 526 final, of 6 February 1992) providing supplementary measures on foodstuff control, stipulating in particular that the Member States must ensure that the competent authorities have an adequate number of qualified and experienced officials.

5.1.1 Cooperation in relation to control

To improve cooperation between the various national services having competence in this area, each Member State is required to submit a list of the authorities competent to carry out inspections to the Commission. A coordinated programme must be established at Community level. The Directive provides that the Commission shall issue a recommendation regarding a coordinated control programme for the year to all the Member States, after having consulted the Permanent Committee on Foodstuffs.

The competent authorities in the Member States must also provide one another with administrative and judicial assistance. Under Council Decision 92/481/EEC of 22 September 1992 (*Official Journal of the European Communities* L286/65 of 1 October 1992) a plan of action was drawn up for the exchange of national inspectors of the administrations of Member States responsible for implementing Community legislation for the completion of the internal market.

5.1.2 Sampling and analysis methods

The Council adopted Directive 85/591 (*Official Journal of the European Communities* L372 of 31 December 1985) regarding the introduction of sampling and analysis methods to be used by the Community to control foodstuffs for human consumption. This is a framework Directive laying down a number of criteria with which analysis methods must comply. It sets up a simplified procedure for adopting sampling methods or Community analysis methods in order to establish the composition, the manufacturing features, the packaging and the labelling of a foodstuff.

Any measures adopted on the basis of this Directive must also contain a safeguard clause justifying any measures laid down by States to protect the health of their own nationals.

5.1.3 Inspecting the Quality of fresh fruit and vegetables

In the case of fruit and vegetables, the Commission has issued a regulation directly dealing with quality control. The relevant text is regulation 2251/92 on the quality control of fresh fruit and vegetables, amended by Regulation 3720/92 of 22 December 1992 (*Official Journal of the European Communities* L378/32 of 23 December 1992).

This regulation requires the inspectors to acquire representative samples from individual lots. The inspector is required to indicate the lots of the product he wishes to examine in order that the importer can submit them. A mark or some indication must be placed on each lot, making it possible to identify them, indicating the type of produce, the importer's name, the country of origin, the quality class, and if necessary the variety or commercial type.

The purpose of sampling is to ensure the conformity of the packaging, marking, and the product. If the inspector feels that the product is in conformity with Community legislation, he issues an inspection certificate. If not, the proprietor or the importer must be notified of the defects encountered, and a document issued indicating the quality standards which have not been met, and ensure that the products are not marketed for consumption as fresh produce.

The efficiency of the certification agencies are also checked, and they are required to ensure regularly that product quality remains consistent.

Producers excluded from controls because they have set in place their own quality-assurance system must indicate the registration number on the labelling of all their products.

5.1.4 Quality control of fresh fruit and vegetables for importation into the Community

Fresh fruit and vegetables from third States are inspected in order to ensure conformity with Community quality standards or, in the case of non-European third countries or countries outside the Mediterranean region, at least equivalent standards. When a product has been inspected in its country of origin by a Community recognised authority, it must be accompanied by an inspection certificate showing that it is in conformity with Community or equivalent provisions. The destination State may nevertheless carry out new checks.

5.1.5 Relations between the EEC and third countries

Relations with the ACP countries

On 15 December 1989, the fourth Lomé Convention was signed between the European Community and the ACP (African-Caribbean-Pacific) countries, which will remain in force until February 2000. This Convention sets up a general regime providing free access to the Community market, with a few exceptions, permitting the unhampered movement of goods originating from the ACP countries. No reciprocal arrangements exist for exports from the Community to the ACP States. As a general rule, these countries have the same treatment as the Member States of the Community. Import restrictions may therefore be applied where they are justified for purposes of public health protection.

Relations with the OCT

Articles 131 to 136 of the EEC Treaty deal with the principle of the association with the Community of non-European countries. The purpose of association is to broaden to the Community as a whole the special ties that exist between Member States and their former dependencies. A decision was adopted by the Council, No. 90/146 on 5 March 1990 (*Official Journal of the European Communities* L 84 of 30 March 1990) to extend the association of the OCT countries (Overseas Countries and Territories) with the EEC under decision 86/283 of 30 June 1986 (*Official Journal of the European Communities* L 175 of 1 July 1986). Since these texts took up the principles applying under the Lomé Agreements, the same rules apply to inspection and control.

Other States

These principles requiring identical health-care and hygiene inspections and controls to be carried out on products from Member States and the restrictions on imports on the grounds of public health also apply to products from non-Community countries[121].

Once the import formalities have been completed and customs duty paid, the product imported from a third State can be freely marketed within the Community. In other words, it can freely circulate throughout the whole customs territory of the Community[122] and will be considered as equivalent to a Community product.

Since 1 January 1988, the Community has had a general code of Community law provisions applying to products entering the Community: TARIC; this was instituted under combined nomenclature No. 2658/87 of 23 July 1987 (*Official Journal of the European Communities* L 256 of 7 September 1987) and refers in particular to the licences and certificates required for each commodity.

Relations between the EEC and third countries in the event of a health hazard

These were formalised in regulation 339/93 of 8 February 1993 *(Official Journal of the European Communities* L 40/1 of 17 February 1993) regarding conformity inspections of products imported from third countries to ensure compliance with the rules governing safety and hygiene; this regulation refers to all products and not only food, but does not apply in cases covered by regulations governing veterinary checks.

When, in the course of inspection, the customs authorities have serious grounds for believing that a particular product constitutes a serious and immediate threat to health or safety, without the marking required under Community or national rules governing safety and/or a document that should accompany the commodity, they suspend clearance for the food product in question and immediately inform the competent national authorities responsible for market supervision. If the latter find that there is no serious threat to health, the product can then be freely marketed. When there is a real danger, or when the Community or national safety rules have been infringed, the commercial invoice accompanying the imported products must be specifically marked to indicate this fact.

---

[121] See "Les Accords du Gatt", in "Les relations internationales de la CEE", Dictionnaire du marché commun, 1989, No. 4, p. 199.

[122] The implementation is governed by Directive No. 695 of 24 July 1979, *Officiai Journal of the European Communities* L 205 of 13 August 1970, Directive No. 57 of 17 December 1981, *Officiai Journal of the European Communities L* 28, of 19 January 1982, and Directive No. 371 of 14 July 1983, *Official Journal of the European Communities* L 204 of 28 July 1983.

5.2 **Food hygiene**

Legislation on food hygiene is piecemeal and incomplete. It governs fresh meat (Directive 64/433, *Official Journal of the European Communities* L 121/64, recently amended by Directive 88/657, *Official Journal of the European Communities* L 382/88), poultry meat (Directive 71/118, *Official Journal of the European Communities* L 55/71, amended by Directive 88/657, *Official Journal of the European Communities* L 382/88), meat-based products (Directive 77/99, *Official Journal of the European Communities* L 26/77, amended by Directive 89/227, *Official Journal of the European Communities* L 382/89), heat-treated milk (Directive 85/397, *Official Journal of the European Communities* L 226/85, amended by Regulation 3768/85, *Official Journal of the European Communities* L 362/85), egg products (Directive 89/437, *Official Journal of the European Communities* L 212/89) and fish products (Directive 91/493, *Official Journal of the European Communities* L 268/91).

In the case of products not yet covered by this harmonisation policy, a draft Directive on the hygiene of foodstuffs[123], is now being adopted. This will form the basis of Community food hygiene legislation in this field. (It should be noticed that this a horizontal text). This draft defines food hygiene as all the measures necessary to ensure the safety and wholesomeness of foodstuffs in the following stages: production, processing, manufacture, packaging, storing, transporting, distribution, handling or offering for sale to the consumer. The procedures necessary to ensure safety, the implementation and the monitoring of the control procedures are the responsibility of the businesses themselves. It is recommended to draft documents relating to good hygiene practice based on international codes of use[124].

Failure to comply with the hygiene rules can lead to the withdrawal and/or destruction of the food, and the closure of the premises.

5.3 **Post mortem veterinary examinations**

5.3.1 System of trade between Member States covering most products of animal origin

Directive 89/662 of 11 December 1989 *(Official Journal of the European Communities* L 395 of 30 December 1989) regarding veterinary inspections applicable to intra-Community trade replaced the veterinary inspections carried out at the Community's internal borders by checks carried out at the place of departure, if necessary completed by other inspections at the place of destination.

The veterinary inspections are carried out at the establishment of origin and by the competent authorities of the Member State in which the products originate. These authorities must take every precaution to ensure compliance with veterinary requirements at every stage of production, and to impose penalties in the event of non-compliance. Inspections must be carried out in accordance with harmonised provisions, where these exist. Otherwise, they must ensure that the products are in compliance with the rules of the Member State of destination, when these are justified in terms of article 36 of the Treaty.

---

[123] See COM(91) 525, final, of 31 January 1992 amended by COM (92) 547, final, of 31 December 1992 and by COM(93) 219, final, of 19 May 1993.

[124] "General Principles of Food Hygiene", Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, CAC/Vol. A Ed. 2, Rome 1988.

Certificates issued by official veterinarians must indicate the identity, the source and the destination of the product and all the hygiene and health information required, and must be accompanied by certification attesting to the wholesomeness of the meat[125] which must also be marked to indicate wholesomeness.

In the Member State of destination, veterinary inspections can only be carried out by sampling, without any discrimination. If some serious irregularity is suspected, the sampling may be carried out during transportation.

Provisions exist to deal with cases in which the inspections carried out at the place of destination show the animals to be diseased, or when the accompanying documents are incomplete.

In case of disagreement, the receiving State must give the shipper the right to seek the opinion of an expert veterinarian. This expert's report does not interfere with the ordinary appeal procedures under domestic legislation. The procedure to be followed has been set out in Directive 65/277. The Member State which rejects the products must not take any steps to hamper or prevent the expert examination from being carried out, and is required to provide the expert with any information and material resources required. The expert's opinion must be submitted to the competent authority of the destination State and to the Commission.

Directive 92/67 of 14 July 1992 *(Official Journal of the European Communities* L 268, of 14 September 1992) completed Directive 89/662. Since 1 July 1992, veterinary inspections on all animal products have been abolished in view of the progress made with controlling products from third countries, and particularly with combating foot-and-mouth disease and swine fever.

5.3.2 Products from third countries

Directive 90/675 of 10 December 1990 *(Official Journal of the European Communities* L 373 of 31 December 1990) lays down the principles for organising veterinary inspections on products from third countries introduced into the Community. This Directive not only applies to products of animal origin but also to vegetable products that might contaminate Community livestock.

Documentary control and identity checks must be carried out for each lot coming from third countries by the veterinary officials at border posts, or by any other competent authority[126]. The products are then channelled, under customs control, to the border inspection post in the immediate proximity of the point of entry into the Community, for supplementary inspections to be carried out. Access by commodities to Community territory can be prohibited when they are indicated on lists drawn up by the Commission, specifying countries or parts of countries from which imports are permitted and the establishments for which Member States may authorise imports. The Commission took decisions in this direction regarding the import of meat from South American countries including Argentina, Brazil, Uruguay, Paraguay and Colombia[127].

Official certificates accompanying meat must be issued by an official veterinarian in the exporting country on the day of loading; these certificates must certify that the fresh meat is in

[125] See Directive 64/433/EEC, loc. *cit.*

[126] See article 6 of Directive 89/662/EEC, *op. cit.*

[127] For Brazil see Decision 87/119 (*Official Journal of the European Communities* L 49 of 18 February 1987), amended by decisions 92/257, (*Official Journal of the European Communities* L 128 of 14 May 1992), and 92/485 (*Official Journal of the European Communities* L 290/13 of 6 October 1992).

conformity with Community legislation on imports. These regulations are set out in Directive 72/462 *(Official Journal of the European Communities* L 302 of 31 December 1972), and the veterinarian is personally liable for ensuring conformity.

When the inspections show that the products are not in accordance with Community or national regulations in areas that have not yet been harmonised, or if irregularities are discovered, the products are returned. If it is impossible to return them, they are destroyed on the territory of the Member State in which the inspection has taken place. However, waivers are possible in some cases.

Safeguard measures are also provided when there is a serious threat to livestock or human health, or under animal health measures or for the protection of human health. Experts from the Commission, working jointly with the competent authorities, must ensure that the inspection posts meet the required standards. If the country of destination finds non-compliance with the provisions of the Directive, it must immediately inform the Member State through which the product was introduced. When repeated infringements of the Directive occur, the competent authority of the Member State detecting these infringements must notify the Commission and the other Member States.

Some products were already covered by Community regulations prior to the Directive on the veterinary inspections of products from third States. These texts still apply, after being adapted to the new Directive. They are as follows: (i) Directive 64/433 regarding health and hygiene problems relating to intra-Community trade in fresh meat, lately amended by Directive 88/657; (ii) Directive 71/118, relating to health and hygiene problems with the trade in fresh poultry meat, lately amended by Directive 88/657; (iii) Directive 72/461 *(Official Journal of the European Communities* L 302/72) regarding animal health problems in relation to intra-Community trade in fresh meat, lately amended by Directive 87/489, *(Official Journal of the European Communities* L 382/87); (iv) Directive 77/99, lately amended by Directive 89/227; (v) Directive 80/215 *(Official Journal of the European Communities* L 47/80), relating to animal health problems in relation to the intra-Community trade in meat-based products, lately amended by Directive 88/660 *(Official Journal of the European Communities* L 382/88); (vi) Directive 85/397, lately amended by regulation 3768/85; (vii) Directive 88/657 *(Official Journal of the European Communities* L 382/88) laying down the requirements for the production and trade in chopped meat, meat in pieces of less than 100 grammes, and meat preparations; and (viii) Directive 89/437, regarding hygiene and health problems relating to the production and marketing of egg products.

5.4 **Types of control authorised for trade in foodstuffs between Member States**

These control operations are carried out in compliance with the principle of the mutual recognition of national control and inspection measures[128]. They are only lawful if they are intended to pursue a lawful purpose (article 36 of the Treaty of Rome). Consequently the following practices are prohibited:

(a) double controls and systematic controls - These are controls imposed on imports when the authorities in the exporting country have already carried out similar controls which, while not being identical in terms of the procedure and implementation, are equivalent in terms of their purpose. Such systematic controls are not justified if they are merely a repetition of those carried out in the Member State in which the goods are produced,

---

[128] Directive 89/397, *Official Journal of the European Communities* L 186/89 of 30 June 1989 on the official control of foodstuffs.

provided that equivalent guarantees are supplied[129]. Sampling inspections are nevertheless admissible if they are not a measure of equivalent effect;

(b) control carried out by the importing State on the "evolution" of a product during transportation - This is no longer justified when the inspection carried out by the exporting State also related to the conditions under which the products in question are stored and transported[130]. However, the Court of Justice has ruled that import controls, limited to measures to prevent transportation risks resulting from subsequent handling following the controls carried out on departure, are admissible if the control in the exporting Member State provides no guarantees[131];

(c) production of documents accompanying the foodstuff - This refers mainly to health certificates or certificates attesting to the wholesomeness of the product that are issued by the Member State of origin and licences issued by the importing Member State. Import licences are prohibited, except those justified under article 36 of the Treaty of Rome[132]. Health certificates may be taken as a presumption of conformity with national health and hygiene legislation in the importing State. They are therefore justified, because they reduce the controls carried out when goods pass from one Member State to another, within the framework of cooperation between national authorities[133].

6. FOOD CONTROL INFRASTRUCTURE RECOMMENDED BY FAO

According to FAO in order for a control system to be effective, it is necessary for:

(a) operations to be carried out by some authority whose duties are divided between local services and the central authority. It is generally preferable to centralise control at the national level;

(b) the officials responsible for the quality control of foodstuffs to be empowered to take whatever steps are necessary when products are not in conformity with current legislation;

(c) encouragement to be given to consultation, coordination and cooperation between all the organisations responsible for food control;

(d) inspection and sampling rules to be drawn up;

(e) manufacturers of foodstuffs with their own quality control facility to use the same methods as those adopted by official analysts[134].

---

[129] Decision Simmental, Case 35/76, 10 December 1976, ECR 1976.

[130] Decision Delhaise, Cases 2-4/82, 6 October 1983, ECR 1983.

[131] Decision United Food, Case 132/80, 7 April 1981, ECR 1981.

[132] Decision International Fruit, Cases 51-54/81, 14 December 1971, ECR 1971.

[133] Decision Commission v. Greece, Case 35/88, *Official Journal of the European Communities* No. 1, February 1989.

[134] "Guidelines for Developing and Effective National Food Control System", *op. cit.*, pp. 46-53.

7. THE LIMITATIONS OF TRADITIONAL CONTROL

The types of controls described in this chapter have their drawbacks:

(a) There is sufficient focus on the food processing hazards;

(b) they are wasteful of product if destructive testing is involved;

(c) they detect defects after they have been produced and not before;

(d) production personnel are encouraged to regard quality control as being the responsibility of someone else, that is, the inspector,

(e) effectivesess is restricted by the inherent limitations of any statistically based sampling system[135].

This is why quality control is being left increasingly to the professionals, despite the existence of traditional control measures.

CHAPTER II - CONTROL BY PRODUCERS: A PRACTICE IN EXPANSION

In the food industry, foodstuffs are commonly packaged and pre-packaged; it is therefore evident that any effective, preventive inspections should be carried out as early in the chain as possible: in the factory or just after harvesting and before marketing. While this is still true today, it is not superseded: the obligation to guarantee safety with product liability requires producers to carry out their own controls, with the result that official control becomes second-tier control. One of the reasons for leaving food quality control to the parties concerned is to increase production and enhance the food industry. This means that controls must be carried out following a recognised procedure: the procedure which is most unanimously accepted is the quality assurance system based on the HACCP method (Hazard Analysis Critical Control Point System)[136].

It is the producer company itself which is responsible for carrying out controls, but this can also be done with the assistance of outside laboratories. This internal control stems from the general obligation to assume product liability: this is the case in France (the Consumers' Code), the United Kingdom ("Consumer Protection Act, 1987"), and the European Community as a whole (Directive 92/59, *Official Journal of the European Communities* L 228 of 11 August 1992, completing Directive 85/374, *Official Journal of the European Communities* L 210 of 7 August 1985). In the United States, the Federal States are competent in this field. Under the principles laid down in all this legislation, whoever is responsible for first placing a product on the market is liable for ensuring conformity with current standards and legislation, and is required to justify any checks carried out. The reason for encouraging businesses to handle their own control procedures is that governments are increasingly anxious to institute jointly agreed procedures for improved quality, which also lightens administrative controls[137].

---

[135] "Draft Outline of Model Legislation for Government Certification Systems Based on Quality Assurance Principles", Joint FAO/WHO Food Standards Programme, *op. cit.*, CX/FICS 92/8.

[136] Ch. Castang, "Principes généralux du contrôle alimentaire - Bilan et perspectives communautaires", in "Colloque sur le droit alimentaire, trente ans de droit alimentaire dans la Communauté", AEDA, 1991.

[137] See Lamy Droit Economique, "Le contrôle de la qualité", 1992.

1. QUALITY ASSURANCE

Quality assurance is based on the principle that compliance with standards improves when quality is embodied into the product during manufacture rather than endeavouring to identify flaws by inspection carried out at the end of the manufacturing process[138].

The principle of quality assurance was first introduced in the United States in the Fifties. In order to overcome the difficulty of setting up a body of inspectors which was large enough to enforce the construction codes in the aerospace industry and control the products manufactured[139], this method was established and encouraged by the general industrial policy adopted by the government.

At the present time the lack of specialised technicians in the civil service is one of the main problems found in the developing countries. Quality assurance systems and HACCP should help them to overcome these difficulties, at least in the food industry.

The purpose of quality assurance is to guarantee that the business in question is able to produce a commodity that meets the requirements of the consumer[140]. By proving that the required quality levels have been achieved, quality assurance helps to establish trust between the business and its customers. Another essential advantage is that inspection costs are reduced.

1.1 Standards on which quality assurance might be based

ISO 9001 Quality Systems - Model for quality assurance in design/development, production, installation and servicing: this system is used when a contract between two parties requires the supplier to guarantee conformity with the requirements specified at different stages, such as the development, manufacturing, storage and delivery of the product.

ISO 9002, Quality Systems - Model for quality assurance in production and installation; mis model is used when the supplier requires the assurance that a product meets the specified requirements during production and installation. Quality system requirements not only relate to the system as such, but also the responsibility for supervision, contractual terms and the examination of the contract, the control process, the inspection process, the revision of the items to be produced, and the measures to be taken in the case of non-conformity.

ISO 9003, Quality Systems - Model for quality assurance in final inspection and test; this system applies when the contract between two parties requires the supplier to be capable of detecting and controlling conformity with the other party's requirements. This condition only applies during inspection and testing.

ISO 9004, Quality management and quality system elements; this system provides indications regarding the basic components of a quality system, and deals with the measures needed to make them

---

[138] See "Draft outline of Model Legislation for Government Certification Based on Quality Assurance Principles", *op. cit.*

[139] R. Genevray, "Un système d'assurance de la qualité: est-ce une nécessité pour tous?", Qualité Magazine, No. 17, 1990.

[140] O. Pierre A.M. Goutel and P. Viet, "Les outils de maîtrise de la qualité et leur prise en compte dans les contrôles de la DGCCRF', Revue Concurrence et Consommation, No. 57, 1990, p. 18.

more effective[141].

Some of the standards defined above are more suitable than others to apply to the specific features of food businesses.

1.2 Standards suitable for the food industry

The standard most widely used for the food industry is ISO 9002; large businesses generally give preference status to suppliers who apply this standard. However the standard applies to a wide range of different products, and some administrative bodies such as the *Australian Quarantine and Inspection Service, the New Zealand Kiwifruit Marketing Board, the Australian Horticultural Corporation and the Leatherhead Food Research Association* (United Kingdom) have evidenced those aspects of the standard which specifically relate to food. This adaptation of quality assurance systems to food has also been dealt by the Codex Committee regarding inspection and certification systems for imports and food exports. For it recommends that existing systems used for quality assurance purposes in two-party contractual circumstances are specifically adapted for foods[142].

ISO 9001 and ISO 9003 apply less directly to the food industry. However they can be found in some contracts.

1.3 Another approach to quality assurance

A simpler approach to quality assurance focuses on the business's operations which are likely to give rise to a food hygiene and safety hazard. This system, which makes it possible to solve these problems, refers to codes of good manufacturing practice designed to provide standards for the design and operation of the business, giving pride of place to the HACCP system as a means of control[143].

2. THE HACCP SYSTEM

HACCP is a method that makes it possible to identify and appraise the hazards relating to various stages in the process of producing a foodstuff, and to define the means required to control it. It therefore makes it possible to ensure that a foodstuff meets safety standards.

The relevance of HACCP is that it is designed for food businesses and to help inspections carried out by the authorities and to promote international trade by enhancing confidence in the safety of food products.[144]

---

[141] For the definition of these standards see: ISO 9000 "International Standards for Quality Management", pp. 51, 59, 67 and 71.

[142] "Codex Committee on Import and Export Food Inspection and Certification Systems", *op. cit.*, CX/FICS 92/3, p. 2.

[143] See the Code Committee on "Draft outline of Model legislation for Government Certification Systems based on Quality Assurance Principles", *op. cit.*, p. 5.

[144] J.L. Jouve and Ph. Rohmer, "La méthode HACCP: contexte et principes d'utilisation", CTCPA/CT INFOS 1, 1992, p. 4.

HACCP can be used alone[145], but it is very useful to combine it with the implementation of a quality insurance system.

2.1 HACCP and quality assurance

When a business uses ISO 9000 standards, HACCP makes it possible to establish and implement quality insurance. The purpose of these standards is only to describe the component parts of the organisation, but they do not determine the technical facilities to be used by the food industry or the way in which the provisions relating to quality insurance are to be implemented. These standards encourage manufacturers to use all appropriate specific methods. After many years of use in the food industry in Europe, and above all in the United States, HACCP has shown itself to be the most appropriate method to use with quality assurance[146]. It combines aspects relating both to identifying and analysing requirements, with others relating to elements of direct intervention.

Being a method based on the principles used in Common Law countries, Latin countries like France, Italy and Spain were originally reluctant to adopt it.

2.2 The specific features of the HACCP method

Safety cannot be guaranteed merely by an accumulation of technical facilities. It also involves adopting a rigorous approach towards adapting resources and activities to a specifically defined objective: security/health and hygiene. By analysing the functions and the principles for implementing the HACCP method, one can see how it meets these needs.

The functions of the HACCP method are: (i) to analyse the hazards; (ii) to control the critical points; (iii) to monitor the conditions for implementation and (iv) to verify the effectiveness of the system. This being so, the following principles apply:

(a) the hazards associated with every stage of food production must be identified, the probability of occurrence of these hazards evaluated, and the required preventive measures identified;

(b) the "critical points" for controlling these hazards must be determined (the point/ operational stage/procedure which may, or should, be controlled in order to eliminate a hazard or reduce its occurrence to an acceptable level);

(c) operational criteria should be established;

(d) a monitoring system should be put in place to guarantee the effective control of the "critical points";

(e) corrective measures should be designed for implementation when monitoring reveals mat a given "critical point" is not, or is not longer being controlled;

(f) specific procedures should be established for verification, in order to confirm that the HACCP system is working properly;

---

[145] J.L. Jouve and Ph. Rohmer, *op. cit.*, p. 4.

[146] J.L. Jouve and Ph. Rohmer, *op. cit.*, p. 5.

(g) an appropriate documentary system should be established for the implementation of all these principles.

2.3 Implementation of the HACCP method

In order to implement the HACCP method, it is necessary to set up a team responsible for it, draw up a description of the product, identify the expected use, describe the manufacturing procedure, and verify the manufacturing diagram on the spot. Furthermore, the hazards must be analysed, and the preventive measures identified, evaluated and formulated, and the critical points to control them must be identified; and lastly target values and tolerances must be established. Furthermore, a monitoring system has to be set up and the necessary corrective measures adopted to ensure the effectiveness of the system thus put in place, and a documentary system created.

In conclusion, the HACCP method appears to be structured and gradual, of multi-disciplinary application. It is also participatory and creates a sense of responsibility through the group work which it demands. It is specific to a particular business, manufacturing chain, or product. Since it is essentially a preventive system it makes it possible rapidly to make allowances for all market developments.

2.4 **Encouragement to use the HACCP method**

The HACCP method seems to offer the most satisfactory response to the needs relating to liability for defective products.

Even though it can never be a substitute for regulations, the method does make it possible to establish new relations between businesses and the authorities.

By way of example the following should be noted:

(a) at the Brussels Consultation on 22 November 1989, the WHO considered that HACCP was one of the best ways of guaranteeing the safety of food products, that the HACCP concept should be introduced into national and international regulations, and that HACCP should also be considered to be a means of enhancing the effectiveness of public controls. For this reason, close cooperation must exist between the businesses and the authorities, the latter being responsible for evaluating and approving the systems put in place by industry;

(b) The Codex Alimentarius also recommends recourse to this method, particularly for public controls and for the international harmonisation of the terms and elements of the system[147].

(c) The EEC Member States have also strongly recommended the use of this method. The United Kingdom was the first to do so (the first report of the Richmond Committee on the Microbiological Safety of Foods (1990) set up at the request of the British

[147] "Draft Outline of Model Legislation for Government Certification Systems based on Quality Assurance Principles", *op. cit.*

Parliament). In France, the Ministry of Agriculture referred to it in its programme "Aliment 2000". HACCP forms an integral part of EEC regulations, since reference is made to it in article 3 of the draft Directive on Food Hygiene[148] [149] [150].

(d) In the United States, FDA and USDA have decided to use HACCP, by agreement with the professional associations concerned, as the new basis for all their work in the field of public control.

---

[148] See COM(91)525 final, *toc. cit.*

[149] J.L. Jouve, "Le HACCP et l'assurance de la sécurité des denrées alimentaires". Option Qualité, No. 90, December 1991, p. 11 *et seq.*

[150] J.L. Jouve and Ph. Rohmer, *op. cit.*

PART FOUR - QUALITY MARKS IN THE FOOD INDUSTRY

The many marks that exist specifically for the quality of food products show that a food business is voluntarily complying with a set of standards to obtain certification. All these differently marks can be grouped into two categories: (i) certification of conformity of foodstuffs (product or commodity certification); and (ii) certification of quality assurance systems (business certification).

It should be noted that some of these types of product certification are designed to protect higher quality foodstuffs, such as agricultural labelling, attestations of specific character and appellations of origin.

CHAPTER 1 - SIGNS OF QUALITY RECOGNISED BY A NATIONAL AUTHORITY

1. GENERAL PRINCIPLES OF CERTIFICATION

The certification procedure requires the intervention of a third party, the certification authority, which actually delivers the certificate whether it deals with products or businesses (to certify the conformity of the quality assurance system with the ISO 9000-EN 29000 series standards[151]). This certification is known as "third party" certification. But there are also "second party" forms of certification which are given, for example, by a buyer to its supplier.

Quality assurance certification can also apply to a laboratory, in which case it is called an accreditation.

As a general rule, certification means that non-mandatory rules are being voluntarily applied. However, it can also guarantee compliance with regulations: in some countries, the borderline between voluntary and mandatory regulations in certification is not always clear (the United Kingdom, the United States, Australia). However, it differs from the mandatory export certificate discussed earlier.

Certification can also lead to the issue of a certification mark (a collective mark) used to distinguish other individual or collective marks which do not presuppose that a certification procedure has been followed.

In most of the countries studied in this book, no specific certification legislation exists, and the legislation deals with trade marks. Exceptions to this are Belgium, France and Portugal, which have specific legislation on certification.

1.1 **Business certification: quality assurance**

The objective here is to ensure that products meet specific requirements, so that a guarantee can be given that all the products using that system routinely reach specific quality levels. The requirements must also meet the customers' explicit needs (satisfaction/service) or implicit needs (safety, hygiene).

1.1.1 The organisation of different business certification systems

There are two main ways of organising certification: one-tier and two-tier systems.

One-level systems

In these cases, businesses are certified by a body which generally has the status of an association recognised to be of public interest. With the exception of France (Association Française pour l'assurance qualité, AFAQ), the certifying organisation is the national standard-setting organisation, like the Portuguese Quality Institute (IPQ).

---

[151] T. Geslain, "Les signes de la qualité en Europe", Option qualité, No. 105, April 1993, p. 11.

In order for these organisations to receive international recognition, they must be accredited under the EN 45012 standard, laying down the general criteria with which they must comply. There are three possible cases:

(a) the certification body has an independent unit for accrediting certification bodies (Portugal);

(b) accreditation is provided by the relevant ministry (Luxembourg);

(c) the organisation is audited by a foreign counterpart body, as occurs in the EEC.

Two-levels systems

Several certification bodies, generally private, are accredited under EN 45012 by a single national organisation such as the British Standards Institution (BSI). In such cases there are a great many certification bodies: BVQI, Lloyd's (United Kingdom, Belgium, the Netherlands, Chile), Veritas (Denmark). In most cases, the national accreditation body is an association on which the relevant ministries are represented, and the organisation itself is generally established by the Ministry of Industry.

1.1.2 Certification of food businesses

This type of certification is found mainly in the Common Law countries that have longstanding experience with it.

When the certification body certifies a mark for a particular foodstuff, it takes account of specific quality assurance features[152]. The difficulty with quality assurance certification lies in interpreting the ISO 9000 standards. Some certification bodies guarantee that the certified business will provide products meeting the specifications of each customer on a continuous basis (France, United Kingdom); others merely guarantee that the business has put in place an organisational system that meets the description of the standards, but it does not certify that the business actually produces commodities that meet certain particular requirements[153].

Even though this type of certification applies to all businesses, the food industry possesses certain specific features that food businesses must have. Generally speaking, in the food industry the certification bodies have to show a priori their level of industrial technical knowhow. This expertise is based upon the qualifications, skills and experience of the auditors. However, in Germany for example[154], the system is more liberal because the certification organisation is completely free to set up its own systems of sectoral intervention. In other countries, such as Ireland, the certification body requires the food business to comply with a national standard of good hygiene practice.[155]

The certificate obtained by the business provides the following information: the field of activity, the geographical location and the model used for auditing the business's quality system.

---

[152] United Kingdom, "Trade Marks Act, 1938", amended in 1984.

[153] Ireland, Industrial Research and Standards Act 1961, No. 20 of 17 July 1961.

[154] Order on Marks of 25 February 1970, amended on 28 March 1973, 17 December 1988 and 13 March 1990.

[155] "Food Hygiene Regulation-Order" of 26 January 1986, *Statutory Instruments* No. 21 of 1986.

The audit or verification process, which gives pride of place to examining its control and inspection records, is accompanied by discussions with the officials principally responsible for complying with the work schedules and sampling products, where necessary.

1.1.3 Examples of business certification

One-level system: France

The certification of quality assurance systems is the responsibility of the Association Française pour l'assurance qualité (hereafter AFAQ) established under the Act of 20 July 1988. This Association has a food certification committee which comprises representatives of buyers, suppliers, and technical organisations. It is responsible for auditing a proposed quality system. To do this, the Committee works according to international benchmarks.

It adopts the following procedure:

(a) the business decides to comply with one of the existing reference systems for certification by AFAQ. The auditor responsible for evaluating it drafts a report stating whether the quality assurance system of the business is in compliance with the Association's rules;

(b) the quality audit is conducted by auditors commissioned for the purpose by AFAQ following the method set down in standard ISO 10011. As with every other certification system conducted by third parties, AFAQ organises the monitoring of the business through audits in order to ensure that the accreditation conditions can always be met[156].

(c) The certificate obtained by the business contains the following information: the sphere of activity, the geographical location, and the model used to evaluate the quality system of the business (model 1: design, development, production; model 2: production and maintenance; model 3: controls and final tests)[157].

Two-levels system: The United Kingdom

In the United Kingdom the British Standards Institution (BSI) is responsible for standard-setting. BSI was established in 1931 with the purpose of coordinating the efforts of producers and users for the improvement, standardisation and simplification of materials, products and processes, so as to simplify production (quality assurance) and distribution, and to eliminate the national waste of time and material involved in the production of an unnecessary variety of patterns and sizes of articles for one and the same purpose; to prepare and promote the general adoption of British Standards and their revision; to register, in the name of the Institution, marks of all descriptions and to prove and affix or licence the affixing of such marks or other proof, letter, name, description or device; to take such action as may appear desirable or necessary to protect the objects or interests of the Institution (Royal Charter 1981 (3), amended on 18 April 1989 and 11 February 1992).

Since the BSI only prepares standards for testing methods, businesses which manufacture the products for which such standards do not exist may directly obtain type approval after quality control conducted by competent organisations. This special type approval procedure is called "Registration of

---

[156] See "Lamy Droit Economique", *op. cit.*

[157] P. Greyssel, *op. cit.*

Firm of Assessed Capability". Foreign as well as British businesses may resort to it. All businesses meeting the capability conditions are authorised to signify this to their customers by affixing a particular sign: BSI-Registered Firm on all their advertisements, documents or commercial materials.

Before affixing this mark, BSI checks the quality system of the business and its ability to manufacture a product satisfactorily.

Membership of **BSI** is open to any natural person or corporation, whether public or private (a business, local authority, public utility corporation, scientific, professional or commercial associations or organisations).

1.2 **Certification of food products**

Although there exist many different systems in this area, this type of certification is generally performed by actually marking the product itself, unless the producer has his own mark, as in the case of the United Kingdom[158]. The certification of the product is based upon a given benchmark (specifications or standards) and is issued by the certification body.

1.2.1 Basic benchmark: specifications or standards

Specifications

There are two types of specifications: professional codes of practice, and regulated specifications.

(a) Professional codes of practice - These are codes of use or good practice. These documents routinely contain all the items relating to manufacturing procedures (conditions of manufacture, husbandry practices, good hygiene practice) and sometimes quality assurance rules. They devote particular importance to product safety giving pride of place to aspects relating to production conditions. But these codes do not necessarily lead to certification. They are mainly found in Common Law countries and in Northern Europe, where they are used to raise the quality level of national products (Denmark[159]), United States[160].

(b) Regulated specifications - These are all the types of specifications that are drafted jointly by members of the trade and the national or regional authority concerned. They are required to be approved by the authorities and in most cases they are officially published. Specifications of this type are mainly found in countries with many typical products or products associated with a specific territory, as in France[161], Spain[162], Belgium[163], and Portugal[164].

---

[158] "Trade Mark Act, 1938", amended in 1988.

[159] Trade Mark Act No. 211 of 11 June 1959, L.T.A. No. XVII, 23 June 1959, p. 825.

[160] "Food and Drugs Code of Federal Regulations", 10-90 subs. A(d); *Federal Code*, Title 15, chap. 22 - Trademarks.

[161] Article L. 115-21 *et seq.* of the Consumers' Code.

[162] Act No. 32/88 of 10 November 1988, Regulation 625 of 18 May 1990.

[163] Decree No. 89-2237 of 7 September 1989.

[164] Decree-Regulation No. 56/91 of 14 October 1991.

This category includes specifications used as the basis for appellations of origin, indications of origin and quality labels and marks. Unlike professional codes of practice, these specifications mainly refer to the product itself, but they can also stipulate requirements in terms of production methods.

Standards

These are voluntary national standards. Of the various different types of standards examined, product or commodity standards contain the largest number of quality specifications. This type of standard is very frequent in Ireland, Italy, France and Portugal.

1.2.2 Certification systems

One-level systems

One single certification body issues the certificates after the products have been directly controlled or inspected through a sub-contractor and/or after an audit of the business that manufactures them. This is the case of certification systems requiring the Ministry of Agriculture to act as the control and certification authority, as is the case of the Luxembourg national mark[165]. This is also the case of the certification systems used in the United Kingdom and Germany where certification programmes are carried out in terms of the specific foodstuff. Certification bodies are therefore offices dealing with a specific commodity (Ireland, United Kingdom), or acting on an inter-professional basis (Denmark, Netherlands)[166], or they are para-statal organisations acting in cooperation with the offices (United Kingdom and Belgium).

These organisations are themselves authorised by a supervisory administration, which is generally the Ministry of Agriculture.

Two-levels systems

Some private certification bodies are approved by a commission or national body, and issue certificates under their own responsibility. These bodies are generally answerable to the Ministry of Agriculture (France) or the Ministry of Industry (Chile[167]). The credibility of the certificates they deliver depends on the application of a common ISO standard. This is what the European Community countries are working towards, by requiring their private certification bodies to comply with EN 45011.

In Peru certification can also be issued by public or by private bodies authorised by a national commission[168].

---

[165] Act of 2 July 1932 on the standardisation of agricultural and horticultural products, and the creation of a national mark. See, for example, the regulations of the Government in Counsel of 18 May 1965, *Mémorial A* No. 36 of 6 July 1965 and 22 June 1973, *Mémorial A* No. 41 of 17 July 1973 on the creation of a "marque nationale pour le miel luxembourgeois, Government in Counsel regulation of 3 July 1970, *Mémorial A* No. 39 of 14 July 1970, establishing the "marque nationale du beurre luxembourgeois".

[166] Agriculture Quality Act, 1971.

[167] Decree-Law No. 4 of 25 January 1983 and Decree No. 238 of 12 September 1984.

[168] Decree-law No. 658, *El Peruano*, 15 August 1991.

There are several kinds of certification: it may be a certificate of conformity applying to all types of quality foodstuffs (and not just to high quality foodstuffs), a label attesting the superior quality of a particular product, an appellation of origin, or a trade mark certification.

2. PARTICULAR TYPES OF CERTIFICATION

2.1 Certification of conformity

The French case is typical of systems and cultures in which quality is the essential element of a commodity.

Certification of conformity is governed by sections L 115-21 to L 115-26 of the Consumers' Code and Decree No. 90-859 of 25 September 1990 *(Journal officiel de la République française* of 27 September 1990) governing the certification of conformity of foodstuffs and non-food and non-processed agricultural products. Alongside agricultural labelling, which only refers to products of superior quality, it provides the possibility of issuing certification for products that possess specific features or which comply with pre-established rules governing the manufacture, processing or packaging of a product.

The certificate of conformity is issued by organisations independent of the producer, manufacturer, vendor or importer.

The new Consumers' Code (Act No. 93-949 of 26 July 1993, *Journal officiel de la Republique française* of 27 July 1993) sets out the procedures for issuing the certificate of conformity for foodstuffs and non-food and non-processed agricultural products.

2.1.1 The approval of the certifying authority

This approval is issued for five years jointly by the relevant authority (the Ministry of Agriculture or the Ministry of Consumer Affairs) after acquiring the opinion of the conformity certification section of the National Commission on Labels and Certification. It relates both to a specific certification body and to a specific commodity (and is not merely a reference document used as the basis for certification).

The report showing the ability of the applicant organisation must contain all the documents needed by the authorities to verify its impartiality, capability and qualifications and its capacity to ensure effective control. The conditions are those set forth in standard EN 45011 relating to the accreditation of certification organisations.

The report contains information on: (i) the structure and the bylaws of the organisation concerned; (ii) the organisation of control and inspection, and the breakdown of responsibilities; (iii) the terms of reference and composition of the Board of Directors, or the equivalent body, and the names of the officials; (iv) the qualifications of the permanent staff responsible for certification, and (v) its resources.

In order to demonstrate the certification body's independence of the producers, manufacturers, vendors and importers of the commodities to be certified, the application file must describe: (i) the procedures used for certification and the rules for obtaining it; (ii) the conditions for handling the documentation and monitoring the certification procedure; (iii) the testing and controlling facilities

which the certification body possesses; (iv) the measures that apply in the event of failure to comply with written undertakings, and procedures for appealing against decisions; (v) the means used to ensure that consumers are aware that a particular product complies with a given standard or some other normative type document.

Each approved certification body must submit an annual activities report to the relevant ministers. They must also announce any change in the way they perform their activities, and make available any documents required to supervise their operating procedures and to ensure that their activities are properly performed. Approval may also be withdrawn or suspended.

2.1.2 Normative-type specifications

The technical framework of reference may be a standard (in this case only AFNOR is able to certify the product) or a normative-type specification. It is not submitted for type approval or any other particular ministerial form of approval. The reason standards are adopted is to provide a benchmark accepted nationally by all professionals, consumers' representatives and anyone else concerned.

Normative-type specifications are either elaborated by a business or a group of businesses, or by a professional organisation or establishment, or by an approved certification body. In order to avoid any confusion with quality assurance labelling and certification, the code lays down that for each product to which they refer, normative-type provisions must define the features of their composition and use, and the procedures for obtaining, manufacturing, preserving or transporting them; they must also specify the methods used to ensure that the products possess specific features and characteristics.

Standards elaborated by AFNOR are deemed to meet these conditions. The benchmark system used must be officially published and must be at the disposal of the public which may submit comments.

2.1.3 Forms used for certification

The business must ensure that the presentation and labelling of a product must indicate the nature and the certified features and characteristics. This enables consumers to gain a better understanding of the product and assess it. Conversely, although this is not mandatory, the business may use a collective mark taking the form of a logo attesting to certification. Each certification body may use its own logo (too much diversity here is not necessarily a good thing, because it may create confusion in the consumers' minds).

2.1.4 Penalties

Penalties for deception are provided for any fraudulent use or attempted use of certification, or for the use of certification without complying with the conditions, or for presenting a product in a way that misleads consumers into believing it to be certified.

2.2 **Collective marks**

A certification mark, deposited as a collective mark, is governed by the provisions of Act No. 91-7 of 4 January 1991 (*Journal officiel de la République française* of 6 January 1991) and Decree

No. 92-100 of 30 January 1992 *(Journal officiel de la République française* of 31 January 1992) on trade marks. These provide that the collective mark may be used by anyone complying with the codes of practice drawn up by the registration holder.

A collective certification mark may only be deposited by a corporation which is neither a manufacturer, importer, nor vendor of products or services. It may not be assigned, pledged, or subjected to any other coercive measure.

Fraudulent use of a mark of this kind creates liability for infringement of trade mark and the use of a counterfeit mark (article 422 of the Criminal Code). It is also prohibited to (i) reproduce or use a mark, even with the addition of such words as "formula, system, imitation, method, type", and (ii) use a reproduced mark for products or services identical to those designated in the registration.

2.3 **Labelling**

Labelling itself constitutes a mark (France, Belgium). It testifies that a product is of a certain quality level and that it has been approved by the Ministry of Agriculture after having drawn up rules for its use.

The economic basis of the labelling system is to establish an objective and measurable definition of the quality of a particular product in order to encourage high quality agricultural production by setting a minimum quality threshold[169].

2.3.1 The French case

In France, the Consumers' Code provides that agricultural labels are collective maries which attest that a foodstuff, or a non-food and non-processed agricultural product possesses a set of specific features which are fixed in advance and which establish a "superior quality" standard.

The distinction between agricultural labelling and a certificate of conformity is based on the fact that labelling establishes the conformity of a product with a set of specifications drawn up by a group of producers, while certification is issued by reference to specific standards or to normative-type specifications. Furthermore, the labelling system only applies to products of high quality.

Agricultural labels are issued by the certification body. This is a private or public entity which is neither the producer, manufacturer, importer or vendor of products of the same kind. Agricultural labels may only be used if they have been approved by ministerial decree[170].

The certification entity must provide sufficient guarantees of independence and impartiality with respect to all the production, processing or commercial enterprises that may wish to use a label. It must constantly be in a position to show that it is in possession of all the facilities needed to carry out quality control and to promote the products forming the object of a label. The certifying body may own several labels, provided that they apply to different products.

---

[169] F. Feral and D. Beaufort, "Les signes de qualité en France à la veille du grand Marché communautaire et à la lumière d'autres systèmes", Les Cahiers du Cervac, October 1989, p. 3.

[170] Article L 115-22 of the Consumers' Code.

The distinctive sign issued by the certification body constitutes the label, which is placed **on** the relevant products. It must meet all the statutory conditions to constitute a valid mark[171].

This sign is both the mark deposited by the Ministry of Agriculture itself for national labels, or the mark approved for regional labels. Where necessary a technical notice is drawn up defining the minimum criteria to be met in order to obtain such a label. This document, which may be periodically reviewed, is approved by Ministerial Decree upon receiving the opinion of the National Commission on Labelling and Conformity Certification. When the quality of similar, but more common, products improves, the quality threshold for obtaining the label is raised; decisions regarding approval already taken in the past are then reviewed[172].

National labels

The application for the approval of a label must be accompanied by the following documents:

(a) the articles of association and bylaws of the applicant body;

(b) a list of the directors and officers of the applicant body;

(c) the resources of the applicant body;

(d) all the standard contracts concluded by the applicant body;

(e) the draft regulations[173] which must specify (i) the product and the zone in which it is produced and processed, (ii) the distinctive sign chosen for the label, (iii) a technical note defining the specific features of the product, (iv) a report on the procedures and regularity of the inspections carried out on the product at different stages in production and marketing, together with a list of internal penalties; (v) eligibility conditions for new label holders; (vi) a specimen of the label design.

If the certification body commissions an outside entity to carry out its controls, the agreement they conclude between them must state that the outside entity is independent and has its own control and inspection facilities.

Regional labels

The application for approval of a regional label is submitted by the certification body. The application must be accompanied by the same documents as those required for a national label, except for the draft labelling regulations. The application may be accompanied by a list of traditional or specific products of the region for which the label is intended.

As in the case of a national label, approval is granted by a joint order issued by the Minister of Agriculture and the Secretary of State for Consumer Affairs, acting upon the opinion of the National Commission on Labelling and Conformity Certification.

---

[171] See Act No. 91-7, of 4 January 1991, *supra.*

[172] Articles 19 and 20 of Decree No. 83-507 of 17 June 1983.

[173] Articles 6 and 7 of the Decree of 17 June 1983.

After approving a regional label, each of the listed products to which the label may be appended is subject to a set of technical regulations, drawn up along the lines of the technical regulations for a national label.

Approval of the technical regulations for each product is granted by order of the prefect of the region, after consultation with the Regional Technical Commission.

Deposit of the approved label

Like all collective marks, labels are governed by the Act of 4 January 1991[174], which provides the conditions for the validity and registration of marks. Since labels are guarantees of the origin and the quality of agricultural or food products, they are of general interest and fall under the control of the Minister of Agriculture. It is for this reason that before they are registered by the National Institute of Industrial Property, the certification body must submit the label to the Minister of Agriculture for approval. To register a label, the certification body must also file evidence of the ministerial approval and the regulations establishing the conditions for using the label together with the other documentation required for depositing ordinary marks.

Obligations on users of labels

The certification body, as the proprietor or user of the label, may not use any other individual or collective marks which are likely to be confused with that label. It is prohibited to use a national label and a regional label for one and the same product.

Fraud control authorities are empowered to carry out any investigations that may be necessary to enforce labelling legislation.

Approval may be withdrawn or suspended. It is also prohibited[175] to use or attempt to use a label fraudulently, or to issue, use or attempt to use a label which has not been approved, or to use a form of certification likely to lead consumers to believe that a product had been given an agricultural label, or to pass off a product as bearing an agricultural label, or lead, or attempt to lead the public to believe that a product bearing a label is government guaranteed or bears a guarantee issued by some public agency.

2.3.2 The Belgian case

There are two important points to notice here: no distinction is drawn between certification and labelling. Certification is the responsibility of the regional authorities. For example, the Decree of 7 September 1989 on "the issuance of a Walloon quality label, local appellation of origin, and Walloon appellation of origin"[176] lays downs the rules for exploiting superior quality products. This is a regional label. According to this decree, the Walloon quality label is a collective mark which certifies that a product which has been manufactured or processed in Wallonia possesses certain predetermined qualities and specific features and meets a given quality level. The regional authorities are the depositories of the quality label in accordance with Belgian law and current international conventions.

---

[174] See *supra.*

[175] See national control.

[176] *MB.* 19448 of 28 November 1989.

The regional authorities are responsible for the following: (i) drawing up the specifications; (ii) approving the certification bodies that issue the quality certificates; (iii) designing specimen forms for certification; (iv) laying down the conditions and guarantees that any entity wishing to obtain recognition must submit (if these conditions are not met, recognition is withdrawn or suspended).

Any approved certification body must carry out controls before issuing the quality certificate to ensure that the conditions laid out in the specifications are respected; if they are not, the applicant may request the certification body to conduct a fresh analysis; at least once a year it must ensure that holders of quality certification continue to comply with the conditions for obtaining it. At the request of the government, the certification body must submit draft specifications or amendments to specifications.

All these controls must be performed by outside entities approved by the Walloon government authorities.

Producers, manufacturers, processors or groups of producers, manufacturers, and processors of Walloon products may request certification.

The Quality Label and Appellations of Origin Commission includes representatives of producers, manufacturers or processors, consumer's associations, Walloon regional government authorities, certification bodies and the scientific world. They must be domiciled or pursue their main activity in Wallonia. The Commission's task is to monitor the certification bodies, settle conflicts of jurisdiction between the certification bodies and between certification bodies and label users, and to issue opinions on all proposed specifications and amendments to specifications, and on any other issue or draft submitted by the regional government authorities.

It is prohibited:

(a) to use a name by passing it off as a quality label before the name has not been recognised by order of the regional government authorities;

(b) to manufacture, to expose for sale or to sell under a Walloon quality label any products which do not meet the conditions established in the order of the regional government authorities.

3. APPELLATIONS OF ORIGIN

The recognition and protection of appellations of origin dates back into history, particularly in France and Portugal which have an ancient tradition for high quality wine production.

In France, the original system instituted in the nineteenth century was re-established by law in 1990, and incorporated in the new Consumers' Code. An appellation of origin comprises the name of a village, a region, an ancient province or a locality which has traditionally been used to designate a locally-produced commodity whose quality or features depend upon the geographical environment, and which comprises all the natural and human factors (article L 115-1 of the Consumers' Code). The appellation of origin differs from an indication of source ("indication de provenance") in that the latter does not imply any specific features connected with the natural or human factors of the place of origin. It merely provides the consumer with indications of the place where the product is manufactured[177].

[177] F. Feral and D. Beaufort, *op. cit.*, p. 10.

The appellation of origin also differs from a mark, which is only a sign that can be gived a graphic representation to distinguish products or services of a person corporate, but makes no mention of traditional local know-how or expertise. Moreover, a mark is private property and may be assigned, and is of a purely individual nature, while the appellation of origin is collective, non-transferable and cannot, under any circumstances, fall within the public domain[178].

It should be noted that as far as food products are concerned, only the specific system of **"appellation d'origine contrôlée"** is used. This is based on the elements of the common system with the additional feature that the product's well-known reputation is recognised.

3.1 Types of protection for appellations of origin

There are two types of protection for appellations of origin: the recently established administrative channel, and the former judicial procedure which is no longer used, even though the appellations based upon it in the past are still recognised today.

3.1.1 The administrative channel

An appellation of origin is granted by decree of the "Conseil d'Etat" (article L 115-2 of the Consumers' Code). Once this Decree has been published, no legal proceedings under articles L 115-8 to L 115-15 mentioned below may be instituted.

An "appellation d'origine contrôlée" may never be considered as a generic denomination of origin (which loses all its connotations of origin and merely designates an original method of manufacture is used throughout the country), and may never fall within the public domain.

The geographical name which constitutes the "appellation d'origine contrôlée" or any other indication alluding that name, may not be used for any other similar product, notwithstanding any statutory provisions and regulations in force on 6 July 1990, or for any other product if this is likely to detract from the reputation of the "appellation d'origine contrôlée". However, as a waiver to this, any appellations of origin granted under Act No. 49-1603 of 18 December 1949 officially recognising wines known as "vins dits délimités de qualité supérieure (VDQS)" and those in force on 1 July 1990 in the Overseas Departments have retained their status (article L 115-5 of the Consumers' Code).

3.1.2 The judicial procedure

This procedure is merely indicated for the sake of the record. However it might prove of interest to countries that are not able to set up their own autonomous system, but may take action in the courts in order to have an appellation of origin recognised.

This was the system that existed before 1990. Anyone who believed they had title to an appellation of origin were able to use it under their own responsibility and liability without requiring any prior authorisation. However, this right could only be exercised if third party rights were honoured: any aggrieved party could apply to the civil courts for redress, in which case the court would decide whether the name given to the product was or was not an appellation of origin, and establish the geographical zone corresponding to that appellation, as well as the features of the product

---

[178] D. Denis, "La vigne et le vin, régime juridique", Immobilier droit et gestion, Ed. Sirey, 1989.

which could be included as part of the appellation. Judicial recognition was based upon the local, constant, sound usage and practice.

3.2 **Establishing the "appellation d'origine contrôlée"**

Each "appellation d'origine contrôlée" is defined by decree at the proposal of the Institut National des Appellations d'Origine (INAO). The decree specifies the geographical area of production, the conditions for production and for approving the product. The geographical area may be defined taking account of local, constant, sound usage and practice. The Conseil d'Etat decree can only be issued after a public enquiry has been held[179].

3.3 **Institut National des Appellations d'Origine (INAO)**

INAO' powers and responibilities cover all agricultural or food products, whether raw or processed.

After consulting the professional associations defending the interests of the producers concerned, INAO proposes that a particular "appellation d'origine contrôlée" be recognised, which involves identifying the exact geographical areas of production and the conditions for production and approval.

It issues an opinion on the national legislation regarding the labelling and the presentation of each of the products for which it is responsible, and may be consulted on any other issue relating to appellations of origin.

INAO has a National Committee for Wines, Brandies, Ciders, Perries, and Aperitifs based on Ciders, Perries or Wines, a National Committee for Dairy Products, and a National Committee for all products not covered by these other two Committees.

3.4 **Products subject to specific procedures**

Two types of product are subject to a specific procedure: wines and spirits, and cheeses.

3.4.1 Wines and spirits

Wines and spirits are governed by the rules of article 21 of Decree-Law of 30 July 1935[180], creating a category of "appellations d'origine contrôlée" applicable only to wines and spirits complying with all the guarantees stipulated by INAO.

After consulting the professional associations concerned, INAO exactly identifies the areas for the production of wines and eaux-de-vie bearing an appellation of origin. Techniques are specified relating to the vine species, the yields, the minimum natural alcohol content by volume of the wine, the cropping methods and the methods used for wine-making or distillation.

---

[179] Decree No. 69-335 of 11 April 1969, *Journal officiel de la République française* of 16 April 1969.

[180] *Journal officiel de la République française* of 1 August 1935, on the defence of the wine market and on alcoholic beverages.

In the case of wines of superior quality, the conditions under which the VDQS label may be obtained, the procedures for issuing it, are set down in the Acts of 18 December 1949 and 24 May 1951.

Lastly, quality wines produced in a specific region (VQPRD) must meet certain conditions of Community law, and particularly Regulation 823/87 (see Community Appellations of Origin).

3.4.2 Cheeses

Section 3 of Act No. 55-1533 of 28 November 1955[181] sets out the procedure to be followed for establishing or changing an appellation of origin. The geographical locality of the establishment, and the conditions under which the cheese is produced and refined are laid down by the National Committee for Appellations of Origin of Cheeses (CNAOF), and are then approved by the government.

4. COUNTRIES IN WHICH QUALITY SIGNS ARE REGULATED BY TRADE MARK LEGISLATION

In the Common-Law countries in particular, the quality and origin of products are merely components of commercial policy (and not for protecting the specific features of products); this is why certification is dealt with under trade mark legislation, and why no specific legislation has been passed for them. The quality marks used in these countries are intended to identify the products, but not to protect their quality or their origin. This has numerous repercussions in terms of appellations of origin for which quality and origin are essential elements.

The certification mark designed to guarantee the quality, origin, or method of manufacture, may also be registered. The rules may be identical to (United States) or different from (United Kingdom) those applying to standard trade marks.

This type of mark may be entered in the same part of the register as the others (United States and United Kingdom) or in a special section (Australia).

When a professional organisation files the mark, it must also indicate the rules governing the use of that certified mark.

Once the mark has been registered, the professional association becomes the proprietor of the mark placed on all the products of its members and may (United States) or may not (United Kingdom) possess the same rights as the depositor of other trade marks. It is also protected by trade mark legislation. The protection of certified products is therefore linked to the fact that certification marks are deposited, while the quality or origin of the products are not protected as such.

5. CONSEQUENCES IN TERMS OF THE PROTECTION OF DESIGNATIONS OF ORIGIN

In countries like Germany, Australia, the United States and the United Kingdom, a distinction is drawn between source and quality. The geographical indication offers no guarantee with regard to

---

[181] *Journal officiel de la République française* of l July 1935.

quality, but merely serves to identify the product. This different approach to the role of appelations of origin raises problems in terms of the international protection of names recognised in the countries that link the name and the quality of a product. Separating the appellation of origin fom the quality of a commodity places a different construction on the whole notion of indication of source, and the concept of appellation of origin only emerges through the geographical indication of source. Consequently, appellations of origin become generic names describing a method that is tacked on to the indication of the source of a product.

One immediate consequence is that in countries like the United States or Australia, European appellations of origin may be lawfully used for local products enjoying statutory protection (Califomian Champagne). Having become a generic name, the appellation of origin is therefore used as a trade mark, because a geographical name can be used as a trade mark[182].

CHAPTER II - SIGNS OF QUALITY RECOGNISED IN THE EEC

This is a sustem for the mutual recognition of: (i) national certification, (ii) certificates relating to specific features and qualities, (iii) the protection of geographical names, and (iv) appellations of origin of agricultural products and foodstuffs.

1. THE MUTUAL RECOGNITION OF NATIONAL CERTIFICATION

1.1 Community certification of conformity with standards, and certification of conformity with essential requirements in areas regulated by EEC Directives

Certification of conformity with essential requirements of Community legislation is the only form of product certification that currently exists in the EEC. This must take the form of the EC mark. But this mark can only be placed on industrial products[183]. It does not apply to foodstuffs.

However, a draft regulation for the affixing and use of the EC mark for certain other non-food products also exists[184].

1.2 **The mutual recognition system**

With regard to conformity certification, the overriding principle is that of the mutual recognition of national certification bodies and national certification marks. Under Council resolution of 7 May 1985, on a new approach to technical harmonisation and standardisation[185], proof of conformity with Community standards or national standards in areas in which no harmonised standards yet exist is given by certificates or marks delivered at the national level by third parties. Products certified in this way are presumed to be in conformity.

---

[182] D. Denis, *op. cit.*, pp. 135-139.

[183] Council Decision 90/683, 13 December 1990, *Official Journal of the European Communities* L 380, 31 December 1990, concerning the modules for the various phases of the conformity assessment procedures which are intended to be used in the technical harmonization directives.

[184] Council draft regulations COM(91) 145 of 17 May 1991, and the modification of this draft and the decision cited earlier: COM(92) 499 final, of 7 December 1992.

[185] No. C(136)85.

However, with the establishment in 1990 of the European Organisation for Testing and Certification (EOTC) was established to negotiate agreements for the mutual recognition of testing and certification of conformity, and to assign the mark of a certification body to another certification body, it is possible that a new type of Community mark attesting to conformity with food standards might be intorduced.

Since certification is done at the national level the activities of the certification bodies in the various Member States need to be harmonised, and a minimum level of powers must to be established. This is why the Commission requires the national certification bodies to comply with the EN45011 Community standards, and why certification is open to products of other Member States in order to prevent discriminatory treatment between home-produced and imported products.

This has enabled Scotish salmon producers to obtain mutual recognition of the British Food From Britain certificate and the French "Label rouge" (red label), so that their products benefit from a mark recognised on French territory[186].

The Community also encourages the certification of quality assurance systems by the same token as, and to complement, product certification although it deems them to be two complementary, but not alternative, techniques.

The transparency of these national certification systems is assured by the fact that they must be notified to the Commission, and published in the *Official Journal of the European Community.* The national authorities must ensure that the certification bodies uphold high skill standards within their own countries, in the performance of their regular monitoring of the national certification and testing bodies[187].

Lastly, the Commission is contemplating putting a regulation to the Council laying down the conditions under which the non-mandatory certification systems elaborated by the Community are to be given statutory Community protection under the supervision of the Member States' respective control authorities[188]).

1.3 **Relations with third countries**

In its relations with third countries, the Commission has concluded mutual recognition agreements with a number of non-Community certification bodies (article 113 of the Treaty of Rome). This ensures that the competence and skills of these organisations remain equivalent at the same level as those required for their Community counterparts, since the mutual recognition system is limited to reports, certificates and marks which are directly executed and issued by the bodies designated in these agreements.

---

[186] T. Geslain, *op. cit.*, p. 16.

[187] See the Communication of the Commission to the Council (COM(89)209 final of 24 July 1989, OJ C231 of 8 September 1989, p. 3 and *Official Journal of the European Communities* C267 of 19 October 1989, p. 3, regarding a global approach to certification and testing. Council Resolution of 21 December 1989 *Official Journal of the European Communities* CIO of 16 January 1990, p. 1, regarding a global approach to conformity assessment.

[188] See the Draft Council Regulation regarding the European certification of foodstuffs, Draft DG III of 22 May 1991, III 43308/91-Fr CIL/82/03/00.

2. CERTIFICATES OF SPECIFIC CHARACTER

This system is very broadly designed along the lines of the French agricultural labelling system. It is based on regulation 2082/92 of 14 July 1992 *(Official Journal of the European Communities* L 208 of 24 July 1992) regarding certificates of specific character of agricultural products and foodstuffs.

The certificate of specific character is the recognition confirmed by Community registration that an agricultural product or a foodstuff is clearly distinct from any other similar product or foodstuff belonging to the same category. The Commission has instituted a register for certificate of specific character giving the names of the agricultural products and foodstuffs whose specific character has been recognised.

The Commission may define a Community symbol to be used on the labelling, presentation and publicity for these products. Even if the Community certificate of specific character is used, the producer may still continue using the one issued in the country of origin.

In order to listed in the register, the agricultural product or foodstuff must be composed of traditional raw materials, or have a traditional composition or production process and/or processing procedure, typical of the type of production and/or traditional processing system, except for those products whose specificity lies in their source or geographical origin.

Furthermore, the name must be either specific, or describe the specific character of the agricultural product or foodstuff. However, the name may not be registered if it only refers to general claims covered a whole range of agricultural products or foodstuffs, or those already provided by a Community regulation. This is the case, for example, when the characteristic of an agricultural product or foodstuff is too obvious.

Lastly, the name must be traditional and be in conformity with national statutory provisions consecrated by use.

2.1 **Compliance with specifications**

The specifications establishing the composition of product must contain the following elements:

- the name of the agricultural product or foodstuff, drafted in one or more languages,
- the description of the production method, including the type and features of the raw materials and/or ingredients used and/or methods adopted to process the agricultural product or foodstuff in reference to its specific character,
- the elements by which it is possible to assess its traditional character,
- the description of the features of the agricultural product or foodstuff by indicating its main physical, chemical, microbiological and/or organoleptic characteristics relating to its specific character;
- the minimum requirements and procedures for controlling its specific character.

Once the product or foodstuff has been registered, every Member State may complain if one necessary condition is no longer being complied with, and may notify the Member State concerned. In the case of repeated infringements, a reasoned request must be submitted to the Commission.

2.2 **Eligibility to request registration**

Only a group (any organisation, regardless of its legal form or composition, of producers and/or processors involved with the same agricultural product or foodstuff) may request registration. The certificates of specific character is only delivered if the agricultural product or foodstuff has already been certified nationally; this is why the application for registration must be filed with the competent authority of the Member State in which the group is established, together with the specifications. The competent authority then forwards the application to the Commission if it deems it to meet the requirements for Community registration.

2.3 **Community registration procedure**

The Commission forwards the registration application to the other Member States within six months of the date of receipt.

Once this has been done, the Commission publishes the application in the *Official Journal* containing its main elements. Any party with a lawful interest may object to the registration within five months of the date of publication.

If no objections have been filed within six months, the Commission enters the main constituent elements and the description of the agricultural product or foodstuff in the register, and publishes them in the *Official Journal*,

2.4 **Control authority**

Each Member State is required to set up a control authority to ensure that the agricultural products or foodstuffs bearing certificates of specific character comply with the prescribed specifications. In particular, they must eventually meet the conditions of standard EN45011.

2.5 **Protection afforded**

The agricultural product or foodstuff bearing a certificate of specific character is given a name, together where applicable with an indication and, if necessary, a Community symbol. As an exception, only the name may be used for the agricultural product or foodstuff meeting the indications at the request of the group in the application for registration, provided that the same name is not legally used, well-known and economically significant for other similar products.

The Member States must also guarantee legal protection against the unlawful and misleading use of names, indications or reserved Community symbols, and against any practices likely to mislead the consumer. National brand-names, in particular, must not be likely to be mistaken for registered and reserved names.

2.6 **Relations with third States**

Without prejudice to any other agreements previously concluded by Member States, the 1992 Regulation applies to agricultural products and foodstuffs from third countries, provided that:

- the third countries are able to give identical or equivalent guarantees to those set out in the specifications, the specific conditions of manufacture, and that there is no registration as a appellation of origin or geographical indication;
- the third State has a control system equivalent to that of the importing Member State;
- the third State is willing to grant equivalent protection to the Community protection for the same agricultural products and foodstuffs from the Community, bearing Community attestation.

3. PROTECTION OF APPELLATION OF ORIGIN AND GEOGRAPHICAL INDICATIONS (AOP and IGP)

Regulation 2081/92 of 14 July 1992 *(Official Journal of the European Communities* L 208 of 24 July 1992) put in place up a homogeneous system for protecting appellations of origin (similar to the French or Portuguese systems), as well as mere geographical indications.

3.1 Appellations of origin

As in the French case, the Community-type appellation of origin is determined by (i) the name of a region or specific place or, in exceptional cases, of a location used to designate an agricultural product or foodstuff originating from that region, specific place or location; (ii) the quality or the characteristics which essentially or exclusively stem from the geographical environment, including the natural and human factors, and whose production and processing takes place in that specific geographical area.

Certain other names can also be considered to be appellations of origin when it is possible to demonstrate that the nature or the features of certain products are due to the aforementioned factors.

3.2 Geographical indications

It may be the name of a region, a specific place or in exceptional cases a location, which is used to designate an agricultural product or foodstuff originating from these regions, specific places or locations, whose reputation and any other feature may be attributed to the geographical origin. The product or foodstuff must also be processed in that geographical area.

It is therefore not essential for the raw material itself to come from the region in question, in order to avoid infringing essential principles of the legislation in certain countries such as Italy[189] or Belgium[190].

---

[189] Act No. 116 of 3 February 1963, *Gazzetta Ufficiale delta Repubblica Italiana* No. 58 of 1 March 1963.

[190] Decree on Walloon quality labelling, local appellation of origin, and Walloon appellation of origin, 7 September 1989, *MB.* of 28 November 1989.

The geographical area may also be defined arbitrarily, as in the case of "Ardennes butter" or Ardennes ham", since Belgian legislation defines the region of the Ardennes differently in each case[191].

Names that have become generic (the name of an agricultural product or foodstuff which has become the household name for an agricultural product or foodstuff, even though it refers to the place or the region in which that agricultural product or foodstuff had initially been produced or marketed) are not protected. These names include Dijon mustard. Eau de Cologne, etc.

3.3 **The operation of the system**

3.3.1 Protected products

Even though this regulation applies to agricultural products and foodstuffs, it does not cover the wine sector, including spirits, which are governed by specific texts of their own:

(a) for ordinary table wines regulation 823/87 of 16 March 1987 *(Official Journal of the European Communities* L 84/59 of 27 March 1987); for quality wines produced in a given region (VQPRD) regulation 997/81 of 26 March 1981 *(Official Journal of the European Communities* L 106) and 2392/89 of 24 July 1989 *(Official Journal of the European Communities* L 232). The fact that a specific Community system exists for VQPRD does not exclude Member States from keeping their traditional names, even though these are deemed to be complementary (AOC);

(b) for spirits regulations 822/87 of 16 March 1987 *(Official Journal of the European Communities* L 84/59 of 27 March 1987), 1576/89 of 29 May 1989 *(Official Journal of the European Communities* L 160/1), 1014/90 of 24 April 1990 *(Official Journal of the European Communities* L 105/9) amended by regulation 1180/91 of 6 May 1991 *(Official Journal of the European Communities* L 115/5).

3.3.2 The need for specifications

The specifications must indicate:

(a) the name of the agricultural product or foodstuff, including the appellation of origin or the geographical indication;

(b) the technical description of the agricultural product or foodstuff including its raw materials where necessary, and its main physical, chemical, micro-biological and/or organoleptic features;

(c) the exact borders of geographical area and, where necessary, the elements indicating that the necessary conditions have been respected for traditional designations;

(d) data to show that the agricultural product or foodstuff has been produced in the geographical area concerned;

---

[191] O. Brouwer, "Community protection of geographical indications and specific character as a means of enhancing foodstuff quality", in "Common Market Law Review", No. 28, 1991, pp. 631 and 632.

(e) the description of the method used to obtain the agricultural product or foodstuff and, where necessary, the local, constant and sound methods used;

(f) elements to justify the link with the geographical environment or the indication of origin;

(g) references to the structure or structures established to carry out checks;

(h) specific elements of labelling linked to the AOP or IGP indication, as applicable, or the traditional national equivalent indications;

(i) requirements under Community and/or domestic legislation.

Once registered, any Member State may take action in the event of non-compliance with any of the conditions set forth in the specifications. In the case of repeated non-compliance, the Commission must take the necessary measures.

3.3.3 Eligibility to request registration and the characteristics of the application

The application for registration must be submitted by a group of producers or a natural person or corporation, including the specifications, addressed to the Member State in which the geographical area is situated. The Member State must then submit its decision to the Commission. When the name refers to a geographical area which is also situated in another State, that State must also be consulted.

3.3.4 Community registration procedure

The Commission has six months to ensure that the registration application is accompanied by all the documents required before notifying its decision to the Member State concerned. If the application is accepted, the name and address of the applicant is published in the *Official Journal*, together with the name of the product, the main elements of the application, and references to national legislation governing processing, production or manufacture. If no objection is filed, the name is registered by the Commission, after which it is once again published in its final form.

The other Member States have six months during which to file objections to the registration before it is entered in the register of protected appellations of origin and protected geographical indications.

3.3.5 Control facilities

These are identical to those required for attestations of specific character, particularly with regard to conformity with EN 45011 standards.

3.4 **Protection afforded**

The AOP and IGP indications, or any other equivalent national traditional indication/name may henceforth only appear on agricultural products or foodstuffs which comply with the Community regulation.

Once registered, any name (indication or appellation) is afforded protection against the following:

(a) the commercial use of a registered name for products that are not covered by the registration and are comparable to those registered under that name;

(b) imitation or misappropriation of the name or reference to it, even if accompanied by a term referring to that similarity;

(c) a false or fraudulent indication of source, origin, type, or substantial qualities on the packaging or wrapping, advertising or any other document relating to the product;

(d) the use of a container for packaging which is likely to be misleading with regard to its origin;

(e) any other indication likely to mislead the consumer.

The names thus protected cannot become generic names.

An appellation of origin or geographical indication cannot be registered when a mark is so well-known, and has been used for such a long period, that its registration is likely to mislead the consumer.

3.5 **Relations with third States**

This regulation also applies to agricultural products and foodstuffs from third States on the following terms:

(a) the products and foodstuffs must offer identical or equivalent guarantees with regard to the specifications;

(b) the control system is equivalent;

(c) the third States must grant equivalent protection to Community protection for the same agricultural products and foodstuffs from the Community.

When a name protected in one country is identical to a name protected in the Community, registration is granted taking account of local and traditional usage, and the actual risks of confusion.

The use of such a name is only authorised if the country of origin of the product is clearly and visibly marked on the label.

Unlike domestic legislation and international instruments which only protect the appellations of origin, the Community system also protects geographical indications[192].

---

[192] See O. Brouwer, *op. cit.*, p. 633.

CHAPTER III - INTERNATIONAL PROTECTION OF QUALITY MARKS

This only exists for appellations of origin, even though discussions are taking place to institute an international certification system.

1. INTERNATIONAL CERTIFICATION

Some countries in Latin America and the Caribbean have suggsted introducing a symbol to indicate conformity with the Codex standards and codes and/or issuing certificates attesting conformity with the Codex standards[193].

2. INTERNATIONAL CONVENTIONS

The diversity of international provisions reflects different ideas regarding the notion of quality.

2.1 The Paris Union Convention

This Convention for the Protection of Industrial Property, signed on 20 March 1883, revised in Stockholm on 14 July 1967 and amended again in 1979, governs appellations of origin and other quality marks.

This Convention extends the system of industrial property protection established by current national legislation to every national of a signatory State. The direct or indirect use of any false indication regarding the source of the product or the identity of the producer is therefore prohibited. However, it is for the national courts to rule on the facts. But in such countries as the United States or Australia, the indication may not be considered false when it no longer has any geographical significance to the consumer or when it is accompanied by a name that removes any local reference (Australia) or when it has become a generic term (United States)[194].

2.2 The Madrid Agreement

This instrument prohibits false or deceptive indications of source. It was signed in Madrid on 14 April 1891 (the most recent revision was in 1979), and partly fills the gaps in the Paris Convention. Any product bearing a false or deceptive indication that directly or indirectly refers to one of the countries to which the Agreement refers, or to any place within any one of those countries, as being the country or place of origin, may be impounded upon being imported.

These provisions do not prevent vendors from placing their own name or address on products sourced from a country other than the country of sale; but in such cases the address or the name must be accompanied by a specific indication, written in clear letters, of the country or place of manufacture or production, or some other appropriate indication to prevent any misunderstanding regarding the real origin of the goods. Court judgments have been handed down under this instrument permitting the

---

[193] See the opinion of the Codex Coordinating Committee for Latin America and the Caribbean", Report of the Seventh Session, Joint FAO/WHO Food Standards Programme, San José, Costa Rica, 25 February - 1 March 1991, ALINORM 91/36.

[194] D. Denis, *op. cit.*, p. 144.

protection of certain names. The drawback with this instrument is that two few countries have signed it. The United States and Australia, for example, have not ratified it.

2.3 The International Stresa Convention (1951)

This Convention deals with the use of appellations of origin and certain other names in relation to cheeses. Very few countries are signatories: Austria, Denmark, France, Italy, Norway, Netherlands, Sweden and Switzerland. Its legal scope is equally restricted.

2.4 The Lisbon Agreement

This Agreement governs the protection of appellations of origin and international registration, and was signed in Lisbon in 1958 and revised in Stockholm in 1967.

Under the terms of this instrument, the signatory countries undertake to protect appellations of origin of the products of other signatory States, recognised and protected as such in their countries of origin and registered.

The Lisbon Agreement provides that an appellation of origin is the geographical name of a country, a region or a locality used to designate a product coming from it, whose quality or features are exclusively or essentially due to the geographical environment which also comprises the natural and human factors (this definition has been adopted in the Community regulation on appellations of origin).

The country of origin is the one in which the region or the locality whose name constitutes the appellation of origin which has given the product its reputation are situated. No appellation of origin can be considered as generic and appropriate for use as a mark once it has been protected as such in its country of origin.

Protection is offered against all infringement or imitation, even if the actual origin of the product is indicated or if the name is used in a translation or accompanied by such terms as type, kind, method (this has also been taken up in the Community regulation).

A name which is allowed to be used for production in one of the signatory States cannot be deemed to be generic so long as it is protected as an appellation of origin in the country of origin.

Even though this Agreement sets up an effective system to combat misappropriation of names, it is limited in in application by the fact that very few countries have acceded to it[195].

3. BILATERAL AGREEMENTS

There are many bilateral agreements for the mutual recognition and protection of names of agricultural products or foodstuffs. In most cases the agreements relate to wines and spirits, such as the Franco-Portuguese Convention of 1934 under which France gave Portuguese wines and wine-based liqueurs with an appellation of origin the same control and protection measures that applied to French wines and wine-based liqueurs.

---

[195] "Lamy Production - Distribution - Consommation", February 1993, No. 2-985 to 2-998, pp. 12-14.

Another example is the Franco-Swiss Treaty on the Protection of Indications of Source, Appellations of Origin and Other Geographical Names, signed in Bern on 14 May 1974. Under this treaty, the signatory States undertake to adopt all the necessary measures to guarantee the effective protection of the following:

(a) natural or processed products from the territory of the other contracting State against unfair competition in industry and trade;

(b) the names, denominations and graphic representations, and in particular the names "République Française", France", the names of ancient French provinces, and names such as "Confédération Suisse", "Confédération" and "Suisse".

There are also specific agreements for particular appellations and names. One such example was the exchange of Notes between France and the United States to set up a system to protect the names Bourbon and Bourbon-Whiskey in France, and such names as Armagnac, Calvados and Cognac in United States. The United States also undertook to ensure that in inter-State trade and in United States foreign trade these names would only be used for the French products entitled to those names and appellations under current French legislation. It is therefore prohibited to use these names for any other product, even if they are accompanied by such terms as type or method.

These few examples illustrate what can be done in the field of the bilateral recognition of appellations of origin. Even though these instruments are limited in scope, they are nevertheless essential as they form the basis for any judicial proceedings to protect the names in question.

PART FIVE - NATIONAL LEGISLATION

This part examines the legislation[196] current in the following countries: Australia, Chile, the United States, France and the United Kingdom. The two later cases provide an example of the system established under the aegis of the European Community.

[196] As far as possible, the following ternis have been used with the following meanings:

(a) The term "legislation" refers broadly to all legal texts which are promulgated by the legislative arm of the State exercising its legislative powers, or by the executive arm of the State (for implementation/enforcement or interpretation).

(b) The term "law" or "laws" refers only to those texts adopted by the legislative branch. This term variously includes Laws, Statutes, Decrees, Ordinances or Acts adopted by the national legislature or its equivalent (Parliament, Congress, National Assembly, or military ruling council).

(c) The term "subordinate legislation" (subsidiary, enacting, implementing or delegated legislation) refers to all legal instruments promulgated by the executive branch exercising delegated legislative power (regulations, orders, rules, schemes, bye-laws, ordinances, proclamations, determinations), or interpreting a text from a hierarchically superior source (circular, administrative instructions, notes).

AUSTRALIA

Legislation on the control of food produced in Australia for local consumption falls under the exclusive jurisdiction of the States and the Territories. For example, the system adopted in the State of South Australia is based on the Food Act No. 49.

Control over imported and exported food falls within the jurisdiction of the Commonwealth authorities.

1. IMPORT CONTROLS

This is based on the Imported Food Control Act No. 221 of 1992.

It governs all food imported into Australia. Imported food must be free of pathogenic micro-organisms and their toxins, micro-organisms indicating poor handling, non-approved chemicals or chemical residues, non-approved additives or approved additives at greater levels than permotted, and any other contaminant or constituent that may be dangerous to human health.

1.1 Control certificate

All imported food must be accompanied by a specific certificate drawn up as follows:

(a) the application for the food control certificate must be made by the owner of the food and submitted to an authorised officer, containing all the information required by the regulations;

(b) the authorised officer is responsible for issuing the certificate after inspecting the food, or after conducting an inspection and an analysis if necessary;

(c) the certificate must indicate whether the product is required to be inspected or inspected and analysed, or if it is exempt from any form of control.

1.2 Powers of the Ministry of Primary Industries and Energy

The Minister determines: (i) the type of food to be submitted to inspection and/or analysis, or liable to seizure, and the manner in which these operations are to be performed and the full scope of the powers vested in the authorised officers; (ii) the specific rules to be followed to check the certificates or the quality assurance certificates recognised by the foreign authorities (conversely the list of certificates recognised as official by the authorities in the country of origin of the food shall be drawn up by the Secretary of State for Primary Industries and Energy). These certificates may be for the products themselves or for the quality assurance systems.

1.3 Powers vested in the authorised officers

Authorised officers are responsible for conducting controls in any manner, in any place, at any hour of the day or night, by agreement with the occupants of the premises being inspected. They control both the goods and their accompanying documents. They are empowered to carry out searches

and seize any document of any kind. When there are sufficient grounds for suspecting that an offence has been committed, the officer may take samples and photographs.

Sometimes a magistrates warrant is required, but in emergency situations, the officer may act on his or her own initiative.

Any samples and documents siezed may be kept by the officer for 60 days, or for a longer period if authorised by the court.

Anyone in possession of useful information may be required to produce any evidence in their possession. Failure to comply constitutes an offence.

The certificate of an analyst may also be used in evidence.

1.4 **Inspection advice**

Once food that is required to be inspected has been so inspected and/or analysed, an inspection advice is issued to the owner of the food, or to the person in possession of the food when the inspections are perfomied under Customs control; if the food fails the inspection, the inspection advice specifies whether it is to be destroyed, treated or re-exported. The owner may then submit a written request to have the food inspected again.

1.5 **Holding orders**

When the inspection and/or the analysis of the samples indicates that the food is substandard, or when it is felt that importing the product might constitute a danger to the population, the Secretary of State for Primary Industries and Energy may issue a Holding Order. This order can be reviewed if the person concerned so requests in writing. If no reply is received within 28 days thereafter the application is rejected.

In the event of a dispute arising, an appeal may be made to the administrative tribunal.

The Secretary of State is also responsible for publishing information on the processing methods used by the exporter and any incidents that have occurred in the past.

1.6 **Penalties**

A penalty of 10 years' imprisonment is provided for:

(a) knowingly importing food that does not meet applicable standards, or which poses a risk to human health; the serious nature of the offence is determined by the abilities, experience and qualifications and other attributes of the offender;

(b) the unauthorised possession of imported food without the necessary food control certificate, or which the authorised officer considers not to be in accordance with current standards.

Any food deemed to be fraudulent can be treated destroyed or returned to the country of origin, according to circumstances.

Treatment is authorised by the officer when the product can be brought up to current standards or put to some use other than human consumption. The officer submits his decision in writing to the owner indicating, or agreeing jointly with the owner, the measures to be taken in order to ensure that the food meets current standards (the procedure to be followed, the deadlines).

If the owner or the exporter refuses to meet the requirements to ensure compliance with standards, or if they are unable to comply, the products are destroyed. This decision must be served on the person concerned within 21 days following the date on which they are ascertained. While awaiting destruction, the products are impounded, and the owner must pay a fine. He forfeits the right to be issued with any food control certificate subsequently.

2. EXPORT CONTROLS

The relevant law is the Export Control Act, 1982, No. 47 reprinted as at 28 February 1991.

The law is very wide-ranging, covering all exported goods, including food exports. The commodities include goods produced in Australia and those introduced into Australia while awaiting re-export.

2.1 **Notice of intention**

Anyone wishing to export goods requiring authorisation must inform the Secretary of State for Primary Industries and Energy or the officer responsible for controlling food intended for export. He must also indicate the place of destination. Failure to comply with these obligations renders the offender liable to a penalty 12 months' imprisonment and/or a fine.

2.2 **Food subject to authorisation**

Food intended for export requires prior authorisation when there is a risk that they may be rejected by the country of destination. In these cases export is prohibited or restricted. These restrictions may be limited to only one geographical area. In some cases the prohibition on their export may be lifted upon obtaining a licence or a permit.

Specific sanctions apply for failure to comply with these provisions. Anyone introducing into Australia any products requiring authorisation awaiting re-export, accompanied by forged documents with the intention of creating the impression that they have been authorised is liable to a term of imprisonment of five years.

When the export of food subject to authorisation is totally prohibited, or when conditions imposed previously have not been complied with, anyone who exports, transports or has in his possession any such food, knowing this to be forbidden, may be imprisoned for a period of up to five years.

Failure to comply with the conditions attaching to the issue of a licence or permit renders the offender liable to a fine.

2.3 Control and holding

The following provisions apply both to goods subject to authorisation and goods which may be freely exported.

2.3.1 Controls

The officers responsible for carrying out controls must ensure compliance with the provisions of all legislation, restrictions and conditions relating to the granting of licences. To this end they may gain access to any premises with the authorisation of the occupants. In some cases they must be in possession of a warrant issued by a justice of the peace, indicating the period in which the officer may perform his functions.

The inspection shall be carried out on the goods concerned, and also on documents. The officer may carry out any analyses and take any samples that may be necessary.

2.3.2 Holding

In the event that an offence is deemed to have been committed, the officer may hold the goods for 60 days together with any document that may be used in evidence, which shall be returned to their owner or to the person responsible for them by the Secretary of State for Primary Industries and Energy, with or without conditions attaching.

Anyone obstructing the work of an officer may be imprisoned for up to 6 months.

2.4 Official stamps and certification

It is prohibited to use any stamp which may be mistaken for an official stamp. The penalty is imprisonment for five years.

The Secretary of State for Primary Industries and Energy may issue a certificate when this is required by the authorities in the country to which food from Australia is intended for export. This certificate may deal with certain aspects of the food, and its conformity with Australian legislation; it may be required to be issued for certain types of food or on all foods exported to that country.

3. NATIONAL FOOD AUTHORITY

In Australia, food standards are not drawn up by the national standards authority, Standards Australia (SAA) but by the National Food Authority (NFA). The relevant law is the "National Food Authority Act, 1991", No. 118.

3.1 Functions and Powers

The National Food Authority is responsible for developing or proposing new standards, reviewing or modifying existing standards, setting standards for imported food, and developing codes of practice for the food industries. The purpose of these activities is to protect public health and

safety, inform the consumer, prevent fraud, promote fair trading in food, and promote consistency between Australian standards and those used elsewhere in the world.

For this purpose the Authority is fully empowered to act in Australia and outside Australian territory.

The standards may relate to the following subjects: (i) the composition and preparation of the food, (ii) packaging and storage procedures, (iii) consumer information, (iv) all matters relating to public health.

3.2 **Procedures for drafting standards**

The National Food Authority, or any natural person or corporation wishing to develop or vary a standard may propose a new standard or the modification of an existing one. The proposal must be submitted in writing, providing all the necessary information, in compliance with certain formal requirements, together with a sample of the food, if requested.

The NFA must firstly ascertain whether the proposal is for the development or the variation of a standard, and whether a similar proposal has already been filed but not accepted, and lastly whether all the requisite information has been provided. Once these aspects have been checked, the Authority may accept or reject the proposal.

If the proposal is rejected, the NFA must notify its decision in writing.

If the proposal is accepted, however, the NFA must notify the applicant in writing and inform him that by a certain date, and in writing, he must submit all the relevant for developing or varying the standard; the Authority must also inform the public and relevant government departments.

After a detailed assessment of the proposal, the NFA prepares a draft standard or a draft variation of an existing standard, and submit it to the applicant, each appropriate government agency and every other person who has made submissions in respese to the notice published. The draft text is then published in every State or Territory.

The NFA also notifies the Federal Government, the States and Territories of all the draft standards it is studying. The latter may then adopt, amend, reject or return the draft to the NFA for reconsideration.

4. CERTIFIED TRADE MARKS

Under the Trade Marks Act[197], certified trade marks may be registered and hence protected. A trade mark placed on a product may be a certified mark which guarantees the quality or any other feature of the product (origin, process of manufacture with quality assurance) making it possible to distinguish the product from any other products of the same type which have not been certified; the uncertified mark may not therefore contain any term referring to the quality or the origin of the product The certified trade mark is registered in a special part of the official register kept by the Registrar of the Trade Mark Office, giving the proprietor thereof the right to the exclusive use of that mark and to obtain damages in the event of its infringement. The right may only be exercised within

---

[197] "Trade Marks Act, 1955", reprinted in February 1953, No. 3.

the limits of registration: nevertheless, it does not apply to products that are not mentioned in the registered text or products to be exported, or when the proprietor does not place the mark on the food or when he has expressly or implicitly agreed that a third party may use it.

Once a certified mark has been registered, the food bearing it may not bear any other mark.

4.1 **Procedures for registering certified trade marks**

In order for a certified trade mark to be registered with the Trade Mark Office the application must be accompanied by a set of rules for its use, together with an account of the measures to be taken if registration is not accepted.

The Office examines (i) the powers and authority of the applicant for registration or of the person acting on his behalf, (ii) the content of the mark, (iii) matters relating to the public interest.

Anyone objecting to registration must make it known within three months following acceptance of registration by the Registrar. The mark is protected for a period of seven years and may be renewed.

Once a certified trade mark has been registered, the rules governing its use may be amended at any time by the Registrar. It may also be assigned or transferred with the consent of the Registrar.

4.2 **Penalties**

The penalty for forgery or falsification are a fine or a term of imprisonment for two years.

Similar penalties apply for the import of products whose trade mark may be mistaken for a certified trade mark.

Any disputes fall within the jurisdiction of the Federal Court of Australia.

CHILE

1. GENERAL CONTROLS

1.1 **Food intended for the national market and imported food**

Since food production (defined in the Law[198]) is one of the major components of the national economy, Chile has instituted an original system to control food hygiene: the basic legislation is Decree No. 725 of 11 December 1967 *(Diario Oficial* No. 26956, of 31 January 1968) enacting the Hygiene Code to govern all matters relating to public health.

---

[198] *Código sanitario,* Decree No. 725, 11 December 1967.

Several regulations have been issued in implementation of this law, particularly the food hygiene regulations (hereafter called the regulations) adopted by Decree No. 60 of 5 April 1982, subsequently amended.

Under article 4 of the regulations all the substances in any foodstuff produced in or imported into Chile must comply with the legislation and regulations governing the chemical composition, the micro-biological properties and the organoleptic features, as well as the nomenclature and names as defined by statute (and secondary legislation).

Both the producers and the technicians responsible for the manufacturing processes may be held liable for infringements and offences.

Imported products can only be marketed in Chile if they come from duly authorised premises in their countries of origin (as for home-produced products).

The regulations provide the following definitions:

(a) food is considered to be "adulterated" when its intrinsic composition has deteriorated as a result of physical, chemical or biological agents;

(b) food is deemed to be "contaminated" when it contains either biological agents or toxins that make it unfit for consumption, or toxic chemical agents or physical agents above normally tolerated levels;

(c) food is considered to be "adulterated by man" when: (i) the components have been partially or wholly extracted from it; (ii) one component has been partially or totally replaced by an alien component or one which did not exist in the original product; (iii) a process is used making it possible to conceal the fact that the product purity has been affected;

(d) food is considered to be "falsified" when the name or the description given on the packaging is false or misleading in respect of the origin, identity or nutritional value of the product.

The official responsible for controlling food must seize and destroy any items which pose a risk to public health; he may also decide that they must be denatured and put to a use other than human consumption; the owner must bear all costs of these operations.

1.2 **Stages at which food controls are performed**

Food may be controlled in Customs, or during processing, and at any other stage in the production or marketing system.

1.3 **Competent authorities**

Officials of the National Health Service are competent to conduct inspections and make any visits needed to ascertain infringements; they may be accompanied by police officers when necessary. Certain public health measures are the responsibility of the local authorities.

Chile has 27 local health services, each one with a department specialising in food control. Control is carried out by veterinary officials and specialised technicians.

1.4 **Powers and responsibilities of municipal authorities**

Without prejudice to the powers and responsibilities of the National Health Service, the municipal authorities must ensure that all public places are wholesome and safe, and enforce statutory and technical requirements relating to the hygiene and security of food production and distribution premises. The National Health Service is responsible when more than one municipal territory is involved[199].

In order to attain these objectives, the municipal authorities issue operating licences and permits to food businesses, provided that they have previously received authorisation from the National Health Service[200].

1.5 **Powers of the inspection officials**

When officials of the National Health Service ascertain that an offence has been committed, they issue a report providing the material evidence. This report must be signed by the official conducting the inspection, and it is taken at its face value.

When visiting business premises, the official may serve the report on the proprietor, the lessee or anyone else having responsibility, or any adult on the premises. If no such person is present, this must be stated on the report.

The officials may visit any premises that may be necessary. Everyone present may sign the report which must contain an inventory of the assets: the official conducting the control will give each person a copy.

If, in the course of the inspection, registration or visit, the officials discover evidence that an offence has been committed, they may either decide to hold the items on premises belonging to the National Health Service, or they may seal them and leave them where they are.

1.6 **Penalties**

Any interested party, or the Director-General for Health, may request an investigation to be conducted into an alleged offence. In either case the health authorities are empowered to carry out the investigation and take down any statements needed to ascertain the facts.

If a private individual initiates proceedings, the health authority convenes both parties, examines both their claims separately and any other evidence that may exist, and conducts any inspections that may be necessary in order to ascertain the facts.

---

[199] Article 14 of the Code.

[200] Article 15 of the Code and Order relating to basic hygiene standards applicable in the municipality of Santiago, article 11.

Evidence of an offence may be gained from testimony or by an official document issued by the official who has ascertained it.

Appeals against the decision may be lodged with the civil courts within five days following the service of the ruling. The court will reject the appeal if the facts in respect of which the penalty has been issued are shown to have been committed during the administrative phase, and if it considers that the penalty was fair.

1.7 **Penalties and public health provisions**

If no specific penalty is provided by law, a fine is imposed in the amount of one-twentieth of the annual salary paid to industrial and commercial employees in the Department of Santiago. The penalty is doubled in the case of repeat offenders.

The offence may also lead to the closure of the establishment or the premises on which the offence was committed, together with the withdrawal of authorisation to operate, and with the seizure, destruction or denaturation of products posing a risk to public health.

2. EXPORT CONTROLS

The Minister of Agriculture is responsible for health inspections on products for export.

Under Decree-Law No. 3.557 of 1980 relating to agricultural production, all agricultural foodstuffs require an export certificate to be issued by the Ministry of Health before they may be exported. Analyses may be carried out at any moment on imported products, and the same rules apply as for home-produced products.

3. FOOD QUALITY CONTROL

Decree No. 858 of 21 July 1964 *(Diario Oficial* No. 25,928, of 29 August 1964) instituted the National Coordination Council; this Council reports to the Ministry of Industry and is responsible for production standards and production quality control standards. Standardisation and quality control apply to raw products, products of the sea and manufactured products which are processed on Chilean soil, as well as imported products.

The Council has the following powers and responsibilities: (i) to coordinate the functions of public and private entities responsible for quality control under current legislation; (ii) to advise the authorities regarding decisions on quality control; (iii) to carry out checks on existing standards; (iv) to issue authorisation for official laboratories; (v) to liaise with national and international organisations in this sector, (vi) to propose a system for the use of quality certificates.

4. QUALITY STANDARDS

Under Decree No. 456 *(Diario Oficial* No. 27.167 of 14 October 1968) the Minister of Agriculture is responsible for issuing technical quality standards for agricultural products. When the services at the disposal of the Minister are unable to carry out the necessary studies, the National Institute for Technological Research and Standardisation is responsible.

Technical standards drawn up by the Institute are declared to be official standards and may be brought into effect by decree issued by the Minister of Agriculture.

Under Decree No. 447 *(Diario Oficial* No. 33.97 of 29 May 1991) adopting the framework Agreement between the EEC and the Republic of Chile, mutual economic cooperation has been extended to cover quality control and quality standards.

5. CERTIFICATION OF PRODUCTS INTENDED FOR EXPORT

Only certain types of products can qualify for an export certificate. Decree-Law No. 4 of 25 April 1983 *(Diario Oficial* No. 31.603, of 27 June 1983) and Decree No. 238 *(Diario Oficial* No. 32.028 of 22 November 1984) that apply here indicate that only fruit and vegetables and products of the sea intended for export qualify for conformity certification. The Minister of the Economy, Development and Reconstruction is responsible for certification.

A quality certification document is proof that a product meets the official standards or technical specifications.

Certification bodies are entered in a register which is kept by the Under-secretary of State for the Economy, Development and Reconstruction. To qualify for registration, interested parties must submit an application to the Under-secretary which they obtain from the National Institute of Standards, containing the following information:

- their status,
- their internal organisation and operations,
- the scope of their powers,
- the technical skills of the personnel performing the operations,
- the equipment, installations, methods and standards used in the performance of their operations.

The Under-Secretary is required to reply within 30 working days of receiving the application and the documents mentioned above, and must then forward his decision to the Institute.

The applicant may be registered if the Under-secretary fails to reply within 30 days from the date indicated above, which signifies acceptance. Whether the application is accepted or rejected, the Under-secretary must always give the reasons for the decision.

5.1 **Reference document**

Since it is interested party who chooses the standard to be used, certification must be based on (a) national standards adopted by the National Institute of Standards, (b) international standards, (c) official standards in the country of destination or (d) the contractual product quality specifications.

Even though these standards are not made mandatory, the certificate that is issued must describe the values obtained in reference to one of the norms (a), (b) or (c) above.

The certification bodies perform their activities solely in the fields indicated in the registration certificate.

5.2 **Control of certification bodies**

The Minister of the Economy, Development and Reconstruction, together with the Minister of Agriculture through the National Fisheries Service and the National Agriculture Service, acting on the advice of the National Institute for Standards, are responsible for the technical operation of the certification bodies.

In the exercise of these responsibilities they may:

- check the equipment and the installations of the certification body,
- comment on the methodology used,
- check the calibration of the tools and instruments used and suggest that they be replaced when they are no longer suitable for the work for which they are intended,
- ascertain irregularities or shortcomings in the operation of the system.

5.3 **Striking-off**

Certification bodies may be struck off the register on the following grounds:

(a) for giving false indications or false information upon registration;

(b) for delaying notice of any changes affecting their work;

(c) (when it issues a certificate without having measured, inspected or analysed the product) for issuing a certificate which does not match the characteristics of the product, and when there are serious errors in the information and certificates issued.

The Under-Secretary of State for the Economy, Development and Reconstruction is empowered to cancel registration. These provisions may be adopted without prejudice to any civil or criminal proceedings under current legislation.

Products of the sea for export are certified by the National Fisheries Service (SERNAP) which issues the certificate for the fish products intended for export. This certificate can only be issued if the contract between the importer and the exporter so requires, or when it is required by the legislation of the country of destination.

SERNAP is responsible for ascertaining the quality in terms of health and hygiene of fresh imported fish and for certifying the quality of this fresh fish intended for export, considering solely the mandatory standards for this commodity (they may be national, or international standards required by the country of destination, or by the parties to the contract). Quality is also certified if the exporter so requests, and in accordance with his requirements. SERNAP may also delegate its powers over quality control to private or public entities, under strict monitoring and regulation by the SERNAP technical team.

With regard to fruit and vegetables, the exporters' association is competent to request certification.

The exporters' association has its own quality control programme; it has entrusted its management to the Catholic University of Chile, working in close conjunction with the National Institute of Standards to elaborate and promote standards for fresh fruit and vegetables.

The Institute of Agricultural Research is a private establishment under the Ministry of Agriculture. It is also involved in activities relating to the export of fruit through the role played by its own laboratories.

UNITED STATES

1. ADMINISTRATIVE CONTROLS

The relevant provisions are set out in the "Food, Drug and Cosmetic Act, 1906", and the "Food and Drug Code of Federal Regulations". Poultry and certain poultry-based processed products are governed by specific legislation[201], as are egg products[202] [203]. These provisions specifically govern certain types of products, are mainly hygiene rules.

1.1 Food intended for the domestic market

The relevant provisions here are section 301 of chapter 3 of the Food, Drug and Cosmetic Act, 1906[204].

1.1.1 Prohibitions

The following in particular are prohibited: (i) presentation for distribution on the inter-State market, placing on the inter-State market, selling or manufacturing of adulterated food, or food whose labelling is likely to mislead the consumer, (ii) refusing access to the inter-State market; (iii) any action likely to prevent the inspection of the business; (iv) counterfeiting, the fraudulent use of a mark imposed by regulations; (v) using any reference to analyses or reports effected outside the control of the food producing business on the labelling or publicity for the product.

1.1.2 Adulterated food

Food is considered to be "adulterated":

(a) when it contains toxic substances or substances injurious to health; nevertheless when the substance occurs naturally in the food, and it is present in normal quantities, it does not pose a health risk;

---

[201] "Federal Meat Inspection Act"; "Poultry Production Act".

[202] "Egg Products Inspection Act".

[203] See in particular, the "Animals and Animal Products Code of Federal Regulations".

[204] See "Compilation of Selected Acts within the Jurisdiction of the Committee on Energy and Commerce", February 1993, p. 9.

(b) when toxic substances or substances harmful to health or prohibited additives have been added; however pesticide residues that remain on or in a processed agricultural product are not to be considered as injurious to health if the quantity of the residues removed from the raw product during processing is in conformity with sound production practices and when the amount remaining in the food when it is ready for consumption does not exceed the limits laid down for the raw product;

(c) when it contains filth, mildew or decomposing substances;

(d) when it has been prepared, packaged or preserved under unwholesome conditions which may encourage its contamination or make it unfit for human consumption, or when it comes from a sick animal or one that has not been killed in a slaughterhouse;

(e) when it contains wholly or partly toxic or dangerous substances which might make it unfit for human consumption;

(f) when substances or components have been added or removed or when they are intended to fraudulently increase the weight or the quality of the product;

(g) when the product has been blended with non-nutritious substances, save where the substances are necessary for manufacturing requirements, and do not mislead the consumer with regard to the actual quality of the product.

1.1.3 Control procedures

Officers

Control and inspections can be carried out by the Food and Drug Administration (hereafter the **FDA)** which belongs to the Department of Health[205] or by any employee of a State, territory or political subdivision with responsibility for food or public health, provided that that person has been duly delegated by the Secretary of State for Health to act in an official capacity.

These officials may carry out any examinations and inspections that may be necessary, and any other actions that the **FDA** Commissioner requests.

Sampling and analysis

When a sample is taken for analysis, the official must give back part of this official sample for examination or analysis at the request of any of the persons mentioned on the foodstuff label or the proprietor or his legal adviser or agent. To be considered an official sample, it must be named as such.

[205] See Food and Drug Administration: FDA, section 903 and §5.100 Subchapter A for its composition and operations.

1.1.4 Inspecting businesses

Inspecting premises

Any official must be granted access at any reasonable time to any premises on which the food is produced, processed for the inter-State market, on presentation of his credentials and with written notification; he may then inspect vehicles, equipment and any raw materials used.

Inspection of documents

The inspection may not include financial or commercial information, other than information on the transport of goods, pricing or personnel (which do not relate to the technical or professional qualifications or the performance of the employees). Neither may it extend to data on research. When documents are inspected, a separate notification must be submitted.

Obligations upon completion of the inspection

When the inspection is completed, and before leaving the premises, the official must give the proprietor or the person responsible a written report indicating the conditions and the practices found there, which, in his judgment, indicate that all or part of the food is unfit for human consumption. A copy must also be sent to the Secretary of State for Health.

When the official takes samples, he must give the proprietor or an official of the business a receipt describing the samples taken, before leaving the premises.

Analysis and samples

The official who removes samples to have them analysed must send a copy of the results to the proprietor, or the person responsible for the food business from which these samples were taken.

Special provisions apply to the inspection of fish and shellfish[206].

1.1.5 Emergency measures

When the food is contaminated by micro-organisms making it a health hazard and when the nature of the hazard cannot be accurately established when the food comes onto the inter-State market, the Secretary of State may issue an emergency measure requiring a permit for manufacturers and vendors of this type of food.

1.1.6 Penalties

The penalty for offences committed under the Act is imprisonment of up to 1 year and/or a fine.

---

[206] See in particular section 706 of the "Food, Drug and Cosmetic Act", and §197.310 to §197.885 of subchapter B of the Code of Federal Regulations requiring products to be marked

When the offence is committed intentionally, the term of imprisonment may be increased up to a maximum of three years.

Damages and interest may be imposed by order of the Secretary of State for Health.

1.1.7 Judicial penalties

The District Courts of the United States, and the United States Courts of the Territories have jurisdiction.

All adulterated food, or food bearing misleading labelling may give rise to legal proceedings when introduced onto the market, or subsequently when information is requested, and when it is deemed unfit for human consumption, before any district court of the United States or any United States court in whose jurisdiction the foodstuff is found.

When several offences have been committed and fall within the jurisdiction of different territorial courts, but relate to the same offence, they may be joined for a hearing before one court. If the plaintiff requests the cases to be joined, the court shall have jurisdiction in the district agreed upon between the parties; if the parties fail to agree within a reasonable time, any district court may be chosen by the court seized of the case.

Any food deemed to be a health hazard must be placed at the disposal of the court for destruction or for sale. If the food cannot be sold, the court may order it to be destroyed or to be treated to bring it into line with the law.

When the incriminated product is imported, the court may decide to return it to its bona fide proprietor in order to be returned to its country of origin.

2. IMPORTS AND EXPORTS

The law and the competent authorities vary according to the product concerned[207] [208]

2.1 **Imports**

All goods imported into federal territory are subject to formal procedures to ensure that the importer acts in compliance with the rules relating to appellations of origin, technical, hygiene, safety and labelling standards. This applies to all products except poultry meats, certain poultry meat-based processed products, egg products, milk and tea[209] [210].

---

[207] The majority of products fall under chapter 8, section 801 of the "Food, Drug and Cosmetic Act".

[208] "Compilation of Selected Acts within the Jurisdiction of the Committee on Energy and Commerce", *op. cit.*

[209] With regard to poultry meats and certain poultry meat-based processed products, the relevant laws are: "Federal Meat Inspection Act", "Poultry Products Inspection Act" and the regulations contained in the "Animal and Animal Products Code of Federal Regulations: Importation of certain animals and poultry and certain animal poultry products; Inspection and other requirements for certain means of conveyance and shipping containers thereon", Part 91 of the code on "Rinderpest, foot-and-mouth disease, fowl pest disease, African swine fever, hog cholera, and bovine spongiform encephalopathy: prohibited and restricted importations", Part 94 of the Code and "Overtime services relating to imports and exports", Part 96 of the Code, although these are mainly hygiene rules.

A product may not be imported if it appears that it was not manufactured, processed or packaged in conformity with hygiene rules, or if the product cannot be sold or placed on sale in its country of origin, or if it has been adulterated, or if the labelling is misleading.

If a product is refused admission, the director of the FDA district with jurisdiction over the port of entry in which the product was checked, is required to send written notice to the owner of the product giving the reasons for refusal of entry. The owner may always request the product to be treated in order to comply with legislation, describing the arrangements proposed, as well as the date and place for the operations to be performed.

If it is not possible to treat the product, the Secretary of State must order its destruction unless it is re-exported within 90 days following the date of notification of refusal of entry.

If the product can be re-labelled or treated in order to bring it into line with regulations or to be used for purposes other than food, the final destination and the admission of the products must be indicated and authorised by the Secretary of State.

Once these operations have been carried out, the owner of the foodstuff concerned must submit evidence to show that the food has been treated, and pay the costs incurred.

2.2 **Exports**

Agricultural food intended for export is not considered to be adulterated or labelled in such a way as to mislead the consumer (i) if it is in accordance with the interests of the consumers in the country of destination; (ii) if it does not infringe the law in the country of destination; (iii) if it is labelled on the outside of the maritime transport packaging as required for exports.

In the case of meats and certain meat-based processed products, specific provisions have been laid down by the Department of Agriculture whose officials may inspect products regarding hygiene, but not to control their quality.

3. FOOD STANDARDS

Like the United Kingdom and European Community legislation, the United States has adopted the principle that the labelling must enable the consumer to differentiate between products. Whenever the Secretary of State for Commerce deems it necessary to promote commerce in the interest of consumers, he must issue regulations which lay down, in the case of each food, a definition and standards for identifying the food under its common or usual name, and stipulating its quality and/or standards for filling containers. These standards relate to micro-biological safety.

This standard sets a threshold quality level below which the product may not be sold.

A foodstuff is deemed to fail to comply with the definition and the identity standards:

---

[210] There is also a specific law dealing with tea imports, "The Tea Importation Act" and for milk, the "Federal Import Milk Act".

(a) if it contains an ingredient which is not mentioned in the definition or in the standard, unless it is an additive accidentally introduced in an insignificant quantity, and if the indication is not required on labelling of non-standardised food; or

(b) if it does not contain all the ingredients stated in the definition or standard.

However, exceptions are permitted for experimental purposes.

4. GUIDELINES

Guidelines contain recommendations regarding the methods to be used to optimise the health, hygiene, organoleptic or service quality of a particular agricultural foodstuff.

Under §10.90 of Subchapter A, the FDA issues guidelines containing general practices to be followed with regard to product standards, ingredients, and manufacturing techniques. The provisions of these Directives are non-madatory and no sanctions are imposed for non-compliance. However everyone who does comply with the guidelines can be certain that the practices will be accepted by the FDA.

The standards are elaborated on the basis of scientific and technological information, making it possible to revise them when new information becomes available in order to protect the public against products or processing methods that are harmful to health, ineffective or misleading.

5. CERTIFICATION MARK

With regard to marks, legislation is the responsibility of each State, except with regard to inter-State trade.

Collective marks and certification marks, including indications of regional origin, may be registered in the same way and with the same effects as product marks for individuals, countries, States, municipalities, exercising statutory control over the use of the mark forming the object of an application for registration; this applies even if the applicant for registration does not possess an industrial or commercial establishment. Once the collective mark or the certification mark has been registered, the proprietor is guaranteed the protection given to product marks, save where they are used in a way likely to mislead the consumer. The filing of applications and the procedure must be in conformity with the provisions relating to the registration of product marks.

Marks are deposited at the Patent and Trade Mark Office. After examination and acceptance, the Office registers the mark and issues a certificate indicating the products to which it may apply. A registration notice is then published by the Office. If the applicant is not domiciled in the United States the document deposited at the Office must indicate the name and address of a local correspondent.

It should be noted that as far as the indication of origin is concerned the mark cannot be registered when it merely describes products in geographical terms.

Mark registration certificates are delivered bearing the seal of the Patent and Trademark Office. This certificate is the first written evidence of the validity of the mark and its registration, and vests the holder with a property right, with legal effects in relations with third parties throughout the territory. All registration certificates are valid for ten years and are renewable.

Any person may challenge registration on legal grounds within 30 days following the publication of the mark.

The owner of a registered mark may publicise it by presenting the mark accompanied by the words "Registered in U.S. Patent and Trademark Office".

FRANCE

1. QUALITY CONTROL

The procedures to be followed, and the officials responsible for the quality control of foodstuffs produced in France or imported into France are set out in the Consumers' Code (the Code) and the Decree of 22 January 1919 *(Journal officiel de la Republique française* of 31 January 1919).

It should be noted that the control of products of animal origin fall within the jurisdiction of the animal health services, while officials of the Directorate-General for Consumption and the Control and Elimination of Fraud (the DGCCRF) are responsible for all other foodstuffs (article L 215-1 of the Code).

1.1 Control of foodstuffs for domestic consumption

1.1.1 The purpose of control

Food quality control has two purposes: (i) to protect consumer health and safety and (ii) to promote product quality.

Health protection and product safety

When first offered on the market, products must be in compliance with health-care and consumer protection regulations, and fair trading practices (article L 212-1). Food control is therefore intended to prevent the marketing of adulterated, falsified, toxic products, or products unfit for consumption.

This is why the officials responsible for food control also inspect the hygienic conditions of manufacture and sale (articles L 213-1 and L 213-2).

The promotion of product quality

The authorities are required to raise the minimum quality of foodstuffs through specific legal instruments. Particular quality levels have therefore been set for a whole range of products, and the DGCCRF is responsible for ensuring compliance.

1.1.2 Stages at which controls are performed

Controls may be carried out at any stage, from production to marketing (article L 215). With regard to manufacture, fraud may relate to the definition, composition, or the name of the goods, the

lawful processes to which they may be subjected, the characteristics that make them health hazards, and the state of hygiene on the premises and the hygiene of the personnel (article L 214-1).

1.1.3 The powers of the inspection officials

Control is carried out on premises where food is produced or manufactured (article L 215-3). Any attempt to prevent the officials from carrying out their duties constitutes a crime punishable by the same penalties as fraud itself.

Article L 213-4 specifies the times during which inspections can be conducted.

The officials may also seize products (article L 215-5) or impound them (article L 215-7) whenever the suspect goods may constitute an immediate serious threat to fair competition or the interest of consumers. Seizure warrants are issued by an investigating magistrate, except when the culprit is caught red-handed (article L 215-5).

When products are found to be tainted or toxic, the officials may order them to be destroyed, sterilised or denatured, and the operations to be performed are set out in a report (article L 215-6).

When an infringement of the Code can be ascertained without subjecting the goods to analysis the officials may write their report immediately and annex the evidence to it. These reports are taken as evidence until proof to the contrary is offered (article 431 of the Code of Criminal Procedure).

1.1.4 Types of controls carried out

Controls are carried out both on the goods themselves and the documents relating to them (article L 216-6). Under the terms of the circular dated 28 November 1985 anyone holding documents may be ordered to produce them. This also applies to the person in charge of the business premises being controlled, the employees, and anyone else having relations with them. However, this obligation to communicate documents is subject to the confidentiality rules relating to the protection of manufacturing secrets.

1.1.5 Rules to be followed when sampling

Under article 10 of the 1919 Decree, all official samples must comprise at least three specimens; one to be analysed to detect anomalies, and the other two for the courts experts. A Notice must be issued whenever samples are taken.

1.1.6 The judicial phase

Proceedings may be criminal or civil. Criminal offences may be punished with imprisonment and/or fines. This applies particularly to the crimes of deception (article L 213-1) and aduleration (article 213-3), and for many infringements of the laws to which article L 213 refers. These sanctions are doubled for repeat offenders or when the foodstuffs have been made a hazard to human or animal health (article 213-2).

Accessory penalties such as the publication or posting of the judgment, and the confiscation of the foodstuffs may also be imposed (article L 216-3).

2. CONTROL OF IMPORTED FOODSTUFFS OR FOODSTUFFS INTENDED FOR EXPORT

2.1 Imported foodstuffs

These may be subjected to border controls and comply with rules regarding the indication of origin.

2.1.1 Border controls

Article L 212-1 *et seq.* of the Code states that the purpose of border controls is to ensure that when first placed on the market, foodstuffs comply with current safety and public health legislation. Whether or not the product is inspected, the importer is required to carry out all the controls that are necessary to ensure that the foreign product placed on the national market complies with French legislation and practice (Ministerial Circular No. 67-25 of 27 December 1967). Anyone failing to carry out this routine control is liable for criminal penalties.

2.1.2 Indication of origin

Except for a few products such as preserved or pickled fish, vegetables, nuts or plums (Act of 29 June 1934) there is no general obligation to indicate origin. However, there is nothing to prevent the manufacturers and distributors from taking the initiative to provide this type of information if they believe that it meets the expectations of consumers.

2.2 Foodstuffs intended for export

If these foodstuffs comply with the conditions set by the importing country (Decree-law of 14 June 1938) it is not necessary for them to conform to French legislation and practice. However, special mandatory controls carried out on samples are required in the case of fruit, vegetables and eggs. The packaging of these products must also bear a label called an "export label" (Decree of 2 August 1947 amended by the Decree of 24 September 1957).

Other certificates may also be issued by the authorities: (i) health and wholesomeness certificates by the veterinary services, and (ii) analysis certificates, and certificates attesting to the purity of products of vegetable or mineral origin by the DGCCRF.

3. STANDARDS

Standards may be voluntary or may be made mandatory.

3.1 **The elaboration of voluntary standards**

Standardisation is based on the provisions of the Act of 24 May 1941 *(Journal officiel de la Republique française* of 28 May 1941). Decree No. 84-74 of 26 January 1984, as amended by Decree No. 90-653 of 18 July 1990 and Decree No. 91.283 of 19 March 1991, enacts the new French standardisation legislation. Decree No. 61.664 of 27 June 1961 applies specifically to food standards.

3.1.1 Powers and functions

The standards are formally elaborated by the Association Française de Normalisation (AFNOR) which is vested with exclusive standard-setting statutory powers. However, this institution comes under the supervision of the Ministry for Industry, and in reality constitutes the central core of a network of standard-setting offices specific to each industrial sector.

Each year, AFNOR draws up a general standard-setting programme of work based on the requirements expressed by one or more individuals, or businesses or professional groups. Its general purpose is therefore to assess the demand for new standards, coordinate standard-setting, centralise and examine draft standards, disseminate them, promote standardisation and represent French interests on non-governmental standards bodies (article 5 of the Decree of 1984).

The various standard-setting offices are responsible for the technical preparation of draft standards. Any organisation, with or without legal status, which is able to prove its technical capabilities to take responsibility for heading a standards committee for a particular sector, may be approved as a standards-setting office, after a joint decision to this effect has been issued by the Minister for Industry and the other ministries concerned.

3.1.2 Procedures

(a) Preparation of the preliminary draft. When an application for a standard is filed, AFNOR carries out a feasibility survey among the parties concerned. If this shows that it is appropriate to set a standard and that this will have beneficial effects to meet clearly-identified needs, a standards commission is set up; AFNOR may also request the standards office to prepare a preliminary draft standard (article 9 of the 1984 Decree). When sounding out the general interest, AFNOR questions scientists, quality engineers, experts, producers, consumer representatives and government officials.

(b) Preliminary examination procedure. In order to see whether the preliminary draft standard is in the general interest and that there are no objections likely to prevent its adopt, AFNOR can submit it for preliminary administrative examination (Directive of the Secretary of State for Industry, 1 January 1984).

Notice of the preliminary examination is published jointly in the French Standards Bulletin and the *Official Gazette.* The period of examination may not be less than 15 days. After this period of consultation is completed, all the comments are examined by the standards commission and taken into account when elaborating the final draft standard (article 10 of the 1984 Decree).

If no comments are made, or if the comments only relate to matters of substance, AFNOR may draw up the final draft itself.

(c) Approval of the standard. Standards are approved by the Board of Directors of AFNOR, which may delegate this responsibility to its director general (article 11 of the 1984 Decree). The list of standards approved in any one month is published the following month in the *Official Gazette.* The text may be published both as an approved standard or as an experimental standard (for which an experimental or trial period is necessary, during which observations may be submitted), and as a documentation file (but without the full scope of a proper standard).

3.2 **Mandatory standards**

3.2.1 Publication of mandatory standards

Standards are made mandatory in the following ways:

(a) By a ministerial Order based on (1) Decree No. 61-664 of 27 June 1961 *(Journal officiel de la Republique française* 29 June 1961) on the standardisation of agricultural food products, which stipulates that products may be required, under a joint order issued by the Minister of Agriculture and the Secretariat for Home Trade, to comply with the corresponding approved standards under the Act of 24 May 1941 on the status of standards; or (2) Order No. 84-74 of 26 January 1984 *(Journal officiel de la Republique française* of 1 February 1984) under which an approved food standard may be made mandatory by Ministerial Order if public health and safety requirements, or the demands relating to fair trading practice and consumer protection, render this measure necessary (article 12). These are all the basic elements of article 36 of the Treaty of Rome: when it is recognised that an approved foreign standard is equivalent to a standard applicable in France under international agreements, the international standard may also become mandatory in France. It should be noted that, in practice, very few standards have been made mandatory on this basis. However, one such standard is the "NF V 45-056", on the classification of oysters.

(b) By being incorporated into a set of technical regulations. Any standard, whatever its status, may be made mandatory in this way.

Whatever procedure is used, any standards that become mandatory form part of many service or supply contracts, whether they actually refer to them or not. Even tacit reference to them enables the consumer to benefit from them without expressly stipulating them.

3.2.2 Infringements of mandatory standards

The Decree of 26 January 1984 does not provide criminal penalties for failure to comply with mandatory standards. However, article 8 of the Decree of 27 June 1961 on the standardisation of agricultural products states that the fraud unit is responsible for ensuring that standardised products conform to the definitions of the relevant mandatory standards.

Failure to comply with mandatory standards creates civil liability regardless of whether it is wilful or due to negligence (Trib. inst. Biarritz, 16 June 1987, unpublished).

3.2.3 Penalties for failure to comply with mandatory standards

These may be incurred by (i) an infringement of regulations or secondary legislation issued by the administrative authority (article R-26-15 of the Criminal Code), (ii) the criminal offence of "rash conduct" (when failure to comply with the mandatory standard causes physical harm, the culprit can be prosecuted for homicide or involuntary assault simply by having infringed a regulation once the causality link has been established), (iii) the crime of deception (criminal intention is generally shown by the fact that a producer has falsely declared a product to be in conformity with the standard, (iv) the crime of deceptive publicity (when the false claim of conformity to standards is set out on a publicity document, the crime of deception borders on the crime of false publicity or publicity likely to mislead, Act of 27 December 1973).

4. CODES OF PRACTICE

Codes of practice are mandatory for national producers. There are two types:

(a) codes issued by the "technical centres" which take part in drafting quality control rules. For example, the "Centre Technique de la Charcuterie, de la Salaison et des Conserves de Viandes" publishes codes of good practice for meat, including rules governing the composition and presentation of the relevant products, their ingredients, meat and sausage products set out descriptively and with a set of analytical criteria, methods of analysis to be used and all the legislation from different sources that apply to meat and sausage products;

(b) codes issued by a professional association. These are generally approved by the ministry concerned, to reflect the good and constant practice of the profession.

UNITED KINGDOM

1. THE CONTROL OF FOOD FOR NATIONAL CONSUMPTION

The basic text here is the Food Safety Act 1990[211].

According to this Act, control is carried out over foodstuffs for human consumption and ingredients (section 7(1)) and materials in contact with them (section 7(3)). Authorised officers evaluate the probable effect of food on man taking account of the daily admissible dose (section 7(2)). The Act also lays down rules regarding the registration of premises (section 19)[212].

1.1 **Stages at which controls are carried out**

As far as type, quality and substance is concerned, any products sold to consumers must be identified at every stage of production and distribution (section 14). In reality, however, it is normally only as a result of a complaint or an inspection in the retail trade that controls are carried out at the production stage.

---

[211] C.16 of 29 June 1990, replacing the Food Act 1984, except for parts III and IV.

[212] See also Food Premises (Registration) Regulations, 1991, *Statutory Instruments* 1991, No. 2825.

1.2 **Types of controls**

When there are reasonable grounds for believing that an offence has been committed, authorised officers are empowered to carry out any inspections or controls on the premises where the product has been produced, the procedures and methods of manufacture, the raw materials, the finished products and the documents relating to the products themselves (while respecting manufacturing secrets). In the event of a complaint or an inspection carried out among retailers, all types of documents are checked in order to ascertain liability for the alleged offences.

When a business has its own quality assurance system, it must keep registers which are checked when an inspection is carried out in order to establish liability in the event of infringements.

1.3 Seizure

The authorised officer may order the seizure of products when the results of the inspection demonstrate that the product is not in accordance with consumer safety and health regulations. In these cases, the suspect products are submitted to a Justice of the Peace (section 9).

1.4 **Measures adopted by inspectors**

There are two types of measures: improvement notices, and prohibition orders.

(a) Improvement notices. The authorised officer issues an improvement notice when the production or marketing business appears not to be in conformity with legislation regarding the manufacture and processing of food products, or where hygiene conditions are below standard. The improvement notice must indicate the type of offence and the measures to be taken within specific deadlines (sections 10 and 11(e))[213].

(b) Prohibition orders. These may be issued when the owner of a food business has been found to infringe the legislation on manufacturing or food hygiene, or fails to comply with an improvement notice. Under a prohibition order, the authorised officer may ban (i) the use of a particular manufacturing or processing procedure; (ii) the use of specific premises or items of equipment; (iii) the person from managing and running a food business.

The prohibition order expires once the owner is able to justify in court that a certificate has been issued by the authorities showing that adequate measures have been taken to remove any further risks to public health. However, this application may not be filed during the six-month period following the prohibition order (section 11).

Prohibition orders may also be issued when there is an imminent health hazard[214].

---

[213] See the forms of the notices, particularly in emergency cases, in Detention of Food (prescribed forms) Regulations, 1990 *(Statutory Instruments* 1990 No. 2614) and "Food safety (improvement and prohibition-prescribed forms) Regulations, 1991" *(Statutory Instruments* 1991 No. 100).

[214] See sections 12 and 13 of the Food Safety Act 1990 (Commencement No. 1) Order, 1990, *Statutory Instruments* 1990 No. 1383 *(CAO).*

1.5 **Liability**

A fine of up to 20 000 pounds sterling and/or a minimum of three months' imprisonment may be imposed on anyone found guilty of the following offences: (i) rendering a foodstuff offered for sale dangerous to human health (section 7); (ii) offering for sale foodstuffs which are not in conformity with the provisions relating to food product safety (section 8) or which are not of the expected kind, substance or quality (section 14)[215]; (iii) when the labelling or the publicity makes misleading or false statements about the nature, the contents or the quality of the foodstuff (section 15).

Criminal liability is also created by the Act. The principle followed is that the producer must prove that he has acted with all due diligence to avoid committing an offence and to prevent anyone else under his responsibility from doing so (section 21). The retailer has specific defences available which vary according to whether the products are marketed under his own trade mark or not (section 21).

1.6 **Sampling and analysis**

Samples may be taken of any suspect or inspected foodstuff, the products used for their manufacture, the raw materials, materials in contact with them, or any other substance which may be used as evidence. The officer carrying out the inspection must send a copy of the certification of the examination or analysis to the person responsible for the substances analysed (section 6(1)). Samples must be taken in such a way that they may be divided into three parts: one is given to the retailer or the vendor, the second is kept by the official food analyst and the third is submitted to the Government Chemist in the event of litigation. These provisions do not refer to products for which specific legislation exists: milk *(Statutory Instruments* 1989, No. 2383); semi-skimmed and skimmed milk *(Statutory instruments* 1988, No. 2206); milk-based drinks *(Statutory Instruments* 1988, No. 1508); cream treatment *(Statutory Instruments* 1983, No. 1509); poultry meat water content *(Statutory Instruments* 1984, No. 1145); natural mineral waters *(Statutory Instruments* 1985, No. 71); materials and articles in contact with food *(Statutory Instruments* 1987, No. 1523); and certain specific regulations in Scotland, dealing with milk, semi-skimmed milk, skimmed milk, cream, milk-based drinks, and poultry water (section 2, "Food Safety (Sampling and qualifications) Regulations, 1990").

1.7 **Qualifications of food examiners**

With regard to the qualifications of the food examiners, the Food Safety Regulations, 1990, require qualified personnel to analyse and examine food to be authorised by the local authorities to take samples and carry out on-site inspections (section 4). However, no director, owner or employee of a food business may act as a food examiner in the area in which his business is situated (section 5).

Under the regulations on products of animal origin[216], which incorporates the Community Directives 89/662 and 90/675 on veterinary inspections within the Community into British legislation, examinations of products of animal origin must be carried out by veterinarians.

---

[215] When only part of a lot fails to conform with the provisions, it is presumed that all of them are sub-standard until the contrary is proved (section 8(3)).

[216] See Products of Animal Origin (Import and Export) Regulations, 1992.

Environmental hygiene inspectors are responsible for ensuring that the production premises and the products comply with hygiene legislation.

Lastly, the quality (composition, authenticity) of a product is the responsibility of the trading standards inspectors.

1.8 **Codes of good practice**

The Food Safety Act, 1990, empowers the ministers to issue codes of good practice to which the administrative services refer. These codes are deisgned to ensure that the regulations are properly enforced.

The main codes refer to the following:

(a) the authorities responsible for enforcing the 1990 Act: the "Food Safety Act 1990 Code of Practice No. 1 : Responsibility for Enforcement of the Food Safety Act" 1990, HMSO, ISBN 0 11 321354 9) states that (1) the district councils are responsible for prosecuting in the event that food is found to be contaminated by micro-organisms or toxins, or by mould, and (2) the county councils are responsible for dealing with chemical contamination, and offences relating to composition, adulteration and deception;

(b) methods of analysis and inspection: the Food Safety Act Code of Practice No. 7: Sampling for Analysis or Examination, HMSO ISBN 0 11 321351 4, sets out the procedure to be followed for taking samples to enforce the law. All the samples that could be used for the purposes of prosecution, and those subjected to microbiological examination must be taken following the provisions of the code, particularly for certain specific foods: specimen certificates are provided to accompany the foodstuffs with recommendations on how to act when it is difficult to divide the samples into three parts;

(c) food hygiene inspection: the Food Safety Act Code of Practice No. 9: Food Hygiene Inspections, HMSO, 1991, ISBN 011 321467 7, establishes the frequency, and the type of inspections to be carried out, and the purpose of the visits to be made; food businesses are classified into 6 categories in order of risk (the first category must be visited every 60 months, and the high risk category of food businesses at least once every 6 months);

(d) technical inspections: the Food Safety Act 1990 Code of Practice No. 3; Inspection Procedures: General, HMSO, ISBN 0 11 321355 7, states that the inspections must be carried out in compliance with Community legislation and that the HACCP system established by the business must be periodically checked;

(e) failure to comply with current legislation: the various codes deal in particular with the inspection of suspect foodstuffs, and the administrative measures taken ("Code of Practice No. 4: Inspection, Detention and Seizure of Suspect Food", HMSO, ISBN 0 11 321350 6, "Code of Practice No. 5: The Use of Improvement Notices", HMSO, ISBN 0 11321352 2, "Code of Practice No. 6: Prohibition Procedures" HMSO, ISBN 0 11 321349 2); according to these codes the authorised officer may take various measures in the event of non-compliance with food hygiene legislation, ranging from a warning letter to the clos-ure of the establishment: cases are given for the issuance of an improvement notice and prohibition procedures, and when it becomes necessary to detain and/or confiscate products;

(f) enforcement of food standards: the Food Safety Act Code of Practice No. 8; Food Standards Inspections", HMSO, 1991, ISBN 0 11 321466 9, details the legal provisions governing quality, composition, labelling, presentation and publicity for foodstuffs and materials in contact with food. All the premises on which agricultural products are processed must be inspected at least once a year. Where food products are manufactured, inspections must take place at least once every two years, while premises where food products are only handled must be inspected at least once every five years. The authorities responsible for inspection must implement programmes based upon their estimate of the risk. As with hygiene, the purpose is to prevent infringements of food regulations. Where there is a risk that an infringement may take place, the inspection authorities must issue opinions and recommendations for changing the quality control system used by the food business.

2. CONTROL OF IMPORTED FOOD AND FOOD INTENDED FOR EXPORT

2.1 Food intended for export[217]

No special inspections exist for exported food unless the exporter requests them. The inspectors and veterinarians must ensure that a product intended to be marketed in an EEC country is manufactured and labelled in accordance with United Kingdom legislation or the legislation of the country of destination. They may inspect the products intended for export outside the Community. The local authorities must draw up a list of officers specifically authorised to enforce food standards.

2.2 Imported food

The control of imported food is the responsibility of the Port Health Inspectors. However there is also a specific system, the Home Authority, through which the local authorities of the place into which the products are imported or manufactured are made directly responsible for enforcing the law.

Imported food is subject to inspection but is generally admitted without an import licence. Food is detained if it is unfit for human consumption, and the product is presumed to be for human consumption until proof to the contrary is provided. Some agricultural products such as eggs are systematically sampled (for salmonella). In case of doubt, the authorised officer issues a Notice to the importer or the person in possession of the foodstuff, ordering him not to dispose of it until he receives authority from the court to do so. If the inspection shows that the foodstuff is of poor quality, the authorities in the country of origin must be informed.

Food imported by train or air is governed by a special system[218]. The same applies to imports and exports of fresh meats[219].

---

[217] The relevant instrument is the Food Safety (exports) Regulations, 1991, *Statutory Instruments* No. 1476.

[218] See Food Hygiene (General) Regulations, 1970, amended by Food Hygiene (Amendment) Regulations 1990", No. 1431, 1991.

[219] See Products of Animal Origin (Import and Export) Regulations, 1992, No. 3298, incorporating Community Directives 89/662 and 90/675 into British legislation.

2.3 **Codes of practice**

These are usually drawn up by the trade organisations, between the trade and the local authorities or in some cases by the Ministry of Agriculture, Fisheries and Food and the Department of Health and Social Security. They have no statutory force as such.

(a) The Codes drawn up by the Ministry of Food refer to certain specific products such as tea and coffee, salt and biscuits (Codes No. 10, 11 and 12).

(b) Codes drawn up by the Local Authorities Joint Advisory Committee Codes of Practices and trade associations, relate to such commodities as Norwegian crab products (Code No. 3) or canned beans in tomato sauce (Code No. 5).

(c) Food hygiene codes of practice are drawn up by the Minister of Agriculture, Fisheries and Food, to give advice and guidance to those responsible for complying with food hygiene regulations (poultry dressing and packing, hygiene in the bakery trade and industry).

(d) The Department of Trade has also produced codes for quality control: "Department of Trade, Code of Practical Guidance for Packers and Importers", No. 1, Fourth impression, 1986, "Department of Trade, Manual of Practical Guidance for Inspectors", issue No. 1, 1985.

2.4 **Certification marks**

Under current legislation[220], trade marks do not necessarily have to refer to the manufacturer, but may be used to show a commercial relationship between the products and the person entitled to use that mark.

Trade marks are registered with the Patent Office. After examination, the Patent Office publishes the application in the Trade Marks Journal and anyone interested has one month in which to object to the registration of the mark. The register is divided into two parts (A and B), while registration with either part and the protection provided for a mark in either part varies in degree; the criteria used is based upon the distinctive character of the mark to be registered: in order to be registered in part A, it must contain certain elements (the name of a company, individual or firm, an invented word or words, or some other distinctive mark) so that there is no doubt whatsoever as to its originality; if these elements do not appear, or if there is doubt regarding its originality, the mark is registered in part B, and may subsequently be transferred to part A.

The protection afforded to registered trade marks is initially for seven years, which may be renewed for a further 14 years. In the event of non-use for 5 consecutive years, it is deleted from the register unless the holder can prove that there had never been any intention to use it (in which case it is a "defensive" mark).

No-one can challenge the use of a trade mark registered in part A except in the case of fraud, while a challenge is possible if the mark is registered in part B. Furthermore, in the case of a forgery, the proprietor of a mark registered in part A may obtain a court injunction against the forger, however,

---

[220] See the Trade Marks Act, 1938, amended in 1988 (other amendments are expected in order to comply with Community legislation, particularly directive 89/104, *Official Journal of the European Communities* L 40 of 11 February 1989, which established a Community system for depositing and protecting trade marks.

no damages or interest can be claimed if the forger refrains from further infringments of the trade mark on being informed of the proprietor's rights. In the case of a mark registered in part B, the proprietor has exclusive right of use, but in the case of a forgery the proprietor has no relief available to him if the court establishes that the person infringing that mark had no intention to deceive. The Chancellery Division in the High Court of Justice has jurisdiction over disputes in this field.

It is also possible to institute proceedings to defend a trade mark that has not been deposited. This is known as a *passing-off* action (see also Appellation of origin) which makes it possible to sue a producer or trader who deliberately seeks to pass-off products as being quality products when they are not, in a manner that harms the good reputation of another[221]. Furthermore, it is unlawful for trade marks to mislead the public into believing that a product possesses a particular quality (except when the reference is indirect) or that it comes from a particular well-known geographical place.

Trade associations may register a trade mark for the products they certify. In this case they enjoy rights equivalent to those of the proprietor of an ordinary trade mark. The certification mark, which is similar to a collective mark, is used to distinguish products certified in terms of their origin, method of manufacture, specific quality, from other products of the same type sold in the trade. This mark must be entered in part A of the register. The trade association may authorise its members to use the registered trade mark, but it may impose certain conditions (specifications) and may require that it be used only for products indicated in the registration certificate; this is the case with the Food From Britain mark, which is based upon the certification schedules (drafted between trade associations) combining quality standards dealing with processing, manufacture or origin conditions, and quality assurance rules (Scottish salmon is one example of this).

While the general provisions of law apply to trade marks, public policy issues come under the Board of Trade, particularly in relation to the following questions: can a proprietor of a trade mark certify his own foodstuffs? is trade mark registration in the public interest? are the rules governing the use of the trade mark satisfactory?

Anyone requesting the registration of a certification mark must also provide a copy of the rules governing the use of that mark. The Board of Trade may subsequently revoke acceptance of the registration in the event of failure to comply with the regulations. However, there is no routine control of certification marks.

British law applies to foreign nationals of countries that have ratified international conventions to which the United Kingdom is a signatory State.

---

[221] See the Champagne Heidsiek et Cie. v. Scotto case in Bishop (1926; 43 RPC 101): the French producer obtained relief from the court establishing that the quality of English champagne was not the same as French champagne, and that the use of the same name for two products of a different quality damaged the original producer.

BIBLIOGRAPHY

Baibier J-L. "Evolution de la politique française en faveur des produits agro-alimentaires de qualité", Revue de droit rural, No. 196, October 1991.

Bigwood L. & Gérard A. "Objectifs et principes fondamentaux d'un droit comparé de l'alimentation", Vol. 4, Bâle, S. Karger.

Boucourechliev J. "Usages commerciaux, usages professionnels, élaboration et formulation", in "Dix ans de droit de l'entreprise", Litec, 1978.

Brouwer 0. "Community protection of geographical indications and specific character as a means of enhancing foodstuff quality", in "Common Market Law Review", No. 28, 1991.

Brykman L. "The Single Market technical standards and certification, insiders-outsiders and global competition", Journal of Development and Planning, No. 22, 1992.

Burke R.B. & Smith B.L. "Import/Export control: new approaches to considering import/export requirements under national food control systems" FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, Rome, 18-27 March 1991, ALICOM 91/18.

Carbonnier J. "Introduction au droit civil", Thémis, PUF.

Castang Ch. "Principes généraux du contrôle alimentaire - Bilan et perspectives communautaires", in "Colloque sur le droit alimentaire: trente ans de droit alimentaire dans la Communauté", AEDA, 1991.

Charles-Le Bihan & Gadbin D. "Achèvement du marché intérieur dans les filières agro-alimentaires mutation du droit national", Revue de droit rural, No. 201, March 1992.

Creyssel P. "Agro-alimentaire: pour une stratégie de normalisation", Revue Enjeu, from No. 113, February 1991.

Denis D. "La vigne et le vin: régime juridique", Immobilier droit et gestion, Ed. Sirey 1989.

Devolve P. "L'acte administratif", Ed. Sirey 1986, No. 12 and following.

J. Dupichot & E. du Pontavice ; "Traité de droit commercial", Thémis, PUF.

Feral F. & Beaufort D. "Les signes de qualité en France à la veille du grand marché communautaire et à la lumière d'autres systèmes", Les cahiers du Cervac, October 1989.

Fies M.	" La qualité aux mains des entreprises", Ria No. 500, May 1993.
Fourgeoux J.C.	"Normalisation et obligation de sécurité", in "Colloque sécurité des consommateurs et responsabilité du fait des produits défectueux", LGDJ, 1987.
Genevray R.	"Un système d'assurance de la qualité: est-ce une nécessité pour tous?", Qualité magazine, No. 17, 1990.
Gérard A.	"Droit de l'alimentation et produits nouveaux - Les aspects législatifs" Alimentex, special issue, December 1991.
Geslain T.	"Les signes de qualité en Europe", Option qualité, No. 105, April 1993.
Goldman B.	"Droit commercial européen", Dalloz, Paris, 1988.
Herschdoerfer, S.M.	Quality control in the food industry, London, Academic Press Inc. 3 vols.
Homardinquer J-F.	"Pour une histoire de l'alimentation", Cahier des annales, No. 28, A. Colin, Paris, 1990.
Isaac G.	"Droit communautaire général, Coll. Masson.
Jouve J-L.	"Le HACCP et l'assurance de la qualité des denrées alimentaires", Option qualité, No. 90, December 1991.
Jouve J-L.	"HACCP et systèmes de qualité (ISO 9000)", Option qualité, No. 97, July 1992.
Jouve J-L. & Ph.	"La méthode HACCP: contexte et principes d'utilisation", Rohmer CTCPA/CT, infos 1, 1992.
Juran J-M, Gryma F.M. & Bingham R.S.	"Quality control for the food industry", McGraw Hill Book Company, 1979.
Kidiku M.A.	"Normes alimentaires - Evaluation des prescriptions essentielles et des critères de qualité acceptables inclus dans les normes Codex", ALICOM 91/8.
Le Tourneau Ph.	"Les professionnels ont-ils du coeur", Dalloz 1990-Chr, p. 22
Malik R.K.	"Import/Export Control: identification of major problems in food import/export control affecting international trade in food", FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, Rome, 18-27 March 1991, ALICOM 91/15.
Mattera A.	"Le marché unique européen", Coll, Jupiter.

Mcmillan C.W. "Food standards and the control of chemical in food - their impact on international trade", FAO/WHO Conference on food standards, chemicals in food and food trade, ALICOM 91/2.

Mainguy P. "La qualité dans le domaine agro-alimentaire", Report produced at the request of the French Minister of Agriculture and Forests, and the Secretary of State for Consumer Affairs.

Mihaïlov J. "La normalisation en tant qu'instrument de la sécurité des consommateurs", in "Colloque sécurité des consommateurs et responsabilité du fait des produits défectueux", LGDJ, 1987.

Mihaïlov J. "Normes européennes et droit national", Enjeu, No. 87.

Moderne F. "Remarques sur le concept d'acte administratif dans ses relations avec les notions de personne privée et de service à gestion privée", AJDA, 1975-4.

Morales E. "Problems faced by Latin American and Caribbean Countries in the import and export of food products", in "FAO/WHO joint workshops on health and food standardization, and export food in Latin America and the Caribbean", 89287403, ESN/89.

Multon J-L. & Davenas J. "Qu'est-ce que la qualité d'un produit alimentaire et quels en sont les opérateurs?", in "La qualité des produits alimentaires", Coll. Sciences et techniques Agro-Alimentaire, Apria.

Murray R.H. "National and International Standards", in "Quality control in the food industry", Vol. 1, 2nd, Ed. Herschdoerfer.

Nguyen-Bourgeais D. "Normalisation", Juris-classeur concurrence consommation, 1990, fascicule 870, No. 60.

Penneau A. "Règles de l'art et normes techniques", LGDJ, No. 94, 1989.

Pierre 0., Goutel A-M. & Viet P. "Les outils de maîtrise de la qualité et leur prise en compte dans les contrôles de la DGCCRF", Revue concurrence et consommation, 1990, No. 57.

Ronk R.J. & Dodgen D. "Food Standards: an overall strategy for common requirements applicable to all foods", FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, *op. cit.,* ALICOM 91/6.

Schaeffer B. & Viet P. "La direction de la consommation et de la répression des fraudes, et le contrôle de la qualité des aliments", in "La qualité des produits agro-alimentaires, politique, incitations, gestion et contrôle", Apria.

Théry R. "Les associations à monopole: Pourquoi?, Dr. Social, 971-87.

Vivez S. "Les appellations d'origine - Législation et jurisprudence actuelle", Doctoral Thesis in jurisprudence, Bordeaux, 1932.

Waleffe P. "Les classiques de la table", Jean Biron SA, Lausanne, 1967.

Winamo F.G. "Food Standards: approaches to harmonization of critical requirements during production and processing", FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade, Rome, 18-27 March 1991, ALICOM 91/7.

"Appellations d'origine", Lamy Production-Distribution Consommation, February 1993.

"Avis du Comité de coordination du Codex pour l'Amérique Latine et les Caraïbes (CCLAC)", ALINORM 91/36.

"Accord du GATT 1991 relatif aux obstacles techniques au commerce", par le Comité du Codex sur les systèmes d'inspection et de certification des importations et des exportations alimentaires, 21-26 September 1992, CX/FICS 92/5.

"Les avis techniques et l'assurance de la qualité", interview de Dawint, in Revue technique Apave No. 252 - 1990.

Commission européenne, DG 10, "De l'agriculteur au consommateur", Europe verte, No. CCAK 90002 FRC.

European Community Food Law Revue, Agra Europe (London) Ltd.

"Echanges extérieurs et Etats associés "Les accords du GATT" in "Les relations internationales de la Communauté", Dictionnaire du marché commun, 1989.

"International standards for quality management", ISO 9000.

"La normalisation", Lamy droit économique, 1992.

"Le contrôle de la qualité", Lamy droit économique, 1992.

"Le droit des nonnes professionnelles et techniques", Meeting of 16-17 November 1983, Liège University, Ed. Brylant, 1985.

"The law of contracts", Vol. 1, General principles, London, Sweet and Maxwell, 1983, 35th edition, No. 855.856.

FAO Publications

"Guidelines for developing an effective national food control system", FAO/WHO Food Control Series No. 1.

A. Gérard "An outline of food law", Legislative Study No. 7, 1975.

L. González Vaqué " Pesticide Labelling Legislation", Legislative Study No. 43, 1988.

L. Bombín, "Plant Protection Legislation", Legislative Study No. 28, 1983.

"Manual of Food Quality Control", first revision, 1990.

Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, Twentieth Session, Geneva, 28 June-7 July 1993, ALINORM 93/40.

"Report of the FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade", Rome, 18-27 March 1991.

FAO TECHNICAL PAPERS

FAO LEGISLATIVE STUDIES

1 Wildlife and national park legislation in Asia, 1971 (E*)
2 Wildlife and national park legislation in Latin America, 1971 (E* S*)
3 Vicuña conservation legislation, 1971 (E* S*)
4 Legal systems for environment protection: Japan, Sweden, United States, 1972 (E*)
5 Agrarian law and judicial systems, 1975 (E F S*)
6 Agricultural credit legislation in selected developing countries, 1974 (E)
7 An outline of food law, 1975 (E F S)
8 Legislación de aguas en América Central, Caribe y México - Vol. I, 1975 (S)
9 A legal and institutional framework for natural resources management, 1975 (E S)
10 Water law in selected European countries (Belgium, England and Wales, France, Israel, Italy, Spain, Turkey) - Vol. I, 1975 (E F S)
11 Fundamentos teóricos para una legislación tributaría en el sector agropecuario, 1975 (S)
12 International food standards and national laws, 1976 (E/F*)
13 Derecho agrario y desarrollo agrícola: estado actual y perspectivas en América Latina, 1976 (S)
14 Legal and institutional responses to growing water demand, 1977 (E F S)
15 Systematic index of international water resources treaties, declarations, acts and cases by basin - Vol. I, 1978 (E/F/S)
16 Seed legislation, 1980 (E F S)
17 Water law in selected African countries, 1979 (E F S)
18 Reforma agraria y desarrollo rural integrado, 1979 (S)
19 Water legislation in South American countries, 1983 (E F S)
20 Legislation on wildlife, hunting and protected areas in some European countries, 1980 (E F S)
21 Legislation on coastal state requirements for foreign fishing, 1981 (E)
21 Rev. 1 Coastal state requirements for foreign fishing, 1983 (EFS)
21 Rev. 2 Coastal state requirements for foreign fishing, 1985 (ES)
21 Rev. 3 Coastal state requirements for foreign fishing, 1988 (EFS)
21 Rev. 4 Coastal state requirements for foreign fishing, 1993 (E)
22 Agricultural insurance legislation, 1981 (E S)
23 The law of international water resources, 1980 (EFS)
24 Irrigation users' organizations in the legislation and administration of certain Latin American countries, 1983 (E S)
25 Legislation on wildlife and protected areas in Africa, 1984 (E F)
26 The UN Convention on the Law of the Sea: impacts on tuna regulation, 1982 (E F)
27 Regional compendium of fisheries legislation - West Africa (CECAF Region), 1983 (E/F*)
28 Plant protection legislation, 1984 (E F S)
29 Legislation on foods for infants and small children, 1983 (E*)
30 Water law in selected European countries (Cyprus, Finland, the Netherlands, Union of Soviet Socialist Republics, Yugoslavia) -Vol. II, 1983 (E)
31 The role of legislation in land use planning for developing countries, 1985 (E)
32 Agricultural census legislation, 1984 (E)
33 Legislation on productivity in agriculture: a comparative outline, 1985 (E F S)
34 Systematic index of international water resources treaties, declarations, acts and cases by basin - Vol. Il, 1984 (E/F/S)
35 Regional compendium of fisheries legislation (Western Pacific Region) -Vols. I and II, 1984 (E)
36 Legislation controlling the international beef and veal trade, 1985 (EFS)
37 La législation forestière au Cap-Vert, en Ethiopie, en Gambie, au Mali et en Mauritanie, au Niger, au Rwanda et au Sénégal, 1986 (F)
38 The environmental impact of economic incentives for agricultural production: a comparative law study, 1990 (EFS)
39 Propiedad, tenencia y redistribución de tierras en la legislación de América Central y México, 1986 (S)
40 International groundwater resources law, 1986 (EFS)
41 Land tenure systems and forest policy, 1987 (E F)
42 Regional compendium of fisheries legislation (Indian Ocean Region) -Vols. I and II, 1987 (E)
43 Pesticide labelling legislation, 1988 (E F S)
44 La réforme du droit de la terre dans certains pays d'Afrique francophone, 1987 (F)
45 Legal aspects of international joint ventures in agriculture, 1990 (E)
46 The freshwater-maritime interface: legal and institutional aspects, 1990 (E)
47 The regulation of driftnet fishing on the high seas: legal issues, 1991 (E F)
48 Les périmètres irrigués en droit comparé africain (Madagascar, Maroc, Niger, Sénégal, Tunisie), 1992 (F)
49 Analyse préliminaire de certains textes législatifs régissant l'aquaculture, 1993 (F S)
50 Treaties concerning the non-navigational uses of international watercourses -Europe, 1993 (E/F/S)
51 Pesticide registration legislation, 1995 (E F)
52 Preparing national regulations for water resources management, 1994 (E)
53 Evaluation des impacts sur l'environnement pour un développement rural durable: étude juridique, 1994(F)
54 Legislation governing food control and quality certification -Authorities and producers, 1995 (E F)

Availability: August 1995

Ar	-	Arabic	Multil	-	Multilingual
C	-	Chinese	*		Out of print
E	-	English	**		In preparation
F	-	French			
P	-	Portuguese			
S	-	Spanish			

The FAO Technical Papers are available through the authorized FAO Sales Agents or directly from Distribution and Sales Section, FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy.