REGULATIONS ON THE MONITORING OF THE USE OF RECOGNIZED RESERVED DESIGNATIONS AND ADDED-VALUE CLAIMS

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1. Preamble

Reserved designation food products, whether fresh or processed, belong to the value-added product market. Products with high added values are subject to fundamentally different market rules compared with mass-produced products. To respond to the specific characteristics of the demand, production is usually tightly controlled and must comply with precise specification manuals in order to justify, to the consumers, their added market value.

Once placed on sale, therefore, these foods have the following shared characteristics: their labels contain allegations or claims that in the eyes of certain consumers confer added value on the products.

For food production companies, this consumer segment represents a potentially lucrative market, providing them with numerous opportunities to increase their sales and profits. In return, these consumers have the right to demand authentic products.

For this reason, the Québec government passed in 1996 the *Act Respecting Reserved Designations* (A20.02). In 2008, this Act was replaced by the *Act Respecting Reserved Designations and Added-Value Claims* (A20.03). It aims at protecting the authenticity of products, and of terms used to identify and promote them, through product certification based on origin or on special characteristics associated with a method of production or specificity. Another objective of this legislation is to monitor the use of these recognized designations and authorized added-value claims in order to meet the obligations that result from the Act.

Section 9, paragraph 5 of the *Act Respecting Reserved Designations and Added-Value Claims* assigns to the Conseil des appellations réservées et des termes valorisants (CARTV) the responsibility of supervising the use of reserved designations. Section 69 of the Act also assigns it the power to institute proceedings against anyone who uses a reserved designation for products that are not certified by an approved certification body.

The CARTV has a Supervisory Committee whose mission is to monitor the use of recognized reserved designations or authorized added-value claims and to recommend to the Board any appropriate actions that may prevent the illegal use of these designations.

Section 63 of the *Act Respecting Reserved Designations and Added-Value Claims* stipulates that: “a person may not use a recognized reserved designation or authorized added-value claim on a product, its packaging or its labelling, in advertising or commercial documents or in the presentation of a product unless the person is registered with an accredited certification body and the product is certified by such a body as compliant with the applicable specification manual or regulation.

A person to whom a specification manual or a regulation authorizing an added-value

claim applies or whose activities are regulated by such a manual or regulation and who contravenes the first paragraph is guilty of an offence and is liable to the fines set out in section 68".

According to its resolution passed on June 13, 2002, the Board reserves the right to mandate Québec's Attorney General to initiate any penal proceedings resulting from offences under section 21 of the Act instead of institute itself proceedings under the terms of Section 69.

2. Purpose and scope

Through these internal regulations, the CARTV describes the supervision program it has set up as well as its objectives and procedures.

This program aims to protect consumers against the fraudulent and unauthorized use of all reserved designations, through controlling their use and suppressing any illicit use of a reserved designation. Its goal is to:

- ensure compliance with section 63 of the *Act Respecting Reserved Designations and Added-Value Claims*;
- set up a procedural framework aimed at preventing the illegal use of reserved designations;
- correct any instances of non-compliance with the Act.

3. Definitions

In these documents, "Board" refers to the organization's decision-making authority. "CARTV" refers to the organization that exercises the supervision.

4. Structure of the Supervision Program

4.1 The Supervision Program consists of a two-tier structure based on the sharing of responsibilities between the CARTV and the accredited certification bodies:

- Complaints pertaining to reserved designation products from companies holding compliance certificates are processed by the accredited certification bodies that certified the particular products.

- The CARTV processes all other investigation requests, including complaints that have not been satisfactorily settled by an accredited certification body. When a certification body has not properly handled a complaint, the file will be referred back to the CARTV's Accreditation Committee, which is responsible for ensuring that bodies comply with the standards and criteria stipulated in the Board's reference manual.

4.2 To facilitate the CARTV's investigative work, accredited certifiers must draft a list of products certified by operators affiliated with them, and this list must be submitted every three months.

4.3 Whenever required, each accredited certification body must submit a report to the CARTV that deals with the complaints that are currently being processed.

5. Supervision Program Coordinator

5.1 The CARTV's President and Chief Executive Officer appoints among the organization's personnel a Coordinator for the Reserved Designation Supervision Program.

5.2 The Supervision Program Coordinator acts as secretary to the Supervisory Committee, whose mission is to supervise the use of reserved designations and recommend any appropriate actions to the CARTV in order to prevent the illegal use of these designations. On behalf of the Supervisory Committee, the Supervision Program Coordinator handles reserved designation intervention requests.

5.3 The Supervision Program Coordinator determines the powers of staff members placed at his or her disposal and oversees their work. The Coordinator may delegate, in writing, the powers that are to be exercised, upon approval by the CARTV's President and Chief Executive Officer.

5.4 The coordinator may, in writing, entrust a person, who is not a regular staff member of the organization, with the mandate to carry out an investigation and to submit a report within a timeframe determined by the Coordinator.

6. Administrative requirements

6.1 The Reserved Designation Supervision Program Coordinator must be given access to the financial, human and material resources necessary to operate the program.

6.2 Documentation must include an organization plan for the body assigned to administer the program, including a description of the roles and responsibilities of each party or stakeholders in the system.

6.3 The CARTV's chair and executive director must ensure that staff assigned to this program, including the coordinator, possess the required skills to accomplish their work and that they are provided with task descriptions. The communication systems as well as the systems used to record and analyze data must meet requirements regarding these tasks.

7. Procedures intended to prevent illegal use of designations

7.1 The Supervisory Committee shall develop and recommend to the Board the suitable means and proceedings to prevent the illegal use of designations reserved by the Minister.

7.2 The means and proceedings recommended to the Board are outlined in the *Policy on Measures Designed to Prevent the Unlawful Use of Reserved Designations* (SU2PL1001), must include:

a) Detection system(s) for non-compliant products;
b) Processing of non-compliant cases;
c) Intervention steps for processing files;
d) Penal proceedings;
e) Closing of files.

7.3 The Supervision Program Coordinator consults a quality manual that outlines procedures and instructions pertaining to the application of the above-mentioned Policy.

7.4 These overall means of intervention are to be applied by the CARTV in an equitable and impartial way.

8. Intervention requests set out in the Supervision Program

8.1 The Supervision Program Coordinator may respond to three different types of intervention requests:

a) requests for assistance;
b) requests for information;
c) requests for investigation.

8.2 Requests for assistance involve interventions in the form of advice aimed at redirecting requests or complaints that fall outside the program's jurisdiction, reframing premature requests for examination, responding to requests for consultation (application of the Act, conducting examinations, admissibility of complaints, etc.).

8.3 Requests for information are especially aimed at providing information about the Act, regarding what it permits and does not permit. This type of request includes very few explanations, as opposed to requests for assistance. They usually come from the general public.

8.4 Requests for investigation result from systems set up by the CARTV for detection of non-compliant products. These requests are processed in accordance with a systematic procedure in which persons or firms reporting

non-compliances are assured of complete confidentiality.

9. Scope of intervention

9.1 The intervention must, above all else, aim to rectify the problem addressed in the complaint. Two types of non-compliance may be reported: the first concerns certified products whose labelling does not meet the requirements of the certification reference manual; the second type of non-compliance pertains to non-certified products in direct violation of the Act.

9.2 The processing of every investigation request applies to the overall communication tools used by those individual or corporate entities towards whom the complaint is directed, even if the plaintiff has indicated only one non-compliant item (e.g. poster).

9.3 Similarly, processing an investigation request involving one specific product (for example, the labelling on a soy drink) must cover similar products bearing the same brand name (regardless of format and flavour).

9.4 Moreover, the CARTV must ask the entities targeted by an investigation request to correct all obvious incidences of non-compliance that are noted during the investigation.

10. Temporary exemptions

10.1 When the Minister recognizes a reserved designation, the Board shall adopt, if necessary, a stream of commerce policy enabling the CARTV to tolerate under clear conditions and during a certain period, the sale of non-certified products bearing the designation that is from now on reserved.

10.2 The policy on measures to prevent the unlawful use of designation (SU2PL1001) shall include provisions for the granting of temporary exemptions to businesses whose product is marketed on the Québec territory but whose products have been certified by a CARTV's accredited or recognized body but whose information concerning the labels' reserved designation does not meet the requirements of the applicable reference manual. In order to be granted temporary exemption, businesses that sell the said products shall submit exemption requests, with the following required information:

- Name of product
- Trademark
- Name of supplier
- UPC or PLU codes
- Date of sampling
- Name of certifier (when the product is certified)

- Problem related to labelling

10.3 While waiting for its label to become compliant, the product placed on the *CARTV's Temporary Exemption of Products Register* may be marketed until the prescribed expiration date. After this date, labels of all products marketed by the company to which an exemption was granted must be compliant.

10.4 Each exemption request submitted to the CARTV is subject to administration fees, unless it pertains to an exempted product. These fees must be paid in full at the time of the request. Appendix A of these regulations contains the fee scale.

11. Reports submitted by the Supervisory Committee to the Board

11.1 Once a year and each time requested, the Supervisory Committee must submit a report to the Board covering any procedings carried out to prevent the illegal use of designations.

11.2 This report describes:

a) The number of investigation requests received, rejected upon summary examination, examined, refused or abandoned since the last report;
b) Motives for investigation requests;
c) Follow-up pursuant to their examination.

11.3 In drafting this report and whenever it deems necessary, the Supervisory Committee may also express its opinion on the following issues:

a) The degree of plaintiff satisfaction within the framework of respecting Section 63 of the *Act Respecting Reserved Designations and Added-Value Claims*;
b) All other issues related to respecting Section 63 and the motives for which investigations were carried out;
c) Any changes needed in procedures in order to prevent the illegal use of designations.

12. Program audits

12.1 Once in place, the Reserved Designation Supervision Program is subjected to an internal audit at least once a year to ensure that its principles and objectives have been respected.

12.2 The program may also be subjected to an independent evaluation, should the Board of Directors deem it appropriate.

13. Program amendments

The Board may make amendments to the regulations, and it may do so at any time, either by its own initiative or in response to recommendations made under an audit exercise, as mentioned in the previous point.

END OF REGULATIONS