

Brussels, 18th June 2003

Commission of the European
Communities
Attn: Secretary General
Rue de la Loi 200
B – 1049 Brussels

Dear Sir or Madam,

Please find here enclosed the official CIAA complaint to the EU Commission against the Danish Regulation on transfatty acids in oils and fats.

CIAA would like to thank you for the attention that you will give to our comments.

I remain at your disposal to provide any additional information.

Yours sincerely,



**COMPLAINT
TO THE COMMISSION OF THE EUROPEAN COMMUNITIES CONCERNING
FAILURE TO COMPLY WITH COMMUNITY LAW**

SG (2003) A/5867
19. 06. 2003

1. Surname and forename of complainant:
Confederation of the Food & Drink Industries of the EU (CIAA)
2. Where appropriate, represented by:
/
3. Nationality:
/
4. Address or Registered Office
Avenue des Arts 43 – 1040 Brussels – Belgium
5. Telephone/fax/e-mail address:
T + [REDACTED] Fax [REDACTED]
e-mail : claa@claa.be
6. Field and place(s) of activity:
The food and drink industry contributes to the development of a European and international regulatory and economic framework addressing industry's competitiveness, food quality and safety, consumer protection and respect for the environment. The CIAA's permanent secretariat is based in Brussels.
7. Member State or public body alleged by the complainant not to have complied with Community law:
Denmark with regard to the proposed Regulation on Transfatty acids in oils and fats.
8. Fullest possible account of facts giving rise to complaint :

Barrier to trade

The regulation is in breach of the EU rules on free movement of goods because it restricts the import of food products into Denmark thus creating a barrier to trade within the Single Market which can not be justified for reasons of consumer health protection.

In any event, Member States considering the unilateral introduction of a new law are required to show that it is proportionate and minimally affects intra-Community trade. The Danish proposal breaches both these requirements.

Moreover it is inappropriate for Denmark to be contemplating limits on TFAs when the Commission is reviewing the Directive on Nutrition Labelling and is also trying to decide the way forward on nutrition claims.

Mutual Recognition

The proposal states that Denmark has the right to export those products which do not comply with the proposal. It would accordingly forbid the free circulation of food products lawfully produced in other Member States but which contain levels of TFA exceeding those laid down in the proposal, while permitting non-compliant products to be exported. It thus positively discriminates against imported products and in favour of Danish exports.

Disproportionality

The Danish proposal cannot be justified on the grounds of health or consumers protection for the following reasons. It is illogical in seeking to regulate TFAs as a percentage of fat content. For example, Product A, a low fat product which, for technical reasons, might need a high proportion of that fat to be in the form of TFAs, would be outlawed; whereas Product B with total fat present in greater quantities but with a lower percentage of TFAs would be permitted. Yet the total quantity of TFAs in a normal serving could well be higher in Product B than in Product A. There is **lack of proportionality**.

9. As far as possible, specify the provisions of Community law (treaties, regulations, directives, decisions, etc.) which the complainant considers to have been infringed by the Member State concerned:

See comments under point 8.

10. Where appropriate, mention the involvement of a Community funding scheme (with references if possible- from which the Member State concerned benefits or stands to benefit, in relation to the facts giving rise to the complaint:

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11. Details of any approaches already made to the Commission's services (if possible, attach copies of correspondence):

CIAA letter to DG Enterprise addressing specific and detailed comments on the Danish regulation (see copy attached)

12. Details of any approaches already made to other Community bodies or authorities (e.g. European Parliament Committee on Petitions, European Ombudsman). If possible, give the reference assigned to the complainant's approach by the body concerned:

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13. Approaches already made to national authorities, whether central, regional or local (if possible, attach copies of correspondence) :

- 13.1 Administrative approaches (e.g. complaint to the relevant national administrative authorities, whether central, regional or local, and/or to a national or regional ombudsman):

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- 13.2 Recourse to national courts or other procedures (e.g. arbitration or conciliation). (State whether there has already been a decision or award and attach a copy if appropriate):

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14. Specify any documents or evidence which may be submitted in support of the complaint, including the national measures concerned (attach copies):

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15. Confidentiality (tick one box):

"I authorise the Commission to disclose my identity in its contacts with the authorities of the Member State against which the complaint is made".

16. Place, date and signature of complainant/representative:

Brussels, 18th June 2003





Confédération des industries agro-alimentaires de l'UE
Confederation of the food and drink industries of the EU

Brussels, 18th June 2003

CIAA Comments on the Danish Regulation on Transfatty Acids in Oils and Fats

The Confederation of the food and drink industry of the EU, CIAA, would like to comment on the Danish regulation on transfatty acids (TFAs) in oils and fats.

CIAA wishes to react specifically on the following:

Barrier to trade

This proposed regulation would be in breach of the EU rules on free movement of goods because it would restrict the import of food products into Denmark thus creating a barrier to trade within the Single Market which could not be justified for reasons of consumer health protection.

In any event, Member States considering the unilateral introduction of a new law are required to show that it is proportionate and minimally affects intra-Community trade. The Danish proposal breaches both these requirements.

Moreover it is inappropriate for Denmark to be contemplating limits on TFAs when the Commission is reviewing the Directive on Nutrition Labelling and is also trying to decide the way forward on nutrition claims.

Mutual Recognition

A further issue at stake is that the proposal is applicable to imported products and does not contain a mutual recognition clause.

The proposal also states that Denmark has the right to export those products which do not comply with the proposal. It would accordingly forbid the free circulation of food products lawfully produced in other Member states but which contain levels of TFA exceeding those laid down in the proposal, while permitting non-compliant products to be exported. It thus positively discriminates against imported products and in favour of Danish exports.

Regulation TFAs as a percentage of fat content

The Danish proposal cannot be justified on the grounds of health or consumers protection for the following reasons. It is illogical in seeking to regulate TFAs as a percentage of fat content. For example, Product A, a low fat product which, for technical reasons, might need a high proportion of that fat to be in the form of TFAs, would be outlawed; whereas Product B with total fat present in greater quantities but with a lower percentage of TFAs would be permitted. Yet the total quantity of TFAs in a normal serving could well be higher in Product B than in Product A.

There is lack of proportionality

Levels

Overall intake of TFAs are well below levels that would give rise concern, especially where concerned products (e.g. confectionery products, etc.) are consumed as part of a balanced diet.

Optimization of hydrogenation processes produces fewer TFAs, and work in companies on recipe re-formulation has already minimised the amount of TFAs in products.

The proposed Danish legislation is therefore unnecessary; and in seeking to reduce TFAs levels to below those that are economic or currently technically feasible the Danish proposals would restrict consumers' right to choose a range of foods that are both pleasurable and nutritional.

These limits do not appear to be justified on grounds of food safety.

Moreover, there are no other Member States where such general limits are required for foodstuffs.

Analytical methodology

It would be difficult, if not impossible, to enforce the proposed Danish legislation since current analytical methods are unable to determine quantitatively the TFAs resulting from hydrogenation as opposed to those naturally present.

Punishment

It is totally unreasonable and disproportionate that if a product does not comply with this order, then actual fines may be levied, with a threat of imprisonment of up to 2 years.

Final Conclusion

In conclusion the CIAA view on the Danish regulation is:

- It would create potential barriers to trade as there would be prohibitions or restriction on exports to the Danish market.
- It is an unnecessary regulation that will not have any benefit for the consumer and will not have impact on food safety.
- The proposed measure is disproportionate and raises potential barriers, particularly since it does not acknowledge the principle of mutual recognition.
- The proposed measure is not enforceable because industrial TFAs can not be distinguished from natural TFAs.
- Labelling provides the consumers with the relevant information and is therefore a sufficient measure, in proportion to the intended goal.

On the basis of the points above we would ask you to request clarification and/or amendment to the Danish proposal.