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Date: 04/03/2013

GAIN Report Number: CA13018

Canada

Post: Ottawa

CFIA Consults on Inspection Modernization and Sets the Stage for Future Food Regulations

Report Categories:

Policy and Program Announcements

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Report Highlights:

The Canadian Food Inspection Agency consults with the public until May 21, 2013 on the Revised Draft Inspection Modernization Model. With this proposed Model, CFIA presents its views on what the future food regulations would cover, to be developed under the Safe Food for Canadians Act. Envisaged import licensing requirements may pose a serious challenge for U.S. exporting companies currently operating as "non-resident importers" in Canada.

The Revised Draft Improved Food Inspection Model

The Canadian Food Inspection Agency (CFIA) launched public consultations on its Revised Draft Food Inspection Model. Interested parties have until **May 21, 2013** to respond. Please use the link below to learn how to get involved in the consultation process:

<http://inspection.sondages-surveys.ca/surveys/CFIA-ACIA/copy-draft-improved-food-inspection-model-consul-1/?l=en>

This is a new and final round of consultations launched by CFIA on inspection modernization, after having gone through the comments submitted during the previous consultation process in 2012, and having updated the proposed Model. While the key concepts of the Model remain the same, this Revised Draft provides additional details on:

- Import licensing
- Preventive control Plans
- Determination of the level of oversight and frequency of inspection based on risk
- Framework for compliance and enforcement.

U.S. companies are strongly encouraged to get involved in the consultation process and let CFIA know their views on the proposed Inspection Model. For instance, one of the proposed requirements is for CFIA to license all importers of food into Canada. A condition attached to this import license is Canadian residency. If this condition were adopted, it would pose a serious challenge to the thousands of U.S. companies that export food products to Canada as "non-resident importers."

The proposed Food Inspection Model is CFIA's first step in modernizing and strengthening the food safety system in Canada. The Model sets the stage for the second step, which will be the development of new food regulations under the Safe Food for Canadians Act (SFCA). It is important to get involved in this process as early as possible, before CFIA moves to develop the regulatory framework.

The Inspection Model and the future food regulations under SFCA complement each other. The following sections of this report detail what can be expected in terms of new food regulations and the timeline for the next steps.

Safe Food for Canadians Act and Related Regulations

One of the most important initiatives undertaken by the Canadian Food Inspection Agency (CFIA) in recent years was the development of the [Safe Food for Canadians Act](#) (SFCA). This legislation was designed to modernize and strengthen the food safety system in Canada. The following provides an overview of the regulatory changes that are expected to occur over the next couple years, and the various consultative processes that will accompany the development of these regulations.

The SFCA passed the Canadian Parliament and received royal assent in November, 2012. Although the adoption of this Act created a wave of excitement last fall, the Act is not yet in force. The tremendous work of developing regulations only now begins, and the SFCA will be brought into force once the necessary new regulatory framework is developed.

Currently, various foods are regulated in Canada by the following acts and regulations:

1. Food and Drugs Act (as it relates to food) and its regulations
2. Canada Agricultural Products Act (CAPA) and its regulations covering the following:
 - a. Dairy Products
 - b. Eggs
 - c. Fresh Fruit and Vegetable
 - d. Honey
 - e. Licensing and Arbitration
 - f. Livestock and Poultry Carcass Grading
 - g. Organic Products
 - h. Maple Products
 - i. Processed Egg
 - j. Processed Products
3. Meat Inspection Act (MIA) with its Meat Regulations
4. Fish Inspection Act (FIA) with its Fish Regulations
5. Consumer Packaging and Labeling Act (CPLA, as it relates to food) and its regulations.

When brought into force, the SFCA will consolidate food provisions which are now administered and enforced under four of the five Acts listed above: only the Food and Drugs Act will continue to exist separately.

Once developed and approved under the SFCA, the new "Food Regulations" will replace most of the regulations listed under CAPA, MIA, FIA and CPLA. In addition, the Imported Food Sector Product Regulations (IFSPR, which is the topic of the last section in this Report) will also be replaced by the new "Food Regulations." Thus, twelve existing regulations will be merged into one.

Reportedly, the Organic Products Regulations will remain as standalone regulations, and will be incorporated as such under the SFCA. FAS/Ottawa was told that the existing regulations under CPLA will also be incorporated as such under the future "Food Regulations," without undergoing any changes.

To summarize, in the future, there will be one Act (SFCA) with two regulations: a new one on "Food" in general, yet to be developed, and one on Organic Products which is the existing regulation that will be incorporated under SFCA. In the development of the new "Food Regulations," it is likely that provisions under the existing eleven regulations will change, while provisions of one of the existing regulations – the one under CPLA – will be incorporated without change. The provisions of a future regulation, yet to be developed (IFSPR), will also be folded under the mega "Food Regulations."

With respect to the process CFIA will follow in developing the new "Food Regulations," FAS/Ottawa anticipates the following:

- Step 1: in Spring 2013, CFIA will issue a "comprehensive discussion paper" outlining major policy lines and conceptual ideas related to the new food safety regulatory environment.
- Step 2: in Summer 2013, CFIA will initiate pre-consultations with stakeholders.
- Step 3: Early 2014, CFIA will publish a "notice of intent" in Canada Gazette which will launch a formal consultation process with the public on "Food Regulations."

- Step 4: Mid-2014, CFIA will issue "Draft Food Regulations," followed likely by another round of public consultations.
- Step 5: December 2014, CFIA will issue final "Food Regulations" which will enter into force on their publication in Canada Gazette.

Import Licensing and the SFCA

The SFCA is a framework legislation which will require extensive regulatory provisions for enactment. One of the major policy changes that CFIA wants to bring about with this new Act is the mandatory requirement to license all importers of all food products. Currently, under existing regulations, only a very limited number of products require importers to be registered or licensed.

CFIA argues that import licensing will strengthen the safety of imported food items by holding importers accountable. In addition, CFIA will also have the power to attach conditions to import licensing, for instance the implementation of a preventive food safety system, or the implementation of food recall protocols, or residency.

This very last requirement may pose problems for some U.S. exporters. Under existing legislation, a foreign company does not necessarily have to have a physical presence in Canada in order to be considered "importer of record" – this is the category of so called "non-resident importers." It is estimated that tens of thousands of U.S. companies currently fall into the non-resident importer category.

First introduced under the proposed Imported Food Sector Product Regulations (see next section in this Report), the residency requirement will ensure that a company with presence in Canada takes responsibility for the imported food, and that CFIA has the means to take action against importers. According to the residency requirement, only companies established in Canada could be licensed as food importers. Foreign companies, like those in the category of "non-resident importers," would have the option to either establish a presence in Canada or to use the services of a Canadian agent – in this last case, the agent being the licensed importer.

The Imported Food Sector Product Regulations and SFCA

The [Imported Food Sector Product Regulations](#) (IFSPR) aim to improve CFIA's oversight of imported food products in the non-federally registered sector – food products that are not federally regulated by any of the regulations listed earlier under CAPA, MIA or FIA. Such products would include beverages (including alcoholic beverages), confectionary/chocolate, spices, seasonings, vegetable fats and oils, snack foods, bakery products, coffee, infant formula and so on. A [tool](#) is available on CFIA's website to help identify which products would fall under the provisions of this Regulation.

The IFSPR will be issued under CAPA. Stakeholder pre-consultations started in 2010 and ended in 2012. CFIA is currently drafting the proposed regulations with the intent to publish them in Canada Gazette by the end of April, 2013 and to submit for public consultations. FAS/Ottawa was told that if changes resulting from the consultation process are significant, a new draft regulation would be issued for another consultative process. If changes are minor, then final regulations will be issued and will enter into force upon publication in Canada Gazette.

The IFSPR as standalone regulation will be short lived. As mentioned earlier in this Report, the provisions of this regulation will eventually be folded into the new "Food Regulations" to be developed under the SFCA. Nevertheless, in the interim, and once in force, the import licensing provisions under IFSPR have the potential to disrupt the regular business model of all U.S. companies that currently export food products to Canada as "non-resident importers." The issue would be similar to the one described in the previous section of this Report, the only difference being that it would apply to a more limited number of products, i.e. those covered under IFSPR.

FAS/Ottawa will continue to monitor all CFIA regulatory developments included here and submit further reports on these matters.