

UNIVERSITY OF NATAL

FOOD LEGISLATION
IN
THIRD WORLD COUNTRIES:
A CASE STUDY
OF
ZAMBIA

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**FOOD LEGISLATION
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OF
ZAMBIA**

By

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CERTIFICATE

I HEREBY CERTIFY THAT THIS IS AN ORIGINAL PIECE OF WORK WHICH IS MADE AVAILABLE FOR PHOTOCOPYING AND FOR INTER-LIBRARY LOAN.

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ABSTRACT

Advances in the food industry have made food consumption increasingly complex. Varieties of foodstuffs that are available to consumers each day are on the increase. It is therefore essential that legislation in place ensures the health of unsophisticated consumers, in the face of a sophisticated food industry.

The need for food safety legislation is even more crucial to Third World countries where literacy levels are low, poverty levels high, and chronic food shortages, prevalent. An important question that any developing country has to address is how it can better equip its food control system within its own limited resources? Does the answer lie in an increase in the amount of food safety legislation? Or in the improvement of enforcement mechanisms?

This thesis investigates the existence and effectiveness of food safety legislation in typical Third World countries and for this purpose, Zambia has been chosen as a particular case study. The aim of the study is to analyse the existing legal framework and to assess the effectiveness of its enforcement.

This has been done by way of library research and personal interviews. The Internet also proved to be a valuable research tool.

From the findings of the study it is clear that although there exists within the country a legal framework controlling food quality and safety, the same requires urgent amendment and more effective enforcement.

It was realised from the findings of this study that the situation that currently obtains in Zambia can only be left unattended at the nation's peril. It is imperative that legislation in operation is made more effective especially with regard to food imports where a notable lacuna exists. The enforcement of legislation is another area that desperately requires reform.

The solution to the problem of food safety in Zambia does not lie in advocating an increase in the quantity of legislation but rather in its quality. There is a need to increase consumer awareness through food safety and quality consumer education programmes and the active participation of consumer groups in matters of food safety and control.

Overcoming the problem of food safety requires the concerted efforts on the part of all key players, the government, industry and consumers themselves.

PREFACE

Arriving at a topic for my research came almost instantaneously. This is not surprising coming from a country where so much visibly needs to be done to enhance the quality of legislation and its enforcement. This is not only in the area of food safety controls but in other aspects of its laws.

When shopping around in Lusaka one cannot help noticing the state, in which some fresh and processed foodstuff is sold. Foodstuffs are sold in surroundings that are unhygienic, improperly packaged and often unwholesome. This leaves one wondering whether any legislation to ensure the supply of safe and wholesome foodstuff is in place and what is being done to enforce it.

Zambia like other typical Third World countries, has outdated food legislation that leaves it vulnerable to dumping of unwanted foodstuffs from the more Developed countries.

Although arriving at a topic for my research was not a daunting task, obtaining information was. This was especially so with regard to recent publications. Literature on the subject was scanty and often outdated in libraries and data resource centres that I had access to. In most instances government officials were unable to divulge information pertaining to policy on the matter.

I have attempted to state the law as at January 1997 and to obtain current information that would enable me arrive at a conclusive position on the subject.

I am indebted to Dr Rhoda Zulu of the National Council for Scientific Research for according me every opportunity of her time at short notice and pointing me in the right direction. I would also like to express my sincere thanks and gratitude to Mr Alfred Malijani, Executive Secretary, Food and Drugs control in the Ministry of Health, Messrs Davis Mukuka and David Mesa of the Zambian Bureau of Standards, for granting me personal interviews, Mr Mark S. O'Donnell, Chairman of Zambia Association of Manufacturers for sending me valuable information via the Internet, Mr Siva Naidoo, Director of the Consumer Council (South Africa).

To Dr David J.Jukes of the University of Reading, Department of Food Science and Technology I owe my profound gratitude for his assistance in obtaining the much needed information that saved me from citing repealed law. I thank my fiancé, Dominic Luther Sichinga, for his encouragement, support and enduring patience throughout the period of my study and for taking time to proof read my entire thesis, Mr Emmanuel Kasongo and Mrs Adenike Aderibigbe for taking time off their own busy schedules to proof read parts of this thesis, this no doubt saved me numerous mistakes. Last, but undoubtedly not the least, I thank Prof David Mc Quoid-Mason for his guidance and clear insight that were to this thesis 'a valuable treasure trove.'

Naturally, the errors in this thesis are solely my responsibility and unless specifically acknowledged the text is my own original work.

MBITA NAKAZWE

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TABLE OF CASES

1. Barber v Cooperative Wholesale Society Ltd (1983) 147 JP 296, 127 Sol Jo 424.
2. Donoghue v Stevenson [1932] ALL ER (HL)31; (1932) SLT 317.
3. Goldup v John Mash Ltd [1982] QB 161, [1981] 3 ALL ER 257.
4. Hall v Owen-Jones and Jones [1967] 3 ALL ER 209.
5. Lindley v George W Horner & Co. Ltd [1950] 1 ALL ER 234.
6. Meah v Roberts [1978] 1 ALL ER 97.
7. Newton v West Vale Creamery Co. Ltd (1956) 120 JP 698.
8. Preston v Greenclose Ltd (2975) 139 JP Jo 245.
9. Smedleys v Breed [1974] AC 839, [1974] 2 ALL ER 21.
10. Snodgrass v Topping (1952) 116 JP 312.

TABLE OF STATUTES

Acts and Regulations

BRITAIN

1. Adulteration of Food and Drink Act 1860.
2. Adulteration of Food, Drink and Drugs Act 1872.
3. The Sale of Food and Drugs Act 1875.
4. Public Health Act 1875.
5. The Food and Drugs (Adulteration) Act 1928.
6. The Food and Drugs Act 1938.
7. Food and Drugs Act 1955.
8. Food Act 1984.
9. Food Labelling Regulations 1984.
10. Food Safety Act 1990.

ZAMBIA

1. Constitution of the Republic of Zambia, Chapter 1 of the Laws of Zambia.
2. Criminal Procedure Code, Chapter 88 of the Laws of Zambia.
3. English Law (Extent of Application) Act, Chapter 11 of the Laws of Zambia.
4. Fees and Fines Act, Chapter 45 of the Laws of Zambia.
5. Food and Drugs Act, Chapter 303 of the Laws of Zambia
Food and Drugs Regulations.
Poisonous substances in food Regulations.
6. High Court Act, Chapter 27 of the Laws of Zambia.
7. Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia.
8. Local Government Act, Chapter 281 of the Laws of Zambia.
9. Markets Act, Chapter 290 of the Laws of Zambia.
Markets under the control and management of Local authorities.

Markets under the control and management of provincial local government offices.

Local authority market regulations.

By laws of various markets.

Ndola Markets (Establishment) order.

10. Public Health Act, Chapter 295 of the Laws of Zambia.

Public Health (sale of Ice and Aerated waters) regulations.

Public Health (ice cream) regulations.

Public Health (food in airtight receptacles) regulations.

Public Health (Tea room, restaurants, boarding-houses and hotels) regulations.

Public Health (control of habitation in factories, workshops and trade premises) regulations.

Public Health (abattoir and transport of meat) regulations.

Public Health (meat and butcheries) regulations.

Public Health (milk) regulations.

Public Health (sale of bakery products) regulations.

11. Standards Act, Chapter 416 of the Laws of Zambia.

Standards and certification marks regulations.

12. Weights and Measures, Chapter 403 of the Laws of Zambia.

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CHAPTER ONE: FOOD LEGISLATION IN THIRD WORLD COUNTRIES

INTRODUCTION

1.1 The growth of global food trade

The world has rapidly become a single global market. This has largely been the result of the Eighteenth century industrial revolution that begun in Britain before spreading to other parts of Europe and North America.¹ The industrial revolution marked a new era that brought about the mass production of goods.²

There have been major improvements in areas of communication and transportation. Trade has become not only possible between remote parts of the globe, but also widespread. Food trade has increased further with the discovery of new methods of food preservation.³ Various food preservation techniques to improve the shelf life and quality retention properties in foodstuffs, have been formulated. All these have meant that distance and/or perishability has no longer limited trade in foodstuffs.

The need for food has since the 1970s been on the upswing, particularly in Third World countries⁴ that have experienced a rapid increase in population and a drastic reduction in food productivity. The causes of shortages in food supplies

¹Rhys Jenkins Industrialization and Development (1992) 14.

²Various industries that were previously labour intensive producing goods on a small scale, became mechanised thus increasing output in industries.

³Jim Burns, John McInerney and Alan Swimbank The Food Industry : Economics and Policies (1983) 5.

⁴Although the terms "Third World countries", "developing countries" and "less developed countries" do not from a developmental perspective have the same meaning , the terms in this study will be used inter changeably.

amongst Third World countries include factors such as poor harvests as a result of low rainfall, increased desertification, famine, civil war and maladministration. These factors have contributed to the general poverty of Third World nations. It was estimated in 1994 that of the then world population of 5.6 billion people, 74 per cent of the people lived in developing countries.⁵

It is further estimated that by the year 2025, the percentage of the world population living in developing countries will have risen to 86 per cent.⁶ This assumption of a steady rise from 74 per cent to 86 per cent for the 31-year period, 1994 to 2025, makes it possible to estimate the annual growth of Third World population in relation to global population. This is set out in figure 1 below.

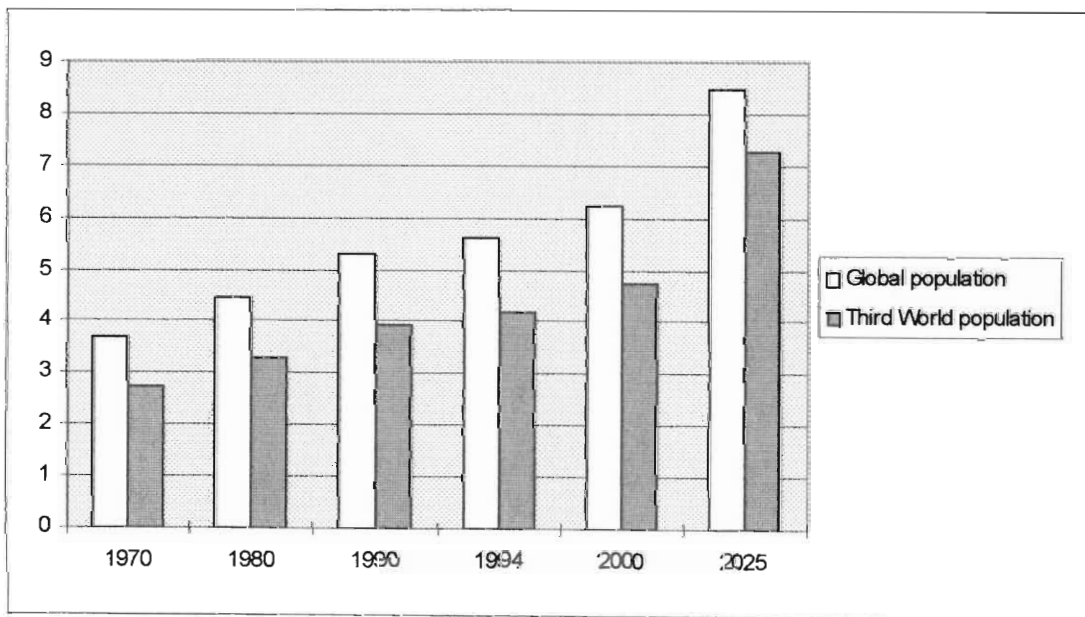


Figure 1. Statistics of World Population in Comparison to those of Developing Countries. Source: United Nations Population Division, 1994.

⁵United Nations World Population Division, Department for Economic and Social Information and Policy Analysis World Population Prospects (1994).

⁶Stanley P Johnson World population and the United Nations: Challenge and response (1987)229.

The increase in demand for food has made it necessary that there to be a corresponding momentum in technological and scientific advancement in areas of agricultural production, processing, preservation, packaging and storage. In most parts of Africa increases in food demand have been evidenced by increased amounts of food relief after natural calamities, and the need for food aid during civil strife.

Apart from an increase in food demand there has been a change in global food habits where the role played by information technology has been enormous. In the past, food was consumed by those who produced it or by their immediate neighbours.⁷ Today, mass media, computer networking and large scale advertising have changed the food habits of various communities by stimulating a global awareness in consumers, of the wide range of foodstuffs available to them. Wholesalers and retailers alike, can import foodstuffs from neighbouring and overseas countries.

It is therefore, common place to find in a Zambian supermarket, foodstuffs manufactured in South Africa, Europe, the Far East and other parts of the globe. Likewise, information on foodstuffs available in an "up market" food store in New York (or any other place) might easily be accessible to a consumer in Zambia or anywhere else in the world.

With all the changes that the world has experienced, what has become quite clear, is that, no individual community in the world is entirely self-sufficient with regard to all its food requirements. The world population is fed by the combined efforts of farmers, producers and processors of

⁷Rosemary C. Anyanwu and David J. Jukes, 'Food Safety Control Systems for Developing Countries' (1990) 1 Food Control 17.

various nations.⁸

1.2 *The state of food law*

The need for food legislative controls arose from the need to balance the benefits of increased food supplies through advances in technological processes against associated health and economic risks.⁹ Although there was great benefit derived from the availability of a wide variety of goods, the industrial era was not without its shortcomings.

Mass production brought with it intense competition among traders, which in turn led to rampant malpractice in food trade.¹⁰ Milk begun to be watered down; alum added to flour; sand to spices; saw dust to bread; ground leaves to tea; lead acetate to beer to mention a few of the many abuses.¹¹

By such practices, business people sought to reduce their production costs while increasing the quantities of goods they produced. Some adulterants added to foodstuffs were of an innocuous character but others were damaging to the health of their consumers.¹² It became apparent that an

⁸ Secretariat of the Joint FAO/WHO Food Standards Programme, Introducing Codex Alimentarius (1986) 4.

⁹ Rosemary C. Anyanwu and David J. Jukes, 'Food Systems and Control in Nigeria' (1991) 16 (2) Food Policy 112.

¹⁰ Ingeborg Paulus The Search for Pure Food : A Sociology of Legislation in Britain (1974) 15.

¹¹ *Ibid.* cf Ross Cranston Consumers and the Law 2ed (1984) 260-261.

¹² In Bradford, Britain, in 1858 seventeen people died and several others suffered severe food poisoning after consuming adulterated lozenges. This incident that has come to be known as the "Bradford incident" greatly impacted on the need for legislation to safeguard consumer health. The incident was instrumental in the passing of the first Act in Britain against adulteration in 1860. See below 34.

individual's influence over the growing number of large and organised industries was minimal. Government intervention was necessary if the health and economic interests of consumers were to be protected.¹³ Such intervention came by way of legislation designed to prevent the adulteration of foodstuffs that rendered them harmful to health.¹⁴ Legislation endeavoured to safeguard public health and economic interests.

The degree of legal intervention grew with developments within the food industry. Legislation sought to control not only adulteration, but other matters related to food. What initially started as simple rules and regulations designed to prevent adulteration, developed into a fully fledged branch of the law.¹⁵

1.3 The need for global food law

The economic, social and technological evolution described in the previous sections have contributed immensely to the emergence of food law as a separate body of law. As large proportions of foodstuffs are now consumed elsewhere than in the country of production or manufacture the need for global food control has become increasingly necessary.¹⁶

¹³Paulus op cit 15.

¹⁴ibid. Prior to the passing of the 1860 Adulteration of Food and Drink Act, legislation passed in Britain was designed to prevent the defrauding of public revenue and paid no attention to consumer interests.

¹⁵Bert Evenhuis, 'General, Legal and Safety Aspects of the Use of Food Flavours' (1987) Food Review 27.

¹⁶Anyanwu and Jukes (1991) op cit. 112.

1.4 *Functions of food law*

Food legislation primarily serves two purposes. These are:

(i) protecting the health and safety of consumers; and

(ii) promoting fair dealing in food trade amongst nations.¹⁷

Although both facets of food law are of equal importance, this work will focus on the protective function of food law.

Advanced trends in the food industry show that diversities in processing operations have made consumer protection a highly complex undertaking. Governments are called upon to define, with a reasonable degree of precision, conditions governing the manufacture, composition, processing, packaging and handling of foodstuffs so as to reduce to a minimum substances that would have harmful effects on the human body.

As the area of food law is one that is closely affiliated to disciplines of food science and technology, microbiology, demography, economics, development, agricultural and environmental sciences, it will be considered in the context of these related disciplines. For the purposes of this study the focus will be directed at establishing for a Third World country like Zambia an effective food quality and safety control system. Unlike developed countries that have such systems in place, most Third World countries are still grappling with the problems of unsafe and inadequate food supplies due to the absence or inadequacy of effective safety systems.

¹⁷ Anyanwu and Jukes (1990) op cit. 17.

1.5 What is meant by food law?

Food law refers to the legal provisions relating to food control. Food legislation regulates specific food control activities such as food production, preservation, labelling, packaging, advertising, handling and storage. Food legislation is there to ensure that all stages in the food distribution chain are constantly monitored so that consumers are supplied with safe and wholesome food.

1.6 Focus of food law

Depending on a country's level of development and technological advancement, emphasises will be placed on different aspects of food control. In developed countries, greater emphasis is placed on monitoring the food control system. This is because the importance of a good supply of quality foodstuffs on the health of a consumer is more appreciated in developed countries than it is in developing countries.¹⁸

In developed countries, quality standards, labelling requirements, hygiene practises together with various processes to which food is subjected is closely monitored. Developing countries however, place greater emphasis on the availability of food rather than on its quality. This is no doubt due to the fact that food supplies are often inadequate and the problems associated with unsafe food are not appreciated.¹⁹

¹⁸Anyanwu and Jukes (1991) op cit. 125.

¹⁹Ibid.

1.7 International efforts to stream-line food safety control

Major steps have been taken to stream-line international efforts at food safety and control . The United Nations and its specialised agencies are amongst the forerunners that are spearheading this campaign. It was in this regard that the Food and Agricultural Organisation (FAO) and the World Health Organisation (WHO) came together and formed a joint food programme known as the *Codex Alimentarius* Commission.²⁰

This *Codex* Commission undertook the huge task of building up a corpus of food standards of worldwide validity.²¹ Groups of countries have made similar efforts notably the European Union, the Council of Europe and the Latin American Food Code Council. Non-governmental organisations such as the International Standards Organisation have also played a major role in the development and formulation of food safety controls.²² The importance of such efforts is that technology is in a continual state of development and food legislation and regulations have to keep abreast with these developments if consumers worldwide are to benefit.

1.8 Food law in developing countries

Although there have been resounding advances in farming

²⁰The *Codex Alimentarius* Commission is a subsidiary body of the Food and Agriculture Organisation and the World Health Organisation of the United Nations. It was formed in 1962 to facilitate and promote the development of internationally acceptable standards. Joint Secretariat of the Food and Agriculture Organisation and the World Health Organisation Introducing Codex Alimentarius (1997) 3.

²¹Alain Gerard An Outline of Food law: Structure, Principle and Main provisions (1975) 4.

²²Ibid.

techniques, processing, manufacturing, packaging, storage, transportation and the marketing of foodstuff since the turn of the century, there still remains a large gap in these areas between the rich and poor nations of the world²³. Studies conducted by United Nations Industrial and Development Organisation (UNIDO) in 1990 showed that the share of developing countries of the sub-Saharan region to the global manufacturing output has consistently remained at less than 0.5%. This is very low considering the land area and population concerned.²⁴

In many Third World countries particularly those of sub-Saharan Africa, industrial progression is far below acceptable minimum levels. Countries such as Burundi, Rwanda, Zaire (now The Democratic Republic of Congo), and Somalia are experiencing civil strife that has resulted in the displacement of large sectors of their populations. The political instability has affected food supply and availability in these countries. For such countries, the focus is not on the quality of food supplies but on their quantities.²⁵ Even in other sub-Saharan countries such as Zambia where no civil strife exists, there is a large demand for adequate food supplies.²⁶

²³Richard G.Lipsey, Peter O. Steiner, Douglas D. Purvis and Paul N.Courant Economics (1990)942.

²⁴United Nations Industrial and Development Organisation, "Food production in the Sub-Saharan region" (1990).

²⁵Gerard op cit. 4.

²⁶In 1991, Zambia, together with other countries in the Southern African region experienced severe draught. As the country did not have sufficient food reserves it not only imported food supplies but also received a large volume of food aid. Ministry of Agriculture Food and Fisheries report (1991) unpublished.

Because of inadequate food reserves such countries are left vulnerable to external manipulation through the dumping of goods on their markets.²⁷ This is because the efforts of governments in these countries are directed at expanding and stabilising the availability of staple food resources.²⁸

Besides countries ravaged by war and civil strife, many African countries suffer severe levels of poverty. In such countries, factors such as the lack of adequate financial resources, low levels of technology and the high incidents of illiteracy present major obstacles to the development of sustainable food laws. Even where food laws exist importance is not attached to their enforcement.

1.9 The role of food law in developing countries

Despite the imbalance that exists between developed and developing nations, the latter are still part of the global food network. In as much as developing nations export raw materials, they import processed foodstuffs. They are thus an integral part of the global food network. As exporters of food crops that contribute a large proportion to their Gross Domestic Product (GDP), it is essential that their exports meet internationally accepted standards to reduce economic losses that result from rejected exports.²⁹

Being importers of processed food products, they have to ensure the quality and safety of their imports to safeguard the health of their citizens. A symbiotic relationship

²⁷"Dumping in international trade is the practice of selling a commodity at a lower price in an export market than its price in a domestic market for reasons not based on costs." Lipsey, Steiner, Purvis and Courant op cit. 952.

²⁸Gerard op cit 3.

²⁹Anyanwu and Jukes (1991)op cit. 112.

between developed and developing nations therefore exists. At present, the former benefits more than the latter. It is left to the Third World countries to ensure that, within their limited financial and technological resources, they can effectively maximise their participation in global food trade without compromising the health and safety of their citizens.

1.10 A case study of Zambia

Zambia, as a developing country has problems akin to those of other Third World countries. It has, for instance, in the last nine years experienced a decline in output in its food manufacturing sector.³⁰ The decline in the sector has been the result of many factors, among them the lack of technology for the processing, preservation and storage of foodstuffs. This coupled with the lack of investment due to the high cost of borrowing have discouraged new investment in the manufacturing sector and stalled its expansion.³¹ Zambian manufacturers and producers have with the liberalisation of the Zambian market experienced stiff competition from foreign imports. With most exporters to the country receiving subsidies from their governments, their products work out much cheaper than locally produced goods. All these factors have crippled local manufacturing.³²

The result is that Zambia has remained a supplier of raw materials and an importer of finished products, the bulk of

³⁰ Moses Chibowa The Plight of the Manufacturing Sector in Zambia (1994) 3.

³¹Mark O Donnell Chairman of Zambia Association of Manufacturers, 11th June, 1997.

³²ibid.

which comprise foodstuffs. This situation is however not unique to Zambia, but common among other countries of the sub-Saharan region.

There exists an important relationship between the growth of a manufacturing industry and the development of effective food controls. With the growth of industry there is a need to constantly update food legislation and strengthen its enforcement.

1.11 Scope of the study

This study will analyse the tenets of effective food legislation. It will analyse the food legislation and enforcement mechanism that exists in Zambia and will try to answer questions like: does effective food legislation exist within the country? How effective is it? Does the legislation meet the needs and aspirations of the consuming public? Does the legislation meet internationally acceptable criteria and standards? How effective is its enforcement? Are there sufficient scientific and financial resources to ensure a proper monitoring of the food system? Are there other means of achieving an efficient monitoring of the food system? How cost effective would the alternatives to the current legislation and enforcement mechanism be?

1.12 An outline of the study

Chapter two will consider international efforts made in food safety and quality. It will look at efforts made to harmonise global food legislation under the *Codex Alimentarius* programme. Efforts by the programme to assist Third World countries to develop effective food safety controls will also be considered.

Chapter three will analyse regional efforts in the harmonisation and standardisation process. Reference in this part will be made to the efforts of the European Union (EU) and the Southern African Development Community (SADC).

Chapter four looks at food legislation in the United Kingdom which forms the base upon which the Zambian legal system is founded having been a former British colony.

Chapter five looks at Zambia's food legislation, its effectiveness and enforcement. Reference to Food safety problems that other Third World countries experience will be made.

Chapter six, will conclude with proposals for improvement to Zambia's food legislation and enforcement.

CHAPTER TWO: FOOD LEGISLATION FROM AN INTERNATIONAL PERSPECTIVE

2.0 *The Codex Alimentarius*

2.1 *Background*

Apart from fostering global food trade, consumers need to be assured of the wholesomeness, purity and hygiene of foodstuffs they consume. Different countries have achieved this through the enactment of legislation, the provision of food standards and the setting up of administrative procedures.³³ To achieve this dual objective of fostering international trade without compromising the health of consumers it was recognised that a global initiative at the harmonisation of varying interests was necessary.

It was against this background that in 1962 a Joint Food Standards Programme was established between the Food and Agriculture Organisation (FAO) and the World Health Organisation (WHO) known as *Codex Alimentarius*.³⁴ This programme is run by the *Codex Alimentarius* Commission.

2.2 *Objectives*

The main objectives of the *Codex Alimentarius* programme are to:

- (i) Protect the health of consumers and ensure fair

³³Joint FAO/WHO Food Standards Programme Introducing Codex Alimentarius (1986) 4.

³⁴This in Latin means "food code" Joint FAO/WHO Food Standards Programme Op cit .3.

practice in food trade; (ii) promote coordination of all food standards work undertaken by international governmental and non-governmental organisations; (iii) determine priorities, initiate and guide the preparation of draft standards through, and with the aid of, appropriate organisations; (iv) finalise standards elaborated in (iii) above and to publish them after acceptance by governments either as regional or world wide standards; (v) amend published standards after surveys in occurring developments³⁵

The programme was a result of many years of thought concerning the establishment of international standards that would be not only acceptable to the international community, but also attainable. Adequate, safe, sound and wholesome food were recognised as vital for the attainment of an acceptable standard of living in any community.³⁶ The influence that food legislation and food control practices have on the quality of food was seen as paramount. Considering that adequate food legislation and food control infrastructure was lacking, especially in a number of developing countries, urgent attention was drawn to finding a solution to the problem. Areas were identified for which harmonisation required to be attained.³⁷

The question that is often posed is how an international community can attain uniform quality standards when it has countries with varying degrees of developmental, scientific and financial resources? The *Codex Alimentarius* programme

³⁵Article 1 Procedural Manual of the Codex Alimentarius 9ed (1995).

³⁶FAO/WHO *Codex Alimentarius* Commission Code of Ethics for International Trade in Food (1979).

³⁷Joint FAO/WHO Food Standards Programme Op cit .3.

does not overlook the existence of these disparities but works to bridge the gap between developed and developing countries with these differences in mind.³⁸

2.3 Membership

Membership is open to all members and associate members of the FAO and/or WHO.³⁹ Currently, membership of the programme stands at 154, and of which approximately 70 are developing countries.⁴⁰ The *Codex Alimentarius* Commission has since its establishment, produced sets of standards, guidelines and principles bound in 28 volumes which include 237 food commodity standards, 41 hygienic and technological codes of practice.⁴¹ It has in addition adopted more than 3,000 "maximum residue limits" (MRL) and evaluated more than 750 food additives.⁴²

2.4 Functions

The functions of the programme are carried out by four composite bodies. These are the Commission, the Executive Committee, the Secretariat and various subsidiary bodies. Figure 2 below shows the organisational framework of the programme.

³⁸Chaya Lakhani, Food Labelling Legislation (1990) Unpublished Master of Laws thesis, University of Natal Durban p.iii.

³⁹Article 2 Procedural Manual of the Codex Alimentarius Commission (1995).

⁴⁰Food Safety and Nutrition, International Food Regulations, Codex Back grounder (1997).

⁴¹ *Codex Alimentarius* [Http://www.foodnet.fic.ca/regulat/codex.html](http://www.foodnet.fic.ca/regulat/codex.html)

⁴²Ibid.

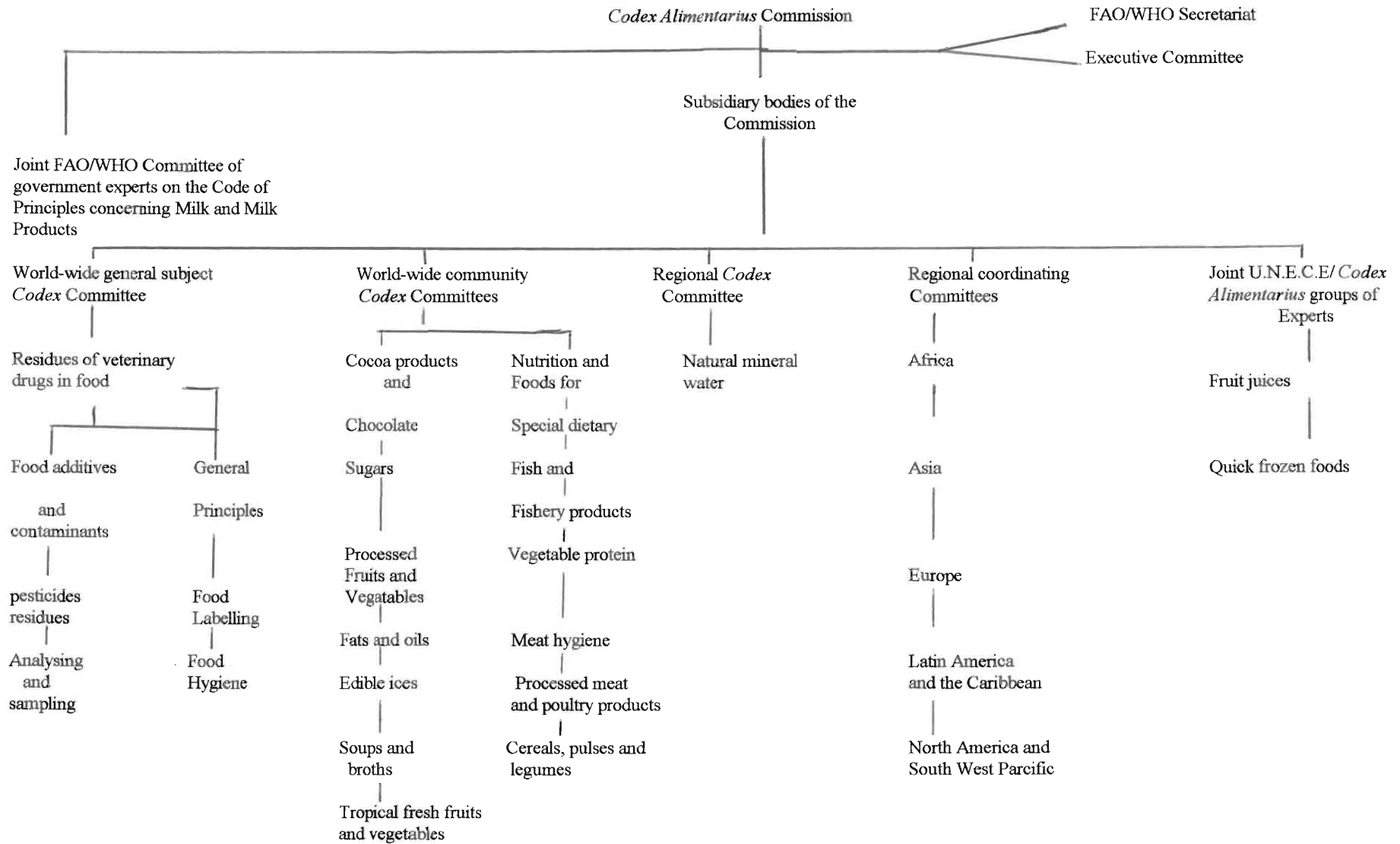


Figure 1. Organisational structure of the *Codex Alimentarius* Commission (R.C Anyanwu and D.J Jukes, 1990)

The Commission has a coordinating function, ensuring the smooth function of the programme as a whole. The role of the Executive Committee is to consider controversial matters and to make recommendations of its findings to the Commission.⁴³ As with any Secretariat, the role of the *Codex Alimentarius*' Secretariat is administrative. It oversees the development of *Codex* Standards by ensuring that inconsistencies are tabled before appropriate specialised bodies.⁴⁴

Perhaps the greatest role in setting of standards within the *Codex Alimentarius* programme is played by the various specialised subsidiary bodies. It is from these bodies that standards originate. These bodies are formed at the instance of the Commission when it sees it necessary for the accomplishment of its mandate.⁴⁵ The subsidiary bodies are divided into three broad categories: worldwide general subject committees, worldwide commodity committees, and regional coordinating committees.⁴⁶

The general subject *Codex* committees function primarily to prepare draft standards for general subjects. Some of the subjects that these committees consider include food hygiene; food additives and contaminants; pesticide and veterinary drug residues; methods of analysis and sampling.⁴⁷

⁴³S Shubber 'The *Codex Alimentarius* Commission under International Law' (1972) 21 International Comparative Law Quarterly 639.

⁴⁴Ibid.

⁴⁵Ibid.

⁴⁶R.C. Anyanwu and D.J Jukes 'Control Systems in Developing Countries' Food Control 23.

⁴⁷Cf Figure 2.

The worldwide *Codex* committees prepare and consider standards for particular foods and food groups.⁴⁸

As the *Codex* programme is one with global representation, the functions of the programme have been broken into regional committees. There are two types of regional committees: regional coordination committees and regional committees. The former coordinate within a particular region, the preparation of draft standards, while the latter prepare draft standards for a particular region.

The importance of having regional committees for the preparation of draft standards is all too obvious. It expedites the formulation of draft standards for regions as each region may have its own unique needs with respect to particular commodity standards.

Matters that various world-wide and regional committees deal with are often of a technical nature such as those of additives, pesticides and veterinary residues. Provision has been made in the programme for the appointment of experts to render technical and scientific advice. It is worthy noting that experts are appointed in their individual capacities and are independent of the *Codex Alimentarius* Commission.⁴⁹ This allows them to make objective findings based on their particular fields of expertise.

The Joint FAO/WHO Expert Committee on Food Additives (JECFA), the Joint FAO/WHO Meetings on Pesticide

⁴⁸Cf Figure 2.

⁴⁹Lakhani op cit.19.

Residues (JMPR), the Joint FAO/WHO Expert Committee on Wholesomeness of Irradiated Food (ECWIF) and the Joint FAO/WHO Expert Committee on Food Hygiene (ECFH) are examples of such technical committees.

2.5 Preparation of a Codex standard

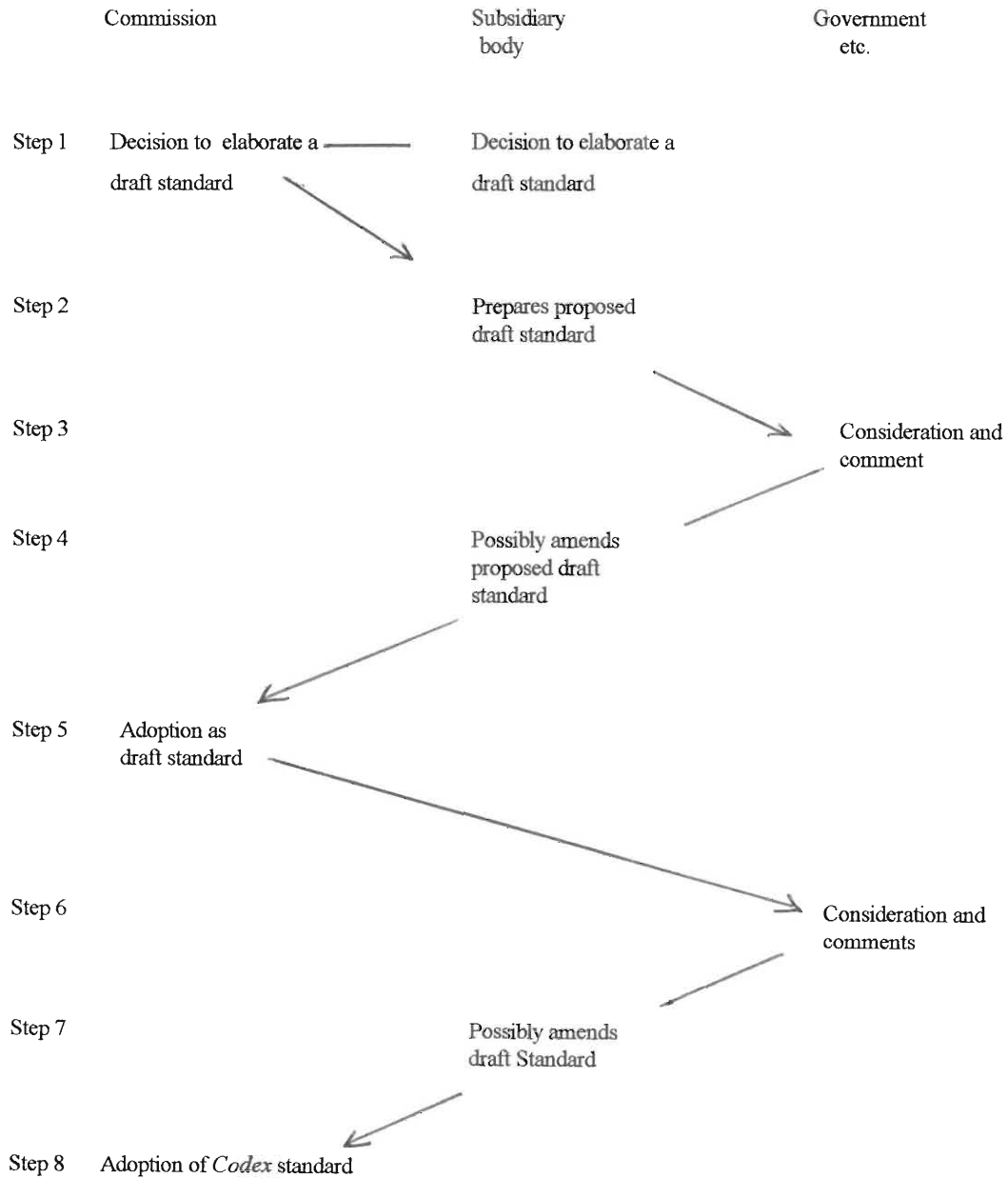


Figure 3 Adoption procedure for a Codex standard.

The adoption procedure set out in Figure 3. above is flexible. Although the procedure is must be complied with before a recommended standard is set, a case by case evaluation of a proposed standard is often undertaken. Certain steps maybe omitted from the above procedure for the purposes of expediency. This accelerates the standardization process. Another inherent advantage of the process is that it avails member governments and interested international organisations ample opportunity to participate through discussion and comment.⁵⁰

2.6 Implementation of Codex standards

Acceptance of standards by member states may take the form of (i) full acceptance; (ii) free circulation and (iii) non-acceptance.⁵¹

2.6.1 Full acceptance

When a member state gives its full acceptance to a recommended standard, it signifies its intention to comply with a standard for food products produced locally and those imported into its jurisdiction.⁵²

2.6.2 Free circulation

With free circulation a member state signifies that it will accept Codex standards at a later date but will permit food products conforming with a Codex standard, free distribution within its jurisdiction.⁵³

⁵⁰Shubber op cit.

⁵¹Christina M. Markus, 'International Harmonisation of Pesticide Tolerances - Legal, Procedural and Policy issues' 47 Food and Drug Law Journal 716.

⁵²Ibid.

⁵³Anyanwu and Jukes (1990) op cit. 24.

2.6.3 Non-acceptance

By non-acceptance a member state indicates that free distribution of food products will not solely be on the basis that products conform to Codex relevant standards. A member state may impose other limitations of its own with which products must conform before they can be permitted free distribution within the member state's jurisdiction.⁵⁴

2.7 Types of standards

A standard may be "specific" (also known as a "vertical standard") or "general" (also known as a "horizontal standard"). "Specific standards" refer to standards for specific product categories such as milk, honey, cheese etc. "General standards" refer to standards for common characteristic foodstuffs such as dairy products, cereals, edible fats etc. A further categorisation of standards is whether they are "compositional", "qualitative" or "quantitative standards". Labelling requirements are an example of a compositional standard.

2.8 The work of the FAO in developing countries

In a bid to help developing countries there exists within the FAO, a Food Quality and Consumer Protection Programme of which the *Codex Alimentarius* is a part. This programme strives to improve the food supply and food security among Third World member states. It does so by providing advisory and technical services for drafting and updating food laws and regulations; helping countries plan for infrastructure development of food control; undertake studies into the improvement of food analysis and inspection services;

⁵⁴ibid.

monitoring food contamination; and provision of food control personnel training.⁵⁵ Guidelines to assist developing countries with important requisites for developing an effective national food control system are illustrated in Figure 4 below.

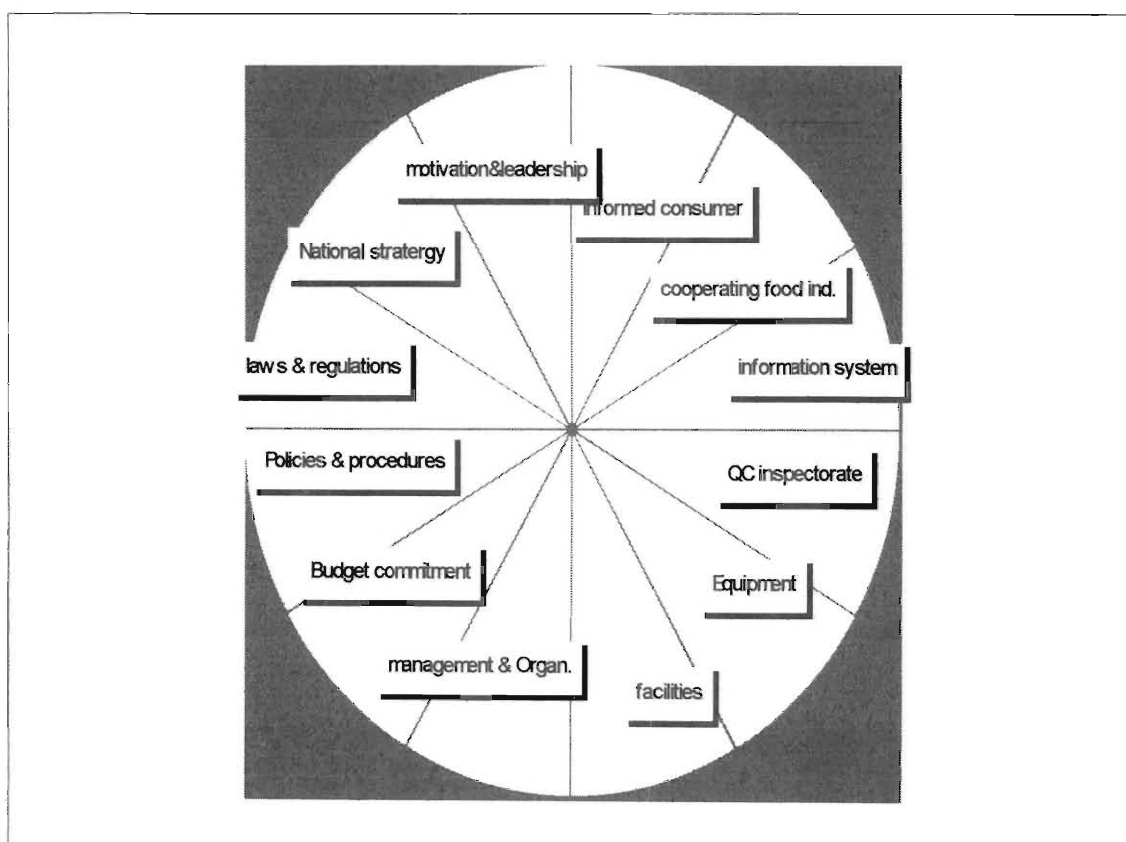


Figure 4 Important requisites of national food control systems. (Source: Codex 1987)

The elements necessary for an effective national control system are complimentary to each other. They are vital for consumer health and safety from manufacture to consumption.

Unfortunately, many of the elements are absent or

⁵⁵Anyanwu and Jukes (1990) op cit. 21.

inadequate in most developing countries. Such developing countries lack, amongst other things, 'adequate food legislation, laboratory equipment and personnel, inspection and monitoring services, administrative machinery for food control and funding for food safety and education programmes.⁵⁶

There have been many publications to aid developing countries develop effective food control systems. These include the Outline of Food Law⁵⁷ describing the structure, principles and main provisions of a model food law, and the Guidelines for Developing an Effective National Food Control System.⁵⁸

Developing countries have been given assistance with monitoring food additives, pesticide residues, mycotoxins and other food contaminants. In Nigeria, the FAO and the *Codex Alimentarius* have prepared an advisory document on aflatoxin, provided training for meat inspection and hygiene, and conducted research necessary to review food legislation and its enforcement mechanism.⁵⁹

The FAO has provided assistance to Zambia in food safety and control. It sent its first mission to assist the Zambian government with putting into place food legislation, the Food and Drugs Act in 1972. This Act is still the principle Act governing Food and Drugs in the

⁵⁶Ibid.

⁵⁷A Gerard Outline of Food Law (1975).

⁵⁸FAO/WHO Joint Programme Guidelines for Developing an Effective National Food Control System (1986).

⁵⁹Anyanwu and Juke (1991) op cit 124-125.

country.⁶⁰

Although the FAO is involved in many projects in other areas of food production it was not until 1994 that a mission to review the functioning of the Food and Drugs Act was sent to Zambia. A consultant⁶¹ was sent on a fact finding mission to assess the functioning of the Food and Drugs Act and its enforcement mechanism.

The consultant held extensive discussions with officials in the central government, provincial governments and other local authorities responsible for the administration of the Food and Drugs Act.

The mission submitted in its findings that although the Food and Drugs Act had reasonably adequate provisions that formed a basis for a food control mechanism, it lacked the co-ordination necessary for its functioning.⁶²

The report cited

- (a) The inadequacy of the legislation in the face of developments within the food industry;
- (b) The lack of coordination amongst the various organisations charged with enforcing the Food and Drugs Act and its accompanying regulations;
- (c) The absence of control mechanisms for insuring that organisations that are responsible for certain

⁶⁰See below 80.

⁶¹The FAO sent its consultant Mr Caesar Roy on a one month fact finding mission from the 24th April 1994 to 23rd May 1994.

⁶²Caesar Roy Food Control Administration in the Government of the Republic of Zambia (1994)18-20.

activities do in fact carry them out;

- (d) The inadequacy of data that defines the nature and actual extent of national food quality and safety problems;⁶³
- (e) The lack of quantified information on the quality and safety of imported foodstuffs;
- (f) The inadequacy of information on both the economic and health impact of adulterated or contaminated food on the nation;⁶⁴
- (g) The lack of a comprehensive summary of information on the status and scope of the food industry vis-à-vis the kind and number of food processing plants operational within the country; and
- (h) The lack of a comprehensive and coordinated consumer education programme that solicits consumer input and advises consumers on the hazards of improper food handling practices.⁶⁵

The FAO sent a second mission to Zambia in May 1997 to consolidate the work done by its first mission. Although both missions made their recommendations on reform to the government through the Ministry of Health, these

⁶³Eg. data that monitors the prevalence of pesticides, heavy metals or other contaminants in the food supply chain.

⁶⁴The unavailability of records of food losses, regulatory closures of food establishments and the prevalence of food borne diseases.

⁶⁵Roy op cit.18-20.

recommendations have yet to be made public.⁶⁶

2.9 Conclusion

Although the FAO has made efforts to assist the Zambian government bring up the standard of food legislation in the country to those of international standards, a lot still requires to be done to transform these recommendations into practically implementable legislation.

The study will now turn to efforts in the area of food legislation that are being made at regional level.

⁶⁶Interview with Mr Alfred Malijani, Executive Secretary, Food and Drugs control in the Ministry of Health, 29th December, 1997.

CHAPTER THREE : REGIONAL HARMONISATION AND STANDARDISATION OF FOOD LAWS

3.0 Regional Groupings

Multilateral and bilateral trade agreements have become the major focus of government and private sector activity. Many countries are seeking to eliminate or reduce the broad range of tariff and non-tariff barriers to trade by facilitating free trade at regional and global level. This has seen the formation of regional groupings that aim to promote regional commerce and trade.

Among the most prominent regional economic groupings are the European Union (EU) for Western Europe, the Economic Forum of Asian and Pacific Countries (EFAPC) for Asia and the Pacific, the Southern African Development Community (SADC) for Southern Africa, the Economic Community for West African States (ECOWAS) for West Africa and the North American Free Trade Agreement (NAFTA) for North America.

This study will look at the activities concerning harmonisation of food legislation of the European Union (after this called the EU) and the Southern African Development Community (after this called SADC)

3.1 The European Union (EU)⁶⁷

3.2 Background

The European Union, the European Economic Community (EEC)

⁶⁷The European Economic Community (EEC) after 1992 became known as the European Union.

as it was then called, was born after the signing of the historic Treaty of Rome⁶⁸ by six European states namely Belgium, France, Italy, Luxembourg, the Federal Republic of Germany and the Netherlands.⁶⁹

Today, after four decades, membership of the Union has increased to fifteen. This has followed the signing of Acts of Accession by The United Kingdom, Denmark, the Republic of Ireland,⁷⁰ Greece⁷¹, Spain, Portugal⁷², Austria, Finland and Sweden⁷³.

3.3 Objectives

The principle objectives of the Treaty of Rome through the four decades have not changed although a number of changes to better achieve these objectives have taken place within the Community. It was an objective of the Treaty to promote cooperation among Member States following the devastation inflicted by the Second World War. The creation of a Common Market where trading barriers did not exist was therefore seen as a priority for cooperation in the grouping.⁷⁴

⁶⁸The Treaty of Rome was signed in Rome in 1957. Prior to the formation of the EEC, Belgium, the Netherlands and Luxembourg existed as a grouping known as *Benelux*.

⁶⁹Josephine Steiner Textbook on EC law 4th ed (1988)3.

⁷⁰The United Kingdom, Denmark and the Republic of Ireland signed the Act of Accession in 1973.

⁷¹Greece signed the Act of Accession in 1979.

⁷²Spain and Portugal signed the Act of Accession in 1986.

⁷³Austria, Finland and Sweden signed the Act of Accession in 1994.

⁷⁴David Jukes, 'Food Law Harmonisation within Europe - a Learning Opportunity' 1995 6 (5) Food control 284.

In 1985, the Member States signed the Single European Act (SEA) which modified the original Treaty of Rome.⁷⁵ The grouping realised that the removal of tariff barriers was not the only impediment to trade as non-tariff barriers still existed. One of the non-tariff barriers identified was the difference between legislation and their administrative enforcement.

The harmonization of legislation was therefore seen as essential for the proper functioning of an internal common market.⁷⁶

The objectives of the Treaty⁷⁷ as stated in Articles 2 and 3a⁷⁸ are that:

The Community shall have as its task, the establishment of a common market, an economic and monetary union and the implementation of the common policies. It shall promote throughout the Community harmonious and balanced economic development, sustainable and non-inflationary growth that respects the environment, has a high degree of economic performance, a high level of employment and that raises the standard of living and quality of life. It also aims at economic and social cohesion and

⁷⁵ibid.

⁷⁶Harmonization is seen to be the incorporation of common provisions with the laws of member states so that each country's requirements are the same: Jukes op cit.284.

⁷⁷Read as amended by the Maastricht Treaty of 1992 that transformed the European Economic Community into the European Union.

⁷⁸With this extract as with others, extracts have been selective on the basis of relevance to the study. These excerpts from the Treaty of Rome were recently amended by the Treaty on the European Union in 1992.

solidarity among Member States.⁷⁹

Article 2 sets out the purposes of the Community. These are

a) the elimination of customs duties and quantitative restrictions on the import and export of goods between Member States, and the elimination of all other measures that have equivalent effect;

c) the creation of an internal market characterized by the abolition of obstacles to the free movement of goods, persons, services and capital between Member States;

h) the approximation of the laws of Member States to the extent required for the proper functioning of the common market;

o) to contribute to the attainment of a high level of health protection; and

s) to contribute to the strengthening of consumer protection;⁸⁰

3.4 Treaty on European Union

An important occurrence within the grouping was the signing of the Treaty on European Union (TEU) in February 1992 at Maastricht. The Treaty on European Union (hereafter called the Maastricht Treaty), extended the scope of the Community's competence, strengthened its institutional

⁷⁹Article 2 of the Treaty of Rome.

⁸⁰Article 3 of the Treaty of Rome.

machinery and increased cooperation in the framing of common policies in justice and home affairs.⁸¹

On consumer policy the Maastricht Treaty 'raises the profile of consumer protection by stating the strengthening of consumer protection as a specific objective and supporting national efforts to protect the health, safety and economic interests of consumers'⁸²

Because of the Maastricht Treaty, the correct name for the fifteen member grouping particularly in relation to the other countries and political groupings is now the European Union, and not the European Community.⁸³

Due to problems in obtaining ratification from some Member States⁸⁴ the Maastricht Treaty only came into force on 1st November, 1993. From that date the European Economic Community Treaty became the European Community Treaty and the European Economic Community became known as the European Union.⁸⁵

3.5 Food legislation in the EU

As the creation of a single market forms one of the core purposes of the European Union, there is increasing focus

⁸¹Steiner op cit 3.

⁸²European Community fact sheet <http://www.cec.org.uk/pubs/facts/facts07.htm>.

⁸³ibid. It is however, necessary for historic accuracy to call it the European Economic Community in parts of this thesis.

⁸⁴Notably the United Kingdom, Denmark and Germany.

⁸⁵It is also not uncommon in practice to refer to aspects of European policy which affect all Member States as Community policies, e.g. Community research policy and the Community budget.

on the subject of consumer protection in general and food law in particular.

The concern to harmonise laws, regulations and administrative procedures has extended to trade in foodstuffs that occupies a large proportion of intra-regional trade. Currently trade between EU Member States accounts for 60.1 per cent and that of the EU and third countries accounts for 39.9 per cent.⁸⁶ Agricultural products of the EU account for 22 per cent of the world's total agricultural production. In 1991 the EU trade in agricultural produce amounted to ECU⁸⁷ 20.9 Billion⁸⁸. Because of the large volume of trade in foodstuffs, the subject of consumer protection has become vital to the advancement of the aspirations of a single common market. It has been recognised that neglecting to harmonise policies would serve to perpetuate the existence of tariff⁸⁹ and non-tariff barriers to trade.⁹⁰

Although some writers⁹¹ have highlighted the fact that the subject of consumer protection did not have a basis in the original treaty forming the European Economic Community, the practicality of the subject for the creation of a

⁸⁶EC Information Service Global Legal Studies (1991).

⁸⁷European Community Units refers to monetary currency of the members states of the European Union.

⁸⁸Ibid.

⁸⁹These include the application to goods of different policies, laws and administrative procedures by individual Member States.

⁹⁰These include the imposition of custom duties and trade quotas usually designed to protect domestic producers and suppliers against foreign competition.

⁹¹Notably R.J Bradgate and G.G Howells, A Guide to the Food and Safety Act 1990 (1990).

common market has superseded this.

Undoubtedly the European Economic Community Treaty was drafted at a time when the consumer movement was still in its infancy. Specific reference to the issue of consumer protection was not made in the European Economic Community Treaty as it was believed that consumer interests would be adequately catered for by an increase in production, free movement of goods and services and an increase in competition. The European Economic Community Treaty did not therefore, explicitly lay down a basis for a consumer protection policy.⁹²

Today, the subjects of consumer law and food legislation within the Union have received a great deal of focus. To increase trade and reduce tariff and non-tariff barriers to trade, the Council of the European Union will act on proposals from the Commission and issue directives for the approximation of provisions laid down by law, regulations or administrative action that affect the establishment or functioning of the common market.⁹³

The Maastricht Treaty⁹⁴ has also sought to ensure the application of a common policy to trade between Member States in relation to each other and with countries outside the membership of the Union. It maintains that this is essential to ensure that Member States do not distort the structure of the internal market by according countries

⁹²Although the term "consumer" is used in certain articles of the Treaty of Rome such as articles 39, 79, 85 and 86 the term as used there denoted an end user rather than a consumer as is known today.

⁹³Article 100.

⁹⁴Article 3 (b).

outside the membership of the EU, more favourable trading conditions than those offered by other EU Member States.⁹⁵

It is useful to examine some of the measures taken by the EU with respect to food legislation. The legislative enactments of the Council and the Commission of the EU, fall into four main categories. These are to (i) make regulations (ii) issue directives (iii) take decisions and (iv) make recommendations or deliver opinions.

Regulations are of general application and are directly applicable to all Member States. Directives bind a Member State on the achievement of a particular result but leave it open to each Member State to choose the form in which it wishes to effect a directive within its national legislation. A decision is only binding wholly on those to whom it is addressed. Recommendations and opinions give guidelines but are not binding.⁹⁶

Directives⁹⁷ have been made on a wide range of food matters. A number of directives cover labelling.⁹⁸ A directive on language⁹⁹ requires that labels need not be in an importing Member State's official language, but must be in a language

⁹⁵David A O Edward and Robert C Lane European Community Law: An Introduction (1991) 44.

⁹⁶Steiner op cit.21.

⁹⁷A full list of EU food directives is provided in Appendix 1 to this work.

⁹⁸Some of these have been incorporated in the United Kingdom Food Labelling Regulations Statutory Instrument No 1499, 1996. Appendix 2 to this work.

⁹⁹Directive 79/112 1979 O.J L33/79.

readily understood by consumers in that state.¹⁰⁰ Other subjects that have been the focus of many directives are preservatives and additives used in foodstuffs,¹⁰¹ and materials and articles intended to come into contact with foodstuffs.¹⁰²

Matters such as the marketing standards for milk, eggs, fruit and vegetables, wine, poultry, meat and spirit drinks are covered by regulations.¹⁰³

Because recommendations and opinions are not of binding effect, they are often used for general policy formulation. Over the years there have been recommendations and opinions expressed on matters of food analysis and documentation on food control.

The obvious advantage in the use of directives to implement food legislation, is that there is a time limit within which Member States must adopt measures to implement directives within their national jurisdiction. Failure to do so is actionable before the European Court of Justice.¹⁰⁴ The recent trend within European Union however, is the use of regulations as opposed to directives. This has been necessitated by the poor translation of directives into legislation in some Member States¹⁰⁵.

¹⁰⁰The practice is that labels are often in multiple languages though according to this directive it does not compel this. This is done for the benefit of consumers of different Member States.

¹⁰¹Directive 64/54 OJL12/64 and Directive 89/107 OJL40/89 respectively.

¹⁰²ibid.

¹⁰³Painter op cit.1.

¹⁰⁴Steiner op cit.21.

¹⁰⁵ibid.

The institutions of the EU are in a constant state of evolution and the scope of its food legislation, ever expanding. While it would be an over-statement to say that the Union has attained full harmonisation in all issues pertaining to foodstuffs, or that it accords consumers the maximum protection possible, it is true to say that the EU has scored remarkable success in trying to harmonise the food legislative framework among its Member States and is continually working towards developing an effective consumer based protection programme.

Other regional groupings should seek to emulate efforts made by the EU in the harmonising of food legislation if they are to achieve similar success in breaking down tariff and non-tariff barriers to trade and promoting consumer health and safety. A lot can also be learnt from the experiences and difficulties the EU has encountered on its journey to harmonisation.

3.6 The Southern African Development Community (SADC)

3.7 Background

This is the most prominent economic grouping in the Southern African region. It comprises the 12 Southern African countries of Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

Originally the Community was known as the Southern African Development Coordinating Conference (SADCC) and comprised nine members: Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe. It was formed at a time when it was realised that beyond political independence attained by countries of the region, there still existed a need for economic emancipation.

Further, South Africa, a major economic force in the region remained under white minority rule and posed a threat to both the economical and political stability of the region. The need to work together for the political survival, economic development and social advancement of their individual countries became apparent to leaders of the Southern African region.¹⁰⁶

In May 1979, foreign ministers from the founding member states convened a meeting in Arusha, Tanzania to discuss the possibility of Economic cooperation among the countries of the region. This was the corner stone for the formation of the SADCC grouping in April 1980 at a summit of heads of states and governments held in Lusaka, Zambia.¹⁰⁷

The programme of action for the grouping covered food, agriculture, industry, manpower and energy. It sought to coordinate the development of the economies of member states in these areas through the coordination of various joint projects. Emphasis was given to the reduction of economic dependency of member states on South Africa. Although it is arguable whether the community as a whole achieved this objective, the debate is outside the scope of this work.

The grouping has, since the achievement of majority rule in South Africa and Namibia, undergone a transformation and a shift of focus.

¹⁰⁶SADC Secretariat SADC handbook 1997)
<http://www.sadc-usa/overview/history/html>.

¹⁰⁷The Conference at which the SADCC grouping was formed is commonly referred to as the 'Lusaka Summit'.

3.7 SADC

Namibia and South Africa were admitted to membership in 1990 and 1994 respectively, and Mauritius in 1995. In 1992 at a summit of heads of state and government was held in Windhoek, Namibia and a Declaration and Treaty that transformed SADCC into SADC was signed. Before the signing of the Declaration, SADCC existed without a treaty or legally binding instruments. SADC aims to integrate the region into a single whole as opposed to SADCC that sought merely to coordinate the economies of member states.¹⁰⁸

The objectives of the Community as stated in the Treaty are to, among other things; achieve development and economic growth, alleviate poverty, and enhance the standard of living and quality of life of the peoples of Southern Africa¹⁰⁹.

Like its European counterpart, it seeks to achieve this through the development of policies aimed at the progressive elimination of obstacles to free movement of capital, labour, goods and services

¹⁰⁸Patel Saliem 'Trade Protocol Poses Tough Challenges Ahead' vol 10(2) Southern Africa Political and Economic monthly (1996) 14-15.

¹⁰⁹ibid.

3.8 Organisational structure of SADC

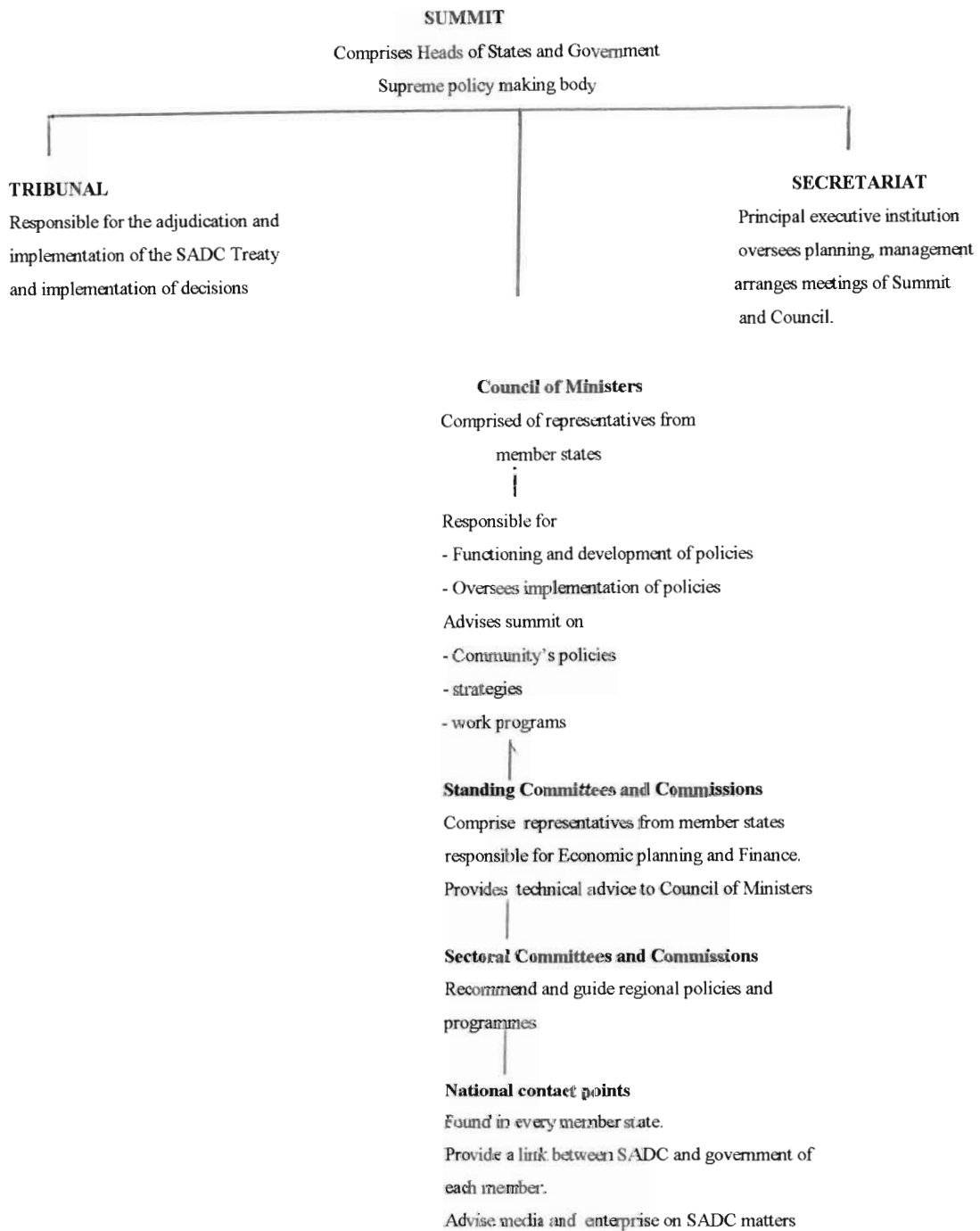


Figure 5. Organisational structure of SADC

Decisions, policies and agreements entered into under the auspices of SADC are legally binding and sanctions can be imposed against a violating member state. Sanctions may also be imposed on a member state that implements policies that undermine the principles and objectives of the community.¹¹⁰

3.9 Food legislation in the SADC grouping

Unlike its European counterpart, however, the Community has not done much about harmonising of food legislation in its member states. The Community has not made deliberate policies in the area of food harmonisation. A number of inequitable trade relations exist between members states with the overwhelming economic, industrial and financial dominance of South Africa. South Africa's huge industries and well developed financial sector place her in a position of advantage over other countries in the region.¹¹¹

The Trade Protocol signed by the member states in August 1996, to establish a Free Trade Area in the next eight years will be a useful barometer for weighing the success of the regional grouping at integration. The Free Trade Area is supposed to enhance trade in goods and services in the region as both tariff and non-tariff barriers are eliminated, custom procedures made less complicated, and trade law harmonised.¹¹²

It is too early to evaluate the success of group in the achieving its objectives in terms of the Free Trade Area

¹¹⁰SADC Secretariat SADC Handbook
<http://www.sadc-usa/overview/history/html>.

¹¹¹ibid.

¹¹²Saliem op cit 14.

and the harmonisation of trade laws affecting the subject of food, but it suffices to say that the decision is a step in the right direction.

3.10 Conclusion

A lot has been done the EU to harmonise its food legislation. It now remains for other regions such as SADC to harmonise its food legislation. This would cut down on the cost of research and a duplication of work involved in ensuring that food standards comply to international standards.

The United Kingdom has had a long history of consumer protection. The study will now turn to an analysis of the food safety legislation in the United Kingdom.

CHAPTER FOUR: FOOD LEGISLATION IN THE UNITED KINGDOM

4.0 *The History of Food Law in England*¹¹³

4.1 *Background*

The concern for purity of food has been of great importance to consumers in England since the mid-Nineteenth century when the effects on health of impure and unwholesome food were heightened. Since then legislation on food in the United Kingdom as a whole has continued to increase.

The Adulteration of Food and Drugs Act of 1860 preventing the adulteration of articles of food and drink comprised just 14 sections.¹¹⁴ Today because of the complexity of food and the advancements made in food technology in the United Kingdom, there has been a vast increase in the volume of legislation.¹⁰⁸

As with any other subject, a proper understanding of the subject must begin with its historic development.

4.2 *England at the close of the Eighteenth century*

With the industrial revolution came mass production and

¹¹³The law with regard to food applicable throughout the United Kingdom which comprises England, Wales, Northern Ireland and Scotland is essentially uniform. There are variations in terms of regulations and enforcement bodies for Northern Ireland and Scotland. Focus will be on the Food and Drugs Act 1990 applicable to the United Kingdom as a whole, regulations made pursuant to the Act, enforcement of the Act and regulations in England and Wales.

¹¹⁴The Adulteration of Food and Drink Act 1860 (repealed).

¹⁰⁸Brian W Harvey and Deborah L Parry The Law of Consumer Protection and Fair Trading (1992) 384.

with it, fierce competition amongst traders. In the late Eighteenth century adulteration of food¹⁰⁹ became one of the biggest problems affecting commerce.

It has been said that formal and informal control measures of various degrees of stringency aimed at preventing the manufacture and sale of adulterated articles of consumption, have existed in England since the medieval period¹¹⁰, but that no general legislation aimed at protecting the consumer was enacted until 1860.

From the medieval period to the mid-Nineteenth century, repeated attempts at suppressing adulteration practices met with consistent failure¹¹¹. The consuming public were unable to exert sufficient influence to eradicate the malpractices perpetuated by an organised manufacturing industry.

In 1815 and 1830, the Assize of Bread and Beerhouse Acts respectively, were repealed in the interests of promoting a spirit of *laissez faire* in trade.¹¹² The repeal of this legislation contributed even further to an increase in adulteration practices in food, drink and drugs,¹¹³ much to

¹⁰⁹Adulteration is defined as the mixing of any substance with an ingredient that is dangerous to health or that makes the substance something other than that which it is sold or intended to be sold as. Jowitts Dictionary of English Law 2nd Ed (1977)57.

¹¹⁰Legislation against impure food is said to have existed since Henry III's Assize of Bread and Ale of 1266:

¹¹¹Ingeborg Paulus, The Search for Pure Food: A Sociology of legislation in Britain (1974) 15.

¹¹²The Business Sector defined "adulteration" as trade practices and was vocal in ensuring its continued existence by maintaining that calls to curb it were against the spirit of "*laissez faire*".

¹¹³W.L. Scott "Food Adulteration and the Legislative Enactment Relating Thereto "(1875) Journal of the society of Arts 427-440.

the detriment of the consuming public.

In the years that followed the inadequacies of prevailing food controls, were greatly felt. It was recognised that the situation required urgent redress. New legislation was enacted to prevent the adulteration of bread¹¹⁴ which legislation became mandatory not only in the City of London, but also in the rest of England.¹¹⁵

The problem however, with the new legislative enactments was that, although they were meant to protect the consuming public, their enforcement was poor.¹¹⁶ The same could be said of the other Acts that had been passed regarding tea, coffee, tobacco, hops and sugar. The Board of Excise charged with the responsibility of enforcing the various Acts paid little attention to consumer frauds and public health. The board's primary concern was the collection of public revenue.¹¹⁷

Consumers as a result suffered economic prejudice besides endangering their health through the consumption of impure foodstuffs.¹¹⁸ The fact that most consumers were illiterate also greatly contributed to their plight.

The first real success at putting in place legislation that protected consumer interests came after the publication of the first report on adulterated articles of food and drink

¹¹⁴The Bread Act 1836.

¹¹⁵Paulus op cit.16.

¹¹⁶ibid.

¹¹⁷J. Burnett Plenty and Want: A Social History of Diet in England from 1815 to the Present Date. (1966) 82- 84.

¹¹⁸Paulus op cit.16.

in The Lancet medical journal of 1851. The Bradford incident of 1858 further heightened the need for protection of consumers from adulterated food substances.

In October that year about 200 people were poisoned, 17 of whom died, after consuming adulterated lozenges. This incident that became known as "the Bradford incident" led to an intense debate on the subject of adulteration. These two events, amongst others, led to the passing of the first general Act in 1860 aimed at preventing the adulteration of food and drink.¹¹⁹

The Adulteration of Food and Drink Act of 1860 laid a foundation for a general framework of food quality control that followed. Successive legislation on food addressed not only adulteration but other matters of public health.¹²⁰

In 1872 a successive act was passed, the Adulteration of Food, Drink and Drugs Act which extended the control of legislation to drugs. The 1872 legislation did not however overcome the problem in the 1860 Act that required proof of knowledge, *mens rea* in order to secure a conviction against a trader. Both statutes required proof that a trader had knowingly supplied adulterated goods. The *mens rea* requirement was a stumbling block in the enforcement of the legislation and was challenged in subsequent cases brought before the courts.¹²¹

By 1875 when a new Act was passed, the *mens rea* requirement

¹¹⁹The Adulteration of Food and Drink Act 1860.

¹²⁰For example the Public Health Act 1875.

¹²¹Fitzpatrick v Kelly (1873) QB 337: Roberts v Egerton (1874) L.R QB 494.

was removed from the legislation in line with the court's imposition of strict liability on traders. This led to the gradual suppression of adulteration.¹²²

The legislation was however scattered over many pieces of legislative enactments which made enforcement cumbersome.

The first attempt at consolidating the various pieces of legislation was made in 1928, and was followed by a more comprehensive consolidation in 1938.¹²³ Other Acts were passed in 1955 and 1984 respectively.¹²⁴ Today the law governing food in the United Kingdom is the Food Safety Act of 1990.¹²⁵

4.3 The role of the court in the development of food law in England

Although the development of food law in England has been more the result of legislative enactments, the courts have also played their part. Their contribution to the development of food law has been through their interpretation of statutes in various situations brought before them for adjudication. Judicial precedents set by the courts have provided direction for the expansion of

¹²²This is not to say that the practice was completely eradicated nor that traders did not seek new means by which to further perpetuate the practice, but that cheap adulteration practices were greatly reduced.

¹²³The Food and Drugs (Adulteration) Act (Consolidation Statute) 1928 and the Food and Drugs Act (Clarification and Consolidation Statute) 1938. The later Act repealed over 250 provisions scattered over thirty six Acts dating back to the reign of Henry VIII.

¹²⁴The Food and Drugs Act 1955 and the Food Act 1984.

¹²⁵The Food Safety Act 1990 is the principal Act with numerous regulations made pursuant to it.

this area of the law.

As early as 1873, cases such as Fitzpatrick v Kelly¹²⁶ had challenged legislative enactments that existed at the time. The case challenged the requirement for proof of knowledge - *mens rea* under the 1872 amendment to the 1860 Act¹²⁷. This led to the imposition of strict liability on traders and vendors for food offences.

An important case in the history of food law was the celebrated case of Donoghue v Stevenson.¹²⁸ This case changed principles of the law regarding liability of manufacturers for their products under the tort of negligence.

In the famous words of Lord Atkin:

"..... A manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him, with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take reasonable care...."¹²⁹

¹²⁶(1873) QB 337.

¹²⁷Adulteration of Food and Drink Act 1860 (repealed).

¹²⁸[1932] ALL ER (HL) 31; (1932) SLT 317.

¹²⁹(1932) AC 562 at 599.

This case extended the meaning of the term consumer to encompass not only a direct purchaser but also a third party user and even someone in the vicinity of the product if it can be foreseen that such a person would be injured.¹³⁰

Other principles expounded by the courts over the years include among others, those relating to merchantable quality, fitness for purpose and conformity to description.¹³¹ It is on foundations of principles such as these that consumer law, to which food law is part, have come to rest.

4.4 The influence of the European Union on food law in the United Kingdom

Since 1973 when the United Kingdom joined the European Union (the European Community as it was then known),¹³² many areas of its law have been brought into a gradual harmonisation with those of the Union. Most of the law in the United Kingdom has been directly affected by the implementation of the European Union's directives and

¹³⁰Brown v Cotterill [1934] 51 T.L.R 21.

¹³¹Meah v Roberts [1978] 1 ALL ER 97 Whereby a customer that had ordered lemonade for his children but was erroneously supplied with caustic soda. The Court held that the 'food' was not of the nature demanded nor was it fit for human consumption.

¹³²The United Kingdom applied for membership to the European community together with Denmark, Norway and Ireland in 1972 but was only admitted to full membership in 1973. The birth of the European Community came from the joint effort after the 2nd World War of six European countries namely: The Federal Republic of Germany, The Netherlands, France, Italy, Luxembourg and Belgium that felt after the war the need for close co-operation among the European countries to promote reconciliation and economic recovery. They signed a Treaty establishing the European Coal and Steel Community in 1951. In 1957 co-operation was extended to areas of atomic energy and trade by the establishment of European Atomic Energy Community and the European Economic Community respectively.

regulations. The Food Safety Act of 1990 is one such piece of legislation. The 1990 Act has been made compatible with provisions of the Union's directives and regulations pertaining to food control.¹³⁵

4.5 Food legislation in England and its enforcement

Although in England there are several pieces of legislation that pertain to consumer interests¹³⁶ the paramount concern of this study is food safety legislation. The central focus of this study will therefore be placed on the Food Safety Act of 1990 and the regulations made pursuant to it.¹³⁷

Whereas some mention will be made to other legislation that affects consumer interests, such as, the protection of a consumer's economic interests,¹³⁸ this will be done only briefly. This is because these concerns although important, are outside the scope of this thesis. The reason for the emphasis on the Food Safety Act, is that it is the principal Act governing food in England.¹³⁹ It is pursuant to this Act that subsidiary legislation in the form of statutory instruments and regulations have been made.

¹³⁵A A Painter Butterworths Food Law (1992) 1.

¹³⁶Some directives and regulations that have been translated into law in the United Kingdom.

¹³⁷For a compilation of the regulations that have been made pursuant to the Food Safety Act 1990, Food Act 1984 and the Food and Drugs Act 1955 refer to Appendix 3 to the work.

¹³⁸For example the Trade Descriptions Act 1968 and the Fair Trading Act 1973.

¹³⁹Other Acts pertaining to consumer protection such as the Consumer Protection Act 1987 specifically exclude food s 10 (7) of the Act.

4.6 *The application of the Food Safety Act*

The Act applies to the United Kingdom which includes England and Wales, Northern Ireland and Scotland.¹⁴⁰ It repealed the whole of the Food Act 1984 (save for parts III and V) and the Food and Drugs (Scotland) Act 1956. It also amended the Food and Environment Protection Act 1985.¹⁴¹

It is noteworthy that regulations and orders made under the Food Act 1984 and earlier legislation continue in force as if they were made under the 1990 Act.¹⁴² Substantial modifications have, however, been made to all such legislation to bring them in conformity with new provisions of the Act. Also, adapted into the provisions of the 1990 Act are those of the 1972 European Communities Act.¹⁴³

Of importance to this study in relation to the 1990 Act are:

- (I) Some definitions of important concepts pertaining to food;
- (ii) Offences relating to food; and
- (iii) Enforcement and administration of the Act.

4.7 *A synopsis of the Food Safety Act*

The Act is an enabling Act under which subsidiary legislation may be made by the Minister of Agriculture,

¹⁴⁰Painter op cit.26.

¹⁴¹Preamble to the Act.

¹⁴²Food Safety Act 1990, s 59 (4).

¹⁴³Painter op cit.27.

Fisheries and Food or the Secretary of State. This is in relation to England and Wales.¹⁴⁴

The 1990 Act in its preliminary part defines the term food. The definition of food in the 1990 is unlike that given in 1984 Act which only referred:

"Drink; chewing gum and other products of a like nature and use, and articles and substances used as ingredients in the preparation of food."

Under the 1990 Act the term food now extends to:

"Articles and substances of no nutritional value used for human consumption."¹⁴⁵

This extension in the definition of food is pragmatic as there now exist many items of consumption, consumed on a large scale that are of no nutritional value. Consumers need to be accorded the protection of the law in their consumption of these products.

4.8 Enforcement of the Act

In England and Wales the enforcement of the Act is in the hands of both the central government and local authorities. Central government responsibilities are shared between the Ministry of Agriculture, Fisheries

¹⁴⁴Food Safety Act 1990, s 4.

¹⁴⁵For various subsidiary legislation made pursuant to the Act refer to Appendix 3 of this work.

and Food and the Department of Health. The bulk of enforcement however is in the hands of local authorities as opposed to the central government.¹⁴⁶

Local authorities charged with the enforcement of the Act and regulations made pursuant thereto are county councils, district councils and London borough councils.¹⁴⁷ The effect of this is that in the metropolitan districts, district councils remain the food authorities while in the non-metropolitan counties, the county councils and district councils are the food authorities.¹⁴⁸

Other officers concerned with the administration of the Act and its regulations are the environmental health officers and trading standards officers for districts and counties respectively.¹⁴⁹ Under the Act there is a provision for the appointment of Public Analysts to provide technical advice for the purposes of enforcement of the Act.¹⁵⁰

In the interest of consumers, duties of the food authorities are to a large measure exercised concurrently. As specific matters require to be directed to particular local authorities, for example micro-organism contamination and chemical contamination that are dealt with by district councils

¹⁴⁶Harvey and Parry op cit 384.

¹⁴⁷Section 5, Food Safety Act 1990.

¹⁴⁸Harvey and Parry op cit 384.

¹⁴⁹ibid.

¹⁵⁰Section 27, Food Safety Act 1990.

and county councils respectively, a code of practise has been put in place to aid consumers direct their complaints to appropriate local authorities.¹⁵¹

To avoid a duplication of labour and wastage of resources, the code of practice elaborates liaison arrangements among the various enforcements agencies concerned.¹⁵²

The 1990 Act bestows a wide range of enforcement powers on the food authorities. Food authorities and authorised officers¹⁵³ are given powers to enforce provisions of the Act. They are given powers of inspection and seizure,¹⁵⁴ to ensure improvement notices that require a proprietor to comply with food hygiene conditions and practices,¹⁵⁵ and the issue of prohibition orders against the use of particular processes, treatments, equipment or persons in a food business.¹⁵⁶

The Act also provides protection to consumers by creating offences meant to foster consumer protection.¹⁵⁷ This protection covers two aspects:

¹⁵¹Statutory Code of Practice No 1:Responsibility for the Enforcement of the Food safety Act 1990.

¹⁵²Harvey and Parry op cit 385.

¹⁵³S5(6): "authorised officer in relation to the food authority means any person authorised by the food authority in writing to act on its behalf in matters arising under the Act."

¹⁵⁴Food Safety Act 1990, s 9.

¹⁵⁵Food Safety Act 1990, s 10.

¹⁵⁶Food Safety Act 1990, s 11.

¹⁵⁷Food Safety Act 1990, ss 14 and 15.

- (i) food safety and
- (ii) consumer protection.¹⁵⁸

4.9 Food safety

The protection offered by the Act covering food safety is not a new concept, having previously existed in the 1955 and 1984 Food legislation.

The Act unlike its predecessors has however defined "injury to health as any impairment, whether permanent or temporary".¹⁵⁹ The Act in deciding whether food is harmful to health or not will note:

- "(a) the probable effect of that food on the health of the person consuming it;
- (b) the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities."

The introduction of the notion of cumulative effects on health of food is important given the increased knowledge of how health can be injured by the consumption of even ordinary quantities of some products.

"Under the Act "food is rendered injurious to health;"¹⁶⁰ by

- (a) adding any article or substance to the food;

¹⁵⁸Food Safety Act 1990, s 7, 8, 14 and 15.

¹⁵⁹Food Safety Act 1990, s7 (2) and (3).

¹⁶⁰Food Safety Act 1990, s7 (1).

- (b) using any article or substance as an ingredient in the preparation of the food;
- (c) abstracting any constituent from the food; and
- (d) subjecting the food to any other process or treatment."

It is an offence under the Act for any person (juristic or natural)¹⁶¹ to sell, offer, expose or advertise for human consumption food failing to comply with food safety requirements.¹⁶²

Food fails to comply with safety requirements if:

- (a) it has been rendered injurious as provided under s7 (1);
- (b) it is unfit for human consumption; or
- (c) it is contaminated extraneously or otherwise making it unreasonable to use it for human consumption.

For the purpose of enforcement of the foregoing provisions and the Act overall, s9 gives authorised officers the power of inspection and seizure.

Notices that may be served by authorised officers include those:

- (a) preventing the sale of food for human consumption, or;
- (b) its removal to a place other than the one immediately specified in the notice or alternatively one requiring that the food be taken immediately before a magistrate to obtain an

¹⁶¹Under Schedule 1 of the Interpretation Act 1978 the expression person includes a body of persons corporate or unincorporated unless the contrary intention appears.

¹⁶²Food Safety Act 1990, s 8 (1).

order for its destruction.¹⁶³

These powers arise if on inspection¹⁶⁴ the food appears to an officer as not satisfying the food safety requirements of s 8, or where it appears to the enforcement officer that the food is likely to cause food poisoning or any disease communicable to humans.

The 1990 Act maintains the tradition in food legislation of being largely an enabling statute leaving the details to be spelt out in subsidiary legislation. A great deal of subsidiary legislation dealing with food already exists and provisions have been made for these to continue in force.¹⁶⁵

4.10 Food regulations made pursuant to the Act¹⁶⁶

Various regulations have been made subject to the Act. These include, among others, provisions that require, prohibit or regulate the presence of specific substances in food, the use of certain processes or treatment in food preparation, and the labelling, marking, presenting and advertising of food. Other provisions are those that ensure the implementation of particular microbiological standards and the observance of hygienic conditions and practises in the

¹⁶³Bradgate op cit.323.

¹⁶⁴Food Safety Act 1990, s 9.

¹⁶⁵Food Safety Act 1990, s 9 (2) introduces an important new feature that is the power to issue a notice which gives the authority 21 days to make further investigations into the fitness of the food. S 31 of the Food Safety Act 1984 had contained a similar provision although it was far more limited and was in practice rarely used.

¹⁶⁶Refer to Appendix 3 for a full list of food regulations in force in England.

preparation of food.¹⁶⁷

4.10.1 Regulations on the enforcement of European Union provisions

Predecessors of the 1990 Act did not contain any specific authority in form of legislation requiring the need for food legislation in the United Kingdom to be in compliance with that of the European Union's directives. Now by virtue of s 17 of the Food Safety Act, the Minister may make regulations with regard to food, food sources or contact materials that bring legislation applicable in the United Kingdom in conformity with that of the European Union.¹⁶⁸

4.10.2 Novel Foods

This is another area in which regulations may be made by the Minister who may prohibit the importation or carrying out of commercial operations with regard to novel foods or food sources.¹⁶⁹ Novel food has been defined as "food not previously used for human consumption in the United Kingdom or those used only to a limited extent".¹⁷⁰

¹⁶⁸Food Safety Act 1990, s17(1).

¹⁶⁹Food Safety Act 1990, s 18(1).

¹⁷⁰These include state of the art products like slimming foods and food which though popular in other countries have only recently been introduced on the British markets e.g exotic fruits and vegetables.

4.11 Defences in terms of the Food Safety Act.

The 1990 Act has completely redesigned the defences available under the Act. It will be important to first start by looking at the defences under the Food Act 1984.

4.11.1 Defences under the Food Act 1984

Under the Food Act 1984, there were two main defences available to those charged with food offences.

The first was the defence of "offence due to act or default of another".¹⁷¹ This was applicable where a defendant could prove that the offence was due to the act or default of another and that he had used all due diligence to avoid the commission of the offence. The defence enabled a person charged directly to bring in a third party.¹⁷²

The second defence was that of a written warranty. The defence availed a defendant who could prove four prerequisites:

- (a) that goods had lawfully been purchased, sold or otherwise dealt with;
- (b) that there was a written warranty to that effect;
- (c) that at the time of the alleged offence no reason existed to the effect that it was otherwise;
- (d) that the goods at the time of the alleged offence were in the same state as at their purchase.¹⁷³

¹⁷¹Section 100 Food Act 1984.

¹⁷²Harvey and Parry op cit 397.

¹⁷³Section 102 Food Act 1984.

4.11.2 Criticisms of the defences under the 1984 Act

The foregoing defences under the 1984 Act were subject to much criticism. It was felt that s100 dealing with an offence due to the fault of another applied only when another party was to blame, whilst s102 dealing with written warranty made it easier for importers to hide behind a warranty leaving home producers without such cover. This was seen to greatly disadvantage local producers.¹⁷⁴

4.11.3 Defences under the 1990 Act.

Owing to the sentiments against the defences under the 1984 Act, the 1990 Act replaced the defences with a general defence. Under the 1990 Act s 20 replaced s100 in the 1984 Act. Under s 20 where the commission of any offence is due to an act or default of another person, that person shall be guilty of the offence. Although s 20 falls under defences available under the Act this is not a defence as it is dependent on the discretion of the prosecution to bring proceeding against such third person.

The main defence under the 1990 Act is that of due diligence. This is applicable where a defendant can prove that he or she has exercised all reasonable precautions and exercised all due diligence to avoid the commission of the offence himself or by a person under his control¹⁷⁵. The defence is available to a person charged with an offence under sections 8, 14 or

¹⁷⁴Bradgate and Howells op cit.330.

¹⁷⁵Food Safety Act 1990, s 21.

15 who can prove that he or she neither prepared the food nor imported it into the United Kingdom.¹⁷⁶

A person shall be deemed under this section to have satisfied the requirements of the defence if he can prove

- a) that the offence committed was due to the act or default of another person not under his control;
- b) that he carried out all reasonable checks or that it was reasonable to rely on checks carried out by his supplier; and
- c) that he did not know and had no reason to suspect at the time of the commission of the alleged offence that the act or omission would amount to an offence.¹⁷⁷

Where a person applies its name or mark to the product, he/she must prove that he/she did not know, and could not reasonably be expected to have known at the time the offence was allegedly committed, that his/her conduct could amount to an offence. "Own branders" are however subject to a stricter regime as they must show:

- (a) that the offence committed was due to the act or default of another person not under his control;
- (b) that the sale or intended sale was not a sale or intended sale under his name or mark; and
- (c) prove that they did not know, and had no reason to suspect, that their act or omission would

¹⁷⁶Food Safety Act 1990, s 21 (2) (a) and (b).

¹⁷⁷Food Safety Act 1990, s 21 (3) (a), (b) and (c).

amount to an offence.¹⁷⁸

The defence of due diligence, like that of written warranty, is not available to those involved in the preparation of food nor to importers.

The revision of the defences serves to place a greater burden on food businesses. This is even higher than the standard imposed by a strict interpretation of the written warranty defence expounded in the case of London Borough of Camden v Fine Fare Ltd.¹⁷⁹ In that case the court did not give credence to the claim by Fine Fare Ltd that it had no reason to believe that the product had at the time of sale not remained in the same state as at the time of its purchase.¹⁸⁰

The defendant sought to rely on the written warranty given without it having in place a system to check the daily freshness of products supplied. The court decided that a claim of this nature could not be made by a company of the size of Fine Fare Ltd that ought to have had in place a system to check products received.¹⁸¹

Generally defendants are now expected to do more than was required in the past to show that they could not reasonably have known that their acts or omissions would amount to an offence.¹⁸²

¹⁷⁸Food Safety Act 1990, s 21 (4).

¹⁷⁹February 2, 1987 unreported.

¹⁸⁰The court was of the opinion that a reputable firm such as fine foods should have had in place a system to check the daily quality of their supplies.

¹⁸²Food Safety Act 1990, S 21 (4).

It has been submitted that the due diligence defence will ensure fewer instances where the defence will be sought to be relied on without any sampling or further checks first being done.¹⁸³ This it is hoped, will result in greater advantage to the consumer as he or she can be sure that the defences available to a producer, manufacturer or "own brander" will not be available without caution.¹⁸⁴

4.11.4 fines and penalties for contravention of the 1990 Act

A person guilty of an offence under the Act shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding two years or to both and on summary conviction to fine and/or prison term not exceeding six months¹⁸⁵

The 1990 Act increased the amounts imposed as fines for infringements of provisions of the Act and its regulations to amounts of not less than £20,000 for convictions under s 7, 8 and 14¹⁸⁶. These provisions relate to consumer safety, and provide recognition of the importance attached to the subject.¹⁸⁷

¹⁸⁴Bradgate and Howells Op cit.

¹⁸⁵Food Safety Act 1990, S 35 (2) (a).

¹⁸⁶Food Safety Act 1990, S35(3) (a).

¹⁸⁷Bradgate and Howells Op cit. 332.

4.12 Governmental, quasi-governmental and voluntary food bodies

4.12.1 Government ministries and departments

The Ministry of Agriculture, Fisheries and Food exercises a lot of authority under the Food Safety Act 1990¹⁸⁸. Departments dealing with various food matters have been set up in the Ministry. Although this Ministry works in collaboration with other ministries and departments, it is with this Ministry that various quasi-governmental and non-governmental committees work in closest collaboration.

4.12.2 Quasi-governmental and government sponsored bodies

The British Standards Institute

This is a voluntary body that receives a grant from the Department of Trade and Industry. It has a standing of more than 75 years and functions to provide guideline for uniformity in standardisation. Its product mark the "kite mark" has received consumer and industry recognition to represent quality. BSI also provide on the spot checks of products bearing its mark to ensure observance to the highest standards.

The Food Advisory Committee

The Food Advisory Committee (FAC) was a result of a merger in November 1983 of the Food Standards and the Food Additives and Contaminants Committees. It is a

¹⁸⁸Food Safety Act 1990, s 4.

technical committee set up to advise the Minister of Agriculture, Fisheries and Food and other relevant Secretaries of State¹⁸⁹ on matters pertaining to the composition, labelling, advertising, additives contaminants and other substances that maybe present in food or used in the preparation of food.¹⁹⁰

The Food Standards Committee (FSC) was an independent committee formed in 1947. Its role was to advise the Minister of Agriculture, Fisheries and Food and other relevant Secretaries of State on the drawing up of regulations on food consumption. The terms of reference for the ten member committee whose experts were drawn from the scientific, trade and consumer protection backgrounds, were to carry out reviews to regulations that were necessary and to decide the nature and extend of the reviews required.

The FSC would submit its report to the Minister who would invite comments from the public. After detailed consultation detailed regulations drafted would be submitted to Parliament. Regulations pertaining to compositional standards,¹⁹¹ and date-marking¹⁹² are examples of some initiatives of this committee. Under date marking it was upon the recommendations of this committee that "sell by" dating of products was introduced in 1975.

¹⁸⁹Being the Secretaries of State for Social Services, Northern Ireland and Scotland.

¹⁹⁰Harvey and Parry op cit 387.

¹⁹¹Compostional standards relating to ice cream, cheese, sausages, meat pies sausage rolls, fish pastes and jams.

¹⁹²Date marking regulations of 1971 and 1972.

The Food Additives and Contaminants Committee (FACC) prior to 1966 was a subcommittee of the FSC. Its role was to advise on matters concerning additives and contaminants. Like the FSC it acted on ministerial references and its reports were published for comment before submission to Parliament for enactment into legislation.

A need to merge the FSC and FACC into a single committee, FAC was necessary to consolidate the work of the two committees. Under s16 and s17 of the 1990 FAC is given power to make regulations as to composition of food and enact legislation that is in conformity with the directives of the European Union.¹⁹³ This committee is influential in shaping legislation in the United Kingdom.

4.12.3 Voluntary bodies

The Consumer Association

The Consumer's Association is famous for its publication Which? Is probably the most well acclaimed consumer body in the United Kingdom. The Association provides comparative testing of goods and services. The Association was established in .Today it's publication enjoys a very wide readership and is influential in promoting consumer affairs legislation.

4.13 Conclusion

Having looked at the Food safety Legislation in the United Kingdom, the study will now turn to an analysis

¹⁹³Some of the regulations that have been made pursuant to the community obligations include those relating to preservatives and colouring matter in food. Refer to Appendix 1 of this work.

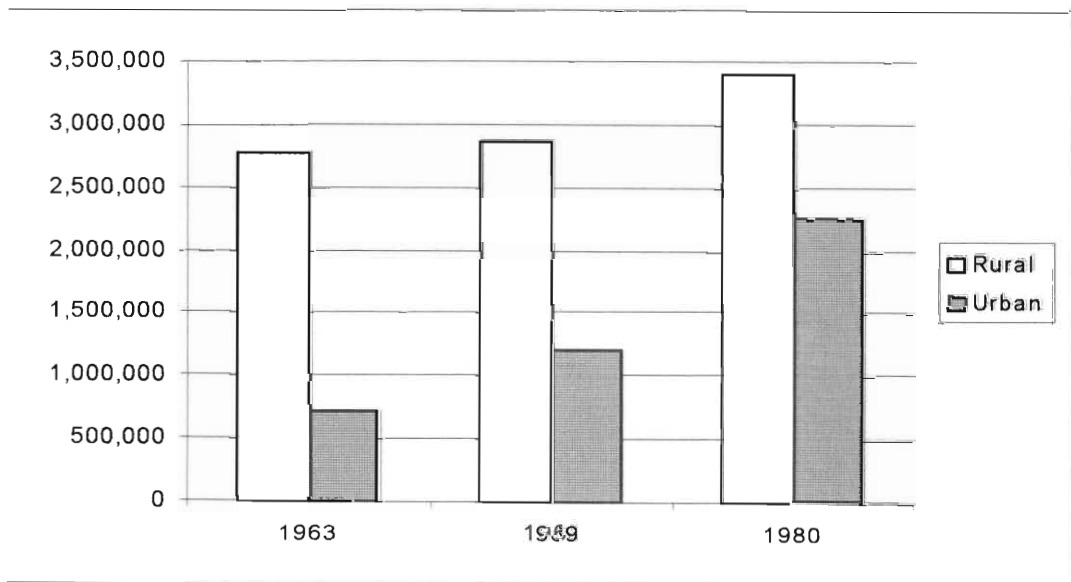
of the food safety legislation in Zambia which is founded upon the English legal system.

CHAPTER FIVE: FOOD LEGISLATION IN ZAMBIA

5.1 Background

Zambia is a landlocked country in Central Southern Africa. It has a land area of 752 614 square kilometres and a population of 9,65 million (with an annual growth rate of 3.5 per cent).¹⁹⁴

Since its independence in 1964, Zambia has held three comprehensive population censuses.¹⁹⁵ The growth in urban population in relation to national population as indicated by the statistics from the census shown in Figure 6 below, show that Zambia's urban population is fast growing.



¹⁹⁴Cable Network News (CNN) country profile Zambia 1997.

¹⁹⁵Central Statistics Office Census of population and Housing 1969 Vol iii (1974), 1980 Population and Housing Census of Zambia Vol iii (1985) and 1990 Census of Population, Housing and Agriculture Vol iii (1994)

	1963	1969	1980
Rural	2,774,914	2,864,579	3,403,232
Urban	715,256	1,192,116	2,258,569
Total	2,490,170	4,056,995	5,661,801
Urban as % of National	20.5%	29.4%	39.9%

Figure 6 showing the comparison between urban population and national population that shows a trend in increasing urban population.¹⁹⁶

The major reason for the increase in urban population continues to be the urban drift that begun during the colonial period where rural dwellers migrated to urban areas in search of jobs and a better standard of living. A line of rail was built to connect the mining areas, farming area and administrative centres which belt forms the main urban area in the country. The concentration in urban population is found in this region.

Although Lusaka and the Copperbelt provinces comprise a total of 7.1% of the land area they contain over 34% of the national population.¹⁹⁷ Today Zambia has one of the highest urban populations on the continent with an estimated 52 per cent of her population living in the urban areas.¹⁹⁸

Although the country exports copper, lead, zinc, cobalt, agricultural and horticultural produce, copper

¹⁹⁷Central Statistics Office 1980 Population and Housing Census of Zambia Vol iii (1985)

¹⁹⁸CNN op cit.

still remains the country's largest export. It accounts for more than 80 per cent of her exports and contributes 5 per cent to the country's gross domestic product (GDP).¹⁹⁹ Her imports, among others, consist of Crude oil, chemicals, machinery and manufactured goods.²⁰⁰

Like many now independent African states, Zambia, is a former British Colony. Zambia, then Northern Rhodesia, obtained her political independence from British rule on 24th October, 1964. Britain formally took control of the territory from the British South African Company (BSA) in 1911. As with many of its former colonies, Britain introduced its own legal structure to help it administer the colony.²⁰¹

The interests of both the colonial government and the BSA Company lay in the exploration of copper discovered in the northern part of the country. To entice the migration of the required labour force from rural areas, the colonial government imposed a hut and poll tax system on the indigenous people. It also outlawed traditional farming systems and cash cropping.²⁰² This compelled the men to leave their villages to seek employment on the mines to enable them pay these taxes. This led to the growth of the migrant population on the mines.

¹⁹⁹Zambia Investment Centre (ZIC) 1996.
[Http://www.zamnet.zm/zamnet/zambus/zic/mfe.htm](http://www.zamnet.zm/zamnet/zambus/zic/mfe.htm).

²⁰⁰Zambia Investment Centre (ZIC) 1996.
[Http://www.zamnet.zm/zamnet/zambus/zic/poz.htm](http://www.zamnet.zm/zamnet/zambus/zic/poz.htm).

²⁰¹Ian Murphy and Richard Vaughan (1990) Zambia 8.

²⁰²Mubiana Macwangi, Lisa Cliggett and George Alter Consequences of the Rural-Urban Migration and the Support for the Elderly (1996).

The Colonial Government perpetuated racial policies that marginalised indigenous miners and the general populace. This led to the resistance against Colonial rule. With the formation of the Federation of Northern Rhodesia, Southern Rhodesia and Nyasaland in 1953, African resistance further increased. Under the Federation the indigenous inhabitants of Northern Rhodesia felt exploited by the Federal Government's choice to concentrate industrial development in Southern Rhodesia at their expense.²⁰³

After concerted African resistance to Colonial rule, the British Colonial Government granted political independence to Northern Rhodesia and the new nation of Zambia was born.

Mineral rich Zambia at the time of her independence had one of the strongest economies on the continent.²⁰⁴ After independence however, the government was faced with many challenges including those of improving the education level of its people, providing health care and expanding the country's infra structure. It also sought to reduce the economic gap between the 'haves' and 'have nots'.

For fostering economic empowerment of its people, the government adopted the socialist ideology of humanism

²⁰³The Federation which lasted 10 years is still today cited as being one of the main reasons why Zimbabwe (then Southern Rhodesia) has a better established manufacturing and industrial sector compared to that of Zambia.

²⁰⁴M Mc Grath and A Whiteside 'Industry, Investment Incentives and the Foreign Exchange Crisis: Zambia a Case Study' in Industrialization and Investment Incentives in Southern Africa (1989) 167.

and embarked on a nationalisation programme. Under the programme it nationalized previous privately owned companies by acquiring 51 per cent or more of the company's controlling interest. Nationalisation took place in areas of mining, finance and manufacturing.²⁰⁵

Zambia's economic success story was however short lived. There was a drastic fall in copper prices on the London Metal Exchange (LME) in the mid 1970s.²⁰⁶ This drastically reduced government revenue and resulted in a balance of payment deficit.²⁰⁷

With the progression of time, the country's economy further declined as copper prices continued to fall. This coupled with economic mismanagement, corruption, heavy costs of hosting liberation movements in neighbouring countries and the lack of diversification in investment, saw the country become largely dependent on foreign aid.²⁰⁸ Today, Zambia stands among the poorest countries in the world.²⁰⁹

²⁰⁵Zambia industrial and mining company (ZIMCO) was formed as a holding company to oversee government interests in the various interests acquired. The company was amongst the largest holdings companies on the continent with more than 150 subsidiaries.

²⁰⁶Copper prices in 1975 fell from 93,23 to 56,10 cents per pound. (ibid).

²⁰⁷From 1975 onwards, the government fell behind in its repayment obligations creating an arrears pipeline of K700m by 1983: Roger C. Riddell Manufacturing Africa (1990) 301.

²⁰⁸Zambia's dependency on loans from the International Monetary Fund date back to 1973. First the institution granted the country short term loans which due to the country's failure to repay were converted into long term loans: Murphy and Vaughan op cit 8.

²⁰⁹OED "Turning an Economy Around, the Challenge in Zambia" Precis No. 132.

5.2 Zambia's economic scenario

The general elections held in 1991, saw the defeat of the United National Independence Party (UNIP) that had governed the country since it obtained independence from British colonial rule. The new Movement for Multi-party Democracy (MMD) government has since its election adopted many measures to resuscitate the country's ailing economy. It has embarked on market-related reforms and the privatisation of previously owned state enterprises. Privatisation is aimed at relieving the state of the burden imposed on it by loss making state owned companies.²¹⁰

In March 1992 it adopted a structural adjustment programme funded by the International Monetary fund (IMF).

Among sectors in the Zambian economy that were to benefit from the liberalisation of the Zambian market were the manufacturing and industrial sectors. It is the view of those involved in manufacturing industry that the liberalisation of the market occurred at too fast a pace.²¹¹ It is felt that the manufacturing sector was not given the opportunity to adjust to the competitive environment created.

Before 1991, most manufacturing companies existed as state-owned monopolies. Most of the parastatals were

²¹⁰Danida, Zambia Poverty Problems
[Http://www.um.dk/english/udenrigspolitik/udviklingspolitik/lande_strategier/zambia/zambia.3.1.html](http://www.um.dk/english/udenrigspolitik/udviklingspolitik/lande_strategier/zambia/zambia.3.1.html).

²¹¹Most companies are running at between 30 and 60 percent of productivity capacity. Len Aked 'Copperbelt Companies, the Struggle Continues' Profit no. 5 October 1996 20.

grossly mismanaged, loss making and had machinery and plants that required upgrading. This left many parastatals dependent on the few profit making companies and on government subsidies. As the government policy then restricted imports, consumers had little choice in varieties of goods available to them. Most state-owned companies because of their monopoly attached very little importance to quality control for their products.

After 1991, it was felt that the import duty structure introduced as part of the government's economic reforms, favoured trading as opposed to manufacturing.²¹² Imported finished goods were treated to a lower tax rating than imported raw materials required by most industries in the country for their production of finished goods²¹³. Zambian manufacturers found themselves having to compete against better quality and more competitively priced imports.²¹⁴

Although the government has allegedly made efforts to redress the situation by granting manufacturers tax relief upon the satisfaction of specific requirements,²¹⁵ it is felt that the remedial action came too late. Many manufacturers have gone out of

²¹²Mark O'Donnell, Chairman Zambia Association of Manufacturers interview 15th April, 1997.

²¹³Aked Op cit. 20.

²¹⁴Survey on prices of locally produced canned foodstuff in comparison to imported foodstuff showed that locally produced canned foodstuff is still more expensive than imported canned food. Dominic Sichinga Lusaka Zambia 7th - 23rd December 1997.

²¹⁵Letter to Commissioner of Taxes, Zambia Revenue Authority dated 15th March, 1997. No response to his letter was received. See Appendix 4.

business or had to drastically reduce their production outputs.²¹⁶ Manufacturers have expressed doubt at the government's commitment to effecting tax relief on imported raw materials. There is too much bureaucracy involved in the qualification process before the grant of an exemption is made. This means that little benefit is actually being derived by manufacturers as a result. Efforts to get clarification on the position from the revenue collection authority proved futile.²¹⁷

Another factor that has had a bearing on the plight of the manufacturing industry has been the high interest rates charged on loans and overdrafts. This has retarded the development of industries.²¹⁸

It is submitted that the lack of a clear-cut government policy on the development of the manufacturing industry is another reason that the industry has not attained its full potential growth capacity.²¹⁹

5.3 What is the effect of this economic scenario?

For consumers liberalisation of the Zambian market has brought about the availability of a greater variety of goods.

²¹⁶Aked op cit. 20.

²¹⁷Letter to the Commissioner of Taxes, Zambia Revenue Authority dated 15 July, 1997. No response was received to this letter. See Appendix 5.

²¹⁸Mark O'Donnell Chairman of Zambia Association of Manufacturers interview 15th April, 1997.

²¹⁹ibid.

This is unlike the period before 1991 characterised by severe shortages of even basic foodstuffs. Today shops, including the recently established South African food chain, Shoprite Checkers, stock a variety of foodstuffs. These are often of better quality and usually cheaper than those manufactured locally.²²⁰

Even with the availability of large varieties of goods, it is questionable whether real benefits are being accrued to consumers. The removal of subsidies on foodstuffs has meant that only a small percentage of the population can actually afford even basic foodstuffs. There is a lack of correspondence between the rise in food prices and the rise in wages. Many people have found themselves out of work due to privatisation and the implementation of private sector reforms.

A lot of people especially in urban areas have resorted to trading. Most towns have now an increased number of street vendors who sell foodstuff and other consumer goods. These are because poor handling and hygiene practices pose a threat to the health of consumers.

Some of the foodstuff sold by not only street vendors but even by supermarkets are in an unwholesome state caused by damage from improper storage facilities during their transportation.²²¹

²²⁰There are no statistics of the quantity of food imports nor quality comparative analysis between local and imported foodstuff.

²²¹There are no official reports evaluating the state of imported foodstuff at the point of sale.

Dumping of foodstuff and drugs is another major problem that Zambia like other third world countries faces. In Zambia, the full extent of this problem is not realised as little is actually being done to monitor the situation, this is still a major problem.

Clearly, despite the undesirability of government intervention in a free market economy, some control is necessary to ensure consumer health and safety. This is especially necessary in a country where more than 70 per cent of the population live below the poverty datum line²²² and large proportions of the foodstuff available is imported. This leaves most of the population vulnerable to malpractices by some business people who import poor quality and defective foodstuffs which they sell at low prices.

The problem is real as many people including those who are literate resort to buying such foodstuffs because of the lack of appreciation of dangers to health that such foodstuffs pose. If food shows no visible signs of decomposition, it is assumed that it is not a danger to health, and where it exhibits visible signs of decomposition it is felt that cooking will eliminate all microbiological hazards.²²³ While this may destroy some of the bacteria, thermolabile bacterial toxins may still persist thus posing a continued risk to the health of a consumer.²²⁴

²²²World Bank Zambia Country Assistance Review: Turning An Economy Around <http://www.worldbank.org/html/oed/s15675.htm>.

²²³Zulu Rhoda, National Council for Scientific Research interview dated 23rd December, 1997.

²²⁴Anyanwu and Jukes op cit 114.

It is therefore, necessary to examine the quality and adequacy of the food safety legislation for food manufactured locally and that imported into the country. The chapter will also examine the enforcement mechanism of this legislation.

*5.4 Background to the Zambian legal system.*²²⁵

Like other former British colonies, Zambia's legal system is founded on English Common law and the doctrines of equity. Section 2 of the English Law (Extent of Application) Act ²²⁶provides that subject to the provisions of the Constitution of Zambia²²⁷ and any other written law;

- a) the English common law;
 - b) doctrines of equity;
 - c) statutes that were in force in England on the 17th August, 1911 (being the commencement of the Northern Rhodesia Order in Council, 1911) and
 - d) any statute of a later date than that mentioned in (c) above that is in force in England
- Shall be in force in the Republic.²²⁸

In addition to some Zambian statutes on matrimonial matters²²⁹, the law as currently in force in the United

²²⁵The Laws of Zambia where revised in 1995 and all citations will be in accordance with the 1995 revision.

²²⁶Chapter 11 of the Laws of Zambia.

²²⁷Constitution of the Republic of Zambia Act, Chapter 1 of the Laws of Zambia.

²²⁸Section 2 of the English Law (Extent of Application) Act Chapter 11 of the Laws of Zambia.

²²⁹The Marriage Act Chapter 50, Affiliation and Maintenance of Children Chapter 64 of the Laws of Zambia.

Kingdom applies to Zambia²³⁰. The Interpretation and General Provisions Act²³¹ provides that 'every Act, applied Act or British Act shall be a public Act and shall be judicially noticed as such in its application in Zambia.'²³²

Commercial transactions are governed by the British Sale of Goods Act of 1893, and judicial decisions of English courts²³³ though not binding on Zambian courts are often cited as persuasive authorities by advocates and judges in cases that come before the courts for adjudication.

5.5 Food safety legislation

This chapter will examine some prominent statutes that govern food safety in Zambia.

5.5.1 The Public Health Act²³⁴

The earliest legislation relating to foodstuffs was the Public Health Act enacted in 1930. This Act still in force today, has been subject to many amendments

²³⁰The High Court Act Chapter 27 of the Laws of Zambia.

²³¹Chapter 2 of the Laws of Zambia.

²³²Section 6(1) of the interpretation and General provisions Act.

²³³Decisions of the court of the Queen's Bench and above form persuasive judicial precedent in Zambia: High Court Act Chapter 27 of the Laws of Zambia.

²³⁴Public Health Act Chapter 295 of the Laws of Zambia (1930).

since its enactment.²³⁵ The Act, principally deals with 'the prevention and suppression of disease and matters related thereto'²³⁶ and only parts ten and eleven of the Act deal with the foodstuffs.²³⁷

Before the passing of the Food and Drugs Act²³⁸ in 1972, the Public Health Act was a major act regulating the sale of foodstuffs. It defines food as:

' any article used for food and drink other than drugs or water and includes articles used in the preparation of food such as flavourings and condiments'²³⁹

It prohibits the exposure, sale, possession and importation of unwholesome food that it defines as food that is "tainted, adulterated or diseased" making it unfit for human and animal consumption.²⁴⁰ The Act also prohibits the collection, preparation, manufacture, storage and transmission of food without the taking of adequate measures to protect the food

²³⁵As amended by Act No. 34 of 1930, Act No. 9 of 1939, Act No. 27 of 1941, Act No. 64 of 1953, Act No. 51 of 1963, G.N. No 291 of 1964, Act No. 69 of 1965, S.I. No. 163 of 1965 and Act No. 14 of 1966

²³⁶Preamble to the Act.

²³⁷See Appendix 6.

²³⁸Food and Drugs Act Chapter 303 of the Laws of Zambia (1972).

²³⁹Section 2 of the Public Health Act chapter 295 of the Laws of Zambia (1972).

²⁴⁰Section 79(1) of the Public Health Act as amended by s I 47 of 1963.

from infection and contamination.²⁴¹

Under the Act, health medical officers, veterinary officers, sanitary inspectors, meat inspectors and police officers above the rank of an assistant inspector have the authority to seize and, if necessary, dispose of unwholesome food.²⁴²

The penalties imposed by the Act for contravening sections, seventy-nine and eighty besides seizure and destruction is a fine of not more than K 200 and/or a prison term of not exceeding six months.²⁴³

Section 82 of the Public Health Act empowers the Minister to make regulations by way of statutory instruments. These regulations that enable the implementations of provisions of the Act regarding foodstuffs are contained in part eleven of the Act.²⁴⁴

Under part eleven the Minister can make regulations regarding:

- a) inspection of stock, and premises where food is manufactured, kept or prepared;
- b) detention or seizure of food articles for the purpose of examination;
- c) fixing of standards for milk, and cleanliness of dairy premises and dairy handlers;

²⁴¹Section 79(2) of the Public Health Act as amended by s I 47 of 1963.

²⁴²Section 80 of the Public Health Act as amended by GN No. 500 of 1964.

²⁴³Section 81 of the Public Health Act.

²⁴⁴Section 82 of the Public Health Act.

- d) conveyance, labelling and distribution of milk;
- e) veterinary inspection of dairy livestock, bacterial sampling and examination of milk and milk products;
- f) duties of dairy personnel during an outbreak of an infectious disease;
- g) inspection, examination and supervision of the manufacture, preparation, storage and transmission of any food intended for export from Zambia;
- h) establishment, maintenance and management of abattoirs;
- I) prohibition of imports into Zambia of unclean, unwholesome, unsound or diseased food;
- j) preparation, manufacture, importation, storage and labelling of airtight packaged foodstuff;
- k) use of defective food packaging; and
- l) marking of food to show nature, quality, weight, contents, place of manufacture and origin.

Regulations made to date pursuant to the Act are the Public Health (Sale of Ice and Aerated waters) Regulations,²⁴⁵ the Public Health (Sale of Bakery Products) Regulations,²⁴⁶ The Public Health (Tea Rooms, Restaurants, Boarding Houses and Hotels) Regulations,²⁴⁷ Public Health (Abattoir and

²⁴⁵GN No. 2 of 1933 as amended by GN No. 12 of 1937, GN No.327 of 1950, GN No 134 of 1952, GN No 134 of 1952, GN No 171 of 1954, GN No 291 of 1964 and Act 51 of 1963.

²⁴⁶GN No. 108 of 1933, GN No. 13 of 1937, GN No.190 of 1947, GN No. 174 of 1954, GN No.291 of 1964 and Act 51 of 1963.

²⁴⁷GN No. 14 of 1933, GN No. 12 of 1937, GN No. 329 of 1950, GN No.172 of 1954, GN No. 214 of 1960, GN No. 250 of 1963, GN No. 291 of 1964 and Act 51 of 1963.

Transportation of Meat) Regulations,²⁴⁸ The Public Health (Meat Abattoir and Butcheries) Regulations,²⁴⁹ the Public Health (Milk) Regulations²⁵⁰ and the Public Health (Ice-Cream) Regulations.²⁵¹

As the Act deals mainly with food as it relates to matters of public health. Much emphasis is placed on dairy stock and products, particularly the diseases that they can communicate to humans through their consumption. As the Public Health Act was limited to matters of Public Health a more comprehensive piece of legislation to deal with food control overall was deemed necessary. This led to the passing of the Food and Drugs Act.

5.5.2 *The Food and Drugs Act*

In 1972 the Ministry of Health with the assistance of an FAO project, drafted a bill, which later that year was enacted into law as the Food and Drugs Act²⁵². This Act was passed 'to protect the public against hazards and fraud in the sale and use of food, drugs, cosmetic and medical devices.'²⁵³ The 1972 Act was followed by the passing of Food and Drugs Regulations in 1978.

²⁴⁸GN No. 78 of 1932, GN No. 3 of 1934, GN No. 12 of 1937, GN No. 175 of 1954, GN No. 135 of 1957, GN No. 291 of 1964 and Act 51 of 1963.

²⁴⁹GN No. 3 of 1939, GN No. 497 of 1964.

²⁵⁰GN No. 79 of 1951, GN No 177 of 1954, GN No. 291 of 1964, GN No.160 of 1961, SI 344 of 1965, SI 215 of 1966.

²⁵¹GN No. 314 of 1953, GN No 253 of 1956, GN No 291 of 1964, Federal GN No 156 of 1962

²⁵²Chapter 295 of the Laws of Zambia (1972).

²⁵³Preamble to the Food and Drugs Act.

The Act defines food as

'any article manufactured, sold or represented for use as food or drink for human consumption including chewing gum and ingredients of such food, drink or chewing gum'²⁵⁴.

The Act creates six categories of offences in relation to food that are punishable by a fine and/or imprisonment.²⁵⁵ It is an offence under the Act to:

- a) sell poisonous, unwholesome or adulterated food;²⁵⁶
- b) label, package or advertise food in a false, misleading or deceptive manner regarding its character, value, quality or composition;²⁵⁷
- c) label, package, sell or advertise food in a manner not complying with a set standard for such food;²⁵⁸
- d) sell food not of a nature, substance or quality demanded by the purchaser;²⁵⁹
- e) sell or prepare food under insanitary

²⁵⁴Section 2 of the Food and Drugs Act.

²⁵⁵Section 31 of the Food and Drugs Act.

²⁵⁶Section 3 of the Food and Drugs Act.

²⁵⁷Section 4 of the Food and Drugs Act.

²⁵⁸Section 5 of the Food and Drugs Act.

²⁵⁹Section 6 of the Food and Drugs Act.

conditions.²⁶⁰

Although the Act does not specifically name the Minister nor Ministry responsible for the administration of the Act, the Ministry of Health is the custodian of the Act.

The Minister is empowered to constitute a ten-member Food and Drugs Board to advise him or her on matters concerning the administration of the Act.²⁶¹ The Act provides that this Board shall constitute the following members:

- a) the Permanent Secretary in the Ministry of Health as chairman;
- b) the Secretary General for the National Council for Scientific Research;
- c) the Chief Health Inspector in the Ministry of Health;
- d) the Chief Pharmacist in the Ministry of Health;
- e) a Public Analyst nominated by the minister;
- f) a member of the National Food and Nutrition Commission;
- g) a medical officer employed by the local authorities;
- h) a person from the food industry;
- I) a member of the Pharmaceutical Society of Zambia; and
- j) a member of the Zambia Bureau of Standards.²⁶²

²⁶⁰Section 7 of the Food and Drugs Act.

²⁶¹Section 23(1) and (5) of the Food and Drugs Act.

²⁶²Section 22 of the Food and Drugs Act.

The Act also empowers the Minister to make regulations for the enforcement of provisions of the Act.²⁶³ Regulations that the Minister may by statutory instrument promulgate include;²⁶⁴

- a) the declaration that a food or class of food is adulterated, if a prescribed substance is added or abstracted from it;
- b) the labelling, packing, offering, exposing and advertising of food;
- c) the size, dimension and other specifications of packaging that a food product should comply with;
- d) the sale or conditions of sale for any food;
- e) the use of any substance as ingredient in any food;
- f) the prescription of standards of composition, strength, potency, purity, quality or other properties of any food;
- g) the import and export of food in order to ensure compliance with the Act;
- h) the method of preservation, packaging, storage, conveyancing and testing of any food in the interest of health;
- I) the carriage of goods including the licensing of vehicles used in such carriage;
- j) the provision for analysis of food samples; and
- k) the exemption from the provisions of the Act of any food and the conditions under which a food will qualify for such exemption.

²⁶³Section 23 of the Food and Drugs Act.

²⁶⁴The regulations that the Minister may promulgate under the Act refer to not only food but also drugs, cosmetics and devices. In this study specific reference has been made to regulations with regard to food.

Persons contravening provisions of the Act are liable to prosecution that may take the form of a fine or imprisonment. Under the Act a first offender may be liable to a fine of not more than K100 and/or a prison term of not more than three months. A subsequent offender may be liable to a fine of K200 and/or imprisonment of not more than six months²⁶⁵. They may in addition have their licences revoked.²⁶⁶

5.5.3 *The Standards Act* ²⁶⁷

The Standards Act repeals²⁶⁸ the Zambia Bureau of Standards Act.²⁶⁹ It provides for the setting of standards for quality control, the continued existence of the Zambia Bureau of Standards and establishes the Standards Council of Zambia.²⁷⁰

Unlike the Food and Drugs Act and the Public Health Act, the Standards Act does not define the term food. It does define the term commodity as a general term under which food can be categorised. A commodity refers to 'any article or goods, whether manufactured or not.'²⁷¹

²⁶⁵Section 31 of the Food and Drugs Act.

²⁶⁶Section 29 and 30 of the Food and Drugs Act.

²⁶⁷No.20 of 1994.

²⁶⁸Section 4(1) of the Standards Act.

²⁶⁹No.22 of 1982.

²⁷⁰The preamble to the Standards Act.

²⁷¹Section 2 of the Standards Act.

It sets voluntary, compulsory and export standards and provides penalties for the contravention of such standards.

5.5.4 Other Acts with provisions on food safety

Other Acts with provisions on food safety are the Criminal Procedure Code²⁷² which makes it a misdemeanour for any person to adulterate any article used as food or drink in a way that makes such article noxious.²⁷³ The penalties under this Act vary and may result in a charge of murder if a person intentionally adulterates food and drink that results in death.

5.6 Enforcement of food legislation in Zambia

The responsibility of food control is shared by the Food and Drugs Board under the Ministry of Health, the Zambia Revenue Authority, Zambia Bureau of Standards, the Ministry of Agriculture, Food and Fisheries, the Environmental Council of Zambia and local city and district councils.²⁷⁴

The Food and Drugs Board under the Ministry of Health

Although under the Act, the Food and Drugs Board was meant to play a key advisory role in policy formulation, many factors have worked against the good intentions of the Act.

²⁷²Chapter 88 of the Laws of Zambia.

²⁷³Section 184 of the Criminal Procedure Code.

²⁷⁴Mr Alfred Malijani, Executive Secretary Food Control, Ministry of Health interview dated 30th December, 1997.

The Board which falls under the Ministry of Health depends on the Ministry's allocation of funds to various departments and institutions within the Ministry.²⁷⁵ Due to inadequate resources that the Ministry receives it is unable to allocate sufficient funds to the Board.

Coupled with the problem of inadequate funding the Board is also faced with the problem of staffing. Apart from the Secretary to the Board, it does not have any other fulltime staff. The diversity of the composition of the Board is such that scheduling regular meetings is often difficult. Since its inception the Board has had three meetings to its credit the last of which was held in 1994.²⁷⁶

Those representing pharmaceutical interests on the Board feel the need to separate the regulation of pharmaceuticals from that of food.²⁷⁷ In this vein a legislative and enforcement framework is being drawn up with the Ministry of Health. With these reforms the regulation of pharmaceutical products would fall under a pharmaceutical regulatory authority established under a revised Pharmacy and Poisons Act.²⁷⁸ Draft legislation for the administration of this Board has already reached an advanced stage. Both the content of the proposed legislation and its enforcement are however outside the scope of this thesis.

²⁷⁵ *ibid.*

²⁷⁶ See Appendice 7.

²⁷⁷ Mugni Daniel, Director of Pharmaceutical Sciences, Ministry of Health interview with Caesar Roy, FAO Food Safety consultant 11th May 1994.

²⁷⁸ Pharmacy and Poisons Act Chapter 299 of Laws of Zambia.

The Department of Public Health

The Department of Public Health in the Ministry of Health is responsible for the implementation of policies concerning matters of public health. It deals with the dissemination of information on the prevention and control of epidemics such as cholera, typhoid, dysentery and Aids. The Department runs public health education seminars and advertisements to educate the public on hygiene practises, identification of disease symptoms and need to obtain medical attention. There are also public health personnel in provincial centres.

Public health inspectors in the Department are mandated as authorised officers to carry out inspections of food premises under the Food and Drugs Act and the Public Health Act to ensure the adherence to safety and hygiene practices to prevent the outbreak of epidemics.

Unlike the campaign against Aids, food safety does not receive consistent publicity. The concern mainly is to prevent cholera and dysentery especially during the rainy season where due to poor sanitation most high density areas are left vulnerable.

Public health departments are often short staffed and like other food control agencies lack adequate funding.

The Food and Drugs Laboratory.

The Food and Drugs Laboratory was established in 1976

to render analytical services.²⁷⁹ The function of the laboratory is to analyse samples brought to it by inspectors from the local authorities for the purposes of prosecution under the Food and Drugs Act.

Presently there is little coordination between the laboratory and inspectors responsible for sample collection.²⁸⁰ Reports of analysis done were unavailable.

The Zambia Revenue Authority

The Zambia Revenue Authority is an autonomous body corporate created under an Act of Parliament to be responsible for the collection of taxes on behalf of the government.²⁸¹ This body has taken over the functions of the Department of Customs and Excise in the Ministry of Finance.

Under the Food and Drugs Act, the Zambia Revenue Authority has responsibility to monitor and control food products entering and leaving the country.²⁸² Although the authority has these functions under the Act, it currently does not monitor food imports for any other purpose other than the collection of taxes.²⁸³ It has closed its analysis laboratory without

²⁷⁹Rhoda Zulu , National Council for Scientific Research, interview dated 23rd December, 1997.

²⁸⁰Sinyinda, Chief Analytical chemist Food and Drugs Laboratory interview with Caesar Roy dated 3rd May 1994.

²⁸¹The Zambia Revenue Act Chapter 321 of the Laws of Zambia (1993).

²⁸²Section 2 of the Standards Act.

²⁸³Maura, Acting Commissioner, Zambia Revenue Authority interview with Caesar Roy, FAO Food Safety consultant 5th May 1994.

any intentions of setting up another analysis laboratory.

It is alarming to note that there are no future prospects of setting up analysis laboratories when Zambia imports large quantities of fresh and processed foodstuffs. It seems appropriate that food control mechanisms should commence at the point of entry that would ensure that foodstuff not conforming to particular safety requirements do not reach the market in the first place.

5.6.1 The Zambia Bureau of Standards

In Zambia the maintenance of standards is the domain of the Zambia Bureau of standards that is a quasi-governmental institution with a long history dating as far back as the late 1960's.

The Bureau started as a private association, the Zambia Standards Association. It later became an institution under the Societies' Act²⁸⁴ the Zambia Bureau of Standards Institute. In 1982 it became a statutory organisation established under an Act of Parliament

In 1994 the Zambian Parliament passed a new Act repealing the Zambia Bureau of Standards Act no 22 of 1982 and replacing it with a new Standards Act²⁸⁵ The Act redefined the functions, responsibilities and powers of the Bureau to increase its functions in

²⁸⁴Chapter 119 of the Laws of Zambia.

²⁸⁵The Standards Act No 20 of 1994.

standardisation, standards' formulation, quality control, quality assurance and removal of technical barriers to trade. These are

- i) to prepare Zambian standards and promote their use in the improvement and promotion of quality in commodities;
- ii) to arrange or provide facilities for the examination and testing of commodities, materials and substances;
- iii) to provide for pre-export inspection of commodities;
- iv) to provide training and consultancy in standardisation, quality management and quality assurance; and
- v) establish meteorological laboratories and other testing facilities.²⁸⁶

A new inclusion to the Standards Act is the provision for the establishment of a 15-member Standards Council of Zambia.²⁸⁷ The Council will be a policy making body within the Bureau appointed by the Minister of Commerce, Trade and Industry with its members drawn from the government, public and the private sector.

It is hoped that once this body is fully operational it will play an active role in the formulation of standards for food control. It will also have a staff complement including inspectors. The passing of this Act has been timely as it will set a new place for the Bureau that despite its long history has not made

²⁸⁶Section 5 of the Act.

²⁸⁷First schedule to the Act.

substantial contributions to the setting of quality controls.

The Bureau has cited many factors that have hampered its effectiveness.²⁸⁸ These are:

a) The lack of financial resources

The Bureau receives 90% of its funding from the Central Government, 5% from its own initiatives and the rest from donors. In 1996 it was able to raise 50% of its own budget.²⁸⁹ The funding that it receives is however inadequate to meet its financial requirements.

The Bureau does not have adequate transport for sample collection and inspection. Currently, it has only one vehicle. It does not have adequate finances to enable it mount consumer awareness campaigns that would bring about public awareness of its functions and the importance of products bearing its logo. Secondly, it is unable to solicit industry's appreciation of its work and to take up its logo as a mark of quality.

b) Low staffing levels.

Currently the Bureau has only eight people on its staff who are all based in Capital Lusaka. It has no other offices outside the Capital. It does not have quality control officers trained in standardisation and quality nor does it have qualified personnel trained in inspection, investigation and prosecution.

²⁸⁸David Mesa, Senior Standards Officer-chemistry Department interview 25th September, 1997.

²⁸⁹Ibid.

c) Lack of laboratory facilities

The Bureau does not have its own laboratory facilities. It runs an accreditation scheme by which various laboratories owned by local companies and organisations are accredited to conduct tests necessary for the certification scheme. Though the laboratory accreditation should enable the Bureau more effectively to use the testing facilities and resources within the country by coordinating existing testing capabilities, procedural matters and its lack of finances hamper the effective coordination of the scheme.

Although the Bureau has a site where it can build offices and a laboratory, again it has not done so because of its lack of funding.

All the standards that the Bureau has enacted are voluntary standards. In food the labelling of prepackaged foods - a Code of Practice is the only standard that the bureau has passed.²⁹⁰

The Bureau hopes that with the changes to the legislation and the structure of the Bureau it will be able to address some of these problems.

Local Authorities

The enforcement of the Food and Drugs Act is the responsibility of local authorities.²⁹¹ City and Municipal councils have public health departments with a provision for public health personnel who include

²⁹⁰See appendix 8 for ZS 033 of 1992.

²⁹¹Section 27 of the Food and Drugs Act.

health inspectors. Presently there are three city councils and six municipal councils in the country. The functions of the Public Health Department include the

- inspection and licensing of premises where liquor is sold;
- inspection and licensing of food businesses such as restaurants, take away food outlets and hotels;
- prevention and control of infectious diseases such as cholera, typhoid;
- pest control and refuse collection; and
- inspection and licensing of food manufacturing premises and the monitoring of water.

Health inspectors are expected to inspect food establishments for licensing purposes. They are expected to monitor food offered for sale in retail markets.

Although they have these functions little is being done to enforce food safety regulations. The Local authorities cite the problems of lack of funding, transport and testing facilities.

Public health inspectors in the country are currently being trained at the Evelyn Hone College and Chainama College of Health Sciences but receive inadequate training in food safety and quality control especially in prosecution.²⁹² There are plans to revise the 3-year diploma syllabus at the Evelyn Hone College to include

²⁹²Leo Mande, Acting Head of Section, Environmental Health Evelyn Hone College interview dated 30th December, 1997.

a wider aspect of food safety and legislation in the curriculum.²⁹³ There are even suggestions to update this diploma to a higher diploma or even degree programme.

To redress the inadequacies in prosecution skills, the Director of Public Prosecutions in the Ministry of Legal Affairs provided some training to public health inspectors in prosecution.²⁹⁴ Sixteen officers from the Departments of Public health in the Ministries of Health and Local Government were trained in prosecution techniques. Even with the training they received these officers still face the problem of inadequate transport, testing and analysis facilities and large areas to cover.

Authorised officers in the local authorities require the consent of the full council before they can prosecute an offender in a subordinate court.²⁹⁵ This means that the decision to prosecute or not is that of the council rather than the officer. The result has been that no cases have been taken before the subordinate court to date.

²⁹³ibid.

²⁹⁴Rhoda Zulu, National Council for Scientific Research interview dated 23rd December, 1997.

²⁹⁵Ibid

CHAPTER 6

6.1 CONCLUSIONS

Having looked at the food safety legislation and its enforcement, much more requires to be done.

LEGISLATIVE DEFICIENCIES

a) The lack of subsidiary legislation

As with any principle Act the Food and Drugs Act was enacted to provide a general framework. The Ministry responsible for the Act is required to pass subsidiary legislation, to address aspects of food safety and control under the Act.

It is unacceptable that since its enactment in 1972, only one set of regulations have been passed. These regulations prohibit the sell, exposure for sale and/or importation of unwholesome animal foodstuffs.²⁹⁶

There are no regulations under the Act to provide specific guidelines for labelling, advertising, packaging, hygiene, additives, contaminants and preservatives for food products. The guidelines that exist under the Act are very general. Prohibitions against the sale of poisonous, unwholesome or adulterated food, deceptive labelling, adherence to prescribed food standards and the preparation of food under insanitary standards²⁹⁷ require regulations that deal specifically with these areas.

b) Inadequate fines

²⁹⁶Food and Drugs Regulations 1978.

²⁹⁷Part II (A) food s3-7 of the Food and Drugs Act.

The fines provided under the Act for contravention of its provisions are so meagre that they do not serve as a deterrent. The cost of prosecuting a case in a court of law by far exceeds the fines imposed. The sum of K200 imposed as a fine for a subsequent offender is equivalent to seven cents given the current exchange rate of K1,400 to one United States Dollar.²⁹⁸ The other penalty of imprisonment would not be appropriate for offences committed by companies that under the law are juristic persons with a separate identity from that of their owners.

c) Failure to keep abreast with advances within the food industry

The Act has not kept abreast with technological advancements within the food industry. It does not address itself to matters such as the use of ionising radiation used for food preservation. This is important with the large amount of imported foodstuffs found on the Zambian market, some of which come from countries that use such technology.

ENFORCEMENT DEFICIENCIES

The function of the Food and Drugs Board under the Act is to advise the Minister of Health on matters of policy formulation concerning the administration of food and drugs in the country²⁹⁹

The Act does not however equip the Board with powers of enforcement. It further, lacks guidelines for its

²⁹⁸SADC Zambia Financial Profile [Http://196.33.84.323/Zambia/zamfin/html](http://196.33.84.323/Zambia/zamfin/html).

²⁹⁹Section 22 of the Food and Drugs Act.

functioning other than that it may appoint committees and invite people to attend its meetings to help it perform its functions under the Act.³⁰⁰

The lack of guidelines for its functioning has resulted in the Board not meeting regularly. As previously stated the Board has since its establishment met only three times.³⁰¹

Without regular meetings, planning programs that would expand coordination of food and drug administration to cater for the country's growing needs are lacking. Another obstacle for the Board is that it lacks a support staff that would help translate its policies into implementable work programs. A permanent support staff would provide a valuable link between the policy-making body and the enforcement agencies.

As the Act does not give the Board any enforcement powers, it relies on health inspectors in the Department of Public Health and local authorities for the implementation of policies formulated. Although theoretically this would work, considering authorized officers are drawn from various institutions, this is not the situation practically.

Before 1991, the local authorities relied on central government for their funding. Today the government has greatly reduced funding to local authorities will have to raise their own funds for their operations. This has resulted in the collapse of local authorities. Years of mismanagement and a large work force have made it difficult for local authorities to raise sufficient funds for operations. With the poor state

³⁰⁰Section 22 (5) and (6) of the Food and Drugs Act.

³⁰¹Cf footnote 275.

of local authorities, there is a breakdown in the enforcement mechanism.

There are some allegations of corruption among authorised officers which are also cited as a cause for the poor enforcement of legislation. This behaviour is attributed to low wages, poor conditions of work, lack of proper incentives and lack of checks and supervision.

6.2 PROPOSALS FOR REFORM

There is an urgent need for the enactment of subsidiary legislation to deal with specific aspects of food control such as good hygiene practices for food handling, packaging, labelling, advertising, additives, preservatives and contaminants.

On the subject of labelling a starting point would be the enactment of the Zambia Bureau of Standards' voluntary Labelling Code of Practice³⁰² into subsidiary legislation. Reference to the Food Labelling Regulation in the United Kingdom would provide useful guidelines.³⁰³

Labels with the coming of self-service shopping provide a valuable link between the manufacturer and consumer. They give the latter the attributes of a product, give instructions for its use and conditions for its storage. It is imperative therefore that a label is informative and truthful.

Reference to international developments on additives'

³⁰²Zambia Bureau of Standards ZS 033 of 1992 Cf Appendix 7.

³⁰³ See Appendix 2.

preservatives, contaminants and the use of ionising radiation would also be useful.

It is submitted that even with an effective legislative framework, without an efficient enforcement mechanism, the problems that exist would continue.

The problem of lack of financial resources, transport, and a shortage of qualified personnel common among the enforcement agencies in Zambia is similar to those experienced among many third world countries.

It is necessary to look at solutions to these problems that are practical and cost effective. It is proposed that an Inter-Ministerial body be established to replace the Food and Drugs Board. This body would have personnel seconded to it from the Ministry of Health, local authorities, Zambia Revenue Authority, Zambia Bureau of Standards and the Food and Drugs Control Laboratory.

This body would be responsible for the planning and implementation of some work programmes both at national and provincial level. It would improve Inter-Ministerial cooperation to ensure the enforcement of safety and health standards for foodstuffs. The body should have its seat in the Capital Lusaka with small offices in the nine provincial Capitals. This would overcome the overlap of functions that results in the wastage of resources. This would also ensure the inspection of imported foodstuffs at border points which is not currently not being done.

It is easier to prevent, at the point of entry, poor quality food imports from reaching the markets than to remove from the market poor quality foodstuff. Foodstuffs that conform with safety standards would be given a clearance certificate before being permitted

to enter the country. As some goods are spoiled during transit obtaining clearance from a provincial office would be necessary before these goods are sold to the public.

The incorporation of personnel from the Food and Drug's laboratory in the enforcement would provide testing of food samples for evidence should prosecution in a court of law be necessary.

Apart from maximising the use of limited laboratory and technical resources, it would also be easier to coordinate training with other Ministries like the office of the Director of Public Prosecutions and the Police.

With the increase of street vending in the Capital city, Lusaka, and major towns within the country an increase in the fines imposed under the Act would help control the problem. Money raised from such fines could be used in the administration of the body.

This money could be used to purchase motor vehicles, to improve existing laboratory facilities, training of personnel, and to advance consumer awareness campaigns on the dangers to health of unhygienic, adulterated and unwholesome foodstuffs. Consumer awareness campaigns alert consumers to the direct connection that exists between poor quality foodstuff and poor health.

The fines imposed need to serve as a deterrent. It is submitted that for food imports instead of quoting a particular figure, because of the constant devaluation of the Zambian Kwacha, a fine be imposed that is a percentage of the value of the food consignment imported into the country in contravention of the Act.

For example the formula used be the Value of consignment x percentage of value of consignment = fine payable

Eg a consignment of canned baked beans worth K2,000,000 X 100% = K2,000,000 payable as a fine.

A proposed scale for the calculation of fines is provided in Figure 7.

Value of consignment in Kwacha	percentage of value charged as fine
0 - 5,000,000	100%
5,000,001 - 10,000,000	90%
10,000,001 - 15,000,000	80%
15,000,001 - 20,000,000	70%
20,000,001 - 25,000,000	60%
25,000,001 - 30,000,000	50%
30,000,001 - 35,000,000	40%
35,000,001 - 40,000,001	30%
40,000,001 - 45,000,001	20%
45,000,001 - 50,000,001	10%
50,000,001+	5%

Figure 7

Besides the imposition of a fine, the Act could provide for the revocation of an importer's license. Penalties applied to importers could also be imposed on local manufacturers.

These penalties would serve as a deterrent and ensure adherence to set health and safety standards.

To curb street vending in fresh fruits, vegetables,

dairy produce, fish, poultry and beef commonly sold among vendors on the street, it is proposed that the fines under the Act be:

Price of food item sold x Unit in Kwacha = fine payable.

Eg Fresh tomatoes worth K2,000 X K100 = K200,000 payable as a fine.

A proposed scale for the calculation of fines is provided in the table below.

Price of food being sold in Kwacha	Unit in Kwacha
0 -10,000	K100
10,001 - 30,000	K200
30,001 - 50,000	K300
50,001 - 70,000	K400
70,001 - 90,000	K500
90,001+	K600

Figure 8

This fines structure could also be made to apply to retailers, wholesalers and food catering businesses.

It is hoped the current unsatisfactory food safety mechanism can be restructured and legislation amended to meet the aspirations of consumers.

With a careful planning this can be attained even with limited resources. The onus is not only upon the Government but also on consumers themselves to take up an active role in ensuring the supply of safe and wholesome foodstuffs.

BIBLIOGRAPHY

BOOKS

Birch GG and Campbell-Platt G (eds) Food Safety - The Challenge Ahead (1993).

Bradgate R J and Howells G G A Guide to the Food Safety Act 1990 (1990).

Burns J, Mc Lnerney J and Swimbank A The Food Industry: Economics and Policies (1983).

Chibowa M The Plight of the Manufacturing Industry in Zambia (1994).

Cranston R Consumers and the Law 2 ed (1984).

Edward D A O and Lane R C European Community Law: An Introduction (1991).

Fallows S J Towards 1992: Completing the EEC Internal Market for Food (1988).

Fallows S J Food Legislative System of the UK (1988).

Gerard A An Outline of Food Law; Structure, Principle and Main Provisions (1975).

Harvey B W and Parry D L The Law of Consumer Protection and Fair Trading (1992).

Hewitt T, Johnson H and Wield D (eds) Industrialisation and Development (1992).

Jenkins R Industrialisation and Development (1992).

Jukes D J Food Legislation of the UK - A Concise Guide 3 ed (1993).

Jukes D J Food Law Enforcement in the UK: Time for a Change? (1991).

Lakhani C P Food Labelling Legislation (unpublished LLM thesis) (1990).

Lister C Regulation of Food Products by the European Community (1992).

Lowe R and Woodroffe G Consumer Law and Practice 4ed (1995).

Markman T and Vorhies F (eds) Consumer Power in a Free Market (1990).

Mathijsen P S R F A Guide to European Community Law 5 ed (1990).

McQuoid-Mason D J (ed) Consumer Law in South Africa (1997).

Morganstern S Legal Protection for the Consumer (1973).

Oughton D W Consumer Law: Text, Cases and Materials (1991).

Paine F A (ed) Packaging and the Law (1973).

Painter and Harvey (eds) Butterworths Law of Food and Drugs (1980).

Painter A A Butterworths Food Law (1992).

Paulus I The Search for Pure Food: A Sociology of Food Legislation in Britain (1974).

Smith P and Swann D Protecting the Consumer, An Economic and Legal Analysis (1979).

Steiner J Textbook on EC Law 4 ed (1988).

Woodroffe G Consumer Law in the EEC (1984).

JOURNAL PUBLICATIONS

Anyanwu R and Jukes D J 'Food Systems and Food Control in Nigeria', 1991 16(2) Food Policy 112-126.

Anyanwu R and Jukes D J 'Food Safety Control Systems for Developing Countries' (1990) 1(1) Food Control 17-26.

Consumers in the European Community Group 'A Hot Potato?' (1987) Food Policy in the EEC .

Evenhuis B 'General, Legal and Safety Aspects of the Use of Food Flavours' (1987) Food Review 27-28.

Houston D L 'Codex Alimentarius Commission 25 years of Fair Trade and Consumer Protection' (1978) 42 Food, Drug and Cosmetic Law Journal 163.

Jukes D J 'European Developments in the Foodstuffs Sector' British Food Journal (1990) 92(5) 3-10.

Jukes D J 'Food Law Harmonisation Within the European Community' (1988) 90(4) British Food Journal 147-154.

Jukes D J 'The Structure of Food Law Enforcement in the United Kingdom' (1988) 90(6) British Food Journal 239-249.

Jukes D J 'Food Safety Practices and Policies' 1988 91(8) British Food Journal.

Jukes D J 'Developing a Food Control System - The Tanzanian Experience' (1988) Food Policy 293-304.

Jukes D J 'Food Law and Regulation - is the Consumer voice Heard ?' (1992) Your Food: Whose Choice?.

Jukes D J 'Approaching 1992 - European Community Developments in 1988' (1989) 91(2) British Food Journal 12-21.

Jukes D J 'Food Safety, Food Law and the Food Technologist' (1989) 3(1) Food Science and Technology Today 28-34.

Kimbrell E F, 'Food Composition and Codex Standards' (1978) 30 Food, Drug and Cosmetic Law Journal.

Leatherhead Food R A, 'UK Food Laws: the 1991 Situation Examined', (1991) 51 Leatherhead Symposium.

Markus C.M, 'International Harmonisation of Pesticide Tolerances - Legal, Procedural and Policy Issues' 47 Food and Drug Law Journal

Shubber S, 'The Codex Alimentarius Commission under International Law' (1972) 21 International Comparative Quarterly.

Swinbank A (ed) '1992 and the EEC's Food Industries' 15(2) Food Policy.

OTHER PUBLICATIONS

Commission of the European Community 'Completion of the Internal Market: Community Legislation on Foodstuffs' (1985).

Commission of the European Community 'Communication on the Free Movement of Foodstuffs within the Community' (1989).

Commission of the European Community 'Second Symposium on Control of Foodstuffs' (1992).

Commission of the European Community 'Symposium on the Enforcement of Food Law' (1980).

Food and Agricultural Organisation of the United Nations 'Interim Report on Food Control Administration in the Republic of Zambia (1994)

World Population prospects (1994) United Nations World Population Division, Department for Economic and Social Information and policy.

CONFERENCE PAPERS

Borrie G 'Modern Developments in Consumer Protection Law in the United Kingdom' (1981) (Unpublished South African Law Conference paper).

Commission of the European Community 'The Quality of foods in the Internal Market' at Harmonisation of legislation on Foodstuffs, February 1993, Brussels.

Jukes D J 'Food Standard, Chemicals in Food and Food Trade' at FAO/WHO Conference Rome, March, 1991.

Zulu R 'Protecting consumer through improved food quality and safety' (1997) (Unpublished) recommendations to the Ministry of Health, Zambia.

APPENDIX 1: EUROPEAN UNION DIRECTIVES ON FOODSTUFFS

Directive 68/420 amending 64/65 on preservatives authorised for use in foodstuffs intended for human consumption (OJ 1968 L 309/25)

Directive 85/585 amending 64/54/EEC on preservatives authorised for use in foodstuffs intended for human consumption (OJ 1985 L 372/43)

Directive 85/573 amending 77/436/EEC on coffee and chicory extracts (OJ 1985 L 372/22)

Directive 85/7 amending a series of directives on the involvement of the standing committee for foodstuffs (OJ 1984 L 2/22)

Directive 70/357 antioxidants authorised for use in foodstuffs intended for human consumption (OJ 1970 L 157/31)

Directive 82/711 basis rules necessary for testing migration of constituents of plastic materials and articles intended to come into contact with foodstuffs (OJ 1981 L 297/26)

Directive 84/500 ceramic articles intended to come into contact with foodstuffs (OJ 1984 L 277/12)

Directive 73/241 cocoa and chocolate products intended for human consumption (OJ 1973 L 228/23)

Directive 77/436 Coffee and chicory extracts OJ 1977 L 172/20)

Directive 62/2645 colouring matters authorised for use in foodstuffs intended for human consumption (OJ 1962 L 115/2645)

Directive 81/712 community method of analysis for verifying the purity of additives used in foodstuffs (OJ 1981 L 257/1)

Directive 80/766 community method of analysis for official control of vinyl chloride monomer levels in materials and articles coming into contact with foodstuffs (OJ 1980 L 213/42)

Directive 79/1067 community method of analysis for testing certain partly or wholly dehydrated milks for human consumption (OJ 1979 L 327/29)

Directive 81/432 community method for official control of vinyl chloride released by materials and articles into foodstuffs (OJ 1981 L 167/6)

Directive 79/1066 community method of analysis for testing coffee and chicory extracts (OJ 1979 L 327/17)

Directive 87/524 community methods for sampling for chemical analysis for monitoring preserved milk products (OJ 1987 L 306/24)

Directive 80/891 community method for testing Erucic acid content in oils and fats intended for human consumption (OJ 1980 L 254/35)

Directive 78/664 criteria for purity of antioxidants used in foodstuffs for human consumption (OJ 1978 L 223/30)

Directive 78/663 criteria for purity of emulsifiers, stabilisers, thickeners and gelling agents for use in foodstuffs (OJ 1978 L 223/7)

Directive 74/329 emulsifiers, stabilisers, thickeners and gelling agents for use in foodstuffs (OJ 1974 L 189/1)

Decision 80/1073 establishing a new statute for the Advisory Committee on foodstuffs (OJ 1980 L 318/28)

Directive 88/344 extraction solvents used in the production of foodstuffs and food ingredients (OJ 1988 L 157/28)

Directive 88/388 flavourings for use in foodstuffs and on source material for their production (OJ 1988 L 184/61)

Directive 89/107 food additives authorised for use in foodstuffs intended for human consumption (OJ 1989 L 40/27)

Directive 77/94 foodstuffs of particular nutritional uses (OJ 1977 L 26/55)

Directive 75/726 fruit juices and certain similar products (OJ 1975 L 311/40)

Directive 79/693 fruit jams, jellies and marmalades and chestnut puree (OJ 1979 L 205/5)

Directive 74/409 Honey (OJ 1974 L 221/10)

Directive 83/463 introducing certain measures for the designation of certain ingredients in the labelling of foodstuffs for sale to the ultimate consumer (OJ 1983 L 255/1)

Directive 85/591 introduction of community methods of sampling and analysis for monitoring foodstuffs intended for human consumption (OJ 1985 L 372/50)

Directive 83/417 lactoproteins (caseins and caseinate) intended for human consumption (OJ 1983 L 237/25)

Directive 85/572 laying down list of simulants to be used for the testing of migration of constituents of plastic materials and articles intended to come into contact with foodstuffs (OJ 1985 372/14)

Directive 86/424 laying down methods of sampling for chemical analysis of edible caseins and caseinate (OJ 1986 L 243/29)

Directive 83/229 material and articles made of regenerated cellulose film intended to come into contact with foodstuffs (OJ 1983 L 123/31)

Directive 89/109 materials and articles intended to come into contact with foodstuffs (OJ 1989 L 40/38)

Directive 76/893 materials and articles coming into contact with foodstuffs (OJ 1976 L 340/19)

Directive 76/621 maximum levels of erucic acid in oils and fats intended for human consumption (OJ 1976 L 202/35)

Directive 85/503 methods of analysis for edible caseins and caseinate (OJ 1985 L 308/12)

Directive 78/142 on materials and articles containing vinyl chloride monomer intended to come into contact with foodstuffs (OJ 1978 L 44/15)

Directive 76/118 partly or wholly dehydrated preserved milks for human consumption (OJ 1976 L 24/29)

Directive 64/65 Preservatives authorised for use in foodstuffs intended for human consumption (OJ 1964 L 12/161)

Directive 65/66 Specific criteria of purity for preservatives authorised for use in foodstuffs intended for human consumption (OJ 1965 L 22/373)

Directive 73/437 sugars intended for human consumption (OJ 1973 L 356/71)

Directive 80/590 symbols that may accompany materials and articles intended to come into contact with foodstuffs (OJ 1980 L 151/21)

Recommendation 80/1089 test relating to safety evaluation of food additives (OJ 1980 L 320/36)

Appendix 2: UNITED KINGDOM FOOD REGULATIONS¹

1997

Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997

Bovine Products (Production and Despatch) Regulations 1997

Bovines and Bovine Products (Despatch Prohibition and Production Restriction) Regulations 1997

Contaminants in Food Regulations 1997

Eggs (Marketing Standards) (Amendment) Regulations 1997.

Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) Partial Revocation Order 1997

Food Protection (Emergency Prohibitions) (Oil and Chemical Pollution of Fish and Plants) (Partial Revocation) Order 1997

Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) Order 1997

Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) Order 1997 Partial Revocation Order 1997.

Food Protection (Emergency Prohibitions) (Oil and Chemical Pollution of Fish and Plants) (Partial Revocation No. 2) Order 1997.

Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) Order 1997 Revocation Order 1997

Food Premises (Registration) Amendment Regulations 1997

Fresh Meat (Hygiene and Inspection) (Amendment) Regulations 1997

Infant Formula and Follow-on Formula (Amendment) Regulations 1997

International Carriage of Perishable Foodstuffs (Amendment) Regulations 1997

Miscellaneous Food Additives (Amendment) Regulations 1997.

Novel Foods and Novel Food Ingredients Regulations (Fees) 1997.

Novel Foods and Novel Food Ingredients Regulations 1997.

Organic Products (Amendment) Regulations 1997

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Amendment) Regulations 1997

Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997

Specified Bovine Material Order 1997

Sweeteners in Food (Amendment) Regulations 1997

¹The Regulations listed are mostly for England, Wales and Scotland. However, before the introduction of the Food Safety Act in 1990, separate Regulations were issued for Scotland - these are not listed here.

Many of the Regulations listed have also been amended by certain administrative Regulations (e.g. relating to penalties or enforcement bodies). These amendments have not been included.

1996

Bread and Flour (Amendment) Regulations 1996

Dairy Products (Hygiene) (Amendment) Regulations 1996

Food Safety (Fishery Products and Live Bivalve Molluscs and Other shellfish)(Miscellaneous Amendments) Regulations 1996

Food (Lot Marking) Regulations 1996

Food Labelling Regulations 1996

Fresh Meat (Hygiene and Inspection) (Amendment) Regulations 1996

Pesticides (Maximum Residue Levels in Crops, Food and Feeding stuffs) (Amendment) Regulations 1996

Plastic Materials and Articles in Contact with Food (Amendment) (No.2) Regulations 1996

Plastic Materials and Articles in Contact with Food (Amendment) Regulations 1996

Specified Bovine Materials (No. 2) Order 1996

Sweeteners in Food (Amendment) Regulations 1996

1995

Bread and Flour Regulations 1995

Colours in Food Regulations 1995

Dairy Products (Hygiene) Regulations 1995

Extraction Solvents in Food (Amendment) Regulations 1995

Food (Miscellaneous Revocations and Amendments) Regulations 1995

Food Safety (Temperature Control) Regulations 1995

Food Safety (General Food Hygiene) Regulations 1995

Fresh Meat (Hygiene and Inspection) Regulations 1995

Fresh Meat (Hygiene and Inspection)(Amendment) Regulations 1995

Infant Formula and Follow-on Formula Regulations 1995

Minced Meat and Meat Preparations (Hygiene) Regulations 1995

Miscellaneous Food Additives Regulations 1995

Pesticides (Maximum Residue Levels in Crops, Food and Feeding stuffs) Regulations 1995

Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995

Spreadable Fats (Marketing Standards) Regulations 1995

Sweeteners in Food Regulations 1995

Wild Game Meat (Hygiene and Inspection) Regulations 1995

1994

Animals, Meat and Meat Products (Examination for Residues and Maximum Residue Limits) Regulations 1994

Drinking Water in Containers Regulations 1994

Flavourings in Food (Amendment) Regulations 1994

Food Safety (Live Bivalve Molluscs and Other Shellfish)(Import Conditions and Miscellaneous Amendments) Regulations 1994

Food Safety (Fishery Products)(Import Conditions and Miscellaneous Amendments) Regulations 1994

Importation of Animal Products and Poultry Products (Amendment) Order 1994

Materials and Articles in Contact with Food (Amendment) Regulations 1994

Meat Products (Hygiene) Regulations 1994

Organic Products (Amendment) Regulations 1994

Pesticides (Maximum Residue Levels in Crops, Food and Feeding stuffs) Regulations 1994

Preserved Tuna and Bonito (Marketing Standards) Regulations 1994

Quick-frozen Foodstuffs (Amendment) Regulations 1994

Units of Measurement Regulations 1994

Weights and Measures (Metrication)(Miscellaneous Goods (Amendment) Order 1994

Weights and Measures (Packaged Goods and Quantity Marking and Abbreviation of Units)(Amendment) Regulations 1994

1993

Animals, Meat and Meat Products (Examination for Residues and Maximum Residue Limits) Regulations 1993

Egg Products Regulations 1993

Extraction Solvents in Food Regulations 1993

Organic Products (Amendment) Regulations 1993

1992

Aflatoxin in Nuts, Nut Products, Dried Figs and Dried Fig Products Regulations 1992

Flavourings in Food Regulations 1992

Food Safety (Fishery Products on Fishing Vessels) Regulations 1992

Food Safety (Live Bivalve Molluscs and Other Shellfish) Regulations 1992

Food Safety (Fishery Products) Regulations 1992

Food Additives Labelling Regulations 1992

Milk and Dairies (Standardisation and Importation) Regulations 1992

Olive Oil (Marketing Standards)(Amendment) Regulations 1992

Organic Products Regulations 1992

Products of Animal Origin (Import and Export) Regulations 1992

Tin in Food Regulations 1992

Weights and Measures (Packaged Goods)(Amendment) Regulations 1992

1991

Animals, Meat and Meat Products (Examination for Residues and Maximum Residue Limits) Regulations 1991

Fruit Juices and Fruit Nectars (England, Wales and Scotland)(Amendment) Regulations 1991

International Carriage of Perishable Foodstuffs (Amendment) Regulations 1991

1990

Channel Tunnel (Amendment of Agriculture, Fisheries and Food Import Legislation)

Food (Control of Irradiation) Regulations 1990

Jam and Similar Products (Amendment) Regulations 1990

Milk and Milk Products (Protection of Designations) Regulation 1990

Preserved Sardines (Marketing Standards) Regulations 1990

Quick-frozen Foodstuffs Regulations 1990

Tryptophan in Food Regulations 1990

Weights and Measures Act 1963 (Various Foods) (Amendment) Order 1990

1989

Casein and Caseinates (Amendment) Regulations 1989

Condensed Milk and Dried Milk (Amendment) Regulations 1989

Preservatives in Food Regulations 1989

Tetrachloroethylene in Olive Oil Regulations 1989

1988

Sweeteners in Food (Amendment) Regulations 1988

Weights and Measures Act 1963 (Miscellaneous Foods) Order 1988

Weights and Measures Act 1963 (Intoxicating Liquor) Order 1988

Weights and Measures (Quantity Marking and Abbreviations of Units) (Amendment) Regulations 1988

1987

Coffee and Coffee Products (Amendment) Regulations 1987

Materials and Articles in Contact with Food Regulations 1987

Olive Oil (Marketing Standards) Regulations 1987

Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations 1987

1986

Condensed Milk and Dried Milk (Amendment) Regulations 1986

Meat Products and Spreadable Fish Products (Amendment) Regulations 1986

Units of Measurement Regulations 1986

Weights and Measures (Packaged Goods) Regulations 1986

1985

Caseins and Caseinates Regulations 1985

International Carriage of Perishable Foodstuffs Regulations 1985

Lead in Food (Amendment) Regulations 1985

Natural Mineral Waters Regulations 1985

1984

Food Labelling Regulations 1984

Imported Food Regulations 1984

Meat Products and Spreadable Fish Products Regulations 1984

Poultry Meat (Water Content) Regulations 1984

1983

Sweeteners in Food Regulations 1983

1982

Cocoa and Chocolate Products (Amendment) Regulations 1982

Coffee and Coffee Products (Amendment) Regulations 1982

Condensed Milk and Dried Milk (Amendment) Regulations 1982

Erucic Acid in Food (Amendment) Regulations 1982

Food Labelling (Amendment) Regulations 1982

Fruit Juices and Fruit Nectars (Amendment) Regulations 1982

Importation of Animal Products and Poultry Products (Amendment) Order 1980

Specified Sugar Products (Amendment) Regulations 1982

1981

Jam and Similar Products Regulations 1981

1980

Chloroform in Food Regulations 1980

Emulsifiers and Stabilisers in Food Regulations 1980
Food Labelling Regulations 1980
Importation of Animal Products and Poultry Products Order 1980
Miscellaneous Additives in Food Regulations 1980
1979
Lead in Food Regulations 1979
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Coffee and Coffee Products Regulations 1978
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Condensed Milk and Dried Milk Regulations 1977
Erucic Acid in Food Regulations 1977
Fruit Juices and Fruit Nectars Regulations 1977
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Cocoa and Chocolate Products Regulations 1976
Drinking Milk Regulations 1976
Honey Regulations 1976
Specified Sugar Products Regulations 1976
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Emulsifiers and Stabilisers in Food Regulations 1975
1973
Arsenic in Food (Amendment) Regulations 1973
Colouring Matter in Foods Regulations 1973
1966
Mineral Hydrocarbons in Food Regulations 1966
1963
Ice-cream (Heat Treatment, etc)(Amendment) Regulations 1963
1960
Arsenic in Food (Amendment) Regulations 1960
1959
Arsenic in Food Regulations 1959
Ice-cream (Heat Treatment, etc) Regulations 1959
Milk and Dairies (General) Regulations 1959

[Source: David J. Juke [David Juke web site](#) (1997)]

APPENDIX 3

Food Labelling Regulations 1996 (Statutory Instrument No 1996/1499)

Headings:

A. Food to be delivered to the ultimate consumer or caterer

1. Name of food
2. List of ingredients
3. Special emphasis
4. Appropriate durability indication
5. Omission of certain particulars
6. Additional requirements
7. Manner of marking or labelling

B. Claims

C. Prescribed nutrition labelling

D. Misleading descriptions

The following foods are not subject to the Regulations: drinks bottled before 1/1/1983 having an alcoholic strength greater than 1.2% (vol.) and meeting the labelling requirements in force at the time of bottling; any food prepared on domestic premises for sale for the benefit of the person preparing it by a registered society; any food not prepared in the course of a business by the person preparing it.

A. Food to be delivered to the ultimate consumer or caterer

Exemptions (but the foods must carry statements relating to packaging gases and sweeteners - see Additional statements below)

a) The following foods are not subject to the controls of this section: Specified sugar products, cocoa and chocolate products, honey, condensed and dried milk for delivery to a catering establishment (unless prepared and labelled for infant consumption), coffee and coffee products (including designated chicory products) for delivery to a catering establishment.

b) The following foods are not subject to the controls of this section in so far as their labelling is regulated by other Regulations: hen eggs, spreadable fats, wines or grape musts, sparkling wines and aerated sparkling wines, liqueur wines, semi-sparkling wines and aerated semi-sparkling wines, spirit drinks, fresh fruit and vegetables, preserved sardines, preserved tuna and bonito, additives.

All food to be marked with:

a) the name of the food;

b) a list of ingredients;

c) the appropriate durability indication:

(i) for food which, from a microbiological point of view, is highly perishable and in consequence likely after a short period of time to constitute an immediate danger to human health, a "use by" date,

(ii) for other foods, the minimum durability;

- d) any special storage conditions or conditions of use;
- c) the name and address of the manufacturer or packer, or a seller established with the EC;
- f) particulars of the place of origin if necessary to avoid misleading the purchaser to a material degree;
- g) instructions for use if necessary.

1) Name of food

If a name prescribed by law exists, it shall be used, and may be qualified by other words which make it more precise. (For fish, Schedule 1 of the Regulations should be consulted; for melons and potatoes sold as such, the variety must be included; except that folacin may be called "folic acid" and vitamin K shall be called "vitamin K").

If no name prescribed by law exists, a customary name may be used.

If no name prescribed by law nor a customary name, a name sufficiently precise to inform a purchaser of the true nature of the food and to enable the food to be distinguished from products with which it could be confused and, if necessary, shall include description of its use.

The name may consist of a name and/or a description (and may contain more than one word).

Trade marks, brand names, or fancy names shall not be substituted.

If the purchaser could be misled without such information, the name should include an indication a) that a food is powdered or in any other physical condition, or b) that a food has been dried, freeze-dried, frozen, concentrated or smoked or subjected to any other treatment. In addition, the following indications are required:

- a) for meat treated with proteolytic enzymes: "tenderised",
- b) for food which has been irradiated: "irradiated" or "treated with ionising radiation".

2) List of ingredients

The list of ingredients should be headed or preceded by "ingredients" (or a heading which includes the word "ingredients").

Order of ingredients:

Ingredients to be listed in weight descending order determined as at the time of their use in the preparation of the food, except for the following:

- a) water and volatile products used as ingredients shall be listed in order of their weight in the finished product. The weight of water is calculated by subtracting from the weight of the finished product the total weight of the other ingredients used;
- b) if an ingredient is reconstituted from concentrated or dehydrated form during preparation of the food, it may be positioned according to its weight before concentration or dehydration;

c) if a food is to be reconstituted during use by the addition of water, its ingredients may be listed in order after reconstitution provided there is a statement "ingredients of the reconstituted product" or "ingredients of the ready to use product" or similar indication;

d) if a product consists of mixed fruit, nuts, vegetables, spices or herbs and no particular one of these ingredients predominates significantly by weight, the ingredients may be listed in any order provided that for foods consisting entirely of such a mixture the heading includes "in variable proportion" or other words indicating method of listing and for other such foods the relevant ingredients are accompanied by such a statement.

Names of ingredients:

The name of an ingredient shall be:

a) the name which would be used if the ingredient were sold as a food, including, if appropriate, either "irradiated" or "treated with ionising radiation" (other appropriate indications must be given if a consumer could be misled by its omission); or

b) the generic name;

c) a flavouring shall be identified by the word "flavouring" or "flavourings" or a more specific name or description of the flavouring; it may be supplemented by the word "natural" (or similar) only where the flavouring component(s) of the ingredient consist(s) exclusively of a flavouring substance obtained by physical (including distillation and solvent extraction), enzymatic or microbiological processes, from material of vegetable or animal origin which material is either raw or has only been subjected to a process normally used in preparing food (including drying, torrefaction and fermentation), and/or, a flavouring preparation(s); in addition, if the name refers to a vegetable or animal nature or origin, the word "natural" (or similar), it must be derived solely or almost solely from that vegetable or animal source.

d) an additive shall be listed by either the principal function it serves, as given in the following table, followed by its name and/or serial number (subject to the notes in the table) or where the function is not given in the table, its name:

Compound ingredients:

The names of the ingredients of a compound ingredient may be given either instead of the compound ingredient or in addition (and immediately following the name of the compound ingredient); except only the name of the compound ingredient need be given if the compound ingredient:

a) need not bear an ingredients' list if it were being sold,

b) is identified by a generic name, or

c) is less than 25% of the finished product, but in this case, any additives used and needing to be named must be listed immediately following the name of the compound ingredient.

Water:

Added water to be declared unless:

- a) it is used solely for reconstitution of an ingredient which is in concentrated or dehydrated form,
- b) it is used as, or as part of, a medium which is not normally consumed,
- c) it does not exceed 5% of the finished product,
- d) it is permitted under EEC frozen or quick-frozen poultry Regulations.

Ingredients not needing to be named:

- a) constituents which are temporarily separated and later re-introduced (in the original proportions),
- b) additives which were in an ingredient and which serve no significant technological function in the finished product,
- c) any additive used solely as a processing aid,
- d) any substance (other than water) used as a solvent or carrier of an additive (and used only at level which is strictly necessary).

Foods which need not bear a list of ingredients:

- a) fresh fruit and vegetables which have not been peeled or cut into pieces,
- b) carbonated water (consisting of water and carbon dioxide only, and the name indicates that the water is carbonated),
- c) vinegar derived by fermentation (from a single basic product) with no added ingredients,
- d) cheese, butter, fermented milk and fermented cream to which only lactic products, enzymes and micro-organism cultures essential to manufacture have been added, or, in the case of cheese (except fresh curd cheese and processed cheese), any salt required for its manufacture,
- e) any food consisting of a single component (including flour containing only legally required nutritional additives),
- f) any drink with an alcoholic strength by volume over 1.2%.

For c) and d), if other ingredients are included only those other added ingredients need be listed if the list is headed "added ingredients" or similar

3) Special emphasis

Where a food is characterised by the presence of a particular ingredient, and special emphasis is given to it on the label, it must include a declaration of the minimum percentage of the ingredient. Similarly, for the low content of a particular ingredient, the maximum percentage should be given. The % to be calculated on the quantity used and to appear by the name of the food or in the ingredients' list. (Neither reference to an ingredient in the name of the food nor to a flavouring on the label shall of itself constitute special emphasis).

4) Appropriate durability indication

milk, if required to avoid confusion, the place of origin is to be given, and, if raw milk, the name of manufacturer or packer.

ii) The following (unless irradiated) need not be marked with any of the above requirements: food which is not exposed for sale, white bread or flour confectionery, carcasses and parts of carcasses not intended for sale in one piece (but see b) below).

b) Additives: Items in a) which have no list of ingredients and contain additives normally requiring declaration, and which serve as antioxidant, colour, flavouring, flavour enhancer, preservative or sweetener, must be marked with an indication of any such category of additive in the food. For edible ices and flour confectionery, a notice displayed in a prominent position stating that the products may contain stated categories (indicating principal function) is sufficient. This section does not apply to food which is not exposed for sale.

c) Items in a) which have no list of ingredients and contain an ingredient which has been irradiated must be marked with a statement of that ingredient accompanied by the word(s) "irradiated" or "treated with ionising radiation". This section does not apply to food which is not exposed for sale.

d) Small packages and certain bottles (unless a) or f) apply or if 7) below applies):

i) For any prepacked food, if either the largest surface of packaging is less than 10 square centimetres, or, if it is contained in an indelibly marked glass bottle intended for re-use and having no label, ring or collar, only the name and, if required, the appropriate durability indication need be given. In the case of milk, if required to avoid confusion, the place of origin is to be given, and, if raw milk, the name of manufacturer or packer. In the case of bottles, for any food except milk, the appropriate durability indication need not be given until 1.1.97; for milk, it need not be given.

ii) For any prepacked food which is an individual portion and is intended as a minor component to either another food or another service, only the name is required. Foods covered include butter and other fat spreads, milk, cream and cheeses, jams and marmalades, mustards, sauces, tea, coffee and sugar, and other services include provision of sleeping accommodation for trade or business.

e) Certain food sold at catering establishments:

i) Any food sold at a catering establishment which is either not prepacked or prepacked for direct sale, need not be marked with any of the items in "General labelling requirement" above (or the additional labelling requirements below).

ii) In the case of milk which is prepacked for direct sale, if required to avoid confusion, the place of origin is to be given, and, if raw milk, the name of manufacturer or packer.

iii) In the case of a food which has been irradiated, the food shall be marked with an indication of the treatment accompanied by the word(s) "irradiated" or "treated with ionising radiation". In the case of irradiated ingredients which would normally be declared, the ingredient shall be stated and accompanied by the appropriate word(s).

f) Seasonal selection packs: The outer packaging of a seasonal selection pack need not be marked or labelled with any particulars provided that each item in the pack meets the Regulations. A seasonal selection pack is defined as a pack consisting of two or more different items of food which are wholly or partly enclosed in outer packaging decorated with seasonal designs.

6) Additional requirements

a) Vending machines: When a name of a food is not visible to a purchaser, it shall be given on a notice on the front of the machine, together with (either on the machine or in close proximity):

i) for food which is not prepacked but for which a claim is made (whether on the machine or elsewhere), a notice giving the prescribed nutrition labelling;

ii) for food which should properly be reheated before it is eaten, and for which there are no reheating instructions on the label, a notice giving such instructions.

b) Alcoholic drinks: Every pre-packed alcoholic drink (except Community controlled wine) with greater than 1.2% alcoholic strength shall be marked with its alcoholic strength by volume (being a figure to not more than one decimal place followed by "% vol" and which may be preceded by "alcohol" or "alc" and determined at 20°C). Tolerances are specified in the Regulations.

c) Raw milk: Except for buffalo milk, containers of raw milk shall be marked "This milk has not been heat-treated and may therefore contain organisms harmful to health". In the case of any raw milk which is not prepacked and is sold at a catering establishment, the words "Milk supplied in this establishment has not been heat-treated and may therefore contain organisms harmful to health" shall appear on a label attached to the container of milk or on a ticket or notice visible to the purchaser.

d) Products containing skimmed milk together with non-milk fat: For a product which i) consists of skimmed milk together with non-milk fat, ii) is capable of being used as a substitute for milk, and iii) is neither an infant formula or a follow-on formula, nor a product specially formulated for infants or young children for medical purposes, it shall be prominently marked with a warning that the product is unfit or not to be used for babies.

e) Foods packaged in certain gases: If the durability of a food has been extended by being packaged in a permitted packaging gas, it shall be marked "packaged in a protective atmosphere".

f) Foods containing sweeteners: For a food containing:

i) a permitted sweetener, the name shall be accompanied by "with sweetener".

ii) both added sugar(s) and sweetener(s), the name shall be accompanied by "with sugar(s) and sweetener(s)".

iii) aspartame, the food shall be marked "contains a source of phenylalanine".

iv) more than 10% added polyols, the food shall be marked "excessive consumption may produce laxative effects".

7) Manner of marking or labelling

General:

a) When sold to the ultimate consumer, the required markings shall be either on the packaging or on a label attached to the packaging or on a label visible through the packaging. If sold otherwise than to the ultimate consumer, as an alternative, the details may be on relevant trade documents (except that the name of the food, its appropriate durability indication and the name and address of

manufacturer, packer or seller must appear on the outermost packaging).

b) For those products which may omit certain details (food which is not prepacked and fancy confectionery products and certain food sold at catering establishments as detailed above in 6) a) and c)) are sold to the ultimate consumer, the details which are required shall appear on a label attached to the food or on a menu, notice, ticket or label discernable to the purchaser at place where he chooses the food. Where the information is given on a menu, etc., if the food contains (or may contain) irradiated ingredients this shall be indicated using the words "irradiated" or "treated with ionising radiation" accompanying the reference to the ingredient. In the case where irradiated dried substances normally used for seasoning are used in a catering establishment, an indication that food sold in the establishment contains (or may contain) those irradiated ingredients is sufficient.

c) For food which is not prepacked and fancy confectionery products (as detailed above in 6) a) above) are sold otherwise than to the ultimate consumer, the details which are required shall appear on a label attached to the food or on a menu, notice, ticket or label discernable to the purchaser at place where he chooses the food, or in commercial documents which accompany the food (or were sent before or at the time of delivery of the food).

Milk:

In the case of milk that is contained in a bottle, particulars may be given on the bottle cap. However, in the case of raw milk, the statement relating to health (see 7) c) above) shall be given elsewhere than on the bottle cap.

Intelligibility:

Any marking or notice should be easy to understand, clearly legible and indelible and, when sold to the ultimate consumer, easily visible (although at a catering establishment where information is changed regularly, information can be given by temporary media e.g. chalk on a blackboard.). They shall not be hidden, obscured or interrupted by written or pictorial matter.

Field of vision:

When required to be marked with one or more of the following, the required information shall appear in the same field of vision:

- a) name of food;
- b) appropriate durability indication;
- c) indication of alcoholic strength by volume;
- d) the cautionary words in respect of raw milk (see 7) c) above);
- e) the warning required on products consisting of skimmed milk with non-milk fat (see 7) d) above);
- f) statement of net quantity.

The requirements of b), c) and f) do not apply to foods falling within the section on small packages and certain bottles above (see 5) d) above).

B. Claims

The following claims in the labelling or advertising of a food are prohibited:

- 1) A claim that a food has tonic properties (except that the use of the word tonic in the description "Indian tonic water" or quinine tonic water" shall not of itself constitute this claim).
- 2) A claim that a food has the property of preventing, treating or curing a human disease or any reference to such a property (except that the use of the claim described below under "claims relating to foods for particular nutritional uses" shall not of itself constitute this claim).

The following claims in the labelling or advertising of a food are only permitted where the conditions specified in the Regulations are met (only summaries of the conditions are given here and the Regulations should be consulted for full details). When considering whether a claim is being made, a reference to a substance in an ingredients' list or in any nutrition labelling shall not constitute a claim.

- 1) Claims relating to foods for particular nutritional uses (i.e. a claim that a food is suitable, or has been specially made, for a particular nutritional purpose which includes requirements either of people whose digestive process or metabolism is disturbed, or of people who, because of special physiological conditions obtain special benefit from the controlled consumption of certain substances, or of infants (0 - 12 months) or young children (1 - 3 years) in good health):

the food must fulfil the claim; the label must indicate the aspects of composition or process which give the food its particular nutritional characteristics; the label must give the prescribed nutrition labelling and may have additional relevant information; when sold to the ultimate consumer, the food must be prepacked and completely enclosed by its packaging.

- 2) Reduced or low energy value claims (i.e. a claim that a food has a reduced or low energy value except that the presence of the words "low calorie" for a soft drink and in accordance with the requirements below on misleading descriptions does not constitute such a claim):

foods claimed to have a reduced energy value must have energy no more than three-quarters of a similar food with no such claim (unless the food is an intense sweetener either on its own or mixed with another food but still significantly sweeter than sucrose); foods claimed to have a low energy value should usually have a maximum energy of 167 kJ (40 kcal) per 100 g (or 100 ml) and per normal serving (unless the food is an intense sweetener either on its own or mixed with another food but still significantly sweeter than sucrose); in the case of an uncooked food, the claim must be in the form "a low energy or calorie or Joule food".

- 3) Protein claims (i.e. a claim that a food, other than one intended for babies or young children which satisfies the conditions for 1) above, is a source of protein):

a reasonable daily consumption of the food must contribute at least 12 g of protein; foods claimed to be a rich or excellent source of protein must have at least 20% of their energy value provided by protein and in other cases at least 12%; the label must give the prescribed nutrition labelling.

- 4) Vitamin / mineral claims (i.e. a claim that a food, other than one intended for babies or young children which satisfies the conditions of 1) above, is a source of vitamins/minerals; a claim is not made when a name includes the name of one or more vitamins/minerals and the food consists solely of vitamins and/or minerals and certain other substances and when mineral claims are made relating

to a low or reduced level of minerals):

claims may only be made with respect to vitamins or minerals in the following table (using the name in the table); where a) the claim is not confined to named vitamins or minerals then, if the food is claimed to be a rich or excellent source of vitamins or minerals, it must contain at least one half of the recommended daily amount (RDA) of two or more of the vitamins or minerals listed in the quantity reasonably expected to be consumed in one day or, otherwise, at least one-sixth; where b) the claim is confined to named vitamins or minerals, the conditions of a) must apply to each named vitamin or mineral; for foods to which nutrition labelling relates, the label must carry a statement of the % RDA of any vitamin or mineral involved in the claim in a quantified serving of the food or per portion (if number of portions in pack is stated); for food supplements or waters other than natural mineral waters, the label must carry a statement of the % RDA of any vitamin or mineral involved in the claim in either a quantified serving of the food or, if prepacked, per portion, and, if prepacked, the number of portions in the pack is to be stated);

5) Cholesterol claims (i.e. a claim relating to the presence or absence of cholesterol):

the food must have a maximum of 0.005% cholesterol except that if it is higher than this figure a claim may be made if the claim relates to the removal of cholesterol from, or its reduction in, the food if the claim is made a) as part of an indication of the true nature of the food, b) as part of an indication of the treatment of the food, within the list of ingredients, or d) as a footnote in respect of a prescribed nutrition labelling; the claim must not include any suggestion of benefit to health because of its level of cholesterol; the food shall be marked with the prescribed nutrition labelling.

6) Nutrition claims (i.e. a claim not dealt with under items 1) - 5) above):

the food must be capable of fulfilling the claim; the food shall be marked with the prescribed nutrition labelling.

7) Claims which depend on another food (i.e. a claim that a food has a particular value or confers a particular benefit):

the value or benefit must not be derived wholly or partly from another food intended to be consumed with the food.

C. Prescribed nutrition labelling

Presentation:

It shall be presented together in one conspicuous place in tabular form with numbers aligned or, if there is insufficient space for this, in linear form. When required or permitted to be given, the following order and manner of listing shall be used:

Where it is required to give additional information relating to any substance which belongs to, or is a component of, one of the items listed, it shall appear as follows:

All amounts:

a) to be given per 100g or 100 ml;

b) may, in addition, be given per quantified serving or per portion (if number of portions in pack is stated);

c) to be the amount contained in the food as sold except that, where detailed preparation instructions are given, they may be the amounts after such preparation (and this must be expressly indicated);

d) to be averages (taking into account seasonal variation, patterns of consumption, etc.) based on i) the manufacturer's analysis of the food, ii) a calculation from the actual average values of the ingredients used in the preparation of the food, and/or iii) a calculation from generally established and accepted data

In calculating the energy value the following conversion factors shall be used:

1 g carbohydrate (excluding polyols) = 17 kJ (4 kcal)

1 g polyols = 10 kJ (2.4 kcal)

1 g protein = 17 kJ (4kcal)

1 g fat = 37 kJ (9 kcal)

1 g ethanol = 29 kJ (7 kcal)

1 g organic acid = 13 kJ (3 kcal)

Contents

1) Except where 2) applies, prescribed nutrition labelling shall give the following:

a) it shall include either:

i) energy, protein, carbohydrates and fat, or

ii) energy, protein, carbohydrates, sugars, fat, saturates, fibre and sodium;

b) if a claim is made for any of sugars, saturates, fibre or sodium, then it shall be given according to a) ii);

c) where a nutrition claim is made relating to polyols, starch, mono-unsaturate, polyunsaturates, cholesterol, vitamins or minerals, the relevant amount shall be given except that, in the case of vitamins or minerals, the amount present must be a significant amount (15% of the RDA);

d) the items in c) may be given even if no claim is made but the restriction relating to vitamins or minerals also applies;

e) if the labelling is presented in the form a) i) above, but includes mono-unsaturate, polyunsaturates, and/or cholesterol, the amount of saturates must also be given;

f) where a nutrition claim is made relating to any substance which belongs to, or is a component of, one of the nutrients already required (or permitted) to be included, the name and amount of that substance shall be given.

2) For food which is not prepacked and which is either sold to the ultimate consumer other than at a catering establishment, to the ultimate consumer from a vending machine, or to a catering establishment, prescribed nutrition labelling shall give any the data relevant to any nutrition claim

which is made and may include shown above under presentation.

D. Misleading descriptions

1) General:

The following words and descriptions may only be used in the labelling or advertising of the foods indicated in the following table if the foods satisfy the conditions stated:

2) Cheese:

The following names may not be used in the labelling of any cheese unless the cheese has at least 48% milk fat (dry matter basis) and the cheese has no more than the following specified water contents:

3) Cream:

The following names may not be used in the labelling of any cream unless the specified requirements are met, except that the milk fat requirement need not be met if the name contains qualifying words indicating that the milk fat content of the cream is greater or less than that specified.

4) "Wine" used in a composite name:

The use of the word "wine" is restricted by EC Regulations. However, it may be used in a composite name in the following cases (so long as no confusion is caused)

a) "Non-alcoholic wine" may only be used for a drink derived from unfermented grape juice intended exclusively for communion or sacramental use (and labelled as such).

b) When the word "wine" is used in a composite name for a drink which is derived from fruit other than grapes, that drink shall be obtained by an alcoholic fermentation of that fruit.

[Source David J. Juke Food labelling Legislation in the UK, (1997)]

APPENDIX 4

Mbita Nakazwe
18 Eaton Road
Glenwood
4001

15th March, 1997

The Commissioner - Customs
Private Bag E635
Lusaka.
Zambia.

Dear Sir,
RE:RESEARCH INFORMATION

My name is Mbita Nakazwe and I am a Master of Laws Student at the University of Natal Durban. I am currently doing research for my masters' thesis entitled "**Food Legislation in Third World Countries : A case study of Zambia.**"

I would appreciate your advise on the import duties charged by your authority for finished goods and raw materials .

Kindly send the information to my home address indicated above or E-mail it to Nakazwem@mtb.und.ac.za

I look forward to hearing from you and thank you in anticipation.

Yours Faithfully

Mbita Nakazwe

APPENDIX 5

Mbita Nakazwe
18 Eaton Road
Glenwood
4001

15th July, 1997

The Commissioner - Customs
Private Bag E635
Lusaka.
Zambia.

Dear Sir,

RE: RESEARCH INFORMATION

I refer to my letter of 15th March, 1997 requesting information on the import duties for finished goods and raw materials. I wish to advise that I have not received any response from yourselves despite sending you an e-mail as well 2 weeks ago. I would really appreciate if you could in addition send me information pertaining to exemptions that I understand local manufacturers receive on imported raw materials and the requirements for their qualification for such exemptions.

My home address is indicated above. You could also email me the information at nakazwem@mtb.und.ac.za

I look forward to hearing from you and thank you in anticipation.

Yours Faithfully,

Mbita Nakazwe

- (d) the drainage of land, streets or premises, the disposal of offensive liquids and the removal and disposal of rubbish, refuse, manure and waste matters;
- (e) the standard or standards of purity of any liquid which, after treatment in any purification works, may be discharged therefrom as effluent;
- (f) the keeping of animals or birds and the construction, cleanliness and drainage of places where animals or birds are kept;
- (g) the establishment and carrying on of factories or trade premises which are liable to cause offensive smells or effluvia, or to discharge liquid or other material liable to cause such smells or effluvia, or to pollute streams, or are otherwise liable to be a nuisance or injurious or dangerous to health, and for prohibiting the establishment or carrying on of such factories or trade premises in unsuitable localities or so as to be a nuisance or injurious or dangerous to health;
- (h) the subdivision and general layout of land intended to be used as building sites, the level construction, number, direction and the width of streets and thoroughfares, the limitation of the number of dwellings or other buildings to be erected on such land, the proportion of any building site which may be built upon and the establishment of zones within which different limitations shall apply and zones within which may be prohibited the establishment or conduct of occupations or trades likely to cause nuisance or annoyance to persons residing in the neighbourhood;
- (i) the inspection of the district of any Local Authority by that Local Authority with a view to ascertaining whether the lands and buildings thereon are in a state to be injurious or dangerous to health and the preparation, keeping, and publication of such records as may be required.

*(As amended by No. 17 of 1957
and G.N. Nos. 291 and 500 of 1964)*

PART X

PROTECTION OF FOODSTUFFS

76. (1) All warehouses or buildings of whatever nature used for the storage of foodstuffs shall be constructed of such materials and in such manner as shall, in the opinion of the Medical Officer of Health, render such warehouse or building rat-proof.

Construction and regulation of buildings used for the storage of foodstuffs

(2) Where any warehouse or building intended for the storage of foodstuffs aforesaid has fallen into a state of disrepair, or does not, in the opinion of the Medical Officer of Health, afford sufficient protection against rat invasion by reason of the materials used in the construction of the same being defective, the Local Authority may by written notice require the owner to effect such repairs and alterations as the notice shall prescribe within a time to be specified in the said notice, and if such requirement is not complied with the Local Authority may enter upon the premises and effect such repairs and alterations, and may recover all costs and expenses incurred from the owner.

(3) Where, in the opinion of the Medical Officer of Health, any foodstuffs within a warehouse or building are insufficiently protected, the owner thereof shall observe all written instructions and directions of the Local Authority within a time to be specified in the notice for the better protection of the same:

Provided that in the case of any prosecution under this section, the court may in its discretion acquit the accused if it is satisfied that all reasonable steps have been taken to exclude rats having regard to all the circumstances of the case.

(As amended by No. 9 of 1937)

No person shall reside or sleep in any room in which foodstuffs are stored, etc.

77. (1) No person shall reside or sleep in any kitchen or room in which foodstuffs are prepared or stored for sale.

(2) If it appears to the Medical Officer of Health that any such kitchen or room is being so used contrary to the provisions of this section, or that any part of the premises adjoining the room in which foodstuffs are stored or exposed for sale is being used as a sleeping apartment under such circumstances that the foodstuffs are likely to be contaminated or made unwholesome, the Local Authority may serve upon the offender or upon the owner of the house, or upon both, a notice calling for such measures to be taken as shall prevent the improper use of such kitchen and premises within a time to be specified in the notice, and if such notice be not complied with the party upon whom it was served shall be guilty of an offence.

(As amended by No. 9 of 1937)

PART XI

WATER AND FOOD SUPPLIES

Duty of Local Authority as to pollution of water supplies

78. It shall be the duty of every Local Authority to take all lawful, necessary and reasonably practicable measures---

(a) for preventing any pollution dangerous to health of any supply of water which the public within its

district has a right to use and does use for drinking or domestic purposes (whether such supply is derived from sources within or beyond its district); and

(b) for purifying any such supply which has become so polluted;

and to take measures (including, if necessary, proceedings at law) against any person so polluting any such supply or polluting any stream so as to be a nuisance or danger to health.

79. (1) No person shall sell or expose for sale or bring into Zambia or into any market or have in his possession without reasonable excuse any food for man in a tainted, adulterated, diseased or unwholesome state, or which is unfit for use, or any food for any animal which is in an unwholesome state or unfit for their use, and any Medical Officer of Health, Veterinary Officer, Sanitary Inspector, Meat Inspector or police officer of or above the rank of Assistant Inspector may seize any such food, and any Administrative Officer, on the recommendation of the Medical Officer of Health or Veterinary Officer, may order it to be destroyed, or to be so disposed of as to prevent it from being used as food for man or animal, as the case may be.

Sale of
unwhole-
some food
prohibited

(2) No person shall collect, prepare, manufacture, keep, transmit or expose for sale any foodstuffs without taking adequate measures to guard against or prevent any infection or contamination thereof.

(As amended by No. 47 of 1963 and G.N. No. 500 of 1964)

80. Any Medical Officer of Health, or other person duly authorised by the Local Authority in writing, may, at any time between the hours of 6 a.m. and 6 p.m., enter any shop or premises used for the sale or preparation for sale, or for the storage of food, to inspect and examine any food found therein which he shall have reason to believe is intended to be used as human food, and should such food appear to such officer to be unfit for such use, he may seize the same, and any Administrative Officer may order it to be disposed of as in the foregoing section. The proof that such food was not exposed or deposited for any such purpose shall rest with the person charged.

Seizure of
unwhole-
some food

(As amended by G.N. No. 500 of 1964)

81. Any person in whose possession there shall be found any food liable to seizure under sections *seventy-nine* and *eighty* shall further be liable to a penalty not exceeding two hundred kwacha or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Penalty

Regulations
under
Part XI

82. The Minister may, by statutory instrument, make regulations regarding all or any of the following matters:

- (a) the inspection of dairy stock and of animals intended for human consumption, and of dairies, stocksheds or yards, milk-shops, milk-vessels and slaughter-houses, and of factories, stores, shops and other places where any article of food is manufactured or prepared or kept;
- (b) the taking and examination of samples of milk, dairy produce, meat or other articles of food and the removal or detention, pending examination or inquiry, of animals or articles which are suspected of being diseased or unsound or unwholesome or unfit for human consumption, and the seizure and destruction or treatment or disposal, so as not to endanger health, of any such article which is found to be unwholesome or unsound or diseased or infected or contaminated, and of diseased animals sold or intended or offered or exposed for sale for human consumption; such regulations may empower a Medical Officer of Health, or (in the case of meat) a Veterinary Officer, to detain, seize or destroy any diseased, unsound or unwholesome article of food, but shall not confer on any other person any power beyond that of detention of such article for the purpose of examination by a Medical Officer of Health, or (in the case of meat) a Veterinary Officer;
- (c) fixing standards of milk contents and cleanliness of milk and prescribing the warning to be given to any cow-keeper, dairymen or purveyor of milk that any milk sold or kept or transmitted or exposed for sale by him has been found to be below any such standard, and the issue of orders prohibiting the sale or keeping or exposure for sale of milk from any particular animal or animals, or requiring the closing of any dairy, stock-shed or yard or milk-shop, the milk from which is found after analysis and official warning to be below any such standard;
- (d) the conveyance and distribution of milk and the labelling or marking of receptacles used for the conveyance of milk;
- (e) the veterinary inspection of dairy stock, the sampling and bacteriological examination of milk and dairy produce and the prevention of the sale, or the keeping, transmission or exposure for sale of milk from a diseased or infected animal;
- (f) the duties of cow-keepers, dairymen and purveyors of milk in connection with the occurrence of infectious disease amongst persons residing or employed

in or about their premises and the furnishing by them of the names and addresses of their customers, and of cow-keepers in connection with reporting the occurrence, in animals on the premises or any dairy cattle, of diseases which are communicable to man and of any disease of the udder;

- (g) the inspection and examination of, and the regulation, inspection and supervision of the manufacture, preparation, storage, keeping and transmission of any article of food intended for sale or for export from Zambia and the prohibition of the manufacture, preparation, storage, keeping, transmission, sale or export from Zambia of any such article which is, or contains an ingredient which is diseased or unsound or unfit for human consumption, or which has been exposed to any infection or contamination;
- (h) the establishment, locality, supervision, equipment, maintenance and management of slaughter-houses and places in which animals awaiting slaughter are kept and the disposal of the waste products of slaughtering and the inspection of slaughter-houses and the animals therein, and prohibiting, restricting or regulating the slaughtering of animals;
- (i) prohibiting the importation into Zambia of any article of food which is not clean, wholesome, sound and free from any disease or infection or contamination, and the seizure and disposal by destruction or otherwise of any such article so imported;
- (j) the preparation, manufacture or importation and the storage and sale of or trade in articles of food which are packed in airtight receptacles or are otherwise preserved, and the marking of any such article or receptacle with the date of manufacture or preparation;
- (k) prohibiting the importation, sale, possession or use of vessels which are intended to contain milk or any liquid or semi-solid article of food and which are rusty or defectively soldered or are made of material containing, in any part likely to come in contact with the contents, lead or other poisonous or injurious substance in such proportion as to be likely to cause injury or danger to health, and fixing the maximum proportions of such substances which may be used in such vessels;
- (l) requiring the marking or stamping in any manner prescribed by such regulations of any article of food for the purpose of showing clearly the nature, quality, weight, contents, place of manufacture or origin

P.O. BOX 30138

LUSAKA

TO: The Acting Chairman
All members of the Food & Drugs Board

SUBJECT: AGENDA FOR THE 1ST BOARD MEETING OF THE 3RD
FOOD AND DRUGS BOARD

VENUE: MINISTRY OF HEALTH-NDEKE HOUSE OFFICE

DATE/TIME: 09.30 HOURS - 16TH MAY 1994.

The Agenda for the special Food and Drugs Board meeting to be held on 16th May 1994 will be as follows:

1. Opening of the meeting
2. Apologies
3. Welcoming remarks for the F.A.O. Consultant Mr. C.A. Roy
4. Brief on the FAO Technical support to Zambia.
5. Comments from the FAO Consultant.
6. Board's overview on the FAO Consultant's 1st Mission
7. Consideration of the proposed amendment to the Standard for salt.
8. Consideration of the proposed amendment to the fees for Analysis.
9. Any other business
10. Closure of the meeting.



A. Malijani
ACTING SECRETARY

LABELLING OF PREPACKAGED FOODS - CODE OF PRACTICE

PART 1. GENERAL GUIDELINES

1. SCOPE

This standard applies to the labelling of all prepackaged foods to be offered as such to the consumer or for catering purposes and to certain aspects relating to the presentation thereof.

2. REFERENCES

In this standard reference has been made to the following publications:

- ZS 033:- *Labelling of prepackaged foods, code of practice*
 Part 2. Guidelines for date marking.
 Part 3. Guidelines for nutrition labelling.
 Part 4. Guidelines on claims
 Part 5. Guidelines for labelling non-retail containers of food.

3. DEFINITION OF TERM

For the purpose of this standard:

- 3.1 **Claim** means any representation which states, suggests or implies that a food has particular qualities relating to its origin, nutritional properties, nature, processing, composition or any other quality.
- 3.2 **Consumer** means persons and families purchasing and receiving food in order to meet their personal needs.
- 3.3 **Container** means any packaging of food for delivery as a single item, whether by completely or partially enclosing the food and includes wrappers. A container may enclose several units or types of packages when such is offered to the consumer.
- 3.4 **Date of manufacture** means the date on which the food becomes the product as described.
- 3.5 **Date of packaging** means the date on which the food is placed in the immediate container in which it will be ultimately sold.
- 3.6 **Date of minimum durability** ("best before") means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have

been made. However, beyond the date the food may still be perfectly satisfactory.

- 3.7 Food means any substances, whether processed, semi-processed or raw, which is intended for human consumption, and includes drinks, chewing gum, and any substance which has been used in the manufacture, preparation or treatment of "food" but does not include cosmetics or tobacco or substances used only as drugs.
- 3.8 Food additive means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result, (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The term does not include "contaminants" or substances added to food for maintaining or improving nutritional qualities.
- 3.9 Foods for catering purposes means those foods for use in restaurants, canteens, schools, hospitals and similar institutions where food is offered for immediate consumption.
- 3.10 Ingredient means any substance, including a food additive, used in the manufacture or preparation of food and present in the final product although possibly in a modified form.
- 3.11 Label means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of food.
- 3.12 Labelling includes any written, printed or graphic matter that is present on the label, accompanies the food, or is displayed near food, including that for the purposes of promoting its sale or disposal.
- 3.13 Lot means a definitive quantity of a commodity produced essentially under the same conditions.
- 3.14 Prepackaged means packed or made up in advance in a container, ready, for offer to the consumer, or for catering purposes.
- 3.15 Processing aid means a substance or material, not including apparatus or utensils, and not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients, to fulfil a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product.
- 3.16 Sell-by-date means the last date of offer for sale to the consumer after which there remains a reasonable storage period in the home.

3.17 **Use-by-date** (Recommended Last Consumption Date) (Expiration Date) means the date which signifies the end of the estimated period under any stated storage conditions, after which the product probably will not have the quality attributes normally expected by the consumer. After this date, the food should not be regarded as marketable.

4. GENERAL PRINCIPLES

4.1 Prepackaged food shall not be described or presented on any label or in any labelling in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect.¹

4.2 Prepackaged food shall not be described or presented on any label or in any labelling by words, pictorial or other devices which refer to or are suggestive either directly or indirectly, or any other product with which such food might be confused, or in such a manner as to lead the purchaser or consumer to suppose that the food is connected with such other product.

5. MANDATORY LABELLING OF PREPACKAGED FOODS

The following information shall appear on the label of prepackaged foods as applicable to the food being labelled, except to the extent otherwise expressly provided in an individual Zambian Standard.

5.1 The name of the food

5.1.1 The name shall indicate the true nature of the food and normally be specific and not generic.

5.1.1.1 Where a name or names have been established for a food in a Zambian Standard, at least one of these names shall be used.

5.1.1.2 In other cases, the name prescribed by the Food and Drugs Act shall be used.

5.1.1.3 In the absence of any such name, either a common or usual name existing by common usage as an appropriate descriptive term which was not misleading or confusing to the consumer shall be used.

5.1.1.4 A "coined", "fanciful", "brand" name, or "trade mark" may be used provided it accompanies one of the names provided in Subclauses 5.1.1.1 to 5.1.1.3.

5.1.2 There shall appear on the label either in conjunction with, or in close proximity to, the name of the food, such additional words or phrases as necessary to avoid misleading or confusing the consumer in regard to the true nature and physical condition of the food including but not limited to the type of packing medium, style, and

¹ Examples of descriptions or presentations to which these General Principles refer are given in the ZS 033: Part 4.

the condition or type of treatment it has undergone; for example: dried, concentrated, reconstituted, smoked.

5.2 List of ingredients.

5.2.1 Except for single ingredient foods, a list of ingredients shall be declared on the label.

5.2.1.1 The list of ingredients shall be headed or preceded by an appropriate title which consists of or includes the term 'ingredient'.

5.2.1.2 All ingredients shall be listed in descending order of ingoing weight (m/m) at the time of the manufacture of the food.

5.2.1.3 Where an ingredient is itself the product of two or more ingredients, such a compound ingredient may be declared, as such, in the list of ingredients provided that it is immediately accompanied by a list in brackets of its ingredients in descending order of proportion (m/m). Where a compound ingredient for which a name has been established in a Zambian Standard or under the Food and Drugs Act, constitutes less than 25 % of the food, the ingredients other than food additives which serve a technological function in the finished product need not be declared.

5.2.1.4 Added water shall be declared in the list of ingredients except when the water forms part of an ingredient such as brine, syrup or broth used in a compound food and declared as such in the list of ingredients. Water or other volatile ingredients evaporated in the course of manufacture need not be declared.

5.2.1.5 As an alternative to the general provisions of this clause, dehydrated or condensed foods which are intended to be reconstituted by the addition of water only, the ingredients may be listed in order of proportion (m/m) in the reconstituted product provided that a statement such as "ingredients of the product when prepared in accordance with the directions of the label" is included.

5.2.2 A specific name shall be used for ingredients in the list of ingredients in accordance with the provisions set out in Clause 5.1 except that:

5.2.2.1 The following class names may be used for the ingredients falling within these classes:

NAME OF CLASSES

CLASS NAMES

Refined oils other than olive

'Oil' together with either the term 'vegetable' or 'animal' qualified by the term 'hydrogenated' or 'partially-

	hydrogenated', as appropriate.
Refined fats	'Fat' together with either, the term, 'vegetable' or 'animal', as appropriate.
Starches, other than chemically modified starches	'Starch'
All species of fish where the fish constitutes an ingredient of another food and provided that the labelling and presentation of such food does not refer to a specific species of fish.	'Fish'
All types of poultrymeat where such meat constitutes an ingredient of another food and provided that the labelling and presentation of such a food does not refer to a specific type of poultrymeat.	'Poultrymeat'
All types of cheese where the cheese or mixture of cheeses constitutes an ingredient of another food and provided that the labelling and presentation of such food does not refer to a specific type of cheese.	'Cheese'
All spices and spice extracts not exceeding 2% by weight either singly or in combination in the food.	'spice', 'spices', or 'mixed spices', as appropriate.
All herbs or parts of herbs not exceeding 2% by weight either singly or in combination in the food.	'Herbs' or 'Mixed herbs', as appropriate.
All types of gum preparations used in the manufacture of gum base for chewing gum	'Gum base'
All types of sucrose.	'Sugar'
Anhydrous dextrose and dextrose monohydrate.	'Dextrose' or 'glucose'
All types of caseinates	'Caseinates'
Press, expeller or refined cocoa butter.	'Cocoa butter'

All crystallized fruit not exceeding 10% of the weight of the food. 'Crystallized fruit'.

5.2.2.2 Notwithstanding the provision set out in clause 5.2.2.1, pork fat, lard and beef fat shall always be declared by their specific names.

5.2.2.3 For food additives falling in the respective classes and appearing in lists of food additives permitted for use in foods generally, the following class titles shall be used together with the specific name or recognized numerical identification as required by the Zambian Standard or the Food and Drugs (Food) Regulations.

Acidity Regulator
Acids
Anti-caking agent
Anti-foaming agent
Antioxidant
Bulking agent
Colour
Colour retention agent
Emulsifier
Emulsifying Salt
Firming agent
Flavour Enhancer
Foaming agent
Gelling agent
Glazing agent
Humectant
Preservative
Propellant
Raising agent
Stabilizer
Sweetener
Thickener

5.2.2.4 The following class titles may be used for food additives falling in the respective classes and appearing in lists of food additives permitted generally for use in foods:

Flavour and Flavouring
Modified Starch(es)

The expression "flavours" may be qualified by "natural", "nature identical", "artificial" or a combination of these words as appropriate.

5.2.3 Processing aids and carry-over of food additives.

5.2.3.1 A food additive carried over into a food in a significant quantity or in an amount sufficient to perform a technological function in that food as a result of the use of raw materials or other ingredients in which the additive was used shall be included in the list of ingredients.

5.2.3.2 A food additive carried over into foods at a level less than that required to achieve a technological function, and processing aids, are exempted from declaration in the list of ingredients.

5.3 Net content and drained weight.

5.3.1 The net contents shall be declared in the metric system ("Systemé International" units).¹

5.3.2 The net contents shall be declared in the following manner:

- (i) for liquid foods, by volume;
- (ii) for solid foods, by weight;
- (iii) for semi-solid or viscous foods, either by weight or volume.

5.3.3 In addition to the declaration of net contents, a food packed in a liquid medium shall carry a declaration in the metric system of the drained weight of the food. For the purposes of this requirement, liquid medium means water, aqueous solutions of sugar and salt, fruit and vegetable juices in canned fruits and vegetables only, or vinegar, either singly or in combination.

4 Name and address

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the food shall be declared.

5 Country of origin

5.1 The country of origin of the food shall be declared.

5.2 When a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

6 Lot identification

6.1 Each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot.

6.2 The lot identification code shall be made available to the Bureau on request.

7 Date marking and storage instructions

If not otherwise determined in an individual Zambian Standard, the date marking requirements in ZS 033: Part 2 shall apply.

¹ The declaration of net contents represents the quantity at the time of packaging. In Zambia a nominal quantity system of weights and measures is still in force.

5.8 Instructions for use

Instructions for use, including reconstitution, where applicable, shall be included on the label, as necessary, to ensure correct utilization of the food.

6. ADDITIONAL MANDATORY REQUIREMENTS

6.1 Quantitative labelling of ingredients.

6.1.1 Where the labelling of a food places special emphasis on the presence of one or more valuable and/or characterizing ingredients, or where the description of the food has the same effect, the ingoing percentage of the ingredient (m/m) at the time of manufacture shall be declared.

6.1.2 Similarly, where the labelling of a food places special emphasis on the low content of one or more ingredients, the percentage of the ingredient (m/m) in the final product shall be declared.

6.1.3 A reference in the name of a food to a particular ingredient shall not of itself constitute the placing of special emphasis. A reference in the labelling of a food to an ingredient used in a small quantity and only as a flavouring shall not of itself constitute the placing of special emphasis.

6.2 Irradiated foods.¹

6.2.1 The label of a food which has been treated with ionizing radiation shall carry a written statement indicating that treatment in close proximity to the name of the food. The use of the international food irradiation symbol, as shown below, is optional, but when it is used, it shall be in close proximity to the name of the food.

6.2.2 When an irradiated product is used as an ingredient in another food, this shall be so declared in the list of ingredients.

6.2.3 When a single ingredient product is prepared from a raw material which has been irradiated, the label of the product shall contain a statement indicating the treatment.



¹) Current legislation in Zambia require that before the introduction of any irradiated food authority must be sought from the Ministry of Health.

7. EXEMPTIONS FROM MANDATORY LABELLING REQUIREMENTS

With the exception of spices and herbs, small units, where the largest surface area is less than 10 cm², may be exempted from the requirements of clauses 5.2 and 5.6 to 5.8.

8. OPTIONAL LABELLING

8.1 Any information or pictorial device written, printed, or graphic matter may be displayed in labelling provided that it is not in conflict with the mandatory requirements of this standard and those relating to claims and deception given in clause 4.

8.2 Grade designations.

If grade designations are used, they shall be readily understandable and not be misleading or deceptive in any way.

9. PRESENTATION OF MANDATORY INFORMATION

9.1 General

9.1.1 Labels in prepackaged foods shall be applied in such a manner that they will not become separated from the container.

9.1.2 Statements required to appear on the label by virtue of this standard or any other Zambian Standards shall be clear, prominent, indelible and readily legible by the consumer under normal conditions of purchase and use.

9.1.3 Where the container is covered by a wrapper, the wrapper shall carry the necessary information or the label on the container shall be readily legible through the outer wrapper or not obscured by it.

9.1.4 The name and net content of the food shall appear in a prominent position and in the same field of vision.

9.2 Language

9.2.1 The language used on the label shall include English.

9.2.2 If the language on the original label is not acceptable, to the consumer for whom it is intended, a supplementary language may be used instead of relabelling.

9.2.3 In the case of either relabelling or a supplementary label, the mandatory information provided shall fully and accurately reflect that in the original label.