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Survey on the Implementation of the CAC General Standard for the Use of Dairy Terms (GSUDT- Survey)



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FOREWORD

In 1999 the Codex Alimentarius Commission established the General Standard for the Usage of Dairy (GSUDT) terms which was developed by the Codex Committee on Milk and Milk Products with the assistance of the IDF. This standard provides the guidance on the correct use of terms that are universally identified with dairy products. At that time there was already a need to ensure that dairy terms were being accurately applied to dairy products and to limit the potential misuse of these.

Unfortunately, the need to apply and interpret the GSUDT is even greater today. A myriad of confusing marketing and naming practices of food stuff has entered the market. These imitation products are capitalizing on the health perceptions of dairy products, misleading the consumer as they are expecting to get the same quality and nutritional value.

The Codex GSUDT is globally recognized and has therefore been implemented in the regulations and policies of many countries all over the world. However, each country follows different approaches, depending inter alia on their legal traditions and political decisions.

IDF with its in-depth knowledge of the GSUDT as well as its broad membership was therefore ideally positioned to do the first in-depth survey on the state of play of the implementation of the GSUDT.

This publication gives you an overview of how the GSUDT has been adopted and translated in 21 countries based on all continents. Deep diving in the different regulatory approaches for achieving the protection of dairy terms gives a unique picture of the legal system in the countries in question. This Bulletin should be read in conjunction IDF Bulletin 507/2020 which explains the GSUDT.

Caroline Emond, Director General
International Dairy Federation Brussels, November 2022

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ABSTRACT

This Bulletin focuses on the national implementation of the Protection of Dairy Terms. It is connected to the IDF Bulletin 507/2020 which deals with the content and interpretation of the General Standard of the Use of Dairy Terms (GSUDT). The GSUDT, as an international commitment in the framework of the Codex Alimentarius Commission of the FAO/WHO (CAC), has established a worldwide standard for the Protection of Dairy Terms. It facilitates international trade in dairy products and helps to prevent consumers being misled. Codex CAC members who decide to adopt the GSUDT, need to implement the standard within their national legal order. Therefore, they follow different approaches, depending inter alia on their legal traditions and political decisions. Until now, no indepth survey on the state of play of the implementation of the GSUDT has been conducted. The International Dairy Federation (IDF), with its long-standing expertise in questions of composition, labelling and trade in dairy products and its widespread membership appears to be the appropriate forum to undertake such a task. Based on a description of the legal background of the Protection of Dairy Terms and a Questionnaire, it conducted a survey within its membership. This Bulletin presents the results of the survey and also includes the description of the legal background and the Questionnaire. In addition, it contains the GSUDT and contact points country-by-country to facilitate gaining more information on the situation in any given country.

ABBREVIATIONS AND ACRONYMS:

AT-PDT	Action Team on the Protection of Dairy Terms
CAC	Codex Alimentarius Commission
CCMMP	Codex Committee on Milk and Milk Products
EU	European Union
FAO	Food and Agricultural Organisation of the United Nations
GSUDT	Codex General Standard for the Use of Dairy Terms
IDF	International Dairy Federation
SCSIL	Standing Committee on Standards of Identity and Labelling
TBT Agreement	WTO Agreement on Technical Barriers to Trade
WHO	World Health Organisation
WTO	World Trade Organisation
PGIs	Protected Geographical Indications
PDOs	Protected Designations of Origin

1

INTRODUCTION

The GSUDT is an international standard addressing the way in which dairy terms should be used. It was developed by the Codex Committee on Milk and Milk Products (CCMMP) with the help of the IDF and established in 1999 by the CAC. Its predecessor was the CAC Code of Principles Concerning Milk and Milk Products established as early as 1958. The CAC currently has 189 members, comprising 188 countries and the European Union (EU). Codex CAC members who decide to adopt the GSUDT, need to implement the standard within their national legal order, which also contain a range of standards in the dairy sector, inter alia the GSUDT. Given the high number of members of the CAC, the GSUDT is accepted almost worldwide. The content of the GSUDT plays an important role in the extensive global trade with dairy products as well as in marketing dairy products within the individual countries, especially to the consumer. The GSUDT is explained in depth in the IDF Bulletin 507/2020.

The goal of this corresponding Bulletin is to explain the legal systematics of implementing the GSUDT and, on that basis, to present the extent at which the GSUDT is implemented in national law, including EU law. The basis of the picture is a Survey within the 43 IDF National Committees. Although by far not all CAC members are represented within the IDF, the National Committees cover the majority of the most important milk producing countries, and about 75 percent of global milk production. Half of the National Committees replied to the survey, including most of the large milk-producing countries, thereby also covering the EU. Thus, the Survey provides not only a good analysis of the current situation, but also underlines the important role of the GSUDT in the world of dairy.

Members of the IDF and all other interested persons in the production and trade of dairy products can use this Bulletin for their business relations as a source of information on national rules and contacts regarding the labelling of dairy products and the Protection of Dairy Terms against misuse. For countries in which the implementation of the GSUDT has, until now, not fully been realized, the Bulletin may be of special importance. In addition, in a range of countries the Protection of Dairy Terms is currently under discussion, especially with a view to the dividing line with non-dairy products. The Bulletin might also be helpful in that regard.

The Survey presented in this Bulletin is based on a Questionnaire which was developed within an Action Team on the Protection of Dairy Terms (AT-PDT)¹, initiated in 2018 and

¹ Lead for this Bullend Labelling (SCSIL) of tin by Dr Christian Busse (Germany).

established in 2019 under the Standing Committee on Standards of Identity and Labelling (SCSIL) of the IDF. In 2019 the AT-PDT finalised the Questionnaire which was circulated for the first time that same year. The replies to the Questionnaire were used by the AT-PDT for a first version of the Survey. After the AT-PDT had finished its work on the IDF Bulletin 507/2020 and that Bulletin was published, a slightly revised Questionnaire was sent out in 2021 in order to fill gaps in the survey and to update the information already provided during the first circulation. The replies are dated from summer 2021 to spring 2022. Hence, the topicality differs from country to country. Generally speaking, developments after spring 2022 are not covered.

This Bulletin consists of four parts: This Introduction (1.) is followed by an Outline of the Legal Concept of the Protection of Dairy Terms, which contains an explanation of the legal structure and the systematic features of the Protection of Dairy Terms (2.). That Outline builds the basis for the Questionnaire, presented in its revised version of 2021 (3.). The last part of the Bulletin forms an analysis of the answers to the Questionnaire (4.). Additionally, Annex I provides contact points for the National Committees which replied to the Questionnaire. If details of the reply from a specific National Committee are of interest, please contact the Secretariat of the SCSIL.² Annex II contains, in parallel to the Bulletin 507/2020, the text of the GSUDT for the convenience of the reader.

The Questionnaire is intended to be circulated to the National Committees on a regular basis to enable the updating and re-distribution of this Bulletin. Between updates, the AT-PDT would also be grateful to receive information of any important developments in this area from National Committees or third parties. In such instances, please also contact the SCSIL Secretariat.

2

OUTLINE OF THE LEGAL CONCEPT OF THE PROTECTION OF DAIRY TERMS

The legal concept on the Protection of Dairy Terms is a complex matter and, especially for non-jurists, difficult to understand. There are different regulatory ways for achieving the protection, also depending on the particularities of the legal system in the countries in question.

2.1. GENERAL GOALS

The Protection of Dairy Terms aims to ensure that food products using dairy terms are genuinely dairy products and additionally, that they comply with the quality standards for dairy products in the country in question. Section 3 of the GSUDT specifies this two-fold aim in the form of three “general principles”: a) the correct use of dairy terms, b) the protection of consumers against being confused or misled and c) ensuring fair practices in the food trade.

2.2. THREE-LEVEL APPROACH

The quality standards can be subdivided into three levels which build upon each other. The first level consists of requirements to qualify as a dairy product and is therefore consistent with the general definition of dairy products. Usually, the most important criterion is that the product is made mainly out of milk-based ingredients, such as raw milk, treated milk or any dairy products.

At the second level, standards for certain categories of dairy products (e.g., cheese, butter, drinking milk or fermented milk) exist. The third level covers standards set up for specific varieties of dairy products (e.g., as specific cheeses - “Gouda” or “Cheddar”, as specific butter - “sour cream butter”, as specific fermented milk - “yogurt” or as specific drinking milk - “whole milk”).

All three levels of quality standards can be found within the CAC Standards for dairy products and are covered by the scope of application of the GSUDT. Not every country has standards at all three levels. Additionally, protected geographical indications (PGIs) and protected designations of origin (PDOs) in the field of dairy products exist in a range of countries and are also taken into account in trade agreements. Because of their specific nature and their usual classification as part of intellectual property law they are not included in the Questionnaire.

The quality standards are not only important for consumers, but also for traders of dairy products and manufacturers using dairy products or parts of them as ingredients. With respect to international trade in dairy products, consumers, traders and manufacturers need to take into account that differing levels of implementation of the CAC Standards for dairy products exist, which results in partly inhomogeneous composition and labelling of dairy products. When a WTO member country determines legislative requirements on dairy standards and the protection of dairy terms, the CAC Standards for dairy products should be considered as guidance. Hence, these standards play, despite their legal nature as recommendations, a vital role within the WTO Agreement on Technical Barriers to Trade (TBT Agreement).

The Questionnaire follows the previously described three-level approach: protection of dairy products in general, protection of certain categories of dairy products and protection of specific varieties of dairy products. The corresponding CAC Standards for dairy products are: the GSUDT with its basic dairy definitions at the highest level, followed by standards on certain categories of dairy products (e.g., in the area of cheeses by the General Standard for Cheese) and standards on specific varieties of milk products (e.g., the numerous single cheese standards). The existence of different levels of standards does not automatically mean that the lowest level must be used when labelling the product. There might be the obligation to use the specific variety name, for example, Gouda has to be named Gouda. But in most cases, there exists a top-down system, which allows that, for example, Gouda can be also labelled as cheese or even only as a dairy product. The GSUDT follows this system.

2.3. POSITIVE AND NEGATIVE PROTECTION

The Protection of Dairy Terms builds not only upon the described three-level approach, but also upon the concept of positive and negative protection of dairy terms. As a general feature of food law most regulated designations could unfold effects in two ways. On the one hand, the use of the designation in question for the food product defined by the designation is allowed. For example, a food product which fulfills the criteria for Gouda may use the designation “Gouda”. This permission is called positive protection. Negative protection means that any food product which does not fulfill the criteria for Gouda is not allowed to use the designation “Gouda”. Or on a more general level: All dairy terms are

intended for dairy products only, which implies that they cannot be used for non-dairy food products.

The GSUDT contains both dimensions. In points 4.2 and 4.3 it sets out the concept of positive protection and regulates the use of dairy terms within the dairy family. Point 4.6 is dedicated to non-dairy food products and, hence, the negative protection side. Part of the negative protection are exceptions for specific non-dairy products which may use certain dairy terms. In the GSUDT this can be found in point 4.6.2, allowing the traditional use of dairy terms for certain non-dairy products, e.g., coconut milk. A new aspect of negative protection is specific national rules for labelling plant-based products imitating animal-based products. According to the GSUDT these specific rules must be in line with the Protection of Dairy Terms, which prevents e.g., a plant-based product from being named “veggie-cheese”.

It is also important that, following the principles of general food law, the question as to whether a dairy term is used correctly is not restricted to the labelling of the product in question. All other factors which are important for consumers, traders and manufacturers, such as advertising, trading papers or the placement of the product on the shelf, must be taken into account.

2.4. THE RELATIONSHIP TO THE PROHIBITION TO MISLEAD CONSUMERS IN GENERAL FOOD LAW

Most countries have a specific regulatory framework concerning the use of dairy terms. However, even in the remaining countries, some sort of protection generally exists, since every country will include the prohibition to mislead consumers in its general food law. Using a dairy term for a food product which is not a dairy product has, in principle, the potential to mislead consumers, e.g., naming a beverage containing only plant-based ingredients, “milk” or a plant-based spread, “butter”. The same applies to the situation in which a specific dairy term is used for a dairy product that does not comply with the standard for this term (e.g., the term “cheese” for a “yogurt”). Normally the rule on not misleading consumers in general food law will not be specific to dairy products, but apply widely to all food products.

An important disadvantage of the ‘misleading’ approach in this given context is that it usually requires proof that the consumer has, in fact, been misled, whereas such proof is not necessary within the concept of the Protection of Dairy Terms. If a rule in the field of protecting dairy terms is breached it is unnecessary to prove, in addition, that a consumer has been misled. Moreover, the misleading approach bears the risk of undermining the GSUDT because deciding on a case-by-case basis with different results opposes the idea of a general protection. Last but not least the Protection of Dairy Terms does not only apply to business-to-consumer situations but also to business-to-business relations.

In the countries implementing the Protection of Dairy Terms, there usually also exists in general food law the prohibition to mislead the consumer. If the application of the two concepts ends up in diverging results, the question arises which concept and hence, result prevails. Usually, the Protection of Dairy Terms as the more specific rule, especially established for the dairy sector, takes precedence. Therefore, it is, in general, not possible to cite the argument that consumers are not being misled as a justification for breaching the rules on the Protection of Dairy Terms. Ultimately, the legislator has already decided how and when these terms can be used, and this decision was published in an official gazette.

2.5. VARIOUS LEGAL FEATURES OF THE REGULATORY FRAMEWORK AND THE SURVEILLANCE AND ENFORCEMENT SYSTEM

The regulatory framework of the Protection of Dairy Terms can differ from country to country and cover a range of legal instruments. Besides formal laws and regulations, there exists governmental guidelines and decision-making practices of food authorities which are important. The Questionnaire intends to capture all legal acts and practices concerning the Protection of Dairy Terms. Also, it targets all levels of the three-level approach, as well as at both the positive and the negative protection sides. Normally, the regulatory framework on the Protection of Dairy Terms in a country consists of various legal instruments. To draw the whole picture, it is therefore necessary to understand as many aspects as possible.

The same applies to the surveillance and enforcement systems which, in most countries, is a mixture of public and private elements. Common public elements are controls, interdictions and fines by public food authorities. A common private element is the application of competition and commercial law by private companies, dairy industry associations and consumer protection organizations. They might enforce the Protection of Dairy Terms through civil actions. Consequently, case law can also be divided into court and administrative decisions and private settlements of disputes. The focus may differ from country to country.

2.6. ONGOING INITIATIVES AND STATE OF PLAY

Of particular interest are ongoing governmental or private initiatives concerning the regulatory framework and its implementation. These initiatives can lead to a stronger or weaker Protection of Dairy Terms. Hence, the questionnaire also touches this aspect. As a final point, a short summary of the state of play in the country concerned could be helpful.

3

QUESTIONNAIRE

Name of the country:

Contact for questions: (name of organization/undertaking, possibly name of contact person; address; phone, e-mail)

1.1. Do governmental laws or regulations concerning definitions of raw milk, milk and/or milk/dairy products exist?

No ... Yes ...

Raw milk No ... Yes ...

Milk No ... Yes ...

Milk/dairy products No ... Yes ...

If the answer is “yes”, please indicate the provision(s) with the title of the legal instrument(s) (in the language of the country and in English translation) and add, if available, the internet address(es) where the legal instrument(s) can be found.

1.2. Do governmental laws or regulations concerning definitions of certain categories of dairy products exist?

No ... Yes ...

Cheese No ... Yes ...

Fermented milk No ... Yes ...

Butter No ... Yes ...

Drinking milk No ... Yes ...

Please name any other important examples.

If the answer is “yes”, please indicate the provision(s) with the title of the legal instrument(s) (in the language of the country and in English translation) and add, if available, the internet address(es) where the legal instrument(s) can be found.

- 1.3. Do governmental laws or regulations concerning definitions of specific varieties of dairy products exist?

No ... Yes ...

Please name important examples (e.g., Gouda, Cheddar, yogurt, sour cream butter, whole milk).

If the answer is “yes”, please indicate the provision(s) with the title of the legal instrument(s) (in the language of the country and in English translation) and add, if available, the internet address(es) where the legal instrument(s) can be found.

- 2.1. Does a positive Protection of Dairy Terms (correct usage of dairy terms within the dairy products family) exist?

No ... Yes ...

If the answer is “yes”, please indicate the provision(s) with the title of the legal instrument(s) (in the language of the country and in English translation) and add, if available, the internet address(es) where the legal instrument(s) can be found.

- 2.2. Does a negative Protection of Dairy Terms (prohibition of the use of dairy terms for non-dairy food products) exist?

No ... Yes ...

If the answer is “yes”, please indicate the provision(s) with the title of the legal instrument(s) (in the language of the country and in English translation) and add, if available, the internet address(es) where the legal instrument(s) can be found.

- 3.1. Does a general prohibition to mislead consumers in the area of food exist?

No ... Yes ...

If the answer is “yes”, please indicate the provision(s) with the title of the legal instrument(s) (in the language of the country and in English translation) and add, if available, the internet address(es) where the legal instrument(s) can be found.

- 3.2. Does a specific prohibition to mislead consumers concerning dairy products exist?

No ... Yes ...

If the answer is “yes”, please indicate the provision(s) with the title of the legal instrument(s) (in the language of the country and in English translation) and add, if available, the internet address(es) where the legal instrument(s) can be found.

4. Do rules other than governmental law and regulations regarding the points 1.1 to 3.2 exist?

No ... Yes ...

Competent authority guidelines?

No ... Yes ...

Competent authority interpretations?

No ... Yes ...

Private dairy standards of a more general scale (e.g., of the dairy industry or supermarket chains)?

No ... Yes ...

If the answer is “yes”, please indicate which topics of 1.1 to 3.2 are covered and the name for each topic author and title of the rule(s) (in the language of the country and in English translation) and add, if available, the internet address(es) where the rule(s) can be found.

5. Do exemptions for the traditional use of dairy terms for certain non-dairy food products (e.g., coconut milk) exist?

No ... Yes ...

If the answer is “yes”, please provide important examples and the title of the legal act or the rule (in the language of the country and in English translation) and add, if available, the internet address where the act or rule can be found.

6. Do specific rules concerning plant-based products imitating animal-based products (prohibiting or allowing the use of dairy terms) exist?

No ... Yes ...

If the answer is “yes”, please indicate the target of these rules and name their title(s) (in the language of the country and in English translation) and add, if available, the internet address where the rules can be found.

7. Do surveillance and enforcement systems concerning the Protection of Dairy Terms exist?

No ... Yes ...

If the answer is “yes”, please provide more details guided by the following categories, which may be existing at the same time, in an independent or a supplementary manner:

Public system

General food surveillance

Yes ... No ...

Specific authorities for dairy

Yes ... No ...

Private system

Yes ... No ...

- 8.1. Does case law of importance concerning the points 1.1 to 7 exist?

No ... Yes ...

Competent authority decisions

No ... Yes ...

Court decisions

No ... Yes ...

If “yes” regarding court decisions:

Public law files (between a private person or a private organization and the state)

No ... Yes ...

Civil law files (between a private person or a private organization)

No ... Yes ...

If there is case law of a principal nature regarding the Protection of Dairy Terms (e.g., prohibiting or allowing the use of a dairy term for a non-dairy product or judging the lawfulness of a certain legal act or behaviour in the field of dairy terms), please give a short summary and, if available, the internet address(es) where the case can be found.

8.2. Do private settlements of importance without court decisions exist?

No ... Yes ...

If the answer is “yes”, please provide details.

9. Does an ongoing initiative to reform the regulatory framework or its implementation exist?

No ... Yes ...

If the answer is “yes”, please indicate, in short, the nature (governmental and/or private) and the target of the initiative and, if available, the relevant internet address(es).

10. As summary and final remarks: What is the overall state of play in your country and is this situation, in your view, satisfactory? If it is not satisfactory, please indicate what should be improved.

4

ANALYSIS OF IMPLEMENTATION

4.1. NUMBER AND GEOGRAPHICAL DISTRIBUTION OF REPLIES

Altogether nearly half of IDF membership (21 out of 43 members) replied to the two circulations of the Questionnaire in 2019 and 2021/22. Europe was represented by Denmark, France, Germany, Iceland, Italy, Latvia, the Netherlands, Norway and the United Kingdom; North America by Canada, Mexico and the United States; South America by Brazil and Chile; Asia by China, India, Japan and South Korea; Australia and Oceania by Australia and New Zealand; and Africa by South Africa. Hence, all continents are included as are, according to the 2019 FAO statistics (cow milk and other milk), the main milk producing countries.

Out of the top ten worldwide these are seven countries in decreasing order: India, United States, Brazil, China, Germany, France and New Zealand (missing Pakistan, Russia and Turkey); and out of the top ten in Europe six countries in decreasing order: Germany, France, the United Kingdom, the Netherlands, Italy and Denmark (missing Poland, Spain, Belgium and Switzerland). Combined, twelve countries out of the top twenty worldwide have replied to the Questionnaire. Hence, large milk producing countries are adequately covered, which enables a good first assessment of the actual situation.

4.2. GOVERNMENTAL LAWS AND REGULATIONS ON DAIRY STANDARDS

In all countries, a specific regulatory framework regarding milk and milk products exists in order to protect the identity of these products and to prevent misleading consumers. There are some common features, however, the details and the depth of the framework show great differences.

4.2.1. *Dairy products in general*

In the EU, Brazil, Canada, China, India and Mexico general definitions of raw milk, milk and dairy products exist. In Australia, Chile, New Zealand, South Africa, South Korea and the United States general definitions of raw milk and milk are in place, but not a general definition of dairy products. Hence, not all countries have implemented the general definitions of the GSUDT.

4.2.2. *Certain categories of dairy products*

In all countries, definitions for certain categories of dairy products are in force. In the EU only a few exist in EU law (butter; drinking milk; casein), but a range of other definitions exist in the law of its member states. e.g., in the member states of the EU, usually cheese is defined. The same is valid for all other countries, as well as a definition of drinking milk. Also often defined are butter and ice cream. But in total, a number of countries failed to implement all relevant CAC Dairy Standards. However, it has to be taken into account, that not all of the CAC Dairy Standards are of practical importance in every country.

4.2.3. *Specific varieties of dairy products*

In all countries, definitions for specific varieties of dairy products are reported, but there exist manifest differences in scope and content. Most countries have standards for specific varieties of cheese, drinking milk and fermented milk, e.g., yogurt. However, Australia, China, Mexico and New Zealand do not specify varieties of cheese within their food standards, with the exception of varieties of processed cheese in New Zealand. Consequently, again, the relevant CAC Dairy Standards are not implemented in each country.

4.3. PROTECTION OF DAIRY TERMS

4.3.1. *Positive protection*

In the EU the positive protection is regulated in general food law. If a specific name for a food product is prescribed, then that exact name must be used. For most of the dairy products either in EU law or in national law, such names are prescribed. The same principle can be found in Australia, Brazil, China, India, New Zealand, South Africa and perhaps also in Chile and the United States. In Canada, the general food law refers to the “common name”, but in the dairy provisions, it appears that a certain name is prescribed. Hence, the principle of general food law is widespread. Consequently, the more identity standards exist, the more dairy products are covered by that principle.

4.3.2. *Negative protection*

In EU law, a strict negative Protection of Dairy Terms is established. Dairy terms are reserved for dairy products only, even if the use of a dairy term for a non-dairy product is explained to the consumer. Accordingly, the combination of a dairy term with the explanatory word “imitation” is not allowed. This is also the situation in Chile and India.

In South Africa, there is an exception from the strict negative protection. A dairy term may be used for a non-dairy product if the word “imitation” is labelled. Instead of “imitation”,

the plant concerned can be named. The same situation appears to be in place in the United States. In Canada, general food law refers to the “common name” which allows labelling of non-dairy products with dairy terms if the consumer is not misled. A similar situation can be found in China, where general food law refers to the “real attributes of the food”. Hence, different approaches exist regarding the negative protection side. For a few countries no provisions on negative protection are reported at all.

4.4. PROHIBITION TO MISLEAD CONSUMERS

In nearly all countries the general food law prohibits the misleading of consumers. A special prohibition in the field of dairy products appears not to exist in any of the countries covered.

4.5. RULES OTHER THAN GOVERNMENTAL LAW AND REGULATIONS

Quite a number of countries reported rules other than governmental law and regulations.

4.5.1. *Competent authority guidelines*

In some EU member states (Denmark; Italy), guidelines or explanatory notes have been issued, whereas on the EU level no such guidelines are established. In Brazil, Chile, China, New Zealand, Norway and the United Kingdom, general guidelines exist. In South Africa, from time to time, interpretation guidelines are issued. The other countries outside the EU have not reported guidelines.

4.5.2. *Competent authority interpretations*

Chile, China, Norway and South Africa mention such interpretations. All other countries, including the EU do not report such interpretations or, at least, state that such interpretations are not available to the public.

4.5.3. *Dairy standards of the dairy industry or other private players*

In Mexico and the United Kingdom, for some milk products, such standards exist created by the dairy industry. In China, these standards are developed by the dairy industry for dairy products not covered by standards in national law. In Germany, overall standards do not exist. Instead, private standard-setting is common by supermarket chains. In Norway, the dairy industry has developed guidelines, with acceptance from the food safety authority.

Aside from the private setting of standards, there exists interpretative guidelines of the dairy industry. In the EU, the European Dairy Association has developed guidelines on

principles and the enforcement of the Protection of Dairy Terms. In South Africa, the dairy industry has issued guidelines regarding the minimum legal requirement related to labelling.

4.6. EXEMPTION FOR THE TRADITIONAL USE OF DAIRY TERMS FOR CERTAIN NON-DAIRY PRODUCTS

In the EU, an exhaustive list of exemptions exists which contains names coming from the member states, listed by languages. Member states are not allowed to extend that list on their own. In South Africa, exemptions can be granted by the Agricultural Ministry. In Norway, exceptions exist for ten products, in Brazil for four products. For India, the example of coconut milk is named, and for Australia and New Zealand the example of soy milk, because for no other country, the legal act is mentioned (FSANZ Standard 1.1.1 – 13). For all other countries, no mechanism of exemptions or even specific exemptions are reported.

4.7. SPECIFIC RULES CONCERNING PLANT-BASED PRODUCTS IMITATING ANIMAL-BASED PRODUCTS

In the EU such rules do not exist. In Germany, guidelines entered into force in 2018 and are currently under review. These guidelines exclude the imitation of dairy products because of the strict Protection of Dairy Terms. In South Africa, special rules for imitated dairy products exist, as stated under point 2.2. General guidelines also are reported for Norway. In China, for soybean milk and “non-dairy whipping cream” special rules exist. In India, a draft was circulated in 2020. No other country has reported similar rules.

4.8. SURVEILLANCE AND ENFORCEMENT SYSTEM

Only a few countries replied to this point which makes it difficult to get an overall picture.

4.8.1. *Public elements*

A special authority for dairy products is reported for the Netherlands and South Africa. In the other countries, the surveillance and enforcement are usually done by the general authorities for food. If it is a federal state, there normally exists a cooperation mechanism between the different authorities, for example, in Germany. The United Kingdom, stated that it is not known if the authorities routinely check for compliance with the Protection of Dairy Terms. In Denmark, Australia and New Zealand, the relevant authority takes up cases only by complaint.

4.8.2. *Private elements*

In Germany, it is stressed that the general rules of private law against unfair competition apply. Hence, if a dairy term is misused, private companies as well as organizations for the protection of the competition or the consumers might, on these grounds, interfere. Several cases have already been to the courts and have even reached the European Court of Justice for a preliminary ruling. In France, the milk interbranch organization is actively monitoring any breach of the Protection of Dairy Terms and takes private-law action to prevent misuses via amicable agreement or, if required, legal recourse. No other country mentioned private-law cases, which is surprising because in many countries, similar rules against unfair competition exist. Industry self-surveillance is reported for some countries (Canada; China; the Netherlands; Norway; South Africa; the United Kingdom).

4.9. CASE LAW

A specific competent authority decision is only reported in Norway regarding a cheese analogue with vegetable fat, and in Australia, where the Advertising Standards Bureau dismissed 2017 complaints against the name “soy milk”. In Canada, it is reported that non-compliance issues are resolved, besides industry stakeholder action, by competent authorities.

Regarding court decisions, the leading law files in the EU are decisions of the European Court of Justice, namely three decisions, all were in favour of a strict Protection of Dairy Terms. The latest is the Tofu-Town judgement of 2017 interdicting the names “tofu butter” and “veggie cheese”. It concluded in general manner, that the term “milk” and the designations reserved exclusively for milk products cannot be used to designate a purely plant-based product in marketing or advertising, even if those terms are expanded upon by clarification or descriptive terms indicating the plant origin of the product.

This jurisdiction sent clear signals to national courts of EU member states. In Germany, a court decision of the Civil Regional Court of Hamburg, dated 2018, is reported, in which the labelling “to be used as Crème fraiche” for a plant-based product was declared unlawful. In 2022 the Civil Regional Court of Stuttgart ruled, that the registered term “milck” can not be used for non-dairy products. Lower German courts have ruled differently on the question, if a comparison between dairy products and plant-based products (e.g., “tastes like butter”) is lawful. Currently a clear-cut decision of a higher court is missing which could unify the jurisprudence.

Except an ongoing case in the Netherlands, in no other European country are such national court cases reported. In South Africa, a very limited number of public law files is stated, with minimal details. In China, public law files are indicated. In addition, in China there already exists some private settlements. In India, a first ongoing case is reported.

In the United States, until recently, the leading court case dates from 1981 and dismisses a complaint against the FDA to act against products labelled as an “imitation” of a dairy product. In 2021, the United States District Court (Northern District of California) ruled that the interdiction to use the term “butter” in the labelling “Cultured Vegan Butter – Made from Plants”, contained in Californian food and agricultural law, is not in line with the constitutional freedom of commercial speech. The Californian agricultural department has failed to prove, as the judgement stated, that consumers are misled.

4.10. ONGOING GOVERNMENTAL OR PRIVATE INITIATIVES CONCERNING THE REGULATORY FRAMEWORK AND ITS IMPLEMENTATION

The replies to ongoing initiatives give a clear picture that outside of the EU, in a range of countries, a debate is taking place to achieve a better Protection of Dairy Terms. A good example is the situation in Australia and New Zealand. There, in Australia and New Zealand, a common undertaking to review “misleading descriptions on meat and dairy alternatives” was proposed in a joint Ministerial Forum meeting in 2018, but work has been delayed. In 2020 the Australian Minister for Agriculture hosted an industry roundtable on the topic, from which a Ministerial working group with members from animal and plant-based sectors was formed. The working group examined current labelling and marketing requirements (including imagery) of plant-based alternatives to meat and dairy products. A range of approaches to address the absence of specific industry guidance for the labelling and marketing of plant-based alternatives were considered by the working group, and the majority preferred progression of a voluntary framework, with inclusion of a compliance regime, and early review of effectiveness as a way forward, however consensus was not achieved.

Separately, in 2021 the Australian Senate called an inquiry, “Definitions of meat and other animal products”. The inquiry received 226 submissions and the final report was delivered in February 2022. The recommendations from the inquiry recognized the significant growth in the plant-based sector and the need for improved policy and regulation to give greater clarity to labelling and marketing of plant-based products. Recommendations include a review of the Australian and New Zealand Food Standards Code, which currently allows exemptions for plant-based products to use dairy terms without the need to meet the standard of identity requirements, set out in the same Food Standards Code. A response from government on the nine recommendations is currently outstanding. Furthermore, the report highlighted the importance of alignment of domestic and international standards to provide all stakeholders with clear guidance.

In China and India in 2019, ongoing initiatives were reported. In Mexico, a broader reform project started in 2022. In South Africa, there is a review of the existing regulations for imitation dairy products which started in March 2021, to align them with the GSUDT. In the United States, the FDA opened a docket in 2018 “regarding the use of dairy terms on plant-based product labels”. Over 14,000 comments were filed. Subsequently, the National Milk Producers Federation filed a Citizen Petition, “which creates a roadmap for the FDA

on how to deal with this issue including presenting options on how plant-based foods should be labeled”. Following that filing the FDA opened another docket in February 2019.

In the EU, within the framework of the Reform of the Common Agricultural Policy, an intensive debate took place in 2019/20 on a clearer wording of the Protection of Dairy Terms regarding the designation of plant alternatives. The debate was initiated by the European Parliament (so called ‘Amendment 171’), which discontinued it then as result of the debate. In France, the EU protection law was used as an inspiration for the protection of meat products terms.

4.11. STATE OF PLAY

In Australia and New Zealand concerns about mislabelling of dairy and meat alternatives were highlighted as a focus for regulatory review, however progress has been delayed (see point 4.10). In Canada and Germany, the situation is satisfactory. The same is valid for Chile and China, but there still exist uncertainties on the definition of some milk products which should be clarified. For Japan, breaches of the Protection of Dairy Terms are reported (soymilk yogurt; soymilk cream; rice milk; almond milk; whipped cream containing plant oil). In Denmark, plant-based products are marketed with names very close to dairy products. This is always objected to by the Dairy Industry. There is no indication of further legislation on that subject. In Iceland, not all elements of the EU protection, which is also valid in Iceland, are obeyed. In India and Norway, the situation is from the regulative side, satisfactory, but there still exists some malpractice concerning labelling and advertising.

In South Africa, it is reported that the existing framework has to be aligned to the GSUDT and the enforcement side should be improved. In South Korea, no law exists to protect dairy terms. Consequently, plant beverages are marketed without restriction (e.g., soy, almond and walnut milk). In the United Kingdom, clear breaches of the Protection of Dairy Terms occur (enlisting some typical examples), but no real action is currently taken against that misuse. For the United States, the FDA-procedure on the use of dairy terms and the nutritional equivalence issue are two important topics (see point 9), but it remains unclear when the FDA-procedure will be completed. Mexico has stressed the importance of aligning the existing framework to CAC Dairy Standards.

5

ANNEX

ANNEX I

CONTACT POINTS COUNTRY-BY-COUNTRY (DATED 18 JULY 2022)

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ANNEX II GSUDT

CODEX STAN 206-1999

CODEX GENERAL STANDARD FOR THE USE OF DAIRY TERMS

1. SCOPE

This General Standard applies to the use of dairy terms in relation to foods to be offered to the consumer or for further processing.

2. DEFINITIONS

2.1 Milk is the normal mammary secretion of milking animals obtained from one or more milkings without either addition to it or extraction from it, intended for consumption as liquid milk or for further processing.

2.2 Milk product is a product obtained by any processing of milk, which may contain food additives, and other ingredients functionally necessary for the processing.

2.3 Composite milk product is a product of which the milk, milk products or milk constituents are an essential part in terms of quantity in the final product, as consumed provided that the constituents not derived from milk are not intended to take the place in part or in whole of any milk constituent.

2.4 A reconstituted milk product is a product resulting from the addition of water to the dried or concentrated form of the product in the amount necessary to re-establish the appropriate water to solids ratio.

2.5 A recombined milk product is a product resulting from the combining of milkfat and milk-solids-non-fat in their preserved forms with or without the addition of water to achieve the appropriate milk product composition.

2.6 Dairy terms means names, designations, symbols, pictorial or other devices which refer to or are suggestive, directly or indirectly, of milk or milk products.

3. GENERAL PRINCIPLES

Foods shall be described or presented in such a manner as to ensure the correct use of dairy terms intended for milk and milk products, to protect consumers from being confused or misled and to ensure fair practices in the food trade.

4. APPLICATION OF DAIRY TERMS

4.1 General requirements

4.1.1 The name of the food shall be declared in accordance with Section 4.1 of the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985, Rev. 1-1991; *Codex Alimentarius*, Volume 1A).

4.1.2 A word or words denoting the animal or, in the case of mixtures, all animals from which the milk has been derived shall be inserted immediately before or after the designation of the product. Such declarations are not required if the consumer would not be misled by their omission.

4.2 Use of the term milk

4.2.1 Only a food complying with the definition in Section 2.1 may be named “milk”. If such a food is offered for sale as such it shall be named “raw milk” or other such appropriate term as would not mislead or confuse the consumer.

4.2.2 Milk which is modified in composition by the addition and/or withdrawal of milk constituents may be identified with a name using the term “milk”, provided that a clear description of the modification to which the milk has been subjected is given in close proximity to the name.

4.2.3 Notwithstanding the provisions of Section 4.2.2 of this Standard, milk which is adjusted for fat and/or protein content and which is intended for direct consumption, may also be named “milk” provided that:

- it is sold only where such adjustment is permitted in the country of retail sale;
- the minimum and maximum limits of fat and/or protein content (as the case may be) of the adjusted milk are specified in the legislation of the country of retail sale. In this case the protein content shall be within the limits of natural variation within that country;
- the adjustment has been performed according to methods permitted by the legislation of the country of retail sale, and only by the addition and/or withdrawal of milk constituents, without altering the whey protein to casein ratio; and
- the adjustment is declared in accordance with Section 4.2.2 of this standard.

4.3 Use of the names of milk products in codex commodity standards

4.3.1 Only a product complying with the provisions in a Codex standard for a milk product may be named as specified in the Codex standard for the product concerned.

4.3.2 Notwithstanding the provisions of Section 4.3.1 of this Standard and Section 4.1.2 of the Codex General Standard for the Labelling of Prepackaged Foods (CODEX

STAN 1-1985, Rev. 1-1991), a milk product may be named as specified in the Codex standard for the relevant milk product when manufactured from milk, the fat and/or protein content of which has been adjusted, provided that the compositional criteria in the relevant standard are met.

- 4.3.3.** Products that are modified through the addition and/or withdrawal of milk constituents may be named with the name of the relevant milk product in association with a clear description of the modification to which the milk product has been subjected provided that the essential product characteristics are maintained and that the limits of such compositional modifications shall be detailed in the standards concerned as appropriate.

4.4 Use of terms for reconstituted and recombined milk products

Milk and milk products may be named as specified in the Codex Standard for the relevant milk product when made from recombined or reconstituted milk or from recombination or reconstitution of milk products in accordance with Section 4.1.2 of the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985, Rev. 1-1991), if the consumer would not be misled or confused.

4.5 Use of terms for composite milk products

A product complying with the description in Section 2.3 may be named with the term “milk” or the name specified for a milk product as appropriate, provided that a clear description of the other characterizing ingredient(s) (such as flavouring foods, spices, herbs and flavours) is given in close proximity to the name.

4.6 Use of dairy terms for other foods

- 4.6.1** The names referred to in Sections 4.2 to 4.5 may only be used as names or in the labelling of milk, milk products or composite milk products.
- 4.6.2** However, the provision in Section 4.6.1 shall not apply to the name of a product the exact nature of which is clear from traditional usage or when the name is clearly used to describe a characteristic quality of the non-milk product.
- 4.6.3** In respect of a product which is not milk, a milk product or a composite milk product, no label, commercial document, publicity material or any form of point of sale presentation shall be used which claims, implies or suggests that the product is milk, a milk product or a composite milk product, or which refers to one or more of these products³.

³ This excludes descriptive names as defined in Section 4.1.1.3 of the General Standard for the Labelling of Prepackaged Foods (GSLPF) and ingredients lists as defined in Section 4.2.1.2 of the GSLPF providing the consumer would not be misled.

4.6.4 However, with regard to products referred to in Section 4.6.3, which contain milk or a milk product, or milk constituents, which are an essential part in terms of characterization of the product, the term “milk”, or the name of a milk product may be used in the description of the true nature of the product, provided that the constituents not derived from milk are not intended to take the place, in part or in whole, of any milk constituent. For these products dairy terms may be used only if the consumer would not be misled.

If however the final product is intended to substitute milk, a milk product or composite milk product, dairy terms shall not be used.

For products referred to in Section 4.6.3 which contain milk, or a milk product, or milk constituents, which are not an essential part in terms of characterization of the product, dairy terms can only be used in the list of ingredients, in accordance with the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985, Rev. 1-1991). For these products dairy terms cannot be used for other purposes.

5. LABELLING OF PREPACKAGED FOODS

Prepackaged milk, milk products and composite milk products shall be labelled in accordance with Section 4 of the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1- 1985, Rev. 1-1991), except to the extent otherwise expressly provided in a specific Codex standard or in Section 4 of this Standard.

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