CHAPTER 28

Legal aspects of chocolate manufacture

Richard Wood

28.1 Introduction

Although the first bars of chocolate were commercially introduced in the early 1800s, it remained over a century before the development of standards for such products began. Initially, the establishment of standards for an Industry which is heavily reliant on innovation had been considered inappropriate since it could prevent manufacturers from taking advantage of the latest technological developments. In the absence of standards, it was therefore vital that manufacturers nonetheless maintained the quality of their products. Since food law and regulation is designed to protect consumers and provide for fair trade practices, and the perceived quality of chocolate is important to consumers, it was inevitable that the composition and labelling of chocolate products would become regulated. This chapter provides information on international standards and legal requirements in the major chocolate-consuming markets.

28.2 International standards – the Codex Alimentarius

The Codex Alimentarius Commission was jointly established by two specialised agencies of the United Nations – the Food and Agricultural Organization (FAO) and the World Health Organization (WHO) – in 1961. Before the Codex Alimentarius was established, governments were setting divergent food standards, which could be seen as barriers to international trade. Harmonised standards would facilitate international trade in food. One of the first expert committees to be established was the Codex Committee on Cocoa and Chocolate Products, which held its first meeting in Switzerland in 1963. Although meeting annually during the 1960s, it began to meet less frequently during the 1970s due to inability to reach agreement. The most contentious point – which would not be resolved by the Codex Committee until it had also been addressed by the

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(then) European Economic Community – concerned the use of vegetable fats other than cocoa butter.

Today there are 187 countries, plus the European Union, participating in Codex work. Member countries may choose to accept Codex Standards in full or with specified deviations, or to permit imports of products complying with the Codex Standard.

Of particular relevance to the functioning of Codex is the World Trade Organization (WTO), which today has 164 member countries. In accepting the WTO Agreement, member countries agree to be bound by multi-lateral trade agreements, including the Agreement on Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). The SPS Agreement requires member countries to base their standards on international standards, guidelines or recommendations such as those established by the Codex Alimentarius Commission. Codex texts are implicitly targeted in the TBT Agreement since the setting and use of international standards is encouraged.

The first Codex Standards for Cocoa and Chocolate Products were established in 1981, although an amendment to allow use of vegetable fats other than cocoa butter was not included until 2003 after four decades of discussion. Negotiations had been complicated by the continued political opposition of cocoa-producing countries to any proposal which appeared likely to result in a reduction in cocoa butter use and the differences in chocolate manufacturing in developed markets where addition of vegetable fats was considered by some to be adulteration.

28.2.1 Cocoa products

Codex Standards are established for the following cocoa products.

28.2.1.1 Cocoa butter

Cocoa butter is the fat obtained from cocoa beans with the following characteristics:

- Free fatty acid content (expressed as oleic acid): not more than 1.75% m/m (percentage mass/mass basis).
- Unsaponifiable matter: not more than 0.7% m/m, except in the case of press cocoa butter which shall not be more than 0.35% m/m.

28.2.1.2 Cocoa mass

Cocoa mass or cocoa/chocolate liquor is the product obtained from cocoa nib, which is obtained from cocoa beans of merchantable quality which have been cleaned and freed from shells as thoroughly as is technically possible with/without roasting, and with/without removal or addition of any of its constituents. It contains 47–60% m/m cocoa butter. The cocoa shell and germ content must not be more than 5% m/m calculated on the fat-free dry matter or not more than 1.75% calculated on an alkali free basis (for cocoa shell only).