

Working Papers Series
Cahiers de recherche

 ECONOMIC COUNCIL OF CANADA
CONSEIL ÉCONOMIQUE DU CANADA

Regulation Reference
Mandat sur la réglementation



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WORKING PAPER NO. 11

AN ANALYSIS OF THE EFFECTS OF GOVERNMENT
REGULATIONS ON THE CANADIAN FRUIT AND
VEGETABLE PROCESSING INDUSTRY

by

Robert G. Shapiro and David R. Hughes
Broadwith, Hughes & Associates Ltd.



FOREWORD

This study is one of a series commissioned by the Economic Council's Regulation Reference which deals with regulation of the food processing, distribution and retailing sector. These studies do not profess to cover the whole field of food PDR regulation but they do focus on several important areas of concern, particularly overlap and duplication between and within levels of government.

The following is a list (alphabetically by author) of studies to be published in this series:

Anderson, Robert D., Government Regulation of the Canadian Dairy Processing, Distributing and Retailing Sector.

*Leckie, Keith and John Morris, Study on Government Regulation in the Red Meat Industry.

*Shapiro, Robert G. and David R. Hughes, An Analysis of the Effects of Government Regulations on the Canadian Fruit and Vegetables Processing Industry.

* already published.

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TABLE OF CONTENTS

<u>CHAPTER</u>		<u>PAGE NUMBER</u>
I	INTRODUCTION	1
PHASE I		
II	STRUCTURE OF THE PROCESSED FRUIT AND VEGETABLES INDUSTRY	3
	(i) Overview	3
	(ii) Processing Technique: Tomato Juice	10
	(iii) Canned Soups and Canned Juices	12
III	A BRIEF HISTORICAL REVIEW OF THE REGULATION OF CANNED SOUPS AND CANNED JUICES	15
IV	MAJOR SETS OF REGULATORY LEGISLATION	20
V	A MORE DETAILED REVIEW OF REGULATION AFFECTING CANNED SOUPS AND CANNED JUICES	25
	(i) Farm Level to Processor Receiving Area	25
	(ii) Processing Level	36
	(iii) Distribution	64
	(iv) Retail	66
VI	OBSERVATIONS AND ISSUES REGARDING REGULATIONS	67
PHASE II		
VII	GOVERNMENT INSPECTION SERVICES AT PLANT LEVEL	78
	(i) Subject Companies	79
	(ii) Major Government Food Inspection Services at Plant Level	82

TABLE OF CONTENTS, CONT'D

CHAPTER	PAGE NUMBER
(iii) Focus of Interviews with Company and Inspection Personnel	85
(iv) Matrices of Major Food Inspection Services at Plant Level	88
(v) Matrix of General Inspection Services at Plant Level	90
(vi) Description and Analysis of Major Food Inspection Services	92
(vii) Government Inspection Branch Expenditures	101
(viii) Company Comments Re: Government Regulation	103
VIII COSTS TO INDUSTRY OF PERCEIVED INSPECTION DUPLICATION	115
IX BENEFITS TO INDUSTRY AND CONSUMERS OF GOVERNMENT INSPECTION SERVICE	118
PHASE III	
X SUMMARY, CONCLUSIONS AND RECOMMENDATIONS	121
(i) Overview	121
(ii) Summary	122
(iii) Conclusions	131
(iv) Recommendations	133
BIBLIOGRAPHY	135
APPENDIX A MAJOR FEDERAL STATUTES AND REGULATIONS CONSIDERED	138
APPENDIX B MAJOR PROVINCIAL (ONTARIO) STATUTES AND REGULATIONS CONSIDERED	140
APPENDIX C NUMBER OF PRODUCTS DETAINED AND RELEASED - FIVE YEAR SUMMARY FRUIT AND VEGETABLE DIVISION	141

LIST OF TABLES

<u>TABLE</u>		<u>PAGE NUMBER</u>
II.1.	VALUE OF SHIPMENTS	4
II.2.	REGIONAL DISTRIBUTION	6
II.3.	PROCESSED FRUIT AND VEGETABLE INDUSTRY	8
II.4.	FIRMS PRODUCING FORMULATED PRODUCTS	8
II.5.	FIRMS PRODUCING BASIC PRODUCTS	9
II.6.	PROCESSING SCHEMATIC FLOW SHEET - TOMATOES	11
IV.1.	FEDERAL LEGISLATION AFFECTING CANNED SOUPS AND CANNED JUICES	22
IV.2.	PROVINCIAL (ONTARIO) LEGISLATION AFFECTING CANNED SOUPS AND CANNED JUICES	23
IV.3.	LEGISLATED INSPECTION SERVICES: PROCESSING OF CANNED SOUPS AND CANNED JUICES	24
VII.1.	CANNED SOUP - FREQUENCY (PER ANNUM) AND PURPOSE OF VISIT OF REGULATORY AGENCY	88
VII.2.	CANNED JUICE - FREQUENCY (PER ANNUM) AND PURPOSE OF VISIT OF REGULATORY AGENCY	89
VII.3.	CANNED SOUPS AND CANNED JUICES - FREQUENCY (PER ANNUM) AND PURPOSE OF REGULATORY AGENCY	90
VII.4.	EXPENDITURES - FRUIT AND VEGETABLE DIVISION- AGRICULTURE CANADA	102
VII.5.	EXPENDITURES - HEALTH OF ANIMALS BRANCH- AGRICULTURE CANADA	102

RÉGLEMENTATION - INDUSTRIE DE LA PRÉPARATION DES FRUITS ET LÉGUMES

Résumé

La présente étude contient un résumé des lois et règlements fédéraux, provinciaux et municipaux ayant une incidence sur l'industrie de la préparation des fruits et légumes, en insistant sur les lois comprenant les dispositions relatives à l'inspection des soupes et jus en boîte, produits sur lesquels les auteurs ont choisi d'axer leurs recherches.

Dans une première étape, les chercheurs ont fait l'inventaire des lois pertinentes à l'industrie de la préparation des fruits et légumes aux niveaux de la production, de la préparation, de la distribution et de la vente au détail. Ils ont tenu compte à la fois de la réglementation générale et des règlements visant des aliments particuliers. Les auteurs ont découvert qu'il existe un degré considérable de chevauchement, surtout en ce qui a trait à la réglementation relative à la salubrité des produits en général, aux normes, à l'emballage et à l'étiquetage. Ils ont, en outre, identifié les ententes et arrangements entre les ministères et les paliers de gouvernement, tant officiels qu'officieux, à l'égard de la l'application de cette réglementation.

La deuxième partie de l'étude présente une analyse qualitative de l'application des règlements au niveau de la préparation. Cinq compagnies de traitement des fruits et légumes (dont trois de préparation de soupes en boîte, et quatre, de jus en boîte) ont été choisies pour former l'échantillon; leurs installations ont été visitées et leur personnel clé interviewé, comme l'ont été des inspecteurs et administrateurs publics et des représentants de syndicats professionnels reliés à l'industrie. Les auteurs ont conclu qu'il existe effectivement des chevauchements en ce qui a trait à l'inspection, ainsi que des inefficacités et des contradictions dans la réglementation, bien que ces problèmes ne soient pas aussi sérieux que ne le juge l'industrie, car ils sont atténués dans une grande mesure par des ententes, des arrangements et des accords entre les ministères, relativement aux pratiques d'inspection.

En conséquence, les chercheurs font les recommandations suivantes :

1. Le gouvernement devrait rationaliser les lois visant à réglementer un aliment particulier, de façon à en éliminer les dispositions redondantes et contradictoires.
2. Le gouvernement devrait rendre officielles et faire connaître au public les ententes fédérales intra et interministérielles relatives à l'inspection, et rationaliser les services d'inspection partout où cela est possible.

AN ANALYSIS OF THE EFFECTS OF GOVERNMENT REGULATIONS ON THE CANADIAN FRUIT AND VEGETABLE PROCESSING INDUSTRY

ABSTRACT

This study presents a compendium of federal, provincial and municipal regulatory legislation having an impact on the processed fruit and vegetable industry, with particular focus on legislation with an inspection component affecting the processors of the subject products, viz. canned soups and canned juices.

In Phase I, the researchers set forth the relevant legislation at the production, processing, distribution and retail levels of the fruit and vegetable processing industry. Both food specific and general regulation was considered. A significant degree of legislative overlap was found, particularly with regard to general sanitation regulation, standards and packaging and labelling. As well, inter-departmental and jurisdictional (federal/provincial) agreements and understandings, both formal and informal, were identified, with regard to the implementation of the legislation.

Phase II is comprised of a qualitative analysis of the implementation of these regulations at the processing level. Five fruit and vegetable processing companies were selected to form the sample (three canned soup processors, four canned juice processors), their facilities were toured and key personnel interviewed, as were government inspectors and administrators and relevant trade associations. It was determined that although there are inspection overlaps and other regulatory inefficiencies and discrepancies, they are not as severe as industry perceives, largely attenuated by arrangements, agreements and understandings between departments with regard to inspection practices.

The researchers therefore recommend that:

1. Government should rationalize food specific regulatory legislation so as to eliminate redundant and conflicting provisions.
2. Government should formalize and publicize current Federal intra- and inter-departmental inspection agreements, and rationalize inspection services wherever possible.

The "Study of Government Regulation of the Food Processing, Distribution and Retailing Industry" prepared for the Economic Council of Canada focuses on three sectors of the food industry; Red Meat, Dairy, and Processed Fruit and Vegetables. Each sector study has been undertaken by a separate researcher or group of researchers. Keith Leckie and John Morris studied the red meat area; David Hughes and Robert Shapiro undertook the processed fruit and vegetables area; and the dairy sector was studied by Brian Owen who also acted as project manager.

With regard to the processed fruit and vegetables sector, the researchers have narrowed the scope of their inquiry to the regulatory legislation affecting canned soups and canned juices at the production, processing, distribution and retail levels of the food supply chain, with emphasis on inspection overlaps and split jurisdictions at the processing level.

The research and presentation of this paper have been divided into three Phases. Phase I comprises a compendium of federal, Ontario and municipal legislation having an impact on the subject products; Phase II is comprised of a qualitative analysis of the implementation of these regulations at the processing level; and Phase III presents a summary, conclusions and the researchers recommendations.

To prepare this paper it has been necessary to interview over fifty persons involved in the processing and inspection of processed fruit and vegetable products. The researchers would like to acknowledge the kind assistance and candid opinions expressed by federal, Ontario, and municipal

inspectors and administrators, the Canadian Food Processors Association, Retail Council of Canada, and the subject companies; Campbell Soup Company Ltd. (Canada), H.J. Heinz Company of Canada Ltd., Canadian Cannery Limited, Libby, McNeill and Libby of Canada Ltd., and St. Jacobs Canning Co. Ltd..

PHASE I

II STRUCTURE OF THE PROCESSED FRUIT AND VEGETABLE INDUSTRY

i) Overview

The processed fruit and vegetable industry is composed of those establishments which are primarily engaged in the canning, freezing and dehydration of fruits and vegetables, and the production of a variety of products using fruits and vegetables as major ingredients. These processed products can be divided into two broad categories:

- 1) Basic - where the fruits and vegetables comprise virtually the entire product (for example, tomato juice).
- 2) Formulated - where the fruits and vegetables are primarily ingredients in the product formulated (for example, vegetable beef soup).

The former category comprises approximately 40% of the industry shipments (in 1977), while the latter accounts for the balance (see Table 11.1).

In 1977, products valued at over \$1.1 billion were produced by the processed fruit and vegetable industry in Canada, representing growth of 4.3% from 1976 to 1977 and 11.8% from 1975¹. An average compound rate of dollar growth of approximately 8% has been recorded since 1961, but much of this growth reflects higher commodity prices; in volume terms the growth of the domestic market has been merely 3% per year². Consumption of these commodities has generally expanded in line with that of all foods and non-alcoholic beverages, but at lower rates than total consumer spending on both goods and services. Thus, like

¹ Statistics Canada, catalogue 32-218. All statistics are derived from this publication unless otherwise specified.

² Tariff Board Report (Reference 152) Vol. 2, Part 1.

TABLE 11.1

VALUE OF SHIPMENTS

Basic Fruit and Vegetable Products

	1977 Shipments (\$ Million)	% of Total
Canned Vegetables	145.32	13.2
Frozen Vegetables	61.17	5.6
Frozen Fr. Fr. Potatoes	106.65	9.7
Canned Fruits	39.75	3.6
Frozen Fruits	17.30	1.6
Tomato & Apple Juice	91.53	8.2
TOTAL	461.72	41.9

Formulated and Other Products

Canned Soup	124.45	11.3
Pickles, Relishes, Sauces	93.30	8.5
Canned citrus juices, drinks	66.16	6.0
Baked Beans	35.45	3.2
Jams, Marmalades	25.08	2.3
Pie Fillings	16.66	1.5
Spaghetti, Macaroni	16.96	1.5
Canned Stews, Dinners	8.95	0.8
All other Frozen Dinners	60.54	5.5
Other Canned Products & Preparations	191.55	17.5
TOTAL	639.12	58.1

Total Shipments of Own Manufacturer	1,100.84	100.0
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Source: Statistics Canada - 32-218

most foods, the share of the consumer's dollar spent on processed fruits and vegetables has tended to decline.

The industry is centered in Ontario with 111 of the 223 plants (190 firms) across Canada being located in this province. The major factors influencing plant location are summarized in the Report by the Sector Task Force on The Canadian Processed Fruit and Vegetable Industry:

Raw Product

A good quality, reasonably priced, reliable supply of raw product is the principal factor influencing plant location, as plant facilities are located, with few exceptions, near the raw product source. There are several reasons for this, including product perishability, quality considerations (in general the sooner the product is packed the better the quality), better control over contracting, growing and harvesting operations, improved production scheduling, and high transportation costs of unprocessed product relative to the finished product (e.g. 1,000 lbs. of potatoes yields approximately 500 lbs. of frozen french fries).

Length of Season

While many fruits and vegetables can be produced in all 10 provinces, the normal length of harvest season (frost free days) is a critical factor influencing plant location decisions for products which must be processed immediately following harvest (e.g. peas, corn, beans). For example, the harvest season is approximately one-third shorter in Manitoba than in southwestern Ontario, consequently the capital investment required to achieve an equivalent output of seasonally processed products could be up to 50 per cent greater in Manitoba. This, of course, is not the case for non-seasonal production (e.g. processed potatoes, formulated foods, etc.).

Other Factors

Other significant factors influencing location include distance to major markets, readily available seasonal labour supply, municipal sewage treatment facilities and governmental incentives.

It is evident why Ontario, which produces a wide variety of fruits and vegetables, enjoys a long harvest season and has ready access to the large

Ontario and Quebec outlets, accounts for approximately 60% of industry employment and shipments. However, it is also very important to economies of other regions, particularly Atlantic Canada, as is evidenced by Table 11.2.

Table 11.2 REGIONAL DISTRIBUTION¹

	Population	Employment	Shipments
Canada	100.0%	100.0%	100.0%
Atlantic	9.5	12.5	10.2
Quebec	27.1	15.8	15.7
Ontario	36.1	58.0	60.4
Prairies	16.3	4.7	5.0
B.C.	10.8	9.0	8.7

Source: Statistics Canada 31-203 and ITC estimates.

In addition, the industry is highly significant on a local basis since the processing facilities are primarily in the small-to-medium size population centres such as St. Hyacinthe, Quebec, Leamington, Ont., Florenceville, N.B., Penticton, B.C. . Permanent employment is provided for approximately 20,000 people and seasonal employment for an equal or greater number between June and November each year.

Production facilities range in size from operations with sales of less than \$50,000 per year to large scale plants such as the H.J. Heinz facility in Leamington, Ontario, which in 1977, had shipments valued at \$147 million. The small establishments (fewer than 50 employees) which in 1975 represented 60% of the plants, accounted for only 12% of total industry shipments, while

i Report of the Task Force on The Canadian Processed Fruit and Vegetable Industry (Task Force Report).

the large establishments (more than 200 employees), comprising 9% of the total number of plants, accounted for 50% of the shipments in 1975. Industry rationalization of processing establishments has reduced the number of plants from 335 in 1961 to 223 in 1977, this reduction occurring in every region in Canada, except the Maritimes¹. Evidence suggests that rationalization with fewer but larger plants has not, as in many industries, been accompanied by increasing specialization, but rather by greater diversification. Especially in canning and freezing, efficiency and scale is acquired by adding products and extending the processing season. Thus the industry is increasingly characterized by multiproduct plants². It is further characterized by foreign-owned firms (mainly subsidiaries of U.S. multi-national enterprises) which accounted for 60% of industry shipments in 1972³.

Food materials of all types are the major production cost input for the industry, comprising about 40% of the value of shipments for canners and preservers and nearly 50% for frozen food processors. Fresh fruits and vegetables account for about one-third of the food materials cost input for canners and preservers and slightly more than one-half for frozen food processors. Meat, sugar and cooking oils are the other major food material inputs. Packaging materials comprise 22% of the value of shipments for canners and preservers, and approximately 10% for frozen food processors, while labour costs for both are approximately 12%⁴.

¹ Task Force Report

² Tariff Board Reports (Reference 152) Vol. 2, Part 1.

³ Task Force Report.

⁴ Task Force Report (1975 figures).

Profitability in the processed fruit and vegetable industry increased significantly in 1973-74 over the preceeding five year average, but has shown an annual decrease since that time. Table 11.3 demonstrates the financial results of the integrated industry, while Tables 11.4 and 11.5 present the industry segmented into firms producing formulated versus basic products¹. As can be seen, the latter segment exhibits a sharp drop in profitability.

Table 11.3 PROCESSED FRUIT AND VEGETABLE INDUSTRY

	Five Year Average 1968-72	1973	1974	1975	1976*	1977*
Working Capital Ratio	1.8	1.6	1.6	1.6	1.9	2.0
Profit after Tax: Shareholders equity	6.9	12.3	15.3	12.6	10.4	9.1
Profit before Tax: Capital employed	10.5	17.8	19.8	17.6	15.3	12.9
Profit before Tax: Sales	4.3	6.5	7.1	6.4	6.2	5.0

Source: Statistics Canada 61-207 (for 1968 through 1975).

* Information from Industry Survey, May 1978 (34 firms representing 70% of industry shipments) (Task Force Report)

Table 11.4 FIRMS PRODUCING FORMULATED PRODUCTS

	1973	1974	1975	1976	1977
Profit after Tax: Shareholders equity	11.2%	13.5%	12.5%	11.9%	13.1%
Profit before Tax: Capital employed	17.9	20.0	20.1	18.5	19.8
Profit before Tax: Sales	8.5	8.8	8.3	8.1	8.3

Source: Industry Survey, May 1978 (Task Force Report).

¹ Statistics Canada - Catalogue 65-007, 65-004.

Table 11.5 Firms Producing Basic Products

	1973	1974	1975	1976	1977
Profit after Tax: Shareholders equity	8.6%	10.8%	9.3%	8.3%	3.0%
Profit before Tax: Capital employed	13.6	14.5	15.2	11.4	4.2
Profit before Tax: Sales	6.1	7.1	6.5	4.1	1.6

Source: Industry Survey, May, 1978 (Task Force Report)

The industry is predominantly oriented to the domestic market, and traditionally experiences a large trade deficit due to consumer demand for products which cannot be produced in Canada (tropical and semi-tropical products). This deficit was \$302.4 million in 1977¹. An analysis of 1977 imports indicates that 46% were tropical and semi-tropical products and 54% were temperate products. Basic fruits and vegetables comprised 82% of the temperate products imported, while 18% were formulated products². Approximately 75% of 1977 imports of basic fruit and vegetable products were accounted for by tomato paste, frozen strawberries, dried vegetables, canned tender fruit, canned tomatoes and canned mushrooms. Imports of each of these products supply the bulk of domestic requirements. Exports comprise less than 5% of total shipments and thus are not a large factor in this industry.

The United States is Canada's major competitor in the processed fruit and vegetable industry. Economies of scale combined with generally lower costs of raw produce, packaging materials and labour give the U.S. a competitive advantage, traditionally offset by tariffs and transportation costs. However, certain

¹ Statistics Canada - Catalogue 65-007, 65-004.

² Statistics Canada - Catalogue 65-007 and ITC estimates.

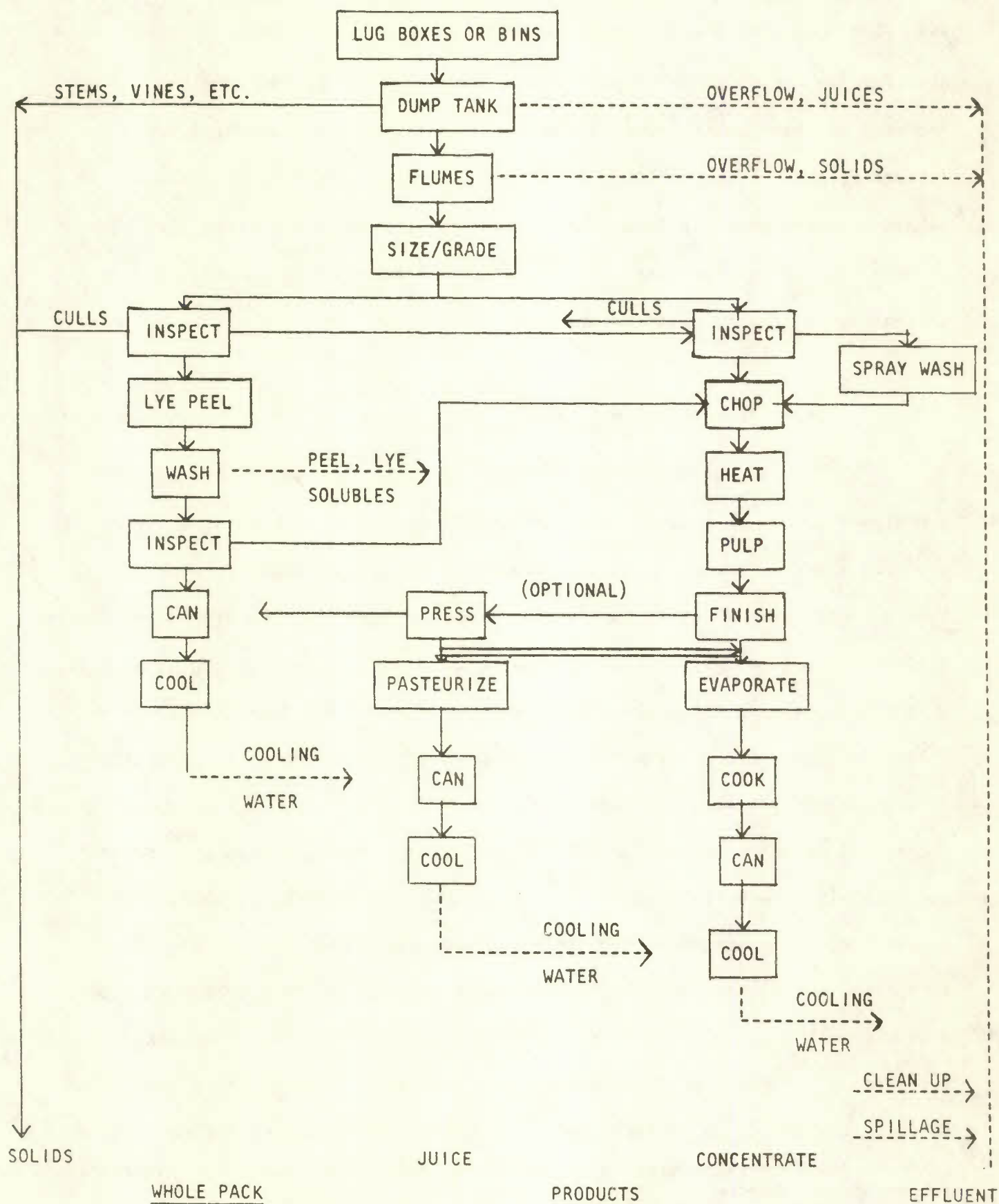
segments of the industry have been experiencing difficulty in recent years in remaining competitive with regard to products with a high labour content, specifically canned tender fruit, canned mushrooms and canned tomatoes. The industry has been concerned with the erosion of specific duty rates due to inflation, and the Tariff Board in 1977 recommended tariff increases with regard to these products (and others), and the replacement of specific rates of duty with ad valorem rates for all products, in order to maintain a consistent level of production in the long run.

(ii) Processing Technique: Tomato Juice

The manufacture of tomato juice utilizes many of the processing techniques common to production of different categories of processed fruits and vegetables. Harvesting is both manual and mechanical (approx. 35%) and the tomatoes are transported in wooden bins or gondolas to the food processing plants. Extraneous material and soil is removed by an initial wash, followed by high pressure rinses to remove final residues, and the tomatoes are generally transported by water flumes from the washers through size graders for separation into whole pack, juice, or sauce products. Sorting and grading operations take place at a number of points within the processing system, the purpose being to sort for size, maturity, degree of peel removal and blemishes (manual). The cleaned and sized tomatoes, and the shape and colour rejects from the whole pack process line are chopped and exposed to steam coils to prevent the breakdown of pectins; the product is then normally pumped into holding tanks and then through "finishers" to eliminate skin and seeds. The juice is then homogenized, deaerated, pasturized, hot filled into containers and cooled. Table 11.6 portrays the process schematically for tomato whole pack, juice and concentrate¹.

¹ "Review of Treatment Technology in the Fruit and Vegetable Processing Industry in Canada", Stanley Associates Engineering Ltd., March, 1977.

Table 11.6 PROCESSING SCHEMATIC FLOW SHEET - TOMATOES



(iii) Canned Soups and Canned Juices

In the "Report by the Sector Task Force on the Canadian Food and Beverage Industry" it was identified that 'a major constraint of profitable growth is the expanding framework of regulations within which the industry must operate'¹. The Processed Fruit and Vegetable Task Force Report supported this statement. Since many food products are embraced within the general heading of 'processed fruit and vegetables', the researchers, in the face of time and budgetary limitations, proposed to focus exclusively on regulatory intervention with regard to two product areas: canned soups and canned juices.

Canned soups represented more than 11% of the total dollar value of processed fruit and vegetable shipments in 1977 and are the largest single formulated processed fruit and vegetable product shipped (dollar value - see Table 11.1). The regulations and regulatory bodies which are extant for this product group are excellent examples of those influencing the production, distribution and retailing of baked beans, stews and other canned preparations and, as a result, conclusions drawn from a study on regulation of canned soups can be validly generalized to other product sectors of the industry.

There are essentially four types of canned soup on the market: vegetable soup (tomato, mushroom, etc.), soup containing meat (beef vegetable, chicken noodle, etc.), soup containing seafood (clam chowder, oyster, etc.), and soup with wine. These soups are subject to inspection by four different federal food specific inspection agencies, each agency representing a different statute and different sets of regulations. The industry, through the Canadian Food Processors Association, recommended that this duplication of inspection services

¹ Sector Task Force Report, p.5.

and jurisdictional overlap be subjected to analysis and that canned soups would be a representative product group for study.

Canned juices and drinks account for approximately 15% of the industry's factory shipments, representing a major source of basic processed fruit and vegetable shipments. Single strength juices are primarily domestic, and compete with reconstituted juices which are imported into Canada in the concentrate form and then reconstituted through the addition of water (and sometimes sugar). The industry expressed concern with differential inspection of domestic juices in relation to imports (citrus), and with split jurisdictions regarding standard juices under the Canada Agricultural Products Standards Act¹ (subject to Agriculture Canada inspection at the processing level) and non-standard juices (subject to Consumer and Corporate Affairs inspection at any trade level). As well, Health and Welfare Canada has overriding jurisdiction with regard to all food, health and safety aspects. Again, conclusions drawn with regard to regulation of this product group can be readily generalized to other product sectors, particularly basic fruit and vegetable products.

The province of Ontario was chosen by the researchers as their provincial focus because of the dominance of this province in the canned soup, and tomato juice markets and its relative importance in the processed fruit and vegetable industry overall. Moreover, after initial analysis of legislation, the researchers determined that federal food specific regulation has a far greater impact on the subject products than provincial regulations², and therefore, resources could be more profitably expended by concentration on this province alone. Moreover, since canned juices and canned soups are sealed products, regulation of the distribution and retailing of these products has, after preliminary

1 Citations for all major statutes and regulations are set out in the Appendix

2 Potentially, this could be changing - see Footnote, p.45 ref. Labatt's decision.

analysis, been determined by the researchers to be barren ground for study. The subject products basically flow through these sectors with very little government intervention since they pose a relatively low health risk and are, in general, highly regulated at the processing level. The researchers have identified relevant legislation in the distribution and retailing sectors, but have not developed these areas to the same extent as the processing level.

III A BRIEF HISTORICAL REVIEW OF THE REGULATION OF CANNED SOUPS AND CANNED JUICES

Legislative jurisdiction over the production, processing, distribution and sale of food products is divided amongst the Parliament of Canada and provincial government authorities. The British North America Act, 1867 defines this distribution of legislative powers, and such definition is further interpreted by the Common Law. The Act states that the federal government may legislate on all matters not coming within the classes of subjects assigned by this Act to provincial legislatures.¹

Section 91 delegates exclusive legislative authority to the Parliament of Canada with regard to (inter alia) the regulation of trade and commerce (91(2)), sea coast and inland fisheries (91(12)), and the criminal law (91(27)), while section 92(13) provides exclusive jurisdiction to the provinces over (inter alia) property and civil rights in the provinces. Section 95 provides for concurrent jurisdiction amongst the provinces and federal government in relation to Agriculture, with an overriding power in the federal government. Through the interpretation of the courts, it has been generally accepted that where there are inconsistent (or conflicting) federal and provincial laws, although both are valid, it is the federal law which prevails; this is known as the doctrine of 'federal paramountcy'.²

¹ The opening words of section 91 of the B.N.A. Act confer on the federal Parliament the power 'to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces;...' This is known as the federal Parliament's 'residual' power.

² Laskin, Canadian Constitutional Law (4th ed., rev., 1975), 23-59.

It should further be noted that provincial jurisdiction is wholly intra-provincial unless otherwise stipulated by federal legislation.

The processing of canned soups and juices is almost wholly an extraprovincial undertaking and, therefore, the major food legislation affecting this industry is at the federal level.¹ Primary examples are the Food and Drugs Act, Canada Agricultural Products Standards Act, Meat Inspection Act, and Consumer Packaging and Labelling Act. Each of these statutes has a different perspective (although there is overlap in provisions) and their historic development will be briefly reviewed. Provincially (Ontario), agricultural legislation is relevant primarily to the production and marketing of farm products which comprise the ingredients of the subject products. General health legislation (The Public Health Act)², worker health and safety legislation (Occupational Health and Safety Act, 1978), and environmental protection legislation (The Environmental Protection Act, 1971) are the important areas of provincial regulation of canned soups and juices. Municipal jurisdiction over plant sanitation and general safety and building inspection is derived from provincial Municipal Acts, and such other provincial legislation as The Public Health Act.

The federal Food and Drugs Act is, historically, the basic federal legislative vehicle in the food industry. Its thrust is consumer protection with two fundamental purposes; protection of the public health and

¹ Since the leading case of Citizens Insurance Co. v. Parsons (1881), 7 App. Cas., 96, it has been accepted that, in general, intraprovincial trade and commerce is a matter within provincial power under 'property and civil rights in the province' (s. 92(13)); and the federal trade and commerce power is confined to interprovincial or international trade and commerce, and 'general' trade and commerce. See Hogg, Constitutional Law of Canada (1977), 268.

² All provincial legislation referred to is that of Ontario unless otherwise indicated. Citations of major legislation are in the Appendix.

prevention of fraud. The original law is modelled on earlier English Acts, and was first cited as The Inland Revenue Act of 1875. This became the Adulteration Act which provided the Governor-in-Council with the authority to set legal standards for food and drugs by Order-in-Council. The constitutional source of the Food and Drugs Act (the present act has been in force since 1954) is sections 91(2) and 91(27) of the B.N.A. Act.¹ It is administered by the Department of National Health and Welfare with regard to health and safety provisions, and the Department of Consumer and Corporate Affairs with regard to fraud provisions.

The Canada Agricultural Products Standards Act was enacted in 1955 as an umbrella statute for standardizing and grading agricultural products (then covered by several other Federal Acts) and the regulation of international and interprovincial trade in these products. Sections 91(2) and 95 of the B.N.A. Act provide the constitutional basis for the Act. The Processed Fruit and Vegetable Regulations under this Act regulates plant sanitary conditions and registration, grades and standards for designated processed fruit and vegetable products, labelling, packaging and marking requirements. Specific regulations also deal with other agricultural products not relevant to canned soup and juice processing. The Act and Regulations are administered by Agriculture Canada at all levels of production other than retail, which is administered by Consumer and Corporate Affairs Canada.

The federal Meat Inspection Act was enacted in 1955 to replace the

¹ See comments with regard to the constitutional basis for Food and Drugs Regulations standards of composition in Chapter V - ref. Labatt's Breweries of Canada Limited v. The Queen et al.

Meat and Canned Foods Act (which still has not been repealed). Sections 91(2) and 95 of the B.N.A. Act provide the constitutional basis for the Act and Regulations (newly enacted in August, 1979), and the stated purpose of the legislation is the inspection of meat and meat products entering into international and interprovincial trade. Since canned soups containing meat are a meat product by definition¹, and are processed for interprovincial (or international) commerce, this Act and Regulations have a major inspection impact on the subject processors. The Act and Regulations further deal, inter alia, with registration of establishments (which must meet construction and sanitation standards), sanitation, standards, labelling, packaging and marking. The Department of Agriculture administers this Act.

In 1971 the Consumer Packaging and Labelling Act was proclaimed respecting the packaging, labelling, sale, importation and advertising of pre-packaged products including foods. Administration of this Act and Regulations is by the Department of Consumer and Corporate Affairs but, through inter-department agreement, their role is restricted primarily to retail inspection with regard to canned soups and juices and other processed fruit and vegetable products under the jurisdiction of Agriculture Canada.

As stated above, provincial legislation has an impact on the subject processors primarily in the areas of public health, worker health and safety, and environmental protection. These areas of regulation are of general application, affecting all industry in Ontario, but the following Acts have an above average importance to the processed fruit and vegetable industry, in terms of

¹ Meat Inspection Regulations, SOR 79-579, s.4.

implementation of inspection provisions. Constitutional authority for these Acts is found under S.92(13) of the B.N.A. Act, property and civil rights in the province.

The first Public Health Act was proclaimed in 1882 followed by a comprehensive Public Health Act in 1884, which required local boards of health to be established in every municipality in the province. The daily administration of the current Public Health Act is at the municipal level with consulting services provided by the Ministry of Health. A new Act called Health Protection Act is currently being drafted, to be promulgated in 1980 or 1981.

The Occupational Health and Safety Act, 1978 is new legislation (proclaimed in October, 1979). It replaces, inter alia, the Industrial Safety Act, 1971, which dates back to 1892, and is administered by the Ministry of Labour. It is unique in that inspection services are provided jointly by the employer, employees and the Ministry.

Environmental protection legislation, such as the Environmental Protection Act, 1971, is a new area of government regulation, responding to an increased public consciousness of ecological problems in the late 1960's. The Ontario Ministry of the Environment was only created in 1972, and prior environmental concerns relating to such things as sewage treatment and waste management systems were administered by the Ministry of Health and the Ontario Water Resources Commission. The Ministry of the Environment now administers provincial environmental regulations and most federal environmental protection legislation through a Federal/Provincial Accord.

IV MAJOR SETS OF REGULATORY LEGISLATION

A listing of Federal and Ontario legislation affecting canned soups and juices at the farm level (that is, the production and marketing of food products to be used for processing), processing, distribution and retail levels is compiled in Tables IV.1 and IV.2. Also included in Table IV.2 are references to areas where municipalities are authorized by provincial statute to pass by-laws adding to or aiding in the administration of the relevant provincial statutes (in practice, municipal regulatory input into the food processing sector is only minimal). Although the listing of statutes and regulations is comprehensive, it is not exhaustive. Furthermore, there is a wide variance in the relative importance of the legislation to the subject industry. As can be seen in these Tables, the legislation is grouped into three arbitrarily discreet categories, in descending order of specificity to the processed fruit and vegetable industry, with a particular focus on canned soups and canned juices. The order is necessarily inexact, but gives the reader an idea of the degree of legislated regulatory impact. The sections on distribution and retail are particularly sparse since the regulation of canned soups and canned juices at those stages of the food chain is of marginal interest due to the sealed nature of the products. The tables further demonstrate that a particular statute, such as the Food and Drugs Act, may have regulatory provisions affecting different levels of the food chain.

Table IV.3 focuses upon legislated inspection services at the processing level for canned soups and canned juices. The word "legislated" is emphasized since, as will be seen later in this paper, although the statute or regulation may empower a regulatory body to inspect with regard to certain

matters, in practice that body may not be inspecting those matters, may be inspecting other matters, or may not be inspecting at all! The co-ordinates of this regulatory matrix are jurisdiction and type of regulation (although the designation is by statute, the subordinate legislation is included - see Tables IV.1 and IV.2).

TABLE IV.1

FEDERAL LEGISLATION AFFECTING CANNED SOUPS AND CANNED JUICES¹

SPECIFICITY OF
LEGISLATION

FOOD - SPECIFIC
LEGISLATION

GENERAL LEGISLATION:
ABOVE AVERAGE IMPACT
ON SUBJECT INDUSTRY

GENERAL LEGISLATION:
BELOW AVERAGE IMPACT
ON SUBJECT INDUSTRY

PRODUCTION	PROCESSING	DISTRIBUTION	RETAIL
Canada Agricultural Products Standards Act (C.A.P.S.) - Processed Fruit & Vegetable Regs.	C.A.P.S. Act - Processed Fruit and Vegetable Regs.	C.A.P.S. Act - Processed Fruit and Vegetable Regs.	Food and Drugs Act/ Regs.
Food and Drugs Act/ Regs.	Meat Inspection Act/ Regs. ²	Meat Inspection Act/ Regs.	
Meat Inspection Act/ Regs.	Food and Drugs Act/ Regs.		
Fish Inspection Act/ Regs.	Fish Inspection Act/ Regs.		
Humane Slaughter of Food Animals Act/ Regs.	Animal Disease and Protection Act/Regs.		
Animal Disease and Protection Act/Regs.			
Fruit, Vegetables and Honey Act/Regs.			
Livestock and Livestock Products Act/Regs.			
Weights and Measures Act/Regs.	Consumer Packaging and Labelling Act/ Regs.	Motor Vehicle Transport Act	Consumer / Packaging and Labelling Act/Regs.
Agricultural Products Marketing Act	Weights and Measures Act/Regs.	National Transportation Act	Weights and Measures Act/Regs.
Plant Quarantine Act/ Regs.	The Fisheries Act - Meat/Poultry/Potato Processing Regs.	Railway Act	Combines Investigation Act
Farm Products Marketing Agencies Act		Aeronautics Act	
Agricultural Stabilization Act	Unemployment Insurance Act		
Custom Tariff	Electricity Inspection Act		
Custom Act	Gas Inspection Act		
	Customs Tariff		
	Anti-Dumping Act		
	Export and Import Permits Act		
	Canada Water Act		
	Combines Investigations Act		
	Official Languages Act		
	Corporations and Labour Returns Act		
	Canada Pension Plan		
	Trademarks Act		

²Financial Statutes: i.e. Business Corporations Act, Income Tax Act

^{1/} All legislation is listed within each specificity level in order of potential impact on the industry, in terms of legislated inspection component (not implementation of such component).

^{2/} Regulations are designated by 'Regs.' if of the same name as enabling Act.

TABLE IV.2

FOOD - SPECIFIC
LEGISLATION

Production	Processing	Distribution	Retail
Farm Products Marketing Act/Regs. ²	Farm Products Grades and Sales Act - Fruit and Vegetables Regs.	Public Health Act	Public Health Act - Food Premises Regs.
Farm Products Grades and Sales Act - Fruit and Vegetables Regs.	Public Health Act - Food Premises Regs.	Meat Inspection Act/ Regs.	
Public Health Act	Meat Inspection Act/ Regs.	Fish Inspection Act/ Regs.	
Fish Inspection Act/ Regs.	Fish Inspection Act/ Regs.		
Meat Inspection Act/ Regs.			
Plant Diseases Act/ Regs.			
Beef Cattle Marketing Act/Regs.			
Livestock and Livestock Products Act/Regs.			
Livestock Community Sales Act			
Freshwater Fish Marketing Act			

GENERAL LEGISLATION:
ABOVE AVERAGE IMPACT
ON SUBJECT INDUSTRY

Occupational Health and Safety Act, 1978	Occupational Health and Safety Act, 1978 - Industrial Establishment Regs.	Public Commercial Vehicles Act	Environmental Protection Act, 1971
Environmental Protection Act	Environmental Protection Act, 1971 - Sewage Systems	Highway Traffic Act	Business Practices Act
Pesticides Act	Ontario Water Resources Act - Plumbing Code		
Employment Standards Act, 1974	Boilers and Pressure Vessels Act/Regs.		
Crop Insurance Act	Elevators and Lifts Act/Regs.		
Farm Products Payments Act	Employment Standards Act, 1974		
Commodity Boards and Marketing Agencies Act, 1978	Metric Conversion Statute Law Amendment Act		
Tile Drainage Act	Building Code Act, 1974		
Drainage Act	Power Cooperation Act - Electrical Safety Code		
Building Code Act, 1974			

GENERAL LEGISLATION:
BELOW AVERAGE IMPACT
ON SUBJECT INDUSTRY

Workmen's Compensation Act	Workmen's Compensation Act	Ontario Human Rights Code	Labour Relations Act
Labour Relations Act	Labour Relations Act	Discriminatory Business Practices Act	Workmen's Compensation Act
Discriminatory Business Practices Act	Business Practices Act		
Public Commercial Vehicle Act	Ontario Human Rights Code		
Highway Traffic Act	Discriminatory Business Practices Act		

*Financial Statutes: Income Tax Act (Ontario), Corporate Information Act, Corporate Tax Act, 1972, Business Corporation Act

MUNICIPAL³

Public Health Act - by-law	Public Health Act - by-law		Public Health Act - by-law
Plant Diseases Act - by-law	Building Code Act - by-law		Building Code Act - by-law
Weed Control Act - by-law	Environmental Protection Act - by-law		
Tile Drainage Act - by-law			

^{1/} See footnote 1, Table IV.1

^{2/} See footnote 2, Table IV.1

^{3/} The municipalities were selected in phase II and are as follows: Toronto, Leamington, Chatham, Simcoe, Dresden. The subject companies stated that municipal inspection services had little or no impact on processing operations.

TABLE IV.3 LEGISLATED INSPECTION SERVICES: PROCESSING OF CANNED SOUPS
AND CANNED JUICES

TYPE OF REGULATION	FEDERAL	PROVINCIAL	MUNICIPAL
IMPORT/EXPORT AND INTERPROVINCIAL TRADE ¹	Food and Drugs Act C.A.P.S. Act Customs Act Animal Disease and Protection Act Meat Inspection Act Fruit, Vegetables and Honey Act Fish Inspection Act Customs Tariff Plant Quarantine Act		
PRODUCT QUALITY ²	Food and Drugs Act C.A.P.S. Act Meat Inspection Act Fish Inspection Act	Fish Inspection Act Plant Diseases Act Farm Products Grades and Sales Act Meat Inspection Act	
CONSUMER HEALTH AND SAFETY ³	Food and Drugs Act C.A.P.S. Act Meat Inspection Act Fish Inspection Act	Fish Inspection Act Public Health Act Meat Inspection Act Farm Products Grades and Sales Act	Bylaw - Public Health Act
PACKAGING/ LABELLING/ ADVERTISING	Food and Drugs Act C.A.P.S. Act Consumer Packaging and Labelling Act	Fish Inspection Act Meat Inspection Act Farm Products Grades and Sales Act	
JOB SAFETY AND WORKING CONDITIONS		The Building Code Act Occupational Health and Safety Act, 1978 The Elevators and Lifts Act The Boilers and Pressure Vessels Act Power Corporation Act Public Health Act The Employment Standards Act, 1974 Workmen's Compensation Act	Bylaw - Building Code Act - Public Health Act
ENVIRONMENTAL CONTROLS	The Fisheries Act Environmental Contaminants Act Canada Water Act	Environmental Protection Act, 1971 Ontario Water Resources Act	Bylaw - Environmental Protection Act, 1971 - Ontario Water Resources Act
GENERAL	Electricity Inspection Act Gas Inspection Act Weights and Measures Act		

¹ Includes inspection of produce for processing and the processed product when destined for export or interprovincial trade or imported.

² Inspection for purposes of grading or compliance with standards of identity or composition.

³ Inspection of processing plant with respect to general sanitation and sanitary handling of components of processed product and the product.

V A MORE DETAILED REVIEW OF REGULATION AFFECTING CANNED SOUPS
AND CANNED JUICES

i) Farm Level to Processor Receiving Area

Canned soups and canned juices contain a wide range of agricultural products, from fruit and vegetables of all types, meat and fish products, milk, eggs, flour, through to spices and exotic relishes. The majority of these agricultural products are regulated, specifically, at the farm level in terms of provincial grading or marketing standards. However, since canned soups and juices are invariably interprovincial or export trade items, the federal regulations predominate. General regulation of the agricultural business, such as environmental controls, worker health and safety, consumer health will not be examined here unless it has a direct impact on the processing, distribution and retail levels of the food chain. Further, canned soup and juice processors are variable in their source of supplies; some are producers as well as processors, (growing some of their own crops, for example, Campbell's grow some of the mushrooms for their mushroom soup). This combination of function will not be addressed at this point in the study, and the production, processing, distribution and retailing functions will be treated separately. The focus of this study is on regulation involving inspection services, and this emphasis will be reflected in the analysis.

In determining what is a major versus minor regulation affecting the production of canned soups and juices at farm level (or, indeed, at the processing, distribution, retail levels), one must look not only at the legislation but at its implementation. In this chapter merely casual reference to enforcement will be made, while in a later chapter, implementation will be addressed explicitly.

a) Federal Regulation of Products Utilized in Canned Soups and Canned Juices - Farm Level

With regard to soups containing meat products, the Meat Inspection Regulations under the Meat Inspection Act are relevant. A meat product under the Act includes birds and is defined as follows in section 2:

- a) an animal carcass
- b) the product or by-product of an animal carcass, and
- c) a food product containing any product or by-product mentioned in paragraph 4.

There may be no export or interprovincial trade of meat products unless, inter alia, the product was prepared in a registered establishment that complied with prescribed conditions, the animal was slaughtered in the prescribed manner and was inspected before and after slaughter, the meat product was packaged and marked as prescribed and conformed to prescribed standards (s.3). The powers of the inspector are set out in section 7 as follows:

- 7. (1) An inspector may at any time (a) enter any place in which he reasonably believes there are meat products or other things to which this Act applies and may open any package found therein that he has reason to believe contains any meat product, and may examine any meat product or other thing found in such place and take samples thereof, and
- (b) require any person to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom, any books, shipping bills, bills of lading or other documents or papers, with respect to the administration of this Act or the regulations.

Carriage and import are further prescribed. The Meat Inspection Regulations (proclaimed in August 1979) provide in Part 1 for registration of establishments (dealing in meat products), standards of such establishments (construction, sanitation), maintenance and operation (sanitation, use of substances in conformity with Food and Drugs Act, Pest Control Products Act). Section 12

states:

12. (1) Subject to subsections (2), (3) and (4), no meat product shall be admitted to or processed in a registered establishment unless
 - (a) the meat product was derived from an animal that was slaughtered, dressed and inspected in a registered establishment in accordance with these Regulations or the meat product was imported into Canada in accordance with these Regulations,
 - (b) the meat product is marked in accordance with these Regulations, and
 - (c) in the case of a meat product that was previously processed in any manner, it was so processed in accordance with these Regulations in a registered establishment or approved rendering plant,and no meat product shall be admitted or re-admitted to a registered establishment after being removed from a registered establishment and shipped to a place other than a registered establishment or approved rendering plant.

Section 26 prohibits transport of meat products unless the carrier is sanitary, temperature requirements are met, and carrier specifications complied with. The handlers of meat products must be clean, healthy (s.27) and the animals must be treated in an humane way. There must be ante mortem and post mortem inspection of animals and they must be slaughtered in accordance with Humane Slaughter Regulations. The Act and regulations are under the jurisdiction of the Department of Agriculture, and are enforced by the new Food Production and Inspection Branch (until October 19, 1979, the Health of Animals Branch).

The Humane Slaughter of Food Animals Act (Department of Agriculture) and Humane Slaughter Regulations prescribe the manner in which the animals must be slaughtered. Inspectors are appointed under the Meat Inspection Act and exercise all the powers under that Act.

The Animal Disease and Protection Act (Department of Agriculture) and Animal Disease and Protection Regulations provide for inspection of animals and segregation of suspected diseased animals. Inspection facilities must be available at animal markets. Carriers and yards where animals are kept must

be as prescribed (sanitation) and, generally, all animals transported anywhere are subject to inspection at any time (s. 137, Regs.).

The Livestock and Livestock Products Act (Department of Agriculture) provides for the regulation of stockyards, livestock and livestock/poultry products. Under Part II of the Act, the Governor-in-Council may make regulations regarding inspection, grading, packing, labelling, branding, marking, shipping and transportation of such products. Under the Act, Hatchery Regulations and Stockyard Regulations have been passed regarding sanitation, care and custody of livestock and poultry. Otherwise, the Act is largely dormant and is covered at the processing level by the Meat Inspection Act and C.A.P.S. Act.

The Food and Drugs Act (Department of National Health and Welfare) is the overriding statute regarding food production and processing from a consumer protection viewpoint. Section 4 states as follows:

4. No person shall sell an article of food that
 - (a) has in or upon it any poisonous or harmful substance,
 - (b) is unfit for human consumption,
 - (c) consists in whole or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance,
 - (d) is adulterated, or
 - (e) was manufactured, prepared, preserved, packaged or stored under unsanitary conditions. 1952-53, c. 38, s. 4.

Power of inspectors (Health Protection Branch) are set out in Section 22 as follows:

22. (1) An inspector may at any reasonable time
 - (a) enter any place where on reasonable grounds he believes any article to which this Act or the regulations apply is manufactured, prepared, preserved, packaged, and examine any such article and take examples thereof, and examine anything he reasonably believes is used or capable of being used for such manufacture, preparation, preservation, packaging or storing;

- (b) open and examine any receptacle or package that on reasonable grounds he believes contains any article to which this Act or the regulations apply;
- (c) examine any books, documents or other records found in any place mentioned in paragraph (a) that on reasonable grounds he believes contain any information relevant to the enforcement of this Act with respect to any article to which this Act or the regulations apply and make copies thereof or extracts therefrom; and
- (d) seize or detain for such time as may be necessary any article by means of or in relation to which he reasonably believes any provision of this Act or the regulations has been violated.

The Fish Inspection Act (Department of Fisheries and Oceans) and Fish Inspection Regulations applies only in respect to fish and containers intended for import and export (includes interprovincial trade). All fish are subject to inspection by the Inspection and Technology Branch, and operating requirements for fish cannery plants (i.e., sanitation, construction) are specified.

The Fruit, Vegetables and Honey Act (Department of Agriculture) permits the Minister to make regulations (s.3) regarding grading, inspection, packing produce, sanitation of premises where produce is packed, and transportation of produce. The only regulation pursuant to the Act, called the Fruit, Vegetables and Honey Regulations concerns importation of produce of kinds grown in Canada, and is limited to 1,000 pounds/day shipments.

The Agricultural Products Marketing Act (Department of Agriculture) under section 2 grants authority to provincial marketing boards to regulate marketing of their agricultural products interprovincially and through export. The purpose of the Act is to cooperate with provincial marketing boards and to improve methods and practices of marketing agricultural products in Canada. There are many regulations to the Act, an example of which is the Ontario

Grapes-for-Processing Order which authorizes the Farm Products Marketing Board of Ontario and Ontario Grape Growers Marketing Board to regulate the marketing of grapes in interprovincial and export trade.

The Farm Products Marketing Agencies Act (Department of Agriculture) establishes national marketing agencies for farm products. Currently, eggs, chickens and turkeys are regulated by national boards. Periodic quotas are established to be enforced by provincial marketing boards.

General regulation of agriculture products may be found in the Pest Control Products Act wherein inspectors may enter any premises where controlled products are used; Fertilizers Act wherein standards for fertilizers are established under the Act and inspectors may enter premises where products are used; Plant Quarantine Act and Regulations which prohibit importation or conveyance of pests or infested plants and permits inspection for same.

Financial regulation of farm products may be found under the Agricultural Products Cooperative Marketing Act which permits the Minister under section 4 to prescribe prices and quotas of products to be marketed under a cooperative plan in an area (no regulations); Agricultural Stabilization Act which establishes the Agricultural Stabilization Board which can set a base price for a commodity (i.e., apples) and can purchase, sell, and deal generally with commodities to stabilize price (s. 10); Agricultural Products Board Act which establishes a Board to function internationally regarding the sale and purchase of commodities - can require information from anyone regarding agricultural products, necessary for the proper administration of the Act.

b) Provincial (Ontario) Regulation of Products Utilized in Canned Soups and Canned Juices - Farm Level

As previously mentioned, since canned soups and juices are interprovincial and export products, provincial legislation with regard to agricultural products themselves is secondary to federal legislation. In terms of general legislation (environmental control, worker health and safety, consumer protection, work conditions), these regulations will be discussed under the processing section.

The Meat Inspection Act (Ontario Ministry of Agriculture and Food) and regulations provide for meat inspection by the Veterinary Services Branch in every slaughtering plant in Ontario, except plants registered under the Meat Inspection Act (Canada) and those engaged solely in slaughtering animals exempted by the regulations under the Act. Therefore, although the Act would appear at first glance to be pertinent, in practice it is irrelevant to products covered in this study.

The Livestock and Livestock Products Act (Ontario Ministry of Agriculture and Food) provides for grading of livestock, poultry and their products; regulation of stockyards, shippers and livestock exchanges. However, the regulations under the Act affect only eggs and wool and are, therefore, not of importance to the products within the ambit of this study.

The Fish Inspection Act (Ontario Ministry of Natural Resources) and Quality Control Regulations regulates inspection services of fish canneries and general operating requirements (i.e., handling, sanitation, equipment, transportation). However, the Ministry has no fish inspectors, but relies on the federal fish inspectors under the Fish Inspection Act (Canada) to enforce the Act and regulations.

Regulation 719 (Slaughterhouses and Meat Processing Plants) under the Public Health Act (Ontario Ministry of Health) provides for inspection of slaughterhouses and meat processing plants. Construction and sanitation requirements are outlined, maintenance and operations prescribed and fitness of personnel dictated. Local health units (autonomous municipal/regional bodies) enforce the inspection provisions of the regulation, but their mandate, although not spelled out in the Act or regulations, is limited to those plants exempted under the Meat Inspection Act (Ontario). These are custom killing slaughterhouses and farmers own slaughtering operations. The regulations are old and soon to be revoked, with relevant sections to be moved into new Food Premises regulations under the Public Health Act. In conclusion, due to their implementation, the regulations have no impact at the production or processing level.

The Farm Products Grades and Sales Act and regulations provide for the inspection, grading, packing and marketing of farm products. The Act provides that any regulation under the Act may adopt, by reference, any grade, standard or grade names established under the C.A.P.S. Act and may require compliance with any such grade, standard or grade name so adopted (s. 2(4)). Inspectors and graders may be appointed and are given the powers to enter any premises, other than a dwelling, that they have reason to believe is used for the producing, marketing or processing of any farm product, and inspect the premises, products, packaging, equipment found therein; take samples, examine books and records and further inspect any carrier of farm products. Inspection is by the Fruit and Vegetable Section of the Quality Control Branch with focus on fresh fruits and vegetables as opposed to fruits and vegetables for pro-

cessing. The legislation is broadly drafted and would appear to have a great impact upon processors, but the Ministry indicated that if C.A.P.S. Act inspectors are involved, the Ministry is not, and Ministry graders only grade fruit and vegetables for processing if so requested by growers and producers or if there is a dispute as to grade between such growers and producers. Further, if a marketing board has established grades under a marketing plan, this supersedes the Farm Products Grades and Sales Act.

The Farm Products Marketing Act continues the Farm Products Marketing Board and forms the legislative basis for the regulation of agricultural marketing whereby Ontario farmers can sell their products collectively. Local producer boards may be established to administer commodity marketing plans. Powers considered necessary to the effective operation of each marketing plan are delegated to the boards by the Farm Products' Marketing Board. In general, the activities of the producer boards have the following objectives: ¹

1. to ensure adequate prices and incomes to producers of the regulated product,
2. to stabilize prices and incomes from the sale of that product by reducing severe fluctuations between high and low prices,
3. to arrange an adequate supply of quality product to meet the needs of the consuming public domestically and to fill export opportunities,
4. to improve efficiency in the marketing system,
5. to provide uniform terms and conditions of sale for that product as well as to ensure equity of payment to producers, and
6. to increase demand and expand markets through product promotion and market development.

The potential impact on processors of compulsory marketing legislation depends on the powers granted to the particular marketing board and how these powers are exercised. Processors of marketing board products must

¹ Factsheet Nos. 77-052, 78-058, Ministry of Agriculture and Food, Ontario.

have a licence from the commodity board they deal with.

The marketing plans affecting canned soup and juice processors may be analyzed by functions as follows: price negotiating boards, price setting boards and boards that regulate production and marketing quotas.

Plans that authorize commodity boards to negotiate prices are as follows:

(1) The Ontario Grape Growers' Marketing-for-Processing Plan (reg. 323): negotiates price with processors (who contract directly with growers, but pay through the board) and establishes the terms and conditions of sale.

(2) The Ontario Vegetable Growers' Marketing-for-Processing Plan (reg. 344): negotiates price, terms and conditions of sale of twelve vegetables grown for processing and regulates all agreements entered into between producers and processors.

(3) The Ontario Potato Growers' Marketing-for-Processing Plan (reg. 248): negotiates price, terms and conditions of sale annually of potatoes contracted for processing into soups (inter alia).

Plans that authorize boards to establish price are as follows:

(1) The Ontario Asparagus Growers' Marketing Plan (reg. 304): establishes prices, grades and sizes, terms and conditions for sale of asparagus for processing. Processors contract through the Board.

(2) The Ontario Tender Fruit Producers' Marketing Plan (reg. 134/79): establishes grade, price, terms and conditions of sale of tender fruit which is defined as peaches, pears, plums and sweet and sour cherries produced in Ontario. Processors contract directly with individual growers with payments made through the board.

(3) The Ontario Apple Marketing Plan (reg. 301): establishes prices and promotes apple sales by collection of licence fees from producers based upon acreage. The local board, known as the Ontario Apple Marketing Commission is composed of 23 members, of which four are processors.

(4) The Ontario Pork Producers' Marketing Plan (reg. 327): operates marketing facilities in order to establish price and sells the regulated product by open auction.

Plans that regulate production and marketing quotas (supply management plans) are as follows:

(1) The Ontario Chicken Producers' Marketing Plan (reg. 310): allots production quotas to producers and after consultation with processors, feed manufacturers and hatcheries, allocates marketing quotas to meet demands for broiler and roaster chickens. The board also establishes prices on a weekly basis.

(2) The Ontario Turkey Producers' Marketing Plan (reg. 342): participates in the Canadian Turkey Marketing Agency, established prices according to a cost-of-production formula and allots Ontario's share of the National Marketing quota to producers holding production quotas.

The Livestock Community Sales Act (Ministry of Agriculture and Food) provides for the establishment and standardization of procedures affecting the sale of cattle or carcasses. Licences are required and regulation 586/76 (Weighing of Carcasses) stipulates that either the C.A.P.S. Act or Farm Products Grades and Sales Act inspectors shall grade the beef.

The Plant Diseases Act (Ministry of Agriculture and Food) provides for licencing of nurseries (fruit trees) and inspection by provincially

appointed inspectors or municipally appointed inspectors. Regulation 677 lists plant diseases such as apple maggot, potato rot, and provides for inspection of nurseries, carriers of nursery produce and processors of same.

General financial regulation may be found under The Commodity Boards and Marketing Agencies Act, 1978 which allows designated commodity boards (Turkey producers, reg. 480/78) to fix levies or charges on producers/marketers to create a fund for price adjustments; The Crop Insurance Act which designates insurable crops (i.e., Tomato, reg. 158; Grape, reg. 551/72).

ii) Processing Level

Legislated regulation of canned soups and juices at the processing level, in terms of inspection services are as outlined in Table IV.3. It can be seen that federal jurisdiction is exclusive with regard to inspection of products destined for import/export and interprovincial trade, while there is an apparent overlap in jurisdiction with the province in the areas of consumer health, consumer information/protection and environmental controls. Municipal bodies enforce sanitation by-laws (and regulations under The Public Health Act (Ontario)) and Building Code regulations. Many of the statutes have multiple objectives, such as the Food and Drugs Act and C.A.P.S. Act, although in terms of the mandate of the government departments administering the legislation, a primary objective can be identified.¹ Much of the legislative overlap that is evident upon reading the legislation is mitigated due to formal and informal interdepartmental and federal/provincial agreements with regard to implementation of the regulations.

¹ Mandate and primary objectives are often unstated and are gleaned by the researchers through analysis of the legislation (preamble sometimes helpful) and discussions with Departmental officials.

The major federal legislation affecting the processing of the subject products are the Processed Fruit and Vegetable Regulations under the C.A.P.S. Act, the Food and Drugs Regulations under the Food and Drugs Act, the Meat Inspection Act/Regulations and the Consumer Packaging and Labelling Act/Regulations. Provincially, the major legislation are The Occupational Health and Safety Act, 1978 (reg. 658/79 - Industrial Establishments), The Environmental Protection Act, 1971 (regs. 15 - General; 229/74 - Sewage Systems), and The Public Health Act (reg. 972/75 - Food Premises). Since the legislation as drafted often has multiple purposes, rather than structure this analysis by type of regulation, reference to the types of regulation within each piece of legislation will be made, thus avoiding repetition. Reference to Table IV.3 may be made by the reader to obtain an overview of the regulatory matrix by regulation type/purpose.

a) Federal Regulation of Canned Soups and Canned Juices - Processing Level

The Processed Fruit and Vegetable Regulations under the C.A.P.S. Act establish grades and standards for designated canned fruits and vegetables; regulate import/export and interprovincial trade requirements for such standard products; regulate inspection procedures regarding these products; stipulate packaging, labelling and marking requirements for these standard products and other specified fruit and vegetable products and establish registration (sanitation, construction) requirements for fruit and vegetable processing plants. The Department of Agriculture enforces this legislation through the new Food Production and Inspection Branch (since October 19, 1979). Prior to that date, the Fruit and Vegetable Division Inspection Services attended to the inspection.

The primary objective of the Act and Regulations is the standardization of specified fruit and vegetable products and covers most canned juices (single strength) made from domestic fruits and vegetables, and general regulation of vegetable soups (without meat and fish/marine products added). The mandate of Agriculture Canada is to promote and protect Canadian agricultural producers/processors, and grades and standards legislation may be seen as fundamentally private interest regulation although clearly the consumer benefits by being able to purchase a readily identifiable standardized product. The legislation also contains consumer health/information/protection provisions, but in terms of classification, these must be seen as secondary.

Part I of the Act states that the Governor-in-Council may make regulations establishing grades (defined to include standards) with appropriate grade names for any class of agricultural products (defined to include, inter alia, livestock, poultry, fruits and vegetables and products thereof) and further prescribe terms and conditions of grading and inspection, and that the products be graded and inspected in a registered establishment. Packing and marking requirements may also be regulated. It is prohibited to falsely use a grade name or use a misleading designation.¹ Table 1 of Schedule 1 to

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The recent Supreme Court of Canada decision (December, 1979) of Dominion Stores v The Queen et. al. (30, 1980 N.R., 399.) questioned the constitutional validity of Part I of the C.A.P.S. Act with regard to the retail sale of graded fresh fruit where the transaction is a 'wholly intra-provincial transaction'. The court affirmed that trading transactions occurring entirely within the provinces are an exclusive provincial jurisdiction (ss.92(13), (16), B.N.A. Act) and decided, in narrow terms, that the grading program (Part I, s.3) has no validity in relation to purely intraprovincial transactions, and in that respect is ultra vires. The implications of this decision were discounted as not relevant to the grading program for processed fruits and vegetables by an official at Agriculture Canada but an interdepartmental Task Force has been established to consider the possible repercussions (and alternative solutions) arising out of this case and the Labatt's case (infra).

the Processed Fruit and Vegetables Regulations sets out the grades, grade names and standards thereof for canned fruits and vegetables while the standards for fruit and vegetables products are set out in Schedule 11. Section 6.1 states that a fruit or vegetable product for which a standard is set out in the Regulations shall contain only the ingredients set out in the standard prescribed for the product in Schedule 1 or 11. Section 7 of the regulations further states that all fruit and vegetable products designated in the Regulations and all articles used as component parts of ingredients thereof, shall be sound, clean, wholesome and fit for food; and comply with the provisions of the Food and Drugs Act and Regulations.

Grades are established under the Regulations for (inter alia) apple juice, concentrated apple juice, apple juice from concentrates, tomato juice, concentrated tomato juice, tomato juice cocktail (optional). For example, Canada Fancy and Canada Choice are grade names of apple juice, and the standards of identity and methods of determination of grade are outlined in Section 3 of Table 1 of Schedule 1.

Standards of identity are established in Schedule 11 for fruit juices (single strength), grape juice, concentrated grape juice, grape juice concentrate, grape juice from concentrate, and vegetable juices (inter alia). The standards are variable in detail; for example, "Fruit Juices" is a general standard which merely states that fruit juice shall be the unfermented liquid expressed from sound, clean, ripe fresh fruit, with or without the addition of sugar, invert sugar or dextrose, in dry form only, and shall be named to correspond to the fruit or fruits from which it is obtained.

The grape juice standard, on the other hand, is detailed as follows:

14. (1) "Grape Juice"

- (a) shall be the unfermented liquid expressed from sound, clean, ripe grapes;
- (b) shall be prepared without the addition of a sweetening ingredient;
- (c) shall be prepared without any concentration or dilution;
- (d) shall contain not less than 15 per cent by weight of soluble grape solids as determined by refractometer at 20 degrees Celsius, uncorrected for acidity;
- (e) shall have the characteristic colour, aroma and flavour of juice from the variety or varieties of grapes from which it was obtained;
- (f) may be prepared by blending juice from *vinifera* type grapes with juice from *labrusca* type grapes;
- (g) may contain a residue of up to 10 mg of sulphur dioxide per kg of grape juice where the grape juice contains juice obtained from *vinifera* type grapes;
- (h) may contain up to 70 mg of sulphur dioxide per kg of grape juice to prevent discolouration where the grape juice is a white grape juice and is so identified;
- (i) may be turbid or clear;
- (j) may, where labelled "sparkling" or "carbonated", be prepared with the addition of carbon dioxide under pressure;
- (k) may be prepared with the addition of ascorbic acid in order to increase the Vitamin C content; and

(1) shall, where labelled "Vitaminized" or "Vitamin C Added", contain not less than 18 mg of biologically active ascorbic acid per 100 ml of grape juice, determined by the Roe and Kuether modified method at any time within 12 months from the date of packing.

(2) For the purpose of this section and section 15, "labrusca type" means grapes of the *Vitis labrusca* species including the variety "Concord"; "vinifera type" means grapes of the *Vitis vinifera* species including the types known as the "French Hybrid varieties".

Since single-strength citrus juices are not named standardized juices but merely fall under the general standard, their compositional inspection is limited, and reconstituted citrus juices are not under the jurisdiction of the C.A.P.S. Act at all, but by default are the jurisdiction of Health and Welfare Canada under the Food and Drugs Act and the Department

of Consumer and Corporate Affairs under the Consumer Packaging and Labelling Act. Single strength citrus juices are imported into Canada but not manufactured here - these imported juices are inspected with regard to product quality.

Canned vegetable soups (without meat/fish products/wine) are not standardized or graded but are 'formulated' products and are thus inspected with regard to label and container specifications only, unless a health hazard is anticipated by the C.A.P.S. inspector.

Standard containers are prescribed for specified canned fruits and vegetables and are set out in Table I, Schedule III (containers for canned fruit and vegetable products for which grades are established) and Table III, Schedule III (standard containers for specified fruit and vegetable products). Vegetable soup container dimensions are regulated and fruit and vegetable juice containers are regulated, partly by name and partly by general designation. Soups with meat are not included and neither are lemon, lime or certain minor berry juices. Citrus juices are generally designated and regulated as to container dimensions.

Labelling requirements are regulated in Part IV of the Regulations with regard to all containers of food products prepared in a registered establishment. General requirements such as the name and address of the packer, common name of the product 'legibly and conspicuously declared', grade name, declaration of net quantity by volume, weight, or count, in Canadian and metric units as prescribed in Schedule V (size of lettering).

declaration of added sugar or sweetener and more. An example of a specific labelling requirement would be s.31(u) which requires apple juice labels which contain the words "Vitaminized" or "Vitamin C Added" to also state "contains not less than 35 mg of ascorbic acid per 100 ml" if ascorbic acid has been added to increase the vitamin content. The Food and Drug regulations must be complied with regarding declarations respecting colour added, preservatives and artificial flavour. The ingredients must be listed in descending order of their proportions if the product is a mixture of two or more fruits and vegetables. Official language requirements are set out, and import label specifications detailed. Section 44 requires that no label be used in a registered establishment unless the label has been approved by the Minister, and a packer is required to keep on the premises all approved labels for inspection. Labelling requirements are the consumer information/protection element in the Regulations.

Establishments processing agricultural products must be registered under Part II of the Regulations. Before receiving a certificate of registration, the premises will be inspected with regard to overall sanitation and construction requirements set out in Part II. Operating rules for a registered establishment (s. 17) also require ongoing sanitary conditions be maintained and that employees be free from disease (employees may be compelled to take medical examinations). The packer must designate one person to be responsible for maintaining sanitation requirements.

Part VI of the Regulations stipulates export and inter-provincial trade requirements of standard food products and vegetable soups and fruit and vegetable juices. The products must be prepared in registered establishments

and packed and marked as prescribed by the Regulations. Certificates of Export are required.

Import requirements are established in Part VII of the Regulations. Grades and standards of products for which these are established must be complied with, as well as packing and marking requirements for all products specified. Import Certificates must accompany these products and the importer must supply samples to the inspector as it is required. Citrus concentrates need not comply with these requirements, since they are not regulated under the Act and Regulations, although single-strength citrus juices must comply. Seizure, detention and forfeiture are the penalties to the importer if the product does not comply.

The powers of inspectors under the C.A.P.S. Act are outlined in Part III of the Act and are the standard powers found in most regulatory legislation. They give the inspector authority to enter any place where he reasonably believes there are agricultural products regulated by the Act or Regulations, and to examine such products or other things found there. He may take samples, inspect books and records, seize products suspected of being in violation of the Act or Regulations¹. The owner or person in charge is obliged to give the inspector all reasonable assistance.

The Food and Drugs Act and Food and Drugs Regulations are the overriding federal legislation with regard to consumer health protection and economic fraud in the manufacture and sale of foods (inter alia). Its jurisdiction

¹ See Appendix C for a five year summary of the number of processed fruit and vegetable products detained and released by the Fruit and Vegetable Division. There have been no prosecutions under the Processed Fruit and Vegetable Regulations with regard to these products - all violations have been satisfactorily dealt with by agreement between the parties.

extends to food offered for sale throughout Canada, both inter and intra-provincially, in contrast with the C.A.P.S. Act and Meat Inspection Act (Canada) which have merely inter-provincial and export/import jurisdiction. The Department of National Health and Welfare has primary responsibility for administration of the Act (under the Health Protection Branch) although the Department of Consumer and Corporate Affairs is responsible for enforcement and interpretation of the Act and Regulations in the area of economic fraud in foods, including labelling, advertising and packaging of foods.

The principal sections of the Act relating to food outline the two fundamental purposes of the Act:

4. No person shall sell an article of food that
(a) has in or upon it any poisonous or harmful substance;
(b) is unfit for human consumption;
(c) consists in whole or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance;
(d) is adulterated; or
(e) was manufactured, prepared, preserved, packaged or stored under unsanitary conditions. 1952-52, c. 38, s.4.

5. (1) No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

(2) An article of food that is not labelled or packaged as required by the regulations, or is labelled or packaged contrary to the regulations, shall be deemed to be labelled or packaged contrary to subsection (1). 1952-53, c. 38, s. 5.

6. Where a standard has been prescribed for a food, no person shall label, package, sell or advertise any article in such a way that it is likely to be mistaken for such food, unless the article complies with the prescribed standard. 1952-53, c. 38, s. 6¹.

¹ See next page for footnote.

7. No person shall manufacture, prepare, preserve, package or store for sale any food under unsanitary conditions. 1952-53, c.38, c.6.

Powers of inspectors are standard, with authority to enter any place where the inspector reasonably believes that articles to which the Act or Regulations apply are manufactured, prepared, preserved, packaged, or stored. He may examine such articles, take samples, examine equipment, documentation, labelling or advertising material, and cause forfeiture of same. All assistance must be given to the inspector. As with the Processed Fruit and Vegetable Regulations, there have been no prosecutions of fruit and vegetable processors under these regulations - all infractions have been settled through informal discussion.

Part B of the Regulations concerns food. Standards, packaging, labelling and advertising, permissible adulteration levels, and permissible

1 (From previous page.) The constitutional validity of ss.6 and 25(1)(c) (authority to pass regulations regarding prescription of standards of composition...) of the Food and Drugs Act was tested in the Supreme Court of Canada in Labatt Breweries of Canada Limited v. The Queen et. al., 30, 1980 N.R., 496. The appellant had marketed a 'light beer' in violation (so found) of the 'light beer' standard in that ss.6 and 25(1)(c) were ultra vires Parliament in so far as they related to malt liquors. This decision calls into question the validity of all prescribed standards under the Food and Drugs Regulations, referred to by the Court as 'legal recipes', and this, of course, would include processed fruit and vegetable products. Consumer and Corporate Affairs Canada, which brought the action and enforces the standards legislation under the Food and Drugs Regulations, believed, with the counsel of the Department of Justice, that the potential ramifications of the decision were serious enough to require the convening of an inter-departmental Task Force to examine the options available to the government, and to seek direction from the Cabinet. The responsible official at C.C.A. stated that the Department will continue to enforce the standards in the interim (although they will not undertake prosecutions), but that the Task Force Report may cause a re-arrangement of responsibilities and a re-definition of jurisdictions. Both the Labatt's and Dominion (supra) cases were considered by government officials to be 'landmark' decisions.

additives are all regulated.

Section B.01.042 states that when a standard for food is prescribed in Part B, the food shall contain only the ingredients included in the standard and in the proportions set out. Only permissible food additives in permissible quantities shall be allowed. Standards are established for all fruit juices generally and the following specific juices; (Division B.11) apple, tomato, grape, grapefruit, lemon, lime, orange, pineapple, concentrates, mixed juices, reconstituted or juice from concentrates. These standards are skeletal in relation to the C.A.P.S. Act standards other than with regard to citrus juices.

For example, grape juice composition is defined as follows:

- (a) shall be the fruit juice obtained from grapes;
- (b) shall have a specific gravity of not less than 1.040 and not more than 1.124 (20°C./20°C.);
- (c) shall contain, before the addition of a sweetening ingredient, in 100 millilitres measured at a temperature of 20°C,
 - (i) not less than 0.20 gram and not more than 0.55 gram of ash, and,
 - (ii) not less than 0.015 gram and not more than 0.070 gram of phosphoric acid calculated as phosphorous pentoxide; and
- (d) may contain citric acid, a sweetening ingredient in dry form, a Class II preservative, and vitamin C.

This standard permits a sweetening ingredient, while the C.A.P.S. Act standard does not. If a standard is not prescribed under the Regulations, the food is still restricted to use of permissible additives (B.01.043) (i.e. "caramel" is permitted in or upon concentrated fruit juice - maximum level of use is "good manufacturing practice").

Division 15 regulates adulteration of food and permissible levels of adulterants (i.e. arsenic; 0.2 p.p.m. for apple juice).

Part B, Division 3 regulates the vitamin, mineral and amino acid content and advertising of that content (i.e. vitamin C may be added to named juices).

Canned soups are not specifically regulated although meat and meat by-products are defined as adulterated if certain portions of the animal are present or contain preservatives or colour other than caramel (affecting canned soups with meat) are used.

Detailed labelling requirements outline that the information on the label must be clear and readily discernible (A.01.016); must be applied to the container (B.01.004), and not on the bottom (.005); common name must be on the principal display panel (.006); list of ingredients in order of proportion (.009) alternate list of ingredients (.011); bilingual requirements (.012(2)), and so on.

With regard to importation of any food, such food is subject to inspection and relabelling and must not constitute a violation of the Act or Regulations (ss.A.01.040,044).

The Meat Inspection Act (Canada) and Meat Inspection Regulations have major impact on canned soups containing meat products (which includes chicken, turkey). Section 4 of the Regulations states that a food product

containing meat or a meat by-product is prescribed to be a meat product for the purposes of the Act, and therefore plants that process soup containing meat must be registered establishments complying with sanitation and construction requirements as set out in the Regulations. Ongoing sanitation and maintenance is regulated and the meat product must be inspected as described in sections 56, 57:

56. Every owner of a registered establishment shall ensure that no meat product in the establishment is approved for human food unless it meets the requirements prescribed by this Part.
57. (1) No meat product shall be approved for human food unless
 - (a) the animal from which the meat product was derived was inspected by an inspector in accordance with these Regulations;
 - (b) the animal from which the meat product was derived was slaughtered and dressed in accordance with these Regulations and its salivary glands have been removed;
 - (c) the meat product was inspected by an inspector in accordance with these Regulations;
 - (d) the meat product conforms to the standards prescribed by this Part;
 - (e) the meat product is wholesome, unadulterated and not inedible;
 - (f) the meat product was not processed in a place other than a registered establishment that
 - (i) complied with, and
 - (ii) was operated in accordance with these Regulations.

The powers of inspectors are standard (s. 7, Act). Packaging and labelling are prescribed in Parts VIII and XI of the Regulations. Labels must be marked with the common name of the meat product, net quantity, ingredients and components, manufacturer's name and address, inspection legend and method of manufacture (s. 87). Bilingual requirements, size of lettering, net quantity declarations (soup containing meat products must be in metric units - ss. 97, 98) are all prescribed. The inspection legend shall only be placed on the label if all requirements of the regulations are complied with.

Imports of meat products must comply with the Regulations regarding meat inspection, packaging and labelling, and the importer must produce a certificate of an official veterinarian of the country of origin stating that the meat product complies with the Regulations. The system of inspection in the country of origin must be equivalent to that established by the regulations (s. 110). Canadian customs will require a copy of the veterinary certificate and then place the imported product under a "hold order" which will be removed after inspection by the Food Production and Inspection Branch at the processing plant.

The Consumer Packaging and Labelling Act and Regulations are under the jurisdiction of the Department of Consumer and Corporate Affairs. Field Operations of the Consumer Standards Directorate conduct the field inspection pertinent to the Act and Regulations in conjunction with the Food Production and Inspection Branch of Agriculture Canada (by agreement to be discussed in a later chapter). The purpose of the Act is consumer fraud protection, and section 3 states that the provisions of the Act are applicable to any product notwithstanding any other Act of the Parliament of Canada. Jurisdiction over the packaging, labelling and advertising of all canned soups and juices is therefore found in this Act from import to retail shelf.

Net quantity representations on the label and in advertising of any prepackaged product must be in accordance with the Act and Regulations (ss. 4,5) and no dealer shall sell, import or advertise any prepackaged product that has applied to it a label that contains any false or misleading

representation regarding that product (s. 7). Containers must not be manufactured, constructed, filled or displayed in such a manner that the consumer might reasonably be misled with regard to quality or quantity of the product. Powers of inspections are standard, and jurisdiction covers the premises of any importer, retailer, manufacturer or processor of any prepackaged product.

Labelling requirements under the Act and Regulations cover bilingual specifications as indicated in the Official Languages Act, placement of information on principal display panel, net quantity declaration and manner of declaration (i.e. canned soups and juices must be by volume), identification of product and manufacturer/importer, units of measurement, size or type. Tolerances for net quantity measurements are established under Schedule I to the Regulations; sampling procedures under Schedule II. Inspections under this Act focus on labelling and net content of the product with analysis directed at detection of economic fraud. Product quality or appearance is not of concern unless there is a misrepresentation.

The Combines Investigations Act, also administered by the Department of Consumer and Corporate Affairs (Marketing Practices Branch of the Bureau of Competition Policy), regulates misleading advertising (inter alia) stating in section 36 that it is an offence to make a representation to the public that is misleading in a material respect. A representation expressed on a label

or container is a representation under s. 36, and general impression as well as literal meaning is to be considered in determining whether the representation is false or misleading in a material way.

The Fish Inspection Act (Canada Department of Fisheries and Oceans) and Regulations could have an impact on canned soup processors who manufacture a soup with a fish or marine product in it. The object of the Act is to set grades and standards for fish products and regulate inter-provincial and import/export trade of fish products. The Act and Regulations are structured in a similar manner to the Meat Inspection Act (Canada), stating that all fish and their products are subject to inspection-grades, standards, processing, labelling are all regulated, and plants handling fish products must comply with sanitation and construction requirements in order to be registered under the Act. In practice, soup processors are not registered under the Act and the Fisheries department does not inspect (to be discussed in a later chapter).

The Meat and Canned Foods Act (Department of Agriculture) provides for regulation of fruit, vegetable, meat and fish canning, with focus on sanitation of premises, product quality and labelling. However, no regulations subsist under the Act and the Department has recommended its repeal.

Import, inter-provincial trade and export regulation is found under several Acts and Regulations. The Food and Drug Regulations, C.A.P.S. Regulations, Meat Inspection Regulations, Consumer Packaging and Labelling Regulations

have been considered. The Customs Act (Department of National Revenue) and regulations (approx. 100) require duty to be paid on certain imported goods (i.e. citrus fruit concentrate). Valuation of imports by customs officers is at fair market value although this may be changing with current G.A.T.T. talks. The Customs Tariff (Department of National Revenue) lists all imported food products on the basis of British Preferred Tariff, Most Favoured National Tariff and General Tariff. The rates of custom duty and goods prohibited entry may be found in the schedules to this Act (i.e. animals, agricultural products, fish and provisions - Schedule A, Group 1). These tariffs are of great concern to the processed fruit and vegetable industry in general, with specific commodities such as canned tomatoes and canned mushrooms being of particular importance due to international competition. With regard to the subject products, only the tariff on fruit juice concentrate was of concern to the Canadian Food Processors Association, who stated that with the current Canadian dollar, the rates were sufficient tariff protection to the industry, but should that situation change, the rate would have to be re-considered. The Plant Quarantine Act and Regulations (Department of Agriculture) are phytosanitary regulation, preventing entry into Canada of specified agricultural products in order to protect Canadian producers from pests indigenous to the exporting country.

The Anti-Dumping Act (Department of National Revenue) imposes an anti-dumping duty on dumped goods entering Canada in respect of which the Anti-Dumping Tribunal has made an Order. The basis of the Order is that the dumping has caused or will cause material injury to production in Canada of like goods

in Canada (s.3). Goods are 'dumped' if their normal value exceeds the export price, and the margin of dumping is the amount by which that value exceeds the export price (s.8). An example that would be relevant to the canned juice processing industry would be that of the dumping of apple concentrate from Europe approximately eight years ago. Duties were levied at that time. As well, in 1978, the Anti-Dumping Tribunal found that the domestic canned whole tomato processors were being injured by dumping from Taiwan and, as a result, anti-dumping duties were levied.

Under the Export and Import Permits Act (Department of Industry, Trade and Commerce), the Governor in Council may establish an Import Control List to restrict the importation of a product, the quantities of which are fixed under the Farm Products Marketing Agencies Act, or the prices of which are supported under such acts as the Agricultural Stabilization Act and Fisheries Prices Support Act (inter alia) (s. 5). The Import Control List (reg. 604) controls the import of such items as butter, eggs, turkeys and beef, and Import Permits are required to import items on the list. In recent years, there have been discussions with regard to a special Meat Import Act, but this has yet to be tabled in the House.

Environmental protection legislation relevant to canned soup and juice processing is found under the Environmental Contaminants Act, Canada Water Act and Fisheries Act. In Ontario, these Acts are enforced almost exclusively by the Ontario Ministry of the Environment, through Federal/Provincial Accord (to be discussed in a later chapter).

The Environmental Contaminants Act (Department of the Environment) has the stated objective of protection of human health and the environment from substances that contaminate the environment. Section 3 states that where the Minister of the Environment or National Health and Welfare suspects that there is a substance entering the environment that may cause danger to humans or the environment, he may cause data to be collected and an investigation conducted into the use and effects of the substance. Agreements with provincial governments are provided for regarding the collection of data and the investigations. Inspectors may be appointed and given powers to enter any establishment where they feel there may be a contravention of the Act. The regulations to this Act restrict specific chemicals, not likely to be found in food processing plants, and the regulations, as currently enacted, are of no particular significance to the subject processors.

The Canada Water Act (Department of the Environment) establishes water quality management areas and water resource management programs. Federal/Provincial arrangements are provided for and the Governor in Council may make regulations prescribing designated wastes and nutrients to be restricted. Inspectors may be appointed and are to be given standard inspection powers regarding any place that they have reason to believe is in violation of the Act or Regulations. The only regulation under this Act is the Phosphorous Control Regulation which is not relevant to subject processors.

The Fisheries Act (Department of Fisheries and Oceans) contains new provisions (ss. 31-33) which state generally that no one shall carry on any work or undertaking that results in the harmful alternation, disruption or

destruction of fish habitats, or deposit or permit the deposit of deleterious substances into any water frequented by fish. Inspection procedures are outlined and reporting requirements of the person carrying on the potentially damaging work. Relevant regulations are the Meat and Poultry Products Plant Liquid Effluent Regulations, and the Potato Processing Plant Liquid Effluent Regulations, both of which apply to new (after March 31, 1977) and expanded plants. Deleterious substances are defined, with authorized daily deposits stated. The owners' duties to collect and analyze samples of deposits, to keep records and to report to the Department are set out.

General regulatory legislation involving inspection services can be found under the Weights and Measures Act, Gas Inspection Act, and Electricity Inspection Act. These Acts have an inspection impact on the subject processors, but are not specifically important to this industry.

The Weights and Measures Act and Regulations (Department of Consumer and Corporate Affairs) are administered by the Standards Directorate, Bureau of Consumer Affairs, Field Operations, Legal Metrology Division. This is consumer protection legislation and inspections take place at all levels of trade. Measuring devices must be periodically inspected by an inspector appointed under the Act, who certifies that the device meets the requirements of the Act and regulations. The device must be sealed by the inspector to prevent adjustments and it is an offence to tamper with seals. The Regulations specify particular devices must be used to measure specific products, and stipulates tolerances and sampling techniques to be applied.

The Electricity Inspection Act and Electricity Meter Regulations (Department of Consumer and Corporate Affairs) require that electrical meters

be approved, verified and sealed by inspectors prior to use by the purchaser of electrical power. The Gas Inspection Act and Gas Meter Regulations (Department of Consumer and Corporate Affairs) also require that gas meters be approved, verified and sealed by the inspector before installation. These regulations (Electricity and Gas) are currently being amended (Bill C-26) so that utility companies will do the inspections in the future.

Other general federal legislation affecting fruit and vegetable processors include the Corporations and Labour Unions Returns Act which requires filing by corporations and unions of corporate/union details and financial statements; Canada Pension Plan which regulates the contribution by the employer/employee regarding pensionable employment; Unemployment Insurance Act which regulates the payment of unemployment insurance premiums by the employer/employee; Immigration Act, 1976 which regulates seasonal employment of immigrants; Statistics Act which can require information to be given by the processor to StatsCanada researchers; Trademarks Acts; Income Tax Act; Canada Business Corporations Act.

b) Provincial (Ontario) Regulation of Canned Soups and Canned Juices - Processing Level

Major provincial (Ontario) legislation affecting canned soups and juices is, as stated, in the regulation of consumer health, job safety and working conditions, and environmental protection. Product quality (grades, standards) and consumer information/protection regulation is within the provincial jurisdiction, but since the subject products are traded inter-provincially, such legislation is not enforced in subject processing plants.¹

^{1/} In light of the Labatt's decision (supra), it is possible that this situation could change with regard to grades and standards legislation.

See Table IV.2 to determine the specificity of the provincial legislation to the subject industry.

The Public Health Act (Ministry of Health) is the major provincial consumer health protection legislation in Ontario. It is administered by Local Health Units (autonomous municipal/regional bodies) in consultation with the Community Health Protection Division of the Ministry. Inspectors are appointed under the Act or employed by Local Boards of Health, and may enter any premises to ensure that the provisions of the Act or Regulations are complied with. The Minister may make regulations respecting the following (inter alia):

- 38. prescribing standards for the construction, operation and maintenance of premises where food or drink for human consumption is manufactured, processed or handled;
- 39. regulating or restricting the manufacturing, processing, preparing, selling or offering for sale of any food or drink for human consumption; R.S.O. 1970, c. 377, s. 6, pars. 34-39; 1972, c. 80, s. 1 (1).
- 39a. requiring persons who operate or are employed in premises where food or drink for human consumption is manufactured, processed or handled to comply with directions that may be issued by medical officers of health or undergo such medical or other tests as are necessary to ensure the sanitary handling of food and drink;
- 39b. authorizing medical officers of health or public health inspectors for the purpose of this Act or the regulations to examine and take samples of food or drink, to examine or require the examination of equipment and utensils, to take samples from equipment and utensils for laboratory examination, and to prescribe and test temperatures of food that is being processed, transported, stored, displayed or offered for sale;

The Medical Officer of Health (MOH) appointed by the Municipality may make periodic inspections of food processing plants (inter alia), and, if as a result of his inspection he determines that such building, equipment,

machinery or any other matter of thing is in a filthy or unclean state, or unsanitary condition, or that the workers are incompetent or unclean, he may close the plant or limit production until the problem is solved (s. 103). Section 107 requires that fruit juice manufacturers obtain a permit before commencing manufacture from the MOH and local board of health.

The "Food Premises" Regulation under the Public Health Act (Reg.972/75) details construction requirements (focus on sanitation) for food processing plants, and regulates lighting and ventilation of the processing areas; equipment specification, sanitary food handling requirements, maintenance of the equipment; personnel cleanliness; sanitary facilities generally and for employees (i.e. number of toilets and wash basins per number of employees); and sanitary requirements for food service facilities (i.e. plant cafeteria).

Section 64 (Regs) states that the MOH or public health inspector may take samples of food or drink for laboratory testing, test equipment for bacteria, and the temperature of food being processed. The operator shall be advised in writing of any non compliance with this regulation.

The Meat Inspection Act and Fish Inspection Act of Ontario provide for regulation of sanitary conditions in plants processing meat and fish products (canned soups containing meat/fish), but since the subject product is an interprovincial trade item and therefore under federal inspection, the Ontario Ministries do not inspect under these Acts, but defer to their federal counterparts.

Regulation of job safety and working conditions is found primarily under the Occupational Health and Safety Act, 1978 (Ministry of Labour) and Industrial Establishments Regulations (658/79). The provisions of the Act and Regulations

are administered jointly by the employers, employees, and inspectors from the Industrial Health and Safety Branch. A joint health and safety committee shall be established by the employer to be made up of workers (selected by peers) and management (if so desired) (s.8). One worker member of the committee shall inspect the physical condition of the work place not more than once a month. Situations of hazard are to be identified, and recommendations made to the employer and workers regarding the establishment, maintenance and monitoring of programs, measures, and procedures respecting the health and safety of the workers. The worker members of the committee are to be paid for time spent on their duties under the Act and Regulations (s.8 12)). The employer must supply equipment, materials, protective devices and an occupational health service as prescribed (ss. 14,15), and the employees must use the protective devices, work responsibly so as not to endanger themselves or other workers and report potential hazards to their employer or supervisor (s. 17). Workers may refuse to work if they believe that the working conditions are hazardous (s. 23) and an investigation shall be immediately conducted.

Part VIII of the Act outlines the Inspector's powers which include entry in or upon any workplace at any time without warrant or notice, testing of equipment, examination of building and equipment specifications, questioning of workers and employers. Regulation 658/79 (Industrial Establishments) regulates construction safety, monthly inspection of equipment, clearances between equipment, lighting, protective equipment to be worn by workers (who are to be trained in their use), maintenance and repairs. Section 121 states that the Building Code Act, 1974 applies to all industrial establishments except as prescribed in Part II of the Regulations. Parts II and III of this

regulation stipulates temperature of the workplace, the number of washrooms, toilets, wash basins per number of employees, protective clothing and permissible noise levels. There is some overlap here with the Food Premises Regulations under the Public Health Act, but the Industrial Establishments Regulations may be read as "general" legislation with an equal impact on all industry unlike the former, which is food specific.

The Building Code Act, 1974 (Ministry of Consumer and Commercial Relations) and Building Code (Regs.) are enforced by the municipalities and counties. No construction or demolition is permitted in the province without a building permit (s.5) and inspectors must approve construction. The Building Code is a comprehensive regulation (several hundred pages) detailing construction requirements that must be complied with. The Building Code Branch of the Ministry only inspects in Northern Ontario and otherwise has a policy and consulting function.

The Elevators and Lifts Act (Ministry of Consumer and Commercial Relations) and Regulations require an annual licence for every elevator or lifting device (unless exempt). The Elevating Devices Branch inspects such regulated elevators once a year unless there are problems. The inspectors have standard powers and can close down the lift if considered unsafe. Installation and alteration must be approved, and the Regulations (238/70) stipulate use, operation and maintenance requirements be complied with by the owner, in order to ensure worker safety.

The Boilers and Pressure Vessels Act (Ministry of Consumer and Commercial Relations) and Regulations (75/70), also worker safety legislation, require annual and periodic inspections of boilers and other pressure vessels

and provide installation and manufacturing specifications. A preliminary inspection will be made by the Boiler and Pressure Vessels Inspection Branch, but if the equipment is insured (as it invariably is) then the insurance company has the responsibility to make periodic inspections and must report to the Ministry.

The Electrical Safety Code (300 pages) under the Power Corporation Act (Ministry of Energy) provides for the inspection of electrical installations prior to and during construction, as well as after completion. Connection authorization must be obtained from the inspection department before the power is turned on. Detailed specifications are provided for the Code and plan and specifications must be filed by the contractor before commencement of work. Inspection powers are standard.

The Employment Standards Act, 1974 (Ministry of Labour) and Regulations regulates contracts of employment generally in Ontario with regard to: inter alia, minimum wages, hours of work, overtime, holiday and vacation pay, termination of employment. Inspectors (Employment Standards Officers) may enter premises to ensure that the Regulations are being complied with but where there is a collective agreement, the Employment Standards Branch rarely exercises its right to inspect (only has 74 inspectors in the province).

The Workmen's Compensation Act (Ministry of Labour) and Regulations provide a compensation plan for injured workers and inspection services regarding safety of equipment and compliance with safeguards prescribed by law. Regulation 833 regulates first aid requirements to be supplied by the employer on the basis of the number of workers in the plant. For example, if there are 15-200 workmen, the employer must provide a stretcher, box with first aid manual, bandages etc. and there must be a holder of a St. John's Ambulance Certificate on hand.

Environmental protection legislation in Ontario is highly developed, and as a result, the provincial Ministry of the Environment enforces the federal as well as provincial legislation in this area (by Federal/Provincial Accord). The Environmental Protection Act, 1971 (Ministry of the Environment) and Regulations state that no one shall discharge into the natural environment any contaminant in excess of that prescribed by the Regulations (s.5). Control or Stop Orders may be issued against the person responsible for the source of contaminant (ss. 6,7). A person responsible for a source of contaminant may submit to the Director a program to prevent or reduce and control the emission or discharge into the natural environment and a certificate of approval is required from the Ministry for the operation of a waste management system or sewage system (ss. 30,57).

Inspection services are provided by provincial officers appointed under the Act, with standard powers of entry, testing, and inquiry, and the Ontario Provincial Police may be called in to assist.

Regulations under the Act establish an air pollution index, visible emission charts (Reg. 15); ambient air criteria (Reg. 872/74); regulate sewage systems (Reg. 229/74) and waste disposal sites and waste management systems (Reg. 824). If the processing plant discharges into a municipal sewer, then the provincial inspectors only become involved upon request of the municipality. Municipalities also may pass by-laws with regard to noise pollution (s.92a, Act).

The Ontario Water Resources Act (Ministry of the Environment) and Regulations have within their jurisdiction supervision of all surface and ground waters in Ontario (s. 30), and injunction proceedings may be taken to prevent pollution of water. Reg. 674/70 under this Act is a Plumbing Code, to be enforced by municipal inspectors. Inspectors from the Ministry periodically inspect for air, water, noise, solid waste pollution (same inspector) on a sector priority basis. The food industry is generally a low priority.

Product quality regulation (grades, standards) may be found under The Fish Inspection Act, The Meat Inspection Act, The Farm Products Grades and Sales Act but this legislation is not enforced with regard to inter-provincial trade items such as canned soups and juices. Under Reg. 293 of The Farm Products Grades and Sales Act provincial graders only become involved with the subject products upon request of the growers and processors, or in case of dispute.

Provincial consumer information/protection legislation may be found under The Business Practices Act (Ministry of Consumer and Commercial Relations) which in Section 2 defines an unfair practice as including a false, misleading or deceptive consumer representation regarding ingredients or qualities of goods, standard or grade of goods, or status of the supplier of goods. Such practices are an offence and the Director may appoint an investigator to look into any matter under the jurisdiction of the Act.

General provincial legislation affecting the subject processors include the Ontario Human Rights Code, legislation protecting civil rights; The Discriminatory Business Practices Act, anti-boycott legislation; The Labour Relations Act, general regulation of labour relations; and corporate and financial statutes such as The Business Corporations Act, Corporate Information Act, Income Tax Act (Ontario).

(iii) Distribution

Distribution of canned soups and canned juices is not of particular regulatory interest, since the products are sealed, do not pose a health hazard, and can be treated without any particular care. The products are shipped directly to large retailers or to wholesalers to be re-sold to smaller retailers. Transportation legislation is of general relevance, such as the Highway Traffic Act (Ontario) which specifies equipment required on all

vehicles, weight, load and size restrictions; The Public Commercial Vehicles Act (Ontario) which requires an operating licence and commercial vehicle licence to operate a public commercial vehicle on a highway for transport of goods of any other person; Motor Vehicle Transport Act (Federal) which allows the provinces to regulate their own tariffs and tolls within the province, even though the transport concerns interprovincial or international trade; National Transportation Act, Railway Act, Aeronautics Act, all federal acts of general application.

Section 9 of the Processed Fruit and Vegetable Regulations (C.A.P.S. Act) states that no person shall ship or transport any fruit or vegetable product for which grades are established under the Regulations unless the proper grade name is applied to the container (unless authorized by Regulation or the inspector). The Farm Products Grades and Sales Act requires in s. 48(4) of Regulation 293 that, inter alia, no person shall transport or ship apple juice, concentrated apple juice, tomato juice or concentrated tomato juice if processed in Ontario, unless the container is marked "Canada Fancy" or "Canada Choice". The Meat Inspection Regulations (Canada) in section 26 state that no meat product (includes soup with meat, poultry) shall be transferred from a registered establishment to any carrier unless the carrier is clean and sanitary, and protection against contamination is adequate. This miscellaneous grouping of legislation indicates a haphazard and somewhat disinterested attitude towards the distribution of the subject products.

(iv) Retail

Canned soups and canned juices are a low priority item at retail due to their sealed quality and the fact that they are highly regulated at the processing level.

The Department of Consumer and Corporate Affairs enforces the Consumer Packaging and Labelling Act at the retail level with regard to canned soups and juices but do not actively inspect such products due to a higher yield potential in less regulated products. This department also enforces the Weights and Measures Act at retail, with regard to testing of scales and metrification, and the Combines Investigations Act. Part V of the Act (misleading advertising) is particularly relevant at the retail level.

The consumer health provisions of the Food and Drugs Act apply at the retail as at all other levels of production. Section 4 prohibits the sale of adulterated, unsanitary food, or food prepared under unsanitary conditions while section 29 provides a defense to the retailer of "want of knowledge". Under the Public Health Act, retail food establishments are subject to inspection by the Medical Officer of Health or other inspector with regard to the products for sale and the sanitation of the premises.

VI OBSERVATIONS AND ISSUES REGARDING REGULATIONS

As indicated by the preceeding analysis, the immediate observation that one can make regarding regulation of the processed fruit and vegetable industry (canned soups and juices) is that there is a staggering volume of legislation that industry must contend with. Many processors are large corporations and have personnel whose major objective is to keep abreast of regulatory changes, ensure corporate compliance, and make industry representations to the appropriate government with regard to desired regulation or deregulation.

These corporations have a dual responsibility; to be good corporate citizens and at the same time provide a fair return on capital to their shareholders. They would agree that regulations which deal with public health, safety, and economic fraud are essential both to business and to consumers. They are concerned, however, with legislative overlap which is subject to conflicting interpretations and results in an overlap in implementation. A persistent theme is the high cost of inspection at the plant level created by ill defined jurisdictions inter-departmentally and interprovincially. A differential inspection of competing products at the importing and processing levels is another major complaint of canned soup and juice processors.

There is no question that there is legislative overlap and inconsistency. Focusing on food legislation pertaining to the subject products, three basic elements can be identified:

1. Grading and standards;
2. Plant and personal sanitation and processing standards;
3. Packaging, labelling and advertising.

At the federal level, both the Food and Drug Regulations and Processed Fruit and Vegetable Regulations (C.A.P.S. Act) contain standards for fruit and vegetable juices. Some of these standards are inconsistent, for example, grape juice (see Chapter V-processing level, federal). Both the Food and Drugs Act and the C.A.P.S. Act state that the standards under that particular Act must be complied with. When the discrepancy in the grape juice standard was pointed out to an official in the Food Production and Inspection Branch, Department of Agriculture (C.A.P.S. Act), he stated that since the standard under the Processed Fruit and Vegetable Regulations was more specific, the processor would know that it was a standard to follow, and that the Food and Drugs standards were written to allow for products already on the market. He further commented that one must be able to read between the lines, and that the Food and Drugs standard for grape juice includes frozen products (not stated in the standard). The comment of an official of the H.P.B., which enforces the Food and Drugs Regulations, was that their mandate was the protection of health and safety, and that they were not interested in grade or visual appearance of the product. Their inspection focus would be on the general sanitary condition of the processing plant, the capability of the equipment to produce a satisfactory (healthy) product, legal formulae, and reasonable purchase

specifications. He further stated that it was within the Health Protection Branch's jurisdiction to take samples of fruit juices to test composition from the standpoint of technological justification and safety, but that they would rarely do so since they were high acid products and, therefore a low health risk. They would be more interested in canned soups since they are a low acid product.

Treatment of single strength and reconstituted citrus juices was considered in Chapter V - Processing, but it is noteworthy that although under the Food and Drugs Act all of these juices are under the jurisdiction of the Health Protection Branch inspectors, they are rarely subjected to compositional testing. These products are competing with domestic canned juices that are subjected to regular inspection with the costs attendant to such inspection.

Canned soups must be considered in terms of vegetable soups without meat, those containing meat and those containing fish or wine. None are standard products! All are under the jurisdiction of the Department of Health and Welfare (H.P.B.) with regard to health hazards (ingredients, additives, etc.). Vegetable soups without meat prior to November 19, 1979, were regulated by the Fruit and Vegetable Division of Agriculture Canada regarding product standards and specific container sizes, while the Health of Animals Branch under the Meat Inspection Act regulated meat-containing soups with regard to raw and finished product quality, formulae, and processing methods. Since November 19, 1979, the Health

of Animals Branch and Fruit and Vegetable Division have been combined under the new Food Production and Inspection Branch. This reflects a rationalization of food inspection activities under Agriculture Canada's jurisdiction, and while the effect of this rationalization is not yet in evidence at the plant level, the seeds have been sown by Agriculture Canada for a more coordinated treatment of such food products. Soups containing fish products are regulated under the Fish Inspection Regulations (Fish Inspection Act - federal), but are inspected by the Health of Animals Branch (by informal agreement - to be discussed later) and soups containing wine are under the jurisdiction of the Health Protection Branch.

With regard to plant and personnel sanitation, the Food and Drugs Act, C.A.P.S. Act, Meat Inspection Act (Canada), Fish Inspection Act (Canada), Public Health Act (Ontario), Meat Inspection Act (Ontario), Fish Inspection Act (Ontario) all contain plant sanitation provisions (for the most part to be complied with as a prerequisite to licencing), personnel health and cleanliness sections, and equipment specifications. These overlapping provisions are often identical, and create an unnecessary paper burden for the processors. In most cases, this redundancy is merely an irritation to processors, but in certain cases, it can create costs. For example, Meat Inspection Act/Regulations construction requirements are more stringent (and costly) than those under the Processed Fruit and Vegetable Regulations. Processors with a multi-product line including both meat and vegetable products must comply with the Meat Inspection Act to be registered under that Act. Even areas of the plant where meat products are not present must follow the more stringent requirements, ostensibly since such products could be handled in those areas

at a later date. Multiplicity of licencing is not generally a problem since a plant registered under the Federal Meat Inspection Act will not generally be required to be licenced under the other Acts.

Packaging, labelling and advertising provisions are found in all these Acts, as well as the Consumer Packaging and Labelling Act, which states that it is the overriding Act insofar as the subjects dealt with therein are concerned. An example of this jurisdictional overlap at the federal level would be with regard to canned soups containing meat products. The new Food Production and Inspection Branch of Agriculture Canada maintains resident inspectors in meat processing plants and must approve all labels in conformity with the Meat Inspection Act. These labels are also subject to the Consumer Packaging and Labelling Act, which is declared to take precedence in consumer labelling matters, and also to the Food and Drugs Regulations (Dept. of National Health and Welfare), which is enforced by the Department of Consumer and Corporate Affairs respecting labelling matters. The processor must obtain approval of the label from Agriculture Canada before use, while Consumer and Corporate Affairs will only render an opinion. The potential problems are self-evident! Labels for vegetable soups and standard canned juices under the C.A.P.S. Act must be approved by Agriculture Canada (still the Fruit and Vegetable Division) while other juice products and soups containing fish or wine labels are subject to Consumer and Corporate Affairs scrutiny.

The Combines Investigations Act and Business Practices Act (Ontario) are general legislation and deal with false advertising and unfair business practices. These Acts do not have an inspection impact at the processing

level but are more relevant to retail sales.

Environmental legislation is a new regulatory field and both Ontario and the federal government have been active in the creation of regulatory law. The Fisheries Act, Environmental Contaminants Act, and Canada Water Act federally legislate air and water pollution control, while the Ontario government regulates the same controls under the Environmental Protection Act, 1971 and Water Resources Act.

From the above, it can clearly be seen that there is substantial overlap in the drafting of Acts and Regulations. Implementation, however, may be a different matter. When questioned about legislative overlap, officials in all government departments stated that while there may be some inspection overlap at plant level, the problem was more perceived than real. They stated that through formal and informal agreements, arrangements, or simple understandings between departments and federal and provincial governments, a rationalization of the effect of legislation was obtained.

Examples of formal agreements are as follows:

- 1) In 1969, by agreement between the Department of National Health and Welfare and Consumer and Corporate Affairs, certain responsibilities under the Food and Drugs Act were transferred to Consumer and Corporate Affairs. This department, under its Bureau of Consumer Affairs, became responsible for the labelling, advertising and packaging (other than components of packaging materials) of foods under the authority of the Food and Drugs Act and Regulations; the interpretation of Food and Drugs Regulations relating to economic fraud; and the inspection of foods at the retail level (inter alia). The Food and Drug Directorate is responsible for the composition of foods from

the standpoint of technological justification and safety including food ingredients, food additives, the addition of vitamins, minerals, amino acids to foods, pesticide residue tolerances; the enforcement and interpretation of provisions relating to health hazard aspects of foods; safety of packaging materials, disinfectants, and sanitizers used in food processing plant; the inspection of food processing plants, warehouses and storage and distribution facilities. This latter responsibility was later transferred to Consumer and Corporate Affairs regarding composition and labelling relative to economic fraud. The official contacted at Consumer and Corporate Affairs stated, however, that if a processing plant was under C.A.P.S. Act jurisdiction, then Agriculture Canada would carry out the inspections. This is an example of "understanding" between departments, and indicates a spirit of cooperation between departments.

2) In 1969, a memorandum of agreement between the Departments of Agriculture and Consumer and Corporate Affairs relative to retail inspection of agricultural products was signed. This agreement delegates to the Department of Agriculture responsibility for the inspection of agricultural food products at all levels of manufacture and trade other than retail, and the development and enforcement of all regulations, grades and other standards that apply to agricultural food products at all levels other than retail. Consumer and Corporate Affairs has responsibility for these matters at the retail level. The departments further agreed to consult each other regarding changes to the regulations that would affect the others jurisdiction, and enforcement of those regulations (prosecutions). Sampling and testing programs were to be developed jointly and relevant information regarding agricultural issues shared.

3) In 1974, an information letter was sent to food manufacturers and consumer associations by the Departments of Agriculture, National Health and Welfare, Consumer and Corporate Affairs and Environment with regard to compliance with the new Consumer Packaging and Labelling Regulations. It was basically stated that the Consumer Packaging and Labelling Act takes precedence over all other Acts in the matters dealt with therein, and that the departments enforcing existing Acts dealing with those subjects would continue to do so.

4) In 1975, the Canada-Ontario Accord for the Protection and Enhancement of Environmental Quality was signed by the respective Ministers of the Environment. This Accord recognizes that both Canada and the provinces have jurisdictions and responsibilities in the field of environmental quality, including pollution prevention, control and abatement, and that programs aimed at achieving environmental objectives should be planned and undertaken in such a way as to ensure comprehensiveness and eliminate duplication. The province undertakes surveillance of the characteristics of effluents and emissions. Effluent and emission standards and ambient quality objectives will be jointly determined. An official in the Pollution Control Division of Environment Canada stated that the food processing industry was considered a low priority by the federal department which is now only involved with major problem industries. Inspections were carried out solely by the provincial ministry. The Ontario Ministry stated that the federal guidelines were a minimum standard, and that the provincial regulations were more stringent. They agreed that the food processing industry was a low priority and that the Ministry tended to accept the companies' monthly reports rather than inspect regularly.

An example of an informal arrangement would be with regard to soups containing fish products. Under the Fish Inspection Act (Canada) these

products must be processed in a registered establishment, and comply with the standards under the Act and Regulations. The Department of Fisheries and Oceans neither licences soup processing plants nor carries out any inspection. Rather, they rely on Health of Animal Inspectors (now Food Production and Inspection Branch) to check the product and report to them if there are any problems. The Health of Animals Inspector of course has no jurisdiction under the Meat Inspection Act to make such inspections, but it is an accommodation for him to do so. Health Protection Branch has jurisdiction under the Food and Drugs Act to inspect the product regarding health hazards, or Consumer and Corporate Affairs may inspect regarding economic fraud, but the former appears to limit plant visits to a thorough once or twice yearly general sanitation and equipment specification inspection, with limited sampling of products, while the latter focuses on packaging and labelling requirements at retail, and looks at composition only as it relates to economic fraud. The product is in fact quite unregulated.

An example of an informal provincial/federal understanding would be that between the Ministry of Natural Resources (Ontario), which administers the Fish Inspection Act (Ontario), and the Department of Fisheries and Forestry, which administers the Fish Inspection Act (Canada). The Ministry stated that they have jurisdiction over sanitation of plants handling fish products in Ontario under their Quality Control Regulations (37/76), but that they rely on federal inspectors to regulate the plants. As seen above, the federal inspectors under Fisheries and Oceans do not inspect fish soup processing plants, but rely on the Health Inspection Branch, or Health of Animals Branch or Bureau of Consumer Affairs to inspect. The result is inconsistent or no inspection of the product.

The legal status of these formal and informal agreements is moot since, to the researchers' knowledge, none have been challenged in a court of law. However, if one accepts the constitutional validity of the legislation in the first place (which is debatable in light of the recent Labatts and Dominion cases), then, looking at agreements between two federal departments, one must consider the inspector appointment clause in the relevant statute. The Food and Drugs Act states that inspectors under that Act must be an employee of Health and Welfare Canada or Consumer and Corporate Affairs Canada (s. 26(4)), while under the C.A.P.S. Act an inspector must be merely appointed or employed under the Public Service Employment Act (s. 7). As a consequence, the federal agreements listed above are within the jurisdiction of the parties to them.

The Federal/Ontario Accord of environmental protection specifies that the province will inspect with regard to effluents and emissions and the enabling legislation provide for the appointment of any 'qualified' person to perform such tasks. Constitutionally, jurisdiction is dual, so there does not appear to be a legal inhibition to enforcement of the agreement. In a similar manner, the legal status of each agreement may be questioned.

As noted in Chapter V there have been no prosecutions of canned soup or canned juice processors under the inspection programs of Agriculture Canada, Health and Welfare Canada and Consumer and Corporate Affairs Canada, although the latter are preparing a case with regard to adulteration of citrus juice from concentrate.¹ The appeal procedures from an inspector's decision are informal, up the line of authority. For example, under the Processed Fruit and Vegetable Regulations, an inspector's detention of a product can be appealed to the regional specialist, then to the commodity coordinator, the

¹ Adulteration in this context refers to the addition of sugar to the citrus juice from concentrate.

regional director, Ottawa Chief of Processed Products, Director of the Division, Director General, A.D.M., and so on. Ninety percent of the problems are solved at the regional level, 9.5 per cent at the Chief's level and perhaps .05 per cent go higher. The procedures are informal, although there could be a hearing at the Director General level or above. All of the Departments questioned indicated that a few telephone calls clear up 99 per cent of the enforcement problems.

PHASE II

VII GOVERNMENT INSPECTION SERVICES AT PLANT LEVEL

In Phase II of this study, an in-depth examination and analysis of government inspection services at canned soup and canned juice processing plants in Ontario has been conducted. Companies were selected after consultation with industry personnel, and specific plants visited in order to assess whether the overlap in federal and provincial regulatory legislation identified in Phase I actually flowed through to implementation at the plant level, with concomitant cost consequences.

Key personnel involved in dealing with government inspectors or administering costs related to government regulation were interviewed at each plant. Each processing facility was toured (with one exception), and inspectors were interviewed on-site, when available. Inspection personnel not on site at the time of the plant visit were interviewed by telephone or at department field offices on a prioritized basis, to obtain a sampling of their perception of their functions as they related to the specific products under study and, in general, to the processed fruit and vegetable industry. Interviews of relevant administrative staff at the ministerial level were also conducted to procure their interpretation of the legislation and perception of its implementation by their agencies and other agencies with overlapping jurisdictions. Executives of the Canadian Food Processors Association and Retail Council of Canada were also consulted for their views of problems and issues related to regulation in the processed fruit and vegetable industry.

(i) Subject Companies

With regard to canned soup products, the companies chosen and plants visited were as follows:

1. Campbell Soup Company Ltd. (Canada)- Toronto plant.

Campbell is the Canadian leader in canned soup processing. Thirty to forty varieties of condensed soup are processed at the Toronto plant, out of which sixty per cent are soups containing meat products. Soups containing wine or fish products make up less than five per cent of total varieties. In volume, Tomato, Chicken Noodle and Cream of Mushroom are the company's leading soup types. All soups are sold under the Campbell brand name.

2. H.J. Heinz Company of Canada Ltd.- Leamington plant.

The Heinz company packs between twenty-five and thirty varieties of soup, either condensed or ready to serve, approximately fifty per cent of which are soups containing meat products (no fish or wine soups). Tomato, vegetable and beef noodle are the company's volume leaders and all products are marketed under the Heinz brand name, other than a very small percentage of Private Label on special order.

3. Canadian Cannery Limited- Simcoe plant.

The Simcoe plant produces approximately fifteen varieties of soup containing vegetable, meat and fish products. No wine-based soups have been processed for many years.

Soups are sold under company brand names and Private Label.

The predominant characteristic of soup processing companies in Canada is that they are large, diversified food packers, many with international affiliations. The high capital costs associated with canned soup processing prohibits small processors from entering this field.

With regard to canned juice products, the companies chosen and plants visited were as follows:

1. Libby, McNeill and Libby of Canada - Chatham plant.

Libby's packs tomato juice during the late summer and early autumn months, reconstitutes orange and grapefruit juices, and is the only Canadian processor importing single strength orange juice. The company's juice products are marketed under Libby's brand name and Private Label.

2. Canadian Cannery Limited - Dresden plant.

The Dresden plant processes tomato juice during late summer and early autumn, and reconstitutes orange juice, grapefruit juice and a blend on a year round basis (at partial plant capacity). The juices are marketed under company brand names and Private Label.

3. H.J. Heinz Company of Canada Ltd. - Leamington plant

Heinz process an adult line of tomato juice, while in their baby juice line they pack apple juice from concentrate, orange juice and pineapple juice (reconstituted) and nine varieties of mixed juices such as apple/prune, apple/pineapple. All juices are sold under the company brand name.

4. St. Jacobs Canning Co. Ltd. - St. Jacobs.

Unlike the other juice processors studied who are diversified food processors, St. Jacobs Canning Co. packs only fruit juices (and drinks and cider). Juices are processed on a year round basis with capacity packing during the summer and autumn apple season when single strength apple juice is packed. The company also processes apple juice from concentrate and reconstitutes orange, grapefruit and a blend. St. Jacobs markets its juices under company brand names but the majority of their products are sold under Private Label and/or generic label.

Fruit and vegetable juice processors are characterized by their diversity, unlike soup processing companies. The majority (as defined by factory shipments) are still large multi-food processors but there exists the small independent packers that just process one type of juice and primarily operate during the produce season. Some of these small seasonal packers are affiliated with larger diversified food companies.

(ii) Major Government Food Inspection Services at Plant Level

a) Federal

a.1) Agriculture Canada

Agriculture Canada is the principal Department conducting inspection services at fruit and vegetable processing plants. On November 19, 1979 this department carried out an internal re-organization, merging its inspection and grading services under the Food Production and Marketing Branch and Health of Animals Branch into a new Food Production and Inspection Branch. The two former branches ceased to exist (a new Marketing Branch was created).

Prior to the integration, the Fruit and Vegetable Division (Processed Products Section) under the Food Production and Marketing Branch (and authority of the Processed Fruit and Vegetables Regulations - C.A.P.S. Act) conducted inspections of processed fruit and vegetable products while the Meat Inspection Division under the Health of Animals Branch (and authority of the Meat Inspection Regulations - Meat Inspection Act) conducted inspections of processed products containing meat (inter alia). It is still valid to refer to the inspection services under their original names since the amalgamation is largely formal at this stage and Department officials state that it will not filter down to plant level for several years.

In commenting on the change, the Minister of Agriculture (at that time) stated in a news release as follows:

"We live in dynamic challenging times. If Agriculture Canada is to continue its long tradition of providing leadership to the agriculture and food sector, we must have a dynamic organization that can meet these challenges."

"Amalgamation of inspection services will mean better co-ordination of programs, improved service to our clients, and certain economies for the taxpayer."¹

All subject plants that process products containing meat or meat products (red meat or poultry) have one or two resident Health of Animals inspectors (one per shift), while Fruit and Vegetable inspectors visit periodically.

With regard to function, in very general terms, the resident Health of Animals inspectors ensure that processing plants and their equipment meet prescribed standards to promote hygienic practice, and examine meat products and ingredients used in meat products for quality and quantity to certify that there is compliance with regulations governing grade, packaging and marking, as well as general sanitation.

a.2) Health and Welfare Canada

Health and Welfare Canada, through its Health Protection Branch, conducts periodic inspections of all food processing plants in its enforcement of the Food and Drugs Act and Regulations. Such inspections focus on areas of concern that the Department formalizes yearly into inspection programs such as the "Project FIAO" (Low Acid Canned Food Project). These projects are designed to reflect the Department's prioritization of current (or continuing) concerns regarding food health and safety hazards. The project inspections are supplemented by Health Protection Branch visits relating to specific consumer complaints or violations found by the Branch at the retail level.

¹ Agriculture Canada, "News", D-53.

The Branch has only one hundred inspectors in the field as opposed to the Meat Hygiene Directorate (Health of Animals), for example, which fields approximately fifteen hundred inspectors.

a.3) Department of Consumer and Corporate Affairs

Field Operations of Consumer and Corporate Affairs (five regional branches) administer the economic fraud provisions under the Consumer Packaging and Labelling Act and Regulations, Food and Drugs Act and Regulations, and C.A.P.S. Act and Regulations (inter alia) by agreement with the Departments of Agriculture and Health and Welfare. The field force includes inspectors of weights and measures, electricity and gas measurement, hazardous products and economic fraud in a wide range of consumer products.

With regard to economic fraud, four hundred and seventy-four manufacturers of food products (out of one thousand) in Ontario were planned to be visited in 1979, as well as surveillance inspection due to consumer complaint or product violation determined at retail. Officials at the Department state, however, that if products are regulated by Agriculture Canada under the C.A.P.S. Act, then inspection by Consumer and Corporate Affairs is restricted to retail. This was confirmed by the subject plant interviewees who stated that Consumer and Corporate Affairs inspectors were never seen at their plants. The Department fields only five to eight food inspectors in Ontario and concentrate on plants where only the Health Protection Branch is inspecting (i.e. plants not inspected by Agriculture Canada).

b) Province of Ontario

b.1) Ministry of Agriculture and Food

The Fruit and Vegetable Section of the Farm Products Quality Branch acts as third party graders of tomatoes contracted for tomato juice, by agreement between the growers and processors. This inspection service is paid for by both growers and processors, and occurs only during packing season. Inspectors are appointed and grades established under the Farm Products Grades and Sales Act and regulations.

b.2) Ministry of Health

The Ministry of Health through autonomous regional and municipal "Local Health Units" have jurisdiction to inspect food processing plants under the Food Premises Regulations (The Public Health Act), but restrict their inspections to periodic inspection of plant cafeteria facilities. Officials of the Public Health Branch of the Public Health Inspection Service state that federally inspected plants are largely ignored by local health authorities.

(iii) Focus of Interviews with Company and Inspection Personnel

Interviews were conducted by researchers with the objective of eliciting the following information from company personnel:

- general information regarding subject company's production/import/export of canned soup and/or canned juice;
- named inspection agencies visiting the plant;
- number of visits of the named agencies on an annual basis;
- number and category of plant personnel involved with visitations;

- plant personnel attitudes with regard to government inspectors and inspection;
- products being inspected and aspects of named products being considered by the inspectors;
- other purposes of inspections perceived by interviewee;
- company's perception of overlap in inspection services;
- where such overlap is noted by interviewee, costs, if any, incurred by company due to such overlap;
- capital costs created by government regulation that would not be incurred by company in self-regulated operations;
- number of new products (in canned soup and canned juice lines) brought out each year by company;
- company's perception of government regulation as an inhibiting factor in introduction of new products;
- general concerns regarding government regulation with regard to regulatory process, drafting and implementation;
- comments.

Interviews with inspection personnel and ministerial administrators

focussed upon obtaining the following information:

- number of visits by inspectors to subject plants on an annual basis;
- average duration of each visit;
- purpose of inspections;
- where inspection is specific to a certain product, aspects of product of relevance to inspection;
- reporting procedure of inspection results to subject company;
- perception of overlap with other government inspection services;

- perception of legislative overlap or discrepancies;
- examples of interaction and co-operation with other inspection services to avoid duplication of services;
- consultation procedures with industry regarding regulations;
- perception of feasibility of self-regulation by industry;
- general comments regarding government's regulatory interest in the processed fruit and vegetable industry and specifically regarding the regulation of canned soups and canned juices.

The interviews with the subject companies and government inspectors and officials were conducted without a formal questionnaire allowing for wide ranging discussion of the issues and problems perceived. The researchers found all parties interviewed co-operative and concerned with improving inspection procedures. However, discrepancies were frequently noted between a company's perception of the inspection function and frequency of inspections, and the inspection service's perception of same. The researchers believe that this is primarily due to a lack of records being kept (or at least, being made available) by some of the subject companies with regard to the inspector's visits, and a lack of reporting by inspectors back to the companies.

(iv) MATRICES OF MAJOR FOOD INSPECTION SERVICES AT PLANT LEVEL

TABLE VII.1. CANNED SOUP¹ - FREQUENCY (PER ANNUM) AND PURPOSE OF VISIT OF REGULATORY AGENCY

	FEDERAL			PROVINCE ON ONTARIO		
	----- Agriculture Canada -----	--- Health and Welfare Canada ---	-- Consumer & Corporate Affairs --	--- Ministry of Agriculture & Food ---	--- Ministry of Health ---	
	FRUIT & VEGETABLE DIVISION	HEALTH OF ANIMALS BRANCH	HEALTH PROTECTION BRANCH ²	CONSUMER FRAUD PROTECTION BRANCH	FRUIT & VEG. SECTION	LOCAL HEALTH UNITS
CAMPBELL SOUP COMPANY - TORONTO	6 Visits - Samples of Tomato Soup Only - No General Inspection	2 Resident Inspectors (1 per shift)	1 Visit (18 hours) ³	0	2 or 3 Full-time Graders during Tomato Pack	12 Visits (1 per Month of Cafeteria Only)
H. J. HEINZ COMPANY - LEAMINGTON	100 Visits Approximately ⁴	2 Resident Inspectors (1 per shift) 12 Visits of Regional Veterinary Supervisor (1 per month) 1 Visit - U.S.D.A. ⁵ (Plant Tour with H. of A. Inspector)	2 Visits (1/2 day each) ⁶	0	Graders of Tomatoes during Tomato Pack	Occasional - Cafeteria Only
CANADIAN CANNERS LTD. - SIMCOE	0 ⁷	1 Resident Inspector 1 Visit of Regional Veterinary Supervisor and Ministry Official in Advance of U.S.D.A. Inspector 1 Visit - U.S.D.A. ⁸ (Plant Tour with H. of A. Inspector)	1 Visit ⁹ (1 1/2 days)	0	Graders of Tomatoes during Tomato Pack	Occasional - Cafeteria Only

^{1/} The statistics for H.J. Heinz Company of Canada Ltd. include inspections of canned juice products since both are processed at the Leamington plant.

^{2/} Health Protection Branch inspections noted do not include visits of the Branch with regard to consumer complaints. We were unable to obtain an accurate number of visitations with regard to complaints due to the confidential nature of such information. Furthermore, such information would vary widely from year to year.

^{3/} No canned soup samples were taken or analysed. Two ingredients, pearl barley and 'S' enriched flour were tested for a named pest control chemical under a Branch project - concentration on Quality Control procedures. Campbell's estimates one three-hour visit per month by Health Protection Branch - with regard to consumer complaints.

^{4/} This large number of visits attributable to inspections of the following: (i) sampling from all imported fruit and vegetable pastes, (ii) sampling from products destined for export shipment and for the Department of National Defence, (iii) sampling from fresh finished product during tomato season, and from production of beans and pork, (iv) monthly sanitation report on different production lines.

^{5/} United States Department of Agriculture inspectors, on invitation from Agriculture Canada, inspect annually and submit a report of their findings to the Health of Animals Branch which sends it to the Company. Certification by USDA would be required if Heinz exported to the United States, but since they do not, they are present by sufferance.

^{6/} Each inspection to fulfill a 'project' objective - one with regard to infant's cereal products and the other with regard to canned baby foods (of the low acid variety) - no samples taken - concentration on Quality Control procedures.

^{7/} Company records no canned soup inspection. Fruit and Vegetable Division inspector at Regional Office believed that his division visited once or twice in 1979 to do a general inspection but acknowledges that all inspections of canned soup products are left to the resident Health of Animals Inspectors, by informal understanding.

^{8/} USDA inspects this plant annually although the company does not export to the United States. Their presence is by sufferance and Company officials state (as did Heinz officials) that the USDA report rendered was of no value to the Company.

^{9/} Inspection of canned mushroom products only - none of soup products. Prior inspections were in 1977 and 1974. Company records one consumer complaint received by telephone from HPB in 1979.

TABLE VII.2. CANNED JUICE - FREQUENCY (PER ANNUM) AND PURPOSE OF VISIT OF REGULATORY AGENCY

FEDERAL			PROVINCE OF ONTARIO		
----- Agriculture Canada -----		--- Health and Welfare Canada ---	--- Consumer & Corporate Affairs	--- Ministry of Agriculture & Food ---	--- Ministry of Health ---
FRUIT & VEGETABLE DIVISION	HEALTH OF ANIMALS BRANCH	HEALTH PROTECTION BRANCH ²	CONSUMER FRAUD PROTECTION BRANCH	FRUIT & VEG. SECTION	LOCAL HEALTH UNITS
2 - 5 Visits per week during tomato juice packing season (approx. 6 weeks) for grading (finished product) Rest of year - Occasional ¹	0	1 Visit (8 hours) ²	0	Grading during tomato pack	Cafeteria Occasionally
2 Visits per week during tomato juice pack for grading 2 general inspections during pack Rest of year - Occasional	1 Resident Inspector ³	2 visits/year (average) of 10 hr. ⁴ duration each	0	Grading during tomato pack	0 ⁵
1 Visit/week during apple juice pack (4 months) - grading 1 visit every 2 weeks rest of season General inspection combined with other visits	0	0 ⁶	0	0	0 ⁷
See Table I					

1/ The company states that a general plant sanitation inspection is conducted by the Fruit and Vegetable Division once a year in the company of the Health Protection Branch when they make their annual inspection. The inspectors state that their program of general plant sanitation inspections have an optimum schedule of one visit per month. However, if a plant has a low violation record, then the inspectors visit less frequently, the implication being that since Canadian Canners has a good record, they are subjected to fewer inspections. The researchers could not determine the exact number of general sanitation inspections in this plant in the year.

2/ Health Protection Branch states that fruit juices (and tomato juice) are low priority products for inspection purposes since they are high acid products and therefore present a low health risk. In their visit to the Dresden plant in 1979, they sampled only low acid products (specifically canned vegetables, asparagus, and spinach) as part of Low Acid Canned Foods Project FIAD. They further confirm that the Fruit and Vegetable Division inspectors accompanied them on the visit.

3/ The resident Health of Animals inspector does not inspect juice products per se, but generally oversees all plant operations with regard to sanitary conditions.

4/ Although the company records at least two H.P.B. general sanitation inspection visits per year, the Branch records only one visit for 1979, as part of Low Acid Project FIAD (inspected canned vegetables, spaghetti with tomato sauce). Fruit and Vegetable Division were informed of the visit by the Branch, but could not attend. Juices were not inspected, but the Branch stated that they look at general sanitary conditions, and should a potential health hazard affecting juices be observed, then such products would be specifically inspected. Also, if juice production is on stream at the time of their visit, the inspectors would 'eyeball' the products and Quality Control procedures (though not necessarily take samples).

5/ Health of Animals inspector submits water samples to the Public Health authorities twice a year.

6/ Since St. Jacobs processes only fruit juices (high acid products) H.P.B. only visit the plant on consumer complaints.

7/ The Company stated that although they have not seen a Public Health Inspector for three or four years, one did visit at that time. The Company complained to Agriculture Canada that they were already federally inspected and did not want the Public Health inspectors on the premises. Public Health inspectors have not visited since that time.

(v) MATRIX OF GENERAL INSPECTION SERVICES AT PLANT LEVEL¹

TABLE VII.3. CANNED SOUPS AND CANNED JUICES - FREQUENCY (PER ANNUM) AND PURPOSE OF VISIT OF REGULATORY AGENCY

SUBJECT COMPANIES	PROVINCE OF ONTARIO										MUNICIPAL	
	FEDERAL					Consumer & Commercial Relations					FIRE MARSHALL	HYDRO
	Consumer & Corporate Affairs	Environment	Employment	INDUSTRIAL HEALTH & SAFETY BRANCH	EMPLOYMENT STANDARDS BRANCH	WORKMEN'S COMPENSATION BOARD	ELEVATING DEVICES BRANCH	BOILERS & PRESSURE VESSELS BRANCH	POLLUTION CONTROL BRANCH			
CAMPBELL'S - TORONTO	1 Visit	1 Visit	4 Visits to Check Layoffs, Rehiring, (seasonal)	2 Visits (approximately 8 hours each)	1 Visit if (Only Visit if Grievance)	3 Visits by I.A.P.A. (Industrial Accident Prevention Assoc.) for Assessment of Rate	2 Visits	5 Visits at Request of Company Insurance Inspectors - 1 Visit per Year	0	1 Visit	Occasional	
HEINZ - LEAMINGTON	2 Visits	0	No Information	2 Visits	0 (Only on Employee Complaint)	I.A.P.A. Periodic Visits to Give Courses, for Assessment	1 Visit	2 Visits	Submit Sample of Waste 1 Time - Own Waste Treatment Plant	1 Visit	No Information	
CANADIAN CANNERS - SIMCOE	1 Visit	0	2 Visits to Head Office	1 Visit (approximately 4-6 hours)	1-2 Visits to Head Office	I.A.P.A. Contact Head Office	1 Visit	4 Visits by Government or Insurance Co. Inspectors	Visits Rare since Use Municipal Sewage Plants	Occasional	Occasional	
CANADIAN CANNERS - ORESDEN	1 Visit	0	2 Visits to Head Office	2 Visits	1 Visit to Look at Payroll	I.A.P.A. Contact Head Office	1 Visit	1 Visit	3 Visits to Waste Disposal Site, Not Plant	1 Visit	Occasional	
Libby's - Chatham	1 Visit	0	5 Visits Teaching Completion of Forms	2 Visits (1-3 day visits to test all safety equipment)	Only on Employee Complaint	4 Visits for Assessment Purposes	1 Visit	1 Visit or When Needed	Periodically Company Sends Waste Water to Branch for Sampling	1 Visit	1 Visit General Electrical Technician	
ST. JACOB'S - ST. JACOB'S	1 Visit	0	0	0	1 Visit	I.A.P.A. Visit 4 Times per Year for Assessment	0	Insurance Inspectors Only Unless New Boiler	3 Visits to Sewage Plant	Occasional	Occasional	

Note: See Footnotes on following page.

Footnotes from TABLE VII.3.

- 1) The personnel interviewed with regard to general inspection services included Quality Control Personnel and Engineering employees. The researchers found that few records were kept by most companies regarding these types of inspections and, therefore, the number of visits recorded are often rough estimates. These general inspections were considered to be merely a necessary (in most cases) part of doing business.
- 2) Weights and measures legislation is enforced by the Legal Metrology Division of Field Operations. Visits are periodic, to verify the accuracy of measuring devices to tolerances specified in the Weights and Measures Act and Regulations. When new scales (measuring devices) are purchased, the company must notify the Division, who then must certify that the device meets the requirements of the Act and Regulations.
- 3) The electricity and gas inspectors under the authority of the Electricity Inspection Act/Regulations and Gas Inspection/Regulations currently approve, verify, and seal electrical and gas meters, but this function is being "privatized" by transfer to authorized manufacturers or utility companies (Bill C-26).
- 4) As indicated in an earlier chapter, Environment Canada is not active in the enforcement of federal environmental legislation in Ontario, but has transferred responsibility to the province by Federal/Provincial Accord.
- 5) The new Occupational Health and Safety Act, 1978 and Regulations (proclaimed in October, 1979) was heralded as a new direction in worker health and safety legislation, in that it created a joint responsibility between employers/employees and the regulatory enforcement branch to administer the Act and Regulations. All of the subject companies stated that prior to the new Act, they had already established the requisite health and safety committees, and therefore were unaffected by the new legislation.
- 6) Inspections of boilers and pressure vessels under the Boilers and Pressure Vessels Act and Regulations are conducted primarily by the insurance companies who insure the equipment. These companies then report to the government inspectors who become involved only when there are problems or new equipment to be certified.

(vi) Description and Analysis of Major Food Inspection Services

Tables VII.1 and VII.2 demonstrate the frequency of inspection of the major food inspection services, and briefly touch upon the purpose of the inspections. To determine the functions of the services relative to canned soups and canned juices, the researchers interviewed approximately fifty persons, including company personnel in the quality control, personnel and engineering departments as well as government inspectors and ministry officials. Widely divergent perceptions of the inspectors' functions were found between company employees and the inspectors, as well as between the inspectors and their ministerial supervisors. The following analysis is an attempt to consolidate the multiplicity of descriptions of functions. Reference to divergent opinions will be recorded throughout.

a) Fruit and Vegetable Division (processed products section) - Agriculture Canada

Frequency of inspection of the subject canned soup processing plants by the Fruit and Vegetable Division varies between plants. At the Campbell and Heinz plants only tomato soup is periodically sampled, with regard to mould count (Howard), fill, and container specifications (seams and sealing). On such sampling visits, the inspectors will look at the production line for sanitary violations and obvious defects in quality control procedures. Labels of all vegetable soups (soups without meat) are sent by the companies to the Fruit and Vegetable Division in Ottawa for approval, and copies of the approved labels are returned to the companies, for mandatory filing, and to the inspectors. Certificates for export which must be signed by Fruit and Vegetable inspectors

are signed at the Campbell's plant by the resident Health of Animals inspector, who states that he generally oversees the processing of non-meat soups for the Fruit and Vegetable Division. At the Canadian Cannery plant in Simcoe, the Fruit and Vegetable inspectors do not inspect soups at all, but have informally handed their jurisdiction over to the resident Health of Animals inspectors, although the Fruit and Vegetable Division does inspect graded vegetable products at this plant (for example, canned tomatoes). Registration of the plants required under the C.A.P.S. Act and Regulations is not enforced where a plant has a Health of Animals registration under the Meat Inspection Act and Regulations.

Intensive general sanitation inspections, to be scheduled monthly under a recent Fruit and Vegetable Division program, are not conducted at Campbell's or Canadian Cannery (Simcoe), and was last conducted at Heinz in September, 1979. This inspection will focus on a product line and covers general sanitation and quality control procedures from reception of raw fruits and vegetables to storage of the finished product. The report filed by the inspectors (and sent to the company upon request) includes (inter alia) inspection of the receiving, preparation, filling/closure, blending, processing, and post-processing areas with focus on structural condition of the area, equipment, employees, product/ingredient container handling, process/instructions and records, process/control records, quality/control records, labelling and warehouse/storage, restrooms, waste disposal and plant exterior.

The canned juice products are generally subject to more inspection than canned soup products, since the former are standard products under the C.A.P.S. Act/Regulations. Grades are established for tomato juice (Heinz, Canadian Cannery, Libby) and apple juice (single strength and reconstituted) (Heinz, St.

Jacobs). Different tests are conducted on samples of each of these products. For example, tomato juice is inspected for flavour, fill (head space and net quantity), vacuum (can sealing and seams), and general sanitation of the processing procedure, while apple juice is inspected for vacuum, fill, sugar solids, acidity, clarity, odour and flavour. Vitamin C levels in apple juice are also tested occasionally.

There is some conflict between the companies' perception of the Fruit and Vegetable Division's jurisdiction over citrus juices and the inspector's perception of same, as well as conflict between different inspectors. A ministry official stated that the Fruit and Vegetable Division has jurisdiction over all standard products, which would include single strength citrus products, and container specifications for all citrus juices. Libby's is the only processor with a national brand selling single strength citrus juice in Canada (imported), and such juice is sampled by the Fruit and Vegetable Inspectors for fill and flavour. The Libby's inspectors also sample citrus juice from concentrate for fill and flavour, but do so on an infrequent, random basis, and will only take samples if the reconstituted citrus is "on line" at the time of their visit.

The inspector at Canadian Cannery (Dresden) also samples reconstituted citrus juices if inspecting while these juices are being processed, but otherwise will not make a special trip to sample them. At St. Jacobs, the inspector does not sample the reconstituted citrus juices, and stated that the Fruit and Vegetable Division does not have jurisdiction over the single strength citrus juices either, although they have jurisdiction over container specifications for all juices. He stated, however, that if there are complaints regarding these juices, then the Fruit and Vegetable Division would take an interest. The companies

stated that Agriculture Canada has no jurisdiction over reconstituted citrus juices, and while Libby's and Canadian Cannery believed that they did have authority over single strength citrus, St. Jacobs stated that Agriculture Canada only had jurisdiction over juices processed in Canada, which would exclude imported single strength citrus juice.

Labels for fruit and vegetable juices (single strength and reconstituted apple, grape) are submitted to Fruit and Vegetable Division, Ottawa, for approval, while reconstituted citrus juice labels are subject to Consumer and Corporate Affairs jurisdiction (labels are not submitted).

The reconstituted citrus juices would appear to be almost completely unregulated at the processing level, although they could be inspected by Consumer and Corporate Affairs at the retail level. Citrus concentrate is imported without inspection by Agriculture Canada, while apple concentrate must be imported by permit and is subject to testing for adulteration by the Fruit and Vegetable Division. This differential treatment, in the opinion of one of the Fruit and Vegetable inspectors, is not due to relative health risks, but is a non-tariff barrier erected to protect Canada's apple growers. Citrus products, of course, are not grown in Canada.

Intensive sanitation inspections are conducted periodically at the canned juice plants, prioritized on a violation basis. The subject companies have relatively good inspection records and, therefore, were not subject to numerous general inspections.

With regard to generic juice products and private brands supplied by the subject companies, the inspectors stated that these were treated no differently than brand name products, although the labels are submitted by the

purchasers of the generics and private brands, as opposed to the processor. St. Jacobs stated, however, that the generic products were subjected to more sampling by the inspector. This was not confirmed by the St. Jacobs' inspector.

b) Health of Animals Branch - Agriculture Canada

The Health of Animals Branch licences all establishments where meat or meat products are handled (for inter-provincial or export trade). Although a can of soup may contain less than 5% meat, it must be processed in an establishment registered under the Meat Inspection Act and Regulations and the processor must provide a private office and facilities for a resident inspector.

The typical daily routine of such inspectors (by their description) would be to tour the plant prior to opening with regard to general sanitation, inspect incoming meat and meat products and documentation accompanying such products (must be slaughtered at a federally inspected plant), as well as the carriers for such products for sanitary handling. The manufacturing process is monitored, from inspection of recipes, grinding of meat, other ingredients, fill, can seams and sealing to storage conditions. At Heinz and Canadian Canners, the inspector takes samples of canned soup in incubation (98° for 10 days), while at Campbell the inspector takes no samples, but monitors the Quality Control personnel sampling of the incubation cans. At Heinz, the Health of Animals inspector certifies only meat products for export, while at Campbell, the inspector certifies export products within the Fruit and Vegetable Division's jurisdiction also.

No samples are taken of soups containing fish or wine or other non-meat soups, but the inspectors stated that they monitored these products generally for sanitary violations, and should a problem arise, would notify the Department of Fisheries, Health Protection Branch or Fruit and Vegetable Division under whose jurisdiction the product fell.

Labelling approval for meat products is obtained from the Health of Animals Branch, Ottawa, and copies of the approved label (with the Canada Meat legend) are filed by the companies and inspectors.

The companies' perception of the inspector's duties and workloads are often at variance with the inspector's perception of same. One company official commented that the Health of Animals inspector was concerned mostly with raw beef and was not involved in day-to-day processing operations. Furthermore, that the inspector spent most of the day in his office doing paperwork (i.e. overtime slips). The inspector at this company, in outlining his daily program, stated that he spent most of the day in the plant and paperwork took him approximately 1/2 to 3/4 of an hour per day. The company official further stated that the presence of a resident inspector created a negative atmosphere in the plant, since the workers believed that the inspectors earned more money for less work. Several of the companies commented that the resident Health of Animals inspectors were completely redundant since the companies' Quality Control procedures were more advanced than that of government and thus did not need policing by resident inspectors.

On the other hand, the inspectors made several points to defend their function. First, that without their presence some less scrupulous processors

would let their standards slip, and would be "canning stuff out of the garbage". Also, that although the companies had Quality Control personnel ostensibly policing the processing of the products, these were company employees and often mixed socially with the workers. As a result, not wanting to be unpopular, they might allow certain practices that should not be permitted, such as longer hair than was sanitary. The inspector being independent did not feel such pressures and could enforce the rules (within reason).

c) Health Protection Branch - Health and Welfare

As indicated in Tables VII.1 and VII.2, the Health Protection Branch focus their periodic inspections on the capability of the processor to produce a satisfactory product from a consumer health and safety viewpoint. Enforcement of economic fraud provisions in the Food and Drugs Act and Regulations have been transferred by formal agreement to the Department of Consumer and Corporate Affairs and would include labelling requirements, standards, and net quantity tolerances (see paragraph (d) below).

In their inspections, the Branch implement "projects" designed annually to monitor current health concerns (for example, de-tinning). Inspections are on a prioritized basis; plants with resident Health of Animals inspectors or a low complaint record are less frequently inspected. High acid products such as canned juices are a low health hazard and only inspected with regard to lead and tin shedding (the high acid products can cause the deterioration of can seams in improperly finished cans). Low acid products such as canned soups are a higher priority to the Health Protection Branch due to their greater health risks, but in none of the subject plants were canned soups or canned juices sampled in the last year.

A "tombstone report" is prepared by the Branch on each inspection tour of a plant. This report includes basic corporate information regarding the company being inspected, such as corporate status, head office, major officers and personnel, products manufactured, other agencies conducting inspections. Recall systems, coding procedures, and pest control programs are noted. Assessments of Quality Control procedures are made, and if the Branch is implementing a project, then samples of the project subject will be taken. Each firm is rated with regard to a compliance history which identifies the number of consumer complaints, warning letters, informal hearings and prosecutions, recalls and seizures of products manufactured by the company. Copies of laboratory reports concerning samples analysed by the Branch normally are sent to the subject companies.

With regard to consumer complaints, the Health Protection Branch believe that they have the primordial responsibility to protect the public health in food matters. If the complaint reveals, after an initial investigation, that there is a health hazard, then the Branch will notify any other agencies inspecting the product, but will take action themselves. If there is merely a problem with taste or harmless foreign objects in the can, then the matter will be referred to the other agencies concerned, and the file closed upon a report back. This was a major area of complaint among the companies who felt that if the products were within the jurisdiction of Agriculture Canada, then that Department should handle all consumer complaints, and the company should not have to deal with another department.

d) Consumer and Corporate Affairs

As noted above (paragraph (c)), the Department of Consumer and Corporate Affairs is responsible for the enforcement of the economic fraud

provisions in the Food and Drugs Act and regulations. They also have superceding jurisdiction over labelling regulations under the Consumer Packaging and Labelling Act. In practice, the Consumer and Corporate Affairs Field Operations (economic fraud section) do not inspect plants within the jurisdiction of the Fruit and Vegetable Division or Health of Animals Branch. By agreement with Agriculture Canada, Consumer and Corporate Affairs only inspect the subject products at the retail level, and officials of the Department state that even at retail, canned soups and canned juices are low priority inspection items since they yield a low violation score.

Although companies can submit their labels to Consumer and Corporate Affairs, not all do since the Department will not approve labels, but will merely give an opinion. A further reason for not submitting labels to this Department, in the opinion of St. Jacobs Cannery, was that the application for label examination required the company to disclose privileged information with regard to the subject products. Ministry officials state that if a label of a product which falls under the C.A.P.S. Act has been approved by Agriculture Canada, it normally need not be reviewed further by Consumer and Corporate Affairs. Reconstituted citrus juices are not standard juices under the C.A.P.S. Act, therefore their labels are not approved by Agriculture Canada. Consumer and Corporate Affairs may check them at retail, but only if brought to their attention through consumer complaint.

e) Fruit and Vegetable Section - Ontario Ministry of Agriculture and Food

The Fruit and Vegetable Section are concerned only with canned juice and canned soup as third party graders of raw tomato, under agreement with the processors and growers. Although the Farm Products Grades and Sales Act would

indicate that this inspection service has jurisdiction to take a more active inspection role, the Ministry indicated that they do not inspect a federally inspected plant unless requested to do so.

f) Local Health Units - Ontario Ministry of Health

Local Health inspectors inspect only cafeteria areas in some of the subject plants. However, if a recall of a product should be ordered by the Health Protection Branch then the Ministry of Health would be asked to monitor the recall, and if necessary, close the violating plant (the Health Protection Branch does not have this jurisdiction).

(vii) Government Inspection Branch Expenditures

Tables VII.4 and VII.5 set forth the gross expenditures of the Fruit and Vegetable Division and Health of Animals Branch (the two Branches that spend a substantial amount of time in the subject plants). Agriculture Canada does not prepare a breakdown of their expenditures by function or by product; as a consequence, these figures merely give an indication of the change in administrative costs over a five year period. The increases in expenditures average approximately 10 per cent per year for both branches, the bulk of such increase being prima facie attributable to inflation.

TABLE VII.4.

EXPENDITURES

FRUIT AND VEGETABLE DIVISION - AGRICULTURE CANADA

Year	Expenditures
1975-76	\$ 5,626,800
1976-77	6,609,100
1977-78	6,856,200
1978-79	7,320,600
1979-80 (to end of Jan./80)	6,075,000
1979-80 Budget	7,770,216

Source: Agriculture Canada

TABLE VII.5.

EXPENDITURES

HEALTH OF ANIMALS BRANCH - AGRICULTURE CANADA

Year	Expenditures
1975-76	\$ 24,805,000
1976-77	29,779,000
1977-78	32,507,000
1978-79	35,742,000
1979-80 (Forecast)	38,705,000

Source: Agriculture Canada

(viii) Company Comments Re: Government Regulation

Areas of concern with regard to government regulation, as expressed by company officials, were varied as would be expected. As one executive stated, each company has its own "axes to grind". The industry (in Ontario) is represented by two active trade associations; the Ontario Food Processors Association and its federal equivalent, the Canadian Food Processors Association, and the researchers found the company executives to be familiar with the associations' positions and each others complaints. Where a company has a negative comment to make about a practice of an inspection service, an attempt was made to obtain a description or rationalization of the function from the inspection service, to determine if the problem was real or perceived, or simply a manifestation of a general bias against government presence in the marketplace. The following comments are outlined individually by each company surveyed, with rebuttals, explanations or commentary by inspectors and other subject companies as is appropriate.

Company A (Soup and Juice)

At this company the researchers spoke with an executive officer, and plant quality control, administrative and engineering personnel. The opinions expressed were often contradictory, attributable in part to personalities and perhaps to the employee's exposure to different levels of government (for example, administrative versus inspection).

The executive officer (at Head Office) stated that the food processing industry was not highly regulated relative to other industries. He felt that health and safety regulation by government was necessary, but

that existing regulations were badly drafted, producing regulatory overlaps and confusion from vague wording. The costs of compliance with packaging and labelling regulations was high, and he believed that it put Canadian products at a cost disadvantage with imported products. This disadvantage could be mitigated, he suggested, by a more active border inspection of imported processed products, thereby forcing the exporting countries to comply with Canadian regulations. On the other hand, he felt that government consultation with industry was good with regard to introduction of new legislation, and that many of the regulations were beneficial to industry, such as container specification regulation and metric labelling, since these acted as non-tariff barriers.

A specific example of government accommodation and "beneficial" regulation was the processing of vinegar. United States regulation of vinegar processing permits a certain process to be used; in Canada this process is prohibited to protect the Canadian vinegar industry from imports. The products are indistinguishable. In 1979, a fire destroyed the plant of a major vinegar processor, and the companies manufacturing vinegar in Canada believed that unless the government relaxed the regulations for several months, there would be a shortage of vinegar. The government agreed and for a short period of time vinegar was processed in the United States manner. The Canadian regulations were again enforced when the ingredient plant was rebuilt, again protecting the domestic industry from United States competition.

The Quality Control Director works in the processing plant and spends much of his time dealing with inspectors and government regulations. In 1979, the company conducted a study of the frequency of government inspections, both federal and provincial, thus indicating the company's concern with

the issue. The Director believed that the Company A's Quality Control procedures were more advanced than that of government and, consequently, that a resident Health of Animals inspector was redundant. He felt that self-regulation with regard to the food processing, with periodic inspection by one branch of government would be the ideal mix of government regulation and company regulation. Further, if a resident Health of Animals inspector were retained, then the Health Protection Branch presence was unnecessary. He was generally irritated by Health Protection Branch visits on consumer complaints which could be handled by resident Agriculture Canada inspectors.

With regard to the introduction of new products, Company A tries to market one or two new products a year, and the company remarked that since the ingredients must comply with Canadian standards, this often required substituting ingredients that are used in products being processed by the United States company. This, however, did not appear to be an inhibition of innovation.

Minor general inspections such as elevators, boilers, worker safety, environment were not considered to be a problem.

Company B (Soup)

The Director of Quality Control, and managers of the Engineering and Personnel departments were the company employees most directly involved with government inspection at Company B. The Quality Control Director stated that he spent the majority of his time dealing with government regulation and administrators. He believed that a resident Health of Animals inspector was unnecessary, due to the company's advanced quality control procedures, and costly in overtime and space required. Furthermore, with a resident Health

of Animals inspector there was no need for the Health Protection Branch to visit the plant. He perceived that the latter simply duplicated the functions of the former. He also felt that label approval should be centralized; currently, the company sends labels of vegetable soups to the Fruit and Vegetable Division, soups containing meat to Health of Animals, and soups containing fish to Consumer and Corporate Affairs. This complaint was reiterated by all the companies interviewed.

Engineering personnel responsible for government inspection of elevators, boilers and pressure vessels, worker safety and environment stated that government inspections were generally beneficial to the company, and that the only difficulties were in keeping up with new concerns of the Ministry of the Environment. One example related to the sulphur dioxide waste program that the Ministry was enforcing a few years ago which caused the company some difficulty in trying to obtain low sulphur fuels. PCB's (polychlorinated biphenyls) are a current environmental concern that the company must contend with.

Company C

The Quality Control Director at Company C voiced several general and specific concerns with regard to inspection services and conflicting regulatory drafting. He felt that there was an inspection overlap between the Health Protection Branch and Agriculture Canada, and that furthermore, both services were unnecessary; the company has a Quality Control program and could be certified to carry out inspections for the government, with periodic submission of samples. With regard to labelling, he believed that a central labelling approval centre should be established.

This company official had several specific complaints regarding legislative overlap and discrepancies. His major complaint was that the headspace requirements in the Processed Fruit and Vegetable Regulations (Schedule iv, Table II) were incompatible with net quantity requirements under the Weights and Measures Regulations (and Consumer Packaging and Labelling Regulations). "Headspace" is the amount of space between the top of a can's ingredients to the top of the can. The Processed Fruit and Vegetable Regulations sets out the maximum gross headspaces allowable per specified can size, while the Weights and Measures Regulations and Consumer Packaging and Labelling Regulations set out allowable deviations (tolerances) in net quantity declarations (per specified can size). Headspace is under the jurisdiction of Agriculture Canada while net quantity tolerances are under the jurisdiction of the Departments of Health and Welfare and Consumer and Corporate Affairs. Since net quantity declarations are economic fraud provisions, Consumer and Corporate Affairs has assumed Health and Welfare's jurisdiction, but the actual testing for headspace and net quantity at the processing level is done by Fruit and Vegetable Division inspectors, by agreement with Consumer and Corporate Affairs. The latter department may do some testing at the retail level. If a container is found to have greater than the maximum gross headspace allowable, the can is considered to be "slack filled" and must be so labelled. If the net quantity is below that declared (and outside the tolerance level) then the company may be prosecuted for fraud.

The problem arises in certain can sizes which in order to comply with the net quantity label declaration must be "overfilled" above the allowable headspace, thus giving the consumer more product than is declared on the can. For example, in a 5½ oz. juice can, the label declaration is 156 ml. The

maximum gross headspace permitted is 6/16 inches. This headspace requirement equals a minimum fill of 160 ml. If the processor puts 156 ml into the can, then the headspace will be greater than 6/16 inches thus contravening the C.A.P.S. Act. In terms of enforcement, the company official stated that he believed that there was an unofficial guideline to inspectors to give precedence to the net quantity requirements where there was a conflict between the Acts.

The Health Protection Branch confirmed that Consumer and Corporate Affairs enforce the Food and Drugs Regulations regarding net quantity declarations, and Consumer and Corporate Affairs stated that if the product fell under the jurisdiction of Agriculture Canada and the latter therefore had label approval, then Agriculture Canada also enforced the net quantity requirements under the Consumer Packaging and Labelling Act.

Fruit and Vegetable Division inspectors and district officers were interviewed with regard to net quantity versus headspace. The inspectors all stated that they inspected the products for "fill", which meant that headspace was measured, and if it registered a certain level, then it indicated to the inspector whether the net quantity was correct. For example, if a 48 oz. can of juice has a headspace of 6/16 inches (the allowable maximum headspace) then the inspector knows that the can does not contain 1.36 L as required. One inspector stated that the companies know that they must fill to 8/16 inches headspace (hot) in order to obtain 9/16 inches headspace and 1.36 L. There appeared to be some confusion over which regulations were being enforced. Some inspectors thought that the net quantity tolerances that they were allowing were set out in the C.A.P.S. Act, while others knew that the tolerances were in the Consumer Packaging and Labelling Act. One inspector stated that since net

quantity tolerances were not in the C.A.P.S. Act, then the net quantity declarations that he was enforcing had no tolerance level and must be exact (or overfilled). The Chief of the Processed Product Section of this Division stated that the industry had been informed that the Consumer Packaging and Labelling standards take precedence and that they must therefore act accordingly. He further commented that the inspection procedures used for net quantity testing under the Consumer Packaging and Labelling Regulations were more complicated and would only be used by the inspectors if they perceived that a prosecution may result.

The other subject companies commented on the net quantity/headspace controversy as follows: Company E said that it was a 'non-issue', since there were no prosecutions, and that the Technical Committee of the Canadian Food Processors Association had resolved the matter; Company D stated that while it was true that in a 48 oz. can of juice the processor could not comply with both sets of regulations, his company overfilled the can to reconcile the conflict. The company official further stated that he believed that headspace requirements under the C.A.P.S. Act were not actively being enforced (by Department direction) but this was contradicted by the inspectors who had not received such a directive; Company B merely pointed out that there was an issue regarding headspace/net quantity but did not elaborate.

Company C also commented that since single strength juices fall under the jurisdiction of the C.A.P.S. Act, they must comply with headspace requirements and must therefore overfill, while juices made from concentrate (other than apple and grape) are regulated by Consumer Packaging and Labelling Regulations and therefore need only fill to the label declaration (and not comply with headspace specifications). This applies a penalty to a company

packing a presumably better product. This company official concluded that weights and measures requirements should be removed from the C.A.P.S. Act and the Weights and Measures Regulations should prevail.

Another area of conflict was the inhibiting effect of regulation on introduction of new products. Company C wanted to introduce a fruit cocktail to the Canadian market a few years ago, but had to abandon the project, according to the company official, since the product did not comply with the standards under the C.A.P.S. Act (pieces of fruit not cut to specification) and the company did not wish to wait two years before a new standard could be passed. Although the company attributed this abandonment to an inhibition created by government regulation, this was rebutted by other executives who said that the delay in drafting a new standard for the C.A.P.S. Act was caused by Agriculture Canada's practice of obtaining an opinion from the Canadian Food Processors Association with regard to any new product which required a change in the regulations. The Association canvasses its members (95% of Canadian processors), which can be a time-consuming process. Generally the subject companies did not feel that present government regulation impeded the introduction of new products.

Company D (Juice)

The President of Company D stated that duplication of inspection was a "bit of a nuisance but not a real problem". He was referring to the handling of consumer complaints by Agriculture Canada (grade/taste), Consumer and Corporate Affairs (fraud) and Health Protection Branch (health and safety). He felt that all complaints should initially come through Agriculture Canada which

would then route the matter appropriately. In terms of food inspection services, his plant was visited only by Fruit and Vegetable Division inspectors - he felt that their services were beneficial to the company in that he could use their grade reports to compare with his own.

He had several specific comments regarding the regulations themselves. He felt that they were difficult to understand, and confusing not only to industry but also to the public which was being politicized by government campaigns encouraging consumer complaints without the consumer being made aware of industry constraints due to regulation. The executive stated that his company could make a better product without some of the C.A.P.S. Act standards. The Processed Fruit and Vegetable Regulations require that single strength apple juice and apple juice from concentrate (imported) be labelled as separate products. This is patently to protect Canadian apple growers who are threatened by imported apple concentrate. He believed that if his company were permitted to mix single strength and concentrate, the product would be less expensive, and the variability of the quality of apple juice (too tart at the beginning of season and too sweet at end of season) could be levelled out to produce a generally better quality product.

Proliferation of regulation was less of a problem than changing interpretations of existing regulations. He gave as an example a label that had been approved by Agriculture Canada. The Department later informed him that they had changed their minds with regard to the French spelling of one of the words on the label, forcing the company to re-print their labels and apply for re-approval.

An anecdote illustrates this executive's frustration in having to deal with conflicting regulations and split jurisdictions. When Vitamin C is added to fruit juice it must be maintained at the regulated level declared on the

label. Vitamin C deteriorates over time or through storage at higher than normal temperatures. The Processed Fruit and Vegetable Regulations require that the vitamin level be maintained for twelve months after canning, after which a lower level is acceptable, while the Food and Drugs Regulations set no such limitation period. Therefore, a can of juice fourteen months old that has slipped below the declared Vitamin C level would be acceptable to Agriculture Canada but unacceptable to the Health Protection Branch (or C.C.A.). The company president said that he believed that the Health Protection Branch would take a reasonable approach to Vitamin C deterioration even though their regulations are onerous. The Branch stated that the canner was responsible for the product as long as it is offered for sale and that should the vitamin potency drop at any period during this time, then the company would be subject to compliance action. The severity of such action would depend on the cause of the Vitamin C deterioration; if due to poor Quality Control methods, then the product would be recalled with possible prosecution and publication; if due to overlong shelf life, then a simple recall would be in order. To guarantee an acceptable Vitamin C level beyond twelve months, the company must add overage and anti-oxidants, which may cause an acid taste. To avoid this, the Branch suggested that the canners remove their products from the market after one year.

Company E (Juice and Soup)

The executive officer and Quality Control Director interviewed at Company E reiterated the other subject companies' opinion that Health Protection Branch inspection of a plant containing a resident Health of Animals inspector was

redundant. Furthermore, they felt that consumer complaints should be funnelled through Agriculture Canada, so that the company would only have to deal with one food agency. The company also pointed out that the presence of a resident Health of Animals inspector was unnecessary since the meat being used was already federally inspected and made up a very small proportion of the product (less than five per cent).

The company endorsed, with certain reservations, the alternative of self-regulation with periodic reporting requirements to a responsible government department. They were fearful of the new Freedom of Information legislation and felt that unless the ground rules clearly protected their disclosures to the government from the public eye, they would not feel comfortable submitting them, and would prefer to be inspected by a single food agency, preferably Agriculture Canada. With government inspections, the company could control what information the agencies obtained, and gave the example of the Health Protection Branch trying to take photographs in the plant, or obtain product formulations. When such requests were made, the company would require the inspector to justify in writing the necessity of such information. H.P.B. officials stated that they only require photographs when necessary for the potential prosecution, and the operating manual for H.P.B. inspectors states that the inspector must not request "plant secrets". The company also believed that although they had sufficiently responsible Quality Control procedures to regulate themselves, some processors did not, and that they therefore could not recommend a self-regulatory program for the industry as a whole.

Proliferation of regulations was not seen as a problem to the company, but interpretation of complex, often contradictory legislation

drafted by several different departments created confusion and costs to companies trying to keep up. Furthermore, the officers complained of inadequate communication of regulatory changes to the companies affected.

VIII COSTS TO INDUSTRY OF PERCEIVED INSPECTION DUPLICATION

As indicated in the preceding chapters, the subject canned soup processors perceived an inspection overlap between the Health Protection Branch and resident Health of Animals inspectors. With regard to canned juice products, the industry was less concerned with inspection overlaps than with split jurisdictions and legislative discrepancies. Although the companies complained about costs created by the duplication of inspection services, when asked for a quantification of these costs none of the companies had prepared figures. Their calculations were "off the cuff" perhaps indicating a lack of real concern. The costs outlined below are augmented by relevant company commentary, and include miscellaneous regulatory costs that the subject companies believed were onerous.

COMPANY A (Soup and Juice)

The Administrative Officer at Company A preceded the discussion with regard to costs with the general comment that government regulations were more of a nuisance than a cost problem. He estimated that the Health Protection Branch spent approximately 72 hours per year (6 hours per month) in the plant on general inspection and consumer complaint visits. The factory manager must accompany the H.P.B. inspectors (company policy) costing the company an estimated \$15.00 per hour, totalling \$1,080.00 per year. With regard to the resident Health of Animals inspectors, the costs enumerated were \$74.00 in 1979 for overtime payments and a valuation of

\$2,400.00 for the office space that the company must by regulation supply. Since the company perceived its Quality Control Program to be of a higher standard than that regulated by government, it did not attribute any costs to maintaining government standards. Furthermore, the company official could not identify any distinct capital or current costs with regard to compliance with government labelling regulations. These costs, if any existed, were merely absorbed into the ongoing costs of doing business.

COMPANY B (Soup)

Duplication of inspection services by the Health Protection Branch was estimated to cost Company B (one plant only) the sum of \$225.00 per year (one two-day visit yearly). The company official complained about the overtime costs of the Health of Animals Inspector at the company plant visited (\$15,095.00 in 1978-79) but then stated that arrangements had been made with the Branch that would lower these costs in 1980. The Health of Animals office space was estimated at a cost of \$5,000.00 per year.

COMPANY C (Juice)

Company C perceived a duplication of general sanitation inspections by the Health Protection Branch and Fruit and Vegetable Division since the Health of Animals inspector was continuously conducting the same inspections. The cost of these two redundant inspection services was estimated at \$320.00 each, annually. The provision of office space to a resident Health of Animals inspector was calculated to cost the company \$5,000.00 per year.

The company official stated that capital costs were created by the different requirements of the C.A.P.S. Act and Meat Inspection Act. The Meat Inspection Act requires that all plants registered under that Act must be built to certain specifications which are more stringent than the C.A.P.S. Act. This creates unnecessary costs, the company believed, since areas of the plant where no meat products were handled had to also be constructed to more expensive specifications. The company could not make an estimate of these costs, however.

COMPANY D (Juice)

The president of Company D stated that he could not estimate the costs of his time spent dealing with "government red tape" and in any case, commented that the cost was passed on to the consumer. He then estimated that his loss of productive worktime in meeting with government administrators and trips to Ottawa yearly cost his company approximately \$20,000 - \$30,000.

Overlap of inspection services was not a problem at this company, and capital costs created by government regulation were "not worth mentioning".

COMPANY E (Juice and Soup)

Company E executives commented that although the costs of inspection overlap created by Health Protection Branch visits were minor, these costs were still unnecessary and the money could be put to better use. A figure of \$7,000 to \$10,000 was estimated for the H.P.B.'s annual general inspection and periodic consumer complaint visits. This sum included the cost of factory personnel accompanying the Branch inspectors, reports by such personnel

regarding the visits, Quality Control and Head Office managers dealing with H.P.B. reports and suggestions, and miscellaneous secretarial work created by such visits. Health of Animals overtime costs were not considered excessive, and amounted to \$9,466.00 in 1979.

IX BENEFITS TO INDUSTRY AND CONSUMERS OF GOVERNMENT INSPECTION SERVICE

An assessment of regulatory costs would not be complete without an estimation of concomitant benefits. Since the focus of this study is on government inspection services, the researchers will restrict their comments to inspection services, particularly those specific to the processing of canned soups and canned juices.

The subject companies, when questioned with regard to perceived benefits of the regulatory legislation, exhibited a common response:

"We don't need the government inspection services since our standards are equal or more stringent than that legislated, but the other guy".

This kind of response indicates that the industry, in spite of its aversion to government regulation, tacitly acknowledges that the policing by government does benefit the industry as a whole, in terms of maintaining minimum standards. Further evidence of this industry perception can be seen in company comments with regard to the inspection of reconstituted citrus juices. The companies, without exception, stated that such juices were not adequately inspected by government, partially due to a lack of sophistication in analysis equipment.

Although the primary impetus for this complaint was that the companies believed that the differential inspection of citrus juices placed the processors of such items at a competitive disadvantage with regard to domestic juices, the concern was also expressed that lack of inspection would permit adulterated juices to enter the market place, thus potentially reflecting badly on the reputation of the industry as a whole.

The grading program of the Fruit and Vegetable Division was considered by several of the companies to be beneficial to the extent that the division reports could be used to compare with company grade reports. This was the only food specific inspection branch that received a direct endorsement from the subject companies.

In terms of the regulations themselves, grades and standards legislation have the primary objectives of controlling the quality, purity and wholesomeness of the foods processed and sold by Canadian manufacturers. The benefit to consumers is difficult to measure without comparative empirical analysis of the product of an unregulated (self-regulated) processed fruit and vegetable industry, but perhaps the company comments above indicate a potential result. Hand-in-hand with such legislation is packaging and labelling regulation which provides the consumer with information with regard to what he/she is eating and drinking and protects him/her from potential economic fraud.

The grades and standards legislation provides several ancillary benefits to industry by restricting competition within Canada and acting as non-tariff trade barriers. For example, importers of standard products under the Processed Fruit and Vegetable Regulations must comply with grades, standards, packaging and labelling requirements under the Regulations. Such inhibitions to trade can be identified as non-tariff barriers. Packaging and labelling legis-

lation perform the same function, as well as simplifying company planning and forecasting (for example, government limitation of container sizes prevents a proliferation of sizes that could create a marketing nightmare). Standardization of product also reduces transaction costs at both the wholesale and retail levels, thus benefiting all links in the PDR chain.

PHASE III

X SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

(i) Overview

In Phase I the researchers identified the federal, provincial¹, and municipal² regulatory legislation affecting the production of canned soups and canned juices at the production, processing, distribution and retail levels of the food supply system (see Tables IV-1, IV-2). Further analysis was apportioned to statutes and regulations relative to their specificity to the subject products and to the operation of fruit and vegetable processing plants. Since preliminary interviews with industry personnel indicated that there were concerns with regard to duplication of government services at the processing level, and with the differential treatment of imported versus domestic canned juices, focus of the research and empirical components of the study was on these two areas of concern (emphasis on the former). A regulatory matrix of "legislated" inspection services at the processing level, coordinates by jurisdiction and type of regulation, was presented in Table IV-3, Phase I. This table demonstrates not only the scope of government inspection services having an impact (legislative if not actual) on the fruit and vegetable processing plants, but also the multiple objectives of major regulatory

^{1/} Ontario was chosen as the representative province for two reasons; firstly the industry is centered in that province; and secondly, research indicated that federal legislation had a much greater impact on the processing of these products than provincial legislation, and accordingly, in the light of a fixed budget, an inter-provincial analysis would produce a diminished return relative to research concentration on one major province.

^{2/} Specific municipalities were not chosen at this stage of the study since the researchers did not choose the subject processing plants until Phase II.

legislation such as the Food and Drugs Act and C.A.P.S. Act. Since discussion with the appropriate trade associations indicated that regulation of the subject products in the distribution and retail sectors was not of significant industry interest, the researchers did not develop this area beyond an identification of general legislation affecting these areas.

In Phase II, five fruit and vegetable processing companies were selected after consultation with the industry, to include three canned soup processors and four canned juice processors. The companies chosen were both large and small in the processing activities with regard to the subject products, so that the differential effect of the regulations on alternative scale production units could be noted. The researchers determined, through interviews with quality control personnel, plant foremen, administrative staff, inspectors and government administrators whether the legislative overlap observed in Phase I flowed through to implementation at plant level. Further, the information obtained in these interviews illustrated the extent of differential inspection of domestic versus single strength citrus and reconstituted citrus juices, and vegetable soups vis-à-vis soups containing meats and fish. Where regulatory overlaps were perceived by the subject companies, costs were obtained in an attempt to quantify the industry complaints. Miscellaneous comments regarding government inspection programs and general regulation of the industry were also recorded, as well as compliance costs attributed by industry to government waste.

(ii) Summary

The processed fruit and vegetable industry in Canada is a billion dollar industry; canned soups represented more than 11 per cent of the total

dollar value of processed fruit and vegetable shipments in 1977, and are the largest single formulated processed fruit and vegetable product shipped (see Table II-1), while canned juices accounted for approximately 15 per cent of the industry's factory shipments. The Canadian Food Processors Association recommended, and a cursory survey confirmed, that an analysis of the government regulations affecting these two product groups would supply excellent examples of the regulatory issues that concern the whole industry. As a result, many of the conclusions of the researchers and comments of the industry and inspection personnel can be readily and validly generalized to other product sectors of the industry.

The identification and summary of regulatory legislation having a prima facie impact on the canned soup and canned juice sector, presented in Phase I, demonstrates the degree of legislative overlap which is extant: for example (see Table IV-3), a company processing canned soups (containing vegetables, meat and fish) is subject to general sanitation inspection of the processing facilities under the Food and Drugs Regulations (Food and Drugs Act), Processed Fruit and Vegetable Regulations (C.A.P.S. Act), Meat Inspection Regulations (Meat Inspection Act), Fish Inspection Regulations (Fish Inspection Act), Food Premises Regulations (Public Health Act - Ontario), Meat Inspection Regulations (Meat Inspection Act - Ontario), and Fish Inspection Regulations (Fish Inspection Act - Ontario). This legislation is potentially enforced by seven different inspection agencies operating under the authority of five federal departments (Health and Welfare Canada and Consumer and Corporate Affairs enforce the Food and Drugs Regulations) and three provincial ministries. These soup products, processed in the same plant are, prima facie, subject to packaging and labelling regulation in all the above Acts and

Regulations (other than the Food Premises regulations; Public Health Act) as well as the Consumer Packaging and Labelling Act/Regulations.

Specified canned juice products (generally those produced domestically), for example, grape juice, are subject to similar, although not always identical standards under the Processed Fruit and Vegetable Regulations (Agriculture Canada) and Food and Drugs Regulations (Health and Welfare Canada, enforced by Consumer and Corporate Affairs)¹.

These are merely a few examples of legislative overlap having a potential impact on the subject products. A summary of this phase of the study would be redundant; first, since Phase I is in itself a summary and, more importantly, it is primarily through implementation that the legislative overlap becomes relevant to the subject industry.

In Phase II, it was determined that the canned soup processors perceived that the regulatory legislation having a major inspection impact on their processing operations were the Processed Fruit and Vegetable Regulations, enforced currently by the Fruit and Vegetable Division, Processed Products Section, Agriculture Canada; Meat Inspection Regulations, enforced currently by the Health of Animals Branch, Agriculture Canada (these two inspection branches have not been formally integrated into the new Food Production and Inspection Branch, but a rationalization of services will not affect plant level inspections for several years) and Food and Drugs Regulations, enforced by the Health Protection Branch, Health and Welfare Canada (health and safety aspect) and the Consumer Fraud Protection Branch, Department of Consumer and Corporate Affairs (economic fraud aspect - at retail level only). Other federal food specific legislation such as the Fish Inspection Act/Regulations

^{1/} Federal jurisdiction to prescribe standards of composition has been brought into question by the Supreme Court of Canada decision in The Labatt case (see footnote 1, page 45). As a consequence of this decision, federal Food and Drugs Act standards are no longer being enforced (no prosecutions), unless the province in question has enacted identical standards (a prosecution would then be taken under the provincial regulations) C.A.P.S. Act standards are not affected since they are valid only for export and interprovincial trade. The major impact would be felt with regard to a product with no C.A.P.S. Act standard and no provincial standard - the Food and Drugs standard would not be enforceable, leaving a vacuum.

have no impact on the subject processors since canned soups containing fish products are inspected, if at all, by Health of Animals Branch Inspectors, by informal agreement with the Department of Fisheries and Oceans. Furthermore, the same processors are registered under the Meat Inspection Regulations, thus obviating the requirement for registration under the Fish Inspection Regulations and Processed Fruit and Vegetable Regulations (by informal agreement).

Provincial (Ontario) food specific regulatory legislation such as the Fish Inspection Act/Regulations and Meat Inspection Act/Regulations do not have any inspection impact on the subject processors since the plants are federally licenced and inspected, thus taking them out of the provinces' jurisdiction (inter-provincial and export trade products) and interest sphere. The Farm Products Grades and Sales Act/Regulation 293, enforced by the Fruit and Vegetable Section, Ontario Ministry of Agriculture and Food, sets grades, standards, and sanitary processing requirements for specified fresh and processed fruit and vegetable products. In plants under the jurisdiction of C.A.P.S. Act inspectors, O.M.A.F.'s involvement is limited to the grading of raw tomatoes during the tomato pack, and then at the request of the processor and grower (or if there is a dispute as to grade). Local health Units established under the Food Premises Regulations (Public Health Act) limit their periodic sanitary inspection to the cafeteria areas of certain of the subject plants.

With regard to the subject canned juice processors, two firms operated integrated canned soup and juice facilities, therefore the above summary would apply to the inspection of both soup and juice products in these plants, subject to a slightly different emphasis as will be seen below.

One firm processed canned juices and soups at separate plants and thus had no resident Health of Animals inspector in the juice plant and the fourth firm manufactured only fruit juices and was subjected only to Fruit and Vegetable Division inspections, with regard to food specific legislation.

General regulatory legislation (not specific to food products - see Table VII-3) containing an inspection component was not perceived by any of the processors to represent a significant problem to the industry. In fact, although the processors were aware of most of these inspection services, they had no records of the specific number of visits per inspection branch and had to estimate the frequency of visitations.

The three major food specific inspection services (Fruit and Vegetable Division, Health of Animals Branch, Health Protection Branch) were perceived to overlap primarily in the area of general sanitation inspection. In the canned soup and integrated canned soup and juice plants, the resident Health of Animals inspectors generally inspect for sanitary processing conditions and handling of food products. Although the focus of the resident inspectors is on meat products, and areas of the plant where such products are found, their inspection routine takes them throughout the plant. Fruit and Vegetable Division have developed a program of monthly intensive general sanitation inspections, prioritized on a violation basis. However, the subject companies were for the most part not subjected to this inspection at all, partly due to low violation records and partly since the Division acknowledged that the resident Health of Animals inspectors were assuming responsibility. The Health Protection Branch visited all of the subject plants (except St. Jacobs) once or twice a year, for one or two days, in the implementation of consumer health and safety projects focusing primarily, in the subject sector,

on low acid products (for example, canned mushrooms). During these inspections, accompanied generally by resident Health of Animals inspectors, the Branch would be concerned with processing capabilities of the company, including a general sanitation component.

Specific areas of regulatory inefficiencies were perceived by some or all of the processors in the following areas:

a) Labelling - labels for products within the regulatory jurisdiction of the Processed Fruit and Vegetable Regulations (single strength juices and reconstituted apple, grape; vegetable soups) must be approved by the Fruit and Vegetable Division; labels for soups containing meats must be approved by Health of Animals Branch; and labels for all other subject products (for example, reconstituted citrus juices, mixed juices, soups containing fish, wine) are subject to Consumer and Corporate Affairs jurisdiction (although the companies do not submit the labels). Consumer and Corporate Affairs, under the enabling authority of the Consumer Packaging and Labelling Act/Regulations has superceding authority over all labels and could conceivably prosecute a company with regard to a label already approved by Agriculture Canada. This situation has not arisen but causes anxiety amongst the processors.

b) Headspace/Net Quantity - the headspace/net quantity controversy arises since headspace requirements in the Processed Fruit and Vegetable Regulations are incompatible with net quantity under the Weights and Measures Regulations and Consumer Packaging and Labelling Regulations. If the processor fills to required headspace in certain can sizes, then the net quantity will fall below net quantity requirements. As a consequence, the can must be "over-

filled". This is not a problem, according to a senior departmental official, since all canners are in the same situation and are aware that the net quantity provisions prevail. Most industry personnel interviewed acknowledged the regulatory discrepancy but commented that it was not a practical problem.

c) Reconstituted Citrus Juices - these juices are not standard products under the C.A.P.S. Act and therefore fall under the jurisdiction of the Health Protection Branch (health and safety aspect) and Consumer Fraud Protection Branch (economic fraud aspect). The Fruit and Vegetable Division sporadically inspects the product with regard to container specifications and fill; Health Protection Branch does not inspect reconstituted juices unless there is a consumer complaint (or for de-tinning); and the Consumer Fraud Protection Branch inspects such juices at the retail level only. These juices compete with standard domestic juices which are inspected at the processing level by the Fruit and Vegetable Division and as a result, are believed to have a competitive advantage over the more regulated juices. Moreover, most processors believed that some reconstituted citrus juices are adulterated and potentially could reflect badly on the fruit juice industry as a whole. Consumer and Corporate Affairs has yet to prosecute a processor with regard to adulteration (addition of sugar and water) of citrus juice from concentrate, but informed the researchers that a possible prosecution was underway, and that detection of adulteration at the retail level was improving.

d) Conflicting Regulations - complexity of regulations was a common complaint, but more serious were conflicting regulations and split jurisdictions. An example of this was with regard to Vitamin C potency requirements under the

Processed Fruit and Vegetable Regulations (vitamin C level must be maintained twelve months after canning), and Food and Drugs Regulations (no limitation period). The Health Protection Branch (and C.C.A.) requires that the prescribed vitamin level be maintained for the duration of the fruit juice's shelf life. The processor consequently must add over the prescribed level so that the required potency is maintained - this overage can cause a bitter taste in the juice.

e) Consumer Complaints - split jurisdictions are also responsible for processor complaints with regard to handling of consumer complaints by Fruit and Vegetable Division, Health of Animals Branch, Health Protection Branch and Consumer Fraud Protection Branch. For example, a complaint regarding a can of domestic fruit juice could be handled by the Fruit and Vegetable Division (if taste is bad - grade, standard); Health Protection Branch (bad taste is manifestation of health hazard); Consumer Fraud Protection Branch (sugar added and not declared). The processors stated that if a product was within the jurisdiction of Agriculture Canada, then all complaints should be funnelled through this Department. The inspection agencies commented that they cooperate with each other on consumer complaints but maintain their independent jurisdictions, although the product may be agricultural.

f) Resident Health of Animals inspectors - although there was no consensus on whether the industry should be self regulatory, there was agreement that the burden of a resident Health of Animals inspector was unnecessary in a processing plant where the products are basically vegetable based but contain a small percentage of meat. Moreover, company quality control procedures were

believed to be equal or superior to government standards, thus rendering a resident inspector redundant.

Costs of perceived inspection duplication were minor in relation to overall operating costs, but the frustrations caused by perceived unnecessary costs were very real. The cost most frequently complained about was the Health Protection Branch annual inspection 'overlap' which ranged from estimates of \$225.00 to \$10,000.00 per year (the latter figure includes time of factory personnel accompanying Branch inspectors, consequent reports, and consideration and implementation of report suggestions by company officials). Overtime costs for Health of Animals inspectors ranged from \$74.00 to \$15,095.00 in 1979, and space allocated to such resident inspectors averaged \$5,000.00 per year. The processors could not estimate capital costs created by government regulations.

It would appear that the processed fruit and vegetable industry is not altogether satisfied with the present system of inspection, although the depth of their dissatisfaction is not as severe as the researchers anticipated. The alternatives to government inspection (assuming that government standards and grades prevail) include self-regulation with no controls other than the marketplace, self-regulation with reporting requirements to a trade association, self-regulation with reporting requirements to responsible government departments (with or without spot checking by government inspectors), continued government inspection by the departments with current jurisdiction but under a single, comprehensive Food Act, or enforcement of government regulations by an independent Food Agency with responsibility to enforce existing (streamlined) legislation. This listing is obviously not exhaustive, but indicates a few of the of the options available.

It is beyond the scope of the study to do an in-depth analysis of the options but, in brief, the industry indicated that self-regulation with no controls was too dangerous a situation, which some unscrupulous processors would take advantage of to the detriment of the reputation of the whole industry. Control by a trade association would require that the association acquire an inspection infrastructure as well as the legal authority to enforce it, while the option of self-regulation with reporting requirements to government was negatively received since several of the companies felt that the proposed Freedom of Information legislation could open their reports to the public, thus exposing privileged information. Enforcement of a single Food Act by current inspection bodies has been mooted for many years but has repeatedly run into jurisdictional roadblocks, and would not solve the problem of a multiplicity of inspection services operating in the same plant. An independent Food Inspection Agency, administering current, rationalized legislation would eliminate the inspection overlap, both real and perceived, but would create a new level of bureaucracy for government and industry to deal with.

(iii) Conclusions

Legislative overlap with regard to food specific regulation of the processed fruit and vegetable industry is pervasive adding to the volume and complexity of legislation that the industry must deal with.

The effects of legislative overlap are aggravated by conflicting provisions, examples of which are given in the body of this study.

Potential food specific inspection duplication is largely mitigated

by formal and informal inter-departmental and federal/provincial agreements. However, industry perceives this overlap, particularly with regard to Health Protection Branch visits in a plant housing resident Health of Animals Branch inspectors. Although the functions of these two branches are different (with some overlap), industry does not distinguish their roles, perhaps due to poor communications. There is minor inspection overlap with regard to the Fruit and Vegetable Division general sanitation inspections.

Informal and formal agreements facilitate coordinated inspection services but cause confusion amongst processors with regard to who is inspecting what.

Inspection of labels by three different inspection agencies is wasteful and creates uncertainty and frustration amongst processors.

The diversity of 'general' regulatory legislation served to mask the cumulative frequency of inspection visitations. Possibly as a result of this segmentation of inspection services (dealing exclusively with numerous company departments), the companies did not perceive these regulations to be a problem for the industry.

Although direct costs of inspection overlap are low, the aggravation costs are high.

The handling of consumer complaints, in the context of present split jurisdictions is reasonable, in that there is a spirit of cooperation, but the split jurisdictions create frustrations for the processors.

Reconstituted citrus juices are subject to less regulation and inspection than domestic juice products, although this is a matter of degree

(iv) Recommendations

1. Government should rationalize food specific regulatory legislation such as to eliminate redundant and conflicting provisions.

Redundancy in legislative drafting is perhaps inevitable with jurisdictional overlaps and ambiguities between federal and provincial orders of government. At this stage of the constitutional debate (and the uncertainties created by the Labatt decision) the researchers will limit their remarks to the redundancies and conflicting provisions found in federal legislation only.

This paper does not attempt to be a section-by-section comparative textual analysis of regulatory legislation, but areas of redundancy in legislative drafting are apparent from even a cursory reading of the Statutes and Regulations. Of course, such a comprehensive analysis would be a sine qua non prior to implementing a program directed at the rationalization of legislation.

As stated, the food specific legislation most relevant to inspection of canned soups and juices are the C.A.P.S. Act/Processed Fruit and Vegetable Regulations, Food and Drugs Act/Regulations, and Meat Inspection Act/Regulations. The Consumer Packaging and Labelling Act/Regulations, although not food specific, is of particular importance as well.

Table IV.3 highlights the areas of potential regulatory redundancy. Under the "product quality" heading, food standards for many fruit and vegetable products are repeated with some conflicting provisions (for example, grape juice) in both the Processed Fruit and Vegetable Regulations, and Food and Drugs Regulations.

Consumer health and safety provisions in the form of plant and personnel sanitation requirements (for the most part to be complied with as a prerequisite to licencing) are found in all federal and Ontario food specific regulations. A soup processing plant will have to comply with as many as seven sets of regulations containing almost identical provisions.^{1/} Packaging and labelling is a particular area in which regulatory redundancies occur. The Consumer Packaging and Labelling Act, as the superseding labelling legislation sets the form and content of packaging, labelling and advertising requirements. Provisions of that Act and Regulations are repeated almost verbatim in some of the food specific regulations (i.e. Meat Inspection Regulations).

Examples of substantive conflicts in the legislation are the head-space/net quantity controversy, and the limitation period with regard to Vitamin C deterioration, both expanded upon in the body of this paper.

1/ A soup plant processing soups containing meat/fish/vegetables is subject in Ontario to plant sanitation provisions under the Food and Drug Act, C.A.P.S. Act, Meat Inspection Act (Canada), Meat Inspection Act (Ontario), Fish Inspection Act (Canada), Fish Inspection Act (Ontario), and Public Health Act (Ontario).

2. Government should formalize and publicize current Federal intra- and inter-departmental inspection agreements, and rationalize inspection services wherever possible.

The focus in this study has been on federal food-specific inspection services, as opposed to provincial, since approximately ninety-five percent of the Canadian production of processed fruits and vegetables takes place in federally registered establishments. Although the volume and variety of inspectors, federal and provincial, conducting the "general" inspections (see Table VII.3) is substantial, these types of inspections were generally regarded by industry as just a necessary part of doing business and therefore, no recommendations for change with respect to these inspections are made.

Since the commencement of this study in September, 1979, there has evolved a potentially major rationalization of federal inspection services, through the creation of Agriculture Canada's Food Production and Inspection Branch. The coordination of the Health of Animals Branch and Fruit and Vegetable Division inspection services has not yet filtered down to plant level, but the Department states that this will occur in the near future. As indicated in the study, the formal and informal agreements and understandings between federal Agriculture, Health and Welfare, Fisheries, and Consumer and Corporate Affairs, largely attenuate the effect of overlapping legislation. It is the researcher's opinion that if the responsible departments were to formalize these agreements (without creating unnecessary rigidity) and communicate/publicize the newly stated regime to the food processing industry this would alleviate much of the industry's dissatisfaction.

Federal inspection services, of course, are not exclusive to the processed fruit and vegetable industry and, no doubt, other sectors encompassed by these same inspection programs have similar problems. However, the formalization and subsequent publication and communication should be directed at the subject industry to ensure that the interested parties are aware of "who's inspecting what, and why" in their industry. A detailed statement of the source of authority (legislative) of the inspecting Branch, the Branch's objectives (stated and otherwise) and functions should be included in the communication. Where there has been overlaps perceived, as indicated in this paper, there should be discussion with industry and the interested Branches with a view to rationalization, if possible; in essence, formalization, definition, communication and discussion.^{1/}

1/ The concept of a single Food Inspection Agency was considered as an option to the present situation with such an agency to be independent of any department, but whose members would be drawn from the departments currently responsible for food processing operations. Optimally, the agency would merely implement policy/legislation derived from the relevant departments and such implementation would coordinate all policy through one accountable inspection arm. The researchers have concluded, in the light of discussions with government and industry, that the incorporation of a new level of bureaucracy is not necessary at this time, but should remain an option (or threat) should the recommendations proposed not be sufficient to alleviate the frustrations currently felt by processors with regard to government inspections.

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- 5) Laskin, B., Canadian Constitutional Law (Carswell, 4th ed. rev., 1975 by A.S. Abel)
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- 7) Report of the Task Force on the Food and Beverage Industry, 1978, Chairman; P. Wygant
- 8) Report of the Task Force on the Processed Fruit and Vegetable Industry, 1978, Chairman; G.L. Nix
- 9) Stanley Associates Limited, "Review of Treatment Technology in the Fruit and Vegetable Processing Industry in Canada", 1977
- 10) Statistics Canada, Catalogue Nos. 32-218, 65-007, 65-004

APPENDIX A

MAJOR FEDERAL STATUTES AND REGULATIONS CONSIDERED

Agricultural Products Marketing Act, R.S.C. 1970, c. A-7.

Agricultural Stabilization Act, R.S.C. 1970, c. A-9.

Animal Disease and Protection Act, S.C. 1974-75, c. 86, c. A-13

-Animal Disease and Protection Regulations, CRC, vol. III, c. 296,
p. 1779.

Anti-Dumping Act, R.S.C. 1970, c. A-15.

Canada Agricultural Products Standards Act, R.S.C. 1970, c. A-8.

-Processed Fruit and Vegetable Regulations, CRC, vol. III, c. 291,
p. 1553.

Combines Investigation Act, R.S.C. 1970, c.-23.

Consumer Packaging and Labelling Act, S.C. 1970-71-72, c.41.

-Consumer Packaging and Labelling Regulations CRC, vol IV, c. 417,
p. 2927.

Customs Act, R.S.C. 1970, c. c-40.

Customs Tariff, R.S.C. 1970, c. c-41.

Electricity Inspection Act, R.S.C. 1970, c. E-4.

Environmental Contaminants Act, R.S.C. 1974-75-76, c. 72.

Export and Import Permits Act, R.S.C. 1970, c. E-17.

Farm Products Marketing Agencies Act, S.C. 1970-71-72, c. 65.

Fish Inspection Act, R.S.C. 1970, c. F-12.

Fisheries Act. R.S.C. 1970, c. F-14.

-Meat and Poultry Products Plant Liquid Effluent Regulations, CRC,
vol. VII, c. 818, p. 5133.

-Potato Processing Plant Liquid Effluent Regulations, CRC, vol. VII,
c. 829, p. 5235.

Food and Drugs Act, R.S.C. 1970, c. F-27.

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Fruit, Vegetables and Honey Act, R.S.C. 1970, c. F-31.

-Fruit, Vegetables and Honey Regulations, CRC, vol. IX, c. 875,
p. 6419.

Gas Inspection Act, R.S.C. 1970, c. G-2.

Humane Slaughter of Food Animals Act, R.S.C. 1970, c. H-10.

-Humane Slaughter Regulations, CRC, vol. IX, c. 937, p. 7103.

Livestock and Livestock Products Act, R.S.C. 1970, c. L-8.

-Hatchery Regulations, CRC, vol. XI, c. 1023, p. 7973.

-Stockyard Regulations, CRC, vol. XI, c. 1025, p. 7981.

Meat Inspection Act, R.S.C. 1970, c. M-7.

-Meat Inspection Regulations, SOR/79-579.

Plant Quarantine Act, R.S.C. 1970, c. P-13.

Weights and Measures Act, S.C. 1970-71-72, c. 36

-Weights and Measures Legislation, CRC, vol. XVIII, c. 1606,
p. 14345.

APPENDIX B

MAJOR PROVINCIAL (ONTARIO) STATUTES AND REGULATIONS CONSIDERED

Boilers and Pressure Vessels Act, R.S.O. 1970, c. 47.
-General (R.R.O. Reg. 75).

Building Code Act, 1974, S.O. 1974, c. 74.
-Building Code (O. Reg. 925/75).

Elevators and Lifts Act, R.S.O. 1970, c. 143.
-General (R.R.O. Reg. 238).

Employment Standards Act, 1974.
-General (O. Reg. 803/75).

Environmental Protection Act, 1971, S.O. 1971, c. 86.
-Sewage Systems (O. Reg. 229/74).

Farm Products Grades and Sales Act, R.S.O. 1970, c. 161.
-Fruit and Vegetables (R.R.O. 293, 294, 295).

Farm Products Marketing Act, R.S.O. 1970, c. 162.

Fish Inspection Act, R.S.O. 1970, c. 174.

Livestock and Livestock Products Act, R.S.O. 1970, c. 251.

Meat Inspection Act, R.S.O. 1970, c. 266.
-General (R.R.O. Reg. 574).

Occupational Health and Safety Act, 1978.
-Industrial Establishment Regulations (O. Reg. 658/79).

Ontario Water Resources Act, R.S.O. 1970, c. 331.
-Plumbing Code (R.R.O. Reg. 674).

Plant Diseases Act, R.S.O. 1970, c. 350.
-General (R.R.O. Reg. 677).

Power Corporation Act, R.S.O. 1970, c. 354.
-Electrical Safety Code (R.R.O. Reg. 683).

Public Health Act, R.S.O. 1970, c. 377.
-Slaughterhouses and Meat Processing Plants (R.R.O. Reg. 719).
-Food Premises Regulations (R.R.O. Reg. 706).

Workmen's Compensation Act, R.S.O. 1970, c. 505.
-First Aid Requirements (R.R.O. Reg. 833).

APPENDIX C

NUMBER OF PRODUCTS DETAINED AND RELEASED-

FIVE YEAR SUMMARY

FRUIT AND VEGETABLE DIVISION

	DETAINED	RELEASED
April 1, 1974- March 31, 1975	1,339	1,276
April 1, 1975- March 31, 1976	1,137	1,298
April 1, 1976- March 31, 1977	1,189	1,137
April 1, 1977- March 31, 1978	1,221	1,205
April 1, 1978- March 31, 1979	847	794

Source: Fruit and Vegetable Division, Processed Products Section,
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