

**OFFICERS****CHAIR**

Tim Penner  
Procter & Gamble Inc.

**1. VICE CHAIR**

Tom Singer  
Reinhart Foods Limited

**2. VICE CHAIR**

Ed Marra  
Nestlé Canada Inc.

**TREASURER**

Tim Moore  
The Clorox Company of Canada, Ltd.

**PRESIDENT & CEO**

George Fleischmann

**CORPORATE SECRETARY**

Robin Garrett



FCPMC · FPACC

**DIRECTORS**

Tom Barlow  
Coca-Cola Bottling Company  
Suzanne Blanchet  
Cascades Tissue Group  
Rudi Blatter  
Lindt & Sprüngli (Canada), Inc.  
Kevin Boyce  
Unilever Canada Limited  
Daniel Butler  
Kraft Canada Inc.  
Pierre Claprood  
Natrel Inc.  
Allan Cosman  
Ferrero Canada Ltd.  
Henry Demone  
High Liner Foods Incorporated  
Terry Dennis  
Storck Canada Inc.  
Philip Donne  
Campbell Soup Company Ltd  
Jean Gattuso  
A. Lassonde Inc.  
Marc Guay  
Frito Lay Canada  
Angela Guy  
Johnson & Johnson Inc.  
Kent Hawkins  
W.T. Hawkins Ltd.  
Rob Hayman  
Grantham Foods Ltd.  
Andrew Hedges  
Reckitt Benckiser (Canada) Inc.  
Robert Irving  
Irving Tissue  
Martin Jamieson  
Robin Hood Multifoods Inc.  
Jacques Légaré  
Council of Food Processing  
and Consumer Products (Quebec)  
Mel MacConnell  
Scotsburn Dairy Group  
Ed MacLellan  
Energizer Canada Inc.  
Gary MacLeod  
Dare Foods Limited  
Rick Meyers  
Hershey Canada Inc.  
Blake Morris  
GlaxoSmithKline Consumer Healthcare  
Robert O'Connell  
ConAgra Grocery Products Limited  
Jeff O'Neill  
Pepsi-Cola Canada Ltd.  
Greg Peterson  
Kellogg Canada Inc.  
John Pigott  
Morrison Lamothe Inc.  
Brian Rainey  
McCormick Canada  
Don Robinson  
Effem Inc.  
Ralph Robinson  
Weston Bakeries Limited  
Ed Shartar  
Coca-Cola Ltd.  
Christi Strauss  
General Mills Canada Corporation  
Larry Thomas  
The Reader's Digest Association (Canada) Lt.  
Vince Timpano  
The Minute Maid Company Canada Inc.  
Michael Unruch  
Pfizer Canada Inc. Consumer Group  
Murray Webb  
Unilever Bestfoods Foodservice Canada

**PAST CHAIR**

Michael Rosicki  
Parmalat Canada

July 8, 2003

Dockets Management Branch (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane, Room 1061  
Rockville, MD USA 20852

Dear Sir or Madam:

Re: Docket No: 02N-0275: Administrative Detention

The Food and Consumer Products Manufacturers of Canada (FCPMC) is pleased to have the opportunity to provide comment on the above section of the Bioterrorism Act. We believe it is important to the free flow of trade across our mutual borders that appropriate mechanism are in place to ensure the security of our food supply chain, while taking into account the unique circumstances of traffic across our mutual border

FCPMC is the industry association representing over 150 Canadian-operated member companies that manufacture and market retailer and national brand food and consumer products that are integral to daily life at home, work and leisure. Our member companies provide Canadians with safe, nutritious and high quality products sold through retail grocery, drug, convenience, mass merchandise and foodservice distribution channels. Last year, the industry generated over \$24 billion annually in GDP (15% of the Manufacturing Gross Domestic Product), employed 312,000 Canadians directly in every region in Canada, contributed \$33 million to charitable causes and donated over 4.5 million bags of groceries to needy Canadians. The industry has a record of embracing world-class regulatory standards and is governed by 442 federal and provincial pieces of legislation, as well as thousands of regulations and self-imposed standards.

The following are FCPMC's comments and recommendations for your consideration.

**Number of Erroneous Detentions:**

FCPMC is concerned about the number of erroneous detentions. The FDA states that in the first nine months of 2002, 48% of the imported shipments of food were erroneously detained. This high percentage took place prior to these proposed regulations, which gives the FDA even more authority to detain product.

Erroneous detentions represent a significant loss of money, unnecessary administrative burden to producers, importers, wholesalers, retailers, transporters and foodservice establishments. In short, the entire supply chain is affected. The food industry globally has worked very hard over the years to improve supply chain efficiencies and good manufacturing practices. The erroneous detention of products could negate any efficiencies, create product shortages on the shelf and a backlog of product at border crossings. Additional costs associated with transportation, proper storage, security, loss of product, and appeals could run into thousands of dollars for each detention. The FDA proposal does not make any provision for compensating parties for the costs incurred due to erroneous detention. Many small businesses may not be able to sustain such losses.

**Criteria used by FDA to order a detention:**

FCPMC recommends a list of criteria be provided which defines “serious adverse health consequences”. An illustrative list from FDA will ensure **excess** (or **unnecessary**) detention does not occur.

**Content of Detention Order:**

FDA has provided a detailed list of information that must be on the detention order. A “brief, general statement” of the reasons for detention does not provide the affected party with sufficient information to appropriately respond. Therefore, FCPMC recommends that FDA require that the detention order include the evidence used to obtain the detention order. It is further recommended the agency be required to more fully disclose the basis upon which the order was issued. This would facilitate avoidance of wrongful detentions, as well as more rapid identification of improper detentions which would minimize the costs to companies.

**Who Serves As Presiding Officer at an Informal Hearing?**

FCPMC recommends that the individual presiding over an appeal hearing must be senior to the individual who signed the detention order.

**Period of Detainment:**

The FDA Act states that “an article of food may be detained . . . for a reasonable period, not to exceed 20 days, unless a greater period, not to exceed 30 days is necessary, to enable FDA to initiate a seizure or injunction action.” FCPMC recommends that “reasonable period” be emphasized; 20 to 30 days is too long in many cases. If the product is perishable, 20 to 30 days would destroy the shipment. In the case of a product with a short shelf life, but not considered perishable by FDA standards, the shortened shelf life as indicated by the “best before” date would deter shoppers from buying the product as an alternate product with a longer due date would be on the shelf as an option.

**Marking of Product:**

FCPMC strongly recommends that detained product be marked on the packing cases only. Consumers would be highly skeptical of purchasing any product which has been visibly marked for detention. The loss to the manufacturer and the retailer would be significant.

FCPMC recognizes that it is difficult to provide a secure supply of food for a nation while at the same time ensuring that the food industry and affected partners are able to deliver to their customers' food that is reasonably priced and of high quality. However, we are concerned that the administrative detention system proposed fails to ensure that food will not be unnecessarily and erroneously detained at the border.

We would welcome reviewing a revised proposal on this issue. FCPMC appreciates the opportunity to provide our Canadian perspective and we look forward to the FDA's evaluation of submitted comments. If you have any questions about FCPMC's submission, please contact Barbara Tordoff, (416) 510-8024 ex. 2243 or [barbt@fcPMC.com](mailto:barbt@fcPMC.com)

Respectfully submitted

A handwritten signature in black ink that reads "Laurie Curry". The signature is written in a cursive style with a prominent loop at the end of the name.

Laurie Curry, Vice President  
Public Policy