

**“Commercial relations in
the food chain.
The Spanish case: a
legislative proposal for a
better functioning”**

Gospodarska zbornica Slovenije

Portorov, 5th of June 2013



INDEX

1. Spanish Food&Drink Industry
2. Commercial relations at national level
3. Spanish Proposal of Law for a better functioning of the food chain

1

SPANISH FOOD&DRINK INDUSTRY

Spanish Food&Drink Industry

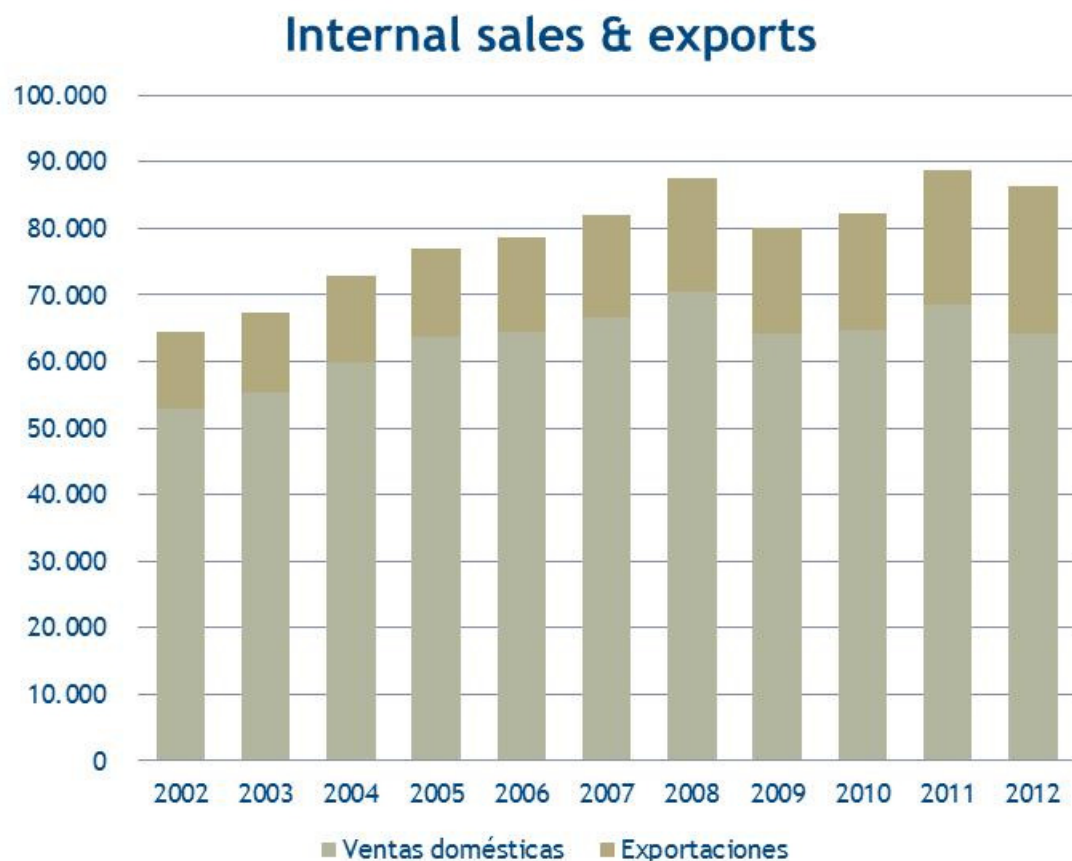
The Spanish Food&Drink Industry Federation (FIAB)

- created in 1977
- **47 sectorial associations** (90% of the industry's turnover)

The Food&Drink Industry Sector is the foremost industrial and export sector of the economy

- Food&Drink Industry transforms 70% of the agricultural production
- Highly fragmented: **96.2% of the companies are SMEs**
- Only 59 firms (0.2%) have more than 500 employees
- **52% Set at rural areas** (less than 10,000 inhabitants)
- **439.675 employees**

PRODUCTION DATA



EXPORTS 2012:
22,078
MILLION €

IMPORTS 2012:
19,052
MILLION €

POSITIVE BALANCE:
3,026 MILLION € (+9.4%), **COVERAGE**
RATE: 115.88%

The sector's net sales decreased by 2.68% in 2012 to reach 86,298 million euros.

EXPORT DATA

**TOTAL SPANISH
EXPORTS**

222,643 M €

+ 3.44 %

**TOTAL FOOD&DRINK
INDUSTRY**

22,078 M €

+9.40%



Exports account for
28.5% of the sector's
turnover.

INNOVATION

- Food for Life Spain Technology Platform www.foodforlife-spain.org
- The Food&Drink industry invested **655 million euros** in innovation (2011):
 - ✓ Investment in R & D along with investment in consumer communication are essential to create value.
 - ✓ Investment in R & D is focused on the acquisition of machinery, equipment and software.

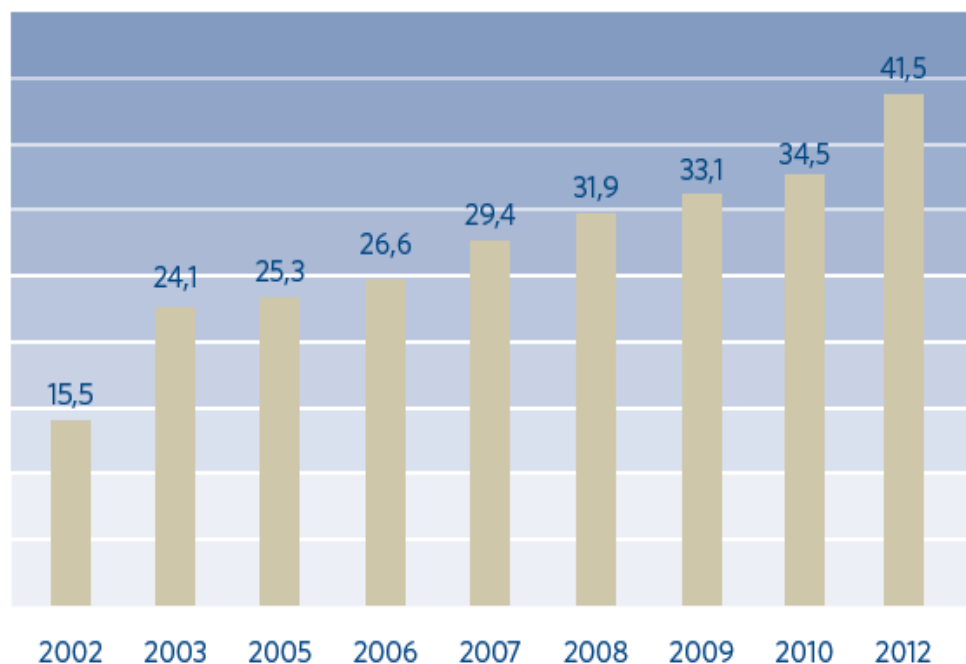


INVESTMENT

- Industry continues to generate confidence abroad. The **41% of foreign investment in 2010** went to the food industry (706 m €).

PRIVATE LABEL

% Market Share Private Label



Fuente: Elaboración propia a partir de datos de Nielsen y del SymphonyIRI Group

Private label (MDD) continues to increase its market share:

- ✓ In 2012 reached **41.5%** and experienced the highest growth rate since 2002.
- ✓ The market share of private labels in Spain is **5.9% higher** than in the EU (35.6%).

2

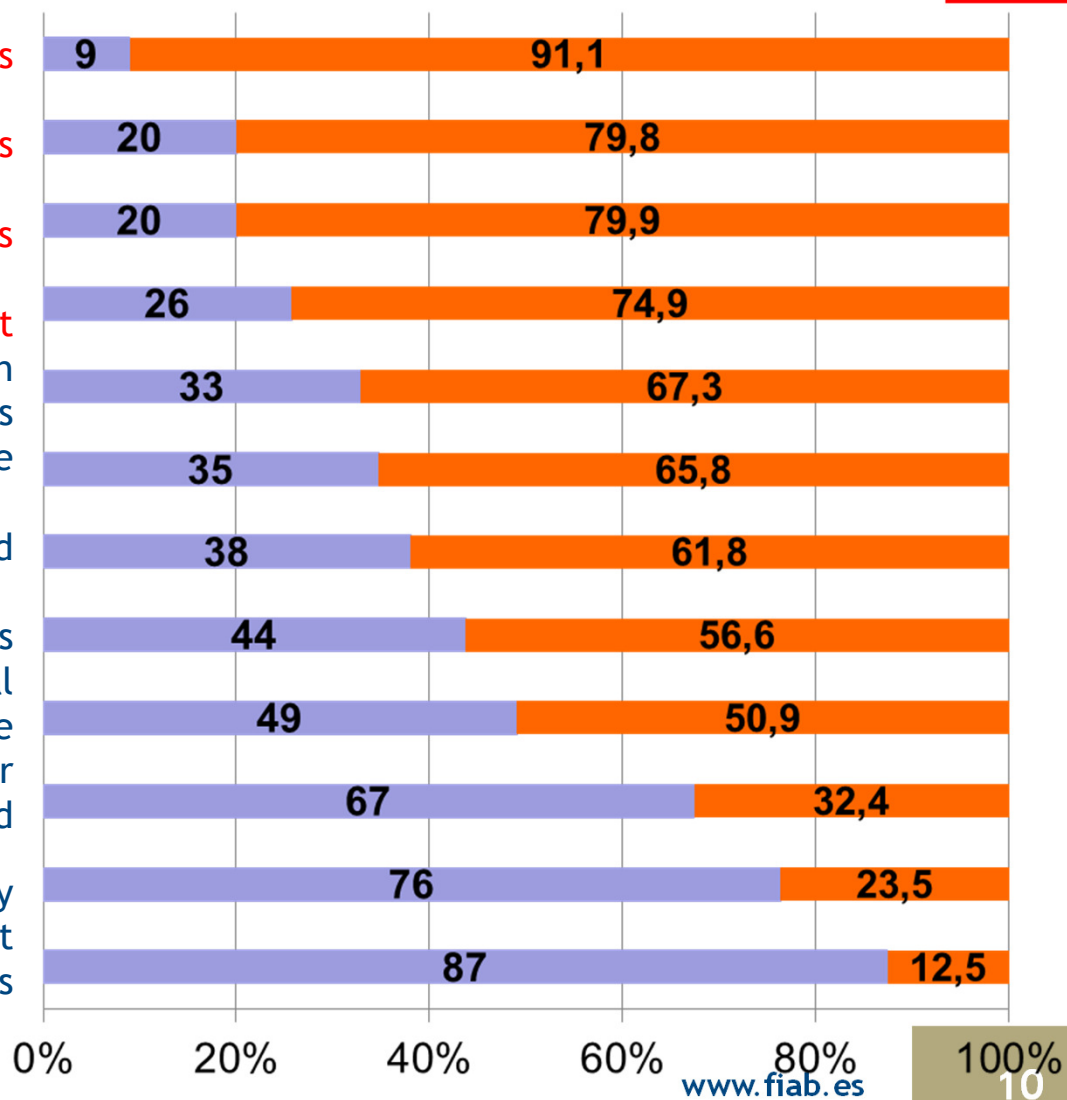
COMMERCIAL RELATIONS AT NATIONAL LEVEL

FoodDrinkEurope-AIM Survey on Unfair Commercial Practices in Europe (March 2011)



■ NO ■ SI

- Non-respect of contractual terms by some customers
- unilateral deductions on invoices without sound business reasons
- De-listing threats to obtain unjustified advantages
- retrospective payments for items not foreseen in the contract
- unilateral disruption of the business relationship to obtain unjustified advantages
- Payments for no service
- Payments clearly in no relation to the level of service provided
- clearly unilateral imposition of contractual provisions
- Unilateral cessation of contract by customers without commercial reasons or notice
- Customer's use of privileged information to develop their competing own retailer brand
- Non respect of confidentiality
- Blanket Refusal to sign a confidentiality agreement without objective reasons



Private Label Report European Commission (April 2011)

- **Innovation in Europe is not low. The big exception is Spain, due to the policy of restricted range of products in some chains.** This has a negative impact on the product development. Copycat has also a negative impact. (Pp. 9,10, 44, 47, 85, 97, 146, 154 and 158)
- **In Spain, negotiations focus on referrals due to reduced range of products in main chains, confrontation about many topics. Prices, discounts, volumes, promotions... - are negotiated weekly. Negotiations never end, even after given the order.** (Pp. 100 and 101)

FIAB Asedas voluntary code of conduct (October 2007)

- Spanish Association of Distributors (Asedas)
- 800 references out

Ministry proposal of a voluntary code of conduct (March-June2011)

- Producers+Industry+Distribution
- “Red lines”

Spanish Authority of Competition CNC- Report on the relations between manufacturers and retailers in the food sector” (October 2011)

- CNC alerts of the abusive commercial practices performed by large retailers and proposes measures to guarantee the free competition and consumers wellbeing
- The high negotiation power of the Spanish distribution
- RECOMMENDATIONS
 - Contractual conditions formalised by writing
 - Mecanismos to avoid payments non predicted, retroactive modifications, sensitive commercial information misuse, most favoured client clauses...

Ministry proposal of a Law for a better functioning of the food chain (October 2012)

Aims:

- reduce the imbalance in commercial relations between different operators,
- increase the competitiveness of the Spanish food sector and the consumer welfare.

Based on a **mixed model of regulation and self-regulation** of commercial relations between the agents, which **will apply to all operators of the chain** (from production to distribution)

Producers, industry and consumers associations support

3

SPANISH DRAFT LAW: MEASURES TO IMPROVE THE FUNCTIONING OF THE FOOD CHAIN

1.- REGULATION of FOOD CONTRACTS and UNFAIR COMMERCIAL PRACTICES

- *Basic terms of the commercial relation will be in written: identification of contracting parties, object of the contract, price -indicating discounts when applicable-, terms and conditions, delivery, rights and duties, information to be given, procedure for modification/extinction of the contract.*
- *The following practices are forbidden:*
 - Contract modifications (except by mutual agreement between the parties)
 - Commercial payments (unless they refer to the introduction of a new product or promotion, and under certain conditions)
 - Misuse of sensitive information
 - Brand management contrary to free or unfair competition
 - Copycatting

2.- SELF-REGULATION based on a CODE OF GOOD PRACTICES which will be voluntary for operators

AGENCY FOR FOOD INFORMATION AND CONTROL

- To establish and develop the enforcement of the provisions of this law,
- To review of claims presented,
- The instruction of disciplinary procedures on behalf of the Ministry of Agriculture, and in some cases, to inform National Competition Commission for possible investigation,
- It will have official investigation powers.

OBSERVATORY ON THE FOOD CHAIN

- Studies and analysis,
- Reports on the application of the proposed Code of Practice contained in this project,
- Monitoring and evaluation of operators' commercial practices, and may refer to the competent authority if detected breaches

Enforcement through an **ADMINISTRATIVE CONTROL** that can apply penalties

- **minor unfair practices**
- **serious offenses** the recidivism of 2 or more minor unfair practices within two years, as well as the breach of the payment terms as established in Law 15/2010 on combating late payment.
- **very serious offenses**, recidivism of 2 or more serious offenses.

In regard to **SANCTIONS**, establishes the following graduation:

- Up to 3,000 € for minor unfair practices
- From 3001 to 100,000 €, for the serious
- From 100,001 to € 1,000,000 for the very serious

Sandra Anguiano
s.anguiano@fiab.es

THANK YOU

Follow us on...



<http://blog.fiab.es>

FIAB Spanish Food and Drink
Industry Federation

Velázquez, 64 - 3º. 28001 Madrid

T +34 91 411 72 11

F +34 91 411 73 44

E fiab@fiab.es

www.fiab.es