ANALYSIS & PERSPECTIVE

LABELING GMO-DERIVED FOOD INGREDIENTS: A RECIPE FOR MISINFORMATION

By John S. Eldred, Keller and Heckman

The issue of whether pre-packaged food must bear a label statement disclosing the fact that an ingredient or additive present in the food is derived from a genetically modified organism (GMO) continues to occupy substantial portions of the time of regulators and policymakers around the globe.

In the European Union, Regulation 1139/98/EC has now been in effect for more than six months. The Regulation establishes that any foodstuff or food ingredient produced from the genetically modified corn or soybeans previously approved for marketing in the EU must be identified in the labeling of the finished foodstuff as “produced from genetically modified maize” or “produced from genetically modified soya.” An exception is provided for foodstuffs and food ingredients “in which neither protein nor DNA resulting from genetic modification is present.”

The Regulation further states that a list of products not subject to the labeling requirement will be drawn up by the European Commission. In light of the Commission’s recent resignation, no action on the issuance of this so-called “negative list,” or to establish standardized methods for the detection of protein or DNA fragments in finished foods, is expected to be issued until the end of the year.

However, the Commission has signaled1 that it interprets the labeling section of the Novel Foods Regulation (258/97/EC) to mean that all foods and food ingredients derived from GMOs in the future will require special labeling if protein or DNA resulting from the genetic modification is present.2

There is no question but that the labeling rules currently on the books and being developed at the EU Commission are motivated by politics, rather than science and sound public policy. In Australia, the Australia New Zealand Food Authority (ANZFA) is, against its better judgment, being forced by the Australia Food Standards Council to require labeling of GMO-derived ingredients on prepackaged foods. The details of how this will work are not yet known. Japanese authorities are also under heavy political pressure to impose a labeling requirement. Finally, on the international level, the Codex Committee on Food Labeling, for its past several meetings, has considered whether and to what extent the labeling of genetically modified ingredients and additives should be required.

At the recently concluded meeting April 27-30 in Ottawa (WFRR, Vol. 9, No. 1, p. 25), the Committee considered, at Step 3, a revision to the Codex General Standard for the Labeling of Prepackaged Foods via an amendment pertaining to foods obtained through biotechnology. The provision under consideration states that when a food or food ingredient obtained through biotechnology is no longer “substantially equivalent to the corresponding existing food or food ingredients as regards to composition, nutritional value or intended use, the characteristics which make it different from the referenced food should be clearly identified in the labeling.”

Also before the Codex was an alternative proposal that would require all foods that are or contain genetically modified organisms to be labeled. The provision would also require that foods that are produced from GMOs but do not contain them to be labeled if, natural variations considered, an “adequate analysis” demonstrates that they differ from equivalent conventional foods.

Prior to the convening of the 27th meeting of the Committee this past April, there was concern that, if the Committee were to reach agreement and advance to the next step the mandatory GMO labeling proposal, it would have potentially significant implications. In addition to the fact that such an action would signal international acceptance of the propriety of mandatory GMO labeling, and thus lead to its enactment in a number of other countries, a Codex recommendation for mandatory GMO labeling would be potentially devastating to any World Trade Organization challenge of a national authority’s labeling rule as being invalid under the WTO “Technical Barriers to Trade” Agreement.3

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1 Paradoxically, current Community law only requires labeling of food ingredients cleared under the Novel Food Regulation and the genetically modified soya and maize referred to in Regulation 1139/98/EC to be labeled. Food additives, i.e., those that are the subject of the so-called EU Miscellaneous Additives Directive (95/2/EC) are not yet subject to any labeling requirement (as the Novel Foods Regulation upon which the labeling requirement is premised expressly does not apply to food additives), but the Commission has promised action later this year to label additives as well.

2 For brief commentary on whether the current EU labeling regulations might arguably violate the TBT agreement, see Savigny and Samail “GMOs: Consumer Perception as a Legitimate Impediment to Trade?” World Food Regulation Review, Vol. 8, No. 1, p. 18.

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The author attended the Codex Committee on Food Labeling meeting, and at that time addressed the Committee with the following remarks:

Beginning of text:

The consumer's need for accurate information is of paramount importance: no one disputes this fact. What we all should remember, however, is that this need is not a mandate for selective inclusion of label information by individuals or groups that may support or oppose a given technology or ingredient.

There is, rather, an ethical and moral imperative to provide full, accurate and non-misleading information that is of real value to consumers. The consumer has no right to misleading information and does not wish to be misled. A simple statement regarding the presence of genetically modified components, delivered out of context and without appropriate elaboration, fails this test entirely. Inaccurate and misleading information is worse than no information at all. For this reason this Committee should, indeed must, oppose any further efforts to mandate, endorse or agree to uninformative, inaccurate and incomplete labeling cloaked in the guise of full disclosure, until such time as it can establish meaningful criteria to ensure that consumers receive the whole story, and not just what one or another interested party would like them to know.

Without innovation, there would be no polio vaccine, no revolution in electronic information available over the Internet, and, yes, no disease-resistant, higher-yielding crops to feed the world’s hungry through genetic modification.

Today, critical advances in biotechnology hold the promise of alleviating hunger and malnutrition, so there can be no compromise when some oppose innovation simply because it is new. In such a case there are only two outcomes, reflecting competing philosophies: Either a new product, process, or substance is permitted, under the law, after strict scrutiny to ensure it is safe and will not adversely affect our environment, or it is not permitted, because, despite proof of safety and lack of environmental harm, according to current scientific standards, there is—as there always is when something new is created—some slight possibility of unforeseen harm, however remote that possibility may be.

Gates Still Open

If this latter philosophy ultimately prevails, then we have entered the 14th century—when the prevailing view was that all knowledge had been obtained—rather than the 21st.

Fortunately, the anti-innovationist view is not now dominant. Those who oppose the development of GMOs—instinctively rather than on scientific grounds—have not succeeded in shutting the gates on new products. High-level scientific and regulatory bodies in the United States, Japan and Europe, including the EU Scientific Committees for Food and Animal Nutrition, have thoroughly reviewed, for example, GM soya and corn, and have concluded that they are indeed safe for human consumption.

Having failed before these bodies, those who oppose the use of GMOs have now turned to this Committee to attempt to gain indirectly what they could not accomplish directly. They do this by proposing that this prestigious body recommend mandatory labeling that a food contains an ingredient derived from a genetically modified plant. They want such a label even though the food product is equivalent or even improved in safety, nutrition, function, and quality to “traditional” versions of the food.

Why is this proposed? Because the proponents wish to stigmatize those products with a label notice that has the effect of a warning. And stigmatize, such a label will. To cite one example: In the United Kingdom, the popular press has, through a campaign of misinformation, created near-hysteria by slanderously referring to food products containing GMO derivatives as “Frankenstein Foods.” Polling data cited from these same news organizations reveal 67 percent of consumers would not buy a food product so labeled and fully one-half believe that such a food poses a danger to health.

Under those circumstances, mandatory GMO labeling will set off a mad scramble among food processors to source ingredients that will allow the label requirement to be avoided. Aside from the inefficiencies and expense this will entail, it will have an unknown but potentially serious adverse effect on current agricultural practices, and may well stop in its tracks development of promising new crop strains that can potentially benefit farmers and consumers as well.

Truth In Labeling

But apart from this, this Committee should reject mandatory GMO labeling because it is inconsistent with the Committee’s—and the world’s—established principles of appropriate food labeling. A mandate to disclose the GMO-derived nature of processed foods is a mandate to require misleading labeling. Such a label statement, particularly in the current climate, falsely implies the food is less safe than “conventional” foods. Conversely, a label claim of “GMO-free” falsely implies such a food is safer and better than GMO-containing foods.

This Committee has always placed paramount importance on truth in labeling. Its general labeling standard prohibits the use of labeling which is “false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect.” (Codex General Standard for the Labeling of Prepackaged Foods, §3.1.) A mandate to disclose GMO-derived ingredients promotes labeling that serves to mislead, rather than inform. Let there be no mistake. This debate is not one of ethics, “consumer right to know,” or other high-sounding principles. It is about getting GMO foods off the grocer’s shelves. Supported by a suspicious and misinformed public, urged on by sensationalist media, many proponents of such labeling wish to achieve a ban by using this Committee’s labeling recommendations to effectively enact it.

A decision not to impose mandatory GMO labeling on prepackaged foods will not deprive consumers of the ability

4 The views expressed are those of the author and not necessarily those of his firm or its clients.
5 The European Scientific Committee for Food reached just such a conclusion relative to GMO soya and maize products in Opinions dated 13 December 1996 and 21 March 1997.
to learn about the use of GMO-derived ingredients. Responsible manufacturers have and always will address their customers’ inquiries. Responses to telephone, letter, or Internet inquiries will allow manufacturers to provide truthful information in a non-misleading context. Where applicable, they can explain how and why their products contain GMO derivatives and why they are safe.

The food processing and agricultural industries’ mandate is clear: when improved crops are developed from the use of recombinant DNA techniques, industry must fully and thoroughly assess the safety, quality and nutritional profile of the resulting food articles, and prove the equivalence of these articles, to those governments requiring official review and clearance before marketing and use. Those individuals and organizations that oppose such clearance should be given an opportunity to participate fully in the process, and to file comments, arguments and data to the authorities in support of their views.

It is the regulatory and food safety authorities, both nationally and internationally, that provide a forum for both the opponents and proponents of the use of GMO food ingredients, and who will decide whether they will be allowed. And this is properly so. The decisions should be made by experts with first-hand knowledge of the relevant scientific data, not by supermarket chains’ purchasing agents overreacting to hysteria.

With all due respect, these decisions should likewise not be made by this Committee, which has neither the knowledge nor the expertise, nor the jurisdiction, to make them. This Committee should not unwittingly hand the anti-innovationists the victory that has so far eluded them when GMO products have received appropriate government clearance. Let this Committee not now depart from its core principle of truthful and non-misleading labels on food products. Let it maintain this principle by rejecting proposals to require mandatory GMO labeling.

End of text

Fortunately, at the conclusion of the discussion, the Committee could not reach a consensus to advance any proposal, and so both the original and the alternative proposals remain at Step 3. A Working Group has been formed, however, consisting of some 28 countries plus a number of consumer and industry non-governmental observers (NGOs), to meet and attempt to address the question as to when a food or food ingredient produced through biotechnology is no longer “equivalent” to the traditional food so as to justify a label statement.

So, the battle rages on. A cavalierly adopted labeling requirement without an enormous public education campaign has the potential to doom a promising new technology. Man has, through hybridization of plants, deliberately transferred genetic material for centuries. The principal difference between hybridization techniques and the use of modern biotechnology is that, in the latter, genetic material is precisely transferred with predictable and desirable results. Once such a plant has been produced and cleared from the standpoint of safety for human consumption and with regard to the environment, a label requirement serves no useful purpose but only a pernicious one. However, in today’s environment, assembling scientific proof is only half the battle. Much work remains for the political arena.