Bayer CropScience

Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

10 February 2011

(...)

Dear Sir/Madam,

Re: Food Standards Amendment (Truth in Labelling – Genetically Modified Material) Bill 2010

Thank you for the opportunity to comment on the above Bill.

Introduction

Bayer CropScience, a subsidiary of Bayer AG with annual sales of about EUR 6.5 billion, is one of the world's leading innovative crop science companies in the areas of crop protection, non-agricultural pest control, seeds and plant biotechnology. In Australia, the company employs about 270 people and has its head office in Melbourne. The Australian BioScience division of Bayer CropScience is a seeds and traits business, with traits developed for improved yield, stress tolerance and insect and herbicide tolerance.

While labelling raises questions of choice and right to know issues it should be noted that space on a label is limited. Principally labels should be used to convey information regarding health and safety. An overcrowded label which includes information to serve a variety of purposes could mean important health and safety information is lost or diluted. Therefore, priority must be given to mandating labelling for health and safety concerns.

Before any GM food is approved for consumption it will have undergone a stringent assessment and deemed to be as safe as its non-GM counterpart. Therefore, labelling for GM content is not related to providing safety information. Taken to its extreme, the consumer's right to know would extend to the consumer having access to the formulation of certain foods, such as the recipe for Coca Cola and Kentucky Fried Chicken. This would obviously be disruptive to commerce and a good reason why food labelling laws should strongly be about the protection of consumer health. Thus the consumer right to know cannot be absolute and comes with a certain compromise. What should not be compromised is that consumers know that all approved GM foods are safe.

Australia has a very stringent and robust regulatory system for the review and approval of any GM organism, including GM foods, crops and medicine. The

Office of Gene Technology Regulator (OGTR) is the principal regulator of all living genetically modified organisms (GMOs) for release in Australia, with Food Standards Australia New Zealand (FSANZ) regulating all GM food and feed; the Therapeutic Goods Administration also regulates GM medicines, to name a few of the regulating agencies in Australia.

The Bill, if introduced, will adversely affect the present system and by its draconian requirements, add greater costs while providing nothing additional in the way of consumer protection. For example, consumers access label information to find out about dietary or nutritional status, allergenic or other health effects of the product. These aspects are adequately addressed within existing legislation. The Bill does not provide any further safeguards than that already found in existing legislation. It is our contention that the provisions of the Bill are unnecessary and would only be disruptive to the present high level of regulatory practice. To a great extent it duplicates control offered by existing legislation.

Comments on provisions of the BIll

Comments on specific sections of the Bill are provided below.

4 Purpose of Act

The purposes of the Bill are unnecessary and are already better served by existing legislation. The right to accurate information is already enshrined in other existing legislation (e.g. Freedom of Information, Trade Practices legislation and all of Australia's many regulatory Acts such as the Gene Technology Act 2000 and the Agricultural and Veterinary Chemicals Code Act 1994). The Trade Practices Act 1974 (TPA) adequately addresses accuracy of labelling. There is no need for more costly legislation to duplicate the present efficient system. The Bill provides for nothing new to be added for consumer protection, either for health or safety or for other reasons. Furthermore, information about the extent of genetic manipulation is available publicly under the GT Act 2000 and the Foods Standards Australia New Zealand Act 1991.

Schedule 1 – Amendment of the Food Standards Australia New Zealand Act 1991

The Foods Standard Australia New Zealand Act 1991 and the assessments carried out by Foods Standard Australia New Zealand (FSANZ) under this Act already provides one of the worlds best regulatory systems to ensure the health and safety of consumers.

Bayer CropScience believes that the current labelling laws for GM content already sets a very stringent standard for labelling (*cf* Standard 1.5.2 Food Produced Using Gene Technology):

> ***"genetically modified food*** *means food that is, or contains as an ingredient, including a processing aid, a food produced using gene technology which –*
>
> *(a) contains novel DNA and/or novel protein; or*
> *(b) has altered characteristics;*
> *but does not include –*
> *(c) highly refined food, other than that with altered characteristics, where the effect of the refining process is to remove novel DNA and/or novel protein;*

(d) a processing aid or food additive, except where novel DNA and/or novel protein from the processing aid or food additive remains present in the food to which it has been added;

(e) flavours present in the food in a concentration no more than 1g/kg; or

(f) a food, ingredient, or processing aid in which genetically modified food is unintentionally present in a quantity of no more than 10g/kg per ingredient.

It is arguable whether a food assessed as safe for human consumption, based on the best scientific methods employed, should need to have mandatory labelling. Given the stringency of the current labelling regime it is surely not justifiable to impose any more stringent requirements. If GM foods containing novel DNA and/or novel protein or foods with altered characteristics (e.g. found under items c to f listed above) are to be labelled this must be done under a system that allows the labelling to be fulfilled under practical and cost effective conditions.

16C Matters for which amendment of standard must be developed and approved – genetically modified material

(1)(a) Current legislation mandates stringent conditions for labelling. Currently GM labelling does not extend to presence of GM material below 1% or to animals fed GM feed or to food products derived from GM sources but which does not contain any GM material in the final product.

A 1% threshold is already a very low threshold to work to and does impose extra costs for industry. To go below 1% would significantly increase costs which increases exponentially the lower one goes beyond this. While a threshold is important for industry to work to, a 0% threshold would certainly increase costs which would be passed onto the consumer.

A threshold is unrelated to any safety concerns since any approved GM product has already been determined to be safe. Thus it is only to satisfy consumer right to know. It makes no sense to allow thresholds for toxic or unhealthy substances in food (e.g. thresholds for transfats, microtoxins in grain, and heavy metals in organic food) but not allow it for a food which is deemed to be as safe as conventional foods.

(1)(b) Labelling should not be processed based and should only relate to identified health matters. The inconsistency of the legislation is further demonstrated by the following example. The legislation considers the means by which the food is produced (whether produced by GM or not). It does not consider the status of the final product (whether the GM food is identical to non-GM food). If knowing the process is important, then all processes used to produce food should be labelled (e.g. halal, kosher, organic, heat treatment, chemical treatment including all additives, wine making processes, malting processes, etc). The absurdity of providing this sort of information when it is of no practical value either for health and safety, applies also for GM products.

To require labelling of animals fed GM presumes that they will in some way be changed by their GM diet. This is untenable and irrational. People ingest billions of DNA and proteins in their diet (GM or non-GM) without consequence. To think that ingestion of fragments of DNA from a GM source (which incidentally could also occur naturally, for example, in ingested

bacteria) is somehow significant, is irrational. No other country in the world currently requires labelling of animal products which have been fed GM feed, including the EU.

(1)(c) The Bill is inconsistent and illogical in its requirement under this section. If the food is derived from GM sources but the final constitution is identical to non-GM food (e.g. vegetable oil from cottonseed or canola) and contains no DNA or protein resulting from the genetic modification, labelling would be unnecessary because the food derived from the GM source is identical to non-GM food and there is no issue of consumer protection. This is the accepted position for pharmaceuticals derived from GM sources, where the final product, if identical to non-GM derived drugs, does not require labelling. Labelling does not provide any added protection for consumers. It merely adds significant costs for producers for no practical benefit. Good regulatory practice must ensure that any costs accrued from a regulated activity is off-set by a net benefit resulting from the regulated activity.

Highly refined foods from GM sources, such as GM cottonseed or canola oil, where the effect of the refining process is to remove novel DNA and/or novel protein to the extent that their composition is substantially similar to oils derived from non-GM seed, should not need to be labelled for a number of reasons. If oils derived from GM and non-GM are compositionally identical, there are absolutely no issues regarding their safety for consumption. They are also indistinguishable from non-GM oils and no scientific test can be performed to distinguish them. The only way to determine their source is to have a traceability regime, involving declarations and documentation. Documentation is not trivial. It demands robust record keeping, quality assurance and stringent traceability systems. Such a system would add costs to industry without any identifiable benefit. There is currently no market failure resulting from the lack of labelling and the extra costs that would be imposed on industry cannot be justified and are not needed.

16D Matters for which guidelines must be developed – exercise of due diligence – genetic modification

(2)(a)(b)(c) Traceability systems already currently exist, including QA systems and there is no need to single out GM or non-GM foods and legislate separately for their traceability. This is unnecessary and demonstrates over-regulation. This is because there are already in place adequate regulatory systems backed up by good legislation to ensure the safe and healthy supply of foods. If any foods or feeds are unsafe they should not be made available to the public. Thus if GM foods are allowed to be on the market they must be safe. Mandatory traceability stigmatizes GM foods which should be treated similarly to other foods with the same level of constrains but nothing more. Traceability would add substantial costs for producers without delivering any real benefits.

The more stringent the due diligence guidelines and labelling requirements, the more will be the cost. It is difficult to quantify the cost in these cases, which often only becomes clear after implementation. However, it is clear that cost depends on the extent of mandatory labelling required. The lower the threshold required, the great the cost and the more things need to be labelled, the greater the cost. Process based labelling will depend on manufacturers revising their present systems so that they can trace every ingredient that they source, including all overseas ingredients. This means added workload for them and extensive documentation if the system is to be enforceable. Documentation is not trivial with

one major overseas commodity trader reporting that some thousands of pieces of documentation are required for them to export commodities from farm to plate. Testing for GM content below 1%, would significantly increase costs which increases exponentially the lower one goes beyond this. While a threshold is important for industry to work to, a 0% threshold would certainly increase costs which would be passed onto the consumer.

16D (4) *high risk country*

The use of the word "*contamination*" is inappropriate as it gives a negative connotation to a GM product. This is not appropriate when that product has been assessed and approved as suitable for human consumption.

Conclusion

Food labelling must be based on sound science. Existing legislation more than adequately safeguards the safety, health and other interests of the Australian public. The present legislation administered by FSANZ already provides a high level of protection as currently no unapproved GM matter may be offered for human or animal consumption regardless of labeling. This Bill does nothing more than to introduce additional costs for industry (which will be passed onto the consumer) without providing any consequential benefit for the consumer.

Politicians have a responsibility to introduce responsible and workable legislation that benefits all sectors of society, and not merely cater to sectarian interests. This legislation is, on close inspection, duplicative, disruptive and generally counterproductive to good governance.

Yours sincerely,
Bayer CropScience

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