Infant Nutrition Council

Industry supporting both Breastfeeding & Infant Formula

11 February 2011

Senate Community Affairs Committee Inquiry into the Food Standards Amendment (Truth in Labelling – Genetically Modified Material) Bill 2010

Infant Nutrition Council Submission

Introduction

The Infant Nutrition Council represents the interests of the infant formula industry in Australia and New Zealand which advocates optimal nutrition for infants. The infant formula industry is a responsible industry that voluntarily restricts its marketing practices to support government policies for the protection and promotion of breastfeeding.

The Infant Nutrition Council (INC) represents the majority of companies marketing and manufacturing infant formula in Australia and New Zealand.

The companies represented by INC are:

- Bayer Ltd
- Dairy Goat Co-operative (NZ) Ltd
- Fonterra Co-operative Group Ltd
- H. J. Heinz Ltd
- Murray Goulburn Co-operative Co. Ltd
- Nestlé Australia Ltd
- Nutricia Pty Ltd
- Wyeth Nutrition

The Infant Nutrition Council is opposed to the Food Standards Amendment (Truth in Labelling – Genetically Modified Material) Bill 2010 (Bill). The INC considers that the proposed legislation will be to the detriment of consumers, as it will inevitably blur the distinction between genetically modified (GM) foods and 'GM free' foods and result in the meaningless 'GM' labelling of foods that generally do not contain any, or any detectable levels of, GM ingredients. The net effect of the Bill will be to confuse and potentially mislead consumers, while in some instances alarming them without cause.

The INC supports the current regulatory regime in regard to genetically modified ingredients and the associated labelling requirements. In this regard we refer the Senate Committee to the recent Blewett 'Review of Food Labelling Law and Policy 2011' (Blewett Report) in which the expert Panel

observed that Australian and New Zealand existing regulations are "among the most stringent in the world."[1]

The Bill

Section 16C of the Bill prescribes that

> Foods containing GM material must list that material as an ingredient of the food on the food's label, irrespective of:
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> (a) the amount of GM material in the food; and
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> (b) the manner in which the GM material made its way into the food; and
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> (c) the fact that the food was not intended to contain GM material.

The Infant Nutrition Council is aware of the debate and sensitivity surrounding genetically modified foods. For products sold in the Australian & New Zealand markets, member companies have chosen not to source genetically modified ingredients for infant formula products and have procurement processes in place to ensure identity-preserved certification or polymerase chain reaction (PCR) testing is received from the ingredient suppliers. Identity preserved certification is a rigorous process by a third-party that traces the ingredient from seed to finished product. This process ensures segregation of non-GM ingredients during all phases of the farming, handling and processing cycle.

Globally regulators and health authorities however acknowledge that products grown without genetic modification, such as soy or maize, may unintentionally contain traces of genetically modified organisms. This may be due to cross-pollination during cultivation, harvesting, storage, transport or processing despite all rigorous processes that farmers and ingredient suppliers put in place. This is a well-recognised phenomenon and is why countries around the world may stipulate threshold levels for adventitious presence of GM material without requiring a finished product to be labelled. European law requires a label when adventitious presence of GM is above 0.9%, whereas some nations including Canada and the US have voluntary labelling. FSANZ has one of the strictest regulations in the world where labelling is required if GM material is unintentionally present above 1% per ingredient.

INC therefore supports the Blewett Report's position that:

> 'Nor does the Panel believe a case can be sustained for changing the present threshold level for unintentional presence — no more than 1% — which is among the most stringent in the world.[2]'

INC supports labelling that provides informed choice for consumers and does not believe this Bill will provide information to a consumer that is meaningful. Rather the effect of the Bill will be to require

[1] Labelling logic – Review of Food Labelling Law and Policy (2011), page 92.

[2] Blewett report para' 5.17 p.92

manufacturers to label all foods that may potentially contain detectable traces of GM material (which could be as little as 0.1%), as GM food. This requirement would apply irrespective of the fact that at any particular time there may be no detectable traces of GM food in the product and that all possible actions have been taken to source non GM ingredients.

Such a restrictive approach, in our view, could only ever be justified if it were based upon serious health and safety considerations; such as applies to foods that may contain allergens. In this regard we also draw the Senate Committees attention to the Blewett Report's conclusion on GM food safety that:

> 'There is no evidence that consumption of either irradiated food or GM food produces any immediate detrimental effects in humans, nor has any convincing evidence been advanced to indicate potential future harm to humans. The Australian Academy of Science concluded in 2007 that 'GM products have been in several foods for many years and consumed without any substantiated evidence of ill effects on health'[3]

A blanket approach to labelling of all products containing soy- or maize-based ingredients will not provide differentiation between ingredients that are genetically modified (100% GM ingredient), and ingredients that are not genetically modified (may, or may not, contain a trace).

Section 16D of the Bill requires due diligence guidelines for the prevention of contamination of the 'GM-free' food. The definition of 'GM-free' food in this proposal "means food not intended to contain genetically modified material, so will capture the majority of food sold in Australia. It will be a defence in any proceedings for a breach of the labelling provisions developed under section 16C to have complied with, or taken reasonable steps to comply with, due diligence guidelines. However, the due diligence processes in place and 'not detected' analytical results become meaningless as they do not guarantee, 100% of the time, that the same result would be found.

There is a level of complexity when labelling traces as sometimes they can be detected and sometimes they cannot due to the limit of detection (typically 0.1%) in PCR testing. Due to the limitations of the analytical method, a negative result does not guarantee 'zero' presence of genetic material, and similarly false positives can also occur. Despite compliance with international testing protocols and best practice (PCR testing), variability across different laboratories can exist when trying to detect such low levels of GM material. This has been demonstrated in the recent testing of soy-based infant formula where both 'not detected' and 0.1% positive results have been reported on the same batch, by two local and international laboratories.

It is due to these limitations that a "zero" threshold is unrealistic and unworkable. Companies with a sophisticated non-GM ingredient sourcing policy and a "GM not detected" final product test result will nevertheless be at risk of a trace test result commissioned by a 3rd party, regardless of the company's clear intention to use only non-GM ingredients. In any prosecution for breach of the labelling requirements that company will then be required to put on a positive defence that it

[3] Blewett Report Para 5.11 page 90.

'complied with or took reasonable steps to comply with, the due diligence guidelines' when it already has every incentive to implement such processes and, in the case of INC members, have already done so.

The processes likely to be contained in the due diligent guidelines are, in effect, already in place with most companies who have decided to implement a non-GM sourcing policy adopting identity-preserved certification (or PCR testing) to ensure procurement of non-GM ingredients.

We believe this will be an issue for a vast number of companies within the food industry. Many will be unaware of the current debate, while others may be under the false impression it does not apply to their business because they do not source GM ingredients, or do not think that they do. Broad brush regulation in the absence of identification of a market failure is not good law and merely adds to the cost of business without providing any commensurate public benefit.

With no way to guarantee a zero result all products containing soy and maize may need to display the statement "may contain traces of GM". This would not genuinely inform or assist the consumer, further reducing choice of foods available.

There is no public health or safety concern around GM traces. Where food safety concerns exist in the food industry there needs to be a way of managing them to protect Public Health and Safety. The food industry developed an Allergen risk assessment program, Voluntary Incidental Trace Allergen Labelling (VITAL) which is best practice guidance to determine the impact of the unintended presence of allergens due to cross contact introduced via raw materials or via processing practices. A risk assessment is performed and a precautionary labelling statement is applied if deemed appropriate such as "may be present: peanuts". The development of the VITAL program provides guidance to industry for consistent application with regard to allergen management processes as well as mandating a specific labelling approach.

Notably, the VITAL Allergen Action Level Grid and associated procedures suggests no precautionary statement is required if the allergen is below the action level set. VITAL is a risk assessment program developed to assist with allergen management and address a significant food safety issue whilst providing protection and information for the allergic consumer. A '

Allergen management and appropriate labelling is a health and safety issue. If foods are not handled, manufactured and labelled appropriately with regard to allergens then there are potentially fatal consequences for individuals allergic to certain foods. There is no such public health and safety concern around traces of GM. The recent Blewett Review of Food Labelling Law and Policy placed labelling of new technologies (including GM) in the bottom half of the food labelling hierarchy for risk management; food safety and preventative health being higher risk and identified by the Panel as most important.

The recommendations in this Bill are impractical for industry and will not provide meaningful information for consumers. GM foods must already be labelled in Australia and the existing laws are already among the most stringent in the world.