Bayer CropScience

BioScience

Community Affairs
Legislation Committee
Parliament House
CANBERRA ACT 2600

08 January 2004

Bayer CropScience Pty Ltd
391-393 Tooronga Road
East Hawthorn Vic 3123
Australia
Tel. +61 3 9248 6888
Fax +61 3 9248 680
A.B.N. 87 000 226 022
www.bayercropscience.com.au

Truth in Food Labeling Bill 2003

Dear Sir/Madam,

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

Introduction

Bayer CropScience is a company that has been providing crop protection products for Australian agriculture for many decades and has recently obtained approval from the Office of the Gene Technology Regulator (OGTR) for commercialisation of its GM canola called InVigor hybrid canola, which has significant advantages and benefits for Australian canola growers. The OGTR has found conclusively that InVigor hybrid canola is as safe as conventional canola and the oil derived from it is identical to non-GM oil. Oil from InVigor hybrid canola has also been assessed and approved for human consumption by Foods Standard Australia New Zealand (FSANZ).

The present regulatory system existing in Australia for the regulation of food substances, including labeling of foods, is one of the best in the world. It adequately safeguards the interests of the community and provides for a practical and cost effective regulatory system for industry.

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 but at its very worst, conflicts with existing legislation.

Comments on provisions of the BIll

Comments on specific sections of the Bill are provided below.

Part 1, clause 3
The purposes of the Bill are inconsistent, unnecessary and are already better served by existing legislation as shown below.

Clause 3(a)
The right to accurate information is already enshrined in other existing legislation (eg 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). Thus for example, information about the extent of genetic manipulation is available publicly under the GT Act 2000 and the Foods Standard Australia New Zealand Act 1991.

Chemical residues information is also currently publicly available and regularly published or posted on websites from a number of residue surveys such as the National Residue Survey, the Australian Total Diet Survey and various state based Market Basket Surveys. There is no need for more costly legislation when the present system is functioning more than adequately.

Clause 3(b)
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. While this Bill purports to fulfil these aims it does not provide any mechanism for doing so. For example, there are no provisions for the implementation of any assessments relating to health and safety of consumers.

This Bill, therefore, cannot meet the aims of protecting the health and safety of consumers, which in any case, is already addressed by FSANZ. All food produced by GM means is subject to FSANZ assessment and only those foods deemed to be safe may be marketed for human consumption.

Clause 3(c)
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.

Clause 3(d)(e)(f)
The Bill adds nothing new for consumer protection not already offered by the many other pieces of existing legislation. The proper places to address any perceived inadequacies are in the jurisdictions of the existing legislations. Thus, for example, if the TPA is identified as inadequate the proper course of action is to amend this legislation. Piecemeal and *ad hoc* legislative fixes

through minor Acts leads to a proliferation of legislations and complicates the regulatory landscape for industry. A coordinated approach should be adopted for legislative change to ensure all legislation are consistent and there is no possibility for duplication.

Part 2, clause 10 and 11

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 (eg 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.

If it is simply one of informing the consumer (for consumer choice) then the inconsistency of the Bill is shown up by the *ad hoc* exemptions for labelling. For example, if the Bill is to simply inform the consumer for the purpose of consumer choice, the exemption under section 12(b) should not be contemplated.

However, food labelling laws should be about the protection of consumers and as such the provisions of clauses 10 and 11 should be deleted. Taken to its extreme, the consumer 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 solely be about the protection of consumer health.

The inconsistency of the legislation is further demonstrated by the following example. The legislation seems to be process based, i.e. it 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 or for consumer choice, applies also for GM products.

Food labelling must be based on sound health criteria. This ensures that the limited space available on product labels carries information that has a bearing on health and nutritional matters and allows the public to assess for themselves that matter. Information with no bearing on health risks should not be incorporated on labels as this has the effect of obfuscating information that do relate to health and diluting any important health messages on labels. Food labels should not be used to serve the ideological “rathers” of any groups prejudicial to GM technologies.

Part 2, clause 12
If this Bill is to be consistent with the aims stated in clauses 3(a) and (c) the exemptions provided for in section 12 should not be included. There is no rational reason to justify these exemptions.

However, as argued above, as the aims of this Bill cannot be met by the provisions stated herein, the exemptions are irrelevant. The exemptions demonstrate this point very clearly. There are no logical grounds for providing these exemptions except for the fact that it would be extremely impractical and costly to implement the requirements of the Bill in these areas. Furthermore, there is no need to require labelling at these exemption points because there are no issues for health, safety or consumer choice. By the same token, there are no issues for health, safety or consumer choice for packaged and unpackaged foods or animal feeds captured under this Bill. The Bill is, therefore, unnecessary.

Part 2, clause 13
The same points made in relation to clauses 10 and 11 above applies. If the GM animal product is identical to non-GM animal product (e.g. does not contain GM DNA or protein) it should not require labelling. There are no scientific grounds to require labelling.

Labelling should not be processed based and should only relate to identified health matters.

Part 2, clause 14(a)
"…*animal feed*…" should be deleted from this clause. There is no scientific reason to require its labeling. As explained above the use of GM feed, if that feed has had prior approval, has no bearing on health and safety. Labeling requirements imposes extra costs for no added benefit.

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.

The level of 0.5% for labeling is not appropriate. To be consistent with many other regulatory jurisdictions this level must be at the 1% level. Furthermore, reliable detection methods are problematic at levels below 1% which means that for regulatory purposes it is not possible to reliably regulate below the 1% level.

The words "*so long as operators can demonstrate that they have all used appropriate steps to avoid the presence of accidental contamination*" should be deleted. This is ambiguous and places unnecessary onus and responsibility on industry members. As the GM product has had prior approval, there are no concerns regarding health and safety. Labeling requirements imposes extra costs for no added benefit.

Part 2, clause 14(b)
The correct name of the authority responsible for food safety assessment is Food Standards Australia New Zealand (not Food Safety ….).

The present legislation administered by FSANZ provides a higher level of protection than proposed by this clause as currently no unapproved GM matter may be offered for human or animal consumption regardless of labeling. This clause should be deleted.

Part 2, clause 15
Traceability systems already currently exist, including QA systems and there is no need to single out 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.

Part 3, clause 16 - 19
These clauses are not necessary as existing legislation adequately addresses these matters.

Part 4, clause 20
Residues information is already currently available. So far, in the many residue surveys carried out through the years, there has been no detection of residues or contaminants which would pose any serious health risks. The surveys confirm the fact that our present regulatory regimes are effective and achieve their aims of protecting the public. Further legislation in this area is manifestly not needed.

This clause does not specify details of the information that must be released. A note of caution must be sounded here in that it is often the case that an untrained member of the public may not be able to competently assess and interpret certain types of information, especially if that information is of a very technical nature.

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. This Bill does nothing more than to introduce additional costs for industry without providing anything consequential to benefit the consumer. Before the introduction of any legislation it would be necessary to carry out a Regulatory Impact Assessment (RIA). We are confident that, for the reasons stated in this submission, any RIA would show substantial costs incurred without commensurate benefits.

Politicians have a responsibility to introduce workable legislation that benefits all of society, not merely cater to sectarian interests. This legislation is, on close inspection, duplicative, disruptive and generally counter productive to good government regulations.

Yours sincerely,
Bayer CropScience

Mr Kay C. Khoo
Regulatory Affairs Manager - BioScience