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New Labelling Guidelines For Genetically Modified Foods May Affect Some Canadian Exporters

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In July 2011, the Codex Alimentarius Commission (Codex), at its annual summit in Geneva, adopted guidelines that allow the labelling of genetically-modified (GM) food products. GM food products are derived from organisms that have been modified by means of modern genetic engineering techniques.

This development is not likely to result in sweeping changes for Canadians in the near term, since the Government of Canada does not intend to require the labelling of GM food products domestically. However, the adoption of the guidelines may affect Canadian food producers who export GM food products to other countries because World Trade Organization (WTO) members that implement the GM labelling regime will be protected from complaints alleging that they are engaged in restraint of trade.

The Codex Commission was created in 1963 by the World Health Organization (WHO) and the Food and Agriculture Organization (FAO). It is responsible for leading the development of international food standards, guidelines and related texts, such as codes of practice, under the Joint FAO/WHO Food Standards Program.

The main purposes of this program are to protect the health of consumers, to ensure fair trade practices in the food trade, and to promote the coordination of all food standards work undertaken by international governmental and non-governmental organizations. The Codex therefore has a sometimes contradictory mandate of protecting the health of consumers while also facilitating international trade.

In 1993, the Codex Committee on Food Labelling (CCFL) began work on developing labelling guidelines for GM food products. However, several countries strongly opposed these guidelines. The United States was one of the strongest opponents of labelling for GM food products and was supported by several other countries, including Canada.

After 18 years of disagreement, the CCFL finally adopted labelling guidelines for GM food products at its 39th session, held in Quebec City, from May 9-13, 2011. The United States, Canada, Mexico, Argentina, Costa Rica and Australia had blocked earlier proposals for *mandatory* GM labelling but ultimately agreed to a much weaker version, which permitted the *voluntary* adoption of GM food product labelling. The guidelines were formally adopted at the annual Codex summit in Geneva, Switzerland, two months later.

The guidelines were referred to as the *Proposed Draft Compilation of Codex Texts Relevant to Labelling of Foods Derived from Modern Biotechnology* (the "GM Guidelines"). The GM Guidelines do not specifically endorse the labelling of GM food products, but this can be inferred from the language. For example, the GM Guidelines refer to the following considerations:

> Different approaches regarding labelling of foods derived from modern biotechnology are used. Any approach implemented by Codex members should be consistent with already adopted Codex provisions. This document is not intended to suggest or imply that foods derived from modern biotechnology are necessarily different from other foods simply due to their method of production.

Clearly, the GM Guidelines suggest that countries may implement one of the many different approaches regarding the labelling of GM food products, provided that they are consistent with already adopted Codex provisions.

The current list of official Codex standards includes *Principles for the Risk Analysis of Foods Derived from Modern Biotechnology* (CAC/GL 44-2003). Paragraphs 18 and 19 state the following:

18. Risk managers should take into account the uncertainties identified in the risk assessment and implement appropriate measures to manage these uncertainties.

19. Risk management measures may include, as appropriate, food labelling conditions for marketing approvals and post-market monitoring.

Therefore, countries should be able to implement GM labelling requirements for the purpose of risk management but not necessarily for the purpose of informing consumers.

As set out above, the GM Guidelines are considered voluntary so countries such as the United States and Canada are unlikely to adopt mandatory labelling requirements. Currently, Health Canada requires that GM food products be evaluated for food safety, but does not require them to be labelled in a manner that discloses their genetically modified nature.

As mentioned above, the most significant benefit of the GM Guidelines will be their expected effect on WTO trade disputes. The WTO agreement on sanitary and phytosanitary measures (the "SPS Agreement") states that "to harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations". The SPS Agreement names the Codex as the relevant standard-setting organization for food safety.

As a result, member countries who choose to adopt mandatory GM labelling requirements should avoid any WTO challenge, initiated by Canada or any other country, based on the claim that such requirements restrict international trade. ■