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The Codex Alimentarius Commission Adopts Guidelines for the Labelling of Genetically Modified Foods

by Henry J. Chang

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Earlier this month, the Codex Alimentarius Commission ("Codex") adopted guidelines allowing the labelling of genetically modified ("GM") food products at its annual Codex summit in Geneva, Switzerland. However, this recent development may not result in sweeping changes for Canadians. While it may indirectly affect Canadian food producers who export GM food products to other countries, the labelling of such food products in Canada is unlikely to occur in the foreseeable future.

The Codex was created in 1963 by the World Health Organization ("WHO") and the Food and Agriculture Organization ("FAO") to develop 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 protecting the health of consumers and ensuring fair trade practices in the food trade, and promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations. Therefore, the Codex has a sometimes contradictory mandate to protect 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 eighteen 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. As stated above, these GM Guidelines were formally adopted at the annual Codex summit in Geneva, Switzerland, in July 2011.

These guidelines were referred to as the *Proposed Draft Compilation of Codex Texts Relevant to Labelling of Foods Derived from Modern Biotechnology* (the "GM Guidelines"). A copy of the CCFL report adopting the GM Guidelines is available in English, French, and Spanish on the Codex website.

The GM Guidelines do not specifically endorse the labelling of GM food products but this can be implied 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)*, which is available on the Codex website. Paragraphs 18 and 19 state as follows:

> 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 purposes of risk management.

As stated 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 GM food products to be evaluated for food safety but does not require them to be labelled in a manner that discloses its genetically modified nature.

The most significant benefit of the GM Guidelines will be its expected effect on World Trade Organization ("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 based on the claim that such requirements restrict international trade. ■