

NORTH AMERICA'S GMO-LABELING POLICY PATCHWORK AND THE CONSUMER'S "RIGHT TO KNOW"

Posted on June 30, 2016

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Genetically modified ("GM") food is an undeniably controversial topic. Long-standing tension exists between GM food proponents, who view genetic modification as a way of improving crop yield and preventing famine, and GM food opponents, who are concerned about the technology's environmental and health impacts. Historically, the United States and Canada have advocated for GM food whereas the European Union has largely opposed it, although this division is gradually blurring as North Americans adopt similar views to their European counterparts regarding natural foods.

The above shift in the North American attitude is due in part to the widespread support for the consumer's "right to know". While GM foods are a billion dollar industry in the US, over thirty states have attempted to implement some form of GM food labeling law. This is a measure that could have serious implications for the food industry, especially considering that over 80% of processed foods in North America contain GM products.

The Vermont Act

The *Vermont Genetically Engineered Food Labeling Act* ("*Vermont Act*") was passed on May 8, 2014 and was the first act of its kind to come into force in North America, taking effect on July 1, 2016. The *Vermont Act* has the aim of increasing transparency between industry and the consumer by imposing labeling requirements on all GM foods that will be imported, produced, licensed, or distributed for sale in Vermont. However, it also provides several exceptions to these requirements for a variety of foods, including alcohol and food served at restaurants that is intended for immediate consumption.

While the *Vermont Act* outlines specific labeling requirements based on a differentiation between "natural" and "unnatural" foods, some critics argue that this is an arbitrary distinction because genetic alterations occur just as readily in nature as they do in the lab. Further, they claim that the aforementioned exceptions undermine the very arguments that support the *raison d'être* of the *Vermont Act*.

As it stands, there are several elements of the *Vermont Act* that make it vulnerable to a constitutional challenge, and a bipartisan agreement that would supersede the Vermont legislation was proposed on June 23, 2016 by two members of the Senate's Agriculture, Nutrition and Forestry Committee (the "Senate Bill"). The

Senate Bill has yet to be considered as the House is on recess until July 5, 2016, but if passed it would have the effect of preventing individual states from implementing their own labeling requirements.

The North American Consumer

Although Canada and the US are sovereign states, increased trade liberalism essentially erases the distinction between Canadian and American consumer interests. As a result, there is now a common North American consumer: an individual who is health conscious and highly connected, has a strong social conscience, and whose product interests are not constrained by geopolitical boundaries. These North American consumers want to make informed choices about the foods they eat and labels could be a fundamental part of this empowerment.

Food for Thought

The anti-labeling camp puts forward a number of arguments as to why the current equivalent treatment of GM foods and non-GM foods should continue, including the manufacturer's cost of identifying and relabeling products, the practical difficulties associated with the accompanying stringent quality control and contamination prevention, and the potentially increased food prices for consumers. Notwithstanding the foregoing concerns, GM food labeling, whether a result of a bottom-up consumer movement or top-down government regulation, also has the possibility to benefit industry.

A synergistic relationship exists between industry and consumers – industry offers economic influence, innovation and global reach, while consumer demand drives modern trends. Industry leaders could seize the opportunity to better align their products with consumer preference and take full advantage of a growing market sector. This is especially relevant in a climate where manufacturers are faced with increasing difficulty in getting consumers to buy products from the "centre store" – it is possible that aligning product promotion with the North American consumer's construct of health could help revitalize this area.

Follow the Leader

While US GM food labeling policy is still in its infancy, over 70 bills and ballot initiatives have been proposed in various states, so even if the Senate Bill fails it is unlikely that Vermont will be the exception. A nationwide American labeling scheme could drive Health Canada and the Canadian Food Inspection Agency, which are responsible for Canadian food labeling policies under the federal *Food and Drugs Act*, to adjust their policies in order to prevent losing US market share. In addition, the "right to know" movement may lead Canada to follow suit sooner than anticipated – in June 2016 a private member's bill that would require mandatory labeling of GM foods was introduced and accepted for debate in the House of Commons. Since mandatory Canadian labeling laws could attract domestic constitutional challenges, as well as challenges resulting from Canada's

obligations under international trade law, the road to regulation could be a bumpy one.

Regardless of potential legislative action, the power imbalance between Canada and the US nevertheless allows the US to leverage its resources and market influence to encourage Canadian industry to conform to a specific standard. It is both costly and inefficient for companies to abide by conflicting regulatory regimes, so Canadian businesses may independently comply with the more rigid American labeling standards in order to remain competitive in both the domestic and international marketplace.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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