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**Appropriate Regulation or Mothering Us Into Mediocrity?
The Case of Low-Carbohydrate Food Products Labeling Regulations**

SPECIAL REPORT

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Introduction

At the George Morris Centre's annual meeting three weeks ago, we announced that we will join our members and friends to develop a comprehensive agri-food policy. One reason is the lack of real leadership and vision by government in developing a sustainable policy for our sector.

Nothing more perfectly illustrates this lack of leadership than the inconsistent, patronizing, and innovation-stifling decision by Health Canada and the Canadian Food Inspection Agency two weeks ago to disallow labeling of low or reduced carbohydrate foods.

Media reports suggest that, as a consequence, at least 22 products from three major food manufacturers could be discontinued¹. Followers of the Atkins and other low-carbohydrate diets can now look forward to fewer product choices, and greater difficulty in buying foods consistent with their diet preferences.

Beyond the direct impact of low-carb labeling reported in the press, this case reflects two critical issues facing the Canadian food system. The first is the inconsistent use of science-based criteria in regulatory product approval and labeling decisions despite consumer preferences not necessarily based on science (and lack of agreement among scientists!). The second is the costs imposed by an unclear and inconsistent regulatory system on innovation and investment in the agri-food sector. In this special report, we consider the rationale and apparent implications of this product regulatory approval decision on low-carbohydrate foods, and the incentives and greater impact stemming from it.

The Low Carbohydrate Labeling Decision

The decision made by Health and CFIA was made as part of implementing a policy change that is supposed to be in place by the end of 2005. The new regulations forbid mention of low carbohydrates or reduced carbohydrates on labels for prepackaged foods. This rule also applies to **brand names** and **product trademarks**. The actual level of carbohydrate contained in a serving of the product will continue to be reported on the nutrition label on the back of the package.

We spoke to the people in CFIA and Health Canada who made these decisions to try to understand them. They say it is because there is "insufficient consensus" among scientists about the health benefits of low-carb foods. They also said the policy was made because low-carb labeling is inconsistent with dietary *recommendations* (which are based on science).

Each of these is addressed below.

¹ "Low-carb labelling rules could sink products", *Toronto Star* September 21, 2004

Food Labels and Science

An obvious question is whether this decision is consistent with other, similar decisions in the past. Have other labeling decisions been made on the same basis? Some recent cases merit comparison:

- The Canadian Food Inspection Agency (and USDA in the US) vehemently opposes a proposal for niche meat products put forward by a firm in Alberta (Kentucky in the US) for private testing (and subsequent labeling) for BSE of all cattle the company slaughters. The rationale is that there is no scientific basis for testing all cattle: sampling is sufficient.
- In Canada, label claims can be made for organic foods. They must contain 95% organic food ingredients, and the definition of organic applied to those ingredients is subject to change. It is unclear that there is any consensus on whether there is scientific evidence that organic products provide a health benefit.
- Under voluntary standards established by the Canadian General Standards Board (CGSB), label claims can be made for foods free of genetically modified (GM) ingredients. According to the CGSB, labeling related to the exclusion or inclusion of GM ingredients is not supposed to “create an erroneous impression of a food’s character, value, composition, merit or safety”. The standard makes no reference to whether Health Canada or other regulatory scientists believe that GM ingredients are either safe or unsafe for consumption, or different from a nutritional perspective, but they are allowed.

Based on these examples, were the claims on product labels approved consistently using a science-basis? The answer is clearly no, and the principle on which decisions are made is unclear.

- In the case of private testing for BSE, there is little difference between 100% testing and sampling. So the CFIA is applying scientific criteria in reaching its conclusion that since there is (statistically) no health benefit, the practice (and the labeling) will not be allowed. But any statistician will tell you that the only way to go from 99% to 100% confidence is to collect data from the population. Apparently consumers can’t be allowed the choice to have 100% confidence, even if they are willing to pay for it from a willing supplier.
- The organic and GM label claims cannot be reconciled against scientific criteria. Some Canadians *believe* that organic foods, or foods that are not made from GM products, are healthier than alternatives. However, that debate does not currently centre on science, and as it relates to labeling, food regulators in this country have not waded into it. But somehow it can be labeled even though there is no “consensus...”. So we are allowed to label organic or GM-free products that are not based on science, but not 100% tested BSE-free beef or low-carb foods because the label claims are not based on science. Anyone see a contradiction?

Low-Carb Labeling and Dietary Recommendations

Health Canada makes dietary recommendations on intake of fat, fibre, and other nutrients, as well as the structure of energy in the diet from carbohydrates and from other sources. Consistent with this, consumers want and can get information on products that are “fat-free” or low fat, and there are definitions of what constitutes fat-free or low fat (measurement methods, tolerances, etc.) as well as verification that the product actually meets this standard.

But if consumers want information on low or reduced-carbohydrate content, Health Canada says they can’t have it. This appears to be another inconsistency. But the regulator says it’s only apparent because they think Canadians should consume less fat, but not less carbohydrate.

That may be so, but not everyone eats too much fat, not everyone eats too little carbohydrates, not everyone can digest them equally, and the products with reduced carbohydrates are not intended for everyone – in fact, one possible use of the information is to help consumers choose *not* to buy the product. But somehow it is logical to the regulator that, because of general dietary recommendations, that there be a special policy for a few products aimed at a segment of the population based on Health Canada’s view of the overall population’s eating habits.

In this case, Health Canada has taken it upon itself to *certify* the goodness of low-carb foods; this goes well beyond verifying the nutrient content. The consequence of failing to meet government certification is that the product or label is removed from the market. Interestingly, nobody asked for certification; least of all the followers of low-carb diets who eat these products.

This policy suggests that Health Canada knows best what people should eat and what they should know, and won’t approve label claims that differ with Health Canada’s current recommendations. Thus, dietary *recommendations* that are supposed to be advisory in nature are being used to forcibly restrict the information and choices of consumers, (when Health Canada decides they should be restricted). Consumer demand is ignored in order to protect the sanctity of dietary standards that are only supposed to serve as guidelines (sometimes, but not other times apparently). This arrogance by food regulators suggests a patronizing attitude toward Canadians who apparently are too ignorant to know what information they should have.

Low-Carb Labeling, Innovation and Investment

At the same time as government is telling us what we should know, government tells Canada’s farm and food system that it must constantly innovate to meet diverse consumer wants if it is to be internationally competitive. For example, the background of the federal-provincial Agricultural Policy Framework (APF) states:

[Consumers have] raised their awareness and expectations. In addition to food safety, consumers are increasingly knowledgeable and discerning in their food purchases and are demanding greater choice. Many suppliers are developing systems that demonstrate to both existing and potential customers that their products meet the specifications demanded by consumers. At the same time, these suppliers are taking advantage of changing consumer

preferences to gain new markets and develop niche markets with potential price premiums. The proposed APF aims to build on these efforts and encourage all producers to take similar action.

How mixed a signal is this? Government tells the agri-food industry to respond to what customers want and differentiate, but apparently only if Health Canada says it's politically correct? Is that the message? Add this to other aspects of Health Canada's regulatory regime such as what we (and others) described in our recent study on the regulatory approval of animal health products². That study says it takes Health Canada about 800 days³ to make a decision to approve or disapprove animal health products compared to their administrative standard of 180 days, and the best practice in Australia of 240 days. The delays and the inconsistencies in Health Canada's processes add cost, discourage research in Canada, and rob our farmers of products that are used to produce products in other countries that compete with ours in both the domestic and export markets.

Putting this together, what message is being sent to Canadians or others who want to invest in this country? It's pretty clear. Only invest here if you like to compete at costs made higher by unnecessary government regulation in markets that are limited to you by unnecessary government regulation.

Conclusion

Food product regulators at Health Canada and CFIA have a job to do. And to do it right, changes are needed. These include:

- A set of clear principles for regulatory approval that respects both scientific evidence and the need to serve consumer demands.
- Regulations need to be consistent, clear and efficient so that agri-food innovators can develop expectations around the process.
- Health Canada should not confuse its advisory role in developing dietary recommendations with its regulatory role by limiting choices just because they conflict with its recommendations.
- The regulatory process should serve to enable new products and labels, rather than reject safe product concepts that do not fit within the standard product "box".

The recently released federal "Smart Regulations" report appears to pick up some of these themes. Maybe it can drive regulatory reform, although to date the leadership in implementing a tough, fast, clear, and consistent regulatory system in Canada has been dismal. Food and pharmaceutical companies know it, and they increasingly choose other places to invest.

² See *The Competitiveness Impacts of Canada's Agricultural Product Review Regulations*, a study by the George Morris Centre on the product approval process at Health Canada- Veterinary Drugs Directorate, or the *2003 Report of the Commissioner of the Environment and Sustainable Development to the House of Commons*, on the regulatory approval processes at the federal Pest Management Regulatory Agency

³ Regulatory Data Services. May 2003. Market Access Times for Veterinary Drug Products. Collected for Canadian Animal Health Institute.

Government ought not to be in charge of what we are eating, or punish us by restricting access to products or labels if we decide to make alternative choices that disagree with their recommendations. In an open society, grown-ups have supposedly been delegated at least that much discretion... And as we start on our journey to develop a Canadian Agri-food policy, the George Morris Centre pledges to treat people as adults, which we think many will see as a refreshing departure from this and many recent government policy processes.