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POLICY

Voluntary Public

Date: 2/6/2012

GAIN Report Number: FR9090

France

Post: Paris

Proposed Bisphenol A ban in food packaging would impact U.S. exports to France

Report Categories:

Sanitary/Phytosanitary/Food Safety

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Report Highlights:

The French food safety agency concluded in its September 2011 preliminary report that Bisphenol A (BPA) had suspected impact on human health. The following month, the National Assembly passed a bill which bans the sales of any food packaging container and food material containing BPA by January 1, 2014. The bill still has to pass the Senate before the parliamentary recess in early March 2012 or become void. The French food industry believes it will not be able to avoid a BPA ban due to the public sensitivity on the issue and has requested more time for a transition to BPA-free food packaging. France has informed the European Union (EU) of the proposed legislation, which must be found justified and not in breach to EU trade laws to be enacted. The EU Commission is now waiting for comments from other Member States before taking position. While it is very difficult to precisely quantify the impact of a possible ban on trade, it is very likely to impact and jeopardize U.S. processed and other food exports to France.

General Information:

Bisphenol A (BPA) is an organic compound that is used to make polycarbonate polymers and epoxy resins, along with other materials used to make plastics. It is widely used, especially in food packaging. It notably strengthens polycarbonate plastics which otherwise would be more prone to cracks when impacted. Used in resins as a liner, it protects metal food containers from corrosion from watery and/or acid content, notably in canned food and canned drinks. It is also widely used to protect metal lids on glass jars. Two companies (Dow Chemical and Bayer AG) produce the bulk of BPA in the world.

It is estimated that most if not all canned drinks, canned foods as well as many drinks and food in plastic containers are in contact with BPA. BPA is also found in many non-food uses such as plastic pipes, thermal paper, and flame retardant. BPA is approved for food uses by EU regulation. BPA is found on about 10 percent of plastic containers (those made with polycarbonate) of the US Tupperware brand. None of Tupperware's children products contain BPA.

Due to the growing public concern over the long-term impact of exposure to BPA, especially for infants, and scientific studies such as the one undertaken by the U.S. National Institutes of Health in 2007, Canada was the first country to ban in 2008 the manufacture and sale of baby bottles containing BPA, followed in 2010 by France. BPA was found to be released in infants' milk when the baby bottle was heated in a microwave. The European Union and other countries such as Turkey have also enacted legislation restricting the use of BPA in baby bottles and children. Denmark has enacted a ban on BPA for baby food products and the Japanese canning industry voluntarily replaced its BPA resin can liners. No other country is undertaking such drastic legislation such as the one proposed in France. Several U.S. states (Minnesota, Connecticut, Wisconsin, Washington, Maryland, Vermont, and New York) have also enacted regulations on BPA in baby bottles.

France's moves on banning BPA

The French National Agency for Food Safety and Occupational and Environmental Health (ANSES) released on September 27, 2011 a [preliminary report](#) on the health effect of BPA on human health. ANSES experts' panel concluded that according to available scientific literature, BPA has recognized impacts on animal health (with effects on reproduction, metabolism, mammal glands, brain and behavior) and suspected impact on human health (effects on reproduction, sugar and fat metabolism and cardiovascular pathologies). Those effects happened at lower than the Tolerable Daily Intake (TDI) levels, especially during certain period of life (pregnancy, pre and post-birth periods). ANSES notably recommended reducing the exposition to BPA for humans by substituting it with other materials, and in the meantime, labeling food containers which contain BPA. ANSES specifically suggested primarily targeting infants and young children as well as pregnant and nursing women. ANSES also called for more in-depth studies on BPA impacts to be released in 2012. The French Food industry Association (ANIA) is funding several research projects pertaining to the evaluation of endocrinous impacts of BPA and similar chemical products on human health, with preliminary results to be published in 2012.

The European Food Safety Agency (EFSA) disputed ANSES finding in an [opinion](#) published in December 2011. EFSA explained that ANSES work was limited to hazard identification while EFSA has carried out a full risk assessment of BPA. EFSA stated that its TDI for BPA, first established by EFSA in 2006, was set to protect all human populations for lifetime exposure to this substance through the diet. ANSES and EFSA agreed to collaborate in the future. EFSA will also liaise closely with U.S. scientific experts on studies that are currently in progress. EFSA is expected to publish some additional reports in 2012 on this issue.

Following EFSA's finding, the French Socialist party (minority), under lobbying from environmental groups, notably the Réseau Environnement Santé (RES: Health and Environment Network), proposed in early October a [two articles bill](#) (It is actually an amendment to the older bill banning use of BPA in baby bottles) at the National Assembly, banning the use of BPA in all food containers by January 1st, 2014 for all consumers and by January 1, 2013 for food packages, materials and containers for infants (0-12 months) and young children (12-36 months). In its communication, the RES network openly linked the law to the [BPA-Free kids Act](#) of 2009 (S 753) introduced by Senator Kerry and Senator Schumer at the U.S. Senate.

The French National Assembly voted unanimously on the bill in mid October 2011. It is now waiting to be examined by the French Senate (which has a Socialist majority). If the bill is approved without any amendment before the end of the current legislature (late February 2012), it will be enacted as a law. If the Senate amends it, a further vote at the National Assembly will be necessary, which is unlikely before the end of the legislature. In that case the bill could be void. The Senate agenda, available in early February 2012, does not show any discussion on BPA scheduled before the end of the legislature.

But even if the bill is not approved by the Senate in due time, the French food industry believes it will be a short-lived delay before another similar bill comes back to the French parliament after the June elections, maybe as early as fall 2012, due to the strong political pressure from environmental and consumers' groups.

The French food industry's position

Many French experts acknowledge they were caught by surprise by the parliamentary move, even if the BPA had been a growing issue over the past few years. Since the vote, the food industry has lobbied both the French government and parliamentarians, highlighting the numerous problems raised by the bill. Economic stakes are very high with the turnover from the French canned food industry amounting to € 4.7 billion (\$6.11 billion) and turnover for the soft drinks industry amounting to € 2.5 billion (\$3.25 billion). The French food industry association (ANIA) is currently trying to assess more precisely the economic impact of a BPA ban.

The wording of the bill was deemed too vague by industry experts. It did not distinguish food containers which were in direct contact with food from food packaging in general. The existing proposal seems to include even over-packaging such as films which are not in contact with the food. The question of inks containing BPA on food labels was not clarified either.

The French food industry also highlighted the lack of studies on available substitutes to BPA, especially for epoxy

resins. Some alternate products such as oleo-resins showed some weaknesses in resistance to acid food and drinks contents such as colas or tomato products. Altogether, it appears there will not be a universal substitute to BPA but various products depending on their final uses. Research & development and testing on those substitutes will take years, especially for products with a long shelf life such as canned food. The food industry is especially eager not to embrace a substitute to BPA which, after several years, could be found more harmful than BPA itself.

But despite those uncertainties, the French food industry believes it will not be able to avoid a BPA ban in a short to medium term. The French public has shown a great sensitivities on food related health concerns, driven by several health related scandals, some of which were not even related to food. But the mix-up in public perception of the [mad cow](#) scandal, the [Mediator diabetes drug](#) scandal and even the [PIP breast implant](#) scandal led French consumers to a high level of mistrust in their regulatory agencies including the food safety agency. French consumers are more akin to listen to environmental or consumers groups over government experts, and then ask their political representatives to pass laws and regulations that address the issues raised by those environmental and consumers groups. Thus, a BPA ban advocated by some environment and consumers groups seems more and more unavoidable in France.

Under the threat of such a ban, the food industry requests time to adapt. It believes a minimum of 5 years is necessary for a transition to BPA-free food packaging. In the meantime, it encourages its constituents not to use BPA-free packaging as a marketing tool as it fears it could further raise the consumers' mistrust in food safety in general. Overall, the French food industry plans to limit any communication in the future on BPA related issues, fearing consumers' backlash against food products.

European reactions

Under Directive 98/34/EC (materials in contact with food), France informed the European Union through the Technical Regulation Information System (TRIS) [2011/529/F](#) notification of the proposed legislation. The proposed legislation must be found justified and not in breach to EU trade to be enacted. The EU Commission is now waiting for comments from other Member States (MS). As of early February 2012, only four MS (Czech Republic, Netherlands, Spain and United Kingdom) have commented on France's TRIS, with UK voicing a detailed opposition, highlighting the lack of proper evaluation in ANSES report. The ending period for comments has been extended by the Commission to April 20, 2012. It is not known if third country trading partners have made comments. France will send another notification (under article 18 of EU regulation 1935/2004/EC) for products made of plastics.

While the debate in France has been rather non-existent, several European groups representing food manufacturers, plastic manufacturers and metal packaging manufacturers have alerted the EU Commission of the potential impact of the bill on their economic sector and on the trade of food products to France. According to the Plastic Europe (European Association of Plastic Manufacturers), FoodDrink Europe and EMPAC (European Metal Packaging Association), a significant number of food companies (total revenue in the EU of € 954 billion (\$1240 billion) with 4.2 million employees), in addition to the packaging industry, will be affected by the ban

and criticized the non-scientific evidence policy making approach. It could eventually be considered as a breach of the Single Market Rules. They claim that the two-year time frame is insufficient for a proper research and development effort as some of the products (such as canned food) have a shelf live that extend beyond that period.

Potential impacts of a BPA ban on U.S. trade to France: risks and potentials

If at this stage it is very difficult to precisely quantify the impact of a possible ban or restriction of the use of BPA in food packaging; it is clear nonetheless, to say that this ban would impact and jeopardize the U.S. processed and other food exports to France. In France, the U.S. companies that manufacture locally would need to adapt and change the composition of their packaging with a new component at a higher cost; e.g., Coca Cola, Pepsi Co, Culligan, etc. Moreover, the small and medium U.S. companies and the U.S. suppliers who export to France and Europe might not have the financial support to change their packaging. French importers of U.S. food products will be confronted directly by French regulatory authorities.

The primary products targeted will be beverages, notably the Florida orange and grapefruit juice using plastic container; France is the second largest market for Florida juices with 21 million dollars sales. Imported beer will also be targeted by this action. In addition any product that contains a plastic packaging or a plastic component may be affected by this law. Frozen seafood and meat products are most likely using BPA in their packaging, as well as packers for bulk dried fruit and dried legume. That means to say that it affects the majority of the manufactured, frozen and fresh products.

On the other hand, RES advertizes that many companies, most of them U.S., have developed non BPA food containers and BPA alternative. The list notably includes: Design Analysis Inc (FL), Novomer Inc. (NY), EMS-Grivory (SC), Eastman Chemicals (TN) and Topas Advanced Polymers Inc (KY). New renewable compounds such as Isosorbide diglycidyl ether made out of corn could replace BPA epoxy resins in the lining of metal cans. The Iowa Corn Promotion Board supports research on such corn-derived products. A 2010 report [“Seeking Safer Packaging”](#) published by [Green Century Capital Management](#) listed several U.S. companies that have started to remove BPA from their food packaging, it includes Hain Celestial, ConAgra, H.J. Heinz, and to a lesser extent General Mills and Nestlé. Other U.S. food companies such as Eden Foods, Muir Glen, Edward & Son, Trader Joe’s, Vital Choice, Wild Planet Foods, Oregon’s Choice Gourmet and Eco Fish, among others also manufactures all or part of their product in BPA-free containers. Thus, proponents of the French bill say that a ban on BPA food packaging, if implemented wisely, could provide some market opportunities to innovative U.S. companies.