Shook, Hardy & Bacon L.L.P.

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FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

Cancer Panel Report Says Environmental Chemicals Causing "Grievous Harm"

Described by the media as "landmark" and "extraordinary," the President's Cancer Panel newly issued 2008-2009 Annual Report claims that the National Cancer Program has not adequately addressed the "true burden of environmentally induced cancer." According to the panel's transmittal letter, some 80,000 chemicals are on the market in the United States, and Americans are exposed daily to many of them, even before birth. Particularly noted were exposures to chemicals such as bisphenol A (BPA), formaldehyde and benzene. The report examines the impact of environmental exposures on cancer risk, identifies the barriers to understanding and reducing the exposures and makes recommendations to overcome these barriers.

Noting that 41 percent of Americans will be diagnosed with cancer and 21 percent will die from the disease, the panel of Bush administration appointees maintains that inadequate attention and funding have been provided to the environmental causes of cancer. The panel also criticizes the scientific tools used to assess cancer risk from environmental exposure and the reactionary rather than precautionary approach that regulators take to environmental hazards. "[I]nstead of requiring industry or other proponents of specific chemicals, devices, or activities to prove their safety, the public bears the burden of proving that a given environmental exposure is harmful. Only a few hundred of the more than 80,000 chemicals in use in the United States have been tested for safety."

Among the sources and types of environmental contaminants cited in the report are (i) industrial and manufacturing sources, (ii) agricultural sources, including insecticides, herbicides and fungicides, (iii) conveniences of modern life (dry cleaning, mobile source air emissions—cars, trucks, airplanes—water disinfection by-products, household pest control, tanning devices), (iv) medical sources, such as medical radiation and scans, and pharmaceuticals in water supplies, (v) military sources, and (vi) natural sources.

Concluding that the nation must learn more about the full extent of environmental influences on cancer, the panel calls for a comprehensive policy agenda, special protections for children, more and better research, stronger regulation, full disclosure of risks to specific populations ("agricultural and chemical workers and their

families, radiation-exposed groups such as uranium mine workers, nuclear industry workers, nuclear test site workers and 'downwinders,' residents of cancer 'hot spots' or other contaminated areas"), and development of safer alternatives to currently used chemicals.

Among the panel's specific recommendations are the adoption of the "precautionary approach" to environmental chemical risks, better regulatory coordination "free of political or industry influence," increased research funding, improved protections for occupational exposures, the incorporation of information about environmental exposures in standard medical histories, and the adoption of "green chemistry" initiatives and research. According to a news source, previous panel reports have focused on treatment and the contribution of diet and smoking to cancer incidence. Nicholas Kristof, writing for *The New York Times*, said, "It's striking that this report emerges not from the fringe but from the mission control of mainstream scientific and medical thinking." He also said, "Industry may howl," because the report calls for "much more rigorous regulation of chemicals." *See Environmental Health News* and *The New York Times*, May 6, 2010.

House Subcommittee Considers Food Safety Reports

The Oversight and Investigations Subcommittee of the House Energy and Commerce Committee held a **hearing** on May 6, 2010, to consider food safety reports prepared by the Government and Accountability Office (GAO) and the Inspector General of the Department of Health and Human Services (HHS). Both the GAO **report** and **testimony** from an Inspector General administrator focused on Food and Drug Administration (FDA) and other agency weaknesses in ensuring that imported foods are safe and domestic food facilities are subject to meaningful inspection in terms of frequency and breadth.

According to Subcommittee Chair Bart Stupak (D-Mich.), the hearing marked the 12th conducted since January 2007 to consider food contamination issues. He concluded his remarks by stating, "We are fortunate that today's hearing was prompted by the HHS and GAO reports rather than another widespread food contamination outbreak like we saw with spinach in 2007, peppers in 2008 and peanut butter in 2009. But make no mistake: Without legislative action it is not a matter of *if* but *when* more lives will be put at risk by another outbreak. We cannot put off action any longer."

Among those testifying were FDA's Deputy Commissioner for Foods Michael Taylor, GAO's Director of Agriculture and Food Safety Lisa Shames and HHS Office of Inspector General Region II Inspector General for Evaluation and Inspections Jodi Nudelman. Taylor testified about ongoing FDA programs intended to minimize food safety risks, and, specifically addressing each report, he agreed with many of their recommendations and promised that the agency will incorporate them, as appropriate. He commended the House for passing the Food Safety Enhancement Act (H.R. 2749) in 2009 and looked forward to its reconciliation in conference with a related Senate bill, which is pending floor action. This legislation would provide FDA with enhanced authority in a number of areas, including mandatory recalls and the development of traceability requirements.

SHB offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

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House and Senate Lawmakers Introduce Obesity-Related Legislation

Bipartisan House sponsors of a bill (H.R. 5209) that would establish a comprehensive national approach to addressing obesity in the United States held a press conference to unveil the measure on May 5, 2010. Appearing with Representatives Ron Kind (D-Wis.), Mary Bono Mack (R-Cal.), Earl Blumenauer (D-Ore.), and Marcia Fudge (D-Ohio) to introduce the Healthy Communities through Helping to Offer Incentives and Choices to Everyone in Society Act of 2010 (Healthy CHOICES Act) were representatives from Del Monte Foods, the Grocery Manufacturers Association, American Heart Association, and the YMCA. Referred to several House committees, the bill would authorize an array of grants, take steps to improve child nutrition, improve access to physical activity for adults and children, improve access to nutritional information and healthy foods, change transportation policies to promote healthy lifestyles, and establish research and assessment tools.

Meanwhile, Senators Mark Udall (D-Colo.) and Al Franken (D-Minn.) have introduced a bill (S. 3298) that would establish a pilot program in child care facilities to address obesity in children younger than age 5. Titled the Healthy Kids from Day One Act, the legislation would "establish a 3-year pilot program in 5 States that will focus on reducing the increasing prevalence of overweight/obesity among children between birth and 5 years of age in child care settings." It would provide competitive grants to implement "evidence-based or data-informed healthy eating and physical activity policies and practices, including curricula and other interventions" and train facility staff to promote healthy eating and physical activity "among the birth to 5 years of age population." Introduced on May 4, the bill was referred to the Committee on Health, Education, Labor, and Pensions.

House Bill Would Regulate How Web Publishers Collect and Use Personal Data

Representative Rick Boucher (D-Va.) has released a **draft bill** that would address online privacy by regulating how Web publishers and advertisers can collect and use personal information, such as name, address, Social Security number, and bank accounts, as well as implicit information, such as "click-stream." While advertisers do not apparently dispute provisions that protect traditional personal information, they are concerned about the types of information they have been using in recent years to target ads relevant to users' online viewing habits. The draft legislation includes as "covered information" "Any unique persistent identifier, such as a customer number, unique pseudonym or user alias, Internet Protocol address, or other unique identifier, where such identifier is used to collect, store, or identify information about a specific individual or a computer, device, or software application owned or used by a particular user or that is otherwise associated with a particular user." Advertisers would not be allowed to collect this type of information without providing notice and securing consent. *See AdAge.com*, May 4, 2010.

EPA's New "Nanomaterials" Definition to Affect Pesticide Registrations

With a new working definition of "nanomaterials," the Environmental Protection Agency (EPA) is apparently poised to launch new regulatory policies including those addressing the registration of pesticides under the Federal Insecticide, Fungicide &

Rodenticide Act (FIFRA). The definition, revealed during a PowerPoint® presentation at an April 29, 2010, Pesticide Program Dialogue Committee meeting, is as follows: "An ingredient that contains particles that have been intentionally produced to have at least one dimension that measures between approximately 1 and 100 nanometers."

The pesticide registration policy, expected to be published in the *Federal Register* in June, would allow EPA to use section 6(a)(2) of FIFRA, which "requires pesticide product registrants to submit adverse effects information about their products," to gather information about the use of nanoscale materials in pesticides. Registrants would be required to report the inclusion of nanoscale materials in a pesticide product already registered or pending registration. Under another new policy, EPA would deem nanoscale versions of conventional pesticide ingredients as "new active ingredients," thus requiring disclosure and possible regulation even if the conventional ingredient is already registered. According to a news source, industry representatives have expressed concerns about EPA's nanomaterial policies, suggesting that they represent a "controversial interpretation" of the law. *See Inside EPA*, April 30, 2010.

FTC Creates Website to Educate Children About Advertising for Foods and Other Products

Featuring colorful graphics purporting to hawk products ranging from sugar-sweetened cereals and acne medication to sporting goods and meals sold at fast-food restaurants, a new Website created by the Federal Trade Commission's (FTC's) Bureau of Consumer Protection seeks to provide children with the tools they need to properly understand and assess commercial speech. Designed for children in grades four through six, the interactive game with accompanying classroom materials urges children to keep three questions in mind whenever and wherever they are exposed to advertising: Who is responsible for the ad? What is the ad really saying? What does the ad want me to do?

FTC announced the Website's launch in late April 2010, and bureau director David Vladeck said that its goal is "to help kids start to understand the commercial world they live in and to be alert to, and think critically, of advertising." Vladeck reportedly confessed that he was unable to get past Level Two in the game, while his 12-year-old nephew was already on Level Four. Funded at a little more than $2 million, the initiative is expected to reach "a couple hundred thousand classrooms" nationwide. *See The New York Times*, April 26, 2010.

FDA Initiates Steps to Increase Food Safety During Transport

The Food and Drug Administration (FDA) has issued an advance notice of proposed rulemaking (ANPRM) under the Sanitary Food Transportation Act of 2005 that establishes guidance on reducing the risk of food contamination during transport. The ANPRM is the first step in creating new federal regulations to govern sanitary practices by shippers, carriers by motor or rail vehicles, receivers, and others engaged in the transportation of food products for human and animal consumption.

FDA has requested input from the food and transportation industries, consumer organizations and other parties on topics, including (i) whether and how information is shared among those involved, (ii) whether trucks used for transporting food should also be used for "nonfood products," (iii) what reasons might waive "any and all" foreseeable rules intended to prevent contamination, and (iv) data on the risk of foodborne illness associated with the transportation of food.

After evaluating responses to the notice, FDA plans to coordinate with the U.S. Departments of Agriculture and Transportation in the rulemaking process. Comments will be accepted through August 30, 2010. *See Federal Register* and *FDA Press Release,* April 30, 2010.

Animal Disease Traceability Topic of APHIS Meetings

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has announced three public **meetings** for stakeholders to offer input on a new framework for animal disease traceability. Specific details for a proposed animal disease traceability rule will be discussed on May 11, 2010, in Kansas City, Missouri, May 13 in Riverdale, Maryland, and May 17 in Denver, Colorado. Written comments will be accepted until May 31. Additional meetings will be announced in a future *Federal Register* notice. *See Federal Register,* May 5, 2010.

APHIS to Again Publicize Animal Welfare Violations

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has **announced** plans to publicize enforcement actions taken in response to violations of the Animal Welfare Act (AWA). Starting in June 2010, APHIS will issue monthly press releases that disclose (i) people and businesses charged with AWA violations, and (ii) information about closed enforcement cases and penalties levied. The agency has reportedly revived the practice, which was discontinued in 2002, as part of its crackdown on AWA offenses. "It is clear that certain repeat offenders are not taking issues of animal welfare and humane treatment seriously enough. In turn, APHIS will not only be moving more swiftly to take enforcement action, but we will be making information about those enforcement actions available to the public on our Website," APHIS Administrator Cindy Smith was quoted as saying.

U.S. International Trade Commission Launches Investigation of China's Agricultural Trade

At the request of the Senate Committee on Finance, the U.S. International Trade Commission has **initiated** an investigation into "China's Agricultural Trade: Competitive Conditions and Effects on U.S. Exports." The commission will conduct a public hearing on the matter June 22, 2010, and the deadline for requests to appear is May 25. Prehearing briefs and statements must be filed no later than June 3. A commission report will be submitted to the Senate committee on March 1, 2011.

According to the commission notice of investigation and hearing, the report will cover the conditions of competition in China's agricultural market and trade from 2005 to 2009 or the latest year for which data are available. Among other matters,

the report will include information about trends in production, consumption and trade in China's agricultural market; government agricultural market programs and pricing and marketing regimes; China's participation in global agricultural export markets; tariffs and non-tariff measures posing barriers to trade; and an analysis of the economic effect of China's most-favored-nation tariffs. *See Federal Register*, May 6, 2010.

ENVI Rejects Novel Food Provision Covering Foods Derived from Cloned Animals

The EU Committee on Environment, Public Health and Food Safety (ENVI) has reportedly rejected a draft provision that sought to allow products from cloned animals and their descendents on the European market. ENVI considered the proposal as part of its efforts to update and simplify regulations pertaining to foods that "have not been consumed to any significant degree in the EU before May 1997." These novel foods include those that are "newly developed, such as food produced by new production processes like nanotechnology, but also foods traditionally consumed outside the EU."

Members of European Parliament apparently voted 42-2 "in favor of entirely excluding food derived from cloned animals and their offspring from the scope of this legislation." Instead, they have asked the European Commission, which initially proposed regulating these products under the novel foods framework, "to present a separate legislative proposal to prohibit food derived from cloned animals and their offspring." According to a May 4, 2010, ENVI news release, "The aim is to achieve a high level of food safety, as well as consumer, environmental and animal health protection, based on the precautionary principle."

The committee has also approved new requirements for foods produced using nanotechnology. Defined as having one or more dimensions less than 100 nanometers, these substances "will need to be clearly indicated in the list of ingredients." The draft legislation would also compel nano-engineered foods to undergo "specific and adequate risk assessments" before market approval. As the MEPs noted, however, all novel foods when necessary must also pass muster with the European Food Safety Authority and the European Group on Ethics in Science and New Technologies on potential health, ethical and environmental implications. *See Law360,* May 5, 2010.

San Francisco Supervisor Seeks to Outlaw Fast Food Toys

A San Francisco elected official has reportedly asked the city attorney to draft an ordinance that would prohibit "fast food restaurants from including toys with meals marketed at children that are high calorie, high sugar and high in fat." The request comes after the Santa Clara County Board of Supervisors' recent approval of a similar ordinance.

San Francisco District 1 Supervisor Eric Mar (D) told a news source that his effort is intended to reduce childhood obesity. "We will protect our communities from fast food companies that are spending $1.6 billion marketing their wares to children," he said. *See The San Francisco Examiner*, April 28, 2010, and *Nation's Restaurant News*, May 2, 2010.

LITIGATION

CSPI Threatens Litigation Against Retailer over Alleged Sale of Recalled Foods

The Center for Science in the Public Interest (CSPI) has issued an **offer of settlement** to Safeway Inc., claiming that it intends to sue the company if it fails to adequately notify its customers about the recall of contaminated foods. According to CSPI's May 5, 2010, letter, Safeway has a club card membership program through which the retailer "can easily identify which Customers purchased products subject to Class 1 recalls, and then advise those Customers that they have purchased a product that puts them at risk of a serious health problem or death."

CSPI contends that Safeway's competitors do this and that Safeway is engaging in "unfair and deceptive acts and practices by selling dangerous products and then failing to inform its Customers that they are at risk." If the company does not agree to inform customers about food recalls by posting online warnings and in-store signs, as well as "immediately contacting each Customer—by telephone, letter, and (when possible) email and text messaging—to advise them not to consume the product and offering a full refund of the amount paid for the product," CSPI says it will file a lawsuit for injunctive relief, disgorgement or restitution, damages, and attorney's fees. *See CSPI Press Release*, May 6, 2010.

Consumer Files Popcorn Lung Claims in New York

Alleging that her habit of consuming two to three bags of microwave popcorn daily between 1991 and 2007 caused her severe lung disease, a New York resident has sued a host of defendants, including 100 "John Does," in state court. *Mercado v. ConAgra Foods, Inc.*, No. n/a (N.Y. Sup. Ct., Queens County, filed May 3, 2010). Agnes Mercado, who claims that her lung disease requires the regular use of an oxygen tank and will likely require a lung transplant, contends that the diactyl in Act II buttered popcorn caused her injury. She sued the product's manufacturer, flavoring companies and unknown companies that "manufactured, designed, packaged, marketed, labeled and sold added diacetyl to Givaudan for use in its butter flavorings that were sold and distributed to ConAgra for use in ConAgra's Act II Lite microwave popcorn."

The plaintiff claims that any statutes of limitations have been tolled by defendants' concealment of information about the health risks of exposure to diacetyl and alleges that she "did not discover and could not have reasonably discovered the cause of her illness before April 2010," when she was diagnosed. She alleges negligence, strict liability for design defect and failure to warn, negligent failure to warn, and breach of express and implied warranties. Represented by Independence, Missouri-based attorney Kenneth McClain, who has successfully litigated diacetyl claims in occupational exposure cases, as well as by Lieff, Cabraser, Heimann & Berstein, LLP attorneys, she seeks compensatory and punitive damages, attorney's fees, interest, and costs.

Criminal Action Still in Progress Against Kosher Slaughterhouse in Iowa

Some two years after a raid on a Postville, Iowa, kosher slaughterhouse for the employment of hundreds of illegal immigrants, charges of child-labor law violations are apparently about to be tried in state court against former executive Sholom Rubashkin. Prosecutors reportedly dropped many related charges against other individuals on the eve of trial. Rubashkin, who was also charged with bank, mail and wire fraud and violations of the Packers & Stockyards Act, appeared at a federal-court sentencing hearing in late April 2010, facing a potential life sentence in prison. According to news sources, the court will hand down a sentencing order sometime in May; a number of former U.S. attorneys general and U.S. attorneys submitted a letter to the court to express concern about the imposition of a life sentence on a first-time, non-violent offender. *See National Law Journal* and *The Blog of Legal Times,* April 26, 2010; *Feedstuffs.com,* April 30, 2010; *Meatingplace.com*, May 5, 2010.

OTHER DEVELOPMENTS

Market Researchers Back Increased Energy Drink Regulation

A recent **report** examining trends in energy drink consumption claims that the U.S. market's "exponential growth" has outpaced regulatory mechanisms designed for other beverages. M.A. Heckman, K. Sherry and E. Gonzalez de Mejia, "Energy Drinks: An Assessment of Their Market Size, Consumer Demographics, Ingredient Profile, Functionality, and Regulation in the United States," *Comprehensive Reviews in Food Science and Food Safety,* May 2010. University of Illinois researchers apparently found that, despite a lack of scientific consensus as to their physiological and cognitive effects, energy drinks represent "more than 200 brands in the United States alone, all purporting to increase energy, longevity, and vitality in some form or another."

The report provides an overview of these marketing strategies as well as common energy drink ingredients, including caffeine, taurine, guarana, ginseng, yerba mate, B vitamins, and "health-promoting constituents" like antioxidant polyphenols. It claims that the majority of such products are pitched to teenagers and young adults "due to this generation's on-the-go lifestyle and receptiveness to advertisements," but companies have reportedly expanded their focus to include women, extreme sport enthusiasts and other demographics by emphasizing cross-promotional appeal, "intentionally defiant names," or unique qualities "such as being all natural, organic, or gluten-free." The research also highlights the current trend among college students to mix alcohol with energy drinks, citing studies that associate this practice with "an increased number of driving accidents or other alcohol-related incidents."

Although they observe that most energy drinks contain less caffeine than eight ounces of coffee, the study authors conclude that the United States has "one of the less stringent" regulatory systems for these products. They note that laws limiting caffeine content in cola do not apply to energy drinks, which are required to list caffeine as an ingredient but not the amount, while no caps exist for other additives such as taurine. "An initial 1st step needs to be taken by the FDA [Food and Drug

Administration] in regard to the regulation of energy drinks, which could be as simple requiring the manufacturers of these products to list the caffeine content as well as supply warnings if their product contains caffeine in the amount of a specified upper limit," states the report. "The potential health risks associated with heavy consumption of these beverages has gone unaddressed and there ought to be a greater need to establish proper regulations."

In a related development, a May 1, 2010, article by *AlterNet* writer Anneli Rufus focuses on the young men "driving the $6 billion energy-drink industry." With 65 percent of the market composed of males ages 13 to 35, this business thrives on caffeine-delivery mechanisms dubbed Crunk!!!, Blade or Blow advertised as "an adolescent dream come true: the legal high." According to Rufus, "Energy drinks, along with the words and pictures used to sell them, are windows into young men's worlds: their real worlds and those mental realms that, based on scientific research, marketers call 'desired worlds' – where young men go, what they buy, what they want."

Rufus alleges that these marketing campaigns "reveal a cynicism even more profound than that of those who sell liquor or cigarettes or crack: at least *they* don't pretend they're selling something else." She claims that despite their glossy pretense, energy drink sales bank on the fact that caffeine is as habit-forming as "liquor, cigarettes or crack." Moreover, these products are able to exploit regulatory loopholes because, as one agency spokesperson conceded, "FDA has not addressed what the terms 'energy' or 'energizer' mean and what characteristics a product or ingredient must possess in order to use the terms."

As a result, notes Rufus, groups like the Caffeine Awareness Association (CAA) are working to enact labeling changes for beverages, in part because they believe caffeine addiction starts in utero. "If the mother is drinking Red Bull, the baby's drinking it too," one CAA member was quoted as saying. "Children are the vulnerable ones. To a kid's eyes, coffee doesn't come in attractive packages, but energy drinks do. These cans look like video games, and that's done on purpose. Kids think they're cool, and kids are the ultimate victims."

Debate over Health and Safety of Raw Milk Continues Unabated

Recent developments in the ongoing food safety debate over the production and sale of raw milk have recently focused the media spotlight in several states. According to a *Denver Post* article, Colorado is one of 29 states allowing "cow-share programs" to side-step laws that forbid the retail sale of raw milk, consumption of which has allegedly been linked to a resurgence of milk-related sickness in the United States. Under a cow-share program, consumers hold shares in dairy herds and receive raw-milk products as a return on their investment. Some 60 Colorado dairies apparently now offer the service.

Meanwhile, similar "buying clubs" are reportedly under fire in Massachusetts, where the mainstream dairy industry has, according to reports, lobbied Commissioner of the Department of Agricultural Resources Scott Soares to begin cracking down on the clubs. The department reportedly sent cease-and-desist letters to four buying clubs early in 2010. Mobilizing support for their cause, the owners reportedly met

with Soares in advance of a May 10 legislative hearing on a department proposal to ban the clubs. Among those challenging the proposal were a Boston employment lawyer, a Cambridge business owner and a former investigator with the Environmental Protection Agency.

In a related development, Wisconsin Governor Jim Doyle (D) has reportedly indicated that he will sign a bill that will allow farmers to sell raw milk directly to consumers through 2011. The president of a Washington-based non-profit group that advocates the consumption of raw milk was apparently pleased with the bill, despite its limitation, saying "It's the best state this could have happened in for us." Wisconsin will join 19 other states that allow direct sales within state borders; nine other states reportedly allow retail sales. Among those opposing the raw-milk movement is plaintiffs' lawyer Bill Marler, who claims raw-milk sales will result in bacterial contamination outbreaks. Industry interests also oppose raw milk, arguing that raw-milk-related outbreaks "hurt all the dairies." *See Alternet.org*, May 4, 2010; *The Kansas City Star* and *The Denver Post*, May 5, 2010.

Natural Health Proponents Call for Support of Legislation Allowing Food and Supplement Health Claims

Citizens for Health is calling on supporters to contact their congressional representatives to vote for a number of bills that would allow food producers and manufacturers of food supplements to make health-related claims for their products on the basis of peer-reviewed scientific evidence. Representative Ron Paul (R-Texas) introduced the Freedom of Health Speech Act (H.R. 3394) and the Health Freedom Act (H.R. 3395) in 2009; both were referred to the House Committee on Energy and Commerce where they remain pending. Representative Jason Chaffetz (R-Utah) introduced the Free Speech About Science Act of 2010 (H.R. 4913) in March; it was also referred to the House Committee on Energy and Commerce. *See Citizens for Health Action Alert*, May 5, 2010.

British Heart Foundation Urges MEPs to Reform Food Labeling

British Heart Foundation Chief Executive Peter Hollins has penned an article in the April 2010 issue of *Parliament Magazine* that urges members of the European Parliament (MEPs) to undertake more stringent reform of food labeling laws. "To improve diets across Europe, the European Heart Network (EHN) advocates for clear and consistent labels on all foods that will help European consumers understand the nutritional content of the food they are buying," writes Hollins in support of mandatory nutrition facts as well as front-of-pack traffic light systems.

Hollins claims that the guideline daily amounts (GDAs) favored by the food and beverage industry do not provide "an interpretation of relative healthiness in the quick and simple way that consumer surveys repeatedly show traffic light colors do." He specifically claims that "the strongest front of pack label is one combining traffic light colors, use of the words 'high 'medium', and 'low', and GDAs." This system, according to Hollins, could also improve nutritional understanding "among lower socio-demographic groups" and help tackle "health inequalities across Europe."

The editorial ultimately calls on MEPs to put the traffic light system back on the table when they vote next month on the measure. "Clear and consistent food labeling underpinned by traffic light colors is an important part of securing the right environment to make healthier, easier choices," opines Hollins. "Not getting it right means we miss a unique opportunity to help address not only the obesity epidemic but also the heavy burden of diet-related chronic non-communicable diseases across Europe."

Animal Welfare Groups Join Forces to Influence Transatlantic Trade

An umbrella organization for animal welfare groups in the European Union has reportedly signed a declaration creating the Transatlantic Animal Welfare Council (TAWC), a cooperative agreement with U.S. activists that seeks to enforce humane handling standards in international trade. According to Eurogroup for Animals, the new forum seeks to "optimize resources by sharing knowledge, expertise and experience" among TAWC signatories, which include the Animal Welfare Institute, Compassion in World Farming, the Humane Society of the United States, the International Fund for Animal Welfare, and the Royal Society for the Preservation of Animals. To this end, TAWC will convene "a plenary session two times per year and set up a number of expert working groups to focus on specific topics of mutual interest, such as animal testing, sustainable agriculture as well as specific bilateral and multilateral trade issues. "

TAWC apparently aims to build upon the efforts of the Transatlantic Economic Council established in 2007 to ease trade barriers and regulatory burdens. "The initiative highlights the high level of citizen concern for animal welfare in both trading blocs and TAWC will cooperate constructively with the EU and USA authorities to ensure that trade discussions take due account of the special nature of animals as sentient beings and of consequent concerns for their welfare," concluded an April 29, 2010, Eurogroup press release.

MEDIA COVERAGE

Chocolate Toddler Formula Draws Ire of Consumer Advocates

"Don't you love the idea of year-old infants drinking sugar-sweetened chocolate milk? And laced with 'omega-3s for brain development, 25 nutrients for healthy growth, and prebiotics to support the immune system'?," opines New York University Professor Marion Nestle in an April 26, 2010, *Food Politics* blog post decrying chocolate dietary supplements for toddlers ages 12 to 36 months. Claiming that consumers are paying 86 cents "for only six ounces of unnecessarily fortified milk plus unnecessary sugar and chocolate," Nestle implies that chocolate- and vanilla-flavored formulas directly compete with milk as a weaning food. She also urges the Food and Drug Administration to issue warning letters to manufacturers whose products feature "front-of-package health claims clearly aimed at babies" younger than age 2. "No wonder Jamie Oliver encountered so much grief about trying to get sweetened, flavored milks out of schools," writes Nestle. "Next: let's genetically modify moms to produce chocolate breast milk!"

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Meanwhile, *Psychology Today's* Susan Albers likewise criticizes the makers of flavored toddler formulas for allegedly contributing to an obesogenic environment. In a May 5, 2010, article titled "Chocolate Toddler Formula? What Will They Think of Next," she cites activists like Rudd Center Director Kelly Brownell in claiming that consumer choices are increasingly restricted by a "toxic food environment." As Albers concludes, "It's pretty safe to say that chocolate toddler formula would be part of this 'toxic environment' which is described as 'high-calorie, high-fat, heavily marketed, inexpensive, and readily accessible foods.'"

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Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

SHB attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.

SHB lawyers have served as general counsel for feed, grain, chemical, and fertilizer associations and have testified before state and federal legislative committees on agribusiness issues.