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French Law Banning Bisphenol A in Food Containers Enacted

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Report Highlights:

In late December 2012, France officially passed a law suspending the production, trade and marketing of food containers containing Bisphenol A (BPA). Such containers are banned as January 1, 2013 for food products intended for infants and on January 1, 2015 for all other products. France notified the European Union and has also to notify the World Trade Organization. In the meantime, food containers containing BPA will have to bear a warning label for pregnant women and infants. Except for baby food, industry is far from being ready and the legislation will hamper French food industry competitiveness and negatively impact trade of food products, including French imports of U.S. canned food.

General Information:

On December 13, 2012, the French Senate approved a [bill](#) that banned the production, import, export, and marketing of food containers containing Bisphenol A (BPA). President Francois Hollande signed the bill on December 24 and it was published in the [French Official Journal](#) on December 26, 2012, and became law.

BPA Ban in Food Containers by 2015

Per this new law, the production, import, export, and marketing of food packaging containing Bisphenol A in direct contact with food contents is banned as of January 1, 2013, for products intended for infants less than 3 years and will be suspended on January 1, 2015, for all other consumer products. The bill also suspends production and use of medical tubing for pregnant women, newborns, and infants when it contains DEHP phthalate by July 1, 2015. France is the first country in the world to suspend BPA in all food packaging. This decision was taken in advance of a risk assessment of BPA by the French Food and Environment Safety Agency (ANSES), which is due to be published in the first quarter of 2013.

France has notified the European Union (EU) Commission under Article 18 of [EU Regulation 1935/2004](#) on materials and articles intended to come into contact with food. France notified under this article because the bill applies to polycarbonate packaging, which is harmonized under EU legislation ([EU regulation 10/2011](#)), rather than the regulation on epoxy liners for metal cans that is not harmonized at the EU level. The notification must include the scientific justification for the ban. The Commission's response to enquiries from [FoodDrinkEurope](#), the European association of food and drink manufacturers, indicates that the EU Commission is likely to wait until the European Food Safety Agency (EFSA) publishes its [risk assessment report of BPA](#) in food contact material, expected in May 2013, before officially commenting and reacting to France's legislation. France also has to notify the World Trade Organization, under the SPS and TBT Agreements. The EU Commission can either side with France and propose to extend the suspension to the EU level or determine that France's legislation is not scientifically founded and ask France to terminate it. Should France fail to terminate the ban, the Commission and other EU Member States can take France to the European Court of Justice, which could fine France for breaching single-market rules. This process, however, would likely take several years.

Warning Labels on Food Containers with BPA

The French BPA law also mandates that food packaging containing BPA will have to bear a warning label advising pregnant and lactating women and infants aged less than three years. A decree will have to be published to set the design and content of the warning label. Due to French rules on streamlining legislation, such decree can now only be enforced starting either on July 1, 2013 or January 1, 2014.

The French General Directorate for Consumption and Fraud (DGCCRF) in the French Ministry of Economy is in charge of drafting this decree with inputs from Ministries of Agriculture, Industry, and Health, as well as other interested constituents, such as the Food Industry Association (ANIA). It appears that significant differences exist between the Ministry of Health, which seems to favor a

warning logo, such as the one existing on alcoholic drinks (see below) and the industry, which supports a simple sentence on labeling such as “this food packaging is made of BPA which is not advised for pregnant women...”.



French warning logo on alcoholic drinks.

Industry fears that a logo on ordinary food items, such as canned vegetables or soda cans, will confuse and frighten consumers. The food industry also requests that the warning label only be mandatory for products to be consumed in France, that food products produced in France for export should be exempted, and that the warning label should only be in French. Industry also requests that a delay should be allowed between the publication of the decree and the mandate date, allowing enough time for producers and importers to modify their labels.

The French brewers' association has asked that beer and alcoholic cans be excluded from the requirement, since those products are not recommended for pregnant and lactating women and infants.

Is Industry Ready?

The French Food Industry Association says that almost all the manufacturers of baby and infants food were already in compliance with the law on January 1, 2013. Baby and infant foods are mostly manufactured by multinational companies, such as Nestlé and Danone, which have strong research and development operations that can more easily initiate and handle BPA substitution in their packaging.

Moreover, the products, such as dry milk and purees, do not present major technical problems in substituting for BPA, because they are not acidic. It is possible, however, that some baby food products currently being imported may not comply with the new French law.

For other foods, substituting for BPA in containers could be extremely challenging, especially for products with acidic or fatty contents, such as colas, tomatoes, mustard, gherkins, duck, and pork meat. ANSES is also to publish, likely in the first quarter of 2013, a report on the various substitutes of BPA and their risk evaluation. The law also mandates that the French government present to the Parliament a report evaluating the potential substitutes to BPA and their industrial uses and their eventual toxicity by

July 2014. This report is likely to be based on the ANSES report. It is possible that substitutes may not be available for some products by 1 January, 2015. Theoretically, the French government could remove the BPA suspension for some products, if no substitute is found safe at the date of the ban.

In any case, the new legislation is creating logistical headaches both for manufacturers of metal cans and for food processors. Instead of having one type of can (with BPA-based resin liners) for all food products, they will have to produce, distribute and stocks many different varieties of cans with different BPA-free resin liners depending on the food product they will contain. This will significantly raise production costs for French canned food producers in a very competitive European market.

So far only one French food manufacturer, Fleury Michon, has marketed its products as “without BPA”, by labeling some ready-to-eat meals as “packaging BPA free”. Negative labeling is somewhat risky and could lead to litigation, however, because BPA presence in food could also arise from water contamination during processing, as many plastic water pipes are lined with BPA. Additionally, the food industry is eager not to generate mistrust in consumers with negative labeling, which could lead to concerns about unlabeled products and reduce sales.

The Devil is in the Details

Food industry experts were quick to highlight several weaknesses in the French legislation, notably its vagueness. Some experts even argue that the law as written seems only to suspend the production, import, export, and marketing of food containers with BPA (empty food containers/packages), rather than the production and marketing of food products (filled containers, even if they contain BPA). Government experts refute such an interpretation of the law, arguing that the text stipulates “food containers with BPA in direct contact with food” and thus encompasses the food products in their containers. Another uncertainty lies with food processing equipment. When asked, government health experts had diverging opinions, some stating that food processing equipment (such as tanks) containing BPA was included in the ban, some denying it. A similar dilemma applies to containers for ingredients, not directly sold to the consumer. Even if theoretically the law is applicable, some supplemental regulations might be necessary to clarify those uncertainties.

Industry is also worried about the timing and schedule of the suspension, since many canned food and beverage products have a very long shelf life (up to 5 years). Will food items in containers with BPA produced before January 1, 2015, will have to be removed from the shelves and destroyed or not after that date? Could empty containers with BPA produced before January 1, 2015, and stored at food processors facilities still be used after that date? These questions are so far unanswered.

The food industry has also raised questions on control, since the risk of indirect BPA contamination could mean that a food item in a BPA-free container could show traces of BPA. They request that BPA contamination thresholds be set to differentiate between indirect contamination and BPA contamination from containers. The French Fraud Office (DGCCRF) has budgeted for more BPA related controls in 2013.

The Next Steps

The French Government still hopes to extend its BPA suspension to the EU level. When questioned, French government experts believed that the recent Belgian and Swedish moves to ban BPA for baby food are a sign that more countries will follow the French example. The [Réseau Environnement Santé](#) (Environment and Health Network), the French NGO which was instrumental in the passing the law, is now [lobbying the European Parliament](#) on endocrinous disruptors, including BPA.

The French law also mandates that the government present to the parliament, no later than January 2014, a report on the “health and environmental impacts of the growing presence of endocrinous disruptors in food, direct environment, medical devices, and the human body”. The report should especially focus on the opportunity to ban some listed phthalates in medical devices.

Impact on U.S. Exports to France

It is difficult to assess precisely the impact of the French legislation on U.S. exports of food products to France, because trade data do not distinguish products by containers (and also because many U.S. food exports to France transit through the Belgian port of Antwerp or the Dutch port of Rotterdam). Nevertheless, some U.S. food exports to France could be in jeopardy if packaging contains BPA. For example, France imported half a million dollars worth of beer in cans, \$6 million in canned soft drinks, and \$8 million of canned seafood from the United States in calendar year 2011, as well \$154 million in nuts and dried fruits, a significant part of which is canned.

U.S. exports at risk are:

- Canned beer
- Canned soft drinks
- Canned seafood - salmon, scallops and crabs
- Canned fruits (including nuts) and vegetables (including tomatoes)
- Canned food preparations
- Canned ingredients, including spices

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