Comments from the Canadian Biotechnology Action Network on the
Revised Draft Policy on the Management of Low Level Presence of Genetically Modified Crops in Imported Grain, Food and Feed and its Associated Implementation Framework for Grain

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In 2013, the Canadian Biotechnology Action Network (CBAN) submitted comments to the Agriculture Canada in strong objection to the establishment of so-called "Low Level Presence" or LLP in Canada. CBAN objects to an LLP policy based on our concern for health and safety as well as our concern for the future of public health policy and regulation of genetically modified (GM, also called genetically engineered) products.[i] This objection is not mitigated by changes as seen in the *Revised Draft Policy on the Management of Low Level Presence of Genetically Modified Crops in Imported Grain, Food and Feed and its Associated Implementation Framework for Grain*.

An LLP policy remains indefensible from a health and safety standpoint and would seriously undermine federal food safety regulation (already heavily criticized as inadequate, particularly in relation to GM foods[ii]) as well as public confidence in our food system (already undermined by the prevalence of unlabeled GM foods[iii]). An LLP policy would clearly subordinate food safety to trade goals.

The stated objective of the LLP policy is to "minimize disruptions to trade while protecting the health and safety of humans, animals and the environment" but the policy seriously undermines health and safety protection.

The Revised Draft sets out that Health Canada's safety assessment process would not be applied to all GM foods allowed into our food system. Canada's safety regulations of GM foods should apply to all GM foods that are to be eaten by Canadians. Either Health Canada's evaluation for safety of GM foods matters or it is irrelevant. Establishing LLP would remove Health Canada's uniform oversight over GM food safety.

The guiding principles set out for the LLP policy are contradicted by the policy proposal itself. For example:

a. If "the safety of human food, animal feed and the environment in Canada is paramount" then why is the federal government proposing to do away with Health Canada's assessment for some GM foods?
b. How are the "risk management decisions and enforcement actions to address LLP occurrences science-based" if the threshold level is to be set by the grain trade and not determined by a scientific safety assessment?
c. How will the LLP policy "encourage compliance with Canada's domestic regulatory system" when its goal is to provide an exception to that system?

The Revised Draft Policy

1. There is no rationale provided for detection and threshold levels.

The Revised Draft proposes a detection level of 0.2% and an undecided threshold level. How these numbers are determined is not explained, nor is the relationship between them:

- The Revised Draft provides a number of 0.2% as a detection level but no rationale is provided as to how and why 0.2% has been identified.
- The Draft does not provide a number for the "threshold level" which is now proposed to be one threshold across commodities rather than the previously proposed crop-specific threshold. The process for determining this level is only vaguely described as a decision to be taken by Health Canada and the CFIA, "taking into consideration advice from appropriate experts as well as the overarching objectives and guiding principles stipulated in the LLP policy." This process looks, as explicit in earlier drafts, to rely on the grain trade to identify thresholds, taking into account "the realities of modern agricultural production and commodity trade, recognizing that small amounts of unintentional commingling can occur during crop production, transportation, bulk handling, conditioning, and storage." The threshold level would therefore not be based on a scientific evaluation of risk to human health but on the considerations of an industry whose primary interest is in the cheap and efficient movement of grain.

2. Trusting foreign jurisdictions to consistently regulate for safety in accordance with Codex is not realistic.

The LLP policy is predicated on a trust in foreign government regulators to reliably and consistently assess the safety of all GM foods in line with Codex guidelines, as outlined in their filled "questionnaire" submitted to Health Canada. This is not realistic.

- There is no guarantee that foreign regulators would consistently apply their own regulations to each GM food safety assessment. For example, Canada's own assessment of recombinant Bovine Growth Hormone was internally disputed.[iv] Additionally, there can be dispute over interpretations of Codex guidelines. For example, Health Canada does not assess the safety of stacked GM events however CBAN maintains that Codex guidelines point to the need for such a safety assessment.[v]
- Public mistrust in Health Canada's regulation of GM foods is, arguably, already high: How does Health Canada propose to engender sufficient public trust in the safety regulation of foreign regulators?
- What is Health Canada's process if a foreign jurisdiction is deemed trustworthy and LLP of a GM food is therefore accepted, but information later comes to light that indicates that the GM food was not approved in line with Codex guidelines?

3. The process for determining which foreign jurisdictions are trustworthy is not transparent.

- The proposal is to assess the trustworthiness of foreign regulatory systems via a "questionnaire" administered by Health Canada. Will the process of assessing the trustworthiness of foreign regulatory systems be transparent? Will the variously answered questionnaires be posted online for access by the Canadian public?

4. The LLP policy proposal is based on the faulty assumption that GM contamination is unavoidable, and would serve to guarantee such contamination into the future.

- The presumption behind the LLP policy is that incidents of GM food contamination will continue and will begin to be seen originating from other countries. A UN FAO survey has however identified the US, Canada and China as the countries from which the majority of LLP contamination originates.[vi]
- Rather than focusing on efforts to protect Canadian trade via effective segregation of GM and non-GM crops, the policy proposes to open Canada's door to slack segregation practice internationally.
- The policy is permissive of GM contamination and would allow GM contamination to become the norm internationally, growing over time.

5. Removing Health Canada's safety assessment for some GM foods is indefensible from a health and safety standpoint.

- The Low Level Presence policy would dismiss or side-step Canada's existing regulation of GM foods for health and safety in certain cases. Though the federal regulatory system for GMOs has been strongly criticized as inadequate[vii], it remains a fact that, however problematic, Health Canada currently evaluates data to determine safety before allowing any GM foods onto Canadian grocery store shelves. LLP would avoid that system, on a case-by-case basis, and make Health Canada's evaluation effectively irrelevant in these cases, with possible broader, long-term implications for the application of regulation for health protection.
- There is no scientific basis for removing zero-tolerance, and LLP allows exceptions to the claim of "science-based" GM food regulation in Canada.
- Where trade goals are in conflict with safety goals, safety should be prioritized. Health Canada's mandate to ensure food safety should be prioritized over trade promotion in every instance.

6. An LLP policy would mean even less transparency in grocery stores for Canadians.

- Canadian consumers already bare the burden of researching to identify which GM foods are on the market and where they could be on grocery store shelves, without the benefit of mandatory labelling or accessible information from regulatory agencies.[viii] Will Health Canada publish a list of GM foods being accepted as LLP

into Canada?
- Over 80% of Canadians want mandatory labelling.[ix] If mandatory labelling of GM food is established in Canada, how will LLP relate? Will products with LLP be labeled?

Alternatives to an LLP Policy

The federal government should regulate strict segregation protocols to avoid the problem of LLP in the first place. Further, the trade problem that LLP aims but fails to address could be solved if Canada reevaluates its policy approach to GM products and institutes a stronger regulatory regime that includes economic considerations. To eliminate the risk of market shutdowns, rather than establishing LLP in Canada as "a model that could be adopted globally"[x], the federal government should ensure that any GM crops approved for growing in Canada are first approved by our major trading partners.[xi]

Rather than establish the LLP policy, Canada's policy approach to genetically modified crops and foods needs to be reevaluated in light of our twenty years of experience with GM products, as well as in light of the continuing public controversy.

Recommendations:

1. The Low Level Presence policy sacrifices food safety for elusive trade goals and should be rejected outright in favour of maintaining our zero-tolerance policy for unapproved GM foods.
2. The federal government should immediately place a moratorium on approving any new genetically engineered foods, crops or animals until a process of full regulatory reform and public consultation on the future of genetic engineering is completed.
3. Instead of considering LLP, Canada should also take every available step to segregate GM crops from non-GM and remove the problem of contamination.
4. The federal government needs to audit regulatory departments, the Canadian Food Inspection Agency and Health Canada in particular, to remove all dual mandates whereby trade considerations threaten to compromise human safety.
5. Canada needs to stop approving GM crops for growing in Canada that are not also approved in our major export markets.

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CBAN is a campaign coalition of 17 organizations that researches, monitors and raises awareness about issues relating to genetic engineering in food and farming. CBAN members include farmer associations, environmental and social justice organizations, and regional coalitions of grassroots groups. CBAN is a project on Tides Canada's shared platform.

[i] CBAN notes with interest that the proposals for LLP relate specifically to genetically modified foods as distinguished from other foods and crops that fall under the existing "Novel Food" and "Plants with Novel Traits" regulations: "For the purposes of this document, "genetically modified" refers to new plants that have been modified using recombinant DNA technology. A genetically modified crop refers to a crop plant with a specific trait or traits that have been introduced via recombinant DNA technology". (Footnote to AAFC AGRIDOC #2812902 page 2) LLP consultation documents recognize the unique trade issue raised by GM products and seemingly propose an exemption for GM foods from the application of Novel Food regulations.

[ii] Most notably via the Royal Society of Canada's Expert Panel on the Future of Food Biotechnology, *Elements of Precaution: Recommendations for the Regulation of Food Biotechnology in Canada*. 2001.

[iii] For example see Leger Marketing, *Canadian Public Opinion Poll: Arctic Apple Issue*, Commissioned by the Quebec Apple Producers Federation, July 3, 2012.

[iv] Lucy Sharratt, "No to Bovine Growth Hormone: A Story of Resistance from Canada" in *Redesigning Life? The Worldwide Challenge to Genetic Engineering*, edited by Brian Tokar (London: Zed Books, 2001). http://www.cban.ca/content/view/full/345

[v] Canadian Biotechnology Action Network, No Safety Assessment of GE Corn by Health Canada: Canada Ignores International Food Safety Guidelines. Press Release. July 29, 2009. http://www.cban.ca/content/view/full/535

[vi] FAO, *The results of the FAO survey on low levels of genetically modified (GM) crops in international food and feed trade*. Technical Consultation on Low Levels of Genetically Modified (GM) Crops in International Food and Feed Trade. March 2014. http://www.fao.org/fileadmin/user_upload/agns/topics/LLP/AGD803_4_Final_En.pdf

[vii] Most notably via the Royal Society of Canada's Expert Panel on the Future of Food Biotechnology, *Elements of Precaution: Recommendations for the Regulation of Food Biotechnology in Canada*. 2001.

[viii] Health Canada and the CFIA maintain lists of approved "Novel Foods" and "Plants with Novel Traits" on their respective websites but these lists include products of conventional plant breeding as well as rDNA technology and, additionally, do not reflect the reality of what is currently on the market. For further information see CBAN's report "Where in the World are GM Crops and Foods? www.gmoinquiry.ca/where

[ix] Polls on GM Labelling in Canada 1994-2014 http://www.cban.ca/content/view/full/2023

[x] Kirsten Finstad, Agriculture and Agri-Food Canada, *Addressing Low-level Presence in Food, Feed and Seed – an update*, Presentation to the Canadian Seed Trade Association, Quebec City, July 16, 2013

[xi] In 2010, this was proposed via Bill C-474, tabled by NDP Agriculture Critic Alex Atamanenko. The Bill would have required that "an analysis of potential harm to export markets be conducted before the sale of any new genetically engineered seed is permitted".