Submission by

Direct Selling Association of New Zealand

to the

Australian Productivity Commission

on

Trans-Tasman Mutual Recognition

25 MARCH 2003

DSA New Zealand does not require to be heard

Contact:

Garth Wyllie
Executive Director
Direct Selling Association New Zealand
Private Bag 92-066
Auckland 1030
Ph 09 367 0913
Fax 09 367 0904
Email wyllie@dsanz.co.nz

Background Information

The Direct Selling Association of New Zealand (DSA) is an Incorporated Society formed in 1974 to represent the interests of and promote Direct Selling in New Zealand.

The DSA is a founding member of the World Federation of Direct Selling Associations represented in 56 Countries and is a signatory to the World Code of Practice, which sets the benchmark for ethical practices world wide.

In New Zealand the DSA has developed its Code of Practice in conjunction with the Ministry of Consumer Affairs and this was signed in a "Mutual Agreement" with the Minister of Consumer Affairs on 7 March 1998.

This Code governs both Consumer practices and relationship with Independent Contractors who sell on behalf of the Association's member companies.

The DSA's membership numbers 36 members covering approximately 90% of companies involved in Direct Selling in New Zealand and by dollar volume around 95% of sales.

The member companies currently have in excess of ninety thousand (105,000) salespeople selling products in New Zealand by the three main types of Direct Selling. The main types of Direct Selling are Traditional Door to Door, Party Plan and Multi-level or Network marketing.

A recent economic impact study undertaken by the University of Otago identified that the industry has a value of 1.8 billion dollars in New Zealand excluding the products which are made in New Zealand for export outside of New Zealand.

Total sales in New Zealand at wholesale levels in the past financial year was $195 million.

Introduction

The DSA New Zealand while aligned to the DSA Australia makes this submission entirely on the basis of its New Zealand membership.

We are focused primarily on the products issues raised under TTMRA which pose problems to our members whether operating in just New Zealand or on both sides of the Tasman.
Our membership consists a range of multi-national companies who operate on both sides of the Tasman and a number who solely operate in New Zealand. All are either effected by existing policy, constraints or are likely to be effected by future policy and constraints as part of the harmonisation process.

Our submission is based answering the issues and questions raised in the review document and explaining those specific issues held by the DSA New Zealand membership.

We are raising the issues from a New Zealand perspective and while we have consulted with our Australian based members are not purporting to represent all Australian Direct Sellers who are represented by the DSA Australia.

BROAD OBJECTIVES

The underlying objectives for the TTMRA are considered by the DSA New Zealand as desirable as part of the simplification of Trans-Tasman Trade and to allow the integration into a single market.
Many of our members operating multi-national companies view New Zealand and Australia as a single market and expect to find common rules and where there are differences find that it imposes additional costs that should not be necessary.

There are considerable impediments to trade at a product level on both sides of the Tasman that impact directly on our members. These include the Therapeutic Goods Authority in Australia and the Environmental Risk Management Authority in New Zealand (Hazardous Substances and New Organisms Legislation) and a variety of both state and federal regulations relating to issues such as Advertising and transport.
Both regimes impose significant costs to our member's products that are excessive and inhibit new or innovative products entering each market in the respective product areas.

Products directly affected in Australia are: Vitamins, complementary health products and sunscreens.
Products directly affected in New Zealand are: most cosmetic and fragrance products, household detergents, cleaning products, and any product that is above the low environmental thresholds imposed and the application of UN Standards for those products that have not yet been implemented operationally by most countries.

Labour is not an issue for Direct Sellers and there are no inhibiting factors in this area with our labour forces able to move freely between both countries.

Direct Selling however is treated differently in some Australian states with some imposing cooling off periods and other not imposing any such restrictions. New Zealand however has an industry agreement through its Code of Practice and looks to voluntary compliance backed by an appropriate force of law to deal with specific breaches of the Fair Trading Law.
There is considerable scope in the overall objectives to deal with the differing laws from both countries and from a State to State basis which would resolve issues that our members operating in Australia encounter.

The DSA New Zealand does see benefits in getting harmonisation in such areas as Therapeutic Products, Hazardous Substances and in the Fair Trading Laws however our experience to date has indicated that such harmonisation tends to be the Australian way or no way. This attitude from officials tends to be focused on the need for Bureaucratic regulation rather than any form of serious co-regulation or voluntary compliance with the force of law as a back up.

The DSA New Zealand would like to see the proposed Joint Agency for Therapeutic Products occur however not at the currently proposed additional regulatory costs which in our opinion can not be justified.
The proposed application process and ongoing costs to keep low risk products in the market as currently undertaken by the TGA is not accepted by the New Zealand industry as a whole and is strongly opposed by the DSA New Zealand.

Our DSA New Zealand members sell more than 40 million dollars wholesale of complimentary health products such as vitamins in New Zealand and presently have no additional labelling costs or registration costs.
The product range is in the many thousands of products however a number of our multi-national members have informed us that they can not sell there full range into Australia due to the combination cost and regulatory barriers imposed under the current TGA structure.
Such barriers and costs are a fundamental part of the opposition to the currently proposed structure of the Joint Agency. It those barriers and costs are reduced to those relative to risk then the DSA New Zealand would fully support the proposal.
Particular cost concerns include:

- The initial cost of registration
- The mandatory GMP Auditing requirement and costs for premises for such low risk products as Sunscreens and vitamins
- The ongoing registration costs to maintain products on the register
- The Cost of application to add or vary a single ingredient to low risk complimentary health products
- The mandatory labelling requirement for therapeutic claims preventing use of international labels in many cases.

The New Zealand Hazardous substances law (HSNO) is onerous and exceeds anything that has been done elsewhere in the world and takes no account of mutual recognition either in Australia or in any other jurisdiction. It is excessively costly for companies wanting to sell new products into New Zealand with an application process and control rules that are plainly excessive for the risk.
The danger of this legislation will be that every cosmetic, fragrance, hair product, detergent, aerosol, soap or cleaning product will require a different label, packaging and handling process in order to be sold in New Zealand.

The application of UN standards as a feature of the controls applied under this law is argued as international best practice however, while this may be suitable for products such as explosives, it does not necessarily translate when applied to consumer products that contain everyday mixtures. The nature of this law however picks up all such products that exceed the defined thresholds and poses a significant barrier to Trans-Tasman trade from Australia.
The compliance costs for applications both in fees and in indirect costs from Consultants, company time and imposed obligations under the default controls being set for new products are significant. A recent hair removal lotion cost more than $10,000 for the application fees alone and the company cost in time was estimated at around 3 times this value. Such costs are not acceptable.

This law has been opposed by the DSA and the majority of industry groups both prior and since its introduction. There is nothing that has changed that view and while harmonisation with Australia is an option, the DSA New Zealand would be seriously concerned that an expansion of the direct scheme to Australia would add costs to those operating Trans-Tasman not to mention Australian companies as well.

There are genuine benefits in cost savings to Trans-Tasman companies from having both the HSNO and therapeutic Products law harmonised in labelling, packaging and advertising

rules. There are equally a potential of higher costs in applications, registrations and in compliance costs where the Harmonisation is not done correctly.
In either case there will be additional cost to those companies operating solely in a single country market where the current zero cost can only go one way. It is this last point that makes the need to ensure "Cost Best Practice" to be applied.

In both the HSNO and Therapeutic Products law, it is more a question of fundamental change before harmonisation should be pursued and then always with a view to minimum cost to industry, a focus on Voluntary Compliance backed by tough penalties (the whip and the carrot scenario) with both regulators and industry fully involved in the development of the best practice operations.
Best practice should not mean just the tightest regulatory system but the lowest cost option to get the maximum compliance to regulations that are necessary.

IMPLEMENTATION

From a New Zealand perspective the implementation of TTMRA has been quite limited. The greatest single impact has been in the area of food safety and labelling. There remain a number of areas where there has been no movement or gain to either market.

The DSA would like to see the implementation process for those areas not yet harmonised such as product laws, hazardous substances law, consumer laws and privacy laws. We believe that these areas continue to offer the greatest potential benefit to both countries however we caution that if the example of food harmonisation is used, then allowing specific state exemptions or exclusions without justification then that benefit will be seriously eroded.

EXEMPTIONS AND EXCLUSION TO MUTUAL RECOGNITION

Under TTMRA there have been a number of exemptions applied however to the DSA's knowledge none have affected our membership other than that for Therapeutic Products and Hazardous substances which continue to be particular problems for resolution.
Exemptions for MEPS, Gas appliances or Medicines have not impacted on our members.

SCOPE OF MUTUAL RECOGNITION

As outline in our statements of objective, the DSA sees that there is a need to address consumer and commercial law harmonisation so compliance in one country will also be compliance in the other. The differing laws by State for Fair Trading is one area that the DSA would see as offering benefits however as mentioned earlier this is not the only area that alignment in law could be beneficial.
We would see benefits from company and other commerce law alignment.

The DSA would also see that there is a need to look at the existing laws and structures and to identify what the inhibiting factors are from them before they are considered on any basis as a Trans-Tasman.

Likewise enforcement could and should be considered on a Tran-Tasman basis which may involve some operational functions of the New Zealand Commerce Commission and the ACCC for Trans-Tasman enforcement where necessary. Other regulatory bodies may also need similar consideration.

MUTUAL RECOGNITION AND POLICY FORMULATION

TTMRA should be looking to produce from the respective Governments policy that aligns and compliments when considering regulations.
The DSA believes that it is necessary to have all such policies tested against the TTMRA on a basis of impact, costs to mutual recognition business and domestic impact.
This does not mean that domestic priorities might not apply such as security, but such issues would be the exception rather than the rule.

We believe that in formulating policy both Governments should be looking to ensure alignment with world standards and that other Mutual Recognition Agreements with the likes of the European Union should also form part of the process to ensure that both New Zealand and Australian products are compatible with normal international expectations.

CONCLUSION

The DSA New Zealand is in favour of continuing the TTRMA process and expanding its scope to cover a wider range of laws.

We favour internal reviews of those regulatory bodies that pose existing barriers to trade in products with the aim of full harmonisation at the lowest cost model using the voluntary compliance tools such as Codes of Practice and enforced by tough penalties.

We oppose the introduction of Trans-Tasman bodies that mirror the existing regulatory regimes such as the TGA or ERMA as part of the Harmonisation process.

The Regulatory regimes established for both countries should as far as possible align and where possible look to recognise and align with other international mutual recognition agreements or international best practices that are accepted and operational.