Submission

To the

Productivity Commission

On the operation of the

Trans Tasman mutual recognition Agreement

April 2003

1.0 Introduction

The Australasian Soft Drink Association Ltd (ASDA) is the peak council of the non-alcoholic water based beverages industry in Australia.

The products covered by the members of the Association include, *inter alia:*

- Carbonated soft drinks
- Cordials and concentrates
- Fruit juice based drinks
- Sports drinks
- Iced teas
- Mineral water
- Still bottled water
- Energy drinks
- Vitaminised Functional beverages

A list of the current membership of the Association is attached as Appendix A to this submission.

2.0 Interest in the Inquiry

ASDA has as a matter of policy supported free trade between the Australian States and between Australia and New Zealand.

ASDA was an early participant in the discussions between the Australia and New Zealand food and beverages sectors and the respective governments in discussion leading to the formulation and signing of the Trans Tasman Mutual Recognition Agreement (TTMRA).

Since its introduction ASDA's members have experienced considerable problems with the discriminatory nature of the agreement, which currently favours New Zealand producers *vis-à-vis* their Australian counterparts.

3.0 The Nature of the Problem

Australia and New Zealand with the support of the Association resolved to introduce a joint Food Regulatory system. This system provides for the development of a joint Food Regulations Code that came into full operation on the 21st December 2002.

Under this agreement, the New Zealand Dietary Supplements Standard, as it straddled both food and therapeutic goods was omitted from the agreement. It is the continuing operation of this Standard in New Zealand that is causing concern to the Association.

4.0 The New Zealand Dietary Supplements Standard

The NZDSS has no counterpart in Australia. It enables within the MTAA for food and beverage products with vitamins and minerals added to be imported into Australia either from New Zealand or through New Zealand.

Australian producers, although they are obliged to compete in the market place against these products cannot formulate them and produce them in Australia under the current arrangements.

The loss of competitive advantage is further aggravated by the loss of a potential export market for these products to South East Asia and other markets.

The Association commissioned the respected firm of Allen Consulting to undertake an economic study of the economic impact of Australia adopting a complimentary Standard for beverages and this is attached as Appendix B to this submission.

A Standard does exist in Australia – Standard 2.9.4 Formulated Supplementary Sports Foods that, although not originally conceived for this purpose, allows the formulation of some products in Australia to compete with the imported products. This standard however, contains onerous labeling provisions such as:

(a) the food is not a sole source of nutrition and should be consumed in conjunction with a nutritious diet, and
(b) the food should be used in conjunction with an appropriate physical training or exercise program
(c) directions stating the recommended quantity and frequency of intake of the food; and
(d) a statement of the recommended consumption in one day; and
(e) a nutrition information panel
(f) a statement *"Not suitable for children under 15years of age or pregnant women: Should only be used under medical or dietetic supervision"*

The beverages currently being produced in New Zealand under the NZDSR do not require these labeling statements and beverages produced in Australia to compete with the imported ones with such labeling are misleading to the consumer as they are perfectly safe to be consumed by all.

5.0 Recent & Current Issues

5.1 Energy Drinks

Energy Drinks became a feature of the Australian market soon after the signing of the TTMRA. An Austrian company "*Red Bull"* started importing its product via New Zealand and an Australasian company,

Frucor Beverages Limited started exporting a similar product *"V"* to Australia.

The Red Bull company then applied to Food standards Australia New Zealand (FSANZ) for an Australian standard. This was supported by the Association. After a period of 24 months and considerable lobbying effort by ASDA of State Health Ministers, a Standard was finally approved. This new Standard, titled "Formulated Caffeinated Beverages" contained the unusual provision of a minimum amount of caffeine and restrictive labeling.

Whilst it allowed Australian producers to finally compete, they continue to do so at a labeling disadvantage to New Zealand exporters producing the same product under the NZDSR.

5.2 Caffeine in Non-Kola Soft Drinks

The old New Zealand Food Regulations allowed New Zealand soft drink producers to use caffeine as part of the flavour base of the beverage at a maximum rate of 200 mg/L in any soft drink. In Australia, caffeine is only permitted in kola drinks at the rate of 145 mg/L. Caffeine is one of only two available 'bittering' agents, the other being quinine.

In the twenty years of this regulation only one non-kola soft drink, *Mountain Dew*, was produced in New Zealand with caffeine. This soft drink, whose brand is owned by PepsiCo International, holds approximately 3% of the NZ soft drink market.

The Association's application to harmonise the Australia New Zealand Standards allowing the use of caffeine in any soft drink (as per the NZ standard) but at the lower rate of 145 mg/L (as per the Australian kola provision) was recently rejected by the Ministerial Food Regulations Council, on fairly nebulous and non-scientific grounds.

The current temporary standard in New Zealand has a life expectancy to the end of December 2003 and we are not as yet certain whether it will be extended thus creating the first food regulatory anomaly between the two countries.

5.3 Functional Beverages

Functional beverages are a generic term for beverages that contain added vitamins, minerals and other ingredients. Energy drinks for example fall within this category.

Again under the NZDSR non-alcoholic beverages containing vitamins and minerals but not containing caffeine have been produced in New Zealand and exported to Australia. Australian producers do not have a comparable Standard and are not allowed to produce to the NZ Standard.

The Association has lodged a further Application to FSANZ, seeking the creation of a "Formulated Beverages Standard". This Application has been accepted by FSANZ and is likely to take at a minimum a further 18 months before it reaches finality without any guarantee of eventual approval of a workable and competitive Standard.

5.4 P235 – Review of Dietary Supplements & P236 – Review of Sports Foods

FSANZ in June 2001 began the above two reviews. Ostensibly these reviews on finalization would have removed the anomalies caused by TTMRA. At the time of writing there is no indication that the many and diverse regulatory and political considerations that have been identified by the initial work of the Review are close to being overcome.

6.0 Conclusions and Recommendations

- The Association would like to reassert its in-principle commitment to the TTMRA and to a system of unrestricted trade between Australia and New Zealand.
- The Association submits that until reviews P235 and P236 are completed to the satisfaction of both Governments, Australian producers should be allowed to produce to either the Australian or New Zealand existing standards including the New Zealand Dietary Supplements regulations (but not a mixture of the two).
- The continued discriminatory provision of the TTMRA, namely that New Zealand producers could produce to either the New Zealand or the Australian Standard whilst Australia producers could only produce to the Australian Standard are costing jobs, profits and exporting opportunities to Australian producers.

Tony Gentile
Chief executive
Australasian Soft Drink Association

Appendix A

AUSTRALASIAN SOFT DRINK ASSOCIATION LTD

Membership as at 31-3-03

ABN Amro Australia
ACI Glass Packaging
ACI Plastic Packaging NZ
ACI Plastics Packaging
AET Films Inc.
Air Liquide Australia Limited
Air Liquide New Zealand Limited
Alpine Beverages Pty Ltd
Aluminium Can Group
AMCOR BEVERAGE CANS Australasia
AMCOR Fibre Packaging
AMCOR PET Technologies
Australian Beverage Enterprises Co-operative Society Ltd
Aygee Gippsland Pty. Ltd.
BCB Beverages Australia Pty Ltd
Beaudesert Soft Drinks
Berri Ltd.
Bertshell Pty Ltd
Bickfords Australia Pty Ltd
BOC Gases Australia Limited
British Soft Drinks
Bundaberg Brewed Drinks Pty. Ltd.
Bundaberg Sugar Ltd
Byron Drinks
Cadbury Schweppes (Aust) Pty. Ltd.
Cantarella Bros. Pty Ltd
Cascade Beverage Company
CHR Hansen
Coca-Cola Oceania
Coca-Cola South Pacific Pty Ltd
Consolidated Beverages Company Pty Ltd
Cooks Soft Drinks
Crows Nest Cordials Pty Ltd
DiverseyLever Australia Pty Ltd
DiverseyLever Consulting
Ecolab Pty Ltd
Firmenich Ltd
Frucor Beverages Ltd
Givaudan Australia Pty Ltd
Golden Circle Ltd.
Great Southland Beverages
Herbal World Australia Pty Ltd
Hopes Goulburn Cordials Pty Ltd
International Flavours & Fragrances (Aust) Pty Ltd
IQ Beverages
ITW Hi Cone
Johnson & Johnson Pacific
Jolt Corporation Australia Pty Ltd
Juicy Isle Pty. Ltd.
Kerry Ingredients
KHS Pacific Pty. Ltd.
Laga Industries
Le Mac Enterprises Pty. Ltd.
Lillyman Bros
Macquarie Bank
Manildra Harwood Sugars
Mead Packaging Pty. Ltd.
Mitchell's Walgett
MON Beverages
NutraSweet Company
NZ Sugar Co.
Orford Refrigeration Pty. Ltd.
P & N Beverages Australia Pty Ltd
Pakval Pty. Ltd.
PepsiCo Australia Holdings Pty Ltd
PET Technologies Ltd
Quest International
Quirk's Refrigeration
Rio Beverages
Citigroup Global Markets Australia Holdings Pty Ltd
Saxbys Soft Drinks Pty. Ltd.
Scholle Industries Pty. Ltd.
Sensient Technologies Australia Pty Ltd
Sopura Australia Pty Ltd
Splatt Engineering Group
Stanwells Cordials & Confection
Sugar Australia Pty Ltd
Sutton Group Ltd
Symrise Pty Ltd
Taffy's Quality Drinks
Tasmanian Rainforest Waters Pty Ltd
Tetra Pak Pty Ltd
The Product Makers (Australia) Pty. Ltd.
Unilever Australasia
Unique Beverages Australia Pty Ltd
Visy Board
Visy Rigid Packaging (NZ) Ltd
VisyPak
Wimmer Marketing