20 April 2007

Mr Mark Bethwaite
C/- Food Regulation Secretariat
Department of Health and Ageing
GPO Box 9848
Canberra ACT 2601
AUSTRALIA

Dear Mr Bethwaite

FURTHER NEW ZEALAND SUBMISSION TO THE BETHWAITE REVIEW

On 5 March New Zealand made a submission to the review into Australia's food regulatory system. This letter responds to two specific matters that were raised during the course of your investigations and the New Zealand Food Safety Authority thanks you for the opportunity to clarify our position on these matters.

New Zealand's Decision to opt out of the Country of Origin Labelling Standard (CoOL)

This matter was raised during the review of the *Agreement Between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System* (the Treaty). New Zealand always made it clear that we would not adopt a mandatory CoOL standard. As provided in our submissions at the time, we did not support it because New Zealand believes it is potentially trade restrictive[1] in that it is not relevant to food safety and there are less restrictive means (such as consumer legislation) of preventing deceptive practices, it is primarily a marketing tool not a consumer protection measure, it is best employed voluntarily by companies in response to customer demand, and there is little

[1] Article 2.2 of the TBT Agreement specifically states, "*Members shall ensure that technical regulations [i.e. mandatory standards] are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to international trade. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment*".

demonstrable benefit to the consumer on which to justify the cost to industry. New Zealand maintains this position domestically and internationally but we recognise Australia's right to set a standard for domestic purposes.

We understand there have been two main issues regarding CoOL raised by Australian stakeholders:

1. consistent application and enforcement of food laws; and
2. potential competitive advantage to New Zealand industry by not having to meet compliance costs associated with CoOL.

With regard to the first point, the CoOL Standard does not apply to New Zealand. New Zealand is entitled to opt out of a standard if it is considered inappropriate for New Zealand on one or more of the following grounds: exceptional health, safety, third country trade, environmental or cultural factors (Annex D (II) (4) of the Treaty), provided that such a variation does not create a barrier to trade (Annex D (II) (5) of the Treaty). In the case of CoOL, New Zealand is a significant food exporter and did not believe this standard was appropriate on the grounds of third country trade. New Zealand's variation does not present a barrier to trade.

The ability to seek a variation to a standard partly offsets the sovereignty issues that would otherwise be posed due to New Zealand only having one vote at the Ministerial Council level. Where there are different standards, including CoOL, the principles of the Trans Tasman Mutual Recognition Arrangement still apply. This means that New Zealand accepts food from Australia if that food can be sold in Australia and vice versa[2]. It should be noted that the balance of trade in food is in Australia's favour.

There is little New Zealand can add to previous submissions regarding the second point, compliance costs associated with CoOL. This matter was also raised in a number of forums prior to Australia adopting CoOL and New Zealand can only reiterate our reasons for not adopting the CoOL Standard - that there is little demonstrable benefit to the consumer on which to justify the cost to industry. Any compliance cost inequities caused by CoOL cannot be addressed by increasing the regulatory burden to New Zealand industry to match that of Australian industries.

Dietary Supplements

As noted during the Treaty review, when New Zealand and Australia signed the Treaty each had an existing set of food standards. While most of these standards were harmonised into the joint food standards system there were a few standards that remained separate or different. For Australia, these included mandatory fortification of bread with thiamine and margarine with vitamin D. For New Zealand, this included the 1985 Dietary Supplements Regulations. In both cases these food goods are subject to

[2] There is a current exemption for risk foods provided under Schedule 2, Permanent Exemptions, but work is progressing to remove this exemption

TTMRA (therapeutic-type dietary supplements are exempt under Schedule 3, Special Exemptions). It is worth noting that Australian manufacturers can and do export food-type dietary supplements to New Zealand under TTMRA. It is the Australian market that Australian manufacturers are prevented from trading in not the New Zealand market. New Zealand appreciates Australian industries' frustration with this situation.

New Zealand has worked continuously on developing appropriate standards within the joint system that would allow food-type dietary supplements to be regulated under the *Australia New Zealand Food Standards Code* (the Code). In 2004, New Zealand released a discussion document proposing these products be regulated under the Code but it was predicated on appropriate joint standards being available.

Regulation under the joint system would open the Australian market to Australian manufacturers of dietary supplements and New Zealand is fully supportive of this objective. Dietary supplements are a significant and growing international market supported by consumers. Preventing Australian (or New Zealand) manufacturing from competing in this market is not in the interest of either country.

With regard to the allegation that transshipping, where a product is imported via a country but does not enter the country, is occurring under TTMRA we would make the following points:

- It is our understanding that such products are not covered by TTMRA in that if they have not entered the country (Australia or new Zealand) they cannot be deemed legally sold in that country. We are seeking further legal confirmation of this position

- We are also undertaking a documentation check to see if there is a transhipping problem and, if there is a problem identified, the extent of that

- Product labelled or presented as being from New Zealand or Australia when it is not, is non-compliant product. This is an international problem that has been the subject of numerous investigations by many countries including New Zealand and Australia and is not a problem with TTMRA (eg New Zealand was alerted that Australian unprocessed sausage casings or 'green-runners' were being sent via New Zealand to China and labelled as product of New Zealand).

New Zealand is working towards a simple food-medicine interface for New Zealand as Australia has, in order to facilitate our alignment and harmonisation programmes. However, New Zealand can only go so far without there being comparable accommodation in the Australia New Zealand Food Standards Code of standards for foods that are highly fortified – generally the food-type dietary supplements.

I hope that this addresses the matters that were raised during your review in the Australian food regulatory system.

Yours sincerely

Andrew McKenzie
Executive Director