Infant Nutrition Council
Industry supporting both Breastfeeding & Infant Formula
AUSTRALIA & NEW ZEALAND

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Mr Howard Staveley
MPI Infant Formula Programme
Ministry for Primary Industries
PO Box 2835
WELLINGTON 6140

Email: infant.formula@mpi.govt.nz

Dear Howard

The Infant Nutrition Council (INC) appreciates the opportunity to make a submission on ***Proposed Export Requirements for the Export of Infant Formula, Follow-on Formula, and Formulated Supplementary Foods for Young Children: MPI Discussion Paper No: 2014/32***.

INC is the association for the infant formula industry in Australia and New Zealand and represents manufacturers, marketers and brand owners who between them are responsible for more than 95% of the volume of infant formula manufactured, sold and exported in New Zealand.

INC aims to:

1. Improve infant nutrition by supporting the public health goals for the protection and promotion of breastfeeding and, when needed, infant formula as the only suitable alternative; and
2. Represent the infant formula industry in Australia and New Zealand.

The INC is a responsible body that voluntarily restricts its marketing practices to support government policies for the protection and promotion of breastfeeding. The companies represented by INC are:

Ordinary Members:

- Abbott Nutrition
- Aspen Nutritionals Austrlia
- Fonterra Co-operative Group Ltd
- H. J. Heinz Company Australia Ltd & H. J. Heinz Company NZ Ltd
- Nestlé Australia Ltd & Nestlé New Zealand Limited
- Danone Nutricia Pty Ltd
- Synlait Ltd

Associate Members:

- A2 Infant Nutrition Ltd
- Ardagh Group NZ Ltd
- Australian Dairy Park
- Bayer Australia Ltd
- Biolife New Zealand Pty Ltd
- Burra Foods

- Cambricare New Zealand Ltd
- Danpac (NZ) Ltd
- Dairy Goat Co-operative (NZ) Ltd
- Douglas Nutrition Ltd
- E-Babycare NZ Ltd
- Everhealth
- Fresco Nutrition Ltd
- GMP Pharmaceuticals Pty Ltd
- Graincorp
- Green Monkey
- Milk World Natural Dairy NZ Ltd
- Murray Goulburn Co-operative Co Ltd (Aust)
- New Image International Ltd
- New Zealand Goldmax Health Pty Ltd
- New Zealand New Milk Ltd
- Nutricare Group Ltd
- Nuztri
- Peak NZ Pty Ltd
- Sutton Group (NZ)
- Synlait Milk Ltd (NZ)
- Tatura Milk Industries
- Unitech Industries Ltd
- Westland Cooperative Dairy Co Ltd

The INC believes that breastfeeding is the normal way to feed infants as it has numerous benefits for both mothers and babies. When an infant is not given breast milk the only suitable and safe alternative is a scientifically developed infant formula product. For these infants, infant formula is the sole source of nutrition for around the first 6 months. It is important that scientific advances in infant nutrition are captured and incorporated into these products to ensure the best possible outcome for infants that are unable to have the benefit of breast milk.

Yours sincerely

Jan Carey
Chief Executive

Infant Nutrition Council

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SUBMISSION TO MINISTRY FOR PRIMARY INDUSTRIES
Proposed Export Requirements for the Export of Infant Formula, Follow-on Formula, and Formulated Supplementary Foods for Young Children: MPI Discussion Paper No: 2014/32

Overarching comments

INC appreciates that the Ministry for Primary Industries has worked closely with industry in the development of the MPI Discussion Paper No: 2014/32. While the focus is on the around 5% by value of exported product currently not subject to regular verification or e-Cert, INC is aware that this 5% could be as damaging to the industry and to New Zealand as a whole and the remaining 95% that are already subject to the full range of requirements.

The key problems identified would seem to be the delay in receiving destination market importer information from the small percentage of exporters that do not operate under an RMP, the absence of regular verification checks of such exporters and the absence of more targeted export data. That said, INC is generally supportive of the proposals except for Proposal 5 relating to identification of the importer in the destination market with responsibility for recalls. INC considers this goes beyond New Zealand's jurisdiction and beyond exporter responsibilities and is quite different to providing information relating to the recipient importer.

Specific comments

1. Submissions

No comments

2. Executive Summary

No comments

3. Introduction

No comments

4. Background

4.1 Infant formula products

INC is disappointed that there is no mention of *The Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand* (Nov 2012) which is the expression in New Zealand of the WHO Code of Marketing as agreed with the Ministry of Health and against which the New Zealand Marketing Compliance Panel assesses complaints. The very first two sentences in the INC Code promote breastfeeding:

> "Breastfeeding is the normal way to feed a baby and is important for baby's health and well-being. The World Health Organization recommends exclusive breastfeeding until six months of age, and then to complement breastfeeding with the appropriate introduction of solid foods with continued breastfeeding up to two years of age."

5. Problem Definition

5.1 Requirements for the export of infant formula

It is stated under this section that:

> "MPI does not directly monitor exports of infant formula products and formulated supplementary food for young children to markets that do not require official assurances".

Yet under Section 4. Background, it is stated that:

> "Most exports of infant formula products and formulated supplementary foods for young children are already closely monitored through MPI's official assurance programme."

It is unclear if the Discussion Paper is trying to say that MPI does not, in its monitoring, distinguish between exports of infant formula products and exports of formulated supplementary foods for young children. If only a small proportion of the combined products (less than 5% by value) are NOT closely monitored, this is not an issue of significant proportions so long as the overall monitoring of the respective products is undertaken.

5.2 Monitoring exporter compliance

The Discussion Paper states that:

> "It is possible that some new and small-scale exporters may not be fully aware of their duties and obligations."

Not being fully aware of duties and obligations is not a justification for regulation but rather a signal that education is required. INC and MPI conducted a Workshop on manufacturing, marketing and export requirements in April 2014 and more of these would be helpful for new and small-scale exporters. Nonetheless, INC considers that all exporters of infant formula products and formulated supplementary foods for young children, including those that do not operate an RMP, should be subject to regular checks and audits rather than the targeted compliance activities that MPI currently undertakes. INC believes that these need to be cost efficient and relative to the quantities exported.

5.3 Collecting statistics for retail-ready and bulk finished infant formula products

INC notes the difficulty of collecting statistics on infant formula, follow-on formula and supplementary food for young children from the current HS codes.

Question 1. Do you have any comments on the problems identified above? Are the[re] additional issues you think should be identified?

INC considers traceability should have been explicitly identified. It is implicit in the comments that there are time delays in effecting recalls because the non-RMP exporters that export less than 5% by value of infant formula products and supplementary foods for young children are not subject to regular access by MPI nor to regular verification checks.

6. Proposals

6.1 Strengthening requirements for the export of infant formula

INC understands that MPI is proposing to make a general requirement for export (GREX) Notice under section 60 of the *Animal Products Act 1999*. The Notice would apply to retail-ready infant formula products and retail-ready formulated supplementary foods for young children intended for export, regardless of whether or not official assurances are

required and to any person who manufactures or processes, transports, packs, labels, preserves, or stores retail-ready infant formula products and retail-ready formulated supplementary foods for young children intended for export, regardless of whether or not an official assurance is required. INC also understands that MPI intends to provide for exemptions under certain circumstances but that these are yet to be developed.

INC suggests that any reference to 'retail-ready infant formula products and supplementary foods for young children' be restated as 'retail-ready infant formula products and retail-ready supplementary foods for young children' to remove doubt that the reference is to retail ready supplementary foods for young children.

Table 2 Proposals
INC notes the proposals cover:

1. processing and handling within the risk management programme (RMP) chain
2. enhanced traceability
3. export authorisation for all markets
4. more detailed product descriptions
5. accountable party responsible for product recall in the export market
6. auditing of exporters
7. enhanced record-keeping

Question 3. Would there be any practical problems for industry arising from any of the proposals outlined above?
INC notes that Proposal 1 is a restatement of an existing requirement and presents no practical problems and agrees with the Proposal.

INC notes that Proposals 2 and 3 will increase costs and time taken to export through additional documentation, electronic records and verification for some exporters. INC nonetheless supports these proposals but cautions MPI on the importance of training both exporters and verifiers in the application of the proposals to minimise the costs and time involved for all exporters.

INC notes Proposal 4 will require specification of new HS codes in the proposed export declaration form and supports the application of new HS codes.

INC does not agree with Proposal 5 requiring exporters to nominate a party in the importing country with responsibility for product recalls and to hold records of their details. INC understands that the receiving importer or import broker would be known but to suggest that that person is 'responsible for product recalls' is unrealistic and goes beyond the jurisdiction of the New Zealand regulator. It is for the importing country regulator to ensure traceability of imports, not the New Zealand Government's responsibility. The New Zealand Government may be able to assist an importing country regulator by providing, in the event of a recall, records of the receiving importers but further than that, including who might be responsible in the destination country for recalls, is beyond the New Zealand Government's jurisdiction and beyond the exporters' responsibilities.

INC notes that Proposal 6 includes provision for an initial audit of compliance with the proposed Notice. INC believes this should be clearly separated so that:

- the initial audit for RMP operators that are also exporters takes place within the existing routine verification and subsequent audits added to the existing verification schedule. This is because these operators are already accessible to MPI in terms of records and subject to regular verification
- the initial audit for non-RMP operators that are exporting take place at a time specified by the Director-General and subsequent audits take place at a frequency also to be specified by the Director-General.

Such an approach will minimise cost and time for existing RMP operator exporters. With this change, INC supports Proposal 6.

INC notes Proposal 7 will add record keeping costs but nonetheless supports the proposal.

Question 4. Are there any elements missing from the proposals that should be considered?

INC does not consider any elements are missing from Proposals 1 to 7 other than clear separation of application between RMP operators that are also exporters and non-RMP operators that are exporting.

Question 5. What impact, if any, would these requirements have on a product intended for the domestic market?

INC is not aware of any impacts for product intended for the domestic market.

Question 6. How much time should be provided for transition to the new requirements?

INC considers a minimum of 12 months be provided for transition to the new requirements. For existing RMP operators, the transition might be [expected to be manageable in a shorter period but for non-RMP exporters, the proposed requirements will require process, documentation and computer training and the identification and engagement of Recognised Agencies as verifiers and notification of this to MPI. These activities will take considerable time to conclude.]

6.2 Monitoring exporter compliance

INC notes that Proposal 8 is to create new and specific HS Codes for infant formula products and formulated supplementary foods for young children.

Question 7. Would there be any practical problems for industry arising from the proposal to change the HS codes for infant formula?

INC is not aware of any practical problems other than transitioning to the new codes arising from the proposal to change the HS codes for infant formula.

Question 8. How much lead time should be provided for the change?

As noted in the response to Question 6, INC considers 12 months is appropriate for transition to the new requirements. For existing RMP operators, the transition might be manageable in a shorter period but for non-RMP exporters, the proposed requirements will require process, documentation and computer training and the identification and engagement of Recognised Agencies as verifiers and notification of this to MPI. These activities will take considerable time to conclude.]

7. Options

7.1 Option 1: Status quo

INC notes the advantages and disadvantages of this Option are contained in the Background of the Discussion Paper. These were somewhat difficult to deduce and detract from being able to assess the relative merits of Option 1. INC's assessment of the information provided suggests that the advantages appear to be:

- most exports of infant formula products and formulated supplementary foods for young children are already closely monitored through MPI's official assurance programme;
- the Animal Products Act 1999 sets out a range of duties and obligations on all dairy exporters;
- New Zealand Customs Service (Customs) assists MPI to monitor exporter compliance by requiring dairy exporters to declare their registration number (or Animal Products number, APD number) prior to gaining export clearance;
- there are other duties and obligations on all dairy exporters set out in the Animal Products Act 1999 and the Animal Products (Dairy) Regulations 2005;
- exporters that do not operate an RMP are required to access product for export from an RMP operator, and to maintain records;
- for exporters that do not operate an RMP (generally small-scale exporters) MPI carries out targeted compliance activities;
- in many cases it appears that exporters submit their exporter registration information as part of their Customs declaration allowing Customs to monitor exporter registration for some consignments of dairy vs non-dairy products

The disadvantages appear to be:

- the WPC Inquiry recommendation to strengthen requirements for exporters would not be met;
- information on infant formula products etc exported to markets that do not require official assurance (e.g. American Samoa), or that exempt infant formula from official assurances (e.g. Hong Kong) may not be collected in E-cert;
- for the 5% of products by value that are not monitored closely, in order to identify the importer in the overseas country, MPI must contact the RMP operator to identify and contact the exporter thereby delaying any prospective recall and/or notification of the relevant country's regulators;
- any delays in locating and withdrawing exported infant formula products and formulated supplementary food for young children may lead to the need for wider consumer recall than would otherwise be required to ensure public safety;
- it is possible that some new and small-scale exporters may not be fully aware of their duties and obligations;
- exporters that do not operate an RMP are not subject to regular verification;
- the current HS codes used for infant formula make it difficult for Customs to monitor exporter registration for some consignments of infant products as the HS codes capture non-dairy infant products;
- it is currently difficult to provide accurate and detailed statistics for exports of infant formula products and formulated supplementary foods for young children due to the set of HS codes used
- retail-ready products exported to markets that do not require official assurances were some of the most difficult to track during the whey protein concentrate contamination incident.

Time delays for recalls and recipients of exports in 5% of cases, regular verification checks in 5% of cases, awareness raising, and collection of statistics appear to be the issues to be addressed. INC does not necessarily believe it is the New Zealand Government's responsibility to manage the functioning of global markets and the fact that consumer recalls always have the potential for negative commercial impacts is not a justification for regulation but rather reducing risks for recalls occurring.

7.2 Option 2: Implement the proposals

INC notes the advantages and disadvantages set out for this option.

On balance, there is very little between the Options. INC nonetheless provides qualified support for Option 2, subject to change to Proposal 5.

We would also point out that the Notice appears to go beyond its objective, all discussions with industry that the requirements would be limited to retail ready product and the objectives of the Discussion Paper when under Part 4.1, the object of the Part is to demonstrate, through traceability documentation within E-cert that-- (b), the traceability of all infant formula products and formulated supplementary foods for young children intended for export is established at all stages of production, processing and distribution. This needs addressing as it conflicts with the statement at clause 1.1(2) that "*All references to infant formula products and formulated supplementary food for young children in this Notice only apply to the retail ready dairy based versions of those products."*

Clause 4.2 Traceability documentation – eligibility declarations and eligibility documents
(1)(c) sent directly to a port or airport facility for export.
INC considers this clause could be worded more clearly.

Question 9. Are there any other advantages or disadvantages not mentioned?
As noted above, INC found it particularly difficult to make a clear comparison between the two options because the advantages and disadvantages of Option 1: Status quo, were not explicitly set out under the Option but rather had to be extracted from two earlier sections.

Question 10. Please provide any indication of the scale of any costs or benefits arising from the proposed requirements
INC believes that there are cost and practical implications for containerisation and/or warehousing related to the requirement for Eligibility Declarations or Eligibility Declarations to be raised electronically prior to products being transferred to the exporter, or sent directly to port of airport facility for export (Section 5.3 [2]) c4) which need careful assessment.

Apart from the issues around Section 4.2 (1), INC believes that if the requirements proposed are managed carefully for existing RMP operator exporters, and Proposal 5 is amended to remove any obligation on New Zealand exporters to identify importers with responsibility for recalls in destination markets, costs will be minimised but the requirements for authorisations for ALL markets remains a major concern. The greater cost is for exporters that are not RMP operators. INC is not in a position to indicate these costs.