

22 August 2014

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 Labelling Requirements for Export Infant Formula, Follow-on Formula, and Formulated Supplementary Foods for Young Children – Applicable to all retail-ready exports: MPI Discussion Paper No: 2014/31.***

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:

Members:

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

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 AUSTRALIA NEW ZEALAND (INC)
SUBMISSION TO MINISTRY FOR PRIMARY INDUSTRIES
Proposed Labelling Requirements for Export Infant Formula,
Follow-on Formula, and Formulated Supplementary Foods for
Young Children – Applicable to all retail-ready exports:
MPI Discussion Paper No: 2014/31

Overarching comments

INC appreciates that the Ministry for Primary Industries has worked closely with industry in the development of the MPI Discussion Paper No: 2014/31. As a result, INC is generally supportive of many of the proposals. INC considers the provisions are an appropriate balance between minimum labelling to ensure the integrity of export product and importing country requirements with one exception. This is in the area concerning proposed criteria for New Zealand origin label claims where there is not a general consensus across INC for the proposed criteria for either 'Product of New Zealand' or 'Made in New Zealand'.

INC notes that the proposed criteria for 'Product of New Zealand' would result in no dairy product other than liquid whole milk being able to carry this claim, at this time should the criteria prevail. INC and MPI recognise (as stated in the Appendix to the Discussion Paper) that no infant formula, follow-on formula or supplementary foods for young children could carry the claim under the proposed criteria.

Some INC members, are of the opinion that the criteria establishes a precedent for other dairy products and ultimately for all food manufactured in New Zealand. The flow-on effect for all food exports from New Zealand would be, that by adding value and manufacturing higher value products for export, products would be penalised by no longer being permitted to carry a 'Product of New Zealand' claim.

INC does not support '100% New Zealand' being included on any cans of infant formula products and supplementary food for young children although would not oppose its use in related advertising where it is suitably qualified as to not be misleading.

There is also no general consensus across INC for the criteria for 'Made in New Zealand'. Some members consider it to be workable while others do not. INC explored alternative criteria for 'Made in New Zealand' but has reached the conclusion that the 'origin claim' provisions in the Notice should not proceed until there has been more extensive and broad discussion, development and consideration around criteria for origin claims across the entire food industry.

Specific comments

1. Submissions

No comments

2. Introduction

No comments

3. Problem Definition

Question 1. Do you have any comments and suggestions on the problems identified above?

INC generally agrees with the problems identified by MPI with the following comments.

Variation: There is variation in labelling infant formula products noting that a good portion of the variation can be attributed to the array of countries that New Zealand exports such products to. INC is concerned that MPI may have overstated the extent of this problem especially in relation to the full range of follow-on formula and formulated supplementary foods for young children which assist the young child to transition to foods in the general food supply.

However, we understand that MPI has observed that variation includes nutrition and health claims and New Zealand origin claims. We note that nutrition and health claims must conform to the regulations that apply in the importing country. For New Zealand origin claims, we note that the New Zealand government must protect the reputation for foods manufactured in New Zealand by appropriate regulatory oversight and that there are no false or misleading claims made. Labelling requirements can assist in ensuring these outcomes.

Overseas market expectations: INC agrees that market expectations are high for the safety and suitability of infant formula products. Manufacturers are aware of these expectations. In general, variation in labelling of export formula need not impact negatively on perceptions of the standard of products. If that were common, there have been several decades for those perceptions to be made clear. However, INC acknowledges that there have been products, in the categories covered by the draft Notice, which have been exported with claims made that could potentially damage the reputation of NZ INC. INC considers there is room for improvement.

Lack of clarity as to general labelling exemptions: INC believes that clarity in this area would be particularly helpful to manufacturers new to the industry.

4. Proposal

INC supports and appreciates the intention of MPI to leave the generic exemption for labelling for all dairy products in place.

Question 2. Do you have any comments on the proposed introduction of minimum labelling requirements for all exported retail-ready infant formula, follow-on formula and formulated supplementary foods for young children?

INC agrees with the introduction of minimum labelling requirements for all exported retail-ready infant formula products. The most important element of this proposal is that the requirements are genuinely minimum.

Question 3. If you do not agree with the introduction of minimum labelling requirements, what other ways do you consider the Government should be addressing labelling compliance for exports of these products?

INC agrees with the introduction of minimum labelling requirements but nonetheless supports the development and provision of more guidance for delivering better, long-term outcomes.

4.1 Labelling notice applicable for all exported infant formula products

General Labelling Requirements:

Proposed mandatory requirements on a label: INC notes that the proposed mandatory requirements are based on the relevant Codex Standards, the Australia New Zealand Food Standards Code (FSC) and the WHO Code of Marketing for Breastmilk Substitutes (the WHO Code). The New Zealand expression of the WHO Code is encompassed in a Ministry of Health approved *Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand* (the INC Code of Practice) and this should have been the reference for the expression of the WHO Code in New Zealand. The INC Code of Practice makes it clear (on p3) that:

“The INC Code of Practice is based on the WHO Code and forms part of New Zealand’s official application of the WHO Code within the context of New Zealand’s legal and economic environment.”

INC does not agree that reflecting the WHO Code in law is justification or necessary for the proposals. Neither the WHO Code nor the INC Code of Practice apply to follow-on formula. The WHO Code and the INC Code are both specifically applicable to infant formula for infants from 0-6 months where the formula is the sole source of nutrition and the most suitable substitute for breastmilk.

Clause 2.3(1) Labelling requirements for infant formula

Clause 2.4(1) Labelling requirements for follow-on formula

Clause 2.5(1) Labelling requirements for formulated supplementary foods for young children

INC agrees with the generic provisions for labelling infant formula, follow-on formula and formulated supplementary foods for young children in the Proposed Notice in these clauses.

Question 5. Do you have any comments on the proposed prohibitions on labels?

Proposed prohibitions on a label

Idealisation of infant formula: INC’s Code of Conduct and the INC Code of Practice both state at the outset that ‘breast is best’. Justification for the proposed prohibition in law should more properly refer to the INC Code of Practice which is the New Zealand reflection of the WHO Code. INC therefore supports the prohibition on “infants, pictures that idealise the use of infant formula, and the words ‘humanised’ or ‘maternalised’ or any word or words having the same or similar meaning”. INC suggests adding, to align with the INC Code of Practice, the following to the above statement “...that idealise the use of infant formula *in comparison to breastfeeding...*”

Government emblems and logos: INC supports the prohibition on the use of relevant Government emblems and logos.

Health claims on infant formula for infants aged 0-6 months, unless expressly permitted: INC supports the prohibition on health claims on infant formula unless expressly permitted by the importing country. It is important that in those countries that permit health claims, export infant formula from New Zealand can also make health claims in order to compete on a level playing field with other infant formula in those markets that might make claims.

Question 6. Do you have any comments on the proposed approach for nutrition and health claims?

Proposed voluntary information on a label

Nutrition and health claims: INC notes the Codex Guideline ‘Nutrition and Health Claims (CAC/GL 23-1997) states that nutrition and health claims shall not be permitted for foods for infants and young children, except where specifically provided for in relevant Codex

standards or national legislation. INC also notes the position on nutrition and health claims in the Food Standards Code. It is important to recognise that caregivers need meaningful information to assist them in choosing the products best suited to their infants and young children.

INC therefore supports the position reflected in the Notice that allows New Zealand exporters to meet importing country requirements while ensuring that New Zealand manufacturers' obligations under the INC Code of Practice and therefore New Zealand's obligations under the WHO Code are considered by:

- prohibiting health claims on infant formula intended for infants aged 0-6 months unless a claim is permitted by the importing country (as outlined above);
- permitting nutrition claims on infant formula, follow-on formula and formulated supplementary foods for young children where such claims are accepted by the importing country, are not misleading, and do not imply that the product is nutritionally equivalent or superior to breastmilk (noting that this is currently available under the transitional standard in the Food Standards Code for domestic product and that this may be a matter for consultation under P1028 Review of Infant Formula Products being conducted by FSANZ);
- permitting health claims on follow-on formula and formulated supplementary foods for young children where such claims are accepted by the importing country, are not misleading, and do not imply that the product is nutritionally equivalent or superior to breastmilk.

Question 7. If your company was currently putting claims on products, would you be able to continue to do so, or would this activity become restricted under these proposals?

Not applicable to INC. Member companies are to advise on the impact of this part of the proposed Notice.

Question 8. Do you have any comments on the proposed criteria for New Zealand origin label claims?

INC acknowledges that the New Zealand Government wishes to protect the image and reputation of New Zealand as a source of the highest quality infant formula products and formulated supplementary foods for young children. The designation of specific criteria for different New Zealand origin claims seeks to enhance this protection. We agree in principle with the intent of this approach.

However, as noted in the Overarching Comments, there is divided opinion among INC members on the criteria and as such, INC believes that further, more extensive consultation is required with the industry to reach a consensus and therefore that the provisions in the draft Notice should not proceed at this time.

INC also recognises that the proposal in this section dealing with 'Product of New Zealand', while potentially workable for infant formula products, will set a precedent for other dairy products and all other food products manufactured in New Zealand. There may well, therefore, be strongly held views about the appropriateness or otherwise of these criteria.

There is not general consensus across INC for the criteria concerning the 'Made in New Zealand' claim.

Proposed criteria for New Zealand origin claims: The paper states that the proposals are to “support consumers’ and regulators’ ability to identify *authentic* New Zealand infant formula products or formulated supplementary foods for young children in offshore markets” (INC italicisation). We have not explored ‘authentic’ but would add this term to broader consideration across the food industry. The claims under discussion are:

- Product of New Zealand/100% New Zealand
- Made in New Zealand
- Made in New Zealand using/from local and imported ingredients.

INC considers that there may be a fundamental difference between ‘Product of New Zealand’ and ‘100% New Zealand’. INC recognises that ‘Product of New Zealand’ is a claim. However, the statement ‘100% New Zealand’ may not be. It is similar to the Government’s marketing and advertising tag line ‘100% pure New Zealand’. In fact, New Zealand is not 100% pure. Consumers recognise this is a marketing line just as ‘100% New Zealand’ is a marketing line. INC believes the term ‘100% New Zealand’ should be prohibited on cans but suggests that the marketing line might be permitted for use in advertising materials where appropriately qualified such that it is not misleading.

INC believes that the criteria for the claim ‘Product of New Zealand’ need to be reconsidered with other food sectors in mind since this has the potential to set a precedent not only in the dairy industry (since only whole liquid milk would meet the criteria) but for other food sectors.

While INC might concur with MPI’s position in the Appendix to the Discussion Paper under the heading ‘Essential constituents’ that “MPI is not aware of any New Zealand manufacturers of infant or follow-on formula manufacturers that use all New Zealand essential constituents..... Therefore, it would be difficult for New Zealand manufacturers to meet the threshold to claim ‘Product of New Zealand’, or similar on those products” (noting the term ‘essential constituents’ is undefined), the flow on effect to the broader manufacturing sector in New Zealand may be significant.

INC has been unable to reach a consensus position with regard to the criteria for ‘Made in New Zealand’. While some members consider it to be workable, others do not. Following are some alternative criteria that have been discussed and which warrant further consideration and debate.

Alternate criteria considered

Some members suggested that the focus for infant formula products is on safety and this is reflected in the integrity of the New Zealand food manufacturing system: that it places the greatest importance on safety and suitability for the target group of infants and young children. The comprehensiveness of the New Zealand safety system was acknowledged in the Report of the Government Inquiry into the Whey Protein Concentrate Contamination Incident. For these reasons, some members suggest that the ‘Made in New Zealand’ criteria could well reflect criteria that focus solely on the safety system within which the products are manufactured rather than the percentage of ingredients of New Zealand origin. There would then be no need for criteria around the statement ‘Made in New Zealand from local and imported ingredients’.

If it is considered that consumers want to know that one or more key ingredient is of New Zealand origin, then this might be an additional criteria. Some members have queried whether consumers are concerned about just protein and evidence for this position should be identified.

INC believes careful consideration is needed around the use of any particular terms and criteria that might be developed for the purpose of determining claims related to New Zealand origin. For example, it is not clear whether the currently proposed term 'dairy protein constituent' refers to protein ingredient or protein content. The two are very different and can have very marked effects on eligibility criteria for use of 'Made in New Zealand'. Protein ingredients have significant variation in the amount of protein in them and in general this is balanced by lactose. Both protein ingredients and lactose used in infant formula may be of New Zealand origin or imported. The greater the level of protein in the ingredient, the less lactose. In all formulations, the lactose and protein must be balanced, and thus there is potential for the 'protein constituent' approach to be misleading in terms of overall dairy ingredient origin.

To demonstrate the potential impact, formulations of infant formula products and formulated supplementary foods for young children can take a number of approaches such that the same final product composition may be achieved using very different raw materials. A market might require a whey to casein ratio of 60:40. For this, the protein ingredients might have typical compositions of the following:

- demineralised whey (12% protein, 80% lactose)
- whey protein concentrate (34% protein, 54% lactose)
- Whey protein concentrate 80 (80% protein, 8% lactose)
- Skim milk (powder equivalent – 33% protein, 55% lactose)

In any formulation, the skim milk solids would contribute around 5-6% of the protein and, say, 7% of the carbohydrate. The remainder of the protein and lactose comes from protein ingredients and lactose. Remembering that all oil used in infant formula products is imported (25-29% of finished infant formula products), there are very different scenarios that might result in different 'New Zealand' and 'imported' ratios for the same composition of product.

Using extremes of formulation, for formula using New Zealand whey protein concentrate 80, but imported lactose totalling say 45%, the product could still make the 'Made in New Zealand' claim. However, a formula using imported whey protein concentrate 80 and New Zealand lactose would not meet the 'Made in New Zealand' criteria even though the New Zealand sourced component is significantly higher. The same could be applied to New Zealand sourced demineralised whey and imported lactose compared to imported demineralised whey and New Zealand lactose. The bottom line is that different combinations may result in very different applications of the 'Made in New Zealand' claim for the same composition of product.

Another area of concern is in relation to the definitions for 'dry', 'wet' and 'combined' process. The following provides examples of the issues:

- the definition of 'wet process' currently states that heat treatment 'may' be required when a heat-treatment step should be a requirement for wet mix process. This is needed to achieve suitable food safety criteria when processing liquid milk
- there is no differentiation between the mixes for infant formula, follow-on formula and formulated supplementary foods for young children. Oil addition is necessary for the manufacture of infant formula and follow-on formula (and FUF for export markets that follow Codex requirements for 12-36 month age group) but not for the manufacture of formulated supplementary foods for young children to meet the Australia New Zealand Food Standards Code Standard 2.9.3
- the definition for combined process might have added to it: "All milk protein ingredients must undergo a suitable heat treatment process and all oils must be incorporated via wet mix process with the exception of LCPUFA's added in encapsulated form. *Note: formulated supplementary foods for young children*

manufactured from milk powders without vegetable oil addition are considered to meet the necessary criteria for a combined process.”

Suffice to say some further work is needed to refine these definitions and INC recommends that MPI work with key agencies/businesses prior to finalisation of the Notice.

There is general support from INC with the view that “all packaging of the product carried out in New Zealand” for both ‘Product of’ and ‘Made in’ statements.

INC supports the rules of origin proposals as stated in Appendix 1. However, INC does not believe the Notice should specify placement on the label as this should be up to the manufacturer or the country of import.

As the foregoing attests and in the absence of consensus across INC members, INC is strongly of the view that this area requires a lot more work and a lot more pan-food industry discussion to determine the best outcome for New Zealand whilst maintaining, not only our integrity as a major exporter of food products, but also efforts to double the value of exports by 2025.

Question 9. How easy or difficult do you consider it would be for your company to make a claim under this criteria?

Not applicable to INC. Member companies are likely to advise on the impact of this part of the proposed Notice. However, INC understands that no infant formula, follow-on formula and supplemented foods for young children would be able to carry the ‘Product of New Zealand’ claim as proposed.

Question 10. Do you consider that the proposed verification requirements are workable? If not, why not?

Question 11. Do you consider there are other ways to meet the requirements for translation?

Verification and compliance

INC agrees that the proposed verification and compliance requirements are workable, that manufacturers must have documented systems to ensure compliance and verification is undertaken by Recognised Agencies, that the documented systems are in English, that the labels have a translation and that the importing country requirement supporting a position on claims is available in English.

INC suggests that guidance on the Notice determine what constitutes ‘certified’ in relation to a translation of a foreign language label and what constitutes ‘standards’ in overseas markets.

It will be important, for consistency and fairness, that Recognised Agencies have guidance on the application of the Notice and receive training on that application.

4.2 Transition Period

INC notes that the proposal is for the changes to be subject to an 18 month transition period.

Question 12. Do you consider an 18 month transition period is workable, or do you think more or less time would be required?

INC believes a transition period of two years is a more realistic timeframe in relation to significant labelling changes. This is not an uncommon timeframe for changes to standards

in the Australia New Zealand Food Standards Code especially where every label must change across the entire industry.

Comments on the draft Notice ‘Labelling Requirements for Export Infant Formula, Follow-on Formula, and Formulated Supplementary Foods for Young Children’ not already covered above

Clause 1.2 Definitions

Check ‘current FSC’ and reference to the Food Treaty

Infant formula and follow-on formula – INC recommends that since the definitions defer to those used in Standard 2.9.1 of the FSC, then for consistency it is important to not to refer to “Infant formula is a product formulated to be used from birth” without identifying that, according to the definition in Standard 2.9.1 of the Food Standards Code, “infant formula means an infant formula product represented as a breast milk substitute for infants and which satisfies the nutritional requirements of infants aged up to four to six months.”

For these reasons, the second and third sentences of the definition should read “*Infant formula is a product formulated to be used from birth and represented as a breast milk substitute for infants which satisfies the nutritional requirements of infants aged up to four to six months*.. *Follow-on formula means an infant formula product represented as either a breast-milk substitute or replacement for infant formula and which constitutes the principal liquid source of nourishment in a progressively diversified diet for infants aged from six months.*