

In Confidence

Office of the Minister for Food Safety

Cabinet

Adopting the Amended Infant Formula Standard in New Zealand

6(a)

Relation to Government priorities

- 2 The proposal in this paper supports the Government's objectives of growing the economy and reducing regulatory burden, as per the National and ACT, and National and New Zealand First Coalition Agreements.

Executive Summary

- 3 Australia and New Zealand share a food regulation system for food labelling and composition. It supports trade between the two countries and obliges New Zealand to commit to harmonise food standards wherever possible. However, we are able to diverge from Australia in certain circumstances.
- 4 Proposed amendments to the Food Standards Code are agreed by a majority of Ministers at the Food Ministers' Meeting. New Zealand has one of ten votes at the Food Ministers' Meeting along with the Australian Commonwealth, States and Territories. Decisions are made by majority.
- 5 On 4 June 2024, the Food Standards Australia New Zealand (FSANZ) Board approved the amended infant formula standard. On 25 July 2024, Ministers agreed to adopt the amended standard into the Food Standards Code.
- 6 Infant formula manufacturers support the majority of the amendments in the standard. It reflects market developments and is well aligned with international regulations.
- 7 However some large infant formula manufacturers have concerns that prohibitions on label statements related to ingredients (for example, "contains no palm oil") and protein fractions (for example, "A2 protein") will limit their ability to compete with products traded in third party countries.
- 8 The companies argue that this change could challenge their competitive position in the e-commerce market in China and lead to a loss of market share to European manufactured products.

- 9 I have considered two options to respond to industry concerns while also capturing the benefits of the updates to the infant formula standard:
- 9.1 Adopt the amended standard, and work with the infant formula sector to further amend the standard within the five year transition period, to protect our competitive position in third party markets;
- 9.2 Opt out of the amended infant formula standard and ask officials for advice on developing a New Zealand only standard, outside the Joint Food System.
- 10 I have engaged closely with Danone and A2 Milk since the publishing of the recommended amended standard. Together they comprise approximately 80 percent of the finished infant formula market. Both companies support the majority of the standard but are sufficiently concerned about the labelling restrictions to advocate for New Zealand to opt out of the amended infant formula standard and developed our own standard. The Infant Nutrition Council also supports an opt out, but acknowledge there is not a consensus among their members.
- 11 Companies that are primarily involved in the infant formula ingredient market, are not disadvantaged by the labelling restrictions, and will benefit from the updated standard. I and my officials have engaged with Fonterra and DCANZ. Fonterra supports adoption of the amended standard.
- 12 There is a high degree of uncertainty about the economic impact with points of view that differ between different companies, and from officials. Danone argues up to \$2 billion could be at stake. The total infant formula export market was approximately \$1.75 billion in 2023.
- 13 6(a) [REDACTED]
- 14 6(a) [REDACTED]
- 15 The amended Standard is expected to come into effect in Australia after 5 August. New Zealand needs to notify the decision it intends to take prior to 5pm (AEST) on this date.

Background

Australia and New Zealand share a food regulation system for food labelling and composition

- 16 The Australia New Zealand Joint Food System underpins the safety of our food supply and provides a regulatory framework for how foods can enter the Trans-Tasman market. It advances our shared commitment to the Single Economic Market agenda which is designed to reduce regulatory barriers and support business opportunities.

- 17 The Joint Food System also plays an important role in protecting the safe food brand of New Zealand and Australia as well as maintaining consumer and importing countries' trust in our food supply. Open access to the Australian market, supported by joint standards, provides confidence to other global markets that our food is safe and suitable.
- 18 New Zealand has one of ten votes at the Food Ministers' Meeting along with the Australian Commonwealth, States and Territories. Decisions at Food Ministers' Meeting are taken by a majority vote. As Minister for Food Safety, I am New Zealand's representative.
- 19 Trade in food between Australia and New Zealand is facilitated by the Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (the Food Treaty). It sets out the arrangements and procedures related to the adoption of joint food standards within the Food Standards Code.
- 20 Under the Food Treaty, New Zealand has committed to harmonise food standards wherever possible. However, the Food Treaty provides options for New Zealand to diverge from Australia in specified exceptional circumstances.

The majority of the amended infant formula standard will benefit New Zealand industry

- 21 On 4 June 2024, the Food Standards Australia New Zealand (FSANZ) board approved the amended infant formula standard.
- 22 The amended standard provides significant benefits for New Zealand infant formula businesses by better reflecting market developments and strengthened alignment with international regulations. My officials advise me that industry supports a significant majority of the amendments.
- 23 Some infant formula companies that manufacture in, and export from, New Zealand have raised concerns with a small number of provisions of the amended standard which would restrict labelling by prohibiting ingredient statements.
- 24 They have conveyed to me that there is significant risk that the amended standard will be more restrictive than other jurisdictions, particularly the European Union, and that will erode their competitive position in the China e-commerce market.

Actions required following the 25 July 2024 Food Ministers' Meeting

- 25 At the July 2024 Food Ministers' Meeting, I moved that the meeting request that FSANZ conduct a narrowly scoped review of labelling provisions of the amended infant formula standard. This would have provided an opportunity to re-assess the restrictions against other international standards, and to provide an opportunity to consider evidence for the potential economic impact on the New Zealand export industry. This was not agreed.

26 I then requested a New Zealand modification to enable representations about ingredients on the label of infant formula products (outside the statement of ingredients and the Nutrition Information Statement). The modified standard would have applied only to New Zealand and would have addressed industry concerns.

27 This request was justified on the basis of third-country trade implications for New Zealand. The value of infant formula exports for New Zealand in 2023 was NZD \$1,753,811,065. Infant formula exports are less significant to the Australian economy.

28 I acted on advice provided prior to the meeting. However, at the meeting, FSANZ advised that New Zealand's request did not conform with the procedural requirements under clause (7) of Annex D of the Food Treaty and the request for a modification could not proceed.

29 6(a) [REDACTED]
[REDACTED] I am required to inform the Chair of the Food Ministers' Meeting of my decision by 5 August 2024.

6(a) [REDACTED]

32 The amended infant formula standard was developed over 11 years with seven rounds of consultation. Changes to the regulatory framework, definitions for product categories, nutrient composition, food additives, contaminants and labelling of infant formula products were considered.

6(a) [REDACTED]

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- 37 Outstanding concerns for some infant formula manufacturers are the prohibitions on label statements related to ingredients and protein fractions. These concerns relate to e-commerce trade to China which currently allow for product to comply with either China's Standard or the country-of-origin standard for products sold via e-commerce.
- 38 Danone, A2 Milk and companies connected with A2 have engaged with my office and officials to argue that the e-commerce trade to China is at risk and that if significant market share is lost, then manufacturing finished infant formula in New Zealand will cease to be viable. The Chinese infant formula market is worth approximately \$1.25 billion per year, with between a third and a half being sold through e-commerce.
- 39 Companies that are primarily involved in infant formula ingredient manufacture are not disadvantaged by the labelling restrictions but do benefit from updated composition standards. I and my officials have engaged with DCANZ and Fonterra. Fonterra supports adopting the amended standard. I am advised that Nestle also supports New Zealand adopting the amended standard.

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Proactive Release

Developing a New Zealand Standard may take time

- 49 If I were to inform the Chair of the Food Ministers' Meeting that New Zealand chose to opt out of the amended infant formula standard, I would ask my officials for advice on developing a New Zealand Food Standard under section 404 of the Food Act 2014. This would allow us to capture the benefits of an updated standard, while addressing sector concerns, but not without the consequences of opting out of the amended standard.

6(a), 9(2)(g)(i)

Cost-of-living Implications

- 52 There are no cost-of-living implications associated with the options in this paper.

Financial Implications

- 53 There are not likely to be any financial implications if New Zealand adopts the amended Infant Formula Standard.
- 54 There will be cost implications if New Zealand chooses to opt out of the Infant Formula Standard and develop a New Zealand only standard. Significant resources will be required to develop the standard.
- 55 Should New Zealand opt out, we will require a process to review industry applications for new ingredients for infant formula including food safety risk assessments and management. This is essential to ensure we maintain the assurance of our export partners and equivalence of our food safety system. This work requires a specialist team with expertise in food science, nutrition, risk assessment, toxicology, genetic modification, dietary assessment and social science.

Legislative Implications

- 56 A New Zealand Standard for Infant Formula may be developed under section 404 of the Food Act 2014 once New Zealand has opted out of the joint standard.

Impact Analysis

Regulatory Impact Statement

- 57 This paper does not require a Regulatory Impact Statement as the paper seeks to replace an existing Food Standard.

Climate Implications of Policy Assessment

- 58 CIPA requirements do not apply to this proposal.

Population Implications

59 There are no impacts on specific population groups arising from this paper.

Human Rights

60 There are no New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 implications.

Use of external Resources

61 No external resources have been used in developing this advice.

Consultation

62 The Ministry of Foreign Affairs and Trade were consulted on this paper.

63 The Chair of the Food Ministers' Meeting, Joint Food System Secretariat, Infant Nutrition Council, Dairy Companies Association of New Zealand and Infant Formula manufacturers will be informed following the Cabinet decision.

Communications

64 I intend to release a statement to the infant formula sector confirming my decision once I have advised the Chair of the Food Ministers' Meeting of Cabinet's decision.

Proactive Release

65 I intend to proactively release this paper online within 30 business days of final decisions being made by Cabinet, with any appropriate redactions consistent with the Official Information Act 1982.

Recommendations

The Minister for Food Safety recommends that Cabinet:

- 1 Note that up-to-date food standards are essential for trade and maintaining our international reputation.
- 2 Note that the amended infant formula standard has benefits for New Zealand infant formula businesses by better reflecting market developments and closer alignment with international regulations.
- 3 Note that infant formula manufacturers support the majority of the amendments in the amended infant formula standard.
- 4 Note that some manufacturers have significant concerns about prohibitions on label statements related to ingredients and protein fractions and the impact it may have on their competitive position in third-country markets.

- 5 Note that New Zealand was unable to secure a review of, or modification to, the amended infant formula standard at the Food Ministers' Meeting on the 25 July 2024.
- 6 Note that New Zealand did not agree to adopt the amended infant formula standard at the Food Ministers' Meeting, 25 July 2024.
- 7 Note that I must advise the Chair of the Food Ministers' Meeting if New Zealand wishes to opt out of the amended infant formula standard by 5pm, 5 August 2024 as required by Australia's FSANZ Act.
- 8 6(a) [REDACTED]
- 9 6(a) [REDACTED]
- 10 Note that a legal mechanism exists to seek an amendment to the Food Standards Code.
- 11 6(a) [REDACTED]
- 12 6(a) [REDACTED]
- 13 6(a) [REDACTED]

Authorised for Lodgement

Hon Andrew Hoggard
Minister for Food Safety