10 October 2001
05/02

FINAL ASSESSMENT REPORT (Inquiry – section 24)

PROPOSAL P249

DEVELOPMENT OF 'STOCK-IN-TRADE' PROVISIONS (GM LABELLING)

EXECUTIVE SUMMARY

On 24 November 2000, the Australia New Zealand Food Standards Council (ANZFSC) adopted an amended version of Standard A18 in Volume 1 of the *Food Standards Code* and Standard 1.5.2 for inclusion in Volume 2 of the *Food Standards Code*. Standard A18 and Standard 1.5.2 as adopted by Health Ministers included Division 2 (which extended labelling requirements for genetically modified (GM) foods) which is due to take legal effect on 7 December 2001; 12 months from the date of gazettal of the amended Standards.

While the Inter-Governmental Task Force on the Labelling of Genetically Modified Food in its advice to ANZFSC in mid 2000, did not consider the issue of long shelf-life foods, a 'major issue', it has become one in the intervening period. As such, limited consideration has to this date been given to the issue of whether food products produced lawfully prior to 7 December 2001, should be required to comply with the GM labelling requirements immediately following this date.

The Council of Health Ministers in their meeting of 31 July 2001 requested that ANZFA consider the issue of whether a 'stock-in-trade' provision was appropriate for the labelling of genetically modified foods and whether any such exemption should be limited to 12 months.

In August 2001, ANZFA prepared draft variations to Standard A18 and Standard 1.5.2 and undertook consultation in relation those variations. The draft variations had the effect of allowing food lawfully manufactured, packaged or imported prior to 7 December 2001, to continue to be lawfully sold after that date.

A significant majority of submissions strongly opposed the proposed exemption being granted, predominantly on the ground that the food industry had been given adequate notice

of the requirements and sufficient time to make the appropriate changes to their labelling or formulations.

The food industry, on the other hand, supported the proposed amendments, with some suggesting that the exemption should be for 24-months or unlimited for food produced prior to 7 December 2001.

ANZFA's view is that it would be unreasonable to require the removal of GM foods produced and labelled in accordance with the requirements in place prior to 7 December 2001 (the date of commencement of the GM labelling requirements). ANZFA therefore proposes to allow GM foods produced or packaged prior to 7 December 2001 to lawfully remain on the market for a further period of 12 months. GM foods manufactured or packaged after 7 December 2001 will still be required to comply with Standard A18 or Standard 1.5.2 in their entirety.

1 INTRODUCTION

On 1 July 1996, an Agreement between Australia and New Zealand (the Treaty) came into force that established a joint Australian New Zealand Food Standards System, which served to underpin the development of Volume 2 of the *Food Standards Code* (Volume 2).

Under the Treaty, during the transition period to the joint system, products sold in New Zealand and Australia could comply with either the New Zealand *Food Regulations 1984* (NZFR), (if manufactured or imported into New Zealand) or Volume 1 of the *Food Standards Code* (Volume 1) (formerly known as the Australian *Food Standards Code*) until such time as Volume 2 had been developed and became the sole set of regulations for the two countries.

Volume 2 came into effect in Australia on 20 December 2000 and in New Zealand on 8 February 2001. It is expected that Volume 1 of the *Food Standards Code* and relevant parts of the New Zealand *Food Regulations 1984* will be repealed towards the end of 2002, leaving Volume 2 as the sole repository of food standards in Australia and New Zealand (under the joint food standards setting system).

2 BACKGROUND

2.1 Development of Standard for regulation of GM foods

The August 1999 meeting of the Australia New Zealand Food Standards Council (ANZFSC) resolved to adopt mandatory labelling of genetically modified foods (GMF) under Standard A18 – Foods Produced from Gene Technology. ANZFSC requested that ANZFA develop a draft Standard, which provided a method of labelling that was practical, meaningful, and with the lowest possible compliance costs.

In October 1999, ANZFSC met to consider the draft Standard developed by an Inter-Governmental Task Force on Genetically Modified Food Labelling. The draft Standard consists of two parts. The first part (Division 1) relates to safety, and prohibits the sale of unapproved genetically modified (GM) foods. The second part (Division 2) relates to the labelling of GM food and food ingredients (whether packaged or unpackaged), additives, and processing aids. At this meeting, ANZFSC also requested that ANZFA publish (the then) draft Standard A18 for further public comment and consultation.

Ministers also requested that the Task Force produce a protocol of compliance and enforcement for the draft Standard with the principal objective of balancing effectiveness and cost efficiency.

On 28 July 2000, the Australia New Zealand Food Standards Council (ANZFSC), agreed in principle to draft Standard A18, and a revised version of Standard 1.5.2. On 24 November, ANZFSC formally adopted draft Standard A18 in Volume 1 of the *Food Standards Code* and Standard 1.5.2 for inclusion in Volume 2 of the *Food Standards Code*. Standard A18 and Standard 1.5.2 as adopted by Health Ministers included Divisions 1 and Division 2 as described above. Division 2 includes the labelling provisions and is due to take legal effect on 7 December 2001, which is twelve months from the date of gazettal of the amended Standards.

2.2 Standard A18 and Standard 1.5.2

2.2.1 Division 1

Division 1 of Standard A18 and Standard 1.5.2 prohibit the sale of foods produced using gene technology unless specifically permitted to do so. To this date, 12 foods produced using gene technology have been approved for sale.

2.2.2 Division 2

Division 2 imposes labelling requirements on genetically modified foods and is due to come into legal effect on 7 December 2001 in both countries.

2.3 Application of Standard A18 and Standard 1.5.2

2.3.1 Australia

The Food Acts of the Australian States and Territories and the *Imported Food Control Act 1992* (Commonwealth) require that food for sale or imported into Australia must comply with the requirements of Standard A18 or Standard 1.5.2.

There are no provisions in the Food Acts of the States and Territories, nor in the *Imported Food Control Act 1992* that specifically make allowance for the continued lawful sale of 'stock-in-trade' when changes to food standards are made.

2.3.2 New Zealand

In New Zealand, food for sale, or food imported into New Zealand, must comply with Standard A18 in Volume 1 or Standard 1.5.2 in Volume 2 of the *Food Standards Code*. On 20 December 2000, the Minister of Health under the *Food Act 1981* (New Zealand), issued the '*New Zealand Food Standard 2001*' in which Standard A18 and Standard 1.5.2 were declared to be mandatory food standards.

Subsections 42(4) and 42(5) of the *Food Act 1981* (New Zealand) provide –

> (4) Notwithstanding anything contained in any regulations made under this section, it shall be lawful for any person, at any time within 12 months after the date of the commencement of the regulations, to sell any food of which the sale is otherwise

lawful, if he proves that at the said date the food was part of the existing stock-in-trade in New Zealand of any person carrying on business there, and that since the said date no act has been done whereby the food fails to conform to the regulations.

(5) For the purposes of subsection (4) of this section, any goods purchased before the said date for importation into New Zealand shall be deemed to be part of the purchaser's stock-in-trade in New Zealand.

The effect of subsection 42(4) is to create a defence for stock-in-trade food that is made unlawful by any amendments to the *Food Regulations 1984* or *Dietary Supplements Regulations 1985*.

Subsection 42(5) of the Act goes on to provide that, for the purposes of subsection (4), any goods purchased before the said date for importation into New Zealand shall be deemed to be part of the purchaser's 'stock-in-trade' in New Zealand.

These 'stock-in-trade' provisions do not apply to the *Food Standards Code*, as the Code is issued as a 'food standard', under section 11C of the *Food Act 1981*, rather than as 'regulations' under section 42.

2.4 Implementation of GM food labelling requirements

In the Intergovernmental Taskforce Report on the labelling of genetically modified foods provided to the ANZFSC meeting on 28 July 2000, the Task Force addressed the issue of implementation of the labelling provisions in the following manner -

'26. Date of Implementation

- Industry raised the issue of the timing of implementation and urged that the 12-month implementation period be extended to take into consideration long shelf-life products that would remain on the market, unlabelled, after the commencement date. Industry also urged that the revised Standard come into effect at the same time as the new Joint Code.

- The Task Force considered that industry has had notification of the intended labelling regulations for over 18 months and that a 12-month implementation period is likely to be sufficient for the significant majority of products to be turned over and long shelf-life products should not be a major issue.

- The Task Force recommended that 12-month implementation period be applied to the revised Standard.

- If Ministers consider that this is still a significant issue they may agree that the revised Standard be applied to foods produced after the date of commencement.'

ANZFSC decided that a 12-month implementation period was sufficient to allow industry to implement the revised labelling requirements. However, since this date, it has become apparent that industry will encounter significant difficulty in ensuring that food products manufactured prior to 7 December 2001 will comply with the labelling requirements being

imposed after that date. During the 'Stakeholder Forum' discussions held by ANZFA at the time of its Board meeting in May 2001, a number of industry representatives raised the possibility of implementing a 'stock-in-trade' provision for the operation of the new GM food labelling requirements due to commence on 7 December 2001.

The Food Regulation Standing Committee recommended to the ANZFSC meeting of 31 July 2001, that ANZFA be requested to raise a proposal to consider the development of provisions relating to 'stock-in-trade'. This recommendation followed representations from the food industry advising that it was considered necessary to include provisions in the *Food Standards Code,* which had the effect of allowing the continued sale of 'stock-in-trade' in existence prior to 7 December 2001, the scheduled commencement date of the GM food labelling requirements.

Of particular concern was how long shelf-life foods produced in the months prior to 7 December 2001 would be handled. It was argued that an explicit provision in the Food Standards Code was necessary to permit products manufactured prior to 7 December 2001, but still legally available for sale after this date.

The Council of Health Ministers at their meeting in July 2001 requested that ANZFA prepare a proposal considering the development of provisions that permitted 'stock-in-trade' manufactured or packed prior to 7 December 2001 to continue to be lawfully sold after that date. The Ministers also requested that the duration of any such exemption be considered, with a view to whether a 12-month duration was appropriate.

2.5 Views of affected parties as to the implementation of GM labelling

The issues raised in the submissions received in relation to the draft assessment (full assessment) and draft variations to Standard A18 and Standard 1.5.2 as published in August 2001, were specifically that –

- The food industry has had sufficient time to prepare for labelling regime due to commence on 7 December 2001. Industry has known since August 1999 that a mandatory labelling regime for GM foods was going to be introduced. Consumers wanted compulsory comprehensive labelling now, submitting that freedom of choice is a basic human right. A freedom that was being denied by exempting food produced prior to 7 December 2001 from the GM labelling requirements.

- One submission quoted from the submission of the New Zealand Minister of Consumer Affairs to the Royal Commission on Genetic Modification who had suggested over sticking - Stickers can be placed over foods already in supermarket – (not tested for GM).

- The GM labelling regime should be brought into line with that proposed in Europe by European Commission Directive.

- Many submissions considered that public consultation period should have been 6/8 weeks to allow for public input as opposed to 3 weeks.

- Many of the submissions were adamantly opposed to GE foods.

- It was argued that labelling was a food safety issue as it was not possible to undertake monitoring or toxicological testing until labelling regime in place.

- Some members of the food industry questioned the duration of the exemption – some argued for 24 month or an open ended exemption.

- The draft variations impose different standards on imported foods as opposed to domestically produced foods.

- While the draft variations were supported by the South Australian Department of Human Services, it was submitted that the exemption should be for no longer than 12 months as this would involve additional enforcement costs.

2.5 International and World Trade Organization obligations

Australia and New Zealand are members of the World Trade Organization (WTO) and are bound as parties to WTO agreements. In Australia, an agreement developed by the Council of Australian Governments (COAG) requires States and Territories to be bound as parties to those WTO agreements to which the Commonwealth is a signatory. Under the Treaty between the Governments of Australia and New Zealand on joint Food Standards, ANZFA is required to ensure that food standards are consistent with the obligations of both countries as members of the WTO.

In certain circumstances Australia and New Zealand have an obligation to notify the WTO of changes to food standards to enable other member countries of the WTO to make comment. Notification is required in the case of any new or changed standards which may have a significant trade effect and which depart from the relevant international standard (or where no international standard exists).

2.6 International and Overseas Standards

This section refers to the manner in which standards are implemented rather than the substantive provisions of the standards.

2.6.1 Codex Alimentarius

Not known

2.6.2 European Commission Directive

Not known

2.6.3 United States

Not known

3 OBJECTIVES & POLICY

3.1 Objectives of Development of a 'stock-in trade' provision

The development of all food standard(s) is predicated on fulfilling ANZFA's Section 10 objectives given below.

ANZFA's statutory objectives in developing food regulatory measures and variations of food regulatory measures

(1) The objectives (in descending priority order) of the Authority in developing food regulatory measures and variations of food regulatory measures are:

(a) the protection of public health and safety; and
(b) the provision of adequate information relating to food to enable consumers to make informed choices; and
(c) the prevention of misleading or deceptive conduct.

(2) In developing food regulatory measures and variations of food regulatory measures, the Authority must also have regard to the following:
(a) the need for standards to be based on risk analysis using the best available scientific evidence;
(b) the promotion of consistency between domestic and international food standards;
(c) the desirability of an efficient and internationally competitive food industry;
(d) the promotion of fair trading in food.

The development of food standard(s) are also carried out in accordance with the competition policy principles which have been adopted by the Council of Australian Governments (COAG) and the draft Code of Good Regulatory Practice (New Zealand). These principles require the review of all business regulation to remove unnecessary obstacles to competition and an assessment of proposed regulation on all affected sectors of the community, and can be encapsulated in the phrase 'minimum effective regulation'.
The specific objectives for this Proposal are to:

1. Provide information to consumers to enable them to make informed choices about the consumption of GM foods and/or ingredients and to prevent misleading or deceptive conduct.

2. Not jeopardise the efficiency and international competitiveness of the food industry of Australia and New Zealand.

An assessment of this proposal must necessarily involve a balancing of these statutory objectives.

4 OPTIONS FOR REGULATION

There are two options for the implementation of the GM foods labelling requirements:

4.1 Option 1: Status Quo – Require all food manufactured or packaged for sale before and after 7 December 2001 to comply with the labelling requirements of Standard A18 and Standard 1.5.2.

4.2 Option 2: Develop provisions that allow the continued lawful sale of foods produced prior to 7 December 2001, after that date.

5 AFFECTED PARTIES

The parties affected by this application are set out below.

5.1 Consumers in Australia and New Zealand;

5.2 Food industry, including New Zealand and Australian manufacturers, exporters to Australia and New Zealand including multi-national manufacturers, and New Zealand and Australian importers;

5.3 Governments of New Zealand, the States and Territories and the Commonwealth of Australia.

6 IMPACT ANALYSIS

6.1 Option 1

Status Quo – Require all food manufactured or packaged for sale before and after 7 December 2001 to comply with the labelling requirements of Standard A18 and Standard 1.5.2.

Government

Advantages

- Enforcement of GM labelling provisions more cost effective as there will be one standard to enforce.

Disadvantages

- Food may need to be recalled to comply with labelling requirements.

Consumers

Advantages

- Foods available for sale will contain information relating to the genetically modified food content.

Disadvantages

- Substantial amount of food that is safe to consume may cease to be available due to the recall of such products. The costs of determining genetically modified food content of such foods and re-labelling if necessary is likely to be passed on to consumers.

- Potential for significant disruption to the market place.

Industry

Advantages

- Those parts of the food industry able to comply with the GM labelling provisions may obtain an advantage over those parts not able to comply that are required to recall and relabel food.

Disadvantages

- Substantial costs of determining whether foods already packaged for sale contain genetically modified foods and if so, the costs of re-labelling these products.
- Potential for significant disruption to the market place.

6.2 Option 2

Develop provisions that allow the continued lawful sale of foods manufactured and packaged prior to 7 December 2001, after that date.

Government

Advantages

- Not incur additional costs of conducting a recall of non-compliant food products.

Disadvantages

- There may be some additional costs in enforcing different standards depending on the date of manufacture or packaging of the food.

Consumers

Advantages

- Food products lawfully produced prior to 7 December 2001 would remain available for sale.
- Avoiding the additional flow on costs of recalling and re-labelling foods produced prior to 7 December 2001.
- Avoiding the detrimental affects of a potentially disrupted food market.

Disadvantages

- Some foods may remain on the market without the requirement of declaring the presence of GM foods.

Industry

Advantages

- Food products lawfully produced prior to 7 December 2001 would remain available for sale.
- Avoiding the additional costs of re-labelling foods produced prior to 7 December 2001.
- Avoid potential for significant disruption to the market place.

Disadvantages

- Public may perceive that industry is avoiding having to comply with GM labelling requirements
- Those parts of the food industry able to comply with GM labelling standards as at 7 December 2001 may be selling GM labelled food whereas members of the food industry that were not able to comply with the GM standards prior to this date can sell unlabelled GM food (produced prior to 7 December 2001).

7 ASSESSMENT

7.1 Assessment against objectives set out section 10 of the ANZFA Act.

Division 1 of Standard A18 and Standard 1.5.2 was adopted by ANZFSC with a view to the protection of the public health and safety of the populations of New Zealand and Australia.

This is achieved by requiring that all foods produced using gene technology be approved for use as foods before being able to be lawfully sold in either jurisdiction.

Division 2 of Standard A18 and Standard 1.5.2 was adopted by ANZFSC with a view to providing information to consumers to enable informed choices about the food they choose to purchase and consume.

7.2 Implementation of Standard A18 and Standard 1.5.2

In developing standards, ANZFA is obliged to do so in a manner that protects the public health and safety of consumers and provides adequate information to consumers to allow informed choice and prevent false or misleading conduct. This must however be done in a manner that does not unnecessarily impact upon the efficiency and international effectiveness of the food industry in New Zealand and Australia.

Since the gazettal of the Standards, the issue of stock in trade GM food has not been specifically considered. While the Intergovernmental Taskforce on the Labelling of Genetically Modified Food and ANZFSC considered the implementation period for commencement of the GM labelling provisions, the issue of long shelf-life foods was not considered to be 'major'. State, Territory, Commonwealth and New Zealand enforcement agencies indicated at this time to the food industry that enforcement priorities would be focused on the date of manufacture of the product rather than the date of sale of the product. It has become apparent that this approach does not provide the certainty that the food industry requires in order to effectively carry on their business.

7.3 Assessment of issues raised in submissions

7.3.1 Duration of implementation period for GM labelling provisions

Submissions

The food industry has had sufficient time to prepare for labelling regime due to commence on 7 December 2001. Industry has known since August 1999 that a mandatory labelling regime for GM foods was going to be introduced. Consumers wanted compulsory comprehensive labelling now, submitting that freedom of choice is a basic human right. A freedom that was being denied by exempting food produced prior to 7 December 2001 from the GM labelling requirements. One submission quoted from the submission of the New Zealand Minister for Consumer Affairs to the Royal Commission on Genetic Modification who had suggested over sticking - Stickers can be placed over foods already in supermarket to the effect that the food was not tested for GM.

Members of the food industry cited the delays in the development of the Compliance Protocol for GM labelling as contributing to the difficulties in clarifying areas of ambiguity in provisions of Standard A18 and Standard 1.5.2 as they relate to labelling.

Assessment

While the Council of Health Ministers announced an intention to require labelling of genetically modified foods in August 1999, this announcement contained little detail as to any such requirements. In fact the Intergovernmental Taskforce on Labelling of Genetically Modified Foods did not make a final recommendation to ANZFSC until May 2000.

It was only on 28 July 2000 that Ministers gave specific directions as to the detail of the labelling requirements relating to GM foods. Following this time, it took another 3-4 months to finalise drafting and it was only on 24 November 2000 that ANZFSC formally adopted the labelling requirements. ANZFSC decided that the labelling requirements were to come into effect on 7 December 2001. While it was argued (by Biotechnology Australia) that ANZFSC specifically considered the issue of stock-in-trade and decided that the requirements should apply to all foods, this was not the case. At that time, the Intergovernmental Taskforce decided that industry could comply with the labelling requirements from 7 December 2001, stating that ‘a 12-month implementation period is likely to be sufficient for the significant majority of products to be turned over and long shelf-life products should not be a major issue’. The Taskforce did not state what should be done with long shelf-life products, merely that ‘it was not a major issue’.

In the meantime, it has become apparent that long shelf-life products have become a ‘major issue’, so much so, that Health Ministers on 31 July 2001, requested that ANZFA prepare a proposal to consider whether ‘stock-in-trade’ prior to 7 December 2001 should be required to comply with the GM labelling requirements.

The food industry has argued that it has been waiting for the publication of the GM compliance protocol to resolve areas requiring clarification. The food industry must comply with the Standard, and not the Protocol. This argument is not persuasive in providing the food industry with any further extension to the application of the GM labelling provisions.

Conclusion

No change from Draft Assessment (Full Assessment).

7.3.2 European Commission Directive on GM food labelling

Submissions

A number of submissions stated that the GM labelling regime should be brought into line with that proposed in Europe by European Commission Directive
Assessment.

Assessment

This submission is beyond the scope of this Proposal and has not been assessed.

Conclusion

No change from Draft Assessment (Full Assessment).

7.3.3 Duration of public consultation period

Submissions

Many submissions considered that public consultation period should have been 6/8 weeks to allow for public input as opposed to 3 weeks.

Assessment

ANZFA decided that the issues before it in this Proposal were of minor complexity and therefore decide to omit one round of public comment in relation to the draft variations to Standard A18 and Standard 1.5.2. A number of submitters were under the misapprehension that ANZFA was required to undertake two rounds of consultation each of six to eight weeks duration. ANZFA considers that it complied with all statutory requirements in the conduct of this proposal.

Conclusion

Given the number of submissions received in relation to this Proposal, ANZFA considers that it is fully apprised on the issues relating to this proposal and is able to take into account all relevant considerations.

7.3.4 Opposition of use of GE foods

Submissions

Many of the submissions were adamantly opposed to GE foods and that GE foods should not be permitted until proven to be safe.

Assessment

This issue is beyond the scope of this Proposal and has therefore not been considered.

Conclusion

No change from Draft Assessment (Full Assessment).

7.3.5 GM labelling a public health and safety issue

Submission

It was argued that labelling was a food safety issue as it was not possible to undertake monitoring or toxicological testing until labelling regime in place.

Assessment

A number of submissions were made to the effect that GM labelling was a food safety issue as it was impossible to conduct stringent long term monitoring and toxicological testing in the absence of labelling as to GM status. ANZFSC expressed the view that the purpose of GM labelling is to provide consumers with sufficient information to allow informed choice, rather than to facilitate long term monitoring and toxicological testing. There are a number of more effective mechanisms for conducting such monitoring and testing.

Conclusion

No change from Draft Assessment (Full Assessment).

7.3.6 Duration of exemption for 'stock-in-trade'

Submissions

Some members of the food industry questioned the duration of the exemption – some argued for 24-month or an open ended exemption.

Several submissions from the food industry suggested that the 12-month limitation on the exemption to the GM labelling requirements for foods manufactured, packaged or imported prior to 7 December 2001 was not of sufficient duration to ensure that all foods produced or imported prior to that date could be lawfully sold following the commencement of GM labelling provisions. Submissions to this effect were that the exemption should either be for 24 months or of no fixed duration.

Of the enforcement agencies to comment, the Department of Human Services in South Australia submitted that stock in trade provisions present some difficulties in terms of enforcement as the date of manufacture, packaging or importation must first be ascertained before determining whether the food complies with the relevant the standard.

While the draft variations were supported by the South Australian Department of Human Services, it was submitted that the exemption should be for no longer than 12 months as this would involve additional enforcement costs.

Assessment

A balance must be struck between allowing industry to comply with the relevant standards in a cost effective manner, and consumers' interests and the costs imposed upon government in enforcing such standards.

Conclusion

ANZFA considers the proposed provision is able to be enforced but agrees that the exemption should be of no longer than 12 months duration so as to allow the effective and efficient allocation of enforcement resources.

ANZFA does not consider that the exemption should be any longer than 12 months as this is consistent with similar provisions in place in New Zealand which, to date, neither industry, consumers nor enforcement agencies have indicated to be problematic.

7.3.7 The draft variations impose different standards on imported foods as opposed to domestically produced foods.

Submissions

Several submissions indicated the proposed drafting imposed different standards to imported food as opposed to domestically produced food. The draft variations to the Standards, prepared at Full Assessment had the effect of allowing the continued lawful sale of domestically produced food manufactured or packaged in accordance with the relevant standards in place prior to 7 December 2001. The draft variations required imported food to have been manufactured, packaged AND imported in accordance with the relevant standards in place prior to 7 December 2001.

This meant that a food manufactured or packaged other than in New Zealand or Australia prior to 7 December 2001, but imported into either country after 7 December 2001 could not be lawfully sold in Australia or New Zealand, but a food manufactured or packaged in Australia or New Zealand on the same date as the imported food could not.

Assessment

ANZFA agrees that to impose such as standard could potentially constitute a unjustifiable technical barrier which could place both countries in breach of their obligations as Members of the World Trade Organization.

Conclusion

Amend drafting so that only food manufactured or packaged prior to 7 December 2001 may continue to be sold after that date.

7.4 Conclusion

ANZFA's view is that it is unreasonable to require retailers to remove GM foods from their shelves on 7 December 2001 that were able to be lawfully sold the day before. To do so would potentially mean the removal of substantial quantities of food from retailers' shelves

because the labelling requirements have changed from those in effect at the date of manufacture of the food. This could be considered an unwarranted and arbitrary imposition on industry and ultimately on consumers to do so. It is therefore proposed to provide an exemption for food manufactured or packaged prior to 7 December 2001, with respect to the labelling requirements set out in Division 2 of Standard A18 and Standard 1.5.2. Furthermore, in order to avoid imposing an unjustifiable barrier to trade, it is also proposed to provide this exemption for food manufactured or packaged prior to 7 December 2001. To require importation prior to this date would discriminate unfairly against imported foods manufactured at the same time as domestically produced foods that would be able to be lawfully sold in either jurisdiction.

However, ANZFA does not consider it reasonable, in the light of the objectives prescribed in section 10 of the ANZFA Act, to provide an open-ended exemption for food produced or imported into Australia or New Zealand prior to 7 December 2001. A balance must be struck between consumers' ability to access information under the operation of the Standard, and industry's ability to adapt in a reasonably cost effective manner to the new requirements. Furthermore, it is not reasonable to require that enforcement agencies should bear the additional costs of enforcing two standards for more than 12 months.

In New Zealand, subsection 42(4) of the *Food Act 1981* (New Zealand), provides a 12 month limit on any concession being granted to food products which are part of the existing stock-in-trade in New Zealand of any person carrying on business there at the date of any amendments to the food regulations.

While subsection 42(4) does not apply in New Zealand in relation to food standards, this would appear to have provided a balance that the food industry has not to this date indicated was problematic. It would therefore seem reasonable in the circumstances to limit the proposed immunity to a period of 12 months. This further period would provide industry with the opportunity to identify affected products and re-label if necessary.

8 CONSULTATION

8.1 Simplified procedures

The Authority decided, pursuant to section 36 of the *Australia New Zealand Food Authority Act 1991*, to omit to invite public submissions in relation to the proposal prior to making a full assessment. The Authority was satisfied that omitting to invite public submissions prior to making a full assessment (making a draft assessment) was warranted as the proposal raises matters of a mechanical nature that are of minor significance or complexity. Furthermore, the Authority considered that omitting to invite public submissions prior to making a full assessment, would not significantly adversely affect the interests of any person or body.

8.2 Release for Public Consultation

This Proposal/ Full Assessment Report was released in August 2001 with a three-week consultation period. The views of the submitters have been incorporated into the development of this Final Assessment (Inquiry) Report.

8.3 Submissions

ANZFA received approximately 131 written submissions in relation to the draft variations to

Standard A18 and Standard 1.5.2. Of these submissions, approximately 117 were opposed to any exemption being granted which would allow any unlabelled GM foods to be sold after 7 December 2001, whether produced before or after this date. Fourteen submissions, from the food industry, supported an exemption being given to food produced prior to 7 December 2001. A number of these submissions supported the exemption, however, a number also sought a 24-month or open ended duration.

9 CONCLUSION

This Final Assessment (Inquiry) discusses issues specific to the application of the GM food labelling provisions in Division 2 of Standard A18 and Standard 1.5.2 to 'stock-in-trade'. This Assessment is accompanied by draft variations to Standard A18 and Standard 1.5.2, which will be recommended to the Australia New Zealand Food Standards Council for adoption.

10 FURTHER INFORMATION

Submissions: No submissions on this matter are sought as the Authority has completed its assessment and the matter is now with the Australia New Zealand Food Standards Council for consideration.

Further information on this and other matters should be addressed to the Standards Liaison Officer at the Australia New Zealand Food Authority at one of the following addresses:

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11 ATTACHMENTS

1. Draft variations to Standard A18 in Volume 1 and Standard 1.5.2 in Volume 2 of the *Food Standards Code*
2. Statement of Reasons

ATTACHMENT 1

DRAFT VARIATION TO THE *FOOD STANDARDS CODE*

PROPOSAL P249

DEVELOPMENT OF 'STOCK-IN-TRADE' PROVISIONS (GM LABELLING)

To commence: On gazettal

Division 2 of Standard A18 of Volume 1 and Standard 1.5.2 of Volume 2 of the Food Standards Code is varied by inserting immediately after subclause 4(4) –

(5) This Division does not apply to food packaged or manufactured prior to 7 December 2001 for a period of 12 months after the commencement of that Division.

(6) Subclause (5) ceases to have effect on 7 December 2002.

Editorial Note:

Subclause 4(5) will cease to operate on 7 December 2002. From this date all food will need to comply with the labelling requirements in Division 2. Subclause 4(5) only applies to the labelling requirements in this Standard and has no effect on the provisions in Division 1.

ATTACHMENT 2

STATEMENT OF REASONS

PROPOSAL P249

DEVELOPMENT OF 'STOCK-IN-TRADE' PROVISIONS (GM LABELLING)

The Australia New Zealand Food Authority (ANZFA) has before it a proposal to amend the Australian *Food Standards Code* (Volume 1 and Volume 2) to allow all food manufactured or packaged prior to 7 December 2001, to continue to be able to be lawfully sold following the commencement of the labelling provisions as they relate to Genetically Modified Foods.

ANZFA recommends the adoption of the draft variation for the following reasons:

- There are likely to be significant costs incurred by the food industry in recalling and relabelling food to determine whether the food contains genetically modified ingredients and if so, either destroying or relabelling this food.

- The benefits to consumers of requiring the above action would be outweighed by the costs that would more than likely be passed on to them by the food industry.

- ANZFA's view is that it would be unreasonable to require the removal of GM foods produced and labelled in accordance with the requirements in place prior to 7 December 2001 (the date of commencement of the GM labelling requirements).

- ANZFA therefore proposes to allow GM foods produced or packaged prior to 7 December 2001 to lawfully remain on the market for a further period of 12 months as this will allow unlabelled food to pass through the supply chain and not impose too onerous a burden on enforcement agencies.

- GM foods manufactured or packaged after 7 December 2001 will still be required to comply with Standard A18 or Standard 1.5.2 in their entirety.

The commencement date of the draft variation is the date of gazettal.

REGULATION IMPACT

ANZFA has undertaken a regulation impact assessment process, which also fulfils the requirement in New Zealand for an assessment of compliance costs. This process concluded that, on balance, the costs associated with the adoption of the draft variation are less than if the draft variation is rejected.

WORLD TRADE ORGANIZATION (WTO) NOTIFICATION

Australia and New Zealand are members of the WTO and are bound as parties to WTO agreements. In Australia, an agreement developed by the Council of Australian Governments (COAG) requires States and Territories to be bound as parties to those WTO agreements to which the Commonwealth is a signatory. Under the agreement between the Governments of

Australia and New Zealand on Uniform Food Standards, ANZFA is required to ensure that food standards are consistent with the obligations of both countries as members of the WTO.

In certain circumstances Australia and New Zealand have an obligation to notify the WTO of changes to food standards to enable other member countries of the WTO to make comment. Notification is required in the case of any new or changed standards which may have significant trade effects and which depart from the relevant international standards (or where no international standard exists).

This matter was not notified to the WTO as a previous notification for the substantive provisions as they relate to the labelling of genetically modified food had already been made. This draft variation is of a mechanical nature only and does not impose a barrier to trade.

DRAFT VARIATION TO THE *FOOD STANDARDS CODE*

To commence: On gazettal

Division 2 of Standard A18 of Volume 1 and Standard 1.5.2 of Volume 2 of the Food Standards Code is varied by inserting immediately after subclause 4(4) –

(5) This Division does not apply to food packaged or manufactured prior to 7 December 2001 for a period of 12 months after the commencement of that Division.

(6) Subclause (5) ceases to have effect on 7 December 2002.

Editorial Note:

Subclause 4(5) will cease to operate on 7 December 2002. From this date all food will need to comply with the labelling requirements in Division 2. Subclause 4(5) only applies to the labelling requirements in this Standard and has no effect on the provisions in Division 1.