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12/01

S37 - FULL ASSESSMENT REPORT

APPLICATION A423 – DEVELOPMENT OF A LABELLING STANDARD IN THE FOOD STANDARDS CODE

INTRODUCTION

Minter Ellison Lawyers, acting on behalf of the Imported Food Program in the Australian Quarantine and Inspection Service (AQIS) has made an application to amend the Food Standards Code to include a requirement, similar to that to be contained in the State and Territory Food Acts, that all food must bear a label containing:

- the name of the food;
- the food's lot identification; and
- the name and business address in Australia of the packer, manufacturer, vendor or importer of the food.

Minter Ellison on behalf of AQIS also requested that the Authority, pursuant to section 37 of the *Australia New Zealand Food Authority Act 1991*, to make an urgent recommendation to the Australia New Zealand Food Standards Council amend the Code as per their application.

OBJECTIVE OF THE PROPOSAL

This application achieves several objectives, namely, to:

- impose the same labelling requirements on food imported into Australia as is required for domestically produced food by virtue of State and Territory food legislation.
- permit the Imported Food Program in the Australian Quarantine Inspection Service to enforce the labelling provisions of the Food Standards Code by including in the Food Standard Code, the requirement to include a label on a package of food.

IMPACT OF PROPOSAL

The impact of this proposal would be to impose the same labelling requirements on food imported into Australia as is required for domestically produced food by virtue of State and Territory food legislation.

SECTION 37 CONSIDERATION

This Application was considered as a matter of urgency, under section 37 of the *Australia New Zealand Food Authority Act 1991* (the ANZFA Act), to omit a round of public comment and to make a recommendation to the 24 November 2000 meeting of the Council to coincide with the scheduled consideration of the joint Code as a whole. This action satisfies the objective of protection of public health and safety as set out in subsection 10(1)(a) of the ANZFA Act, in that AQIS will be unable to enforce the labelling provisions of the Code. The enforcement of the labelling provisions of the Food Standards Code by AQIS is essential to allow contaminated or unsafe product to be traced and effective food recalls to be undertaken.

BACKGROUND

The Imported Food Program of the Australian Quarantine Inspection Service enforces the *Food Standards Code* (the Code) in relation to imported food through the *Imported Food Control Act 1992* (the IFC Act). Section 8(1) of the IFC Act makes it an offence to import any food that does not meet an applicable standard contained in the Code.

The intent of the Code is clear in that it sets out, in considerable detail, what information needs to be included on various food labels. However, the Code does not contain the fundamental requirement that food actually bear a label. This requirement is set out in State and Territory food legislation, with the Code prescribing the form in which this prescribed information is presented. This deficiency has been brought to the attention of AQIS by industry participants, who are now challenging AQIS' ability to fail food for non-compliance with labelling standards. AQIS and the Authority consider that the enforcement of the Food Standards Code and the labelling standards contained therein in relation to imported food is a critical role which the Imported Food Program has been carrying out for 8 years.

The draft *Australia New Zealand Food Standards Code*, which is anticipated to come into effect shortly, contains a requirement that all food intended for sale, subject to a number of exemptions must bear a label containing the information prescribed elsewhere in the joint Code. However, due to the transitional period, industry participants need only comply with either the old or the new Code, and this deficiency will remain a significant regulatory problem for AQIS.

The applicant claimed that the correct labelling of food is a significant issue of public health and safety, as label information is essential to allow contaminated or unsafe product to be traced and effective food recalls to be undertaken. This information also ensures that the identity of the product is clear to prevent fraud and deception and to alert consumers to any potentially harmful allergens.

The applicant stated that if the Code is not amended AQIS will be unable to administer an effective imported food program, as it will not be possible to enforce labelling compliance at the border. This could lead to poorly labelled or unlabelled product being available to consumers and lead to an increased public health and safety risk. Consequently, this would place increased responsibilities on States and Territories, after food has been distributed, to ensure that imported food is correctly labelled.

ASSESSMENT OF APPLICATION

ANZFA accepts that the variation sought by Minter Ellison on behalf of the Australian Quarantine Inspection Service, is necessary to permit the Imported Food Program to effectively enforce the labelling provisions of the Food Standards Code. ANZFA agrees that the requirement to include a label on food produced domestically is set out in State and Territory food legislation and this requirement is not included in the *Imported Food Control Act 1992*. ANZFA accepts that an amendment to the Code as sought by Minter Ellis warranted in the circumstances. However, ANZFA does not consider that the suggested paragraph (b) of the application is necessary as this requirement is adequately reflected in clause 3 of Standard A1.

ANZFA also accepts that it is appropriate to make a recommendation to the Australia New Zealand Food Standards Council pursuant to section 37 of the Australia New Zealand Food Authority Act 1991. ANZFA accepts that the inability of AQIS to effectively enforce the labelling provisions of the Food Standards Code may have significant public health and safety implications.

PUBLIC CONSULTATION

Under subsection 37(3), ANZFA is required as soon as practicable to hold an inquiry into the standard as adopted.

REGULATORY IMPACT ASSESSMENT

It is considered that this Proposal and Full Assessment do not require a regulatory impact assessment, as their intent is to correct a legislative oversight.

WORLD TRADE ORGANIZATION (WTO) NOTIFICATION

It is considered that this Proposal and Full Assessment do not constitute a potential Technical Barrier to Trade or a Sanitary/Phytosanitary matter as their intent is to apply the same measures to imported food as are currently applied to domestically produced food and to correct a legislative oversight. Matters raised in this Proposal and Full Assessment therefore will not be notified to the WTO.

VARIATION TO THE FOOD STANDARDS CODE

To commence: On gazettal

Standard A1 of the Food Standards Code is amended by inserting immediately following clause 1 -

- (1A) (a) In this clause,
- ‘appropriate designation’ means a name or description or a name and description sufficiently specific in each case to indicate the true nature of the food to which it is applied
- (b) Every package of food intended for sale must bear a label containing the following particulars—

- (i) where there is a standard prescribed for the food and a name has been prescribed to be used in relation to that food – the prescribed name, and in any other case, an appropriate designation;
- (ii) the name and business address in Australia or New Zealand of the vendor, manufacturer or packer or in the case of imported food – the name and business address of the importer; and
- (iii) such other particulars as are prescribed in this Code.

INVITATION FOR PUBLIC SUBMISSIONS

The Authority has completed its assessment of this matter and made a recommendation to the Australia New Zealand Food Standards Council as a matter of urgency. The Authority is now conducting an inquiry into this matter, and public submissions are being sought.

All correspondence and submissions on this matter should be addressed to the **Project Manager – Application A423** at one of the following addresses:

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Submissions should be received by the authority by **14 March 2001**.