

Submission by



to the

Ministry for Primary Industries

on the

**Proposed Options for Export Exemptions from New Zealand
Composition and/or Labelling Requirements Under the
Food Act 2014
Discussion Document**

31st July 2024

PO Box 1925
Wellington
Ph: 04 496 6555

INTRODUCTION

The Ministry for Primary Industries (MPI) is seeking feedback on proposed options for export exemptions under the Food Act 2014, relating to food labelling and composition. Export New Zealand (ExportNZ) is pleased to contribute to this work and submit our feedback on the discussion document titled "*Proposed Options for Export Exemptions from New Zealand Composition and/or Labelling Requirements Under the Food Act 2014*" (The Discussion Document).

ExportNZ and the wider Business New Zealand Network (Annex 1), in principle, support discussion and proposals regarding regulatory changes that help businesses and exporters to do business, and increase value and reputation, while also ensuring they maintain a high quality of products and services produced for the end-user.

As the peak industry body for the New Zealand export sector, we represent a broad range of export sectors. This submission attempts to represent all of the feedback that we received. As a vibrant and diverse sector, there will be differing views on these proposals and many other businesses, exporters, and association groups will be making their own submissions.

ExportNZ agrees with the consultation document that the current process is not fit for purpose, creates an unnecessary and burdensome regulatory process, the potential loss in export opportunities, and does not add any value to the exported product or improve product safety.

We support the document's statement that:

*"A cornerstone of New Zealand's highly regarded model for food safety is that food businesses, including exporters, manage their own food safety and suitability risks. The MPI Ownership of the individual exemption process, which includes consideration of any potential food toxicity and nutritional risks arising from certain ingredients added to products, see MPI assume some responsibility for the exempted products being safe and suitable for the end consumer. **This responsibility should lie with food manufacturers or exporters to have the system and processes in place for ensuring safety of their products and demonstrating compliance with relevant requirements** (including importing country requirements)."* (Our emphasis in bold)

In summary, we note that the four options proposed by MPI in the consultation document are;

- **Option One:** Maintain the status quo.
- **Option Two:** An exemption for all New Zealand food exports relating to labelling and composition, with conditions.
- **Option Three:** An exemption for all New Zealand food exports relating to labelling and composition, with a differentiated approach for composition and labelling.
- **Option Four:** An exemption for all New Zealand food exports relating to labelling and composition with a differentiated approach for different classes of product or market.

SUMMARY OF RECOMMENDATIONS

ExportNZ **does not support any of the options in their current form** for the food exports sector overall, and also believes MPI will need to consider separate exemptions and processes that work in particular for the Dairy and Dietary Supplement/Natural Health Product sectors but also ensures arrangements that are equitable across all food exports.

1. MPI should undertake further investigation into why processed food exporters do not currently use the labelling/composition export exemption process.
2. New Zealand's export assurance model for food products' labelling and composition should follow a model that allows producers and exporters to take ownership of their own risks and compliance.
3. ExportNZ supports DCANZ's and NZFGC's proposed 'Option Five' for a blanket exemption for exporters with an RMP, FCP, or National Programme.
4. MPI works on a separate assurance process for exported dietary supplements and natural health products.
5. Market authorisation should not be required from a New Zealand regulator if that product satisfies all the regulations set by the regulatory body of the importing market.
6. ExportNZ does not support any option in its current form, therefore we would suggest the following:

- Engage in targeted engagement with non-dairy food exports to understand why they do not engage in the current exemptions process.
- Co-design a high-trust model that allows non-dairy food exporters to take responsibility for their own export products and that it draw on the Australian approach that allows for products deemed low-risk to not be subject to Australian export controls and to be exported without direct government oversight.
- MPI work with the dairy sector to proceed with Option 5 as suggested in the DCANZ and NZINC submissions.
- MPI works to develop a separate assurance process to better suit the needs and requirements of the dietary supplements and natural health products sector.

GENERAL COMMENTS

The Consultation document states that “*There is anecdotal evidence that some food export sectors may not be using the exemption process*” (page 12), and “*Dairy exporters have been almost exclusive users of the exemption system in recent years*” (page 20).

ExportNZ also has anecdotal evidence from exporters regarding regulatory barriers in New Zealand and the way these can act as a deterrence to businesses exporting more and innovating. Given the focus on increasing New Zealand exports and export value, ExportNZ would support investigations and analysis into why there is not a larger uptake of the exemption process and whether the process is a significant barrier to processed food producers exporting more products from New Zealand. Analysis may also identify other regulatory barriers that unnecessarily hinder processed food exports.

RECOMMENDATION: MPI should undertake further investigation into why processed food exporters do not currently use the labelling/composition export exemption process.

Given New Zealand and Australia already collaborate on joint standards for food safety (and other Joint Australi/New Zealand standards for non-food products) and therefore have a cross-border standard for labelling and composition requirements, it also makes sense that we consider the standards that Australia sets for their food exports, and whether these are fit for purpose in New Zealand.

As outlined in the document, Australia takes a risk-based approach rather than a blanket exemption process for all exported food goods. The Australian model even allows for products deemed low risk to not be subject to Australian export controls and to be exported without direct government oversight. The model is one of high trust and allows exporters to take ownership of their own labelling and suitability for exported products.

ExportNZ would support a similar model that places the onus on producers and exporters to manage their own risks and suitability, therefore we would want MPI to analyse the Australia Export Control Act and effectively follow a similar approach.

RECOMMENDATION: New Zealand’s export assurance model for food products’ labelling and composition should follow a model that allows producers and exporters to take ownership of their own risks and compliance.

ExportNZ supports the submission by the Dairy Companies Association of New Zealand (DCANZ). We understand that DCANZ is proposing a different option, which is based on the existing Risk Management Plans that dairy exporters operate under. The proposed option would allow for a blanket exemption for exporters operating under an RMP coupled with or in addition to the blanket exemption for labelling. This option is better suited to the requirements of the dairy export sector given the RMPs already act as a framework for managing product safety, suitability, and market acceptability outcomes.

RECOMMENDATION: ExportNZ supports DCANZ’s proposed ‘Option Five’ for a blanket exemption for labelling exporters with an RMP, FCP or National Programme.

Feedback from members in the dietary supplements and natural health products export sector suggests that the development and implantation of clear and workable regulations for their sector would be preferable to attempting to regulate or exempt these exported goods from the Food Act in the options outlined in the document. ExportNZ suggests that MPI also work on a separate assurance process for dietary supplements

and natural health products, through the Dietary Supplements Regulations 1985, as part of the post-Therapeutic Product Act repeal work.

RECOMMENDATION: MPI works on a separate assurance process for exported dietary supplements and natural health products.

Concerning this consultation and the proposals outlined, ExportNZ is most concerned about producers' ability to make health and nutrition claims, and the risk that may pose to New Zealand's reputation as a producer of high-quality food. ExportNZ has worked closely with the dietary supplement and natural health product sectors in the past on regulatory frameworks for their sectors, most notably the Therapeutic Products Act (TPA).

In our submission to the Health Select Committee regarding the TPA, ExportNZ recommended that market authorisation should not be required from a New Zealand regulator if that product satisfies all the regulations set by the regulatory body of the importing market.

RECOMMENDATION: Market authorisation should not be required from a New Zealand regulator if that product satisfies all the regulations set by the regulatory body of the importing market.

COMMENTS ON THE PROPOSED OPTIONS

ExportNZ understands that the current export exemption process from New Zealand labelling/composition requirements is not fit for purpose, however we do not believe the proposed changes will provide exporters with the best solutions available and have some shortcomings given the conditions attached to each option.

Option One – Status Quo

We believe that Option One is not an appropriate solution to achieve the intended outcomes listed in point 1.4 on page 5 of the consultation document. Option one will continue to place the responsibility for product labelling on MPI and will continue to create a costly and timely administrative burden on MPI.

The current process is not fit for purpose, creates an unnecessary and burdensome regulatory process, the potential loss in export opportunities, and does not add any value to the exported product or improve product safety.

Option Two – Exemption for All Food Exports, with Conditions

ExportNZ rejects Option Two. Feedback from exporters on Option Two highlighted concerns that Table Three (page 25 of the document) contained conditions that could be difficult, onerous and potentially impractical to achieve resulting in a default back to the status quo.

For example – from Table Three, page 25 of the document (ExportNZ [comments in blue](#)):

Systems in place to ensure the product's composition and labelling achieves compliance with importing country requirements.

Exporters must demonstrate how their product(s) achieve compliance with:

It is unclear how this would need to be demonstrated (by testing or by certification from the importing country?). Some countries do not provide certification, and/or require a free sale certificate from the country of origin, which would not be available if the product does not comply with NZ requirements.

a) expressed specific importing country requirements for labelling and composition;

Importing country requirements may not be freely available or accessible, and may not be clear and transparent. Further, these are often open to wide interpretation, especially where an importer is required to 'self-certify compliance'; or

b) international standard(s), where the importing country makes reference to an international standard as being their legislative standard;

such standards may not exist for all types of products. Where international standards do exist, these only cover composition requirements and do not cover health claims or related requirements; or

- c) *express approval by the overseas competent authority to import a product with the stated variation for composition and labelling, and there is supporting evidence of the acceptance (for example, written confirmation).*

Obtaining such approval on a product-by-product basis would be onerous on exporters, and it is unlikely to be provided by overseas authorities, especially if they do not routinely issue product approvals.

Another example from Table Three is the condition that *"where the importing country is silent or unclear on requirements for labelling (including health claims) and/or composition, New Zealand law will apply"*.

This condition would also apply to options three and four and we do not agree that there needs to be a blanket default to New Zealand labelling and composition standards where the importing country's own requirements are silent, absent, or unclear. Importing countries choose what they need to legislate for, with consideration for their citizens' needs. To impose NZ composition and labelling standards outside of New Zealand territory and jurisdiction is not appropriate.

Option Three – Exemption for All, with Differentiated Approach for Labelling vs Composition & Option Four – Exemption for All, with a Differentiated Approach for Different Classes or Market

Options Three and Four have some merit to them and they may reduce the regulatory burden non-dairy food exports. However, given there is no information about why non-dairy exports do not engage in the exemption process, it is difficult to measure the impact this change could have on that sector. As noted by the DCANZ submission, these options are not an improvement on the current system for dairy exports and will likely result in a decrease in dairy exports.

As stated in the document, there is also the challenge where an importing country may require a Certificate of Free Sale to be issued by MPI (affects options two, three, and four). As stated in the document, MPI will need to develop another way of certifying government assurances in the future. As we've supported MPI following a similar process to that used in Australia, they may also have a solution to government-issued export certificates.

EXPORTNZ SUGGESTED APPROACH TO LABELLING & COMPOSITION ASSURANCE

ExportNZ does not support any option in its current form, therefore we would suggest the following:

- Engage in targeted engagement with non-dairy food exports to understand why they do not engage in the current exemptions process, and what they need to help them navigate complex labelling and composition regulations and requirements.
- Co-design a high-trust model that allows non-dairy food exporters to take responsibility for their own labelling and composition similar to the risk-based Australian approach that allows for products deemed low-risk to not be subject to Australian export controls and to be exported without direct government oversight.
- MPI work with the dairy sector to proceed with Option 5 as suggested in the DCANZ and NZINC submissions.
- MPI works to develop a separate assurance process to better suit the needs and requirements of the dietary supplements and natural health products sector.

ANNEX 1.

ABOUT BUSINESS NEW ZEALAND

[BusinessNZ](#) is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Business South](#),
- [Major Companies Group](#) of New Zealand's largest businesses,
- [Gold Group](#) of medium-sized businesses,
- [Affiliated Industries Group](#) of national industry associations,
- [ExportNZ](#) representing New Zealand exporting enterprises,
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises,
- [Sustainable Business Council](#) of enterprises leading sustainable business practice,
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use,
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods.

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).

ABOUT EXPORT NEW ZEALAND

ExportNZ is a national industry association representing a diverse range of exporters throughout New Zealand. ExportNZ is a division of BusinessNZ, New Zealand's peak business advocacy body.

We are a membership organisation and have approximately 2,000 export members around the country.

ExportNZ advocates for, inspires, connects, and celebrates New Zealand exporters. We aim to build a thriving ecosystem that supports each other.

We are exporters helping exporters.

