Summary of Submissions

MPI Discussion Paper No: 2019/04 – Food for Export – Exemptions from Domestic Compositional Standards – Proposed Food Notice

Consultation opening date	Friday 5 April 2019
Consultation closing date	Friday 3 May 2019
Number of submissions received	5

General Comments	
Submissions	**MPI response**
Commercial Sensitivity / Intellectual Property One submitter stated "MPI has the ability to issue notices under clause 408 of the Food Act 2014 directly to an affected person or group of affected persons and we ask that this practice continues. Significant work goes into an exemption application which we consider to be commercially sensitive and intellectual property." They also stated that in the future they would like to be able to apply for exemptions that are not publicly notified. A second submitter also expressed concern about the requirement to list the product that an exempted ingredient is used in, as this may be commercially sensitive, especially when the product is not a conventional dairy product or is contract manufactured to a specific customer's formulation.	MPI accepts that in some instances there is considerable time required researching market opportunities and developing products that result in a need for an exemption. MPI is prepared to consider assessing applications to determine whether a company specific confidential notice is justifiable on the basis of commercial sensitivity. Such assessment will be subject to a number of conditions (as yet to be developed) such as cost recovery and the criteria for justifying commercial sensitivity. It should also be noted that: • The product name in the exemption only needs to be specific enough so that it matches with the product or product group that the requirement is defined for in the importing country legislation. • MPI has started work to consider what more general exemptions could be granted by regulation under Section 345 of the Food Act.
Food Standards Exemption Fonterra Limited One submitter requested that the *Food Notice: Food Standards Exemption Fonterra Limited* not be consolidated into this notice.	MPI considers there are insufficient grounds to consider this particular exemption as commercially sensitive.

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General Comments	
Submissions	**MPI response**
Self-exemption One submitter asked for the ability for self-exemptions (as given for dairy based Formulated Supplementary Foods for Young Children) to be extended to all dairy products. They see this as a solution which would allow companies to retain their intellectual property while ensuring the integrity of the official assurance system as they would be subject to verification by the recognised agency at audit.	Section 347 of the Food Act, requires exemptions to be specific to a particular market(s) and to a particular food. The suggested extension to self-exemptions for all dairy products is therefore not possible under this section. Section 345 of the Food Act however allows for more generic exemptions at regulation level and MPI has started work to consider what exemptions would be appropriate at regulation level.
Labelling Exemptions One submitter asked whether products retain dual exemptions under Animal Products Act, Section 60B and the proposed exemptions under the Food Act (i.e. where composition is exempted under the Food Act and labelling under the Animal Products Act) and whether it is intended that exemptions for labelling could eventually be covered by the food standards as well?	Historic labelling exemptions issued under the Animal Products Act remain in force so, yes, a product may have a compositional exemption under the Food Act and a labelling exemption under the Animal Products Act. Over time MPI will be re-issuing labelling exemptions, from the Food Standard Code or other domestic food standards, under section 347 of the Food Act. Exemptions from animal product standards however, such as the *Labelling Requirements for Exports of Dairy Based Infant Formula Products and Formulated Supplementary Food for Young Children*, will still be issued under section 60B of the Animal Products Act.
Guidance on Applying for Exemptions One submitter stated "It is noted that there is nothing included in this document as to how to go about obtaining an exemption from the Food Act. Where is it intended that the appropriate forms and guidance will be located for applying for exemptions? Including this information and guidance would assist in consolidating all relevant information required for compliance."	MPI notes that there is no current guidance available on how to obtain an exemption and will develop some. The application form will also be updated. In order to be accessible to exporters the guidance will be located on the MPI website rather than within this Notice.

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Removal of Exemptions	
Submissions	**MPI response**
Only one submitter indicated concern about the proposed removal of exemptions as outlined in the discussion document. The concern expressed was about transitional requirements for the Ferric Chloride exemption for iron supplementation of food exported to Japan and Taiwan. This exemption will no longer be required once sale of remaining stock has been depleted but an exemption is still required until that time.	MPI will issue a separate temporary exemption for the submitter to deal with this transitional issue.

Restructure of the Schedules	
Submissions	**MPI response**
<u>Numbering of Rows</u> Four submitters commented on the restructure of the schedules. While the restructure and layout of the table was considered to be an improvement, two submitters were concerned about the numbering of the rows. Concerns expressed about the row numbering were that: • It adds unnecessary complexity and administration. • The numbers are not unique, row numbers being duplicated in different schedules. • Row numbers are not relevant to exemptions enabled by sections 2.1.2 through 2.1.4. • It would be difficult to add or remove entries while retaining existing row numbers. Both of the submitters expressing concern felt that if numbering was required numbers should be unique to each schedule and numbering should use a country code a product type code and then a number.	The rational for adding row numbers was to assist in verification of requirements. As the size of schedules increase it is more difficult for verifiers to know which exemption is meant especially in situations where the product description does not match that in the schedule. MPI notes the comments of the submitters however and will: • Remove the row numbering from the schedules. • Adjust record keeping requirements to remove the reference to the row number. • Add guidance into the document to encourage the operators to assist with alignment between product descriptions in internal documentation and those used in the Notice.

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Restructure of the Schedules	
Submissions	**MPI response**
Mistakes in Requirements One submitter noted the following mistakes in the schedules. Schedule 2: • Row AM1 column 4 should have a minimum of 8.5mcg/100kg indicated • Row AG1 column 6 should state "no specified requirements" and column 5 should be blank (to be consistent with row FX1) Schedule 5: • Rows A1-D1 – maximum permitted levels should be maximum addition rates.	MPI thanks the submitter for the effort of working through the schedules in detail and will correct these mistakes.

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Incorporation by Reference	
Submissions	**MPI response**
Three submitters responded to the question concerning the incorporation by reference of the Codex Standard for Follow-up Formula (CODEX STAN 156-1987). Two indicated they had no concern with its incorporation and the third qualified this saying they had no concerns with its incorporation "solely for the purposes of the Hong Kong self-exemption for dairy based Formulated Supplementary Foods for Young Children".	MPI notes the submissions and will incorporate the Codex Standard for Follow-up Formula (CODEX STAN 156-1987) by reference into the Food Notice: Food for Export – Exemptions from Domestic Compositional Requirements. In the notice the reference to this standard is limited to exemptions for Formulated Supplementary Food for Young Children sent to Hong Kong.

Record Keeping Requirements	
Submissions	**MPI response**
There were four submitters who commented on the record keeping requirements. One had no objection to them and felt they would assist in management of AP E-cert transfer declarations while three submitters had concerns, in particular about the requirements in Part 4(4).	
<u>Part 4(3)(f)</u> One submitter wrote: "Sub clause (3)(f) would require that in order to utilise a published exemption that a manufacturer would need to have knowledge of the importing country requirements rather than rely on the exemption notice itself, we support this requirement."	MPI thanks the submitter for their support and notes that this requirement relates only to exemptions granted under Part 2.1.2 and 2.1.3.

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Record Keeping Requirements	
Submissions	**MPI response**
Part 4(4) Two submitters expressed concern about the requirement to supply the customer with information to the effect that the product does not meet New Zealand regulatory requirements and cannot be sold in New Zealand for human consumption. They felt that such statements may cause unwarranted concerns that the product may not be safe unless the importer has a detailed understanding of the ANZ regulatory system and asked that it be removed. One submitter stated that: "We also believe that our overseas partners' primary concern and interests are to ensure products comply with their own country requirements rather than ANZ requirements. Accordingly, information relating to the compliance of the products against their own country requirements may be more of interest to them." Two submitters indicated that this requirement was not practical due to the nature and type of documents where these statements are often found. Two submitters note that the Transfer Control Declarations are used to indicate that the product is manufactured under a food safety exemption and the countries of eligibility.	The purpose of informing the customer that the product does not meet the New Zealand requirements and cannot be sold in New Zealand is to make it clear that the product may not be re-exported to New Zealand. On further reflection however MPI accepts the proposal in Part 4(4) is not an appropriate method of managing this risk and will delete Part 4(4).

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