

Project Officer Proposal P1054
Food Standards Australia New Zealand
PO Box 10559
The Terrace
Wellington 6036

14 November 2019

Dear Sir/Madam

P1054 – Pure and highly concentrated caffeine products

Thank you for the opportunity to comment on this proposal.

Risk management

New Zealand Food Safety (NZFS) agrees that pure and highly concentrated caffeine products pose an unacceptable acute human health risk to consumers. The proposed prohibition of the retail sale of foods with a caffeine concentration of above 5% (5g/100g) is a clear cut-off point which provides clarity for both industry and regulators.

However, NZFS recommends that further consideration needs to be given to the format or the presentation of the caffeine-containing foods. The consultation document makes it clear that there is an obvious risk with products that require consumers to measure out an individual serving (e.g. powders or liquid concentrates), even if the manufacturer has provided a measuring implement. NZFS agrees that the risks associated with these types of products need to be managed immediately and that the proposed 5% limit can adequately manage this risk.

NZFS would like FSANZ to give further consideration to other forms of food. We have identified a caffeine strip product that is currently sold in New Zealand and Australia as a supplemented food. Even though each strip contains 40mg of caffeine, the lightweight nature of these products means that they are over the proposed 5% limit for caffeine and will be captured under the prohibition. NZFS understands they and caffeine containing gum are used as part of elite athletes' sports nutrition programme because they contain a precise amount of caffeine. As they are individually packaged in pre-measured single servings, NZFS believes they pose less risk than products requiring the consumer to self-measure servings. We consider that the prohibition of these types of product is an unintended consequence of the proposed 5% caffeine limit. Therefore, FSANZ should give further consideration on the presentation of the caffeine-containing foods.

Application to New Zealand Food (Supplemented Food) Standard 2016

The consultation document correctly points out that by inserting a new paragraph, paragraph 1.1.1—10(5)(g) in to the Australia New Zealand Food Standards Code, that paragraph will apply to supplemented foods under the New Zealand Food (Supplemented Food) Standard 2016 (Supplemented Food Standard). NZFS intends for the proposed variation to apply to supplemented foods. However, if stakeholders raise concerns on the application of the proposed limit, NZFS will do a risk assessment to inform any decision to amend the Supplemented Food Standard.

World Trade Organisation (WTO) notification

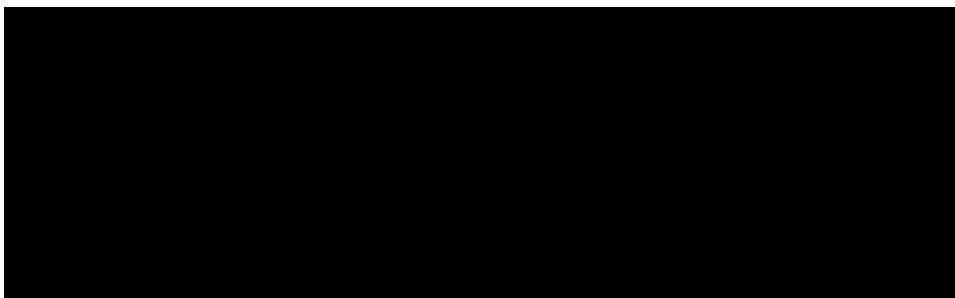
NZFS considers that a notification to the WTO under New Zealand's obligations under the WTO Technical Barriers to Trade Agreement (TBT) is necessary as the proposed 5% limit on caffeine across foods for retail sale that do not already have restrictions "may have a significant effect on trade" (Article 2.9 of the TBT). We have already identified a product (caffeine strips) that will be prohibited under the proposed 5% limit which are made in the United Kingdom and imported into New Zealand and Australia. As the proposed limit imposes a regulatory measure for general foods which is inconsistent with other existing or imminent international standards (as described in the consultation document), FSANZ should make a notification to the WTO as per the obligation for member countries. This notification can provide for the same period for comment that was granted to the public.

Stock-in-trade provision

NZFS would like FSANZ to clarify the application of section 1.1.1—9 to the proposed variation if approved. Section 1.1.1—9 effectively allows for a stock-in-trade provision for 12 months from the date of the variation. Given the acute human health risk that pure and highly concentrated caffeine products have, and that a variation made under an urgent proposal can only last for 12 months at the longest, NZFS considers that the proposed variation should also impose a much shorter or no stock-in-trade provision for foods containing a very high concentration of caffeine (i.e. caffeine powder intended to be used in food manufacturing as an ingredient or food additive). Section 1.1.1—9 can continue to apply to foods with a lower caffeine concentration.

In summary, NZFS agree that there is an unacceptable risk posed by pure and highly concentrated caffeine products. We agree that action needs to be taken to prohibit the retail sale of foods with a concentration of caffeine above 5% when the consumer is required to measure the individual serving of that food. However, though these products are not without risk, further consideration needs to be given to caffeine-containing foods that are individually packaged in pre-measured single servings.

Yours sincerely,



Director Food Science and Risk Assessment