



Kmart Australia Ltd
800 Toorak Road
Tooronga Vic 3148

April 8, 2003

MRA Review
Productivity Commission
PO Box 80
Belconnen ACT 2616

Dear Sir or Madam,

2003 Review of the Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Arrangement

Kmart previously lodged a submission, number 28, with the Commission.

That submission discussed the differences between the New Zealand and Australian standards and compliance regimes in relation to the public safety aspects of imported ceramic ware. It raised a number of issues concerning the analysis methodology and the New Zealand administration of the program.

To summarise, it recommended that ceramic ware be removed from the Special Exemptions category and granted mutual recognition status on the basis that

- the objectives of the Australian and New Zealand regimes were substantially identical
- the Australian compliance regime adequately managed the public risk factors based on best available scientific evidence and risk management principles
- aspects of the New Zealand testing regime and administrative practice represented a barrier to trade.

This second submission deals with graphic materials (that is materials used for writing drawing, marking and painting) when imported into New Zealand from Australia. In this regard Kmart has encountered similar issues as outlined in our earlier submission.

However, the main difference in this instance is that Kmart long ago abandoned efforts to accommodate the obstructive elements of the New Zealand analysis and compliance regime preferring instead to source imported graphic materials from local distributors. This transfers all the problems to the local distributor, but in so doing Kmart incurs higher intermediate costs which are additional to the preferred method of direct importation. Ultimately these costs flow through to the consumer.

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New Zealand legislation

The importation of graphic materials into New Zealand is controlled under the *Toxic Substances Regulations 1983*. The objective of the regulations is to prevent the incidence of poisoning due to the ingestion of graphic materials containing high levels of toxins.

Management responsibility for this program rests with the Ministry of Health (MOH). Operational aspects of the program are conducted by the Public Health Service (PHS). We understand that the MOH has issued a document entitled *Toxic Elements and their Compounds in Graphic Materials - Guidelines for Public Health Services, 1997*. We do not have a copy of this publication but the PHS appears to have used this as a basis when preparing *Public Health Guidelines for the Clearance of Imported Graphic Materials*, which is attached.

Recent Kmart experience

In December 2002 Kmart New Zealand imported the 'Fun Stuff' 86 piece art set, keycode 37839505. This product was sampled by the New Zealand health authorities and we were subsequently advised that it failed the toxicity test.

This importation was unusual because, as previously stated, our normal practice is to source product from a local distributor. However, in this instance there was strong pre-Christmas public reaction to this product in Australian stores and Kmart New Zealand requested supply from Australian stocks because the local distributor did not carry this item.

Kmart's internal risk management program adheres to international standards and these have been incorporated into our quality control procedures, as discussed below. These procedures were followed in respect to the 'Fun Stuff' set and, in our view the product does not represent a public health risk because it meets the required safety standards.

Kmart's Risk Management Program

Kmart takes a very serious approach to its obligations in relation to the protection of public health and has implemented a set of stringent Quality Control procedures.

Kmart standards demand that all graphic materials meet the toxicological requirements of AS1647 Part 3. All suppliers must provide Kmart with a relevant test report before an order is finalised.

For a number of years Australia has adopted an industry self regulatory approach to managing risk in relation to graphic materials. Industry is responsible, conscientious, well educated and understands the benefits associated with meeting the relative safety standards and procedures, especially where public safety is involved. As a result, this program has been highly successful, the evidence is reflected in the zero incidences of poisoning over this period.

In the case of keycode 37839505 our Quality Control procedures, as outlined above, were followed and Kmart was satisfied that the product met the required

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safety standards, the order was approved and goods imported into Australia. When a quantity of these art sets were packed for shipment to New Zealand no certificate meeting the normal 90 day requirement imposed by New Zealand health authorities was available. Therefore a re-test was necessary, at a cost of another \$2,400.

The second test was conducted by New Zealand health authorities and was reported to exceed the acceptable levels of toxicity in a blue colour in the paint palette. Therefore, the set failed and was directed to be either destroyed or have the offending blue colour replaced with another product that satisfies the safety standard.

The supplier of the product is confident the product meets the safety standard and therefore disputes the New Zealand test result. We understand it will lodge its own submission to the Commission in relation to the safety aspects of the product and the test procedures.

Costs

This particular recall involves one shipment only. The costs to Kmart include lab test fees of \$2, 400, land transport from stores to storage location of \$1,050, lost sales of \$10,000, plus destruction or repack costs.

The product cost and efficiency loss due to sourcing these products from local distributors is more enduring but difficult to estimate. The related uncertainty and difficulty in meeting the compliance requirements long ago was the underlying cause of trade diversion of this particular product. To avoid problems Kmart terminated normal supply arrangements and re-engineered its order fulfilment procedures in effect contracting out the importation and clearance responsibilities.

Recommendation

That graphic materials should be removed from the category of Special Exemptions and the scope of the Mutual Recognition Agreement should be broadened to include graphic materials. From the point of view of protecting public health and safety industry self regulatory practices currently operating in Australia have proven to be adequate.

Yours faithfully

KMART AUSTRALIA LTD

SERGIO GALANTI

Divisional Merchandise Manager

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Note: Submission No. 53

Attachment: “Public Health Guidelines for the Clearance of Imported Graphic Materials”
(four pages).

The Commission is seeking permission from the Auckland Healthcare Public Health
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