Food Regulation Standing Committee

Consultation Paper on Country of Origin Labelling of Food

January 2003

1. Introduction

1.1 Purpose

This paper outlines what the Food Regulation Standing Committee (FRSC) Working Group considers to be the rationale and possible objectives of Country of Origin Labelling (CoOL) and the issues that Ministers will need to consider in providing policy guidance to Food Standards Australia New Zealand (FSANZ)*.

The Working Group is calling for submissions from interested stakeholders regarding their preferred option for regulating country of origin labelling in Australia and New Zealand, and the objectives that this option meets. Specifically, submitters are asked to consider whether CoOL should be provided for in the *Food Standards Code* or by other mechanisms. To reach this decision, they need to consider whether CoOL specifically for food provides net benefits.

1.2 Submission Process

A response sheet is attached to assist stakeholders in considering this issue. Please use this form to provide your submission. The Working Group is seeking your preferred option, and your justifications for this position against the objectives identified.

Submissions or responses should be addressed to:

Australia
Submissions - Country of Origin Labelling of Food
C/- Food Regulation and Safety Section
Food and Agriculture Group
Department of Agriculture, Fisheries and Forestry – Australia
GPO Box 858
CANBERRA ACT 2601

Or emailed to – sonia.nielsen@affa.gov.au

New Zealand
Submissions – Country of Origin Labelling of Food
C/- Policy & Regulatory Standards
(Labelling and Composition)
New Zealand Food Safety Authority
PO Box 2835
WELLINGTON

Or emailed to – inksterc@nzfsa.govt.nz

Submissions are to be received by **Friday 28 February 2003**.

2. Background

* The Statutory Authority with responsibility for setting food standards, Food Standards Australia New Zealand (FSANZ), has had a number of name changes over the past ten years (The National Food Authority and the Australia New Zealand Food Authority). For ease of reference, FSANZ will be referred to by its current name in this document.

FSANZ commenced the review of the CoOL provisions in Australia and New Zealand with the aim of harmonising requirements in both countries for the new joint Australia New Zealand Food Standards Code.

FSANZ commenced the new review in May 2001 by raising Proposal P237 – Preliminary Assessment Report – Country of Origin Labelling of Food. FSANZ was able to complete a significant amount of consultation and research into this issue. However, the review was delayed when FSANZ was not able to resolve the CoOL issue using objective, scientific evidence.

In October 2001, the Managing Director of FSANZ wrote to Ministers seeking policy advice from the Australia and New Zealand Food Standards Council (ANZFSC) to guide FSANZ in moving forward and completing the review of CoOL.

A Food Regulation Standing Committee (FRSC) Working Group was established to provide the Council with advice on options available to government on CoOL for food for its use in providing this policy guidance to FSANZ.

2.1 Current CoOL legislation

Currently, Australia and New Zealand have differing country of origin labelling requirements for food.

In New Zealand country of origin labelling of food is regulated through fair trading legislation, with the exception of wine and wine products. This legislation does not require that products be labelled with CoOL, but does require that where a product is so labelled, any claims about its origin must not be misleading or deceptive.

Country of origin labelling of food in Australia is currently regulated under:

- The State and Territory Food Acts and the *Imported Food Control Act 1992* which adopt the provisions of the Australian New Zealand *Food Standards Code*;
- The *Commerce (Trade Descriptions) Act 1905* and the *Commerce (Imports) Regulations 1940*; and
- The *Trade Practices Act 1974* (TPA).

Currently, Standard 1.1A.3 – Transitional Standard for Country of Origin Labelling Requirements is in place in the joint *Food Standards Code*. This standard incorporates the various country of origin requirements contained in the Australian *Food Standards Code* and certain requirements of the New Zealand *Food Regulations (1984)*. These requirements operate for a period of two years from the commencement of alternative country of origin provisions elsewhere in the Code. Standard 1.1A.3 is set out at **Attachment A**.

For Australia, the Code requires mandatory CoOL for all packaged foods, which indicates either the country from which the entire product originates, or at least the place of packaging

and a statement as to whether or not the product contains local and/ or imported ingredients. Some unpackaged foods, (fruit, vegetables, fish and nuts), also require CoOL, or at least a label at point of retail sale stating that they are imported. Food and beverages are the only

products in Australia that have mandatory country of origin labelling provisions past point of entry into the country.

For New Zealand, the Code requires CoOL on wine and wine product packages only.

The *Commerce (Trade Descriptions) Act 1905* covers imported foods and requires that all goods prescribed under its Regulations carry a description, statement, indication, or suggestion, direct or indirect, as to the country or place in or at which the goods are made or produced. The *Commerce (Imports) Regulations 1940* list the goods which are prohibited imports unless they bear a proper trade description. This list includes food and drink, including items for manufacture. The Regulations also define trade description, outlining what form it may take and how it must be attached to the goods.

The *Commerce (Trade Descriptions) Act 1905* and its Regulations are administered and enforced by the Australian Customs Service. Both are currently the subject of an Australian National Competition Principles Review. The Review Committee has made its recommendations to the Minister for Justice and Customs. If the recommendations are accepted, the *Commerce (Import) Regulations 1940* will be repealed, and food will no longer be required to carry CoOL at point of entry into Australia under this Act.

The *Imported Food Control Act 1992* is administered by the Australian Quarantine and Inspection Service (AQIS) and adopts the provisions of the *Food Standards Code*. This Act requires that, at point of entry to Australia, food must carry the information required by the *Food Standards Code*. Exceptions to this requirement are made when an international treaty provides otherwise.

The TPA prohibits false and misleading labelling of all products (not just food). The TPA was amended in 1998 to provide definitions for country of origin claims on labels and advertising (ie 'product of' and 'made in'). Although the TPA does not require mandatory country of origin labelling of food, it does require that any claims made in this area comply with these definitions and must not be false, misleading or deceptive.

Therefore, there are currently several different pieces of legislation covering this issue in Australia. While each piece of legislation contains provisions pertaining to the declaration of CoOL for that product, the labelling outcome is markedly different between the pieces of legislation due to the differing objectives of each.

3. Broad Policy Framework

3.1 FSANZ objectives

The objectives of FSANZ in developing or reviewing food regulatory measures are set out in the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). In descending priority order, these are:

- The protection of public health and safety;
- The provision of adequate information relating to food to enable consumers to make informed choices; and
- The prevention of misleading or deceptive conduct.

(subsection 10(1))

In developing or reviewing food regulatory measures, FSANZ must also have regard to the following:

- The need for standards to be based on risk analysis using the best available scientific evidence;
- The promotion of consistency between domestic and international food standards;
- The desirability of an efficient and internationally competitive food industry;
- The promotion of fair-trading in food;
- Any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority.

(subsection 10(2))

3.2 COAG principles and the New Zealand Code of Good Regulatory Practice – minimum effective regulation

The Council of Australian Governments (COAG) has articulated principles for national regulation making and assessment in its Principles and Guidelines for National Standing Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies (as amended in 1997). These principles are directed at achieving minimum effective regulation taking into account economic, environmental, health and safety concerns. They are also consistent with the objectives of Australian National Competition Policy.

National Competition Policy represents a commitment by all Australian governments to a consistent approach to fostering greater economic efficiency and improving the overall competitiveness of the Australian economy. It requires that regulation should only be provided if it provides net social benefits and these benefits can only be achieved through a regulatory approach.

The New Zealand Code of Good Regulatory Practice (1997) requires five tests to be applied to regulation making: efficiency, effectiveness, transparency, clarity and equity. The effectiveness test requires that regulation should only be adopted for which the costs on society are justified by the benefits to society and which achieve objectives at lowest cost, taking into account alternative approaches to regulations.

3.3 Bi-lateral Agreements – Australia and New Zealand

Australia and New Zealand have three bi-lateral treaties that are relevant to the issue of CoOL – the Australia New Zealand Closer Economic Relations Trade Agreement (CER), the Trans Tasman Mutual Recognition Agreement (TTMRA) and more specifically, the Australia New Zealand Joint Food Standards Setting Agreement (the Treaty).

The central provision of the CER is the creation of a WTO-consistent Free Trade Agreement between Australia and New Zealand. In addition to achieving the elimination of all tariffs and quantitative restrictions on trade in goods, the agreement also covers services and addresses the harmonisation of a range of non-tariff measures that affect the free flow of goods and services, including those relating to quarantine and customs issues, standards and business laws.

The TTMRA is a form of an equivalence agreement that, in the case of food and drinks, provides for products that meet the regulations in one country to be legally sold in the other country.

The Treaty provides for the establishment of a harmonised food standard setting system for Australia and New Zealand, based on the Australian arrangements. The joint system is intended to reduce compliance costs for industry and assist in reducing regulatory barriers to trade in food between Australia and New Zealand.

3.4 WTO

Australia and New Zealand are both signatories to the two key WTO agreements relating to food regulation – the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement). Both of these Agreements oblige Australia and New Zealand to develop standards that are no more trade restrictive than is necessary to achieve the desired outcome.

3.5 Specific objectives - country of origin labelling of food

In order for CoOL to be best managed, and by the most appropriate mechanism, the objectives that are fulfilled by CoOL should first be clarified.

The possible objectives as identified are:

- Protection of public health and safety;
- Provision of consumer information to facilitate informed choice;
- Prevention of misleading and deceptive conduct; and
- Facilitation of trade.

As well as determining the objectives of CoOL, consideration needs to be given to how these are best achieved and whether or not the joint *Food Standards Code* is the appropriate vehicle for achieving them. For example, if it is demonstrated that CoOL plays a role in protecting public health and safety, then scientific evidence should be available to support this and to support the case for the mandatory Australian provisions to be retained in the Code and potentially, therefore, extended to New Zealand. If instead CoOL is proposed for consumer information only, so that consumers can make informed choices, a case for mandatory labelling might be developed. However, if CoOL is primarily a matter of trade and providing local producers and processors with a market advantage, there is no role for FSANZ in regulating CoOL under Section 10 of the FSANZ Act.

4. Consideration of issues

4.1 The role of CoOL in food product recalls

In New Zealand, recalls have been successfully conducted for a wide variety of food safety reasons including most recently Bovine Spongiform Encephalopathy (BSE) and soy sauce. These have been affected without recourse to mandatory country of origin labelling requirements. In general, the New Zealand experience is that recalls fall into one of three categories: a specific product and manufacturer, a specific product type, or a specific product type from a specific country. New Zealand considers that only in the last category could CoOL conceivably play a role. In the first two, other information sources form the primary basis for recall such as product name, description, other labelling information, container shape or size or other certification/import information.

New Zealand considers that while CoOL might have a role in recalls of a specific product type from a specific country, in practice this is not the case. One of the major reasons why New Zealand finds that CoOL is not particularly useful in these cases is that ingredients from a wide range of sources and countries commonly enter international trade as mixed, repackaged, or reformulated products for retail sale from a specific country. CoOL on the final product does nothing to help the regulator in these cases unless it was available to ingredient level. The country of origin is lost and the CoOL could be misleading. The only practical way to establish the acceptability or otherwise of specific products from specific countries if a problem is suspected is by way of enquiry into the origin of the ingredients of the traded product from the country of export. New Zealand has not had a situation where the absence of CoOL has hindered the regulator in recalling product.

FSANZ's Food Industry Recall Protocol - A Guide to Conducting Food Recalls (July 2001), which applies only in Australia, sets out the information that should be supplied to FSANZ and State and Territory Health Departments before a recall is initiated in order to conduct a proper hazard or risk assessment. Country of origin is not amongst the information required.

Similar information is required to be included in the text of any recall advertising in the event of a consumer recall, so that consumers are able to easily identify the product that is the subject of the recall. CoOL is not specifically required by FSANZ in these public notifications, but could be included as a 'detail necessary for fool-proof identification' for consumers.

For the majority of routine product-specific food recalls in Australia, CoOL is not an essential requirement for the effective management of food recalls. These recalls are related to single or related food products and specific information relating to the name and description of the product, manufacturer's details and batch code/use-by date are the most useful tools to facilitate timely identification and recall of products.

For the limited number of country-specific major international food safety emergencies (eg. BSE, dioxin contaminated beef and dairy products from Belgium in 1999, and the 1986 Chernobyl nuclear accident affecting food products from the Ukraine and neighboring countries), FSANZ considers that it would be difficult for it, health agencies and industry to locate affected products that have already entered Australia in a timely way in the absence of CoOL. This information is presently required to be on all imported foods and beverages at point of entry into Australia by the *Commerce (Import) Regulations 1940*, which may be

repealed following the recommendations of the National Competition Principles Review Committee.

In the 1999 dioxin contaminated Belgian beef and dairy products issue and the 2001 BSE issue, FSANZ relied on CoOL to provide advice to retailers to voluntarily withdraw the implicated stock from their shelves. Furthermore, FSANZ directed Australian consumers to use CoOL to discard this imported food.

However, as CoOL will often only indicate where a product has been manufactured, this will not always reflect the actual origin of the food or ingredients. This is particularly the case where a product is labelled 'made in', meaning in Australia only that the goods must have been substantially transformed in the country claimed to be the origin and 50 per cent or more of the costs of production must have been carried out in that country, as provided for under the TPA. Therefore, although Australian consumers were directed by FSANZ to use the CoOL information, this would not always have allowed them to identify the origin of the ingredients in products if the term 'made in' was used on the label.

AQIS has indicated that in some cases CoOL is an important identifier of risk and that its presence on packaged foods is used in matching product to paperwork during inspections, but that any trace back activities are based on records and certification provided by the importer. In the event of the repeal of the *Commerce (Import) Regulations 1940*, the *Food Standards Code* would be the only piece of regulation in Australia requiring this information to be provided.

4.2 Consumer demand

One of FSANZ's objectives as set out in the FSANZ Act is the provision of adequate information relating to food to enable consumers to make informed choices. There has been very little thorough formal research carried out on consumer demand for CoOL in either Australia or New Zealand. Notwithstanding, submissions from consumer groups made to FSANZ during the initial assessment of this Proposal indicated a high level of consumer demand for CoOL on food products sold in Australia, but virtually no consumer demand for this information in New Zealand.

FSANZ has also coordinated some qualitative consumer-based research on broad labelling issues, of which country of origin labelling was a component. The overall aim of the research was to provide an in-depth understanding of awareness, knowledge and attitudes toward food labelling amongst consumers and selected stakeholder groups in Australia and New Zealand before the joint *Food Standards Code* becomes the sole Code, and thereby benchmark awareness. Outcomes from this qualitative research, conducted by NFO Donovan Research, were broadly consistent with the indications above that there is a much higher awareness and use of CoOL in Australia than there is in New Zealand.

Consumer groups raised a number of issues regarding CoOL during FSANZ's consultation period. Firstly, there is considerable consumer confusion in Australia surrounding the TPA terms 'made in' and 'product of'. Secondly, there is a perception in Australia that CoOL is an indicator of whether or not a food product is safe. Australian consumers have also indicated that the information allows them to purchase Australian products as a means of

supporting local products and businesses. Consumer groups also said that the information allows them to seek out, or avoid, product from other countries, for example, when advised of illegal or exploitative animal or human practices.

Australian consumer and industry confusion over the meaning of the terms 'made in' and 'product of', cannot be remedied by applying mandatory labelling to food products. The Australian Competition and Consumer Commission (ACCC) has been active in seeking solutions to address this confusion in the past and is about to release "Foods and beverage industries: Country of origin guidelines to the Trade Practices Act". While this seeks to clarify the requirements for industry, however, it will not address consumer confusion.

With regard to public health and safety, Australian consumer perceptions of the protection afforded by CoOL has been re-enforced during the number of recalls in Australia, including the recent BSE related recalls in 2001, where Australian consumers were directed to use this information to remove products from their shelves (as discussed above in 3.3). Consideration should be given to the appropriateness and effectiveness of this approach and whether or not it adds any value to the other systems used in trace back – eg certification.

Consideration is also needed on whether a mandatory CoOL provision is required for consumers to make informed choices, or whether businesses have a strong incentive to provide consumers with the information that they need in order to make their purchasing decisions.

4.3 Industry view – primary producers and processed food manufacturers

During the course of both FSANZ reviews of CoOL, the views of industry stakeholders have varied. Generally, submissions to FSANZ indicated that primary producers and their peak bodies were divided on the preferred regulatory option, while food manufacturers and processors were in favour of removing the mandatory provisions from the *Food Standards Code*.

Some primary producers support the development of a new Standard that requires mandatory CoOL. In some cases this support extends to CoOL for ingredients. FSANZ believes that this probably reflects the ease with which CoOL can be identified for single ingredient foods, or foods that have not been subject to extensive processing. Primary producer views are also divided along the lines of those who export and those who are almost exclusively domestically focussed.

New Zealand has advised that their enquiries have identified that export oriented primary industries clearly recognise the cost implications and the limitations on flexibility for marketing a product if there are also domestic requirements to be met in labelling that are not health and safety related. For example, the seafood and red meat industries oppose mandatory CoOL as another hurdle for marketing their product.

The range, number and seasonal variation of ingredients used in processed foods may explain the lack of support for CoOL by manufacturers of processed foods. The removal of the current mandatory requirements would result in cost savings, which would aid in the development of an efficient and internationally competitive food industry. Submissions

suggest that processed food manufacturers are of the view that CoOL is a matter that is more appropriately dealt with by the market than by regulation.

4.4 Trade implications

4.4.1 *New Zealand*

As previously mentioned, Australia and New Zealand are signatories to three relevant bi-lateral agreements (the CER, the TTMRA and the food standards Treaty).

New Zealand has clearly indicated that it supports voluntary country of origin labelling and is opposed to mandatory country of origin labelling for a number of reasons including:

- CoOL is not a public health and safety issue and is considered ineffective as a tool for consumers to use to make food safety related purchasing decisions;
- other regulatory and non-regulatory mechanisms are available to regulators to ensure food is safe on entry into the market;
- where recall is necessary, the absence of CoOL has not impeded emergency responses in New Zealand over many years;
- there are potential costs to the processor and to the consumer of any mandatory labelling requirement;
- there are government costs in enforcing a mandatory requirement;
- it potentially reinforces consumer perceptions that should be addressed through education and effective problem management;
- there are WTO SPS and TBT compliance concerns and issues of consistency with positions taken internationally both bilaterally and multilaterally in relation to similar issues; and
- concerns that mandatory CoOL supports promotion of the 'Buy Australia' programme that is somewhat contrary to the objectives of CER in that it differentiates between Australian and New Zealand like products.

New Zealand has indicated a strong preference to follow the objectives of the Treaty and the Act and seek a harmonised approach to CoOL in Australia and New Zealand. Ministers are also obliged to seek this result under the Treaty and the Act.

However, there are already a number of standard variations between Australia and New Zealand in the joint Code: Standard 1.4.2 - Maximum Residue Limits – Australia only; Chapter 3 - Food Safety Standards – Australia only; Standard 2.4.2 - Edible Oil Spreads – clause 2(2); Standard 2.1.1 – Cereal and Cereal Products – clause 4(1).

4.4.2 Codex

Section 4.5 of the Codex General Standard for the Labelling of Pre-packaged Foods currently provides that the country of origin of food shall be declared if its omission would mislead or deceive the consumer. It also stipulates that, when a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered the country of origin for the purposes of labelling. This is in line with the TPA

provisions in Australia and is less prescriptive than the provisions in the *Food Standards Code*.

Country of origin labelling is currently under discussion in the Codex Committee on Food Labelling (CCFL). At the 30th session of CCFL in May 2002, the views of delegates were widely divergent, with many delegations opposing further work to amend the standard as it currently stood, and many others stressing the need to strengthen the Codex provisions in the interest of consumer information. Importantly, even those delegations in favour of amending the Codex requirements did not view CoOL as being relevant to addressing safety concerns regarding food.

A decision on whether or not to amend the Codex CoOL provisions is not expected to be reached before Ministers are due to decide on this issue domestically in April 2003. Therefore, rather than focussing on consistency with the Codex standard, stakeholders may choose to focus on consistency with Australia and New Zealand's negotiating position on this issue at Codex (and other international fora).

4.4.3 WTO

The Commonwealth Department of Foreign Affairs and Trade (DFAT) advise that they are not aware of any complaints by other countries about Australia's current country of origin labelling rules, but notes that the current system pre-dates the WTO Agreements, which entered into force in 1995. However, any change to CoOL will now need to be notified to the WTO and will raise the issue for WTO member comment.

The WTO Agreements do not preclude WTO members from implementing mandatory CoOL requirements, however, such requirements must comply with WTO disciplines. Australia would be required to submit a WTO notification to the appropriate WTO committee in the event it revised the existing standard or introduces a new standard, even if the substance of the standard was identical to the existing standard. This notification would have to be made under either the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) or the Agreement on Technical Barriers to Trade (TBT Agreement). If such requirements were introduced to New Zealand, New Zealand would also have to notify the relevant WTO committee. Australia and New Zealand are both parties to these two key WTO Agreements.

DFAT and MFAT have advised that the standard would need to comply with the terms of the SPS Agreement if it was being introduced to protect human health from identified food borne risk. To be a legitimate SPS measure, the CoOL provisions must address a specific risk or risks for each product or class of product, and must be necessary to manage that risk to a certain level. The SPS Agreement requires SPS measures to be scientifically justifiable (by being based on a proper scientific risk assessment or an international standard) and not be more trade restrictive than necessary to manage an identified food borne risk. 'Not more trade restrictive than necessary' means that there is no other measure, reasonably taken into account technical and economic feasibility, that achieves the level of health protection sought. MFAT has advised that a blanket country of origin labelling regime may well be difficult to justify in these terms.

Alternatively, CoOL could fall within the scope of the TBT Agreement where it applied for consumer information or to facilitate product recalls in food safety emergencies. Such a food

safety reason would have to be demonstrated as outside the scope of the SPS Agreement. The TBT Agreement lists as legitimate objectives *inter alia* the prevention of deceptive practices, and the protection of human health and safety outside the scope of the SPS Agreement. The provision of consumer information could also constitute a legitimate objective under the TBT Agreement but not on the basis of consumer demand only. The TBT Agreement requires technical regulations (i.e. mandatory standards) to be applied in a non-discriminatory manner, and not be more trade restrictive than necessary to fulfil a legitimate objective.

It is noted that Australia and New Zealand have both argued – both in Codex and in response to the EC's proposed labelling and traceability requirements on GMOs – that food should be safe before it enters the marketplace and that current pre-market clearance processes for food are the best assurance that foods pose no threat to human health. Similarly, Australia and New Zealand have both separately voiced opposition to bills in the US and Canada proposing mandatory labelling for meat imported into these countries claiming that it will act as a barrier to trade and will add unjustifiable costs to Australian and New Zealand products.

The review of the *Commerce (Trade Descriptions) Act 1905* could potentially raise a further issue in the context of the WTO Agreements. Article 2.1 of the TBT Agreement contains a national treatment obligation not to discriminate between domestic and imported goods, as does Article III:4 of GATT. If the mandatory provisions were removed from the *Food Standards Code*, but retained in the *Commerce (Trade Descriptions) Act 1905*, it would place Australia in breach of this obligation, as CoOL would be required on imported products only.

4.5 Costs and benefits to government, industry and consumers

Australia's National Competition Policy, implemented in 1995, requires that any regulations provide a net social benefit which could not be provided other than by regulation. Similarly, New Zealand's Code of Good Regulatory Practice requires that only regulations for which the costs on society are justified by the benefits be adopted and that these achieve objectives at lowest cost.

In Australia, there is little quantitative evidence, and limited qualitative evidence, available to assess either the cost or benefits of maintaining the provisions for CoOL. In New Zealand, there is no quantitative or qualitative evidence of the costs or benefits of introducing mandatory country of origin labelling.

Australian industry bodies claim that the costs of CoOL are substantial. It should be noted, however, that in Australia industry is already required to provide CoOL on all packaged and some unpackaged goods and therefore would not be required to alter labels, unless the provisions were extended to cover more unpackaged foods, or ingredients. In the case of a new, extended standard, industry could also incur costs associated with substantiation of country of origin labelling claims for ingredients. Costs in New Zealand could expect to be comparably higher since no mandatory country of origin labelling is currently in place. Any costs would almost certainly be borne by consumers.

The current cost to governments in Australia of CoOL appears to be minimal, as enforcement activities have not in the past been given high priority by State and Territory health agencies in the face of competing food safety enforcement activities. However, the future cost to

government in New Zealand and Australia may be significant because introduction of new laws carries with it the expectation of active enforcement.

4.6 Existing enforcement of CoOL breaches

In Australia, the enforcement of the CoOL provisions in the various pieces of legislation falls to the State, Territory and local government health departments (under the State and Territory Food Acts which adopt the *Food Standards Code*), the Australian Customs Service (*Commerce (Trade Descriptions) Act 1905*), the Australian Quarantine and Inspection Service (*Imported Food Control Act 1992* which also adopts the *Food Standards Code*) and the ACCC and the State and Territory fair trading departments (the TPA and State/ Territory fair trading legislation respectively).

In New Zealand, enforcement of such labelling is almost exclusively by the Commerce Commission under the *Fair Trading Act 1986*. This has operated in New Zealand to its satisfaction for many years.

The enforcement of CoOL breaches in Australia would appear to be reactive rather than proactive in most States and is most often regarding the absence of labelling on the product, or the absence of English labelling on the product. Budgetary constraints have resulted in the responsible agencies only investigating breaches of CoOL provisions when they have received a complaint from industry or consumers. When a complaint is received the responsible agency investigates the claim and will then approach the company involved directly. Negotiation and consultation between the company and the responsible agency is the preferred method of resolution of CoOL breaches. In some cases such negotiations have not been effective and the matters have ended in the courts. But these are isolated incidents.

Information gathered from ACCC indicates that it has pursued six country of origin cases since October 1998. Only one has been taken to the Federal Court, with the rest being resolved by the receipt of court enforceable undertakings of future compliance.

5 Options

Five options have been identified to allow Ministers to give policy guidance to FSANZ. It assessed each against the four objectives for CoOL which had been identified – protection of public health and safety, provision of consumer information, prevention of misleading claims and the facilitation of trade.

Submitters are asked to indicate a preferred option, or combination of options, from below.

Option 1 – Australia's current mandatory CoOL provisions in joint Code

The provisions for mandatory CoOL from the old *Australian Food Standards Code* (Volume 1) would be included as a new standard in the joint *Australia New Zealand Food Standards Code* (Volume 2). This would involve the consolidation or rationalisation of the various standards in the old Code covering CoOL into one, as per the transitional standard - Standard 1.1A.3.

Pros

– May assist in emergency food recalls where specific product from a specific country is being recalled;

– Australian consumers are provided with the same country of origin information as they currently have;

– Some information is provided which assists Australian consumers who prefer to buy Australian produced food, or food produced in a particular country, to make those purchases; and

– Similar CoOL information is currently required in Australia on all domestic and imported food products.

Cons

– Does not in itself provide any surety of public health and safety;

– Is not currently used for food safety or food recall purposes by New Zealand regulators;

– Provides limited information to consumers as it does not require specific country of origin to be identified, nor does it provide information on the country source of ingredients in the case of products labelled with 'made in' claims;

– Would result in costs to New Zealand manufacturers, consumers and government;

– The TPA provisions of 'made in' and 'product of' do not apply in New Zealand, leading to inconsistencies

– Would potentially create inconsistencies for both countries in trade positions taken bilaterally and multilaterally on this issue; and

– Is potentially in excess of minimum effective regulation principle.

Option 2 – No mandatory CoOL provisions in joint Code

The mandatory provisions from the *Australian Food Standards Code* would not be moved into the joint Code. CoOL would be regulated through the TPA and State and Territory fair trading laws and the *Commerce (Trade Descriptions) Act 1905* and its Regulations in Australia (if retained), and continue to be regulated by the Fair Trading Act in New Zealand.

Pros

– Would emphasise the fundamental role of other traceability elements and related 'through chain' approaches to ensuring public health and safety, where there are identified food borne risks to human health or to facilitate product recalls in food safety emergencies;

– Industry could make country of origin claims where there was a market advantage to doing so;

– The TPA would be available to ensure truth in labelling;

– The least trade restrictive option and consistent with WTO obligations and trade positions taken bilaterally and multilaterally;

– Consistent with the Australia New Zealand Food Standards Setting Treaty, TTMRA and the Australia New Zealand Closer Economic Relations Trade Agreement (CER);

– Reduces the cost burden on industry and therefore consumers, particularly in Australia; and

– Consistent with minimum effective regulation principles.

Cons

– Potentially a reduction in information in Australia which may be drawn upon in managing major food safety events;

– Likely public concern at the reduction of the level of information available to consumers in Australia;

– If the *Commerce (Import) Regulations 1940* are repealed, AQIS would need to address the need for specific CoOL provisions in the Imported Food Control Act; and

– If the *Commerce (Import) Regulations 1940* are retained, Australia would potentially be in breach of their WTO obligations to not apply different regulations to domestic and imported goods.

Option 3 – Voluntary Code of Practice under the joint Code

A voluntary Code of Practice would be established with industry under the joint Code and underpinned by the State and Territory Food Acts. The TPA and State and Territory fair trading legislation provisions for false and misleading claims would also apply.

Pros

- Would encourage industry agreed practices and emphasise 'through chain' systems approaches to food safety;
- Could provide similar information to Australian consumers;
- Would encourage industry commitment to 'truth in labelling'. TPA protections would still be available;
- Industry can provide CoOL information to guide consumer choice where there is market advantage to doing so;
- Would be consistent with minimum effective regulation;
- Reduces the cost burden on industry and therefore consumers, whilst having potential to ensure that consumers are not mislead where claims are made; and
- Depending on its application would be consistent with WTO obligations, Codex and potentially both Australia and New Zealand's trade policy stances.

Cons

- May not guarantee information which may be useful in Australia, but not essential, to deal with a food safety event;
- In itself, the voluntary code would not guarantee truth in labelling; and
- Consumer demands for extent of information provided would need to be negotiated with industry and pursued through market preferences.
- If the *Commerce (Import) Regulations 1940* are retained, Australia would potentially be in breach of their WTO obligations to not apply different regulations to domestic and imported goods.

Option 4 –A CoOL standard mirroring TPA provisions that would have voluntary application

A standard that mirrors the TPA definitions for 'made in' and 'product of' would be established under the joint Code. This would require compliance only where the terms ‘made in’ or ‘product of’ were used. This would rely upon industry complying with provisions which could be imposed by the TPA.

Pros

– Would emphasise industry driven practices, systems and markets;

– Will make the TPA definitions applicable in New Zealand, which is consistent with seeking to harmonise requirements as reflected in the Australia New Zealand Food Standards Treaty and promoting co-operation as reflected in the Australia New Zealand Closer Economic Relations Trade Agreement (CER);

– Consistent framework for CoOL between fair trading and food legislation, reducing consumer and industry confusion regarding CoOL terms;

– Reduces the cost burden on industry and therefore consumers, whilst ensuring that consumers are not misled where claims are made;

– Industry could make CoOL claims where there was a market advantage to doing so; and

– Depending on its application would be consistent with WTO obligations, Codex and potentially both Australia and New Zealand’s trade policy stances.

Cons

– May not guarantee information which may be useful in Australia, but not essential, to deal with food safety events;

– May present different enforcement issues between New Zealand food laws and the Fair Trading Act; and

– May make it more complicated to amend the TPA if its provisions are enshrined in the Code.

– If the *Commerce (Import) Regulations 1940* are retained, Australia would potentially be in breach of their WTO obligations to not apply different regulations to domestic and imported goods.

Option 5 – Extending existing provisions – labelling of ingredients

A new mandatory CoOL provision would be included in the joint Code which would require more detailed labelling, through to specifying country of origin of ingredients.

Pros

– CoOL could provide more information to assist in consumer food recall situations;

– Consumers would be provided with more extensive and detailed country of origin information; and

– Consumers would have more information to help guide any preference for local food products.

Cons

– The additional information in itself would not provide any surety of food safety;

– Without increased enforcement, the TPA provisions remain the fundamental protection for Australian consumers;

– Ingredient labelling has been rejected by the Executive Codex Committee as unwarranted;

– Might not be the least trade restrictive, which might result in a challenge from our trading partners in the WTO;

– Significantly increased costs to industry, consumers and government. Would be strongly resisted by some processors and importers on the basis of this increased costs;

– Contrary to Australia and New Zealand's positions on ingredient labelling in export markets; and

– Potentially creates variation in requirements between Australia and New Zealand if New Zealand was to pursue an exemption for New Zealand purposes.

ATTACHMENT A

Current CoOL provisions in Standard 1.1A.3 of the joint *Food Standards Code* are set out below.

STANDARD 1.1A.3
TRANSITIONAL STANDARD FOR COUNTRY OF ORIGIN LABELLING REQUIREMENTS

Purpose

This Standard incorporates the various country of origin requirements contained in the former Australian *Food Standards Code* and certain requirements in the New Zealand *Food Regulations (1984).* These requirements operate for a period of two years from the commencement of any corresponding alternative country of origin provisions elsewhere in this Code. This Standard does not apply in New Zealand, other than certain requirements as they relate to wine and wine products.

Table of Provisions

Clauses

1 Application

(1) For the matters regulated in this Standard, food must comply with this Standard or any alternative country of origin provisions elsewhere in this Code, but not a combination of, or parts of, both.

(2) Subject to subclause (1), food produced in or imported into New Zealand must only comply with clause 11.

(3) Subject to subclause (1), food produced in or imported into Australia must comply with this Standard, other than clause 11.

(4) This Standard ceases to have effect two years from the commencement of any country of origin provisions elsewhere in this Code.

Drafting note:

At the time of drafting this transitional standard, the review of country of origin labelling requirements for food has not been finalised. If this review concludes that there is no need for country of origin declarations on food, then this transitional standard may need to be repealed.

2 General requirements

(1) The label on a package containing food shall include a statement that identifies the country in which the food was made or produced.

(2) If the label on a package containing food includes:

(a) a statement that identifies the country in which the food was packed for retail sale; and

(b) if any of the ingredients of the food does not originate in the country in which the food was packed for retail sale, a statement -

(i) identifying the country or countries of origin of the ingredients of the food; or

(ii) to the effect that the food is made from ingredients imported into that country or from local and imported ingredients, as the case requires;

the label shall be taken to comply with subclause (1).

(3) The material included on a label under this clause may include a comment on or explanation of that material.

(4) Where the name and address of the manufacturer are set out on the label and the address contains the name of the country in which the food was made or produced, the name and address shall be taken to satisfy the requirements of subclause (1).

(5) In this clause, 'ingredient' does not include food additives.

3 Country of origin requirements for fish

(1) In this clause -

fish means a fish or part of a fish ordinarily used for consumption by humankind and includes a crustacean or mollusc.

(2) Subject to subclause (3), if fish, other than fish the country of origin of which is Australia or New Zealand, is displayed for retail sale other than in a package, there must be displayed on or in connection with the display of the fish a label containing, in type of 9 mm, a statement indicating the country of origin of the fish or a statement indicating that the fish is imported.

(3) Subclause (2) does not apply to fish which has been coated with or mixed with one or more other foods, or to cooked fish other than cooked prawns.

4 Country of origin requirements for vegetables

If vegetables, other than frozen, dehydrated or preserved vegetables or vegetables grown in Australia or New Zealand, are displayed for retail sale otherwise than in a package, there must be displayed on or in connection with the display of the vegetables, a label containing, in standard type of 9 mm, a statement indicating the country of origin of the vegetables or a statement indicating that the vegetables are imported.

5 Country of origin requirements for nuts

(1) In this clause -

nuts includes peanuts and coconuts.

(2) If nuts other than nuts grown in Australia or New Zealand are displayed for retail sale otherwise than in a package, there must be displayed on or in connection with the display of the nuts a label containing, in standard type of 9 mm, a statement indicating the country or countries of origin of the nuts or a statement indicating that the nuts are imported.

6 Country of origin requirements for fruit

(1) In this Standard -

fruit means the edible, fleshy fructification of plants, distinguished by their sweet, acid and ethereal flavours.

(2) If fruit, other than preserved fruit or fruit grown in Australia or New Zealand, is displayed for retail sale otherwise than in a package, there must be displayed on or in connection with the display of the fruit a label containing, in standard type of 9 mm, a statement indicating the country of origin of the fruit or a statement indicating that the fruit is imported.

7 Labelling of fruit juices containing imported fruit ingredients

(1) For the purpose of subclause (2), fruit juice, concentrated fruit juice, reconstituted fruit juice, sweetened fruit juice or sweetened reconstituted fruit juice contains an imported fruit ingredient if an ingredient of the food is -

(a) fruit juice or concentrated fruit juice that was imported into Australia; or
(b) a food referred to in paragraph (a) that was prepared in whole or in part from fruit that was imported into Australia.

(2) If fruit juice, concentrated fruit juice, reconstituted fruit juice, sweetened fruit juice or sweetened reconstituted fruit juice offered for sale contains one or more imported fruit ingredients, the label on or attached to a package containing the food must, unless the label expressly indicates that the food is a product of a country other than Australia, include, otherwise than in the ingredient list -

(a) a statement identifying each country of origin of the imported fruit ingredients; or
(b) a statement to the effect that the food is made from -

(i) imported fruit ingredients; or
(ii) imported fruit ingredients and local fruit ingredients;

as the case requires.

8 Country of origin requirements for orange juice

(1) In this clause

orange juice means the liquid portion with or without pulp expressed from the endocarp of sound, mature oranges (*Citrus sinensis* (L.) Osbeck).

(2) For the purposes of subclause (3), orange juice, reconstituted orange juice, concentrated orange juice or sweetened orange juice contains an imported fruit ingredient if an ingredient of the food is -

(a) orange juice, concentrated orange juice or sweetened orange juice that was imported into Australia; or
(b) a food referred to in paragraph (a) that was prepared in whole or in part from oranges that were imported into Australia.

(3) Where orange juice, reconstituted orange juice, concentrated orange juice or sweetened orange juice offered for retail sale, contains one or more imported fruit ingredients, the label on or attached to a package containing the food must, unless the label expressly indicates that the food is a product of a country other than Australia, include other than in the ingredient list -

(a) a statement identifying each country of origin of the imported fruit ingredients; or
(b) a statement to the effect that the food is made from:

(i) imported oranges, imported orange juice, imported orange juice concentrate or imported sweetened orange juice; or
(ii) imported fruit ingredients and local fruit ingredients ;

as the case requires.

9 Country of origin requirements for fruit drinks

(1) In this clause -

comminuted fruit means the comminuted product prepared from that portion of whole fruit which is normally used for human consumption but does not include the peel of citrus fruit.

concentrated fruit puree means the product obtained by removing some of the water from fruit puree.

fruit drink means a product (other than a fruit juice) prepared from one or more of fruit juice, fruit puree, concentrated fruit juice, concentrated fruit puree, comminuted fruit and orange peel extract and one or more of the following -

(a) water;
(b) mineral water;
(c) mineralised water.

fruit puree means the product obtained by sieving the edible part of whole or peeled fruit without removing the juice.

orange peel extract means the water extract of orange peel, with or without the pulp.

(2) For the purposes of this clause, fruit drink contains an imported fruit ingredient if the fruit drink contains -

(a) fruit juice, concentrated fruit juice, orange peel extract, concentrated orange peel extract that was imported into Australia; or
(b) a food referred to in paragraph (a) that was prepared in whole or in part from fruit that was imported into Australia.

(3) Subclause (4) applies only to fruit drink that -

(a) subject to paragraphs (b) and (c), contains at least 350 mL/L of the fruit or fruits after which it is named; or
(b) in the case of lemon fruit drink, blackcurrant fruit drink, or guava fruit drink - contains at least 250 mL/L of lemon juice, blackcurrant juice or guava juice, as the case may be; or
(c) in the case of pineapple fruit drink, pear fruit drink or apple fruit drink or a mixture of those - contains at least 500 mL/L of pineapple juice, pear juice or apple juice or of a mixture of those juices, as the case may be.

(4) If fruit drink offered for sale contains one or more imported fruit ingredients, the label on a package containing the fruit drink must, unless the label expressly indicates that the fruit drink is a product of a country other than Australia, include, otherwise than in the ingredient list -

(a) a statement identifying each country of origin of the imported fruit ingredients; or
(b) a statement to the effect that the fruit drink was made from -

(i) imported fruit ingredients; or
(ii) imported fruit ingredients and local fruit ingredients;

as the case requires.

10 Country of origin requirements for spirits

(1) Products consisting of imported spirits to which only water or caramel or both has or have been added in Australia shall be considered as wholly produced in the country of origin of the spirit.

(2) There shall be written in the label on or attached to a package containing spirit bottled in Australia from imported bulk spirit, in standard type, the words - 'BOTTLED IN AUSTRALIA'.

(3) There shall be written in the label on a package containing a blend of spirits produced in more than one country, in standard type, the name of every such country in descending order of proportion, and the proportion of the blend from each of the countries with a deviation from the stated proportion of not more than 10 mL/L by volume.

(4) Save for the purposes of compliance with subclause (2) or (3), the word 'Australia' or 'Australian' shall not be used in the label on or attached to a package containing spirits the contents of which were not produced wholly in Australia.

11 Country of origin requirements in New Zealand for wine and wine products

(1) There shall be borne on the label on each package of wine or wine product words that clearly indicate the country of origin of the wine or wine product.

(2) If any of the grape juice, concentrated grape juice, potable spirit, or wine spirit used in any wine product originates in a country other than the country of origin of the wine, that country shall be named on the label as a source of ingredients used in the manufacture of the wine product.

RESPONSE SHEET

PROPOSED OPTIONS FOR COUNTRY OF ORIGIN LABELLING OF FOOD

Name:
Title:
Organisation:
Address:

Telephone:
Fax:
Email:

1. **What is your preferred option for the regulation of country of origin labelling of food? (See Section 5 of the Consultation Paper on Country of Origin Labelling of Food)**

2. **Please provide justification for your preferred option using the broad policy framework and the specific objectives of country of origin labelling (Section 3 of the Consultation Paper on Country of Origin Labelling of Food).**

3. **Are there other options for country of origin labelling that you believe should be included in the consultation paper?**

Yes
No

If yes, please provide details below: If no, please go to Question 4.

4. **For the options you have listed above, please comment on the advantages and disadvantages of implementing each of these mechanisms.**

5. **Additional Comments:**

Comments should be provided by **Friday 28 February 2003** to:

Australia

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