



FOOD STANDARDS
Australia New Zealand
Te Mana Kounga Kai – Ahitereiria me Aotearoa

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FINAL ASSESSMENT REPORT

PROPOSAL P292

COUNTRY OF ORIGIN LABELLING OF FOOD

FOOD STANDARDS AUSTRALIA NEW ZEALAND (FSANZ)

FSANZ's role is to protect the health and safety of people in Australia and New Zealand through the maintenance of a safe food supply. FSANZ is a partnership between ten Governments: the Australian Government; Australian States and Territories; and New Zealand. It is a statutory authority under Commonwealth law and is an independent, expert body.

FSANZ is responsible for developing, varying and reviewing standards and for developing codes of conduct with industry for food available in Australia and New Zealand covering labelling, composition and contaminants. In Australia, FSANZ also develops food standards for food safety, maximum residue limits, primary production and processing and a range of other functions including the coordination of national food surveillance and recall systems, conducting research and assessing policies about imported food.

The FSANZ Board approves new standards or variations to food standards in accordance with policy guidelines set by the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council). The Ministerial Council comprises Australian Government, State and Territory and New Zealand Ministers, with representation from a range of portfolios. Approved standards are then notified to the Ministerial Council. The Ministerial Council may then request that FSANZ review a proposed or existing standard. If the Ministerial Council does not request that FSANZ review the draft standard, or amends a draft standard, the standard is adopted by reference under the food laws of the Australian Government, States, Territories and New Zealand. The Ministerial Council can, independently of a notification from FSANZ, request that FSANZ review a standard.

The process for amending the *Australia New Zealand Food Standards Code* (the Code) is prescribed in the *Food Standards Australia New Zealand Act 1991* (FSANZ Act).

FINAL ASSESSMENT STAGE

FSANZ has now completed two stages of the assessment process and held three rounds of public consultation as part of its assessment of this Proposal. This Final Assessment Report and its recommendations have been approved by the FSANZ Board and notified to the Ministerial Council.

If the Ministerial Council does not request FSANZ to review the draft amendments to the Code, an amendment to the Code is published in the *Commonwealth Gazette* and the *New Zealand Gazette* and adopted by reference and without amendment under Australian State and Territory food law.

In New Zealand, the New Zealand Minister of Health gazettes the food standard under the New Zealand Food Act. Following gazettal, the standard takes effect 28 days later.

Further Information

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Assessment reports are available for viewing and downloading from the FSANZ website www.foodstandards.gov.au or alternatively paper copies of reports can be requested from FSANZ's Information Officer at info@foodstandards.gov.au including other general inquiries and requests for information.

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1. Background

The purpose of Proposal P292 is to review the current provisions regarding mandatory country of origin labelling (CoOL) contained in Standard 1.1A.3 of the Code.

The review of the current transitional Standard commenced in May 2001 with the raising of Proposal P237. As part of its assessment, FSANZ has:

- prepared an Initial Assessment Report and Draft Assessment Report;
- prepared a Discussion Paper detailing specific issues for consideration in the context of a revised standard;
- utilised relevant research including:
 - a benefit cost analysis of CoOL;
 - quantitative consumer research to provide baseline indicators on attitudes towards labelling, awareness and use of different label elements, beliefs about clarity and trustworthiness of labels and elements of labels that are difficult to interpret; and
 - research provided by stakeholders;
- considered over 2000 submissions (provided in response to the Initial Assessment Report, Draft Assessment Report and Discussion Paper);
- sought the advice of an External Advisory Group;
- sought advice on issues including interactions with domestic trade practices laws, international and trade implications of CoOL; and
- used information from submissions to Proposal P237– the previous but abandoned review of CoOL.

2. Objectives of the review

The **principal objective** of this particular Proposal is:

- to ensure that adequate information is provided about the origin of food products to enable consumers to make informed choices.

In meeting this principal objective, FSANZ also seeks to ensure:

- that there is a balance between the benefit to consumers of origin labelling and the cost to industry and consumers of providing it;
- consistent treatment of domestic and imported foods with regard to country of origin requirements;

- consistency with Australia's and New Zealand's obligations under WTO agreements;
- consistency with other legislation such as fair trading legislation; and
- consistency with other labelling standards in the Code.

In considering any amendments to standards, FSANZ must meet three primary objectives detailed in section 10 of the FSANZ Act:

- the protection of public health and safety (this is not an issue for consideration in the context of CoOL);
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.

FSANZ must also have regard to:

- 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; and
- any written policy guidelines formulated by the Ministerial Council. The Ministerial Council issued Policy Guidelines for CoOL in December 2003 (see Attachment 2).

3. Options considered and summary of impacts of options

FSANZ has examined a number of options for CoOL, including maintaining the *status quo*, self regulation, reliance on existing fair trading laws and trade description laws, adoption of the current transitional Standard into the Code and development of a revised Standard in the Code. On the basis of stakeholder feedback and FSANZ's independent analysis, the options have been reduced to two:

- Option 1: Make the transitional Standard a permanent Standard in the Code.** This is effectively a continuation of the *status quo* with broad CoOL provisions applying to Australia only and limited provisions for wine and wine products applying to New Zealand. The existing Standard requires:

- that the label on or attached to all packaged food in Australia contain a statement that identifies the country or countries in which the food was made or produced. This requirement may be satisfied:
 - by including on the label a statement identifying the country in which the food was packed for retail sale, and, if any of the ingredients do not originate in the country, a statement to the effect that the food is made from local and imported ingredients, as applicable.
 - if the name and address of the manufacturer are set out on the label, and the address contains the name of the country where the food was made or produced;
- that certain unpackaged foods in Australia, namely uncooked fish, vegetables, nuts and fresh fruit that originate from anywhere other than from Australia and New Zealand, are required to be either labelled with their country of origin, or a statement indicating that the foods are imported;
- that fruit juices and fruit drinks in Australia meet product specific CoOL; and
- that wine and wine products in New Zealand meet product specific CoOL.

Option 2: Developing a revised Standard in the Code. Option 2 has been developed over the course of the review and has been informed by extensive stakeholder input. The key elements of Option 2 (compared to Option 1) are as follows:

- extending the existing requirements for unpackaged food to a wider range of foods including: semi-processed fish; fresh and preserved pork; and whole or cut fruit and vegetables that have been preserved, pickled, cooked frozen or dehydrated (and mixed with other fruit or vegetables).
- strengthening the requirements for packaged foods, such that the label must identify where the food was made, produced, manufactured or packaged for retail sale.
- strengthening the requirements for the labelling to be clear and unambiguous (by specific reference to trade practices legislation and the legibility standard).
- removing the specific requirements relating to fruit juices and fruit drinks. Under Option 2, fruit juices and fruit drinks are proposed to be regulated in the same way as packaged food.

- removing the specific requirements for wine and spirits (New Zealand only).

Please note that more detailed information regarding the options considered and the impacts of the options is included in the Regulation Impact Statement included at Attachment 3.

3.1 Impacts of Option 1 (the *status quo*)

3.1.1 Consumers

Option 1 would not result in additional costs to consumers. The major disadvantage of Option 1 is that it does not provide consumers with any additional information about country or origin and consumer research data demonstrates there is a demand for CoOL (as discussed in relation to Option 2). A small benefit of Option 1 (compared to Option 2) is that consumers are familiar with the current system and would not need to learn a new system.

3.1.2 Industry

The major advantage of Option 1 to industry is that it will not result in any additional costs. Equally it would not deliver any further benefits. However, if sectors of industry decided that there was a consumer demand for CoOL, the relevant industry could address this demand by voluntary labelling.

3.1.3 Government agencies

Apart from minor administrative cost for regulators in formalising the Standard and adjusting the regulations to non-transitional status, it is unlikely that government agencies responsible for regulatory and enforcement matters would accrue additional costs.

In the area of unpackaged goods, imported and local goods would continue to be treated differently (i.e. imported products must be labelled as imported but local products are not required to be labelled). This could pose a small risk for the Australian Government in terms of our trade obligations.

3.2 Impacts of Option 2 (a revised Standard)

3.2.1 Consumers

Consumer research results and the responses to this Proposal indicate that:

- overall there is an awareness of CoOL, an interest in the CoOL of food, a preparedness to use that information and some social value in the provision of information. The benefit of that value is, however, unknown and the Benefit Cost Analysis (undertaken by the New Zealand Institute of Economic Research (NZIER) and available on the FSANZ website) indicates that the tangible benefit is likely to be small, due to the apparent lack of latent demand for CoOL from consumers and retailers alike; and

- there is strong support for CoOL of unpackaged food to give greater assistance to those consumers wishing to buy locally grown produce. While the dollar value of that benefit may be small, that does not discount the possibility of intangible benefits.

The Benefit Cost Analysis indicates that:

- with few exceptions, the interest in CoOL does not translate into a willingness by consumers to pay for the cost of providing CoOL;
- because non-compliance with CoOL requirements does not represent a classic market failure, the argument for a social value for CoOL is not strong; and
- the benefits in terms of consumer trust in the food system are small. The Benefit Cost Analysis notes that if there were an appreciable benefit from CoOL, suppliers would be voluntarily applying it more than they do at present. However, it should be noted that in Australia, following the release of the Draft Assessment Report and the attendant media and consumer interest in CoOL, rates of compliance with CoOL have increased (particularly voluntary compliance).

This suggests that retailers were prepared to respond positively to consumer interest in CoOL and, presumably, considered that the benefit to the consumer justified the additional expense.

The conclusions of the Benefit Cost Analysis must be balanced against the consumer research and stakeholder responses, which suggest that consumers regard CoOL as important. While the value of CoOL to consumers cannot be readily quantified, FSANZ considers that Option 2 provides further benefits to consumers through the strengthened requirements over the existing Standard.

There are no health and safety benefits from CoOL, as imported food must meet the same health and safety criteria as locally grown or produced food. However, we recognise that some consumers believe that CoOL is a public health and safety measure (based on negative perceptions about the growing, production or manufacturing processes of any given country).

There may be additional costs to consumers as a result of Option 2, if costs to industry increase (as discussed below) and these costs are passed on to consumers. There may also be a reduction in choices if suppliers remove foods from the market because CoOL reduces their profitability (particularly in relation to imported foods and small speciality lines).

3.2.2 Industry

Based on submissions from stakeholders and the Benefit Cost Analysis, there will be additional costs for industry, particularly New Zealand industry. Costs include:

- additional costs of changing label design – a once only cost primarily for packaged food suppliers;

- enhanced quality assurance on labelling systems to avoid inadvertent non-compliance, with attendant costs of non-compliant product withdrawal and risk of prosecution – low additional cost;
- relabelling to comply – a recurring cost for retailers and importers who need to over-label packaged produce in foreign languages;
- allocative costs from changes in established supply patterns – producers may move to ‘second choice’ ingredient suppliers to avoid costs of CoOL, but this is most likely to affect importers of packaged foods¹; and
- changes to record-keeping. However, many businesses merchandising systems already capture the information required.

Relative impacts are greater and more widespread in New Zealand, but impacts will be larger in absolute terms in Australia.

Some quantified estimates of the likely costs of CoOL are presented in the following table which details lowest, highest and mid-range results for Australia and New Zealand. Lower estimates result if it is assumed only minor labelling changes are needed to a low proportion of products, and higher estimates result if major changes are required for most products.

Summary of estimates from the report

	<u>Low</u>	<u>Medium</u>	<u>High</u>	<u>Low</u>	<u>Medium</u>	<u>High</u>
	<i>NZ\$m</i>	<i>NZ\$m</i>	<i>NZ\$m</i>	<i>A\$m</i>	<i>A\$m</i>	<i>A\$m</i>
Cost of CoOL in New Zealand	14	61	110	13	56	101
Cost of CoOL In Australia	26	67	105	24	62	97
Aus & NZ Combined Cost	40	127	215	36	118	197
Share of food turnover NZ	0.11%	0.48%	0.86%	0.11%	0.48%	0.86%
Share of food turnover Aus	0.04%	0.14%	0.18%	0.04%	0.14%	0.18%
Share of combined turnover	0.06%	0.18%	0.30%	0.06%	0.18%	0.30%

Source: NZIER

In terms of impacts on different sectors of industry it is anticipated that:

- the principal costs of mandatory CoOL will be borne in relation to packaged goods, particularly in New Zealand; and
- for fresh and unpackaged produce, the major impacts will fall on the retail sector, which will be required to provide more specific information than is currently the case. The principal impost will be the provision of display materials.

¹ NZIER Report pii

This impost may be relatively small and according to some comments from retailers, within the tasks and duties of current staff in putting together displays.

Possible benefits to industry include the following:

- benefits to local producers of fresh and semi-processed unpackaged produce as consumer research indicates that consumers prefer local to imported produce. On the basis of the Benefit Cost Analysis, this does not, however, translate into a large effect in the market place² and the current rates of voluntary compliance for those products must also be considered in assessing overall benefit.

3.2.3 *Government agencies*

Regulatory and enforcement bodies may experience administrative costs associated with the new Standard. However, this is likely to be small as CoOL is not a health and safety issue and is enforced accordingly, predominantly on the basis of consumer feedback and reporting.

The Benefit Cost Analysis suggests that there is also a potential cost if the measures conflict with WTO obligations or general trade policy, such as an inconsistency between a domestic and international position on CoOL. While Option 2 treats local and imported products equally, if a trading partner were to argue that CoOL was inconsistent with the principles of the Agreement on Technical Barriers to Trade (TBT), it may present an unquantifiable, but potentially significant, cost to government.

The risk of an initial dispute appears to be low, but there may also be a risk of retaliatory action following any initial dispute. Retaliatory action is but one possibility after all other resolution measures have been exhausted, and the risk of retaliatory action is substantially smaller than the risk of an initial dispute.

Advice from relevant agencies indicates the importance of treating imported products no less favourably than locally produced foods and that if this outcome is achieved the international trade risk is significantly reduced. FSANZ has considered this carefully in drafting the Standard.

In the assessment process, a number of the State-based enforcement bodies indicated that CoOL enforcement would benefit from greater certainty and clarity in the Standard.

4. Summary of stakeholder views on options

During the course of the review, FSANZ received a large number of submissions, reflecting the intense public interest in CoOL. The three rounds of consultation on Proposal P292 have had a significant impact on the development of the proposed Standard.

² NZIER Report p 40

In particular, many issues raised in submissions to the Initial and Draft Assessment Reports have been incorporated into the recommended Standard. For example, Option 2 (as described in Part 3 above) reflects stakeholder desire for:

- country of origin information for unpackaged foods to be provided on a label rather than 'on request';
- the country or origin to be specified on the label rather than allowing use of the word 'imported';
- a widening of the type of products to which CoOL requirements apply (extending the requirements to specified unpackaged foods including processed variants); and
- consistency with trade practices law.

We received the following views in relation to certain issues (a more detailed account of the outcomes of consultations are included in the Regulation Impact Statement at Attachment 3):

- **Labelling of unpackaged foods.**
Submissions from consumers indicate strong support for CoOL of unpackaged produce as this is considered to give greater assistance to those consumers wishing to purchase from certain countries, including Australia.
- **Availability of country of origin information.**
Submitters recommended that country of origin information be contained within a label or sign displayed on or in connection with the food. Stakeholders did not support the proposal that CoOL information for unpackaged foods be provided to customers on request. The general view was that this was unworkable and did not provide easily accessible information to consumers.
- **Use of the word 'imported' or specifying the country or origin.** While most submitters supported specifying the country, a range of views was expressed. Many submitters considered that use of the word 'imported' allows consumers to distinguish between locally produced and imported products and provides sufficient information. Others believed that it was more informative to have the country specified and that the Ministerial Council policy guidelines could be interpreted as requiring this.

Retailers indicated that where there were extended supply chains – for example, imported fish – providing this greater level of information on a daily basis required a new way of handling data.

- **Ingredients labelling.**
Few submitters supported ingredients labelling. However, some primary producers saw it as an additional opportunity to represent their product and some consumers favoured individual CoOL on all ingredients to ensure informed choice, as well as to provide *de facto* health and safety information.

The fruit, vegetable and pork industries stated that some form of ingredients labelling was necessary to fully inform consumers. Manufacturers and some jurisdictions were not in favour of ingredients labelling because of the increased costs to industry and consumers and compliance issues. The Ministerial Council Policy Guideline states that CoOL should apply to whole foods rather than individual ingredients.

- **Foods to which CoOL requirements should apply.**
We received a diverse range of views on the scope of CoOL and the products to which the Standard should apply. Consumers generally considered more labelling to be better than less and some submitters recommended an extension of CoOL to other commodities. Retail groups favoured the extension of CoOL to food service. Producer views varied, some favouring extension (e.g. pork) while other export-focused industries expressed reservations due to potential trade-related concerns.
- **Name and addresses in lieu of express reference to country of origin.**
Some industry submitters requested a continuation of identifying a country of origin of a food through the name and address of the manufacturer on the label, provided the country where the food was made or produced was identified in the address block. Other submitters were concerned that this was not sufficient and potentially misleading.
- **Definition of ‘made in’ and ‘product of’.**
There was broad support for continuing to rely on trade practices law to set the ‘rules’ regarding use of the terms ‘Made in’ and ‘Product of’. Some submitters, however, considered that these terms were not sufficient to either prevent misleading or deceptive conduct or ensure informed choice. Submitters requested further guidance from the Australian Competition and Consumer Commission (ACCC) on the labelling provisions under the *Trade Practices Act 1974*.
- **Application to New Zealand.**
While some consumer and producer groups within New Zealand are very supportive of mandatory CoOL, others (including industry, retail and major primary producers) are generally opposed, preferring a voluntary approach. Stakeholders cited concerns regarding international trade policy, industry advocacy positions and implementation costs.

At present, the New Zealand Government opposes mandatory CoOL, instead favouring voluntary labelling. Its concerns are based on CoOL being inconsistent with government trade policy, New Zealand’s position in the international trading community and potential conflict with the intent of trade liberalisation.

- **International considerations.**
A number of New Zealand submitters noted that New Zealand and Australia recently opposed mandatory CoOL of several commodities in the United States, including beef.

Arguments included the significant compliance costs that would be imposed, the belief that mandatory CoOL gives no assurance to consumers regarding food safety and health and the potential for it to result in a barrier to trade. Submitters believed that it would be inconsistent to now adopt the opposite stance domestically.

- **Print size and legibility requirements for unpackaged foods.** While Australian and New Zealand industry generally recognised the benefits of clear and unambiguous signage, some expressed reservations about the use of 9 mm signs in confined display areas such as deli-cabinets. Consumer groups generally supported print size and legibility requirements, with a minority of submitters suggesting that the requirement be extended to shelf displays of packaged foods.

5. FSANZ decision (Recommended option)

FSANZ recommends a package of measures designed to ensure that adequate information about the origin of food products is available to enable consumers to make informed choices. These measures include both the adoption of a revised Standard in the Code and a range of additional measures encompassing enforcement initiatives, consumer awareness initiatives and the development of educational information.

A. Revised Standard

It is recommended Option 2 be adopted and that the revised Standard would contain the following provisions:

- **Labelling requirement for packaged foods:**
 - a statement must be included on the package that:
 - identifies the country where the food was made or produced; or
 - identifies where the food was made, manufactured or packaged for retail sale and that the food is constituted from ingredients imported into that country or from local and imported ingredients, as the case may be.
 - if the term ‘Made in...’ or ‘Product of...’ is used, it must meet the requirements of the relevant trade practices legislation which defines these terms.
 - ‘Made in...’ can apply to goods that have been substantially transformed in the country claimed to be the origin and no less than 50% of the costs of production must have been carried out in that country.

- ‘Product of...’ is more demanding than ‘Made in...’. The country of origin of the ‘Product of’ claim must be the country of origin of each significant ingredient of the food and all or virtually all the processes of production or manufacture of the goods must have happened in that country.
- **Labelling requirement for unpackaged fish, whole or cut fruit and vegetables including processed variants and fresh and preserved pork (unmixed):**
 - a label on, or in connection with the display of food must identify the country or countries of origin; and
 - retailers will have the option to either label the individual commodities (e.g. with a sticker) or place a sign (with 9 mm font) in association with the food.
- **Labelling requirement for unpackaged fish, whole or cut fruit and vegetables including processed variants and fresh and preserved pork (mixed):**
 - if the foods are a mix of different products within this category – e.g. a mix of fruits – then the label may indicate that the foods are a mix of local/and or imported produce, as the case may be.
- **Legibility**
 - print must be consistent with legibility requirements. This requires ‘each word, statement, expression or design prescribed to be contained, written or set out in a label must, wherever occurring, be so contained, written or set out legibly and prominently such as to afford a distinct contrast to the background, and in the English language.’
- **Other**
 - False or misleading representations concerning the origin of the food will continue to be prohibited under trade practices law.
 - Lesser claims such as qualified claims can continue to be used, consistent with trade practices law (e.g. a qualified claim is ‘Made in Australia from local and imported ingredients’).

B. Additional measures to complement the changes to the Standard

FSANZ recommends that the revised Standard be accompanied by:

- the development of an enforcement and compliance guide (developed by FSANZ and States and Territories jointly);
- the assigning of a national priority to monitoring and enforcement of CoOL requirements (through the national enforcement strategy);

- the joint development (by FSANZ and ACCC) of a user guide to explain the relationship between the trade practices and fair trading laws and the Code;
- the implementation of a consumer awareness program including, for example, point of sale information; and
- FSANZ encouragement of industry initiatives promoting CoOL.

6. Statement of Reasons for recommended option

FSANZ makes the above recommendations for the following reasons:

- the revised Standard addresses the desire of consumers to have access to country of origin information. Overall stakeholders appear to support CoOL for packaged foods, unpackaged fish, pork, fruit, vegetables and nuts and the extension of CoOL to unpackaged processed forms of those commodities. There appears to be strong demand for clear CoOL, particularly for the identification of fresh local produce;
- the recommended Option provides the best ratio of benefits to costs. FSANZ notes:
 - the uncertain nature of the data available on the costs and benefits of CoOL, and the corresponding uncertainties of predicting benefit and cost (particularly with respect to re-labelling, which may vary from zero to substantial depending on the product line in question);
 - that there are likely to be relatively significant compliance costs for certain parts of industry (although these are neither certain nor quantifiable); and
 - that many of the perceived benefits of CoOL are intangible. However, based on consumer research and feedback through the formal and informal consultation processes, when intangible issues of social value are taken into account the revised standard (Option 2) delivers a net benefit overall. The size of that benefit is difficult to quantify due to the intangibles involved but FSANZ considers that it is unlikely to be large and at the very least would balance the costs to industry with the benefits to consumers;
- there appears to be a general preparedness of the retail sector to supply the requisite information to consumers to enable them to make informed choices (and an acknowledgement that this may also have flow-on benefits at the producer and industry level); and
- areas of possible inconsistency with international trade agreements are addressed.

The revised Standard is also:

- consistent with the objectives of section 10 of the FSANZ Act;

- consistent, with only minor variations, with the core labelling Standard of the Code (Standard 1.2.1) ensuring greater certainty for industry balanced with the need for consumers to have access to sufficient information to make an informed choice and prevent misleading or deceptive conduct; and
- addresses the inconsistencies in the current transitional standard with Australia's and New Zealand's obligations under international agreements by removing those parts which would potentially breach articles 2.1 and 2.2 of the WTO TBT Agreement.

7. Comparison of existing standard and revised standard

	Current Transitional Standard	Recommended Revised Standard
Packaged Food	<p>Label must identify the country in which the food was made, manufactured or packed for retail sale</p> <p>or</p> <p>If ingredients are from a different country, label must state that the food is made from imported ingredients</p> <p>or</p> <p>Requirements are met if the name and address of the manufacturer are on the label and this includes the country in which the food was made or produced</p>	<p>Strengthening of requirement</p> <ul style="list-style-type: none"> - There must be a specific declaration of the country of origin of the food product. - No longer adequate to note that ingredients are 'imported'. <p>This declaration can be an unqualified claim such as 'Made in country X' or 'Product of country X' or a qualified claim such as 'Made in country X from local and imported ingredients'.</p>
Unpackaged fresh whole or cut fruit and vegetables	Label must state the country or origin or that the fruit and vegetables are imported	<p>Strengthening of requirement</p> <p>There must be a label on or in connection with the display of the food identifying country or countries of origin</p>
Unpackaged fish including processed fish, cut fish, filleted fish and fish mixed with one or more foods	No mandatory CoOL for fish coated with, or mixed with, other foods and cooked fish other than cooked prawns	<p>Extension of requirements</p> <ul style="list-style-type: none"> - Processed fish must meet the same requirements as other unpackaged fish, fruit, vegetables
Processed unpackaged whole or cut fruit and vegetables e.g. preserved, pickled cooked, frozen, dehydrated) other than where mixed with another food	No requirements for CoOL	<p>Extension of requirements</p> <ul style="list-style-type: none"> - Unpackaged processed fruit and vegetables must meet the same requirements as unpackaged unprocessed fruit and vegetables

	Current Transitional Standard	Recommended Revised Standard
Unpackaged fresh or preserved pork	No requirements for CoOL	Extension of requirements - Unpackaged fresh or processed pork must meet the same requirements as unpackaged fruit and vegetables
Other information	<p>In the Code the definition of fruit and vegetables includes nuts (Standard 2.3.1)</p> <p>Prohibition on false or misleading representations concerning the place of origin of goods</p> <p>TPA sets out requirements re use of the terms 'product of' and 'made in' (including 'manufactured in' and 'Australian made').</p> <p>Labelling must comply with Standard 1.2.9 re legibility.</p>	

8. Examples of types of CoOL required under recommended revised Standard

Following are some examples of the CoOL required under the recommended revised Standard. Please note that certain minimum claims will be mandated but manufacturers may choose to supplement these mandated claims with additional information provided such information is not misleading or deceptive.

Description	Source/Origin	Type	Minimum Mandated Requirement	Optional additional labels
Australian fruit cake	Australian fruit and all other ingredients Australian, baked and packaged in Australia.	Packaged	Product of Australia.	With Australian fruit and ingredients
Bacon	Australian pork cured in Australia using imported brine	Unpackaged	Made in Australia	Made with Australian pork
Bean salad	Vegetables from Australia, bean mix from various sources dependent on availability, manufactured in Australia	Packaged	Made in Australia from local and imported ingredients	
Caesar salad mix	Salad leaves from Australia, croutons from France, salad dressing from France, packaged in Australia	Packaged	Packaged in Australia from Australian and French ingredients OR Packaged in Australia from local and imported ingredients	
Continental fruit loaf	Imported Fruit substantially transformed in Australia, flour, butter, egg Australian, baked in Australia, 60% of value from Australia	Packaged	Made in Australia	From local and imported ingredients. With imported fruit.

Description	Source/Origin	Type	Minimum Mandated Requirement	Optional additional labels
Crumbed fish	Australian fish, crumbs sourced from imported sources, crumbed in Australia	Unpackaged	Made in Australia	Australian fish, coated with imported breadcrumbs
Frozen peas	Peas from Belgium Frozen and Packaged in Australia	Packaged	Product of Belgium	Packaged in Australia.
Gourmet salad leaves	Lettuce from Australia, Rocket from NZ	Unpackaged	Lettuce produce of Australia, Rocket produce of NZ OR Product of Australia and New Zealand OR Comprised of a mix of local and imported products	
Mixed nuts in shell	Hazel/walnuts from Germany; almonds from Turkey; peanuts from USA; blended in Australia	Unpackaged	Nuts from Germany, Turkey and USA OR Blended in Australia from imported nuts.	
Oranges	Produced and distributed in Australia	Unpackaged	Product of Australia OR Australian Grown.	
Orange juice	Concentrate from 60% Australian fruit and 40% Brazilian fruit diluted and bottled in Australia.	Packaged	Bottled in Australia from local and imported juice concentrate OR Blended Australian and Brazilian fruit concentrates diluted in Australia.	
Potatoes	Potatoes from Tasmania, washed and packaged in Australia	Packaged	Product of Australia OR Australian Grown	Tasmanian Potatoes
Prawn cutlets	Whole prawns from Indonesia, processed (i.e., shelled, headed, gutted) in Australia, 75% of value in Australia	Packaged	Made in Australia.	Prepared from imported ingredients. Prepared from Indonesian prawns.
Raw prawns	Prawns from Indonesia	Unpackaged	Product of Indonesia	

9. Specific aspects of the decision

The standards development process raised a number of key issues. This section describes those issues, FSANZ's resolution of them and the implications for the proposed Standard.

9.1 Issue: Requirement to specify the country for whole foods

9.1.1 FSANZ recommendation

That the revised Standard require that for whole foods, the actual country of origin must be specified and the term 'imported' is not sufficient.

9.1.1.1 Explanation

During consultations, submitters generally supported this proposal. Some seafood importers were however concerned that the extended nature of the supply chain for imported seafood could give rise to complexity and increased compliance cost. They also questioned the value of specifying the country over the use of the word imported

On balance, FSANZ considers that the country of origin should be specified. The consumer is provided with more complete information and the requirement is consistent with that for packaged foods. This is also consistent with the Ministerial Council policy guidance that indicates that the country of origin should be made available to consumers.

9.2 Issue: Labels or signs required for specified unpackaged foods

9.2.1 FSANZ Recommendation

For specified unpackaged foods (fish, pork, fruit, vegetables, nuts and certain processed variants of these foods) the country of origin information must be provided by a label on the actual product or by a sign associated with the display of the product.

9.2.1.1 Explanation

During consultation of the proposal, submitters supported this approach as it allowed flexibility and improved information accessibility for consumers. FSANZ also canvassed the option of country of origin information for unpackaged foods being provided to consumers 'on request' – an option not supported by submitters.

9.3 Issue: Prescribing the print size for unpackaged foods

9.3.1 FSANZ Recommendation

That the Standard prescribe the print size (9 mm) required for signs in relation to unpackaged food.

9.3.1.1 Explanation

The Discussion Paper proposed 9 mm print for signs associated with the display of unpackaged foods. A number of submitters commented on this aspect of the proposal. Some New Zealand submitters were critical of specifying print size arguing that it is not needed and that it is not consistent with the Code.

A greater number of submitters, including Australian retailers and New Zealand producers and industry, were opposed to the 9 mm print size for signs associated with the display of unpackaged foods, believing the print size is too big, would be difficult to implement and could cause consumer confusion in deli-cabinets with a range of products in close proximity. Some submitters suggested smaller font size (e.g. 6 mm) for signs within deli-cabinets. This is not supported by FSANZ because of potential confusion and inconsistency in implementation.

9.4 Issue: Strengthened requirements for unpackaged foods

9.4.1 FSANZ recommendation

That the requirements applying to specified unpackaged foods (fish, fruit, vegetables and nuts) be extended to processed forms of these commodities and also to fresh pork and preserved pork such as ham and bacon.

9.4.1.1 Explanation

There was general agreement with extending the requirements for CoOL to certain processed fish, fruit and vegetables. Some submitters raised concerns about the cut off point where country of origin labelling starts and stops – for example, in salads mixes where other food types are included. Other submitters argued that any product with fruit and vegetable content should carry CoOL.

In proposing a standard for CoOL for unpackaged fish, fruit, vegetables and nuts and processed forms of this produce, the setting of scope is difficult. FSANZ is not proposing to require CoOL for all unpackaged produce and in the Discussion Paper we set a scope on the basis of processed or preserved forms of the fruit and vegetables, while excluding those fruit and vegetable products mixed with other foods. As a result of submissions, FSANZ has modified the definition to include preserved and processed fruit and vegetables products where mixed with other foods required for preservation – e.g. salt, sugar, oil.

Submissions also strongly supported the extension of the CoOL requirements to unpackaged pig meat (with no submissions suggesting that pig meat should be excluded).

The extension of the labelling requirements to include fresh and preserved pork products recognises that this industry is a growing and dynamic international meat market. The industry is demonstrating rapid growth with an increase of imports from 29,000 metric tonnes (mt) in July 2003 to 49,000 mt in July 2005³. Imports count for between 40% and 45% of the processed pork market in Australia. Submitters indicated that with the quantity of imported pork increasing, consumers wanted further information to assist their purchasing decision.

³ Source: Australian Bureau of Statistics

The exclusion of poultry and red meat is justifiable on the basis that no poultry meat has been imported into Australia during 2003 or 2004, and imports of fresh red meat (beef and sheep) during the 2004-05 financial year are minimal with only 0.27% of fresh beef meat and only 0.05% of fresh sheep meat imported⁴.

9.5 Issue: Unpackaged foods of mixed origin

9.5.1 FSANZ recommendation

That where the specified unpackaged foods were of mixed origin (e.g. mixed nuts, mixed salad) the sign should either list the countries the foods came from or state on the sign that the container comprises a mix of local and imported product.

9.5.1.1 Explanation

Views expressed in submissions were again varied. Many supported the proposal recognising that in the situation where mixes occurred the definitions allowed by the Trade Practices Act were appropriate. Other submitters were of the view that each of the contributing countries should always be specified and in proportion of the component from each country.

FSANZ proposes to retain the requirements identified in the Discussion Paper. These requirements are consistent with the Trade Practices Act, allow some flexibility for manufacturers and retailers and allow consumers to determine whether foods are locally produced or imported or a mix of both. Placing a mandatory requirement to specify countries and proportions of produce from each country are prescriptive, have the potential to add considerable cost for small increase in consumer benefit. Such a measure would touch on ingredients labelling, which is ruled out in the policy guidance for CoOL.

9.6 Issue: Inclusion of CoOL requirements for food for catering

9.6.1 FSANZ recommendation

That food sold to catering establishments be required to carry CoOL.

9.6.1.1 Explanation

A number of submitters were concerned that the exemption proposed in the Discussion Paper was a departure from the existing requirements, where food for catering establishments is required to carry CoOL.

Other submitters suggested that catering establishments should be required to provide information to their customers – e.g. on a menu or sign or 'on request'.

FSANZ agrees that this exemption is inconsistent with the existing standard and will remove it from the Final assessment report. However FSANZ is not proposing any new CoOL requirements on catering establishments.

⁴ (Source: Australian Bureau of Statistics)

This has not been canvassed during the CoOL standards development process and would be best handled as a new proposal or application.

9.7 Issue: Ingredients labelling

9.7.1 FSANZ recommendation

That mandatory CoOL not extend to ingredients labelling.

9.7.1.1 Explanation

There have been proposals put forward, primarily from the Fair Dinkum Food Campaign and the pork industry, that labelling should extend to ingredients. For example, it was suggested that the top three ingredients in a package of mixed frozen vegetables or smallgoods containing pork should undergo CoOL labelling.

Having regard to its statutory objectives, FSANZ has concluded that ingredient labelling is not warranted for the following reasons:

- FSANZ must ensure that consumers have adequate information to ensure informed choice, and that consumers are not misled or deceived. FSANZ must also take into account consistency between domestic and international food standards, the desirability of an efficient and internationally competitive food industry, and the Ministerial Policy Guidelines. These Guidelines state that CoOL should apply to the whole food, not ingredients, as well as providing a scheme that is overall cost efficient and balances the cost to industry with the benefit to consumers;
- FSANZ considers that there would be higher costs to industry from ingredients labelling. Noting that sources of ingredients vary, depending on availability, a requirement to re-label every time there is change in the source of ingredients could impose a significant technical and administrative burden. Those industries that source products from a range of countries would be required to change their labelling print runs frequently, or carry sufficient stockpiles of different labelling packs, depending on the source of foodstuffs;
- high-level traceability requirements would need to be imposed throughout the production chain, which would also add to the costs of production. We consider that, in the absence of any risk to public health and safety, these increased costs are not warranted;
- greater prescription may lead to restrictions in product ranges, as smaller manufacturers could not afford to change their labelling every time an ingredient source changed. This could potentially deprive consumers of choice. For those larger industries that could afford to make those changes, increased costs may be passed on to the consumer, who may consequently restrict their choices in order to balance the food budget. In either circumstance, increased prescription does not appear to provide an overall benefit to the consumer;

- the requirements may have an adverse impact on Australia’s export market, noting that such prescriptive measures may be questioned as not being the ‘least trade restrictive’ necessary to secure the objective of consumer information; and
- greater prescription may raise the cost of imported produce, ensuring price parity with more expensive local produce. This may provide de facto tariff protection for local produce.

9.8 Issue: Interaction between the proposed CoOL standard and the Australian Trade Practices Act 1974

9.8.1 FSANZ recommendation

That the Standard for CoOL rely on requirements under the Trade Practices Act relating to CoOL, including existing rules surrounding use of the terms ‘Made in...’ and ‘Product of...’.

9.8.1.1 Explanation:

Australia

The *Trade Practices Amendment (Country of Origin Representations) Act 1998* provides a legislative regime for CoOL claims.

In addition to its general prohibition on corporations engaging in conduct that is misleading and deceptive, the Trade Practices Act now provides that a corporation ‘shall not make a false or misleading representation covering the place of origin of goods’.

The Trade Practices Act also provides the following general test for country of origin representations:

- if the term ‘Made in...’, or ‘Manufactured in...’ is used;
 - the goods must have been substantially transformed in the country represented; and
 - at least 50% of the value of production or manufacturing processes must have occurred in the country represented. If these requirements are met a claim such as ‘Made in Australia’ or ‘Australian made’ will not contravene the Trade Practices Act. This approach sets a clear minimum standard for ensuring that unqualified claims of origin are not misleading and deceptive.
- For ‘Product of...’ claims, all the significant ingredients or components must come from the country represented, and all, or virtually all, of the production/manufacturing processes must also have occurred in the country represented. It is this premium label that indicates to consumers that a food contains ingredients from Australia and was produced in Australia.

However, there is nothing to prevent local producers and manufacturers from clearly identifying the actual amount of Australian (or other country) content or input in their products. Many businesses choose to provide this information to consumers as it may provide them with a market defence.

Where it is not possible for either a 'Made in...' or 'Product of...' claim to be made, a qualified claim may be made – that is a claim which implies a lesser connection with the country claimed than for 'Product of...' or 'Made in...'. Typically a qualified claim says 'Packed in Australia from local and imported ingredients', or 'Made in Australia from local and imported ingredients'.

FSANZ considers that, for Australia, the CoOL Standard must be consistent with the Trade Practices Act and requirements and principles of trade practices law. It is one of FSANZ's statutory objectives to ensure this consistency, and to avoid the provisions of the Code being rendered invalid due to any inconsistency with the Trade Practices Act. If FSANZ were to make provision in the Code for CoOL that goes beyond the provisions of the Trade Practices Act (and these were reflected in State/Territory laws), these would be invalid to the extent of any inconsistency with the Trade Practices Act (as the Commonwealth law will override by virtue of the operation of the Constitution).

By ensuring the Code is in line with the requirements of the Trade Practices Act and trade practices law this enables additional and enhanced enforcement of CoOL through the mechanisms of the ACCC.

FSANZ will be working closely with the ACCC in that regard.

New Zealand

The *New Zealand Fair Trading Act 1986* (NZFTA) is modelled on the Australian Trade Practices Act. The NZFTA does not require all products to be labelled with country of origin. However, where a product is labelled, any claims made about its origin must not be misleading or deceptive. In relation to food, this includes labelling of food products, and any advertising, promotional material, or verbal representation about those products.

While the NZFTA does not require that all products be labelled with a place of origin, where a product is labelled, any claims made about its origin must not be misleading.

The New Zealand legislation is not as prescriptive as the Australian model. However, the essential principles nonetheless apply. For example, under the New Zealand model it would be misleading to label orange juice bottled in New Zealand from imported concentrate as 'Made in New Zealand'. An accurate label would be a qualified claim such as 'Bottled in New Zealand from Imported Concentrate'.⁵

⁵ Source – Place of Origin and the Fair Trading Act - a guide for importers, manufacturers and retailers, New Zealand Commerce Commission March 1999

Some submitters raised the issue that there were, potentially, inconsistencies between the Australian and New Zealand laws. Examples were not provided, but if a joint standard were to be applied in both countries, those inconsistencies, should any arise, would not necessarily pose an issue for trans-Tasman trade due to the operation of the Trans Tasman Mutual Recognition Arrangement (TTMRA).

10. Implementation and Communication

Following the preparation of the Final Assessment Report and consideration by the FSANZ Board, a notification will be made to the Ministerial Council. The Ministerial Council has the opportunity to ask for review of the revised Standard. If a review is not requested the amendments to the Code are gazetted shortly after the Ministerial Council consideration. The amendments come into effect upon gazettal, subject to the implementation arrangements included in the Standard.

10.1 Transitional Issues

The current transitional country of origin Standard will continue to operate in parallel to the new Standard for a period of two years. In addition, sub-clause 1(2) of Standard 1.1.1 provides for a 12-month period of grace for compliance with new provisions in the Code. The net effect is that, from the commencement of Standard 1.2.11, manufacturers and retailers can continue to comply with Standard 1.1.A3 for a period of three years. Alternatively, manufacturers and retailers may comply with Standard 1.2.11 from its commencement.

This will act to minimise the costs to those parts of industry most affected.

10.2 Communication Issues

FSANZ will be developing communication strategies for the education of consumers and industry about the new country of origin labelling provisions.

For the CoOL Standard to be effective, it is important to ensure that consumers understand the new labelling. Although we have no specific funding to carry out a major public education campaign, we will work with partners and key stakeholders to develop communication material explaining country of origin labelling. This material will be included on the FSANZ website www.foodstandards.gov.au and, subject to funding, may also be made available at point of purchase (for example in supermarkets, fruit and vegetable shops and fish markets).

FSANZ also has an industry Advice Line that will be primed to respond to CoOL inquiries from food manufacturers and retailers. An interpretive guide will be available on the FSANZ website and for purchase in hard copy from FSANZ's publishers, Anstat.

Attachments

1. Draft variations to the *Australia New Zealand Food Standards Code*
2. Background to Country of Origin Labelling
3. Regulation Impact Statement
4. International Experience
5. List of submitters to Draft Assessment Report and Discussion Paper

Draft Variations to the *Australia New Zealand Food Standards Code***To commence: On Gazettal**

[1] *Standard 1.1A.3 of the Australia New Zealand Food Standards Code is varied by–*

[1.1] *omitting subclause 1(1), substituting –*

(1) For the matters regulated in this Standard, food must comply with this Standard or Standard 1.2.11, but not a combination of, or parts, of both.

[1.2] *omitting subclause 1(4), substituting –*

(4) Subject to subclause 5, this Standard ceases to have effect two years from the commencement of Standard 1.2.11.

[1.3] *inserting after subclause 1(4) –*

(5) Clauses 3, 4, 5 and 6 of this Standard cease to have effect six months from the commencement of Standard 1.2.11.

[2] *Standard 1.2.1 of the Australia New Zealand Food Standards Code is varied by omitting subclause 2(2), substituting –*

(2) Notwithstanding subclause (1), food for retail sale or for catering purposes must comply with any requirements specified in –

- (a) subclauses 2(2), 3(2), 4(2) and 5(2) of Standard 1.2.3; and
- (b) Standard 1.2.6; and
- (c) subclauses 4(2) and 4(3) of Standard 1.2.8; and
- (d) subclause 2(3) of Standard 1.2.10; and
- (e) subclauses 2(2) and 2(3) of Standard 1.2.11; and
- (f) subclause 4(3) of Standard 1.5.2; and
- (g) clause 6 of Standard 1.5.3; and
- (h) subclause 4(3) and clauses 5, 6, and 10 of Standard 2.2.1; and
- (i) clause 3 of Standard 2.2.3; and
- (j) subclause 3(2) of Standard 2.6.3; and
- (k) subclauses 3(3) and 3(4) of Standard 2.6.4; and
- (l) subclauses 3(1), 3(2), 3(3) and 3(4) of Standard 2.9.4.

[3] *Standard 1.2.9 of the Australia New Zealand Food Standards Code is varied by omitting the Purpose, substituting –*

Purpose

This Standard sets out general and specific legibility requirements for the labelling of packaged and unpackaged foods.

[4] *The Australia New Zealand Food Standards Code is varied by inserting after Standard 1.2.10 –*

STANDARD 1.2.11

COUNTRY OF ORIGIN REQUIREMENTS

Purpose

This Standard sets out the requirements for Country of Origin for packaged foods and certain unpackaged foods.

Table of Provisions

- 1 Application
- 2 Labelling requirements

Clauses

1 Application

(1) For the matters regulated in this Standard, food must comply with this Standard or Standard 1.1A.3, but not a combination of, or parts of, both.

Editorial note:

The transitional country of origin Standard 1.1A.3 continues to operate in parallel to this Standard for a period of two years, with the exception of clauses 3, 4, 5 and 6 of that Standard, which will only operate for a period of 6 months.

In addition, subclause 1(2) of Standard 1.1.1 provides for a 12-month period of grace for compliance with new provisions in the Code.

The net effect is that, from the commencement of Standard 1.2.11, manufacturers and retailers can continue to comply with Standard 1.1A.3 for a period of three years, except for the requirements in Clauses 3, 4, 5 and 6. For those foods, retailers can only continue to comply with those provisions for six months. After that period, compliance with the requirements of subclauses 2(2) and 2(3) of this Standard will be required.

Alternatively, manufacturers and retailers may comply with Standard 1.2.11 from its commencement, or at anytime from commencement.

(2) This Standard does not affect the operation of Standard 2.7.5 concerning geographical indications.

(3) This Standard does not apply to food sold to the public by restaurants, canteens, schools, caterers or self-catering institutions where the food is offered for immediate consumption.

(4) The requirements in the Table to subclause 2(2) for fresh pork and preserved pork apply 12 months from the commencement of this Standard.

2 Labelling requirements

(1) The foods listed in column 1 of the Table to this subclause must comply with the labelling requirements in relation to that food listed in column 2 of the Table.

Table to subclause 2(1)

Column 1	Column 2
Food	Labelling requirement
Packaged food (except that to which subclause 2(2) of this Standard applies)	<p>(a) a statement on the package that identifies where the food was made or produced; or</p> <p>(b) a statement on the package –</p> <p style="padding-left: 40px;">(i) that identifies the country where the food was made, manufactured or packaged for retail sale; and</p> <p style="padding-left: 40px;">(ii) to the effect that the food is constituted from ingredients imported into that country or from local and imported ingredients as the case may be.</p>

Editorial Note:

The provisions of subclause 2(1) follow the principles of the *Trade Practices Act 1974* (Commonwealth) and the *Fair Trading Act 1986* (New Zealand) which contain requirements concerning the place of origin of goods.

In particular, false or misleading representations concerning the place of origin of goods are prohibited. Country of origin statements are a sub-set of place of origin.

In complying with this Standard, manufacturers and retailers should be consistent with trade practices law. For Australia, the provisions of sections 65AA-AN of the Trade Practices Act 1974 govern statements as to the country of origin of goods. There are requirements for the use of ‘product of’ representations and other statements as to country of origin, such as ‘made in’ or ‘manufactured in’ or other like statements. These statements may only be used in the following circumstances –

(a) ‘Product of’ is a premium claim and the country of origin claimed must be the country of origin of each significant ingredient of the food and all or virtually all the processes of production or manufacture of the goods must have happened in that country.

‘Product of’ includes other declarations such as ‘produce of’ and ‘produced in’.

(b) ‘Made in’ - the goods must have been substantially transformed in the country claimed to be the origin and 50% of the costs of production must have been carried out in that country. Under the Trade Practices provisions, substantial transformation is defined as –

‘a fundamental change...in form or nature such that the goods existing after the change are new and different goods from those existing before the change’.

‘Made in’ includes other declarations such as ‘manufactured in’ or ‘Australian made’ for example.

Where it is not possible for a ‘Made in’ claim to be made, either due to uncertainty around the question of substantial transformation and whether 50% costs of production is met, or to adjust to seasonal changes in availability of individual ingredients, manufacturers may make a qualified claim. Common examples of a qualified claim are ‘Made in Australia from imported ingredients’ or ‘Packaged in Australia from local and imported ingredients’.

The provisions of this Standard should also be read in conjunction with other applicable laws such as the State and Territory Fair Trading Acts and Food Acts. These Acts contain provisions governing misleading and deceptive conduct in the supply of food in trade and commerce and representations about food that are misleading or deceptive.

Suppliers should, therefore, exercise caution in their country of origin declarations and ensure that the representations that are made are not compromised by conflicting information. For example, having in large type on a label a map of Australia and the words ‘Proudly Australian Owned’ and in smaller type elsewhere on the label ‘Product of’ naming a different country, while technically compliant with this Standard, may still be misleading or deceptive.

Further information on country of origin claims may be found in ‘Food and Beverage Industry – country of origin guidelines to the Trade Practices Act’ available on the ACCC website.

All labelling must comply with the requirements of Standard 1.2.9, designed to ensure that food labels are clear. Standard 1.2.9 provides that each word, statement, expression or design prescribed to be contained, written or set out in a label must, wherever occurring, be so contained, written or set out legibly and prominently such as to afford a distinct contrast to the background, and in the English language.

Subclause 2(2), below, of this Standard provides for the Country of Origin Labelling requirements for fresh whole or cut fruit and vegetables which are displayed for retail sale in packages that do not obscure the nature or quality of the food, such as clear plastic or mesh bags. Under Standard 1.2.1, with some exceptions, this form of packaging is generally exempt from the labelling requirements of the Code. Country of Origin is one of those exceptions.

(2) Subject to subclause 3, the foods listed and displayed in the manner described in column 1 of the Table to this subclause must comply with the labelling requirements in relation to that food listed in column 2 of the Table.

Table to subclause 2(2)

Column 1	Column 2
Food	Labelling requirement
<p>Where the food is displayed for retail sale other than in a package</p> <p>Fish, including cut fish, filleted fish, fish that has been mixed with one or more other foods and fish that has undergone any other processing including cooking, smoking, drying, pickling or coating with another food</p> <p>Fresh pork, whole or cut, except where the product has been mixed with food not regulated by this subclause</p> <p>Pork, whole or cut, that has been preserved by curing, drying, smoking or by other means, except where that product has been mixed with food not regulated by this subclause (other than those foods used in the preserving)</p> <p>Fresh whole or cut fruit and vegetables</p> <p>Whole or cut fruit and vegetables where that produce has been preserved, pickled, cooked, frozen or dehydrated except where that produce has been mixed with food not regulated by this subclause (other than with those foods used in the preserving, pickling or cooking as the case may be)</p>	<p>A label on or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.</p> <p>A label on or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may.</p> <p>A label on or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.</p> <p>A label on or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.</p>
<p>Where the food is displayed for retail sale in a package that does not obscure the nature or quality of the food</p> <p>Fresh whole or cut fruit and vegetables</p>	<p>A label on the package or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.</p>

(3) Where the food listed in Column 1 to the Table to subclause 2(2) is displayed for retail sale other than in a package, and the requirements of Column 2 are being met by a label in connection with the display of the food, in addition to the requirements of Standard 1.2.9, the label must be in size of type of at least 9 mm.

Editorial note:

Subclause 2(2) governs the country of origin requirements for fresh and processed unpackaged produce, or fresh produce that is packaged in such a way that the nature or quality of the food is not obscured, such as in a plastic or mesh bag, that are currently available on the market.

Retailers will have two options. They may label the individual commodities, such as with a sticker, as is a common practice with apples, oranges and lemons etc. Or they may place a label on a sign in association with the food in 9 mm type stating the country or countries of origin of the produce or make a 'qualified claim' that the foods are a mix of local and/or imported foods as the case may be. This would commonly be the case with soup mixes of whole vegetables that are displayed for retail sale in a plastic bag.

If the mix comprises Australian produce and produce from other countries, the retailer can either declare each country of origin, or that the food is a mix of local and imported produce.

If the mix comprises produce from other countries, the retailer may either declare the individual countries of origin, or declare that the food is made up of imported produce.

This subclause also applies to unpackaged fish, fruit and vegetables that have undergone some form of processing. In the case of fruit and vegetables, the subclause applies to food products such as olives that have been soaked in salt water or vinegar, sun-dried tomatoes in olive oil or tofu. Where those products have been mixed with other foods not regulated by the subclause, such as pasta, the country of origin provisions do not apply.

Standard 1.2.9 provides that each word, statement, expression or design prescribed to be contained, written or set out in a label must, wherever occurring, be so contained, written or set out legibly and prominently such as to afford a distinct contrast to the background, and in the English language.

Fruit and vegetables are defined in Standard 2.3.1, and that definition includes nuts.

To commence: Six months from Gazettal

[5] *The Australia New Zealand Food Standards Code is varied by –*

[4.1] *omitting clauses 3, 4, 5 and 6 of Standard 1.1A.3*

To commence: Two years from Gazettal

[6] *The Australia New Zealand Food Standards Code is varied by –*

[4.1] *omitting Standard 1.1A.3*

[4.2] *omitting subclause 1(1) of Standard 1.2.11, substituting –*

Deleted

Background to country of origin labelling**B1. Current transitional Standard**

The transitional Standard for CoOL (Standard 1.1A.3) requires that the label on or attached to all packaged food in Australia to contain a statement that identifies the country or countries in which the food was made or produced. This requirement may be satisfied by including on the label a statement identifying the country in which the food was packed for retail sale, and, if any of the ingredients do not originate in the country, a statement to the effect that the food is made from local and imported ingredients, as applicable.

CoOL requirements may also be satisfied if the name and address of the manufacturer are set out on the label, and the address contains the name of the country where the food was made or produced.

In addition, certain unpackaged foods, namely uncooked fish, vegetables, nuts and fresh fruit that originate from anywhere other than from Australia and New Zealand, are required to be either labelled with their country of origin, or a statement indicating that the foods are imported.

The transitional standard does not apply in New Zealand, other than requirements that relate to wine and wine products.

B2. Review of the transitional Standard

Under the *Agreement between Australia and New Zealand establishing a System for the Development of Joint Foods Standards* (the Treaty), Australia and New Zealand have agreed to the development of joint food standards to apply in both countries. The development of joint food standards involved a review of all existing provisions in the former Australian *Food Standards Code* and *New Zealand Food Regulations 1984*, including those relating to CoOL. The transitional Standard for CoOL (Standard 1.1A.3) was placed in the Code as a temporary solution to the administrative problem where the existing regulations had been repealed (Australian *Food Standards Code* and *New Zealand Food Regulations 1984*), before a new Standard was finalised.

Divergent views among stakeholders with regard to the regulation of CoOL saw the then Australia New Zealand Food Authority (ANZFA), now FSANZ, refer the matter to the Ministerial Council for policy guidance. The Ministerial Council policy guidelines on CoOL were issued in December 2003. These guidelines provide FSANZ with the mandate and direction to complete the review of CoOL (Section 1.2).

B3. Ministerial Council Policy Guidelines

In December 2003 the Ministerial Council issued policy guidelines requiring FSANZ to develop regulatory principles for country of origin labelling to ensure that FSANZ meets its statutory obligations under section 10 of the FSANZ Act (noting that country of origin labelling is not a public health and safety issue). The Policy Guidelines require that FSANZ have regard to the following high order and specific principles:

Country of Origin Labelling of Food

SCOPE/ AIM

To develop regulatory principles for country of origin labelling to ensure that Food Standards Australia New Zealand (FSANZ) meets its statutory obligations under section 10 of the *Food Standards Australia New Zealand Act 1991*. In meeting its statutory obligations, it is recognised that country of origin labelling is not a public health and safety issue.

HIGH ORDER PRINCIPLES

- Ensure that consumers have access to accurate information regarding the contents and production of food products.
- Ensure that consumers are not misled or deceived regarding food products.
- Be consistent with, and complement, Australia and New Zealand national policies and legislation including those relating to fair-trading and industry competitiveness.
- Be cost effective overall, and comply with Australia and New Zealand obligations under international agreements while not being more trade restrictive than necessary.

SPECIFIC PRINCIPLES

- Balance the benefit to consumers of country of origin labelling with the cost to industry and consumers of providing it.
- Ensure consistent treatment of domestic and imported food products with regard to country of origin requirements.

POLICY GUIDANCE

- In developing a new standard for country of origin labelling in the Food Standards Code, FSANZ should ensure that:

- the standard is consistent with the High Order and Specific Principles;
- country of origin labelling of food is mandatory for the purpose of enabling consumers to make informed choices;
- country of origin labelling applies to the whole food, not individual ingredients; and
- consideration is given to the existing temporary Australian standard (Standard 1.1A.3).

As endorsed by ANZFRMC3 - August 2003

Regulation Impact Statement

C1. Regulatory problem

The development of joint food standards for Australia and New Zealand involves a review of all existing provisions in the former Australian *Food Standards Code* and *New Zealand Food Regulations 1984*, including those relating to CoOL.

The regulatory problems to be addressed through the review are as follows:

- the current standard is transitional only and requires review to determine whether it should become a joint standard;
- the current Standard may not provide sufficient information to consumers regarding the contents and production of food contents to enable consumers to make informed choices. FSANZ has been informed through stakeholder submissions and consumer research that consumers do have regard to the origin of foods in making food choices. It is claimed that consumers use information about the origin of foods in their purchasing decisions, and moreover that consumers have a 'right to know' the origin of foods as citizens of Australia and New Zealand. On this basis there is a case to investigate whether the information about the origin of foods is sufficient or appropriate to the needs of consumers in Australia and New Zealand;
- potential inconsistencies between the current standard and legislation including those relating to fair trading and industry competitiveness; and
- potential inconsistencies between the current transitional standard and Australia's and New Zealand's obligations under international trade agreements. It is considered that the current transitional standard may be inconsistent with Articles 2.1 and 2.2 of the World Trade Organisation (WTO) Technical Barriers to Trade Agreement. For example, the current provisions of the standard concerning unpackaged foods may lead to the situation where like products originating in another country are treated less favourably than like products of national origin.

Adequate consumer information for informed decision-making

Introduction

Research shows that while consumers care about the country of origin of foods and recognise the need for CoOL, other parts of a food label, such as date marking, ingredient listing and nutrition information, are considered more immediately important at the point of purchase. While country of origin and these other label components are important, the price of the product is a major factor in purchasing decisions.

Although not initially mentioned as being as important as other label components, when the topic of country of origin is raised, the majority of consumers think CoOL to be very important. Consumers feel that CoOL allows them to identify the source of a product, choose better quality products, avoid products they would prefer not to purchase and to support local industries.

Generally, consumers are well informed on the type of CoOL found on packaged foods. However, there is some desire to have the labelling simplified and clearly explained.

FSANZ consumer qualitative research on food labelling issues

As part of its effort to assess the impact of new food regulation, FSANZ (then ANZFA) carried out qualitative consumer research on attitudes to food labelling issues to assist with informing and developing that process. This took the form of 18 stratified discussion groups conducted with consumers, 12 in Australia, and six in New Zealand⁶.

Consumers generally had a good appreciation of the range of information available on a label attached to a packaged food. The most important elements of the label were the Nutrition Information Panel, the ingredient list, date marking, and, to a lesser degree, food additive labelling, and nutrition claims.

Although not initially mentioned as being as important as other labels, when the moderator raised the topic of CoOL, the majority of participants thought this was very important. A number of panellists said that it is the first thing they look at. However, in-store survey data indicated that country of origin information was a significant consideration only for spreads and tinned food.

Terms that consumers knew were used to refer to country of origin included 'Australian or New Zealand made' or 'Made in New Zealand', 'Australian made and owned', 'Product of New Zealand', 'Australian produce', 'local and imported ingredients'.

It was felt that country of origin labelling was essential for the identification of the source of the product concerned. There were two main aspects to this: being able to choose better quality products, and being able to avoid products from locations considered to be unsafe. Food was viewed as being equally as 'safe' whether it was from Australia or New Zealand. A few group participants also mentioned wanting the ability to be able to locate and buy authentic exotic food products, especially products from Asian countries instead of the inferior, substitute local product.

For some, buying Australian or New Zealand made products meant that they were doing their bit for the economy. These people were quite committed to the idea of keeping the money and the jobs in Australia/New Zealand.

⁶Australia New Zealand Food Authority (ANZFA). 2001, Qualitative Research with Consumers. Evaluation Report Series No 2, ANZFA, December 2001.

Others were not overly committed to Australian/New Zealand made products, but if the price and quality were similar would buy Australian/New Zealand made. Others bought solely on price, with no thought about the country of origin, but for most, this was seen as a question of need. For some, it was a question of being able to buy the best, regardless of its origin. A minority are prepared to pay a premium to support Australian or New Zealand industries, however, for others when there is a negative price implication, they were not interested in buying local products.

The packaging was sometimes said to be inadequate because it did not show the actual place of origin of the product, when really this was of paramount importance for the reasons mentioned earlier. The main problem with CoOL appeared to be the many and varied forms used for labelling purposes, and the meaning of the claims. There was a general perception that CoOL was confusing.

FSANZ Quantitative consumer research

Based on the preliminary qualitative research, FSANZ commissioned quantitative consumer research⁷ in 2002 to investigate consumer attitudes towards labelling, including CoOL. The research was based on 1940 door-to-door interviews in the metropolitan areas of Australia (1259) and New Zealand (681).

CoOL was widely recognised by consumers, but more Australians than New Zealanders used CoOL. The research found that CoOL was important when discussed in its own right, but was less important when viewed against other labelling components such as date marking, ingredient lists, or nutrition information. Almost half (49%) of the consumers reported using CoOL, 14% occasionally used it, 34% used this information most of the time when buying food, 32% used this information every time when they bought food, and 20% used it when buying a product for the first time. Sixteen percent of consumers rated country of origin label element as not very clear.

Consumers were also shown three food labels that described the country of origin as 'made in', 'product of', and 'made from Australia/New Zealand ingredients', and asked to select the product that had the most Australian/New Zealand ingredients. A high proportion of consumers (60%) correctly selected 'product of' label, with a third (31%) selecting 'made in' label, 3% selected 'made from Australia/New Zealand ingredients' and 6% reported that they did not know. More New Zealand consumers (37%) incorrectly selected 'made in' label compared to Australian Consumers (27%).

Research from other organisations

Following the Draft Assessment, FSANZ requested that those organisations that had cited consumer research data to provide that information.

⁷*Food Standards Australia New Zealand (FSANZ). 2003, Food Labelling Issues: Quantitative Research with Consumers, NFO Donovan Research Report, FSANZ, Canberra.*

A survey conducted on behalf of Australian Consumers' Association in January 2001⁸ found that 56% of consumers made an effort to buy Australian always or most of the time they went shopping, while 30% did so most of the time and 14% not at all. The major reasons given for buying Australian were that it was good for the economy and helped create jobs. The vast majority of consumers (79%) understood that 'Product of Australia' had a different meaning to 'Made in Australia'. 85% agreed or strongly agreed that labels should state the origin of imported ingredients, while 15% disagreed or did not care.

Information from a survey of 1000 respondents conducted for the National Aquaculture Council Inc (Australia) indicated that, for seafood, 89% of consumers thought that the source was important when making their purchasing decision, but 30% were not aware of the source of their purchase. Consumers believed that in the absence of evidence to the contrary, ready to cook seafood displayed for retail sale is of Australian origin.

Research conducted on behalf of HomeGrown Limited⁹, while primarily directed to the question of the use of the HomeGrown logo, also looked to the issue of Country of Origin preferences. Based on 215 face-to-face interviews and 300 random telephone interviews they found that Victorian shoppers had a clear preference for Australian produce. The results showed that 89-95% of consumers preferred fresh produce (fruit and vegetables, meat and seafood) of Australian origin. The reasons given were supporting Australian jobs and farmers (65%), freshness (38%) and high Australian Standards (32%). Consumers assumed that most fresh produce was Australian and felt deceived when they discovered otherwise.

A major retailer in Australia has also conducted research, based on informal and anecdotal information (information confidential). The feedback that was received over a two-year period indicated that that consumers wanted more stocking and promotion of Australian products, both packaged and fresh.

FSANZ also received consumer research from AgriQuality Limited in New Zealand¹⁰. Their research found that 25% of consumers paid a high level of attention to where their food came from and how it was grown.

However, 59% placed a high value on the assurance that food was grown in New Zealand, and 59% would value a label that assured them their food was grown and produced in New Zealand.

When questioned as to why they valued assurance on this issue people talked primarily about the importance of supporting the local industry and economy (62%), the feeling that New Zealand grown food is of a better quality or safer in some way (14%), or they simply said that it's what they prefer (14%).

⁸Figures used by kind permission, Australian Consumers' Association

⁹Research conducted by DBM Consultants for Australian HomeGrown Ltd April 2005

¹⁰From Research Solutions Ltd for AgriQuality Ltd

C. Objectives

The **principal objective** of this particular Proposal is:

- to ensure that adequate information is provided about the origin of food products to enable consumers to make informed choices.

In meeting this principal objective, FSANZ also seeks to ensure:

- that there is a balance between the benefit to consumers of origin labelling and the cost to industry and consumers of providing it;
- consistent treatment of domestic and imported foods with regard to country of origin requirements;
- consistency with Australia's and New Zealand's obligations under World Trade Organisation (WTO) Agreements;
- consistency with other legislation such as fair trading legislation; and
- consistency with other labelling standards in the Code.

In developing and varying standards, FSANZ must also have regard to:

- 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; and
- any written policy guidelines formulated by the Ministerial Council.

In developing or varying a food standard, FSANZ is required by its legislation to meet three primary objectives, which are set out in section 10 of the FSANZ Act.

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.

For the purposes of this particular proposal the protection of public health and safety is not a relevant consideration.

C3. Regulatory options

Through the assessment process, FSANZ identified a range of different options including:

- maintaining the *status quo*;
- self regulation;
- reliance on existing fair trading laws and trade description laws;
- adoption of the current transitional Standard into the Code; and
- development of a revised Standard in the Code.

At Final Assessment, FSANZ has narrowed those options to the following two options:

Option 1: Mandate the transitional standard as an Australia-only standard in the Code

This would mean making the transitional a permanent standard in the Code (effectively continuation of the status quo with broad CoOL provisions applying to Australia only and limited provisions for wine and wine products applying to New Zealand). The existing Standard requires:

- that the label on or attached to all packaged food in Australia contain a statement that identifies the country or countries in which the food was made or produced. This requirement may be satisfied:
 - by including on the label a statement identifying the country in which the food was packed for retail sale, and, if any of the ingredients do not originate in the country, a statement to the effect that the food is made from local and imported ingredients, as applicable.
 - if the name and address of the manufacturer are set out on the label, and the address contains the name of the country where the food was made or produced;
- that certain unpackaged foods in Australia, namely uncooked fish, vegetables, nuts and fresh fruit that originate from anywhere other than from Australia and New Zealand, are required to be either labelled with their country of origin, or a statement indicating that the foods are imported;
- that fruit juices and fruit drinks in Australia meet product specific CoOL; and
- that wine and wine products in New Zealand meet product specific CoOL.

Option 2: Developing a revised Standard in the Code.

Option 2 has been developed over the course of the review and has been informed by extensive stakeholder input. The key elements of Option 2 (compared to Option 1) are as follows:

- extending the existing requirements for unpackaged food to a wider range of foods including: semi-processed fish; fresh and preserved pork; and whole or cut fruit and vegetables that have been preserved, pickled, cooked frozen or dehydrated (and mixed with other fruit or vegetables).
- strengthening the requirements for packaged foods, such that the label must identify where the food was made, produced, manufactured or packaged for retail sale.
- strengthening the requirements for the labelling to be clear and unambiguous (by specific reference to trade practices legislation and the legibility standard).
- removing the specific requirements relating to fruit juices and fruit drinks. Under Option 2, fruit juices and fruit drinks are proposed to be regulated in the same way as packaged food.
- removing the specific requirements for wine and wine product (New Zealand only).

C4. Impact analysis

FSANZ is required, in the course of developing regulations suitable for adoption in Australia and New Zealand, to consider the impact of various options on all sectors of the community, including consumers, the food industry and governments in both countries. The Benefit Cost Analysis accompanying this report (also available on the FSANZ website) identifies and evaluates the advantages and disadvantages of amendments to the standards and their health and economic impacts.

C4.1 Affected parties

Parties affected by this Proposal include:

1. Industry – (food manufacturers, processors or growers and importers).
2. Consumers.
3. Government agencies that regulate and enforce the food industry in Australia and New Zealand.

C4.2 Option 1: the *status quo*

Consumers

Option 1 would not result in additional costs to consumers. The major disadvantage of Option 1 is that it does not provide consumers with any additional information about country or origin and consumer research data demonstrates there is a demand for CoOL (as discussed in relation to Option 2). A small benefit of Option 1 (compared to Option 2) is that consumers are familiar with the current system and would not need to learn a new system.

Industry

The major advantage of Option 1 to industry is that it will not result in any additional costs. Equally it would not deliver any benefits. However, if sectors of industry decided that there was a consumer demand for CoOL, the relevant industry could address this demand by voluntary labelling.

Government agencies

Apart from minor administrative cost for regulators in formalising the Standard and adjusting the regulations to non-transitional status, it is unlikely that government agencies responsible for regulatory and enforcement matters would accrue additional costs. In the area of unpackaged goods, imported and local goods would continue to be treated differently (i.e. imported products must be labelled as imported but local products are not required to be labelled). This could pose a small risk for the Australian Government in terms of our trade obligations.

C4.3 Option 2 (a revised Standard)

Consumers

Consumer research results and the responses to this Proposal indicate that:

- overall there is an awareness of CoOL, an interest in the CoOL of food, a preparedness to use that information and some social value in the provision of information.

The benefit of that value is, however, unknown and the Benefit Cost Analysis indicates that the tangible benefit is likely to be small, due to the apparent lack of latent demand for CoOL from consumers and retailers alike; and

- there is strong support for CoOL of unpackaged food to give greater assistance to those consumers wishing to buy locally grown produce. While the dollar value of that benefit may be small, that does not discount the possibility of intangible benefits.

The Benefit Cost Analysis indicates that:

- with few exceptions, the interest in CoOL does not translate into a willingness by consumers to pay for the cost of providing CoOL;
- because non compliance with CoOL requirements does not represent a classic market failure, the argument for a social value for CoOL is not strong; and
- the benefits in terms of consumer trust in the food system are small to negligible. The Benefit Cost Analysis notes that if there were an appreciable benefit from CoOL, suppliers would be voluntarily applying it more than they do at present.

However, it should be noted that in Australia, following the release of the Draft Assessment Report and the attendant media and consumer interest in CoOL, rates of compliance with CoOL have increased (particularly voluntary compliance). This suggests that retailers were prepared to respond positively to consumer interest in CoOL and, presumably, considered that the benefit to the consumer justified the additional expense.

The conclusions of the Benefit Cost Analysis must be balanced against the consumer research and stakeholder responses, which suggest that consumers regard CoOL as important. While the value of CoOL to consumers cannot be readily quantified, FSANZ considers that Option 2 provides further benefits to consumers from strengthening requirements existing in the current Standard

There are no health and safety benefits from CoOL, as imported food must meet the same health and safety criteria as locally grown or produced food. However, we recognise that some consumers believe that CoOL is a public health and safety measure (based on negative perceptions about the growing, production or manufacturing processes of any given country).

There may be additional costs to consumers as a result of Option 2, if costs to industry increase (as discussed below) and these costs are passed on to consumers. There may also be a reduction in choices if suppliers remove foods from the market because CoOL reduces their profitability (particularly in relation to imported foods and small speciality lines).

Industry

Based on submissions from stakeholders and the Benefit Cost Analysis, there will be additional costs for industry, particularly New Zealand industry. Costs include:

- additional costs of changing label design – a once only cost primarily for packaged food suppliers;
- enhanced quality assurance on labelling systems to avoid inadvertent non-compliance, with attendant costs of non-compliant product withdrawal and risk of prosecution– low additional cost;
- relabelling to comply – a recurring cost for retailers and importers who need to over-label packaged produce in foreign languages;
- allocative costs from changes in established supply patterns – producers may move to ‘second choice’ ingredient suppliers to avoid costs of CoOL, but this is most likely to affect importers of packaged foods¹¹; and
- changes to record keeping. However, many businesses merchandising systems already capture the information required.

¹¹ NZIER Report pii

Relative Impacts are greater and more widespread in New Zealand but impacts will be larger in absolute terms in Australia.

Some quantified estimates of the likely costs of CoOL are presented in the following table which details lowest, highest and mid-range results for Australia and New Zealand. Lower estimates result if it is assumed only minor labelling changes are needed to a low proportion of products, and higher estimates result if major changes are required for most products.

Summary of estimates from the report

	<u>Low</u>	<u>Medium</u>	<u>High</u>	<u>Low</u>	<u>Medium</u>	<u>High</u>
	<i>NZ\$m</i>	<i>NZ\$m</i>	<i>NZ\$m</i>	<i>A\$m</i>	<i>A\$m</i>	<i>A\$m</i>
Cost of CoOL in New Zealand	14	61	110	13	56	101
Cost of CoOL In Australia	26	67	105	24	62	97
Aus & NZ Combined Cost	40	127	215	36	118	197
Share of food turnover NZ	0.11%	0.48%	0.86%	0.11%	0.48%	0.86%
Share of food turnover Aus	0.04%	0.14%	0.18%	0.04%	0.14%	0.18%
Share of combined turnover	0.06%	0.18%	0.30%	0.06%	0.18%	0.30%

Source: NZIER

In terms of impacts on different sectors of industry it is anticipated that:

- the principal costs of mandatory CoOL will be borne in relation to packaged goods, particularly in New Zealand; and
- for fresh and unpackaged produce, the major impacts will fall on the retail sector, which will be required to provide more specific information than is currently the case. The principal impost will be the provision of display materials. This impost may be relatively small and according to some comments from retailers, within the tasks and duties of current staff in putting together displays.

Possible benefits to industry include the following:

- benefits to local producers of fresh and semi-processed unpackaged produce as consumer research indicates that consumers prefer local to imported produce. On the basis of the Benefit Cost Analysis, this does not, however, translate into a large effect in the market place¹² and the current rates of voluntary compliance for those products must also be considered in assessing overall benefit.

¹² NZIER Report p 40

Government agencies

Regulatory and enforcement bodies may experience administrative costs associated with the new Standard. However, this is likely to be small as CoOL is not a health and safety issue and is enforced accordingly, predominantly on the basis of consumer feedback and reporting.

The Benefit Cost Analysis suggests that there is also a potential cost if the measures conflict with WTO obligations or general trade policy, such as an inconsistency between a domestic and international position on CoOL. While Option 2 treats local and imported products equally, if a trading partner were to argue that CoOL was inconsistent with Technical Barriers to Trade principles it may present an unquantifiable, but potentially significant, cost to government.

The risk of an initial dispute appears to be low, but there may also be a risk of retaliatory action following any initial dispute. Retaliatory action is but one possibility after all other resolution measures have been exhausted, and the risk of retaliatory action is substantially smaller than the risk of an initial dispute.

In the assessment process, a number of the State-based enforcement bodies indicated that CoOL enforcement would benefit from greater certainty and clarity in the Standard.

C5. Consultation

C5.1 Consultation undertaken

Consultation on P237

Following the release of the Initial Assessment Report for Proposal P237, the former review of the CoOL of food, FSANZ received a total of 47 written submissions, with twelve of these being from New Zealand organisations. The majority of responses for both Australia and New Zealand were from the food industry, accounting for 24 and nine submissions respectively.

There were also in total, six submissions from consumers groups and individual consumers. A total of eight submissions were received from Government agencies.

FSANZ also established an External Advisory Group consisting of representatives from government, industry and consumers to oversee the review and to provide expert advice when required.

Consultation on Proposal P292

There have been three rounds of consultation for proposal P292 at Initial Assessment, Draft Assessment and following release of the Discussion Paper. While FSANZ usually undertakes two rounds of consultation it was considered important to undertake a further round following the response to the Draft Assessment Report.

Once FSANZ had considered submissions to the Draft Assessment Report, a number of substantive changes in the Country of Origin Proposal were indicated in order to address concerns raised by submitters. FSANZ then prepared a Discussion Paper that was made available for further public consultation.

Initial Assessment Report – FSANZ received a total of 1655 submissions in response to the P292 Initial Assessment. In the weeks preceding the closing date for written submissions to the Initial Assessment Report for Proposal P292, FSANZ also invited key stakeholders to attend forums in Auckland, Wellington, Sydney and Melbourne.

Draft Assessment Report – In March 2005, FSANZ released for consideration a Draft Assessment Report and draft country of origin labelling standard. FSANZ received a total of 138 individual submissions and 148 Campaign submissions, predominantly from New Zealand.

Sector	Australia	New Zealand	Trans Tasman	International	<i>Total</i>
Industry	32	14	1	1	48
Government	9	2	-	-	11
Consumer groups	1	1	-	-	2
Consumers	36	41	-	-	77
Other (Campaign)	-	148	-	-	148
Total	78	206 (58*)	1	1	286 (138*)

*Totals excluding campaign submissions

Discussion Paper – As a result of the intense interest generated in the Draft Assessment, FSANZ undertook targeted consultation with key submitters in Australia and New Zealand, aimed at further clarifying issues raised in submissions to the Draft Assessment Report.

FSANZ then produced a Discussion Paper, aimed at addressing concerns raised in response to the Draft Assessment Report, and proposing revised measures. This paper was released in August 2005. FSANZ received 181 individual submissions and 117 Campaign submissions.

Sector	Australia	New Zealand	Trans Tasman	International	<i>Total</i>
Industry	53	15	4	3	75
Government	8	2	-	-	10
Consumer groups	5	1	-	-	6
Consumers	34	56	-	-	90
Other (Campaign)	-	117	-	-	117
Total	100	117(74*)	4	3	298 (181)*

*Totals excluding campaign submissions

In addition FSANZ received 21 late submissions, 8 from consumers, one from a consumer association, two from Government and 10 from industry. These submissions broadly reflected the issue summarised below. Concerns raised by late submissions were considered in the Final Assessment Report.

C5.2 Views of stakeholders on options

Results of consultation on Proposal P237

The Initial Assessment report for Proposal P237 proposed four options:

- maintaining the *status quo*;
- reliance on fair trading laws and trade description laws;
- self-regulation; and
- a new standard in the Code.

The written submissions clearly indicated that option 2 – Reliance on fair trading laws and trade description laws (20 submissions) and option 4 – Development of a New Standard (23 submissions) were the preferred options.

Results of consultation on Proposal 292 Initial Assessment

The Initial Assessment report for Proposal 292 proposed two options:

- adopt the current transitional standard into the Code; and
- develop a revised standard.

Of the 1655 submission received in response to the P292 Initial Assessment, 1596 campaign submissions were received from New Zealand consumers. These were of two types – electronic postcards from members of a political party in New Zealand (1511 submissions) and a form letter from NZ consumers (85 submissions).

Sixty-nine individual (non-campaign) submissions were received. Of these, 21 were from Australia, 43 from New Zealand and five from either another country or an unspecified country. Industry submissions comprised the majority of those received from Australia, accounting for 12 submissions. Six submissions were received from Australian consumers or consumer groups and two were from government agencies. The majority of New Zealand submissions were from consumers or consumer groups, accounting for 22 submissions, closely followed by 19 submissions from NZ industry. There was also one submission received from an MP and a joint submission from two government agencies.

The following table indicates the number of submissions that nominated support for each of the regulatory options presented in the IAR.

OPTION	AUSTRALIA	NEW ZEALAND	AUSTRALIA /NEW ZEALAND	OTHER	TOTAL
1 – Adopt the current Transitional Standard into the Code	6	1	1	1 (Scotland)	9
2 – Develop a revised Standard	3	4			7
No preference given					1639

However, a large proportion of the stakeholder submissions chose not to specify support for either of the regulatory options presented. Some stakeholders chose to defer nomination of their preferred option until further detail is available on regulatory option 2 (develop a revised standard). This regulatory option was presented in a general, basic form in the IAR, without detailing the mechanism through which a revised standard could be implemented. Issues involved in the process of developing regulatory options are a focus for External Advisory Group discussions.

Many of the submissions that did not specify a preferred regulatory option expressed their preference regarding CoOL in other ways. The following table intends to capture this range of preferences.

PREFERENCE	AUSTRALIA	NEW ZEALAND	UNSPECIFIED
Supports Mandatory CoOL	6	1608	
Opposes Mandatory CoOL	1	12	
Supports Voluntary CoOL	2	10	
Supports CoOL	3	9	2

Three submitters noted that they felt unable to comment fully on either of the regulatory options presented, as there was insufficient detail provided for regulatory option 2 (develop a revised Standard).

C5.3 Results of consultation on Proposal 292 Draft Assessment

Key issues raised by stakeholders were as follows.

Whether the country of origin details should be on the label

The Draft Assessment suggested that in order to align country of origin requirements with other Code provisions dealing with unpackaged foods that the information could be provided to consumers either on a label or sign associated with the display of the food or provided on customer request. This met with widespread concern from consumers, producers, industry and retailers. The general view was that this was unworkable and did not provide easily accessible information to consumers.

Submitters recommended reverting to the current provision that requires the information to be contained within a label or sign displayed on or in connection with the food. Retailers and consumers indicated support for rejecting this option. This has now been reconsidered and has been rejected.

Whether the country should be specified on the label

A further concern expressed in the submissions and representations centred on the use of the word 'imported' in relation to both packaged and unpackaged produce. While specifying the actual country is clearly more specific and certain, many submitters recognised that the 'imported' option allows consumers to distinguish between locally produced and imported products and that provides sufficient information. Others believed that it was more informative to have the country specified and that the policy guidelines could be interpreted as requiring this. Retailers indicated that where there were extended supply chains – for example, imported fish – providing this greater level of information on a daily basis required a new way of handling data. This could be achieved with suitable information systems in place and that industry is already moving in this direction.

Application of CoOL to Whole Foods/Individual Ingredients

Few submitters supported ingredients labelling. Some primary producers see it as an additional opportunity to represent product and some consumers and consumer groups favoured individual CoOL on all ingredients to ensure informed choice, as well as for the purpose of providing *de facto* health and safety information.

In response to the Initial assessment, nine submitters supported application of CoOL regulations to whole (final) foods only. It was noted that the Ministerial Council Policy Guideline stated that CoOL should apply to whole foods rather than individual ingredients. The point was made that the source of ingredients may change at short notice such as in the case of when a natural disaster may effect supply and that labelling problems would be compounded if CoOL was required compared with having provisions which permit use of the term 'imported ingredients', as supply, seasonality, price and availability are continuing factors in determining the country from which ingredients are sourced.

A further comment was that labelling the county of origin of ingredients is impractical and the costs would outweigh any perceived benefits. One other submitter noted that the origin of materials imported are known and any purchasing agents used are required to have traceability systems in place, hence products can be effectively recalled if necessary without CoOL.

Which unpackaged foods should be labelled

FSANZ proposed to extend the existing requirements for packaged foods to unpackaged fresh and processed fruit, vegetables, nuts and seafood. Submissions from consumers indicated a preference for an expansion of scope, suggesting more information is better (e.g. dairy, meat, cereals, poultry and eggs, confectionery, all unpackaged; food service). Submitters expressed diverse range of views in relation to these issues.

For Australian and New Zealand consumers more labelling was better than less, and favoured extension of CoOL to other commodities. Retail groups favoured the extension of CoOL to food service, that being attraction of a level playing field. Producer views varied, some favouring extension (e.g. pork) while other export-focused industries expressed reservations due to potential trade-related concerns. One submission was received in respect of poultry that was ambivalent as to CoOL, as were industry submissions from the dairy and cereal sectors.

Name and Address including Country being deemed compliant

Some industry submitters were keen to continue to allow the name and address of the manufacturer on the label as being sufficient provided that the name of the country where the food was made or produced was in the address block. Other submitters were concerned that this was not sufficient and potentially misleading.

Definition of 'made in' and 'product of'

While most submissions broadly supported the FSANZ proposal to rely on trade practices law definitions and requirements, other submitters expressed concern that these were not, of themselves sufficient to either prevent misleading or deceptive conduct or ensure informed choice.

Use of 'representation'

Submitters were keen to have clarity – notwithstanding that it was implicit in the option canvassed that a representation would have to be sufficient to identify the country of origin, the majority of submitters who addressed this point felt that a logo or flag would not to be adequate and similarly with the use of the word 'imported' wanted the name of the country used.

TTMRA and NZ-Only provisions

These issues were raised principally by New Zealand submitters. Overwhelmingly, those submitters from New Zealand in favour of mandatory CoOL were consumers, and some primary producers. However many NZ groups, such as consumer associations and industry and Government organisations, remain opposed to mandatory CoOL. Some made exceptions e.g. relating to the current provisions for wines produced in New Zealand.

The TTMRA was noted as relevant in the instance of New Zealand opting out of the proposed standard.

This could lead to the circumstance of food from New Zealand being able to be sold in Australia without having to comply with the CoOL Standard. This is counterbalanced to some degree by the *Australian Commerce Imports Regulations 1940* made under *Commerce Trade Descriptions Act 1905*.

Trade considerations

In response to the Initial Assessment many submitters noted that mandatory CoOL is potentially in conflict with Australia and New Zealand's international trade obligations, particularly with respect to the *WTO Agreement on Technical Barriers to Trade* (TBT) as it is more restrictive than the Codex requirement and those of EU and UK. However, views differed on whether the potential trade barrier could be effectively managed or not. Those who believed that it could be managed, the majority of whom were Australian respondents pointed out that:

- there is no evidence to suggest the existing CoOL requirements in the Code are a barrier to trade;
- mandatory CoOL should be permissible under Article 2.2 of the TBT Agreement as it is 'necessary in order to fulfil a legitimate objective'; the legitimate objective being the protection of the rights of citizens to information on the source of substances;
- the Code requirements place no additional regulatory burden on the food industry or importers as CoOL is required by other legislation such as the *Commonwealth Quarantine Act 1908*; and
- for packaged foods labels generally have to be changed to meet other requirements such as NIP, so CoOL is not a significant barrier to trade.

Most New Zealand submitters believed that there was a barrier to trade that could result in a WTO challenge. Their rationale included the following points:

- Article 2.2 of the TBT Agreement does not explicitly provide grounds for mandatory regulations that are based on a consumer's 'right to know'. While the Article does include 'the prevention of deceptive practices' as a legitimate objective for mandatory standards, this does not necessarily translate to mandatory CoOL as other mechanisms can be used, such as the NZ Fair Trading Act;
- mandatory CoOL in importing countries could fall within the terms of 'with the effect of increasing unnecessary obstacles to international trade' as stated in Article 2.2 of the TBT Agreement;
- mandatory CoOL could be incompatible with Article 2.1 of the TBT Agreement and may not fit with the concept of national treatment;
- different treatment of certain imported unpackaged foods to their domestic equivalents could breach Article 2.1 of the TBT Agreement;
- mandatory CoOL could send a message to trading partners that Australia and New Zealand agriculture is protectionist;
- it could be used as an intended barrier to imported product; and

- compliance with mandatory CoOL could be costly for suppliers from developing countries who lack the record-keeping infrastructure to maintain audit trails. This could conflict with the spirit of trade liberalization of the current WTO round, which aims to give preference to the trade agendas of developing countries.

New Zealand submitters to the Initial Assessment Report were also concerned with the impact that mandatory CoOL could have on trade. One view was that it could result in a reduction of imported food, which would impact heavily on New Zealand, as many ingredients have to be imported.

Such an outcome would offer less choice for consumers. Another opinion was that mandatory CoOL could be seen as an attempt to influence domestic consumers by implying that there is a safety or quality differential between domestic and imported products.

International considerations

Following the Initial Assessment, five New Zealand submitters commented that recently both New Zealand and Australia opposed mandatory CoOL of several commodities in the US, including beef. Arguments included the significant compliance costs that would be imposed, the belief that mandatory CoOL gives no assurance to consumers regarding food safety and health and the potential for it to result in a barrier to trade. Submitters believed that it would be inconsistent to now adopt the opposite stance domestically.

An Australian submitter also pointed out that US labelling regulations differ to Australia, such that there is no distinction between 'Product of...' and 'Made in...'. This means an Australian processor can export products to the US using the Australian definition of 'Made in Australia' and it can then be on-sold as 'Product of Australia' or 'Australian X' when 'X' may not be an ingredient made in Australia. This situation would disadvantage Australian growers of 'X'.

Consistency with other legislation

A number of submitters noted that any changes to CoOL legislation should be consistent with trade practices/fair trading legislation in both Australia and New Zealand and that if there was increased consistency between the Code and the TPA, it would be likely to increase certainty and decrease costs.

In terms of consistency between CoOL requirements and other pieces of legislation, it was noted that:

- current requirements are consistent with the Australian Commerce Imports Regulations 1940 and if this piece of legislation is repealed (as recommended) mandatory CoOL in the Code would be inconsistent with the Commerce Trade Descriptions Act 1905; and
- CoOL is consistent with current legislation relating to Australian import regulations such as the Commonwealth Quarantine Act.

A number of submitters felt that CoOL can be best dealt with by current trade practices/fair trading laws. Four submitters felt that deceptive practice in terms of CoOL is best dealt with by trade practice/fair trading law i.e. in both Australia and New Zealand. In addition to this, there were nine submitters that specifically noted that New Zealand fair trading law is an adequate mechanism for managing CoOL in terms of protecting consumers from misleading or deceptive behaviour. It was noted that mandatory CoOL legislation in the Code would not help mitigate the risk of deceptive practice as this was already addressed by fair trading law and that to include it in the Code in addition to this would be considered a heavy handed approach.

C5.4 Results of consultation on Proposal 292 The Discussion Paper

Following analysis of the submissions to the Draft Assessment Report, the Discussion Paper identified eight specific issues for further consideration in the development of a revised standard. FSANZ analysed the submissions and developed a revised approach to a number of issues. These were canvassed in the Discussion Paper and proposed that:

1. For specified unpackaged foods the country of origin information would be provided by a label on the actual product or by a sign associated with the display of the product.
2. For whole foods the actual country of origin would be specified, use of the term imported would not be sufficient.
3. The requirements applying to specified unpackaged foods (fish, fruit, vegetables and nuts) be extended to processed forms of these commodities.
4. Where unpackaged foods were of mixed origin (e.g. mixed nuts) that the sign should either list the countries the foods came from or state on the sign that the container comprises a mix of local and imported product.
5. Regulations for print size on signs identifying the origin of unpackaged products.
6. Measures for specifying the origin of packaged whole foods and packaged mixed foods with reliance on the *Australian Trade Practices Act 1974* and the *New Zealand Fair Trading Act 1986*.
7. The name of the country to be specified when a manufacturer's address is given or when associated with a logo or image. A further requirement is that clear declarations such as 'product of' or 'made in' or declarations to similar effect should be made.

But did not include:

8. A requirement for country of origin labelling for ingredients.

Responses received from Australian stakeholders were generally favourable indicating that the changes to the proposal had resolved many concerns. There is broad support from industry (AFGC, retailers), producers (seafood, red meat) and the jurisdictions. Some Australian submitters would like more prescription but there are diverse views on what those additions might be, in essence reflecting more specific interests relevant to the submitter.

The response from New Zealand was consistent with that received from earlier consultation. While specific consumer groups within New Zealand are very supportive of mandatory CoOL labelling this is not the case with all consumer organisations. Certain producer groups including pork and vegetable producers also favour mandatory labelling. However other sectors within the New Zealand economy such as industry, retail and major primary producers are generally opposed to mandatory CoOL preferring a voluntary approach, citing concerns related international trade policy, industry advocacy positions and implementation costs.

The New Zealand government opposes mandatory CoOL instead favouring voluntary CoOL. Its concerns are based on CoOL being inconsistent with government trade policy, New Zealand's position in the international trade community and potential conflict with the intent of trade liberalisation.

Some specific issues raised by submitters include:

Widening the scope for unpackaged foods to include other commodities

- there were strong representations from the Australian and New Zealand pork industries for unpackaged pork to be captured by the Standard.
- this view was also reflected by consumers in Australia and New Zealand who wanted pork and other unpackaged meats and dairy products included in the Standard.
- certain jurisdictions expressed a preference to widen the scope e.g. to include all unpackaged whole foods or to include all meat products.

Print size and legibility requirements for unpackaged foods

Australian retailers and New Zealand producers and industry are opposed to the 9 mm print size for signs associated with the display of unpackaged foods, believing the print size is too big, would be difficult to implement and could cause consumer confusion in deli-cabinets with a range of products in close proximity. They suggest the option to specify 9 mm in free standing displays and allow 6 mm in closed deli cabinets.

Further prescription on packaged foods

- the fruit and vegetable industries want further prescription on packaged foods. For example, there would be requirements around the print size and colour and placement of the country of origin information on a food label.

- any qualified claims would also need to state the proportion of local vs. imported ingredients.

Use of unqualified claims such as 'made in...' and reference to trade practices law

- many submitters supported the proposed alignment of CoOL with the Trade Practices Act and ACCC's role in implementation agreeing that consistency was important as well as then potential participation of a further enforcement resource.
- however, there were strong calls for further guidance from the Australian Competition and Consumer Commission on the labelling provisions under the Trade Practices Act. The fruit and vegetable industries and a jurisdiction want the use of unqualified claims to be disallowed under the new standard suggesting that the unqualified claims did not provide adequate information and in certain circumstances could be misleading e.g. where a product could contain significant or key ingredients from countries outside Australia but still meet the 'made in' claims due to the current interpretation of the Trade Practices Act.

Ingredients labelling

- the fruit, vegetable and pork industries stated that some form of ingredients labelling was necessary to fully inform consumers. A suggestion was made that the country of origin should be labelled for the top three ingredients of packaged foods.
- manufacturers and some jurisdictions are generally opposed to ingredients labelling. The major objections were increased costs to industry and consumers and compliance issues.

Implementation and Enforcement

A range of views was expressed concerning implementation timeframes and enforcement:

- many were happy with the proposed timeframes of 6 months for unpackaged foods and 2 years for packaged foods recognising the benefits associated with managed change particularly around label changes required for packed products.
- other submitters sought reduced lead in times for packaged goods suggesting that 6 months was adequate and that manufacturers could make such changes readily and at low cost.
- a number of submitters expressed concerns at the apparent low level of enforcement of current CoOL standards and requested that jurisdictions assign higher priority to this matter

Public Awareness

Many submitters indicated that many consumers were confused by the differing declarations regarding country of origin and that an awareness campaign would be helpful in raising consumer awareness and understanding. This would be assisted by if a single user guide prepared jointly by FSANZ and ACCC were made available

C5.5 New Zealand Government view

FSANZ has received consistent submissions from the New Zealand Food Safety Authority (NZFSA), which also represented the views of the New Zealand Ministry of Foreign Affairs and Trade (MFAT), the Ministry of Consumer Affairs, and the Ministry of Economic Development on CoOL, and restating the New Zealand position of opposition to mandatory CoOL. In their submission to the Draft Assessment, NZFSA reiterated its submission at Initial Assessment, that the New Zealand Government has consistently opposed the imposition of mandatory Country of Origin labelling (CoOL), for reasons including its likely trade-restrictive effects and its irrelevance to food safety requirements. NZFSA noted the changes that were suggested at Draft Assessment, particularly that CoOL is now proposed to apply to the final food and not individual ingredients and the changed requirements for unpackaged food, however stated that New Zealand continues to oppose the introduction of mandatory CoOL, and the reasons for this as provided at Initial Assessment remain unchanged. This position has been reinforced with the release of the Discussion paper.

Reasons cited include:

- the Proposal has not been able to demonstrate tangible consumer benefits.
- inconsistency with the High Order principles expressed in the policy guidance.
- the prescriptive nature of some provisions e.g. size of lettering for signs relating to unpackaged foods is counter to the general non-prescriptive approach used in the Food Standards Code.

C5.6 Impact of Consultation on the proposed standard

The three rounds of consultation on Country of Origin Labelling proposal P292 have had a significant impact on the development of the proposed standard. Many issues raised in submissions to the Initial and Draft Assessment Reports have been incorporated into the final draft. For example, Option 2 reflects stakeholder desire for:

- country of origin information for unpackaged foods to be provided on a label rather than 'on request'.
- the country or origin to be specified on the label rather than allowing use of the word 'imported'.

- a widening of the type of products to which CoOL requirements apply (extending the requirements to specified unpackaged foods including processed variants); and
- consistency with trade practices law.

C6 Conclusion

Option 2 (revised Standard) addresses the desire of consumers to have access to country of origin information. Overall stakeholders appear to support CoOL for packaged foods, unpackaged fish, pork, fruit, vegetables and nuts and the extension of CoOL to unpackaged processed forms of those commodities. There appears to be strong demand for clear CoOL, particularly for the identification of fresh local produce.

The recommended Option provides the best ratio of benefits to costs. FSANZ notes:

- the uncertain nature of the data available on the costs and benefits of CoOL, and the corresponding uncertainties of predicting benefit and cost (particularly with respect to re-labelling, which may vary from zero to substantial depending on the product line in question);
- that there are likely to be relatively significant compliance costs for certain parts of industry (although these are neither certain nor quantifiable);
- that many of the perceived benefits of CoOL are intangible. However, based on consumer research and feedback through the formal and informal consultation processes, when intangible issues of social value are taken into account the revised standard (Option 2) delivers a net benefit overall. The size of that benefit is difficult to quantify due to the intangibles involved but FSANZ considers that it is unlikely to be large and at the very least would balance the costs to industry with the benefits to consumers;
- there appears to be a general preparedness of the retail sector to supply the requisite information to consumers to enable them make informed choices (and an acknowledgement that this may also have flow-on benefits at the producer and industry level); and
- areas of possible inconsistency with international trade agreements are addressed.

International experience

A number of Australia's trading partners have Country of Origin Labelling (CoOL) regulations for foods, but there is considerable variation in the requirements of individual countries, making direct comparison difficult.

CoOL applies across a greater range of products on a vertical commodity basis in the other jurisdictions, than it does in Australia. Those requirements differ from commodity to commodity, and, as is the case with some commodities in the United Kingdom (UK), not mandatory. CoOL is not yet mandatory across the board in the United States of America (USA), and in Canada CoOL is generally mandatory for imported products, but variously voluntary or mandatory on certain produce across the range.

Codex Alimentarius Commission (Codex)

The Codex *General Standard for the Labelling of Pre-packaged Foods* states in section 4.5 that:

- the country of origin should be declared if its omission would mislead or deceive the consumer.
- when a food undergoes processing in a second country, which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

Codex does make specific provision for CoOL for fresh fruit and vegetables and vertical commodity based standards exist for specified commodities such as avocados, bananas, baby corn and so forth. The Codex Committee on Food Labelling is currently considering whether to approve new work, proposed by the delegation of the United Kingdom and supported by Malaysia and Switzerland, on an amendment to the *General Standard for the Labelling of Prepackaged Foods* in order to amend the provisions for CoOL.

United Kingdom (UK) and European Union (EU)

The CoOL requirements of the UK and the EU reflect, in general, the requirements of the provisions of the Codex General Standard for the Labelling of Pre-packaged foods.

There are certain commodities for the EU for which there is mandatory CoOL, on a vertical or commodity basis. Such commodities include beef, fruit and vegetables, fish, olive oil, eggs, poultry meat, honey and certain 'regional' products – such as those from a particular production area. Certified logos are allowed for some of those products. Within the commodity standards there are a number of different requirements for how CoOL is to be declared.

For beef, there are requirements to declare the country of birth, rearing, slaughter and cutting (where applicable) whereas for poultry, it is only required that CoOL be declared where the product originates from outside the EU.

In the UK, CoOL of fresh fruit and vegetables falls outside the scope of the Food Standards Agency (FSA). Policy on this issue lies with the Department of Environment, Food and Rural Affairs (Defra). CoOL is required for beef, veal, fish and shellfish, for both pre-packed and loose products, and for wine and certain fresh fruit and vegetables. For other foods, CoOL is required where purchasers might otherwise be misled. Where voluntary labelling is provided, this information must not mislead the consumer.

The FSA has produced guidance for industry and enforcement authorities on the interpretation of the existing rules to ensure they address the issues that are of most concern to consumers, with a view to encouraging increased voluntary declarations, and is pressing for changes to EU legislation to require origin labelling on a wider range of foods, and for clear rules on the use of terms like 'produce of ...'. The FSA is also putting the case for more origin labelling vigorously at international levels, particularly through the Codex Committee on Food Labelling.

United States of America (USA)

In the USA, CoOL is only mandatory for imported foods under the *Tariff Act 1930*. Country of origin claims are regulated by the Federal Trade Commission and the US Customs Service as part of the general trade regulation, rather than by the Food and Drug Administration as part of general food regulation. The law requires that a country of origin statement be conspicuous. If a domestic firm's name and address is declared as the firm responsible for distributing the product, then the country of origin statement must appear in close proximity to the name and address and be at least comparable in letter size.

The *Farm Security and Rural Investment Act of 2002*, more commonly known as the 2002 Farm Bill, requires mandatory CoOL for beef, pork, fish, perishable agriculture commodities and peanut products produced in the USA by 30 September 2004. However, the Senate has since approved an omnibus appropriations bill containing a two-year moratorium on mandatory CoOL for products produced in the US. This would have delayed mandatory CoOL on USA produce until 30 September 2006, but in mid-May 2005 the House Appropriations Committee in the US introduced a fiscal bill to delay mandatory CoOL beyond the September 2006 deadline. That has delayed mandatory CoOL on meat, fresh produce and peanuts, although mandatory CoOL on seafood took effect in April 2005. CoOL legislation requires retailers to label seafood products as to origin and whether they are wild or farmed. Seafood used as an ingredient in processed food is exempt.

Beef, pork, and seafood producers associations along with some food retailers and wholesalers vehemently oppose the mandatory labelling, citing its burdensome cost and logistical complications. They are joining forces to craft a cost-effective voluntary program that would provide consumers with CoOL information. In June 2005, legislation was introduced to the Senate that would replace current mandatory CoOL of seafood.

The new bill directs the Secretary of Agriculture to develop a voluntary labelling program for produce, beef, veal, lamb, pork, and seafood that would replace the current mandatory labelling in place for seafood products.

Canada

The Canadian system of CoOL is broadly similar in structure to the EU/UK model. Country of Origin is mandatory for various products on a commodity basis, i.e. a 'vertical' standard. Generally, few products require a country of origin statement. Country of origin means the last country in which a food product undergoes processing that changes the nature of the food product before it is offered for sale. While most foods do not require CoOL, foods that are wholly imported require a dealer name and address (Consumer Packaging and Labelling Act, Food and Drug Regulations, and Consumer Packaging and Labelling Regulations). When processed fruits and vegetables are imported, the country where the product was packed must be shown clearly and conspicuously on the label, either as a part of the name and address of the foreign operator, or as a separate declaration indicating the origin of the product.

According to the Competition Bureau, two conditions must be met in order to declare a product as 'Product of Canada'/'Produit du Canada'. Firstly, it is necessary to determine whether the last substantial transformation of the goods was carried out in Canada, thereby resulting in a recognizably new final product that is a product significantly different in appearance from the ingredients individually. Secondly, it is necessary to evaluate the extent to which the final product is composed of Canadian materials and manufactured by Canadians. The total cost of direct Canadian labour and/or Canadian material must represent at least 51 % of the cost of production of the new product.

For fresh fruit and vegetables, imported produce must bear specific labelling such as 'Product of', 'Produce of', 'Grown in' or 'Country of Origin', followed by the name of the country of origin of the produce, or other words which clearly indicate the country in which the produce was grown. The declarations are subject specific legibility requirements, with font size prescriptions based on the surface area of the label on the container of produce. For certain commodities, such as honey produced in Canada, it is compulsory to use the words, 'product of Canada', whereas imported honey may simply bear the declaration 'Imported'. Other examples of products that do require CoOL are cheese and wine.

Conversely, for foods such as processed fruits and vegetables when these are imported, the country where the product was packed must be shown clearly and conspicuously on the label, either as a part of the name and address of the foreign operator or as a separate declaration indicating the origin of the product. Where these products are completely prepared in Canada from fruits and vegetables grown and processed in Canada, labelling with 'Product of Canada/ Produit du Canada' is optional.

Where these products are wholly manufactured outside Canada, the declaration of the country of origin is mandatory, whether the goods are sold in their original containers, or repackaged in Canada.

The country of origin can be declared as part of the name and address of the foreign packer (processor), or as a separate declaration. Therefore a product is 'wholly manufactured in a country other than Canada...' when it has not undergone any processing in Canada and its nature remains the same. Repackaging and labelling a product does not change the nature of the product.

For fish, the name of the country of origin must be clearly identified on the label of any fish or fish product imported into Canada. The wording 'Product of' must be used to clearly identify the name of the country of origin. For domestic products CoOL is not required, but may be shown on the label. Entirely imported products have to be labelled with the out of country name and address, the Canadian dealer name and address with bilingual 'imported by' or 'imported for' statement, or with the Canadian dealer name and address with country of origin statement.

A food that is not wholly imported requires the Canadian dealer name and address, but not a 'made in Canada' statement, unless the criteria are met. The dealer's name and address is prescribed in instances where countries of origin statements are also mandatory, such as for wine. Non-mandatory claims with respect to country of origin are subject to the Food and Drugs Act and the Consumer Packaging and Labelling Act and must not be false, misleading, deceptive, or create an erroneous impression.

List of submitters to Draft Assessment and Discussion Paper

Please note that a summary of all submissions made is included on the FSANZ website.

List of Submissions in response to the Draft Assessment Report (excluding campaign submissions)

Steve Adams
 Kay Amsler (Aus)
 John Anderson
 Apple and Pear Australia Limited
 Apple and Pear Growers of SA
 Australian Barramundi Farmers Assoc
 Australian Citrus Growers
 Australian Competition and Consumers Commission
 Australian Consumers Association - Clare Hughes
 Australian Customs Service
 Australian Manufacturers Workers Union
 Australian Olive Oil Association
 Australian Pork Limited- K Plowman
 Australian Seafood Association

 Brian and Lyn Bagnall
 Rick and Amy Bazely
 Glenys Bean
 Beer, Wine and Spirits Council of NZ
 AP and PR Bogg - Lychee Growers
 Brisbane Tomato Association

 J Carapiet
 Cherry Growers and Packers
 Josh Cole
 Coles Myer
 Rosemary Corin Elliot

Victoria Davis
 Colin Day
 Department of Agriculture, Fisheries and Forestry
 Department of Health - South Australia
 Department of Health and Human Services - Tasmania
 Department of Human Services - Victoria
 Distilled Spirits Association of New Zealand Inc.
 Quentin Duthie

 Paul Elwell-Sutton

 Gladys Farrell
 Antonia Feitz
 Federated Farmers of NZ Inc.
 Angela Fischer
 George Fisher
 Stephen Fisher
 Janet Flowers
 Fonterra Cooperative Group Ltd
 Food and Beverages Importers Association
 Food Technology Assoc of Vic Inc
 Foodstuffs NZ Ltd
 Charles Foot
 Shari French and Anthony Wood
 Madalene Frost

 George Weston Foods Ltd
 GE Free NZ

Zelka Grammer & Tim Vallings
 Carol Grant
 Green Party of Aotearoa New Zealand
 Barbara Gunn

 Diane Haist
 Nicholas Haritos (Aus)
 Lynda Harris
 Kate Hayward
 Joe Heffeman
 Ian Holman
 Debbie Holmes

 Inland Aquaculture Association of South Australia Inc

 Karen Jackson
 Barbara Jones

 Craig Le Vaillant
 Marc Levine
 Marie Lockie
 Steve Luke

 Don McConnell
 Bill and Kate McEwan
 Dr A O MacLennan
 Hugh And Lorraine McMaster
 Sarah McMurray
 Lisa Marshall
 Malcolm Miller
 Mario McMillan
 Master Fish Merchants Association of Australia
 Meat and Wool
 Mid Murray Citrus
 Scott Mieras

Angus and Em Napier
National Aquaculture
Council Inc
Barbara Neil
NSW Fisherman's
Cooperative Assoc.
NSW Food Authority
NSW Seafood Industry
Council
New Zealand Consumers
Institute - B Allan
New Zealand Food and
Grocery Council
New Zealand Food
Safety Authority
New Zealand Juice and
Beverage Association
New Zealand Retailers
Association
New Zealand
Winegrowers
NZ Federation of
Business and
Professional Women
NZ Fruitgrowers,
Vegetable & Potato
Berryfruit Growers
Feds (joint
submission)
Northern Territory
Horticultural
Association

Luciana Orr
Patricia Orr

Linda Page
Thomas Palmer
Allan Payne
Progressive Enterprises

Qld Aquaculture
Industries Federation
Queensland Health
Qld Seafood Industry
Association

Catherine Raftopoulos
Jenny Ravlic
David Renwick
Riverina Citrus
Vicki Roberts
Leanne Ruditsch
Rural Women of New
Zealand

Ruth Lawson D.Phil
Catherine Ryan

Safe Food Queensland
Radha Sahar
Maureen Sandall
Sandy Kincaid
Sanitarium
Bonnie Schaab
Sabine Schneider
Scotch Whiskey
Association
Michael Scott and Sue
Shotton
Micheal Skan
Anita Smith
South Australian Fresh
Fruit Growers
Association Inc
Janet Stevenson
Sydney Fish Market P/L

Tasmanian Fishing
Industry Council
Tasmanian Salmonid
Growers Assoc
Tigrey P/L
Helen Traves

Unilever

Victorian Farmer's
Federation
Peter Volker

Nick and Lyn Willis (Aus)
George Wood
Briony Woodnorth
Graham Wrightson

List of Submissions in response to the Discussion Paper (excluding campaign submissions, but including late submissions)

<p>ACCI N&S Alton Amcor Australasia AMWU J Anarn Appledale Processors G Dray Aquaculture Council of Western Australia Australian Barramundi Farmers Assoc Australian Bee Industry Council Australian Beverages Council Australian Citrus Growers Inc Australian Consumers Association Australian Customs Service Australian Food and Grocery Council Australian Home Grown Ltd Australian Institute of Environmental Health Australian Marine Conservation Society Australian Pork Limited Australian Prawn Farmers Assoc Australian Seafood Industry Council Australian Seafood Producers Ausveg (Euan Laird)</p> <p>Karen Bateman Rik and Amt Bazeley Glenys Bean Beer Wine & Spirit Council of NZ John Bisetto Rosanne Bisetto J Boland Carol Booth Joanna Bosman Senator Ron Boswell Jenni Boulton Niel Bowden</p>	<p>Jill Brown Mary Buchanan Business NZ</p> <p>Cadbury Schweppes Cattle Council of Australia Chamber of Commerce and Industry WA Citrus Board of SA CML Commonwealth Fisheries Assoc Conservation Council of WA Consumers Association of SA Consumers' Institute of NZ Inc Coral Sea Farms</p> <p>Adrian Dametto - Citrus Grower Dairy Australia Victoria Davies Rachel de Cent Dep of Health – SA DHS and DPI Victoria Department of Industry and Resources WA Distilled Spirits Association Inc Distilled Spirits Council of the United States District Veterinarian's Office Mark Doerke Charles Drace James Drinnan</p> <p>Chris Elliott Paul Elwell-Sutton Environmental Health Association Lethea Erz</p> <p>Fair Dinkum Food Campaign Karen Farmer Federal Council of Australian Apiarists Assoc</p>	<p>Federated Farmers of NZ Fishy Business Fonterra Food and Beverage Importers Assoc Food Symphony Food Technology Association of Victoria Inc Foodstuffs NZ Shari French Frucor Beverages</p> <p>Noeline Gannaway GE Free Northland GE Free NZ Green Party of Aotearoa NZ Penelope Greenslade Griffins Food Ltd Griffith & District Citrus Growers Inc Growcom (Formerly Qld Fruit and Vegetable Growers) Ingrid Gruner GWF</p> <p>Allen Hampton C. Harrington I. and L. Hay John Henderson Roger Hill, Lesley Hill Maureen Howard Kay Hull MP R Hyett</p> <p>Martin Jackson James Crisp Ltd Ivan Jeray</p> <p>Joe Kennedy</p> <p>J. & C. & E. Land Joachim Lang Judi Lapsley Miller Pola Lekstan Marie Lockie</p> <p>Mary McCammon Kaylas Mackenzie</p>
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Brian Magree
 Fiona Maxwell
 Rory Meyer
 Mario Miranda
 Vicki Martin
 Massey Environmental
 Group (Brittany
 Jenkins)
 Master Fish Merchants
 Assoc of Australia
 Masterfoods Australia
 New Zealand
 Meat and Wool NZMIA
 Mrs Mac's Pty Ltd
 Areti Metuamate

 National Aquaculture
 Council Inc.
 National Council of
 Women Of Australia
 NFF
 Nature Conservation
 Council of NSW
 Ana Navidad
 NSW Farmers Assoc
 NSW Food Authority
 NZFGC
 NZFSA
 NZ Fruitgrowers
 Federation
 NT Government Dep
 Health & Community
 Services
 NZJBA
 NZ Pork Industry Board
 NZ Retailers Association
 NZ Seafood Industry
 Council
 NT Seafood Council
 Nutrinova

 Leah and Terry O'Driscoll
 Organic Olive Oil
 Company
 Nicky Owers

 Anna Parlane
 Parliament of WA
 Neville Pearson
 Martina Pedro, D.
 Pottage
 Joanna Piekarski
 C.M and B.J. Prendergast
 Progressive Enterprises

Queensland Aquaculture
 Industries Federation
 Qld Seafood Industry
 Assoc

 J. Railton
 M. Randle
 Abi Raymond
 Reuban and Sharmi
 Redford
 Restaurant and Catering
 Australia
 Natasha Rickit
 Riverina Citrus
 D & C Robb-Naylor
 B. Roxon
 Ruello and Assoc

 Barbara Santich
 Sanitarium
 Scalzo Food Industries
 Seafood Importers Assoc
 of Australia
 Seafood Services
 Australia
 Seafood Traders of
 Australasia PTY Ltd
 Christine Selby
 A Sharpe
 Warren Snow
 SA Seafood Marketers
 And Processors
 Association
 Tina Speidell
 Leslie Su
 Harry Sutton
 Sydney Fish Market

 Tangaroa Blue
 Tasmanian Salmoid
 Growers Assoc Ltd
 Kirsten Taylor
 Lynette Taylor
 The Food Products
 Association
 The Scotch Whiskey
 Association
 The Wilderness Society
 Inc
 Nicolaas Thiemen
 Francken
 Tiger Fisheries P/L
 Tony Cavanagh
 Tony Light
 Sasha Tschirky

Unilever

 Victorian Apiarists'
 Association
 Victorian Framers
 Federation
 Victorian Framers
 Federation Horticulture
 Group

 Arnold Ward
 Western Australian
 Farmers Federation
 Western Australian
 Fishing Industry
 Council
 Nola Wicks
 Venecia Wilson
 Briony Woodnorth
 Woolworths

 A. Zalunardo
 D. Zalundaro