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

**2-05**
**23 March 2005**

# DRAFT ASSESSMENT REPORT

# PROPOSAL P292

# COUNTRY OF ORIGIN LABELLING OF FOOD

**DEADLINE FOR PUBLIC SUBMISSIONS: 6pm (Canberra time) 4 May 2005**
**SUBMISSIONS RECEIVED AFTER THIS DEADLINE**
**WILL NOT BE CONSIDERED**
*(See 'Invitation for Public Submissions' for details)*

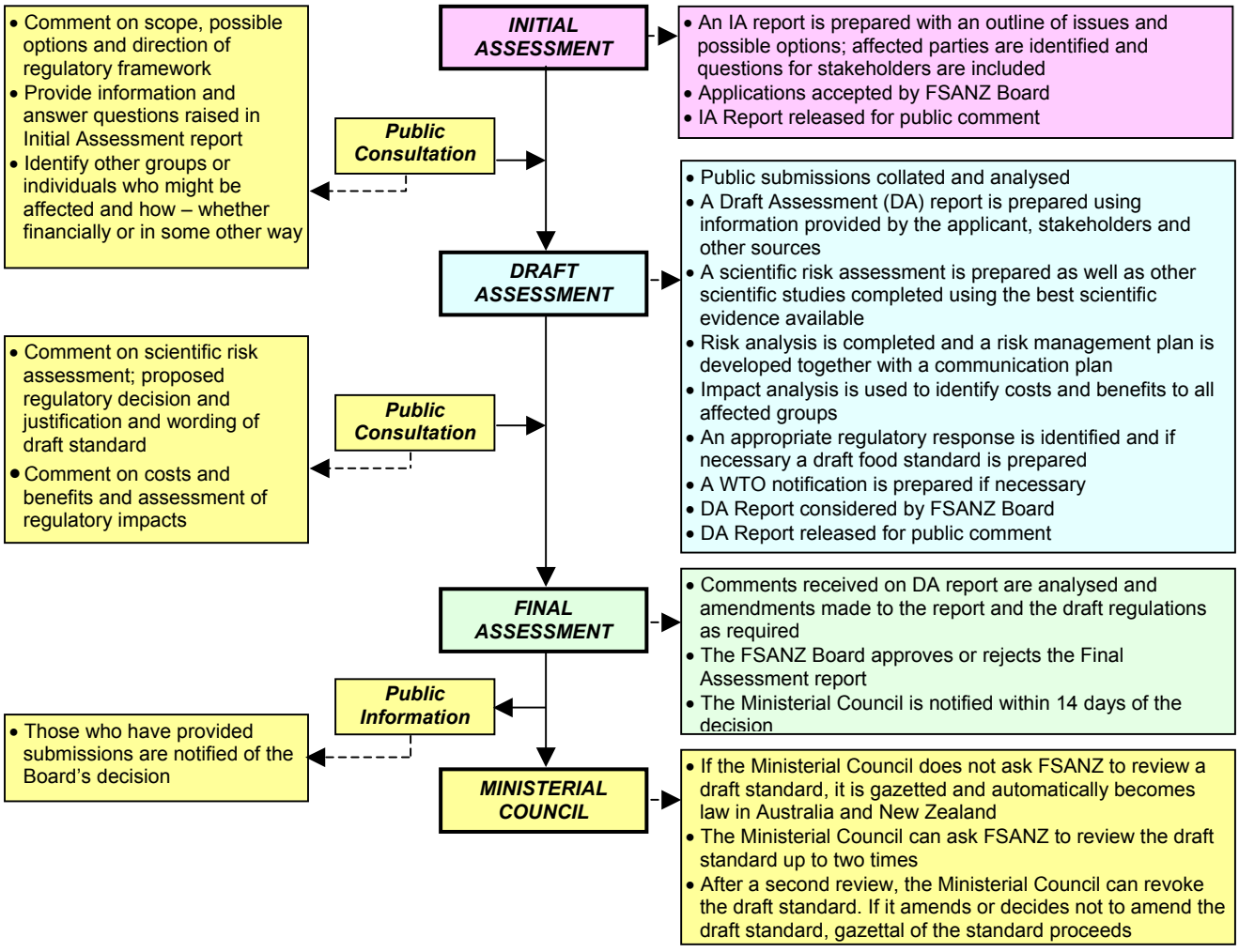
## FOOD STANDARDS AUSTRALIA NEW ZEALAND (FSANZ)

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) made up of Australian Government, State and Territory and New Zealand Health Ministers as lead Ministers, with representation from other 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* is prescribed in the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). The diagram below represents the different stages in the process including when periods of public consultation occur. This process varies for matters that are urgent or minor in significance or complexity.



## INVITATION FOR PUBLIC SUBMISSIONS

FSANZ has prepared a Draft Assessment Report for Proposal P292; and prepared a draft variation to the *Australia New Zealand Food Standards Code* (the Code).

FSANZ invites public comment on this Draft Assessment Report based on regulation impact principles and the draft variation to the Code for the purpose of preparing an amendment to the Code for approval by the FSANZ Board.

Written submissions are invited from interested individuals and organisations to assist FSANZ in preparing the Final Assessment for this Proposal. Submissions should, where possible, address the objectives of FSANZ as set out in section 10 of the FSANZ Act. Information providing details of potential costs and benefits of the proposed change to the Code from stakeholders is highly desirable. Claims made in submissions should be supported wherever possible by referencing or including relevant studies, research findings, trials, surveys etc. Technical information should be in sufficient detail to allow independent scientific assessment.

The processes of FSANZ are open to public scrutiny, and any submissions received will ordinarily be placed on the public register of FSANZ and made available for inspection. If you wish any information contained in a submission to remain confidential to FSANZ, you should clearly identify the sensitive information and provide justification for treating it as commercial-in-confidence. Section 39 of the FSANZ Act requires FSANZ to treat in-confidence, trade secrets relating to food and any other information relating to food, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure.

Submissions must be made in writing and should clearly be marked with the word 'Submission' and quote the correct project number and name. Submissions may be sent to one of the following addresses:

**Food Standards Australia New Zealand**
**PO Box 7186**
**Canberra BC ACT 2610**
**AUSTRALIA**
**Tel (02) 6271 2222**
**www.foodstandards.gov.au**

**Food Standards Australia New Zealand**
**PO Box 10559**
**The Terrace WELLINGTON 6036**
**NEW ZEALAND**
**Tel (04) 473 9942**
**www.foodstandards.govt.nz**

**Submissions need to be received by FSANZ 6pm (Canberra time) 4 May 2005**

Submissions received after this date will not be considered, unless agreement for an extension has been given prior to this closing date. Agreement to an extension of time will only be given if extraordinary circumstances warrant an extension to the submission period. Any agreed extension will be notified on the FSANZ Website and will apply to all submitters.

While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website using the Standards Development tab and then through Documents for Public Comment. Questions relating to making submissions or the application process can be directed to the Standards Management Officer at the above address or by emailing slo@foodstandards.gov.au.

Assessment reports are available for viewing and downloading from the FSANZ website. Alternatively, requests for paper copies of reports or other general inquiries can be directed to FSANZ's Information Officer at either of the above addresses or by emailing info@foodstandards.gov.au.

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## Executive Summary and Statement of Reasons

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 *Australia New Zealand Food Standards Code* (the Code).

The issues being considered in this Proposal in relation to the review of the transitional Standard 1.1A.3 CoOL, include:

- ensuring CoOL regulations are consistent with Australia's and New Zealand's obligations under WTO Agreements;
- ensuring consistency between a CoOL Standard and other legislation. For example, fair trading legislation; and
- ensuring a CoOL standard operates consistently with other labelling standards in the Code.

The regulatory options identified in the Initial Assessment Report were:

1. adopt the current transitional Standard into the Code; or
2. develop a revised Standard in the Code that is consistent with the Ministerial Council Policy Guideline, other relevant legislation and Australian and New Zealand obligations under WTO Agreements.

The Initial Assessment Report raised a number of questions in relation to these issues and to proposed regulatory options. FSANZ received a large number of submissions in response to those questions. The submissions indicate that key stakeholder views are split between the regulatory options. Many stakeholders expressed strong opinions against mandatory CoOL while supporting voluntary CoOL.

There is a distinct polarity regarding CoOL both within and between stakeholder groups, and this has been a feature of previous CoOL proposals. There continues to be a lack of consensus among stakeholders as to future direction of CoOL.

The progress and direction of Proposal P292 has been guided by information received through the consultation process, from the views of an External Advisory Group, through targeted and standard public consultation mechanisms and the policy guidelines developed by the Ministerial Council. FSANZ will use information from submissions to Proposal P237- the previous but abandoned Review of CoOL of food, where appropriate, to assist in finalising the direction of P292. Public submissions are now invited in response to the matters raised in this Draft Assessment Report, and the Draft Regulatory Measure.

As a result of the above consultations and processes, the regulatory options have been broadened - to maintain the status quo, adopt the current transitional standard into the Code or develop a revised standard that seeks to address and reconcile the broad range of issues concerning CoOL. The Regulatory Impact Statement (benefit-cost analysis of Country of Origin Labelling, prepared by the New Zealand Institute for Economic Research {NZIER}) indicates that the preferred regulatory option proposed by FSANZ appeared most likely to provide the best ratio of benefits to costs.

**Statement of Reasons**

FSANZ recommends the adoption of a revised Standard in the Code that:

(i) applies to all packaged and some unpackaged foods,
(ii) provides flexibility while remaining consistent with fair trading laws; and
(iii) applies to the whole (final) food, not ingredients – except where a declaration that ingredients are imported is allowed.

for the following reasons:

- areas of inconsistency with Australian and New Zealand fair trading laws are addressed such that compliance with the Standard would not nonetheless involve a potential breach of the fair trading laws. That will provide greater certainty for Industry and reduce both the costs of compliance and enforcement;

- the revised standard is 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;

- the revised standard addresses the inconsistencies in the current transitional standard with Australia 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 Technical Barriers to Trade (TBT) Agreement;

- the proposed changes to the Code are consistent with the objectives of section 10 of the FSANZ Act;

- the revised standard balances the need for consumers to have access to CoO information with the likely costs for Industry in implementing the Standard; and

- the Regulatory Impact Statement indicates that the preferred option, namely the introduction of a revised standard for CoO, provides the best ratio of benefits to costs.

The proposed drafting for the omission of the current transitional standard, consequential amendments to standard 1.2.1 and the insertion of the new CoOL standard, 1.2.11 is at Attachment 1 of the Draft Assessment Report.

# 1. Introduction

Mandatory CoOL ensures information is available to help consumers identify where a food was made or produced. This type of information may be useful for consumers who choose foods on the basis of:

- supporting domestic markets for social and economic reasons; and/or
- a specific quality or qualities associated with a specific region or country; and/or
- political, religious or ethical beliefs.

In preparing this Draft Assessment Report, FSANZ has had regard to the matters specified in section 15AA of the FSANZ Act, along with

- previous Proposals raised by the then ANZFA and any submissions made in response to those proposals
- Consultation with an External Advisory Group of Industry, Consumer and Government bodies

## 1.1 Nature of Proposal

On 24 November 2000, the former Australia New Zealand Food Standards Council adopted the Code. At that time a number of outstanding matters were identified for review during the two year transition period. One of the tasks was a review of the provisions contained in the former Australian *Food Standards Code* regarding mandatory CoOL of food.

In December 2003, the Ministerial Council agreed to policy guidelines for the regulation of CoOL on food. The policy guidelines are set out in Section 1.2. These guidelines have been taken into consideration in this report and for the draft standard at Attachment 1.

## 1.2 Ministerial Council Policy Guidelines

### *1.2.1 Scope/Aim*

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

### *1.2.2 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's and New Zealand's 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 trade agreements while not being more trade restrictive than necessary

*1.2.3 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.

*1.2.4 Policy Guidance*

In developing a new standard for country of origin labelling in the 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).

## 2. Regulatory Problem

Under the Australia New Zealand Food Standards Setting Agreement (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).

The Ministerial Council guidelines require mandatory CoOL to ensure that consumers have accurate information regarding 'the contents and production of food contents' to enable consumers to make informed choices. The guidelines also ensure that a new Standard for CoOL will be consistent with, and complement, Australia and New Zealand national policies and legislation including those relating to fair trading and industry competitiveness and comply with Australia's and New Zealand's obligations under international trade agreements.

As part of the review, FSANZ has identified a number of potential problems with the current transitional standard, and these are dealt with in sections 5, 6 and 7 of this report.

## 3. Objective

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.

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.

The **specific objectives** of this Proposal are consistent with the high order principles outlined in Section 1.2. They are to:

- 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's and New Zealand's national policies and legislation including those relating to fair-trading and industry competitiveness.
- Be cost effective overall, and comply with Australia's and New Zealand's obligations under international trade agreements while not being more trade restrictive than necessary.

In formulating the policy guidelines, the Ministerial Council recognised that CoOL was not a public health and safety issue.

# 4. Background

## 4.1 History

### *4.1.1 Proposal P90*

In 1992, the then National Food Authority (NFA) received three Applications seeking amendment of the provisions in the former Australian *Food Standards Code* relating to the CoOL of food. The NFA commenced a review of CoOL, Proposal P90, in October 1992, in order to rationalise and clarify the existing provisions and consider the need for new requirements.

During the review, several Federal Court decisions regarding the *Trade Practices Act 1974* (Australia) (the TPA) created uncertainty about the meaning of 'Made in Australia' and 'Product of Australia' for goods generally. Subsequently, the Australian Parliament amended the TPA to establish a legislative compliance regime for country of origin claims. The amendments made to the TPA by the *Trade Practices Amendment (Country of Origin Representations) Act 1998* came into effect on 13 August 1998.

With the incorporation of the country of origin amendments to the TPA, the then ANZFA was in a position where, in Proposal P90, the new legislative compliance regime had not been given due consideration. In addition, Australia and New Zealand had signed a Treaty, which established a system for the development of joint Food Standards for both countries, which meant that the review of CoOL would need to include New Zealand's view and legislative regime. These developments affected ANZFA's ability to complete the review of CoOL under Proposal P90. It was therefore decided to abandon the review and start afresh by raising a new proposal.

### *4.1.2 Proposal P237*

In May 2001, the then ANZFA raised Proposal P237, to consider the need for inclusion of CoOL provisions in the Code. The review set out to harmonise the requirements in the Code, within the context of minimum effective regulation.

The review also set out to consider whether the general provisions in food law, fair-trading and trade descriptions laws were sufficient to fulfil the objectives of CoOL of food, and whether the benefits of labelling to the community outweighed the cost of compliance and enforcement.

In October 2001, recognising the divergence of stakeholder opinion expressed at Initial Assessment in response to Proposal P237 and mindful of the separation of responsibilities for the development of food policy and food standards resulting from the Inter-Governmental Agreement signed by the Council of Australia Governments in November 2000, the then ANZFA referred the matter of CoOL to the Ministerial Council for policy guidance. This guidance was given to FSANZ in December 2003.

In March 2004, the FSANZ Board agreed to abandon Proposal P237 because the regulatory options proposed by ANZFA in the Initial Assessment Report for Proposal P237 and consulted on in May 2001 were not entirely consistent with policy guidelines (Section 1.3) agreed to by the Ministerial Council in April 2003.

The FSANZ Board considered that raising a new Proposal rather than continuing with P237 would allow FSANZ to take better account of the Ministerial Council policy guidelines and to consult on new options which meet the information needs of consumers, do not put an unacceptable burden on Industry and which are consistent with Australian and New Zealand national policy and relevant international trade agreements.

As part of the review, and following the release of the Initial Assessment Report for Proposal P292, FSANZ appointed an External Advisory Group, made up of Government, Industry and Consumer groups from Australia and New Zealand. The Group was appointed to assist with the development of a new CoOL Standard.

### 4.2 Current Standard

The transitional Standard for CoOL (Standard 1.1A.3) in the Code incorporates the various CoOL requirements of the former Australian *Food Standards Code* and the New Zealand *Food Regulations 1984,* both of which have now been repealed. The transitional Standard does not apply in New Zealand, other than requirements that relate to wine and wine products.

The transitional Standard requires 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 for CoOL of food will remain in place until this review is completed, and for two years following the gazettal of any new CoOL standard.

## 5. Relevant Issues

### 5.1 International Practice

#### *5.1.1 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.

Specific provisions on CoOL have also been established for some classes of commodities especially fresh fruit, vegetables and milk products.

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.

### *5.1.2 United Kingdom and European Union*

Codex Principles concerning CoOL have been reflected in European Union (EU) and United Kingdom (UK) law.

The Food Standards Agency (FSA) of the UK 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 putting the case for more origin labelling vigorously at international levels, particularly through the Codex Committee on Food Labelling.

In the meantime, the FSA has produced guidance on the interpretation of the existing rules to ensure they address the issues that are of most concern to consumers and with a view to encouraging increased voluntary declarations.

### *5.1.3 United States of America*

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 US 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 will delay mandatory CoOL on US produce until 30 September 2006.

Some trade associations (beef, pork, and seafood producers along with food retailers and wholesalers) opposed to mandatory CoOL are joining forces to craft a cost effective voluntary program that would provide consumers with CoOL information.

## 5.2 International Trade

The current transitional standard (Standard 1.1A.3) for CoOL requires all packaged foods to bear CoOL. This applies to both imported and domestic products. With regard to some unpackaged foods, namely fish, vegetables (other than frozen, dehydrated or preserved), nuts and fruit (other than preserved), only certain imported foods are required to have CoOL whereas their domestic equivalents are not required to have this information.

### *5.2.1 World Trade Organisation (WTO) Obligations*

As member countries of the WTO, Australia and New Zealand must ensure that regulations are consistent with their obligations under the WTO Agreements.

#### 5.2.1.1 Technical Barriers to Trade

The following articles of the Agreement on Technical Barriers to Trade (1995) are particularly relevant to P292:

Article 2.1 of the TBT Agreement states that 'Members shall ensure that in respect of technical regulations, products imported from the territory of any member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country'.

Article 2.2 of the TBT Agreement states that 'Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create'.

The issue of CoOL for imported and domestic products needs to be considered in the context of the Articles outlined above and the effect that their application may have on Australia and New Zealand's imports/exports with other countries. Determination of whether existing regulations are trade restrictive or favour domestic products over imported products has been considered in the context of the objectives of this Proposal (Section 3) and the Ministerial Council Policy Guideline (Section 1.2).

In the Initial Assessment Report, FSANZ asked specific questions as to what evidence exists for the current standard constituting a barrier to trade, and what may be done to address the problem, if that indeed were the case.

The majority of the submissions received stated that the current standard is either problematic as a barrier to trade, or at least there is inconsistency with WTO obligations. However no evidence of the current standard being an actual barrier to trade was provided.

A small number of submitters stated that there was no inconsistency with WTO obligations

Following consideration of the matters raised in public submissions, FSANZ, in consultation with the EAG has formed the view that it is strongly arguable that the current transitional standard is, inconsistent with Articles 2.1 and 2.2 of the TBT Agreement.

For example, the current provisions of the standard concerning unpackaged foods set up a scenario where like products originating in another country are treated less favourably than like products of national origin.

## 5.3 Consistency with other Legislation

One of the high order principles outlined in the policy guideline (Section 1.3) is that CoOL will be consistent with, and complement, Australia and New Zealand national policies and legislation, including those relating to fair-trading and industry competitiveness. An important consideration in applying this principle to CoOL is that under fair-trading legislation CoOL is voluntary. In addition, fair-trading legislation in Australia is more prescriptive than fair-trading legislation in New Zealand.

### *5.3.1 Trade Practices Act 1974 (Commonwealth)*

The *Trade Practices Amendment (Country of Origin Representations) Act 1998* came into effect on 13 August 1998. These amendments to the TPA provide a legislative regime for CoOL claims. In addition to its general prohibition on corporations engaging in conduct that is misleading and deceptive (s.52), the TPA now provides that a corporation shall not… make a false or misleading representation covering the place of origin of goods' (s.53(eb)). The TPA also provides that certain country of origin representations made about goods do not contravene subsections 52 or 53 (eb), and provides a general test for country of origin representations (s.65AB). The TPA applies to claims such as 'made in' as well as 'product of' claims.

The general test for country of origin representations is that:

- where a corporation makes a representation as to the country of origin of the goods
- (such as 'made in' but not 'product/produce of' or a prescribed logo), and
- the goods have been substantially transformed in the country represented, and
- at least 50% of the production or manufacturing processes that occurred in the country represented, the corporation will not contravene the TPA. This approach sets a clear minimum standard for ensuring that unqualified claims of origin are not misleading and deceptive.

Use of 'Product of…' representations do not contravene the TPA where all the significant ingredients or components come from the country represented, and all, or virtually all, of the production/manufacturing processes also occurred in the country represented. It is this premium label that indicates to consumers that a food contains ingredients from Australia and was produced or manufactured 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.

The Australian Competition and Consumer Commission (ACCC) administer the TPA. It has produced a guideline on 'Made in…' and 'Product of…' claims that explains the circumstances under which these can be used.

The ACCC noted, however, in its submission in response to the Initial Assessment Report, that current CoOL requirements are not necessarily inconsistent with the TPA, and advised of potential solutions to alleviate any risk of inconsistency.

The ACCC also advised that there had been only 20 complaints and inquiries specific to CoOL in the 12 months prior to 1 July 2004, but that this is not necessarily an indication of the significance of any problem with non-compliance with CoOL. The inquiries, which constituted 50% of all contact, were from industry and consumers wanting to know about CoOL obligations.

The ACCC considered that increasing consistency between the Code and the TPA as regards CoOL is likely to increase certainty and decrease compliance costs.

Other submitters stated that there was potential inconsistency between the current standard and the fair trading laws, both in Australia and New Zealand, and that, principally, the best protection for consumers lies in those laws and not in a mandatory system of CoOL.

### *5.3.2 Commerce Trade Descriptions Act 1905 (Commonwealth)*

The *Commerce Trade Descriptions Act 1905* (CTD Act) makes it an offence to import goods to which false a false trade description is applied (s.9), and prohibits the export of goods to which any false trade description is applied (s.12). (A false trade description is defined as 'a trade description, which…is false or likely to mislead in a material respect as regards to goods to which it is applied…'(s.3)).

The *Commerce Imports Regulations 1940* prohibits the import of a number of specified products, including articles used for food or drink, unless a trade description that contains the name of the country in which the goods were made or produced is applied to the goods Regulations 7(1)(a), 8(c)(i)). In complying with this requirement, importers should be mindful of the provisions of the TPA as well.

A National Competition Policy Review of the CTD Act and the *Commerce Imports Regulations 1940* has recommended that the CTD Act be retained but that the regulations be repealed. A repeal of the regulations would result in imported food no longer being required to carry CoOL.

A Government response to the Review is yet to be completed.

One submitter asserted that a repeal of the those regulations would result in inconsistency between mandatory CoOL and the CTD. It was not, however, explained how this would necessarily be the case.

### *5.3.3 Australian State and Territory regulations*

There is no specific State and Territory food law that regulates CoOL.

### *5.3.4 New Zealand Fair Trading Act 1986*

The *New Zealand Fair Trading Act 1986* (NZFTA) is modelled on the TPA. 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. S.13 (j) provides that:

- 'No person shall, in trade, in connection with the supply or possible supply of goods or services – (j) make a false or misleading representation concerning the place of origin of the good.'

The Commerce Commission (NZ) enforces the NZFTA and the *Commerce Act 1986*. The Ministry for Economic Development is responsible for the administration of the NZFTA.

Given that voluntary CoOL currently exists in New Zealand, mandatory CoOL has not been a feature of the regulatory regime to date and that provisions under fair trading legislation address issues of misleading CoOL, a mandatory requirement may not be necessary or appropriate in the future.

Most New Zealand submitters stated that misleading/deceptive conduct issues are matters for the NZFTA, and that this legislation adequately protects consumers, and that mandatory CoOL was not necessary to achieve this aim.

### 5.4 Consistency within the Code

The transitional Standard (1.1A.3) for CoOL currently operates as a vertical stand alone standard and only applies to packaged foods and specific categories of unpackaged food. All of the other labelling standards contained in Part 1.2 of the Code operate as horizontal standards in that they apply across all categories of food. The advantage of horizontal standards is that specific principles, such as providing adequate information to consumers to make informed choices, can be applied across all foods, not just those specific commodities described within a standard.

In order to prevent confusion and provide adequate information to consumers to make informed choices it is important to ensure that all labelling standards are applied consistently. To that end, FSANZ has to every extent possible, aligned the proposed CoOL standard with the horizontal labelling standards of part 1.2 of the Code.

### 5.5 CoOL of Individual Ingredients

Currently the transitional standard (Standard 1.1A.3) requires fruit juice, orange juice, fruit drinks and spirits which are made from a combination of imported ingredients to declare the identity of each country of the imported ingredients from which the product is made. The policy guideline indicates that in developing a standard FSANZ should ensure that CoOL applies to the whole (final) food, not individual ingredients.

In the submissions received, a range of viewpoints were given in relation to this aspect of CoOL, ranging from CoOL on whole foods only, to CoOL of main ingredients, to CoOL on all ingredients. FSANZ has considered the range of views, and the specific policy guidelines, and considers the draft regulatory measure at Attachment 1 strikes a balance between the various positions.

## 6. Regulatory Options

In the Initial Assessment Report, possible options were identified. Those were:

1. Adopt the current transitional Standard into the Code.
2. Develop a revised Standard in the Code that is consistent with the Ministerial Council Policy Guideline, other relevant legislation and Australian and New Zealand obligations under WTO Agreements.

As a result of the submissions received, which are canvassed at items 7 and 8, FSANZ expanded the regulatory options – noting that the expansions were refinements of the two options identified in the Initial Assessment Report. The impact analysis above and the issues raised in submissions would provide insight into the expanded option options below, however, for the purposes of the Regulatory Impact Statement, FSANZ commissioned a benefit-cost analysis for all options identified, which is at Attachment 3.

1. Status Quo – no action required;
2. Adopt the current transitional Standard into the Code (effectively the same as 1);
3. Develop a revised standard in the Code, which continues to be a vertical standard, applying to the named commodities and packaged foods;
4. Develop a revised standard, that is a component of the horizontal labelling regime of part 1.2 of the Code, that:

    (i) applies to all packaged and some unpackaged foods;
    (ii) provides flexibility while remaining consistent with fair trading laws; and
    (iii) applies to the whole food, not ingredients – except where a declaration that ingredients are imported is allowed.

6. Develop a revised standard for CoOL applying to all foods, whether packaged or unpackaged.

FSANZ considers, however, that Option 4 is the preferred option for a new CoOL standard, considering the submissions made to FSANZ in respect of the Initial Assessment, the objectives listed in section 10 of the Act, the Ministerial Policy Guidelines and other material concerning CoOL of food.

## 7. 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 regulatory impact assessment identifies and evaluates the advantages and disadvantages of amendments to the standards, and their health and economic impacts.

### 7.1 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.

## 7.2 Data Collection

Preliminary information gathered by FSANZ at Initial Assessment has been provided under Section 5 above. FSANZ has also collected further data following the Initial Assessment Report. This information has been used to develop a regulatory impact analysis for this Draft Assessment Report. Relevant data may be provided in the form of scientific or non-scientific evidence. Submitters have been encouraged to present data in response to the key issues listed above, giving consideration to all affected parties wherever possible.

## 7.3 Impact Analysis

In the Initial Assessment Report, a series of questions were asked based on the 2 Regulatory Options outlined in that Report. Not all submissions addressed the specific questions, and where those questions were addressed, in not all cases were clear preferences for the 2 options expressed, with some submitters expressing views supporting the adoption of a voluntary, as opposed to mandatory system of CoOL In general terms, irrespective of which option was preferred (if any) the following comments were made regarding potential impact:

### *7.3.1 Industry*

Most industry groups who submitted advised there would be significant costs for industry, particularly New Zealand industry, in mandatory CoOL, and that the benefits to industry, based in part on the actual CoOL requirements of consumers were not significant enough to warrant the cost of mandatory CoOL.

A minority of industry considered either that it was uncertain whether the increased costs would be passed on to consumers, but that there were tangible benefits for consumers and industry if there was comprehensive CoOL information on which decisions may be based. This was particularly the case where mandatory CoOL was applied to imported products per the current transitional arrangements.

### *7.3.2 Consumers*

There was a divergence of views expressed regarding consumers, and the potential impact. Research was cited by some groups that supported the view that Australian consumers use CoOL as a means to support Australian products and businesses, and that CoOL information is an important tool when purchasing fresh food and packaged foods.

Conversely, data was provided to the effect that consumers are either uninterested in CoOL or that it is of a lower priority than other labelling information – such as allergenicity or nutritional content, and that consumer choice, particularly in New Zealand was motivated primarily by brand or price, and that CoOL is not the most cost effective way to enable consumers to make an informed choice.

Other comments made included assertions that ranged from consumers either having an interest in where their food comes from, to consumers not finding CoOL useful, to a lack of CoOL on unpackaged foods potentially contributing to confusion surrounding CoOL

There was some concern that any increased costs of applying mandatory CoOL in New Zealand would be passed onto the consumer.

#### *7.3.3 Enforcement Agencies in Australia and New Zealand*

Not all enforcement agencies provided comments in response to the Initial Assessment Report, however, of those that did, one supported option 1, one supported option 2 and one (New Zealand Food Safety Authority) did not support mandatory CoOL, and one expressed no preference. The New Zealand agency also advised there would be considerable cost for New Zealand in enforcement of a new mandatory CoOL standard. Cost was not considered as a factor for the Australian Agencies.

#### *7.3.4 Summary*

Most views of stakeholders tended to be high-level statements that would require further detail to properly flesh out the information underlying those statements. However, it can be said that, an overall, preliminary assessment would be that consumers use CoOL in making decisions to purchase food products, but only as a matter after taking account of date marking, nutritional information, ingredients and price. Consumers will benefit from CoOL, but these benefits may be small. Industry also benefits from a preference of consumers to buy local foods, but the extent of this benefit has not been conclusively determined and may be also small. In Australia, where mandatory CoOL currently exists on food products, these factors may be sufficient to deliver a small net-benefit to the economy. In New Zealand, where mandatory CoOL only applies to wine and wine products, the introduction of CoOL on a wider range of food products could impose large compliance costs on industry.

New Zealand food manufacturers commonly use imported ingredients and source these from various suppliers and countries depending on accessibility, price and seasonality. The cost of re-labelling every time the source changed would be very costly. In the view of industry, it would be impractical. Introducing mandatory CoOL in New Zealand, without certain flexibility for qualifying a CoOL declaration (i.e. packaged in New Zealand and made from local and imported ingredients) could impose a significant net-cost on the economy.

# 8. Consultation

## 8.1 Proposal P237

Following the release of the Initial Assessment Report for P237, the former review of the CoOL of food, FSANZ undertook broad consultation on CoOL. FSANZ considers that the issues raised are relevant matters for the purposes of this Proposal.

#### *8.1.1 Stakeholder Forums Proposal P237*

For Proposal P237, 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.

The following table provides a breakdown of the submissions supporting each option in Australia and New Zealand. (Note that one of the submissions provided comment but did not indicate support for an option.)

| OPTION | AUSTRALIA | NEW ZEALAND | TOTAL |
|---|---|---|---|
| **Maintain Status Quo** | 2 | 0 | **2** |
| **Reliance on fair trading laws & trade description laws** | 15 | 5 | **20** |
| **Self – regulation** | 0 | 2<br>(2 submissions also noted option 3 has merit) | **2** |
| **New Standard in ANZFSC** | 18<br>(of these, 8 specifically mentioned that the new Standard must have consistency with the TPA provisions) | 5 | **23** |
| | | Total Submissions | **47** |

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.

### *8.1.2 External Advisory Group Proposal P237*

The early engagement of key stakeholders from both Australia and New Zealand was considered to be important. Therefore, FSANZ established an External Advisory Group consisting of representatives from government, industry and consumers to oversee the review and to provide expert advice when required. The membership of the External Advisory Group consisted of representatives from:

- Department of Agriculture, Fisheries and Forestry - Australia (AFFA);
- Australian Quarantine and Inspection Service (AQIS);
- Australian Customs Service;
- Australian Competition and Consumer Commission;
- Australian Food and Grocery Council;
- National Farmers' Federation;
- Australian Retailers' Association;
- Australian Chamber of Commerce and Industry;
- New Zealand Ministry of Economic Development;
- New Zealand Grocery Marketers Association; and
- New Zealand Consumers Institute.

## 8.2 Proposal P292 Initial Assessment

In the weeks preceding the closing date for written submissions to the Initial Assessment Report for Proposal P292, FSANZ invited key stakeholders to attend forums in Auckland, Wellington, Sydney and Melbourne. Those forums were to consider issues related to CoOL of food and to provide information regarding the review process. The forums were also an opportunity to encourage key stakeholders to formally submit their feedback in writing.

### *8.2.1 Overall summary*

FSANZ received a total of 1655 submissions in response to the P292 Initial Assessment

Of these, 1596 campaign submissions were received from New Zealand consumers. These were of two types – 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, twenty one were from Australia, forty three 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.

### *8.2.2 Regulatory options and preferences*

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 |
|---|---|---|---|---|
| **1 – Adopt the current Transitional Standard into the Code** | 6 | 1 | 1 | 1 (Scotland) |
| **2 – Develop a revised Standard** | 3 | 4 | | |

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 EAG 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).

*8.2.3 Key issues*

Key issues that have arisen from submissions to the P293 Initial Assessment Report and which need to be considered at Draft Assessment are as follows:

8.2.3.1 International considerations

Five New Zealand submitters commented that recently both New Zealand and Australia strongly 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..'. Thus 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'.

8.2.3.2 Trade considerations

Many submitters noted that mandatory CoOL is potentially in conflict with Australia and New Zealand's WTO obligations, particularly with respect to *The 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:

- retention of subclause 2(4) of Standard 1.1A.3 would minimise conflict with Article 2.2 of the TBT Agreement. New Zealand produce complying with Codex, EU, UK or USA requirements and not bearing a specific CoOL statement could still comply with the Australian requirement under subclause 2(4);
- 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 CoO is required by other legislation such as the Commonwealth *Quarantine Act 1908*;

- the extent of a barrier to trade may be minimised by only requiring food for retail sale to be labelled with an origin statement and by not prescribing a specific format;

- 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 which 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;

- 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 P292 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.

8.2.3.3 Consistency with other legislation

Four submitters specifically pointed out that the CoOL requirements are inconsistent with trade practices/fair trading legislation in Australia and New Zealand and one submitter noted that there was a tension between the current requirements for CoOL in the Code and the requirements of the Trade Practices Act (TPA) and that this tension would be eased by not prescribing a format for country of origin statements, but allowing for the use of qualifying statements that would minimise the likelihood of a statement being false or misleading. Two other submitters noted that any changes to CoOL legislation should be consistent with trade practices/fair trading legislation in both Australia and New Zealand. It was also noted 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.

One submitter noted there was consideration of a review of the TPA and if this is to occur then any review of CoOL in the Code should be held pending changes to the TPA. It was queried by the same submitter that given that FSANZ and ACCC have recently signed an MoU, of what consequence does Proposal P292 have in Australia?

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.

8.2.3.4 Application of CoOL to Whole Foods/Individual Ingredients

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 agents used, are required to have traceability systems in place, hence products can be effectively recalled if necessary without CoOL.

Twelve submitters supported CoOL for both whole food and ingredients.

8.2.3.5 Consistency within the Code

One submitter suggested that the CoOL standard should be consistent with other labelling standards in the Code and as a horizontal standard, should apply to all foods.

## 8.3 Draft Assessment

FSANZ is now seeking comment in relation to this Draft Assessment Report. Comments received in response to this Report will be used to assist in the development of a Final Assessment Report.

FSANZ recognises that the issues raised by submitters across the history of CoOL demonstrate a broad polarity in opinion.

FSANZ also recognises that it would not be possible to reconcile those views in the one standard, and that if FSANZ were to formulate a standard that just catered to the needs of one group, the needs and views of others would be significantly compromised.

Therefore, FSANZ has developed a standard that FSANZ believes addresses the attendant issues inherent to CoOL and those raised in submissions. FSANZ considers that the preferred option strikes an acceptable balance between the plethora of differing views and that it represents a satisfactory medium of the relative costs and benefits to industry and consumers of mandatory CoOL

Submitters are therefore invited to provide comments in relation to:

- the preferred regulatory option and potential impacts in relation to these regulatory options.

FSANZ will continue to take account of the views expressed by submitters in relation to the Initial Assessment Report for this proposal as well as previous proposals. However for the purpose of responding to this request for submissions it is not necessary for submitters to restate the views that have previously been expressed.

## 8.4 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obligated to notify WTO member nations where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

This matter will not be notified to the WTO under the Technical Barrier to Trade (TBT) Agreement as the provisions of the new Standard are unlikely to significantly affect trade, particularly since FSANZ is taking action to remove those provisions which currently constitute a barrier to trade. Moreover, FSANZ does not believe that the proposed Standard is inconsistent with the Codex *General Standard for the Labelling of Pre-packaged Foods.*

## 9. Conclusion and Recommendation

FSANZ recommends the adoption of a revised Standard in the Code that:

- applies to all packaged and some unpackaged foods,
- provides flexibility while remaining consistent with fair trading laws; and
- applies to the whole food, not ingredients – except where a declaration that ingredient are imported is allowed.

for the following reasons:

- Areas of inconsistency with Australian and New Zealand fair trading laws are addressed such that compliance with the Standard would not nonetheless involve a potential breach of the fair trading laws. That will provide greater certainty for Industry and reduce both the costs of compliance and enforcement.

- The revised standard is 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.

- The revised standard addresses the inconsistencies in the current transitional standard with Australia 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 Technical Barriers to Trade (TBT) Agreement.

- The proposed changes to the Code are consistent with the objectives of section 10 of the FSANZ Act.

- The revised standard balances the need for consumers to have access to CoO information with the likely costs for Industry in implementing the Standard.

- The Regulatory Impact Statement indicates that the preferred option, namely the introduction of a revised standard for CoO, provides the best ratio of benefits to costs.

## 10. Implementation and review

Following the consultation period for this document, the Final Assessment of the Application will be completed. Following the preparation of the Final Assessment Report and consideration by the FSANZ Board, a notification will be made to the Ministerial Council and it is anticipated that this will be completed by the end of 2005. The amendments to the Code would come into effect shortly thereafter upon gazettal, subject to any request from the Ministerial Council for a review.

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, 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 1.1.A3 for a period of three years. Alternatively, manufacturers and retailers may comply with Standard 1.2.11 from its commencement.

## ATTACHMENTS

1. Draft variations to the *Australia New Zealand Food Standards Code*
2. Summaries of issues raised in public submissions in the first round
3. Detailed benefit-cost analysis
4. User Guide

**Attachment 1**

## 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 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.

**[2]** *omitting subclause 2(2) of Standard 1.2.1, substituting –*

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

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

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

## *STANDARD 1.2.11*

## *COUNTRY OF ORIGIN REQUIREMENTS*

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**Purpose**

This Standard sets out the requirements for Country of Origin for packaged foods that are required by this Code to bear a label, and certain unpackaged foods.

**Table of Provisions**



**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. 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 1.1.A3 for a period of three years. Alternatively, manufacturers and retailers may comply with Standard 1.2.11 from its commencement.

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

(3) Paragraph 2(1)(e) of Standard 1.2.1 does not affect the operation of this Standard.

**Editorial note –**

Paragraph 2(1)(e) of Standard 1.2.1 provides that food for retail or catering purposes must bear a label except where the food is whole or cut fresh fruit and vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables. Subclause 1(3) operates to the effect that those foods must nonetheless comply with the requirements for Country of Origin set out in this Standard

## 2 Requirements for packaged food

(1) The label on a package of food must include –

(a) a representation that identifies the country of origin of the food; or
(b) a statement that the food is imported; or
(c) a statement –

(i) that identifies the country where the food was made, manufactured or packaged for retail sale; and
(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.

**Editorial Note:**

A representation may include graphics such as a certified trademark or logo, and the material included on a label under this clause may include a comment on or explanation of that material.

The *Trade Practices Act 1974* (Commonwealth) and the *Fair Trading Act 1986* (New Zealand) contain requirements concerning the place of origin of goods. In particular, they prohibit the making of false or misleading representations concerning the place of origin of goods. Unlike this Standard, the legislation does not mandate country of origin, which is a sub-set of place of origin, however in complying with the requirements of this Standard, consistency with the criteria required by the legislation is necessary.

For Australia, the provisions of sections 65AA-AN of the *Trade Practices Act 1974* govern statements identifying country of origin where expressions including 'made in' and 'product of' are used.

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 Act. 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.

**3 Requirements for specific unpackaged foods**

(1) Where a food listed in the Table to this clause is for retail sale other than in a package, a statement identifying the country of origin of the food or indicating that the food is imported, must be -

(a) displayed on or in connection with the display of the food; or
(b) provided to the purchaser upon request.

**Table to clause 3**

| **Food** |
|---|
| Fish |
| Fruit and Vegetables |

**Editorial note:**

'Fish' and 'Fruit and Vegetables' are defined in Standards 2.2.3 and 2.3.1 respectively.

**To commence: Two years from Gazettal**

**[4]** ***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

**Attachment 2**

# SUMMARY OF SUBMISSIONS FOR P292 (Country of Origin Labelling of Food) IAR

## AUSTRALIAN SUBMISSIONS

*Government Agencies*

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| Australian Competition and Consumer Commission (ACCC) | • ACCC ensures compliance with Trade Practices Act 1974 (the Act).<br>• The Act prohibits misleading or deceptive conduct if goods are labelled with country of origin.<br>• Also sets out specific defences for country of origin representations, whereby when certain tests are met, claims about the origin of goods do not breach relevant sections of the act:<br>• safe harbour defence for general country of origin claims applies to claims such as 'Made in…' and 'Manufactured in…'<br>• defence for 'Product of…' claims, which is more demanding.<br>• Believe CoOL requirements are not necessarily inconsistent with country of origin requirements under the Act.<br>• Notes that in the instance where a food was labelled with 'Made in…' or 'Product of…' under the Code without meeting the specific tests of defence for the Act, this does not necessarily comprise a breach in the Act.<br>• To constitute a breach of the Act the representation would still have to be proven false, misleading or deceptive.<br>• Considers it unlikely that a representation such as 'Packed in Australia' or 'Packed in Australia from local and imported ingredients' would be regarded as a general country of origin claim to which the safe harbour defence would apply.<br>• Considers that claims such as 'Made in Australia from local and imported ingredients' or 'Packed in Australia' are likely to be qualified claims, which give more information than a general claim and imply a lesser connection with the country represented.<br>• These qualified claims are unlikely to need to meet in full the requirements for substantial transformation and fifty per cent cost of production tests, though the Act still requires they are not false, misleading or deceptive. | • Do submitters believe the existing CoOL requirement in New Zealand and Australia are consistent with fair-trading and import regulations?<br>• Section 7.3.3 IAR - it is possible to have a food that complies with the requirements of the Code but does not meet the safe harbour provisions outlined in the Act for 'Made in…' and 'Product of…' claims.<br>• Clause 2, subclause (3) of the Transitional Standard provides that where the name and address of the manufacturer are set out on the label and the address contains the name of the country in which the food was made or produced, the name and address shall be taken to satisfy the requirements of subclause (1).<br>• If there is inconsistency between existing CoOL requirements and |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| | • Notes that the name and address of the manufacturer is not necessarily an origin claim for the purpose of the Act, whether it is or not would be determined by the courts on a case by case basis.<br>• To alleviate any risk, the standard could provide that such defences are prescribed under Division 1AA of Part V of the Act apply to unqualified general country of origin and 'product of…' claims made under the Code.<br>• Flexibility could also be provided to ensure that qualified claims can be made in situations where unqualified claims cannot be sustained.<br>• ACCC received over 20 complaints and inquiries in the 12 months to 1 July 2004, specific to CoOL by food and beverage manufacturers.<br>• Approximately half were inquiries received from businesses and consumers wanting to know about CoOL obligations.<br>• Note that the number of complaints may not be indicative of the current rate of non-compliance given that not all possible breaches are drawn the ACCC's attention<br>• The number of complaints received by ACCC is not necessarily indicative of the significance of the problem.<br>• Non compliance can affect consumers confidence in food and beverage products, can have a detrimental impact on competitors and the industry and can have implications for food safety.<br>• ACCC receives inquiries from food and beverage manufacturers relation to their CoO obligations.<br>• The Act does not require goods to be labelled with their CoO, hence manufacturers firstly consider mandatory labelling obligations under other legislation, and then need to consider whether this labelling is false, misleading or deceptive, or likely to mislead or deceive under the Act.<br>• Increasing consistency is likely to increase certainty and decrease compliance costs. | fair-trading and import regulations, how could a new Standard address such concerns?<br>• What is the current rate of non-compliance of imported/domestic products re CoOL in the New Zealand/Australia market?<br>• If non-compliance is a problem, how significant a problem is it?<br>• How substantial is the problem of inconsistency between CoOL requirements in the Code and other legislation?<br>• What are the benefits of ensuring consistency between the Code and other legislation? |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| Australian Government Department of Agriculture Fisheries and Forestry (DAFF) | • **Supports *in-principle* Option 2 – considers that the best interests of industry and consumers may be served by requiring mandatory CoOL on all food products.**<br>• Considers that there are inconsistencies in the Transitional Standard between the unpackaged products regulated in this standard (fruits, vegetables, seafood and nuts) and other unpackaged products not mentioned in this standard.<br>• Supports that the CoOL Standard should be consistent with other labelling standards in the Code; CoOL should be a horizontal standard and should apply to all foods.<br>• Believes the current standard is problematic with regard to Australia's WTO obligations as domestic and imported unpackaged products are not treated equally.<br>• Notes that research conducted by FSANZ and the 'Made in Australia' campaign demonstrates that Australians use CoOL as a means to supporting Australian products and businesses.<br>• Consumers also state that this information allows them to make a judgement on the quality of the food based on its CoO and to avoid certain countries for ethical reasons such as human rights practices.<br>• Notes that these applications of CoOL are consistent with the objectives of FSANZ to ensure consumers have adequate information relating to food to make informed choices.<br>• Considers that current CoOL requirements for packaged foods should be extended to all unpackaged foods should be extended to all unpackaged foods, taking into account the costs and benefits to producers and consumers of imposing mandatory labelling<br>• Believes these requirements should be: consistent with Ministerial Policy Guidelines, should result in consistency in labelling between food products, should seek to keep to a minimum the costs to producers (application of point of sale labelling may be most appropriate).<br>• Notes that many primary production sectors support the introduction of CoOL for all food products.<br>• Also notes that some sectors, notably the red meat sector, do not support its introduction on the grounds of costs and its implications for Australia's international trade position on labelling. | |
| Queensland Health (QH) | **Supports Option 1 – adopt the current transitional Standard into the Code.** | |

*Industry*

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| Australian Food and Grocery Council (AFGC) | • Restates its position that CoOL should be voluntary.<br>• Recognizes that it is likely that a standard will be developed, in accordance with the Ministerial Policy Guidelines.<br>• Considers any standard developed should apply equally between Australia and NZ (strongly opposes that it be Australia only).<br>• Notes that mandatory CoOL could be in conflict with Australia and NZ's obligations under WTO's TBT, as it is more restrictive than the Codex requirement and those of EU and UK.<br>• Notes the current standard is, and a new standard would be, inconsistent with fair trading legislation in both Australia and New Zealand, thought also note it is not in conflict or incompatible with this legislation.<br>• Believes cost can be minimized, in accordance with the High Order Principles of the Ministerial Policy Guidelines, by staying close to the current Standard 1.A.3, particularly by retaining the provision which allows the name of the country in the name and address of the manufacturer to fulfil the CoO requirements.<br>• Believes requiring mandatory CoOL will mean significant cost on parts of the NZ industry.<br>• To minimize these costs, AGFC recommends a 5 year introductory period together with a stock in trade provision of one year generally and two years for foods having a shelf life of more than one year.<br>• Supports CoOL applying to the whole food rather than individual ingredients, as stated in the Policy Guideline.<br>• Supports that CoOL is not a public health and safety issue.<br>• Considers the first and forth High Order Principles are contradictory.<br>• Supports the principles of not misleading or deceiving consumers.<br>• Supports consistency across all legislation in Australia and NZ.<br>• Supports balancing the benefit to consumers of CoOL with the cost to industry and consumers of providing it, particularly consideration of the costs to industry for any changes in requirements.<br>• Supports consideration of the existing temporary Australian standard and consideration of the costs of moving away from it. | |

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| | • *Trade implications:*<br>• Notes that that due to subclause 2(4) of Standard 1.1A.3 a specific 'made in' or 'product of' statement is not necessary, and NZ produce complying with Codex, EU, UK or USA requirements and not bearing a specific CoOL statement could still comply with the Australian requirement.<br>• Considers that different treatment of imported unpackaged fish, vegetables, fruit and nuts to their domestic equivalents could breach Article 2.1 of the TBT Agreement.<br>• Recommends that the current provision in subclause 2(4) be retained to minimize conflict with Article 2.2 of the TBT Agreement.<br>• Considers that for packaged foods, CoOL specifically is not a significant barrier to trade as labels generally have to be changed to meet other requirements such as NIP, and because of subclause 2(4).<br>• Also notes that having to print labels for Australia does impose costs, and in some cases where margins or quantities are small it can mean that the product is not imported because it is not economical to do so.<br>• *Consistency with other legislation:*<br>• Considers it highly desirable that CoOL requirements are consistent with other Commonwealth, State and Territory and New Zealand Legislation.<br>• Vigorously opposes having different requirements in Australia and New Zealand.<br>• Does not believe that the existing CoOL requirements in New Zealand and Australia are consistent with fair-trading and import regulations.<br>• Notes that though not consistent with fair trading or trade practices legislation, CoOL is not in conflict with or incompatible with these.<br>• Notes that under the TPA 'made in X' is taken to mean substantial transformation of the ingredients into a different product and 50% of input costs are incurred in X, whereas in NZ it is substantial transformation only.<br>• Notes that the only consistency of CoOL current requirements is with the Australian *Commerce Imports Regulations 1940*, both of which require CoOL for food.<br>• Believes to ensure consistency between CoOL requirements and fair-trading and import regulations CoOL should be voluntary.<br>• Agrees that CoOL requirements should apply horizontally to all foods.<br>• *Application of CoOL to individual ingredients.* | |

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| | • Notes that some of the vertical requirements in Standard 1.1A.3 apply to specific ingredients of specified foods, which is in conflict with the Ministerial Council Policy Guidelines which state CoOL should apply to whole foods rather than individual ingredients.<br>• Notes that for manufacturers of those foods for which CoO requirements apply to ingredients, applying it to the whole food only will simply labelling and stock supply.<br>• Note that if it was required to identify a specific country [of import] labelling problems would be compounded, compared 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.<br>• Notes that sometimes source of ingredients may change at short notice, such as in the case of natural disaster effecting supply.<br>• Considers the labelling of CoO of ingredients is impractical, the costs outweigh any perceived benefits and would only lead to the occasional inadvertent labelling of products.<br>• *Impacts on industry:*<br>• Notes that there is an inventory cost of printing and maintaining two labels for some products which must currently be labelled for CoO of ingredients (i.e. 'made in Australia from Australian and imported ingredients' and ' made in Australia from imported and Australian ingredients').<br>• Considers there are no benefits to industry of CoOL'.<br>• Notes there are some problems with the ACCC's 'safe haven' for 'made in' statements (substantial transformation and 50% of costs) when raw material costs may vary, but that this is generally overcome by adding the qualifier 'from Australian and imported ingredients' or the reverse.<br>• Considers it is not possible to introduce a new CoOL requirement that is consistent with the Ministerial Council Policy Guidelines, other relevant legislation and Australia's and New Zealand's obligations under WTO Agreements.<br>• Notes that if the *Commerce Imports Regulations 1940* are repealed, as has been recommended, mandatory CoOL under the Code would be inconsistent with the *Commerce Trade Descriptions Act 1905*.<br>• Notes that costs could be minimized by allowing a five year introductory period and general one year stock in trade for most foods and a two year stock in trade for food with | |

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| | a shelf life over one year.<br>• Notes that costs to Australian industry, NZ industry and importers would depend on the form of the standard:<br>• Under a mandatory CoOL which removes the requirement for ingredient CoO and retains the provision which allows for name and address of the manufacturer (it if contains the name of the country in which the product was made) to fulfil the CoO requirement - there would be virtually no requirements to Australian industry.<br>• Under a standard that requires a 'made in' statement which can be qualified by 'from Australian and imported ingredients' – there would be considerable costs on both Australian and New Zealand food industry. Assuming it required half the labels to be changed the costs would be over $200 million. One company alone estimates it would costs $1.2 million<br>• Under a standard in which CoO is optional – this would impose no costs.<br>• Impact on Consumers<br>• Considers that the majority of consumers are not concerned by the absence of CoOL on most unpackaged foods.<br>• Considers only a minority of consumers are really interested in CoOL and therefore there is minimal 'benefit' to consumers.<br>• Notes that in FSANZ quantitative research with consumers study in June 2003, in unprompted awareness of label information, only 17% of people mentioned CoO<br>• Considers NZ consumers generally are not concerned at the absence of CoOL. Notes that one AFGC member company who has products without CoO statements has had no enquiries during the past year.<br>• Considers that consumers generally do not perceive anything about the costs of labelling.<br>• Considers that costs to consumers would depend on the format of the standard, varying from zero to an increase in the price of food if the format of the standard required a large number of label changes.<br>• Considers there would be no risks to consumers.<br>• Impact of Government<br>• Notes that the cost of having to enforce new regulations depends on the format of the standard. If a simple CoO standard is put in place the enforcement cost is minimal as it can be included as part of normal label inspection activities. | |

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| Australian Pork Limited (APL) | • Advocates that mandatory CoOL is consistent with maintaining an efficient and internationally competitive food industry that addresses public health and safety concerns, provides consumers with information on which to make informed decision; facilitates trade; and stops misleading labelling.<br>• Believes there should be consistent treatment of both domestic and imported foods, so that CoOL covers both packaged and unpackaged goods.<br>• Advocates that CoOL should apply to both whole foods and ingredients.<br>• Cites consumer research that indicates 83% of consumers believe that CoO information is important when purchasing fresh food and 72% believe CoO information is important when deciding which packaged foods to buy.<br>• Notes that interest in CoO for food products appears to be far greater than for mand other products, citing research that found 63% of consumers believed that CoOL is important when choosing clothes and shoes, and 50% when purchasing household furniture.<br>• Believes CoOL allows consumers to purchase Australian products as a means of supporting local businesses, avoid products from countries where they believe that illegal or exploitative animal or human practices occur.<br>• Qualitative research by APL May 2004 identified that consumers assume that all fresh produce, including fruit, vegetables, fish and meat are Australian grown.<br>• However this is not necessarily the case as consumers may not obtain accurate information regarding the CoO of the product and ingredients.<br>• Believes the current 'Made in Australia' allows for imported raw materials to be sold in processed pork products under that guise of being of Australian origin.<br>• Supports mandatory CoOL for all packaged and unpackaged pork products, incorporating both the whole foods and individual ingredients.<br>• This will ensure consumers can identify the country of origin of content of a product and also the proportion of content in a product that is of domestic origin.<br>• It is essential that consumers have accurate information regarding both the whole food and the individual ingredients to enable them to make informed purchase decisions.<br>• Notes that pork imported into Australia is input into the production of smallgoods, which are sold without CoO indication, and current labelling requirements do not allow consumers to differentiate smallgoods that are made from imported product. | |

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| | • Many Australian consumers assume that unpackaged pork products from the delicatessen (ham, bacon etc) are made from 100% Australian pork, whereas statistically only 60% of smallgoods are actually produced from Australian ingredients.<br>• Pork imports, including low cost foreign pork as a raw material for smallgoods manufacture, cause severe economic harm to the domestic pork industry.<br>• Believes that the same standards that are in place for fruit juice, fruit drinks and spirits need to be applied to other processed products , such as pork smallgoods.<br>• Actions taken such as the 'Homegrown' campaign are severely limited and disadvantaged by the lack of CoOL.<br>• Therefore the absence of mandatory CoOL contributes to further damage to the Australian pork industry.<br>• CoO labels on unpackaged pork products would also assist in controlling and managing health risks associated with the increasing number of international outbreaks of diseases, such as BSE and Food and Mouth disease.<br>• Without CoOL consumers cannot minimise their personal risk from potential exposure to diseases or even show their preference to the Australian industry.<br>• Notes that, according to the ACA, there is considerable confusion in Australia around TPA terms 'Made in' and 'Product of', and that CoOL is an indicator of whether a food product is safe.<br>• Believes that applying mandatory CoOL to all food products is unlikely to remedy confusion over the TPA prescribed terms.<br>• Rather, believes that it is only through mandatory CoOL for both whole foods and ingredients that this would be resolved.<br>• *Consumer Insights:*<br>• Cite a National Newspoll Study conducted for APL in February 2004, which identified that 78% of Australians would prefer to buy Australian origin produce, while 88% claim they would pay more for bacon and ham labelled 100% Australian.<br>• Also cites Focus Group Research for APL in May 2004 on the 'Australian Homegrown' concept which indicated a high and growing concern with food product labelling due to consumers' growing recognition of diseases such as BSE, Foot and Mouth, and Avian Influenza occurring overseas. | |

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| | • Also cites industry and consumer research, conducted nationally by Sweeney Research on behalf of the Commonwealth Department of Industry, Science and Resources in May 1999, which found that industry underestimated the importance that consumers place CoOL Almost 70% of consumers look for information about a product's origin when making purchasing decisions.<br>• Consumer research found that :<br>• Consumers look at CoOL to help determine the quality of an item and to support local industry and employment.<br>• around 88% of consumers prefer to buy Australian whenever possible and 77% are happy to pay a little extra for Australian goods.<br>• Consumers are keen to know where a product comes from and are more likely to purchase a product if they know its origins. When consumers specifically asked for CoOL information at the point of sale, 78% of those who receive an answer go on to purchase the product, whereas only 45% of those who do not receive the requested information go on to purchase the product.<br>• APL Focus Group Research in May 2004 for the Homegrown group concept confirmed the above findings and clearly illustrated emphatic support for clear identification of the source of origin for ALL food, and a clear preference of Australian home grown produce and foods made with 100% Australian home grown produce.<br>• Notes that the Made In Australia Campaign undertook research into consumer understanding of CoO claims between October 2002 and February 2003, and found that 79% respondents believed that the terms 'Made in Australia' and 'Product of Australia' have different meanings. Consumers generally understood 'Product of Australia' to be the higher claim, though this understanding was significantly lower among younger people than older people. It appeared that understanding of the difference between the 'Made in' and 'Product of' claims increases with age.<br>• *Potential Costs and Benefits:*<br>• Does not know whether a mandatory Australian CoOL system would increase the costs borne by producers, or whether the costs would be successfully passed onto consumers.<br>• Believes that Australian consumers and the industry will benefit from having comprehensive CoOL information on which to base their decisions.<br>• *Enforcement:* | |

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| | • Notes that a move to extend CoOL will only be as effective as the system that is in place to enforce it.<br>• *Australian HomeGrown Program:*<br>• Notes that this program, initiated by APL, is distinct from 'Made in Australia' and 'Australian Made and Owned' campaigns, as it identifies for the first time 100% Australian grown produce and Australian food products made with 100% Australian grown produce.<br>• APL's call for mandatory CoOL supports the 'Australian HomeGrown' Program. | |
| Australian Prawn Farmers Association (APFA) | • Supports mandatory CoOL on all imported seafood.<br>• Believes labels should include not only the word imported, but also the country of origin (e.g. *Imported from China*).<br>• Supports removal of the current provision which allows retailers an option to label imported seafood with either 'imported' or country of origin.<br>• No objection to requiring similar labelling apply to Australian produce (which may assist with concerns in relation to WTO)<br>• Also note that:<br>• Market research indicates 88% of Australian consumers would prefer to buy 'Australian seafood', and the vast majority of seafood sold in Australia is imported. | |
| Australian Seafood Industry Council (ASIC) | • Maintain that CoOL should be mandatory for the retail sale of unpackaged seafoods.<br>• Support the current transitional standard as a minimum requirement for the accurate advising of Australian consumers of seafood, as believe the current transitional standard sets a benchmark which should not be diminished.<br>• Endorses the general requirement that packaged food should contain a statement identifying the country in which the food was made or produced. | |

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| Buderim Ginger Ltd | • Believe the current regulations around 'Made in Australia' and 'Australian Made', based on the 50% rule, can be misleading to consumers.<br>• Especially in the case of crystallized ginger where the characterizing ingredient, the ginger itself, may not come from Australia.<br>• Believe there should be more transparency in labelling, and that the origin of the characterizing ingredient should be specified, through use of descriptions such as 'Manufactured in Australia from (for example) Chinese ginger'.<br>• Believe the characterizing ingredient is the critical determinant of origin.<br>• Note that the US labelling laws do not distinguish between the terms 'Made in.. ' and 'Product of…', such that an Australian product can be onsold in the US as 'Product of Australia' or 'Australian ginger', which disadvantages the true originators of Australian Ginger.<br>• Believe that labelling laws in Australia should close off this ability. | |
| Food and Beverage Importers Association (FBIA) | • Supports option 2 – with a horizontal Standard.<br>• Consider CoOL should be mandatory to foods for retail sale only, as labelling is for the purpose of the consumer being enabled to make informed choices.<br>• Should food not for retail sale be required to CoOL, suggest that the information not be mandatory on the label so long as it is supplied in documentation accompanying the food.<br>• Considers that as long as there is no clear international practice mandating CoO and Australia makes it mandatory to declare the CoO, the Australian requirement has the potential to act as a barrier to trade.<br>• The extent of barrier to trade may be minimised by not prescribing a format for an origin statement and only requiring food for retail sale to be labelled with an origin statement.<br>• Considers that there is tension between the current Food Standards Code requirements and the TPA requirements and that this tension would be eased by not prescribing a format for origin statements, allowing for the use of qualifying statements that would minimise the likelihood of a statement being false or misleading.<br>• Does not support the introduction of provisions that have been developed for the regulation of voluntary statements into a code of mandatory provisions.<br>• Considers that CoOL invariably relate to claims of Australian origin and that measured developed to prevent consumers being misled as to whether the food was produced in Australia should not be imposed on foods that are already clearly labelled to show that they are not of Australian origin.<br>• Strongly supports the application of CoOL to whole foods and not ingredients. | |

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| Food Technology Association of Victoria (FTAV) | • Agrees with Option 1, for the following reasons:<br>• Believes CoOL is primarily under the jurisdiction of the TPA.<br>• Notes that there are several recent cases brought by TPA regarding labelling of food including CoO.<br>• Asks whether any prosecutions by any other food enforcement authority have relied solely on the provisions of the Code, without reference to TPA.<br>• Suggests that cases of prosecutions concerning all food issues, in particular CoO issues, should be an indicator of the need to request changes in the Code.<br>• Note that the food industry have adopted over the past several years the present changes to CoOL, albeit with some initial protest, and that these changes were instigated under pressure from allegedly representative consumer organisations and individuals.<br>• Believes that the current standard permits the consumer to make the choices originally demanded of knowing the CoO of the food purchased, and the food companies have responded favourably to written and verbal requests for further information on specific questions of CoOL.<br>• Notes that the food industry is not aware of any strong protest against the current CoOL by the public.<br>• Notes that there are reports that some members are uncertain about the exact meaning of the CoOL used on packaged foods, and believes that an education program would resolved many of these issues, with further changes only adding to confusion in the market place.<br>• Notes that the current proposal does not offer any suggestion as to what the revised standard that is consistent with the Ministerial Council Policy Guideline may contain, and therefore that any definite proposal would occur at Draft Assessment stage with only one opportunity to submit comment.<br>• Notes that FSANZ and ACCC have recently signed an MoU, which presumably includes CoOL, and hence the CoOL guidelines issued by ACCC are still operable. Therefore asks if ACCC does not have a revised stance, of what consequence this proposal is.<br>• Believes the financial consequences to the food industry have not been considered. These costs include – revised artwork; current label stocks; time of technical, marketing, legal etc personnel in ensuring compliance, and an educational program to explain the meaning, and the possibility of having to reveal sources of supply of materials to competitors.<br>• Believes there has been no justification produced that any deception has been perpetrated on consumers with the current CoOL. | |

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| | • Notes there are no health and safety issues involved in CoOL.<br>• Notes that there was consideration of a review of TPA, and if this is to occur then any review of CoOL in the Code should be held pending changes in TPA.<br>• Believes the issue of difference with New Zealand Fair Trading should be resolved for the sake of consistency, but this should be at government ministerial level rather than through the Code.<br>• Notes that should any change to CoOL in the Code be implemented then it should be simple and direct that CoOL comply with TPA, and suggest that if necessary FSANZ could produce specific guidelines to assist industry in interpretation of TPA. | |
| Heinz Australia/Heinz-Wattie NZ (Heinz) (also under NZ industry) | • Supports adoption of the current transitional standard into the Code, with the recommendation that this new standard apply to both Australia and NZ.<br>• Agrees with the Minister's high order principles and believe that these principles can only be implemented in a trans-Tasman standard.<br>• Recognises that there are differences in trade practices legislation and CoO definitions in both countries and that these should be discussed and reviewed by FSANZ with the ACCC and Commerce Commission.<br>• However, does not believe this requires amendment of the current transitional standard (except to allow its application to NZ).<br>• Believes consideration should be given to a longer than the usual 12 months stock in trade provision if any amendment to the current standard or application to NZ is adopted, to allow the sell through of stock labelled currently under existing legislation. | |
| The Master Fish Merchants Association of Australia (MFA) | • Supports the transitional arrangements being shifted into the code 'as is'.<br>• Considers that the arrangements clearly define the CoO and use of word imported.<br>• Comments that this would allow the continuing situation that is cost effective and provides certainty. | |
| NSW Farmers Association (NSWFA) | • Concerned that '*product of*' and '*made in'* statements are confusing to consumers. Recommend that amendments be included in the Code to ensure that labelling provisions for CoOL are unambiguous to the consumer.<br>• Notes that currently there are different provisions for unpackaged fresh foods. Although there is no evidence of a barrier to trade, NSW farmers association recommend that FSANZ monitors fresh food imports and exports for evidence of any barriers to trade, and informs industry if barriers arise.<br>• Comments that in US mandatory CoOL has cost the meat industry US$2.4 billion in the first year. | |

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| | UK FSA are pressing for EU legislation to require origin labelling on a wider range of foods. It is recommended that FSANZ monitor developments of fresh produce CoOL overseas and prepare a list of countries and current requirements. Also recommend that this list includes an estimate of cost of implementation.<br>• Considers that consumers are probably not concerned with the individual CoO of each food ingredient but would be more interested whether the whole product was made from imported or Australian ingredients, thus recommends that CoOL be applied consistently across all categories of food, applying to whole food not ingredients.<br>• Considers that it is logical that option 2 be the most sensible approach, but first a number of issues need to be considered including:<br>• cost to industry of compliance; and<br>• economic analysis of threats under WTO if existing Standard is maintained.<br>• Considers it is difficult with the information provided to elaborate on costs and benefits of CoOL. Recommend that FSANZ provide more detailed figures on impact of CoOL for domestic and export orientated industry before a selection of options can be made.<br>• Recommends that the Draft Assessment Report clearly articulate whether any options being considered have voluntary or mandatory elements. | |
| Queensland Fruit & Vegetable Growers | • Supports the adoption of the transitional Standard into the Code, with an amendment removing the 'imported' labelling option for unpackaged fruits, vegetables and nuts.<br>• Also support labelling requirements for fruits, vegetables and nuts sold loose in delicatessens.<br>• Believes that these two changes would present minimal changes and costs to industry, while improving the quality of information for consumers along with the traceability (e.g. for food safety and biosecurity purposes) of produce<br>• Believes these changes would provide benefits:<br>• assisting in emergency food recalls where specific product from a specific country if being recalled.<br>• provision to consumers of the same level of CoO information as they currently have for packaged goods.<br>• provision of more information to assist Australian consumers who prefer to buy Australian produced food, or food produced in a particular country, to make those purchases based on quality, economic factors, freshness and concerns about the spread of disease.<br>• International Trade | |

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| | • Has no evidence to suggest the existing CoOL requirements in the Code are a barrier to trade.<br>• The Code places no additional or unique regulatory burden on the food industry or importers, as CoO is required by other agencies, e.g. other legislation such as the Commonwealth Quarantine Act 1908 requires disclosure of CoO (e.g. for permits to import quarantine material).<br>• Consistency with other legislation<br>• Believes that CoOL is consistent with current legislation relating to Australian import regulations, e.g. the Commonwealth Quarantine Act.<br>• Believes that the fair trading prohibition on misrepresenting the origin of goods serves as a requirement to correctly label goods.<br>• CoOL of individual ingredients<br>• Argues that the current requirement for fruit juice and fruit drinks to name the origin of ingredients should be maintained, despite the Ministerial Council policy guideline, as this would ensure that consumers are given continued access to information about the origin of their purchases.<br>• Impact Analysis - Industry<br>• Seeks an amendment to the transitional standard to remove the 'imported' labelling option for fresh fruits, vegetables and nuts, leaving a requirement for label containing, in standard 9 mm type, a statement indicating the CoO of the produce – believe this provides more useful information to consumers.<br>• Argues that consumer and other regulatory requirements (quarantine, food safety etc) demand traceability of produce (i.e. consumer, retailer, wholesaler, exporter or regulator should know where their produce originates).<br>• Believes that implementation requires minimal changes and would present no or little increased costs to importers.<br>• With their suggested amendments to strengthen the Code, Australian consumers would be provided with information to assist those who wish to buy Australian produce, or food produced in a particular country.<br>• Believes that preserved produce (which required labelling) that is displayed 'loose' e.g. stuffed olives sold be weight at delicatessens, should also be labelled with CoOL, according to their suggested amendments.<br>• Believes this would provide consumers with opportunity to make more informed decisions about | |

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| | their purchases along with improving the traceability of produce.<br>• Notes that currently CoOL requirements do not present a problem to horticultural producers, and believe that in the future more domestically-produced fresh produce will be labelled and marketed as being from a specific region.<br>• Acknowledges that the US has encountered problems with the 2002 Farm Bill, but note that these problems relate to domestic origin rules for produce 'overriding' existing regional or local branding.<br>• Notes that in Australia several primary production sectors (e.g. pork, seafood, horticulture) along with food retailers and wholesalers are moving towards a joint voluntary campaign and branding to provide a visual identity for consumers to recognise produce of Australian origin.<br>• Impact Analysis – Consumers<br>• QFVG frequently receives enquiries (and complaints) from consumers about the difficulty in determining the CoO of produce and consistently increased difficulty in making informed choices about purchasing produce.<br>• Cites research conducted by Newspoll/Soudan Lane in February 2002 for Australian pork Ltd, which found that 83% of consumers believe country of origin is important when purchasing food, while 78% would prefer to buy Australian food.<br>• Also cites research for the Australian HomeGrown campaign, which discovered that the large majority of consumers assumed that all fruit, vegetables and meats are currently from Australia..<br>• Notes that the former research indicates a failure of current CoOL to provide consumers with the information they need. | |
| Unilever Australasia (Unilever) | • Supports CoOL on packaged foods for consumer information as per the Ministerial Policy Guidelines.<br>• Does not support CoOL on the basis of individual ingredients, as would be overly restrictive to manufacturers and would not provide consumers with useable information.<br>• Believes the regulatory requirement should be in the Code and its method of determination should be consistent with the CoO requirements specified in the Trade Practices Act, and clarified in the 'safe harbours'.<br>• This would prevent duplication of legislation and prevent inconsistency, whilst satisfying the requirements of the Policy Guidelines.<br>• Also supports the comments of the AFGC. | |

*Consumers*

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| Australian Consumers' Association (ACA) | • Chooses not to express a preference for either option, primarily as they do not know what a revised standard under Option 2 would look like.<br>• In principle, supports Option 2, a joint Australian New Zealand Standard, but would not support a standard that 'waters down' the current requirements of the transitional Standard in order to create a more lenient standard that would be acceptable to New Zealand.<br>• If the alternative was an Australian only standard, ACA would support a revision of the transitional Standard over option 1.<br>• considers that there should be a third option - to revise the transitional Standard so that it applies to a wider range of products.<br>• Supports more specific labelling of imported products and ingredients, identifying the CoO, rather than simply stating that the product was imported.<br>• Believes consumers are interested in CoO and that it influences their choices of food in relation to protection of health – particularly during the early phases of BSE, many consumers wanted to know how to avoid meat and products derived from UK cattle.<br>• In early 2001 the regulator used CoO indicators to assist consumers in product recalls in response to the BSE scare.<br>• Consider that Ministers have failed to acknowledge the role CoOL can play in avoiding and acting on food-related public health and safety risks.<br>• Notes that it is difficult to isolate the use of CoOL for purpose of providing information to enable consumers to make an informed choice, from public health and safety.<br>• Notes that it is evitable that consumers will, in light of any specific food safety issues (nitrofurans in prawn and honey), use CoOL to assess risk.<br>• Supports CoOL for individual key ingredients.<br>• Considers that labels such as 'made from Australian and imported ingredients' does not give sufficient information where health and safety may be an issue.<br>• gives the example of Argentine honey and nitrofurans – a label stating 'made from Australian and Argentine ingredients' would have allowed consumers to avoid Argentine honey if they chose to, without avoiding other imported honey.<br>• Consider that the TPA plus the current Food Standards Code provision have served to provide a basis for which consumers can make some decisions, but would not like to see this diluted and would like imprecise terms to be eliminated. | |

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| | • Of the belief that '*Product of Australia*' appears to provide an adequate indicator for consumers, but '*Made in Australia*' is increasingly discredited for foods.<br>• Considers that '*made from imported and Australian ingredients'* is unhelpful and imprecise and should be improved.'<br>• Believes that a Standard that is not based on protecting health and safety and does not incorporate '*Made in'* and '*Product of*' statements covered by fair trading laws will be very narrow and not meet consumer expectations.<br>• In recent years the ACCC has taken action against manufacturers who have made misleading or false statements in relation to the CoO of their products providing evidence that manufacturers are incorrectly using the terms and reaping the benefits of favourable consumer perceptions.<br>• Considers that CoOL is imperative for FSANZ to know where a product originates in order to assist with product recalls.<br>• Considers that transitional Standard 1.1A.3 has added to consumer confusion regarding CoO statements and foods that fall under this standard or the Trade Practises Act.<br>• Agrees with FSANZ that the terms '*Made in'* and '*Product of*' are used to establish a marketing advantage. However, does not agree that these terms be excluded from a CoOL Standard - rather FSANZ and the ACCC could put into practise the MoU to develop a standard that encompasses all types of origin claims.<br>• Cannot provide evidence as to whether consumers are concerned by the absence of CoOL on unpackaged foods, consider that lack of CoOL on unpackaged foods may contribute to confusion surrounding CoOL.<br>• Comments that the labelling requirements for unpackaged foods in Standard 1.1A.3 are not being adequately enforced in the retail environment, particularly in relation to seafood, fruit and vegetables. | |
| Cotterell, Tania | • Believes all foods should be labelled clearly and responsibly.<br>• Labelling should state clearly what a product contains. | |
| Meyer, Olaf | • Supports CoOL and GE food labelling. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| Michaels, Christopher | • Supports CoOL.<br>• Rationale – consumers have a right to know what ingredients are in their food, including their sources.<br>• Nominates the quality of food (quality of a food can vary according to where it is produced), the safety of food (many places that produce foods using processes that aren't safe), and politics (citizens of a democracy have a right to know) as major issues of concern. | |
| Professional Women, Tasmania (PWT) | • Considers that CoOL need to be more tightly regulated and enforcement stronger both at State and Federal levels (evidence supplied of situations of poor regulation and enforcement in Tasmania).<br>• Believes that CoOL should be on unpackaged food advertising and in-store displays.<br>• Believes that CoO and State of Origin labelling are required for produce.<br>• Considers that information provided to consumers should focus on method of primary production and not just product.<br>• Discuss various issues in regards to state of origin labelling and the importance and difficulty in enforcement of misleading messages.<br>• Believes Tasmanian industry and consumers have benefits to gain through State of Origin labelling.<br>• Believe that Tasmanian supermarkets should differentiate products according the place of origin and production method.<br>• Believes place of origin should be included in supermarket advertising of produce.<br>• Present various examples of issues and concerns regarding place of origin and a lack of regulation or enforcement. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| Tom Street | • Support of mandatory CoOL labelling.<br>• Is of the opinion that CoOL should be extended to ingredients.<br>• Believes that benefits far outweigh the costs.<br>• Concerned at lack of CoOL requirements in New Zealand.<br><br>• Comments on the use of CoOL for decision making in regards to personal health, environmental, ethical or political reasons.<br>• Considers that mandatory CoOL is simply a display of relevant information and should pose little specific barriers to trade.<br>• Comments that even if CoOL does provide technical barrier to trade, that it should be permissible as it is 'necessary in order to fulfil a legitimate objective' (TBT Agreement, Article 2.2). The legitimate objective in this case being the protection of the rights of citizens to information about where in the world substances which they plan to ingest originate from. | |

**NEW ZEALAND SUBMISSIONS**

*Government Agencies*

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| New Zealand Food Safety Authority & NZ Ministry of Foreign Affairs and Trade (NZFSA & MFAT) | • Do not support Option 2.<br>• Cannot comment on the wine provisions in Option 1 at the present.<br>• NZ government has consistently opposed CoOL for reasons including its likely trade restrictive effects and its irrelevance to food safety.<br>• Prefers that CoOL be implemented by industry on a voluntary basis.<br>• If consumers do distinguish between goods according to CoO, the incentive will exist for industry to act without government intervention.<br>• Believe that issues of deceptive practices are best dealt with by fair trading/trade practices law.<br>• Believes CoOL should be a commercial decision for consumer information purposes only.<br>• A food marketer is free to label with 'product of New Zealand' if they believe it will give a market advantage. | • provision of information and prevention of misleading claims<br><br>• trade barriers |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • The Fair Trading Act regulates on misleading and deceptive labelling in NZ and the Commerce Commission publishes a guide for importers, manufacturers and retailers - 'Place of Origin' (1999).<br>• Case law supports the operation of this legislation.<br>• NZ imports around 20% (value basis) of all food consumed in NZ and consumers are therefore quite accustomed to buying imported foods.<br>• Believes that CoOL may act as a barrier to trade.<br>• Mandatory CoOL is not required in order that consumers not be deceived through misleading labelling of the nationality of the product.<br>• CoOL is irrelevant in terms of food safety – existing standards already ensure high sanitary standards are met and products are safe to eat.<br>• Mandatory CoOL would do nothing to increase the safety or quality of products, if there were new food safety concerns.<br>• believes a strong case can be made that mandatory CoOL requirements are not consistent with WTO obligations (specifically *The Agreement on Technical Barriers to Trade*).<br>• Mandatory and voluntary labelling requirements that are not based on food safety are mostly governed by the TBT Agreement, particularly Article 2.2.<br>• Believes that this Article does not explicitly provide grounds for mandatory regulations that are based on a consumers 'right to know'.<br>• This Article does include 'the prevention of deceptive practices' as a legitimate objective for mandatory standards, but believes this does not necessarily require mandatory CoOL, and can be achieved through other mechanisms e.g. NZ Fair Trading Act.<br>• Considers that the cost of mandatory CoOL outweighs the risk to consumers of deceptive practices in the absence of such a system ('proportionality').<br>• Mandatory CoOL would not help mitigate the risk of 'prevention of deceptive practices' that is addressed by the Fair Trading Act, and would be a very heavy-handed instrument in light of the potential costs to industry.<br>• Also believe mandatory CoOL could be seen as an attempt to influence domestic consumers by implying that there is a safety or quality differential between the domestic and imported products.<br>• Failure to comply with WTO obligations could result in other WTO member countries challenging the measure in WTO disputes settlement proceedings<br>• NZ exports over 80% of the food produced in NZ. | • international obligations<br>• facilitation of trade<br>• cost<br>• regulatory options |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • Believe flexibility is important in marketing their food and that applies to both domestic and export markets.<br>• NZ strenuously objects to other countries imposing CoOL requirements on NZ exporters (as has Australia) and do not want to compromise this position or be inconsistent.<br>• NZ, along with Australia and other Cairns Group members has very recently strongly opposed US CoOL requirements for meat, and it would be difficult to reconcile one position internationally and another domestically.<br>• Believes that different countries want different statements on their imports and adding a requirement for NZ simply reduces market flexibility.<br>• Labelling changes add cost which ultimately are passed on to the consumer.<br>• Cites the Economic Analysis from a proposal issued by the USDA on the IS mandatory CoOL, which estimates negligible benefits and indicates significant financial costs to industry would result.<br>• NZFSA cannot support Option 2.<br>• Cannot comment on the wine provisions in Option 1 as NZ has undertaken to review its CoOL requirements for wine and wine products as part of the implementation of the Wine Act 2003.<br>• Intends to release a public discussion document for proposed regulations under the Wine Act in 2004, which will discuss mandatory disclosure on a label of the countries or country from which grapes, grape juice or wine were sourced. | |

**Sue Kedgley, MP, Green Party Aotearoa, New Zealand**

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| Sue Kedgley – Green Party Aotearoa, New Zealand | • Considers mandatory CoOL must be adopted to meet the FSANZ statutory objectives; provision of adequate information to consumer, and prevention of misleading or deceptive conduct.<br>• Considers that mandatory CoOL is essential (not 'useful' as suggested in proposal) to enabling consumers to make food choices as outlined on p4 of the IAR.<br>• Is of the view that mandatory CoOL should apply to all fresh, whole foods and to major food ingredients.<br>• States that to label a pork sausage made with pork imported from Canada as being made in New Zealand is misleading and that the Standard should allow for a label that says something like 'made in New Zealand, contains pork from Canada'. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • Says that suggestions by the New Zealand government that consumers are not interested in CoOL are nonsense and refers to a recent survey by the Consumers Institute that found that 67% of New Zealand consumers are interested in where their food comes from.<br>• Finds it poor that the NZ government would oppose CoOL in order to protect NZ exporters when many exporters are proud to inform overseas customers that their product is New Zealand made.<br>• Suggests that the Dairy and Meat Boards are the only significant food producers in New Zealand who oppose CoOL as a way of circumventing export quotas. Does not believe that interests of two manufacturers should be given precedence over the rights of New Zealand consumers. Attached copy of answers to Parliamentary Questions as evidence.<br>• Considers that consumers have the right to purchase food on the basis of their own belief systems including avoiding a variety of foods under a variety of scenarios including ethical, environmental and phytosanitary quarantine reasons.<br>• Considers voluntary CoOL or absence of CoOL can mislead and deceive the consumer.<br>• Believes that absence of CoOL on imported food produce, particularly fresh produce such as meat, fish, fruit and vegetables that are commonly produced in New Zealand but also imported into New Zealand is particularly misleading.<br>• Concerned about tomatoes being grown in UK and permissions to use dimethoate – comments that CoOL would allow consumers to ascertain where their tomatoes were grown.<br>• Growth hormones permitted in pig farming in Australia but not New Zealand, comments that CoOL would permit concerned pork eaters to avoid pork that had potentially been fed growth hormones. | |

*Industry*

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| Beer, Wine & Spirits Council of NZ (BWSCNZ) | • Believes CoOL should be voluntary not mandatory.<br>• Currently Transitional Standard 1.1A.3 is not applicable to beer or beer products in Australia or NZ and is only applicable in NZ as relating to wine and wine products.<br>• Believes that this application should be maintained and that mandatory CoOL should not apply to NZ beer or beer products.<br>• Believes CoOL is a commercial issue, not a public health or safety issue.<br>• Believes that the Code is not the correct avenue to pursue commercial issues relating to food products.<br>• Believes that the NZ Fair trading Act, which states that any claims about a product's origin must not be false and misleading, covers the sentiments of Codex that 'Country of origin should be declared if its omission would mislead or deceive the consumer'.<br>• Notes that breaches to the Fair Trading Act can result in a fines and other penalties, and that court action can be initiated by anyone, not just the Commerce Commission – these factors ensure that consumers are not misled.<br>• Believes that the costs of initiating CoOL will effect manufacturers, who will have to change their labels, and would have high costs for enforcement.<br>• Notes that ensuring consistent treatment of domestic and imported food products regarding CoOL would be costly, considering the number of domestically produced and imported food products in NZ.<br>• Believes that beer labels should be kept 'clean' as the brewers see fit; and that any information that is superfluous should be voluntary not mandatory.<br>• Believes there is some consumer confusion regarding the definitions of 'Made in' and 'Product of' that needs to be addressed.<br>• But also believes that the address of the manufacturer or brewer on beer and beer product already included on the label is sufficient information for consumers. | |
| Business NZ | • Recommends there should be no mandatory CoOL in Standard 1.1A.3 of the Code, with NZ CoO continuing to be enforced under the Fair Trading Act 1994.<br>• Believes there is no sound case for mandatory CoOL because:<br>• Unlikely to improve public health or safety;<br>• NZ already has satisfactory regulatory and market-led mechanisms in place (e.g. the Buy New Zealand Made campaign); | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • NZ already has sufficient recourse in the event of conduct that is misleading or deceptive (e.g. the generic Fair Trading Act);<br>• Can find little evidence of a strong broad-based consumer demand for mandatory CoOL;<br>• Mandatory CoOL is likely to add unjustifiable costs for many food producers and thereby harm the efficiency and competitiveness of the food industry.<br>• Supports the positions of Federated Farmers and Food & Grocery Council.<br>• Notes that it is important that the regulatory environment for NZ protects public health and safety, enables consumers to make informed choices and minimises misleading or deceptive conduct, whilst facilitating trade, fostering efficiency and competitiveness without unreasonable compliance costs. | |
| Deer Industry New Zealand (DINZ) | • Does not believe that mandatory CoOL is necessary<br>• Believes that there is no health benefit from CoOL and that current import standards are adequate to endure that imported foods are safe.<br>• Concerned that CoOL may confuse or mislead consumers by implying that imported food is in some way inferior or superior to locally produced foods – comment that this misconception has been observed in overseas markets.<br>• Considers that CoOL is not a safety issue, rather the Government seeking to ensure that information is provided to meet consumer preference. They do not consider that enforcement of CoOL would be a Government function.<br>• Considers that current legislative mechanisms (Fair Trading Act) are satisfactory for communicating information to consumers about the foods they buy.<br>• Is of the opinion that self regulation as a result of consumer demand (through the purchase of foods displaying CoOL) would provide the mechanism for CoOL if it was required.<br>• Deer Industry New Zealand and market partners currently actively promote New Zealand as CoO. This initiative has been successfully funded by producers, processors and marketers without government intervention, funding or legislation.<br>• Believe that there are practical difficulties around CoOL of deer products according the country that the deer were; born, raised, slaughtered or processed in.<br>• The USA cost benefit analysis of mandatory CoOL was estimated as US$1.9B. The DINZ believes that this cost would be transferred to consumers. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • Believes that mandatory CoOL may impact on products not being exported to NZ due to the cost/complexity of meeting labelling requirements – resulting in less consumer choice. | |
| Distilled Spirits Association Inc. New Zealand (DSANZ) | • Strongly supports the operation of consistent and aligned labelling standards on both sides of the Tasman.<br>• Not opposed to country of origin labelling and any extension or harmonisations of the current 'Australia only' requirement to include New Zealand.<br>• Is interested in aspects of the CoO Std as it relates to distilled spirits.<br>• Notes that quality spirits or liqueurs imported into the local the local market already declare CoO voluntarily or as part of their respective quality and national legislation.<br>• Believes CoO information would enable consumers to make more informed product choices, as well as allowing them to make quality decisions.<br>• Many spirits can only be produced in specific countries, regions or territories – which allows consumers some guarantee of quality.<br>• Notes that additional protections for consumers and brand owners are provided by NZ's fair trading legislation and Geographical indication laws, which are underpinned by NZ's obligations under WTO trade rules.<br>• A discerning consumer's product knowledge can strengthen the association of specific products being sourced from specific countries it is no substitute for actual declaration of CoO.<br>• Believes for distilled spirits CoOL is absolutely integral and synonymous with international reputation and quality.<br>• Believes that all leading spirit brands made or bottled in NZ are currently voluntarily labelled as 'Product of NZ' or :Bottled in NZ'.<br>• Where this is not the case believes consumers can infer the product's origin from the mandatory NZ-based suppliers name and address details.<br>• Where there is a deficiency or inaccuracy with CoO details NZ consumers are fully protected by provisions of the Fair Trading Act.<br>• Believes there should be consistency of labelling requirements between Australia and New Zealand.<br>• Where a CoO regime is implemented in NZ believes there should be consistent monitoring of manufacturers and importers for full compliance. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • Believes the term 'manufacturing' requires clarification – suggests an editorial note for CoO claims, and provides definition relevant to distilled spirits.<br>• With respect to blending, notes that the WTO proposes a rule the specifies when 85% or more of the blend comes from one country, that country is deemed to be the CoO of the blended product.<br>• If this is not met by any country, the country of blending will be considered the CoO of the product. | |
| Federated Farmers of New Zealand Inc (FFNZ) | • Does not support mandatory implementation of the current transitional Australian Standard or a revision of this Standard.<br>• Believes that no sound case has been put forward to justify introduction of mandatory CoOL.<br>• Believes that mandatory CoOL is not in the best interests of consumers.<br>• Is concerned with the potential costs of introducing compulsory CoOL.<br>• Supports voluntary CoOL, and feel the status quo for CoOL in NZ is appropriate.<br>• Supports the development of definitions or criteria for organizations that do chose to use CoOL, such as 'Made in…' and Product of…', this would provide consistency.<br>• Is strongly opposed to mandatory CoOL.<br>• Believes the proposed standard is in consistent with NZ's policy of minimal regulatory intervention.<br>• Believes CoOL needs to be recognized as a marketing concept, and can be appropriately applied by industry in response to consumer demand.<br>• Believes the proposed mandatory CoOL will impose one perceived customer preference on all consumers, and will add to compliance costs, would be a technical barrier to trade, and is not scientifically justifiable.<br>• Does not believe mandatory CoOL is consistent with any of FSANZ's objectives:<br>• Believes mandatory CoOL is not justifiable for food safety or public health reasons<br>• Believes that mandatory CoOL is not necessary to meet the FSANZ objective of providing adequate information relating to food to enable consumers to make informed choices:<br>• Rather, believes that the market would respond to sufficient demand from consumers for CoOL, and that allowing the market to adapt is more rapid that regulatory alternatives. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • Sees voluntary schemes such as the New Zealand Beef and Lamb Quality Mark as a good example of the market providing information to consumers without being compelled by Government regulations.<br>• Believes there is a risk that government regulatory response 'crowd out' market-related solutions to consumer demand.<br>• Believes that market mechanisms such as brand names are likely to provide much more information to consumers about the type of product and its quality , than regulatory measures.<br>• Believes the regulatory framework should allow a competitive market to deliver the full range of products and meet consumer's demands efficiently<br>• Does not believe that compulsory CoOL is the appropriate mechanism for the prevention of misleading and deceptive conduct:<br>• There are sufficient legislative and market mechanisms in place to provide information to consumer re quality of products, or where deception takes place, the right recourse.<br>• Supports the current generic legislative provisions in New Zealand's Fair Trading Act, which has operated to NZ's satisfaction for many years.<br>• Supports the use of self-regulation through brand names and similar as the appropriate market mechanisms to convey information to consumers about products and processes.<br>• Supports minimum international standards as outlined in Codex General Standard for the Labelling of Prepackaged Foods – which stipulates that the CoO should be declared if its omission would mislead the consumer.<br>• Believes that mandatory CoOL may confuse the consumer, as ingredients can be recombined by food processors to avoid labelling requirements.<br>• This would mean than imported labelled foods would not be readily available as it would be re-processed, re-exported or sold into the restaurant or food service trade to avoid CoOL.<br>• Does not believe that mandatory CoOL is the correct mechanism to ensure truth in labelling.<br>• Believes FSANZ should develop definitions or criteria for the use of origin statements such as 'Made in…' and 'Product of…', as this would provide consistent CoO labelling where companies chose to use it.<br>• Believes that CoOL is not consistent with facilitating trade:<br>• Concerned that mandatory CoOL may act as a barrier to trade. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • Believes mandatory CoO labelling gives the impression that imported product is of an inferior quality or safety standard to local product.<br>• Believes mandatory CoOL may send a message to trading partners that Australia and New Zealand agriculture is protectionist.<br>• Foreign markets are extremely important to Australia and New Zealand and therefore they have an interest in liberalisation not protectionism.<br>• Notes that Australia and New Zealand have opposed mandatory labelling in the US, and it would be inconsistent to promote it in their domestic markets.<br>• Believes that mandatory CoOL may be challenged at the WHO as a non-tariff barrier to trade, or at least become subject to negotiation.<br>• Complying with mandatory CoOL requirements may be costly to developing country suppliers to Australia and New Zealand who lack the record-keeping infrastructure to maintain audit trails.<br>• This may conflict with the spirit of trade liberalization of the current WTO round, which aims to give preference to the trade agendas of developing countries.<br>• Is concerned with the potential costs of introducing mandatory CoOL.<br>• Mandatory CoOL may increase costs facing producers, especially where it is difficult to determine the CoO e.g. where several countries have been part of the production process.<br>• Notes that many producers have not found it profitable to voluntarily provide CoOL to consumers, demonstrating that the demand for the information does not outweigh the cost of providing it.<br>• Examples of instances where demand for the information is seized as an opportunity by industry include – producers of organic produce and 'dolphin-safe' tuna, where products have been voluntarily labelled to capture a price premium.<br>• Notes that the US experience with CoOL has demonstrated that the costs of implementation outweigh the benefits to consumers:<br>• The USDA found that consumer benefits of mandatory CoOL are 'likely to be negligible', and the US could incur costs of direct implementation costs of as much as US$3.9 billion in the first year alone. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • The US has now introduced legislation for voluntary CoOL (which will repeal the Farm Bill relating to mandatory CoOL), with the aim of informing consumers of the choices available to them and allowing producers to label with CoO in the most efficient way possible.<br>• Believes it is inappropriate to legislate for a perceived consumer preference.<br>• Believes the proposed mandatory standard will effectively impose an extra tax on food products that consumers will have to meet.<br>• Strongly supports market driven practices and systems, and believes voluntary CoOL is likely to best achieve the objective of providing consumers with useful information at least cost. | |
| Fonterra Co-operative group Ltd (Fonterra) | • Does not support either of the Regulatory Options.<br>• Believes no single option should be forwarded as the 'preferred solution' until a greater degree of international consensus or uniformity exists regards harmonised origin labelling.<br>• Believes that CoOL is most relevant to trade practices rather than health or safety, and that the NZ Fair Trading Act adequately addresses trade practices concerns at present.<br>• Believes mandatory CoOL is not an area which should be regulated at legislative level, particularly through the use of health/food regulation.<br>• Believes that the concept of certain 'non mandated' but generally accepted phrases has merit, and these accepted phrases could be developed by industry groups and consumer organisations, without intent of legislative or regulatory force.<br>• Has significant interest in CoOL as is New Zealand's largest exporter and a global player in the production and sale of dairy products, and therefore believes Fonterra has a key input into the rules and regulations that govern CoO.<br>• Notes that they intend to comment more particularly in the second round of consultation for P292.<br>• Notes that CoOL is best addressed by the market as it is about consumer choice rather than health and safety.<br>• Comment on each Regulatory Option:<br>• *Option 1:*<br>• Notes that adopting the current transitional standard would not be entirely helpful for NZ, as this standard does not apply to NZ other than certain requirements that relate to wine and wine products. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • Does not agree that FSANZ should adopt a mandatory standard for NZ that includes information about the origin of food's ingredients, such as a statement that the food is made from imported ingredients or local and imported ingredients (as applicable).<br>• *Option 2:*<br>• Disagrees that it is automatically an advantage for any proposed standard to be based on the requirements of the Australian TPA.<br>• Notes that Australia and New Zealand have different characteristics regarding food production, e.g. NZ exports a much greater percentage of its food production than Australia, and believes these factors should be closely considered when determining the relevancy of Australian legislation for NZ.<br>• Recognises that adopting a new standard could result in inconsistency between food labelling regulation and labelling regulation of other products.<br>• Believes it is difficult to see how the dynamic range of values that New Zealand and Australian consumers bring to their food selection can be addressed in a regulation that ensures that CoO declarations are correctly understood, and used upon by consumers and producers alike.<br>• *Costs*<br>• Concerned that increased costs will result from introducing compulsory labelling.<br>• Note the US experience where considerable additional costs were incurred in implementation of mandatory labelling with little consumer benefit.<br>• *Trade Policy Issues*<br>• Has significant concerns about the use of mandatory CoOL not only in New Zealand and Australia but in the major markets such as the EU, USA and Japan<br>• Notes that mandatory CoOL could be used in these markets as an intended barrier to imported product, including that from NZ.<br>• Notes that mandatory legislation has been passed in USA for mandatory CoOL on several commodities including beef, and that the NZ meat industry and NZ Government have strongly opposed this legislation.<br>• Notes that similar legislation for dairy products could occur in the USA or other markets, with the intention of promoting domestic protectionist interests.<br>• In this case, if NZ had its own mandatory CoOL requirements this would undermine protests at industry and Government level about the same practice in overseas markets. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • Believes mandatory CoOL could well be incompatible with Article 2.1 of the TBT agreement, and may not fit with the concept of national treatment.<br>• In the case of Article 2.2 TBT mandatory CoO in importing countries could fall within the terms of 'with the effect of increasing unnecessary obstacles to international trade'.<br>• Any action against such TBT obstacles would not be assisted by the existence of mandatory CoOL in NZ. | |
| Foodstuffs NZ Ltd (Foodstuffs NZ) | • As the Ministerial Council has decided a mandatory CoOL standard will be developed, Foodstuffs recommends the development of a standard which makes CoOL voluntary, but regulates its use where adopted, with rules of use based on the current CoOL standard.<br>• However, overall Foodstuffs does not believe CoOL is necessary or desirable, as:<br>• compliance costs are likely to exceed the benefit to consumers.<br>• Fair Trading legislation already protects consumers from misleading or deceptive claims.<br>• Notes that consumers in NZ currently have the option of buying foods that are voluntarily labelled with CoO e.g. Foodstuffs Pam range of private label grocery products.<br>• Does not believe additional benefits to consumers from mandatory CoOL would be significant.<br>• Notes that CoOL information does not give useful information about a food's safety or nutritional value.<br>• Notes that the 'buy NZ' campaign is not strong in NZ as, probably due to the fact that a large proportion of food products are imported.<br>• Believes mandatory CoOL would impose significant compliance costs on industry participants that do not currently voluntarily label with CoO, and these costs would have to be apportioned over a smaller product base.<br>• notes that labelling changes take some time to implement and that food manufacturers and marketers have recently invested significantly in new labelling to comply with the 2002 Joint Code, mandatory CoOL would necessitate further changes and costs to labelling.<br>• Does not support Option 1 as:<br>• see that the current CoOL requirements have little value, and compliance costs for NZ businesses would be significant. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • Does not see that the current CoOL standard assists FSANZ achieve any of its 3 objectives, particularly within the NZ environment.<br>• Does not support mandatory CoOL, and feel it difficult to comment fully on Option 2 without knowing what shape a mandatory standard might take.<br>• Believes that mandatory CoOL would impose significant costs on NZ food manufacturers, and provide little benefit to consumers.<br>• However, considers that a mandatory standard based on the current standard would be preferable to a completely new mandatory model, as the latter would mean increased compliance costs for Australian and NZ industry that have already adopted voluntary CoOL, as well as those that have not.<br>• Does not support the adoption of CoOL for individual ingredients, as manufacturers need to change sourcing of ingredients regularly and it would be impractical to re-label each time.<br>• Does not support mandatory CoOL for unpackaged foods:<br>• This would incur practical difficulties and compliance costs, plus would be open to abuse.<br>• Notes that Zespri International Ltd is currently investigating Chinese retailers who are selling Chinese grown kiwi fruit under the New Zealand brand.<br>• Supports the development of a new standard that regulates the use of voluntary CoOL, provided this was based on the current Australian model i.e. applying to the finished product and to packaged foods only.<br>• This model would limit compliance costs as businesses could chose to adopt CoOL if they wished, and truth in labelling provisions in the Code and in fair trading legislation would protect consumers from false and misleading claims.<br>• This approach would minimise compliance costs for industry but provide consumers with choice, hence believe it is the best compromise for all parties. | |
| Griffin Foods | • Does not support mandatory CoOL of food.<br>• Advantages of no mandatory CoOL include:<br>• Emphasises the fundamental role of other Traceability elements and related 'through-chain' approaches to ensuring public health and safety; on pack CoOL is not required for recalls. | |

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| | • Industry can make CoO claims if they choose to do so e.g. Griffin foods uses the 'New Zealand Made' logo and also states that the products are 'manufactured and marketed by…. Auckland, NZ'.<br>• The TPA/Commerce Commission would be available to ensure truth in labelling.<br>• Provides the least trade restriction and is consistent with WTO obligations and trade positions taken bilaterally and multilaterally.<br>• Is consistent with the Australia New Zealand Food Standards Setting Treaty, TTMRA and the Australia New Zealand Closer Economic relations Trade Agreement (CER).<br>• Reduces the cost burden on industry and therefore consumers e.g. it would cost Griffin foods alone $510,000 to implement, based on 340 packaging stock keeping units at a chance over cost of $1,500 each.<br>• It is consistent with minimum effective regulation principles.<br>• CoO does not provide a means for consumers to choose safe food, and if a consumer wants to know where a product originates from they can contact the supplier via details on label required under Standard 1.2.2.<br>• However, assumes some form of mandatory CoOL will be implemented, given that Ministerial Council Policy Guidelines, and in this case supports Option 2, as well as:<br>• Acceptance of TPA/Australian Competition and Consumer Commission definitions of 'Made in' and 'Product of'.<br>• Application of CoOL to the whole food rather than individual ingredients.<br>• Notes with respect to ingredients that Griffin Food Ltd imports approximately 250 ingredients e.g. oils from Malaysia and Indonesia, cocoa butter, liquor and power from the Philippines etc, including in some cases ingredients that are imported from more than one country.<br>• There is also the odd occasion where for reasons beyond their control ingredients have to be imported from an alternative country e.g. if NZ has a poor wheat harvest grain from Australia or Canada are options for importation.<br>• The origin of materials imported by Griffin Foods are known and any agents used are required to have traceability systems in place, hence products can be effectively recalled if necessary, without CoOL. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • If CoOL of ingredients was mandatory Griffin Foods would either label source as countries 'a' or 'b' or 'c' or 'd' to cover all eventualities, or would list only single countries, thereby restricting their supply options, without time consuming and prohibitive label changes.<br>• Believe CoOL of ingredients would be restrictive and add cost to the manufacturer without improving food safety or adding value for the consumer. | |
| Heinz Australia / Heinz-Wattie NZ (Heinz) (also under Australia industry) | • Supports adoption of the current transitional standard into the Code, with the recommendation that this new standard apply to both Australia and NZ.<br>• Agrees with the Minister's high order principles and believe that these principles can only be implemented in a trans-Tasman standard.<br>• Recognises that there are differences in trade practices legislation and CoO definitions in both countries and that there should be discussed and reviewed by FSANZ with the ACCC and Commerce Commission.<br>• However, does not believe this requires amendment of the current transitional standard (except to allow its application to NZ).<br>• Believes consideration should be given to a longer than the usual 12 months stock in trade provision if any amendment to the current standard or application to NZ is adopted, to allow the sell through of stock labelled currently under existing legislation. | |
| James Crisp Ltd (James Crisp) | • Supports Option 1 of P292 – the adoption into the Code of the current transitional Standard 1.1A.3.<br>• Opposes Option 2.<br>• Supports the policy guideline (para 5.5 of IAR) - that CoOL should apply to the whole food not to individual ingredients in the food.<br>• Notes that:<br>• JC has voluntarily adopted Std 1.1A.3 in respect of all foods they import and distribute in NZ.<br>• Believes that virtually all other NZ food importers have similarly adopted Std 1.1A.3.<br>• Notes that prior to December 2002, JC was already largely complying with the requirements of Std 1.1A.3, and that any further labelling changes required to comply with Std 1.1A.3 were not onerous or costly to implement.<br>• No foods imported into NZ by JC require re-labelling on entry into NZ to comply with Std 1.1A.3. | • comments relate to key questions (Industry Section) |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| | • Provisions of Std 1.1A.3 do not pose any problems to JC in respect of foods which they package in NZ for retail sale.<br>• Considers that the provisions of Std 1.1A.3 strike a realistic and fair balance between the interested of importers, retailers and consumers.<br>• JC particularly supports the continuation of Std 1.1A.3 which allows for CoOL to state 'Packed in New Zealand using imported ingredients' or (where applicable) 'Packaged in New Zealand using imported and local ingredients'.<br>• Seasonal availability of bulk foods sourced overseas frequently results in sourcing of the same bulk food from more that one CoO.<br>• A requirement for specific CoOL in respect of bulk foods sourced from overseas would be onerous on importers and retailers – incurring significant cost in maintaining duplicate or parallel packaging at no particular benefit to consumers.<br>• In JC's experience the number of consumers who wish to know the specific CoO of bulk foods which are packaged in NZ for retail sale is very small.<br>• Notes that the fact such foods can be imported into NZ is a guarantee of quality, to which little would be added in terms of consumer education if required to specify a particular CoO. | |
| Meat and Wool New Zealand (M&WNZ) | • Does not believe CoOL is in the best interests of the consumers.<br>• Will be difficult to implement and costly to administer.<br>• Does not contribute to food hygiene or safety issues.<br>• Would seriously undermine the credibility of New Zealand export industries who have long argued against similar schemes in other countries, most notably the United Sates.<br>• In the case of meat and meat products, CoO would need to be clearly defined. CoO could apply to meat or meat products from a particular country where:<br>• The animal has to have been born, raised and slaughtered then significantly transformed within that same country; or<br>• The animal has to have been raised slaughtered and then significantly transformed in that country although it was born in another country and subsequently imported within a certain a date of slaughtered to the final country; or<br>• The animal has to have been slaughtered and transformed significantly in that country although it has been born in one country and imported and raised in another country before import into the final country; or | |

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| | • That meat has to have been imported and significantly transformed in the final country after having been slaughtered either in situation 1, 2 or 3.<br>• All of the above scenarios occur internationally and CoOL regulations would need to take these into consideration. In addition products with blends of ingredients from different countries would also have to be considered<br>• Some countries take into consideration the amount of time the animal has been in a country before slaughter as part of the definition of CoO.<br>• Valid tracking systems would have to be in place. In the case of most meat products this would mean tracking it through its lifetime, and recording periods of grazing in various countries it might enter from time to time. The product may also need to be tracked from slaughter to initial processing, possibly into manufacturing, and then on if the product is to be used in subsequent manufacturing (meat patties).<br>• Considerable cost would be occurred in a tracking system and in policing such requirements.<br>• There is a possibility that some exports would choose not to export products to Australia and New Zealand because of the complexity of meeting the origin labelling requirements- resulting in less consumer choice.<br>• Disadvantages of CoOL:<br>• Information on CoOL is not always meaningful, particularly with processed foods where several countries have been part of the production process;<br>• Significant additional cost is likely to be passed on to consumers;<br>• Consumers may (mistakenly) see imported foods to be for a higher or lower food safety and health standard than local products; and<br>• Mandatory CoOL may act as a barrier to trade by discriminating against imported goods.<br>• The USDA identified a number of reasons why producers have not chosen to include Mandatory CoOL including:<br>• Consumers may not care where their food comes from – they compare foods based on price and taste;<br>• Consumers might prefer domestic products but not enough to cover labelling costs; and<br>• Consumers demand labels but markets are not effectively functioning – CoO is not an attribute that can been tasted smelt or seen, therefore the consumer has to trust the label. | |

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| | • Companies have strong incentives to maintain and protect their brand images and monitor quality in order to differentiate them from other products. Consider that because of this brand names are more likely to provide information to consumers about product identification and quality than regulatory measures such as CoOL. An example of this is the NZ Beef and Lamb Quality Mark – supported by industry and represents adherence to a set of standards covering eating quality, food safety and animal welfare.<br>• Comments that Initial Assessment Report acknowledged that CoOL is not a public health and safety issue and may be useful for consumers in their food choice. As such mandatory CoOL is a marketing issue and a matter of preference to the consumer not a matter of right.<br>• Considers that it is not appropriate for government to regulate for one part of the population and in doing so add substantial compliance costs to all consumers.<br>• The New Zealand meat industry has consistently fought against mandatory CoOL in export markets because:<br>• Of significant compliance costs;<br>• Mandatory CoOL gives no assurance to consumers regarding food safety and health standards; and<br>• It may result in a barrier to trade.<br>• The adoption of mandatory CoOL in New Zealand would seriously effect that credibility of the argument. | |
| Meat Industry Association of NZ (MIANZ) | • Believes CoOL is a commercial (not a regulatory issue):<br>• Notes that there are market mechanisms which also operate to convey information to consumers about products and processes and believe this self regulation, through brand names, works along side existing legislative mechanisms.<br>• Believes making CoOL mandatory would be making an inappropriate decision on behalf of consumers.<br>• Believes mandatory CoOL could mislead consumers, as they may draw the misconception that imported food is in some way inferior/superior to NZ produced food<br>• Notes that NZ has opposed the introduction of mandatory CoOL in international markets and it would be inconsistent to now adopt a different stance.<br>• Believes that there are no health benefits form mandatory CoOL:<br>• Believes CoOL is not a food safety issue, as the origin of a product does not determine whether a food is safe or not. | |

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| | • Believes there would be no health benefit from mandatory CoOL, as health standards are adequate to ensure the safety of imported foods and labelling will do nothing to improve the safety of imported foods.<br>• Believes there is a risk that technical barriers to trade will be erected:<br>• Note that international market research shows consumers often unfairly discriminate against imported foods, this can lead to technical barriers to trade.<br>• Believes that satisfactory legislative mechanisms already exist:<br>• there are currently satisfactory legislative mechanisms (such as the Fair Trading Act) in place that communicate information to consumers about food products.<br>• Believes the market, rather than regulatory authorities, is best placed to determine the need for CoOL, and respond rapidly to changes in consumer demand:<br>• Believes that the market will respond to consumer demands for country of origin.<br>• Notes that under a program funded by NZ producers, processors and marketers, and without Government intervention, funding or regulation Meat NZ and Deer Industry BS, alongside of exporters of NZ lamb, beef and venison, and their market partners, actively promote NZ as the country or origin of NZ venison and this is supported through branding (logos etc).<br>• Believes there are practical difficulties associated with the implementation of CoOL:<br>• Notes that the USDA in a cost/benefit analysis estimated the initial cost of implementing mandatory CoOL at US$1.9 billion, and hence organizations such as Deer Industry NZ, the MIA and Meat & Wool NZ have opposed mandatory CoOL in the US.<br>• Believes that mandatory CoOL adds unnecessary cost as illustrated by US cost benefit analysis:<br>• Believes there could be practical difficulties with implementing CoOL, particularly where meat products are used as ingredients in the manufacture of consumer ready products (hamburger patties, salamis etc), as have been highlighted in the USA during their deliberations regarding mandatory CoOL.<br>• Believes mandatory CoOL adds unnecessary cost which would most likely be passed on to consumers. | |
| NZ Business Roundtable (NZBR) | • Sees no sound case for CoOL.<br>• Reasons are the same as those given for Business NZ. | |

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| New Zealand Food and Grocery Council (NZFGC) | • Opposes CoOL.<br>• Development of mandatory CoOL is not supported; it should remain a voluntary decision in New Zealand.<br>• Does not support either option in the proposal..<br>• Notes that the proposal recognises that CoOL is not a public health and safety issue and suggests it could be argued why consideration is being given to making it a mandatory provision when there are other ways of achieving high order and specific principles..<br>• Agrees that CoOL is not a public health and safety issue.<br>• Acknowledges that although it has been suggested that CoOL is useful in product recall situations, FCG submits (again) that product identification through the use of barcodes is an effective way of managing product recalls and preferable to relying on CoOL.<br>• Submits that Trade Practises legislation is the most affective means of managing CoOL. Fair trading does not require CoOL, but ensures that any claims about CoO are not misleading or deceptive.<br>• Case law in respect of place of origin has been built up in New Zealand and is now well understood.<br>• Considers that Standard 1.2.2 (clause 3) and Section 13 of the Fair Trading Act are most effective and efficient means of managing CoOL.<br>• Considers that it is not the purpose of the Food Standards Code to support domestic markets for social and economic reasons (as discussed in the introduction of the Initial Assessment Report) and that those consumers selecting products for political, religious or ethical beliefs are currently obtaining information without difficulty.<br>• Comments that the 'Buy New Zealand Made' campaign, a voluntary CoOL initiative, is supported by very few food manufacturers.<br>• Accepts that ensuring consumers have access to accurate information about food products and that they must be not mislead or deceived are high order principles, but that in respect of CoOL these principles are more effectively addressed under fair trading legislation.<br>• Content that CoOL would not meet the high order principle of overall cost effectiveness or the specific principle of balancing the benefit to the consumer with the cost to industry.<br>• Mandatory CoOL will result in significant cost to manufacturer, particularly in instances where is to difficult to ascertain the CoO. | |

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| | • Does not believe that CoOL is most cost effective way of enabling consumers to make informed choices.<br>• Pleased to note that CoOL is not being proposed for individual ingredients. FCG believe this is untenable, impractical and impossible to implement. A number of ingredients change depending on seasonability, accessibility, availability and sudden climate changes. FCG consider it is neither realistic nor possible to make the required labelling changes on a product should the ingredient in a product change.<br>• In the submission to the FRSC working group on CoOL the FGC presented a survey of FCG members around the number of CoO enquiries. Regardless of size of company, the number of enquiries was small. Many companies reported no enquiries at all. Those who did report enquiries reported no more than 5 per year and the enquiries were restricted to ingredients rather than finished products. Thus it would seem that CoOL is of little interest to New Zealand consumers. On the release of P292 the survey was repeated, with similar results. One very large company selling a diverse range of products commented, 'We have searched three years of consumer inquiries and found that none relate to CoO of ingredients or products. There are approximately 100 000 contacts on the database and thus this would indicate the CoOL is not a major issue for consumers.'<br>• Numerous surveys continue to show that major determinants of purchasing decisions of food products in New Zealand are brand names and price.<br>• Considers that enforcement of CoOL may be problematic as there is no health and safety issue so monitoring and enforcement resources will be limited.<br>• Has not specifically costed CoOL but suggest up to $10000 per product as the cost to industry.<br>• Should mandatory CoOL be introduced request a long lead time because of the cost industry has already expended in labelling as a result of the new Code.<br>• Requests that FSANZ consider equity issues and that CoOL may unfairly disadvantage New Zealand manufacturers who have to import many more ingredients than their Australian counterparts.<br>• Considers that a New Zealand or Australian only Standard is not unreasonable as has happened with Standard 2.1.1 cereal and cereal products, due to the disadvantage that New Zealand manufacturers would have if mandatory CoOL was implemented. | |

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| NZ Juice and Beverage Association (NZJBA) | • Supports Option 2<br>• Believes that the requirements of option 2 can be met with a single statement to the effect that 'the label must declare that the product contains imported ingredients where to do otherwise would potentially mislead the consumer', and believes this is inline with the requirements of the NZ Fair Trading Act<br>• Argues that the situation which exists in NZ is effectively a mandatory CoOL given the precedent set by the NZ Commerce Commission (NZCC) in relation to the juice industry. Cites a document published by NZCC in 1995 titled 'Summary of Commerce Commission Position Regarding Juice Labelling' which suggests there should be a declaration on the label to the effect that the product is made from imported juice, in the situation where the fruit juice contains juice from another country to the name and address of the manufacturer or distributor given on the label in compliance with the requirements of the Code<br>• Does not agree with the last paragraph of section 5.3.4 of P292 IAR, which states that: 'given voluntary CoOL currently exists in NZ, mandatory CoOL has not been a feature of the regulatory regime to date, and that provisions under fair trading legislation address issues of misleading CoOL , a mandatory requirement may not be necessary or appropriate in the future' | |
| NZ Pork Industry Board (NZPIB) | • Supports the development of a revised standard consistent with the Ministerial Policy Guideline (excluding application to whole food not ingredients), other relevant legislation and Australian and New Zealand obligations under WTO agreements<br>• Does not accept that CoOL is not a public health and safety issue, especially in relation to health issues such as BSE and vCJD<br>• Cites qualitative research commissioned by NZPIB in 2003 which highlighted consumer concern [regarding health and safety] and that consumers would expect to be told if meat sold in supermarkets and butcheries was no grown in NZ<br>• Strongly supports the High Order Principles (1.3.2)<br>• Suggests that specific risk profiles, including the extend to consumer concerns, should be established and evaluated<br>• Considers that the current, Transitional Standard applies to the individual ingredients in relation to fruit juices and fruit drinks, where if the juice is imported it must be described in terms of country of origin | |

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| | • Strongly believes that the origin of the characterizing ingredient should be specified, as for fruit juices and fruit drinks<br>• Strongly believes processed pork products should be treated in the same manner as fruit juices, whereby the meat component that is the characterizing ingredient must be described for CoO<br>• Believes this approach is analogous to the FSANZ requirement for percentage of the characterising ingredient to be specified<br>• Notes that the voluntary '100% New Zealand Pork' brand has been a successful program in the fresh pork market, however it has had a more limited impact in the processed pork markets, due to reliance on processors who may use significant amounts of imported pork<br>• Notes that the use of hormones is a consumer issue, as their 2003 consumer research indicated some consumers were concerned with the use of added hormones, and furthermore believed that hormones would be declared in the same way as for other added ingredients<br>• Notes that CoOL would at least offer consumers the choice of meat from the NZ supply chain which they could have faith would be hormone free<br>• Notes in relation to Section 5.3 of the IAR – the current standard is not consistent between countries, nor between product categories, and hence does not meet the Policy Guidelines that CoOL is to be mandatory for the purpose of enabling consumers to make informed choices<br>• Notes in relation to Section 5.5 of IAR – they do not believe CoOL can be applied with integrity to the whole food rather than individual ingredients, in a manner that will not mislead consumers | |
| NZ Retailers Association (NZRA) | • Supports voluntary CoOL (consistent with previous submissions).<br>• Notes the Code already requires suppliers name and address on food labels.<br>• Cites market research provided as part of the submission by Progressive Enterprises Ltd which indicates minimal interest in origin inquiries.<br>• Notes few types of merchandise in NZ require mandatory CoOL, only for apparel and footwear.<br>• Considers the provisions of the Fair Trading Act 1986 general outline the need for clear and accurate labelling. | |

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| | • Considers these requirements well understood in the trade as a very limited number of prosecutions have occurred in the last 20 years in relation to intentionally misleading or inaccurate labelling.<br>• Is unaware of any compelling demand by consumers for additional merchandise sectors to be subject to mandatory CoOL requirements.<br>• CoOL raises questions as to who is responsible for accurate content or product information on origin labels.<br>• Notes that retailers, who are responsible for ensuring the merchandise they sell complies with the law and meets consumer's expectations, are also reliant on manufacturers and importers providing them with accurate information.<br>• Notes that mandatory CoOL was recently discussed at a meeting of the Grocery Industry Council – a body which comprises major organizations representing the grocery industry in NZ, including: NZ Food and Grocery Industry Council, NZ Retailers Association, Progressive Enterprises Ltd, Foodstuffs and NARGON.<br>• None of these industry members supported mandatory CoOL, on the basis that:<br>• NZ is highly dependent on imported ingredients in food, and accessibility, price and seasonality frequently mean that NZ manufacturers source from different countries through the year and mandatory labelling would be impractical.<br>• There is confusion about the current CoOL requirements in Australia.<br>• CoOL is not a standards issue, it is a marketing issue and has been driven by political aspirations.<br>• CoOL could reduce consumer choice.<br>• CoOL should continue to be addressed under fair trading legislation.<br>• There are few consumer calls for CoOL.<br>• Consumers do not obtain information solely from labels, other forms of education are also used to provide information to consumers, such as point of sale material and the internet.<br>• No cost/benefit analysis has been completed in respect of the proposal for CoOL.<br>• CoOL would be a major issue to manufacturers who have already reviewed their labelling to ensure compliance with the Code.<br>• Retailers would encounter similar costs in respect of house brands. | |

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| | • Notes that further costs are likely to arise out of the revised packaging code which requires manufacturers to review new and existing packaging on replacement against the current NZ Code of Practice for the packaging of consumer goods, and mandatory CoOL requirements could add yet another cost.<br>• Believes the costs would exceed the benefits and it has yet been demonstrated that there is a necessity for CoOL on food in NZ. | |
| New Zealand Wine (NZW) | • Supports the retention of CoOL requirements for wine, even if there not be general requirements for CoOL for food<br>• Does not believe CoOL is a barrier to trade as it is generally a standard requirement for most jurisdictions, hence do not believe wine would have to be re-labelled for sale in Australia or NZ<br>• Believes there is a very low level of non-compliance with current rules for CoOL on wine, as it is standard in most jurisdictions<br>• Considers that an absence of CoOL on wine may mislead consumers in certain circumstances, as may brands are associated with certain CoO<br>• Hence, where wine of a certain brand is not from the assumed CoO the absence of CoOL can mislead consumers<br>• Notes that currently Australia and New Zealand require CoOL for wine<br>• Notes that CoOL is a standard requirement for wine in most international markets, including member states of the European Union and the United States | |
| Progressive Enterprises Limited NZ (Progressive Enterprises) | • Supports voluntary requirements for CoOL and would support that adoption of the transitional Standard for any supplier voluntarily providing CoOL.<br>• Considers that current labelling standards meet the requirements of High Order Principle 1 – ensure that consumers have access to accurate information regarding the contents and production of food products.<br>• Considers that CoOL simply provides more information, but do not think that there is any clear consumer demand for this information. Of 22912 consumer enquiries since 1 August 2003, only 0.1% have been related to labelling enquiries – a survey of staff indicates none of these were CoOL labelling enquiries.<br>• Considers that current consumer law and regulatory practices provide sufficient protection in the areas of High Order Principle 2 – ensure that consumers are not misled or deceived regarding food products. | |

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| | • Considers that High Order Principle 3 regarding consistency and complementing Australia and New Zealand national policies and legislation would necessitate voluntary CoOL for both countries, or mandatory for Australia and voluntary for New Zealand labels.<br>• Is of the view that a voluntary regime will neither create an unfavourable advantage for locally produced goods compared to imported goods, nor will it create barriers to trade as required under High Order Principle 4.<br>• Does not consider mandatory CoOL to be cost effective;<br>• Suppliers who only supply the domestic market will be faced with an additional labelling obligation that will be seen as irrelevant, unnecessary, costly and unwanted by themselves and their customers;<br>• Suppliers may change their labelling, however this will be done at their leisure and convenience and may not meet legislative time frames; and<br>• Compliance monitoring will need to be more extensive by both the retailer and regulatory bodies.<br>• Provides the following issues surrounding impact on various stakeholders:<br>• *For producers* supplying domestic market only – additional labelling costs, no clear competitive advantage given lack of consumer interest; another compliance issue that will require management with out practical purpose; exposure to prosecution if the standard is breached.<br>• *For retailers* – additional compliance issue requiring monitoring; prevention of exposure will require appropriate ongoing diligence through out the supply chain, from the listing of a new product or supplier to the retail shelf; identified non compliant products will require trade withdrawal incurring associated costs.<br>• *For consumers* – no benefit for safety; no perceivable benefit from information given lack of consumer interest; no increase in protection against false or misleading claims; increased cost of goods as manufacturers/ producers pass on additional cost.<br>• Does not consider that the existing CoOL requirements in the Code are a barrier to trade. Although food exported from New Zealand to Australia are required to carry CoOL, the rules are clear and well understood, and the rules that apply in Australia are not inconsistent with the voluntary CoOL requirements in New Zealand.<br>• Is of the belief that existing CoOL requirements in Australia and New Zealand are consistent. | |

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| | • Most foods imported in to New Zealand by Progressive Enterprises are also imported in to Australia and many of these foods have CoOL to meet the Australian requirements. Given that the requirements across the two countries are consistent do not consider the current requirements to be problematic. | |
| Tegel Foods Ltd (Tegel) | • Opposes introduction of compulsory CoOL.<br>• In the sector Tegel produces fresh and frozen poultry, imports are not permitted (for bio security reasons) and thus all products are of New Zealand origin. There are low levels of canned poultry products but not significant.<br>• The cost of changing the packaging and labels to all the words 'New Zealand' to our address is $392000.<br>• Of the view that there is no confusion for consumers and therefore the cost is not justified. | |

*Consumers*

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
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| Consumer's Institute | • Does not support mandatory CoOL as believe any misleading and deceptive practices in this area are adequately dealt with under NZ legislation, such as the Fair Trading Act.<br>• The existing Fair trading Act is appropriate to deal with the problem, the New Zealand Commerce Commission has shown it will act against food manufacturers and processors who mislead or deceive consumers.<br>• Mandatory CoOL will not prevent misleading or deceptive conduct.<br>• Supports the policy guideline that CoOL should apply to the whole food, not individual ingredients, due to practical considerations.<br>• But believes the Standard must have appropriate and enforceable conditions to prevent manufacturers and distributors from declaring the most desirable country, if ingredients come from many countries.<br>• Survey of consumer opinion conducted in November 2002 by the Institute (under contract to NZFSA):<br>• 8,000 subscribers of Consumer magazine were sent the survey, 67% response rate - results indicate that where food is made or produced is less important than date marking, taste, nutritional information, ingredients, price, endorsements/approvals, and familiarity with the products. | 5.2 Consistency with other legislation<br>5.5 CoOL of individual ingredients<br>7.3.2 Consumers |

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| | • CoOL is an issue of consumer choice and is related to moral and personal issues, not food safety.<br>• Concerned that mandatory CoOL could result in significant cost to NZ industry, and these could be passed on to the consumer.<br>• Believes that CoOL is not a public health and safety issue and any misleading or deceptive practices are adequately dealt with under other NZ legislation such as the Fair Trading Act. | |
| Eco-land Ltd | • Wishes to ensure food we eat is clearly labelled with CoO and description of production method.<br>• Rationale is to allow informed decision at purchase. | |
| Evans, Phil | • Believes all products should have labelling that states where products come from.<br>• Believes CoOL should be clearly marked on packaging or shelf label if no packaging exists (as in the case of fresh products).<br>• Believes that NZ's Minister of Health, Annette King, puts business before the rights of people to determine what they eat when it is argued that CoOL is not in the best interests of industry but can be done voluntarily if the business determines they may gain some market advantage in doing so.<br>• Believes that NZ should make its own decision regarding food and that Australia should make decisions for Australia; the joint agency is believed to be another breach of the rights of NZ citizens. | |
| Fowler, Peter | • Supports CoOL.<br>• Rationale – those with preference for a particular country of origin should have the right to exercise their preference. | |
| Gannaway, Noeline | • Strongly supports mandatory CoOL.<br>• Rationale – asks for informed choice, including the right to know where food comes from, imported food may have been exposed to toxic chemicals (e.g. Chinese garlic).<br>• CoOL especially important for those with sensitivities. | |
| GE Free New Zealand (GE Free NZ) | • Supports mandatory CoOL.<br>• Supports CoOL applying to all imported foods, packaged and unpackaged, and to all major food ingredients, not just the whole food.<br>• Main concern is around using CoOL to identify foods that may contain GE foods or ingredients, as are unsatisfied with GM labelling in New Zealand. | |

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| | • Notes there is demand for CoOL in NZ, citing a submission they have made to NZFSA re Codex CoOL (CL 2002/25-FL).<br>• Believe adoption of a mandatory requirement for CoOL is necessary in order for FSANZ to meet their statutory obligations in sections 10(1)(b) and 10(1)(c)<br>• Cites the Codex *General Standard for the Labelling of Pre-packaged Foods* section 4.5 in which the CoO should be declared if its omission would mislead or deceive the consumer.<br>• Rationale for wishing to choose foods on the basis of: supporting local producers and domestic markets ( for social and economic reasons).political, religious or ethical beliefs, health and safety reasons (e.g. avoiding beef from countries which have had BSE), environmental reasons (costs of transporting food long distance around the world), wishing to avoid foods fumigated with methyl bromide, concern that food imported into NZ is not checked for illegal pesticide residues or antibiotic resistant bacteria, specific practices associated with food production in specific countries. | |
| Graf, Marcus | • Supports CoOL.<br>• Believes that FSANZ statutory duty to ensure adequate information is provided for food products and deception is prevented can only be met by introduction of mandatory CoOL.<br>• Wishes to make decisions based on – distance a product has travelled, farming methods used in the CoO, agricultural chemicals (including GM), presence of certain diseases (e.g. BSE), human rights and condition is CoO.<br>• Wants labelling to apply to packaged and unpackaged food, and in the case of packaged food to apply to all major ingredients of the product.<br>• It is not sufficient to state the country in which the product was finally assembled. | |
| Grant, Carol | • Supports CoOL, for all ingredients in products.<br>• Rationale is to be able to buy food for family safety. | |
| Hutchison, M A | • Supports mandatory CoOL on all food imported into NZ.<br>• Rationale is wishing to know where food comes from. | |
| Kingston, Helen & Derry | • Suggest and new standard incorporates mandatory CoOL.<br>• Require CoOL to make decisions on food choices for personal health, environmental, ethical or political reasons.<br>• Believe the benefit to consumers of mandatory CoO outweighs possible costs of labelling foods.<br>• Support extension of mandatory CoOL to the major ingredients of processed food (those that make up more than specified 'threshold' percentage of the overall product). | |

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| | • Are concerned that much of the food marketed in NZ now is processed, and the label 'made in NZ from imported ingredients' does not provide enough information for consumers to make informed choices concerning the most important aspects of origin of their food – the place in which the raw materials were created.<br>• Note that there is a growing number of members of the public who wish to select foods that have not been transported vast distances with the use of fossil fuels.<br>• See little possible conflicts between mandatory CoOL and WTO objectives.<br>• Believe that even if CoOL does provide a barrier to trade this should be permissible as it id 'necessary in order to fulfil a legitimate objective (TBT Agreement, Article 2.2), which is this case is the protection of the right of the citizens to information about where in the world substances which they plan to digest originate from. | |
| Le Grange, Louise | • Does not specifically state support for CoOL.<br>• Implies supports CoOL, as wishes to – support local markets, consider safety issues (e.g. BSE, foot and mouth) and production methods (some are dubious). | |
| Milne, Vivian | • Supports mandatory CoOL.<br>• Rationale – to support local producers and domestic markets, and to make informed choices for health and safety reasons.<br>• Wants this to apply to major food ingredients not just the whole food. | |
| Morgan, Graham | • Would like mandatory CoOL on all imported food<br>• Notes that New Zealand produced foods are not currently required to CoOL but comments that most do.<br>• Considers that CoOL will be of minimal cost to industry and that cost will be carried by the consumer.<br>• comments that if costs are intended to include the possible repercussion of not meeting WTO agreements then this needs to be identified in next assessment report.<br>• Considers that current Standard is open to abuse by the food industry as the words 'which changes its nature' are open to definition. | |
| Morrow, Mrs LD | • Would like mandatory CoO in supermarkets and food stores.<br>• Prefers to buy NZ produce as not fumigated with methyl bromide or treated with fungicide or insecticide.<br>• Willing to pay a little more for NZ produce to benefit her family's long term health<br>• Shop assistants are unable to provide details when asked for CoO information. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| Physicians and Scientists for Responsible Genetics in New Zealand | • Are of the opinion that people of any nation have the right to choose what they eat, whatever their reason for doing so; therefore they have the right to fully detailed, accurate, meaningful labelling of foodstuffs.<br>• Consider CoOL is necessary to identify potentially allergenic ingredients and ingredient residues resulting from potential co-mingling during transportation or from multi-purpose use of containers and/or processing equipment – believe delaying this opportunity would leave New Zealanders vulnerable to potential allergic reactions.<br>• Are of the opinion that CoOL will allow consumers to possibly reduce exposure to pesticides by avoiding food from specific countries.<br>• CoOL would allow consumers to choose food based on ethical and religious reasons and identify foods that may potentially contain transgenic DNA. | |
| Rhodes, John | • Needs to know where food comes from.<br>• Rationale – wants to support NS producers, wants to avoid beef from countries which have BSE, objects to the costs to the environment of transporting food long distances, wants to avoid food containing illegal pesticide residues or antibiotic resistant bacteria. | |
| Sontier, Stuart | • Proposes FSANZ adopt a requirement for mandatory CoOL for both Australia and NZ.<br>• Would like to make decisions that are ethical and health related in an informed way on foods.<br>• Is frustrated that does not have the information to avoid purchasing foods from certain countries.<br>• Believes he can be misled into buying products he would not want to be buying. | |
| Struyck, Julia | • CoOL is very important.<br>• rationale –to know where produce comes from so knows what treatment it has been given (refers to organic standards in USA stating they are lower than elsewhere, and Australian tomatoes being sprayed with toxic insecticide), and wants to buy NZ produce and support NZ farms. | |
| Students for Environmental Action (New Zealand) – second submission | • Strongly oppose option 1.<br>• In the most part support option 2 – would like to see CoOL extended to ingredients.<br>• Are of the opinion that consumers require the right to know where food comes from in order to make decisions with their family's, their own and the planets health in mind.<br>• Comment that members wish to avoid purchasing food that has travelled a great distance and potentially supported burning of fossil fuels.<br>• Also may wish to avoid food from a country on the basis of agricultural practice. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| Tyrrell, Jackie | • Concerned about the increasing difficulty of determining where food comes from.<br>• Wishes to buy NZ-grown food – to support local growers, to avoid use of fossil fuels to transport foods internationally, to buy food grown in a country where farming practices are not too suspect.<br>• Believes that a requirement for mandatory CoOL is essential for FSANZ to meet its statutory obligations.<br>• Refers to Codex *General Standard for the Labelling of Pre-packaged Foods* which states in section 4,.5 that the CoO should be declared if its omission would mislead of deceive the consumer. | |
| Volker, Peter | • Believes FSANZ has a requirement for mandatory CoOL for both Australia and New Zealand in order to meeting objectives 1 & 2 of the FSANZ Act 1991.<br>• People must be able to distinguish the sources of food they purchase.<br>• Choices have little significance if no insight into the aspects related to the product can be gained.<br>• The following are important to consumers, according to personal ideas philosophy and makeup:<br>• Health qualities e.g. spray residues, natural vitamins, absence of artificial colouring.<br>• Life force qualities e.g. absence of irradiation, duration of cooling and natural ripening.<br>• Distance a product had to travel to get to its destination – draws on fossil fuel resources, people feel a connection with growers.<br>• Food products should be presented with much more detailed information, especially fresh foods.<br>• Concerned about potential for misleading information since products traditionally produced in NZ but incidentally imported can be labelled in a way which suggests they were produced in NZ. | |
| Williams, Marcus | • Requests that CoOL be included on all produce and food products which are not 100% NZ origin.<br>• Rationale is that their family's food choices are limited by lack of CoOL, as they wish to consider this, along with other criteria, when purchasing foods. | |

**OTHER / UNSPECIFIED COUNTRY**

**Industry – US/International**

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| National Food Processors Association | • Believe that transitional Standard for CoOL is overly burdensome and confusing; and inconsistent with international standards and national legislation.<br>• Comments on previous submission to P90 where it did not support the tiered approach to CoOL.<br>• Comments that consumers seek products that are processed and prepared under food quality and safety regulations in which they have confidence.<br>• Believes that mandatory CoOL provisions should be consistent with the international CODEX standard in which origin is conferred with substantial transformation.<br>• Agrees that the claim '*product of*' can mislead consumers and refers to the TPA which establishes clear and reasonable test for voluntary '*made in*' or '*product of*' claims<br>• Comments on the considerable costs as described by the USDA impact analysis, and considers that these costs are significant considering there is no benefit to consumer health and safety as a result of origin labelling.<br>• Believes that with voluntary CoOL producers of certain products may achieve a marketing advantage – comment that it is appropriate for FSANZ to develop a minimum standard consistent with the TPA for voluntary claims.<br>• Comments that mandatory CoOL for all food products results in increased costs for ALL foods and limits sourcing ingredients for processed foods.<br>• Discusses the burden of ingredient labelling in relation to season, supply and pricing. | |

*Industry - Scotland*

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| The Scotch Whiskey Association | • Supports the adoption of the current transitional Standard into the Code, with applicability in New Zealand and Australia.<br>• Has identified one area of difficulty, namely incompatibility with WTO TRIPS and Standard 2.7.5 – have proposed an amendment to the Standard to resolve the difficulty.<br>• Strongly supports that provision of clause 10(3) that requires the label on a package containing a blend of spirits produced in more than one country to identify, in standard type, the name of every country in descending order or proportion, and the proportion of the blend from each country. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| | • *Incompatibility with WTO TRIPS and Standard 2.7.5;*<br>• Clause 4 of Standard 2.7.5 defines whisky as having a minimum of 37.5% alcohol and says that a whisky 'must not be sold under a geographical indication unless the concentration of alcohol by volume is a t a level permitted under the laws for the geographical indication of the territory, locality or region indicated by the geographical indication'. Scotch whisky and is believed that Canadian and Irish whisky are required by the laws of their country to have a minimum strength of 40% alcohol by volume. Consequently if the whisky is diluted below 40% they are not permitted to carry a geographical indicator. However, under standard 1.1A.3 they could apparently be labelled as a 'whisky – a product of 'X' country'. Standard 2.7.5 defines geographical indication as an indication whether expressed or implied. The use of the description 'product of Scotland' implies that the whisky is Scotch whiskey.<br>• It is considered the implied labelling in this case will result in consumers being misled or deceived and unable to make an informed choice.<br>• The Association submits that given the inherent contradiction between Standard 1.1A.3 and Standard 2.7.5 it is in fact impossible to label Scotch whisky which has been diluted to a strength below 40% vol in a manner that is lawful.<br>• UK scotch Whiskey Act 1988 makes it illegal to sell Scotch Whiskey at a strength less than 40%, irrespective of how it is labelled. The association believes that Standards should reflect all the regulation that apply to the product in its country of origin.<br>• Comment that it is also the view of Australian DFAT and New Zealand MFAT that 'spirits with geographical indication should be sold according to the domestic laws in their place of origin'.<br>• Proposes that Standard 2.7.5 is amended to prohibit the dilution of spirits entitled to geographic indication below the minimum strength allowed by the law which defines the geographical indication in question.<br>• *Retention of Standard 1.1A.3 clause 10*<br>• Strongly support the retention of Standard 1.1A.3 clause 10.<br>• States that many spirits are exported under geographical indication and subsequently mixed or blended in the importing country….do not consider that a label 'product of (the importing country)' is be appropriate.<br>• The result would disadvantage producers of Australia and New Zealand whisky who distil and mature their products locally. | |

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| | • May result in a descriptions that are inconsistent with existing practise as outlined in Standard 1.1a.3 clause 10(4).<br>• Submits that an appropriate term would be 'bottled in…' with a declaration of proportion of spirits in the blend as under clause 10(3). | |

*Industry - US*

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| Distilled Spirits Council of the United States | • Note that it is a significant stakeholder in the Australian and New Zealand distilled spirits markets.<br>• Do not intend to submit specific comments at this stage in the proceedings, as understand that FSANZ has not yet proposed specific revisions to the current transitional standard for CoOL for distilled spirits.<br>• Requests the opportunity to provide additional comments if FSANZ determines to propose modifications to the transitional standard regarding CoOL for spirits or identifies other options. | |

*Consumers – unspecified country*

| SUBMITTER | COMMENT | REFERENCE IN REPORT |
|---|---|---|
| Anjali Walsh | • Wants CoOL.<br>• Rationale - is protective and necessary and discriminative information for the consumer. | |
| Kent Steedman | • Requests CoOL.<br>• rationale is only to buy food from Australia and the Pacific that he feels safe with for economic and cultural reasons. | |

**Attachment 3**

# Regulatory Impact Statement

## Benefit cost analysis of Country of Origin Labelling Proposal P292

## Final Report to Food Standards Australia New Zealand

### Preface

NZIER is a specialist consulting firm that uses applied economic research and analysis to provide a wide range of strategic advice to clients in the public and private sectors, throughout New Zealand and Australia, and further afield.

NZIER is also known for its long-established *Quarterly Survey of Business Opinion* and *Quarterly Predictions*.

Our aim is to be the premier centre of applied economic research in New Zealand. We pride ourselves on our reputation for independence and delivering quality analysis in the right form, and at the right time, for our clients. We ensure quality through teamwork on individual projects, critical review at internal seminars, and by peer review at various stages through a project by a senior staff member otherwise not involved in the project. NZIER was established in 1958.

### Authorship

This report has been prepared at NZIER by Peter Clough and reviewed by Chris Nixon. The assistance of Sarah Spring is gratefully acknowledged.

### Executive Summary

This report considers the benefits and costs of various options for implementing proposal P292 on Country of Origin Labelling (CoOL). It has been commissioned by Food Standards Australia New Zealand to inform a regulatory impact statement for public consultation about different options for implementing CoOL. Currently CoOL is mandatory in Australia but not in New Zealand (except for wine and wine products), so there are differential impacts across the two countries in applying joint food standards across both countries.

The options identified from the P292 Initial Assessment Report are:

- *Option 1. Status quo*: retaining the current situation of different operation in Australia and New Zealand. No action required.

- *Option 2. Adopting the current transitional Standard into the Code*: this is effectively the same as Option 1, except that it would extend mandatory compliance to New Zealand.

- *Option 3. Developing a revised Standard for the Code*: this continues to be a 'vertical standard', standing apart from other food labelling requirements, applying to named commodities and packaged foods as at present.

- *Option 4.* Developing a revised standard that is a component of the horizontal labelling regime of part 1.2 of the Code, that:

    - Applies to all packaged food and some unpackaged foods;
    - Provides flexibility while remaining consistent with fair trading laws; and
    - Applies to the whole food, not ingredients – except where a declaration that ingredients are imported is allowed.

- *Option 5:* Develop a revised standard for CoOL applying to all foods, whether packaged or unpackaged.

Cost benefit analysis is about comparing what occurs with a proposed plan of action with what would occur without it. In this case the status quo is the counterfactual or 'do nothing' case, against which each option is compared. FSANZ regards Option 1 to be untenable, inconsistent with other laws and incompatible with international trade rules. Option 2 is basically the same, except for the additional costs imposed on New Zealand food suppliers in complying with the rule. Option 3 is also expected to be very similar, with minor adjustment to current practice by only some suppliers. Option 4 is a more substantial overhaul of the CoOL regulation, which incorporates it into the codes governing other food labelling requirements. Although this option may require widespread relabelling of products to comply with the new standard, for some products (e.g. unpackaged) it would also be less prescriptive than the current standard, reduce potential inconsistencies with respect to fair trading laws, and allow greater flexibility (and lower cost) in complying. So in aggregate Option 4 could conceivably entail more, or less, compliance cost than Options 2 and 3. Option 5 applies the revised standard across a wider range of foods, whether unpackaged or packaged, and would certainly entail higher compliance cost than Option 4.

FSANZ has indicated its preferred option is Option 4, for reasons of legal consistency and compatibility with international trade rules. Much of the focus of the report is on Option 2, however, as this has the largest differential impact between the two countries. Other options represent incremental changes across both countries compared to Option 2, but the cost of mandatory CoOL in New Zealand under-pins all those options.

Cost benefit analysis generally entails looking at effects over time and reducing them through discounting to a net present value. This is not feasible for this report, both because of the limitations of data that would make any such analysis an exercise in spurious precision, and also because the nature of the options being considered mean that the majority of the costs stem from once-only adjustments at the point of implementing the standard. On-going incremental costs are small to negligible, and the emphasis of this report is on the one-off adjustment cost, which can be viewed as equivalent to the present value of the benefit stream needed to make the proposal worthwhile.

The report considers evidence of what the benefits and costs might be, then applies it to a framework of analysis for comparing the separate options.

**Evidence of the impacts of CoOL**

The current CoOL requirement has a relatively low default level for identifying origins, simply requiring a label attached to packed foods (or displayed by unpacked foods) with a statement on where the food was made or packed for retail sale, and if it contains imported ingredients. Options involving changes to the standard are more concerned with presentational issues than changing details on the content of the food. For instance, the proposed Option 4 would be less prescriptive in some respects (e.g. abandoning stipulated font sizes in favour of general legibility requirements), but it would continue to be satisfied by a statement that food contains 'local and imported produce'. This is likely to make compliance cost lower for suppliers, but also does little to increase information content for consumers.

There is a wide range of international literature about CoOL, particularly relating to the US, but most concerns situations which are not closely analogous to the proposals being considered in the Draft Assessment Report of Proposal P292. Overseas reactions to CoOL are based on an expectation of more onerous requirements than are considered here, so some of the arguments applicable overseas have limited currency here. Similarly, some of the submissions on the Initial Assessment Report were reacting to more stringent regulatory impositions than is required under the options outlined above, such as the expectation that percentage shares of food by origin would be required, with attendant increases in record keeping.

There is no hard evidence of how many foods comply with the current standard in New Zealand, but casual observation of foods in supermarkets suggests a high proportion do, particularly those sourced from Australia or New Zealand brands that are exported to Australia. Some food types are largely non-compliant, including staples like bread and flour, and specialty foods.

**Framework of analysis**

The framework of analysis identifies the effects on economic welfare. The increased costs of CoOL will be passed on in full to consumers through higher prices, with contraction in consumption at the margin. If imported and domestic produce compete and CoOL impacts more heavily on domestic than imported produce (e.g. because imports are already labelled), the regulation creates a competitive advantage for imported foods.

The principal costs fall under the following headings:

- Compliance costs for supplier firms in meeting new standards. Because Option 4 allows a three year transition period, which should allow time for old packaging stock to be used up without being written off, these are primarily the one-off costs of redesigning labels to comply. From industry advice we have assumed this averages NZ$2,500 per product.

- Administration costs for food regulators. Both countries have food regulators already providing information and monitoring for compliance with other standards, so the marginal costs of CoOL are likely to be low to negligible on top of what is already being done.

- Allocative shifts in supply and demand for foods. These could result from regulatory price changes, but seem likely to be small for the options considered here.

The principal benefits fall under the following headings:

- Direct customer value. Suppliers use origin as a marketing advantage where it conveys a premium value, but this is not something that applies to the majority of foods. Surveys indicate that shoppers have an interest in country of origin, but it is a lesser priority than other food attributes, such as taste, appearance and price. Mandatory CoOL imposes costs on the majority of shoppers for information sought by only a minority.

- External value. There may be value for society in improved trust in the food system derived from openness of information provided by it, but the information provided by the proposed options does not significantly contribute to this.

- Fundamental system value. There may be value for society in improved operations for the food system (e.g. more rapid product recalls in case of food scares), but there are other systems in place which provide such value and the type of information required by the proposed options does not significantly contribute to this. Reduction of prescription and inconsistency with fair trading legislation and international trade rules could enhance fundamental system value for the food industries, although such effects are difficult to quantify. Their economic value derives from a reduced risk of legal challenge to the rules in national and international fora, and the concomitant costs of dealing with such challenges.

- Social value in the right to know *per se*. Knowledge itself may be viewed as socially desirable, but it is not costless and its provision still involves diverting resources from other activities that society may regard as more valuable. The type of information required by the proposed options is not particularly informative as to countries of origin because of the low default level, and it can not much assist consumers who have strong preferences or prejudices about foods from particular countries.

**Comparative analysis and implications**

The comparative analysis looks at likely levels of cost and benefit of implementing different options for P292. Due to limitations in data the figures are largely based on assumption and the relative results across options are more informative than the absolute levels of the estimates.

The analysis concentrates on one-off costs of compliance with CoOL, compared against the value of the right to know and the reduced risk of legal challenge to current standards, which are the principal tangible benefits of the current proposals. There are other, less tangible effects, such as the potential damage in trade negotiations caused by what may be seen as a non-tariff barrier to trade. These have not been included in the current analysis, because their quantification is difficult and including them by assumption would not be informative.

The comparison of options has been summarised in the table below. This shows the effect of each option in increasing the right to know, reducing risk of challenge to legal anomalies in the current standard, and the estimated cost of moving to each option.

Option 2 has a cost of probably no more than NZ$12.5 million, incurred entirely in New Zealand. This is small compared to the aggregate annual expenditure on affected foodstuffs of around NZ$5,700 million (0.2%), but it is possible that for some products it could result in price rises, demand contraction at the margin or switching to imports that already comply, which would also reduce economic surpluses for New Zealand suppliers. The benefits are also correspondingly small as required wording simply indicates food *may* contain imported materials, which is not informative for shoppers.

However, Option 2 does not resolve the legal anomalies, so the costs imposed on the economy are incurred for no reason unless the 'right to know' benefit is at least as large as the costs. There is no sound empirical evidence of what is the value of the 'right to know', but this implied value appears high given the limited information content on the labels and lack of evidence of a general consumer value in this type of origin information.

**Summary comparison of options**

| | **Gains from Right to Know** | **Legal risks avoided** | **Cost** | **Main impacts** |
|---|---|---|---|---|
| Option 1 *Status quo*: current transitional standard | No | No | Nil | Nil |
| Option 2: current standard mandatory in New Zealand | Yes | No | Up to NZ$10 - 12.5m | Only in New Zealand |
| Option 3: Revised vertical standard in both countries | Yes | Yes | Greater than or, equal to Option 2 | Most in New Zealand & some in Australia |
| Option 4: Revised horizontal standard in both countries | Yes | Yes | Greater than, equal or less than Option 2 | New Zealand & Australia |
| Option 5: Revised standard across all foods in both countries | Yes | Yes | Greater than Option 2 | New Zealand & Australia |

Source: NZIER

Other options are likely to be at least as costly as Option 2, if not more so, except Option 4, which may be less costly because of the greater flexibility it introduces for some products. This Option resolves the legal anomalies, so the cost of proceeding with it will represent the implicit value of both the 'right to know' and the avoidance of legal risks. If Option 4 is as costly or less costly than Option 2 there are clear advantages in Option 4 because it provides a greater range of benefits and does not depend on an implied value of the 'right to know' which is as improbably high as in Option 2. Of the options considered, Option 4 appears most likely to provide the best ratio of benefits to costs.

There are large uncertainties surrounding the estimates in this analysis, particularly with respect to the range of foodstuffs that currently comply with the proposed CoOL, the number of food lines across both countries, and the likely consumption response to price rises induced by regulatory cost impositions. Removing these uncertainties would require extensive market surveys across both countries.

The framework used in this analysis is more robust than the data, and is sufficient to signal the broad pattern of impacts and the relative effects across the different options.

**Introduction**

FSANZ requires a benefit-cost analysis of various options for implementing proposal P292, regarding Country of Origin Labelling, to inform a regulatory impact statement for public consultation. The nub of the issue is that Australia and New Zealand currently have different approaches to Country of Origin Labelling (CoOL), but have also made commitment to harmonize their approaches through the development of joint food standards to apply in both countries. A transitional Standard on CoOL developed with the repeal of some previous legislation has been adopted as a mandatory requirement in Australia, but is not yet mandatory in New Zealand (other than for wine products) and only subject to voluntary compliance. The development of, and public consultation on, proposal P292 therefore requires guidance on the costs and benefits of various options for proceeding from this point.

**CoOL Options**

The options identified in the P292 Draft Assessment Report are:

- *Option 1. Status quo*: retaining the current situation of different operation in Australia and New Zealand. No action required.

- *Option 2. Adopting the current transitional Standard into the Code*: this is effectively the same as Option 1, except that it would extend mandatory compliance to New Zealand.

- *Option 3. Developing a revised Standard for the Code*: this continues to be a 'vertical standard', standing apart from other food labelling requirements, applying to named commodities and packaged foods as at present.

- *Option 4.* Developing a revised standard that is a component of the horizontal labelling regime of part 1.2 of the Code, that:

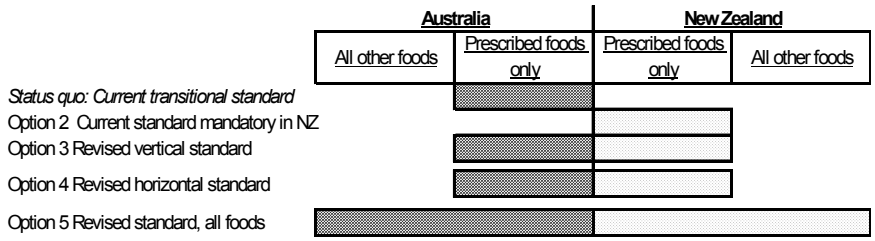
    - Applies to all packaged food and some unpackaged foods;
    - Provides flexibility while remaining consistent with fair trading laws; and
    - Applies to the whole food, not ingredients – except where a declaration that ingredients are imported is allowed.

- *Option 5:* Develop a revised standard for CoOL applying to all foods, whether packaged or unpackaged.

Without any changes to the standard, there will be continuation of the *status quo* in Option 1, so this can be regarded as the 'do nothing' or counterfactual case. This raises the question of whether continuation of this state of affairs is detrimental to human well-being, and whether any of the other options can be expected to result in more informed choices that raise societal well-being.

The scope of this current analysis is illustrated in **Figure 1** below. In the status quo only Australia conforms to the transitional standard, and any compliance in New Zealand is purely voluntary. In option 2 New Zealand alone faces adjustment to a mandatory compliance with the transitional standard. Given compliance in both countries, Option 3 involves minor adjustment to labelling, and Option 4 involves more substantial revision of the labelling requirements. Option 5 involves substantial revision of the standard and its extension to a wider range of foods than those currently affected by the transitional standard.

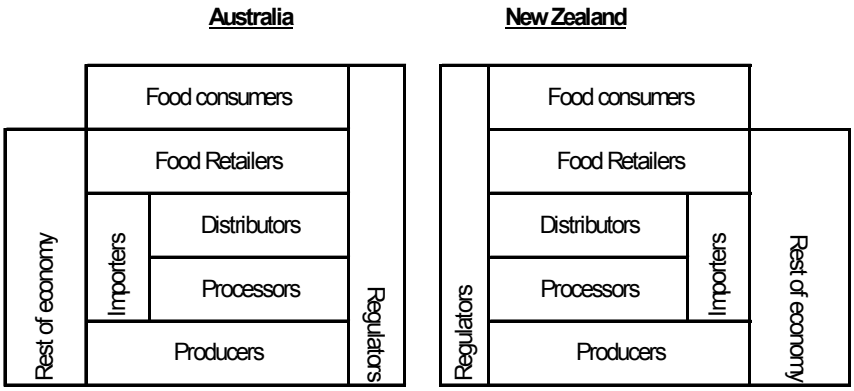
**Figure 1: Scope of P292 Options**




Source: NZIER

The parties likely to be affected are illustrated in **Figure 2**. These are primarily food consumers and those involved in food supply, but there are also linkages to the wider economy in each country. These parties will be affected to varying degree by the different options for implementing CoOL.

**Figure 2: Parties who would be affected by P292**




Source: NZIER

**What are CoOL requirements?**

The requirements for country of origin labelling in the current Transitional Standard are outlined in the P292 Initial Assessment Report. These requirements, which apply only to food for retail sale (excluding food sold through catering establishments and fresh meat) are broadly as follows.

All packaged foods require:

- A label attached to the package;
- A statement identifying countries in which the food was made or produced; OR
- A statement identifying the country in which food was packed for retail sale; AND
- If any ingredients do not originate in the country of sale, a statement that food is made from local and imported ingredients.

The requirements for unpackaged foods (e.g. uncooked fish, vegetables, nuts and fresh fruit from outside Australia and New Zealand) are:

- A label displayed at point of sale indicating the country of origin; OR
- A label displayed at point of sale with a statement that they are imported.

Amendments to proposals made subsequent to the Initial Assessment Report are intended to increase flexibility in the application of the standard. These include requiring CoO Labelling either on display in connection with the display of food, or at point of sale, not on individual items for unpackaged foods. This is being removed in the proposed new standard, due to inconsistency with fair trading laws. Requirements are also being made less prescriptive for some packaged foods, such as orange and fruit juices, which are quite specific in the current transitional standard.

The Food Standards Code provides for a 12-month grace period for compliance, and the current transitional Standard will operate in parallel to the new Standard for a period of two years. This means manufacturers and retailers have up to three years to adjust to the new Standard after it comes into force, using up old label stocks and making necessary changes to their operations.

In addition to these requirements specific to CoOL, the International Codex General Standard for pre-packaged foods also requires:

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

Further, the Australian *Trade Practices Act (1974)* requires that at least 50% of the production or manufacturing to have occurred in the country identified as the country of origin for it to be legitimately described as ‘made in’ that country. ‘Produce of…’ representations are allowed only where all significant ingredients and virtually all the production/manufacturing processes occurred in the country represented as country of origin. There is no requirement to identify the actual amount of content originating from any country (but also no prohibition of so doing).

Although the New Zealand Fair Trading Act (1986) is modelled on the Australian Trade Practices Act, it does not require all products to be labelled with country of origin, but any labels that appear must not be misleading or deceptive. Some New Zealand food suppliers may already be using labels that comply with CoOL requirements, but to the extent that they do not, any move to mandatory CoO Labelling will involve some change in practice in New Zealand, and some increase in cost (otherwise they would be complying already), which needs to be weighed against expected benefits.

## Evidence from the literature

### International insights

Much of the international literature on mandatory CoOL relates to its implementation in the USA, where CoOL was scheduled to become mandatory in September 2004 under the 2002 Farm Bill. It has since been postponed to 2006 and there are now moves afoot to make it voluntary.

Certain caveats attach to the applicability of the US literature with respect to CoOL in Australia and New Zealand. These include:

- Much of the discussion is on the basis that consumers view CoOL information as a proxy for food quality and safety, and a presumption that US-produced food is safer – although there is no objective evidence that this is the case, or that CoOL confers any safety benefit over and above existing import regulations;

- The safety focus is also clearly influenced by high profile events such as the incidents of BSE in the EU and Canada, which are more significant with respect to trade flows into the US than they are for Australia and New Zealand;

- An implicit premise in much of this literature appears to be that mandatory CoOL would increase consumption of domestic US produce, which is not necessarily the same as increasing the economic welfare derived from food consumption decisions.

Critical issues that emerge from this literature are:

- The extent to which new record-keeping practices would be needed for industry to comply with the standard;

- The scope of coverage of the new CoOL standard;

- The effects of CoOL on food prices and associated consumption responses.

Papers which are sceptical of the net benefits of mandatory CoOL (including the USDA) stress that the benefits are nebulous and probably minimal, whereas the costs could be extensive.[1] These costs arise from both new record keeping of origins of inputs into food production, which extend through successive stages in the production chain, and some changes in firms' operational practices. They also arise from the breadth of coverage, going right back from retailers through to primary producers, including numerous individual ranchers and fishing companies. Benefits are not only difficult to quantify but also possibly covered in other legislation – e.g. to the extent that fair trading legislation covers deceptive and fraudulent claims, reducing such claims cannot be attributed as an additional benefit of mandatory CoOL.

[1] See GS Becker (August 2004), 'Country of Origin Labeling for Foods', Congressional Research Service, Library of Congress; Barry Krissoff and others (January 2004) 'Country of origin labelling: theory and observation'; Electronic Outlook Report from the Economic Research Service, USDA; Colin Carter & Alix Zwane (2003) 'Not so CoOL? Economic implications of mandatory country of origin labelling' ARE Update 6(5) University of California

Papers in favour of mandatory CoOL stress the limited impacts on compliance cost, both because tracing and record keeping should be minimal in addition to what firms already undertake for regulatory and stock management purposes, and because the scope of CoOL imposition would be narrower than the sceptic literature presumes (e.g. on a technical interpretation of the law, primary producers would be exempt).[2] They anticipate a positive demand response from improved labelling, either through producers receiving a higher price or from an increased quantity of domestic produce consumed as a result of improved labelling. They cite a number of consumer surveys in which consumers indicate CoOL is a desirable attribute of food, although most of these do not explicitly link this to willingness to pay for that additional information. One study which does estimates the price premium on beef with mandatory CoOL could be between 11% and 24% of current prices, but this needs to be viewed in light of the health scares associated with beef at the time, and the lack of supporting evidence that such premia are being realised in the market.[3]

One other contentious issue is the extent to which mandatory CoOL may be viewed as a non-tariff trade barrier and subject to challenge or retaliation under the WTO rules. Enthusiasm for mandatory CoOL reflects different states' varying interests in opening up trade: CoOL may be more attractive to Florida growers than to Californian farmers who have more to gain from encouraging open trade.

There is great debate about the effectiveness of CoOL in increasing sales of domestically produced products. If CoOL was extremely effective, then firms producing domestically based products would ensure that all of their products are voluntarily labelled with CoOL markings. Economic models of voluntary disclosure indicate that mandatory labelling is not necessary to resolve asymmetric information between consumers and suppliers, if enough consumers attach value to the product characteristics, if producers have a credible method of conveying their product's attributes, and if consumers are sceptical of firms that do not label their products. There is empirical evidence that mandatory nutrition labelling has had an impact on consumer food choices, but this is also suggests it is more influential on choice when describing a negative characteristic (such as fat content) rather than a positive one.[4] COOL does not appear to have widely held and strong positive associations, suggesting that it may be both a minor influence on consumer choice, and also less likely to be supplied by private 'unravelling' of information by suppliers.

In view of the caveats outlined above, the US papers with their presumption of safety benefits are not directly applicable to the current CoOL proposals in Australia and New Zealand. But they are useful in identifying some of the critical unknown quantities, in particular what consumers understand by labelling terms, their likely demand responses, and operational requirements of compliance, on which any cost benefit analysis is likely to hinge.

[2] See VanSickle JR and others (2003) 'Country of origin labelling – a legal and economic analysis' Policy Brief Services, International Agricultural Trade Policy Centre, University of Florida.
[3] See Wendy Umberger and others (2003) 'Country of origin labelling of beef products: US consumers' perceptions' Journal of Food Distribution Research 34(3)
[4] Mathios AD (2000) 'The impact of mandatory disclosure laws on product choices: an analysis of the salad dressing market'; *Journal of Law and Economics*, XLIII, 651-677

**Summary of submissions**

Submissions on the Initial Assessment Report have raised a number of issues which can be divided into a number of different areas. These are outlined here, along with commentary on economic implications for the arguments.

*General issues*

A feature of the submissions made on the Initial Assessment Report is the large number of high level assertions made without tangible evidence to support them. Some of these draw inferences from overseas experience of CoOL in circumstances different from those in the current proposals. Some of them also appear to reflect an ideological predisposition, which overseas opinion surveys have shown to be influential on attitudes to CoOL.[5]

Submissions both in favour and critical of mandatory CoOL discuss the importance of the 'right to know' for political, religious, or ethical beliefs as a justification for regulation.

Those in favour of mandatory CoOL tend to assume that absence of universal CoOL is evidence of a market failure. In economic terms, market failure occurs where suppliers are unable to capture the benefits from their actions to cover the costs of so doing (as in the case of public goods); where property rights are incompletely specified (as in the case of environmental externalities such as pollution); or in the case of market structure imperfections that permit exploitation (as in the case of market dominance and monopolistic behaviour).

'Information failure' is a specific case of market failure that occurs when information is not supplied because it is costly to supply and, once supplied, it can be used by anyone, regardless of whether they contribute to its supply costs. This however is not the same situation as that described by the failure to indicate country of origin: the critical information provided by CoOL is not of such form that it can be expropriated by non-contributors to the cost of its supply, except to the extent that it may reinforce certain prejudices about foods from specific origins that depend more on perception than any objective evidence about the quality of foods from different sources. The market failure argument for mandatory CoOL is therefore tenuous on information grounds, and appears to rest more on questions of market structure: retailers and consumers have limited market power compared to suppliers and require the nudge of mandatory standards to obtain disclosure of origins of what is supplied. It is arguable however that market power is distributed in this way, and large retail chains appear to have considerable power in getting upstream suppliers to provide what they require.

The 'right to know' argument hinges critically on comparative assessment of the costs of providing that knowledge and the social value that it creates. The benefit of right to know may be undermined if suppliers change product composition specifically to minimise their costs of CoOL, for instance avoiding ingredients from lengthy supply chains whose origins are more difficult to verify, or those where origins change periodically requiring different labelling to comply with CoOL. This may have the effect of reducing the range of ingredients in use, and hence reducing choice in the market, which would be detrimental to at least those consumers who are indifferent to country of origin.

[5] Umberger et al, *op.cit.*

*International trade policy considerations*

While very difficult to quantify, there are costs for trade policy flexibility associated with signing up to a mandatory CoOL regulation. In the multilateral trade policy environment, New Zealand does not set the international trade policy agenda, in effect it is a 'trade policy taker' (see Nixon and Yeabsley, 2003). To have any influence on how the international trade policy agenda impacts on New Zealand, our trade policy negotiators must be 'useful to the process'. This requires flexibility, that is, being seen to be impartial and coming up with innovative ideas and bringing parties together. By taking a strong stance on a trade policy issue, such as CoOL, New Zealand could well compromise its position a policy entrepreneur. The flexibility of New Zealand negotiators could be reduced, lessening the chances that New Zealand negotiators have in influencing the trade policy implementation process, which is crucial to New Zealand's economic well being. Similar considerations apply to Australia's trade policy positioning, given its long interest in trade liberalisation as a member of the Cairns group of countries.

There is also an issue of trade policy consistency. New Zealand has opposed mandatory CoOL in the USA where the New Zealand Government has perceived that it could harm exports of beef. Arguing against CoOL implementation in the US and then implementing it domestically means that our arguments carry less weight. Furthermore, this may mean that other countries adopt CoOL regulations that have the potential to harm New Zealand exports – increasing uncertainty around future trade.

*Trade considerations*

CoOL can be seen as an attempt to protect various industries. This is reinforced by a study of the submissions. Those industries that are most avidly pro CoOL face strong import competition, while those that do not support CoOL are focused on exporting.[6]

There may also be ramifications associated with multilateral trade process. Submitters point to Article 2.1 of the Technical Barriers to Trade in the Uruguay Round Agreement, under which CoOL could be interpreted as being in breach of the agreement. Whether it is or not has not been fully tested properly, therefore it is difficult to say whether this is the case. However, continuation of the current transitional standard, which was formulated prior to the signing of the TBT agreement, appears problematic and open to challenge. This possibility will be reduced with the proposed removal in Option 4 of discriminatory provisions such as those with respect to fish, nuts, fruit and vegetables, orange and fruit juices.

CoOL could be interpreted as being against the spirit of New Zealand bilateral agreements with Australia, particularly Closer Economic Relations (CER) and Trans Tasman Mutual Recognition (TTMRA). This is because CER is a *mutual recognition* treaty, where each country can set its own tariffs and other protection measures for third country goods and services. While there is nothing to stop each country setting in place the same protection measures, in reality they have not for social and political reasons. *Harmonisation* would have required the mandatory alignment of tariffs and other protection measures so that third countries would face the same uniform measures of protection.

[6] This is mirrored in the US, with Florida, the State which faces competitive threats from South American food sources having introduced mandatory CoOL in 1980, while California, a major exporting State is very much against mandatory CoOL.

This would be closer to a customs union than a free trade area (an EU rather than an EFTA), and would result in the application of common tariffs that would be disadvantageous to some industries in either or both countries because they are not customized to variations in conditions in those countries.

Similarly, the TTMRA is designed to reduce transaction costs and increase employment opportunities by mutually recognising each other's standards (in goods) and registered occupations (services). Harmonisation would have imposed a mandatory standard for goods and services. In both cases, harmonisation could potentially disadvantage one party because of the adjustment costs of complying to a new standard or protection regime and for efficiency reasons, i.e. the imposed rules may not describe the historical, political, cultural, and social context in which economic agents (people and businesses) interact.[7]

Two other issues are also potentially important:

- CoOL may reduce choice for consumers. If a company sources product from a number of different countries depending on supply difficulties, seasonality, or for any other reasons, the introduction of mandatory CoOL could mean a product is withdrawn because the costs of changing labels is prohibitive. This is more likely to impact on developing countries' export trade since they are less likely to have infrastructure required to trace the origin of commodities they produce.

- A potential exists to mislead the consumer on product quality. CoOL requirements are silent on product quality; these issues are appropriately handled by other legislation. However, in advertising material and other marketing information there is often a suggestion that buying domestically made products is better for your health, the environment, and for other reasons. CoOL can not substantiate these claims and is not aimed at proving these claims.

On the benefit side, CoOL could enhance the attributes of a particular region or country as a producer of a particular product. What those attributes are, will depend on the unique selling points of the region or country. If these enhancements are translated into increased trade and export sales then this has the potential to increase profitability and employment.

The strength of these arguments (and the costs and benefits) will depend upon how great the change is from the status quo. If the changes from the current labelling regulations are relatively small, then the costs of moving will be correspondingly small.

*Consistency with other legislation*

Without testing the claims of inconsistency between CoOL and domestic legislation such as the Trade Practices Act in Australia and the Fair Trading Act in New Zealand it is difficult to assert whether a breach in the Act has occurred. This can only be tested through the courts. The legal advice received by FSANZ is that the current standard presents potential inconsistencies, requiring changes to align it with applicable domestic laws.

[7] For a more completed study of these issues in the CER context, see Nixon and Yeabsley (2003) and for the TTMRA see Productivity Commission (2003)

*Application of CoOL to whole food/individual ingredients*

A number of submitters have suggested that CoOL should be extended to all foods (including the ingredients) rather than just whole foods. The main reason for this is the 'right to know'. Those that support the mandatory labelling of whole foods only (mainly from the supermarket trade) argue that applying it to all ingredients is overly restrictive, does not provide consumers with usable information, and adds unnecessary costs when ingredients need to be sourced from different countries.

*Consistency within the code*

One submitter argues that if some food items require mandatory labelling then all foods should require mandatory labelling.

**Overview considerations**

Public objectives commonly identified for mandatory CoOL are to rectify failures in the market for information, prevent fraudulent labelling claims, and ensure sufficient records for speedy tracing in case of food-borne disease. The objectives that private sector suppliers have from product origin traceability are rather different, and likely to centre on differentiating their product in the market, assuring quality, and improving supply chain management.

CoOL is a 'credence characteristic', not a sensory attribute of food. The value of CoOL as a marketing tool depends on suppliers associating the origin with some desirable attribute of the product (e.g. prestige, quality) and with establishing trust with their consumers. As is evident from the experience of country-based export marketing brands, this can be difficult to do when there are numerous producers under the same country label: the single-desk marketing of the New Zealand Dairy Board in the 1970s and 1980s was more successful in returning value to producers than the fractious marketing of New Zealand meat by different firms, with recurring episodes of 'weak selling' undermining price premiums sought on export markets. So suppliers often gain more benefit by establishing their own distinctive brands than by pushing a more generic characteristic such as country of origin. Under such circumstances CoOL may not emerge without some government intervention to ensure reliability of the information.

To ensure that labels are accurate, origin information must be maintained and transferred along the supply chain. Some sectors already routinely do this in pursuit of a price premium (e.g. organic foods). The fact that other sectors do not indicates that suppliers do not see a realisable value gain for their customers that would justify the cost of providing accurate origin information. If there is value in marketing a particular product attribute, profit seeking retailers, manufacturers and producers would voluntarily highlight that attribute. Competitive disclosure would result in explicit claims for all positive aspects of products, and allow consumers to make their own inferences about products without claims.

The frequency with which voluntary CoOL is observed therefore gives an indication of the market value of labelling food origins. Although it is difficult to identify how many food products do carry country of origin labelling, the fact that CoOL is being considered for a mandatory standard at all indicates that voluntary CoOL is not frequent, and certainly not universal. There are various reasons why food suppliers may see no private advantage in labelling food origins:

- Consumers may not care where their food comes from, and accept that other regulations ensure equivalent safety of imported and domestic food;

- Consumers may prefer imported products in which case origin labelling is detrimental to domestic produce and not wanted by local suppliers;

- Consumers may prefer domestic products, but not enough to cover the extra costs such labelling requires;

- Consumers demand information and labelling, but there is a market failure in supply.

Market failure may be a justification for government intervention such as regulatory changes, but it still requires that the social benefits should exceed the social costs. Otherwise the intervention will be socially inefficient, and the community ends up worse off with the regulation than it would be without it. Hence the importance of trying to identify the costs and benefits likely to arise from the regulatory change.

Estimating benefits and costs from mandatory CoOL will be tentative as long as consumer demand for labelling and its costs are imprecisely measured. If mandatory CoOL does not change consumers' willingness to purchase particular products, CoOL affects consumers only through its impact on food prices, which in turn reflects any increases in costs of labelling, record-keeping and operating procedures that suppliers have already decided are not justified by any increase in demand. Higher prices may lead to contraction of food purchases or substitution to foods less affected by CoOL (e.g. those with simpler supply chains and fewer ingredients).

Whether consumers are better off with mandatory CoOL depends on the relative size of their willingness to pay extra for label information, and the cost of providing that information. Even consumers who want information may not be willing to pay the increased price it entails.

Returning to the public policy objectives for mandatory CoOL, the literature and submissions do provide a mixed endorsement.

- Public right to know: this is a laudable public policy aim, but there is little evidence to suggest that the consuming public sees sufficient value in this to justify much additional cost.

- Rectify failures in the market for information: this is an economically respectable justification for regulatory intervention, but in the case of food labelling the issue is less about information failure than about asymmetries in information and market power among players in the food chain and the difficulties about specifying information disclosure where it may be perceived as costly to do.

- Prevention of fraudulent labelling claims: the contribution of mandatory CoOL to this end depends on the coverage and enforcement of other regulations, which are well developed in both Australia and New Zealand, so the incremental benefit of mandatory CoOL is unlikely to be large.

- Ensure sufficient records for speedy tracing in case of food-borne disease: the contribution of mandatory CoOL to this aim is discussed in the literature primarily in relation to livestock traceability in respect to meat safety incidents, and is possibly overstated because of the long delay between detection of incidents and the shipment of contaminated products. This international literature is largely irrelevant to the current consideration of CoOL, which does not cover fresh meat, and the contribution of the proposed labelling to traceability is negligible.

Submissions indicate a fair degree of uncertainty and misconception about the CoOL requirement which may result in exaggeration of the likely impacts. If CoOL can be satisfied by an address that identifies the country of packing for retail sale, and a statement to the effect that some ingredients may be imported, compliance is unlikely to require extensive new record-keeping systems, and costs of adjusting labels may not be significant. In this case the incremental benefit of mandatory CoOL is also unlikely to be large, because the standard does not require identification of specific source countries, and has limited information for improving consumer choice.

**Comparison of Benefits and Costs**

The comparison of benefits and costs proceeds by attempting to quantify the benefits and costs of each of Options 2, 3, 4 and 5 compared to the current status quo. A critical initial question is how much compliance with the standard increases compared to some level of voluntary compliance in the status quo, and what the consequent benefits and costs are likely to be.

Cost benefit analysis of a policy change is concerned with resultant changes in societal welfare. Welfare in this sense represents the economic surpluses enjoyed by those in the affected jurisdictions, namely:

- Producers' surplus is the difference between market price and cost of supply of affected products, and is manifested as an economic rent, or super-normal profit, for infra-marginal suppliers;

- Consumers' surplus is the difference between market price and consumers' willingness to pay for affected products, and is manifested as a saving for infra-marginal consumers that they can apply to other desirable consumption.

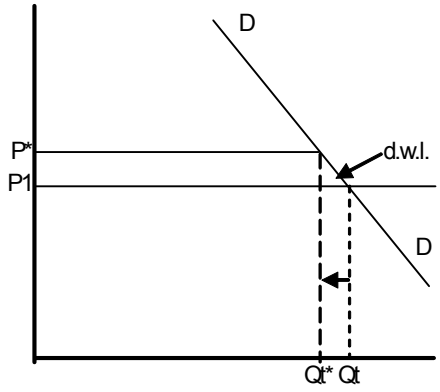
Before considering in detail particular costs and benefits, we outline the general welfare impacts implied by the different options.

**Basic welfare effects of CoOL**

The simple welfare effects of a new regulation are illustrated in **Figure 3** below. This shows a horizontal supply line for food intersecting an elastic demand curve (DD), resulting in a market price of P1 and quantity consumption of Qt. To the extent that regulation increases costs for suppliers that are passed on to consumers, price will rise to P*, and consumption will shift back up the demand curve to Q*. The net effect is that food consumption declines (Qt-Q*), and although suppliers recover their additional costs on remaining sales by eating into the consumer surplus that consumers previously enjoyed, there is a deadweight loss (d.w.l.) in welfare from the reduction in consumption at the margin.

The relative scale of these effects depends on the respective elasticities of supply and demand. The more inelastic the demand, the smaller the contraction in consumption and the corresponding deadweight loss. With perfectly inelastic demand, the entire cost is borne by reduction in the consumers' surplus. The more elastic the demand, the larger the contraction in consumption and the deadweight loss. The additional costs on remaining sales are borne entirely by reduction in consumers' surpluses, but producers also face contraction in their sales at the margin which can impact on their overall profitability.

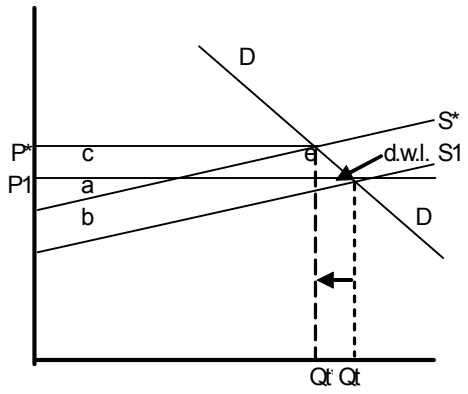
**Figure 3: Simple welfare effects of a new regulation**




Source: NZIER

When supply is also elastic to some degree, the supply curve slopes up towards the right (**Figure 4**). In this case the new regulatory costs raise the supply curve and increase price at the margin to P*, with the result that the deadweight loss comprises contractions in both consumers' surplus and producers' surplus. On their remaining sales (Qt*) producers recover their extra costs (b+e) and recover a producer surplus (a+c). Whether producers are better off after regulation depends on the respective sizes of their lost portion of producer surplus (area b) and their captured consumer surplus (area c). But producers at the margin where sales have contracted suffer deadweight loss and are worse off, as are consumers who face deadweight loss and the transfer of consumers' surplus (c+e) to producers.

**Figure 4: Regulatory impacts with elastic supply**

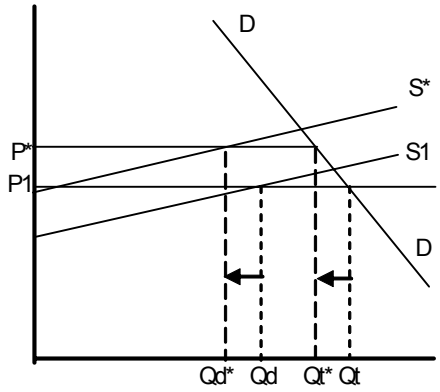



Source: NZIER

In **Figure 4**, the rise in price (P*-P1) is visibly less than the increase in the supply cost curves (S*-S1). This may give the impression that producers are not passing their costs onto consumers in full, but this is an illusion created by the contraction of supply down the supply curve: at the new price the marginal unit supplied still faces the full additional cost of the regulation. Producers could only afford to not pass costs on if they were earning a surplus at the margin, which may be possible under some forms of monopoly behaviour but does not apply to a competitive market. The general expectation therefore is that the additional costs of regulation will be passed on in full to consumers, although they may appear not to be if there is contraction down a sloping supply curve.

**Figure 5** shows the situation where local supply comprises a mix of domestic and imported produce. In this case, imports provide a backstop supply, such that the more elastic supply of domestic produce will enter the market up to the point where its price equals the price of imports. Thus at the internationally determined price of P1, out of a total supply of Qt domestic produce supplies Qd and the balance, (Qt-Qd), comprises imports.

**Figure 5: Welfare effects of regulation with imports**




Source: NZIER

If labelling regulation increases domestic costs but not those of imports (e.g. because imports are already compliant with the regulation) the domestic supply line will rise but price does not, so the domestic volume on the market will contract as imports increase to take their place. This is a result that looks likely under Option 2, which extends to New Zealand a regulation with which Australian food products already comply, increasing the competitive advantage of food imports into New Zealand, particularly those from Australian suppliers who already comply. How large this opportunity is depends on the level of additional cost for New Zealand suppliers, and in turn how many New Zealand food products already comply with the labelling regulation.

If the new regulation affects both imports and domestic foods, (as would apply, for instance, in moving from Option 3 to Option 4), both the domestic costs and price of imports will increase. Overall consumption will contract up the demand curve to settle at the new import-determined domestic price P*. Supply of domestic food contracts to Qd*, the point where the marginal cost on the new supply curve is P*. Imports change from Qt-Qd to Qt*-Qd*. Whether imports contract by more or less than domestic produce supply is an empirical question, dependent on the respective slopes of the domestic supply and demand curves.

The foregoing indicates that the distributional impacts of the different CoOL options are quite different. Moving from the status quo to any of the options (2, 3, 4 or 5) involves a bigger regulatory imposition on New Zealand producers than on Australian producers, and creates an opportunity for increased Australian exports into New Zealand. New Zealand consumers face reduction in consumers' surplus in every case. But moving to a tighter standard having already extended CoOL to New Zealand (e.g. from Option 2 to Options 3, 4 or 5) would not necessarily advantage Australian producers over New Zealand producers. New Zealand consumers would still lose some consumer surplus, as would Australian consumers if the tighter standard increased producers' costs which are passed on in full to consumers.
In addition to the comparative static changes outlined in figures 3-5, there will be dynamic economic impacts as a result of introduction of tighter CoOL standards, for instance those resulting from the loss of consumers' surplus having effects on other areas of consumption through the economy. How large these effects are depends on how significant CoOL costs are likely to be, to which we return in section 3.3.

**Benefits**

In terms of an economic cost benefit analysis, the benefits of mandatory CoOL can be divided between:

- Direct customer value – realisable willingness to pay for information (as expressed in price).

- External value – societal willingness to pay for improved trust and reputation of the food system and claims made about it – stemming from the 'right to know' which recurs through numerous submissions.

- Fundamental system value – value gained from improved operational characteristics of the system (such as the value of expeditious product recall outlined above).

The specific benefits of mandatory CoOL under P292 stem largely from the following sources:

- Rectifying a market failure in consumer information by ensuring the 'right to know';

- Allowing demand to shift closer to 'real' consumer preferences by reducing the uncertainty over origins that may inhibit current consumption patterns;

- Improving the traceability of food products from particular origins in the event of product recall because of food related disease.

The likely importance of these benefits is considered below.

*Improving consumer choices through information*

The first two bullets derive from the value to consumers of improved information. In a functioning market, if there is value in providing more information, suppliers can be expected to provide that information, if the benefit they receive covers the cost they incur – i.e. if consumers were willing to pay the cost of providing verifiable CoOL, products would carry this information as a 'credence' attribute differentiating them in the market.

While there are some products which carry a geographic identity and command a premium price – export New Zealand lamb, California oranges, champagne etc – not all foods carry such labelling. The implication is that for many foods there is no realisable private value to be gained from such labelling.

This raises the question, is there a social value from CoOL over and above that which would be reflected in consumers' collective willingness to pay? Given that there is no appreciable safety benefit from CoOL, the fundamental question centres on the value of the right to know that allows demand to shift closer to real consumer preferences. The evidence here is mixed. Although the Initial Assessment Report identifies surveys that report consumer interest in CoOL, other attributes of food, such as appearance, taste and price are generally higher up the list of important attributes that consumers look for when making decisions about food. With few exceptions, interest in CoOL does not correspond to sufficient collective willingness to pay by consumers to justify the cost of providing it, and the information failure in the case of CoOL is not of the sort that can be defined as a classic market failure.

As the evidence for a realisable price premium on CoOL is variable across products, a mandatory standard across broad product types is likely to result in excessive information across a number of products – i.e. for at least some products the benefit is zero although the cost is not, which is not socially worthwhile unless offset by much larger net benefits realised elsewhere. As CoOL appears to be demanded by a minority of consumers whose combined willingness to pay is insufficient to provide it, mandatory CoOL will have the effect of spreading additional costs across all consumers, including those who are indifferent to the information it provides.

Under such circumstances, it is difficult to convincingly demonstrate much direct net benefit to consumers in general from providing CoO information. If suppliers face additional costs, however small, prices will rise and detract from consumers' surplus, even among consumers who are indifferent to CoOL. Consumer response, whether contraction due to higher prices or expansion due to outward shift of the demand curve caused by improved information, is likely to vary widely across different products according to their individual and cross-price demand elasticities. With limited knowledge of these elasticities, the overall response is indeterminate. But given that the information conveyed by CoOL may be uninformative as to country of origin (because of the low default standard of 'contains imported produce'), and given that only a minority of consumers place high priority on CoOL in both countries it is unlikely that adoption of even the preferred Option, Option 4, will result in appreciable outward shift in demand to offset the impact of price increases.

*Improving the traceability of food products*

The significance of the third bullet depends on the expected value of future costs avoided by more rapid response to any alarm caused by concerns about foods from particular origins. The expected value would be given by the present value cost avoided by more rapid tracing and removing of food from the particular origin, times the probability of such a recall occurring. Both these factors make the value of such a benefit likely to be rather small: the potential cost avoided is the difference between nationwide recall of particular foodstuffs in, say, two weeks or 10 weeks at some point in the future, which is diminished in present value terms. The probability of such recalls on past experience is also very low.

However, there are other processes apart from retail product labelling that can be used to trace food origins in emergency. When the BSE scare affecting UK beef product exports broke in the mid-1990s, Australia and New Zealand protected their imports by measures unrelated to country of origin labelling. In the case of packaged foods, manufacturers attempting to recall product from retailers and customers have more precise identifiers to use than origin labelling, such as brand, date stamp and batch number, and the vague 'imported ingredient' statements on current foods are of little help in identifying foods from particular countries where disease risks have emerged. The case for product traceability is slightly stronger for unpackaged products, but is still weak given that labelling is only required at point of sale, not on individual food items. In effect the expected value of benefit in traceability is the product of scale of potential damage times probability of such an event taking place times the probability of point of sale labelling aiding identification out in the market place. As shops have accounting records for tracing suppliers of particular stock, the attribution of incremental benefit to mandatory CoOL from this cause should be small.

The product recall argument can largely be discounted in respect of the current CoOL proposals. So too can the corollary of potential negative spillover effects arising should a single product recall from an identified country lead to consumer reaction against other products from that country, because of the low default level of 'imported ingredient' statements. There is always a possibility of recall from one country tarnishing the reputation of other products of that country, resulting in adverse consumer reaction, but to the extent that the labelling provided for in the current proposals does not identify specific countries of origin of major ingredients, the consumer reaction against other foods is likely to be muted.

*Other possible benefits*

The foregoing discussion indicates that there is very little evidence to suggest the direct customer value of mandatory CoOL – a realisable willingness to pay for the additional information – is large or widespread across foods affected by P292. It also suggests that the value of fundamental changes to the food system – such as the value of more expeditious product recall outlined above, is also likely to be negligible. Are there any other sources of external value that justify regulatory intervention in the market?

Society may be willing to pay more for its food through regulation if this increases the trust, reputation and sense of security obtained from the food system and claims made about it. This might be a reason for incurring costs over and above what can be justified by tangible benefits received. The current CoOL proposal, however, is not one where this argument can be stretched very far. The basic proposal is relatively minor in terms of the information it conveys, and as indicated in the Initial Assessment Report, there is no objective safety issue at stake with CoOL. So the question of trust and security reduces to whether society in general would feel better of if food was labelled with the place where it was packed, and indication of the use of imports.

The literature consulted indicates large gaps in understanding what motivates people when making their consumption decisions, but what evidence there is suggests the CoOL proposal is unlikely to add much increment of gain in trust in the food system. Unlike some other countries that have suffered repeated and widespread failures in food safety with potentially catastrophic impacts in the long-term (notably the UK), neither Australia nor New Zealand have yet to experience a shock that undermines the integrity of the food system.

This is not to say that such shocks could not occur, or that the systems in the respective countries can be complacent. But society is likely to be willing to pay less for a precautionary approach before the event than it would after the event when the threat has materialised. Given the low default level of the requirements of CoOL, it is more in the nature of a palliative measure than an effective protection against risks to the integrity of the food system. The fundamental system value of CoOL in such circumstances is likely to be low, and would not justify incurring large costs in implementing the regulation.

There is also an economic benefit from resolution of legal anomalies in the current standard. The risk attached to the status quo is that some aspect of the current standard could be challenged in national or international fora, requiring costs to be incurred in resolving that challenge. In the absence of a history of actual challenges being mounted, the expected value of this risk is probably low, but it is not zero, and may vary across options considered.

**Costs**

In terms of an economic cost benefit analysis, the costs of CoOL can be divided between:

- Compliance costs for firms subject to the new standard including:
    - One off adjustments in complying with the standard (e.g. reprinting labels to conform etc). These involve appreciable costs per food item line affected by the regulation, and depending on the pre-existing compliance level, could be substantial in aggregate.
    - On-going recording and operational practice changes – as indicated in the international literature, of crucial importance is whether this is incremental tweaking of existing recording systems, or establishment of new procedures in addition to the status quo. Given the limited nature of the CoOL proposals, at least under Options 2 and 3, it seems unlikely that there would be any significant additional recording or operational practice change required by the proposal. With Options 4 5 there could conceivably be more changes involved, but this seems unlikely in view of the current proposals.

- Regulatory administration costs, which are important both for:
    - Direct costs for the regulatory authorities in implementing and enforcing the new standard; and
    - Indirect effects arising from the effectiveness of the enforcement activity in changing the level of compliance with the new standard: if compliance is raised, there will be a negative cost (benefit) to offset against the direct costs of implementation;
    - In both cases, the more minor the change, the less the regulatory costs are likely to be, as food regulators are unlikely to divert many resources from other activities to enforce minor wording changes that have no practical implication for their major concern, food safety.

- Allocative shifts in resource use choices in the food industry e.g.:

- If mandatory CoOL is more onerous on domestically-sourced food than imports, the mix of imports and local produce in production processes may change. As indicated in section 0 above, this has distributional implications, particularly for Option 2 where the differential impact of the regulation between New Zealand and Australia is greatest.
- Such shifts may detract from the traceability of food sources. In the case of CoOL, however, the traceability benefit is negligible.

The discussion that follows takes as its starting point moving from the status quo to Option 2. Consideration of moving beyond Option 2 to Options 3, 4 and 5 is found in the comparison of options in the next chapter.

*The current level of compliance*

For Option 2, the costs likely to be incurred by making the CoOL standard mandatory in New Zealand depend on the level of compliance with the standard already being observed there. This is impossible to determine in the absence of a comprehensive survey of available product labelling, which is beyond the scope of this current report. However, an eyeball survey of products on the shelves of supermarkets in New Zealand suggests that compliance may already be relatively high, although this varies across the different product categories.

Current practice with respect to different categories appears to be:

- Fresh fruit and vegetables: not often origin marked, although there are exceptions, especially in identifying imports (e.g. Australian or Californian oranges). Customers would commonly assume that vegetables in particular are sourced within New Zealand.
- Fresh fruit juices: mixed practice, with some local brands and supermarket own brands having minimal labelling, whereas brands known to be exported carry the manufacturer's address.
- Dairy produce: mostly labelled with location of packing, but some exceptions even in well-known national brands. Consumers would probably assume that milk products are sourced in New Zealand, unless explicitly stated otherwise.
- Fresh and chilled meat in supermarket packs: with the exception of some origin labelled products (e.g. pork, chicken), this has minimal labelling with no identification of where meat is packed or sourced, though consumers would probably assume that meat originates in New Zealand. However, fresh meat is not subject to CoOL, because of the limited imports into both Australia and New Zealand.
- Delicatessen meats and small goods: these carry the name and address of the company, but generally are not specific about the location of packing or origin of meat (except with explicitly imported produce).
- Cakes, biscuits: generally carry 'manufactured and marketed by' statements with name and address of company, and sometimes 'Product of… and 'Made in…' labels.
- Confectionary: generally carry 'manufactured and marketed by' with name and address of company, and 'from local and imported ingredients' in the case of cocoa, nuts etc.
- Hot beverages: generally labelled with supplier's address, plus origin statement ('from imported coffee' etc).
- Canned vegetables and fruit: generally carry statement 'manufactured by' plus the suppliers' address.

- Frozen vegetables, cakes etc: packing location generally marked, as well as whether sourced from local or imported produce.
- Fruit conserves and spreads: major brands carry origin information, but local specialty brands carry only the address of manufacturer, with no indication of where ingredients are sourced.
- Breads: most main brands of bread, and New Zealand branded flour products (cornflour, custard powder etc) are labelled only with the name of manufacturer, not with the location of manufacture or source of ingredients, even though New Zealand imports a substantial proportion of its wheat for baking. Specialty brands (e.g. pita bread) and supermarket bakery products commonly do not carry any marking as to source of principal ingredients.
- Beers, wines and spirits: mostly labelled with location of manufacture. CoOL is already mandatory for wine and wine products in New Zealand.

This variable compliance pattern is explicable by the differences in marketing scope of different food lines. A large range of products in New Zealand are imported from Australia and likely to be compliant already (particularly in the area of sugar confectionary, cocoa preparations and cereal products). New Zealand product variants destined for the Australian market are also likely to comply. In either case suppliers are unlikely to have separate labels to meet the less stringent requirements of the smaller New Zealand market. Absence of origin labelling is primarily on products which are not intended for export in their current packaging, particularly loose fresh produce (vegetables and meat) and specialty products from small local supply companies (delicatessen and conserves).

Apart from variation in the presence of origin labelling, there is also wide variation in the form of that labelling. Whereas some products carry conspicuous buy local campaign logos (kangaroo or kiwi), and others have prominent statements of 'Product of…' or 'Made in…', others only carry the name of the packing or manufacturing company in the small print with the nutrient information. This may comply with the letter of the regulation, but it is scarcely in the spirit of improving information for consumer choices if the information is only apparent under close scrutiny of the product.

The common wording of 'Made from local and imported ingredients' is not informative about specific sources, a point pertinent to the claimed benefit of improving product recall in the event of identified disease risk (see 0). Some products increase ambiguity by stating 'local *and/or* imported ingredients'. Even if this is compliant under the CoOL standard, the information content is almost zero – it might warn xenophobic purchasers off certain products, but hardly helps discerning buyers to align their consumption with their preferences for different countries' produce. It does, however, enable producers to cover themselves for seasonal or market-induced variations in input supplies, without altering packaging.

Aside from wording ambiguity, it appears that a large proportion of New Zealand foods could be considered as complying with CoOL. Judging by the current weekly household expenditure on food in New Zealand, around 25% falls into categories that currently do not often bear origin labelling, 26% consists of ready-to-eat prepared foods, and the remainder falls in categories that commonly do carry labels that appear likely to comply. Removing the 26% spent on ready-to-eat foods and most of the 20% spent on meat and poultry, to which CoOL does not apply, around 15% of current household food expenditure appears to be in categories that are predominantly non-compliant (e.g. fruit, vegetables and fish).

These proportions should not be regarded as precise, but rather as indicating rough orders of magnitude of the effects across New Zealand's food supply. They suggest that whatever the increase in prices of individual food items may be, those increases will affect a relatively small proportion of consumers' food budgets. The impact of extending mandatory CoOL to New Zealand under Option 2, at least, is not likely to involve across the board price increases on all food items, although consumers will pay more for a benefit towards which most of them are indifferent.

**Table 1: Household Expenditure on Food in New Zealand**

*Average weekly expenditure per household YE June 2004*

| | *NZ$* | *%* |
|---|---|---|
| Fruit | 9.10 | *6.4%* |
| Vegetables | 10.30 | *7.2%* |
| Meat | 14.80 | *10.4%* |
| Poultry | 4.80 | *3.4%* |
| Fish | 2.80 | *2.0%* |
| Farm products, fats, oils | 13.60 | *9.6%* |
| Cereal products | 16.40 | *11.5%* |
| Sweet products, spreads, beverages | 15.50 | *10.9%* |
| Other foodstuffs | 18.30 | *12.9%* |
| Meals away from home, ready-to-eat | 36.80 | *25.8%* |
| **Total Food Group** | **142.40** | **100%** |

Source: NZIER; from Household Economic Survey, Statistics New Zealand

There are three broad supermarket groups operating 11 chains of supermarkets and grocery outlets in New Zealand. Currently supermarkets account for around 35% of alcoholic beverage sales, 20% of meat sales, 65-70% of fruit and vegetable sales and 8% of dairy sales.[8] So achieving change in behaviour by supermarkets would achieve a big change in compliance on fresh fruit and vegetables, but less in the area of meat where independent butchers still retain significant market share.

*Costs of changes in labelling*

On the assumption that the proposed CoOL does not require introduction of new recording systems for the supply channel, the principal cost of compliance is likely to lie in changes to the labelling. From information supplied by industry sources, this presents a number of distinct options.[9]

The best solution is to include the additional words on the labels or other packaging at the time of printing these materials. If this is to become the standard, then that is the ultimate goal.

[8] Commerce Commission, Decision 438, Determination pursuant to the Commerce Act 1986 involving Progressive Enterprises Limited and Woolworths (New Zealand) Limited (2001)

[9] Information on costs has been obtained from personal communication with three separate, independent observers on food retailing in New Zealand: Professor Ray Winger, Massey University (R.J.Winger@massey.ac.nz); Anny Dentener, Technical Director, ADECRON Ltd (anny.dentener@adecron.co.nz); Ron Geiger Alaron Ltd (ron.geiger@alaron.co.nz)

The additional costs incurred depends on a number of factors, and the stage at which changes are made:

- At the time of design of new labels/packaging, or those that are being updated anyway - no significant additional cost;

- If change occurs when there is no need for re-design, then all costs of updating artwork, plates and so on could add significant additional cost;

- Addition of wording by means of interim overprinting at the time of batch/use by labelling - effective only where batch/use printing method allows other printing to occur at the same time. Some possible methods allow this to be done with no significant additional cost (e.g. hot foil transfer and high resolution ink jet), but it would not be possible with character set driven impact printing.

- Addition of wording by means of overstickers - significant additional cost.

Actually monitoring content and origin issues to ensure that the label description is accurate can be significant. In most cases where this occurs now it is more marketing driven than compliance driven, and given the low default level of CoOL requirements, it is unlikely there were would be any incremental compliance cost from this activity.

Industry sources have suggested an indicative figure for a straight forward change in the label would be about NZ$5,000 all up (design, marketing & technical inputs, new plates for printing, etc.). i.e. all costs associated with the change. This is the cost that would apply to an individual product variant, i.e. the cost for a firm with 10 different product packages to update would be NZ$50,000. The labels in the food industry now are very full -- so it might require some major moving of current information around the label, which would be more complex and potentially more expensive.

One of the key costs that industry would experience is the redundancy of existing label stocks. This depends upon the time allowed for changeover. Many companies have about 1-2 years' stock. For simple labels the cost could involve maybe $5,000 per product variant. For some expensive labels (e.g. Tetrapak) the cost may be as high as $20,000 to $50,000. This can be the biggest expense, but as CoOL proposals would provide a 3-year transition period, costs of label changeover would be minimal from this source.

With unpackaged foods the costs of compliance are likely to be considerably less, because point of sale labels often tend to be simpler in design and contain less detailed information on nutrition and food content.

Overall labelling costs could be substantial for suppliers of packaged foods, but as most of these appear to be already compliant, the aggregate impact of mandatory CoOL appears unlikely to be great, at least under Option 2. Its biggest impact on introduction to New Zealand is likely to be on smaller suppliers of product variants intended for the domestic market, of which some are currently non-compliant (e.g. specialty jams, breads, smallgoods etc) and may not have the volume of throughput to clear stocks of existing packaging.

*The apparent costs of CoOL*

If the principal costs of CoOL are likely to lie in changes in the labelling, this provides a way of estimating the aggregate costs of the new CoOL regulation. This cannot be done with any precision in the absence of comprehensive records of the number of products that already do or do not comply. But some broad order of magnitude estimates can be made under varying assumptions of compliance.

Industry sources suggest that the average supermarket in New Zealand carries around 30,000-35,000 separate product variants. Allowing for non-food items (e.g. personal hygiene and household cleaners) and food items exempt from CoOL (e.g. fresh meat) there may be 15-20,000 food items potentially subject to CoOL.[10] Combining this with the estimate of costs of re-labelling provides rough estimates of the aggregate cost of the new regulation.

Given a typical cost of re-labelling an item of NZ$5,000, and a grace period of up to three years, the incremental cost of compliance is either NZ$5,000 for those that re-label solely to comply, or $0 for those that would have been relabelled anyway. Assuming an even distribution of products through their relabelling cycles, the median cost would be $2,500 per item. As indicated in **Table 2**, if only 5% of food items were initially non-compliant, the cost of relabelling to meet the new regulation would be in the range of NZ$1.8-2.5 million, whereas if 40% of food items were initially non-compliant, the cost would range from NZ$15-20 million.

**Table 2: Possible costs of labelling compliance**

| Share of items non-compliant | *5%* | *10%* | *15%* | *20%* | *25%* | *30%* | *40%* | *50%* |
|---|---|---|---|---|---|---|---|---|
| **$ 5,000** | | | | | | | | |
| No. of items | *NZ$* | *NZ$* | *NZ$* | *NZ$* | *NZ$* | *NZ$* | *NZ$* | *NZ$* |
| 15,000 | 3,750,000 | 7,500,000 | 11,250,000 | 15,000,000 | 18,750,000 | 22,500,000 | 30,000,000 | 37,500,000 |
| 17,500 | 4,375,000 | 8,750,000 | 13,125,000 | 17,500,000 | 21,875,000 | 26,250,000 | 35,000,000 | 43,750,000 |
| 20,000 | 5,000,000 | 10,000,000 | 15,000,000 | 20,000,000 | 25,000,000 | 30,000,000 | 40,000,000 | 50,000,000 |
| **$ 2,500** | | | | | | | | |
| No. of items | *NZ$* | *NZ$* | *NZ$* | *NZ$* | *NZ$* | *NZ$* | *NZ$* | *NZ$* |
| 15,000 | 1,875,000 | 3,750,000 | 5,625,000 | 7,500,000 | 9,375,000 | 11,250,000 | 15,000,000 | 18,750,000 |
| 17,500 | 2,187,500 | 4,375,000 | 6,562,500 | 8,750,000 | 10,937,500 | 13,125,000 | 17,500,000 | 21,875,000 |
| 20,000 | 2,500,000 | 5,000,000 | 7,500,000 | 10,000,000 | 12,500,000 | 15,000,000 | 20,000,000 | 25,000,000 |

Source: NZIER

Across the combined Australian and New Zealand markets, the cost of relabelling to comply with Option 5, which both involves changing all labels and extending the regulation to foods not currently covered, the costs are likely to be higher than would be implied by these estimates. This is because although there is a large range of food products that are common to both sides of the Tasman, there will also be some that are unique to each country. So even if there are 20,000 product variants on offer in each country, the number of product variants across the two countries will be greater.

[10] Some corroboration of these estimates may be found on the website of Coriolis Research Ltd of Auckland (www.coriolisresearch.com). In an overview of grocery retailing in Australia and the use of house brands, it estimates Coles supermarkets carry 20,000 grocery product variants, whereas Bi-Lo carries 6,000. Clearly these figures vary with the nature of the grocery operation and the different strategies of different retailers, so any average is going to be approximate.

There are no statistics available to us that would verify these numbers, and they are provided only as an illustration. What they do indicate, however, is that the costs of labelling alone are not trivial, particularly in the options that potentially affect more product variants.

**Drawing the threads together**

This section provides a comparative analysis of costs and benefits of each of Options 2, 3, 4 and 5, differentiating between consumers and producers in both Australia and New Zealand. There are large uncertainties about the approximate magnitudes of the different categories of costs and benefits likely to arise from implementation of CoOL. Although it is common in cost benefit analysis for costs to be more certain than benefits, in this case the costs are uncertain and the benefits are even more so.

**Background to food supply in Australia and New Zealand**

Australia and New Zealand are both food exporting countries, with some similarities but also complementarities in their respective food supplies. Australia's population is approximately 5 times that of New Zealand, and its GDP is 6.6 times as large, but Australia's total food exports are around 1.9 times those from New Zealand, and its total food imports 2.5 times as large. New Zealand exports 6 times as much food as it imports, compared to less than 5 times in the case of Australia. Food-related trade is proportionately more important in the New Zealand, with agriculture accounting for 4.8% of GDP in New Zealand, compared to 2.7% in Australia.[11]

New Zealand is Australia's 8th most important destination for food exports in value terms, and the largest source of food imports into Australia, accounting for 18% of total food imports.[12] In declining order of importance, New Zealand's principal food exports to Australia are seafoods, dairy produce, vegetables and tubers and fruit and nut products. Australia's largest food exports to New Zealand are cereals, sugars and confectionary, cereal products, cocoa preparations and meat. Australian exports to New Zealand have a high proportion going to intermediate consumption as inputs into New Zealand food processing, whereas New Zealand's food exports tend to be more into final consumption. In calendar year 2004 New Zealand ran a NZ$269m trade surplus in food with Australia.[13]
This brief snapshot indicates that the two countries' food systems are integrated to a large degree. In such circumstances, regulatory changes that impact more heavily on one country than on the other can be expected to affect the balance and pattern of trade between them, as well as affecting the mix of imports and domestic produce sales more generally.

**Comparison of options**

The comparison of options that follows compares each option for implementation of CoOL against the current *status quo*. In the status quo, Australia adheres to mandatory CoOL but New Zealand does not.

[11] Pacific Economic Co-operation Council (2002) Pacific Food Outlook
[12] ABARE (2002) Australian Food Statistics, Project 2698, Canberra
[13] Statistics New Zealand (2005) INFOS Overseas Trade Statistics, Wellington

In principle this should provide some savings in labelling costs for New Zealand suppliers and consumers relative to those in Australia, other things being equal. New Zealand consumers, however, suffer the dis-benefit of being less informed about food's place of manufacture and the origin of principal ingredients, compared to their Australian counterparts.

In practice the difference in information between the two countries is less because of the widespread presence of CoOL-compliant foods in New Zealand. There are no statistics on this, but from observation we suspect the proportion of available food lines that already comply is well over 50%. There is a portion of the New Zealand consuming public which, motivated by environmental and other concerns, offers a latent demand for CoOL in New Zealand, but this does not appear large enough to induce suppliers to provide CoOL on all their product variants.

Given limited information and uncertainty over the current state of the markets in the two countries, a first step for comparing the options is to establish the likely relative cost levels of each option against the status quo.

- Option 2 will be more costly because of the extension of mandatory compliance to New Zealand suppliers.

- Option 3 entails only minor changes and removal of potential inconsistencies in the current standard. But to the extent than any change may require some currently-compliant suppliers to change their current practice, it will be more costly than Option 2 and the status quo.

- Option 4 entails substantial revision that brings CoOL into the general labelling requirement. This will increase costs to the extent that it increases the number of currently compliant products that would be required to change, but it also makes requirements on some products less prescriptive (e.g. unpackaged foods, fruit juices) which could reduce costs. The overall effect may be more or less costly than Option 3, but is certainly more costly than the status quo, because of mandatory compliance in New Zealand.

- Option 5 entails substantial revision (as for Option 4) and extension across more foods, widening the number of foods swept up into the need to make changes to comply. It is more costly than Option 4 and the status quo.

Hence there is a progression of cost through successive options, with the possible exception of Option 4 which may be less costly than Option 3 overall, and particularly beneficial for some particular product variants. Whether these costs are significant is considered in the following sections.

*Option 2: Adopting the current transitional standard in both countries*

The principal effect of adopting the current transitional standard into the code would be to make CoOL mandatory in New Zealand. The likely effects are summarised in **Figure 6**, which also indicates the relative scale of impact compared to other options by indicating degrees of negative impact (--) or positive impact (++) or no change.

The compliance costs are all in New Zealand, on the assumption that Australia is already at a high level of compliance, and there is no intention to increase enforcement of compliance. Some importers and processors in New Zealand need to revise their packaging, and some retailers need to revise point of sale labels for unpackaged goods subject to the standard. In both cases the costs would be passed onto consumers, resulting in some contraction of consumption. New Zealand processors lose some domestic sales because of this, and also because there will be a shift in price relativity in favour of imports (including from Australia), causing marginal supply from New Zealand processors to contract. This impact is also felt back up the supply chain as a decline in domestic demand for New Zealand food producers. There are some minor implementation costs for the New Zealand Food Standards Authority, and negligible effect on companies that distribute food around New Zealand.

**Figure 6: Effects on different parties of Option 2**

| OPTION 2: Current standard mandatory in New Zealand | | | | |
|---|---|---|---|---|
| Affected parties | Australia | | New Zealand | |
| Food Regulators | No change | | Minor implementation | - |
| Food Consumers | " | | Some price increase, consumption fall | – |
| Food Retailers | " | | Some retailers revise point of sale labels | - |
| Distributors | " | | Negligible change | |
| Processors | " | | Some processors revise packaging; lose some domestic sales | – |
| Import/export traders | Some opportunity for increased export to NZ | ++ | Some importers revise labelling | - |
| Producers | " | | Decline in domestic demand | - |

Source: NZIER

Legend: Impact on parties relative to status quo: Cost low (-) Cost high (---); Benefit low (+) Benefit high (+++); Mixed across parties - +

The benefits of Option 2 relative to the *status quo* derive solely from the increased 'public right to know', given that the standards requirements add little to the fundamental integrity of the food system in New Zealand. The costs primarily relate to relabelling and the marginal loss of sales for New Zealand processors and producers; distributors and retailers lose less as they may offset the loss with increased sales of imports. There are also implementation and enforcement costs for the food regulator, but the incremental cost attributable to this regulation is small.

In light of **Table 2** and the observation that perhaps 25% of food in New Zealand is currently non-compliant, the aggregate labelling cost could be as high as NZ$25 million or as low as zero, depending on timing within each firm's package replacement cycle. We would expect this to be towards the low end of this range, because of the three year transition period for compliance with P292 which should allow old packaging stock to be used without writing it off. But we would not expect it to be zero because of operational requirements in scheduling packaging changes for firms with large numbers of product variants, and because some smaller suppliers are less well placed to make the changes and clear their stock quickly.

All up the costs are unlikely to exceed the mid-point packaging cost of $10-$12.5 million. This is a once-only cost incurred in the three year transition period. The translation into food prices is likely to be quite small, and so too are the corresponding contraction in consumption and gain to Australian exporters. This is small compared to the aggregate annual expenditure on foodstuffs in New Zealand: combining the weekly household expenditures on affected food categories in **Table 1** with the number of households (1.2 million) gives an annual food bill of around NZ$5,700 million. Compliance with Option 2 amounts to about 0.2% of this and seems unlikely to cause convulsions in the market, but it is possible that for some particular products it could result in price rises, demand contraction at the margin or switching to imports that already comply. This would imply reduced producer surpluses for suppliers as well as consumer surplus losses in New Zealand.

The critical judgement that must be made is whether this magnitude of cost, borne primarily as a loss in New Zealand consumers' surplus, would be justified by the incremental benefit obtained. In other words, is the wider dissemination in the New Zealand market of CoOL statements identifying the place of manufacture, and presence of imported product (from unspecified countries), worth the implied social value of up to NZ$10 million (A$9 million)?

*Option 3 Develop a revised vertical standard in the code*

This option would continue with the current labelling standard, but with minor changes to fix current anomalies. Compared against the *status quo*, the impact on New Zealand would be substantially the same as that of Option 2, provided the form of new wording was finalised before New Zealand suppliers started printing labels to comply. There would be an increase in cost if the wording change resulted in more New Zealand product being non-compliant than is currently the case. The likelihood of competitive advantage being created for imports from Australia would also be less than under Option 2, as Australian exporters would simultaneously be facing similar compliance costs. As under Option 2, this trade effect is likely to be small.

**Figure 7: Effects on different parties of Option 3**

| OPTION 3: Minor changes to current standard, mandatory both countries | | | | |
|---|---|---|---|---|
| | Australia | | New Zealand | |
| Food Regulators | Minor implementation | - | Minor implementation | - |
| Food Consumers | Some price increase, consumption fall | – | Some price increase, consumption fall | – |
| Food Retailers | Some retailers revise point of sale labels | - | Some retailers revise point of sale labels | - |
| Distributors | Negligible change | | Negligible change | |
| Processors | Some processors revise packaging; lose domestic sales | – | Some processors revise packaging; lose domestic sales | – |
| Import/export traders | Some import labels revised: less opportunity for increased export to NZ | -+ | Some importers revise labelling | - |
| Producers | Slight decline in domestic demand | - | Decline in domestic demand | - |

Source: NZIER

Legend: Impact on parties relative to status quo: Cost low (-) Cost high (---); Benefit low (+) Benefit high (+++); Mixed across parties - +

Australian suppliers and consumers would face similar compliance costs as those in New Zealand. Although compliance in Australia is closer to 100% than it is in New Zealand, a proportion of Australian produce has the wording anomalies that Option 3 is intended to fix. Depending on what that proportion is, costs could either be very low or quite high, given the estimates in **Table 2**.

The combined effect across countries will be less than double the impact in one, because of the existence of common product variants that only require changing once; but more than the impact in any one country, because of the existence of product variants unique to each one. For instance, if there are 17,000 common products, 3,000 unique to New Zealand and 5,000 unique to Australia, there would be 25,000 product variants across the two countries. If all of these required relabelling at a median cost of NZ$2,500 per item, the combined cost across the two countries would be NZ$62.5 million. If 25% required relabelling, the combined cost would be NZ$15.6 million (compared to NZ$12.5 million in the one-country case in Option 2). This would imply that the incremental cost of Option 3 over Option 2, and the additional benefit to justify it, would be around NZ$3.1 million. With other combinations of common and unique products it could be more or less. We have no statistics on the number of common and unique products, so these figures are for illustration only.

The costs will be borne primarily by reduction in consumers' surplus in both countries. For products that are common to both countries, the cost per product variant spread across the combined market are likely to have minimal impact on prices and consumption. Cost increases will have bigger impact on products that are unique to either market, and it is on these products that costs are likely to have most appreciable effect on price and corresponding consumption contraction or switching to substitutes.

The incremental benefit of 'fixing' minor anomalies is indeterminate, but as in Option 2 will come entirely from the consumers' right to know. There is wide variation under current practice in the placing and prominence of address and origin information, and wording changes to make the information more visible could improve the convenience of the labelling. However, changes which necessitate substantial redesign and layout of labels could also increase the cost above the NZ$5,000 assumed here.

*Option 4 Develop a revised horizontal standard in the code*

For Option 4, all categories of impact are likely to be more pronounced than they are under options 2 and 3. How much more pronounced depends on the detail of the substantial revision, and the extent to which formerly compliant products need to be modified to meet the new standard.

For New Zealand, moving from the status quo to a substantially revised standard could incur substantially increased costs, compared to Option 2. This is both because more products would be swept up into the non-compliant category, and also because meeting the new standard may require more elaborate redesign of labels that would require more than the NZ$5,000 typical cost assumed here. If 50% of products in New Zealand shops required relabelling instead of the 20-25% assumed for Option 2 above, the labelling cost could be NZ$25 million or more if a higher typical cost were required. Regulatory implementation costs could also increase, as the higher the cost imposition the greater the enforcement required to ensure compliance. Price increases and consumption contraction could also be more pronounced, particularly for products with small supply runs.

Effects in Australia would be similarly more pronounced. In general Australian suppliers would gain less competitive advantage over New Zealand suppliers because they face similar cost impacts simultaneously. But there is the possibility that larger suppliers with economies of scale in adjustment could gain price advantage over smaller suppliers in both countries, increasing the possibility of imports displacing domestic sales.

**Figure 8: Effects on different parties of Option 4**

| OPTION 4: Major changes to current standard, mandatory both countries | | | | |
|---|---|---|---|---|
| | Australia | | New Zealand | |
| Food Regulators | Major implementation | – | Major implementation | – |
| Food Consumers | More price increase, consumption fall | — | More price increase, consumption fall | — |
| Food Retailers | More retailers revise point of sale labels | –<br>+ | More retailers revise point of sale labels | –<br>+ |
| Distributors | Indirect business contraction | - | Indirect business contraction | - |
| Processors | More processors revise packaging; lose domestic sales | —<br>+ | More processors revise packaging; lose domestic sales | —<br>+ |
| Import/export traders | More importers revise labels; more export opportunities to NZ | –++ | More importers revise labels | – |
| Producers | More decline in domestic demand | – | More decline in domestic demand | – |

Source: NZIER

Legend: Impact on parties relative to status quo: Cost low (-) Cost high (---); Benefit low (+) Benefit high (+++); Mixed across parties - +

The current proposals do not require greater specificity as to origin information, recording percentage shares of imports or other measures that reduce the flexibility of compliance, so industry suggestions of a marked step up in costs of compliance appear unfounded. By requiring only 'Name of Country' or 'Imported', application to whole foods, not ingredients, and options for the information provided on label, on display or on request, the proposal appears less prescriptive than the current transitional standard, particularly for some product groups (unpackaged foods, fruit juices). This would result in savings (positive impacts) for some suppliers that could offset the costs of CoOL to some degree. However, it is still likely to be more costly than the status quo, because of mandatory compliance in New Zealand where the standard is currently voluntary.

The many references in the submissions to over-prescriptive information requirements suggests there has been widespread misinterpretation and misapprehension of what is intended, which raises a further regulatory risk: in the presence of uncertainty over what a rule entails, firms may react with 'excessive precaution' to what is required to ensure that they are not found non-compliant. The result can be an unnecessary increase in cost, or even withdrawal of some goods and services altogether, reducing consumer choices. This can be alleviated by clarifying what is required to satisfy the standard in particular circumstances, or by specifying default labels that suppliers can be assured will comply.

The benefits of this option are somewhat ambiguous, both because of the risk of excessive precautionary responses and because part of this option allows information to be provided 'on request', which does not appear consistent with making information readily available to consumers, or conducive to ease of comparison between different products. This appears to create transaction costs which detract from consumer benefit. In the absence of reliable quantitative information, it is questionable whether the incremental benefit will be commensurate with the likely increased cost.

There is also an economic benefit from resolution of legal anomalies in the current standard. The risk attached to the status quo is that some aspect of the current standard could be challenged in national or international fora, requiring costs to be incurred in resolving that challenge. In the absence of a history of actual challenges being mounted, the expected value of this risk is probably low, but it is also not zero. So if Option 4 resolves legal anomalies that remain under Option 3, there is some benefit in moving to Option 4.

*Option 5: Develop a revised standard for all foods*

Option 5 appears to be substantially the same as Option 4, but extended across a wider range of food products. The implication is that aggregate costs will increase as even more foodstuffs are swept into the non-compliant category, with the risk of more elaborate labelling costs being incurred by industry and passed on to consumers.

**Figure 9; Effects on different parties of Option 5**

| OPTION 5: Major changes applied to all foods, mandatory both countries | | | | |
|---|---|---|---|---|
| | Australia | | New Zealand | |
| Food Regulators | Major implementation | — | Major implementation | — |
| Food Consumers | More price increase, consumption fall | — | More price increase, consumption fall | — |
| Food Retailers | Retailers revise many point of sale labels | — | Retailers revise many point of sale labels | — |
| Distributors | Indirect business contraction | – | Indirect business contraction | – |
| Processors | Many processors revise packaging; lose domestic sales | — | Many processors revise packaging; lose domestic sales | — |
| Import/export traders | Many importers revise labels; reduced export opportunities to NZ | –+ | Many importers revise labels | – |
| Producers | More decline in domestic demand | – | More decline in domestic demand | – |

Source: NZIER

Legend: Impact on parties relative to status quo: Cost low (-) Cost high (---); Benefit low (+) Benefit high (+++); Mixed across parties - +

The effects are more pronounced than in Option 4, with greater likelihood of price increases, consumption falls, and declines in domestic demand in both countries being passed back up the food chain to producers. Processors and retailers will pass on their costs to consumers as higher prices, and there may be contraction of sales at the margin. At this level of effect it is possible that distribution companies may also be affected indirectly by contraction in business, and there are likely to be more regulatory costs as the standard is rolled out across more foodstuffs. Costs will be borne both as a reduction in consumers' surplus and as burden on the taxpayer, unless regulatory costs are recovered entirely from industry (and ultimately from the consumers). There may also be an appreciable deadweight cost to both suppliers and consumers.

The benefits of Option 5 stem from the 'right to know' and the wider coverage of information across products. The level of costs and benefits is indeterminate: but we should expect diminishing marginal utility from extending coverage to more, and less used, products which suggests that the incremental benefit is unlikely to match the escalation in costs.

This is likely even if Option 5 is confined to whole foods (like Option 4). Broadening its scope to consider individual ingredients would result in even more marked increase in compliance cost.

There is no reliable basis for putting a value on this right to know. In principle, people could be asked how much they are willing to pay for increased information of the sort provided by CoOL, or alternatively how much they believe society should be willing to pay, through contingent valuation surveys or similar methods of stated preference valuation but we have not come across any such surveys that are pertinent to CoOL. But looking at what is intended for the different options for CoOL, it is hard to discern substantial incremental benefits in progressing from Options 2 to 3, 4 and 5. In contrast, there is more certainty that there is an incremental cost in moving from the status quo to any of the options, and that Option 5 would be most costly because of its broader scope in covering all foods. Under these circumstances, whatever the value ascribed to the right to know, it is unlikely that moving Option 5 will yield the highest net benefit.

**Conclusions**

This report has considered the costs and benefits of various options for implementing proposals for country of origin labelling of food. In light of an interpretation of the requirements of CoOL, it has examined some of the international literature on country of origin labelling, finding much of it applying to situations very different from those in which CoOL has arisen. Consequently much of the overseas evidence, although useful in describing impacts of stringent regulations, does not appear closely analogous to current proposals for CoOL in Australia and New Zealand.

The report examines the likely consequences of four different options for implementing CoOL against the counter-factual of the continuation of the *status quo*. Our conclusions on the benefits of CoOL are:

- Direct customer value – there is little evidence of *general* consumer value as expressed by willingness to pay for CoOL information, although there are plenty of examples of exceptional products where CoOL does aid the marketing of food.

- External value – there may be social value in improved trust and reputation of the food system and claims made about it, but the information provided by complying with CoOL is not particularly conducive to improving that trust and reputation.

- Fundamental system value – there may be social value in improved operational characteristics of the system (as in more expeditious product recalls) but the specifics of complying with CoOL do not particularly add to other systems and processes in this regard. The principal fundamental value is the reduction of risk of legal challenge to the current standard provided by some of the options.

- Social value in the 'right to know' *per se* – this is the most significant area of benefit, but it is important to ascertain whether this benefit is commensurate with the costs that are incurred in providing information.

Costs of implementing CoOL fall largely under the following headings:

- Compliance costs for firms in meeting new standards – for CoOL with a 3 year transition period, these are primarily the once-only costs of changing labels, which may be very little or large for different products.

- Allocative shifts due to supply and demand changes in response to regulatory price increases – mostly small in the context of CoOL, but increasing with the more substantive Options 4 and 5.

- Regulatory administration costs – probably low incremental cost.

There are other, less tangible costs associated with CoOL. Uncertainty over the nature of the regulation may prompt inappropriate responses that add to costs or result in products being needlessly changed or withdrawn from the market, detracting from consumer choices. The presence of CoOL regulations may affect negotiations with trading partners, with implications on wider aspects of trade.

These trade implications and other intangible costs are noted but not taken into account in this current analysis, because their quantification is extremely difficult and assuming values for them would not be informative. The analysis concentrates on the one-off costs of compliance with CoOL, which can be viewed as equivalent to the present value of the benefit stream needed to make the proposal worthwhile, and the value of the right to know and of reduced risk of legal challenge, which are the principal tangible benefits of the current CoOL proposals. The weight to be given to trade and other intangible considerations requires judgement calls by decision makers.

In conclusion, the requirements of CoOL do not appear particularly onerous and the costs are correspondingly low, compared to overall costs of food consumption. The corollary of this is that CoOL is also not particularly informative about food origin because of its low default level ('contains imported food' etc), so the benefits are also correspondingly low.
Option 4 is the preferred option of FSANZ, as it removes anomalies with other legislation in the current standard. Because this option is less prescriptive on some foods than the current standard, some product variants face lower costs and there are compliance savings to offset any increase in overall cost. The net effect could be more or less costly than Option 2, but is still more costly than the status quo.

Costs increase with the widening coverage and complexity of the options, but benefits do not rise commensurately. Option 5 in particular appears likely to encounter diminishing marginal benefit from extending over more products.

There is very little hard data to apply to the likely costs and benefits of CoOL. Estimates of re-labelling costs are fairly robust, but estimates of the share of non-complying products are rough and there is no information on price response, consumption effects and changes in market behaviour likely to arise from implementing CoOL. Particular uncertainty surrounds the adequacy of the 3 year transition period to allow suppliers to clear their stocks of old non-compliant labelling. Depending on circumstances the additional cost of re-labelling faced by suppliers may be zero or a substantial cost per product variant.

The analytical framework used here, however, could be used with better data, should it come to light. This would probably require more extensive survey of the food markets in both Australia and New Zealand than has been possible here.

Cost benefit considerations suggest that CoOL could be implemented at low cost, but the benefits are also small. Option 2 may not satisfy ministerial directives and has adverse impacts largely confined to New Zealand, but Option 4 satisfies legal requirements and may be less costly than Option 2, with impacts spread more widely across both countries.
The comparison of options has been summarised in **Table 3**. This shows the effect of each option in increasing the right to know, reducing risk of challenge to legal anomalies in the current standard (the motivation for the current proposals), and the estimated cost of moving to each option.

**Table 3: Comparison of options**

| | **Gains from Right to Know** | **Legal risks avoided** | **Cost** | **Main impacts** |
|---|---|---|---|---|
| Option 1 *Status quo*: current transitional standard | No | No | Nil | Nil |
| Option 2: current standard mandatory in New Zealand | Yes | No | Up to NZ$10 - 12.5m | Only in New Zealand |
| Option 3: Revised vertical standard in both countries | Yes | Yes | Greater than or, equal to Option 2 | Most in New Zealand & some in Australia |
| Option 4: Revised horizontal standard in both countries | Yes | Yes | Greater than, equal or less than Option 2 | New Zealand & Australia |
| Option 5: Revised standard across all foods in both countries | Yes | Yes | Greater than Option 2 | New Zealand & Australia |

Source: NZIER

Option 2 has a cost of probably no more than NZ$12.5 million, incurred entirely in New Zealand. However, it does not resolve the legal anomalies, so the costs imposed on the economy are incurred for no reason unless the 'right to know' benefit were at least as large as the costs. There is no hard evidence of what is the value of the 'right to know', but this implied value appears high given that the information content on the labels is not specific, and there is little evidence of a general consumer value in this type of origin information.

Other options are likely to be at least as costly as Option 2, if not more so, except Option 4, which may be less costly because of the greater flexibility it introduces for some products. This Option resolves the legal anomalies, so the cost of proceeding with it will represent the implicit value of both the 'right to know' and the avoidance of legal risks. If Option 4 is as costly or less costly than Option 2 there are clear advantages in Option 4 because it provides a greater range of benefits. Put another way, it may be considered more robust because it does not depend on an implied value of the 'right to know' which is as improbably high as in Option 2.

Of the options considered, Option 4 appears most likely to provide the best ratio of benefits to costs. Even without full quantification, it is evident that the benefits do not increase commensurately with the costs in moving to the more costly Option 5.

## Reference list


ABARE (2002) *Australian Food Statistics*, Project 2698, Canberra

Becker GS (August 2004), 'Country of Origin Labeling for Foods', Congressional Research Service, Library of Congress;

Carter, Colin & Alix Zwane (2003) 'Not so CoOL? Economic implications of mandatory country of origin labelling' *ARE Update* 6(5) University of California

Commerce Commission (2001), Decision 438, Determination pursuant to the Commerce Act 1986 involving Progressive Enterprises Limited and Woolworths (New Zealand) Limited

Food Standards Australia & New Zealand (2004) Initial Assessment Report Proposal P292 – Country of Origin Labelling of Food

Krissoff, Barry and others (January 2004) 'Country of origin labelling: theory and observation'; Electronic Outlook Report from the Economic Research Service, USDA;

Mathios AD (2000) 'The impact of mandatory disclosure laws on product choices: an analysis of the salad dressing market'; *Journal of Law and Economics*, XLIII, 651-677

Nixon C & Yeabsley J (2002) 'New Zealand's Trade Policy Odyssey', NZIER Research Monograph No 68, Wellington

Office of Regulation Review (1994) 'Country of Origin Labelling of Food' Submission to the National Food Authority, Canberra

Pacific Economic Co-operation Council (2002) *Pacific Food Outlook*

Productivity Commission (2003), Evaluation of the Mutual Recognition Schemes Draft Research report.

Statistics New Zealand (2005) INFOS Overseas Trade Statistics, Wellington

Umberger, Wendy and others (2003) 'Country of origin labelling of beef products: US consumers' perceptions' *Journal of Food Distribution Research* 34(3)

USDA (2004) 'Mandatory Country of Origin Labeling of Fish and Shellfish; Interim Rule', 7 CFR Part 60

Van Sickle JR and others (2003) 'Country of origin labelling – a legal and economic analysis' Policy Brief Services, International Agricultural Trade Policy Centre, University of Florida

**Attachment 4**

# Draft User Guide

## Country of Origin

**User Guide to Standard 1.2.11 – Country of Origin Requirements**

**March 2005**

**Background**

**In this user guide, the 'old Code' means Volume 1 of the *Food Standards Code* (the Australian *Food Standards Code*). The 'new Code' means Volume 2 of the *Food Standards Code* (the *Australia New Zealand Food Standards Code*). The 'New Zealand regulations' means the New Zealand *Food Regulations 1984*.**

Country of Origin Labelling has been under review by Food Standards Australia New Zealand (FSANZ), the previous Australia New Zealand Food Authority (ANZFA) and the former National Food Authority (NFA) for over 12 years. In summary, the major milestones over that period include:

| | |
|---|---|
| **1992** | NFA received three applications seeking amendment of the provisions in the former Australian *Food Standards Code*. |
| **October 1992** | NFA commenced a review of Country of Origin Labelling of Food, Proposal P90. |
| **1999 – 2000** | Several Federal Court Decisions regarding the *Trade Practices Act 1974* (TPA) created uncertainty about the meaning of 'Made in Australia' and 'Product of Australia' for goods generally. The TPA was amended in 1998 to establish legislative compliance for country of origin claims, including the establishment of safe harbours when making 'made in' and 'product of' claims. |
| **May 2001** | The review of Country of Origin Labelling (Proposal P90) was abandoned due to the need to consider the TPA amendments. A new Proposal P237 was raised and an Initial Assessment Report released for public comment. |
| **October 2001** | ANZFA referred country of origin labelling to the Ministerial Council for policy advice because the divergence of stakeholder views made it difficult to establish a preferred regulatory option. |
| **April 2003** | The Ministerial Council agreed to a policy direction requiring the mandatory declaration of country of origin for the provision of consumer information. |
| **December 2003** | The Ministerial Council referred the policy guidelines for country of origin labelling of food to FSANZ, to guide development of a Standard for inclusion in the *Australia New Zealand Food Standards Code* (Code). |

**March 2004** FSANZ Board abandoned P237 and prepared a fresh Proposal, P292.

**May 2004** Initial Assessment Report for P292 considered by the Board and released for public comment.

Following the release of the Initial Assessment Report, FSANZ received a very large number of submissions covering a polarity of opposing views as to what a mandatory standard for country of origin labelling (if indeed a mandatory standard was desired) ought contain.

To address the issues raised in submissions, reconcile the inconsistencies in domestic law, address international obligations, provide certainty to industry and consumers, and, have regard to the Ministerial Policy Guidelines, FSANZ developed Standard 1.2.11.

Ancillary to the development process for the new standard for country of origin requirements, FSANZ has developed this draft user guide to help manufacturers and retailers interpret and apply Standard 1.2.11 – Country of Origin Requirements.

The guide may also be used by food officers to help interpret food standards in the Code, and will also be helpful to consumers in understanding the country of origin requirements for food.

This user guide, unlike the standard itself, is not legally binding. If in any doubt about interpreting the standards, you should seek independent legal advice.

As well as complying with food standards requirements, you must also continue to comply with other legislation. In Australia, this legislation includes the *Trade Practices Act 1974,* the *Imported Food Control Act 1992* and State and Territory Fair Trading Acts and Food Acts. In New Zealand, this legislation includes the *Food Act 1981* and *Fair Trading Act 1986*.

**Purpose**

This guide is intended to help manufacturers and retailers comply with their country of origin obligations. The obligations are set out in Standard 1.2.11 – Country of Origin Requirements.

**What is Country of Origin?**

Country of origin is concerned with which country food comes from. It is well recognised that consumers are interested in whether their food is locally grown or produced, or imported.

**How Does Country of Origin Work Within the Code?**

Standard 1.2.11 of the Code interacts with the core 'horizontal' labelling standard – Standard 1.2.1 – Application of Labelling and Other Information Requirements. This standard provides that, subject to certain exceptions, foods for retail sale or catering purposes are required, for packaged foods, to bear a label setting out prescribed information, and, for certain unpackaged foods, to be accompanied by certain information, either on display in connection with the display of the food, or available on request.

**Commencement**

The transitional country of origin Standard 1.1A.3 continues to operate in parallel to this Standard for a period of two years. 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 1.1.A3 for a period of three years. Alternatively, manufacturers and retailers may comply with Standard 1.2.11 from its commencement.

**What are the Country of Origin Labelling requirements for packaged foods?**

*Clause 2 of Standard 1.2.11 provides three different options for meeting the requirements of the Code.*

In order to meet the requirements of Standard 1.2.11, each of the following options must be considered and the most appropriate option used for the type of food being labelled. Fair trading legislation must also be considered in this process. *Refer to the Fair Trading Legislation section below when determining country of origin labelling requirements.*

Clause 2 applies to packaged food for retail sale and catering purposes only.

**Option a)**

In this option the label must bear a representation indicating the country of origin of the food. A representation may be an oblique statement, such as 'Product of New Zealand' or 'Made in Australia'.

It may also include graphics that are commonly associated with the country origin of the food and which indicate this country to the general public, such as a certified trademark or logo, for example, a logo which includes a map of Australia, or a picture of a Kiwi (native bird of New Zealand).

**Example**

'Made in Australia'

'Product of New Zealand'

**Option b)**

In this option there may simply be a statement on the label indicating that the food has been imported (if this is the case). This is to provide flexibility for industry where the source of a particular food and or its ingredients may change depending on seasonal variability.

This option is intended for use on packages of food where the entire product within the package has been imported and no manufacturing of the product has occurred in the country of retail sale.

It is not a requirement that the country the product has been imported from is stated on the label, but this optional information may be included, provided that this is not misleading or deceptive.

**Example**

'Imported Food'

'This food product is imported'

'Imported from Italy'

**Option c)**

Finally the requirements may be satisfied with a statement identifying where the food was either made, manufactured or packaged for retail sale, along with a further statement that the food is made from imported and/or local ingredients, as the case may be.

This option is also intended to provide further flexibility for industry particularly where a final food is made from a mix of local and/or imported ingredients. This type of statement is often referred to as a 'qualified claim' and is permissible under fair trading legislation.

Manufacturers should note that a compound ingredient manufactured in Australia or New Zealand but made up from imported ingredients should not be described as a 'local' ingredient.

**Example**

'Manufactured in Australia from local and imported ingredients.'

'Packed in New Zealand. Contains imported ingredients.'

**What has changed for packaged foods?**

Standard 1.1A.3 is a transitional standard of the Code which incorporates the various country of origin requirements contained in the former Australian Food Standards Code and certain requirements in the New Zealand Food Regulations 1984. Standard 1.1A.3 does not apply to food produced in or imported into New Zealand, other than certain requirements for wine and wine products. As previously stated, Standard 1.2.11 will replace the transitional standard 1.1A.3 however Standard 1.1A.3 will continue to operate in parallel to Standard 1.2.11 for a period of three years.

In order to remove any potential inconsistency with fair trading laws, the express provision in the transitional standard that where the name and address of the manufacturer are set out on the label and the address contains the name of the country in which the food was made or produced, the name and address being taken to satisfy the requirements the Standard; has been removed. FSANZ is of the view, however, that if a manufacturer continues to have the name of the country where the food was made or produced in the name and address block of the supplier, then the requirements of the new standard - a *'representation that identifies the country of origin of the food'* will be met – provided that the insertion of the name of the country is not misleading or deceptive.

Also, in the Draft Assessment process, having regard to the submissions, Ministerial Policy guidelines and all other relevant matters it was concluded that the costs to industry of mandatory country of origin labelling would be better balanced against consumers 'right to know', by dispensing with requirements for country of origin labelling of individual ingredients. So, except where a qualified claim is made (and reference to ingredients is limited to advising that some/all ingredients are imported), industry will not be required to declare the origin of constituent ingredients.

There are no longer any special requirements for fruit juices, orange juice, fruit drinks, spirits or New Zealand wines. As those products are presented for sale in a package, they are therefore subject to the labelling requirements of Standard 1.2.1, and are, in this case, subject to the general provisions of Clause 2 of Standard 1.2.11.

The changes were made in order to align country of origin labelling with the core labelling provisions of the Code and to remove those provisions that were discriminatory and inconsistent with Articles 2.1 and 2.2 of the WTO Agreement on Technical Barriers to Trade.

**What are the country of origin requirements for unpackaged foods?**

For certain foods that are other than in a package, those being fish, fruit and vegetables, country of origin labelling requirements may be met by a statement identifying the country of origin of the food or a statement that the food is imported. The statement may be either on display in connection with the display of the food or may be simply provided to the customer on request.

**What has changed for unpackaged foods?**

Under the current transitional standard, country of origin labelling, in a particular size font, on display in connection with the display of the food is required for certain foods that come other than in a package, and are other than the produce of Australia and New Zealand.

Clause 3 of Standard 1.2.11 does not provide for any prescription of the size of the font and the requirement may be met either by a statement identifying the country of origin of the food or a statement that the food is imported.

That statement may be either on display in connection with the display of the food or may be simply provided to the customer on request.

Further, the country of origin requirements apply to those commodities regardless of origin. This means that Australian and New Zealand produce will also have to comply with Clause 3. This action was taken to remove provisions that were discriminatory and inconsistent with Articles 2.1 and 2.2 of the WTO Agreement on Technical Barriers to Trade.

**Fair Trading Legislation**

The *Trade Practices Act 1974* (Commonwealth) and the *Fair Trading Act 1986* (New Zealand) contain requirements concerning the place of origin of goods. In particular, they prohibit the making of false or misleading representations concerning the place of origin of goods. Standard 1.2.11 has been devised to remove potential areas of inconsistency between the transitional standard and that legislation, such that compliance with the Code would not risk a breach of that legislation.

Unlike Standard 1.2.11, the fair trading legislation does not mandate country of origin, which is a sub-set of place of origin. However in complying with the requirements of Standard 1.2.11, consistency with the criteria required by that legislation is necessary.

For Australia, the provisions of sections 65AA-AN of the *Trade Practices Act 1974* govern statements identifying country of origin where expressions including 'made in' and 'product of' are used.

The provisions of Standard 1.2.11 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 misleading or deceptive.