



**FINAL ASSESSMENT REPORT
AND REGULATION IMPACT ASSESSMENT
(INQUIRY - S.17)**

APPLICATION A418 - LABELLING OF DUTY FREE SPIRITS

**(TAKING INTO CONSIDERATION THE APPLICANT'S COMMENTS DATED
28 MARCH 2002)**

1.0 EXECUTIVE SUMMARY

1.1 Background

The Australia New Zealand Food Authority (ANZFA) received an application on 12 June 2000 from the Distilled Spirits Industry Council of Australia (DSICA) to amend the *Food Standards Code* to exempt from the labelling requirements of the Code, spirit and liqueur products sold through duty free shops for export, or in the case of in-bound duty free, for personal import ('domestic duty free sale').

In August 2001, the Board undertook a Draft (Full) Assessment of the Application, and prepared draft variations to the *Food Standards Code* which exempted spirits and liqueurs sold in duty free outlets from standard drink and name and business address labelling requirements.

These draft variations to Standard 1.2.2 and 2.7.5 were then released for a final round of public comment. This comment closed on 30 October 2001.

1.2 Issue

Currently, the Code imposes labelling requirements in relation to spirits and liqueurs, regardless of where these are sold, and whether they are imported or manufactured domestically.

Many specialty spirit and liqueur products imported for sale in duty free stores do not comply with labelling requirements under the Code, in particular, the standard drinks labelling requirement. To date, the Australian Quarantine and Inspection Service (AQIS) has not enforced the relevant labelling provisions for spirits and liqueurs destined for sale through Australian duty free shops. However, AQIS had advised that it intends to enforce these provisions, and will consider such products to be 'failing food' under the *Imported Food Control Act* (IFC Act).

This situation appears to be partially inconsistent with the treatment of similar products within Australia under some State and Territory food legislation. Under this legislation, food for sale in duty free stores must comply with the labelling requirements of the Code, and to this extent it is consistent with the IFC Act. However, this legislation provides persons selling products to outbound travellers with an 'export defence' to the offence of selling duty-free spirits and liqueurs in Australia that do not comply with the labelling requirements of the Code.

To enable these products to continue to be imported into Australia without re-labelling, an amendment to the Code was sought to exempt from labelling requirements spirits and liqueurs for domestic duty free sale.

1.3 Consultation- Final Assessment

A total of thirteen submissions were received in relation to the Draft (Full) Assessment draft variations to the Code. The majority of submitters (seven), mostly from industry, supported the draft variations. Four submitters were opposed to the proposed amendments. One industry submitter suggested the proposed labelling exemption be extended to all alcoholic beverages, including beer sold in duty free stores.

Mr Preston, on behalf of the Applicant, submitted that the draft (full) assessment variations should include an exemption from the country of origin labelling requirements until the review of that area has been resolved.

Opposition to the amendment argued that the move might prejudice the important public health initiative of standard drink labelling.

The New Zealand Ministry of Health (MoH) also shared this view, adding that the issue of exemption should be considered in the broader context of labelling requirements for food sold in duty free stores.

An assessment of these submissions is contained at 2.6 of this Paper.

1.4 Policy

In the assessment of all applications, ANZFA has regard to Section 10 of the *Australia New Zealand Food Authority Act 1991* and respective Australian and New Zealand trade competition policies.

1.5 Draft Assessment Drafting

In August 2001 the Authority conducted a Draft (Full) Assessment of the Application. Whilst the Application sought a general exemption from the labelling requirements in the Code for spirits and liqueurs sold at duty free outlets, the Authority decided that the exemptions should be limited to standard drink labelling requirements and the requirements for the name and address of the supplier.

1.6 Consequential amendments

None

1.7 Regulatory Impact Statement and World Trade Organization

As the preferred regulatory option involves no change to the current labelling requirements for standard drink labelling and name and address in Australia or New Zealand of the supplier of the product, no World Trade Organization (WTO) notification is considered necessary.

1.8 Conclusions

This report provides a Final Assessment (Inquiry) of Application A418 – Labelling of Duty Free Spirits, proposing that the Authority make a recommendation to the Ministerial Council that it reject the draft variations to the Code.

It is proposed that spirits and liqueurs for domestic duty free continue to be subject to standard drink labelling requirements in Standard 2.7.1 and the requirement to label the food with a name and address of the supplier in Australia or New Zealand in Standard 1.2.2.

The preferred option does not address the potential trade disparity between Australian and New Zealand duty free shops on the one hand and foreign duty free shops on the other. However, this decision recognises the primacy of the Authority's first statutory priority – the protection of public health and safety.

Relevantly, this objective was advanced by the implementation of standard drink labelling in 1994. The potential trade disparity, in the standard drink labelling sense, was created in 1994, and justified on public health grounds.

The Authority, in weighing the conflicting objectives does not consider there to be a sufficiently persuasive case to interfere with this important public health initiative. Nor does the Authority find sufficient justification to interfere with the public health and safety provision of name and address requirements.

2.0 BACKGROUND AND ISSUE

2.1 Background of A418

ANZFA received an application on 12 June 2000 from DSICA to amend the Code to exempt from the labelling requirements of the Code, spirit and liqueur products for domestic duty free sale.

Following receipt of this Application, ANZFA consulted with DSICA and AQIS to explore whether an administrative solution could be found to the problem raised by DSICA in its Application. No such solution was found, and accordingly A418 remained on foot.

ANZFA conducted a Draft (Full) Assessment of the Application at ANZFA69 in August 2001.

2.2 Issue and Objective of Application A418

Issue

Currently, the Code imposes labelling requirements in relation to spirits and liqueurs, regardless of where these are sold, and whether they are imported or manufactured domestically.

Certain specialty spirit and liqueur products have been imported for many years for sale in duty free stores to persons travelling to, or returning from, overseas. These products are all manufactured overseas, and differ from products usually found in the Australian non-duty free market, for example in the bottle size or niche marketing, in ways designed to take advantage of the duty free thresholds for alcohol in various countries. The labelling conforms to general international requirements, such as alcohol by volume, manufacturer's name and address, and name of the food, but does not conform to labelling requirements peculiar to Australia, in particular, standard drinks labelling.

Until recently, AQIS has not enforced the relevant labelling provisions of the Code for spirits and liqueurs destined for sale through duty free shops. However, AQIS has indicated that in the future, it will consider such foods to be failing foods under the IFC Act, including because the foods are not labelled with standard drinks. Failing foods must be re-labelled, re-exported by the importer without entry into Australia, destroyed or otherwise dealt with as directed by AQIS. There does not appear to be an applicable defence or exemption to this under the IFC Act.

Accordingly, spirits and liqueurs imported for sale through duty free shops that do not meet labelling requirements under the Code will not be able to continue to be imported without relabelling.

This situation appears to be partially inconsistent with the treatment of similar products within Australia under some State and Territory food legislation, in particular, that of Victoria, Queensland, Western Australia and the Northern Territory. Under this legislation, food for sale in duty free stores must comply with the labelling requirements of the Code, and to this extent it is consistent with the IFC Act.

However, under this legislation it is a defence to the offence of breaching of the labelling requirements under the Code, that the food is to be exported to another country and the sale, packing or labelling of the food complies with the laws in force in the country to which the food is exported. This would appear to provide persons selling products to outbound travellers with a defence to the offence of selling duty-free spirits and liqueurs in Australia that do not comply with the labelling requirements of the Code.

Objectives

The objectives of the Application are to:

- ensure consistency in the way the Code is applied to spirit and liqueur products for domestic duty free sale by the IFC Act and State and Territory food legislation; by
- exempting spirit and liqueur products for domestic duty free sale from labelling requirements under the Code.

2.3 Relevant Provisions

Food Standards Code

Clause 3 of Standard 1.2.2 requires that the label on a package of food contain the name and business address in Australia or New Zealand of the supplier of the food.

Standard 2.7.1, clause 3 requires beverages or foods capable of being consumed as beverages, which contain more than 0.5% alcohol by volume, measured at 20°C, to be labelled with a statement of the approximate number of standard drinks in the package. This standard drinks labelling requirement is unique to the Code. It does not appear in any other national or international food standards that we are aware of.

2.4 Standard drink labelling

In August 1991 the then National Food Authority received an application from the Australian Ministerial Council on Drug Strategy to revise the Code to include a requirement that alcoholic beverages be labelled with standard drink information. The Authority conducted a Full Assessment and Inquiry in relation to the application and in July 1993 a draft provision giving effect to the application was recommended to the Ministerial Council.

In December 1994 the Ministerial Council adopted the labelling requirement and the provision was gazetted in the Commonwealth Gazette on 22 December 1994, with a 12 month lead in time.

The standard drink labelling provision is presently contained in Standard A1 of Volume 1 and Standard 2.7.1 of Volume 2 of the Code. At present the requirement is only optional in New Zealand. The provision will become mandatory in or around December 2002 when Volume 1 of the Code and relevant parts of the New Zealand *Food Regulations* are expected to be repealed.

The Full Assessment Report of March 1993 for the Standard Drink Application provides the following observations:

- The introduction of standard drink labelling is recommended on the basis of research findings and other informed opinion suggesting strongly that this form of labelling furthers the objectives of public health and safety and consumer information by more adequately informing consumers of alcohol content than existing or other methods.
- Some submissions were concerned that the measure may introduce trade barriers, having the effect of increasing costs, and interfere with consumer choice. There are no international food standards or regulations in other countries requiring standard drink labelling. However, exporters and importers already re-label so as to comply with labelling requirements.
- The potential advantages derived from standard drink labelling are considered to outweigh any real or perceived disadvantages associated with its introduction.

The Authority's inquiry into the application in June 1993 did not depart from the position taken during the Full Assessment phase. The Inquiry report acknowledged that Australia may be the first country to introduce standard drink labelling, but that the advantages outweighed considerations of trade disparity, cost and availability of product.

The reasons for the position adopted by the Authority in 1993 regarding the standard drink application are of considerable relevance to the present application (Application A418).

2.5 Consultation prior to Draft Assessment (first round)

ANZFA made a preliminary assessment and called for submissions on A418 on 14 February 2001. The closing date for submissions was 14 March 2001. Eighteen submissions were received. A copy of the submissions is at Attachment 3 and a summary of the submissions is at Attachment 4. The majority of submitters supported the proposed amendment to the Code.

Ramifications of Rejecting the Amendment

Six submissions stated that if A418 is rejected, the requirement to re-label product will impose extra costs which may lead to increased prices for products, or stopping supply of products to Australia.

This would disadvantage Australian duty free shops relative to overseas duty free shops, and disadvantage consumers through increased prices and a reduction in range of products. One submission indicated that if A418 is rejected, New Zealand will suffer similar effects once standard drinks labelling becomes compulsory in 2002.

Inconsistency of IFC Act and State and Territory food legislation

Two submissions expressed the view that a discrepancy existed between the IFC Act and State and Territory food legislation, such that the former mandates compliance with the Code whenever food is imported, whereas the latter imposes a similar obligation only when food is sold. One submission stated that this was at variance with Australia's WTO obligations.

Consistency in treatment of duty free

Three submissions supported the Application as individuals can purchase the same alcohol products overseas (without standard drinks labelling) and consume them in Australia, so it is only equitable to exempt products imported into Australia for duty free sale from labelling requirements. One submission stated that in their experience no other country requires products destined for duty free sale to comply with domestic market labelling requirements. Another submission claimed that there was an almost universally accepted belief that the duty free market is separate from the domestic market and should not be subject to domestic labelling requirements.

Scope of exemption

One submission suggested that the Application be extended to include table and sparkling wine, fortified wine, aperitifs, beers and other alcohol beverages for domestic duty free sale, to maintain industry and regulatory consistency and to ensure consumers are not disadvantaged. Another submission suggested that the Application be extended to confectionary sold in duty free outlets.

Consumer information

Three submissions opposing the Application argued that the information provided to consumers about the products they purchase (i.e. standard drinks information) is valuable and beneficial, and should not be reduced. Two submissions supporting the Application argued that standard drink labelling is a concept peculiar to Australia and hence such labelling is irrelevant to non-Australian consumers.

Public health considerations

Three submissions noted that exempting spirits and liqueurs for domestic duty free sale from standard drink labelling would undermine this initiative, which was instituted to promote public health. One submission argued that the public health interest in standard drinks labelling should outweigh the commercial interests of distillers in obtaining the exemption, that standard drinks labelling had been a successful strategy in reducing alcohol related harm which should not be downgraded in any manner, and that granting the exemption would encourage further incremental erosion of standard drinks labelling.

Conformity with domestic legislation

Four submissions argued that all products for sale from domestic shops (including duty free shops) should conform to domestic law, including or especially alcohol products. However, one of these acknowledged that the volume of products affected is small. One submission stated that A418, if progressed, needed to be framed within a broader policy context of the degree to which goods sold in duty free shops must comply with domestic legal requirements. Two submissions from New Zealand noted that no exceptions to the *Smoke Free Environments Act 1990* have been given for tobacco products sold through duty free shops and similarly, no exception should be granted for alcohol products.

2.6 Assessment of Consultation after draft assessment (final round)

A total of thirteen submissions were received in relation to the Draft (Full) Assessment draft variations to the Code. Copies of the submissions were provided to the Board prior to ANZFA71 in November 2001.

2.6.1 Proponents

All seven industry based submitters supported the draft amendments to the Code. However, the Australian Associated Brewers Inc submitted that the exemptions should apply to all alcoholic beverages sold in duty free shops. This submission is not dissimilar to the comment by MoH that the matter should be considered in the context of labelling requirements for all foods. The Authority does not agree with this extension, as it does not fall within the ambit of the Application and has not been the subject of robust assessment, nor of consultation with stakeholders and the general public. The Authority acknowledges that the issue is relevant to foods other than just spirits and liqueurs, however, the implementation of a broader exemption would need to be considered outside the scope of the specific Application.

Mr Preston, on behalf of the Applicant, requested that ANZFA consider extending the draft exemptions to country of origin (CoO) labelling requirements on the basis that these requirements are still under review, and that the final outcome is unknown. It was conceded in this submission that the Applicant does not know if CoO requirements will pose a difficulty in terms of labelling of duty free spirits and liqueurs. In the Authority's view, and in the absence of any persuasive information supporting such an extension, it would not be appropriate to add CoO requirements to the exemption.

2.6.2 Opponents

In the MoH's submission it stated that despite the international trade implications, products for sale in domestic stores should comply with domestic legislation, regardless of the duty free issue. Likewise, the Alcohol Advisory Council of New Zealand (ALAC) opposes the Application principally on the basis of the standard drink labelling component.

ALAC states that products for sale in domestic stores should comply with domestic legislation, regardless of the duty free issue, because standard drink labelling assists consumers to make healthy choices about alcohol. The submission also states that inward duty free sales bring a significant amount of alcoholic beverages into New Zealand, and the public should be informed about the (alcohol) contents of these products.

The National Council for Women provided similar comments in their submission, but also stated that the cost of labelling should not be great and that standard drink labelling is an important public health initiative.

The National Expert Advisory Committee on Alcohol submitted that standard drink labelling is one of the many strategies employed to reduce alcohol related harm and that the requirement needs to be applied to all alcohol irrespective of where it is sold to deliver an effective and consistent message.

Submissions against the application argued that the public health interest in standard drinks labelling should outweigh the commercial interests of distillers in obtaining the exemption, that standard drinks labelling had been a successful strategy in reducing alcohol related harm which should not be downgraded in any manner, and that granting the exemption would encourage further incremental erosion of standard drinks labelling.

2.6.3 *Assessment*

There is an absence of any empirical or other evidence in the arguments advanced by both proponents and opponents of the application. The cases for and against the application are based on mere assertions concerning the likely effects of intervention or status quo. The absence of any real evidence to support either case makes an assessment of the matter difficult.

Ultimately, the Authority's conclusion must turn on a balancing of competing objectives. On the one hand the application would remove standard drink labelling from a section of the market. Although this section may be small, the effect, in the Authority's view, must inevitably compromise the primary objectives of public health and consumer information. On the other hand, the applicant and proponents submit that the interests of a consistent market and an internationally competitive food industry will be compromised if the application is not implemented.

The Applicant's contention is that a failure to amend the Code will result in a significant decrease in availability of spirits and liqueurs in duty free outlets because the cost of re-labelling is prohibitive and the Australian and New Zealand market is not sufficiently large to warrant the extra cost. There is no evidence to either support or contradict this contention. Accordingly, any finding the Authority could make in relation to this question would be speculative and guess work.

In these circumstances, the Authority is compelled to prefer the primary statutory objectives of public health and safety and consumer information to other considerations such as a consistent market and an internationally competitive food industry.

The Authority cannot find any convincing justification for disturbing, albeit marginally, the important public health initiative of standard drink labelling.

This reasoning applies equally to the exemption for name and address, in Australia or New Zealand, of the supplier of the food. The applicant contends that supplier details (from the place of origin, i.e. name and address details in Scotland for Scotch whisky) already appear on the products in question and that there are practical difficulties with providing a name and address in Australia or New Zealand. The difficulty is that the importer in Australia or New Zealand would need to 'over-label' to incorporate their name and address.

This, the Applicant says, will add further to the cost, which, in the Applicant's submission, makes the exercise commercially unviable.

Again, this contention is not accompanied by supporting evidence. Without such evidence the Authority must prefer a retention of the current name and address requirements. In the absence of such evidence, a contrary conclusion would again be speculative.

Furthermore, even if the Authority was to accept the Applicant's argument on this issue, because of the Authority's conclusion regarding standard drink labelling, the product would require 'over-labelling' anyway. The Authority's conclusion on standard drink labelling thus renders nugatory the Applicant's contentions about name and address requirements.

2.7 *Regulatory Options*

The possible options for the regulation of spirits and liqueurs for domestic duty free sale include the following.

- Option 1** **Exempt spirits and liqueurs for domestic duty free sale from standard drink and name and address labelling requirements in the Code.**

- Option 2** **Do not amend the Code. Instead, rely on amendments to other legislation (e.g.. the IFC Act) or AQIS's use of its discretionary powers to enable the continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code.**

- Option 3** **Do not amend the Code or rely on amendments of other legislation or AQIS's use of its discretionary powers, preventing continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code.**

Option 1: Exempt from the labelling requirements of the Code, spirits and liqueurs for domestic duty free sale

For Option 1, Standard 1.2.7 of the Code (Volume 2) would be amended to exempt spirits and liqueurs for domestic duty free sale, from standard drink labelling and name and address of supplier requirements. Spirits and liqueurs manufactured in ways designed to take advantage of the duty free alcohol thresholds in various countries could continue to be imported into Australia and New Zealand for sale in duty free outlets, and Australian and New Zealand companies could manufacture such products for sale in duty free outlets.

Consumers would not be provided with standard drinks information in relation to spirits and liqueurs for domestic duty free sale, although generally they would be provided with alcohol by volume labelling.

Option 2 Do not amend the Code. Instead, rely on amendments to other legislation (e.g.. the IFC Act) or AQIS's use of its discretionary powers to enable the continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code

Option 2 would rely on alternative legislative or administrative remedies to permit the continued importation and sale of certain spirits and liqueurs for domestic duty free sale. On the advice received, legislative amendment is unlikely.

There does not appear to be any clear administrative remedy as AQIS has indicated that it does not have discretion to continue to allow the importation and sale of the spirits and liqueurs in question, without relabelling.

Option 3 Do not amend the Code or rely on amendments to other legislation or AQIS's use of its discretionary powers, preventing continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code

Option 3 would result in spirits and liqueurs imported for domestic duty free sale being re-labelled, or otherwise being unable to be imported and sold in Australia (and New Zealand from 2003). Such re-labelling will involve costs to industry, and is likely to result in an increase in prices for such products.

It will, however, ensure that travellers are provided with standard drinks information in relation to duty free spirits and liqueurs, which may promote public health generally, although the overall impact of this labelling on such a small segment of the market for alcohol products is not large.

These options are discussed further and assessed in view of their regulatory impacts in Section 4.

3.0 ASSESSMENT

3.1 Policy principles

There are a number of principles underpinning the development of food standards by ANZFA. These principles have been taken into account and used in relation to the Application at hand.

General Applications

In developing food standards ANZFA must have regard to the objectives outlined in Section 10 of the *Australia New Zealand Food Authority Act 1991*.

Consistent with these statutory objectives and regulatory policies of ANZFA, the development of standards takes into account a number of issues including the appropriate level of regulatory prescriptiveness; public health and safety; the need for consumer information; ease of understanding of standards; and facilitation of harmonisation of food standards between Australia and New Zealand.

The development of food standards are also be carried out in accordance with the competition policy principles which have been adopted by the Council of Australian Governments (COAG) and the draft Code of Good Regulatory Practice (New Zealand).

These principles require the review of all business regulation to remove unnecessary obstacles to competition and an assessment of proposed regulation on all affected sectors of the community. This is provided in the form of the Regulation Impact Statement (see Section 4.0).

4.0 REGULATION IMPACT STATEMENT

The Authority develops food regulation suitable for adoption in Australia and New Zealand. It is required to consider the impact, including compliance costs to business, of various regulatory (and non-regulatory) options on all sectors of the community that includes the consumers, food industry and governments in both countries. The regulation impact statement (RIS) identifies and evaluates, though is not be limited to, the costs and benefits of the regulation, and its health, economic and social impacts. In the course of assessing the regulatory impact, the Authority is guided by the Australian *Guide to Regulation* (Commonwealth of Australia 1997) and *New Zealand Code of Good Regulatory Practice*.

4.1 Options

There are three main options arising out of this Application. These are:

Option 1 **Exempt from the specified labelling requirements of the Code, spirits and liqueurs for duty free sale.**

Option 2 **Do not amend the Code. Instead, rely on amendments to other legislation (e.g. the IFC Act) or AQIS's use of its discretionary powers to enable the continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code.**

Option 3 **Do not amend the Code or rely on amendments to other legislation or AQIS's use of its discretionary powers, preventing continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code.**

Option 1 *Exempt from the labelling requirements of the Code, spirits and liqueurs for domestic duty free sale.*

Description

Standard 1.2.7 of the Code (Volume 2) would be amended to exempt spirits and liqueurs for domestic duty free sale, from standard drink and name and business address labelling requirements of the Code. Spirits and liqueurs manufactured in ways designed to take advantage of the duty free alcohol thresholds in various countries could continue to be imported into Australia and New Zealand for sale in duty free outlets, without relabelling. Australian and New Zealand industry could manufacture such products for sale in domestic duty free shops.

Government

Advantages

- No change required to enforcement in both Australia and New Zealand.
- Consistency between treatment of spirits and liqueurs for domestic duty free sale under the IFC Act and State and Territory food legislation.

Disadvantages

- Inconsistency in application of standard drinks labelling between domestic and international duty free.
- Undermines a significant government public health initiative.

Consumer/Public Health

Advantages

- Ensure continued availability of spirit and liqueur products in duty free shops.
- Similar spirit and liqueur products available in Australian and New Zealand duty free shops and overseas duty free shops, with consistent labelling.
- No increase in prices of spirits and liqueurs for domestic duty free sale due to requirements to re-label.

Disadvantages

- Lack of information on standard drinks contained in spirits or liqueurs for domestic duty free sale.
- Therefore undermines a significant government public health initiative.

Industry

Advantages

- Able to import spirit and liqueur products for domestic duty free sale without relabelling.
- Consistency between treatment of spirits and liqueurs for domestic duty free sale under the IFC Act and State and Territory food legislation.

Disadvantages

- None identified.

Conclusion

If the Applicant's assertions were to be accepted, this option has clear benefits. However, these benefits do not outweigh the fundamental public health importance of standard drink labelling.

Option 2 Do not amend the Code. Instead, rely on amendments to other legislation (e.g. the IFC Act) or AQIS's use of its discretionary powers to enable the continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code.

Description

Option 2 would involve relying on alternative legislative or administrative remedies to permit the continued importation of certain spirits for domestic duty free sale.

Government

Advantages

- Does not begin pattern of making piecemeal exemptions to the Code for particular products, contrary to spirit of new Code.

Disadvantages

- An administrative solution (i.e. AQIS's use of its discretionary powers) does not appear legally possible.
- Potential for legislation not to be passed, resulting in Option 3 outcomes by default.
- Option 3 would apply by default in the interim prior to any legislative change.

Consumer/Public Health

Advantages

- Similar spirit and liqueur products available in Australian and New Zealand duty free shops and overseas duty free shops, with consistent labelling.
- No increase in prices of spirits and liqueurs for domestic duty free sale due to requirements to re-label.

Disadvantages

- Lack of information on standard drinks contained in spirits or liqueurs for domestic duty free sale.

Industry

Advantages

- Able to import spirit and liqueur products for domestic duty free sale without relabelling.
- Consistency between treatment of spirits and liqueurs for domestic duty free sale under the IFC Act and State and Territory food legislation.

Disadvantages

- Uncertainty as to whether administrative solution would be liable to changes, such that the issue re-emerges.
- Time lag in passing appropriate legislative amendments would result in option 3 by default.
- Uncertainty as to whether legislative amendments would be passed, such that the issue may not be finally resolved.

Conclusion

This option is inherently uncertain. Due to legal barriers to an administrative solution from AQIS, legislative change would appear to be required under this option, and this would, at best, be time consuming and not certain to occur, which means that option 3 issues would arise in any interim period.

Option 3 Do not amend the Code or rely on amendments of other legislation or AQIS's use of its discretionary powers, preventing continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code.

Description

This option would require no regulatory action to be taken by ANZFA. Instead, AQIS would begin enforcing the relevant provisions of the IFC Act and requiring that spirits and liqueurs imported for domestic duty free sale that do not comply with the Code's labelling requirements be re-labelled, re-exported by the importer, destroyed, or otherwise dealt with as directed by AQIS.

Government

Advantages

- No amendment to the Code required to be made, promulgated and implemented.
- Retention of benefits of a significant public health initiative for all purchasers.

Disadvantages

- Greater enforcement burden and costs to Australia arising from implementation of labelling requirements.
- Continued inconsistency between IFC Act and State and Territory food laws.
- Requirements retain the barrier to trade that may be inconsistent with Australia's WTO requirements.
- Encourages consumers to purchase spirits and liqueurs at overseas duty free shops rather than Australian duty free shops, due to greater range and lower prices, which is undesirable in that it disadvantages Australian industry relative to its overseas competitors.

Consumer/Public Health

Advantages

- Spirits and liqueurs for domestic duty free sale have standard drinks labelling information to assist in decision-making concerning alcohol purchases and consumption.

Disadvantages

- Increased prices for spirits and liqueurs at Australian duty free shops due to relabelling costs being passed on to consumers.

Industry

Advantages

- None identified.

Disadvantages

- Increased costs associated with imported spirit and liqueur products for domestic duty free sale.
- May not be viable to continue to stock all products currently available through duty free shops in Australia.
- Encourages consumers to purchase spirits and liqueurs at overseas duty free shops rather than Australian duty free shops, due to greater range and lower prices.

Conclusion

This option would ensure that spirit and liqueur products for domestic duty free sale continue to be labelled with standard drinks information, and name and business address details.

Option 3 would mean a greater enforcement burden on government, and has, in the Applicant's submission, the potential to damage the business of Australian duty free stores, as well as reducing consumer choice and increasing prices of the products in question. This Report concludes that even if this were the case, such outcomes do not outweigh the primacy of the public health benefits of standard drink labelling for all purchasers.

Preferred option

The issue and objectives as outlined in Section 2 have been considered in the light of three possible options for regulation. Weighing the public health and safety issues and trade harmonization, it is considered that exempting spirits and liqueurs for domestic duty free sale from labelling requirements under the Code (Option 1) is not justified.

Option 2 is unsatisfactory, as it does not provide a certain or timely outcome to the issue at hand. Rather, it is likely to result in option 3 by default.

By exempting spirits and liqueurs for domestic duty free sale from standard drink labelling requirements under the Code, consistency between domestic and international food standards, the efficiency and international competitiveness of the food industry, and fair trading in food is potentially promoted and encouraged. However, this would be at the expense of an important public health initiative in the form of standard drink labelling. On balance, the public health objective must override those other competing interests.

4.2 Conclusion and Preferred Option

ANZFA's preferred option is Option Three.

5.0 WORLD TRADE ORGANIZATION

Australia and New Zealand are members of the WTO and are bound as parties to WTO agreements. In Australia, an agreement developed by COAG requires States and Territories to be bound as parties to those WTO agreements to which the Commonwealth is a signatory. Under the agreement between the Governments of Australia and New Zealand on Uniform Food Standards, ANZFA is required to ensure that food standards are consistent with the obligations of both countries as members of the WTO.

In certain circumstances Australia and New Zealand have an obligation to notify the WTO of changes to food standards to enable other member countries of the WTO to make comment. Notification is required in the case of any new or changed standards which may have a significant trade effect and which depart from the relevant international standard (or where no international standard exists).

As the outcome of this Final Assessment proposes no change, that is, a retention of the status quo in relation to the Code, regarding standard drink labelling and name and address of the supplier, it is considered unnecessary to provide WTO notification.

6.0 CONCLUSIONS

There is an absence of any empirical or other evidence in the arguments advanced by both proponents and opponents of the application. The cases for and against the application are based on mere assertions concerning the likely effects of intervention or status quo. The absence of any real evidence to support either case makes an assessment of the matter difficult.

Ultimately, the Authority's conclusion must turn on a balancing of competing objectives. On the one hand the application would remove standard drink labelling from a section of the market. Although this section may be small, the effect, in the Authority's view, must inevitably compromise the primary objectives of public health and consumer information. On the other hand, the applicant and proponents submit that the interests of a consistent market and an internationally competitive food industry will be compromised if the application is not implemented.

The Applicant's contention is that a failure to amend the Code will result in a significant decrease in availability of spirits and liqueurs in duty free outlets because the cost of relabelling is prohibitive and the Australian and New Zealand market is not sufficiently large to warrant the extra cost. There is no evidence to either support or contradict this contention. Accordingly, any finding the Authority could make in relation to this question would be speculative and guess work.

In these circumstances, the Authority is compelled to prefer the primary statutory objectives of public health and safety and consumer information to other considerations such as a consistent market and an internationally competitive food industry

The Authority cannot find any convincing justification for disturbing, albeit marginally, the important public health initiative of standard drink labelling.

This reasoning applies equally to the exemption for name and address, in Australia or New Zealand, of the supplier of the food. The applicant contends that supplier details (from the place of origin, i.e. name and address details in Scotland for Scotch whisky) already appear on the products in question and that there are practical difficulties with providing a name and address in Australia or New Zealand. The difficulty is that the importer in Australia or New Zealand would need to 'over-label' to incorporate their name and address. This, the Applicant says, will add further to the cost, which, in the Applicant's submission, makes the exercise commercially unviable.

The name and address requirements in Australia or New Zealand is a regulatory measure based on the statutory objective of public health and safety, which facilitates important food recall and trace-back activities. The exemption sought by the Applicant would remove a critical link in the chain of supply, and could potentially jeopardise trace-back and recall operations.

Again, this contention is not accompanied by supporting evidence. Without such evidence the Authority must prefer a retention of the current name and address requirements. In the absence of such evidence, a contrary conclusion would again be speculative.

Furthermore, even if the Authority was to accept the Applicant's argument on this issue, because of the Authority's conclusion regarding standard drink labelling, the product would require 'over-labelling' anyway. The Authority's conclusion on standard drink labelling thus renders nugatory the Applicant's contentions about name and address requirements.

7.0 RECOMMENDATION

The Authority's decision is to recommend to the Ministerial Council that it reject the draft variations to the *Food Standards Code*, as prepared after Draft (Full) Assessment.

FURTHER INFORMATION

Submissions

No submissions on this matter are sought as the Authority has completed its assessment and the matter is now with the Australia New Zealand Food Standards Council for consideration.

Further Information

Further information on this and other matters should be addressed to the Standards Liaison Officer at the Australia New Zealand Food Authority at one of the following addresses:

Australia New Zealand Food Authority
PO Box 7186
Canberra BC ACT 2610
AUSTRALIA
Tel (02) 6271 2258
email: slo@anzfa.gov.au

Australia New Zealand Food Authority
PO Box 10559
The Terrace WELLINGTON 6036
NEW ZEALAND
Tel (04) 473 9942
email: anzfa.nz@anzfa.gov.au

Assessment reports are available for viewing and downloading from the ANZFA website www.anzfa.gov.au or alternatively paper copies of reports can be requested from the Authorities Information Officer at info@anzfa.gov.au.

8.0 LIST OF ATTACHMENTS TO THE REPORT

1. Draft Variations to the *Australia New Zealand Food Standards Code*
2. Reply to submissions by Mr Preston on behalf of Applicant
3. Statement of Reasons

DRAFT VARIATION TO THE *FOOD STANDARDS CODE*

APPLICATION A418

To commence: On gazettal

[1] *Standard 1.2.2 of Volume 2 of the Food Standards Code is varied by omitting clause 3 and substituting –*

3 Name and address of supplier

Unless otherwise expressly provided elsewhere in this Code, the label on a package of food must include the name and business address in Australia or New Zealand, of the supplier of the food.

Editorial note:

‘Supplier’ is defined in Standard 1.1.1 to include the packer, manufacturer, vendor or importer of the food in question.

Clause 3 does not apply to alcoholic beverages standardised in Standard 2.7.5 of the Code intended for sale, or sold, in a duty free shop. Refer to subclause 1(2) of Standard 2.7.1.

[2] *Standard 2.7.1 of Volume 2 of the Food Standards Code is varied by –*

[2.1] *omitting clause 1 and substituting –*

1 Interpretation

(1) In this Standard -

duty free means free of customs duty.

duty free shop means a shop where duty free goods may be sold legally.

standard drink means the amount of a beverage which contains 10 grams of ethanol, measured at 20°C.

(2) Clause 3 of Standard 1.2.2 does not apply to alcoholic beverages standardised in Standard 2.7.5 of the Code intended for sale, or sold, in a duty free shop.

[2.2] *omitting subclause 3(2) and substituting –*

(2) Subclause (1) does not apply to –

(a) beverages packed prior to 22 December 2000; or

(b) alcoholic beverages standardised in Standard 2.7.5 of the Code intended for sale, or sold, in a duty free shop.

**REPLY TO THE FINAL ASSESSMENT SUBMISSIONS BY MR PRESTON ON
BEHALF OF THE APPLICANT**

Review of A418 Public Comments

Distilled Spirits Industry Council of Australia Inc

- 1. Scotch Whisky Association**
- 2. Guinness UDV**
- 3. Australian Customs Service**
- 4. DSANZ**
- 5. Conferation Européenne des Producteurs de Spiritueux**
- 6. Food Technology Association of Victoria**

These organisations all support, or do not object to, the proposed amendment.

7. NZ Ministry of Health

Products for sale from domestic stores should conform with domestic legislation, regardless of whether they are duty free or not.

The 19 September 2001 report did not address the wider policy issues of the sale of foods in duty free stores and the necessity to comply with Australia (sic) and New Zealand food labelling requirements

The Applicant disagrees with these comments.

The Report, in the Applicant's view, dealt with the wider policy issues directly and cogently. The key issue is not whether food sold through duty free outlets needs to comply with ANZ requirements, but whether Australia and New Zealand wish to compete in the global market for duty free sales.

If the answer is in the affirmative (which accords with both countries' economic policies), the practical corollary is that neither country can insist on the observance of unique labelling requirements and at the same time look to compete. The market in duty free goods is by nature global rather than local, and manufacturers that produce goods solely for the duty free market label those goods accordingly. The products are available in duty free outlets at points of departure, arrival and transit, and consumers can choose to purchase as they please. To encumber ANZ duty free outlets with obligations that do not apply to their competitors is, ultimately, to prejudice their ability to compete, which has direct impact upon employment and growth.

The reality is that both countries provide an allowance for incoming travellers to import alcoholic beverages without duty. The beverages thus imported can be purchased anywhere in the world. The manufacturers themselves are not concerned whether their product is sold in Singapore, Sydney or Auckland, and the ANZ market (at least in respect of the duty free products) is too small to warrant unique labelling.

Unless an exemption from uniquely Australasian requirements is granted, the local outlet must either over label (at an expense to be passed on to the customer) or else not stock the goods. Either way, their ability to compete is impeded, and trade will be lost to overseas markets.

8. National Council of Women Inc Ltd

1. Inbound duty free should comply with Australian requirements

Failure to allow inbound duty free to be labelled in accordance with global labelling practices will not result in compliance with Australian standards, but in the withdrawal of the products from the Australian market. Travellers will quickly learn to make their duty free purchase at point of departure or transit, rather than upon arrival. The net effect would be to transfer profits away from Australian operations, and to jeopardise the jobs of inbound duty free employees.

2. A point of contact needs to be available to consumers

As is usual, the retailer would be the first point of contact. Failing this, the overseas manufacturer may be contacted. Contacting a Scottish manufacturer is, in practical terms, no more difficult than it is for a Western Australian to contact a NZ manufacturer.

3&4. Standard drink labelling is an important (and uniquely Australian) public health initiative.

The Application does not seek to undermine standard drinks labelling. However, the NCW acknowledges that an Australian manufacturer producing for the export market does not need to include standard drinks labelling. The Application seeks to place overseas manufacturers on an equal footing, as is required by Australia's international trade obligations.

5. The cost of re-labelling should not be great.

No evidence is provided to support this assertion. To the contrary, the manual labour in relabelling small quantities of presentation pack products is prohibitive, because consumers can buy exactly the same product without relabelling overseas. The issue is not whether the cost can be passed on to the consumer, but whether consumers would, in a competitive global market, buy duty free beverages in Australia. If they do not, it will cost Australian jobs and Australian profits.

9. Alcohol Advisory Council of New Zealand

Inward duty free sales being a significant amount of duty free alcoholic beverages into NZ, and the ALAC considers that the public should be informed about the content of these beverages.

Like the NCW, the ALAC fails to understand that travellers do not have to buy duty free alcohol at an inwards duty free store. Duty free outlets (both inwards and outwards) compete with point of departure/arrival and transit duty free outlets for this market. All these outlets carry the products in question, without standard drinks labelling and without an ANZ name and address.

The issue is simply whether it is ANZ's benefit to have a share of this market, or whether the market should be forced entirely offshore.

10. National Expert Advisory Committee on Alcohol

The NEACA is justifiably proud of its invention of standard drinks labelling. Again, this Application is NOT an attack on standard drinks labelling.

However, to state that the *substantial amounts of alcohol imported into Australia each year ... should be labelled in ways that meets Australian standards* is utopian. For so long as overseas ports of call do not require standard drinks labelling, and so long as Australian and New Zealand customs legislation provides a duty free allowance of alcoholic beverage, product will be imported that is not standard drinks labelled, whether it be purchased overseas or on arrival. Australia and New Zealand can either compete for a share in this market, or erect a trade barrier against it, but either way the influx of non-labelled duty free alcoholic beverages will continue.

11. Australian Associated Brewers Inc

ALL alcoholic beverages sold through duty free should be exempted.

In principle, the AAB is correct. The Application seeks treatment for overseas producers equivalent to that given to Australian producers who manufacture for export. This, in principle, extends to all foods, not just alcoholic beverages.

However, ANZFA is concerned to limit the scope of the Application so that it makes the minimum change necessary to address real problems. AQIS's threatened barrier against the import of spirits for duty free sale is the tangible problem that the Application was to address. If the AAB can show ANZFA that it is in a similar position, and is facing (or is likely to face) similar problems with AQIS, the Applicant would not object to the proposed amendment being extended to cover beers. However, if this would cause any lengthy delay, it may be more appropriate for the AAB to lodge its own application.

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**APPLICATION A418 FINAL ASSESSMENT
STATEMENT OF REASONS**

This Statement of Reasons concerns the Authority's decision (the decision) to recommend to the Ministerial Council that, under section 18(1) of the *Australia New Zealand Food Authority Act 1991*, it reject draft variations to the *Food Standards Code* developed after the Authority's Full Assessment of Application A418. Those draft variations are contained at Attachment 1 to the Authority's Final Assessment Report and deal with exemptions for spirits and liqueurs sold in duty free outlets from standard drink and name and address labelling requirements in Standards 2.7.1 and 1.2.2 respectively of the *Food Standards Code*.

The Authority's reasons for the decision are as follows.

Standard drink labelling

- In August 1991 the then National Food Authority received an application from the Australian Ministerial Council on Drug Strategy to revise the *Food Standards Code* to include a requirement that alcoholic beverages be labelled with standard drink information. The Authority conducted a Full Assessment and Inquiry in relation to the application and in July 1993 a draft provision giving effect to the application was recommended to the Ministerial Council.
- In December 1994 the Ministerial Council adopted the labelling requirement and the provision was gazetted in the Commonwealth Gazette on 22 December 1994, with a 12 month lead in time.
- The standard drink labelling provision is presently contained in Standard A1 of Volume 1 and Standard 2.7.1 of Volume 2 of the *Food Standards Code*. At present the requirement is only optional in New Zealand. The provision will become mandatory in or around December 2002 when Volume 1 of the Code and relevant parts of the New Zealand *Food Regulations* are expected to be repealed.
- The Full Assessment Report of March 1993 for this Application provides the following observations –

The introduction of standard drink labelling is recommended on the basis of research findings and other informed opinion suggesting strongly that this form of labelling furthers the objectives of public health and safety and consumer information by more adequately informing consumers of alcohol content than existing or other methods.

Some submissions were concerned that the measure may introduce trade barriers, having the effect of increasing costs, and interfere with consumer choice. There are no international food standards or regulations in other countries requiring standard drink labelling. However, exporters and importers already re-label so as to comply with labelling requirements.

The potential advantages derived from standard drink labelling are considered to outweigh any real or perceived disadvantages associated with its introduction.

- The Authority's inquiry into the Application in June 1993 did not depart from the position taken during the Full Assessment phase. The Inquiry report acknowledged that Australia may be the first country to introduce standard drink labelling, but that the advantages outweighed considerations of trade disparity, cost and availability of product.
- The reasons for the position adopted by the Authority in 1993 regarding the standard drink application are of considerable relevance to the present application (Application A418). Notably, the two principal objectives underpinning the 1993 regulatory measure remain the Authority's priority objectives in dealing with Application A418. The Authority's position with respect to standard drink requirements has not changed since 1993. Therefore, it would require compelling reasons to introduce measures which would diminish the regulatory measure, regardless of the extent of that diminution.

Application A418

- There is a striking absence of any empirical or other evidence in the arguments advanced by both proponents and opponents of the application. The cases for and against the application are based on mere assertions concerning the likely effects of intervention or status quo. The absence of any real evidence to support either case makes an assessment of the matter difficult.
- Ultimately, the Authority's conclusion must turn on a balancing of competing objectives. On the one hand the Application would remove standard drink labelling from a section of the market. Although this section may be small, the effect, in the Authority's view, must inevitably compromise the primary objectives of public health and consumer information. On the other hand, the applicant and proponents submit that the interests of a consistent market and an internationally competitive food industry will be compromised if the application is not implemented.
- The Applicant's contention is that a continuation of the status quo will result in a significant decrease in availability of spirits and liqueurs in duty free outlets because the cost of re-labelling is prohibitive and the Australian and New Zealand market is not sufficiently large to warrant the extra cost. There is no evidence to either support or contradict this contention. Accordingly, any finding the Authority could make in relation to this question would be speculative and guess work.
- In these circumstances, the Authority is compelled to prefer the primary statutory objectives of public health and safety and consumer information to other considerations such as a consistent market and an internationally competitive food industry
- The Authority cannot find any convincing justification for disturbing, albeit marginally, the important public health initiative of standard drink labelling.
- This reasoning applies equally to the exemption for name and address, in Australia or New Zealand, of the supplier of the food. The applicant contends that supplier details (from the place of origin, i.e. name and address details in Scotland for Scotch whisky) already appear on the products in question and that there are practical difficulties with providing a name and address in Australia or New Zealand.

The difficulty is that the importer in Australia or New Zealand would need to ‘over-label’ to incorporate their name and address. This, the Applicant says, will add further to the cost, which, in the Applicant’s submission, makes the exercise commercially unviable.

- The name and address requirements in Australia or New Zealand is a regulatory measure based on the statutory objective of public health and safety, which facilitates important food recall and trace-back activities. The exemption sought by the Applicant would remove a critical link in the chain of supply, and could potentially jeopardise trace-back and recall operations.
- Again, this contention is not accompanied by supporting evidence. Without such evidence the Authority must prefer a retention of the current name and address requirements. In the absence of such evidence, a contrary conclusion would again be speculative and amount to an unwarranted compromise of an important health and safety provision in the Code
- Furthermore, even if the Authority was to accept the Applicant’s argument on this issue, because of the Authority’s conclusion regarding standard drink labelling, the product would require ‘over-labelling’ anyway. The Authority’s conclusion on standard drink labelling thus renders nugatory the Applicant’s contentions about name and address requirements.