

10-05
7 December 2005

FIRST REVIEW REPORT

PROPOSAL P292

COUNTRY OF ORIGIN LABELLING OF FOOD

1. INTRODUCTION

Proposal P292 seeks to review and replace the existing transitional Country of Origin Standard 1.1A.3 with a new Standard 1.2.11.

Standard 1.2.11 was notified to the Ministerial Council on 28 September 2005. The Ministerial Council requested a First Review of the Standard on 8 November 2005.

2. DECISION AND REASONING

FSANZ re-affirms its decision of 23 September 2005 to approve the draft variations to the *Australia New Zealand Food Standards Code* for the following reasons.

Ultimately, FSANZ's conclusion must turn on a balancing of competing objectives. Of greatest relevance to the Ministerial Council request for review are section 10(1)(b) – the provision of adequate information relating to food to enable consumers to make informed choices and section 10(1)(c) – the prevention of misleading and deceptive conduct - on the one hand, and section 10(2)(b) – the promotion of consistency between domestic and international food standards, on the other hand.

FSANZ, in balancing these considerations, has given appropriate weight to its primary statutory objective of consumer information, whilst having regard to the promotion of consistency between domestic and international food standards. To the extent that these factors are in competition, FSANZ places more weight on the objective of consumer information. The potential consumer information advantages to be derived from FSANZ's approval of the draft standard are considered to outweigh any real or perceived disadvantages associated with international trade considerations.

In these circumstances, FSANZ is compelled to prefer the primary statutory objective of consumer information and the prevention of misleading or deceptive conduct.

Draft Variations to the *Australia New Zealand Food Standards Code*

To commence: On Gazettal

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

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

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

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

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

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

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

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

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

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

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

Purpose

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

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

STANDARD 1.2.11

COUNTRY OF ORIGIN REQUIREMENTS

Purpose

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

Table of Provisions

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Clauses

1 Application

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

Editorial note:

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

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

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

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

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

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

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

2 Labelling requirements

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

Table to subclause 2(1)

Column 1	Column 2
Food	Labelling requirement
Packaged food (except that to which subclause 2(2) of this Standard applies)	(a) a statement on the package that identifies where the food was made or produced; or (b) a statement on the package – <ul style="list-style-type: none"> (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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table to subclause 2(2)

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

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

Editorial note:

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

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

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

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

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

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

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

To commence: Six months from Gazettal

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

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

To commence: Two years from Gazettal

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

[4.1] *omitting Standard 1.1A.3*

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

Deleted

Australia New Zealand Food Regulation Ministerial Policy Guidelines Country of Origin Labelling of Food

SCOPE/ AIM

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

HIGH ORDER PRINCIPLES

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

SPECIFIC PRINCIPLES

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

POLICY GUIDANCE

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

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

As endorsed by ANZFRMC – August 2003