

6-05
12 August 2005

Country of Origin Labelling

A Discussion Paper to inform the development of a Food Standard

DEADLINE FOR PUBLIC SUBMISSIONS: 6pm (Canberra time)

5 September 2005

**SUBMISSIONS RECEIVED AFTER THIS DEADLINE
WILL NOT BE CONSIDERED**

(See 'Invitation for Public Submissions' for details)

INVITATION FOR PUBLIC SUBMISSIONS

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 +61 2 6271 2222
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Food Standards Australia New Zealand
PO Box 10559
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Submissions need to be received by FSANZ by 6pm (Canberra time) 5 September 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, this Discussion Paper 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.

Executive Summary

Our proposed approach seeks to

Strengthen existing arrangements

FSANZ has carefully considered the community response to previous suggestions on country of origin labelling requirements for food. In doing so, we have moved to strengthen the labelling requirements to ensure an appropriate balance of measures designed to inform consumers adequately.

Require clearer food labels

Country of origin information on food labels should not only be present but also in a form that is clear and unambiguous to consumers. Accordingly, we have developed specific requirements for the labelling of unpackaged foods and some additional provisions for packaged foods.

Present a comprehensive package of measures – not just the standard

A new package of measures will incorporate a new standard for country of origin labelling in the *Australia New Zealand Food Standards Code*, that reflects broad community interests while at the same time, achieves a consistency of approach between imported and domestic food products and with our international trading obligations.

It will include guidance material to address those areas where trade practices and food law intersect. It will also be accompanied by an awareness campaign designed to raise community understanding generally.

Ensure due regard is given to costs on industry and consumers

We adhere to the principle of minimum effective regulation when setting food standards. The revised Country of Origin Labelling standard is the minimum regulation necessary to provide consumers with information about the source of a food product and the food industry with certainty in the marketplace.

We plan to provide a lead-in time to ensure industry can adjust at minimum cost.

Respond to consumer needs

Our consultation process revealed strongly held views in the community to retain mandatory country of origin labelling on food.

Accordingly, we have abandoned the ‘information on request’ approach and have strengthened the current requirements for labelling. In addition, we will be clarifying specific legibility requirements for certain unpackaged foods.

What the proposed approach means in practice

A new standard for country of origin labelling

The new standard will:

- strengthen the current requirements for country of origin labelling –
 - in a manner that is consistent with trade practices law; and
 - that is consistent with international obligations and applicable regardless of whether it is Australian or New Zealand or imported from another country.

A standard that imposes specific requirements for all packaged foods

Specific requirements for packaged food will set out:

- a need to declare the country of origin in a manner that is clear and not misleading – e.g. prominent text on contrasting background;
- specific requirements for ‘made in, manufactured or packaged or retail sale’; and
- specific requirements for food made up from local and imported ingredients.

A standard that has specific requirements for some unpackaged foods

New specific requirements will apply for unpackaged fish, fruit, vegetables and nuts, whether fresh or processed.

A standard that improves the clarity of labelling information

Labels on or in association with unpackaged foods will be subject to the same legibility requirements as packaged foods. Where a sign is displayed adjacent to produce, it should be at least 9mm and comply with legibility requirements. Stickers on produce will need to be clear and unambiguous about the country of origin. A logo or manufacturer’s address alone will not be sufficient.

Additional guidance and help

Supporting guidance material will be developed and an awareness campaign will be initiated to ensure a good understanding of the revised arrangements.

A continuing reliance on trade practices law

There will be a continued reliance on trade practices laws including the need to ensure that all labels are true and not misleading.

Timely implementation arrangements

Implementation arrangements will be introduced that accommodate the need to inform consumers and industry’s own phase-in/re-labelling requirements:

- requirements consistent with trade practices law will continue to apply;
- unpackaged food and packaged fresh produce will require new labelling within six months of gazettal of the new standard; and
- for all other packaged food, a two-year phase in time will apply, plus twelve months for existing product.

The Discussion Paper

This Discussion Paper provides individuals and organisations with an interest in country of origin labelling of food with information on the approach adopted by Food Standards Australia New Zealand (FSANZ) to develop the standard.

In addition, we outline the guidance provided by the Australia and New Zealand Food Regulation Ministerial Council to assist us to develop the standard and the regulatory options that we have considered.

As part of our extensive community consultation process, we issued a draft standard for public comment in March 2005. Sections of the public and the food industry were critical of some aspects of our approach and proposed standard.

We carefully analysed the responses to our proposals and decided to amend our approach, as described in this paper.

In summary, we are recommending that the new country of origin labelling standard should:

- apply to certain unpackaged and all packaged foods; and
- apply as a general labelling standard across the food supply.

We have also decided to provide a third round of public consultation on the revised draft standard between 10 August and 2 September 2005. The FSANZ Board will review a summary of responses late in September, prior to a discussion of the matter by the Ministerial Council in October 2005.

This round of public consultation provides an opportunity for you to shape future country of origin labelling requirements.

We encourage you to take advantage of this and make a submission to FSANZ.

Background

The *Australia New Zealand Food Standards Code* (the Code) sets out requirements for the labelling and providing other information on food sold in Australia and New Zealand.

Food labels are used to provide consumers with information on the content and origin of a food product and, where necessary, to alert them to ingredients that are known to adversely affect some people.

Food Standards Australia New Zealand (FSANZ) is the government agency responsible for developing food standards. It does so through its open and transparent consultative processes and in accordance with the requirements set out in its governing legislation.

The existing country of origin labelling provisions in the Code came into effect in December 2002. They are only transitional measures¹ and they are the subject of the current review. The existing standard requires: mandatory country of origin labelling on all packaged foods; mandatory country of origin labelling on or near certain unpackaged foods – fish, vegetables, fruit and nuts (with some exceptions); and for unpackaged foods allows the use of the term ‘imported’, as well as the use of the specific country of origin.

In December 2003, the Food Regulation Ministerial Council referred Policy Guidelines for Country of Origin Labelling (Attachment 1) to FSANZ to guide the review of the transitional standard. The Council stipulated that the country of origin of food should be mandatory and should apply to whole foods, not individual ingredients. In addition, the Council required FSANZ to have regard to fair-trading and industry competitiveness issues, to be cost effective overall and to comply with Australia and New Zealand’s international trade obligations. FSANZ is also obliged to ensure that domestic and imported food products received consistent treatment.

We released an Initial Assessment Report in May 2004, inviting public comment on a number of issues. In March 2005, a Draft Assessment Report was released for a second round of public consultation. This report canvassed a number of regulatory options and included a draft Country of Origin Labelling standard.

The final position on country of origin labelling is intended to strike the right balance between costs imposed on the food industry and consumers themselves and the need to ensure consumers can make informed choices in the market place.

¹ Standard 1.1 A.3. Other than some specific requirements for wine and wine products, this standard does not apply in New Zealand.

Regulatory options

Other than leave requirements as they are (the status quo) at least **three** options were identified in our earlier consultations to develop a longer-term solution to country of origin labelling. The options were:

1. A standard in the Code that applies to all packaged foods and certain unpackaged foods.
2. A standard that would apply as a general labelling standard across the food supply. This standard would apply to all packaged and some unpackaged foods. It would provide flexibility while remaining consistent with fair trading laws and it would apply to whole foods, not ingredients.
3. A standard for country of origin labelling applying to all foods, whether packaged or unpackaged.

Our preferred approach combines (1) and (2) – a new standard covering all packaged and some unpackaged foods that would be subject to the general legibility requirements of the Code.

We will also be developing other measures, such as guidance material clarifying where food and trade practices law apply and an awareness campaign that will provide a better understanding of the arrangements generally.

Attachment 2 sets out the proposed Standard and Attachment 3 contains examples of how the proposed Country of Origin Labelling standard would be applied. Attachment 4 summarises the change between the current arrangements and the new standard.

During previous consultations on country of origin labelling, we met with key submitters, including consumer, producer, retail and industry representatives. It became apparent during such discussions and from submissions received during the formal consultation period that consumers and food producers had concerns about some aspects of our proposals, as outlined in the earlier Draft Assessment Report.

The **eight** substantive issues arising from public comment on the regulatory options are described below.

Issues to be addressed – labelling generally

Should information be on the label or provided on request?

We are proposing that country of origin details should be on the label.

We previously suggested that country of origin information on certain unpackaged foods could be provided to consumers on request. This met with widespread concern from consumers, producers, industry and retailers.

The general view was that it was unworkable and did not provide easily accessible information to consumers. Submitters recommended reverting to the current provision that requires the information to be contained within a label or sign displayed on or in connection with the food. Retailers and consumers indicated support for rejecting this option. We have reconsidered this option and we have rejected it.

Should we specify the country on the label?

We propose that the actual country of origin should be stated on the label rather than just rely on a statement that the product is imported. Arrangements must be consistent with trade practices law for:

- ‘Made in ...’; and
- ‘Product of ...’; and also permit
- a qualified claim, like ‘Made in ... from local and imported ingredients’, where there is a mix of ingredients from various countries.

Examples are set out in Attachment 3.

Earlier consultations raised the option of specifying the country the product came from or simply requiring the label to declare the product was ‘imported’.

While specifying the actual country is clearly more specific and certain, a range of views was expressed on this option. Many submitters recognised the ‘imported’ option allows consumers to distinguish between locally produced and imported products. Others believed that it was more informative to have the country specified and that the policy guidelines could be interpreted as requiring this. A third view was that, by allowing an option, greater flexibility was afforded and that compliance costs would be lower.

Retailers indicated that where there were extended supply chains – for example, imported fish – providing this greater level of information on a daily basis required a new way of handling data. This could be achieved with suitable information systems in place. We understand that industry is already moving in this direction.

We have carefully considered the views and the over-riding need to ensure consumers are properly informed.

Issues to be addressed – unpackaged foods

Which unpackaged foods should be labelled?

We are proposing to extend the existing requirements for packaged foods to unpackaged fresh and processed fruit, vegetables, nuts² and seafood.

As a consequence, the sign adjacent to these unpackaged processed products will be required to state the country of origin and not just state 'imported'. The print size on the sign will need to be at least 9mm and be consistent with legibility requirements. The current practice of placing stickers on produce satisfies the labelling requirements, provided it is clear and unambiguous.

This provision, for example, would apply to:

- both fresh tomatoes and unpackaged sun-dried tomatoes;
- unpackaged fresh and smoked fish fillets and frozen unpackaged crumbed fish fillets; and
- fresh apples and dried apples.

In this way, there will be a consistent approach adopted for the country of origin labelling of unpackaged and packaged foods in the Code.

While the Draft Assessment Report did not canvass varying the scope of existing country of origin requirements for unpackaged foods, some submitters did. Submissions from consumers indicated a preference for an expansion of scope, suggesting more information is better. Export industries expressed reservations due to potential trade related concerns. The policy guidelines were not specific on this issue.

How do we declare country of origin for unpackaged foods of mixed origin?

We are proposing that the sign next to the container of unpackaged foods of mixed origin should either:

- list the countries the unpacked foods came from; or
- state on the sign that the container comprised a mix of local and imported product.

As an example, a bin of mixed nuts will require either a sign next to the bin of whole produce listing the country or countries of origin, or a statement next to the bin indicating that the produce is a mix of local and imported produce, as appropriate. Each of these requirements would have to satisfy the print requirements below.

² Definition of fruit and vegetables now incorporates nuts.

Should we regulate for print size on labels?

We are proposing to maintain the existing country of origin labelling requirements that specify a minimum print size of 9mm for signs adjacent to unpackaged foods.

In practice the actual 9mm sign near or adjacent to unpackaged Australian product would look like:



In addition, the legibility standard (Standard 1.2.9 in the Food Standards Code) for unpackaged food will apply to all labels and signs stating the country of origin of the product. This requires “each word, statement, expression or design prescribed to be contained, written or set out in a label must, wherever occurring, be so contained, written or set out legibly and prominently such as to afford a distinct contrast to the background, and in the English language.”

It is recognised that, as a general rule, font size (the size of the print on the sign) is only specified in the Food Standards Code for mandatory warning statements. However, in this case we are proposing that this general rule be extended to unpackaged foods to enhance the prominence of the sign displayed in connection with the food.

We are also proposing to review the legibility standard in the Code. The outcome of this review will apply to the labelling of unpackaged foods.

Issues to be addressed – packaged foods

How do we declare country of origin for packaged whole foods and packaged mixed foods?

Labelling requirements for packaged foods will rely on the trade practices law.

The requirements of Australia’s *Trade Practices Act 1974* and New Zealand’s *Fair Trading Act 1986* prohibit the making of false or misleading representations about the place of origin of goods.

For Australia, the *Trade Practices Act* provides the requirements that must be met where the statements ‘Made in’ and ‘Product of’ (and similar statements) are used for a country of origin declaration

Rather than redefine ‘Made in’ and ‘Product of’ in the Code, we intend to rely on trade practices and fair trading laws to regulate this aspect of country of origin labelling. We will produce a user guide to explain the relationship between these laws and the Code.

‘Made in’ can apply to goods that 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. ‘Product of’ is more demanding than ‘Made in’. The country of origin of the ‘Product of’ claim must be the country of origin of each significant ingredient of the food and all or virtually all the processes of production or manufacture of the goods must have happened in that country.

An editorial note in the new standard refers to the requirements of the *Trade Practices Act 1974* and the *Fair Trading Act 1986*.

For food mixtures the use of ‘Product of’ and ‘Made in’ have particular meanings. In the case of a food produced and packed in Australia – e.g. frozen vegetables – the wording ‘Product of Australia’ (or equivalent expression) would be appropriate. Where an imported whole food is packed in Australia – e.g. frozen meat patties – the use of ‘Product of XXX country, packed in Australia’ would be appropriate.

Where foods are made or produced from a range of ingredients, the wording could be as above or be subject to a *qualified* claim, such as ‘Made in country XXX from local and imported ingredients’ or ‘Packed in Australia from local and imported ingredients’.

Will ingredients of foods be labelled?

We do not support origin labelling of individual food ingredients – e.g. identifying the origin of each ingredient of a fruit cake, which may contain fruit, nuts, flour, spices, sugar and other ingredients.

While a number of submitters expressed a preference for declaring the country of origin of ingredients, our examination of this found it to be impractical and at a prohibitive cost. We examined the impact on the food industry, particularly on manufacturers of products that source imported ingredients from a number of countries.

Manufacturers switch between countries as a source of imported ingredients on the basis of seasonality, price, quality and ability to supply the required quantity. A change in labelling every time one of these factors changed would be unreasonably costly. Alternatively, if manufacturers limited their source of ingredients to avoid re-labelling costs, their competitiveness on the market could substantially diminish. In view of these impacts FSANZ is not proposing to require country of origin labelling at the ingredient level.

We have also come to this position having regard to the policy guidance that specifically excluded ingredient labelling.

How should the country of origin be declared? For example, will an address of a manufacturer or a picture of the country satisfy the requirements?

We will require a specific declaration of the country of origin of the food product.

To ensure there is no misunderstanding we are suggesting, that where the name of the country appears in an address on the label, either the words ‘Product of’, ‘Made in’ (or similar words) or a qualified claim should be used along with that country name.

We believe that claims should not confuse or be ambiguous and so an outline of the country or a picture of a koala, kiwi or kangaroo will not be sufficient. In this way a claim like ‘100% Australian owned’ (who owns the company) could not be confused with ‘100% Australian produce’ (where the food comes from).

In addition and to ensure greater clarity, we are proposing to consult with the ACCC and the New Zealand Commerce Commission to achieve consistency in the published user guides on this matter. Our aim is to ensure that consumers have information that is distinct, prominent and unambiguous.

Impacts and implementation

As mentioned, we will consult with ACCC and the New Zealand Commerce Commission regarding the development of guidance material for those areas where trade practices and food law intersect – to clarify when they apply. An awareness campaign designed to raise community understanding generally will also accompany the standard.

We plan to provide a lead-in time that ensures industry can implement the standard at minimum cost. Implementation arrangements specifically include lead-in times – six months for unpackaged foods and certain packaged fresh foods, two years for packaged foods as well as an additional year for packaged stock.

This should enable industry to make the minor refinements to labels within the normal commercial labelling cycle – typically one year to eighteen months for packaged goods. Industry will therefore not incur costs of holding stocks of obsolete labels. Generally in Australia, and for many food product lines in New Zealand, adjustment will not be required because food manufacturers already comply with these measures.

A lead-in time also allows sufficient time for the major retailers to refine online stock control systems for fresh produce. This will allow identification of origin of whole fresh produce. Overall the cost impact of this package of measures for the food industry is expected to be small.

Consumers will benefit under this package because it contains measures designed to increase the consumer’s knowledge of the source of food products.

The new standard provides industry with some flexibility. It is consistent with the *Trade Practices Act* in Australia and the *Fair Trading Act* in New Zealand, which will make it easier for industry to comply.

Having your say

We welcome further comment on the issues and approaches outlined in this Discussion Paper. The paper has been placed on the FSANZ website, together with a comprehensive [fact sheet](#), to facilitate a wider debate. The documents are available at www.foodstandards.gov.au. The Initial Assessment Report and the Draft Assessment Report for Country of Origin Labelling (Proposal P292) are also available at this address.

Individuals and organisations intending to make a submission will find Information for Submitters at www.foodstandards.gov.au/standardsdevelopment/.

Submissions must be received by:

6PM (Canberra Time), Monday 5 September 2005.

The timeline for the Country of Origin Labelling standard is:

12 August 2005: Discussion Paper released for public comment
5 September 2005: Close of submissions
September 2005: Final Assessment Report considered by FSANZ Board
October 2005: Referred to Ministerial Council

Policy guidance

Australia New Zealand Food Regulation Ministerial Council 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 agreements while not being more trade restrictive than necessary.

Specific principles

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

Policy guidance

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

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

As endorsed by ANZFRMC3 - August 2003

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 any country of origin provisions elsewhere in this Code.

[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 any country of origin provisions elsewhere in this Code.

[2] ***Standard 1.2.1 of the Australia New Zealand Food Standards Code is varied by 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) 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] ***The Australia New Zealand Food Standards Code is varied by inserting after Standard 1.2.10 –***

STANDARD 1.2.11

COUNTRY OF ORIGIN REQUIREMENTS

Purpose

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

Table of Provisions

- 1 Application
- 2 Labelling requirements.

Clauses

1 Application

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

Editorial note:

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

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

The net effect is that, from the commencement of Standard 1.2.11, manufacturers and retailers can continue to comply with Standard 1.1.A3 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), 2(3) and 2(4) 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 for catering purposes or sold to the public by restaurants, canteens, schools, caterers or self-catering institutions where the food is offered for immediate consumption.

2 Labelling requirements

(1) The foods listed in Column 1 of the Table to this sub-clause must comply with the labelling requirements in relation to that food listed in Column 2 of the Table.

Table to Sub-clause 2(1)

Column 1	Column 2
Food	Labelling requirement
Packaged food (except that to which sub-clause 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 – (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:

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.

The provisions of this subclause 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.

To comply with this Standard, manufacturers and retailers should be consistent with the trade practices legislation. For Australia, the provisions of sections 65AA-AN of the *Trade Practices Act 1974* govern statements the country of origin of where food is made or produced where expressions including ‘made in’ and ‘product of’ or like statements are used. These statements may only be used in the following circumstances:

- (a) ‘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’, ‘Australian made’ for example.

- (b) ‘Product of’ is more demanding than ‘Made in’ and the country of origin of the claim must be the country of origin of each significant ingredient of the food and all or virtually all the processes of production or manufacture of the goods must have happened in that country.

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

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 are entitled, as a matter of law, to 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 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.

Retailers 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.

- (2) Subject to sub-clause 3 the foods listed and displayed in the manner described in Column 1 of the Table to this sub-clause must comply with the labelling requirements in relation to that food listed in Column 2 of the Table.

Table to Sub-clause 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>A label on or in connection with the display of the food identifying –</p> <ul style="list-style-type: none"> (a) the country or countries of origin of the food; or (b) a statement indicating that the foods are a mix of local and/or imported produce as the case may be; or

<p>Fresh whole or cut fruit and vegetables</p>	<p>A label on or in connection with the display of the food identifying – (a) the country or countries of origin of the food; or (b) a statement indicating that the foods are a mix of local and/or imported produce as the case may be.</p>
<p>Whole or cut fruit and vegetables where that produce has been preserved, cooked, frozen or dehydrated but not where that produce has been mixed with food not regulated by this subclause.</p>	<p>A label on or in connection with the display of the food identifying – (a) the country or countries of origin of the food; or (b) a statement indicating that the foods are a mix of local and/or imported produce 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 identifying – (a) the country or countries of origin of the food; or (b) a statement indicating that the foods are a mix of local and/or imported produce as the case may be.</p>

(3) Where the food listed in Column 1 to the Table to sub-clause 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 shall be in size of type of at least 9mm

Editorial note:

The sub-clause 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 the option to either label the individual commodities, such as with a sticker, as is the current practice with apples, oranges and lemons etc or on a sign in association with the food in 9mm 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 produce 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.

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

[5] *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

Examples of how the new standard will apply

A bean product in a can on a supermarket shelf

Bean salad is a composite food that would carry a country of origin declaration.

1. Where the beans are grown in Australia/New Zealand and processing occurs in Australia/New Zealand (so that a significant ingredient or significant component of the goods and all processes involved in the production or manufacture of the goods occurred in Australia/New Zealand), the declaration could be:

‘Product of Australia’ or ‘Australian product’ or ‘Australian produce’ or ‘Produce of Australia’

‘Product of New Zealand’ or ‘New Zealand product’ or ‘New Zealand produce’ or ‘Produce of New Zealand’

2. Where some beans are imported, some grown in Australia/New Zealand and the processing (substantial transformation) of the imported goods occurred in Australia/New Zealand, and provided 50% of the costs have been incurred in Australia/New Zealand, the declaration could be:

‘Made in Australia’ or ‘Australian made’ or ‘Manufactured in Australia’ or ‘Australian manufacture’

‘Made in New Zealand’ or ‘New Zealand made’ or ‘Manufactured in New Zealand’ or ‘New Zealand manufacture’

3. Where the beans were imported and the processing occurred in Australia (or New Zealand), where less than 50% of the costs have been incurred in Australia (or New Zealand), the declaration could be a qualified claim such as:

‘Packed in Australia from imported ingredients’ or ‘Made in Australia from imported ingredients’

‘Packed in New Zealand from imported ingredients’ or ‘Made in New Zealand from imported ingredients’

Where the beans are processed and are displayed for retail sale in an unpackaged form, such as in a salad and only where the beans have been mixed in with other fruit or vegetables the retailer is required to provide a declaration of the country or countries of origin of the food or a statement that the food is a mix of local and imported produce as the case may be.

For example:

Made from beans grown in Australia and New Zealand

Made from local and imported beans

Mixed unpackaged foods

For certain unpackaged foods, mixes may be available for sale.

This example³ is for mixed nuts, where a market has a container of mixed nuts:

1. Where the nuts were grown in a single country, the declaration could be:

‘Product of Australia (or New Zealand)’

‘Product of country XXXX’
2. Where some nuts are imported, some grown in Australia (or New Zealand), the declaration could be a qualified claim such as:

“Australian (or New Zealand) and imported nuts’ or ‘Local and imported nuts’

Alternatively the retailer could indicate the countries of origin for the various nuts:

‘Nuts from Australia (or New Zealand) and country XXXX’
3. Where the nuts are imported from more than one country the declaration could be a qualified claim such as:

“Nuts from country XXXX and country YYYYY” or

“Nuts blended in country XXXX from local and imported ingredients”

³ In each case, the print size on a display sign must be at least 9mm.

Country of Origin Labelling – proposed changes

Conditions ⁴	Current requirements	Proposed requirements
<p>Fresh (packaged and unpackaged)</p> <p><i>Examples:</i> fresh <u>packaged</u> – tomatoes in a sealed pack fresh <u>unpackaged</u> – loose tomatoes</p>	<p>Fresh unpackaged – statement on or in connection with the display, indicating the country of origin or a statement indicating that the product is imported.</p> <p>Fresh packaged – statement that identifies the country in which the food was made or produced.</p> <p>A statement that identifies the country in which the food was packed for retail sale <u>and</u> if any of the ingredients of the food does not originate in the country in which the food was packed for retail sale, a statement identifying the country of origin of the ingredients <u>or</u> a statement to the effect that the food is made from imported ingredients or a combination of local and imported ingredients is also considered as compliant with the standard.</p>	<p>Fresh packaged and unpackaged – statement on package (or food) or in connection with the display, indicating the specific country or countries of origin or a mix of local and imported produce.</p> <p><i>Examples:</i></p> <p>Labels (stickers) on individual fruit and vegetables must comply with the general legibility requirements of the Code – i.e. clear, unambiguous and with lettering against a contrasting background.</p> <p>A sign adjacent to mixed unpackaged produce must carry lettering at least 9mm in size and conform to legibility requirements.</p>

⁴ The scope of both the current standard and proposed standard applies to all packaged food and the following unpackaged food – fruit, vegetables (including nuts) and seafood.

Conditions ⁴	Current requirements	Proposed requirements
<p>Processed unpackaged</p> <p><i>Example:</i> dehydrated apple available at self-serve counters.</p>	<p>No requirement for country of origin labelling</p>	<p>As for unpackaged fresh produce.</p>
<p>Packaged – including canned and frozen packaged.</p>	<p>A statement that identifies the country in which the food was made or produced. A statement that identifies the country in which the food was packed for retail sale <u>and</u> if any of the ingredients of the food does not originate in the country in which the food was packed for retail sale, a statement identifying the country of origin of the ingredients <u>or</u> a statement to the effect that the food is made from imported ingredients or a combination of local and imported ingredients is also considered as compliant with the standard.</p>	<p>Option 1 - A statement that identifies the country in which the food was made or produced; or Option 2 - For foods that contain local and imported ingredients – a qualified statement to the effect that the food is constituted from ingredients imported into Australia or some other country or from local and imported ingredients.</p> <ul style="list-style-type: none"> • Both Australian and imported foods will need to comply with TPA requirements for ‘product of’ or ‘made in’ the relevant country. • TPA requirements will be outlined in an editorial note within the standard.

Conditions ⁴	Current requirements	Proposed requirements
Labelling	<p>Unpackaged foods – The print on the statement on or in association with the display should be at least 9mm type.</p> <p>Packaged foods – Standard 1.2.9 of the Food Standards Code sets out legibility requirements. 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.</p>	<p>Unpackaged foods – The requirement of 9mm type on signs adjacent to produce will be preserved and clarity of presentation will be enhanced by re-enforcing the current legibility requirements.</p> <p>Packaged fresh foods – Legibility expectations will be clarified and set out in an editorial note in the Country of Origin Labelling standard to enable compliance and enforcement.</p>
Enforcement	<p>AQIS State and Territory responsibility under their legislation. ACCC and NZCC have enforcement powers in relation to country of origin claims under the respective trade practices laws of Australia and New Zealand.</p>	<p>No change.</p>