



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

5-06

9 August 2006

INITIAL ASSESSMENT REPORT

APPLICATION A571

PRESCRIBED NAME FOR WINE PRODUCTS

DEADLINE FOR PUBLIC SUBMISSIONS: 6pm (Canberra time) 20 September 2006
SUBMISSIONS RECEIVED AFTER THIS DEADLINE
WILL NOT BE CONSIDERED

(See 'Invitation for Public Submissions' for details)

For Information on matters relating to this Assessment Report or the assessment process generally, please refer to <http://www.foodstandards.gov.au/standardsdevelopment/>

Executive Summary

Purpose

This Application (A571) from the Winemakers' Federation of Australia (WFA) (the Applicant) seeks to amend Standard 2.7.4 – Wine and Wine Product of the *Australia New Zealand Food Standards Code* (the Code). The WFA is seeking to define the term 'wine based beverage', to declare 'wine based beverage' as a prescribed name and to delete the current definition for wine product.

The purpose of this Initial Assessment Report is to provide relevant information, supplied by the Applicant, to assist in identifying the affected parties and to outline the relevant issues necessary to complete assessment of the Application.

The Applicant is concerned that the current definition for wine product can be misleading to consumers when used in combination with labelling the country of origin. The WFA is therefore proposing that FSANZ:

- define the term 'wine based beverage' as 'wine based beverage is an alcoholic drink, other than wine, where the contained alcohol derives predominantly from wine';
- declare 'wine based beverage' as a prescribed name; and
- delete the current definition for wine product 'wine product means a food containing no less than 700 mL/L of wine as defined in this Standard, which has been formulated, processed, modified or mixed with other foods such that is not wine'.

FSANZ has identified two options that are available for proceeding with assessment of Application A571:

1. Option 1 – maintain *status quo*; or
2. Option 2 – amend Standard 2.7.4 as per the Application.

This Initial Assessment Report is not an assessment of the merits of the Application but rather is an assessment of whether the Application should be accepted for further consideration, according to criteria laid down in the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

Reasons for Assessment

After considering the requirements for Initial Assessment as prescribed in section 13 of the FSANZ Act, FSANZ has decided to accept the Application for the following reasons:

- The Application seeks to amend a regulatory measure. Such an approval, if accepted, would warrant a variation to Standard 2.7.4.
- The Application is not so similar to any previous application that it ought not be accepted.

- At this stage no other relevant matters are apparent.

Consultation

Public submissions are now invited on this Initial Assessment Report. Comments are specifically requested in relation to evidence of potential consumer deception and on the cost / benefit aspects of this Application.

Responses to this Initial Assessment Report will be used to develop the next stage of the Application and the preparation of a Draft Assessment Report.

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INVITATION FOR PUBLIC SUBMISSIONS

FSANZ invites public comment on this Initial Assessment Report A571, including identification and discussion of the key issues and variation/s to the Code for approval by the FSANZ Board.

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

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

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

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

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

Submissions need to be received by FSANZ by 6pm (Canberra time) 20 September 2006.

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

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

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

INTRODUCTION

1. Background

FSANZ received an Application on 15 August 2005 from the Winemakers' Federation of Australia (WFA) to amend Standard 2.7.4 – Wine and Wine Product of the Code. The WFA is seeking to define the term 'wine based beverage', to declare 'wine based beverage' to be a prescribed name and to delete the current definition for wine product. The WFA also initially sought to incorporate definitions for 'Vermouth' and 'Ginger Wine'. This Application was altered on 6 April 2006 with the Applicant withdrawing the request to incorporate definitions for 'Vermouth' and 'Ginger Wine'. This Initial Assessment Report discusses the issues associated with defining the term 'wine based beverage', declaring 'wine based beverage' to be a prescribed name and deleting the current definition for wine product.

Work on this Group 2 Application commenced on 1 March 2006.

1.1 Current Standard

Standard 1.2.2 – Food Identification Requirements of the Code, requires the label on a package of food to include either:

- the prescribed name of the food, where the Code declares a name to be prescribed; or
- a name or description of the food sufficient to indicate the true nature of the food.

Standard 2.7.4 – Wine and Wine Product, of the Code, includes definitions and specific compositional requirements for 'wine' and 'wine products'. These definitions are for the purpose of defining specific compositional requirements for wine and wine products and are not defined for the purpose of representing these products to consumers. Accordingly 'wine' and 'wine product' are specifically stated in the Code as not being prescribed names, therefore are not required to be used in the labelling or representation of these products. However, this does not prevent the voluntary use of these terms by manufacturers, including where these terms would be an appropriate common name to describe the true nature of a product.

Standard 1.2.11 – Country of Origin Requirements (Australia only) sets out the requirements for country of origin labelling of packaged foods and certain unpackaged foods. The Standard requires most packaged foods to be labelled with a statement on the package that identifies where the food was made or produced; or a statement that identifies the country where the food was made, manufactured or packaged for retail sale and to the effect that the food is constituted from imported ingredients or from local and imported ingredients. Standard 1.2.11 applies to Australia only, however the provisions in the transitional country of origin Standard 1.1A.3 that require a country of origin declaration in New Zealand on the label of each package of wine or wine product, will continue to operate until December 2007.

The *Trade Practices Act 1974* provides the basis for the use of statements such as 'product of' and 'made in' and Standard 1.2.11 also provides guidance, in the form of an editorial note, on the use of these terms, however this Standard does not actually prescribe the terminology to be used in the country of origin declaration.

1.2 Summary of Proposed Amendments

The Applicant has proposed that FSANZ:

- define the term ‘wine based beverage’ as ‘wine based beverage is an alcoholic drink, other than wine, where the contained alcohol derives predominantly from wine’;
- declare ‘wine based beverage’ to be a prescribed name; and
- delete the current definition for wine product ‘wine product means a food containing no less than 700 mL/L of wine as defined in this Standard, which has been formulated, processed, modified or mixed with other foods such that is not wine’.

2. The Issue / Problem

The Applicant is concerned that the product name ‘wine product’ can be misleading when used in combination with labelling the country of origin of the product, for example:

- ‘Wine. Product of Australia’ when labelling wine; and
- ‘Wine Product of Australia’ when labelling a wine product.

The Applicant provided the example of wine that is diluted through the addition of 30% water and subsequently presented as a ‘Wine Product of Australia’ which could be confused with ‘Wine. Product of Australia’. Their concern relates to confusion around the type of product that is being represented (wine or wine product) rather than whether the product is produced in Australia or not.

In considering this issue, FSANZ requested and was provided with actual examples of products that have used the above expressions. It should be noted that the use of the terms ‘wine’ and ‘wine product’ as product names is voluntary and that the placement of the name of such products and the country of origin declaration is at the discretion of the manufacturer, provided that the information is legible and prominent, and complies with relevant trade practices legislation.

3. Objectives

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

- the protection of public health and safety;
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.

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

- the need for standards to be based on risk analysis using the best available scientific evidence;
- the promotion of consistency between domestic and international food standards;
- the desirability of an efficient and internationally competitive food industry;
- the promotion of fair trading in food; and
- any written policy guidelines formulated by the Ministerial Council.

The specific objectives for the assessment of this application are to:

- protect the public health and safety by preventing misleading consumer.

4. Key Assessment Questions

The following questions were developed within FSANZ for the risk assessors to consider at Initial Assessment.

- is potential consumer deception substantiated?
- if potential consumer deception is substantiated will the proposed amendments to the Code address this issue?

RISK ASSESSMENT

5. Risk Assessment Summary

The Applicant has not provided evidence of the consumer being misled. The applicant states in the Application that there is only 'potential' for consumers to be misled by the use of such statements. FSANZ is not aware of any consumer research that would provide evidence of consumers being misled or confused by such statements.

In terms of the declaration 'wine product of Australia' on the label of a wine product, FSANZ considers that this is potentially inconsistent with the guidance provided in Standard 1.2.11 for country of origin declarations and the requirements of the *Trade Practices Act 1974* or the *New Zealand Fair Trading Act 1986* and potentially falls outside the 'safe harbour' defence. FSANZ is not aware of any such regulatory action having taken place.

FSANZ considers that if 'wine based beverage' is defined and declared to be a prescribed name, there may be greater regulatory clarity.

RISK MANAGEMENT

6. Options

FSANZ is currently considering two options for addressing this Application:

6.1 Option 1 – Maintain *status quo*

Maintain *status quo* by not amending the Code as this is an enforcement issue.

6.2 Option 2 – Amend Standard 2.7.4 as per the Application

Amend the Code by defining the term ‘wine based beverage’, declaring ‘wine based beverage’ as a prescribed name and deleting the current definition for wine product to prevent the potential to mislead consumers.

7. Impact Analysis

7.1 Affected Parties

The affected parties to this Application include the following:

1. industry, who may be required to change labelling;
2. consumers, particularly those who may be misled; and
3. government, who will need to ensure that products are labelled correctly.

7.2 Benefit Cost Analysis

In amending food standards for Australia and New Zealand, FSANZ is required to consider the impact of all options on all sectors of the community, including consumers, the food industry and governments in both countries. The regulatory impact assessment identifies and evaluates, though is not limited to, the costs and benefits of the proposed regulation, including likely health, economic and social impacts.

To develop the analysis of the costs and benefits of the options proposed, FSANZ seeks comment on the following:

- What is the likely impact on consumers, industry and government if Option 1 – *Status quo* is maintained?
- What is the likely impact on consumers, industry and government if Option 2 – Amend Standard 2.7.4 in the Code is adopted?
- What are the costs or benefits for consumers - consumer information, etc?
- What are the costs or benefits for business – change of labelling, etc?
- What are the costs or benefits for government – enforcement, etc?

7.3 Comparison of Options

At this Initial Assessment stage, no comparison of the identified regulatory options can be undertaken. Further information on the risk assessment and risk management aspects of this Application is required before such a comparison can be made. A comparison will therefore be made at Draft Assessment

COMMUNICATION

8. Communication and Consultation Strategy

This Application is seeking to amend an existing Standard. As a result FSANZ has applied a basic communication strategy to Application A571. This involves advertising the availability of assessment reports for public comment in the national press and making the reports available on the FSANZ website. FSANZ will issue a media release drawing journalists' attention to the matter.

The Applicant and individuals and organisations that make submissions on this Application will be notified at each stage of the Application. If approval is recommended, once the FSANZ Board has approved the Final Assessment Report, FSANZ will notify the Ministerial Council. The Applicant and Stakeholders, including the public, will be notified of the gazettal of changes to the Code in the national press and on the website.

FSANZ provides an advisory service to the jurisdictions on changes to the Code.

9. Consultation

Public comment is sought on the Initial Assessment Report for this Application.

The purpose of the Initial Assessment Report is to seek early input on a range of specific issues known to be of interest to various stakeholders, to seek input on the likely regulatory impact at an early stage and to seek input from stakeholders on any matter of interest to them in relation to the Application.

All stakeholders that make a submission in relation to the Application will be included on a mailing list to receive further FSANZ documents in relation to the application. If readers of this Initial Assessment Report are aware of others who might have an interest in this Application, they should bring this to their attention. Other interested parties, as they come to the attention of FSANZ, will also be added to the mailing list for public consultation.

At this stage FSANZ is seeking public comment to assist it in assessing this Application. All stakeholders must observe the relevant due date for submissions.

Comments that would be useful could cover:

- What evidence is there that consumers are being misled as proposed by the Applicant?
- Whether the options proposed will prevent the potential misleading of consumers;

- Parties that might be affected by having this Application approved or rejected; and
- Potential costs and benefits to consumers, industry and government.

9.1 World Trade Organization (WTO)

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

Amending the Code regarding the definition of wine products is unlikely to have a significant effect on international trade. This issue will be fully considered at Draft Assessment and, if necessary, notification will be recommended to the agencies responsible in accordance with Australia's and New Zealand's obligations under the WTO Technical Barrier to Trade (TBT) or Sanitary and Phytosanitary Measure (SPS) Agreements. This will enable other WTO member countries to comment on proposed changes to standards where they may have a significant impact on them.

CONCLUSION

10. Conclusion and Preferred Option

This Initial Assessment Report is based mainly on information provided by the Applicant and discusses relevant issues in relation to amending Standard 2.7.4 of the Code. After having regards to the requirements for Initial Assessment as prescribed in section 13 of the FSANZ Act, FSANZ has decided to accept the Application for the following reasons:

- the Application seeks to amend a regulatory measure and as such would warrant a variation to Standard 2.7.4;
- the Application is not so similar to any previous application that it ought not be accepted; and
- at this stage no other relevant matters are apparent.

Responses to this Initial Assessment Report will be used to develop the next stage of the Application and the preparation of a Draft Assessment Report.