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

4-04
26 May 2004

INITIAL ASSESSMENT REPORT

PROPOSAL P292

COUNTRY OF ORIGIN LABELLING OF FOOD

DEADLINE FOR PUBLIC SUBMISSIONS to FSANZ in relation to this matter:
7 July 2004
(See 'Invitation for Public Submissions' for details)

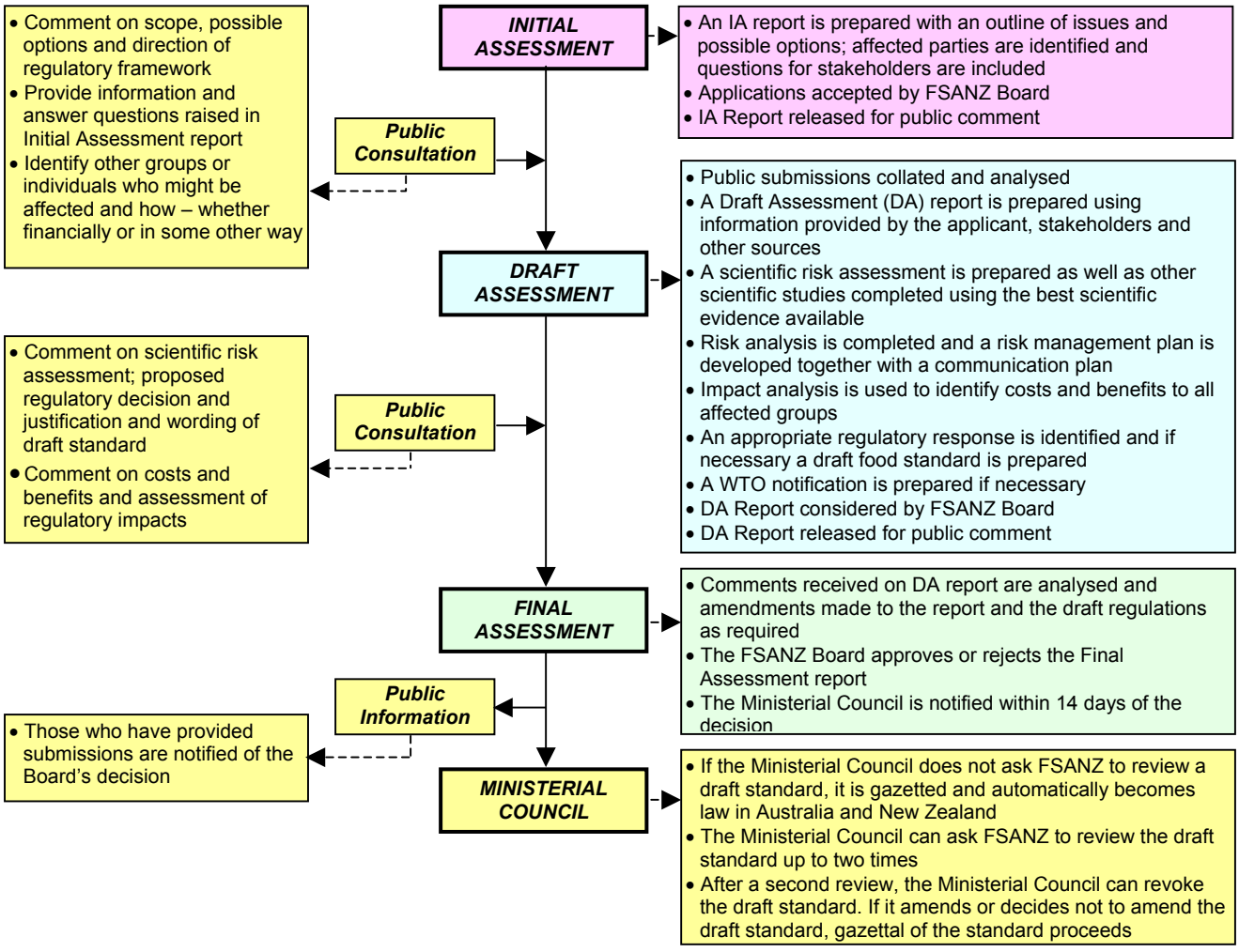
FOOD STANDARDS AUSTRALIA NEW ZEALAND (FSANZ)

FSANZ's role is to protect the health and safety of people in Australia and New Zealand through the maintenance of a safe food supply. FSANZ is a partnership between ten Governments: the Commonwealth; Australian States and Territories; and New Zealand. It is a statutory authority under Commonwealth law and is an independent, expert body.

FSANZ is responsible for developing, varying and reviewing standards and for developing codes of conduct with industry for food available in Australia and New Zealand covering labelling, composition and contaminants. In Australia, FSANZ also develops food standards for food safety, maximum residue limits, primary production and processing and a range of other functions including the coordination of national food surveillance and recall systems, conducting research and assessing policies about imported food.

The FSANZ Board approves new standards or variations to food standards in accordance with policy guidelines set by the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) made up of Commonwealth, State and Territory and New Zealand Health Ministers as lead Ministers, with representation from other portfolios. Approved standards are then notified to the Ministerial Council. The Ministerial Council may then request that FSANZ review a proposed or existing standard. If the Ministerial Council does not request that FSANZ review the draft standard, or amends a draft standard, the standard is adopted by reference under the food laws of the Commonwealth, States, Territories and New Zealand. The Ministerial Council can, independently of a notification from FSANZ, request that FSANZ review a standard.

The process for amending the *Australia New Zealand Food Standards Code* is prescribed in the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). The diagram below represents the different stages in the process including when periods of public consultation occur. This process varies for matters that are urgent or minor in significance or complexity.



INVITATION FOR PUBLIC SUBMISSIONS

FSANZ has prepared an Initial Assessment Report of Proposal P292, which includes the identification and discussion of the key issues. FSANZ invites public comment on this Initial Assessment Report for the purpose of preparing an amendment to the Code for approval by the FSANZ Board.

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

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

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

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

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

Submissions should be received by FSANZ **by 7 July 2004**. Submissions received after this date may not be considered, unless the Project Manager has given prior agreement for an extension.

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

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

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Executive Summary

The purpose of Proposal P292 is to review the current provisions regarding mandatory country of origin labelling (CoOL) contained in Standard 1.1A.3 of the *Australia New Zealand Food Standards Code* (the Code). These provisions need to be reviewed in the context of policy guidelines for CoOL (Section 1.3) developed by the Australia New Zealand Food Regulation Ministerial Council (Ministerial Council).

The issues to be considered in this Proposal in relation to the review of the transitional Standard 1.1A.3 CoOL, which are discussed in more detail in Section 5 of this report, include:

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

The Initial Assessment Report raises a number of questions in relation to these issues and the various regulatory options outlined in Section 6 of the report. FSANZ encourages your feedback on these questions and the related regulatory options.

The regulatory options are:

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

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

1. Introduction

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

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

1.2 Nature of Proposal

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

In December 2003, the Ministerial Council agreed to policy guidelines for the regulation of CoOL on food. The policy guidelines are set out in Section 1.3. These guidelines need to be taken into consideration in finalising the review of CoOL.

1.3 Ministerial Council Policy Guidelines

1.3.1 Scope/Aim

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

1.3.2 High Order Principles

- Ensure that consumers have access to accurate information regarding the contents and production of food products.

- Ensure that consumers are not misled or deceived regarding food products.

- Be consistent with, and complement, Australia's and New Zealand's national policies and legislation including those relating to fair-trading and industry competitiveness.

- Be cost effective overall, and comply with Australia and New Zealand obligations under international trade agreements while not being more trade restrictive than necessary

1.3.3 Specific Principles

- Balance the benefit to consumers of country of origin labelling with the cost to industry and consumers of providing it.

- Ensure consistent treatment of domestic and imported food products with regard to country of origin requirements.

1.3.4 Policy Guidance

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

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

2. Background

2.1 History

2.1.1 Proposal P90

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

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

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

2.1.2 Proposal P237

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

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

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

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

The FSANZ Board considered that raising a new Proposal rather than continuing with P237 would allow FSANZ to take better account of the Ministerial Council policy guideline and to consult on new options which meet the information needs of consumers and which are consistent with Australian and New Zealand national policy and relevant international trade agreements.

2.2 Current Standard

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

The transitional Standard requires the label on or attached to all packaged food in Australia to contain a statement that identifies the country or countries in which the food was made or produced. This requirement may be satisfied by including on the label a statement identifying the country in which the food was packed for retail sale, and, if any of the ingredients do not originate in the country, a statement to the effect that the food is made from local and imported ingredients, as applicable.

In addition, certain unpackaged foods, namely uncooked fish, vegetables, nuts and fresh fruit that originate from anywhere other than from Australia and New Zealand, are required to be labelled with their country of origin, or a statement indicating that they are imported.

The transitional standard for CoOL of food will remain in place until this review is completed.

3. Regulatory Problem

Under the Australia New Zealand Food Standards Setting Agreement (the Treaty), Australia and New Zealand have agreed to the development of joint food standards to apply in both countries.

The development of joint food standards involved a review of all existing provisions in the former Australian *Food Standards Code* and *New Zealand Food regulations 1984*, including those relating to CoOL. The transitional Standard for CoOL (Standard 1.1A.3) was placed in the Code as a temporary solution to the administrative problem where the existing regulations had been repealed (Australian *Food Standards Code* and *New Zealand Food Regulations 1984*), before a new Standard was finalised.

Divergent views among stakeholders with regard to the regulation of CoOL saw FSANZ refer the matter to the Ministerial Council for policy guidance. The Ministerial Council policy guidelines on CoOL were passed to FSANZ in December 2003. These guidelines provide FSANZ with the mandate and direction to complete the review of CoOL (Section 1.3).

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

4. Objective

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

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

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

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

The **specific objectives** of this Proposal are consistent with the high order principles outlined in Section 1.3. They are to:

- Ensure that consumers have access to accurate information regarding the contents and production of food products.

- Ensure that consumers are not misled or deceived regarding food products.

- Be consistent with, and complement, Australia's and New Zealand's national policies and legislation including those relating to fair-trading and industry competitiveness.

- Be cost effective overall, and comply with Australia's and New Zealand's obligations under international trade agreements while not being more trade restrictive than necessary.

5. Relevant Issues

5.1 International Practice

5.1.1 Codex

The Codex *General Standard for the Labelling of Pre-packaged Foods* states in section 4.5 that:

- The country of origin should be declared if its omission would mislead or deceive the consumer.

- When a food undergoes processing in a second country, which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

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

The Codex Committee on food labelling is currently considering whether to approve new work, proposed by the delegation of the United Kingdom and supported by Malaysia and Switzerland, on an amendment to the *General Standard for the Labelling of Prepackaged Foods* in order to amend the provisions for CoOL.

5.1.2 United Kingdom and European Union

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

The Food Standards Agency (FSA) of the UK is pressing for changes to EU legislation to require origin labelling on a wider range of foods and for clear rules on the use of terms like 'produce of ...'. The FSA is putting the case for more origin labelling vigorously at international levels, particularly through the Codex Committee on Food Labelling.

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

5.1.3 United States of America

CoOL is only mandatory for imported foods under the *Tariff Act 1930*. Country of origin claims are regulated by the Federal Trade Commission and the US Customs Service as part of the general trade regulation, rather than by the Food and Drug Administration as part of general food regulation. The law requires that a country of origin statement be conspicuous. If a domestic firm's name and address is declared as the firm responsible for distributing the product, then the country of origin statement must appear in close proximity to the name and address and be at least comparable in letter size.

The *Farm Security and Rural Investment Act of 2002*, more commonly known as the 2002 Farm Bill, requires mandatory CoOL for beef, pork, fish, perishable agriculture commodities and peanut products produced in the US by 30 September 2004. However, the Senate has since approved an omnibus appropriations bill containing a two-year moratorium on mandatory CoOL for products produced in the US. This will delay mandatory CoOL on US produce until 30 September 2006.

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

5.2 International Trade

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

5.2.1 World Trade Organisation (WTO) Obligations

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

5.2.1.1 Technical Barriers to Trade

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

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

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

The issue of CoOL for imported and domestic products needs to be considered in the context of the Articles outlined above and the effect that their application may have on Australia and New Zealand's imports/exports with other countries. Determination of whether existing regulations are trade restrictive or favour domestic products over imported products needs to be considered in the context of the objectives of this Proposal (Section 5) and the Ministerial Council Policy Guideline (Section 1.3).

Key Questions

Does the Australian food industry, the New Zealand food industry and food importers have any evidence that the existing CoOL requirements in the Code are a barrier to trade?

If so, to what extent is it a barrier to trade and how can this be addressed?

5.3 Consistency with other Legislation

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

5.3.1 Trade Practices Act 1974 (Commonwealth)

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

The general test for country of origin representations is that:

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

Use of 'Product of…' representations do not contravene the TPA where all the significant ingredients or components come from the country represented, and all, or virtually all, of the production/manufacturing processes also occurred in the country represented. It is this premium label that indicates to consumers that a food contains ingredients from Australia and was produced or manufactured in Australia. However, there is nothing to prevent local producers and manufacturers from clearly identifying the actual amount of Australian (or other country) content or input in their products. Many businesses choose to provide this information to consumers as it may provide them with a market defence.

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

5.3.2 Commerce Trade Descriptions Act 1905 (Commonwealth)

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

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

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

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

5.3.3 Australian State and Territory regulations

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

5.3.4 New Zealand Fair Trading Act 1986

The *New Zealand Fair Trading Act 1986* (NZFTA) is modelled on the TPA. The NZFTA does not require all products to be labelled with country of origin. However, where a product is labelled, any claims made about its origin must not be misleading or deceptive. In relation to food, this includes labelling of food products, and any advertising, promotional material, or verbal representation about those products.

While the NZFTA does not require that all products be labelled with a place of origin, where a product is labelled, any claims made about its origin must not be misleading. S.13 (j) provides that:

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

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

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

Key Questions

Do submitters believe the existing CoOL requirements in New Zealand and Australia are consistent with fair-trading and import regulations?

If there is inconsistency between existing CoOL requirements and fair-trading and import regulations, how could a new Standard address such concerns?

5.4 Consistency within the Code

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

In order to prevent confusion and provide adequate information to consumers to make informed choices it is important to ensure that all labelling standards are applied consistently.

5.5 CoOL of Individual Ingredients

Currently the transitional standard (Standard 1.1A.3) requires fruit juice, orange juice, fruit drinks and spirits which are made from a combination of imported ingredients to declare the identity of each country of the imported ingredients from which the product is made. The policy guideline (Attachment 1) indicates that in developing a standard FSANZ should ensure that CoOL applies to the whole food, not individual ingredients.

Key Questions

What impact will applying CoOL to the whole food rather than individual ingredients have on industry?

What are the benefits of applying CoOL to the whole food?

6. Regulatory Options

Possible options are:

1. Adopt the current transitional Standard into the Code.

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

7. Impact Analysis

FSANZ is required, in the course of developing regulations suitable for adoption in Australia and New Zealand, to consider the impact of various options on all sectors of the community, including consumers, the food industry and governments in both countries. The regulatory impact assessment will identify and evaluate, though not be limited to, the advantages and disadvantages of amendments to the standards, and their health and economic impacts.

7.1 Affected Parties

Parties Affected by this Proposal include:

1. Industry – food manufacturers, processors or growers and importers.

2. Consumers.

3. Government agencies that regulate and enforce the food industry in Australia and New Zealand.

7.2 Data Collection

Preliminary information gathered by FSANZ at Initial Assessment has been provided under Section 5 above. This information, together with relevant qualitative and quantitative data to be obtained during the first round of public consultation, will be used to develop a regulatory impact analysis for the Draft Assessment Report. Relevant data may be provided in the form of scientific or non-scientific evidence. Submitters are encouraged to present data in response to the key issues listed above, giving consideration to all affected parties wherever possible.

7.3 Impact Analysis

7.3.1 Industry

If a new food standard for CoOL is developed, there may be greater consistency between CoOL requirements and Australia and New Zealand national policies and legislation including those relating to fair-trading and industry competitiveness. However, this could result in significant costs to New Zealand industry, particularly if it is required to label all packaged foods, which is not a current requirement.

7.3.1.1 Option 1 – Adopt the current transitional Standard into the Code

Key Questions

What are New Zealand industry views on the costs and benefits of maintaining the status quo in New Zealand that in general does not require CoOL of food?

How substantial are the costs and benefits to Australian industry of maintaining the current transitional standard within the Code?

Are the current requirements regarding CoOL problematic from the perspective of importers of food products into Australia and New Zealand? If so, to what extent is the food importing industry affected?

Is there any evidence showing the percentage of imported products that have to be relabelled when entering New Zealand/Australia in order to comply with the CoOL requirements set out in Standard 1.1A.3 of the Code?

What cost is involved in the re-labelling of imported food products to satisfy the current requirements around CoOL?

Are the current requirements regarding CoOL problematic from the perspective of domestic manufacturers/producers of food products? If so to what extent are domestic manufacturers/producers affected?

7.3.1.2 Option 2 - Develop a revised Standard in the Code that is consistent with the Ministerial Council Policy Guideline, other relevant legislation and Australian and New Zealand obligations under WTO Agreements

Key Questions

What would be the benefits to Australian industry, New Zealand industry and importers?

What would be the costs to Australian industry, New Zealand industry and importers?

Would there be any disadvantage to either importers or manufacturers/producers of domestic products if a new standard were developed to ensure consistency between local and imported product. If so, what costs would be incurred?

7.3.2 Consumers

The development of a new Standard for CoOL that applies equally to both Australia and New Zealand will ensure consistency in the application of the provisions in both countries. This may promote challenges to consumers in both countries particularly if the provisions are different to the current transitional Standard.

7.3.2.1 Option 1 – Adopt the current transitional Standard into the Code

Key Questions

Are Australian consumers concerned by the absence of CoOL on most unpackaged food products?

In what circumstances do Australian consumers benefit from CoOL declarations?

Are New Zealand consumers concerned by the absence of CoOL?

Do consumers perceive any costs in maintaining the current requirements?

7.3.2.2 Option 2 - Develop a revised Standard in the Code that is consistent with the Ministerial Council Policy Guideline, other relevant legislation and Australian and New Zealand obligations under WTO Agreements

Key Questions

If a new standard for CoOL is developed that applies to both Australia and New Zealand:

What would be the benefits and costs to consumers?

Would there be any risks to consumers?

7.3.3 Government

The New Zealand Government and the Australian and State/Territory Governments are responsible for enforcing the Code. The ACCC and the NZ Commerce Commission enforce legislation relating to the fair trading legislation. At present there is some inconsistency between the transitional Standard 1.1A.3 for CoOL and fair-trading legislation in Australia. For example, it is possible to have a food that complies with the requirements in the Code but does not meet the safe harbour provisions outlined in the Trade Practices Act for 'Made in' and 'Product of' claims.

There is border control legislation, which also regulates CoOL of food. However, it is likely that the regulations will be repealed resulting in CoOL not being required on imported products under border legislation. The Code, of course, applies at the border.

7.3.3.1 Option 1 – Adopt the current transitional Standard into the Code

Key Questions

What is the current rate of non-compliance of imported/domestic products re: CoOL in the New Zealand/Australia market?

If non-compliance is a problem, how significant a problem is it?

How substantial is the problem of inconsistency between CoOL requirements in the Code and other legislation?

7.3.3.2 Option 2 - Develop a revised Standard in the Code that is consistent with the Ministerial Council Policy Guideline, other relevant legislation and Australian and New Zealand obligations under WTO Agreements

Key Questions

What are the benefits of ensuring consistency between the Code and other legislation?

What are the costs of having to enforce new regulations?

8. Consultation

FSANZ is seeking public comment in order to assist in the assessment of this Proposal. The views of submitters will assist in the development of the Draft Assessment and a preferred regulatory approach for CoOL. There will be a further round of public comment after the Draft Assessment Report is completed.

Submitters are encouraged to inform FSANZ of any key stakeholder groups they believe should be informed about this consultation process.

8.1 External Advisory Group

FSANZ is planning to convene an external advisory group (EAG) of key stakeholders to provide advice on the review of CoOL. In particular the EAG will be asked to:

- consider and provide feedback on submissions/comments received in relation to stakeholder consultations; and
- provide advice on the costs and benefits of the proposed options.

8.2 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.

There are relevant international standards and amending the Code to allow a revised standard for CoOL is unlikely to have a significant impact on trade, but may have a positive effect for those countries importing to Australia and New Zealand. 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.

9. Conclusion and Recommendation

This paper discusses a range of issues in relation to CoOL of food. FSANZ seeks comment on these issues from all sectors of the community including consumers, industry and government.

Submissions to this Initial Assessment will be used to further develop P292 in relation to the labelling of food with country of origin, including the preparation of draft regulatory measures, which will be circulated for a second round of public comment in the Draft Assessment Report. It is likely that the Draft Assessment Report will be available for comment at the end 2004.

Information regarding how to make a submission to Proposal P292 is included in the section **'Invitation for Public Submissions'** on page 3 if this Report.