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Submission on Proposal P1041 – Removal of Country of Origin Labelling (CoOL) Requirements

Thank you for the opportunity to comment on this proposal. The Ministry for Primary Industries (MPI) has consulted with the Ministry of Foreign Affairs and Trade (MFAT), the Ministry of Business, Innovation and Employment (MBIE) and the New Zealand Treasury during the preparation of this submission. MPI has the following comments to make.

General comments

MPI notes that the Australia Federal Government intends to remove mandatory CoOL requirements from the Australia and New Zealand Food Standards Code (the Food Code) and place them under the ambit of Australian Consumer Law (ACL). In addition to moving the existing mandatory requirements, there will be a number of changes to CoOL requirements for food. The new regulations will require CoOL in a standardised format that will impose additional compliance costs on food producers; and give greater prominence to whether food products are grown in and/or made in Australia through use of the “Australian Made Australian Grown” kangaroo icon.

The changes as proposed will have a significant impact on New Zealand food producers who import food into Australia and supply ingredients to Australian food manufacturers.

New Zealand is the most significant food importer into Australia (supplying approximately 17 per cent (of Australia’s total food imports by value in 2014). New Zealand’s food and beverage exports to Australia for the year to June 2015 were valued over NZ\$2.4 billion; the value of goods likely to be used as ingredients is approximately NZ\$867 million. Most of the food New Zealand supplied to Australia will be covered by the new labelling rules.

In 2005, when the Australia and New Zealand Food Regulation Ministerial Council (now the Australia New Zealand Ministerial Forum on Food Regulation (the Forum)) considered introducing the mandatory CoOL, New Zealand opted out of the food standard. New Zealand supports a voluntary approach to CoOL.

New Zealand has raised concerns about the impact of the proposed changes to CoOL including at the Australia and New Zealand Ministerial Forum on Food Regulation in November 2015. In the context of our close partnership with Australia, we are also engaged in direct consultations with the Australian Department of Industry, Innovation and Science's CoOL Taskforce.

Creating a precedent

By removing CoOL from the Food Code and pursuing CoOL reform through the Legislative and Governance Forum on Consumer Affairs (CAF) it could be seen to create a potential precedent for dealing with food in a new way. That is, the measures appear to be inconsistent with Article 5(3) of the ***Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system*** (the Food Standards Treaty), which provides –

Article 5 Adoption of food standards

(3) Subject to Annexes D and E of this Agreement, neither Member State shall by legislation or by other means establish or amend a food standard falling within the scope of this Agreement other than in accordance with this Agreement.

The Food Code is recognised as a credible and unified food standards system. We would not want changes that would undermine the unity of the system, and provide a precedent for unilateral action.

Technical amendments to the Food Code

The proposal indicates that if the mandatory CoOL requirements are removed from the Food Code there would be some renumbering of subsequent paragraphs.

Clause [2.4] of the draft variation is problematic if the intention is to remove 1.2.1-7 and substitute 1.2.1-7 with 1.2.1-8. Although the draft variation does not make it clear whether 1.2.1-7 will in fact be substituted. MPI's suggested variation and reasons are set out below:

MPI suggested variation:

Standard 1.2.1 is varied by

[2.1] omitting paragraph 1.2.1—5(b) and replace with paragraph 1.2.5—5(b) deleted

[2.2] this item should be deleted

[2.3] omitting the notes at the end of subsection 1.2.1—6(1), substituting

Note See section 1.2.1—9 for information requirements for food for sale that does not need to bear a label.

[2.4] omitting section 1.2.1—7 and replace with section 1.2.1—7 deleted

[2.5] omitting paragraph 1.2.1—11(c) and replace with paragraph 1.2.1—11(c) deleted

[2.6] this item should be deleted

[2.7] omitting section 1.2.1—14 and replace with section 1.2.1—14 deleted

MPI's reasons:

- Replacing 1.2.1-7 with 1.2.1-8 and so on will be problematic as some of New Zealand's legislation already refers to specific provisions in the Food Code as it is currently set out. For example, regulation 150(2) of the Food Regulations 2015 refers to standard 1.2.1-9. If the Food Code provisions are renumbered this will create confusion and uncertainty for users and will mean the Food Regulations will have to be amended.
- FSANZ's usual approach of deleting text and noting "deleted" without renumbering subsequent paragraphs also follows good legislative drafting practice. This avoids any unnecessary issues with having to consequentially amend other legislation and also helps the user understand the history and context of the legislation.

The above comments apply to all the clauses in the variation.

Yours sincerely

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