



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Policy Approvals for a Consumer Information Standard: Country of Origin of Regulated Foods	Date to be published	9 December 2019

List of documents that have been proactively released

Date	Title	Author
24 September 2019	<i>Policy Approvals for a Consumer Information Standard: Country of Origin of Regulated Foods</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
24 September 2019	<i>Country of Origin of Regulated Foods: Proposed Consumer Information Standard DEV-19-MIN-0252</i>	<i>Cabinet Office</i>
24 September 2019	<i>Impact Summary: Consumer Information Standard for Country of Origin Labelling</i>	<i>MBIE</i>

Information redacted

YES / NO (please select)

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Some information has been withheld for the reason of Confidential advice to Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

POLICY APPROVALS FOR A CONSUMER INFORMATION STANDARD: COUNTRY OF ORIGIN OF REGULATED FOODS

Proposal

1. This paper seeks agreement for regulations to be made under the Fair Trading Act 1986 prescribing a consumer information standard for the disclosure of the country or place of origin of certain foods.

Executive Summary

2. The Consumers' Right to Know (Country of Origin of Food) Act 2018 (**the Act**) requires the Minister of Commerce and Consumer Affairs to recommend the making of regulations under the Fair Trading Act 1986 prescribing a consumer information standard for the disclosure of the country or place of origin of certain foods by June 2020.
3. This paper seeks agreement on the technical details to make a consumer information standard to give effect to the Act and to release an exposure draft of the regulations.

Background

4. The Act, passed in December 2018, originated as a member's Bill sponsored by Gareth Hughes MP. The purpose of the Act is to provide for a simple, mandatory system in New Zealand that provides consumers with accurate information about the country or place of origin of certain foods, so consumers can make informed decisions when purchasing food.
5. The Act requires the Minister of Commerce and Consumer Affairs to recommend the making of regulations under the Fair Trading Act 1986 prescribing a consumer information standard for the disclosure of the country or place of origin of certain foods. The statutory deadline is 18 months from the Act's commencement ie. June 2020.
6. The Act specifies that the Minister must be satisfied that the consumer information standard meets the purpose of the Act, defines and applies to "regulated foods", and requires the disclosure of the food's country or place of origin by reference to where the food was grown or something similar. "Regulated foods" must include foods that are a single type of fresh or frozen fruit, vegetable, meat, fish or seafood that are no more than "minimally processed". "Regulated foods" must also include cured pork.¹

¹ Cured pork was included due to the many public submissions received by the Primary Production Committee recommending the inclusion of cured pork products. The Primary Production Committee

7. The Act requires that the consumer information standard apply to food supplied, or offered or advertised for supply, at retail, including on a website. However, the requirements will not apply to food that is supplied, or offered or advertised for supply for immediate consumption, by businesses such as restaurants, cafeterias, takeaway shops, canteens and caterers or at a fundraising event. The requirements are to apply regardless of whether the food is packaged.

Disclosure of the origin of food by reference to where it was grown or something similar

8. The Act requires a regulated food's country or place of origin to be disclosed by reference to where the food was grown or something similar (for example, where it was harvested, caught or raised, but not where it was merely packaged, manufactured or processed). I propose that the country of origin of fruit and vegetables must be disclosed by reference to where the fruit or vegetable was grown, and the country of origin of meat must be disclosed by reference to where the animal was raised.
9. Retailers sometimes choose to label the subnational regions of fresh produce (e.g. "California grapes" or "Hawkes Bay mushrooms"). However, I propose to require the country to be disclosed for fruit, vegetables and meat, with labelling of any other place, such as a subnational region, to be a voluntary addition (outside of the regulations). This proposal will be the simplest for consumers to understand and for the Commerce Commission to enforce.
10. Disclosure of the country or place in which wild fish or seafood was "raised" or "grown" may pose difficulties, as often the fish or seafood cannot be said to have been raised, grown or even caught in any particular country, especially if caught in international waters or if the fish is a highly migratory species.
11. I propose to require disclosure of the territorial region in which the fish or seafood was "caught" or "harvested". The territorial region would include a country's territorial waters and exclusive economic zones. If not caught in any territorial region but in international waters, the supplier must disclose the region in international waters.
12. For cured pork, I propose to require disclosure of where the where the pigs were raised, rather than where the cured pork was processed.

recommended the addition of cured pork in its report back to the House.

Table 1: Disclosure of the origin of a food

Food	Reference point for disclosure of country or place of origin	What is required to be disclosed?
Fruit, vegetable or meat	Where the fruit or vegetable was grown Where the animal was raised (for meat)	Country
Fish or seafood	Caught or harvested	Territorial region or international waters
Cured pork	Where the pigs were raised	Country

Meaning of “minimally processed”

13. I propose that “minimal processing” will include processes such as size reduction (chopping, slicing etc.), filleting, deboning, shelling, blanching, mashing, refrigerating, vacuum sealing, irradiating and surface treating. I propose that minimal processing will not include processes such as adding ingredients to alter the taste or other characteristics of the food, cooking, drying, pickling, curing and canning.

Meaning of cured pork

14. The Act includes cured pork as a “regulated food” and requires the disclosure of its country or place of origin. However, the Act does not provide a definition for cured pork. I understand the intent of this inclusion was to capture products such as bacon and ham.
15. I propose for “cured pork” to mean a product that is either: a processed pork product that contains at least 30% pork flesh and is represented for sale as bacon or ham, or; a processed pork product that contains or is made of whole muscle cuts or pieces of pork flesh, contains at least 66% pork flesh, and contains, for the primary purpose of preservation, either added salt and nitrite and/or nitrate, or added salt (such as for dry-cured products). This is consistent with common industry practice of what a curing process involves and aligns with other technical definitions used overseas.
16. This will capture products that are sold as bacon and ham. It will also capture any other products that have been cured and contain a significantly high percentage of pork flesh so that it avoids capturing products that are more likely to be made of a mixture of meats.
17. All other processed pork products, including marinated pork and other products that contain added salt for flavouring and not for the purpose of curing, will not be included as this does not reasonably fit into the definition of a cured meat. Additionally, there is no good justification for why we should require labelling of marinated or other processed pork products (for example ready-to-eat meals containing pork) but not similar products made of other types of meat. This would widen the discrepancy between the treatment of pork and other types of meat under the regime and is not required by the Act. These classes of products will be considered at a later date and/or with the second tranche of regulations.

Disclosure and legibility requirements

18. I propose that when a food is supplied, or offered or advertised for supply where the food is physically present, the information must be disclosed in a written format clearly in connection with the food (for example, by labelling the actual food or displaying signage in connection with the food such as a sign above a bin of kumara). When a food is offered or advertised for supply somewhere other than where the food is physically located, the information must be disclosed in a written format on the offer or advertisement for supply. This flexible requirement will reduce compliance costs, so that suppliers who are already providing voluntary country of origin labelling are less likely to have to change their labelling, while still meeting the requirement to provide accurate information to consumers.
19. The information must be in English or Te Reo Māori, be legible, and be prominent so as to contrast distinctly with the background of the label. These requirements are similar to the general legibility requirements for mandatory food labelling in the Australia New Zealand Food Standards Code.
20. There are a number of different statements that might be made to disclose the country of origin to consumers. I am not proposing that the regulations will specify the statements that must be used to disclose the origin of the food. The regulations will require disclosure of a regulated food's origin and the supplier can decide how they meet the obligation. This will provide flexibility and reduce compliance costs. For example, in relation to apples, "New Zealand apples", "Grown in New Zealand" and "Product of New Zealand" would all meet the disclosure requirement. A picture of a flag or animal would not comply because it would not meet the requirement for it to be in writing.
21. The Trans-Tasman Mutual Recognition Agreement with Australia means that Australian-imported food that does not meet New Zealand's regulations could still be lawfully sold in New Zealand (although Australia has its own country of origin requirements, so food imported from Australia will carry some form of country of origin statement).

Exclusions for foods in certain circumstances

22. The Act provides that the consumer information standard may exclude any food from being a regulated food if the Minister considers that requiring the food to comply with the standard:
 - 22.1. would be unduly onerous; or
 - 22.2. would not help consumers to make informed decisions about purchasing the food.
23. The Act provides that food that is excluded may be defined in any way (for example, as a food that is supplied, or offered or advertised for supply, in specified circumstances). The Act does not limit my power under the Fair Trading Act to recommend additional requirements in the consumer information standard.

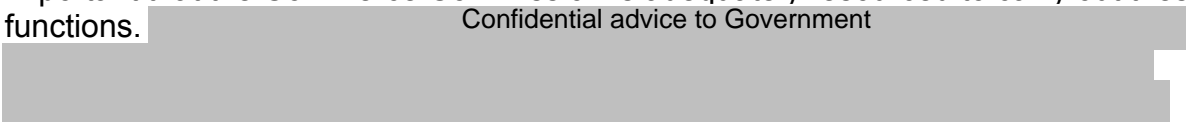
24. I propose to exclude foods from being regulated foods in the following circumstances:
- 24.1. food that is supplied, or offered or advertised for supply online, where the retailer believes that the country or place of origin may change between ordering and delivery, or where the country or place of origin varies between individual retail stores;
 - 24.2. food that is advertised for supply, where the retailer believes that the country or place may change between advertisement and purchase, or where the country or place of origin varies between individual retail stores;
 - 24.3. food that is advertised for supply over an audio-only medium, such as radio advertising; and
 - 24.4. food that is supplied, or offered or advertised for supply, where the food has multiple source countries or the source countries vary frequently within a period in which it would be unreasonable to change labelling.
25. I am satisfied that requiring food that is supplied, or offered or advertised for supply in these circumstances to comply with the standard would be unduly onerous. I consider they would be unduly onerous because:
- 25.1. when food is supplied, or offered or advertised for supply online, or is advertised for supply somewhere other than where the product is physically located in advertisements such as weekly mail-outs or on television, the country or place of origin of some foods may change between the time of offer or advertisement and delivery or purchase, or the country of origin may vary between individual retail stores. There would be significant compliance costs and impracticalities in requiring these foods to be labelled with an individual source country;
 - 25.2. in regards to an audio-only advertising medium such as radio, compliance with the regulations would incur additional costs of paying for the extra airtime needed to state the country or place of origin. It would be even more onerous in cases where advertisements advertise multiple foods and could result in, for example, half the air time being taken up with origin declarations. This would result in a reduction of the advertisement's effectiveness. Additionally, there is less of an argument that radio advertisements would help consumers make informed decisions about purchasing the food, since consumers in these situations are not actively seeking out information about the food or necessarily intending to purchase it; and
 - 25.3. requiring suppliers to label a food that has multiple sources of origin (for example a packet of peas where the peas are sourced from two different countries) or that varies frequently (for example due to seasonality) would require suppliers to develop new processes to separate ingredients from different countries, and develop multiple labels or multiple packages to disclose each source country.

26. While I am proposing to exclude foods from being regulated foods in these circumstances, I am proposing some additional requirements for inclusion in the consumer information standard under the Fair Trading Act. I propose to require that:
- 26.1. for foods that are supplied, or offered or advertised for supply online, if the retailer believes that the country of origin may change between ordering and delivery, the retailer must state the country or place of origin of its stock at the time of ordering, and indicate that the country or place of origin for delivery is subject to change;
 - 26.2. for foods that advertised for supply, if the retailer believes that the country of origin may change between advertisement and purchase, the retailer must state the country or place of origin of its stock at the time of advertisement;
 - 26.3. if the items in stock are sourced from multiple countries (for example, oranges are obtained from two different countries in different shops), all of these countries must be listed as alternatives;
 - 26.4. if the foods that are supplied, or offered or advertised for supply are sourced from multiple countries, or the countries are subject to frequent variation, all of these countries must be listed as alternatives (for example, "Pork raised in Australia, Canada or New Zealand").

Consultation

27. The Ministry for Primary Industries, the Ministry of Foreign Affairs and Trade, and the Treasury were consulted on these proposals. The Department of Prime Minister and Cabinet (Policy Advisory Group) has been informed.
28. My officials conducted targeted consultation on the technical details required to give effect to the requirements of the Act. They consulted with key food industry stakeholders such as representatives of New Zealand food manufacturers and retailers, pork farmers and processors, the horticulture industry and consumer representatives.
29. Subject to Cabinet authorisation, I intend to release an exposure draft of the regulations for public consultation. Under the World Trade Organization (**WTO**) Agreement on Technical Barriers to Trade (**TBT**), my officials are required to notify the exposure draft to the WTO at least 60 days before the final regulations are adopted. New Zealand could be asked about the rationale for requiring country of origin labelling for this particular group of products at the WTO TBT Committee. The possible impact on trade is further detailed in the Regulatory Impact Analysis.

Financial Implications

30. The policy proposals in this paper involve new functions for the Commerce Commission as the regulator responsible for enforcing the Fair Trading Act. It is important that the Commerce Commission is adequately resourced to carry out these functions.
- Confidential advice to Government
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Legislative Implications

31. The proposals in this paper will be implemented through regulations made by Order in Council, prescribing a consumer information standard under the Fair Trading Act.

Impact Analysis

32. The impact analysis (**IA**) requirements apply to the proposals in this paper. An impact summary has been prepared and is attached.

Quality of the impact analysis

33. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Summary prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Summary meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Human Rights

34. There are no human rights implications from these policy proposals.

Gender Implications

35. There are no gender implications from these policy proposals.

Disability Perspective

36. There are no disability implications from these policy proposals.

Publicity

37. Publicity will be planned by my office when the exposure draft of the regulations is publicly released.

Proactive Release

38. This paper will be published on MBIE's website within 30 business days of Cabinet's decision, subject to withholdings as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that the Consumers' Right to Know (Country of Origin of Food) Act 2018 requires the Minister of Commerce and Consumer Affairs to recommend the making of regulations under the Fair Trading Act 1986 prescribing a consumer information standard for the disclosure of the country or place of origin of certain foods by June 2020;
2. **agree** that the country or place of origin of fruit and vegetables must be disclosed by reference to where it was grown and that the origin of meat must be disclosed by reference to where the animal was raised;
3. **agree** that the country or place of origin of fish or seafood must be disclosed by reference to the territorial region in which the fish or seafood was caught or harvested, and if caught in international waters, it must be disclosed by reference to the region in international waters;
4. **agree** that the country or place of origin of cured pork must be disclosed by reference to where the pigs were raised;
5. **agree** that a food is no more than "minimally processed" if it has been, at most, subject to certain processes (including for example size reduction, deboning/filleting, blanching, refrigerating, surface treating);
6. **agree** that cured pork is either: a processed pork product that contains at least 30% pork flesh and is represented for sale as bacon or ham; or a processed pork product that contains or is made of whole muscle cuts or pieces of pork flesh, contains at least 66% pork flesh, and contains, for the primary purposes of preservation, either added salt and nitrite and/or nitrate, or added salt (such as for dry-cured products).
7. **agree** that where food is supplied or offered for supply where the food is physically present, the information must be disclosed in a written format clearly in connection with the food;
8. **agree** that where food is offered or advertised for supply other than where the food is physically located, the information must be disclosed in a written format on the offer or the advertisement for supply;
9. **agree** that the information must be disclosed in English or Te Reo Māori, be legible and be prominent so as to contrast distinctly with the background of the label;
10. **agree** to exclude food from being a regulated food if it is supplied, or offered or advertised for supply online, where the retailer believes that the country or place of origin may change between ordering and delivery, or the country or place of origin varies between individual retail stores;
11. **agree** that where the recommendation 10 applies the following requirements will apply:

- 11.1. if the retailer believes that the country or place of origin may change between ordering and delivery, the retailer must state the country or place of origin of its stock at the time of ordering and indicate that the country or place of origin for delivery is subject to change; or
- 11.2. if the country or place of origin of the regulated food varies between individual stores, all possible countries or places of origin must be listed as alternatives;
12. **agree** to exclude food from being a regulated food if it is advertised for supply somewhere other than where the product is physically located, where the retailer reasonably believes that the country or place of origin may change between advertisement and purchase, or the country or place of origin varies between individual retail stores;
13. **agree** that where the recommendation 12 applies the following requirements will apply:
- 13.1. if the retailer believes that the country or place of origin may change between advertisement and purchase, the retailer must state the country or place of origin of its stock at the time of advertisement; or
- 13.2. if the country or place of origin of the regulated food varies between individual stores, all possible countries or places of origin must be listed as alternatives;
14. **agree** to exclude food from being a regulated food where it is advertised for supply over an audio-only medium (such as the radio);
15. **agree** to exclude food from being a regulated food that is supplied, or offered or advertised for supply, where a single food is either sourced from multiple sources or the source may vary frequently within a period in which it would be unreasonable to change labelling;
16. **agree** that where recommendation 15 applies all possible countries or places of origin must be disclosed;
17. **invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations;
18. **authorise** the Minister of Commerce and Consumer Affairs to make minor or technical changes, consistent with the policy framework in this paper, on any issues that arise during drafting; and
19. **authorise** the Minister of Commerce and Consumer Affairs to approve and release an exposure draft of the Order in Council for consultation purposes.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs