

14 February 2001
12/01

PRELIMINARY ASSESSMENT REPORT

APPLICATION A418 - LABELLING OF DUTY FREE SPIRITS

BACKGROUND

An application has been received by the Australia New Zealand Food Authority (ANZFA) from the Distilled Spirits Industry Council of Australia Inc (DSICA), seeking to amend food standards so as to exempt spirits and liqueurs destined for sale from duty free outlets from certain labelling requirements.

Certain specialty spirit and liqueur products have been imported for many years for sale in duty free stores. These products are all manufactured overseas, and differ from the products usually found on the Australian market, for example in the bottle size or niche marketing, in ways designed to take advantage of the duty free thresholds for alcohol in various countries. The product labelling conforms to general international requirements, such as alcohol by volume, name and address of the manufacturer, name of the food etc but does not carry labelling specifically in compliance with Australian requirements, in particular, standard drink labelling.

The applicant claims that these products are not for the domestic market but are destined solely for sale through duty free outlets to persons travelling to, or returning from, overseas.

Food commercially imported into Australia must comply with the same food standards that apply to food manufactured domestically. Domestic food standards (the Australian *Food Standards Code* (the Code), or the Joint Australia New Zealand *Food Standards Code*) are enforced by the Australian Quarantine Inspection Service (AQIS) under the *Imported Food Control Act* (IFC Act).

Under the IFC Act, imported food that does not meet the standards set out in the Code is designated 'failing food' and must be:

- (a) re-labelled;
- (b) re-exported by the importer without entry into Australia;
- (c) destroyed; or
- (d) otherwise dealt with as directed by AQIS.

Until recently, AQIS has not enforced the relevant labelling provisions for spirits and liqueurs destined for sale through duty free outlets. However, AQIS has advised that, from 1 January 2001, it will consider such products to be failing food under the IFC Act, including because the label on the foods do not carry standard drinks labelling. AQIS has also advised that it does not have discretion (under (d) above) to continue to allow such products to be sold even when restricted to sale through duty free outlets. Generally, all State and Territory Food Acts (except that of South Australia) provide that it is not an offence to sell food that does not meet

the Australian standards where the food is for export and complies with the standards (if any) in the country to which it is to be exported.

In addition, no State or Territory food law makes it an offence to possess, for personal consumption, food that does not comply with the Code.

According to the applicant, in practice, no regulators seek to apply domestic Australian food standards to food for export. Food for export is regulated instead under the Food Export Orders administered by AQIS.

The consequence for industry, of the recent change in approach by AQIS, is that spirits and liqueurs being imported for sale from duty free outlets, without standard drinks labelling are being prohibited, while at the same time, similar products could be manufactured domestically for export, without standard drinks labelling, and such sale would not (in general) be illegal.

This arises because the IFC Act requires AQIS to apply the Code to imported food. However, the exemption provisions relating to food for export are not in the Code, but are in State and Territory laws that adopt the Code.

OBJECTIVE

The applicant seeks to have an exemption included in the Code for spirits and liqueurs destined for sale from duty free outlets to be exempt from certain labelling requirements. The applicant considers that this would remove the inconsistency in the application of the Code by AQIS, compared to State and Territory food officials, and enable the products to be imported for duty free sale.

The applicant considers that the proposed variation would be effective because it brings the effect of such provisions into the Code, where they can be taken into account by AQIS, instead of relying on State and Territory food legislation, which AQIS does not take into account when administering the IFC Act.

POSSIBLE OPTIONS (including alternatives):

Possible options for addressing the problem identified by the applicant include:

1. Amend the Code to include a provision to the effect that food imported into Australia for subsequent export (or personal importation) through duty free outlets be exempt from the requirements of the Code.
2. Maintain the *status quo* and do not amend the Code, instead relying on amendments to the other legislation (for example, the IFC Act) or the use of AQIS discretionary powers to achieve the same objective as the proposed variation to the Code. (AQIS has indicated that they would be unwilling to seek such legislative amendments).

IDENTIFICATION OF AFFECTED PARTIES

The parties most likely to be affected by this application are overseas manufacturers of spirits and liqueurs destined for duty free sale in Australia, and consumers purchasing duty free spirits and liqueurs in Australian duty free outlets.

POTENTIAL REGULATORY IMPACTS

Potential regulatory impacts identified by the applicant may include:

- Option 1, may provide benefits arising from greater consistency in the administration of food legislation across different portfolios and different tiers of government.
- Option 1 may provide for a ‘level playing field’ for domestic and international manufacturers of spirits and liqueurs destined for duty free sale in Australia.
- Option 1 may provide benefits for consumers as people travelling overseas from Australia will be able to purchase the same range of spirits and liqueurs in Australian duty free stores as is available at international destinations.
- Option 2 may give rise to some costs as maintaining a regulatory inconsistency may have implications under the SPS and TBT Agreements of the World Trade Organization.
- Option 2 may impose a cost in that unless action is taken to address the regulatory inconsistency, some spirit and liqueur products may no longer be available in duty free stores in Australia. The applicant claims that the products in question are imported in small quantities only. There are no economies of scale that might otherwise justify special label runs or over-labelling to include standard drinks labelling.
- Option 2 may give rise to costs as a ‘level playing field’ is not maintained. Consumers travelling overseas will be able to purchase spirits and liqueurs at international destinations without standard drink labelling, and, to the extent allowed under Australian law, incoming passengers may import such products to Australia.
- Option 2 has been discounted by AQIS

However, the advantages and benefits provided by Option 1 may equally be provided by alternative measures to an amendment of the Code.

NEW ZEALAND

ANZFA is seeking comment from New Zealand spirit manufacturers and importers and enforcement agents on:

- what effect, if any, the introduction of standard drinks labelling for alcoholic beverages in New Zealand will have on the sale of spirits through duty free outlets; and
- the possible inclusion of an exemption from certain labelling requirements for spirits sold through duty free outlets in New Zealand.

CONSIDERATION OF ISSUES UNDER SECTION 13

This application does relate to a matter that may be developed as a food regulatory measure, or warrants a variation of a food regulatory measure, and is not so similar to a previous application that it ought not be accepted.

Costs and benefits arising for any food regulatory measure or other measures developed or varied as a result of this application, will be considered at full assessment.

OTHER RELEVANT MATTERS

The Codex Alimentarius does not contain a standard for alcoholic beverages.

No other country imposes standard drinks or similar labelling requirements for alcoholic beverages, however, under the new Australia New Zealand Food Standards Code, New Zealand has adopted standard drinks labelling.

CONCLUSIONS

This application does relate to a matter that may be developed as a food regulatory measure, or warrants a variation of a food regulatory measure, as provided for in section 13 of the *ANZFA Act 1991*. Cost arising from any food regulatory measure so developed will be assessed at Full Assessment.

Accordingly the Authority has decided to accept the application and will now make a full assessment of it.

If subsequently recommended by Authority and agreed to by the Australia New Zealand Food Standards Council, an amendment to the Code, as suggested by the applicant, would allow the importation of food destined for duty free sale into Australia, which does not meet certain specific requirements of Australian food standards.

INVITATION FOR PUBLIC SUBMISSIONS

Written submissions containing technical or other relevant information which will assist the Authority in undertaking a full assessment on matters relevant to the application, including consideration of its regulatory impact, are invited from interested individuals and organisations. Technical information presented should be in sufficient detail to allow independent scientific assessment.

Submissions providing more general comment and opinion are also invited. The Authority's policy on the management of submissions is available from the Standards Liaison Officer upon request.

The processes of the Authority are open to public scrutiny, and any submissions received will ordinarily be placed on the public register of the Authority and made available for inspection. If you wish any confidential information contained in a submission to remain confidential to the Authority, you should clearly identify the sensitive information and provide justification for treating it in confidence. The *Australia New Zealand Food Authority Act 1991* requires the Authority 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.

Following its full assessment of the application the Authority may prepare a draft standard or draft variation to a standard (and supporting draft regulatory impact statement), or decide to reject the application. If a draft standard or draft variation is prepared, it is then circulated to interested parties, including those from whom submissions were received, with a further invitation to make written submissions on the draft.

Any such submissions will then be taken into consideration during the inquiry which the Authority will hold to consider the draft standard or draft variation to a standard.

All correspondence and submissions on this matter should be addressed to the **Project Manager - Application A418** at one of the following addresses:

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PO Box 7186
Canberra Mail Centre ACT 2610
AUSTRALIA

Tel (02) 6271 2222 Fax (02) 6271 2278

Submissions should be received by the Authority by **14 March 2001**.

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NEW ZEALAND

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