



19 September 2001

04/02

**DRAFT ASSESSMENT REPORT (FULL ASSESSMENT –
SECTION 15)**

APPLICATION A418

LABELLING OF DUTY FREE SPIRITS

EXECUTIVE SUMMARY

- The Australia New Zealand Food Authority (ANZFA) received an application on 12 June 2000 from the Distilled Spirits Industry Council of Australia (DSICA) to amend the *Food Standards Code* ('the Code') to exempt from the labelling requirements of the Code, spirit and liqueur products sold through duty free shops for export, or in the case of in-bound duty free, for personal import ('domestic duty free sale').
- At the recent meeting of the ANZFA Board in Adelaide (ANZFA69), the Board considered application A418 – Labelling of Duty Free Spirits, at Full Assessment. As a result of its deliberations, it prepared a draft variation of a food regulatory measure (see Attachment 1). The draft variation exempts from certain labelling requirements, alcoholic beverages standardised in Standard 2.7.5 of the Code that are intended for sale, or sold, in a duty free shop. The labelling requirements from which such beverages are proposed to be exempted are:
 - the requirement to label with the name and business address in Australia or New Zealand of the supplier of the food (clause 3 of Standard 1.2.2); and
 - the requirement to apply standard drinks labelling (clause 3 of Standard 2.7.1).

BACKGROUND

Currently, the Code imposes labelling requirements in relation to spirits and liqueurs, regardless of where these are sold, and whether they are imported or manufactured domestically.

Many specialty spirit and liqueur products imported for sale in duty free stores do not comply with labelling requirements under the Code, in particular, the standard drinks labelling requirement. To date, the Australian Quarantine and Inspection Service (AQIS) has not enforced the relevant labelling provisions for spirits and liqueurs destined for sale through Australian duty free shops. However, AQIS has advised that it intends to begin to enforce these provisions, and will consider such products to be 'failing food' under the *Imported Food Control Act* (IFC Act).

This situation appears to be partially inconsistent with the treatment of similar products within Australia under some State and Territory food legislation. Under this legislation, food for sale in duty free stores must comply with the labelling requirements of the Code, and to this extent it is consistent with the IFC Act. However, this legislation provides persons selling products to outbound travellers with an 'export defence' to the offence of selling duty-free spirits and liqueurs in Australia that do not comply with the labelling requirements of the Code.

To enable these products to continue to be imported into Australia without re-labelling, an amendment to the Code is sought to exempt from labelling requirements spirits and liqueurs for domestic duty free sale.

RELEVANT PROVISIONS

Standard 2.7.1 of the Code sets out general labelling requirements in relation to alcoholic beverages and food containing alcohol. Clause 3 requires beverages or foods capable of being consumed as beverages, which contain more than 0.5% alcohol by volume, measured at 20°C, to be labelled with a statement of the approximate number of standard drinks in the package. This standard drinks labelling requirement is unique to the Code. It does not appear in any other national or international food standards that we are aware of

CONSULTATION

A total of eighteen submissions were received at preliminary assessment.

The majority of submitters (mostly representative of industry) supported the exemption of spirit and liqueur products for domestic duty free sale from the labelling requirements of the Code. These submitters generally based their arguments upon the potential trade barriers and other inequities caused by Australia's unique alcohol labelling requirements, principally standard drinks labelling, and the negative ramifications of these for consumers and industry.

Submitters who did not support the exemption generally argued that products for domestic sale should have to conform to domestic labelling requirements, regardless of whether they were sold in duty free shops or not. Any exemption would undermine standard drinks labelling, which is an important public health initiative currently in place in Australia, and shortly to be implemented in New Zealand.

REGULATORY OPTIONS

The possible options for the regulation of spirits and liqueurs for domestic duty free sale include the following.

Option 1 **Exempt from certain labelling requirements of the Code, spirits and liqueurs for domestic duty free sale.**

Option 2 **Do not amend the Code. Instead, rely on amendments to other legislation (eg. the IFC Act) or AQIS' use of its discretionary powers to enable the continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code.**

Option 3 **Do not amend the Code or rely on amendments of other legislation or AQIS' use of its discretionary powers, preventing continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code.**

Option 1: Exempt from certain labelling requirements of the Code, spirits and liqueurs for domestic duty free sale

For Option 1, Standard 1.2.7 of the Code (Volume 2) would be amended to exempt spirits and liqueurs for domestic duty free sale, from labelling requirements of the Code with respect to standard drinks labelling, and labelling with the name and business address in Australia or New Zealand of the supplier of the food. Spirits and liqueurs manufactured in ways designed to take advantage of the duty free alcohol thresholds in various countries could continue to be imported into Australia for sale in duty free outlets, and Australian companies could manufacture such products for sale in duty free outlets.

Consumers would not be provided with standard drinks information in relation to spirits and liqueurs for domestic duty free sale, although generally they would be provided with alcohol by volume labelling. Nor would they be provided with the name and business address in Australia or New Zealand of the supplier of the food. This does not, however, represent a change to the present situation in duty free shops.

Option 2 Do not amend the Code. Instead, rely on amendments to other legislation (eg. the IFC Act) or AQIS' use of its discretionary powers to enable the continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code

Option 2 would rely on alternative legislative or administrative remedies to permit the continued importation and sale of certain spirits and liqueurs for domestic duty free sale. Legislative change is unlikely to be timely and is not certain to occur. There does not appear to be any clear administrative remedy as AQIS has indicated that it does not have discretion to continue to allow the importation and sale of the spirits and liqueurs in question, without relabelling.

Option 3 Do not amend the Code or rely on amendments to other legislation or AQIS' use of its discretionary powers, preventing continued importation and sale of spirits and liqueurs for domestic duty free sale that do not comply with the labelling requirements of the Code

Option 3 would result in spirits and liqueurs imported for domestic duty free sale being re-labelled, or otherwise being unable to be imported and sold in Australia. Such re-labelling will involve costs and inconvenience to industry, and is likely to result in either non-availability of these products or an increase in prices for such products. This may have a flow-on effect of encouraging travellers to purchase alcohol from duty free shops overseas in preference to Australia. It will however ensure that travellers are provided with standard drinks information in relation to duty free spirits and liqueurs, which may promote public health generally, although the overall impact of this labelling on such a small segment of the market for alcohol products is not likely to be significant. This option is unlikely to be consistent with Australia's WTO obligations.

PREFERRED OPTION

In view of public health and safety, and trade harmonization, it is considered that exempting spirits and liqueurs for domestic duty free sale from certain labelling requirements under the Code is the most appropriate option (ie Option 1).

Option 2 is unsatisfactory, as it does not provide a certain or timely outcome to the issue at hand. Rather, it is likely to result in option 3 by default.

The option of not amending the Code or relying on other solutions (Option 3) would not meet the objective of ensuring consistency in the way the Code is applied to spirit and liqueur products for domestic duty free sale by the IFC Act and State and Territory food legislation. Although it would ensure that consumers were provided with more information in relation to such goods (ie. standard drinks labelling and supplier details in Australia), this would not be meaningful to many non-Australian consumers who do not understand what a 'standard drink' is, and it would represent a change to the present situation which does not appear to have had any significant negative impact upon the 'standard drinks' health initiative and associated campaigns. It would also be inconsistent with international standards and practices in relation to duty free products.

By exempting spirits and liqueurs for domestic duty free sale from certain labelling requirements under the Code, consistency between domestic and international food standards, the efficiency and international competitiveness of the food industry, and fair trading in food is promoted and encouraged, without significant detriment to public health and safety, or to the provision of adequate consumer information relating to food. These factors indicate Option 1 as the most suitable.

REGULATORY IMPACT AND WORLD TRADE ORGANISATION

The regulatory option that is beneficial to most stakeholders is the option of exempting spirits and liqueurs for domestic duty free sale from certain labelling requirements under the Code. This would promote consistency between food regulation applicable to imported and domestically produced foods, without significant detriment to consumers.

As the preferred regulatory option involves an exemption from regulations that are inconsistent with international labelling requirements, no World Trade Organization (WTO) notification would be required.

POLICY

In the assessment of all applications, ANZFA has regard to section 10 of the *Australia New Zealand Food Authority Act 1991* and respective Australian and New Zealand trade and competition policies.

DEFINITIONS

There are currently no definitions of ‘duty free shop’ or similar in the Code. The draft variation includes a definition of ‘duty free shop’ based upon dictionary definitions which reflect the common understanding of the term ‘duty free shop’.

FURTHER SUBMISSIONS

ANZFA invites submissions on this draft variation. In particular, comment is sought in relation to the scope of the draft exemptions. For instance, should the exemptions be granted? Should they apply to all alcoholic beverages sold in duty free shops? Should the exemptions relate to other labelling requirements, or should they not relate to some of the labelling requirements as proposed?

CONCLUSION

It is proposed that spirits and liqueurs for domestic duty free sale are exempted from certain labelling requirements of the Code. That is, alcoholic beverages standardised in Standard 2.7.5 of the Code that are intended for sale, or sold, in a duty free shop, are proposed to be exempt from certain labelling requirements of the Code. The labelling requirements from which such beverages are proposed to be exempted are:

- the requirement to label with the name and business address in Australia or New Zealand of the supplier of the food (clause 3 of Standard 1.2.2); and
- the requirement to apply standard drinks labelling (clause 3 of Standard 2.7.1).

The preferred regulatory option meets the objectives of this application (A418) and in so doing promotes consistency between food regulation applicable to imported and domestically produced foods and addresses the issue of potential trade disparity between Australian and New Zealand duty free shops and foreign duty free shops. The preferred option also ensures compliance with WTO requirements, without significant detriment to consumers.

FOOD STANDARDS SETTING IN AUSTRALIA AND NEW ZEALAND

The Governments of Australia and New Zealand entered an Agreement in December 1995 establishing a system for the development of joint food standards. On 24 November 2000, Health Ministers in the Australia New Zealand Food Standards Council (ANZFSC) agreed to adopt the new *Australian New Zealand Food Standards Code*. The new Code was gazetted on 20 December 2000 in both Australia and New Zealand as an alternate to existing food regulations until December 2002 when it will become the sole food code for both countries. It aims to reduce the prescription of

existing food regulations in both countries and lead to greater industry innovation, competition and trade.

Until the joint *Australia New Zealand Food Standards Code* is finalised the following arrangements for the two countries apply:

- **Food imported into New Zealand other than from Australia** must comply with either Volume 1 (known as *Australian Food Standards Code*) or Volume 2 (known as the joint *Australia New Zealand Food Standards Code*) of the *Australian Food Standards Code*, as gazetted in New Zealand, or the *New Zealand Food Regulations 1984*, but not a combination thereof. However, in all cases maximum residue limits for agricultural and veterinary chemicals must comply solely with those limits specified in the *New Zealand (Maximum Residue Limits of Agricultural Compounds) Mandatory Food Standard 1999*.
- **Food imported into Australia other than from New Zealand** must comply solely with Volume 1 (known as *Australian Food Standards Code*) or Volume 2 (known as the joint *Australia New Zealand Food Standards Code*) of the *Australian Food Standards Code*, but not a combination of the two.
- **Food imported into New Zealand from Australia** must comply with either Volume 1 (known as *Australian Food Standards Code*) or Volume 2 (known as *Australia New Zealand Food Standards Code*) of the *Australian Food Standards Code* as gazetted in New Zealand, but not a combination thereof. Certain foods listed in Standard T1 in Volume 1 may be manufactured in Australia to equivalent provisions in the *New Zealand Food Regulations 1984*.
- **Food imported into Australia from New Zealand** must comply with Volume 1 (known as *Australian Food Standards Code*) or Volume 2 (known as *Australia New Zealand Food Standards Code*) of the *Australian Food Standards Code*, but not a combination of the two. However, under the provisions of the Trans-Tasman Mutual Recognition Arrangement, food may **also** be imported into Australia from New Zealand provided it complies with the *New Zealand Food Regulations 1984*.
- **Food manufactured in Australia and sold in Australia** must comply with Volume 1 (known as *Australian Food Standards Code*) or Volume 2 (known as *Australia New Zealand Food Standards Code*) of the *Australian Food Standards Code* but not a combination of the two. Certain foods listed in Standard T1 in Volume 1 may be manufactured in Australia to equivalent provisions in the *New Zealand Food Regulations 1984*.

In addition to the above, all food sold in New Zealand must comply with the *New Zealand Fair Trading Act 1986* and all food sold in Australia must comply with the *Australian Trade Practices Act 1974*, and the respective Australian State and Territory *Fair Trading Acts*.

Any person or organisation may apply to ANZFA to have the *Food Standards Code* amended. In addition, ANZFA may develop proposals to amend the *Australian Food*

Standards Code or to develop joint Australia New Zealand food standards. ANZFA can provide advice on the requirements for applications to amend the *Food Standards Code*.

INVITATION FOR PUBLIC SUBMISSIONS

Written submissions containing technical or other relevant information which will assist the Authority in undertaking the assessment of 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 Draft assessment (Full assessment – section 15) 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 Final assessment (Inquiry – section 17), 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:

Australia New Zealand Food Authority
PO Box 7186
Canberra BC ACT 2610
AUSTRALIA

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

Australia New Zealand Food Authority
PO Box 10559
The Terrace WELLINGTON 6036
NEW ZEALAND

Fax (04) 473 9942 Fax (04) 473 9855

Submissions should be received by the Authority by: **31 October 2001**.

DRAFT AMENDMENT TO THE FOOD STANDARDS CODE

To commence: On gazettal

[1] *Standard 1.2.2 of Volume 2 of the Food Standards Code is varied by –*

[1.1] *omitting clause 3 and substituting –*

3 Name and address of supplier

Unless otherwise expressly provided elsewhere in this Code, the label on a package of food must include the name and business address in Australia or New Zealand, of the supplier of the food.

Editorial note:

“Supplier” is defined in Standard 1.1.1 to include the packer, manufacturer, vendor or importer of the food in question.

Clause 3 does not apply to alcoholic beverages standardised in Standard 2.7.5 of the Code intended for sale, or sold, in a duty free shop. Refer to subclause 1(2) of Standard 2.7.1.

[2] *Standard 2.7.1 of Volume 2 of the Food Standards Code is varied by –*

[2.1] *omitting clause 1 and substituting –*

1 Interpretation

(1) In this Standard -
duty free means free of customs duty.

duty free shop means a shop where duty free goods may be sold legally.

standard drink means the amount of a beverage which contains 10 grams of ethanol, measured at 20°C.

(2) Clause 3 of Standard 1.2.2 does not apply to alcoholic beverages standardised in Standard 2.7.5 of the Code intended for sale, or sold, in a duty free shop.

[2.2] *omitting subclause 3(2) and substituting –*

(2) Subclause (1) does not apply to –

- (a) beverages packed prior to 22 December 2000; or
- (b) alcoholic beverages standardised in Standard 2.7.5 of the Code intended for sale, or sold, in a duty free shop.