



Submission to the Primary Production Committee

This is a submission on the Consumers' Right to Know (Country of Origin of Food) Bill.

1. Research for this submission was carried out by Law Reform student volunteers from the Wellington Community Justice Project (WCJP), a law student-lead society and registered charity at Victoria University of Wellington.
2. The WCJP aims to improve access to justice in the wider community, and provide volunteers with opportunities to develop their legal skills through volunteer projects. Law Reform is one of four teams within the WCJP with their primary focus on legislative changes and policy developments.
3. The WCJP supports the passing of this Bill into law but makes a few recommendations in relations to the labelling practices and guidelines.

This submission is the collaborative work of:

Rose Emily Argyle (LLB/BA), Charlie Harvey (LLB/BCom), and Abigail Shieh (LLB/BA)

Managed by: Josiah Koh & Vivian Tan

Editor: Vivian Tan

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I Introduction

- [1] This Bill aims to provide a “simple, mandatory labelling system in New Zealand that provides consumers with accurate information about the country of origin of single component foods”.¹ Consumers have the right to know where their food comes from, and the Wellington Community Justice Project supports the progression of this Bill.
- [2] This submission discusses the effects of the “country of origin” labelling and explores approaches taken overseas in analysing the effectiveness of the proposed Bill. This submission also compares the proposed Bill to similar regulations and legislations in New Zealand that also require the labelling of its country of origin as well as labels already required for food, addressing how the similar legislations handle issues brought up in the first reading, such as: trade, cost, labelling enforcement, and the extent of the legislation.

II The “Country of Origin” Labelling

- [3] Several studies show that “country of origin” labels causes consumers to make certain assumptions about product-related attributes including environmental concerns, safety, and the quality of a product.² In the first reading of this Bill, concerns were raised about having consumers assume that a country of origin label equates to a food safety guarantee.
- [4] The reality is that consumers do make those assumptions particularly where there is restricted information, and that this may mislead consumers unless they are otherwise informed.³ However, mandatory labelling provides accountability and incentivise foreign product suppliers to ensure food safety in order to maintain a good reputation. It may also incentivise companies from countries perceived to be less safe to make available useful information that is beneficial to consumers, such as information in relations to food safety.

¹ Consumers’ Right to Know (Country of Origin of Food) Bill 2016, cl 3.

² Cristea Adina, Captain Gabriela and Stoenescu Roxana-Denisa “Country-of-Origin Effects on Perceived Brand Positioning” (paper presented to the 2nd Global Conference on Business, Economics, Management and Tourism, Prague, 30–31 October 2014); Christopher Berry and Others “A COOL Effect: The Direct and Indirect Impact of Country-of-Origin Disclosures on Purchase Intentions for Retail Food Products” (2015) 91(3) *Journal of Retailing* 533.

³ Above n 2.

- [5] Inferences drawn from the “country of origin” labels of food products can have positive or negative effects, depending on whether the countries have a good or bad reputation in the international or New Zealand market. Therefore, it is natural for some to view this as a trade disincentive since a “country of origin” label would give New Zealand products a competitive advantage and that imported products from less desirable countries would have a perceived disadvantage.
- [6] Although the aforementioned claims are largely unproven, a study conducted by the University of Arkansas suggests that if retailers from certain countries are disadvantaged, promotion programs could be used to establish a premium brand position for products from certain countries or seek to raise the perception of countries viewed less favourably.⁴ They further suggest that consumers should be more educated about New Zealand food safety audits that our imports must go through. Their study showed that releasing this audit information reduced perceived food safety and quality bias.⁵ These measures would be more likely to promote trust in imported products from countries that may be disadvantaged by the legislation.

III Clear Labelling

- [7] There is a need to ensure that labelling is clear to all consumers. There needs to be education for producers and retailers as to what is necessary to constitute a “statement that identifies the country of origin” for the purposes of s6. In Australia there are many difficulties with the clarity of claims on their standard labels. One issue was with the interpretation of statements such as “product of” or “made in”.⁶
- [8] It would be undesirable if the ability to successfully communicate credible point-of-purchase information, becomes a point of competitive differentiation amongst retailers. Companies may be able to position their products more directly on country of origin information in order to distract consumers from poor quality or to justify higher prices.⁷ It

⁴ Christopher Berry and Others, above n 2.

⁵ Christopher Berry and Others, above n 2.

⁶ Elizabeth Withall and Others “Obtaining consumer perspectives using a citizens' jury: does the current country of origin labelling in Australia allow for informed food choices?” (2016) 16 BMC Public Health 1241.

⁷ Christopher L Newman and Others “Twenty Years of Country-of-Origin Food Labeling Research: A Review of the Literature and Implications for Food Marketing Systems” (2014) 34(4) Journal of Macromarketing 505.

would defeat the point of the legislation if marketers are able to manipulate which origin information is actually included on their labels in order to affect purchase decisions.⁸

[9] Although this Bill only applies to single component foods (and therefore avoids misleading percentage calculations of how much of certain products are made or produced in which country) it might be necessary to create a universal standard or statement template which facilitates clarity. This way consumers are less likely to be misled and can have confidence in their purchase decisions. If a mandatory approach is adopted, consumers must be made aware of the meaning of these labels since it is possible that only one third of consumers correctly understand the ideas of “product of” and “made in” labels.⁹

IV Costs

[10] The implementation of new labelling requirements may be a costly undertaking for retailers and wholesalers.¹⁰ Although, financial effects are highly debatable for producers and consumers, the overhead costs for companies should not be underestimated.¹¹ These cost increases may reduce profits for supply chain members if consumers are not willing to pay more for foods affected by labelling legislation.

[11] Furthermore, “country of origin” information is not as relevant to current New Zealand consumers as other considerations in their everyday food choices and as such, mandatory labelling may not be beneficial.¹² The New Zealand Food Safety Authority estimates that suggest similar policies would increase food prices by 20 to 30 per cent.¹³ Therefore, mandatory labelling policies may add costs and reinforce misconceptions that consumers already hold about the meaning of country of origin labels. Labels will only serve consumers that seek, are motivated to use, and correctly understand this information.

⁸ Above n 7.

⁹ Andrea Insch and Erin Jackson “Consumer understanding and use of country-of-origin in food choice” (2014) 116 *British Food Journal* 62.

¹⁰ Above n 2.

¹¹ Above n 7.

¹² Above n 9.

¹³ New Zealand Food Safety Authority “Country of origin labelling for food: Commonly Asked Questions” <www.foodsmart.govt.nz>.

[12] The costs of implementing this legislation, although overheads may be significant, would be outweighed by the benefit to consumers. Many retailers are already under similar obligations if they export to Australia so costs for them would be minimal despite the findings in the Irsch and Jackson study. Moreover, consumers are increasingly concerned about where their food comes from in today's globalised world. Although this legislation is only likely to most affect those who are educated and those who have the means to make purchase decisions based on variables other than price. All New Zealanders should be entitled to be conscientious consumers and be facilitated to make those informed decisions.

V *Comparative Labelling Practices*

A Australia

[13] On the 1 July 2016, reforms that amended the consumer law relating to Country of Origin Labelling came into force. Under the Competition and Consumer Act 2010, the Country of Origin Food Labelling Information Standard 2016 was made.¹⁴ This reform implemented a new scheme by which all food sold inside Australia is subject to country of original labelling. The labelling will indicate whether a product was: grown, produced or made in Australia; packaged in Australia; grown, produced or made in another country; packaged in another country.¹⁵

[14] All food that the standard applies to will contain markings that indicate the location the product was grown/produced/made and how much of that product contains Australian produce. For most imported foods, the country of origin statement will need to be clearly defined. If that product also contains Australian produce, the percentage will displayed alongside the country of origin.

[15] Food is also separated into "priority" and "non-priority" foods. All "priority" foods will be required to contain the labelling. Inclusion of the labelling for "non priority" foods is voluntary. This distinction was made to exclude certain foods that it deemed consumers had a low interest in knowing its origin. "Non priority" foods include: seasonings;

¹⁴ Competition and Consumer Act 2010 (Aus), sch 2, s 134.

¹⁵ Country of Origin Food Labelling Information Standard 2016 (Aus), s 6.

confectionary; biscuits and snack food; bottled water; soft drinks and sports drinks; tea and coffee; and alcoholic beverages.

[16] These changes were made in response to confusion amongst consumers regarding their country of origin labelling.¹⁶ There had been calls for the labelling to be clearer and more meaningful. Consumers were not just interested in where something was made and packaged but also how much food was grown in Australia. The government was very aware of the potential increase in regulatory and production costs, however its recognition of the importance that consumers receive the information they need to make purchasing decisions that align with their personal preferences was where it placed its emphasis. Any misleading labelling would be investigated and enforced by the Australian Competition and Consumer Commission.¹⁷

B United Kingdom and the European Union

[17] The legislation prescribing the country of origin labelling in the United Kingdom is dictated by the European Union and the United Kingdom parliament. Their food falls into two categories, either there is a specific European Union regulation relating to that category, or there is a general directive relating to its packaging or local legislation.

[18] The Food Labelling Regulations 1996 sets out the general provisions relating to food sold within the United Kingdom. For example, reg 5(f) when read with reg 4 requires food that is ready for delivery to the ultimate consumer or to a catering establishment to be labelled with particulars of the place of origin or provenance of the food if failure to give such particulars might mislead a purchaser. The European Union Directive 2000/13/EC prohibits labelling that could mislead a purchaser to the characteristic of a food in particular, its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production.

[19] One such example is the origin labelling of beef, governed by Regulations (EC) No 1760/2000 and (EC) No 1825/2000. Factors such as the country of birth; country of rearing; country of slaughter; country of cutting; and the allocated number of the cutting

¹⁶ Department of Industry, Innovation and Science (Aus) *Country of Origin Food Labelling – FAQs* (2016).

¹⁷ Australian Competition and Consumer Commission “Country of origin” (2016) Australian Competition and Consumer Commission < www.accc.gov.au>.

plant and slaughterhouse will be taken into account in the labelling of beefs. If it all occurs in the same country it just has to be labelled as “Origin: [Country]”.

- [20] Eggs are sold under EC Regulation 1028/2006 (which was implemented by EC/557/07) which only requires eggs that have been imported by a third country to have a country of origin. The sale of poultry is similar in that only if it is imported from outside the European Community will it require an origin label.¹⁸ Fish are labelled according to the ocean that it was caught in as set out in Regulations (EC) 104/2000 and 2065/2001. If farmed then the processing country will be named.
- [21] Other food products like fresh fruit and vegetables are required to have the country of origin at all points in the distribution chain, under Council Regulations (EC) 2200/96 and (EC) 1580/2007. Though, some fruits have their own marketing standards.
- [22] Honey is regulated under the Honey Regulations 2003. The country of origin must be stated but if a blend has multiple origins then they can simply be labelled as from EC countries, Non-EC countries or both. Olive Oil is regulated under (EC) No 1019/2002. Only ‘extra virgin’ and ‘virgin olive oil’ may bear the origin on the labelling. That labelling can only contain, a Protected Designation of Origin, Protected Geographical Indication, a member state, the European Community or a third country. If more than 75% selection has occurred from a certain geographic area, that area may be listed.
- [23] Finally, the European Union has also three designations under the EU Protected Food Name Scheme. The current regulations protect the designation of origin, geographical indication and guarantee traditional speciality.¹⁹ These marks allow products to be registered because of some special character that arises from their geographic location, or traditional production methods.²⁰

¹⁸ EC Regulation 1906/90.

¹⁹ Council Regulations (EC) 509/2006, (EC) 510/2006.

²⁰ Examples include: Champagne wine, Stilton Cheese, Arbroath Smokies, Feta cheese, parma ham, Roquefort cheese.

C Recommended Labelling Practices in New Zealand

- [24] The proposed Bill does not take adequate steps to give consumers the best knowledge in order for them to make informed purchasing decisions. In reviewing the approaches of the European Union and Australia, two lessons can be garnished. Firstly, the European law is complex, unstructured and contained over a vast, and individualist regulations. Secondly, the Australian amendment provides a significantly greater amount of information to consumers.
- [25] Each major category has its own specific labelling regulations, and there is no consistency amongst them. Considering that the aim of the scheme is to provide consumers with more information about their products in order to make informed purchasing decisions, that Australian approach makes significant steps to achieve this.
- [26] Given that other aspects of food labelling in Australia and New Zealand are shared through the Australia and New Zealand Food Standards, it would be contrary to the common market place our nations have established to diverge on country of origin labelling. This would reduce the administrative and financial burden this would be placing on businesses.

VI *Consistency with other domestic legislations*

- [27] This part of the submission compares the proposed Bill to similar regulations/ legislation in New Zealand which also require labelling of country of origin, as well as labels already required for food, addressing how the similar legislation handles issues brought up in the first reading; namely trade, cost, labelling, enforcement and extent of the legislation.
- [28] The Consumer Information Standard (Country of Origin (Clothing and Footwear) Labelling) Regulations 1992, under s 27 of the Fair Trading Act 1986, requires clothing and footwear to have country of origin labels. Grape wine is also required to have country of origin labelling under part 1.2 and part 2.7 of the Australia New Zealand Food Standards Code.

[29] All wine sold in New Zealand, including imported wine, must meet the labelling and composition requirements of the Australia New Zealand Food Standards Code (the Code). All New Zealand grape wine must be labelled with its country or countries of origin. If the wine includes imported wine in the blend, this must be indicated on the label. This is specified in the Wine Regulations 2006.²¹ The rules for label statements about grape variety, vintage and area of origin are collectively known as ‘the 85% rule’. If a label states the wine is from a particular grape variety, vintage or area, then at least 85% of that wine must be from that variety, vintage or area. The 85% rule applies to wine labelled for retail sale. It does not apply to wine sold in bulk. In general, the rules for label statements apply to grape wine made in New Zealand regardless of whether it is sold in New Zealand or intended for export.

[30] Certain types of food are also already required to be labelled with information including:–

- a. the name of the food;
- b. a lot number which identifies where and when the food was packaged or prepared and the batch;
- c. a date mark;
- d. the name and address of the supplier or business in New Zealand or Australia, who can be contacted if more product information is needed;
- e. mandatory warning statements, advisory statements and declarations to identify certain ingredients or substances that may trigger allergies or be of concern;
- f. an ingredient list, including any food additives such as preservatives, flavours and colours. Food additives should be identified by their function and name or code number (for example, 'Thickener (pectin)' or 'Thickener (440)');
- g. a date marking (usually ‘Use By’ or ‘Best Before’ dates) for most packaged food with a shelf life of less than two years;
- h. directions for use and storage to ensure the food will keep for the period indicated by the date mark. Directions may include how you should store the food to stop it spoiling or reduce the growth of pathogens that may cause illness;

²¹ Wine Regulations 2006, reg 7–8.

- i. a Nutrition Information Panel (NIP) to allow you to compare the quantities of 7 key nutrients per serving, and per 100g (or 100ml if liquid);
- j. the percentage of a product's characterising ingredient, if relevant (for example, cocoa in chocolate or strawberries in strawberry yoghurt);
- k. the net weight or volume.

[31] Although Richard Prosser states in the Hansard Report that existing regulations require labelling of country of origin for white-ware, as do a number of other sources, no other further substantial information regarding the labelling of white-ware could be found.

[32] Misleading tags and overall lack of information in supermarkets and other food produce shops is a huge problem, with a recent Consumer New Zealand and Horticulture New Zealand survey showing that 71% of people want mandatory country of origin labelling for fruit and vegetables. Currently, phone applications such as the SAFE app lists whether a product is New Zealand made (sourced and made in New Zealand) or not. The main reasons for people using this app are unclear labelling and loopholes in cruelty and food standards, meaning that many consumers regard labelling on packaging as untrustworthy.

[33] Introducing this Bill would increase transparency, crack down on misleading labels and build up New Zealand food standards, which also may help combat other food-related issues as it would be easier for New Zealanders to have clear, straightforward access to knowledge and awareness about their purchases. The information would be readily available on the packaging after regulations become enforceable. If country of origin is required and closely scrutinised, manufacturers will be held accountable to a higher food standard overall. This Bill would also maintain consistency with existing regulations that require labelling of country of origin for clothing and footwear, wine and white-ware.

A Trade

[34] Several other countries adhere to food labelling standards, particularly country of origin labelling, which New Zealand already has as a requirement on certain products. Introducing this requirement would mean that we become more in line with 90% of our trading countries. It has not appeared to hinder our clothing and footwear industry in any

way, nor our wine industry. In fact, this would lessen the chance of New Zealand consumers being taken advantage of by overseas manufacturers.

B Cost

[35] As mentioned above, certain types of food are already required to label an extensive amount of information. Horticulture New Zealand does not believe compliance costs will be significant. If it were worked into the process of manufacturing, it would not be difficult to trace the source, especially as the Bill only concerns single component foods. Multi component foods would make the process more difficult, but it is a lot more straightforward with single component foods. Two major New Zealand retailers are already committed to displaying country of origin information.

[36] In the clothing and footwear industry, the costs are worked into the manufacturing process, as it has become a norm to label clothes with such information. Costs of labelling do not appear to be a major concern for fashion retailers. Once mandatory labelling becomes the norm for food products, it will also be worked into the manufacturing process, as long as companies are allowed a buffer time similar to the Australian legislation, in order to adjust their process.

C Labelling Difficulties

[37] Concerns regarding labelling difficulties were raised in the first reading, such as practical difficulties and costs associated with labelling produce that one wants to sell on the side of the road. However, the regulations in clothing and footwear state that if it is impractical to have the information branded, a simple removable tag is sufficient, as long as the country of origin is obviously shown. The regulations have mandatory application to all clothing suppliers, which includes at markets and in giveaways; yet this appears not to have hindered the presence of pop up fashion stalls or other similar retailers. What is important is that the information is clear and straightforwardly presented- it does not have to be a costly and inconvenient process, and it provides customers with vital information. A clear sign next to the produce on a table could be considered as sufficient labelling.

[38] Although labelling may also add a cost on small business producers of fresh produce, on the balance the requirement would actually be beneficial overall for local businesses, as

overseas manufacturers would not be able to get away with misleading labels as easily, allowing local companies to become more competitive. The clothing and footwear regulations place a strong emphasis on not allowing misleading or misrepresentative information, including the use of symbols or words that may imply a product is locally produced when it is in fact, not- for example the usage of a kiwi motif on an apple when it is in fact imported from overseas. If regulations became enforceable instead of voluntary, small businesses that actually grow their produce in New Zealand would not be disadvantaged anymore from losing customers to misleading packaging used by offshore producers with local New Zealand distributors.

D Enforcement

[39] In terms of the difficulties Australia has faced in labelling food which may be made up of several different sources, this Bill will not face the same issue as it deals only with single component foods. In the first reading, concerns were raised over this, as if the Bill were to be extended to multi-component foods, members did not want to head down the same path as Australia, in that it will label what percentage of a product is Australian made, without providing information on the rest. One member called it essentially a form of ‘fraud’.

[40] If it were to be extended, the 85% rule used by the wine regulations could be considered, in that the product must comprise of at least 85% of ingredients from one country before it can label itself as such, whilst omitting information about the other 15%- otherwise all percentages must be stated. It is understandably more difficult to label food than it is to label clothing or wine, but these issues do not rise under single component food labelling.

[41] The clothing and footwear regulations are enforceable under the Fair Trading Act 1986.²² It is an offence under s 28 of the act to supply clothing that does not comply with the country of origin guidelines, with fines up to \$30,000, and possibly a conducting of a recall for all products improperly labeled. The proposed Bill would be enforceable under subpart 6, part 4 of the Food Act 2014. There would undoubtedly be difficulties in the tracing a country of origin, but similar issues have been tackled in the fashion industry.

²² Section 27, Fair Trading Act 1986.

[42] For example, clothing companies are rated for their ethical practices by third parties. It can be said that with the growing demand for transparency, companies are more likely to provide information/ sources to third parties. In a similar way, it has to be recognised that dishonest behaviours by manufacturers is not just limited to the food industry. If it is made a mandatory requirement, there will be additional incentive to ensure accuracy. The information on packaging we now have is already very misleading and dishonest, having a mandatory “country of origin” labelling requirement would help counter this issue.

VII Conclusion

[43] Some regulations that exists in New Zealand already requires a “country of origin” label. In passing this bill, we would simply be keeping in line with other countries’ (many of which are trading partners) standards and our own existing legislations. Overall, the benefits vastly outweigh the costs and the Wellington Community Justice Project supports this Bill with the following recommendations.

[44] It is our view that promotional programmes that seek to raise the perception of countries be viewed less favourably. Educating New Zealanders as to the food safety audits required of all countries we import from might also be necessary to mitigate trade disincentives. Guidelines dictating clear statements relating to a country of origin are also required to ensure clarity for consumers. If the Select Committee finds this requires a mandatory system, consumers must be educated as to what each label means.

[45] We recommend that the proposed Bill be expanded to reflect the legislation in Australia. Consumers should be provided all the information about their food, not simply where it had originated from. This is because some consumers may wish to support local producers, while others may wish to avoid certain countries due to ethical grounds or workplace-related practices. There may be concerns that labelling products with their origin may harm sales of foreign products in New Zealand due to consumers avoiding certain products. However, factors relating to price and quality that plays into a consumer’s purchase decision should not be ignored.

[46] We thank the Committee for their consideration of our thoughts.