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INITIAL ASSESSMENT REPORT

APPLICATION A479

FORMAT AND LISTING OF NUTRIENTS IN THE NUTRITION INFORMATION PANEL

DEADLINE FOR PUBLIC SUBMISSIONS to FSANZ in relation to this matter:
28 January 2004
(See 'Invitation for Public Submissions' for details)

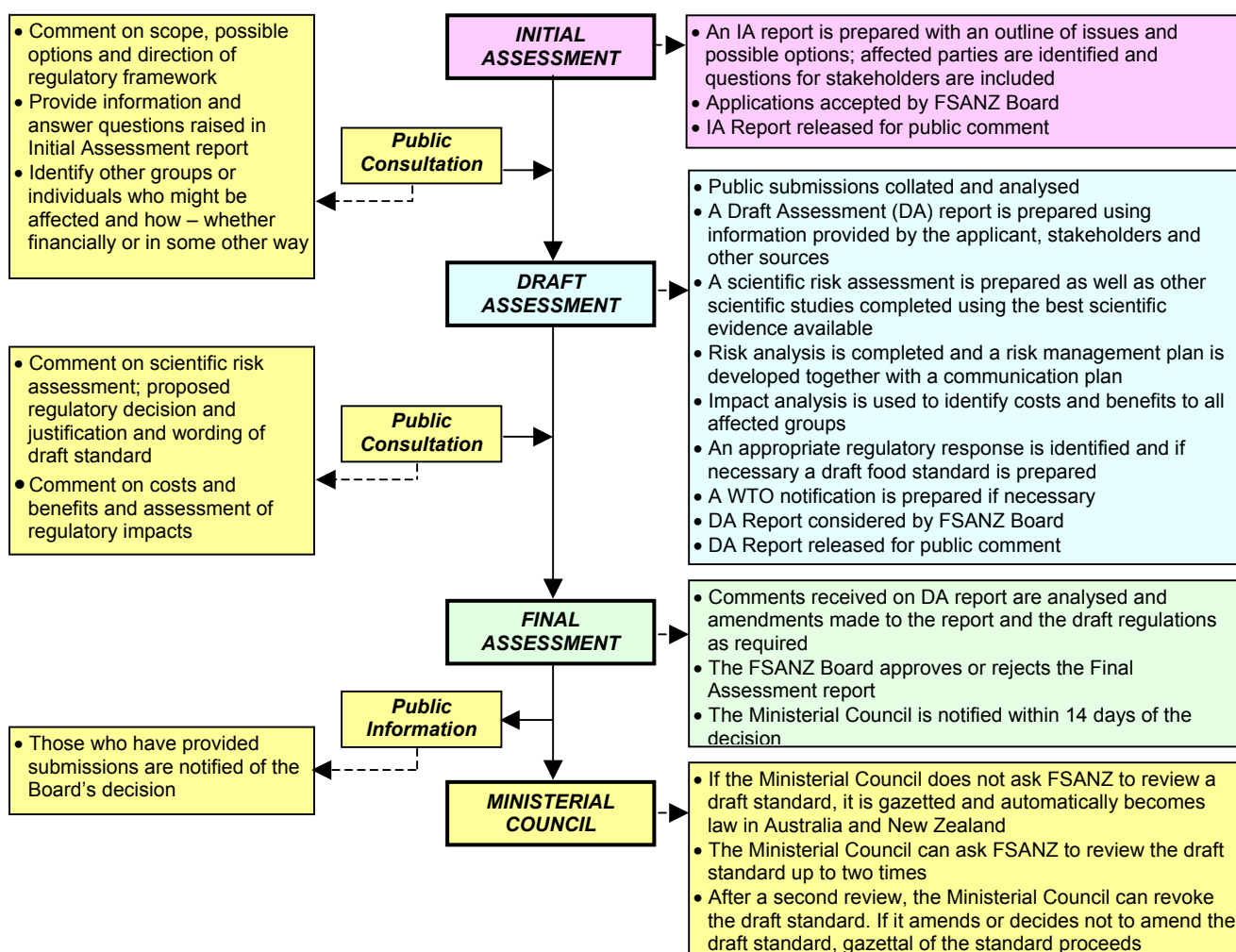
FOOD STANDARDS AUSTRALIA NEW ZEALAND (FSANZ)

FSANZ's role is to protect the health and safety of people in Australia and New Zealand through the maintenance of a safe food supply. FSANZ is a partnership between ten Governments: the Commonwealth; Australian States and Territories; and New Zealand. It is a statutory authority under Commonwealth law and is an independent, expert body.

FSANZ is responsible for developing, varying and reviewing standards and for developing codes of conduct with industry for food available in Australia and New Zealand covering labelling, composition and contaminants. In Australia, FSANZ also develops food standards for food safety, maximum residue limits, primary production and processing and a range of other functions including the coordination of national food surveillance and recall systems, conducting research and assessing policies about imported food.

The FSANZ Board approves new standards or variations to food standards in accordance with policy guidelines set by the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) made up of Commonwealth, State and Territory and New Zealand Health Ministers as lead Ministers, with representation from other portfolios. Approved standards are then notified to the Ministerial Council. The Ministerial Council may then request that FSANZ review a proposed or existing standard. If the Ministerial Council does not request that FSANZ review the draft standard, or amends a draft standard, the standard is adopted by reference under the food laws of the Commonwealth, States, Territories and New Zealand. The Ministerial Council can, independently of a notification from FSANZ, request that FSANZ review a standard.

The process for amending the *Australia New Zealand Food Standards Code* is prescribed in the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). The diagram below represents the different stages in the process including when periods of public consultation occur. This process varies for matters that are urgent or minor in significance or complexity.



INVITATION FOR PUBLIC SUBMISSIONS

FSANZ has prepared an Initial Assessment Report of Application A479, which includes the identification and discussion of the key issues.

FSANZ invites public comment on this Initial Assessment Report for the purpose of preparing an amendment to the Code for approval by the FSANZ Board.

Written submissions are invited from interested individuals and organisations to assist FSANZ in preparing the Draft Assessment/Final Assessment for this Application. Submissions should, where possible, address the objectives of FSANZ as set out in section 10 of the FSANZ Act. Information providing details of potential costs and benefits of the proposed change to the Code from stakeholders is highly desirable. Claims made in submissions should be supported wherever possible by referencing or including relevant studies, research findings, trials, surveys etc. Technical information should be in sufficient detail to allow independent scientific assessment.

The processes of FSANZ are open to public scrutiny, and any submissions received will ordinarily be placed on the public register of FSANZ and made available for inspection. If you wish any information contained in a submission to remain confidential to FSANZ, you should clearly identify the sensitive information and provide justification for treating it as commercial-in-confidence. Section 39 of the FSANZ Act requires FSANZ 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.

Submissions must be made in writing and should clearly be marked with the word 'Submission' and quote the correct project number and name. Submissions may be sent to one of the following addresses:

**Food Standards Australia New Zealand
PO Box 7186
Canberra BC ACT 2610
AUSTRALIA
Tel (02) 6271 2222
www.foodstandards.gov.au**

**Food Standards Australia New Zealand
PO Box 10559
The Terrace WELLINGTON 6036
NEW ZEALAND
Tel (04) 473 9942
www.foodstandards.govt.nz**

Submissions should be received by FSANZ **by 28 January 2004**.

Submissions received after this date may not be considered, unless the Project Manager has given prior agreement for an extension.

While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website using the Standards Development tab and then through Documents for Public Comment. Questions relating to making submissions or the application process can be directed to the Standards Liaison Officer at the above address or by emailing slo@foodstandards.gov.au.

Assessment reports are available for viewing and downloading from the FSANZ website. Alternatively, requests for paper copies of reports or other general inquiries can be directed to FSANZ's Information Officer at either of the above addresses or by emailing info@foodstandards.gov.au.

Further Information

Further information on this Application and the assessment process should be addressed to the FSANZ Standards Liaison Officer at one of the following addresses:

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Executive Summary

Standard 1.2.8 – Nutrition Information Requirements in the *Australia New Zealand Food Standards Code* (the Code) requires nutrition information on most food labels in the form of a Nutrition Information Panel (NIP). In the NIP, information on the amount of energy, protein, total fat, saturated fat, carbohydrate, sugar and sodium must be displayed. In addition to mandating the information that is required in a NIP, clause 5 in Standard 1.2.8 mandates the format in which the information is to be presented. The intention of prescribing the format is to more readily enable consumers to make an informed choice about the nutritional content of the food they purchase.

Application A479 from the NSW Health Department, seeks to amend Standard 1.2.8 - Nutrition Information Requirements to allow for the format of the NIP to be more flexible than that currently permitted. Specifically, it proposes to allow for the nutrient listing to appear in a different order, using similar terms, as long as the nutrients declared in the NIP are, at a minimum, the same as the nutrients outlined in Standard 1.2.8 of the Code. It also proposes flexibility in the ordering of the ‘per serve’ and ‘per 100g’ columns.

The problem as described by the Applicant is that several imported foods do not comply with the prescribed requirements in clause 5, Standard 1.2.8. The Applicant contends that many non-compliant imports provide similar information to that required by the Code, with slight differences in the presentation of the information. The Applicant considers that such labelling meets the intent of Standard 1.2.8 and that consumers are able to obtain sufficient information from the label to make informed choices. The Applicant proposes that flexibility in the presentation of the NIP should be applied to both imported and domestic products.

A number of relevant issues need to be considered as part of A479 including:

- the need for consistent information for consumers to make informed food purchasing decisions;
- international practice, where a number of other countries also mandate the content and format of NIPs; and
- Australia/New Zealand WTO obligations and international trade implications of the current Standard 1.2.8.

Two regulatory options have been identified at Initial Assessment:

Option 1: Maintain the current requirements in clause 5, Standard 1.2.8 of the Code, which prescribe the format for the presentation of information in the NIP.

Option 2: Allow flexibility in the presentation of information in the NIP by permitting an alternate format in clause 5, Standard 1.2.8.

The parties affected by the options proposed can be broadly divided into four groups: the food industry, consumers, government and health professionals. The sectors of the food industry that would primarily be affected would be overseas food manufacturers, local importers and distributors, and domestic food manufacturers. A significant number of consumers will be affected by this Application.

The FSANZ quantitative consumer survey indicated that sixty-six percent of consumers use the NIP, even if only occasionally, in making food purchasing decisions (FSANZ 2003). Health professionals are potentially affected given that the NIP is used in consumer education about nutrition and related food purchasing activities.

The New Zealand Government and the Australian State and Territory Governments are responsible for enforcing the Code at the domestic level. The Australian Quarantine and Inspection Service (AQIS) is responsible for enforcing the Code for imported foods in Australia while the New Zealand Food Safety Authority (NZFSA) and the public health units are responsible for enforcement of requirements for imported foods in New Zealand. This Application affects each of these government agencies.

The costs and benefits of the two identified options and their impacts on each stakeholder group are to be determined through response to a range of key questions that have been identified for the purpose of this assessment.

FSANZ is seeking public comment in order to assist in the assessment of this Application. The views of submitters will assist in the development of the Draft Assessment and a preferred regulatory approach for the declaration of information in the NIP.

1. Introduction

Standard 1.2.8 – Nutrition Information Requirements in the Code requires nutrition information on most food labels in the form of a Nutrition Information Panel (NIP). In the NIP, information on the amount of energy, protein, total fat, saturated fat, carbohydrate, sugar and sodium must be displayed. In addition to mandating the information that is required in a NIP, clause 5 in Standard 1.2.8 also mandates the format in which the NIP is presented. The requirements for mandatory nutrition information to be presented in a consistent format as mandated in the Code is to more readily enable consumers to make an informed choice about the nutritional content of the food they purchase.

1.1 Nature of Application

Application A479 from the NSW Health Department, seeks to amend Standard 1.2.8 - Nutrition Information Requirements to allow the format of the NIP to be more flexible than currently allowed. Specifically, it proposes to allow for the nutrient listing to appear in a different order, using similar terms, as long as the nutrients declared in the NIP are, at a minimum, the same as the nutrients outlined in Standard 1.2.8 of the Code. It also proposes flexibility in the ordering of the ‘per serve’ and ‘per 100 g’ columns.

The proposed variation is being sought in order to accommodate the NIP on a wider range of imported products where the NIP differs in this regard. The example NIP provided by the applicant is that of the UK, where the ‘per serve’ and ‘per 100g’ columns are in a different order, the information on carbohydrates and fats appear in a different order, fibre information appears before sodium and slightly different terms are used (eg in relation to fat ‘of which: - saturates’ in the UK panel vs. ‘saturated’ in the Australia New Zealand panel).

The Applicant contends that imported products should be considered to comply with the requirements in Standard 1.2.8 if they carry at a minimum all of the mandatory information regardless of the order of the nutrients, the nutrient terms or the order of the columns. It is also suggested that although the NIP declared on the labels of several imported products do not comply with the specified format of Standard 1.2.8, they do meet the intent of the Standard. Whilst the Application focuses on imported products, the Applicant proposes that flexibility in the presentation of the NIP be applied to both imported and domestic products.

2. Regulatory Problem

2.1 Current Standard

Standard 1.2.8 – Nutrition Information Requirements defines the nutrition information requirements in relation to food. Amongst other requirements, it specifies the need for most foods to carry a NIP and also outlines the circumstances in which foods may be exempt from these labelling requirements.

Clause 5, Standard 1.2.8 specifically outlines the prescribed components of the NIP and the format in which this information must be presented. Unless the Standard permits a variation in the presentation of the required information, the prescribed format should be followed. This means that the elements of the NIP must appear in the exact order using the exact terminology prescribed; there must be two columns in the NIP – one ‘per serve’ and one ‘per

100 g' or '100 ml' where the 'per serve' column appears to the left hand side of the 'per 100 g/ml' column, as outlined below in Figure 1.

Standard 1.2.8 of the Code applies equally to both domestic and imported food products.

Figure 1 Australia/New Zealand Nutrition Information Panel

NUTRITION INFORMATION		
Servings per package: 3		
Serving size: 150 g		
	Quantity per Serving	Quantity per 100g (or 100mL)
Energy	608 kJ	405 kJ
Protein	4.2 g	2.8 g
Fat, total	7.5 g	4.9 g
- saturated	4.6 g	3.0 g
-		
Carbohydrate	18.6 g	12.4 g
sugars	18.6 g	12.4 g
Sodium	90 mg	60 mg

2.2 The Problem

The Applicant advises that several imported foods do not comply with the labelling requirements of the Code, in that the information presented in the NIP does not comply with the format prescribed in the Code. The labels of many non-compliant imports do provide the same information to that required by the Code but present it with slight differences, such as: different words, different ordering of nutrients, a different set of nutrients, or a different ordering of the 'per serve' and 'per 100 g' columns of the NIP. The Applicant suggests that such labelling meets the intent of the Code and that consumers are able to obtain the same information from the label to make informed choices. The problem from an enforcement perspective according to the Applicant, is that while these products satisfy the intent of the Code, officers that enforce the Code when requested, must make what is an apparently wrong and illogical ruling and declare the products to be non-compliant.

3. Objective

In developing or varying a food standard, FSANZ is required by its legislation to meet three primary objectives, which are set out in section 10 of the FSANZ Act. These are:

- the protection of public health and safety;
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.

In developing and varying standards, FSANZ must also have regard to:

- the need for standards to be based on risk analysis using the best available scientific evidence;

- the promotion of consistency between domestic and international food standards;
- the desirability of an efficient and internationally competitive food industry;
- the promotion of fair trading in food; and
- any written policy guidelines formulated by the Ministerial Council.

The specific objective of A479 is to ensure that the prescribed format of the NIP on food labels enhances the ability of consumers to make an informed choice about food products in the market place.

4. Background

4.1 Proposal P167 - Review of Nutrition Labelling

In December 1997, the then Australia New Zealand Food Authority (ANZFA) raised Proposal P167 – Review of Nutrition Labelling to review the regulation of nutrition labelling in Australia and New Zealand. The Nutrition Information Panel was developed as part of Proposal P167.

One of the underlying principles in this review was the need to ensure that information, which is provided to the consumer is accurate, easy to use, does not confuse, and assists the consumer in identifying the key nutrient contents of individual food products, in comparing nutrient content within product categories, and in choosing among relevant food alternatives.

The Objective for the Regulatory Impact Statement for Proposal P167 states that ‘In the interests of public health and safety and in order to be able to make informed decisions/choices, consumers, health professionals, government and health and nutrition educators are, in many cases, reliant on this information. It thereby needs to be reliable, meaningful and consistent’.

Whilst consideration was given to voluntary ordering of nutrients in the NIP at Full Assessment (now called Draft Assessment), this was not considered to be appropriate, as it may result in a lack of consistency in NIPs. Consistency in the NIP was seen to be an important factor in assisting consumers to make choices about food products. It was therefore recommended that a standard format be prescribed for all NIPs. In particular, it was recommended that nutrients and unit expressions should be listed in a specified order, using specified names and specific measurements.

Out of the 60 articles reviewed for Proposal P167, no material specifically focussed on the importance of consistency of label formats in order to facilitate both the use of information and the comparison of products, but several suggested that there is a need for consistency. For instance, Levy et al (1991) commented that the elderly, in particular, rely on information being presented consistently to enable them to readily find relevant information.

Consumer research conducted by ANZFA (now FSANZ) as part of Proposal P167, found that consumers believed consistency in labelling through standardisation was fundamental to the design and implementation of NIPs (FSANZ, 1999).

Subjects stated that consistency in format is essential to enable ready assimilation of new information, easy comparison of products and quick utilisation of information.

At Inquiry (now called Final Assessment) it was noted that Australia had a mandatory order of nutrients in the NIP, which had been in place for several years. There had been no problems associated with trade barriers and consumers were accustomed to the order of nutrients. It was noted that a change in the order might cause confusion.

4.2 Use of Nutrition Information Panels by Consumers

As stated by Tee (2002), nutrition labelling of foods is one of the strategies used to assist consumers in adopting healthy dietary practices. The primary objective of nutrition labelling is to describe the nutritional qualities of a food product factually and informatively. Nutrition labelling is intended to convey information about the nutrient content on the food, thereby assisting consumers in making better food choices when planning their daily meals (Tee, 2002).

Consumers' use of the NIP in Australia and New Zealand is indicated in *Food labelling issues: Quantitative Research with Consumers* (2003). This study was commissioned by FSANZ during August and September 2002 via 1940 door to door interviews in several metropolitan areas of both Australia and New Zealand. Forty percent of participants demonstrated an awareness of NIPs as *top of mind*, and when prompted this increased to eighty-six percent. Out of 15 label elements, NIPs were ranked equal second in terms of the elements used, even if just occasionally. The majority of consumers indicated that NIPs were 'clear and easy to understand' (65%) and felt 'sure they could trust the information' (55%). Consumers reported using NIPs 'most of the time when I buy (these) products' or 'when I buy for the first time'. The outcomes of this study indicate that the NIP is an important labelling tool to assist consumers in making food purchasing decisions.

4.3 Use of Nutrition Information Panels by Industry

Nutrition labelling is also important to the food industry as labelling provides a means for food manufacturers and retailers to become more aware of the nutritional properties of their products, and to emphasize these properties to consumers (Tee, 2002). Nutrition labelling presents a unique marketing opportunity for manufacturers as products can be reformulated to meet certain nutrient profiles and these properties can be communicated to the consumer.

4.4 Issues raised by Government agencies

Discussions have been held between FSANZ and enforcement agencies with regard to the current requirements of Standard 1.2.8 in the context of the need for greater flexibility in the interpretation of the Standard with respect to the presentation of the NIP. Specific issues raised in discussions included the order of nutrients in the NIP, the principle of 'equivalence' as specified in key WTO agreements and the importance of having a consistent NIP to ensure consumer understanding.

4.5 Work Plan Classification

This Application had been provisionally rated as work plan category 4 (level of complexity) and placed in Group 2 on the FSANZ standards development Work Plan. This Initial Assessment confirms these ratings. Further details about the Work Plan and its classification system are given in *Information for Applicants* at www.foodstandards.gov.au.

5. Relevant Issues

5.1 The need for consistent information for consumers to make informed decisions

Although most people claim to read labels in the store, particularly on products that are new to them, many report feeling ‘rushed’ and ‘pressured’ to make a quick product selection (ANZFA, 2001). The majority of consumers in an ANZFA survey believed that ‘grocery shopping is a chore – they do it as quickly as possible’ (ANZFA, 1996). Such attitudes, when combined with time pressures and the enormous amount of information that is available in a supermarket, indicate a need for labels to be consistent, on the assumption that faster and possibly better decisions can be made. A recent FSANZ survey found that most consumers made a choice between two products by selecting the one that they considered to be preferable based on the most important attribute (fat content) (FSANZ, 2003). The decision making process is likely to be quicker and less stressful when fat and other nutrients are ordered in a consistent manner on all food products.

Such reasoning forms the basis for consistent labelling in other countries. In the United States, the Nutrition Labelling and Education Act (NLEA) of 1990 sought to simplify the task of identifying the nutritional value of different foods by standardising labels. As reported by Kreuter et al, (1997), it was thought that this would promote the comparability of foods and make nutrition information on labels easier for consumers to understand.

The United Kingdom Food Advisory Committee Review of Food Labelling (2001) also supports the notion of consistency in format, as one of their key recommendations is that whenever nutrition information is provided, it must be presented in a standard format and must be clear to understand.

The extent to which minor inconsistencies in format can, however, be tolerated, without any significant effect on consumers’ ability to make judgements about a food, has yet to be determined.

5.1.1 Consumer research – Proposal P167

As part of Proposal P167 – qualitative consumer research was undertaken in October 1998 primarily to evaluate consumers’ reactions to the inclusion of an interpretive element in NIPs. As part of the study, it was found that overall, focus groups thought that education and consistency in labelling through standardisation were the fundamental rules for designing and implementing NIPs. They therefore wanted nutrients and unit expressions (‘per 100g/100mL’ and ‘per serving’) listed in the same order on all packages.

As a result of conducting the focus groups, a recommendation was made that a standard format be prescribed for all NIPs. It was proposed that in particular, nutrients and unit expressions be listed in a specified order, using specified names and specified measurements.

5.1.2 Consumer research - Application A479

Whilst there have been suggestions that consistency is an important factor in the use of NIPs, there is an absence of published literature that specifically focuses on whether consistency in the format of NIPs is a pivotal factor in enabling consumers to make decisions about food products in the market place. Given this, FSANZ is undertaking consumer research to examine whether inconsistency in the format of the NIP has an impact on consumers' ability to make judgements about the information within the NIP. This research is necessary in order to progress A479 effectively.

Key Question

Is there any evidence to suggest that consumers' decision making is affected/not affected when comparing nutrition information in NIPs with differing formats? How is it affected?

5.2 International Practice

5.2.1 Codex

In Codex Alimentarius, nutrition labelling is voluntary for all foods, except for packaged foods for which nutrition claims are made. Where a nutrient declaration is required, the declaration is mandatory for energy, protein, available carbohydrate, fat, any claimed nutrient and for any other nutrient considered relevant for maintaining a good nutritional status as required by national legislation. The declaration of nutrient content should be numerical, but additional means of presentation should not be excluded. Information on the amounts of nutrients must be expressed in terms of g per 100 g or per 100 ml or per package if the package contains only a single portion. Information may also be given per serving as quantified on the label or per portion, provided that the number of portions contained in the package is stated. Any declaration of fatty acids should follow the format below:

Fatg
of which polyunsaturatedg
and saturatedg

Similarly, for the declaration of types of carbohydrate, the following format is given:

Carbohydrate	...g
of which sugars	...g

A review is currently underway and is at step 8 of the procedure. It is proposed that where the amount and/or type of fatty acids or the amount of cholesterol is declared, the following format should be used:

Total Fat	
of which	saturated fatty acids ... g
	trans fatty acids ... g
	monounsaturated fatty acids ... g
	polyunsaturated fatty acids ... g
Cholesterol	..m g

5.2.2 *United Kingdom*

In the United Kingdom (UK), nutrition labelling requirements are laid down at the European Union level by Council Directive 90/496/EEC of 1990. These have been adopted into law in England and Wales by the Food Labelling Regulations 1996. Nutrition labelling is mandatory only on foods bearing a nutrition claim, such as 'low fat' and on foods for particular nutritional uses (such as medical foods).

Nutrition labelling may be given in two main formats, but must include the amount of any nutrient for which a claim has been made. The minimum declaration permitted is a 'Group 1' declaration, which requires information on energy, protein, carbohydrate and fat.

The other standard format is a 'Group 2' declaration as illustrated in Figure 2, that requires information on energy; protein; carbohydrate - of which sugars; fat - of which saturates; fibre; and sodium.

A range of other nutrients may be included on a voluntary basis and must be included if a claim about them is made.

Information must be declared per 100 g or per 100 ml of the food. Information can also be provided on per portion (provided the number of portions in the package is stated) or per quantified serving basis. The Ministry of Agriculture Fisheries and Food (MAFF) Guidance notes on nutrition labelling suggest that the information be expressed as 'typical values per 100g (or 'per 100ml'). MAFF also states that if the additional per serving/portion information is clearly intended to benefit the consumer, and there really is too little space for it, flexibility may be appropriate. Thus 'per serving' or 'per portion' information can be given selectively for some nutrients.

In terms of layout, MAFF does not believe that it would matter in practice if minor changes are made to the prescribed layout, provided it does not confuse or mislead consumers or make it more difficult to compare the nutritional content of foods. For example:

carbohydrate of which: -sugars	might be shown as	carbohydrate of which: sugars
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Figure 2 An example of a Group 2 declaration.

NUTRITION INFORMATION		
Servings per package: 3		
Serving size: 150g		
	Typical Values per 100g	Typical values per serving
Energy	608kJ	405kJ
Protein	4.2g	2.8g
Carbohydrate	18.6g	12.4g
of which:		
-sugars	18.6g	12.4g
Fat	7.5g	4.9g
of which		
-saturates	4.6g	3.0g
Fibre	0g	0g
Sodium	90mg	60mg

5.2.3 United States of America

In 1994, the USA implemented the NLEA, which require a ‘Nutrition Facts’ panel for almost all processed foods, as illustrated in Figure 3. Nutrient declarations are mandatory for calories, calories from fat, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrate, dietary fibre, sugars, protein, vitamin A, vitamin C, calcium and iron. Nutrient amounts must be expressed in grams (or milligrams) per standardised reference serving for total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrate, dietary fibre, sugars and protein, and as percent daily values (DV) for all nutrients except calories, calories from fat, trans fat, sugars and protein. A footnote must appear below the declaration of vitamin and minerals and must state that ‘*Percent Daily Values are based on a 2,000 calorie diet. Your Daily Intakes may be higher or lower depending on your calorie needs.’ and must be followed by daily values for six nutrients as illustrated below.

Figure 3 US Nutrition Facts panel

Nutrition Facts	
Serving Size 1 cup (228g) Servings per Container 2	
Amount Per Serving	
Calories 280	Calories from Fat 120
% Daily Value*	
Total Fat 13g	20%
Saturated Fat 5g	25%
Trans Fat 2g	
Cholesterol 30mg	10%
Sodium 60mg	28%
Total Carbohydrates 31g	10%
Dietary Fiber 0g	0%
Sugars 5g	
Protein 5g	
Vitamin A 4%	• Vitamin C 2%
Calcium 15%	• Iron 4%
*Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.	
	Calories 2,000 2,500
Total Fat	Less than 65g 80g
Sat Fat	Less than 20g 25g
Cholesterol	Less than 300mg 300mg
Sodium	Less than 2,400mg 2,400mg
Total Carbohydrate	300g 375g
Dietary Fiber	25g 30g

5.2.4 Canada

On 1 January 2003, Canada published new regulations in the Canada Gazette amending their *Food and Drug Regulations*. Nutrition labelling is now mandatory on most food labels in the form of a 'Nutrition Facts Table', which includes the following core items, as illustrated in Figure 4. These are serving size, energy value, fat, saturated fatty acids, trans fatty acids, the sum of saturated fatty acids and trans fatty acids, cholesterol, sodium, carbohydrate, fibre, sugars, protein, and the amount of vitamin A, vitamin C, calcium and iron. A list of additional information that may be included in the Nutrition Facts Table is also prescribed. Information is expressed in a similar way to the US except that a combined %Daily Value is given for saturated fat and trans fat, rather than a %Daily Value for saturated fat and no value for trans fat.

In addition to objectives that focussed on aspects of public health, two of the key objectives of the new regulations are to:

- advance compatibility with the USA system and further work towards mutual acceptance by Canada and the USA of their respective nutrition labelling requirements; and
- provide a system for conveying information about the nutrient content of food in a standardised format which allows for comparison among foods and prevents consumers' confusion in respect of the nutrient value and composition of a food at point of purchase.

The format of the Nutrition Facts Table is prescribed, including font size, bilingual presentation, layout, positioning on the label and orientation. In developing the labelling regulations, consultations with literacy experts, consumer advocates and the design and packaging industry, have confirmed that when different designs or formats for the presentation of nutrition labelling information are used, consumers often have difficulty finding and understanding the information.

Even though the standard format is prescribed, there are provisions for alternative presentations of the 'Nutrition Facts' table to accommodate situations where it is not possible to display the standard format on the product label (e.g. narrow version, horizontal version, vertical version). On smaller packages, the 'Nutrition Facts' table is permitted to be on the inside of the label.

Figure 4 Canadian Nutrition Facts panel

Nutrition Facts	
Per 125 mL (87g)	
Amount	% Daily Value
Calories 80	
Fat 0.5 g	1 %
Saturated Fat 0 g + Trans 0 g	0 %
Cholesterol 0 mg	
Sodium 0 mg	0 %
Carbohydrate 18 g	6 %
Fibre 2 g	8 %
Sugars 2 g	
Protein 3 g	
Vitamin A 2 %	Vitamin C 10 %
Calcium 0 %	Iron 2 %

5.2.5 South-East Asia

There is no mandatory nutrition labelling for general foods in countries in South-East Asia, including Malaysia, Brunei Darussalam, Indonesia, Philippines, Singapore and Thailand. These countries only require mandatory nutrition labelling for foods for special dietary use, foods that are enriched or fortified, and foods making nutrient claims (Tee et al 2002).

In many cases voluntary nutrition labelling is used. However, in general, the format and requirements for nutrition labelling differ widely across the region. As reported by Tee et al, (2000) some countries, such as Malaysia, closely follow the Codex guidelines on nutrition labelling, in terms of format, components to be included and mode of expression. Other countries, such as the Philippines and Thailand, have drafted nutrition labelling regulations very similar to those of the United States.

5.3 International Trade

5.3.1 World Trade Organization (WTO) Obligations

As member countries of the WTO, Australia and New Zealand must ensure that regulations are consistent with their obligations under the WTO. As noted in the draft paper Australia plans to submit in early 2004 to the WTO Technical Barriers to Trade (TBT) Committee as 'follow-up' to the Triennial Review of the operation of the TBT Agreement.

‘The [TBT] Agreement recognises that alignment with international standards, guides or recommendations may not always be possible or desirable: either because relevant international standards or guidelines do not exist, or because they would be ineffective or inappropriate in terms of the legitimate objectives pursued, for instance, because of fundamental geographical, or climatic factors or technological problems. To reduce the likelihood differing national requirements becoming an obstacle to trade, the Agreement encourages Members to accept as equivalent the technical regulations and conformity assessment procedures of other Members, where they achieve the same regulatory objective by different means.’

The following articles of the Agreement on Technical Barriers to Trade (1995) are particularly relevant to A479:

Article 2.2 of the TBT Agreement states that ‘Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create’.

Article 2.7 of the TBT Agreement states that ‘Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.’

The issue of ‘equivalence’ in relation to the NIP needs to be considered in the context of the Articles outlined above and the effect their application may have on Australia and New Zealand’s imports/exports with other countries. Determination of ‘equivalence’ should be guided by whether the relevant objectives are being met by regulations as opposed to whether the regulations themselves are considered the same.

It should be noted that unlike the Sanitary and Phytosanitary (SPS) Agreement which imposes a positive obligation on WTO members to recognise ‘equivalence’ once this has been objectively demonstrated by the exporting member, the TBT Agreement only requires WTO members to give ‘positive consideration’ to accepting another member’s technical regulations as equivalent to their own.

Advice from the Australian Department of Foreign Affairs and Trade indicates that it may be possible to retain the current requirements of clause 5, Standard 1.2.8 and remain WTO-consistent, provided that there are published statements elsewhere stating that Australia will recognise equivalent approaches where they meet the same policy objectives as the Standard. In the Full Assessment Report for Proposal P167, (now called Draft Assessment), it was noted that the recommendations being made were in the interests of protecting long-term public health through the consistent provision of key nutritional information. It should also be noted that one of the most significant stakeholders, the USA, already mandates nutrition labelling on all processed foods, and for a greater number of nutrients than is being recommended by this review. No objections to the proposed approach were received by the then ANZFA.

5.3.2 *Potential impact on international trade*

The Applicant proposes that the current requirements detailed in Standard 1.2.8 of the Code are restrictive and could have significant trade implications.

It could be argued that trade from an overall perspective is not impeded by the current requirements. A number of countries' regulations are at least as onerous as those of Australia and New Zealand, if not more so as outlined in Section 5.2 and other countries will not accept Australia/New Zealand exports unless they are labelled to meet the importing countries requirements. Given this, it is also apparent that Australian and New Zealand exports are impeded by other countries' laws.

6. Regulatory Options

At Initial Assessment, two possible regulatory options have been identified.

Option 1.

Maintain the current requirements in clause 5, Standard 1.2.8 which prescribe the format for the presentation of information in the NIP.

Option 2

Allow flexibility in the format of the NIP in presenting the information required in clause 5, Standard 1.2.8 of the Code.

7. Impact Analysis

7.1 Affected Parties

7.1.1 Consumers

A significant number of consumers will be affected by this Application. The FSANZ Quantitative Consumer Survey indicated that sixty-six percent of consumers use the NIP, even if only occasionally, in making food purchasing decisions.

7.1.2 Food Industry

The sectors of the food industry that would primarily be affected would be overseas food manufacturers, local importers and distributors, and domestic food manufacturers.

7.1.3 Government

The New Zealand Government and the Australian State and Territory governments are responsible for enforcing the Code at the domestic level. The Australian Quarantine and Inspection Service (AQIS) is responsible for enforcing the Code for imported foods in Australia while the New Zealand Food Safety Authority (NZFSA) and the public health units are responsible for enforcement of imported foods in New Zealand. This Application affects each of these government agencies.

7.1.4 Health Professionals

A range of health professionals including clinicians, community nutritionists and health educators could potentially be affected by this Application as the NIP is commonly used as a tool in educating the public about nutrition and food products.

7.2 Data Collection

Preliminary information gathered by FSANZ at Initial Assessment has been provided under Section 5 above. This information, together with relevant qualitative and quantitative data to be obtained during the first round of public consultation, will be used to perform a regulatory impact analysis at Draft Assessment of the parties affected. Relevant data may be provided in the form of scientific or non-scientific evidence. Submitters are encouraged to present data in response to the key issues listed above, giving consideration to all affected parties wherever possible.

7.3 Impact Analysis

7.3.1 Consumers

It appears that consumers require consistency in the presentation of the NIP in order to make an informed decision about the nutritional aspects of food products. If this is so, then it is suggested that consumers would not benefit from greater flexibility being allowed in the format of the NIP because they will take longer to make product decisions and could potentially make incorrect judgements about foods they are purchasing.

Option 1

Key Questions

How substantial are the benefits to consumers for having a consistently presented NIP?

Do consumers perceive any costs in maintaining the current requirements?

Option 2

Key questions

If greater flexibility was allowed in the format of the NIP:

What would be the benefits to consumers?

Do you believe, that one potential benefit for consumers would be that a greater choice of imported products would be available?

Would there be any risks to consumers?

Would public health principles be compromised?

What effect would greater flexibility in the NIP have on consumers' ability to make informed choices?

7.3.2 *Industry*

If greater flexibility in the format of the NIP is allowed, the overseas food industry and the imported food industry in Australia and New Zealand may benefit as a greater number of products could be accepted into the country without having to re-label. However, it is difficult to see how the domestic food industry would benefit from a change in the current requirements as it has been made clear since the introduction of the Code, that the requirements in clause 5, Standard 1.2.8 have to be met, with no flexibility allowed and therefore have labelled their products accordingly.

Option 1

Key questions

Do all imported/domestic foods comply with current requirements around the presentation of the NIP?

Do imported/domestic products carry some form of a NIP? If so, with which countries regulations are they complying?

Are the current requirements regarding the format of the NIP problematic from the perspective of importers of food products? If so, to what extent is the food importing industry affected?

Is there any evidence to demonstrate the percentage of imported products that have to be relabelled when entering Australia/New Zealand in order to comply with clause 5, Standard 1.2.8 of the Code?

What cost is involved in the re-labelling of imported food products to satisfy the current requirements around the presentation of the NIP?

Option 2

Key questions

How significant would the benefits be to overseas food manufacturers and the local imported food industry if flexibility was allowed in the presentation of the NIP?

Would domestic food manufacturers benefit from allowing greater flexibility in the presentation of the NIP: for imported foods only; or for both domestic and imported foods?

Would there be any disadvantage to domestic food manufacturers if greater flexibility was allowed in the format of the NIP? If so, what costs would be incurred?

Would there be any disadvantage to food importers and distributors if greater flexibility was allowed in the format of the NIP? If so, what costs would be incurred?

7.3.3 *Government*

The New Zealand Government and the Australian State/Territory Governments are responsible for enforcing the Code. At present, Standard 1.2.8 is very clear in terms of what is required in relation to the presentation of information in the NIP.

Option 1

Key questions

What is the current rate of non-compliance of imported/domestic products observed by enforcement agencies in the Australia/New Zealand market?

If non-compliance is a problem, how significant a problem is it?

What proportion of imported foods would benefit from a change to regulations that allowed for greater flexibility in the format of the NIP?

How substantial is the benefit of enforcing a consistent NIP?

Option 2

Key questions

How enforceable would the regulations be if a greater degree of flexibility was allowed in relation to the format of the NIP?

Would NZFSA, AQIS and the Australian States/Territories require clear guidelines as to how to interpret whether a product complied with the regulations if greater flexibility was allowed?

What would be the impact on enforcement agencies both in terms of cost and time to inspect labels if flexibility in the format of the NIP was allowed, that is a number of different labels were on the market?

Would a range of different NIPs on food products be practical from an enforcement perspective?

If greater flexibility is allowed, what risk may be introduced? Would the credibility of the scientific basis of the NIP be affected?

What level of variation from the required NIP would be accepted as 'equivalent' by Government agencies in the context of the TBT agreement?

7.3.4 Health professionals

Many clinicians, public health/community nutritionists and health educators undertake education activities that focus on use of the NIP in making appropriate food choices. It would seem that consistency in presentation would be an important factor in educating consumers about food via the use of the NIP. Therefore, it is considered that greater flexibility in presentation of the NIP would not benefit health professionals.

Option 1

Key Questions

How substantial are the benefits to health professionals for having a consistently presented NIP?

Do health professionals perceive any costs in maintaining the current requirements?

Option 2

Key questions

If greater flexibility was allowed in the format of the NIP:

What would be the benefits to health professionals?

Would there be any risks to health professionals?

Would public health principles be compromised?

What effect would greater flexibility in the NIP have on health professionals' ability to educate consumers about nutrition and appropriate food choices?

8. Consultation

8.1 Public consultation

FSANZ is seeking public comment in order to assist in the assessment of this Application. The views of submitters will assist in the development of the Draft Assessment and a preferred regulatory approach on the regulation of the format of the NIP. There will be a further round of public comment after the Draft Assessment Report is completed.

Submitters are encouraged to inform FSANZ of any key stakeholder groups they believe should be informed about this consultation process.

8.2 World Trade Organization (WTO)

As members of the WTO, Australia and New Zealand are obligated to notify WTO member nations where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

Amending the Code to allow greater flexibility in the presentation of the NIP is unlikely to have a significant detrimental effect on international trade, but may have a positive effect for those countries exporting to Australia/New Zealand. This issue will be fully considered at Draft Assessment and, if necessary, notification will be recommended to the agencies responsible in accordance with Australia and New Zealand's obligations under the WTO TBT or SPS Agreements. This will enable other WTO member countries to comment on proposed changes to standards where they may have a significant impact on them.

9. Conclusion and Recommendation

FSANZ accepts this application following Initial Assessment and recommends that the Application should proceed to Draft Assessment based on matters listed in s.13 of the FSANZ Act, which include:

- the application seeks a variation to Standard 1.2.8 to permit the format of NIPs to be more flexible than is currently allowed;
- the application relates to a matter that warrants a variation to Standard 1.2.8 if further assessment supports such a variation;
- the application is not so similar to any previous application that it ought not be accepted;
- there is no basis for considering, at this stage of assessment, that the costs that would arise from a variation to Standard 1.2.8 would outweigh the direct and indirect benefits to the community, Government or industry, although it is surmised that there may be negligible benefits for domestic industry if the variation proceeds; and
- there are no other measures that would be more cost-effective than a food regulatory measure varied as a result of this Application.

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