Impact Summary: Consumer information standard for country of origin labelling

Section 1: General information

Purpose
The Ministry of Business, Innovation and Employment is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing: • final decisions to proceed with a policy change to be taken by or on behalf of Cabinet/the Minister of Commerce and Consumer Affairs

Key Limitations or Constraints on Analysis

Overall policy and key policy constraints

The proposal is to make new regulations under section 27 of the Fair Trading Act 1986, which provides for the Minister responsible for Consumer Affairs to make recommendations for a consumer information standard.

The proposed regulations are required by statute to be made, in the Consumers' Right to Know (Country of Origin of Food) Act 2019 (**the Act**). The Act requires the making of a consumer information standard under the Fair Trading Act 1986 to prescribe requirements for labelling the country of origin of certain foods. The high-level policy has been agreed by Parliament and is therefore not in scope for analysis. Consequently, we do not consider options for extending the requirements to foods not set out in the Act or the impacts on New Zealand of the high-level policy. The analysis in this Regulatory Impact Analysis (**RIA**) is limited to the scope of the requirements in the Act.

It is worth noting that the Act originated from a member's Bill. As such, no RIA was prepared to inform whether the high-level policy set out in the Act should proceed and on what basis. The counterfactual is that the requirements of the Act must be complied with, but we are limited in our ability to compare the impact of the options with the impact of the counterfactual because no

impact analysis was done to inform the development of the counterfactual.

The Act specifies that the Minister must make recommendations for a consumer information standard to require the labelling of country or place of origin on foods that:

a) are only one type of fruit, vegetable, meat, fish, or seafood, and
b) are fresh (even if previously frozen) or frozen and are not, for example, dried, cured, or pickled, and
c) are no more than minimally processed (for example, by being cut, minced, filleted, or surface treated), and
d) are packaged or unpackaged.

The Act also requires country of origin labelling on cured pork.

The Act requires that the consumer information standard provide that the requirements:

a) apply to food supplied at retail, including on an Internet site
b) not apply to food supplied at wholesale
c) not apply to food supplied at a fundraising event, or by businesses such as restaurants, cafeterias, takeaway shops, caterers or similar places where the food is for immediate consumption.

The proposals contain the prescriptive details to be included in the consumer information standard in order to give effect to the high-level requirements of the Act.

Limitations and constraints

The scope of the problem and the range of options within the scope of Ministerial decision-making is limited by the requirements of the Act, such that the impacts of the options available to the Minister are likely to be very similar.

For example, one option considered is whether disclosure of a subnational region would be a permissible alternative to disclosing the country of origin. In either option, businesses that do not currently provide country of origin labels will incur costs in identifying origin and providing labelling, and these costs will be similar.

Other options in this document are not preferred because they do not achieve the purpose of the Act. An example is the proposal relating to disclosure of country of origin for food sold online, where the source of supply may change. An alternative to our proposal is to require businesses to provide country of origin labelling at the point of delivery or pick-up. This would not achieve the purpose of the Act, which is to enable consumers to make informed *purchasing* decisions. The proposals are those which best achieve Parliament's intent.

Aspects over which the Minister has greater discretion relate to exemptions from the regulations. Section 5(4) of the Act provides that the Minister may make exemptions where it would be unduly onerous to comply or it would not help consumers to make informed purchasing decisions. The proposals set out some recommended exemptions and why we think they meet the criteria.

Other constraints include New Zealand's international trade obligations. Labelling regimes are disciplined by international obligations which are set out in the World Trade Organization (**WTO**) agreements, including the Agreement on Technical Barriers to Trade (**TBT**) and New Zealand's Free Trade Agreements. To be consistent with New Zealand's international obligations, a mandatory country of origin labelling scheme could not discriminate against, or between, foreign products. Additionally, a scheme must not be more trade restrictive than necessary to fulfil a legitimate

objective. As such, we have not considered options which could conflict with our international obligations, such as any options that would require higher standards from imported goods than domestically produced goods.

Quality of evidence

The evidence base for the proposals in this RIA is limited to submitters' accounts of compliance costs and accounts of what information is likely to be useful or confusing to consumers. The submissions we have drawn from are from two select committee submissions processes on the high-level policy in the Act, and the targeted consultation exercise on the specific proposals in this RIA with food industry stakeholders, the regulator and Consumer NZ. We chose to undertake targeted consultation because of the limited timeframe in which the regulations must be made. We have not been able to quantify potential compliance costs, because information from food industry stakeholders has been qualitative. In terms of assessing whether the proposals are likely to support informed consumer decision-making, the proposals have not been road-tested with individual consumers. However, we do not think this is a significant risk, because of the limited range of options that can be considered within the scope of the Act.

Criteria

The criteria used to assess the options in this RIA are limited by the purpose and requirements of the Act and the criteria for exemptions under the Act:

- whether it provides consumers with accurate information about the country or place of origin of certain foods to enable informed decisions about purchasing the food
- compliance costs, including whether compliance would be unduly onerous.

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Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

As noted above, the high-level policy has been agreed by Parliament and is therefore not in scope for analysis. This includes consideration of whether or not there is a problem with the current absence of mandatory country of origin labelling for food in New Zealand.

The current situation is that the Consumers' Right to Know (Country of Origin of Food) Act requires the Minister to make a consumer information standard under the Fair Trading Act to prescribe requirements for labelling the country of origin of certain foods. The Minister must make the recommendation as soon as practicable, but by no later than 4 June 2020.

We therefore consider the counterfactual to be that suppliers of certain foods that meet the criteria in the Act will have to comply with the requirements of a new consumer information standard, even where compliance may not be appropriate (i.e. it may be unduly onerous or may not help consumers to make informed purchasing decisions).

Specific technical problems that arise with the counterfactual are described in section 3.1 below.

2.2 Who is affected and how?

The regulated parties are persons who supply, or offer or advertise for supply, the regulated foods at retail within New Zealand. These regulated foods are mainly single ingredient fresh or frozen foods.

This largely affects food retailers and food manufacturers/processors, who will be required to label foods with country of origin either in store (e.g. a retailer might have to label a display case or a bin) or at the place of packaging (e.g. a manufacturer might have to label a packaged food item). In relation to packaged foods covered by the standard (e.g. frozen berries), this will include overseas suppliers of the foods that are imported for retail and New Zealand manufacturers that may also supply to export markets. It affects primary food producers (farmers, growers etc) to a lesser extent, as they are not typically responsible for labelling. The regulation will impact those suppliers who do not already provide country of origin labelling voluntarily or whose labelling would not meet the proposed requirements.

New Zealand's two major grocery retailers, Foodstuffs and Woolworths, who make up approximately 80 per cent of the retail grocery market, voluntarily provide country of origin information for single ingredient whole foods including fruit, vegetables, meat and seafood. Some manufacturers voluntarily provide country of origin labelling on packaged food as well, although we do not know the precise scale of this.

In terms of impacts on importers and exporters, some packaging of imported foods will need to be changed, which will affect overseas manufacturers or New Zealand-based importers. New Zealand manufacturers may also need to run separate packaging lines for goods sold in New Zealand and those for export, if labelling requirements between our trade partners are conflicting. However, these impacts of the proposals are similar to the impacts under the counterfactual (e.g. the requirements of the Act in New Zealand differ to those in the Australian information standard regardless of the options considered in this RIA). The Trans-Tasman Mutual Recognition Agreement (TTMRA) with Australia means that goods sold in one country can also be sold in the other. This means that Australian-imported food that does not meet New Zealand's regulations could still be sold in New Zealand (although Australia has its own country of origin requirements, so food imported

from Australia will carry some form of country of origin statement).

Many food retailers and manufacturers oppose the high-level policy because of the additional costs it will impose. The main supporters of the high-level policy are consumers and consumer representative groups, who want to know where their food comes from, and some New Zealand food businesses, particularly primary producers and some processors, who believe that requiring imported products to be labelled with their origin will level the playing field and potentially provide them with a competitive advantage.

2.3 Are there any constraints on the scope for decision making?

The key constraints on the scope for decision-making, and of our analysis, are detailed in section 1 above.

Section 3: Options identification

3.1 What options have been considered?

Options and issues

The options identified below relate to matters where alternative approaches could be taken to design the consumer information standard, within the bounds of the Act. These matters are:

- use of subnational regions
- legibility requirements
- the use of certain terms to convey where a food was grown
- foods in online sales and advertising where the source is subject to change
- audio-only advertising
- foods with multiple sources or where the source changes frequently
- disclosure of the origin of fish and seafood
- the meaning of cured pork.

Criteria

The following criteria are used to assess the options:

- whether it provides consumers with accurate information about the country or place of origin of certain foods to enable informed decisions about purchasing the food
- whether it minimises costs, including whether compliance would be unduly onerous for suppliers and any enforcement costs.

Use of subnational regions

The purpose of the Act is to provide information “about the country or place of origin of certain foods” (section 3).

While the country generally tells consumers what they want to know about the origin of a food, in some cases it may be appropriate for suppliers to state a subnational region. Retailers sometimes choose to label the subnational regions of fresh produce (e.g. “California grapes” or “Hawes Bay mushrooms”).

Preferred option

Our preferred option is to simply require the country to be labelled on all foods, and any labelling of subnational regions to be a voluntary addition. This would be simplest for the Commerce Commission to enforce and for consumers to understand. There was a mix of views from stakeholders on whether we should allow suppliers to disclose origin by reference to a subnational region. While some supported allowing this, others pointed out that the use of subnational regions could be confusing or ambiguous for consumers, especially where the same place names are used in different countries (e.g. "Cambridge"). This would be inconsistent with existing information standards for clothing and footwear. It would be more difficult for the Commerce Commission to enforce, as they would have to decide what type of subnational regions would be acceptable i.e. state, region, town, city, mountain, lake or road.

This option will likely have a minor impact on major retailers, who frequently use subnational regions in New Zealand to label fresh produce. However, we don't consider that adding an additional "New Zealand" or "NZ" to a sign will be onerous to comply with or increase compliance costs to a moderate extent. Although this may seem unnecessary for New Zealand place names, we think it is preferable to have one consistent approach that applies across all products to support consumer understanding and informed decision-making. Having different requirements for New Zealand place names could be seen as discriminating between domestic and imported goods.

Alternative options

A. Another option is to allow all suppliers to provide an origin statement that references a subnational region rather than the country. In most cases, suppliers are only likely to reference a subnational region where a reasonable New Zealand consumer could correctly infer the country of origin, such as "California grapes" or "Hawkes Bay mushrooms". However, there is a possibility that suppliers will reference subnational regions that are not so easily identifiable, for example "Grown in Mačva" (a district in Western Serbia), although this is a low risk. A potential risk is that labels may state subnational regions that exist in multiple countries (e.g. "Cambridge"), which may be confusing to consumers and prevent them from correctly identifying the country of origin.

B. Another option is a test of whether a reasonable New Zealand consumer would be likely to correctly infer the country from the subnational region. This would address the issue of potentially ambiguous place names. However, a principle-based test would be more difficult for suppliers to apply and for the regulator to enforce, which could increase costs. It would not be a straightforward issue as to whether the statement did or did not comply with the requirements.

Legibility requirements

Preferred option

We propose that the information must be disclosed in English, be legible, and be prominent so as to contrast distinctly with the background of the label. These requirements are the same general legibility requirements for mandatory food labelling in the *Australia New Zealand Food Standards Code*. This flexible requirement will reduce compliance costs, so that suppliers who are already providing voluntary country of origin labelling are less likely to have to change their labelling, while still meeting the requirement to provide accurate information to consumers. Flexibility also means that suppliers who also sell their products in overseas markets are less likely to need to change their

labelling based on differing legibility requirements (the proposed approach is similar to the Australian general legibility requirements for country of origin, for example). All submitters to our targeted consultation agreed with having these general requirements for legibility.

We note that there may be some risks with not enabling all consumers to have access to information about a regulated food's country of origin to inform purchasing decisions – particularly persons who do not understand English and persons who are visually impaired.

However, the risk of not requiring disclosure in English is that it would mean imported foods could be sold with the country of origin labelled in a language that is not understood by most New Zealand consumers. This would defeat the purpose of the Act. It would mean that a product labelled in another language would technically comply with the regulations, but might still be considered misleading to many New Zealand consumers. Alternatively, requiring food labels to be in multiple languages would be costly to comply with.

The legibility requirements do not address accessibility issues for persons who are visually impaired. The costs of developing accessible food labelling systems (e.g. requiring bar code scanners to relay origin information) mean that any additional accessibility requirements are likely to be challenging to comply with.

Alternative option

A. Another option would be to prescribe minimum font sizes (e.g. for a small package with a surface area of less than 100cm2, individual letters must be no more than 1.5mm in height; and all other packages must have a minimum height of 3mm). While this provides more clarity about what will be considered legible, it may be overly restrictive and possibly increase compliance costs if suppliers have to change current labelling in order to comply with these prescriptive requirements. Many submitters to our targeted consultation disagreed with having minimum font sizes. Country of origin is not a food safety or health issue and therefore the risks of not ensuring minimum font sizes are not significant. The Australian country of origin standard does not have minimum font sizes, but has more general legibility requirements. We think the requirement that the statement be "legible" should be sufficient to ensure legibility for consumers, and that having multiple prescriptive minimum font sizes for different situations is unnecessary to achieve this outcome.

Clarifying the use of "product of", "produced in" and "made in" for certain foods

There are a number of different statements that might be made to convey the country or place of origin to consumers. However, there is a risk that the use of certain terms may cause confusion or be misleading to consumers in certain contexts.

A "Made in" or "Produced in" statement is unlikely to be meaningful for most of the foods covered by the regulations, which will be subject to minimal processing at most and therefore will not undergo substantial transformation beyond being grown.

For cured pork, the use of a "Produced in" or "Product of" statement may be confusing and misleading to consumers. If a bacon packet is labelled "Produced in Canada", where the pork has come from Canada but it was processed into bacon in another country, such a statement may mislead consumers into thinking that the pork was cured in Canada. In this instance, it may be more meaningful to say something like "Canadian pork" or "Raised in Canada".

Similarly, a “Made in” statement may be confusing and potentially misleading for consumers to signify the country of origin of the pig in cured pork products. For example, if the pork was sourced from Canada but the bacon processed in New Zealand, a label stating “Made in Canada” may be misleading.

Preferred option

Our preferred option is not to be overly prescriptive about the different statements that can be used to describe where a food has been grown. The regulations will require disclosure of a regulated food’s origin and the supplier can decide how they meet the obligation. For example, in relation to apples, “New Zealand apples”, “Grown in New Zealand” and “Product of New Zealand” would all meet the disclosure requirement. This will provide flexibility for suppliers and reduce compliance costs.

For the foods covered under New Zealand’s regulations, which will, at most, have undergone only minimal processing (apart from cured pork), a “Made in” or “Produced in” statement may not be meaningful. However, if a supplier chose to use “Produced in New Zealand” to convey the origin of a fresh orange, for example, we think a consumer would reasonably infer that it was grown in New Zealand and not assume that further processing had occurred. It would still provide consumers with information about the country of origin to help inform purchasing decisions. Therefore, the potential for consumer harm would not be great, compared to potential compliance costs if suppliers have to change current labelling to comply with prohibitions on such terms.

The greater risk of misleading consumers is in regard to statements about cured pork. However, the Commerce Commission could investigate the use of certain terms and whether they were likely to be misleading under the general prohibition on misleading or deceptive representations in the Fair Trading Act. This option would make enforcement outcomes less certain (i.e. while the Commerce Commission could challenge the use of “Made in” as misleading to convey where the pig was raised for a cured pork product, it would not provide the same certainty as prohibiting its use in the first place). However, the Commerce Commission could seek to issue guidance to industry on the types of terms that might be suitable and that might not be. Clarifying the use of certain terms in regulator guidance, rather than prohibiting them in regulations, would provide certainty while at the same time providing greater flexibility.

Alternative option

A. The other option is to prohibit the use of certain terms in certain contexts. This would prohibit the use of the statements “Produced in” or “Made in” to disclose the country of origin of single-ingredient, minimally processed foods, and prohibit the use of the statements “Product of”, “Produced in” or “Made in” to disclose the source of the pork in a cured pork product, as these statements may not adequately disclose where the pig was raised.

   There is a risk that prohibiting certain terms for the regulated foods would set a precedent for any possible extensions to the scope of a country of origin labelling regime in future, where statements like “Made in” may well be appropriate for products that undergo higher levels of processing. In addition, prohibiting terms like “Product of” could conflict with international agreements New Zealand has signed up to for some products, particularly wine, where use of the term “Product of” is explicitly permitted.

   This option would likely have higher compliance costs for suppliers, to the extent that prohibited terms differ from mandatory standards used by other countries, as it would require New Zealand-specific labels to be developed. However, the trade-off would be that it

would likely have lower enforcement costs for the regulator, as it would make enforcement outcomes more certain. It would also ensure that consumers have accurate, easy to understand information about the country of origin of the food.

Partial exemption for certain foods in advertising and online sales

Section 5(3)(b) of the Act requires regulated foods to be labelled if they are "supplied, or offered or advertised for supply, at retail, including on an Internet site".

Major retailers submitted that labelling the country of origin of foods may pose difficulties when food is sold online or in advertising, such as weekly mail-outs or even television advertising. Some individual stores buy their produce from different sources, which may change regularly. For example, a nationwide retailer may advertise bananas on its national online sales platform, but an individual store in one region might source bananas from the Philippines, while another store in another region might source bananas from Ecuador. Retailers said that they may need to change the source of supply due to the availability of product. Such a change might only affect a few stores or may take days to roll out across different stores. We think that requiring compliance in these circumstances would be unduly onerous and would therefore meet the criteria for an exemption. There would be significant compliance costs and impracticalities in requiring these foods to be labelled with an individual source country. It could require significant changes to the national online sales platforms of these retailers.

Preferred option

Our preferred option is that if there is a possibility that the country of origin may change between ordering and delivery (or advertisement and purchase), the retailer should be able to state the country of origin of its stock at the time of ordering or advertisement, and indicate that the country of origin is subject to change. If the items in stock are sourced from multiple countries (for example, oranges are obtained from two different countries in different shops), all of these countries may be listed as alternatives. In this situation an online retailer may state the multiple countries from which the items in stock are sourced. This would have to be accompanied by a statement about why the source may differ. For example, "Product of either Australia or Chile depending on supply" or "Grapes from Australia or Chile. Source of supply may change depending on the individual store".

This would reduce compliance costs, while still providing consumers with information about the possible countries of origin.

Most submitters who would be affected by the proposal supported it, including the major retailers and retail associations.

Alternative options

A. Another option would be to exempt foods in these situations and instead require retailers to provide country of origin labelling at the point of delivery or pick-up. Some submitters supported this option to provide more flexibility. However, it would not achieve the purpose of the Act, because requiring country of origin labelling at the point of delivery or pick-up does not give a consumer the opportunity to know where their food comes from before they purchase it.
B. Another option would be to not provide the exemption. Some submitters disagreed with providing flexibility for online sales, saying that there should be no exemptions made so that consumers always know the source of their food before making a purchase. We disagree because we think that complying with the requirements would be unduly onerous for certain

products sold online, for the reasons set out above. While this option would provide consumers with the most accurate information about the country of origin of their food, we think that the costs outweigh the benefits in this instance.

Exemption for audio-only advertising

The requirement to comply with the regulations may be unduly onerous for certain types of advertising material, particularly audio-only advertising. Compliance with the regulations would incur additional costs of paying for the extra airtime needed to state the country of origin. A radio advertisement might have to state, for example, “Bananas on sale this week from the Philippines or Ecuador – source of supply may vary depending on individual store and availability,” taking up precious airtime to get the message across.

Preferred option

We propose an exemption for audio-only advertising. We think that requiring compliance could meet the criterion of being “unduly onerous” and qualify for an exemption. It would incur additional costs of paying for the extra airtime needed to state the country or place of origin. It would be even more onerous in cases where advertisements advertise multiple foods and could result in, for example, half the air time being taken up with origin declarations. This would result in a reduction of the advertisement’s effectiveness. Additionally, there is less of an argument that radio advertisements would help consumers make informed decisions about purchasing the food, since consumers in these situations are not actively seeking out information about the food or intending to purchase it.

Alternative option

A. The alternative would be to not provide the exemption. Compliance without the exemption could increase costs (i.e. the cost of paying for airtime), however in reality we think that a requirement to comply is more likely to discourage suppliers from advertising certain products on radio advertising.

Partial exemption for foods with multiple possible source countries

There are some instances where a single food might be from multiple sources or may vary according to seasonality. This is more of an issue for packaged foods. For example, a packet of frozen peas may contain peas sourced from two different countries. Food manufacturers said this is a common occurrence. This may also be an issue for some cured pork products. Some suppliers may source pork from multiple countries, but process the pork and label the final product in a single country.

Preferred option

Our preferred option is to provide a partial exemption from the requirements for these foods, and require suppliers to state all of the possible countries of origin, for example “Pork raised in Australia, Canada or New Zealand”. This would inform the consumer of the multiple possible countries of origin, and therefore meets the purpose of the Act.

We think that requiring suppliers to label a single country of origin for the food meets the test of being unduly onerous in these instances. This option would significantly reduce compliance costs, as not having the exemption could require suppliers to develop new processes to separate ingredients from different countries, and develop multiple labels or multiple packages to disclose each source country. Food manufacturers submitted that it would be onerous to require them to update labels every time the country of origin changes due to supplier changes, seasonal variations and crop

shortages, or even to declare multiple countries on the label.

Some food manufacturers did not support this option (allowing suppliers to state all possible sources of origin), stating that it would require manufacturers to include all possible countries where the ingredient could be imported from and countries where they would want to import from in order to avoid costly label updates.

Requiring such statements about where cured pork is from will differ from other mandatory standards used in other countries, such as Australian requirements, where the percentage of Australian ingredients must be stated and where the product was made or produced e.g. "Made in Australia from at least 75% Australian ingredients". Such statements would not meet the requirements of the Act in New Zealand, which requires disclosure by reference to where a food was grown, whereas the country where the food was grown is not clear from the Australian statement. The New Zealand requirements will also depart from the international Codex General Standard for the Labelling of Prepackaged Foods – clause 4.5.2 specifies that when a food is processed in a second country, the country of processing should be considered the country of origin for labelling purposes.

This option does present the risk that, for example, suppliers add 1% of New Zealand pork into a cured pork product and then represents the product as "Pork from NZ, Canada and Australia." While this is a possibility, we don't think that consumers will necessarily consider that the country from which the highest percentage of the ingredient is sourced must be the same as the country that is listed first. This information still provides consumers with the necessary information to inform purchasing decisions, if they are concerned about consuming foods from a particular country or only want to consume New Zealand-grown foods. Furthermore, if such a product were to convey the overall impression that it was from New Zealand (e.g. packaging included a kiwi) the Commerce Commission would be able to investigate under the Fair Trading Act.

Alternative options

A. An alternative would be to require disclosure of the most common source country, for example "Pork raised in Canada or other countries" (if that supplier sources the majority of the pork from which it makes bacon from Canada). This gives the consumer the most likely country of origin, but means that the pork may not be from the country identified, so it does not necessarily support informed decision-making.

B. Another option would be an exclusion from the requirement to state a country and instead to simply convey that the food is imported, for example "Bacon made from imported pork". Some manufacturers thought that we should allow statements like this, or statements such as "Packed in New Zealand from imported ingredients." Although easier to implement and imposing the least compliance costs, this would provide the least amount of information to the consumer about the origin of the product, and therefore would not meet the purpose of the Act.

C. An alternative option proposed by one manufacturer is to impose an additional requirement for suppliers to state the percentages from each country. We think this goes too far (it goes beyond the requirements or the purpose of the Act) and would be difficult to comply with, particularly as the percentages of the ingredients from those countries may change frequently due to supply. It also risks creating a precedent where any future extension of these regulations for processed products in future would have similar requirements. The costs of this across a wide range of products could be significant.

Disclosure of the origin of fish and seafood

Section 5(2)(c) of the Act provides that the Minister must be satisfied that the consumer information standard "requires a regulated food's country or place of origin to be disclosed by reference to where the food was grown or something similar (for example, where it was harvested, caught, or raised, but not where it was merely packaged, manufactured, or processed)".

Disclosure of where wild fish or seafood was "raised" or "grown" may pose difficulties, as often the fish or seafood cannot be said to have been raised, grown or even caught in any particular country, especially if caught in international waters. Similarly, some fish species such as tuna may be highly migratory and cannot be said to have been raised or grown in a particular country or even body of water. Due to the difficulties in identifying and verifying where fish or seafood were raised or grown (except for freshwater or farmed fish), we think it would be unreasonable to require disclosure of where they were raised or grown.

Preferred option

Our preferred option is to require disclosure of the territorial region in which the fish or seafood was *caught*. The territorial region would include a country's territorial waters and exclusive economic zones. For example, if the fish was caught or farmed in New Zealand's territorial waters it could be labelled "Product of New Zealand" or "Caught in New Zealand" or something similar. We think this option comes closest to meeting the purpose of the Act (disclosure of where the food was grown) compared to other options discussed below and is more meaningful to consumers.

If not caught in any territorial region but in international waters, we suggest the supplier would disclose the region in international waters. For fish or seafood caught in international waters, the supplier could disclose the region in international waters by, for example, making reference to the major fishing areas of the Food and Agriculture Organization of the United Nations (a similar requirement to the country of origin labelling requirement in the European Union). This would require statements such as "Caught in the Southwest Pacific" or "Northeast Atlantic salmon".

This option is potentially more costly for suppliers to comply with than the options outlined below. However, we think it best meets the purpose of the Act and therefore the benefits outweigh the costs.

One submitter said this option was problematic in assuming that a vessel on a long return journey separates the catch from territorial waters from that caught in international waters. They suggested that we provide a percentage allowance for mixed catches, so that a fish could be represented as "Caught in New Zealand" where the majority of the catch was caught in New Zealand's territorial waters, but a small percentage was caught in international waters. We disagree that this would be appropriate, because it would be inaccurate to say that 80% of the fish was caught in New Zealand waters. It would also be inaccurate to say that the fish was caught in New Zealand waters if it was not, but was caught by the same vessel which caught most of its fish in New Zealand waters.

Furthermore, New Zealand vessels that fish in both New Zealand and international waters are required to obtain a permit from Fisheries New Zealand and separate the catch from New Zealand and international waters. As such, our proposal should impose no additional compliance costs for New Zealand vessels associated with requiring vessels to separate their catches from different regions. However, there may be additional compliance costs for foreign vessels that do not have the same requirements in their fisheries systems.

Alternative options

A. An alternative would be disclosure of the country of registration of the shipping vessel that caught the fish or seafood. This information may or may not be related to the waters in which the fish or seafood were caught. A ship might be registered in one country but catch seafood in the territorial waters of another. While this imposes fewer costs than our preferred option, it is less meaningful for consumers and would not meet the purpose of the Act.

B. Another alternative would be disclosure of the country where the fish or seafood were landed. Again, this would not necessarily be relevant to where something was caught. Fish could be caught in one country's waters but landed in another for further processing. While it imposes fewer costs, it would not achieve the purpose of the Act.

Meaning of cured pork

Section 5(3)(a)(ii) of the Act states that regulated foods must include cured pork. The Act does not provide a definition for cured pork. However, we understand the intent of this inclusion was to capture products such as bacon and ham.[1] There are a range of similar cured pork products that are not called "bacon" or "ham.

Preferred option

Our preferred option is to define "cured pork" to mean:

a) a processed pork product that contains at least 30% pork flesh and is represented for sale as bacon or ham, or

b) a processed pork product that:

  i. contains or is made of whole muscle cuts or pieces of pork flesh, and

  ii. contains at least 66% pork flesh, and

  iii. contains, for the primary purpose of preservation, either

    (1) added salt and nitrite and/or nitrate, or

    (2) added salt, such as for dry-cured products.

The starting point for the first category of (a) is that the purpose of the inclusion of "cured pork" in the Act appeared to be to capture products like bacon and ham. Therefore, there is allowance in this category for products that don't necessarily contain whole muscle cuts or have not been "cured", as long as they are sold as bacon or ham.

The second category draws on a definition of curing (i.e. the inclusion of added salt, nitrites, nitrates etc) and the definition of manufactured meat in the Australia New Zealand Food Standards Code (at least 66% flesh). It captures products not captured by the first category, that aren't sold as bacon or ham, have been cured, and contain a significantly high percentage of pork flesh so that it avoids capturing products that are more likely to be made of a mixture of meats. This best meets the requirements of the Act to include cured pork, while imposing the least compliance costs because it does not capture other pork products unnecessarily.

[1] Cured pork was included due to many of the submissions received by the Primary Production Committee during the public submission process recommending the inclusion of cured pork products such as bacon and ham.

Alternative options

A. One option would be to include sausages that have been cured. Sausages have not been included (even if they have been cured using salt and/or nitrites or nitrates) because they are not represented for sale as bacon or ham, and do not contain whole muscle cuts or flesh. While we could include sausages where they have been cured, we think the inclusion of some sausages but not others may be confusing to consumers. Additionally, sausages are more likely to be made of multiple meat types (e.g. beef and pork) or multiple meat sources (i.e. pork sourced from several different countries), which can make labelling difficult and more costly to comply with.

B. Some New Zealand pork growers and manufacturers submitted that the definition of "cured pork" should be expanded to include all other processed pork products, including marinated pork and other products that contain salt or flavourings that do not have the purpose of curing the meat. We do not think this would align with the requirements of the Act because it does not reasonably fit into the definition of 'cured' as a reasonable person would think a 'cured' meat is, and would therefore impose compliance costs that are unnecessary to meet the requirements of the Act. While there is no legal definition of 'cured', our preferred option is consistent with common industry practice of what a curing process involves and aligns with other technical definitions used overseas. Additionally, there is no good justification for why we would seek to include marinated or processed pork but not other types of marinated or processed meats. Such a broad definition might also capture a wide range of products, including, for example, a canned pork stew, a frozen roast pork ready meal, a frozen pork pie or some frozen pork dumplings or buns (depending on the meat content). It would also capture products made of mixed meats, for example a salami of 35% pork and 35% beef – disclosing the origin of the pork would not make sense in that context. This would create a wide discrepancy between the treatment of pork and other types of meat under the regime. It also has the potential to conflict with any future standard that might be made to extend the country of origin regime to further foods. For example, if the regime is extended to include heavily processed foods, it is unlikely that a requirement to disclose the origin of the pork in a heavily processed food made up of multiple ingredients would continue to make sense in that context.

3.2 Which of these options is the proposed approach?

The preferred options and why they best meet the criteria are identified in section 3.1 above.

It is possible that the exemptions or partial exemptions from the requirement to comply may be seen as inconsistent with the expectation that regulation "is proportionate, fair and equitable in the way it treats regulated parties", because there is a difference in treatment where compliance is more difficult for some regulated parties. However, we think it is justified, because the exemptions meet the criteria in the Act, and furthermore result in proportionate application of the regulation i.e. where compliance is more difficult, the requirements are more flexible.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties *(identify)*	**Comment**: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*
Additional costs of proposed approach, compared to taking no action		
Regulated parties	Some additional upfront compliance costs of adjusting labelling (in-store, packaging) compared to counterfactual.	Low
Regulators	There may be some additional enforcement costs, but these depend on the counterfactual, the costs of which are not well known.	Low
Wider government	N/A	N/A
Other parties	Ongoing costs for consumers of not knowing the country of origin for foods that are granted an exemption.	Low
Total Monetised Cost	*N/A*	N/A
Non-monetised costs		*Low*

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	Ongoing reduced compliance costs for regulated parties that will be eligible for an exemption.	Low
Regulators	Ongoing reduced enforcement costs due to prescription in requirements.	Low
Wider government	N/A	N/A
Other parties	Benefits to consumers of being better informed, compared to the counterfactual.	Low
Total Monetised Benefit	N/A	N/A
Non-monetised benefits		*Low*

4.2 What other impacts is this approach likely to have?

The proposals may have indirect impacts on suppliers' sourcing decisions, and consequently, consumer choice. For example, the proposal to require labelling of where fish/seafood were caught, rather than where they were landed, may impact on where shipping vessels choose to go to. This could reduce consumer choice if their only choice is fish/seafood caught in a particular region.

It may also impact where suppliers source foods that may have multiple origins from, in that they may choose to limit the number of source countries to also limit their labelling costs. This could drive up costs for both suppliers and consumers and reduce the quality of some consumer goods. However, this impact would be even greater without the proposed exemptions, if the counterfactual was retained.

These proposals could also have trade implications. If the requirements create incentives for domestic producers to rely exclusively on domestic inputs to a product, this could have a detrimental impact on competitive opportunities for imported products and therefore be seen as an indirect form of discrimination.[2] This depends in practice on whether compliance impairs the competitive opportunities of foreign products that might otherwise be sourced for inclusion in some of the products covered by these options. Labelling of fish and seafood, for example, could impair competitive opportunities of foreign products if the foreign competitor's flag state does not require separation of catches. However, potential trade implications are even more likely to be present in the counterfactual, if the exemptions were not provided. To the extent possible within the constraints of the Act, we have attempted to minimise these risks by consulting the Ministry of Foreign Affairs and Trade on the proposals.

The proposals could also indirectly increase demand for New Zealand sourced foods by New Zealand consumers, which could in turn run the risk of retaliation by overseas jurisdictions and overseas consumer bias against New Zealand exports.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

The high-level policy in the Act was subject to two public submissions processes when it was considered by Parliament. The high-level policy is generally supported by consumers, although most consumer submitters wish to see the scope of the policy expanded further. However, this is outside the scope of analysis for this RIA.

The specific regulatory proposals in this RIA have been consulted on through targeted consultation of key members in the food industry who will be subject to the regulation, as well as consumer representative groups who will benefit from the regulation. Twenty-five organisations were invited to submit and thirteen submissions were received from representatives of the food manufacturing industry, primary producers (including pork farmers), food retailers, the regulator and a consumer

[2] For example, in 2009 Mexico and Canada challenged U.S. country of origin requirements for beef and pork as being inconsistent with the obligations of the WTO TBT agreement. In order to comply with U.S. regulation, suppliers had to separate imported animals and meat from domestic animals and meat during production. The Appellate Body found that the regulation was inconsistent with the requirement that domestic and imported products be afforded the same treatment, concluding "that the least costly way of complying was to rely exclusively on domestic livestock, creating an incentive for US producers to use exclusively domestic livestock and thus causing a detrimental impact on the competitive opportunities of imported livestock." *WTO Dispute Settlement One-Page Case Summaries: DS384: United States – Certain Country of Origin Labelling (COOL) Requirements* (2012), accessed at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds384sum_e.pdf

representative group. Their comments have been taken into account in the development and modification of the proposals in this RIA.

Stakeholder views on the specifics of our preferred options are detailed in section 3.1 above.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The proposals will be given effect in a consumer information standard made under section 27 of the Fair Trading Act. These take the form of regulations made by Order in Council. The regulations will be notified in the *New Zealand Gazette* and will be the subject of communications material put out by the office of the Minister of Commerce and Consumer Affairs. The regulations will also be notified to the WTO, and a transition period of at least six months needs to be provided before the regulations come into force.

The regulations will commence six months after the regulations are notified for fresh foods, and will apply to frozen foods 18 months after commencement, to allow additional time for businesses to adjust packaging. This gives suppliers of frozen foods 24 months to comply after the regulations are notified. We understand that many frozen foods have a shelf life of up to 24 months and expect this to be ample time for suppliers to adjust labelling so that stock on the shelf will have time to be phased out by the time the regulations come into effect. This transition period will also enable regulated parties to ask questions and manage any implementation risks proactively.

The Commerce Commission, as the enforcement agency for the Fair Trading Act, will be responsible for enforcing the requirements. The Commerce Commission is already responsible for enforcing prohibitions on misleading, false and unsubstantiated claims under the Fair Trading Act, so has significant experience enforcing similar requirements. The Commission has taken cases regarding misleading country of origin of consumer goods in the past. Commission staff estimated that the new requirements will require two additional FTE, which would require additional funding. If not, the Commission's role will largely be reactive (i.e. in response to complaints) and investigations will be prioritised taking into account the Commission's other enforcement priorities. The Commission's resourcing requirements will be considered as part of a baseline review currently underway.

The Fair Trading Act contains existing penalties for a breach of a consumer information standard. An individual can be liable for a fine up to $10,000 if convicted, and a body corporate for a fine up to $30,000 if convicted. The Commerce Commission can also issue infringement offences for a breach, with a fee of $1000.

Implementation will rely on the following requirements to be set out in the regulations:

- The information must be disclosed in a written format clearly in connection with the food. The intent is that retailers can disclose the prescribed information on either signage displayed in connection with the food or labelling on the package of the food. This will reduce compliance costs because the flexibility means that suppliers have a range of ways in which they can comply, while still meeting the requirement for informing consumers.
- The consumer information standard must include food that is "no more than minimally processed (for example, by being cut, minced, filleted, or surface treated)" (other than cured pork, to which the requirement that it be no more than minimally processed does not apply). A food will be considered minimally processed if it has been subjected to the processes in the non-

exhaustive list on the left-hand side below, and other similar levels of processing:

Minimal processing	More than minimal processing
Size reduction e.g. cutting, chopping, slicing, dicing, mincing, grating etc	Adding ingredients to substantially alter the taste of the food, including marinating or crumbing. (Waxing, adding water or adding a small amount of salt is not considered to substantially alter the taste.)
Filleting, deboning, shelling, shucking etc.	Canning
Surface treating (applying another substance to the surface, while not altering the essential character, taste or nutritional content of the food e.g. water; wax, gum or other edible coating; anti-microbial or anti-browning agents; other chemical or gaseous treatments)	Fermenting, pickling, preserving in salt, sugar or oil
Blanching (e.g. vegetables that are blanched prior to freezing)	Cooking (except blanching), baking, roasting, steaming, grilling etc.
Peeling etc.	Reconstituting
Washing, sanitizing etc.	Drying, dehydrating, freeze-drying etc.
Mashing	Smoking
Refrigerating, chilling	Curing
Vacuum sealing	Blending, pureeing
Irradiating	

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The Commerce Commission already collects data on complaints and investigations for the consumer protection system. These existing methods of data collection will continue. The Commerce Commission shares this data with MBIE on an ad-hoc basis as needed and when there are no constraints on data-sharing.

7.2 When and how will the new arrangements be reviewed?

No reviews are planned at this stage. Any reviews by MBIE will be ad-hoc, in response to concerns raised from stakeholders, or may occur if the Government decides at a future time to expand the scope of the consumer information standard for country of origin labelling to include additional foods. Concerns about unduly onerous compliance costs and other impracticalities may prompt a review of the need for exemptions to be granted.

Stakeholders will be able to raise any concerns with the Commerce Commission or MBIE.