

Consumers' Right to Know (Country of Origin of Food) Bill

Member's Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Consumers' Right to Know (Country of Origin of Food) Bill and recommends that it be passed with the amendments shown.

About the bill as introduced

The Consumer' Right to Know (Country of Origin of Food) Bill is a Member's bill that was introduced in the 51st Parliament in the name of Steffan Browning, MP. It was adopted by Gareth Hughes, MP in the 52nd Parliament.

The bill seeks to provide a mandatory labelling system that provides consumers with accurate information about the country of origin of single component foods. This would enable them to make informed decisions about their food purchases.

The requirements would apply to packaged or unpackaged food or food products that contain only one type of vegetable, fruit, meat, seafood, nut, grain, seed, or oil. The foods could contain water, sugar or its substitutes, salt, or other ingredients used in preserving, colouring, or flavouring.

The bill would require information about the country of origin of the single component food to be displayed at the point of sale. The information could be contained on a label or connected with the food or food product.

The bill would create offences for false or misleading labelling on packaged food or displays, with fines of up to \$10,000 for individuals and \$50,000 for organisations.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor, technical, or consequential amendments.

Creating a consumer information standard under the Fair Trading Act

Section 27 of the Fair Trading Act 1986 allows regulations to be made that prescribe consumer information standards for goods or services.

Rather than creating a permanent standalone Act for a single issue, we consider that the requirements of this bill should be contained in a consumer information standard under section 27 of the Fair Trading Act. This would avoid the confusion of having the legal requirements for country of origin labelling for consumer goods spread across several Acts. It would also give access to the existing enforcement regime under the Act.

We therefore recommend that all provisions of the bill be deleted, excluding the title, commencement, and purpose clauses. In their place, we propose a requirement for the Minister of Commerce and Consumer Affairs to recommend that regulations be made under the Fair Trading Act, which we discuss below.

Principles and requirements for the consumer information standard

Clause 5 of the bill as introduced specifies the principles that apply to decisions made and actions taken under the legislation. We recommend replacing this clause to set out the principles and requirements for the new consumer information standard.

We recommend inserting new clause 5(1), which would require the Minister of Commerce and Consumer Affairs to recommend that regulations be made under section 27 of the Fair Trading Act. The regulations would prescribe a consumer information standard for disclosing a regulated food's country or place of origin.

We consider that the precise details of the scope of the labelling regime should be covered when the regulations are drafted. However, we recommend inserting clause 5(2) to require that the Minister be satisfied that the consumer information standard:

- requires the country or place of origin of a regulated food to be disclosed by referring to where it was grown, caught, or raised, rather than simply where it was packaged or processed
- commences 6 months after the date of its notification in the Gazette (for fresh foods)
- does not apply to frozen foods until 18 months after the commencement of the standard.

This different timeframe recognises that frozen foods are often sold packaged and have a longer shelf life and so allows time for the transition to the new regime.

Definition of regulated foods

We recommend inserting clause 5(3) to specify the foods to which the regulations apply.

We discussed several options for foods that could be included in the regulations. They were:

- fresh, minimally processed foods
- foods that contain exactly one specified ingredient
- foods with a specified ingredient that comprises over 50 percent of the food.

To adopt a scheme that is the simplest to implement with the least costs, and to avoid confusion around definitions, we recommend that the labelling regime should apply only to single ingredient foods that are fresh or frozen and unprocessed or minimally processed. Examples of minimal processing include being cut, filleted, or minced.

We have decided to specifically incorporate cured pork products within the definition of this bill to provide certainty to consumers that these products would be approved under the tests in this bill.

Clauses 6 and 7 of the bill as introduced specify that all packaged or unpackaged food on sale in New Zealand must identify the country of origin. We consider this definition very broad, and believe it could result in restaurants, takeaway shops, school canteens, and fundraisers needing to include the origin of regulated foods.

We recommend that the labelling regime should apply only to food for retail sale, with the exceptions noted above. This would mean that food sold by food retailers would be covered, but other types of food businesses, such as restaurants or take-aways shops, would not be.

Consistency with international trade obligations

We sought advice about whether our proposed regime, covering single ingredient, minimally processed, fresh or frozen foods, would be consistent with New Zealand's international trade obligations. The Ministry of Foreign Affairs and Trade's (MFAT) preliminary advice is that it would be possible to implement the proposed regime in a way that is consistent with New Zealand's international obligations. If this proposal progresses, MFAT would work with the Ministry of Business, Innovation and Employment and the Ministry for Primary Industries to ensure that the regulations were consistent with New Zealand's international obligations.

Requirements for labelling

Clause 3 of the bill as introduced sets out the purpose of the legislation. It provides for a simple, mandatory labelling system that gives consumers accurate information about the origin of foods to help them make informed decisions. While retaining this clause, we recommend removing the reference to "labelling". We consider that the requirements for how the origin of a food is disclosed should be set out in regulations.

This could include information provided on labels on products or signage associated with the sale of products.

Excluding certain foods

We recommend inserting new clause 5(4) to allow the Minister to exclude any food from the regulations if compliance would be unduly onerous or would not help consumers to make informed decisions about the food. An example would be a small amount of product sold at a roadside stall, where it is obvious that it is grown at that place. This exclusion would not apply to larger produce stalls selling, for example, fruit and vegetables that included some imported products.

Including other foods

We considered whether other foods, such as nuts, grains, seeds, and oils, should be included in the regulations. We recommend inserting new clause 5(8) to make it clear that the bill does not limit the Minister's existing ability to recommend additional requirements under the Fair Trading Act. This could include other types of food outside the scope of foods covered by the bill. We received advice that the Minister has the ability to add any product under regulation to those covered under this bill.

Timeframe for recommending regulations

Under clause 2 of the bill as introduced, the legislation would commence 6 months after the date of Royal assent. We recommend amending this clause so that it came into force on the day after the date of Royal assent. This would enable the regulation-drafting process to begin.

We recommend inserting new clause 5(6) to require the Minister to recommend the regulations no later than 18 months after the commencement of the legislation. At that point, our proposed new clause 6 would then repeal this legislation.

Appendix

Committee process

The Consumers' Right to Know (Country of Origin of Food) Bill was referred to the Primary Production Committee of the 51st Parliament on 12 April 2017. The closing date for submissions was 18 May 2017. The committee received and considered 401 submissions, including 114 form submissions, from interested groups and individuals. It heard oral evidence from 22 submitters.

The bill was reinstated with this committee in the current Parliament.

We presented an interim report to the House on 11 July 2018 and sought further submissions. The closing date for further submissions was 1 August 2018. We received and considered an additional 386 submissions.

Both committees received advice from the Ministry of Business, Innovation and Employment, the Ministry for Primary Industries, and the Ministry of Foreign Affairs and Trade.

Committee membership

Hon David Bennett (Chairperson)

Kiri Allan

Hon Nathan Guy

Kieran McAnulty

Mark Patterson

Stuart Smith

Rino Tirikatene

Hamish Walker

Gareth Hughes took part in some of the consideration of this item of business.

**Consumers' Right to Know (Country of Origin of Food)
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Gareth Hughes

Consumers' Right to Know (Country of Origin of Food) Bill

Member's Bill

Contents

		Page
1	Title	2
2	Commencement	2
3	Purpose	2

Part 1

Preliminary provisions

4	Interpretation	2
4	<u>Act binds the Crown</u>	<u>2</u>
5	Principles which apply to decision-making and actions taken under the Act	2
5	<u>New consumer information standard: country of origin of regulated foods</u>	<u>3</u>

Part 2

Country of origin labelling

6	Packaged food	4
6	<u>Repeal of this Act</u>	<u>4</u>
7	Unpackaged food	4
8	Foods to which this Act applies	4
9	Offences	5
10	Enforcement	5

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Consumers' Right to Know (Country of Origin of Food) Act **2016**.
- 2 Commencement** 5
~~The This~~ Act comes into force ~~6 months on the day~~ after the date on which it receives the Royal assent.
- 3 Purpose**
The purpose of this Act is to provide ~~for a simple, mandatory labelling system~~ in New Zealand that provides consumers with accurate information about the country ~~or place of origin of single component certain~~ foods to enable ~~them to make informed food purchasing decisions~~ informed decisions about purchasing the food. 10
- Part 1**
Preliminary provisions 15
- 4 Interpretation**
In this Act, —
~~country of origin~~ means the country in which the food is grown, harvested or produced
~~single component foods~~ means food or food products, whether packaged or unpackaged, that contain only one vegetable, fruit, meat, seafood, nut, grain, seed, or oil, although these may also contain water, sugar or its substitutes, salt, or other ingredients used in preserving, colouring or flavouring. 20
- 4 Act binds the Crown**
This Act binds the Crown. 25
- 5 Principles which apply to decision making and actions taken under the Act**
The following principles apply to every decision made or action undertaken under the authority of this Act:
(a) consumers are to be provided with accurate information about the country of origin of single component food to enable them to make informed purchasing decisions: 30
(b) information about the country of origin of single component food must be clearly displayed at the point of sale of the food or food product, whether contained on a label or otherwise connected with the food or food product, to enable consumers to exercise freedom of choice when making purchasing decisions. 35

- 5 New consumer information standard: country of origin of regulated foods**
- (1) The Minister of Commerce and Consumer Affairs must recommend the making of regulations under section 27 of the Fair Trading Act 1986 prescribing a consumer information standard for the disclosure of a regulated food's country or place of origin. 5
- (2) The Minister must be satisfied that the consumer information standard—
- (a) meets the purpose of this Act; and
 - (b) defines and applies to regulated foods; and
 - (c) 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); and 10
 - (d) commences 6 months after the date of its notification in the *Gazette*; and
 - (e) does not apply to frozen food until 18 months after the commencement of the standard. 15
- (3) The **regulated foods** must include food that—
- (a) is either—
 - (i) only 1 type of fruit, vegetable, meat, fish, or seafood that—
 - (A) is fresh (even if previously frozen) or frozen and is not, for example, dried, cured, or pickled; and 20
 - (B) is no more than minimally processed (for example, by being cut, minced, filleted, or surface treated); or
 - (ii) cured pork; and
 - (b) is supplied, or offered or advertised for supply, at retail, including on an Internet site; and 25
 - (c) is not supplied, or offered or advertised for supply,—
 - (i) by any of the following for immediate consumption: a restaurant, cafeteria, takeaway shop, canteen, or similar place, or a caterer; or
 - (ii) at a fundraising event; and
 - (d) is packaged or unpackaged. 30
- (4) However, the consumer information standard may exclude any food from being a regulated food if the Minister considers that requiring the food to comply with the standard—
- (a) would be unduly onerous; or
 - (b) would not help consumers to make informed decisions about purchasing the food. 35
- (5) The food that is excluded may be defined in any way (for example, as a food that is supplied, or offered or advertised for supply, in specified circumstances).

Consumers' Right to Know (Country of Origin of Food)		
Bill		
(6)	<u>The Minister must make the recommendation as soon as practicable after the commencement of this Act, but no later than 18 months after its commencement.</u>	
(7)	<u>The requirements of this section continue to apply even if the deadline in subsection (6) has passed or this section has been repealed by section 6.</u>	5
(8)	<u>To avoid doubt,—</u>	
	(a) <u>the Minister may satisfy this section by recommending regulations that amend other regulations; and</u>	
	(b) <u>this section does not limit section 27 of the Fair Trading Act 1986, so that the regulations recommended by the Minister to satisfy this section—</u>	10
	(i) <u>may prescribe a consumer information standard that includes other food as a regulated food or includes other matters; and</u>	
	(ii) <u>may be amended or repealed later.</u>	

Part 2 15

Country of origin labelling

6	<u>Packaged food</u>	
	<u>All packaged single component foods on sale in New Zealand must have a statement that identifies the country of origin on the label or which is clearly displayed in connection with the retail display of the food.</u>	20
6	<u>Repeal of this Act</u>	
	<u>This Act is repealed 18 months after its commencement.</u>	
7	<u>Unpackaged food</u>	
	<u>All unpackaged single component foods on sale in New Zealand must have a statement that identifies the country of origin which is clearly displayed in connection with the retail display of the food.</u>	25
8	<u>Foods to which this Act applies</u>	
	<u>This Act applies to—</u>	
	(a) <u>fresh seafood, including prawns, shrimps, crabs, shellfish, cut fish, filleted fish, and seafood that has undergone any other processing including cooking, smoking, drying, pickling, freezing, canning, or coating with another food:</u>	30
	(b) <u>fresh and frozen meat, whole or cut, including meat that has been preserved by curing, drying, smoking, canning, or by other means:</u>	
	(c) <u>fresh whole or cut fruit and vegetables:</u>	35
	(d) <u>canned, dried, or frozen fruit, and vegetables:</u>	

(e) ~~nuts, seeds, grains, oil and any other food, either whole or processed.~~

9 Offences

- (1) ~~No person shall sell any single component food—~~
- (a) ~~that bears or has attached to it, or is contained in a package that bears or has attached to it, any false or misleading statement, word, brand, picture, label, or mark purporting to indicate the country of origin of the food or food product; or~~ 5
 - (b) ~~that is the subject of or connected with any sign or display or other similar means of communication with any statement, word, brand, picture, or mark that is false or misleading in relation to the country of origin of the food or food product.~~ 10
- (2) ~~No person shall, for the purpose of effecting or promoting the sale of a single component food, publish or cause to be published any advertisement relating or likely to cause any person to believe that it relates to the food, containing any statement, word, brand, picture, or mark that is false or misleading in relation to the country of origin of the food or food product.~~ 15
- (3) ~~Every individual who contravenes any of the provisions of this section commits an offence and is liable,—~~
- (a) ~~in any case where the court is satisfied that the individual intended to commit the offence, to a fine not exceeding \$10,000;~~ 20
 - (b) ~~in any other case, to a fine not exceeding \$5,000.~~
- (4) ~~Every body corporate who contravenes any of the provisions of this section commits an offence and is liable,—~~
- (a) ~~in any case where the court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding \$50,000;~~ 25
 - (b) ~~in any other case, to a fine not exceeding \$10,000.~~

10 Enforcement

~~The provisions of subpart 6 of Part 4 of the Food Act 2014 apply to the enforcement of the provisions of this Act, with any necessary modifications.~~

Legislative history

8 December 2016
12 April 2017

Introduction (Bill 231-1)
First reading and referral to Primary Production Committee