

EXPLANATORY STATEMENT

PROPOSAL P271

DEFINITION OF LIQUEUR

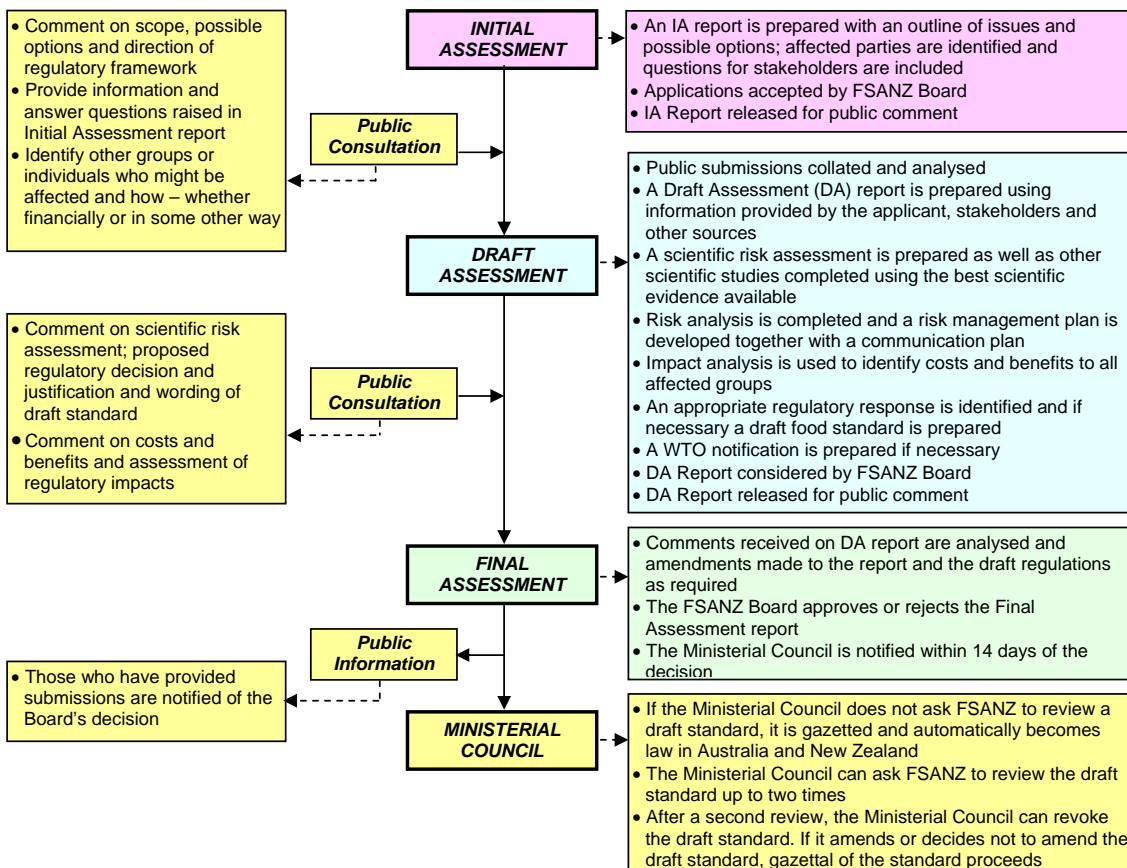
FOOD STANDARDS AUSTRALIA NEW ZEALAND (FSANZ)

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 Australian Government; 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 Australian Government, 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 Australian Government, 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.



Final Assessment Stage

FSANZ has now completed two stages of the assessment process and held two rounds of public consultation as part of its assessment of this Proposal. This Final Assessment Report and its recommendations have been approved by the FSANZ Board and notified to the Ministerial Council.

If the Ministerial Council does not request FSANZ to review the draft amendments to the Code, an amendment to the Code is published in the *Commonwealth Gazette* and the *New Zealand Gazette* and adopted by reference and without amendment under Australian State and Territory food law.

In New Zealand, the New Zealand Minister of Health gazettes the food standard under the New Zealand Food Act. Following gazettal, the standard takes effect 28 days later.

Further Information

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Assessment reports are available for viewing and downloading from the FSANZ website www.foodstandards.gov.au or alternatively paper copies of reports can be requested from FSANZ's Information Officer at info@foodstandards.gov.au including other general inquiries and requests for information.

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Executive Summary and Statement of Reasons

The current definition for 'liqueur', in the *Australia New Zealand Food Standards Code* (the Code), is broad enough to allow a number of products to be classified as 'liqueurs' that were not intended to be classified as such. 'Liqueurs' are exempt from certain labelling requirements, such as ingredient labelling, percentage labelling, and nutrition information labelling. Exemption from these labelling requirements was not intended for some of the products that currently take advantage of these exemptions. In particular, manufacturers, importers and retailers of many 'ready-to-drink' products (RTDs), which are usually mixtures of spirits with soft drinks, are claiming that RTDs match the Code's definition of liqueur, thus qualifying for the labelling exemptions associated with liqueurs. Different interpretations of the Code's provisions regulating liqueurs has caused some confusion throughout the industry and resulted in similar products having different labelling information, which is potentially confusing for consumers and enforcement agencies.

Therefore, the main objective of this Proposal is to clarify the original intent of the Code's drafting with respect to liqueurs. It is not concerned with re-evaluating or re-determining labelling requirements or labelling exemptions for alcoholic beverages. Notwithstanding this, the clarification of the original intent of the liqueur definition and the subsequent labelling implications are significant for certain manufacturers.

The former Australia New Zealand Food Authority (ANZFA, now FSANZ) developed the Code's labelling requirements and exemptions during its review of food standards, with extensive consultation of industry representatives and consumers. The Code's requirements have been in place since December 2000 with some changes to its labelling requirements and labelling exemptions being put in place during the Code's implementation phase, which ended in December 2002. After reviewing documentation and user guides, it is possible that there may have been some misunderstanding about the precise labelling requirements for products currently standardised as liqueurs, including the 'ready to drink' range of products. On this basis, FSANZ has proposed the following approach:

1. Include an amendment to the definition for 'liqueur' to require a compositional requirement of 15 % alcohol by volume (ABV). This means that all products currently 'standardised' as liqueurs would fall outside this definition if they contained less than 15% ABV, and would not be exempt from the labelling requirements for ingredient labelling, nutrition information labelling and characterising ingredient labelling.
2. Include a nutrition information panel labelling exemption in Standard 1.2.8 – Nutrition Information Requirements, for beverages containing more than 0.5% ABV that are standardised in Standards 2.7.2 to 2.7.5. This would have the effect of maintaining a nutrition information panel (NIP) exemption for beverages containing more than 0.5% ABV. FSANZ is planning a review of exemptions to nutrition information labelling, as part of the potential Proposal PP280 – Nutrition Information Panel (NIP) exemptions, to generally consider the issue of nutrition information labelling exemptions. On FSANZ's current Work Plan it is envisaged that work will commence on PP280 in mid-2007, dependent on resources and other priorities that may arise. This approach will allow interested parties to put forward their arguments for and against changes to those labelling exemptions during the assessment of that Proposal.

3. Include an exemption in Standard 1.2.10 – Characterising Ingredients and Components of Food, for alcoholic beverages containing more than 0.5% ABV but are not standardised in Standards 2.7.2 to 2.7.5. This would have the effect of maintaining an exemption for beverages containing more than 0.5% ABV. This exemption is proposed on the basis that other provisions in the Code require the labelling of these products to include the alcohol by volume declaration and that it would be inappropriate to require an additional alcohol by weight declaration as would be required by Standard 1.2.10.

This approach clarifies the labelling and allows the more contentious issue of nutrition labelling exemptions to be considered alongside exemptions for other alcohol containing beverages at a later date. To implement the proposed requirements for ingredient labelling some minor amendments are also required to Standard 1.2.4.

Initial work on this Proposal commenced in September 2002, with an Initial Assessment completed in December 2002.

In response to the Initial Assessment eleven submissions were received, mostly from manufacturers of RTDs and the industry organisations representing them. Most submissions agreed that the definition for liqueur should be clarified and that RTDs should not be included in that definition. Most submissions also agreed that ingredient labelling should be required for RTDs. However, most submissions opposed the need for percentage labelling on RTDs and all opposed the need for nutrition information labelling on RTDs. That is, there was acceptance of the old labelling requirements of the former Australian *Food Standards Code* and the *New Zealand Food Regulations 1984*, but opposition to the new labelling requirements of the current Code.

A Draft Assessment Report was released for public comment in March 2004. Seven submissions were received. All submissions supported the Proposal to amend Standard 2.7.5 to clarify which alcoholic beverages were included in the definition of 'liqueur'. Specific issues raised in submissions are covered and evaluated under the relevant headings in the report.

FSANZ Decision

A variation to the Code is approved that will clarify the original intent of the drafting for the definition of liqueur and lead to more certainty for industry members, consumers and enforcement agencies as to which products fit the definition of 'liqueur'. It will also clarify the labelling requirements for such products.

At Final Assessment, FSANZ recommends that Standard 2.7.5 – Spirits be amended to include:

- a revised definition for 'liqueur', which specifies a minimum alcohol content of 15% alcohol by volume;
- Clause 6 of Standard 1.2.4 be amended to refer to 'Standards 2.7.2 to 2.7.5' not Part 2.7 and to retain the ingredient labelling exemption when alcohol containing beverages standardised in Standards 2.7.2 to 2.7.5 are used as compound ingredients;

- amend paragraph 3 of Standard 1.2.8 to include exemption for alcoholic beverages containing 0.5% or more alcohol by volume but which are not standardised in Standards 2.7.2 to 2.7.5; and
- amend subclause 2(4) of Standard 1.2.10 to include exemption for alcoholic beverage containing 0.5% or more alcohol by volume but which are not standardised in Standards 2.7.2 to 2.7.5.

Statement of Reasons

Reasons for the recommended amendments are that it will:

- provide a clearer definition for 'liqueur', which will assist to ensure consistent interpretation and application of the Code's provisions by manufacturers, enforcement agencies and consumers;
- improve the provision of adequate information relating to food, to enable consumers to make informed choices by requiring ingredient labelling for all alcoholic beverages that are not standardised in Standards 2.7.2 to 2.7.5 of the Code;
- allow the nutrition information panel exemption for alcohol containing beverages that were previously standardised as 'liqueurs' to remain, pending a more detailed consideration of all nutrition information panel exemptions as part of the potential Proposal PP280;
- clarify percentage labelling by exempting beverages containing more than 0.5% alcohol by volume from percentage labelling on the basis that an alcohol by volume declaration is required for these foods and that it is inappropriate to also require an alcohol by weight declaration;
- promote international consistency in respect of domestic food standards regulating liqueurs; and
- promote fair trading in food by improving certainty for manufacturers, importers and distributors of alcoholic beverages by clarifying which beverages are considered to be liqueurs.

1. Introduction

The main objective of this Proposal is to clarify the original intent of the Code's drafting with respect to 'Ready to Drink' products (RTDs) and liqueurs, leading to more certainty for industry members, consumers and enforcement agencies as to which products fit the definition of 'liqueur'. The Draft Assessment for Proposal P262 – Minor Amendments Omnibus to Volume 2 of the *Food Standards Code* III, included a proposed amendment to the liqueur definition to clarify which products were to be included as 'liqueurs'..

Submissions from the distilled spirits industry associations in Australia and New Zealand, in response to the Draft Assessment for Proposal P262, indicated that the proposed change would have an adverse impact on some of their members and that therefore the amendment should not be included in a minor omnibus amendment Proposal, which had an abbreviated consultation process. Instead they requested a full consultation process. The FSANZ Board agreed to proceed with a separate Proposal, including a full consultation process in September 2002.

2. Regulatory problem

The current definition for 'liqueur' (see section 4.1 *Historical background*) is broad enough to allow a large number of products to be classified as 'liqueurs' that were not intended to be so classified. If classified as 'liqueurs', these products would be considered as 'alcoholic beverages standardised in Part 2.7 – Alcoholic Beverages, of this Code' and therefore exempt from certain labelling requirements, such as ingredient labelling, percentage labelling, and nutrition information labelling. Exemption from these labelling requirements was not intended for these products.

Different interpretations by producers and retailers of the requirements for these products has led to confusion throughout the industry and resulted in similar products having different labelling information, which is potentially confusing for consumers and enforcement agencies.

3. Objective

The main objective of this Proposal is to clarify the original intent of the Code's drafting with respect to RTDs and liqueurs, leading to more certainty for industry members, consumers and enforcement agencies as to which products are intended to meet the definition of 'liqueur' and consequently the labelling that should apply.

This Proposal is not concerned with re-evaluating or re-determining labelling requirements or exemptions for alcoholic beverages, as these were previously developed with extensive consultation of industry representatives and consumers.

A clearer definition for 'liqueur' will help ensure the fulfilment of FSANZ's section 10 objectives (see below) in relation to food regulatory measures and promote fair trade in the alcoholic beverages industry by helping to ensure consistent interpretation and application of the Code's provisions throughout the jurisdictions.

In developing a clearer definition for ‘liqueur’, in the absence of any international standards for alcoholic beverages and of any applicable Ministerial guidelines, consideration was given to relevant definitions in the domestic standards of other countries.

In developing or varying a food regulatory measure, 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 food regulatory measures, FSANZ must also have regard to:

- the need for these measures 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.

4. Background

4.1 Historical background

During the development of the Code, consideration was given to the relevant domestic standards for alcohol and related products in other countries such as Canada, the United States of America and the United Kingdom. Regard was also given to the principle of Minimal Effective Regulation, which was one of the major principles underlying the review of all food standards in Australia and New Zealand.

In its evaluation for the review of food standards regulating liqueurs in Australia and New Zealand, as part of Proposal P204 – Alcoholic beverages and labelling of foods containing alcohol, the then ANZFA concluded:

Liqueurs are regulated as spirit drinks in all major liqueur producing countries. They are always spirits that have been flavoured with other foods. ANZFA’s proposed treatment aligns with existing practice in the domestic food standards in the EU and is less prescriptive than the current US, Canadian and Australian standards. Similar drinks that do not contain spirits would be regulated as mixed or miscellaneous foods subject to general requirements for naming, ingredient labelling and alcohol content labelling.

The outcome of these considerations was the current liqueur definition in Standard 2.7.5 – Spirits of the Code:

liqueur means a spirit flavoured or mixed with other foods.

The definition is minimally prescriptive and has been interpreted by some as encompassing some ready-to-drink alcoholic beverages. As well, there is no accepted international definition of liqueur.

5. Relevant issues

5.1 Intent of the Code with respect to ‘ready-to-drink’ products

The intent of the Code with respect to RTDs was that they continue to be regulated in the same way as they were in the Australian *Food Standards Code* and the *New Zealand Food Regulations 1984*. That is, as ‘alcoholic beverages not elsewhere standardised’. At the time, RTDs were not considered to be standardised alcoholic beverages (such as beer, wine, fruit wine, spirits or liqueurs) and therefore were not considered to be eligible for the labelling exemptions permitted for standardised alcoholic beverages. FSANZ (then ANZFA) did not intend RTDs to be captured by the liqueur definition and be exempt from ingredient labelling provisions in the Code.

FSANZ’s user guide on ingredient labelling confirms that the intent of the Code was for RTDs to be regulated as non-standardised alcoholic beverages. The guide advises on ingredient labelling requirements for RTDs and other non-standardised alcoholic beverage products as follows:

Alcoholic beverages not covered by Part 2.7 of the new Code are not exempt from ingredient labelling requirements. For example wine-based drinks with less than 70% wine, ready-to-drink spirits/mixer products and newly developed alcoholic beverages that are not standardised in Part 2.7 of the new Code must be fully ingredient labelled.

In relation to nutrition information and percentage labelling the application of these labelling requirements was less definitive. Notwithstanding the original intention, the ‘exemption’ from labelling requirements has been in place for some time, and manufacturers and industry have arranged the labelling of products accordingly.

5.2 Issues raised in submissions

The following issues were raised in submissions to the Draft Assessment Report:

- liqueur definition
- ingredient labelling
- nutrition information labelling
- percentage labelling
- use of the term ‘flavoured’

Issues raised in the submissions are discussed in sections 5.3 – 5.7.

5.3 Definition of liqueur

All submissions agreed with FSANZ's proposal to amend the definition of liqueur in Standard 2.7.5 to clarify which alcoholic beverages should be considered 'liqueurs'. Most submissions also agreed that RTDs should not be included in the definition for liqueur.

A definition of liqueur that includes a minimum alcohol content of 15% alcohol by volume would appear to be acceptable to all submitters including manufacturers of RTDs and their representative organisations. Such an amendment to the definition will provide a clearer classification of what type of products are included in the liqueur definition, which will help to ensure consistent interpretation and application of the Code's provisions by manufacturers, enforcement agencies and consumers, providing them with more certainty than the current definition provides.

The proposed definition will also align more closely than the current liqueur definition with the domestic regulations of other liqueur producing countries, thus promoting consistency with other countries domestic food standards. The clarification of which beverages are considered to be liqueurs will also help promote fair trading in food by improving certainty for alcoholic beverage manufacturers, importers and distributors.

5.3.1 Preferred approach

At Final Assessment, FSANZ proposes to include a minimum alcohol requirement of 15% alcohol by volume in the definition of liqueur in Standard 2.7.5.

5.4 Ingredient labelling of RTDs

All foods containing 0.5% or more alcohol by volume are subject to the alcohol labelling requirements set out in Standard 2.7.1 – Labelling of Alcoholic Beverages and Food Containing Alcohol. In addition, all foods are subject to the provisions in Standard 1.2.3 – Mandatory warnings and advisory statements and declarations, that require the declaration of certain substances in food.

The Code's general ingredient labelling requirements for foods are set out in Standard 1.2.4 – Labelling of Ingredients. Some foods, including alcoholic beverages that are standardised in Standards 2.7.2 to 2.7.5, are specifically exempt from these general ingredient labelling requirements (Standard 1.2.4, subclause 2(b)). This means that alcoholic beverages that are not standardised in these Standards are required to provide ingredient labelling information on their labels.

Restricting the definition of a liqueur to products containing 15% alcohol by volume or more will mean that products previously standardised as liqueurs and containing less than 15% alcohol by volume will be required to have ingredient labelling in accordance with Standard 1.2.4. If the liqueur definition is adopted then manufacturers will have 12 months from the date of gazettal to ensure that the labelling of their products comply with the ingredient labelling provisions in Standard 1.2.4.

All submissions, including those from RTD manufacturers and their representative industry organisations agreed that RTDs should be ingredient labelled. Manufacturers of RTDs also indicated that they currently provide ingredient labelling information on all their RTDs.

In considering the ingredient labelling provisions, FSANZ has noted two aspects of the current Standard 1.2.4 that require amendment to implement the intent of this Proposal which is to:

- apply ingredient labelling to products containing 15% or less alcohol by volume but that are not standardised in Standards 2.7.2 to 2.7.5; and
- retain the ingredient labelling exemption for alcohol containing beverages standardised in Standards 2.7.2 to 2.7.5 when these are used as compound ingredients in mixed foods.

For this last dot point this issue was considered in Proposal P143 – Review of the statement of ingredients, where it was determined that for consistency, the ingredient labelling requirements that apply to ingredients generally should also apply to the declaration of ingredients of compound ingredients.

To address this FSANZ proposes to:

- amend the reference to ‘Part 2.7’ in subclause 6(2) of Standard 1.2.4 to restrict it to alcohol containing beverages standardised in Standards 2.7.2 to 2.7.5; and
- amend Clause 6 of Standard 1.2.4 such that alcohol containing beverages standardised in Standards 2.7.2 to 2.7.5 are exempt from compound ingredient labelling.

5.4.1 Preferred approach

At Final Assessment, FSANZ proposes not to include an exemption for RTDs or other non-standardised alcoholic beverages from the Code’s general labelling requirements for ingredient labelling. In accordance with the amended definition for liqueur, this will result in products containing less than 15% alcohol by volume that are currently standardised as ‘liqueurs’ being required to comply with the ingredient labelling requirements in Standard 1.2.4.

5.5 Nutrition information labelling of RTDs

The Code’s general nutrition information labelling requirements for foods are set out in Standard 1.2.8 – Nutrition Information Requirements. Some foods, including alcoholic beverages that are standardised in Standards 2.7.2 to 2.7.5, are specifically exempt from these general nutrition information labelling requirements (Standard 1.2.8, subclause 3(b)). This means that alcoholic beverages that are not standardised in Standards 2.7.2 to 2.7.5 are required to provide nutrition information on their labels.

5.5.1 Issues raised in submissions

The **Australian Consumers’ Association (ACA)** believes that RTDs should be excluded from the liqueur definition and should not be exempt from the labelling requirements for nutrition information panels. Supports the notion that RTDs should be required to display nutrition information panels. Notes that the sugar content of RTDs is similar to the equivalent carbonated soft drinks.

Cadbury Schweppes Pty Ltd supports the **Distilled Spirits Industry Council of Australia** submission made at Initial Assessment that, in turn did not support the application of nutrition information labelling to RTDs.

Distilled Spirits Association of New Zealand (DSANZ) considers that the Proposal has an excessive focus on RTDs and that the labelling of these products should not be considered as part of the Proposal, and that a separate review should be conducted where the labelling of RTDs and rival products can be considered simultaneously and consistently. States that as RTDs are beverages containing alcohol, they should be treated on the same basis as other standardised alcohol beverages and be exempt from nutrition labelling. Not aware of any instances where the public has been disadvantaged, misled or deceived from not sighting nutrition labelling on product labels.

Beer, Wine and Spirits Council of New Zealand (BWSCNZ) considers there could be a 'doubling-up' of information or confusion if RTDs were required to include nutrition information labelling. Likely to be significant costs to meet the labelling after redefinition and an ample stock in trade would possibly help to reduce the cost.

New Zealand Food Safety Authority (NZFSA) supports the option to amend the definition for liqueurs and considers that RTDs should be excluded from the definition of liqueurs and that full labelling apply.

Environmental Health Unit, Queensland Health supports the option to amend the definition for liqueurs as this will provide a clearer definition and promote trade in alcoholic beverages by ensuring consistent interpretation and application throughout the jurisdictions.

5.5.2 *Evaluation*

The current labelling exemptions were developed during the development of the Code, including the determination of which foods were to be exempt from general nutrition information labelling requirements. During the two-year transition phase for the current Code, there was further consideration and clarification of foods to be exempted. Of the alcoholic beverages, only those standardised in Standards 2.7.2 to 2.7.5 of the Code were determined to be exempt from nutrition information labelling requirements. In general the Code requires all packaged foods to be labelled with nutrition information unless adequate reasons were provided to warrant an exemption from such labelling.

While it could be argued that this Proposal is clarifying an original intent, the fact of the matter is that certain alcohol containing beverages are currently exempt from nutrition information labelling. Including the definition change to liqueurs will apply nutrition information labelling to products that were previously exempt.

FSANZ's planned review of exemptions to nutrition information labelling, potential Proposal PP280, is intended to address inconsistencies and anomalies in the current nutrition information labelling requirements. Interested parties will be able to put forward their arguments for and against changes to those labelling exemptions during the assessment of that Proposal. On FSANZ's current Work Plan it is envisaged that work will commence on PP280 in mid-2007, dependent on resources and other priorities that may arise.

Recognising the costs associated with instituting nutrition information labelling, FSANZ does not consider it appropriate to apply nutrition labelling to alcoholic beverages that are currently exempt in advance of the more comprehensive consideration of the nutrition information labelling exemptions in the potential Proposal PP280. On this basis, FSANZ intends to include an exemption from nutrition information labelling requirements for beverages containing more than 0.5% alcohol by volume, pending finalisation of the potential Proposal PP280.

It should be noted that this exemption would not apply where a nutrition claim is made about a product (provided by clause 4 of Standard 1.2.8). For example, if a product is described as 'diet' or 'lo-cal' then a nutrition information panel is required, irrespective of any generic exemption that might apply. Furthermore, the exemption does not prevent manufacturers from voluntarily including nutrition information in a label. If manufacturers do include voluntary nutrition information then this is regarded as a 'nutrition claim' and triggers the requirement for complete nutrition information labelling in accordance with the provisions in Standard 1.2.8.

5.5.2 *Preferred approach*

At Final Assessment FSANZ proposes to include an exemption from nutrition information labelling for beverages containing more than 0.5% alcohol by volume pending a more comprehensive consideration of the nutrition information labelling exemptions as part of the potential Proposal PP280.

5.6 **Percentage labelling**

The Code's general percentage labelling requirements for foods are set out in Standard 1.2.10 – Characterising Ingredients and Components of Food. Some foods, including alcoholic beverages that are standardised in Standards 2.7.2 to 2.7.5, are specifically exempt from these general percentage labelling requirements (Standard 1.2.10, subclause 2(4)(i)). This means that alcoholic beverages that are not standardised in Standards 2.7.2 to 2.7.5 are required to include percentage labelling information in their labels.

5.6.1 *Issues raised in submissions*

The **Australian Consumers' Association (ACA)** believes that RTDs should be excluded from the liqueur definition and should not be exempt from the labelling requirements for percentage of characterising ingredients.

Cadbury Schweppes Pty Ltd supports the Distilled Spirits Industry Council of Australia submission made at Initial Assessment which in turn did not support the application of percentage labelling requirements.

Distilled Spirits Association of New Zealand (DSANZ) submission is as listed in section 5.5.1.

Beer, Wine and Spirits Council of New Zealand (BWSCNZ) considers there could be a 'doubling-up' of information or confusion if RTDs were required to include percentage labelling.

The example is given of a 5% alcohol by volume product that would also need to include a percentage labelling declaration of between 11-13% depending upon the density of the spirit. Likely to be significant costs to meet the labelling after redefinition and an ample stock in trade would possibly help to reduce the cost.

New Zealand Food Safety Authority (NZFSA) supports the option to amend the definition for liqueurs and considers that RTDs should be excluded from the definition of liqueurs and that full labelling would apply.

Environmental Health Unit, Queensland Health supports the option to amend the definition for liqueurs as this will provide a clearer definition and promote trade in alcoholic beverages by ensuring consistent interpretation and application throughout the jurisdictions.

The main arguments offered in submissions for opposing percentage labelling on RTDs was the potential duplication of information and the need to consider RTD labelling in conjunction with other alcoholic beverage labelling.

5.6.2 *Evaluation*

In reconsidering this issue FSANZ has noted that:

- the requirements in Standard 1.2.10 require the label on a package of food to include a declaration of the proportion of characterising ingredients and characterising components of the food, calculated and expressed in accordance with the Standard;
- where the proportion of a characterising component of a food is declared in accordance with Standard 1.2.10, the proportion of ingredients or category of ingredients containing that characterising component is not required to be declared; and
- the proportion of a characterising ingredient or category of ingredients must be calculated in accordance with this clause, by dividing the ingoing weight of the ingredient or total weight of the ingredients within the category of ingredients by the total weight of all the ingoing ingredients of the food, and multiplying this amount by 100.

The sum total of these requirements is that if alcohol containing beverages were required to comply with percentage labelling then they could either:

- A. declare the proportion of alcohol by weight in the product (i.e. the characterising component) and not need to declare the proportion by weight of the characterising ingredients in the food (i.e. mixer or spirit); OR
- B. declare the proportion by weight of the characterising ingredients in the product (i.e. mixer or spirit).

FSANZ considers that requiring 'weight' declarations of alcohol in alcoholic beverages is inconsistent with the current, longstanding and international approach for declaring the presence of alcohol in foods, where alcohol by 'volume' labelling is required. In addition, FSANZ has also noted that standard drink labelling is based upon the 'weight' of alcohol in a specific 'volume' of the product.

Given the current alcohol by volume and standard drink labelling requirements that apply to alcohol containing beverages (under the requirements of standard 2.7.1 – Labelling of alcoholic beverages and food containing alcohol), FSANZ considers that beverages containing 0.5 % or more of alcohol by volume should be exempt from percentage labelling. Exempting products from percentage labelling would mean that it would not be necessary for the label to include the declaration of the weight of spirit or mixer in RTDs and only the alcohol by volume and standard drink labelling would apply. It could be argued therefore that consumers are being denied information about the mass of the spirit or mixer in these mixed foods. However, this situation is no different from any other comparable alcoholic beverage and would apply if the manufacturer decided to include the confusing declaration of alcohol by weight in the label.

On this basis, FSANZ considers that for consistency with other alcohol containing beverages, those beverages containing 0.5% or more of alcohol by volume that are currently exempt from percentage labelling should remain exempt from these requirements on the grounds that they would be subject to the alcohol by volume and standard drink labelling requirements.

From information provided in submissions, some but not all RTDs are already labelled with percentage labelling information on the ingoing weight of spirit in the product. FSANZ considers that there is nothing to prevent manufacturers continuing to voluntarily provide this information, provided that this information is not false, misleading or deceptive.

5.6.3 *Preferred approach*

At Final Assessment FSANZ proposes to include an exemption from the requirements in Standard 1.2.10 for beverages containing 0.5 % or more alcohol by volume on the basis that these products would already be subject to alcohol by volume and standard drink labelling requirements.

5.7 **Other issues raised in submissions**

ACA considers that the word ‘flavoured’ should be required on RTDs, as based upon ACA findings the vast majority did not contain any of the fruit named in the label. Currently there are no specific requirements in the Code that relate to the mandatory use of the word ‘flavoured’. This is on the basis that general provisions in food and consumer protection legislation require products to be presented to the prospective consumer such that they are not false, misleading or deceptive, nor likely to mislead or deceive. If there are products which are inappropriately represented then this should be brought to the attention of the relevant enforcement agencies so that, if necessary, appropriate action can be taken under these existing general provisions.

National Council of Women of New Zealand (NCWNZ) considers that a maximum ethanol content needs to be prescribed. This restriction does not currently apply to liqueurs and it is not known what maximum level would be appropriate. On this basis and as the alcohol content by volume is declared, FSANZ does not propose to incorporate a maximum alcohol by volume level in the definition for liqueur.

NCWNZ would like to see each label include warnings on the dangers of alcohol. This issue has been previously considered as part of Application A359 which was rejected for a range of reasons.

NCWZN would like to see products containing alcohol labelled with the alcohol by volume. This is a current requirement.

NCWZN would agree with nutrition labelling of these products but not in such a way as to promote alcohol as having nutritional value. This issue can be considered in more depth as part of the potential Proposal PP280.

Agriquality considers the proposed definition to be flawed and that it does not address the fundamental issue of aligning the definition with any recognised food. The submitter also considers that the original Volume 1 of the Australian *Food Standards Code* described the generally held view of a liqueur, although the cream variation should be removed. FSANZ has noted this view and considers that the original Volume 1 liqueur definition was also very broad in its scope. When this issue was considered as part of Proposal P204 – Alcoholic Beverages, and Labelling of Foods Containing Alcohol, it was determined that the definition of liqueur should ensure that it did not include redundant wording – resulting in the minimally prescriptive current definition of liqueur. On this basis, FSANZ considers that it is unnecessary to reincorporate what was previously regarded as unnecessary wording in the definition.

6. Regulatory options

FSANZ is required to consider the impact of various regulatory (and non-regulatory) options on all sectors of the community, which includes consumers, food industries and governments in Australia and New Zealand. The benefits and costs associated with the proposed amendment to the Code have been analysed using regulatory impact principles.

There is an existing regulation that is being inconsistently interpreted.

The following regulatory options were suggested for this Proposal:

Option 1 Do not amend the Code to clarify which alcoholic beverages should be considered as 'liqueurs'.

Option 2 Amend the Code to clarify which alcoholic beverages should be considered as 'liqueurs'.

Information on the likely costs and benefits to stakeholders of the two regulatory options was used in the preparation of the Final Assessment Report. Further information from stakeholders was used by FSANZ in preparing an impact analysis for the Final Assessment.

7. Impact analysis

7.1 Affected parties

This Proposal will affect:

7.1.1 Producers and importers of alcoholic beverages in Australia and New Zealand

Changing the definition of 'liqueur' to include a compositional requirement is of itself unlikely to result in significant impacts, and is well supported by submitters.

Including the definitional change would have advantages for manufacturers of clarifying the scope of a 'liqueur' with minimal cost implications for manufacturers or importers.

The labelling requirements that flow from this change are likely to be significant for some manufacturers, although it is difficult to determine the extent of these costs, as many manufacturers are already including more information than would currently be required.

Requiring ingredient labelling for all alcoholic beverages that are not standardised in Standards 2.7.2 to 2.7.5 of the Code would enhance consistency and transparency and based upon submissions would have minimal cost implications for manufacturers and importers.

Incorporating an exemption for nutrition information labelling for alcohol containing beverages that were previously standardised as 'liqueurs' would be of benefit for manufacturers and importers. This would allow the issue of nutrition information labelling exemptions to be considered more generically as part of another potential Proposal (PP280).

Clarifying percentage labelling requirements by exempting beverages containing more than 0.5% alcohol by volume from percentage labelling would provide certainty to manufacturers and importers. The exemption would be on the basis that an alcohol by volume declaration is required for these foods and that it is inappropriate to also require an alcohol by weight declaration, which would be required by the percentage labelling requirements in Standard 1.2.10.

7.1.2 Enforcement agencies in Australia and New Zealand and those responsible for facilitating consistent application and interpretation of the Code

Current provisions relating to 'liqueur' have resulted in different interpretations by producers/retailers as to which alcoholic products are exempt from some of the Code's labelling requirements. This has resulted in similar products being labelled differently, which is potentially confusing to enforcement agencies with the responsibility of enforcing the Code. It also has the potential to cause problems for those departments and committees responsible for facilitating consistent interpretation and application of the Code's provisions.

Amending the Code to clarify the original intent of the drafting will provide more certainty for enforcement agencies as to which products comply with the 'liqueur' definition. This will help ensure the consistent interpretation and application of provisions in the Code relating to alcoholic beverages labelling.

7.1.3 Consumers of alcoholic beverages in Australia and New Zealand

Current provisions relating to 'liqueur' have resulted in different interpretations by producers/retailers as to which alcoholic products are exempt from some of the Code's labelling requirements.

Amending the Code to clarify the original intent of the drafting will ensure that consumers will receive consistent labelling information on similar products, which will improve their ability to make informed choices about products they wish to purchase.

Amending the definition for 'liqueur' and the associated amendments to the labelling requirements will mean that consumers will be consistently provided with ingredient labelling on those products containing 15% or less alcohol by volume that are currently standardised as liqueurs. Currently ingredient labelling is not required for these products.

While consumers will not be provided with nutrition information labelling for products containing 15% or less alcohol by volume that are currently standardised as liqueurs, this issue will be reconsidered as part of a separate Proposal and this situation is no different to any other similar alcohol containing beverage. The costs for consumers of retaining this exemption are not seen as significant in the short term.

Clarifying the percentage labelling requirements by exempting beverages containing more than 0.5% alcohol by volume from percentage labelling will ensure that consumers are not provided with the potentially confusing alcohol by volume and alcohol by weight declaration, which could be argued, is currently required by the percentage labelling requirements.

7.2 Conclusion

Option 2 is preferred as it clarifies the definition of 'liqueur', provides additional information to consumers, ensures that existing information is provided consistently and allows the contentious and potentially costly issue of nutrition information labelling to be considered more generically as part of another Proposal.

8. Consultation

8.1 Public consultation

During its review of food regulations in Australia and New Zealand, the then ANZFA developed the current liqueur definition in the Code after extensive consultation on matters relating to spirits and liqueur regulation in Australia, New Zealand and other countries.

Because of the consultation on these matters during and since the review, FSANZ considers that the stakeholders are highly concentrated (Australian and New Zealand alcoholic beverages industry, Australian Government departments with responsibility for enforcement and trade, and the New Zealand Government) and are well acquainted with the issues.

Consumers are also affected because of this Proposal's potential effect of providing more labelling information than is currently provided on RTDs.

In seeking public submissions from all stakeholders at Initial Assessment and Draft Assessment FSANZ specifically requested information from members of the alcoholic beverages industry in Australia and New Zealand on:

- the extent of the problem, i.e., the number and types of products currently claiming to be 'liqueur' and using the exemption from labelling requirements that applies to 'alcoholic beverages standardised in Part 2.7 of this Code'; and
- the likely costs to members of re-labelling these products, should changes to the Code require this.

The FSANZ Board agreed to the Initial Assessment for this Proposal, P271, on 5 December 2002 and public notice inviting submissions was given on 18 December 2002. The initial consultation period ended on 29 January 2003. However, at the request of distilled spirits industry associations in Australia and New Zealand, the consultation period was extended to 31 March 2003 to provide enough time for detailed information necessary for the assessment to be collated and provided. FSANZ agreed to this request.

The Draft Assessment Report was released for public comment on 17 March 2004. Seven submissions were received:

- the Australian Consumers' Association;
- an organisation representing the non-commercial interests of New Zealand's leading drinks companies (Beer Wine and Spirits Council of New Zealand);
- the Distilled Spirits Association of New Zealand;
- Cadbury Schweppes supporting the submission made during the Initial Assessment by the Distilled Spirits Association of New Zealand and the Distilled Spirits Industry Council of Australia;
- a state-based food technology association (Food Technology Association of Victoria Inc.);
- the New Zealand Food Safety Authority; and
- the Environmental Health Unit of Queensland Health.

Three late submissions were also received and while not formally able to be considered, the issues raised in these submissions were taken into account during the Final Assessment.

All submissions supported the proposal to amend Standard 2.7.5 to clarify which alcoholic beverages were included in the definition of 'liqueur'. A summary of these submissions is at **Attachment 2**. Specific issues raised in submissions are covered and evaluated under the relevant headings in Section 5.

8.2 World Trade Organization (WTO)

As members of the World Trade Organization (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.

There are not any relevant international standards (that is there is no Codex standard or definition for liqueur) and amending the Code to alter the liqueur definition is unlikely to have a significant effect on international trade for this reason. Therefore FSANZ did not notify the agencies responsible in accordance with Australia's and New Zealand's obligations under the WTO Technical Barrier to Trade (TBT) or Sanitary and Phytosanitary Measure (SPS) Agreements.

8.2.1 Issues raised in submissions

In its late submission, the **Distilled Spirits Council of the United States (DISCUS)**, a trade organisation representing US producers, marketers and exporters of distilled spirits products, commented that:

- the proposed definition of ‘liqueur’ is different from that in the United States of America (USA);
- certain liqueurs in the USA have an alcohol content of less than 15% alcohol by volume but that the commercial impact of this is not likely to be a significant barrier to trade;
- it does not oppose the proposed definition of ‘liqueur’.

8.2.2 *Evaluation*

The proposed amendment to the definition of liqueur will still result in a definition for liqueur that is less prescriptive than domestic regulations for liqueurs in other countries with which Australia and New Zealand trade. Also there are no accepted international provisions for liqueurs. It is therefore unlikely that any changes resulting from this Proposal will have a significant effect on international trade.

9. **The Decision**

A variation to the Code is approved that will clarify the original intent of the drafting for the definition of liqueur and lead to more certainty for industry members, consumers and enforcement agencies as to which products fit the definition of ‘liqueur’. It will also clarify the labelling requirements for such products.

At Final Assessment, FSANZ recommends that Standard 2.7.5 – Spirits be amended to include:

- a revised definition for ‘liqueur’, which specifies a minimum alcohol content of 15% alcohol by volume;
- clause 6 of Standard 1.2.4 be amended to refer to ‘Standards 2.7.2 to 2.7.5’ not Part 2.7 and to retain the ingredient labelling exemption when alcohol containing beverages standardised in Standards 2.7.2 to 2.7.5 are used as compound ingredients;
- amend paragraph 3 of Standard 1.2.8 to include exemption for alcoholic beverage containing 0.5% or more alcohol by volume but that is not standardised in Standards 2.7.2 to 2.7.5; and
- amend subclause 2(4) of Standard 1.2.10 to include exemption for alcoholic beverage containing 0.5% or more alcohol by volume but that is not standardised in Standards 2.7.2 to 2.7.5.

Reasons for the recommended amendment are that it will:

- provide a clearer definition for ‘liqueur’, which will assist to ensure consistent interpretation and application of the Code’s provisions by manufacturers, enforcement agencies and consumers;
- improve the provision of adequate information relating to food, to enable consumers to make informed choices by requiring ingredient labelling for all alcoholic beverages that are not standardised in Standards 2.7.2 to 2.7.5 of the Code;

- allow the nutrition information panel exemption for alcohol containing beverages that were previously standardised as ‘liqueurs’ to remain, pending a more detailed consideration of all nutrition information panel exemptions as part of the potential Proposal PP280;
- clarify percentage labelling by exempting beverages containing more than 0.5% alcohol by volume from percentage labelling on the basis that an alcohol by volume declaration is required for these foods and that it is inappropriate to also require an alcohol by weight declaration;
- promote international consistency in respect of domestic food standards regulating liqueurs; and
- promote fair trading in food by improving certainty for manufacturers, importers and distributors of alcoholic beverages by clarifying which beverages are considered to be liqueurs.

10. Implementation and review

FSANZ recommends that the effective date for the proposed amendments be from the date of gazettal, noting that Standard 1.1.1, clause 1(2) provides a twelve month timeframe for compliance from the date of any variation to the Code.

As part of the potential Proposal PP280, the exemptions for nutrition information labelling will be reviewed in a generic sense.

ATTACHMENTS

1. Draft variation to the *Australia New Zealand Food Standards Code*.
2. Summary of public submissions received in response to the Initial Assessment and Draft Assessment Reports.

Draft Variations to the Australia New Zealand Food Standards Code

To commence: on gazettal

[1] *Standard 1.2.4 of the Australia New Zealand Food Standards Code is varied by –*

[1.1] *omitting from the start of subclause 6(1), A, substituting –*

Subject to subclause (3), a

[1.2] *omitting from the start of subclause 6(2), Except in the case of an alcoholic beverage specified in Part 2.7 of this Code, those, substituting –*

Those

[1.3] *inserting after subclause 6(2) –*

(3) Subclause 6(1) does not apply to an alcoholic beverage standardised in Standard 2.7.2 to Standard 2.7.5 of this Code.

[2] *Standard 1.2.8 of the Australia New Zealand Food Standards Code is varied by omitting paragraphs 3(o) to 3(p), substituting –*

- (o) a kit which is intended to be used to produce an alcoholic beverage standardised in Standard 2.7.2 to Standard 2.7.5 of this Code; or
- (p) a beverage containing no less than 0.5% alcohol by volume that is not standardised in Standard 2.7.2 to Standard 2.7.5 of this Code; or
- (q) kava as standardised in Standard 2.6.3.

[3] *Standard 1.2.10 of the Australia New Zealand Food Standards Code is varied by omitting subparagraph 2(4)(i), substituting –*

- (i) alcoholic beverages standardised in Standard 2.7.2 to 2.7.5 of this Code; or
- (j) beverages containing no less than 0.5% alcohol by volume that are not standardised in Standard 2.7.2 to Standard 2.7.5 of this Code.

[4] *Standard 2.7.5 of the Australia New Zealand Food Standards Code is varied by omitting from clause 1, the definition of liqueur, substituting –*

liqueur means a spirit flavoured or mixed with other foods, which contains more than 15% alcohol by volume, measured at 20°C.

Summary of submissions

Initial Assessment Report

List of submitters:

- 1 Australian Food and Grocery Council (AFGC)
- 2 Beer, Wine and Spirits Council of New Zealand (BWSCNZ)
- 3 The Continental Spirits Company Pty Ltd (CSC)
- 4 Distilled Spirits Association of New Zealand (DSANZ)
- 5 Distilled Spirits Council of the United States (DISCUS)
- 6 Distilled Spirits Industry Council of Australia (DSICA) (joint submission with DSANZ)
- 7 Food Technology Association of Victoria Inc (FTAV)
- 8 Hoyts Food (HF)
- 9 Independent Liquor New Zealand Ltd (ILNZ)
- 10 Rainforest Liqueurs (RL)
- 11 Winemakers' Federation of Australia (WFA)

Australian Food and Grocery Council (AFGC)

- Agrees that the current Code definition of 'liqueur' is minimally prescriptive as compared with the old Code's definition, which was defined extensively in terms of its ingredients, alcohol and sugars content. In the old Code, 'cream liqueur' was also defined as having a minimum milk fat content.
- Agrees that current definition of liqueur needs clarification and supports this.
- Considers that the basis for allowing labelling exemptions for some alcoholic beverages but not others needs to be clarified and logical reasons provided for making this distinction.
- While it can be argued that beers, wines, spirits and liqueurs are traditional products, with modern day technology, it cannot be argued that the consumer would automatically be aware of the ingredients and additives used in their preparation or their nutritional value.
- It can be argued that 'mixer drinks' are also traditional products as they have been consumed for well over one hundred years although generally mixed in the home, club, pub or restaurant at which they were served. Notwithstanding that, they have been available in ready mixed form for retail sale in Australia for well over a quarter of a century.
- It can be argued that because traditional alcoholic beverages are generally consumed socially and/or for pleasure, not for nutritional purposes or as an essential part of the diet, the consumer is not interested in their ingredients or nutritional content. However this argument must apply equally to 'mixer drinks'.

- FSANZ appears to be advancing the argument that it wants to change the definition of ‘liqueur’ because it wants ‘mixer drinks’ to carry an ingredient list and nutrition information panels but wishes to maintain the exemption from these requirements for liqueurs and other alcoholic beverages. FSANZ must provide cogent reasons for this different approach to the different categories of drinks that are used under the same conditions and for the same purposes, particularly when some mixer drinks may have an alcohol content similar to some beers.
- AFGC is not seeking to have ingredient and nutritional labelling extended to beers, wines and spirits, rather it is seeking to have all alcoholic beverages treated equally with respect to labelling, unless sound reasons can be given for not doing so.

Beer, Wine and Spirits Council of New Zealand (BWSCNZ)

- Agrees that the Code needs to be amended to clarify which alcoholic beverages should be considered ‘liqueurs’ and suggests that a minimum alcohol by volume content of 16% be included in the definition.
- The intention behind ingredient labelling information is to inform consumers of what a product contains. The reasoning behind the exemptions to ingredient labelling (for beer wine, spirits and liqueurs, etc) is that the original ingredients are no longer present in the final product. This is not the case for most RTDs, which are most often mixtures of ingredients such as carbonated water, sugar, alcohol, etc that remain the same in the final product. These products were never intended to be exempt from labelling, as stipulated in FSANZ’s user guide on ingredient labelling.
- Suggests that a survey of a selection of traditional liqueurs be undertaken to find out what the minimum percentage of alcohol content is and use this as a basis for the definition.

The Continental Spirits Company Pty Ltd

- Supports the adoption of a clearer and more detailed definition of ‘liqueur’ to clarify whether or not RTDs are to be included in the definition.
- Suggests inclusion of a definition for RTDs in the Code, and exemptions for RTDs from ingredient, nutrition and percentage labelling requirements or at least exempt from nutrition and percentage labelling requirements.
- Supports ingredient labelling of RTDs because it would assist consumers make informed decisions about RTD products and would assist protection of public and consumer health by alerting consumers to the presence of flavours and food additives they may wish to avoid.
- Opposes nutrition labelling because consumers would be encouraged to think of RTDs as nutritious foods; and would clutter the label so consumers would not be able to easily find alcohol content labelling and other important information.
- Opposes percentage labelling because consumers would not know the difference between ingredient percentage labelling and the percentage alcohol by volume alcohol content information required by provisions in Standard 2.7.1. Believes therefore that percentage labelling would be potentially misleading to consumers and is therefore not appropriate on RTDs.
- States that all nine of Continental’s RTD products have ingredient and percentage labelling information and provides commercial-in-confidence information on the estimated costs of re-labelling these products to include nutrition labelling.

- In the event of any new labelling requirements, requests a phase-in period of at least twelve months to reduce costs of compliance.

Distilled Spirits Association of New Zealand (DSANZ)

Submission states that it does not want to repeat the quantitative detail contained in their joint submission with DSICA but wanted to mention some key points:

- that FSANZ has no intent to change the way traditional liqueurs are regulated but wants to introduce new labelling requirements for RTDs to include percentage labelling and nutrition information. That these labelling requirements are not fair because beer and wine and spirits are exempt from these labelling requirements and RTDs should also be exempt.
- DSANZ does not oppose ingredient labelling of RTDs and that under the old Code this was a requirement for RTDs.
- DSANZ opposes the nutrition labelling requirements for RTDs (unless a claim is made) because: the introduction of nutrition labelling could run counter to public health concerns whereby Government and other agencies should not be seen to be promoting the 'nutritional' elements of alcoholic beverages including RTDs; and that consumers do not consume any type of alcoholic beverage for nutritional purposes and many do not need the information for comparative purposes.
- The Ministerial Council has recently agreed to exempt home brew kits from the requirements for nutrition information, and this should be extended to RTDs and all alcoholic beverages.
- DSANZ supports a clearer definition of 'liqueur' in the Code with a minimum alcohol content of 15% abv and the definition should exclude RTDs and suggests the new definition should exclude products made by the mere addition of flavourings to alcohol, which do not meet traditional and consumer expectations of 'liqueur'.
- DSANZ opposes percentage labelling for RTDs because it will cause consumer confusion by providing different numbers than are required for alcohol content labelling (alcoholic beverages are required to provide alcohol content information, which is usually done by providing a statement of the percentage alcohol by volume).

Distilled Spirits Council of the United States (DISCUS)

- DISCUS is a trade organisation representing US producers, marketers and exporters of distilled spirits products. In 2001, US spirits exports to Australia and New Zealand totalled approx. \$60 million of which approx. \$6.4 million was liqueurs. It is therefore a significant stakeholder because any change to the current definition of liqueur in the Code may have a direct and substantial impact on US exports.
- Urges FSANZ to proceed with caution so as not to erect unnecessary obstacles to trade.
- Any change to provisions regulating RTDs should be guided by the principle that any standards for RTDs including labelling requirements should apply equally to all RTDs products irrespective of their base, as well as to other competing products. Believes there is no justification for discriminating among like or directly competitive products.
- Cannot offer estimates of re-labelling costs at this time because not sure which products will be affected by modification to the definition. Welcomes opportunity to comment once they have an understanding of the range of products that might be affected.

- Expresses concern about FSANZ’s initial decision not to inform WTO of amendments to liqueur definition because any proposed modifications to the ‘liqueur’ definition could jeopardise US sales to the second largest export market for liqueurs and cordials.
- Suggests that this Proposal should be notified to WTO at Draft Assessment because it could have a significant effect on international trade.

Distilled Spirits Industry Council of Australia (DSICA) (joint submission with DSANZ)

- Proposal P271 seeks to address the problems caused by the breadth of the definition of ‘liqueur’ in Standard 2.7.5. The definition can be read to include products, such as ‘ready to drink’ mixtures of spirit and carbonated soft drink (RTDs), that previously were standardised in Standard P5 as ‘alcoholic beverages not elsewhere standardised’.
- The Proposal seeks to amend the definition of ‘liqueur’ so as to exclude RTDs and similar products. The intended effect of this change would be that RTDs, and other alcoholic beverages not elsewhere standardised, would, like most other packaged foods, be required to carry ingredient listing, nutrition information and a declaration of the percentages of ‘characterising ingredients’ and characterising components’.
- DSICA and DSANZ –
- concur that alcoholic beverages, other than those defined in Standards 2.7.2 to 2.7.5 inclusive, should carry ingredient listing:
 - oppose the introduction of nutrition labelling for alcoholic beverages howsoever standardised on the basis that alcoholic beverages should not be consumed for nutritional purposes, and that the proposal would introduce market inequity between competing products (RTDs and beer);
 - oppose the introduction of characterising ingredient and characterising component labelling for alcoholic beverages howsoever standardised, on the basis that it would impose triple labelling obligations for alcohol and could encourage poor consumer choice and would again introduce market inequity between competing products;
 - support an amendment to the definition of liqueur to impose a minimum alcohol content of 15% ABV;
 - propose further that the ethanol content of liqueurs should be derived only from a spirituous ingredient;
 - note the concurrent need to change references in the Code from ‘alcoholic beverages standardised in Part 2.7’ to ‘alcoholic beverages defined in standards 2.7.2 to 2.7.5’ where necessary; and
 - note that the industry will need at least 12 months in which to comply with new labelling requirements.
- Provides total possible cost to industry (based on 250 SKUs) for nutrition labelling is estimated at approximately \$13 million broken down as follows:
 - product analysis – approx \$1000 per product – \$250,000 for industry;
 - label re-design – approx \$800 per label – \$200,000 for industry;
 - plates for new label production – approx. \$800 – \$200,000 for industry;
 - production modifications (assuming some change but minor) approx. \$30,000 per product – \$7,500,000 for industry;
 - write-off costs for 3-6 months of finished goods – \$4,800,000 for industry;

- reproduction of advertising materials etc, where required – ?.
- Unclear what benefit is intended to be derived, particularly in circumstances where competing products will not require nutrition labelling. If FSANZ proposes to proceed with these requirements an express statement and costing as to the benefits sought by nutrition labelling of RTDs should be stated including why competing products are to remain exempt.

Food Technology Association of Victoria Inc

- Supports the proposal to amend the Code to clarify which alcoholic beverages should be considered as ‘liqueurs’.

Hoyts Food Industries Pty Ltd

- Believes that packaging on all consumable product must have nutrition information labelling, especially spirits and liqueurs. Costs of label changes have been borne by other food industry sectors and the alcohol beverage industry should also have increased labelling obligations.
- States that the flavour of spirits and liqueurs worldwide are standardised using flavours and/or colourings and/or essences.
- Believes consumers should be told of the sugar content of liqueurs (up to 40% or more of the total content) by full ingredient and nutrition information labelling.

Independent Liquor New Zealand Ltd (ILNZ)

- Independent Liquor manufactures 430 products of which 85% are RTDs.
- Independent’s interpretation of labelling requirement has been to include ingredient and percentage labelling information but not nutrition labelling.
- Independent’s survey of liquor outlets reveals that all its competitors in the RTD market also ingredient and percentage label but that no RTD includes nutrition information. This indicates there is little confusion amongst members in the alcoholic beverage industry.
- If FSANZ assessment results in no requirement for nutrition information, then no additional labelling costs will be incurred because Independent already includes ingredient and percentage labelling information on RTD labels.
- Costs of packaging changes to include nutrition information are estimated to be approximately \$400,000 plus staffing resources to determine the nutrition information.

Rainforest Liqueurs

- The submission compares definitions and minimum alcohol concentrations for liqueurs in Canada, the US, EU, Ethiopia and Poland. It points out that the main difference in the various domestic standards for liqueurs seems to be the minimum alcohol content.
- The minimum alcohol contents for liqueurs are: in the US, 30% abv; in Canada, 25% abv; in Ethiopia, 20% abv; in the EU, 15% abv; and in Poland, 25% abv. Otherwise most of the standards prescribe natural flavourings, colourings, and sweetening agents to greater than 10 per cent.

- Other than per cent alcohol by volume, the recipes for most traditional liqueurs are closely held secrets so as to protect intellectual property rights.
- The company has \$10,000 invested in current labels, which have both alcohol content and standard drink labelling information. To pursue a complete label reprinting would be cost prohibitive.

Winemakers' Federation of Australia (WFA)

Wishes to ensure that any revised definition will continue to allow the use of the term 'liqueur' to describe fortified wines. Any change to the definition that prevents such usage would be detrimental to the industry.

Draft Assessment Report

List of submitters:

- 12 Australian Consumers' Association (ACA)
- 13 Cadbury Schweppes Pty Ltd
- 14 Food Technology Association of Victoria Inc (FTAV)
- 15 Distilled Spirits Association of New Zealand (DSANZ)
- 16 Beer, Wine and Spirits Council of New Zealand (BWSCNZ)
- 17 New Zealand Food Safety Authority (NZFSA)
- 18 Environmental Health Unit, Queensland Health

Information from the following were received after the closing date for submissions. The issues raised were considered to be relevant matters and were taken into account by the Board in the Final Assessment:

- 19 Distilled Spirits Council of the United States (DISCUS)
- 20 National Council of Women of New Zealand (NCWNZ)
- 21 Agriquality

Australian Consumers' Association (ACA)

- Supports the recommendation to amend the definition for liqueur to specify a minimum alcohol by volume content of 15%
- Believes that Ready to Drinks (RTDs) should be excluded from the liqueur definition and should not be exempt from the labelling requirements for ingredient lists, percentage of characterising ingredients and nutrition information panels
- Supports the notion that RTDs should be required to display nutrition information panels.
- Notes that the sugar content of RTDs is similar to the equivalent carbonated soft drinks.
- Considers that the word 'flavoured' should be required on RTDs, as based upon ACA findings the vast majority did not contain any of the fruit named in the label.

Cadbury Schweppes Pty Ltd

- Supports the Distilled Spirits Industry Council of Australia submission made at Initial Assessment.

Food Technology Association of Victoria Inc

- Supports the proposal to amend the Code to clarify which alcoholic beverages should be considered as 'liqueurs'.

Distilled Spirits Association of New Zealand (DSANZ)

- Supports the definition of 'liqueur' in the Code with a minimum alcohol content of 15% abv.
- Considers that the proposal has an excessive focus on Ready To Drink products (RTDs) and that the labelling of these products should not be considered as part of the Proposal, and that a separate review should be conducted where the labelling of RTDs and rival products can be considered simultaneously and consistently.
- States that as RTDs are beverages containing alcohol, they should be treated on the same basis as other standardised alcohol beverages and be exempt from nutrition labelling and percentage labelling.
- Not aware of any instances where the public has been disadvantaged, misled or deceived from not sighting ingredient labelling or nutrition labelling on product labels.

Beer, Wine and Spirits Council of New Zealand (BWSCNZ)

- Agrees that the Code needs to be amended to clarify which alcoholic beverages should be considered 'liqueurs' and support the 15% minimum alcohol by volume measure. They note that the current definition has seen some products exempt from labelling and others not.
- Considers there could be a 'doubling-up' of information or confusion if RTDs were required to include ingredient labelling, nutrition labelling and percentage labelling. The example is given of a 5% alcohol by volume product that would also need to include a percentage labelling declaration of between 11-13% depending upon the density of the spirit.
- Likely to be significant costs to meet the labelling after redefinition and an ample stock in trade would possibly help to reduce the cost.

New Zealand Food Safety Authority (NZFSA)

- Supports the option to amend the definition for liqueurs and considers that RTDs should be excluded from the definition of liqueurs and that full labelling would apply.

Environmental Health Unit, Queensland Health

- Supports the option to amend the definition for liqueurs as this will provide a clearer definition and promote trade in alcoholic beverages by ensuring consistent interpretation and application throughout the jurisdictions.

The following information was received after the closing date.

Distilled Spirits Council of the United States (DISCUS)

- DISCUS is a trade organisation representing US producers, marketers and exporters of distilled spirits products. In 2001, US spirits exports to Australia and New Zealand totalled approx. \$60 million of which approx. \$6.4 million was liqueurs. It is therefore a significant stakeholder because any change to the current definition of liqueur in the Code may have a direct and substantial impact on US exports.
- Notes that the proposed definition of 'liqueur' is different from that in the United States of America (USA).
- Notes that certain liqueurs in the USA have an alcohol content of less than 15% alcohol by volume but that the commercial impact of this is not likely to be a significant barrier to trade.
- Does not oppose the proposed definition of 'liqueur'.

National Council of Women of New Zealand (NCWNZ)

- Supports 15% minimum alcohol by volume for liqueur definition and does not believe that a separate definition for RTDs is necessary.
- Considers that a maximum ethanol content needs to be prescribed.
- Would like to see each label include warnings on the dangers of alcohol.
- Would like to see products containing alcohol labelled with the alcohol by volume
- Would agree with nutrition labelling of these products but not in such a way as to promote alcohol as having nutritional value.
- Liqueur industry should not be exempt from labelling on the grounds of additional costs.
- Provides a clearer definition of liqueur and will ensure consistent application and interpretation of the Code, improves the provision of additional information to consumers to enable informed choice, promotes consistency between domestic and international food standards, promotes fair trading by improving certainty as to which beverages are to be considered liqueurs.

Agriquality

- Considers the proposed definition to be flawed and it does not address the fundamental issue of aligning the definition with any recognised food.
- Considers that the original Volume 1 of the *Food Standards Code* described the generally-held view of a liqueur, although the cream variation should be removed.

ATTACHMENT 3

FIRST REVIEW REPORT

PROPOSAL P271

DEFINITION OF LIQUEUR

Decision

FSANZ re-affirms the decision to amend the liqueur definition as stated in the drafting to the Final Assessment Report, which includes a minimum alcohol content of 15% abv.

Summary Table

Issues addressed in the First Review of Proposal P271 – Definition of Liqueur

MINISTERIAL COUNCIL ISSUE	FSANZ RESPONSE
<p>Places an unreasonable cost burden on industry or consumers</p> <ul style="list-style-type: none">• There is a current market of liqueurs in New Zealand below 14% abv. Changing these products to 15% abv would impose costs.• The policy behind Proposal P271 was to ensure Ready to Drink products (RTDs) were not considered liqueurs.• This change has an unintended consequence of the Proposal, by affecting genuine liqueurs.	<ul style="list-style-type: none">• The intent of the Code was that the definition of liqueurs would not include RTDs. A joint submission from both New Zealand and Australian distilled spirits associations proposed a 15% abv limit for liqueurs, which was subsequently consulted on with no objections received.• Internationally liqueurs are expected and known as strong alcohol products. A list provided by a New Zealand industry association of over 200 international liqueurs all have alcohol levels of at least 15% abv.• The New Zealand associations argue strongly against reducing the minimum alcohol level in the definition.• Changes will be required for products below 15% abv, but there is the usual 12 month stock-in-trade provisions of the Code.• The two affected companies needed to be aware of the progress of the Proposal as it had direct relevance to their products.• One of these companies was a submitter to the Initial Assessment Report and was therefore invited to comment on the amended definition at Draft Assessment.
<p>Does not provide adequate information to enable informed choice</p> <ul style="list-style-type: none">• Current products with alcohol levels below 15% abv would not be able to be called liqueurs.	<ul style="list-style-type: none">• There will be label and/or reformulation changes for products currently below 15% abv.• This would not cause consumer confusion, nor reduce the information to consumers.• Changes will relate to alcohol content, standard drinks and possibly ingredients labelling.
<p>Does not protect public health and safety</p> <ul style="list-style-type: none">• Lower alcohol products help protect public health and safety.	<ul style="list-style-type: none">• Industry advise that liqueurs are not considered to be an ‘at risk’ alcohol category that consumers drink irresponsibly or abuse.• Industry argues that consumers have an understanding that liqueurs are high alcohol products.• Manufacturers can choose to produce lower alcohol products if there is a perceived market.

MINISTERIAL COUNCIL ISSUE	FSANZ RESPONSE
<p>Is not consistent with New Zealand domestic laws</p> <ul style="list-style-type: none"> The <i>New Zealand Food Act 1981</i> requires appropriate consultation as a precondition for issuing a food standard. 	<ul style="list-style-type: none"> The FSANZ consultation approach for this Proposal has been full, thorough and appropriate. One of the two affected companies now requesting a lower alcohol level had been made aware of the proposed changes. The consultation has been the standard consultation process undertaken for all Applications and Proposals. This process included putting notices on the FSANZ website, placing advertisements in both Australian and New Zealand newspapers, media releases, seeking and considering submissions, as well as consultation with specific industry groups. The two New Zealand industry bodies argue strongly against changing the proposed definition with the 15% abv limit. As they and the Australian industry association had earlier sought in submissions that the liqueur definition include a 15% abv (or higher) limit it is possible that this is the position that would have been adopted even if the two affected companies had made submissions requesting a lower alcohol level.

1. Introduction

On 28 July 2006, the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) requested a First Review of Proposal P271 – Definition of Liqueur. The Final Assessment Report of P271 contained the following proposed amended definition of liqueur in Standard 2.7.5 – Spirits of the *Australia New Zealand Food Standards Code* (the Code):

liqueur means a spirit flavoured or mixed with other foods, which contains more than 15% alcohol by volume, measured at 20°C.

Food Standards Australia New Zealand (FSANZ) sought an extension of time from the Ministerial Council (from 28 October 2006 until 16 February 2007) to complete the First Review, which was granted.

The chronology of the progress of Proposal P271 – Definition of Liqueur is given in the table below.

Milestone or relevant issue	Date or time period
Initial Assessment Report approved by the FSANZ Board	5 Dec 2002
Public consultation period for the Initial Assessment Report	18 Dec 2002- 31 March 2003
Gazettal of <i>Customs and Excise (Alcoholic Beverages) Amendment Act</i> , New Zealand	6 May 2003
Draft Assessment Report approved by the FSANZ Board	4 March 2004

Milestone or relevant issue	Date or time period
Public consultation period for the Draft Assessment Report	17 March 2004 – 28 April 2004
Final Assessment Report approved by the FSANZ Board	18 May 2006
Final Assessment Report notified to the Australia New Zealand Food Regulation Ministerial Council (Ministerial Council)	30 May 2006
Ministerial Council sought a First Review	28 July 2006

2. Objectives of Review

The Ministerial Council requested FSANZ review the definition of liqueur, specifically the minimum alcohol content of 15% alcohol by volume (abv) requirement. This is especially the case since information has come to light that there are two New Zealand liqueur manufacturers who produce liqueurs with an alcohol content of less than 14% abv. The Ministerial Council recommended that FSANZ consult further with affected stakeholders to consider whether a lower alcohol limit than 15% abv could be used, such as 13.5% abv.

3. Grounds for the review requested by the Ministerial Council

The Ministerial Council has requested a First Review of Proposal P271 on the grounds that the proposed amendment to the Standard:

- places an unreasonable cost burden on industry or consumers;
- does not provide adequate information to enable informed choice;

does not protect public health and safety; and

is not consistent with New Zealand domestic laws.

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4. Background

After the development of the Code, FSANZ became aware that a number of manufacturers of ready-to-drink products (RTDs) were claiming that these products met the current definition of liqueur. Relying on this, the manufacturers would then obtain certain labelling exemptions relevant to liqueurs. Whilst meeting the current Code definition of 'liqueur' (which is: **liqueur** means a spirit flavoured or mixed with other foods) such beverages are not technically liqueurs nor what stakeholders (industry, consumer and enforcement agencies) commonly understand them to be. There was confusion in the industry and with enforcement authorities which lead to the Proposal being initiated. The current definition of liqueurs in the Code was not intended to include RTDs. The intent was that RTDs would be regulated as they had been in the former Australian *Food Standards Code* and the *New Zealand Food Regulations 1984*. That is, as 'alcoholic beverages not elsewhere standardised'.

4.1 Consultation processes for this Proposal

FSANZ has formal consultation processes it must undertake to satisfy FSANZ's responsibilities under the FSANZ Act, to ensure good consultation with stakeholders concerning any food standard amendments.

FSANZ has followed the stakeholder consultation processes for this Proposal that is undertaken for most Applications and Proposals. FSANZ consultative processes are predicated on use of the internet (the FSANZ website), newspaper advertisements in the main newspapers in Australia and New Zealand, emails and letters to submitters and interested parties listed on FSANZ's databases and media releases, which are often picked up by various trade publications. This provides sufficient opportunity for interested parties to be aware of the proposed changes. This approach underpins the FSANZ consultation processes for all Applications and Proposals.

FSANZ has formal processes it must undertake to ensure good consultation with stakeholders concerning any food standard amendments (that is for Applications and Proposals to amend the Code). However, there is also an onus on interested parties to make themselves aware of changes that will affect their business. To now change that approach in response to a Ministerial Council review request because two companies (including one that was aware of the progress of the Proposal as it had made a submission to the Initial Assessment Report) were not aware of the proposed change, would set a precedent. It could result in review requests prompted by companies and stakeholders on the grounds that the company had not been aware that standards development work was underway, or that the company did not put in a submission making their views known and the resulting standard disadvantaged them. FSANZ has set consultation processes in place to ensure affected parties are made aware of proposed changes to the Code, while the onus beyond that belongs with interested stakeholders.

This Proposal – Definition of Liqueur, was initiated by FSANZ to clarify the original intent of the Code in respect to RTDs and liqueurs. This was to lead to more certainty for industry members, consumers and enforcement agencies.

The title of the Proposal, 'Definition of Liqueur', accurately represents the subject matter of the Proposal; that is, reviewing and amending the definition of liqueur. Manufacturers of liqueurs needed to keep abreast of progress of the Proposal, since it directly affected them.

There were two formal consultation periods for this Proposal, where submissions from interested parties were sought.

The first period of public consultation was on the Initial Assessment Report, which was circulated for a period of public comment from 18 December 2002 to 31 March 2003 (an extension of time for comments was sought from some stakeholders and this was granted). The information circular posted on the FSANZ website seeking submissions on this report specifically mentioned that the Proposal was to provide a clearer definition of liqueur including a minimum alcohol content. Public submissions were sought by advertising in Australian and New Zealand newspapers, a public notice on the FSANZ website and a media release. As well, the two main industry associations representing the liqueur industry in Australia and New Zealand were notified as interested parties.

The second period of public consultation was on the Draft Assessment Report between 17 March 2004 until 28 April 2004. This Report contained the draft proposed new liqueur definition incorporating a minimum alcohol content of 15% abv. Again, public submissions were sought by advertising in Australian and New Zealand newspapers, a public notice on the FSANZ website and a media release.

As well, submitters on the Initial Assessment Report were notified of the progress of the Proposal and invited to make comments on the Draft Assessment Report. Where FSANZ was made aware there were other relevant stakeholders who needed to be informed of the progress of the Proposal, they were also informed, as interested parties, in the same way as earlier submitters.

Eleven submissions on the Initial Assessment Report were received, from spirits industry groups, manufacturers of liqueurs, other alcohol industry groups and general food industry groups from both Australia and New Zealand. There was general agreement from the submitters that the definition of liqueur needed to be amended, and that RTDs should not be considered liqueurs. Relevant New Zealand industry groups who put in submissions to the Initial Assessment Report were the Beer, Wine and Spirits Council of New Zealand, the Distilled Spirits Association of New Zealand and Independent Liquor New Zealand Ltd (Independent Liquor). These submitters were also placed on the submitters list and notified of the progress of the Proposal.

It is important to note that Independent Liquor put in a submission to the Initial Assessment Report and was included in subsequent notifications. Independent Liquor is one of the two New Zealand companies who currently produce liqueurs with alcohol levels below 15% abv (being either 13.7% or 13.9%). FSANZ received information from Independent Liquor that the proposed definition caused a problem for them during targeted consultation for this First Review Report in October 2006. Independent Liquor indicated to FSANZ that it currently produces 20 liqueurs with an alcohol content of 13.7-13.9% abv. The combined volume in 2005 was 34,000 cases.

Three submitters on the Initial Assessment Report suggested the new liqueur definition include a minimum alcohol content. The Distilled Spirits Association of New Zealand (in a joint submission with the comparable Australian industry group, Distilled Spirits Industry Council of Australia) suggested a minimum alcohol limit for liqueurs of 15% abv. A survey undertaken on their members indicated that the vast majority of liqueurs on the market exceed 17% abv and the vast majority of liqueurs traded internationally would not be affected by a 15% abv limit. The Beer, Wine and Spirits Council of New Zealand suggested a minimum alcohol content of 16% abv. This suggestion was to ensure liqueurs were a category with an alcohol limit stronger than wine-mixers and to differentiate liqueurs from RTDs.

FSANZ drafted a new liqueur definition incorporating a minimum alcohol content of 15% abv in the Draft Assessment Report. This Report was circulated for a round of public comment from 17 March 2004 to 28 April 2004. Seven submissions were received (as well as three late submissions which all supported the new definition of liqueur that FSANZ did not treat as submissions). The Board considered the issues raised in these late submissions as other relevant matters in its deliberations on the Final Assessment Report. There were a number of New Zealand submissions received: the Distilled Spirits Association of New Zealand; the Beer, Wine and Spirits Council of New Zealand; as well as the New Zealand Food Safety Authority. No concern was raised about the minimum alcohol level of 15% abv for liqueurs in any of these submissions. Independent Liquor, as a submitter to the Initial Assessment Report was notified that the Draft Assessment Report (containing the proposed liqueur definition with the 15% abv minimum limit) was available for comment.

4.2 Ministerial Council First Review request

The Final Assessment Report was agreed to by the FSANZ Board on 18 May 2006. The definition for liqueur in the drafting in this Report was unchanged from that circulated for public comment in March and April 2004, that is, it included the minimum alcohol content of 15% abv.

The Ministerial Council was notified on 30 May 2006 that FSANZ had made a Final Assessment of Proposal P271. FSANZ then notified this fact in Australian and New Zealand newspapers, on the FSANZ website and in a media circular on 31 May 2006.

Prior to June 2006, FSANZ was not made aware that there were any concerns or issues with the 15% abv alcohol limit in the definition for liqueur. It was considered that the proposed amendments to the Code were duly transparent and had been fully consulted. The Proposal was raised in 2002 and the Final Assessment Report completed in May 2006; it is considered that the Australian and New Zealand liqueur industries has had sufficient time and opportunity to raise issues and concerns with this Proposal.

In June 2006, a liqueur manufacturer in New Zealand (the Prenzel Distilling Company) alerted FSANZ to its concerns with the minimum alcohol limit proposed for liqueurs, as it would negatively impact on their particular products.

FSANZ has subsequently undertaken targeted consultation with affected industry groups and interested parties in New Zealand and Australia. FSANZ has been able to ascertain that only two New Zealand liqueur manufacturers currently produce liqueurs with alcohol levels below 15% abv. FSANZ consulted with these two companies. One of these companies is Independent Liquor, as discussed earlier. As a submitter, this company was on the FSANZ distribution list for interested stakeholders and was notified of progress of the Proposal.

FSANZ has been advised by the Distilled Spirits Association of New Zealand that these lower alcohol liqueur products have been produced (some reformulated from initially higher alcohol products) to an alcohol concentration just below 14% abv primarily to avoid an increase to excise taxation for products with an alcohol content between 14-23% abv introduced in New Zealand in 2003. The amendment was the *Customs and Excise (Alcoholic Beverages) Amendment Act* which was gazetted on 6 May 2003.

The Distilled Spirits Association of New Zealand submits that it 'considers the reviews have all been detailed, exhaustive and inclusive. All stakeholders have had ample opportunity to put forward their points of view. The Association suggests that the affected party(s) had effectively given up their claim to the consultations by NOT exercising their right of participation.'

5. Options

There are three options proposed for consideration under this review:

1. re-affirm approval of the draft variations to Standards 1.2.4, 1.2.8, 1.2.10 and 2.7.5 of the Code as notified to the Ministerial Council; or

2. re-affirm approval of the draft variations to Standards 1.2.4, 1.2.8, 1.2.10 and 2.7.5 of the Code subject to amendments relating to the review grounds as notified to the Ministerial Council; or
3. withdraw approval of the draft variations to Standards 1.2.4, 1.2.8, 1.2.10 and 2.7.5 of the Code as notified to the Ministerial Council.

6. Review on grounds requested by the Ministerial Council

The specific issues raised by the Ministerial Council in the First Review are addressed in the subsections below. FSANZ undertook targeted consultation with interested and affected parties in New Zealand and Australia to determine the extent of the issue and which companies would be affected. FSANZ was able to determine there are two New Zealand companies that would be affected and FSANZ consulted with both companies.

6.1 Unreasonable cost burden on industry or consumers

The Ministerial Council raised the following issues:

That there is an existing market for liqueurs in New Zealand with an alcohol content below 14% abv. A 15% abv requirement for liqueurs in the new definition would place an unreasonable cost burden for manufacturers of such products, to reformulate their products to greater than 15% abv and subsequent relabelling costs.

That the justification behind Proposal P271 was to better define liqueurs so that RTDs did not meet the current definition of liqueurs with the subsequent labelling exemptions. And it was an unexpected consequence of the amended definition to pick up genuine liqueurs who have a lower alcohol content than 15% abv.

6.1.1 FSANZ response

The intention of the Proposal was to ensure that RTDs did not come within the current definition of liqueurs in the Code and have the various labelling exemptions that apply to liqueurs. To this end, FSANZ consulted widely with liqueur industry groups to develop an appropriate new definition for liqueur that would not include RTDs, but would be consistent with liqueur definitions in Australia, New Zealand and internationally. The definition also needed to be consistent with market and consumer understandings and expectations of liqueurs. At this time a decision was made to incorporate a minimum alcohol content for liqueurs of 15% abv. The distilled spirits industry groups in both Australia and New Zealand suggested and were supportive of this level (and one had earlier proposed a higher level).

The intent of the Code, when the current definition of liqueur was devised, was that the definition of liqueurs would not include RTDs. It was intended that RTDs would be regulated as they had been in the former Australian *Food Standards Code* and the New Zealand *Food Regulations 1984*. That is, they would be treated as ‘alcoholic beverages not elsewhere standardised’. FSANZ’s user guide on ingredient labelling confirms that the intent of the Code was for RTDs to be regulated as non-standardised alcoholic beverages and to be fully ingredient labelled.

The Distilled Spirits Association of New Zealand, in their submission to FSANZ to targeted consultation for this First Review gave the following information as background to the New Zealand excise tax changes.

For background purposes, Parliament in 2003 increased the excise tax on beverages containing 14-23% abv as it believed some manufacturers were using a loophole to sell products at the higher percentage of the bracket whilst benefiting from an arbitrarily lower tax rate.

Consequently 22.9% abv product was reformulated by some manufacturers to 13.9% abv (and lower) to bypass the new tax settings. The move had been reported to be 'unashamedly aimed at beating the tax'.

In other words, due to local tax changes, 22.9% abv product was diluted down to 13.9% abv (just under the threshold for table wine) or 13.7% abv to take advantage of lower excise tax settings. Unwittingly, this had enabled the 13.9%/13.7% abv products to claim a 'liqueur' status and therefore exemption from some labelling requirements including ingredient labelling.

FSANZ has obtained a list of internationally produced liqueurs from the Distilled Spirits Association of New Zealand which lists over 200 liqueurs and they all have alcohol contents of at least 15% abv, most quite a bit higher. This New Zealand industry group does not support altering the proposed minimum alcohol level from 15% to 13.5% abv. Furthermore, the industry group expressed concern that 'domestic excise tax settings were to now determine Trans-Tasman food standards'. The Beer, Wine and Spirits Council of New Zealand, in a submission to FSANZ as part of targeted consultation for the First Review, also supported the proposed recommendations contained in the Final Assessment Report for Proposal P271 (that is the 15% abv limit) and further states that it 'does not believe excise should drive food standards definitions'.

If the two affected New Zealand liqueur manufacturers had put in submissions requesting a lower than 14% abv limit for liqueurs in the two rounds of public comment FSANZ would have taken their views into consideration. However, it is unlikely that the decision to amend the liqueur definition would have been changed. The lower alcohol limit is opposed by the industry associations and other producers due to the international practice and history of these products being strong alcohol products.

Maintaining the 15% abv minimum alcohol level in the liqueur definition would require the two New Zealand liqueur manufacturers of products below this limit to make a decision to reformulate to at least 15% abv, if they wish to continue to market their products as liqueurs. Alternatively, manufacturers could maintain the alcohol content below 14% abv to achieve excise tax advantages, but such products would not be able to be called liqueurs, and they would not achieve labelling exemptions that liqueurs have (i.e. they would require ingredient listing). There will be labelling changes and possible reformulation costs for these products regardless. However, there is the standard 12 month stock-in-trade requirement of the Code (contained in subclause 1(2) of Standard 1.1.1 of the Code) for any label changes required for amendments to the Code.

The two manufacturers may well pass on to the consumer the costs of relabelling and/or reformulating their products to meet the new liqueur definition. However, the two companies needed to be aware of the changes that were occurring as a result of this Proposal that were relevant to their products and communicate their concerns to FSANZ. Such communication can occur at any time, not just during the formal public submission period, but FSANZ was not made aware of the situation until after the Final Assessment had been made. As well, the two companies did not factor in the proposed alcohol limit when they initially made their reformulation decisions to produce product below 14% abv.

6.1.2 Conclusion

If the changes to the liqueur definition as proposed, including a minimum alcohol limit of 15% abv, is maintained then changes will be required for some existing New Zealand liqueurs which currently have an alcohol content below 14% abv. The definition of liqueur was amended to differentiate RTDs from liqueurs which was the original intent of the Code. The distilled spirits industry groups in both New Zealand and Australia proposed the original amendment to include the 15% abv minimum limit. The Distilled Spirits Association of New Zealand supplied a list of over 200 internationally produced and sold liqueurs which all contain an alcohol content of at least 15% abv.

6.2 Inadequate information to enable informed choice

The Ministerial Council raised the issue that liqueurs currently sold on the New Zealand market have alcohol levels just below 14% abv. These products are known and sold as liqueurs. The target of this Proposal is RTDs, which have a lower alcohol content (generally around 5% abv). If the liqueur definition is changed to include a 15% abv minimum alcohol requirement then current liqueurs with an alcohol level of less than 14% abv could not be sold as liqueurs, and consumers would not have adequate information. Consumers would not be provided with adequate information to enable an informed choice (and consumers would be confused about products). There are also costs associated with the proposed definition change, as the product name would need to be changed, since the name 'liqueur' would no longer be permissible.

6.2.1 FSANZ response

The Distilled Spirits Association of New Zealand state that *it is commonly understood by consumers that a liqueur traditionally and historically contains a level of alcohol that is 'strong'*. Further the Association suggests *that a 13% abv product – no higher than table wine – is a 'liqueur' is mis-descriptive and potentially compromises the identity and reputation of genuine and authentic liqueurs*. The Beer, Wine and Spirits Council of New Zealand argues that the proposed 15% abv limit in the liqueur definition 'will allow a reasonable separation from the traditional liqueurs, RTDs and the ultra dilute spirits'.

If the proposed liqueur definition with the 15% abv minimum alcohol limit is maintained then current liqueur products produced with an alcohol content below 14% abv would no longer be able to be defined as liqueurs. Manufacturers of these products could make the decision to reformulate their products to have a minimum alcohol content of at least 15% abv, with a subsequent minor label change of the alcohol content and standard drinks labels.

In this case, consumers of such products should not be confused as the product is still the same as they have purchased before but with a slightly increased alcohol content (difference being <1.5% abv). Current labelling regulations require that manufacturers label their products with the alcohol concentration and standard drinks designation so consumers will have the required information to make a choice. The cost for such label and reformulation changes should be reduced as it can be carried out over a 12-month period due to the usual stock-in-trade provisions contained in Standard 1.1.1 of the Code. In most cases manufacturers would be able to incorporate label changes as part of their normal business of label updating or when the current label stock is depleted.

Alternatively, manufacturers of product below 15% abv could keep their product below 15% abv, but they would not be able to call them liqueurs, so label changes would be required. By not being able to be called liqueurs they would need to consider an alternative name. Whilst no longer being able to compete directly on the 'liqueur market', this scenario could potentially be turned to advantage by the more entrepreneurial manufacturers as an opportunity to develop new or niche markets. These beverages would no longer have the labelling exemptions afforded to liqueurs and would therefore need to provide ingredient listing on their labels. In this situation, consumers would have more choice of 'new' products and increased label information. Such products would still enjoy the excise tax benefits by being below 14% abv. For regulatory purposes the products would now be classified as 'alcoholic beverages not elsewhere standardised'. There would be labelling costs for the manufacturer, but again they would have 12 months stock-in-trade provisions and could implement label changes when current label stock was depleted or was updated.

6.2.2 Conclusion

There will be label and/or reformulation changes to current products with an alcohol level below 15% abv, but these will not necessarily cause consumers confusion nor reduce the information available for consumers to make informed choice. The changes will relate to alcohol content, standard drinks and possibly ingredients labelling. The decision that current manufacturers of such product would need to make will be a commercial one, and could potentially be turned to their advantage. In addition, liqueurs will continue to be strong alcoholic drinks, therefore avoiding potential consumer confusion.

6.3 Protection of public health and safety

The Ministerial Council raised the issue that lower alcohol choices for consumers helps protect public health and safety. Having a minimum alcohol content of 15% abv for liqueurs does not allow the production of lower alcohol liqueurs, which are currently produced.

6.3.1 FSANZ response

Maintaining the liqueur level at 15% abv could encourage manufacturers to produce lower alcohol alternatives which may still have similar sensory attributes to liqueurs but would come under the category of 'alcoholic beverages not elsewhere standardised'. These products would provide full ingredient labelling on which to base health-related dietary intake behaviours.

Liqueurs traditionally have a high alcohol content and usually come with a high price premium. The Distilled Spirits Association of New Zealand explains that ‘genuine and authentic liqueurs are in general not the type of beverage some individuals, including young people or minors, choose to abuse’. The Association further states that ‘liqueurs are typically of a sweet nature (i.e. high in sugar content), have a high alcohol content (i.e. minimum 15% abv), have high quality packaging and higher price points’ and ‘are not usually associated with binge or risky drinking behaviour and are consumed sparingly’. FSANZ is not aware that they pose more of a public health and safety issue than other alcoholic beverages, and are arguably less of a concern due to lower availability to high risk groups. To facilitate the development of lower alcohol liqueurs and thereby expand the possible alcohol content of such beverages may in fact have the unintended consequence of confusing consumers as to their alcoholic properties and/or leading to false assumptions of lower alcohol contents for all liqueurs.

6.3.2 Conclusion

Liqueurs are not considered by the Distilled Spirits Association of New Zealand to be an ‘at risk’ alcohol category which consumers drink irresponsibly or abuse. There is a history and general understanding of liqueurs being high alcohol products. Manufacturers can produce alternative lower alcohol, ingredient listed products, below the 15% abv minimum alcohol limit to cater for a low alcohol market wishing to make choices based on health and safety issues.

6.4 Inconsistent with New Zealand domestic laws

The Ministerial Council raised concern that the New Zealand *Food Act 1981* (section 11E clause 2) requires appropriate consultation as a precondition for issuing a food standard, and it is believed more targeted consultation should have occurred.

6.4.1 FSANZ response

FSANZ consultative processes are predicated on use of the internet (the FSANZ website), newspaper advertisements in the main newspapers in Australia and New Zealand, emails and letters to submitters and interested parties listed on FSANZ’s databases, as well as media releases (which are often picked up by trade publications). This provides sufficient opportunity for interested parties to be aware of the proposed changes. This approach underpins the FSANZ consultation processes for all Applications and Proposals.

Comments from three submitters to the Initial Assessment Report suggested incorporating a minimum alcohol content in the liqueur definition. A joint submission from the distilled spirits industry groups from both Australia and New Zealand (being the Distilled Spirits Industry Council of Australia, and the Distilled Spirits Association of New Zealand respectively) suggested a minimum alcohol level of 15% abv. The Beer, Wine and Spirits Council of New Zealand suggested a minimum level of 16% abv. At no stage was a level less than 15% abv suggested.

The revised definition of liqueur, incorporating the 15% abv minimum level was included in proposed drafting in the Draft Assessment Report for P271 on which public comment was sought.

One of the two companies now seeking a lower alcohol level for liqueurs was aware of the Proposal and were invited to comment on the proposed draft definition which included the 15% abv alcohol level. No submissions were received objecting to this proposed definition, incorporating the 15% abv alcohol minimum level. All submitters to this Report supported the new proposed definition, which included a number of industry groups and a government agency.

Industry consultation, with both Australian and New Zealand industry groups representing liqueur manufacturers were all supportive of the proposed new liqueur definition. FSANZ was only made aware in June 2006 that a small number (subsequently understood to be two) of New Zealand liqueur manufacturers produced liqueurs with lower alcohol levels (13.7-13.9% abv). FSANZ has been advised as part of the targeted consultation process that these lower alcohol liqueur products have been reformulated to have an alcohol level below 14% abv to obtain a taxation advantage after New Zealand excise tax increases for beverages containing 14-23% abv were introduced in May 2003.

6.4.2 Conclusion

FSANZ has considered the relevant provisions of the New Zealand *Food Act 1981* and believes it has fulfilled the obligations for appropriate consultation, adequate and appropriate notice of intent to issue the food standard, allowed a reasonable opportunity for interested parties to make submissions and given appropriate consideration of such submissions.

The FSANZ consultation approach for this Proposal has been full, thorough and conducted over a prolonged period of time. FSANZ informed interested parties of the progress of the Proposal by putting notices on our website, placing advertisements in both Australian and New Zealand national papers, sending out media releases, seeking and considering submitters comments on the Proposal, sending out communications to submitters and other interested parties when changes to the Proposal have occurred and consulted specifically with industry groups.

FSANZ's consultation process for this Proposal was the standard consultation that it performs for all Applications and Proposals to ensure that it communicates to all relevant affected parties to any amendment to the Code. In this case, it specifically conducted targeted consultation with the two industry groups representing the liqueur industry in both Australia and New Zealand. The review Proposal occurred over almost four years and affected parties also had a responsibility to make themselves aware of changes that directly affected them.

7. Impact analysis

FSANZ found that there were no identified issues that would affect stakeholders as a result of amending the liqueur definition for the Proposal at Final Assessment. Amending the definition of liqueur clarified the situation for consumers, manufacturers and enforcement agencies. There was no expectation that any labelling changes would be required.

FSANZ has now been made aware that there will be labelling changes required as a consequence of amending the liqueur definition to include a minimum 15% abv alcohol content for a small number of New Zealand liqueur manufacturers. The following impact analysis specifically addresses this issue, separate from that considered in the Final Assessment Report.

7.1 *Manufacturers and retailers of liqueurs*

Requiring the minimum alcohol content for liqueurs at 15% abv will mean changes for two liqueur manufacturers that FSANZ has been made aware of after the Final Assessment Report was finalised. There are currently a small number of liqueurs produced in New Zealand (two companies have been identified) which have an alcohol content of less than 14% abv. If the definition of liqueur to contain the minimum alcohol content of 15% abv is unchanged then these manufacturers will need to alter their products to reflect the amendment to the Code.

There are stock-in-trade provisions in the Code (subclause 1(2) of Standard 1.1.1) which means that manufacturers will have 12 months from the time of gazettal of the amended definition to ensure their products comply with the Code. This time will allow manufacturers to make decisions about how they will alter their products to comply. In essence, they will have two choices; to reformulate to alter the alcohol content to be at least 15% abv and implement subsequent labelling changes for their product; or to keep the product at the same alcohol level and re-label to re-name the product and provide ingredient labelling. There will be costs associated with ensuring their products are compliant.

7.2 *Enforcement agencies*

It is not expected that there should be any impacts for enforcement agencies beyond the recommendations as originally presented at Final Assessment. Jurisdictions will be alerted however, that liqueurs with less than 15% abv are on the market in New Zealand and will need to be either relabelled and/or reformulated.

7.3 *Consumers*

It is not expected that there will be any major impact on consumers after gazetting the amended liqueur definition. The minor impact is that some products would have an increased alcohol content, or would no longer be called liqueurs and would have ingredient labels.

8. Conclusion and recommendation

The First Review concludes that the preferred option is Option 1, which is to reaffirm the decision to amend the liqueur definition as stated in the drafting to the Final Assessment Report, which included a minimum alcohol content of 15% abv.

FSANZ considers that due and appropriate process for good regulatory decision making has been followed in developing the recommendations of Proposal P271 and compelling reasons have not been found for amending the definition of liqueur to include a minimum alcohol of 13.5% abv.

Attachment 1 contains the proposed draft variations, as originally detailed in the Final Assessment Report.

Draft variations to the Australia New Zealand Food Standards Code

To commence: on gazettal

[1] *Standard 1.2.4 of the Australia New Zealand Food Standards Code is varied by –*

[1.1] *omitting from the start of subclause 6(1), A, substituting –*

Subject to subclause (3), a

[1.2] *omitting from the start of subclause 6(2), Except in the case of an alcoholic beverage specified in Part 2.7 of this Code, those, substituting –*

Those

[1.3] *inserting after subclause 6(2) –*

(3) Subclause 6(1) does not apply to an alcoholic beverage standardised in Standard 2.7.2 to Standard 2.7.5 of this Code.

[2] *Standard 1.2.8 of the Australia New Zealand Food Standards Code is varied by omitting paragraphs 3(o) to 3(p), substituting –*

- (o) a kit which is intended to be used to produce an alcoholic beverage standardised in Standard 2.7.2 to Standard 2.7.5 of this Code; or
- (p) a beverage containing no less than 0.5% alcohol by volume that is not standardised in Standard 2.7.2 to Standard 2.7.5 of this Code; or
- (q) kava as standardised in Standard 2.6.3.

[3] *Standard 1.2.10 of the Australia New Zealand Food Standards Code is varied by omitting subparagraph 2(4)(i), substituting –*

- (i) alcoholic beverages standardised in Standard 2.7.2 to 2.7.5 of this Code; or
- (j) beverages containing no less than 0.5% alcohol by volume that are not standardised in Standard 2.7.2 to Standard 2.7.5 of this Code.

[4] *Standard 2.7.5 of the Australia New Zealand Food Standards Code is varied by omitting from clause 1, the definition of liqueur, substituting –*

liqueur means a spirit flavoured or mixed with other foods, which contains more than 15% alcohol by volume, measured at 20°C.