

Impact of international regulation *on the Victorian food industry*

A discussion paper prepared for the Victorian Competition and Efficiency
Commission by Inquit Pty Ltd, November 2006

Table of Contents

100 Word Summary **1**

Extended Summary **1**

The national regulatory context 2

The international market 3

Exports **3**

Table 1: Value of food exports by State (\$m) **4**

Table 2: Value of Victorian exports by commodity groups (\$m) **4**

Table 3: Victorian Food Processing Industry Data **5**

Imports **5**

Australian food value chain **6**

International agreements 6

International standards-making bodies 7

The Codex Alimentarius **7**

“OIE” – The World Organization for Animal Health **8**

International Plant Protection Convention **9**

Links between Australian standards and international standards 9

International trade agreements 10

World Trade Organization Agreements **10**

SPS Agreement **11**

TBT Agreement **12**

Bilateral trade agreements **12**

Impact of international agreements and standards in Victoria 14

The ‘regulatory cascade’ in Victoria **14**

Customer requirements **16**

The “international” content of Victorian regulations **17**

Food product and food safety standards **17**

Primary production and Processing standards **18**

General standards: Labeling **19**

Benefit-cost analysis of food regulations 20

Practical difficulties in benefit-cost analysis **20**

International evidence on net benefits **22**

Tariff lines covered by technical measures in selected markets **23**

Costs attributable to Australian implementation 25

Multiple food safety audits **25**

MRLs **26**

Country of Origin Labeling **27**

Quarantine barriers **29**

Bananas **29**

Grains **30**

100 Word Summary

Because two-thirds of Victorian produce is exported, achieving an international standard of production and quality is essential. Food standards in Victoria are consistent, therefore, with international standards but they are made under Australian laws and in accordance with Australian conditions. Other food regulations in Victoria arise from Commonwealth laws regulating exports and imports and from firms' participation in export or import markets. Standards and regulations that 'cascade' from the national level may impose costs on the Victorian food industry and should be subject to regulatory impact statements. But there is surprisingly little evidence of the *net* benefits or costs.

Extended Summary

Some food regulations in Victoria are consistent, by design, with international standards or arise from participation in the international market. The multilateral and bilateral treaties to which Australia is a signatory

Agreements and laws forming the Australian food regulatory structure

1. The 2001 COAG Food Regulation Agreement and the formation of the Australia and New Zealand Food Regulation Ministerial Council
2. The 1995 Australia-New Zealand Joint Food Standards Treaty
3. The 1991 Food Standards Australia New Zealand Act (as amended in 2002)
4. The 1995 COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies (as amended in 2004)
5. The Australia New Zealand Food Regulation Ministerial Council Principles and Protocols for the Development of Food Regulation Policy Guidelines (2002, clarified in 2005)

encourage this consistency but allow full autonomy in the content of standards subject to keeping trade-restrictions to a minimum.

The "international" regulations affecting the Victorian food industry are

- ▶ **State-enforced regulations**, e.g. under the Food Act (1984) that imports the Australian Food Standards by reference (Section 16). These Standards, in turn, are consistent with—but do not directly implement—international standards and guidelines such as those in the *Codex Alimentarius* for hygienic food production and distribution
- ▶ **Commonwealth-enforced regulations** such as those managed by the Australian Quarantine and Inspection Service (AQIS) under the Export Control Act (1982) that impose conditions on

the licensing of food exports or food processing establishments which may, among other things, require compliance with the same processes as are contained in the Australian Food Safety Standards. Quarantine regulations that affect imports are also enforced by the Commonwealth.

- ▶ **Commercial requirements** of export customers that are often due to import control regulations in export markets particularly in matters such as maximum residue limits (MRLs) for agricultural compounds and pesticides

Australian food standards are made for Australian purposes, under Australian laws and in accordance with Australian conditions: they do not impose ‘international’ standards. The Australian Food Standards that are the source of food safety regulations in Victoria are consistent with the *Codex* standards and guidelines but they are

- ▶ Different in content—generally less prescriptive and less detailed
- ▶ Drafted after a process of consultation and evaluation with Australian ‘stakeholders’
- ▶ Approved by a Council dominated by the State governments that implement them

Some of the regulations and commercial requirements that have international ‘antecedents’ (e.g. the Food Safety Standards) or that arise from participation in export or import trade may impose costs on the Victorian food industry but there is little evidence of the *net* benefits or costs of these regulations. The quality of FSANZ cost-benefit analysis of the Food Safety Standards, for example, is questionable and the decision to proceed with changes to the standards for Country of Origin Labeling (CoOL) was made against the conclusions of a cost-benefit study. This, despite Council of Australian Governments (COAG) guidelines that require cost-benefit analysis as part of regulatory impact statements.

The national regulatory context

State Governments have the constitutional authority to regulate matters relating to food, but the Commonwealth has the authority to regulate for matters relating to imports and exports.¹ Because Australia has a national food market and a production industry that depends on export sales, the States and Commonwealth collaborate to make national food regulations and the States give effect to many of these regulations through their own laws.

The principal sources of this national collaboration is Australia’s the **Food Regulation Agreement** reached by the Council of Australian Governments in 2002. It describes the purpose of food industry regulation in Australia as:

1. providing safe food controls for the purpose of protecting public health and safety;
2. reducing the regulatory burden on the food sector;
3. facilitating the harmonisation of Australia’s domestic and export food standards and their harmonisation with international food standards;

¹ See the discussion and notes in “International obligations” section below.

4. providing cost effective compliance and enforcement arrangements for industry, government and consumers;
5. providing a consistent regulatory approach across Australia through nationally agreed policy, standards and enforcement procedures;
6. recognising that responsibility for food safety encompasses all levels of government and a variety of portfolios; and
7. supporting the joint Australia and New Zealand efforts to harmonise food standards.(Preamble)²

Although many other laws and regulations may affect Victorian food producers—for example trade practices laws or labor laws—those regulations that impact on firms and individuals as food producers, processors etc. find their origins chiefly in either

- (i) Australian Standards, including food safety standards, created under the national Food Regulation Agreement, that apply to all food sold in Australia and that are implemented in Victoria by the Victorian Food Act (1984), or;
- (ii) Commonwealth laws regulating exports and imports of food that are consistent with the standards for food safety found in the Australian Standards. Commonwealth laws include the Australian Customs Act, the Quarantine Act, the various Export Control or Inspection and Meat Export Charges Acts, the Imported Food Control Act, the Dairy Produce Act, the Therapeutic Goods Act, the Agricultural and Veterinary Chemicals Act (1994), the Gene Technology Act (2000) and the Industrial Chemicals (Notification and Assessment) Act 1989 (and regulations under each of these acts).³

Victorian food producers and processors are also affected by export customer requirements that imply compliance measures that are often similar to, but distinct from, the measures required by State and Commonwealth regulations.

The international market

In Victoria, as in the rest of Australia, the regulation of food production, processing, logistics, retailing and service takes account of international market conditions, including international food standards and trade agreements. There is no mystery behind this: the international market is by far the largest outlet for Australian food production and the source of important inputs into the fresh and processed food industry in Australia.

Exports

Thanks to low border barriers, good transport infrastructure and a production environment (physical endowments, regulation) that ensures continuing comparative advantage, the Australian food industry is

2 Council of Australian Governments, Food Regulation Agreement (2002)

³ A list of Commonwealth legislation effecting export and import market controls can be found at: <http://www.affa.gov.au/content/output.cfm?ObjectID=D2C48F86-BA1A-11A1-A2200060A1B00707>

integrated with the global food market, and highly dependent on it for a profitable outlet. About two-thirds of all Australian rural production is destined for the export market.

Victoria leads the nation in the value of its exports of food, accounting for a quarter of Australia's exports.

Table 1: Value of food exports by State (\$m)

	1997-98	2003-04	2004-05	2005-06	% of total
Victoria	3,924	5,359	5,717	5,751	25%
Queensland	4,018	3,908	4,603	4,501	20%
New South Wales	3,559	3,337	3,947	3,732	17%
Western Australia	2,978	3,571	3,515	3,535	16%
South Australia	2,128	3,340	3,176	3,278	14%
NT+ACT+confidential	435	1,616	1,680	1,354	6%
Tasmania	449	417	486	462	2%
Total Australia	17,492	21,548	23,124	22,612	100

Summary of Victorian Food and Fibre Export Performance 2005-06, Department of Primary Industries. Melbourne, August 2006. All values nominal \$

The export-to-production ratio of the food industry in Victoria is slightly higher than the national average at about 68 percent (\$5.71 billion out of an estimated total value of \$8.4⁴ in 2004-05).

In 2005-06 food exports amounted to \$5.75 billion. Dairy products alone accounted for almost two-fifths of food export earnings.

Table 2: Value of Victorian exports by commodity groups (\$m)

Commodity Group	1997-98	2003-04	2004-05	2005-06	% of total
Dairy	1,545	1,890	2,053	2,170	38%
Meat	810	1,238	1,332	1,356	24%
Wine	122	436	532	650	11%
Grains	578	711	701	518	9%
Horticulture	313	362	394	410	7%
Prepared_foods	294	422	423	368	6%
Niche	141	183	145	141	2%
Seafood	122	117	137	137	2%

⁴ Australian Bureau of Statistics, 7503.0 - "Value of Agricultural Commodities Produced, Australia, 2004-05"

Commodity Group	1997-98	2003-04	2004-05	2005-06	% of total
Total food	3,924	5,359	5,717	5,751	100

Summary of Victorian Food and Fibre Export Performance 2005-06, Department of Primary Industries. Melbourne, August 2006. All values nominal \$

Most of Victoria's food exports comprise either 'substantially' or 'elaborately' transformed processed products; the product of a food processing industry that represented almost a quarter of Victoria's manufacturing turnover in 2001-2 (\$5 billion out of \$26 billion: see Table 3).

Table 3: Victorian Food Processing Industry Data

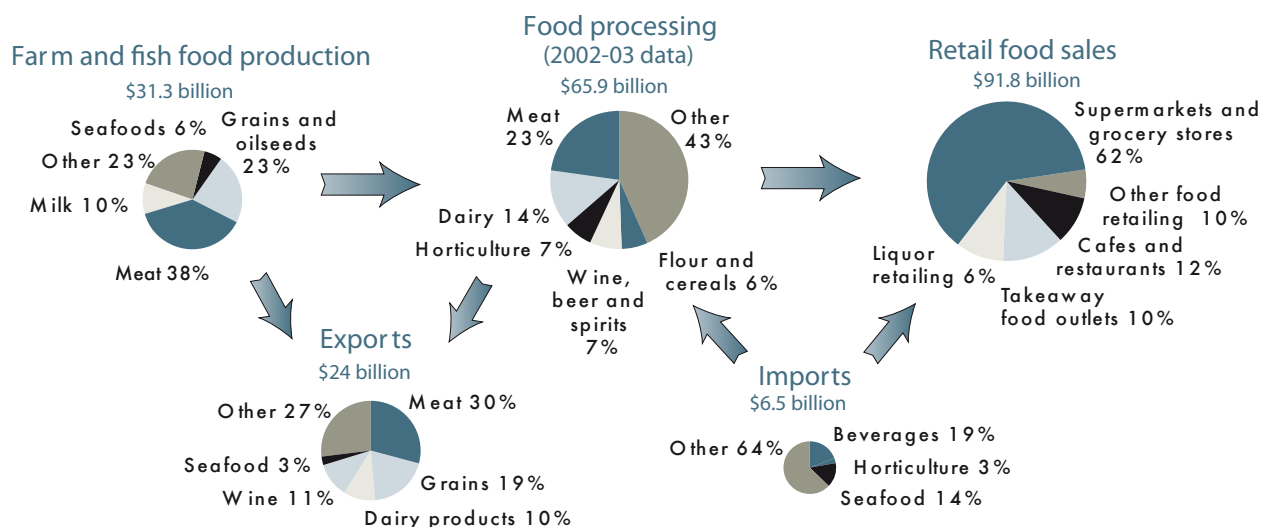
Commodity	1999-00	2001-02	1999-00	2001-02	1999-00	2001-02
	Wages and Salaries		Turnover		Industry Value Added	
	\$m	\$m	\$m	\$m	\$m	\$m
Meat	333	380	1,955	3,198	475	598
Dairy	392	449	4,823	5,125	1,071	979
Fruit and vegetables	99	68	811	513	235	162
Bakery products	228	223	1,013	1,044	333	347
Other food	442	544	2,938	4,205	724	1,193
Beverage and malt	155	290	2,088	2,627	761	958
Total food and beverages	1,871	2,368	15,558	19,688	4,099	5,059
Total manufacturing	11,679	13,759	74,312	88,041	22,159	25,757

Australian Department of Agriculture Fisheries and Forestry, "Australian Food Statistics 2005". All values nominal \$

Imports

There are no current statistics on Australian imports of food by State of destination, but the role of imports in the Australian value chain shows the importance of imports. Almost all food imports (95%) are processed; at \$6.5 billion in 2005, imports represent about 10% of the ex-factory value of Australian processed food.

Australian food value chain



[from "Australian Food Statistics, 2005", DAFF]

Many of these imports are an essential supply to the Australian food processing and retail industries, covering seasonal downturns in Australian supply. According to AFGC, fruit and vegetable processing plant would be forced to cease production for some periods of the year without import supply.

According to the National Farmers' Federation fresh food industries such as horticulture also benefit from the import supply of seasonal produce. If items such as avocado are not available in the retail chain during the Australian 'off-season', Australian producers are obliged to re-introduce marketing campaigns at the start of every local season, increasing overall costs.

New Zealand is the main source of Australia's food imports, accounting for \$1.2 billion or 18 per cent of total Australian food imports in 2004-05. The next most important supplying countries were USA, Thailand, Ireland and China, none of which represented even half of the level of NZ supply.

International agreements

The international framework of standards to which the Australian Food Regulation Agreement refers is embodied in the non-binding *Codex Alimentarius* (i.e. "Food Code") administered by the UN Food and Agriculture Organization's and in the standards developed by the Office International des Epizooties (OIE—now called the "World Organization for Animal Health") and the the International Plant Protection Convention, also administered by the FAO.

These standards are in turn a point of reference for two contractual, that is 'binding', agreements to which Australia adheres as a member of the World Trade Organization:

- The Agreement on Sanitary and Phytosanitary (SPS) Measures, and
- The Agreement on Technical Barriers to Trade (TBT).

In addition, Australia has an agreement with New Zealand on the adoption and implementation of “joint” food standards and bilateral ‘free trade’ agreements with Singapore and Thailand, in which the parties have agreed on the mutual recognition or harmonization of differences between their national standards.

None of these agreements applies directly in Australian law. Each of them has been adopted by the Commonwealth and given effect through some of the same mechanisms—Acts of Parliament, policies, government authorities and regulations—that implement the Food Regulation Agreement. One of these implementing mechanisms is the Victorian Food Act.

International standards-making bodies

These bodies create standards that are widely used as the basis for national standards. Member countries are not obliged, however, to adopt any particular standard.

The *Codex Alimentarius*

The *Codex Alimentarius* is a collection of standards, codes of practice, guidelines and other recommendations that is maintained by the *Codex Alimentarius* Commission, a part of the UN Food and Agriculture Organization. Membership of the Commission is open to all UN Members and Australia has been a member since the *Codex* was established in 1963. One objective of the *Codex* standards is to facilitate trade but the standards are not binding on UN Members.

The creation of the *Codex Alimentarius* followed the development of industrial food processes from the 1940s which led to growing concern that food additives and the residues of pesticides and other agricultural chemicals could affect human health. FAO—concerned with maintaining trade flows that contributed to efficient supply—and the WHO—concerned with public health issues—joined in 1963 to adopt the *Codex Alimentarius* as a means of facilitating the adoption of harmonized and sufficient global food standards and thereby pursuing both the trade and public health goals. By the end of the century the *Codex* standards and processes were recognized as the global reference standard for food products, ingredients (including additives and residues), labeling, packaging and testing. The standards are not enforced within *Codex Alimentarius*: rather they form an accepted basis for national (and non-government) standards. Each UN member decides for itself how to give effect to the *Codex*.

Some of the *Codex* texts are very general and some are very specific. Some include detailed requirements related to a food or group of foods others deal with the operation and management of production processes or the operation of government regulatory systems for food safety and consumer protection.

Codex Standards usually relate to product characteristics and may deal with all government-regulated characteristics appropriate to the commodity, or only one characteristic. Maximum residue limits (MRLs) for residues of pesticides or veterinary drugs in foods are examples of standards dealing with only one characteristic.

There are *Codex* General Standards for food additives and contaminants and toxins in foods that contain both general and commodity-specific provisions. The *Codex* “General Standard for the Labeling of Prepackaged Foods” covers all foods in this category. Because standards relate to product characteristics, they can be applied wherever the products are traded.

By far the largest number of Specific Standards in the *Codex Alimentarius* is the group called commodity standards. These include standards for:

- cereals, pulses, legumes and derived products including vegetable proteins
- fats and oils and related products
- fish and fishery products
- fresh fruits and vegetables
- processed and quick-frozen fruits and vegetables
- fruit juices
- meat and meat products
- milk and milk products
- sugars, cocoa products and chocolate and other miscellaneous products

Commodity standards are comprehensive. Each includes provisions on the the scope of the standard, the description or definition of the product, the essential composition, permitted additives and limits on contaminants. Products conforming to the Codex standard must meet certain hygiene conditions and labeling requirements designed to ensure that the consumer is not deceived or misled about the food. There may be provisions on container fill and the drained weight of the commodity and on methods of analysis and sampling to be used to determine whether the product conforms to the requirements of the standard.

Codex Codes of Practice include codes of hygienic practice that define production, processing, manufacturing, transport and storage practices for individual foods or groups of foods. For food hygiene, the basic text is the Codex General Principles of Food Hygiene, which introduces the use of the Hazard Analysis and Critical Control Point (HACCP) food safety management system.

“OIE” – The World Organization for Animal Health

Founded by treaty in 1924, the Office International des Epizooties (OIE) is now called the “World Organization for Animal Health”⁵. The objective of OIE are:

- To ensure transparency in the global animal disease and zoonosis situation⁶
- To collect, analyse and disseminate scientific veterinary information
- To provide expertise and encourage international solidarity in the control of animal diseases
- To safeguard world trade by publishing health standards for international trade in animals and animal products
- To improve the legal framework and resources of national Veterinary Services

⁵ See http://www.oie.int/eng/en_index.htm

⁶ A zoonosis is a disease that humans can catch from animals

- To provide a better guarantee of the safety of food of animal origin and to promote animal welfare through a science-based approach

In practice, OIE provides the framework for international collaboration in the control of zoonoses. Its provisions and processes play an important part in the standards and regulations adopted and enforced by BioSecurity Australia and AQIS under Commonwealth Quarantine and Export Control legislation.

International Plant Protection Convention

Founded under FAO auspices in 1951, the IPPC is the ‘phytosanitary analog’ of the OIE. The Convention “encourages” countries—without binding them under treaty obligations—to ensure through phytosanitary certification that their exports are not the means for introducing new pests to their trading partners.⁷

Likewise, importing countries strive to ensure that measures they have in place for protection are technically justified.

Links between Australian standards and international standards

The Codex, OIE and other international standards form an important point of reference for Australian standards. But they are not the only—or even the primary—basis in law for Australian standards.

The provisions of *Codex Alimentarius* and other international standards-making bodies are referenced at the ‘top’ of Australia’s national system of food regulations. The Food Regulation Agreement reached by State and Commonwealth governments in 2002 establishes a Ministerial Council whose powers are, among other things, to ensure

“The promotion of harmonised food standards within Australia between the Parties (harmonisation of domestic standards between States and Territories and of domestic standards with export standards) and with *Codex Alimentarius* (harmonisation of domestic and export standards with international food standards set by *Codex Alimentarius*).”⁸

Under the Food Standards Australia New Zealand Act (“FSANZ Act”) (1991) the Food Regulation Ministerial Council has an oversight role in the development and amendments of food standards by the responsible national authority, Food Standards Australia New Zealand (FSANZ), may request reviews of a standard and may, ultimately, reject a draft standard or revision of a standard.

But neither the Council nor FSANZ is required by the Agreement or the FSANZ Act to adopt *Codex Alimentarius* standards when developing Australian standards or procedures or revising existing standards or procedures. Section 10 of the FSANZ Act on the Objectives of the Authority in developing standards lists those matters that it must take into account :

- (2) In developing or reviewing food regulatory measures and variations of food regulatory measures, the Authority must also have regard to the following:

⁷ See <https://www.ippc.int/IPP/En/default.jsp>

⁸ Council of Australian Governments, Food Regulation Agreement (2002), paragraph 3 (a)

- (a) the need for standards to be based on risk analysis using the best available scientific evidence;
- (b) the promotion of consistency between domestic and international food standards;
- (c) the desirability of an efficient and internationally competitive food industry;
- (d) the promotion of fair trading in food;
- (e) any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority.

Since there are several matters to be taken into account—all with apparently the same weight—including facts about Australian commercial conditions ('fair trading') and 'the best available scientific evidence', the 'promotion of consistency' between Australian and international standards could not require, and may not even permit, the simple adoption of international standards, for example, by reference or by inclusion of the text of the international standards in Australian standards.

In fact, as an examination of particular Australian standards (below) will show, important Australian standards such as the Food Safety Standard make no direct references to *Codex* and are embodied in texts that are significantly different in detail and in scope from the texts of the *Codex* standards with which they are consistent.

International trade agreements

In contrast to the library of standards embodied in *Codex Alimentarius*, OIE etc, the Agreements of the WTO and the bilateral trade agreements reached by Australia with New Zealand, Singapore, the United States, Thailand are treaties that give rise to *obligations* on the part of the Australian government. Each of these agreements has been given effect in Australian law by, among other means, amendments to some of the Commonwealth legislation affected by the Food Regulation Agreement.

World Trade Organization Agreements

Two WTO Agreements—on Sanitary and PhytoSanitary Measures and on Technical Barriers to Trade—affect the implementation of international standards in Australian food regulations. Both Agreements promote the "harmonization" of national food regulations among WTO Members based on the adoption of existing international standards including the *Codex Alimentarius* standards. The WTO's purpose in encouraging harmonization of standards at an international level, as explained in the Agreements, is to avoid trade conflicts, where ever possible.⁹

Before the entry into force of the WTO in 1995 international standards, guidelines, recommendations and other advisory texts could be adopted by governments on a voluntary basis. Although these norms remain voluntary, a new status has in effect been conferred on them by the SPS Agreement. A WTO Member adopting such norms is presumed to be in full compliance with the its obligations under the SPS Agreement.

⁹ The preamble to the SPS Agreement, for example, describes harmonization as a means of minimizing the 'negative effects on trade' of autonomous national standards

But neither Agreement requires that Australia adopt any particular standard. Both Agreements provide explicitly for the **autonomy** of WTO Members in the selection of standards. Each permits the adoption of standards that are more or less stringent than the international standards subject to certain conditions relating to the minimization of trade restrictions including the scientific justification of more stringent standards and economic factors.

SPS Agreement

The SPS Agreement provides for limited use of (otherwise prohibited) non-tariff barriers that are

“... necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade”¹⁰ (emphasis added)

A second objective of the Agreement is

“... to further the use of harmonized sanitary and phytosanitary measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the *Codex Alimentarius* Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention, without requiring Members to change their appropriate level of protection of human, animal or plant life or health;”¹¹ (emphasis added)

Both of these objectives of the SPS Agreement—the avoidance of unnecessary trade restrictions and the harmonization of standards—import a reference to the *Codex Alimentarius*.

Article 3 of the Agreement on Harmonization requires that Members

“... base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist”

The incentive to harmonize around existing international standards is a presumption that measures to enforce such standards are ‘necessary’ in the terms of the Preamble. This presumption is a key that ‘unlocks’ access to a general exception (provided in GATT Article XX(b)) to the WTO’s prohibition on the use of non-tariff measures.

“Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT...”

¹⁰ Preamble to the “Agreement on the Application of Sanitary and PhytoSanitary Measures”

¹¹ *ibid.*

The Agreement does not explicitly define the other key terms of the Preamble: ‘unjustifiable discrimination’ or ‘a disguised restriction on international trade’. It allows the content of these rules to emerge from the practice of the Committee on Sanitary and PhytoSanitary measures or from dispute settlement decisions. The Agreement does, however, require Members to notify those import requirements that exceed the standards embodied in Codex and the other conventions listed in the Preamble. By implication (and practice), non-discriminatory requirements for food imports that adhere to the Codex standards or are less stringent are not considered to be a ‘disguised restriction’ on international trade.

Finally, the SPS Agreement requires (Article 7) that Australia maintain a system of inspection and control procedures that do not themselves represent unnecessary restrictions on trade.

“Members shall observe the provisions of Annex C in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise ensure that their procedures are not inconsistent with the provisions of this Agreement.”

TBT Agreement

The Agreement on Technical Barriers to Trade has objectives in the domain of industrial standards and labeling that are analogous to those of the SPS Agreement in the domain of standards securing animal and plant health and safety.

The application of the TBT Agreement to food regulation is chiefly to its promotion of the harmonization of standards for packaging, marking and labeling as a means of avoiding discriminatory or burdensome restrictions on trade.

“... technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.”¹²

As in the case of the SPS Agreement, measures at the border that enforce conformity with an existing international standard (including the *Codex Alimentarius* standards) are presumed to meet the requirements of the GATT exceptions permitting the use of non-tariff barriers

“Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.”¹³

Bilateral trade agreements

Each of the ‘free trade’ agreements to which Australia is party (with New Zealand, Singapore, USA and Thailand) contains some obligations related to food regulations and trade but, like the multilateral treaties,

¹² Article 2 of the Agreement on Technical Barriers to Trade

¹³ Ibid.

none requires the adoption of any specific food standard. All of them provide for the liberalization of tariffs and tariff-quotas on imports of food products by each party.

The Australia New Zealand Closer Economic Relations Trade agreement, which established 'free trade' in food products between the parties after July 1990, had a significant economic impact on the Victorian food industry by eliminating remaining tariff barriers to very competitive NZ produce, especially dairy and certain meat and horticulture products. The eventual impact of the Agreement on the harmonization of food standards was also profound. Article 12 of the ANZCER Trade Agreement committed the parties to examining the scope for the harmonization of standards, leading eventually to the Joint Food Standards Treaty¹⁴ of 1995 and the establishment of a trans-Tasman food standards agreement, NZ participation in the Food Regulation Agreement and a joint authority for the creation and implementation of food standards.

The food safety (SPS, quarantine measures) and standard provisions of the free trade agreements reached since 2003 with Singapore, USA and Thailand are designed as trade facilitation provisions that commit the governments that are parties to the agreement to work toward reducing trade frictions that might arise from a misalignment of standards on either side or from a lack of timely information. They appear to have have no direct regulatory consequences for the Victorian food industry.

The chief provisions of these agreements on food standards and regulations are:

1. **Harmonization of standards.** Although the US agreement makes no provisions for harmonization, the other two agreements commit the parties to work toward ("endeavour to work toward"–Thailand) the harmonization of their ('mandatory'–Singapore FTA) standards.
2. **Acceptance of "equivalence".** Again there are no provisions in the US agreement. The parties to the Singapore and Thai FTA's have agreed to
 - favorably consider proposals for accepting the equivalence of each other's mandatory requirements (Singapore), or
 - follow SPS and Codex procedures for determining equivalence (Thailand)
3. **Sharing information.** The parties in the three agreements have undertaken to cooperate and share information on participation in the WTO SPS Agreement and on SPS measures
4. In the Singapore agreement the two sides have agreed to consider means of reducing differences in conformity **assessment procedures**
5. In the US agreement the two sides established a joint committee and work program for resolving differences over **risk assessments** and risk mitigation measures affecting bilateral trade

¹⁴ "Agreement Between The Government Of Australia And The Government Of New Zealand Establishing A System For The Development Of Joint Food Standards" accessible at <http://www.austlii.edu.au/cgi-bin/disp.pl/au/other/dfat/treaties/1996/12.html>

Impact of international agreements and standards in Victoria

The Australian regulatory environment for food includes

1. International treaties, international standards and—to a lesser extent—the laws of other countries that represent export markets for Australian produce or provide import supply.
2. Commonwealth laws, policies and standards
3. State (and local) government laws and regulations

This list can be considered a regulatory ‘cascade’ through which regulations that are consistent with international agreements impact on Victoria.

A second, non-regulatory, ‘vector’ by which international requirements affect the Victorian food industry is through the requirements of export markets that are not specified in treaties or that vary from the recommended standards or procedures in those treaties.

The ‘regulatory cascade’ in Victoria

The WTO Agreements, bilateral treaties that include provisions on SPS and TBT measures and the Australia New Zealand Joint Food Standards Treaty are treaties that are implemented in Australian law.¹⁵

Commonwealth legislation that gives effect to international obligations—at ❶ in the diagram—may be imposed on the States.¹⁶ But none of these treaty obligations imposes particular standards on Australia.

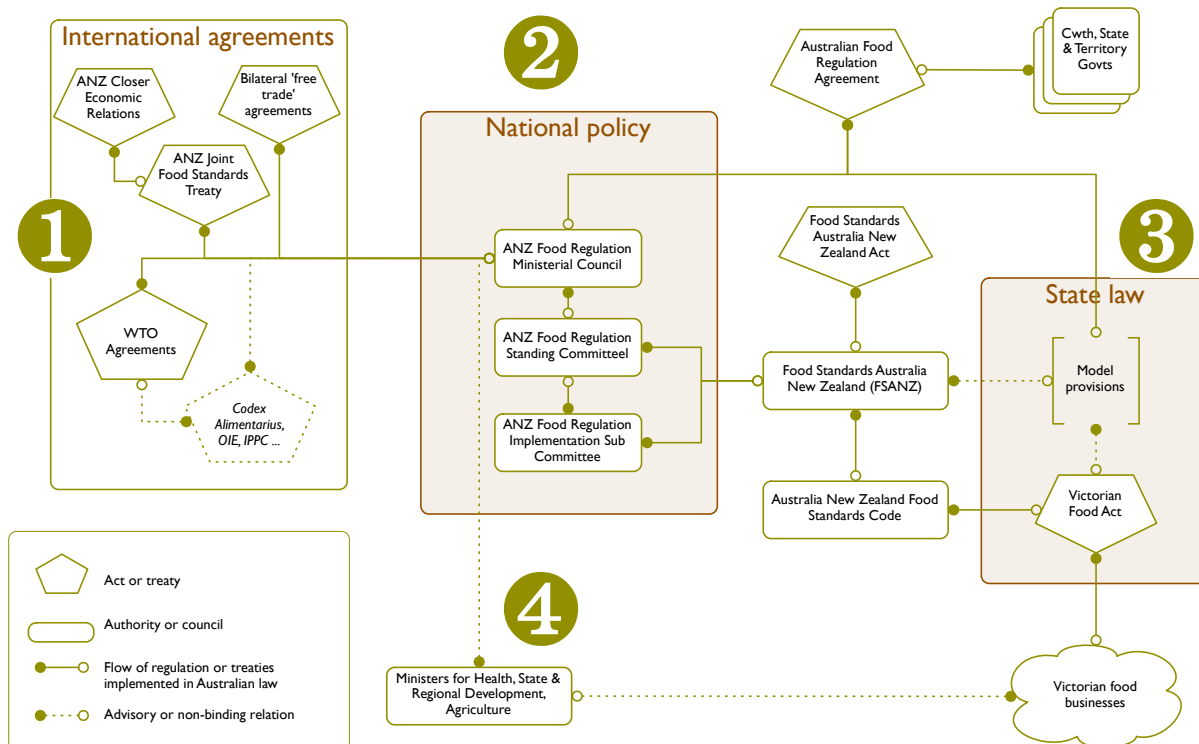
It is debatable whether the *Codex Alimentarius* or OIE standards, guidelines and procedures comprise treaties, because they are not binding on UN Members. The ‘cascade’ of international standards from *Codex*, OIE etc. to the States of Australia is based on the *voluntary* cooperation of Australian governments

¹⁵ A treaty is any agreement reached by the Australian government, through some authorized representative, with another government or governments that is intended to bind the parties in accordance with its terms. The term ‘treaty’ covers a range of international instruments, including charters, conventions, covenants, protocols, agreements, pacts and exchanges of notes. In Australian constitutional practice (not explicit in the Constitution) treaties are not considered self-executing but must be enacted in Commonwealth law before having effect.

¹⁶ The High Court has determined that the Commonwealth has power under the external affairs provision (Sect. 51) of the Constitution to enforce international obligations that it has accepted throughout Australia, subject only to certain general limits; for example, the Commonwealth’s powers are limited by the express guarantee of freedom of interstate trade and by the implied guarantee of non-discrimination among the states. The Commonwealth has expressed the view that its powers under Sect. 51 extend not only to support a law calculated to discharge Australia’s known obligations, but also to those reasonably apprehended. The external affairs power may also extend to compliance with the recommendations of international agencies and the pursuit of international objectives which have not been reduced to binding obligations such as the standards embodied in *Codex Alimentarius*.

since the 1980s to give effect to national food standards consistent with international food standards.¹⁷ In the diagram this non-obligatory flow is indicated by dashed lines.

The structure of food regulation in Australia



Some treaties to which Australia is a party, such as the WTO TBT Agreement, oblige national governments to ensure that certain of their provisions are applied by sub-national governments including, in this case, the government of Victoria. For example, the TBT Agreement requires that where sub-national governments have powers—as Victoria does—to require a labeling standard, they should provide the same notification, information and consultation facilities for importers as the national government is obliged to provide under the Agreement.

¹⁷ The 1998 Blair Report noted, the Commonwealth has no specific powers to legislate matters relating to food, except for incidental powers arising from e.g. the 'corporations' power (or the 'external affairs' power in the case of treaty obligations). This left the States with most of the regulatory authority by virtue of the power-sharing rules of the Constitution. Although the States voluntarily entered into arrangements with the Commonwealth to "adopt adopt (automatically by reference and without amendment) food standards developed by the then National Food Authority and agreed by Health Ministers" (Blair Report, p 37) , the eight different States and Territories continued to make their own local food standards and some of the 700 local authorities continued to adopt local by-laws or ordinances to regulate the activities of food enterprises until 2001 when COAG reached the Food Regulation Agreement.

Some treaties to which Australia is a party oblige the Commonwealth to act within its own powers over exports and imports in a way that impacts the Victorian food industry. For example, the WTO SPS Agreement requires Australia actively to monitor, notify and manage certain animal and plant diseases to keep them from spreading to other countries, mostly by trade in animals or products. In conformity with this obligation, and for other reasons, the Export Control Act (1982) and commodity-specific legislation prohibits the export of ‘prescribed’ goods (dairy, fish, grain, live animals, meat, fresh fruit and vegetables etc) unless the export is licensed.

In practice, the export license is signaled by the allocation of an AQIS ‘Export Clearance Number’ and sometimes physical certification (e.g. ‘health certificate’) to a shipment. In most cases goods qualifying for an ECN must be processed in a registered ‘export establishment’ whose processes are subject to the AQIS ‘QA’ (quality assurance) audit system¹⁸. Because such a high proportion of Victorian produce is exported, most food processing establishments (abattoirs, dairy plants, fruit and vegetable processors, fisheries) are registered export establishments whose compliance with export standards is subject to audit by AQIS or, in the case of Victorian dairy processors by Dairy Safe Victoria as AQIS’ agent.

Because the Commonwealth has no specific power to make laws relating to food, State laws, now based on the ‘model legislation’ developed by the Food Regulation Ministerial Council, implement (by reference) national food standards and play a critical role in the application of other food policies that are agreed at national level under the provisions of the Food Regulation Agreement. In Victoria—at ③ in the diagram—the national Food Standards Code applies by virtue of the Victorian Food Act (specifically Section 16) whose purposes are:

- (a) to ensure food for sale is both safe and suitable for human consumption;
- (b) to prevent misleading conduct in connection with the sale of food; c. to provide for the application in Victoria of the Food Standards Code. (Section 3)16

The regulatory “cascade” of international obligations is complemented by a return ‘flow’ from Victoria to the national level via the participation (at ④ in the diagram) of Victorian Ministers on the national Food Regulation Ministerial Council.

Customer requirements

Some international requirements that affect Victorian producers arise from the stipulations of export customers. These include, for example, the requirements of certain markets for Halal processes in the preparation of meat or the application of particular Maximum Residue Levels (MRLs) or customers’ requirements for the content of ‘novel foods’ (usually genetically modified organisms) or for processing standards and procedures in abattoirs. Each of these requirements is likely to include a requirement for authorized certification or audit by government or sometimes by qualified private auditors that may overlap

¹⁸ There are, however, several variations on the AQIS system including certification procedures that have been delegated to national or state industry authorities; for example the certification of ‘organic’ produce has been delegated to the National Association for Sustainable Agriculture. Some parts of the food industry continue under AQIS ‘food inspection’ processes which involve physical verification of each shipment.

with the audit requirements of Commonwealth legislation *and* with audit requirements arising from the stipulations of domestic customers such as supermarket chains.

Since compliance with customer requirements is ‘voluntary’—although unavoidable for businesses that sell in a particular market—the benefit-cost analysis must be assumed to be positive in those cases where Victorian businesses continue to comply. This is not to say, however, that some of the costs might not be reduced (see below).

The “international” content of Victorian regulations

The Australian Food Standards Code imported into Victorian law by Section 16 of the Victorian Food Act comprises:

1. General food standards: including food labeling, additives, MRLs, microbiological limits, novel foods
2. Food product standards: related to the characteristics of food products
3. Food safety standards: the requirements for Food Safety Programs (or HACCP programs)
4. Primary production and processing standards: completing the ‘whole chain’ coverage of, essentially, safety standards

Food product and food safety standards

Of the four parts of the Code, the most controversial from the point of view of costs imposed on business—especially small business—are the Food Safety Standards in Part 3.2 of the Code that provide for the application of Food Safety Programs, Food Safety Practices and Food Premises and Equipment (Standards 3.2.1, 3.2.2 and 3.2.3). The most challenging of these food safety standards is 3.2.1, which introduces a requirement for food producers, processors and food service/retailers to adopt a Food Safety Program (FSP). An FSP is a significant step up in terms of organization, training and time from the requirements of Standards 3.2.2 (hygienic practices, skills and knowledge, cleaning and maintenance) and 3.2.3 (food premises, fixtures, equipment, transport vehicles). It requires changes to business practices in a significant majority of small businesses and in community groups that are involved in food service.

At first sight, it may seem that international regulations may be imported by Section 16 of the Victorian Food Act that requires Victorian food businesses (and others handling food) to comply with the internationally-consistent Australian Food Standards Code. But the process of making and applying food standards in Australia gives little support to the view that FSANZ—or any of the Federal bodies operating under the terms of the Food Regulation Agreement—acts as an ‘agent’ for international standards bodies such as *Codex* or that the Australian Food Standards code directly implements international standards.

The text of the Food Standards Code is not similar to the (English language) text of *Codex Alimentarius* standards, nor does it include direct references to the international standards or to treaties dealing with the harmonization of standards or to the requirements of important export markets. On their face the Australian standards arise out of Australian concerns relating to the same subject matter as is covered by the

international standards. They address Australian food characteristics as well as the Australian economic and regulatory environment.

Furthermore the policies and process for the creation of Australian standards appear to ensure that there can be no simple adoption of international standards by FSANZ. The FSANZ Act places the initiative for the creation or amendment of a Standard in the hands of Australian or New Zealand individuals (by application) or the Authority and specifies a consultation and evaluation process that take Australian (and New Zealand) impacts into account (for Food Product Standards; NZ does not adopt FSANZ food safety or primary production standards). As a matter of policy established by the Food Regulation Ministerial Council (see, for example the “Overarching Policy Guideline on Primary Production and Processing Standards”¹⁹) all FSANZ standards are expected to comply with the COAG “Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies”.²⁰ These, in turn, require among other things a regulatory impact statement (RIS) that evaluates the costs and benefits of the standard for Australian businesses and consumers. The RIS is intended to ensure the adaption of regulations to the needs of Australian businesses and consumers.

Despite obvious similarities in objectives and content between the Australian and international standards, compliance with the Food Standards Code, as required by the Victorian Food Act, is compliance with an Australian standard, not primarily (or even substantially) with one of Australia’s international obligations or with an objective relating to international sales of the product.

The balance of this section considers the “international content” of specific standards in more detail.

Primary production and Processing standards

Food Standards Australia New Zealand has begun to develop standards for primary production and processing to complement the standards in the Food Standards Code that are focussed on product characteristics. As of November 2006, only the Seafood standard has been adopted; standards for poultry and dairy production and processing are under development. These standards are, logically, subordinate to the existing standards for the application of Food Safety Programs, Food Safety Practices and Food Premises and Equipment (Standards 3.2.1, 3.2.2 and 3.2.3). The new Seafood standard specifically imports these earlier standards.

There is no reason to consider the Seafood Primary Production standard implements or enforces an international standard. Although there are agreed international Codes Of Practice in *Codex Alimentarius*

¹⁹ Australia New Zealand Food Regulation Ministerial Council. Accessed at [http://www.health.gov.au/internet/wcms/publishing.nsf/Content/2087CDEAFEE7C703CCA256F190003AF4B/\\$File/anzfrmc_standards.pdf](http://www.health.gov.au/internet/wcms/publishing.nsf/Content/2087CDEAFEE7C703CCA256F190003AF4B/$File/anzfrmc_standards.pdf)

²⁰ Accessed at <http://www.coag.gov.au/meetings/250604/coagpg04.pdf>

that establish detailed sector-by-sector guidelines for safe primary production—including in Seafood²¹ and different fisheries industries—these are not directly binding obligations on UN Members.²²

As in other parts of the Food Standards Code, there is a superficial similarity in the objectives and subject matter of the Codex standard and the FSANZ standard for seafood production. But the differences between the two documents are more striking than the similarities. The *Codex Alimentarius* Code of Practice for Fish and Fishery Products is a very detailed 98-page document detailing many basic procedures for the handling of fish (and other seafood products) by producers and processors. The FSANZ standard 4.2.1 on Seafood is 10 pages and covers similar ground but in a much more summary fashion, offering one-sentence requirements generally not containing specifications (e.g. numbers). Some of the detail not directly included in the FSANZ standard are referenced in other documents from industry regulators (e.g. the Australian Shellfish Quality Assurance Program Operations Manual) or from other agencies (the AQIS export processing establishment registration requirements).

General standards: Labeling

International requirements on the labeling of food has two objectives

1. To set standards for consumer information
2. To prevent the use of mandatory labeling requirements as a disguised barrier to trade

International consumer information standards are found in the *Codex Alimentarius* “General Standard on the Labelling of Prepackaged Food”. The provisions of that standard are reflected in Part 1.2 of the FSANZ General Standards. As in the case of food safety and production standards, however, it would be an exaggeration to say that the FSANZ standards are “international” standards both because they differ significantly in content and because they have been created in conformity with a consultation and evaluation procedure that gives them an Australian, rather than “international” identity.

International requirements designed to prevent the use of mandatory labeling requirements in a way that could be trade restrictive affect chiefly the actions of regulatory authorities. A common concern in international trade is the use of “Country of Origin” labeling (CoOL) of fresh or packaged foods in a manner that discriminates between imported produce and local produce.

²¹ Code of Practice for Fish and Fishery Products, CAC/RCP 52-2-3 (2005). Accessed at http://www.codexalimentarius.net/download/standards/10273/CXP_052e.pdf

²² They may not even be considered one of the ‘standards, guidelines or recommendations’ that are endorsed by the ‘harmonization’ provisions of the WTO SPS Agreement since the WTO rules (probably) do not permit discrimination among products based on the process by which they were produced (as opposed to their inherent characteristics in use) and can not, therefore, endorse standards that would discriminate among products on this basis. Two recent cases that concerned in part this matter of ‘like product’ (France-Asbestos and EC-GMOs) seem, however, to leave room for further dispute on this issue.

Benefit-cost analysis of food regulations

The adoption of standards—even “autonomous” standards reflecting Australian conditions—brings benefits, as well as costs, to firms by reducing the firm’s level of import risk (information costs, mitigation costs, adaptation costs) and, potentially, by reducing information costs for their customers in export markets.

For importers and exporters, the harmonization of food standards among trade partners—the objective of the international standards and treaties that FSANZ must take into account:

- Reduces information requirements for exporters about standards in export markets
- Reduces compliance-information costs (inspections, certification) for both exporters and importers
- Improves consumer information (that is, reducing the consumer’s information costs) in relation to the quality of imported products
- Reduces both the capital and recurrent costs that firms would face if they had to equip themselves to meet a variety of inconsistent food standards

Of course, these are precisely the benefits that arose from the adoption by the Australian states of a uniform national food standard under the Food Regulation Agreement in place of the variety of State-based standards that previously existed.

There is specific provision in the COAG guidelines for “National Standard Setting and Regulatory Action”²³ for a benefit-cost analysis as part of a regulatory impact statement:

The most appropriate form of analysis should be applied to the identified costs and benefits and a conclusion drawn on whether regulation is necessary and what is the most efficient regulatory approach.

Unfortunately, this guideline has produced an evaluation in the case of the Food Safety Standards that does not seem to be very informative or reliable (below). In at least one case (see the section on CoOL below) an adverse benefit-cost analysis has been ignored by the Food Regulation Ministerial Council.

Practical difficulties in benefit-cost analysis

In practice, it is difficult to identify the net benefits of the international harmonization aspects of the Australian food standards-setting process. Although there is no doubt that compliance with Australian food standards can add to the costs of any business—as indicated by surveys conducted for submission to the Blair Report²⁴ and the (former) Department of Health and Aging²⁵—there is little evidence of the size of the net benefits or costs of these standards for food businesses and almost no data on the net costs or net benefits for importers and exporters.

²³ See footnote 21

²⁴ “Overcooked: A study of Food Compliance Costs For Small Business”, Price Waterhouse Coopers for the Department of Workplace Relations and Small Business (1998)

²⁵ “Food Safety Management Systems: Costs, Benefits and Alternatives”, The Allen Consulting Group for the Department of Health and Ageing (2002)

A 2002 report by the Allen Consulting Group²⁶, for example, attempted to develop an **economy-wide benefit-cost analysis** of the (then) proposed Australian Food Standard 3.2.1: the “Food Safety Program” standard. It found a net benefit of approximately \$0.4 billion in excess of the costs to government and business (combined) of approximately \$3.5 billion. But the consultants were unable to estimate the net benefits to business alone because of deficiencies in the data (many firms reported no expected benefits because they were not informed about the FSP program) and because the benefits identified were social benefits (reduced incidence of food-borne illnesses, deaths) that could not be attributed to firms.

The Allen Consulting Group surveyed more than 200 food businesses to determine the costs and benefits of the implementation of food processing and handling hygiene Standards 3.2.2. Extrapolating to a national level, they found that the “main drivers” of compliance costs for the new national standard would be the cost of cleaning/sanitizing of equipment: an estimated \$630.3 million or a \$6.3 million increment over previous State-based standards. Other “up front” costs were of a significantly smaller order: \$16.4 million to improve knowledge and skills and \$31.6 million for capital items. That is, cleaning/sanitizing of equipment would comprise 90 percent of the estimated total costs (\$703.3 million) of compliance with the standard. As the Allen Report notes:

... It is unclear how much of this cost is attributable solely to the legislative requirements as many businesses are likely to undertake cleaning as part of their standard business practice regardless of any regulatory requirements.²⁷

Quantified assessments of the **costs of standards for Australian importers and exporters** is still more difficult to find. The most recent data (from 1998) is based on a survey of 37 small-to-medium-sized firms by Price Waterhouse that did not claim to be representative and related to the direct and indirect costs of the implementation of standards associated with inspections, licensing and testing²⁸. This data was later extrapolated on a national basis by FSANZ in its 1999 assessment of costs and benefits of food standards²⁹.

²⁶ Ibid

²⁷ Ibid p. 46 These numbers must be given scale, too, by being seen in the the context of total turnover of food businesses: around \$40 billion per annum at the time of the Allen Group survey.

²⁸ Report of the Food Regulation Review (1998), Canberra, p.53-54

²⁹ The summary of the FSANZ study reports:

“Australia's current food hygiene regulatory system costs government \$18.6 million (net) to enforce, and small business \$337 million in compliance costs each year. Yet 11,500 consumers contract foodborne disease every day, costing the Australian community over \$2.6 billion every year. The proposed national food safety standards described in this report incorporate requirements that can reduce the incidence of foodborne illness in Australia. Reducing foodborne illness by just 20 per cent would realise an annual saving to the Australian community of over \$500 million.” The \$337 million number is derived from the PWC assessment. Accessed at <http://www.foodstandards.gov.au/newsroom/foodsafetystandardscostsandbenefits/>

The FSANZ extrapolation provides only a lightweight foundation for a national ‘regulatory impact statement’ as required by the COAG guidelines³⁰. The assessment does not contain a detailed benefit analysis and the sample sizes used in the PWC estimates of cost suggest a very wide confidence interval.

FSANZ does not provide any estimates of the costs and benefits of the Food Safety Standards as they relate to trade; specifically, it does not attempt to quantify the benefits of e.g. more secure access to export markets such as Japan-Beef or reduced risk of imports of pests or disease as a result of AQIS import inspections.

There is some *qualitative* evidence of the impact of costs Victorian exporters and importers in, for example, the submissions of various industry and trade associations to the Taskforce on Reducing the Regulatory Burden on Business³¹ (a.k.a. the “Banks” Taskforce and the “Red Tape Inquiry”) commissioned by the Prime Minister’s office in 2005. The Victorian restaurant industry, for example, complained specifically about the compliance costs of the FSP regulations:

Businesses in Victoria are the only foodservice businesses required at this point to have a food safety plan. They indicate that the monitoring and record keeping associated with their Food Safety Plans requires significant resources. In the main they question the effectiveness of the record keeping requirement in ensuring good hygiene practices.³²

International evidence on net benefits

The lack of information to support a benefit-cost analysis of standards in the context of international trade is not peculiar to Australia. Attempts to evaluate the net benefits (costs) of harmonized food standards for importers and exporters in other countries offer only similarly tentative and qualitative assessments: data on costs and benefits is limited and subject to different interpretations but, overall, the costs appear to be small in relation to turnover and vary significantly from case to case.

Concern about food safety, and specifically about the food safety of imports, is a widespread and growing phenomenon in industrialized countries and, to a lesser extent, in developing countries driven especially by ‘crises’ in animal health that have given rise to widespread public concern. “Incidents” include the ‘BSE’ crisis and foot-and-mouth disease outbreaks in the UK; the spread of avian influenza in East Asia; a long-standing conflict between the USA and EC over the presence of growth-promoting hormones in US beef exports; a similar conflict over US exports of genetically modified animal feeds (soybean meal) to Europe.³³

³⁰ See footnote (21) above.

³¹ See <http://www.regulationtaskforce.gov.au/>

³² Submission of Restaurant and Catering Australia, p 9. The submission provided some quantification that suggested the costs of the FSP standards for the restaurant industry in Victoria could be of the order of \$32.5 million, but acknowledged that this estimate was based on “imprecise” data.

³³ Jean C Buzby, “Effects of Food-Safety Perceptions on Food Demand and Global Trade”, Economic Research Service, US Department of Agriculture (2001). Accessed at <http://www.ers.usda.gov/publications/wrs011/wrs011i.pdf>

Analysts looking for the trade impacts of standards face significant technical difficulties arising from the lack of pertinent data on the content of national standards, their coverage and the extent to which any two countries ‘share’ a standard. In a major review of the impact of standards on international trade (and economic welfare), the WTO’s World Trade Report for 2005 was able to conclude only that the available evidence and economic modeling suggested that technical standards requirements, including ‘SPS’ standards requirements, apply to a large proportion of tariff sub-headings in many important markets and therefore have the potential to impact trade.

Tariff lines covered by technical measures in selected markets

Country	Number of subheadings	Share of imports covered (%)
Australia	1092	27.0
Brazil (2001)	2204	46.2
Canada (2000)	142	9.7
China	841	34.9
European Communities (1999)	116	0.6
Hong Kong China (1994)	223	2.3
Japan (2001)	77	1.9
South Africa (1999)	101	2.7
United States (1999)	1084	31.9

Source: UNCTAD TRAINS and UN Comtrade (reproduced from WTO’s “World Trade Report”³⁴). Note: TRAINS reports data at different tariff heading levels (sometimes at HS 6, 8 or 9 digit levels). The information provided in the Table has been standardized at the HS 6-digit level (“subheading”) even though the tariff lines covered by a technical measure may not extend to all the tariff lines in that subheading. But since the number of these subheadings is the same for all countries who adhere to the WCO’s HS 1996 convention, the numbers in the second column are comparable. The trade-off is that the share of imports covered by technical measures reported in column 3 is likely to be an overestimate.

On the costs and benefits of standards compliance with respect to trade, the evidence suggests that the impact of technical standards (including food standards) is small.

The OECD study was able to supply some information on the estimated percentage increase in production costs incurred as a result of physically adapting products to meet technical specifications. In the case of telecommunication equipment, the additional costs incurred to meet technical requirements ranged between zero and 10 per cent. For dairy products it was between zero and 15 per cent. For automotive products, the additional costs ranged more widely from zero to a high of 30 per cent. The overall conclusion was that while different mandatory

³⁴ WTO, “World Trade Report, 2005” Geneva, p. 58

technical requirements existed among the surveyed countries for each of the three product categories, meeting them did not significantly increase costs.³⁵

But there are important qualifications on this conclusion for smaller firms.

The [OECD] case studies tell a more complex story where the costs of and benefits from compliance vary enormously among firms and countries and depend on a range of factors – industrial structure, possibility of collective action, strength of consumer preference for safety, etc.³⁶

The empirical evidence on the costs and benefits of compliance with SPS standards is also highly variable and dependent on cases, many of which arise from studies of the impact of these standards on developing countries.

[A World Bank, 2005] study involved a series of case studies covering a number of low-income countries (Ethiopia, India, Jamaica, Kenya, Morocco, Nicaragua, Senegal, Thailand, etc.) and commodity chains related to fish, horticulture, livestock products, nuts and spices. The report found that compliance costs vary enormously between countries, industries, and firms/farms within the same industry. Countries and industries that have greater foresight or have taken a “pro-active” stance are better able to adapt to the evolution of product standards.

There are several well-publicized cases where developing country exporters appear to have faced very large losses—or, alternately very high costs of compliance—as the result of the implementation of an SPS-compliant in an export market.³⁷ Possibly the most notorious example conveys the potential scale of a particular case:

The paper by Otsuki et al. (2001)... investigated the effect of aflatoxin [a contaminant of ground-nuts including peanuts] standards in the EU on Africa-EU trade flows and health risks. They examined three regulatory scenarios: standards set at pre-EU harmonized levels (status quo), the standard set by Codex, and the new harmonized EU standard... They conclude that compared to Codex standards, the implementation of the new harmonized aflatoxin standard in the EU would reduce health risk by approximately 1.4 deaths per billion a year, but would simultaneously decrease African exports to the EU by about \$670 million.³⁸

The Otsuki et al. estimates have been criticized in other literature and global estimates of the actual rejections of imports at the border due to non-compliance with SPS standards suggest that these measures have only

³⁵ Ibid.

³⁶ Ibid.

³⁷ A detailed account of the impact of changing SPS standards on developing country exporters can be found in “Indonesia’s Shrimp Exports: Meeting the Challenge of Quality Standards” by Rina Oktaviani and Erwidodo in *Managing the Challenges of WTO Participation – 45 Case Studies*, Gallagher P, Low P and Stoler A (eds.). This case is available on-line from the WTO at http://www.wto.org/english/res_e/booksp_e/casestudies_e/case18_e.htm

³⁸ WTO World Trade Report, 2005

a small impact on trade flows. WTO's conclusion on the impact of food standards on developing countries is rather nuanced:

There are conflicting conclusions too about the trade impact of SPS measures on developing countries. There have been cases where access to export markets was denied due to sanitary or phytosanitary issues, resulting in substantial costs in terms of lost sales and market share. But rising standards also serve to accentuate underlying supply chain strengths so some countries are able to use high quality and safety standards to reposition themselves in global markets.³⁹

This mixed assessment is supported, indirectly, by the low rate of SPS-standards-related disputes pursued to conclusion through the WTO. Although a large number of SPS-related trade barriers are notified to WTO every year—there were some 3800 SPS barrier notifications in the period 1999 to 2005—few of them give rise to complaints by other WTO member states. The WTO Dispute Settlement Body has registered only 84 “requests for consultations”—the first stage in a WTO disputes process—since 1995 that relate to an SPS measure. Only a handful of disputes have gone to adjudication.

Costs attributable to Australian implementation

The *articulation* of the links between Australia's international obligations and the Australian regulations imposed in Victoria means that *international agreements* do not directly increase costs in Victoria. To the extent that Australian regulations comply with these agreements, there is sufficient flexibility in the agreements that the burden of blame for any excessive regulatory costs has to lie with Australian authorities.

Some of the regulatory costs identified by industry relate *only* to Australian regulatory provisions associated with standards that implement *Codex* standards. In particular, complaints about the time taken to implement changes to Australian standards or the refusal of FSANZ to authorize health benefits claims in labeling⁴⁰ are not due to inappropriate or costly implementation of the international aspects of the standards or to international market conditions.

There are, however, costs that are imposed by Australian regulations that are directly related to the international context of the regulation or to international market conditions.

Multiple food safety audits

What can be done to reduce costly “overlaps” in regulatory and commercial food-safety auditing requirements?

The introduction of an audited Food Safety Program Standard (3.2.1) that became mandatory in all States after December 2003 in

- food service, where potentially hazardous food is served to vulnerable populations

³⁹ See the Inquit database of SPS notifications (January 1999 - September, 2005) accessible at <http://www.inquit.com/> (free registration required)

⁴⁰ See the submission of the Australian Food and Grocery Council to the ‘Red Tape Review’ (below) accessed at: <http://www.regulationtaskforce.gov.au/submissions/sub036.pdf>

- the production, harvesting, processing and distribution of raw oysters and other bivalves
- catering operations serving food to the general public
- the production of manufactured and fermented meat.

highlighted the degree of overlap between auditing and inspection in different State jurisdictions. Some of this overlap is **due to domestic regulatory arrangements** (the Food Safety Program standard, or existing State inspection or risk-based audits, AQIS export establishment audits or export food inspections) and some **due to international market conditions** such as export customer or domestic customer requirements for food 'quality' audits that are (in the case of customers such as the Australian supermarkets) often risk- (i.e. HACCP-) based.⁴¹

Some risk-based audits for AQIS purposes (i.e. export establishment audits) and some other AQIS compliance requirements (e.g. compliance with EXDOC procedures associated with obtaining an ECN 'export license') are already conducted on a contractual/delegated basis by the State food-safety inspection authorities. In Victoria, DairySafe undertakes these functions.

To further reduce the problem of overlapping regulatory and audits, especially for export food businesses, the Implementation Sub-Committee (ISC) of the Food Regulation Ministerial Committee in May 2006 issued a proposal for a national framework for the regulatory approval and management of food safety auditors, and audits under food safety legislation.⁴² The national framework seeks to promote national consistency in the management of food safety auditors and auditing under both the health and primary industry portfolios. Under these proposals State and Federal authorities "may" accept risk-based audits by suitably qualified auditors conducting an approved food-safety inspection program on behalf of commercial customers as the required audits for Food Safety Program purposes.

Dairy Safe, Victoria, has led the way in negotiating a recent agreement with AQIS that will allow Dairy Safe, as its agent, to designate suitably qualified private contractors who perform audits of food safety programs on behalf of commercial customers to also conduct AQIS-mandated audits related to registered dairy export establishments.

But not all commercial customers will accept audits undertaken to meet the needs of their competitors and market-based requirements for multiple audits are likely to persist while commercial customers including the Australian supermarkets insist on individual audits.

MRLs

Should Australia adopt 'default' MRL's?

Standard 1.4.2 of the Food Standards Code defines MRLs as the maximum level of a chemical which is permitted to be present in a food. The concentration is expressed in milligrams per kilogram (mg/kg) of the food. Where no explicit MRL is defined for a compound the permitted level is 'no detectable level',

⁴¹ Seafood Export Consultative Committee Minutes, 9th Meeting – Friday 7 February 2003, Canberra. Accessed at http://www.secc.com.au/secc_minutes.htm

⁴² National Food Safety Audit Framework Consultation Paper, Canberra, May 2006

sometimes called a ‘zero tolerance approach’. The Standing Committee of the Food Regulation Committee recognizes that this means, effectively, a costly and ever-shifting standard:

Increasingly sophisticated analytical techniques can detect very low levels of residues in food that were previously undetectable, and those residues may pose only a very low risk to public health at the levels detected. When low level residues of agricultural and veterinary chemicals with no MRL are found in food, such a food commodity becomes illegal for sale even if it poses a very low risk to public health. The zero tolerance approach places a significant financial burden on industry, jurisdictions and the consumer.⁴³

Other countries have addressed the *technological jeopardy* problem by setting a low level “default” MRL (EU, NZ, Canada and Japan), in some cases recognising Codex MRLs (NZ and UK).⁴⁴

Since imports are an essential part of our national food economy, should Australia—like New Zealand—adopt ‘default’ MRLs by specifying the *Codex* MRL where no other has been scheduled?

Country of Origin Labeling

Do CoOL requirements offer net benefits for Victorian producers on either domestic or export markets?

The Australian standard on CoOL (1.2.11) was changed in December, 2005 to extend limited requirements (applying CoOL only to packaged foods) by requiring CoOL on the ingredients of certain packaged foods and on many fresh foods which were not formerly labeled.

The question canvassed by many producers was whether the changes offered a net benefit by, for example, increasing their share of Australian supermarket sales. There is little disinterested analysis of the impact on Australian consumer choice of CoOL⁴⁵; but the available research suggests the impact is modest. US research indicates that CoOL is relevant to consumer choice only when the consumer associates origin with quality. In its Regulatory Impact Statement on the proposed regulation, FSANZ estimated that “perhaps only 10 percent” of consumers considered CoOL information “highly important”.⁴⁶

If, however, a CoOL label identifying local produce is more effective than these studies suggest, moving the consumer to exercise a preference for domestic produce independent of the other qualities of the product, Victorian producers should be wary of any trend to the use of CoOL. Almost 70% of their produce is sold in export markets where losses due to the adoption of CoOL in those countries could more than offset any gains from the adoption of CoOL in Australia (the losses would presumably occur chiefly in the case of products that end up in the retail market).

⁴³ “Food Regulation Public Consultation Paper on Draft Ministerial Policy Guidelines for the regulation of residues of agricultural and veterinary chemicals in food”. Food Regulation Standing Committee, Canberra, April 2006

⁴⁴ In both the EU and Japan, however, some ‘default’ MRLs remain at ‘zero’

⁴⁵ See Australian Parliamentary Library Research Note #5 of 5 September 2005. Accessed at <http://www.aph.gov.au/library/pubs/rn/2005-06/06rn08.pdf>

⁴⁶ “Feasibility Study into Extending Country of Origin Labelling to Selected Packaged Fruit or Vegetable Whole Food Produce”, Canberra, March 2006. Accessed at: <http://www.pc.gov.au/orr/ris/examples/coolfood/index.html>

The Regulatory Impact Statement on the CoOL extension prepared by the Office of Regulation Review was damning:

Results of the study clearly show that the costs outweigh the benefits, and:

- There would be significant costs associated with the proposed extension to CoOL.
- The extension to CoOL would have an adverse impact on Australian industry.
- All consumers would pay more for a small, incremental increase in information that would be used by only a small proportion of consumers in making purchases.
- No evidence has been found to suggest that consumers would be prepared to pay more for the incremental increase in CoOL that is proposed.⁴⁷

The impact the horticulture industry of the extension to fresh produce is especially pertinent to Victoria. In the case of fresh vegetables, for example, the Australian Bureau of Agricultural and Resource Economics (ABARE)⁴⁸ reports that only 1 percent of supermarket supply was imported in 2004-05 (Table 2). In vegetables affected by that small level of imports, there might be a marketing advantage from CoOL if Australian consumers exercise a preference for Australian produce. But the new standard is applicable to all fresh vegetables. In other words, fresh vegetable producers in Victoria will incur 99 percent of the overall cost of the new arrangements to achieve a marketing benefit that might occur in only 1 percent of cases.⁴⁹

The economic study commissioned for the Regulatory Impact Statement on the extension of CoOL confirmed the scale of the potential economy-wide costs of the new regulations and the costs for horticulture in particular:

On average, cost increases are estimated to be significant at around 1.4 per cent. Worst affected would be small firms and small product lines with cost increases of up to 14 per cent. This would:

- raise the price of domestically produced processed horticultural products relative to imports and exports, imposing costs on Australian consumers (up to \$70 million a year);
- reduce processed horticultural output by up to 5.0 per cent (\$212 million a year) due to reduced global competitiveness domestically and on export markets;
- increase imports of finished processed horticultural products;
- decrease imports of horticultural ingredients for processing; and
- decrease exports of processed products and raise exports of fresh horticulture with less value added.

⁴⁷ Ibid.

⁴⁸ ABARE eReport 06.5 'Australian Vegetables Production Sector'.

⁴⁹ ABARE data (ibid.) based on supermarket surveys show that only two fresh vegetable categories had more than a 1% import share: capsicums (5%) and asparagus (26%).

Taking account of all income effects, national income would be reduced by at least \$80 million and up to \$160 million a year⁵⁰

Despite this apparently clear-cut result—confirming intuitive evaluation in the case of some industries—the standard was approved by the Food Regulation Ministerial Committee and Gazetted.

Quarantine barriers

As a result of decades of economic assessment of the costs and benefits of protection by the Tariff Board, the Industries Assistance Commission and the Productivity Commission, Australian border protection has been steadily reduced with significant benefit for the economy as a whole and for export competitive industries in particular.

The only exceptions to the economic review of Australian border protection are trade remedy measures (anti-dumping, countervailing duties) and quarantine barriers. Trade remedies are assessed on the basis of a form of accounting procedure defined in law to be a means of determining the compliance of imports with competition standards. But import barriers enforced as part of a quarantine measure, at present, are subject to no economic evaluation at all.⁵¹ This is all the more remarkable because quarantine import measures are among the very few import measures that regularly result in complete prohibition of imports.

All import barriers, whatever their origin or justification, are potentially costly. Economists' estimates and testimony of some of the most prominent Victorian export industries suggest that some quarantine import barriers are very costly to Victorian consumers, processors and exporters.

Bananas

A long-standing prohibition on imports of Bananas has been under review in an extended Import Risk Assessment procedure since at least 1998. The prohibition has recently had a dramatic impact on Australian consumers when, as a result of the devastation of crops by Cyclone Larry in 2005, banana prices rose by 250 percent contributing to an 11-year peak in the Australian CPI.⁵² But the consumer welfare losses from banana import prohibitions have been known for many years. Economists Kym Anderson and Sallie James argued in a 1998 paper that removing Australia's ban on banana imports would have increased net social welfare in Australia by \$100 million a year even if the domestic banana industry shut down as a result of imports.⁵³

⁵⁰ "Feasibility Study etc.", Canberra, March 2006

⁵¹ A small policy change has been introduced in October 2006 that will allow—but not require—the "Eminent Scientists Group" that reviews draft Import Risk Assessments to co-opt economic advice on matters where it deems such advice is needed. See BioSecurity Australia's "Policy Memorandum 2006/29" accessed at http://www.daff.gov.au/corporate_docs/publications/pdf/biosecurityaustralia/bapm/2006/2006_29.pdf

⁵² <http://www.smh.com.au/news/national/economy-slips-on-banana-skin/2006/07/26/1153816251734.html>

⁵³ James, S. and Anderson, K. 1998, On the need for more economic assessment of quarantine policies, Australian Journal of Agricultural and Resource Economics, vol 42, no. 2, pp. 425 - 44.

Victorian dairy exporters have objected to the prohibition of imports both because they consider it has a net adverse impact on the economy and because the management of the import risk by use of a prohibition threatens an export market for dairy products in the Philippines—the specific ‘target’ of the banana import risk assessment—that was more valuable than the Australian banana crop in ‘normal’ years.⁵⁴

Grains

Feed grains prices and availability in Australia are affected by quarantine restrictions requiring special sterilization, processing and handling provisions for imported grains to prevent the introduction/spread of weeds and pest species.

In 2004, during the negotiations on the US-Australia Free Trade Agreement, the US side claimed that these practices cost Australian feed grains users approximately \$US41 per tonne:

Biosecurity Australia (BA) and the Australian Quarantine and Inspection Service (AQIS) impose such stringent requirements in terms of exotic weeds and pathogens that the costs of compliance drive up the cost of U.S. corn and sorghum to the point where they can only begin to be competitive in the most extreme drought conditions, such as those that existed last year. Even under those marketing conditions, the U.S. was able to export only about 50,000 MT of corn. Quarantine-related costs run approximately US\$41.00 per ton. These costs include hammer milling and steam pelletizing, AQIS administrative charges for supervision and inspections, restrictions on blending and source regions in the U.S., cleanliness and precautions against spillage, approved transportation, costs for shutdown and cleaning times associated with quarantine requirements⁵⁵

These data are broadly confirmed by e.g. Australian Pork Limited.⁵⁶

⁵⁴ See the submission of Murray Goulburn Cooperative Limited, Tatura Milk Products Limited and Warnambool Cheese and Butter Limited to the Joint Parliamentary Committee of Public Accounts and Audit (2005) accessed at: <http://www.aph.gov.au/house/committee/jpaa/aqis/Submissions/sub39.pdf>

⁵⁵ Letter of the US Grains, Feed and Oilseeds Trade Advisory Committee to the US Trade Representative, 12 March, 2004, accessed at: http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Australia_FTA/Reports/asset_upload_file420_3391.pdf

⁵⁶ “Feed Grains Issues” fact sheet accessed at <http://www.apl.au.com/media/Feed%20Grain%20%20Fact%20Sheet.pdf>