

DISCUSSION PAPER

ON

VOLUNTARY GM-FREE LABELLING

April 2003



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Foreword

Genetic modification is of interest to many consumers, particularly when associated with food. The Joint Australia New Zealand Food Standards Code requires that suppliers provide consumers with information about whether a food contains genetically modified (GM) material, where the material is above a given threshold. Some consumers, however, want further information about whether food contains any GM material or results from a process involving genetic modification.

Although it is seemingly straightforward to label food as GM-free, there are complex issues around what GM-free means and also in determining whether a food contains any GM material or results from a process involving genetic modification. The government's purpose in facilitating the development of a GM-free labelling system is to assist those businesses that wish to meet consumer demand for information by labelling their food as GM-free, while helping to ensure that the information provided to consumers is meaningful and accurate.

As a voluntary initiative, responsibility for final development of a GM-free labelling system rests with stakeholders. The aim of this paper is to raise some of the issues surrounding GM-free labelling, and to look at what is involved in the development, ownership and administration of such a labelling system.

I welcome submissions from all stakeholders interested in the development of a GM-free labelling system. An interdepartmental working group, comprising the Ministry of Consumer Affairs and the New Zealand Food Safety Authority, will analyse submissions, provide feedback, and co-ordinate those stakeholders who wish to participate in the development of a labelling system.



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Call for Submissions

Final date for submissions and contact details

Final date for submissions is 30 May 2003.

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OFFICIAL INFORMATION ACT 1982

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1 Introduction

1.1 Overview

The Royal Commission on Genetic Modification identified consumer demand for more information than the Joint Australia New Zealand Food Code requires about whether a food results from a genetic modification process, or contains any GM material. Following consideration of the Royal Commission's recommendations, the government directed an interdepartmental working group, consisting of the Ministry of Consumer Affairs and the New Zealand Food Safety Authority, to facilitate the development of a voluntary "GM-free" labelling system.

Readers should note that throughout the paper the term GM-free with speech marks ("GM-free") means the *complete absence* of any genetically modified material, or use of a genetic modification process, in a food or food product. This interpretation is based on the Commerce Commission's guidance. Where no speech marks are used, the term GM-free may convey a less strict interpretation. For example, it may encompass other representations such as "best endeavour to be GM-free".

As it is a voluntary initiative, responsibility for developing a successful GM-free labelling system *ultimately* rests with stakeholders. The role of the interdepartmental working group is to assist by identifying issues and options, analysing submissions received from this paper, and co-ordinating interested suppliers, consumers and consumer groups in their efforts to develop a labelling system. The working group's role *does not* extend to developing or funding a labelling system itself.

1.2 Purpose of this Paper

This paper is intended to provide a starting point to help stakeholders develop a GM-free labelling system. It does this by:

- setting out the issues around defining what "GM-free" might mean
- identifying the legal parameters within which "GM-free" claims may be "tested" under the Fair Trading Act 1986 and also within which a labelling system must be developed
- examining some of the reasons why consumers and suppliers may wish to become involved in developing a labelling system, and using these to identify what information a labelling system could (or should) provide
- looking at labelling as a tool to provide consumer information, and the specific issues associated with the use of a "GM-free" label
- looking at the purpose of a labelling system
- presenting possible options for a labelling system
- introducing some of the issues that should be considered when looking at possible labelling systems.

As they work through this paper, readers will realise that the successful development of a voluntary GM-free labelling system depends on obtaining the support of those stakeholders that have the capacity, expertise, or financial resources to engage in developing a labelling system. This may not be an easy task. During the period over which this paper has been researched and written, the interdepartmental working group has identified only one group developing (or looking to develop) a voluntary GM-free labelling system in New Zealand – the National Consumers Food Safety Network.

By releasing this paper, the working group hopes to stimulate discussion amongst stakeholders on the merits of developing a voluntary GM-free labelling system, and, from submissions received, identify those stakeholders willing to contribute to its development.

2 Why develop a GM-free labelling system?

Summary

This section sets out the key background issues around the development of a labelling system. These are:

- The Royal Commission on Genetic Modification identified an “information gap” between the coverage of Standard 1.5.2 of the Australia New Zealand Joint Food Code and the information needs of consumers who wish to avoid food produced using genetic modification.
- The government responded to the Royal Commission’s report by directing an interdepartmental working group to facilitate the development of a “GM-free” labelling system (noting that there were technical and cost barriers to developing a labelling system).
- A key stakeholder meeting was then convened in February 2002, which identified general support for government facilitation in developing a labelling system.

2.1 Overview: the Role of the Royal Commission on Genetic Modification

The Royal Commission on Genetic Modification was set up in May 2000 to investigate, and report on, the issues and options surrounding genetic modification for New Zealand. A particular area of public interest focused on by the Royal Commission was food safety and consumer choice. Within this context, a key issue the Commission identified for consideration was “*can people choose whether or not to eat genetically modified food?*”

The Royal Commission considered the operation of Standard 1.5.2 of the Australia New Zealand Joint Food Code, and supported the standard’s pre-market safety assessment of GM food. It also supported the Code’s mandatory labelling requirements, although it noted that some people are concerned that food not labelled may contain some GM material, or may have been manufactured using a process involving genetic modification.

An “information gap” exists under Standard 1.5.2 because there are several exemptions from the mandatory labelling of GM material or genetic modification processes. Two of these exemptions are for flavourings and the unintentional presence of GM material, as long as the amounts involved do not exceed certain percentage thresholds. If they exceed these thresholds, then the flavouring or ingredient would have to be declared on the label. The other exemption is for food intended for immediate consumption, such as that available at restaurants, cafes, and take-away, self-vending and self-catering outlets.

While acknowledging this “information gap”, the Royal Commission accepted that there are cost, testing and product-tracing barriers that “... mitigate against the

imposition of a mandatory labelling requirement covering not only the product but the production process”¹.

The Royal Commission did “... consider that a standard label should be used, on a voluntary basis, to indicate that a food contains no genetically modified material and has not been manufactured in a genetically modified production process”². It recommended:

“that government facilitate the development of a voluntary label indicating a food has not been genetically modified, contains no genetically modified ingredients and has not been manufactured using a process involving genetic modification”³.

In making this recommendation the Royal Commission contemplated that the “GM-free” label would be simple and easily recognized – similar to the Heart Foundation’s “Pick the Tick” and would indicate that a product was “100% free” of genetic modification.

2.2 Government’s Response

Government accepted the Commission’s recommendation and directed:

“...the Ministry of Consumer Affairs to scope what would be required for an interdepartmental working group to facilitate the development of a voluntary ‘GM-free’ labelling system, and to proceed with the facilitation if it can be resourced from within baselines”.

The government noted that a voluntary “GM-free” labelling system would complement the mandatory labelling requirements of Standard 1.5.2. The purpose of the label would be to help fill the “information gap” for those consumers who wish to avoid food produced using genetic modification but which was not covered under the mandatory Standard. Important technical and cost barriers to the use and development of a “GM-free” labelling system were also noted:

- the cost and difficulty of detecting GM material in processed foods
- the ability of identity-preservation systems to verify a food’s origin
- the willingness and ability of suppliers to standardise “GM-free” claims.

Cabinet papers relating to the government’s response are available on the Ministry for the Environment’s website⁴.

¹ Royal Commission on Genetic Modification, (2001). *Report of the Royal Commission on Genetic Modification: Report and Recommendations*. Royal Commission on Genetic Modification, Wellington. p 233.

² Ibid. p 234

³ Ibid. p 234

⁴ http://www.mfe.govt.nz/issues/genetic_modification/food_medical.htm

2.3 Scoping Exercise

The Ministry of Consumer Affairs hosted a meeting with key consumer and industry stakeholders in February 2002 to scope the issues involved – such as who and what may be involved in developing a voluntary labelling system. For the purposes of the meeting, key stakeholders were identified as those that either represented industry/consumer associations or who might be in a position to take ownership of a voluntary labelling system. Appendix One lists participants at the meeting.

The meeting was not a substitute for consultation with wider stakeholders. Its role was to allow the interdepartmental working group to get an overall “feel” for the issue. Objectives of the meeting were to identify:

- processes for further work and consultation on the development of a GM-free labelling system
- issues that will need to be addressed when developing a voluntary GM-free labelling system and feasible options for such a system.

Key stakeholder groups expressed their support for the development of a voluntary labelling system, and for government’s role in facilitating the development of such a system. But it is indicative of the complexity of the issue that the meeting did not identify a process for developing the labelling system. Stakeholders did identify, however, a range of issues surrounding the development of a system and these are discussed in Section 5.

3 What are the boundaries within which a labelling system can be developed?

Summary

This section identifies the legislative environment in which a labelling system will operate. The main considerations are:

- The Commerce Commission’s interpretation of “GM-free” under the Fair Trading Act 1986 does not allow the use of any GM ingredient, or genetic modification process, in the production of a food or food product.
- Both the Commerce Commission and the Food Standards Australia and New Zealand (FSANZ) recommend that suppliers ensure that they can provide documentary evidence to verify “GM-free” claims.
- Suppliers exporting food labelled as “GM free” will need to consider the fair-trading and food-labelling laws in the country to which they are exporting.

3.1 Overview

Any voluntary GM-free labelling system will need to be developed within New Zealand’s legislative environment – including legislation governing fair-trading practices and specific legislation dealing with food that has been genetically modified. The effects – and possible constraints – of these two legislative streams are discussed in the next two sub-sections.

3.2 Fair Trading Act 1986

The Fair Trading Act 1986 prohibits misleading and deceptive conduct in trade. The Act does not require the mandatory disclosure of information about food – its purpose is to ensure that information disclosed by suppliers is not misleading or deceptive. More detailed information on the Act is provided in Appendix Two.

To ensure that suppliers do not mislead consumers when disclosing information, they should be aware that under the Act:

- it is the overall impression created by labelling that should be considered – small print or disclaimers to qualify the representation on a label may not be sufficient to change the consumer’s overall impression of a label
- disclosing information that is misleading will, even if unintentional, be in breach of the Act.

Under the Act, the Commerce Commission⁵ has interpreted “GM-free” as the absence of any GM ingredient or genetic modification production process in a food or food product. This interpretation has not been tested in court, although it is consistent with the interpretation of “GM-free” by the Australian Competition and Consumer Commission.

⁵ Commerce Commission (January 2000). *Food Labelling, Promotion and Marketing. A Guide for manufacturers, importers and retailers.*

Under the Fair Trading Act, the term “free” has been interpreted as being absolute (that is, the material described as free cannot be present at any level in the product, and the product cannot in any way result from the described process). This applies equally to the terms “no” and “non”.

The Commerce Commission has made a recommendation to suppliers that, to avoid risking a breach of the Act, they should not claim that a food, or food product, is GM-free unless it can be traced back to a “GM-free” source and process. This is because it is difficult to test whether a food contains GM material (particularly at low levels and in highly processed foods), and almost impossible to test whether a food results from a genetic modification process.

Within this legislative context, some suppliers are already looking to fill the “information gap” by making GM-free claims. Examples of the types of products and claims being made are listed in Appendix Three.

3.3 Food Standard 1.5.2

Standard 1.5.2, of the Joint Australia New Zealand Food Code, requires food that contains genetically modified DNA or protein to be labelled, although there are certain exemptions from these requirements (see paragraph 3 below in this subsection). This means that a food, food ingredient, food additive, and food-processing aid or flavouring that contains genetically modified DNA or protein must be identified on the label as being “genetically modified”. Food is sometimes processed in such a way as to remove all GM DNA or protein (for example, oils and sugars processed from GM plants). If a food is processed in this way and it does not have altered characteristics, then it does not need to be labelled.

The Standard also requires food that has altered characteristics to be labelled. This means that if food is significantly different from its non-GM counterpart with respect to allergenicity, toxicity, nutritional impact or end use, it must be identified on the label as being “genetically modified”. For example, soybeans can be modified so that their oil is higher in oleic acid than oil from non-GM soybeans. This oil would need to be labelled, even if no GM material was present in the finished product.

There are *three exemptions* from these labelling requirements. One is for flavourings making up less than 0.1% of a final food. The second is for an ingredient that unintentionally contains GM material, but which is less than 1% of that ingredient. And the third is for food for immediate consumption – for example, that sold in take-away outlets, restaurants and cafes, and self-catering establishments.

The provisions of the Standard do not extend to “negative labelling” – that is, to claim that a product is “GM-free”, or non-GM. (Negative here refers to the absence of material; it is not a qualitative reference to the merits of a product or process). But the *user guide* to the Standard recommends⁶ that for those suppliers who want to make “GM-free” claims:

- greater diligence may be required to support negative labelling than the positive labelling currently required by Standard 1.5.2

⁶ Australia New Zealand Food Authority (2000). *Labelling Genetically Modified Food User Guide to Standard A18/1.5.2 – Food Produced Using Gene Technology*.

- negative labelling claims must be able to be supported to ensure they comply with fair trading legislation.

The Standard and its labelling requirements can be found on the Food Standards Australia New Zealand internet site.⁷

3.4 International Issues

The international legislative environment has implications for those New Zealand businesses that may wish to market their foods overseas as “GM-free”. Under the Trans Tasman Mutual Recognition Agreement, “GM-free” labelled food exported to Australia, which can be legally sold within New Zealand, can also be legally sold in Australia. For other export markets, New Zealand suppliers will need to be aware of the interpretation of GM-free in the importing country, and the relevant provisions of that country’s fair-trading laws.

Further information on the international issues that need to be considered when developing a labelling system is provided in Appendix Four.

⁷ http://www.foodstandards.gov.au/foodstandardscode/index.cfm#_FSCchapter1

4 Why become involved in a labelling system?

Summary

To be successful, a labelling system will need to meet various consumer and industry expectations or “drivers”.

Consumer Expectations

- That the labelling system has low transaction costs (this is the cost to the consumer in obtaining information, including costs incurred should the transaction “go wrong” in some way).
- That meaningful information is provided (in a form that is easy to understand and provides for low transaction costs).
- That consumers can place confidence in the source of information – for example, through:
 - specifications and requirements to support “GM-free” claims
 - consumer participation and representation.

Industry Expectations

- That for a voluntary “GM-free” labelling system to be successfully developed ... *industry benefits* (competitive advantage, increased profit, market penetration) ... must outweigh the *risks* (not meeting consumer demand, lacking credibility, being inconsistent with legislation) ... and *costs* (market research, development, marketing and verification).

4.1 Overview

To be successful, a labelling system for GM-free food must meet the expectations of *both* consumers and industry. These expectations, or “drivers”, can be used as a yardstick against which proposals for developing a labelling system can be assessed. The remaining sections of this paper develop the various options for how elements of a voluntary GM-free labelling system might work, including some of the factors that need to be taken into account to satisfy the consumer and industry “drivers” that are discussed below.

4.2 Consumer Expectations

Central to the Royal Commission’s recommendation was that, in addition to the information provided by Standard 1.5.2, there was a continuing demand by some consumers for information about whether a food resulted from a genetic modification process, or contained any GM material whatsoever. This might be for environmental, ethical, religious or other reasons.

In deciding how best to meet this demand, the consumer-information principles discussed below need to be considered.

4.2.1 Transaction costs

Transaction costs are the time and effort expended by the consumer to become informed. They include:

- the costs of obtaining the information needed for the transaction
- the immediate costs involved in undertaking the transaction and the costs that arise as a consequence of the transaction – including monitoring, and redress and enforcement (should the transaction subsequently “go wrong” in some way).

This definition of transaction costs does not include the monetary cost to the consumer of purchasing a product.

Consumers obtain information on products in order to avoid a “bad deal”. A consumer’s decision on whether to gather information on a product is based on the value of that information relative to the cost of obtaining and processing the information. Consumers may, therefore, either avoid products with high transaction costs or decide not to gather all the information needed for an informed decision if it comes at too high a cost.

The existence of an “information gap” in the operation of Standard 1.5.2 suggests that transaction costs for consumers who wish to purchase “GM-free” food are high, as consumers demanding “GM-free” food need to seek additional information about a product or supplier. A single standardised label, supported by background information that is accessible to the consumer, may best meet consumer demand on the grounds that it will have lower transaction costs. This is because consumers confronted with a standardised label need to familiarise themselves with the label only once. Conversely, consumers faced with a range of individual supplier labels face higher transaction costs, because of the relative time and effort involved in understanding each of them.

4.2.2 Meaningful information

To make informed purchasing decisions, consumers need meaningful information that is conveyed in a manner that minimises their transaction costs. Disclosing technical information can be difficult. For example, in response to consumer concern about the health effects of non-ionising radiation from mobile phones, telecommunications companies are looking to supply the specific absorption rate (SAR) of different models of phones. But the SAR number provided is a peak value – mobile phones only operate at this level when the cellular signal is weak. To be made meaningful, it needs to be disclosed alongside additional information that informs consumers about this.

Information about genetic modification is also complex. Technical information on why it is difficult to determine whether a food is “GM-free” needs to be conveyed in a way that is meaningful for consumers.

4.2.3 Consumer confidence

Although the Fair Trading Act requires that information supplied in trade to consumers is accurate, consumers individually and generally are likely to hold perceptions about the integrity of the information source. Perceptions, warranted or unwarranted, can be expected to have an influence on purchasing decisions.

Perceptions are likely to be positive where consumers have confidence in the source of information. Confidence in a labelling system can be generated where:

- consumers participate in the development of a labelling system
- consumers are represented in decision making
- the decision-making process is transparent
- a trusted group or agency supports the label, such as the Heart Foundation's support for "Pick the Tick" labels
- a set of specifications underpins the labelling system, for example requirements could be set for the use of identity preservation systems to help validate suppliers' claims.

4.3 Industry Expectations

Industry can be expected to respond to consumer demand for "GM-free" information where the benefits of providing a label outweigh the risks, and costs.

4.3.1 Benefits

Suppliers labelling food as "GM-free" will benefit where it results in a relative increase in profit. This may be achieved through:

- Competitive advantage – where there is an unfulfilled demand for information in a segment of the market, labelled foods may have a competitive advantage over unlabelled foods.
- Premium prices – consumers wanting an assurance that their food is "GM-free" may be prepared to pay a premium price for this information.
- Market penetration – the development of a standardised label used collectively would spread development costs across suppliers wishing to meet consumer demand for information on "GM-free" food. A standardised label also would receive greater exposure in the market, as it would be displayed on a larger number of products.

4.3.2 Risks

The risks of labelling food as "GM-free" stem from the possibility that the information disclosed:

- Does not meet consumer expectations – consumers do not respond to the label, and so there is the risk that competitors will develop alternative labels to meet consumer demand. Suppliers will need to ascertain the exact scope of the demand, and the consumer's willingness to pay for the information. There may be a demand by some consumers for information that assures them that a food is absolutely "GM-free". Others may accept a lesser assurance, for example, a "best endeavour to be GM-free" label.
- Lacks credibility – consumers may choose not to purchase the product on the basis that information on the label is too difficult to understand or is not substantiated; it may be seen as advertising or puffery.
- Is inconsistent with the legislative environment – it might, for example, contravene the Fair Trading Act.

4.3.3 Costs

Labelling a product as “GM-free” will impose additional costs on the supplier, whether the label is developed independently by a single supplier or through the use of an industry-wide label. Such costs will reflect:

- market research
- development and marketing
- verification to ensure that the label is accurate and meets fair-trading requirements.

The extent to which suppliers will pass increased costs on to consumers will depend on factors such as their size, the competitiveness of the market, and the premium that consumers are prepared to pay for GM-free labelled food.

5 Use of a “GM-Free” Label

Summary

This section examines the use of labels to convey information, and some of the specific issues associated with the use of a “GM-free” label. In particular:

- Labels work by conveying information directly to consumers, either by prompting them to seek further information or by alerting them to information they have already received.
- Information overload can still reduce the effectiveness of labels in conveying information.
- Because it is difficult to determine whether a product is in fact “GM-free”, the use of this terminology poses a risk for suppliers. The use of alternative terminology or a “GM-free” “symbol” (supported by additional information to explain the product’s “GM-free” status) may go some way to overcoming this risk.

5.1 Overview

A label is a representation by a supplier to do any of the following:

- Convey information directly to a consumer, for example, nutritional information panels.
- Prompt consumers into seeking further information from a secondary source, for example, a website or 0800 number.
- Alert consumers to information already received about the features of a product or production process from advertisements or other information sources. In these circumstances the label serves as a “trigger”, it does not impart information itself. The Heart Foundation’s “Pick the Tick” does not convey information on the comparable nutritional benefits between products; rather it alerts consumers to the fact that the product has been assessed by the Foundation and meets its nutritional guidelines.

Labels are limited in their effectiveness to convey complex information by:

- Physical restrictions – the limited amount of space available on a product can restrict the amount of information that can be included on a label.
- Information overload – a label competes against a range of other information about a product’s performance or characteristics for a consumer’s attention. There is a risk that consumers become overloaded with information, and, because of high transaction costs, choose to avoid a product altogether or disregard the label when making a decision.

Applying the consumer and industry “drivers” to the development of a “GM-free” label raises a number of issues about terminology that will need to be considered by stakeholders.

5.2 Terminology

The labelling requirements under Standard 1.5.2 reflect a balance between the difficulty of testing to determine whether a food contains GM material, the provision of meaningful information to consumers, and the imposition of costs and risks on industry.

Finding a balance between the cost and risk to suppliers of making GM-free claims may be made more difficult because of the Commerce Commission’s interpretation of “GM-free” under the Fair Trading Act. This interpretation does not allow for the presence of *any* GM material in a food.

A “GM-free” label could not, therefore, provide a threshold for accidental contamination as is the case with Standard 1.5.2.

This interpretation of “GM-free” also extends to food that results from a genetic modification process. There are substantial difficulties in establishing whether or not a food results from a genetic modification process where:

- the food that results from a genetic modification process does not contain GM material
- modified DNA or protein is eliminated through heating and other manufacturing processes.

5.2.1 Alternative terminology

To mitigate the risk and associated verification costs of making a “GM-free” claim, suppliers might consider the use of alternative terminology to fill the “information gap”. Any supplier, or group of suppliers, considering the use of alternative terminology to reduce risk should seek legal advice on the overall impression of the label under the Fair Trading Act. Examples of alternative labels could include:

- “Not sourced from GM ingredients”. This label could be used if the food, or food ingredient, when purchased was free of GM material – but it does not provide an assurance that food is free from accidental contamination by GM material during storage, handling, processing, or manufacturing stages. That is, the label relates to the *source* of a food, not its final contents.
- “Best endeavour to be GM-free”. The intention of this label would be to convey the suppliers’ efforts to provide “GM-free” food – but, because of the risk of accidental contamination, avoids making the absolute statement that the food is “GM-free”. It does, however, imply that the supplier has taken some steps to source “GM-free” food or food ingredients.

Suppliers will need to consider whether alternative terminology will meet consumer demand for “GM-free” information, and whether additional information is needed to make the alternative label meaningful. For example, a pamphlet or website about the difficulty suppliers face in supplying food that is “GM-free” may support either of the above options.

5.2.2 GM-free symbol

Although the term “GM-free” is succinct and may best meet consumer demand, its use poses a risk to suppliers. A label using alternative terminology might reduce

this risk, but it could also be clumsy, long winded or need to be supported by additional information to be made meaningful.

The use of a symbol or logo, supported by additional information, might avoid some of these difficulties. A symbol would not explicitly state whether a product is “GM-free”. Instead, it would prompt consumers to seek further information about the product, or alert them to information already received from, say, advertising. This information might include steps that suppliers have taken to source “GM-free” food and segregate GM material, but stop short of making a “GM-free” claim.

There is the risk, however, that over time the GM-free symbol will begin to stand for “GM-free” in the pure sense – as consumers will either be unaware, uninterested or have forgotten that the symbol is a signal that there could be some qualifications to a particular supplier’s GM-free claim.

5.2.3 Labelling where there are no GM counterparts or equivalents

Concern has been expressed that it might be misleading under the Fair Trading Act to label foods as “GM-free”, where that type of food does not have any GM counterparts or equivalents (that is, no food of that type has been genetically modified). The issue is that consumers may wrongly assume that food not labelled as “GM-free” contains some GM material, or results from a genetic modification process (but is outside of the scope of the threshold requirements for Standard 1.5.2).

Guidance from the Commerce Commission suggests that it would not be misleading to label conventional foods that do not have GM counterparts as “GM-free”. While this type of labelling could be seen as exploiting consumer demand for information, it is still legitimate to obtain a competitive advantage over a rival supplier despite there being no commercially available GM foods or food ingredients of that type.

New Zealand suppliers should, however, note that this approach differs from U.S Food and Drug Administration guidelines and Canadian Food Inspection Agency advice. They state that it would be misleading to label a conventional food as GM-free where there are currently no equivalent GM products⁸.

Questions for Submitters

- What terminology should be used for a “GM-free” label?
- Would a GM-free symbol avoid some of the issues associated with use of the term “GM-free”?
- Should a GM-free labelling system extend to food where there are as yet no GM counterparts or equivalents?

⁸ US Food and Drug Administration (January 2001). *Guidance for Industry – Voluntary labelling indicating whether foods have or have not been developed using bioengineering.*

6 Labelling System

Summary

This section introduces the idea of a “labelling system” to support a GM-free label. It discusses:

- The necessary relationship between what is contained on a label and the processes that verify identity-preservation and product-tracing mechanisms for “GM-free” food.
- Whether identity-preservation and tracing mechanisms for imported food provide a sufficient level of verification for suppliers to make “GM-free” claims.
- The possible role a labelling system can play in supporting a standardised label.

6.1 Overview

Because of the difficulty of establishing whether a food is “GM-free”, both the Commerce Commission and Food Standards Australia New Zealand recommend that suppliers making “GM-free” labelling claims be able to provide reliable evidence that genetic modification production processes have not been used and that steps have been taken to segregate GM materials.

The purpose of a labelling system is to support a label by providing an assurance that the labelling claim on a product is meaningful and accurate through setting out appropriate supply, manufacturing and administrative procedures. It underpins in a reliable and authoritative way the claims made on the label.

A system for a “GM-free” label is likely to include a means of verifying identity preservation⁹. This is a procedure that requires segregation of GM food throughout the supply chain (for example, at seed, farm, handling and distribution, processing, manufacturing, and retail levels) to prevent contamination of “GM-free” food. The labelling system is also likely to include product-tracing mechanisms that provide documentary evidence that at each stage of the production process only “GM-free” food and food ingredients have been used.

6.2 Verifying Claims

Applying identity-preservation and product-tracing processes to the development of a “GM-free” labelling system raises a number of technical issues. New Zealand is an importer of food and food ingredients from countries with commercial GM crops. Identity-preservation systems for imported food will be based around the country-of-origin’s definition of GM-free and its mandatory labelling requirements. These systems may not, particularly if the food is from North America, be the same as the definition of “GM-free” under the Fair Trading Act.

⁹ There is seemingly no internationally agreed definition of identity preservation, but the concept essentially refers to any system of crop or raw-material management that segregates or preserves the identity of the source or nature of the materials. Broadly, “segregation” is synonymous with keeping crops and products apart, whereas “identity preservation” is taken to apply to a positive desire to preserve the original identity source of a crop or product.

Developing a labelling system in New Zealand that includes identity-preservation and product-tracing elements will require consideration of whether the level of verification provides sufficient confidence to make a “GM-free” claim under the Fair Trading Act – that is, has identity preservation been designed to support an absolute interpretation of “GM-free”, and does it exclude food from a genetic modification process?

The use of an identity-preservation process that provides a threshold for accidental contamination to support a “GM-free” label would not provide a defence for a breach of the Fair Trading Act (under Section 44 relating to the taking of reasonable precautions). For example, the British Retail Consortium and Food and Drink Federation have developed a voluntary technical standard for the supply of identity-preserved maize and soya to support the European Commission Novel Food Regulations. It provides a 1% accidental contamination threshold, and so could not be used as the basis for “GM-free” claims in New Zealand.

6.3 Standardised Label

A labelling system could prescribe the form and contents of a standardised GM-free label for the voluntary use of those suppliers that meet the system’s requirements. This would allow suppliers who consider that there is a market advantage in sharing the same label to do so, while leaving other suppliers who use the system free to make their own claims.

Alternatively, the system could be designed in such a way that all users of the system are required to use the same label. An administrative body could licence use of the labels (see Section 7 for a more detailed discussion of this). For example, suppliers with products certified against Heart Foundation performance criteria are licensed to use the “Pick the Tick” label.

In either case, a standardised label could be supported by publicity and marketing on behalf of all suppliers who use the system – including additional information to support a GM-free symbol or alternative GM-free terminology.

Questions for Submitters

- What features should a labelling system provide?
- What identity-preservation and product-tracing mechanisms should a labelling system be based around?
- Should a labelling system provide for a standardised label?

7 Self-Regulatory Options for a Labelling System

Summary

Three self-regulatory options have been identified for the development of a labelling system:

- National standard – a standards committee would develop technical specifications around identity-preservation and product-tracing mechanisms to support GM-free claims and the use of an identifying label.
- Code of practice – developed by stakeholders or a standards organisation and setting out industry best practice, including mechanisms for identity preservation, product tracing, labelling, publicity, and (possibly) disputes resolution.
- Third-party certification – carried out by a stakeholder organisation or a specialist certification organisation to provide independent verification of a supplier against a set of specifications.

7.1 Overview

The development of a voluntary labelling system is a form of self-regulation for suppliers who wish to make GM-free claims, and who see that there is an advantage in using a shared system.

In its barest form, a labelling system could set out the industry guidelines that suppliers should follow before making a “GM-free” claim, which may reduce the risk of action under the Fair Trading Act. Consumers and suppliers may, however, have greater confidence in the accuracy of labelling claims where a system provides an administrative structure that has the role of auditing, monitoring and certifying suppliers against the system’s requirements. For example, an independent third party could audit and certify suppliers against the system’s requirements – failure to meet these requirements could result in censure.

As a *mandatory* requirement of a labelling system, third-party certification would provide consumers and suppliers with independent assurance that all of the suppliers using the system were meeting its requirements. As a *voluntary* requirement, individual suppliers could use third-party certification to assure themselves that they met the system’s requirements.

Depending on the standards that the owners of the labelling system wish to promote, a system could provide a forum for resolving disputes. Providing a disputes-resolution process would respond to any consumer concern over the integrity of the system and could also extend to suppliers who object to the outcome of an audit, certification process or act of censure.

The three main options for a self-regulatory labelling system are a national standard, a code of practice or third-party certification. All of these options are

discussed below, but they are clearly not exhaustive. An alternative may, for example, be the establishment of a public database that includes information on the source of foods, food ingredients and their genetic status. As well, any combination of these options could be used for a labelling system.

7.2 Standards

Standards are generally an agreed set of specifications and/or outcome-based statements, such as:

- the kind, grade, quantity, origin, performance, care, composition, contents, manufacture, processing, design, construction, use, finish, or packaging of goods
- the testing of the goods during and/or after manufacturing or processing
- the form and content of markings, warnings or instructions to accompany the goods.

Standards can be developed by an industry association, an industry sub-sector, or by groups with a common interest in a product or process.

7.2.1 National standards

Standards New Zealand (SNZ) is the trading arm of the Standards Council, a Crown entity with the responsibility for developing national, regional and international standards (often jointly with Australia). Where appropriate New Zealand Standards are based or developed around similar or equivalent international standards. This assists suppliers in gaining access to export markets, and can assist in enabling imports to New Zealand through harmonisation of Standards.

When a New Zealand Standard is developed, revised or amended SNZ would generally secure funding for the project based on the defined scope and the timeframe for delivery. SNZ is obliged under the Standards Act 1988 to consult with all interested parties and to establish a technical committee under the project management of SNZ to develop the standard. Membership of the committee is drawn from a balanced cross-section of all those organisations who may potentially use, or have an interest in, the Standard. Generally, this will mean representatives from: consumer, industry, professional and technical associations; research and testing bodies; and regulators. SNZ retains ownership of the standard and is responsible for managing revisions based on time or need.

All the parties involved must agree upon the final content and shape of a national standard. Wider public comment is sought and considered by the committee during the development stages. Claims of compliance with a national standard may be made by self-declaration (to make a false claim would breach the Fair Trading Act) or a third party can certify compliance.

An example of a national standard that has been developed to support a label requirement is summarised in the box below.

Textiles - Care Labelling

The Consumer Information Standard (Care Labelling) Regulations 2000 is a mandatory standard under the Fair Trading Act 1986. The regulations require suppliers of textile articles to provide information to consumers on the correct way to care for articles, including dry-cleaning and washing. The regulations also prescribe the form of symbols and terminology on the label.

A voluntary joint national standard has been developed, AS/NZS 1957:1998 “Textiles – Care Labelling”, to assist suppliers in meeting the Care Labelling Regulations. The standard sets out a procedure for suppliers to determine how a textile product should best be cleaned, dried and pressed – which then enables them to correctly disclose this information.

The standard uses a series of procedures for determining the correct care-labelling instructions, which are summarised in a flowchart. Some of the procedures include classification of the textile article by fibre type, reference tables on the end use of products, and a reference table on the appropriate care-labelling information and performance tests to verify that the care-labelling instructions are accurate.

7.2.2 GM-free national standard

Standards New Zealand could be commissioned by stakeholders to develop a national standard to support a “GM-free” label. The standard could address technical issues surrounding the verification of “GM-free” food, such as detailing processes for tracing food and food ingredients.

Suppliers who purchase the standard and follow its provisions could label food as being “GM-free”. They could then substantiate this by referring to their use of the standard and/or by evidence of third-party certification. The standard could prescribe the form of a GM-free label for suppliers to use. In either case, representations by suppliers that they have met the GM-free standard could always be “tested” by someone bringing a claim of misrepresentation under the Fair Trading Act.

7.3 Code of Practice

A code of practice is a set of principles, rules and procedures that regulate those suppliers who agree to be bound by its provisions. Codes are generally developed by an industry sector or a standards body, in consultation with consumer and government stakeholders, and are owned and administered by those suppliers who subscribe to it.

A code of practice will generally provide a set of rules similar to a standard, but the rules are normally developed by the owners of the code. An administrative body is usually established to support a code and may be responsible for monitoring and auditing compliance with the code, reviewing it, and undertaking dispute resolution between consumers and participating suppliers.

Examples of codes of practice include the Electricity Complaints Commission and the Insurance and Savings Ombudsman scheme, both of which are established for the purpose of dispute resolution. The Juice Association Code of Practice,

summarised in the box below, is an example of a code that focuses on processing procedures and the validity of claims made by suppliers.

Code of Practice and Administration Rules for the New Zealand Juice Industry¹⁰

The Juice Industry Code of Practice applies to all members of the New Zealand Juice Association (NZJA) and other subscribers approved by the NZJA. The purpose of the Code is to assist industry compliance with New Zealand’s food and dietary supplement regulations and the Fair Trading Act.

Members of the NZJA, and other subscribers to the Code, agree not to engage in misleading or deceptive conduct (prohibited under the Fair Trading Act). Misleading or deceptive conduct includes the adulteration and dilution of juice; misrepresentation about juice composition, grade and contents; and misleading packaging or advertising.

The Code is administered by the NZJA, which is responsible for promoting, financing and reviewing the Code. It also conducts an ongoing juice monitoring and testing programme. Individual members of the NZJA, and other subscribers to the Code, may also conduct testing of competitors’ juice products.

Results of the NZJA’s monitoring programme and complaints about breaches of the Code by competitors or from the public are referred to the New Zealand Industry Compliance Committee. The committee is appointed by the NZJA, and includes representatives from the NZJA, consumers and the juice industry. Depending on the significance of the breach, the committee may issue warnings, publish test results, notify retailers or government enforcement agencies, or institute legal proceedings itself.

7.3.1 GM-free code of best practice

A labelling system could be based on a code of practice that codifies industry “best practice” for the supply and labelling of “GM-free” food. The code could be developed by an industry association, or even a group of suppliers within an industry, in consultation with consumer organisations and other interested stakeholders. The code could include rules relating to:

- sourcing identity-preserved food and food ingredients
- documentary evidence to support “GM-free” claims
- labelling (labels, logos or other insignia that certify a supplier to be a subscriber to the code)
- publicising and marketing the label
- disputes resolution.

7.4 Third-Party Certification

Third-party certification schemes generally involve an independent party auditing suppliers for compliance to a set of specifications or standards (national or international). The specifications may be a national standard or similar in scope to

¹⁰ This example is a summary of the Juice Association Code of Practice not a direct quotation from the Code.

a national standard, and set out procedures for tracing food and food products, record keeping and segregating “GM-free” foods. They could also prescribe the form and circumstances in which a supplier could use a “GM-free” label, although certification schemes usually require suppliers to have had their product or production processes certified before making a claim.

Three immediately apparent options for the development of a third-party certification labelling system are:

- specialist certification organisation
- stakeholder association
- certified standard.

7.4.1 Specialist certification organisation

Stakeholders could approach an organisation that specialises in the development of specifications, and the certification of suppliers, to develop a GM-free labelling system. AgriQuality – a state owned enterprise specialising in agricultural and production procedures – offers certification and quality-management systems across the agricultural and food industries. AgriQuality retains ownership of the specifications it develops and recoups costs by charging suppliers a fee for certification.

An example of an AgriQuality system is their Organic Standard, which is summarised in the box below.

AgriQuality - Organic Standard

The AgriQuality organic standard is based on the Codex Alimentarius Commission international food standards, EU Regulations and Australian National Standards. It specifies minimum compliance requirements to gain certification for the production and labelling of organically produced foods. The aims of the standard are to protect consumers against misleading information in the market; protect producers of organic produce against misrepresentation of other agricultural produce as being organic; and to ensure that all stages of food production, preparation, storage, transport, and marketing comply with the standard.

Certenz, an independent business group set up by AgriQuality, certifies organic products and businesses to the AgriQuality Standard. The Joint Accreditation System of Australia and New Zealand (JAS-ANZ) has accredited Certenz for compliance with ISO 65 (“Certification of organic foods and organic food production systems”).

In addition to developing the standard and certification, AgriQuality provide services to assist suppliers wishing to produce organic foods. These services include training, testing, gap analysis, and auditing.

7.4.2 Stakeholder Association

A third-party certification scheme could also be developed and operated by an industry association, group of industry members, or interested stakeholders. Development of specifications and supplier certification may be the sole purpose of

an association – making it similar to the development of a code of practice. An association could recoup the cost of establishing and administering a labelling system through certification fees, levying members, or licensing suppliers to use the label.

The National Consumers Food Safety Network have done some initial work around developing a GM-free labelling system similar to the Heart Foundation’s “Pick the Tick”. The system would be based on an identity-preservation system and supported by testing. It would be owned by a consumer trust and use a logo. Suppliers using the logo would incur charges to pay for verification, promotion and maintenance of the system.

Two associations that have certification systems, BIO-GRO and the Heart Foundation, are summarised in the box below.

BIO-GRO Organic Standard

BIO-GRO is the trading name for the non-profit organisation New Zealand Biological Producers and Consumers Council Inc. It is funded through membership and inspection fees, licensing levies, donations, and grants.

BIO-GRO is an accredited member of the International Federation of Organic Agricultural Movements. BIO-GRO has developed its own standard that meets EU, US and Japanese regulations governing the use of the “organic” label. This standard is reviewed every two years.

BIO-GRO certifies both primary and non-primary production against its standard. The certification process includes testing, annual auditing and random auditing on a 3-4 yearly basis. If non-compliance with the BIO-GRO standards occurs, additional follow-up documentation or audits may be required to provide evidence that non-compliance has been corrected. Suppliers that meet the standard, and pass the certification process, are licensed by BIO-GRO to use its trademark.

Heart Foundation - “Pick the Tick” Trademark Symbol

The “Pick the Tick” symbol is part of the Heart Foundation’s nutrition programme aimed at improving New Zealander’s eating patterns. Foods carrying the symbol are lower in total fat, saturated fat, and sodium than comparable products.

Suppliers seeking to use the symbol must submit their product for assessment against the Foundation’s guidelines. Suppliers with foods that meet the guidelines must pay a royalty and enter into a licensing agreement to use the symbol. Product packaging and advertising must also be approved by the Foundation.

Suppliers that enter into the licensing agreement with the Foundation agree to have their product and packaging randomly tested against the guidelines.

7.4.3 Certified Standard

A third-party certification scheme could also be built on a national standard, with suppliers becoming certified against the standard by an accredited certification body. For example, Bureau Veritas, AgriQuality and SGS International Certification Systems audit and certify an organisation’s systems and processes against agreed

specifications and standards. Certification bodies have in turn been accredited by an accreditation body such as International Accreditation New Zealand (IANZ), or JAS-ANZ as recognition of their ability to provide this certification.

Similar to the way in which the “S” mark is used, certified suppliers could use a symbol or logo specified in the standard to indicate that their product and process is GM-free, and has been certified as such.

Questions for Submitters

- What option appears most suitable for a labelling system? What are its advantages and disadvantages?
- Which option would provide suppliers with the most confidence to make “GM-free” claims?
- Which option is likely to gain the most consumer support?
- What other options could be developed?

8 Factors for Assessing Options for a GM-Free Labelling System

Summary

The options for a labelling system discussed in the previous section, and the identification of consumer and industry “drivers”, raise a number of issues that will have to be addressed during the development of the system. They are effectively questions for its developers that cover the areas of:

- ownership and administration
- technical expertise
- consumer confidence
- flexibility
- ongoing support
- dispute resolution
- funding

8.1 Overview: Ownership and Administration Issues

Previous sections have set out some of the “drivers” that stakeholders may have for the development of a GM-free labelling system, and the type of self-regulatory options that are available.

The labelling system will need to be owned and administered by some organisation that retains the confidence of consumers *and* suppliers. The central question is what form should that organisation take? The options identified in Section 7 posed a mix of ownership and administrative choices: independent third party (for example, a standards organisation), industry or consumer association, or a mix of stakeholders.

This section now looks at a number of factors that will have to be taken into account in developing a self-regulatory GM-free labelling system. The varying degrees of emphasis given to these factors by stakeholders will help in assessing the various options available and in determining the eventual ownership and administrative “shape” of any labelling system that emerges from this process.

8.2 Technical Expertise

The development of a structure to support a GM-free label is inherently technical, and will revolve around identity-preservation processes and tracing mechanisms. The technical expertise available to the labelling system’s owners and administrators is an important issue. In particular, whether this expertise should be “in house” or contracted from “outside” as and when required.

The expertise available through the formation of an expert committee to develop a consensus-based national standard, or the use of a specialist organisation to develop a third-party standard, may have advantages over the expertise available to a stakeholder association.

8.3 Consumer Confidence

In Section 4 the relationship between consumer perceptions about the source of information and consumer confidence in a label was introduced. To build consumer confidence, a labelling system could be designed around the following principles:

- Participation – consumers participate in the development of a system and are widely consulted in decision making.
- Representation – consumers are represented in the decision-making forum. As the end users of a product, consumers can improve the quality of decision making by bringing their perspectives and experiences into a labelling system.
- Transparency – decisions on the scope, management, operation, and specifications of a system are made readily available to consumers.

Working from these principles, there is obvious merit in the development of a consensus-based national standard by an expert committee that is representative of interested stakeholders. Equally, however, the principles could be incorporated into a code of practice that supports a labelling system, including a third-party accreditation system by an industry association.

8.4 Flexibility

There is no agreed international interpretation of what GM-free means. A “GM-free” labelling system developed for New Zealand suppliers may need to change in response to international developments, such as the development of a GM-free definition by the Codex Alimentarius Commission. Other issues that may necessitate change include improvements in the sensitivity of testing procedures to detect GM material and genetic modification processes, and the decreasing availability of “GM-free” food if genetic modification techniques are adopted more widely. To accommodate change, a labelling system will need to have a degree of flexibility.

The ownership and administration of a labelling system will have a bearing on how quickly a system can be amended to respond to change. For example, convening an expert committee and reviewing a national standard may take longer than amending a code of practice.

8.5 Ongoing Support

A number of the labelling system options identified in this paper require some form of ongoing support, such as:

- monitoring and reviewing the system’s specifications
- auditing suppliers against specifications

- accrediting suppliers
- publicity and marketing.

Many of these ongoing support requirements are administrative, and may need to be performed by a standing body. A code of practice requires both an executive to manage the code and a secretariat for day-to-day administration. Others, such as third-party certification, require continuing technical support.

Ongoing support requirements for a labelling system have funding implications that go beyond initial development costs. Funding may need to be recouped through a cost-recovery system, and so requirements for ongoing support will need to be considered at an early stage in the system's development.

8.6 Dispute Resolution

A dispute resolution process would provide an additional level of scrutiny and add "teeth" to a GM-free labelling system. It would help build and maintain consumer confidence, as consumers could take action against suppliers who are suspected of non-compliance with the system's specifications. Suppliers would also be able to take action against non-compliant competitors.

Some of the options for a labelling system identified in Section 7, such as a New Zealand Standard, are unlikely to be able to accommodate a dispute-resolution process. Whether a labelling system should include dispute resolution will, therefore, need to be considered before a system is developed.

A process for dispute resolution would also require ongoing support to ensure that decisions are fair, and that the process is efficient and accessible. Support is likely to include an executive to manage the system, a forum to hear complaints, and possibly an office. All of this suggests that the incorporation of a dispute-resolution process will impose significant administrative costs on a labelling system.

8.7 Funding

The question of who will fund development of a labelling system is an obvious hurdle to development.

Two main funding options have been identified:

- Cost recovery – the use of levies or licences on suppliers using the system or label could be used to recover development costs. An administrative structure may be necessary to manage cost recovery, which suggests that a labelling system would need to be based around a code of practice or a stakeholder association that provides third-party certification.
- One-off costs – stakeholders could contribute one-off costs to the development of a labelling system, for example, through the development of a national standard or a third-party standard owned by a specialist organisation.

The funding option that is eventually chosen will be influenced by the various factors that have been discussed in this section and the different weights that stakeholders give to them.

Questions for Submitters

- What technical expertise is available to develop a labelling system?
- Does the labelling system provide processes that will build consumer confidence?
- How flexible is the labelling system to change (for example, if an international definition of GM-free is developed, or improvements are made in the sensitivity of tests for detecting the presence of GM material or genetic modification processes)?
- What ongoing support structures does the labelling system require (for example, monitoring, auditing, licensing, or marketing requirements)?
- Should a labelling system provide for a dispute-resolution process?
- Who will contribute to the funding of a labelling system, and what form should this take?
- What ownership and administrative structure is most likely to take account of all the factors involved in developing a GM-free labelling system?

9 Next Steps

The boxed sets of questions at the end of Sections 5-8 are intended solely as prompts to stimulate response and reaction from readers. Submitters are freely invited to comment on *all aspects* of the paper, and to comment on any additional matters considered to be relevant to these issues which were not covered expressly by this discussion document.

To advance the development of a labelling system, the interdepartmental working group is particularly interested in receiving comment on:

- the options presented in Section 7 – although these are by no means exhaustive and any further options identified by stakeholders are welcomed
- the assessment factors introduced in Section 8 and their influence upon the possible ownership and administrative structure of the labelling system.

Expressions of interest from stakeholders who are willing to develop or contribute to the funding of a voluntary GM-free labelling system are also sought.

The interdepartmental working group will analyse submissions received from stakeholders, and co-ordinate those people or organisations who wish to be involved in the development of the labelling system. This may lead to the establishment of a body of stakeholders, co-ordinated by the interdepartmental working group, who are capable of furthering the project.

Appendix One:

Organisations Represented at the Key Stakeholders' Meeting - Wellington, 27 February 2002

AgriQuality New Zealand	Life Sciences Network/ Biotenz
Australia New Zealand Food Authority (now known as Food Standards Australia New Zealand)	National Consumers Food Safety Network
BIO-GRO New Zealand	Organic Federation of Aotearoa
Commerce Commission	Retail and Wholesale Merchants Association of New Zealand (now known as New Zealand Retailers Association)
Consumers Institute	Standards New Zealand
Federated Farmers of New Zealand Inc.	Zespri International Ltd
Fonterra	Ministry of Agriculture and Forestry
GE Free New Zealand	Ministry of Health
Greenpeace	Ministry of Consumer Affairs
Grocery Marketers' Association	

Appendix Two:

Fair Trading Act 1986

The Fair Trading Act (the “Act”) is generic consumer protection legislation that prohibits misleading and deceptive conduct in trade.

Section 10 of the Act provides:

“No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods.”

Section 13(a) of the Act provides:

“No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services make a false or misleading representation that goods are of a particular kind, standard, quality, grade, quantity, composition, style, or model, or have had a particular history or particular previous use.”

The Act does not require the mandatory disclosure of information about food. But information voluntarily disclosed about food, through words pictures or other representations, will be in breach of the Act if it misleads or deceives consumers about a food’s:

- composition
- age
- quality
- quantity
- nutritional quality
- origin
- health benefits
- desirability.

In interpreting whether a claim is misleading, the courts will examine the overall impression given by the labelling; additional information given as fine print is unlikely to provide a successful defence if the overall impression of the labelling is misleading. Information disclosed by a supplier does not have to be intentionally, or deliberately misleading, to be in breach of the Act.

Fines and Offences Under the Act

The Commerce Commission, competitors or consumers can take action for a breach of the Act. Section 40 sets out offences for a breach of the Act’s provisions. It provides for fines of up to \$30,000 for individuals and \$100,000 for companies.

Appendix Three:

Examples of GM-free claims

The table below lists some of the products that the interdepartmental working group is aware of that have “GM-free” labels. It is intended to provide a “snapshot” of the range of foods whose suppliers are making GM-free claims, and the terminology used. It is not an exhaustive list, or based on a survey, of foods with GM-free representations.

Examples of Foods Currently Available with GM-free Claims

Product	Labelling Claim
Canned Apricots	“Guaranteed GM-free”
Soy Milk	“Made from Non-GM Soy*” “*Made from non-genetically modified soy. Using a process known as identity preservation every stage from seed to supermarket is controlled, to maintain segregation and to minimise the possibility of mixing identity preserved soybeans with any other soybeans”.
Naan Bread	“GE Free”
Rice Milk	“Not genetically modified” “Free from genetically altered products” “GM ingredients are not naturally occurring substances and as such we do not use them in our products”
Organic, Free Range Eggs	“No genetic modification used”
Sultanas	“GMO Free”
Organic Soy Drink	“Sourced from Australian GM-free soy beans” “Organic farming does not permit the use of genetic modified seed or plant”
Multigrain corn thins	“GMO free” “contains no genetically modified ingredients”

Appendix Four:

International Issues

The international legislative environment has implications for New Zealand businesses that wish to market their foods overseas as GM-free.

Australia

The Trans-Tasman Mutual Recognition Agreement allows goods that can be legally sold in New Zealand to be sold in Australia. Foods with GM-free labels, which can be legally sold within New Zealand, will be able to be sold in Australia.

It should be noted that the interpretation of GM-free by the Royal Commission on Genetic Modification and the Commerce Commission is consistent with the interpretation by the Australian Competition and Consumer Commission under Australia's equivalent to the Fair Trading Act, the Trade Practices Act 1974 (i.e. "GM-free" is the absence of any ingredients or production processes in a food).

Codex and technical barriers to trade

The Codex Alimentarius Commission (Codex) develops international food standards. Countries that adhere to Standards developed by Codex are unlikely to breach the Agreement on Technical Barriers to Trade (TBT). New Zealand, as a World Trade Organisation member, is committed under the TBT to not creating unnecessary obstacles to trade through the use of technical regulations and standards, including packaging, marking and labelling requirements. A voluntary initiative to develop a labelling system, as recommended by the Royal Commission, would be less likely to raise TBT issues than a mandatory initiative. Nonetheless, a national standard for a voluntary GM-free labelling regime would need to comply with the TBT Agreement's "Code of Good Practice for the Preparation, Adoption, and Application of Standards".¹¹ Any procedures for assessing conformity with such a standard would need to comply with the relevant conformity assessment provisions of the TBT Agreement.¹²

In May, the Codex Committee on Food Labelling considered issues around the definition of genetically modified, but agreement on the scope of this term was unable to be reached. Codex has yet to begin the process of developing a definition for "GM-free".

¹¹ Annex 3 to the WTO Agreement on Technical Barriers to Trade (TBT).

¹² Articles 5, 6, 7 and 8 of the TBT Agreement.

Other export markets

Outside of Codex, there is no internationally agreed interpretation of “GM-free”. Individual government’s guidance on GM-free claims can be divided into two broad groups:

- countries that define “GM-free” as the absence of genetic material only, do not require mandatory presence-based genetically modified labelling, and advise suppliers against making “GM-free” claims (e.g. Canada and the United States)
- countries that require mandatory genetically modified presence-based labelling and define “GM-free” as the absence of any genetically modified material or any genetic modification technology in the production process (e.g. EU member states, Australia and New Zealand).

New Zealand exporters making GM-free claims will, therefore, need to be aware of the interpretation of GM-free in the importing country, and the relevant provisions of that country’s fair-trading law.